

Cambridge Waste Water Treatment Plant Relocation Project  
Anglian Water Services Limited

# Master Development Agreement

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20 November 2023

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Dated

23 June

2022

- (1) Cambridge 4 LLP
- (2) U and I (Cambridge) Limited
- (3) Land Securities Property Holdings Limited

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**Master Development Agreement**

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relating to sale and development of land known as Cambridge 4, Cambridge

***Private and Confidential – Commercially Sensitive***

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## PARTICULARS

<b>Date</b>	23 June	2022
<b>Owner</b>	Cambridge 4 LLP (registered number OC427168) whose registered office is at Lancaster House Lancaster Way Ermline Business Park Huntingdon Cambridgeshire PE29 6XU.	
<b>Developer</b>	U and I (Cambridge) Limited (registered number 12611883) whose registered office is at 7a Howick Place London SW1P 1DZ	
<b>Developer's Guarantor</b>	Land Securities Property Holdings Limited (registered number 05075022) whose registered office is at 100 Victoria Street, London, United Kingdom, SW1E 5JL	



<b>Development Area</b>	The freehold property known as Cambridge 4, Cambridge and shown for identification edged red on Plan 1 with such variations as may be agreed by the parties but excluding any part of the Development Area as is required by the Owner and notified to the Developer to enable the AW Relocation Requirements to be achieved and the AW Relocation Site to be developed and operated as a water recycling centre in accordance with the Relocation Site Planning Permission.
<b>Developer's Solicitors</b>	Gowling WLG (UK) LLP of 4 More London Riverside, London, SE1 2AU, United Kingdom (Ref: JL/2652742) or such other solicitors as the Developer may appoint and notify in writing to the Owner.
<b>Development</b>	<p>Any one or more of the following activities for the Proposed Development:</p> <ul style="list-style-type: none"><li>(a) obtaining Planning Permissions and other Statutory Consents;</li><li>(b) the appointment of the Professional Team, Building Contractor and any Principal Sub-Contractors;</li><li>(c) the preparation and approval of the Development Plans;</li><li>(d) the carrying out of the Plot Infrastructure Works;</li><li>(e) the marketing and sale of individual Plots at the Development Area; and</li><li>(f) the carrying out of works on the Development Area to provide for meanwhile social or other temporary uses and/or if agreed by the Owner (acting reasonably) the development of part of the Development Area.</li></ul>

**Owner's Representative**

Savills of 33 Margaret Street, London, W1G 0JD (ref: Patrick Moseley) or such other surveyor who is a Fellow or Member of the Royal Institution of Chartered Surveyors as the Owner may appoint and notify in writing to the Developer.

**Owner's Solicitors**

Eversheds Sutherland (International) LLP of 115 Colmore Row (Ref: StorerM.175125.000080) or such other solicitors as the Owner may appoint and notify in writing to the Developer.

**Plan**

The plan attached to this Agreement numbered 1 included at **Appendix 1**.



**Proposed Development**

The Development of the Development Area as serviced plots (with associated infrastructure) to enable the delivery of a development satisfying the Minimum Requirements (as a minimum) and otherwise in accordance with the requirements of this Agreement and the Business Plan.

**Title Number(s)**

CB209927, CB288636, CB288631 CB283648 and CB283649, and such other title numbers as there may be for any additional areas comprised in the Development Area from time to time.

**THIS AGREEMENT** is made on the date set out in the Particulars

**BETWEEN**

- (1) the Owner; and
- (2) the Developer; and
- (3) the Developer's Guarantor.

**BACKGROUND**

- (A) The Owner has the benefit of the Landowner(s) Options to acquire (or direct the acquisition of) the Development Area and has procured the Developer via a negotiated procedure procurement process pursuant to the Public Contracts Regulations 2015 to: a) obtain planning permission enabling the Proposed Development; b) carry out the Plot Infrastructure Works at the Development Area; and c) market the Individual Plots forming the Development Area to third party developers for Development of those Plots subject to and in accordance with the terms of this Agreement.
- (B) Subject to the satisfaction (or where permitted by the terms of this Agreement, waiver) of the Conditions Precedent and the Plot Conditions, the Owner will in accordance with the terms of this Agreement transfer the individual Plots comprised within the Development Area to third party purchasers in return for the payment for each Plot of the Plot Price.
- (C) The parties shall carry out their respective obligations in relation to the Development in accordance with the Objectives subject to and in accordance with the terms of this Agreement.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

1.1 In this Agreement, the following words and expressions have the following meanings:

- |                          |   |
|--------------------------|---|
| <b>"Access Licence"</b>  | has the meaning given it in <b>clause 4.1</b> ;   |
| <b>"Account"</b>         | has the meaning given in <b>clause 9.1</b> ;  |
| <b>"Adverse Matters"</b> | any change in the Plot Infrastructure Works or any terms contained in a Planning Permission, Planning Agreement or a Statutory Consent or any other agreement with a third party which would or would be likely to: <ul style="list-style-type: none"><li>(a) materially alter the layout of the Proposed Development;</li><li>(b) materially delay the Date of Practical Completion;</li><li>(c) materially affect the lettable or marketability of the Proposed Development;</li><li>(d) materially restrict the permitted use or uses of the Proposed Development;</li><li>(e) materially increase the Developer's Costs; or</li></ul> |



- (f) materially reduce the value of the Development Area or the Proposed Development in the open market;

**"Affordable Housing"**

has the meaning given it in Annex 2 of the National Planning Policy Framework or otherwise as the local planning authority might from time to time determine;

**"Agreed Proportion"**

where the Eligible Developer's Costs are solely attributable to the relevant Plot: 100%; or

where the Eligible Developer's Costs relate to a Combined Infrastructure Area: X% where (unless otherwise agreed by the Project Board or in the Infrastructure Strategy):

$$X = Y/Z \times 100$$

Where:

Y is to be the Internal Area of the relevant Plot (as calculated by reference to the indicative masterplan as at the date of the Satisfactory Outline Planning Permission or Satisfactory Hybrid Planning Permission (as the case may be)

Z is to be the Internal Area (as calculated by reference to the indicative masterplan as at the date of the Satisfactory Outline Planning Permission or Satisfactory Hybrid Planning Permission (as the case may be)) of the Combined Infrastructure Area (including the relevant Plot) as calculated by reference to the Satisfactory Plot Planning Permission (or where there is no Satisfactory Plot Planning Permission, as anticipated by the Infrastructure Strategy included in the current Business Plan at the date of calculation); or

Where the Eligible Developer's Costs are Site Wide Developer's Costs: A% where (unless otherwise agreed by the Project Board):

$$A = B/C \times 100$$

Where:

B is to be the Internal Area of the relevant Plot (as calculated by reference to the indicative masterplan as at the date of the Satisfactory Outline Planning Permission or Satisfactory Hybrid Planning Permission (as the case may be)

C is to be the Internal Area (as calculated by reference to the indicative masterplan as at the date of the Satisfactory Outline Planning Permission or Satisfactory Hybrid Planning Permission (as the case may be) of all the Plots within the Development Area (including the relevant Plot);

<b>"Appointment"</b>	each of the deeds of appointment of the Professional Team to be entered into in accordance with <b>Paragraph 1 of Schedule 9</b> ;
<b>"Appointment Default"</b>	the rescission of the Building Contract or any Appointment without the express written consent of the Owner or their determination due to the act or default of the Developer;
<b>"Architect"</b>	such architect as the Developer or the Building Contractor appoints as the Architect for the Plot Infrastructure Works in accordance with <b>Paragraph 1 of Schedule 9</b> ;
<b>"AW Centre"</b>	the water recycling centre in the ownership of AWS that is at the date of this Agreement located upon the part of the Development Area registered under title number CB209927;
<b>"AW Relocation Site"</b>	an alternative site suitable for the relocation, servicing, and development of a replacement facility for the AW Centre acceptable to AWS in its discretion;
<b>"AWG"</b>	means AWG C4 Limited of Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire PE29 6XU (registered in England and Wales number 11787247), and its statutory successors;
<b>"AW Relocation Requirements"</b>	means each of the following requirements are satisfied: <ul style="list-style-type: none"> <li>(a) the development of a new water recycling facility for the City of Cambridge and its catchment areas at the AW Relocation Site which has been practically completed to the satisfaction of AWS and in accordance with the relevant building contracts, the Relocation Site Planning Permission, and any necessary Statutory Consents and regulatory requirements;</li> <li>(b) the construction, connection and commissioning of all necessary inflow and outflow infrastructure and connection of such infrastructure to appropriate discharge point(s) has been completed to the satisfaction of AWS and in accordance with the relevant building contracts, the Relocation Site Planning Permission, and any necessary Statutory Consents and regulatory requirements;</li> <li>(c) all conduits for the transmission of any necessary utilities to and from the AW Relocation Site have been constructed to be practically complete to the satisfaction of AWS and in accordance with the relevant building contracts, the Relocation Site Planning Permission, and</li> </ul>



any necessary Statutory Consents and regulatory requirements, and (so far as necessary) all easements with third parties for the use of such conduits are in place;

- (d) all easements for vehicular and pedestrian access to the AW Relocation Site are (so far as necessary) complete to the satisfaction of AWS and so as to enable access to and from the public highway to the AW Relocation Site suitable for its use as a water recycling centre in accordance with the Relocation Site Planning Permission;

all regulatory and statutory requirements, conditions and/or consents for the commissioning and operation of the AW Relocation Site as a water recycling centre have been achieved or satisfied and all regulatory and statutory requirements, conditions and/or consents relating to the AW Centre at the Development Area have been achieved or satisfied, so as to enable AWS to properly certify in accordance with its statutory and regulatory obligations that the AW Centre at the Development Area is surplus to its operational requirements;

**"AWS"**

means Anglian Water Services Limited of Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire PE29 6XU (registered in England and Wales number 2366656, and any statutory successor to AWS);

**"AW Relocation Requirements"**

means each of the following requirements are satisfied:

- (a) the development of a new water recycling facility for the City of Cambridge and its catchment areas at the AW Relocation Site which has been practically completed to the satisfaction of AWS and in accordance with the relevant building contracts, the Relocation Site Planning Permission, and any necessary Statutory Consents and regulatory requirements;
- (b) the construction, connection and commissioning of all necessary inflow and outflow infrastructure and connection of such infrastructure to appropriate discharge point(s) has been completed to the satisfaction of AWS and in accordance with the relevant building contracts, the Relocation Site Planning Permission, and any necessary Statutory Consents and regulatory requirements;
- (c) all conduits for the transmission of any necessary utilities to and from the AW Relocation Site have been constructed so as to be practically complete to the

satisfaction of AWS and in accordance with the relevant building contracts, the Relocation Site Planning Permission, and any necessary Statutory Consents and regulatory requirements, and (so far as necessary) all easements with third parties for the use of such conduits are in place;

- (d) all easements for vehicular and pedestrian access to the AW Relocation Site are (so far as necessary) complete to the satisfaction of AWS and so as to enable access to and from the public highway to the AW Relocation Site suitable for its use as a water recycling centre in accordance with the Relocation Site Planning Permission;

all regulatory and statutory requirements, conditions and/or consents for the commissioning and operation of the AW Relocation Site as a water recycling centre have been achieved or satisfied and all regulatory and statutory requirements, conditions and/or consents relating to the AW Centre at the Development Area have been achieved or satisfied, so as to enable AWS to properly certify in accordance with its statutory and regulatory obligations that the AW Centre at the Development Area is surplus to its operational requirements;

**"Base Figure"**

means the figure for the Consumer Price Index prepared and published by the Office of National Statistics for the month of the date of this Agreement or such other index as agreed by the Project Board in writing from time to time;

**"Building Contract"**

the building contract or contracts for the carrying out of the Plot Infrastructure Works to be entered into in accordance with **Paragraph 1 of Schedule 9**;

**"Building Contractor"**

such building contractor or building contractors as the Developer appoints as the building contractor for the purposes of the Plot Infrastructure Works in accordance with **Paragraph 1 of Schedule 9**;

**"Business Plan"**

the Business Plan for the Proposed Development from time to time, being the Initial Business Plan to be prepared and agreed in accordance with the requirements of the Business Plan Condition at **Schedule 2** as may be varied by the parties from time to time in accordance with the Change Procedure;

**"Calculation Date"**

for each Plot (or any Relevant Part agreed pursuant to **clause 7.13**), the date of the calculation of the distribution of payments due from the Account pursuant to **clause 9**;

**"CDM Regulations"**

the Construction (Design and Management)



	Regulations 2015;
<b>"Certificate of Practical Completion"</b>	the certificate or statement to be issued in accordance with a Building Contract certifying that Practical Completion has taken place;
<b>"Change Procedure"</b>	the procedure set out in <b>clause 11</b> for reaching agreement on issues as required under this Agreement;
<b>"Code of Measuring Practice"</b>	means the RICS Code of Measuring Practice, 6 <sup>th</sup> Edition;
<b>"Combined Infrastructure Area"</b>	an area comprising Plots which share Infrastructure at the Development Area as identified in the Infrastructure Strategy where the costs of such Infrastructure is to be apportioned between such Plots in accordance with this Agreement;
<b>"Commercial Conditions"</b>	the Standard Commercial Conditions (Second Edition);
<b>"Commercially Sensitive Information"</b>	any information, which if disclosed, would be likely to prejudice the commercial interests of any person;
<b>"Commissioner"</b>	The Information Commissioner as defined in Data Protection Legislation, being the regulatory authority in the UK responsible for supervising or regulating compliance by persons with Data Protection Legislation;
<b>"Communications and Engagement Strategy"</b>	the communications and engagement strategy as set out in the Business Plan, as may be updated from time to time in accordance with the Change Procedure;
<b>"Community Infrastructure Levy"</b>	Any sums payable as "Community Infrastructure Levy" as defined pursuant to part 11 of the Planning Act 2008;
<b>"Conditions Precedent"</b>	the conditions precedent set out at <b>clause 5.2</b> of this Agreement;
<b>"Confidential Information"</b>	<p>(a) any information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include trade secrets, Intellectual Property Rights, know-how, of either party and all personal data and special category personal data as defined in the Data Protection Legislation;</p> <p>(b) any financial information relating to the Developer or the Developer's Guarantor; and/or</p> <p>(c) any financial information relating to the Development which is provided in relation to the Viability Requirement or the</p>

Viability Test;

**"Construction Industry Scheme"**

the tax deduction scheme for the construction industry operated by HM Revenue and Customs under Chapter 3 of Part 3 of the Finance Act 2004 and The Income Tax (Construction Industry Scheme) Regulations 2005;

**"Construction Phase Plan"**

the construction phase plan to be prepared in respect of the Plot Infrastructure Works under regulations 12 or 15 of the CDM Regulations;

**"Contamination"**

the presence in, on, under or over the Development Area or any part thereof of any Hazardous Material or Waste;

**"Control"**

In relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person:

(a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or

(b) as a result of any powers conferred by the articles of association or any other document regulating that or any other body corporate;

**"Controller"**

has the meaning given to it in the Data Protection Legislation;

**"Council"**

Cambridge City Council whose address is at The Guildhall, Market Hill, Cambridge CB2 3QJ, or any statutory successor to the Council;

**"Current Figure"**

means the figure for the Consumer Prices Index prepared and published by the Office for National Statistics, or, if such Index ceases to be prepared the Index which replaces it or most closely approximates it for the month of the date that the relevant calculation is to be made in accordance with this Agreement (or where such figure has not been published at the time of the calculation, the last published monthly figure) or such other Index as agreed by the Project Board from time to time;



**"Current Infrastructure Commitment"**

at the date of any calculation requested by the Owner pursuant to **paragraph 3.3 of Part 2 of Schedule 2:**

- (a) the aggregate of any Infrastructure Costs and any associated Community Infrastructure Levy or financial liability pursuant to a required Planning Agreement for a Plot incurred and self-funded by the Developer and not yet recovered pursuant to **clause 9** as at that date; and
- (b) any reasonably anticipated Infrastructure Costs and any associated Community Infrastructure Levy or financial liability pursuant to a required Planning Agreement for the relevant Plot that the Developer has not secured funding from an Investor and would (if the Funding Condition was satisfied) be obliged to self-fund from its own resources;

**"Data Loss Event"**

any event that results, or may result, in the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, access to, Personal Data held by the Developer under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

**"Data Protection Impact Assessment"**

an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**"Data Protection Legislation"**

all applicable laws relevant to a party governing the use or processing of Personal Data, data protection and/or privacy (including privacy in electronic communications, direct marketing and in respect of communications and digital and on-line activities) pursuant to this Agreement and including:

- (a) the UK GDPR;
- (b) the LED; and
- (c) the DPA 2018,

In each case as amended, replaced or supplemented and in force from time to time;

**"Data Protection Officer"**

has the meaning given to it in the DPA 2018;

**"Data Subject"**

an individual who is the subject of Personal Data;

**"Data Subject Request"**

a request made by, or on behalf of, a Data Subject in accordance with rights granted to it pursuant to the Data Protection Legislation, such as the right to access their Personal Data;



**"Date of Actual Completion"** the date on which completion of the sale and purchase of the relevant Plot takes place;

**"Date of Practical Completion"** the date certified in the Certificate of Practical Completion as the date of Practical Completion or otherwise determined as the date of Practical Completion in accordance with the terms of this Agreement;

**"Date of Sectional Completion"** the date certified in a Sectional Completion Certificate as the date of Sectional Completion of a Section or otherwise determined as the date of Sectional Completion in accordance with the terms of this Agreement;

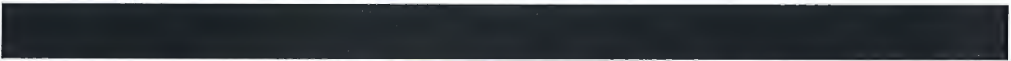
**"DPA 2018"** the Data Protection Act 2018;

**"Defects Liability Period"** the defects liability period under the Building Contract for the whole of the Plot Infrastructure Works or (if applicable) a Section of the Plot Infrastructure Works;



**"Development Consent Order"** an order made by the Secretary of State pursuant to the Planning Act 2008 (as amended) which gives consent for a nationally significant infrastructure project as defined by Section 14 of the Planning Act 2008 (as may be amended);


**"Developer's Costs"** has the meaning given to it in **Part 2 of Schedule 8**;



**Developer's Planning and Promotion Costs** the Developer's Costs referred to in paragraph 2 of **Part 2 of Schedule 8**;

**"Developer Funding"** such funding (being either debt or equity or a combination of debt and equity or a forward sale or forward funding whether or not in combination with debt or equity) as the Developer requires properly to comply with its obligations pursuant to this Agreement in connection with the development of the relevant Plot (to include the requirement to deliver all associated Plot Infrastructure Works and any payments due pursuant to Community Infrastructure Levy and/or any Planning Agreements) such funding (where funding provided by an Investor is to be utilised) to be made available to the Developer on the terms of the Developer Funding Agreement;

**"Developer Funding Agreement"** such funding agreement or agreements (if any) as are entered into relating to the Developer Funding on such terms and in such form or forms as shall be acceptable to the Owner and the Developer

	(acting reasonably);
"Developer's Return"	the Developer's Return as defined in <b>clause 9.2.5</b> ;
	
"Developer's Representative"	the person appointed by the Developer as the Employer's Agent;
"Developer's Team"	the Building Contractor, the Professional Team, and any Principal Sub-Contractors;
"Development Account"	the notional account in respect of the Development and each Plot to be maintained by the Developer in accordance with <b>Part 1 of Schedule 8</b> ;
"Development Receipts"	means the sums referred to in <b>Paragraph 1.3 of Part 1 of Schedule 8</b> ;
"Development Viability Condition"	has the meaning defined in <b>Part 1 of Schedule 3</b> ;
"Direct Agreement"	the direct agreement required pursuant to the HIF Agreement to be entered into by Homes England and the Developer permitting Homes England to exercise step in rights where permitted by the HIF Agreement such Direct Agreement to be in the form attached as Appendix 5 with such amendments as the Owner shall request and the Developer shall agree (acting reasonably);
"Disposal"	means a freehold transfer by the Owner or Landowner(s) of a Plot or Plots (or part of a plot in the circumstances set out at <b>clause 7.13</b> ) to be made on arms' length bona fide commercial terms to a Plot Purchaser in accordance with <b>clause 7</b> ;
"Disposal Documents"	means the draft documents to be agreed in accordance with <b>clause 7</b> including: <ul style="list-style-type: none"> <li>(a) the Plot Transfer Agreement;</li> <li>(b) the Plot Transfer;</li> <li>(c) (if required) the buy-back option;</li> <li>(d) the Plot Licence;</li> <li>(e) the Legal Charge and any related Intercreditor/ priority agreement; and</li> <li>(f) any ancillary documents agreed by the parties as being required pursuant to the Disposal Strategy;</li> </ul> <p>subject to such amendments as the Developer may (acting reasonably) require and the Owner shall (acting reasonably) agree;</p>



**"Early Phases Strategy"**

the strategy for the delivery of any initial phases of the Development to be formulated and included as part of the Business Plan;

**"Eligible Developer's Costs"**

the Agreed Proportion of the aggregate of the Developer's Costs incurred or estimated to be incurred for the relevant Plot (which for the avoidance of doubt include the Agreed Proportion of a) any Site Wide Developer's Costs and/or b) any Developer's Costs for a Combined Infrastructure Area properly attributable to the relevant Plot) and/or c) any Developer's Costs for the Infrastructure exclusively servicing the relevant Plot or otherwise agreed to be exclusively allocated to the relevant Plot in accordance with the Infrastructure Strategy);

**"Eligible Planning and Promotion Costs"**

all Developer's Planning and Promotion Costs incurred by the Developer at the date of any distribution of receipts from Plot Sales pursuant to clause 9 which have not either (a) been included in Developer's Eligible Costs or (b) been previously paid to the Developer pursuant to **clause 9**;

**"Employer's Agent"**

such person as the Developer appoints as the Employer's Agent for the purposes of a Building Contract in accordance with **Paragraph 1 of Schedule 9**;

**"Environment"**

all or any of the following media namely the air, including without limitation the air within buildings and within other natural or man-made structures, water and land and any living organisms or eco-systems supported by those media;

**"Environmental Consultant"**

such environmental consultant as the Developer or the Building Contractor appoints as the environmental consultant for the Plot Infrastructure Works in accordance with **Paragraph 1 of Schedule 9**;

**"Environmental Information Regulations"**

the Environmental Information Regulations 2004;





**"Exempt Information"**

any information which is exempt from disclosure pursuant to the provisions of:

- (a) the FOIA; or
- (b) the Environmental Information Regulations; or
- (c) the Fees Regulations;

**"Fees Regulations"**

the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004;

**"Financial Model"**

the financial model as set out in the Business Plan as may be updated from time to time in accordance with the Change Procedure;

**"FOIA"**

the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any codes of practice issued under sections 45 and 46 of the Freedom of Information Act 2000 and any guidance issued by the Information Commissioner in relation to such Act;

**"Force Majeure"**

any one or more of the following:

- (a) fire;
- (b) storm or other exceptionally adverse weather conditions;
- (c) war, hostilities, rebellion, insurrection, military or usurped power or civil war;
- (d) labour lockouts, strikes or other industrial



	disputes;
	(e) riot, terrorist action, commotion, disorder;
	(f) decree of government;
	(g) non-availability of labour, materials or equipment; or
	(h) any other causes or circumstances beyond the reasonable control of the Developer or the Building Contractor;
<b>"Funding Condition"</b>	has the meaning given in paragraph 3 of Part 2 of <b>Schedule 2</b> ;
<b>"Funding Strategy"</b>	The strategy for the funding of the Development to be formulated and included as part of the Business Plan;
<b>"Group Company"</b>	In relation to any Undertaking: <ul style="list-style-type: none"> <li>(a) an Undertaking which is either a parent undertaking or a subsidiary undertaking of the Developer or the Developer's Guarantor (as the case may be);</li> <li>(b) an Undertaking which is a subsidiary undertaking of a parent undertaking of which the Developer or the Developer's Guarantor (as the case may be) is also a subsidiary undertaking; and/or</li> <li>(c) an Undertaking which Controls, is Controlled by or is under common Control with the Developer or the Developer's Guarantor (as the case may be);</li> </ul>
<b>"Hazardous Material"</b>	any substance, whether in solid, liquid or gaseous form, which is capable of causing harm to human health or to the Environment whether on its own or in combination with any other substance;
<b>"HIF Agreement"</b>	a housing infrastructure fund grant determination agreement dated 27 <sup>th</sup> March 2020 for the provision of HIF Funding for the Development Area, entered into by (1) Homes England, (2) Cambridge City Council (3) CWRP Relocation Limited (3) Anglian Venture Holdings Limited and (4) AWG C4 Limited as varied from time to time;
<b>"HIF Milestones"</b>	the "Core Housing Output Milestones" as defined in the HIF Agreement as may be varied from time to time;
<b>"HIF Milestone Dates"</b>	the "Milestone Dates" (as defined in the HIF Agreement) as may be varied from time to time;
<b>"Highways Works"</b>	means those parts of the Plot Infrastructure Works comprising the installation or construction of:



	(a) roads and footpaths;
	(b) bridges, tunnels, underpasses; and
	(c) areas of open space;
<b>"Health and Safety Executive"</b>	the Health and Safety Executive or any successor department or organisation having responsibility for the administration of the CDM Regulations;
<b>"Homes England"</b>	Homes England (the trading name of Homes and Communities Agency), a body corporate under Section 1 of the Housing and Regeneration Act 2008 of One Friargate Coventry CV21 2GN (including any statutory successor);
<b>"Housing Needs Assessment"</b>	the housing needs assessment as set out in the Business Plan as may be updated from time to time in accordance with the Change Procedure;
<b>"Indirect and Consequential Losses"</b>	In relation to any breach of this Agreement or other circumstances in which a party is entitled to recover losses, any loss of profit, loss of revenue, loss of contract, loss of goodwill, loss of business opportunities or loss of anticipated savings resulting from such breach, whether or not the party committing the breach knew or ought to have known that such loss would be likely to be suffered as a result of such breach (provided that for the avoidance of doubt a) losses stemming from a breach of the HIF Funding or b) expenses incurred in relation to securing possession of land at the Development Area are not to be considered indirect and consequential losses;
<b>"Hybrid Planning Permission"</b>	has the meaning given in <b>Schedule 5</b> ;
<b>"Indexed"</b>	the indexation of the Minimum Return and the Developer's Minimum Return in accordance with <b>clause 9.5</b> ;
<b>"Information"</b>	has the meaning given under Section 84 of the Freedom of Information Act 2000;
<b>"Infrastructure"</b>	any one or more of the following: <ul style="list-style-type: none"> <li>(a) roads and footpaths;</li> <li>(b) bridges, tunnels, underpasses;</li> <li>(c) areas of open space;</li> <li>(d) electricity, foul and surface water drainage, gas, water, and public telephone services to the public mains;</li> <li>(e) internet, cable and other computer or telecommunications media;</li> <li>(f) all pipes, wires, ducts and other conduits for the passage of such services;</li> </ul>

- (g) transport infrastructure (including bus shelters); and
- (h) social infrastructure (including community facilities town halls libraries outdoor amenity/facilities (beyond open space and play) street art and the like);

**"Infrastructure Land"**

the parts of the Development Area not included as Plots as Identified in the Business Plan;

**"Infrastructure Costs"**

the Developer's Costs for the provision of the Infrastructure more particularly defined at **paragraph 3 of part 2 of Schedule 8**;

**"Infrastructure Proportion"**

for any Plot, the proportion of the Infrastructure Land calculated as follows:

$$A = \frac{B \times D}{C}$$

Where:

A= the Infrastructure Land (In gross acreage) to be allocated to the relevant Plot;

B= the total area (In gross acreage) of the Infrastructure Land

C = the total area (in gross acreage) of all the Plots within the Development Area

D= the total area (In gross acreage) of the relevant Plot

Or such other proportion as the parties may agree pursuant to the Business Plan;

**"Infrastructure Strategy"**

the strategy for the delivery of Infrastructure as set out in the Business Plan as may be updated from time to time in accordance with the Change Procedure, and which will include:

- (a) the programme for the delivery of the Plot Infrastructure Works (including an illustrative cash flow and programme of sales receipts); and
- (b) an itemised estimated cost of the Plot Infrastructure Works;

**"Insolvency Default"**

has the meaning given in **paragraph 2 of Schedule 10**;

**"Insured Risks"**

the risks of:

- (a) fire, subterranean fire, lightning, storm, tempest, flood and explosion;
- (b) bursting or overflowing of water tanks, apparatus or pipes or the escape of water



	from any of them;
	(c) aircraft or other aerial devices or articles dropped or falling from any of them;
	(d) riot, civil commotion and malicious damage; and
	(e) impact, earthquake, heave, landslip, subsidence;
<b>"Interim Uses"</b>	such temporary uses for a part of the Development Area as may be agreed by the Council (acting reasonably) pursuant to the Partnership Working Strategy;
<b>"Interim Use Lease"</b>	the lease to be granted by the Council for any parts of the Development Area agreed to be used for Interim Uses in a form proposed by either the Developer or the Council and approved by the other (such approval not to be unreasonably withheld or delayed);
<b>"Internal Area"</b>	the "gross internal area" of each Plot measured in accordance with the current Code of Measuring Practice from time to time as published by the Royal Institution of Chartered Surveyors;
<b>"Investor"</b>	any person approved in writing by the Owner, such approval not to be unreasonably withheld or delayed, who has entered into an agreement with the Developer and/or Owner (where agreed by the Owner at its discretion) to provide funding to the Developer and/or Owners for the carrying out of the Plot Infrastructure Works for a Plot or Plots;
<b>"Landowner"</b>	(as the case may be) for any part of the Development Area Cambridge City Council, Anglian Water Services and Ambury Developments Limited and their respective successors in title and "Landowners" shall be construed accordingly;
<b>"Landowner's Option(s)"</b>	option agreements with the Landowners dated on or about the date of this Agreement, enabling (where the Conditions are satisfied) the land comprised in the Development Area to be transferred by the Owner (or by the Landowners at the Owner's direction) to a Plot Purchaser;
<b>"Local Planning Policy"</b>	means the planning policy (including any area action plan) forming the statutory development plan relating to planning at the Development Area as updated by the local planning authority from time to time;
<b>"LED"</b>	the Law Enforcement Directive (Directive (EU) 2016/680) as amended, replaced or supplemented from time to time;
<b>"Legal Charge"</b>	a fixed legal charge in the form agreed pursuant to <b>clause 7;</b>

<b>"LIBOR"</b>	the 12-month British pound London Inter-Bank Offered Rate or if such rate ceases to exist such other equivalent rate as the parties may agree or if not so agreed as may be determined by an expert pursuant to <b>clause 17</b> ;
<b>"Licence Area"</b>	means the area forming part of the Development Area being the subject of a Plot Licence;
<b>"Management and Maintenance Strategy"</b>	means the management and maintenance strategy set out in the Business Plan as may be updated from time to time in accordance with the Change Procedure, such strategy not to oblige the Owner to take on any liability for long term management (unless it otherwise agrees at its absolute discretion);
<b>"Marketing"</b>	all or any of the following: <ul style="list-style-type: none"> <li>(a) the researching and preparation of a marketing plan for the Disposal of the Plots within the Development Area;</li> <li>(b) the appointment of selling agents; and</li> <li>(c) the advertising and promotion of the Plots to be let or sold on the best terms reasonably obtainable so as to achieve the best price or rent;</li> </ul> <p>and the word <b>"Market"</b> is to be interpreted accordingly;</p>
<b>"Marketing and Disposal Strategy"</b>	the marketing and disposal strategy as set out in the Business Plan as may be updated from time to time in accordance with the Change Procedure;
<b>"Marketing Personal Data"</b>	Personal Data obtained, created and/or processed by or for U&I pursuant to the Project and related to the Communications and Engagement Strategy, Marketing and Disposal Strategy and/or Marketing;
<b>"Masterplan"</b>	has the meaning given it in <b>Schedule 5</b> ;
<b>"Material Breach"</b>	a breach of the terms of this Agreement which has a material and adverse effect and is significant, having regard to all relevant circumstances including the nature of the breach (and in particular whether it is intentional, negligent or otherwise), the regularity with which the obligation which has been breached fails to be performed and the consequences of the breach;
<b>"Material Commencement"</b>	has the meaning given to it in the Town and Country Planning Act 1990;
<b>"Mechanical and Electrical Services Engineer"</b>	such mechanical and electrical services engineer as the Developer or the Building Contractor appoints as the Mechanical and Electrical Services Engineer for the purposes of the Plot Infrastructure Works in accordance with <b>Paragraph 1</b> of



**"Milestones"**

**Schedule 9;**

each of the following dates:

- (a) the date for submission of the master plan and the Outline Planning Application or Hybrid Planning Application (as determined by the Planning Strategy);
- (b) the date for satisfaction of the Conditions Precedent (where not already satisfied);
- (c) the date for satisfaction of the Plot Conditions for each of the Plots;
- (d) the dates for the Disposal of each Plot; and
- (e) the dates for commencement and completion of (i) Plot Infrastructure Works and (ii) (if applicable) a Section of the Plot Infrastructure Works for each Plot;

together with such other appropriate Milestones as are agreed as part of the Business Plan pursuant to **Schedule 2;**

**"Milestone Date"**

for each Milestone, the corresponding date for the satisfaction of the relevant Milestone, such dates to be agreed by the parties and being the longest not target dates for satisfying each relevant Milestone and set out in the Business Plan from time to time, or such later date(s) as is agreed in accordance with the Change Procedure;

**"Minimum Requirements"**

(save as waived by the Owner at its absolute discretion):

- (a) the delivery of at least five thousand two hundred (5,200) residential units at the Development Area; and
- (b) the Landowner receiving at least the Minimum Return as consideration for the Disposal of each Plot;



**"Objectives"**

each of the following:

- (a) ensuring that the Proposed Development is integrated and complements the wider North East Cambridge Area Action Plan, as more particularly defined in the Local Planning Policy;
- (b) delivery of innovative place making and a live work learn and play philosophy



intended for the new residential quarter to be established by the Proposed Development;

- (c) innovation in technology, design and construction methods to accelerate development of the whole Development Area;
- (d) use of the Cambridge Sustainable Housing Design Guide dated June 2017 to underpin the overarching site design of the Proposed Development;
- (e) transport neutrality for the Proposed Development to enhance capacity and reduce car dependency;
- (f) achieving a mix of disposal tenures (which may include private rental sector and a range of affordable housing tenures at policy compliant levels) so as to facilitate the accelerated development of the whole Development Area;
- (g) a financial return in the context of these Objectives to deliver the Proposed Development pursuant to a Marketing and Sales Strategy which maximises the financial return to the Owner in the context of the Objectives and the provisions of this Agreement;
- (h) delivery of Infrastructure where appropriate to do so; and
- (i) such other objectives as the parties may agree;

**"Onerous Conditions"**

has the meaning given to it in **part 6 of Schedule 5**;

**"Option to Tax"**

an option to tax the Development Area pursuant to Part 1 Schedule 10 to the VATA and "Opted to Tax" has a corresponding meaning;

**"Outline Planning Permission"**

has the meaning given to it in **Schedule 5**;

**"Owner's Disposals Representative"**

Savills of 33 Margaret Street, London, W1G 0JD (ref: Patrick Moseley) or such other surveyor who is a Fellow or Member of the Royal Institution of Chartered Surveyors experienced in disposals of property similar the property to be disposed of pursuant to this Agreement as the Owner may appoint and notify in writing to the Developer;

<b>"Personal Data"</b>	any data relating to an identified or identifiable individual that are within the scope of protection as "personal data" under the applicable Data Protection Legislation and which are provided by or on behalf of one party to another for the purposes of this Agreement;
<b>"Personal Data Breach"</b>	has the meaning given to it in the Data Protection Legislation;
<b>"Phasing Programme"</b>	the plan and programme set out in the Business Plan setting out the number, extent, and layout of the Plots and the general approach to phasing of the Proposed Development;
<b>"Planning Act"</b>	the Town and Country Planning Act 1990;
<b>"Planning Agreement"</b>	an agreement or undertaking in respect of and affecting the Development Area or the Plot Infrastructure Works, whether or not also affecting other property, pursuant to: <ul style="list-style-type: none"> <li>(a) section 106 of the Planning Act;</li> <li>(b) section 111 Local Government Act 1972;</li> <li>(c) section 33 Local Government (Miscellaneous Provisions) Act 1982;</li> <li>(d) sections 38 or 278 Highways Act 1980;</li> <li>(e) section 104 Water Industry Act 1991 or any other provision of similar intent, within the meaning of the Water Act 1989, with an appropriate authority for the supply of water or the drainage of surface or foul water from the Development Area; or</li> <li>(f) any agreement with an appropriate authority or utility company relating to the passage or transmission of gas, water, electricity, foul or surface water drainage or any of them;</li> </ul>
<b>"Planning Consultant"</b>	such reputable and suitably qualified person appointed by the Developer as the planning consultant(s) for the Development in accordance with <b>Paragraph 1 of Schedule 9</b> ;
<b>"Planning Permission"</b>	as the context requires, a Hybrid Planning Permission, an Outline Planning Permission or a Plot Planning Permission;
<b>"Planning Strategy"</b>	the planning strategy as set out in the Business Plan as may be updated from time to time in accordance with the Change Procedure;
<b>"Plot"</b>	any area of land at the Development Area which is capable of independent use and occupation or which would be capable of such occupation following the carrying out of Plot Infrastructure



	Works, such areas to be identified in the Phasing Programme as from time to time may be amended pursuant to the Change Procedure;
<b>"Plot Conditions"</b>	the conditions for drawdown of a Plot Licence as set out at <b>clause 5.3</b> of this Agreement;
<b>"Plot Delivery Strategy"</b>	the plot delivery strategy as set out in the Business Plan as may be updated from time to time in accordance with the Change Procedure and addressing (without limitation): <ul style="list-style-type: none"> <li>(a) the extent of the Licence Area in respect of each Plot, and the required duration of any Plot Licence;</li> <li>(b) the extent of Infrastructure allocated to each Plot (including but not limited to being for the purpose of calculating the Developer's Costs for each Plot not included in a Plot Infrastructure Area); and</li> <li>(c) the proposed density of development on each Plot;</li> </ul>
<b>"Plot Development Plans"</b>	the detailed plans, drawings, sections, elevations, specifications, priced bills of quantities, engineer's drawings and calculations and other design and building details for the Plot Infrastructure Works to be produced in respect of each Plot in accordance with <b>paragraph 1 of Schedule 4</b> ;
<b>"Plot Infrastructure Area"</b>	means that part of the Development Area for which the Developer will require access under a Plot Licence to carry out Plot Delivery Works in respect of a Plot or Plots to be determined in accordance with the Plot Delivery Strategy;
<b>"Plot Infrastructure Specification"</b>	the detailed specification of the Plot Infrastructure Works to be prepared in respect of each Plot in accordance with <b>paragraph 1 of Schedule 4</b> ;
<b>"Plot Infrastructure Works"</b>	such works (including such Remediation Works, Services Works and Highways Works as may be required) required to be carried out in on under or over the relevant Plot Infrastructure Area or any other Plot as required to comply with any Statutory Consents or Planning Agreement or to facilitate the developed use of the relevant Plot following completion of the development of the relevant Plot, including (so far as applicable to the relevant Plot) the construction installation upgrading and connection of Infrastructure;
<b>"Plot Licence"</b>	means the access licence in the form annexed at <b>Appendix 2</b> with such amendments as may be agreed by the parties (acting reasonably) to be granted by the relevant Landowner to the Developer for a Plot Infrastructure Area to enable the Developer to carry out and complete the Plot

	Infrastructure Works;
<b>"Plot Licence Completion Date"</b>	the date twenty Working Days after the Owner has been given written notice by the Developer that the last of the Plot Conditions has been satisfied in respect of the relevant Plot or it is otherwise determined that the Plot Conditions have been satisfied pursuant to <b>clause 17</b> ;
<b>"Plot Planning Application"</b>	has the meaning given to it in <b>Schedule 5</b> ;
<b>"Plot Planning Condition"</b>	has the meaning given to it in <b>Schedule 5</b> ;
<b>"Plot Planning Permission"</b>	a planning permission granted or to be granted pursuant to a Plot Planning Application;
<b>"Plot Purchaser"</b>	means any bona fide purchaser acquiring an individual Plot for the relevant Plot Price in accordance with a Plot Transfer Agreement for the Plot;
<b>"Plot Price"</b>	means the consideration paid or to be paid (including any deferred consideration) by a Plot Purchaser in respect of a Plot;
<b>"Plot Programme of Works"</b>	the detailed programme of works to be produced in respect of each Plot in accordance with <b>paragraph 2 of Schedule 4</b> ;
<b>"Plot Transfer"</b>	means the draft Plot transfer to be agreed pursuant to <b>clause 7</b> as amended from time to time (and from Plot to Plot) in accordance with the Change Procedure;
<b>"Plot Transfer Agreement"</b>	means for any plot the Plot sale and purchase agreement between (1) the Owner/Landowner and (2) Plot Purchaser to be agreed pursuant to <b>clause 7</b> as amended from time to time (and from Plot to Plot) in accordance with the Change Procedure;
<b>"Plot Viability Condition"</b>	has the meaning given in <b>paragraph 2 of Schedule 3</b> ;
<b>"Practical Completion"</b>	completion of the whole of the Plot Infrastructure Works in accordance with the terms of the Building Contract but excludes any landscaping works that it is not possible to complete because of the planting season in which practical completion occurs;
<b>"Pre-Development Obligations"</b>	those obligations set out in <b>paragraphs 1 to 3 of Schedule 6</b> ;
<b>"Principal Designer"</b>	such reputable and suitably qualified person appointed by the Developer as the Principal Designer for the Plot Infrastructure Works in accordance with regulation 5 of the CDM Regulations;
<b>"Principal Sub-Contractors"</b>	the sub-contractors with material design responsibility appointed or to be appointed by the



Building Contractor for the Plot Infrastructure Works;

**"Processor"**

has the meaning given to it in the Data Protection Legislation;

**"Procurement Strategy"**

the procurement strategy as set out in the Business Plan as may be updated from time to time in accordance with the Change Procedure ensuring that the Building Contractor, each Principal Sub-Contractor and each member of the Professional Team are appointed in a manner to ensure value for money so as not to breach the Council's and AWG's and/or AWS's statutory and procurement obligations and otherwise as may be notified to the Developer from time to time upon written request;

**"Professional Team"**

each of the following:

- (a) the Architect;
- (b) the Employer's Agent;
- (c) the Environmental Consultant;
- (d) the Mechanical and Electrical Services Engineer;
- (e) the Principal Designer;
- (f) the Planning Consultant;
- (g) the Project Manager;
- (h) the Quantity Surveyor; and
- (i) the Civil and Structural Engineer;

together with any other consultants or advisors appointed or engaged by the Developer as identified in the Business Plan or otherwise reasonably required to achieve the objectives;

**"Prohibited Materials"**

any products or materials which are generally known to be deleterious at the time of specification or use, in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with:

- (a) the report entitled " Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Development Area Federation) other than the recommendations for good practice contained in Section 2 of that report;
- (b) relevant British or European Standards or Codes of Practice; or

any publications of the Building Research Establishment related to the specification of products or materials;

**"Project"**

completion of the required plans, programmes, strategies, objectives, works and activities necessary for U&I to perform and complete this Agreement in accordance with its terms, including the Plot Infrastructure Works, Plot Programme of Works, Procurement Strategy, Services Works, Communications and Engagement Strategy, Marketing and Marketing and Disposal Strategy;

**"Project Board"**

the board to be established in accordance with the provisions of **clause 11**, and which is at any time is to comprise the Owner's Board Members and the Developer's Board Members who are to be responsible for driving forward the strategy and co-ordination of the delivery of the Proposed Development and for reviewing progress of the Development against the Business Plan;

**"Project Board Objectives"**

to monitor and provide a forum to discuss the performance of the parties' obligations under this Agreement including:

- (a) to monitor progress and drive forward development strategy against:
  - (i) the Milestones;
  - (ii) the Phasing Program;
  - (iii) the Infrastructure Strategy;
  - (iv) the Sustainability Strategy;
  - (v) the Transport Strategy;
  - (vi) the Procurement Strategy;
  - (vii) the Marketing and Disposal Strategy;
  - (viii) the Communications and Engagement Strategy;
  - (ix) the Management and Maintenance Strategy; and
  - (x) the requirements of the HIF Agreement (including the HIF "Milestones")
- (b) to ensure that the Objectives, Minimum Requirements, HIF Milestones and Milestones are met;
- (c) to review and consider any changes to the Business Plan as part of the annual review of the Business Plan;



- (d) to discuss any strategic matters that relate to this Agreement and the Development;
- (e) to review and consider any matters which are to be determined in accordance with the Change Procedure;
- (f) to seek to resolve any disputes that may arise between the parties, so as to avoid, where possible, the need for formal referral to a Specialist;
- (g) to monitor progress of the development of individual Plots in accordance with the Plot Delivery Strategy as updated for the relevant Plot in accordance with **clause 5.13**; and
- (h) such other strategic or monitoring objectives as the Owner and Developer may identify during the currency of this Agreement;

**"Project Manager"**

such project manager as the Developer appoints as the Project Manager for the purposes of the Plot Infrastructure Works in accordance with **paragraph 1 of Schedule 9**;

**"Project Partners"**

has the meaning given to it in the HIF Agreement;

**"Project Personal Data"**

Personal Data obtained, created and/or processed by or for the Developer in relation to the successful implementation and completion of the Project;

**"Protective Measures"**

appropriate technical and organisational measures, which may include: pseudonymising and encrypting Personal Data, ensuring ongoing confidentiality, integrity, availability and resilience of systems and services, ensuring the ability to restore the availability of and access to Personal Data can be restored in a timely manner in an event of a physical or technical incident, and regularly testing, assessing and evaluating the effectiveness of the such measures adopted by it to ensure the security of the processing;

**"Quantity Surveyor"**

such quantity surveyor as the Developer or the Building Contractor appoints as the Quantity Surveyor for the purposes of the Plot Infrastructure Works in accordance with **paragraph 1 of Schedule 9**;

**"Reinstatement Cost"**

the costs, allowing for inflation during the period of reinstatement, of:

- (a) debris removal, demolition, site clearance and complete reinstatement of the Plot Infrastructure Works, assuming their total destruction; and

**"Relocation Site Planning Permission"**

(b) all the Professional Team's, design, legal and other professional fees;

either:

(a) a Development Consent Order obtained pursuant to the Planning Act 2008 by or on behalf of AWS enabling the relocation of the AW Centre to the AW Relocation Site in accordance with the AW Relocation Requirements; or

(b) detailed planning permission and any other required Statutory Consents obtained by or on behalf of AWS for a replacement facility at the AW Relocation Site, so as to enable the relocation of the AW Centre to the AW Relocation Site in accordance with the AW Relocation Requirements;

**"Remediation Works"**

such works required to remove Contamination as necessary to comply with any Statutory Consents or Planning Agreement or which are in the reasonable opinion of the Developer necessary to accommodate the use of the relevant Plot following completion of the Development Works for that Plot; and other ground improvement works reasonably required by the Developer (including for the avoidance of doubt piling, dewatering, obstruction removal and diversion of below ground services);

**"Request for Information"**

a request for information pursuant to the provisions of:

(a) the FOIA; or

(b) the Environmental Information Regulations;

**"Restricted Transfer"**

a transfer of Project Personal Data which is undergoing processing or which is intended to be processed after transfer, to (or within) a country or territory to which such transfer is prohibited or subject to any requirement to take additional steps to adequately protect the Personal Data for the transfer to be lawful under the Data Protection Legislation;

**"RICS"**

the Royal Institution of Chartered Surveyors;

**"Rolling Infrastructure Commitment"**

the requirement that (unless it chooses to do so) at any one time no more than the Rolling Infrastructure Cap of funding be committed by the Developer from its own resources to fund a) Infrastructure Costs and b) any associated Community Infrastructure Levy or financial liability pursuant to a required Planning Agreement for a Plot at the Development Area, for the avoidance of doubt such assessment to



disregard:

- a) any Infrastructure Costs and any associated Community Infrastructure Levy or financial liability pursuant to a required Planning Agreement for a Plot incurred by the Developer which have been recovered from proceeds pursuant to **clause 9**; and
- b) any Infrastructure Costs and any associated Community Infrastructure Levy or financial liability pursuant to a required Planning Agreement for a Plot funded by an Investor;

**"Rolling Infrastructure Cap"**

the sum of thirty million pounds (£30million) less any Developer's Costs incurred by the Developer but not repaid to the Developer pursuant to clause 9 at each date on which the Rolling Infrastructure Commitment is calculated;

**"Sale Costs"**

means the reasonable and proper professional costs (including legal and surveyor's fees) incurred by a party in respect of each Plot Sale in accordance with a budget agreed in writing in advance with the Owner's Representative (acting reasonably) in accordance with the Disposal Strategy;

**"Satisfactory Hybrid Planning Permission"**

has the meaning given to it in **paragraph 1 of Part 1 of Schedule 5**;

**Satisfactory Outline Planning Permission"**

has the meaning given to it in **paragraph 1 of Part 1 of Schedule 5**;

**Satisfactory Plot Planning Permission"**

has the meaning given to it in **paragraph 1 of Part 1 of Schedule 5**;

**"Section"**

(where applicable) the Sections into which the Plot Infrastructure Works have been divided, as referred to in the Building Contract;

**"Sectional Completion"**

completion of the whole of a Section of the Plot Infrastructure Works in accordance with the terms of the Building Contract but excludes any landscaping works in relation to such Section that it is not possible to complete because of the planting season in which practical completion occurs;

**"Sectional Completion Certificate"**

the certificate or statement to be issued in accordance with a Building Contract certifying that Sectional Completion has taken place;

**"Services Works"**

those parts of the Plot Infrastructure Works comprising the installation and connection of:

- (a) electricity, foul and surface water drainage, gas, water, and public telephone services within the Development Area to the public mains;

- (b) internet, cable and other computer or telecommunications media; and
  - (c) all pipes, wires, ducts and other conduits for the passage of such services;
- "Site Wide Developer's Costs"** any Developer's Costs which are incurred in relation to the Proposed Development as a whole, excluding any Developer's Costs attributed to a Plot, or to a Combined Infrastructure Area in accordance with **paragraph 2.1.3 of Schedule 4;**
- "Specialist"** has the meaning given to it in **clause 17;**
- "Statutory Consents"** any statutory approvals, consents, licences or permissions required from any local or other competent authority to enable the Developer lawfully to carry out and complete the Plot Infrastructure Works or to reinstate them following their damage or destruction and includes the approval of reserved matters under the Planning Permission;
- "Statutory Requirements"** all or any of the following:
- (a) any Acts of Parliament and any statutory instruments, rules, orders, regulations, notices, directions, bye-laws and permissions for the time being made under or deriving validity from any Act of Parliament;
  - (b) any European directive or regulations and rules having the force of law in the United Kingdom; and
  - (c) any regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over the Plot Infrastructure Works;
- "Step-In Agreement"** any agreement to be made between (1) the Owner (2) the Developer and (3) an Investor in a form to be agreed by the Owner (acting reasonably) providing for rights for the Investor to remedy any Event of Default or complying with the terms of this Agreement in relation to any Plot Infrastructure Works and to step in to this agreement and replace the Developer following an Event of Default;
- "Structural Engineer"** such structural engineer as the Developer or the Building Contractor appoints as the Structural Engineer for the purposes of the Plot Infrastructure Works in accordance with **Paragraph 1 of Schedule 9;**
- "Subsidy Control Law"** Section 29 European Union (Future Relationship) Act 2021 and any other subsidy control legislation (including statutory guidance) made or coming



into force after the date of this Agreement that amends, supplements or replaces such legislation or guidance, including but not limited to the Subsidy Control Act 2022

**"Sustainability Strategy"**

the sustainability strategy as set out in the Business Plan as may be updated from time to time in accordance with the Change Procedure;

**"Third Party Rights"**

where there are to be provided rights pursuant to the Contracts (Rights of Third Parties) Act 1999 from each of the Professional Team, any Building Contractor and each Principal Sub-Contractor in accordance with **Paragraph 2 of Schedule 9**;

**"Title Matters"**

the agreements, covenants, declarations, easements, exceptions, provisions, reservations, stipulations and other matters referred to in the deeds and documents briefly described in **Part 2 of Schedule 1**;

**"Transport Strategy"**

the transport strategy as set out in the Business Plan as may be updated from time to time in accordance with the Change Procedure;

**"UK GDPR"**

the UK General Data Protection Regulation, as defined in the DPA 2018;

**"Unacceptable Person"**

- (a) any sovereign fund or entity owned or controlled by or any governmental body of a country in respect of which the United Kingdom has withdrawn or suspended diplomatic relations (for so long as such withdrawal or suspension lasts);
- (b) any sovereign fund or entity owned or controlled by or any governmental body of a country in respect of which the United Kingdom has imposed punitive sanctions;
- (c) any sovereign fund or entity owned or controlled by or any governmental body of a country in respect of which the United Nations has imposed punitive sanctions;
- (d) any senior governmental or military officer or political leader of any of the countries referred to in paragraphs (a) or (b) of this definition or any companies or other investment or trading vehicles beneficially owned by such individuals or their immediate family;
- (e) any body or organisation which it would be illegal for a British citizen to be a member of or such is otherwise classed as a banned organization in the United Kingdom; and

	(f)	any entity engaged openly or covertly in activities directed towards the overthrowing or influencing by force or violence of Her Majesty's Government in the United Kingdom;
<b>"Unconditional Date"</b>		for any Plot, the date that both the Conditions Precedent and the Plot Conditions for such Plot have been satisfied or, where permitted by this Agreement, waived;
<b>"Undertaking"</b>	(a)	a body corporate or partnership;
	(b)	an unincorporated association carrying on a trade or business with or without a view to profit;
	(c)	any of the above or its equivalent established in a jurisdiction outside of the UK; and
	(d)	any company or legal person in relation to which insolvency proceedings may be opened pursuant to Article 3 of the EC Regulation on Insolvency Proceedings 2000;
<b>"Vacant Plot Condition"</b>		for each Plot obtaining possession of the Plot free of third party occupation, in accordance with the Vacant Plot Strategy and <b>Schedule 2</b> ;
<b>"Vacant Plot Strategy"</b>		the Vacant Plot strategy as set out in the Business Plan such strategy to take fully into account the likely timings of relocation and satisfaction of the AW Relocation Requirements for a) the AW Centre and b) the likely timings of relocation of any occupiers (taking into account the terms of their occupation) as such strategy may be updated from time to time in accordance with the Change Procedure;
<b>"Vacant Plot Trigger Date"</b>		for any Plot, being the earliest date on which all of the following requirements are achieved:
	(a)	the Business Plan (including the Vacant Plot Strategy) is approved in accordance with <b>Schedule 2</b> ;
	(b)	a Satisfactory Outline Planning Permission or Hybrid Planning Permission is obtained in accordance with <b>Schedule 5</b> ;
	(c)	the Plot is agreed or determined to be Viable pursuant to a Viability Test carried out pursuant to <b>Schedule 3</b> ;
	(d)	for any Plot which includes land comprised in the AW Centre, a Relocation Site Planning Permission is obtained and a period of six weeks has expired thereafter, without Planning Proceedings



(as defined in **Schedule 5**) being commenced, or if they are commenced, those Proceedings having been finally disposed of leaving in place the Relocation Site Planning Permission;

(e) for any Plot which includes land comprised in the AW Centre, where the Relocation Site Planning Permission is not a Development Consent Order giving rights of compulsory acquisition so as to enable the acquisition and servicing of the AW Relocation Site so it can be operated as a water treatment works for the City of Cambridge and its catchment area, the entering into by AWS of an unconditional sale and purchase agreement (or where there is a conditional sale and purchase agreement all conditions being satisfied or waived) for the AW Relocation Site and any other land/ rights required to enable the AW Relocation Requirements to be satisfied; and

(f) for any Plot which includes land comprised in the AW, Material Commencement of the development works pursuant to the Relocation Planning Permission at the AW Relocation Site;

"VAT"	Value Added Tax;
"VATA"	the Value Added Tax Act 1994;
"Viable"	has the meaning given to it in <b>Schedule 3</b> ;
"Viability Requirement"	means that on the disposal of any individual Plot to a Plot Purchaser both:  (a) the Development Viability Condition has been satisfied in accordance with <b>Part 1 of Schedule 3</b> ; and  (b) the Plot to be disposed individually is Viable in accordance with <b>part 2 of Schedule 3</b> ;
"Viability Test"	means making an assessment on the basis of the Financial Model as to whether or not the disposal of any individual Plot satisfies the Viability Requirement in accordance with <b>Schedule 3</b> and where the Viability Test relates to the whole of the Development Area whether the Plots comprised within the Development Area in aggregate are Viable;
"Warranties"	collateral warranties to be given by each member of the Professional Team, the Building Contractor, each Principal Sub-Contractor and the Developer's Representative in accordance with <b>Paragraph 3</b> of

## Schedule 9;

"Waste"	any discarded, unwanted or surplus substance irrespective of whether it is capable of being recycled or recovered or has any value;
"Working Day"	a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales;

### 1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
  - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
  - 1.2.3.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;
- 1.2.4 references to the Development Area include any part of it;
- 1.2.5 "including" means "including, without limitation,";
- 1.2.6 "indemnify" means to indemnify against all actions, claims, demands and proceedings taken or made against the Owner and all costs, damages, expenses, liabilities and losses incurred by the Owner;
- 1.2.7 if there is more than one Developer or more than one Owner, the obligations which they undertake can be enforced against them all jointly or against each individually; and
- 1.2.8 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

1.3 The Particulars form part of this Agreement and words and expressions set out in the Particulars are to be treated as defined terms in this Agreement.

1.4 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

1.5 This Agreement is a "development agreement" for the purposes of Article 6 Construction Contracts (England and Wales) Exclusion Order 1998.

## 2. OBJECTIVES AND DELIVERY

2.1 The Developer has been selected by the Owner to procure the carrying out and completion of the Proposed Development for the whole of the Development Area in accordance with and on the terms of this Agreement (including the Business Plan once this has been prepared and approved in accordance with **part 2 of Schedule 2** of this Agreement) so as to endeavour to achieve the Milestones for each Plot by the relevant Milestone Date and to endeavour to achieve (or procure the achievement of) the Objectives for the Proposed Development by the Agreement Longstop Date.



2.2 The Owner and the Developer will act in good faith in seeking to deliver the Objectives and in performing their obligations under this Agreement.

**3. DEVELOPER'S AND OWNER'S WARRANTIES**

3.1 The Developer warrants to the Owner as at the date of this Agreement and (save for clauses 3.1.7 and 3.1.9 below) at the drawdown of any Plot Licence that:

3.1.1 the Developer is a validly existing company;

3.1.2 the execution of this Agreement by the Developer has been validly authorised;

3.1.3 the Developer's obligations under this Agreement constitute valid legal and binding obligations of the Developer enforceable against the Developer in accordance with the terms of this Agreement;

3.1.4 neither the execution of this Agreement by the Developer nor compliance with its terms will:

3.1.4.1 conflict with or result in any breach of any law or enactment or any deed, agreement or other obligation or duty to which the Developer is bound; or

3.1.4.2 cause any limitation on any of the powers whatsoever of the Developer, or on the right or ability of the directors of the Developer to exercise such powers, to be exceeded;

3.1.5 the Developer is not in default under any law or enactment or under any deed, agreement or other obligation or duty to which the Developer is bound so as to affect adversely its ability to comply with the terms of this Agreement;

3.1.6 all consents required by the Developer for the execution, delivery, issue, validity or enforceability of this Agreement have been obtained and have not been withdrawn;

3.1.7 the Developer is not under any statutory obligation to undertake the Plot Infrastructure Works or any part of them;

3.1.8 no litigation or administrative or arbitration proceedings before any court, tribunal, Government authority or arbitrator is presently taking place, pending or, to the knowledge of the Developer, threatened which might have a material adverse effect on its business, assets, condition or operations or might affect adversely its ability to comply with its obligations under this Agreement;

3.1.9 all information, documents and accounts of the Developer submitted to the Owner for its appraisal of the Development for the purposes of this Agreement are true and accurate and:

3.1.9.1 no change has occurred since the date on which such information, documents and accounts was supplied which renders them untrue or misleading in any respect; and

3.1.9.2 there has been no material adverse change in the business, assets, operations or prospects of the Developer since such information, documents and accounts was provided;

3.1.10 no person having any charge or other form of security over the Development Area or any other assets of the Developer has enforced or given notice of its intention to enforce such security;



- 3.1.11 the Developer is registered under the Construction Industry Scheme with gross payment status;
  - 3.1.12 the Developer operates the Construction Industry Scheme in respect of payments made to sub-contractors (within the meaning of the Construction Industry Scheme);
  - 3.1.13 the Developer is not, after due enquiry, aware of anything which materially threatens the success or successful completion of the Development;
  - 3.1.14 no Event of Default has occurred or is continuing.
- 3.2 The Owner warrants to the Developer as at the date of this Agreement and at the drawdown of any Plot Licence that:
- 3.2.1 the Owner is a validly existing Limited Liability Partnership;
  - 3.2.2 the execution of this Agreement by the Owner has been validly authorised;
  - 3.2.3 the Owner's obligations under this Agreement constitute valid legal and binding obligations of the Owner enforceable against the Owner in accordance with the terms of this Agreement;
  - 3.2.4 neither the execution of this Agreement by the Owner nor compliance with its terms will:
    - 3.2.4.1 conflict with or result in any breach of any law or enactment or any deed, agreement or other obligation or duty to which the Owner is bound; or
    - 3.2.4.2 cause any limitation on any of the powers whatsoever of the Owner, or on the right or ability of the directors/ members of the Owner to exercise such powers, to be exceeded.
    - 3.2.4.3 cause any limitation on any of the powers whatsoever of the Owner, or on the right or ability of the directors or members of the Owner to exercise such powers, to be exceeded;
    - 3.2.4.4 the Owner is not in default under any law or enactment or under any deed, agreement or other obligation or duty to which the Owner is bound so as to affect adversely its ability to comply with the terms of this Agreement;
    - 3.2.4.5 all consents required by the Owner for the execution, delivery, issue, validity or enforceability of this Agreement have been obtained and have not been withdrawn;
    - 3.2.4.6 no litigation or administrative or arbitration proceedings before any court, tribunal, Government authority or arbitrator is presently taking place, pending or, to the knowledge of the Owner, threatened which might have a material adverse effect on its business, assets, condition or operations or might affect adversely its ability to comply with its obligations under this Agreement; and
    - 3.2.4.7 no person having any charge or other form of security over the Development Area or any other assets of the Owner has enforced or given notice of its intention to enforce such security.
- 3.3 Subject to **clause 3.5**, for the purposes of the HIF Agreement the Developer confirms at the date of this Agreement that it is not aware of any matter that would make the



representations and warranties set out in Schedule 5 of the HIF Agreement by the Project Partners inaccurate or misleading.

- 3.4 Where reasonably requested by the Project Partners (or either one of them) the Developer is to confirm that at the date of such confirmation it is not aware of any matter that would make the representations and warranties set out in Schedule 5 of the HIF Agreement by the Project Partners inaccurate or misleading.
- 3.5 If at any time the Developer considers it is not able (or may not in the future be able) to make the representations and warranties set out in Schedule 5 of the HIF Agreement by the Project Partners inaccurate or misleading it shall notify the Owner accordingly.
- 3.6 The Owner will procure that Cambridge City Council and CWRP Relocation Limited ("CWRP") comply with the terms of the HIF Agreement where necessary in the Owner's opinion (acting reasonably) and where not to so comply would be detrimental to the Developer provided that this obligation shall not require the Owner to act in a manner that would be detrimental to itself, Cambridge City Council or CWRP.

#### 4. LICENCE FOR ACCESS AND INTERIM USES

- 4.1 The Owner will procure as soon as reasonably practicable from the date of request the grant by the relevant Landowner to the Developer of a non-exclusive licence(s) (each respectively an "Access Licence") materially in the form of the access licence annexed to this Agreement as **Appendix 3** to the persons listed in **clause 4.2** to enter and remain on such parts of the Development Area as are approved in writing by the Project Board (and subject to any existing occupational interests and the occupation of the AW Site by AWS, it being acknowledged that the Owner is not to be obliged to grant access to parts of the Development Area which are subject to occupational interests/ the AW Site without the consent of such occupiers or AWS (as the case may be)) from and including the date of the Access Licence to and including the Date of Actual Completion for the purposes set out in **clause 4.3**.
- 4.2 The licence in **clause 4.1** will be granted to enable access to:
- 4.2.1 the Developer;
  - 4.2.2 the Building Contractor,
  - 4.2.3 the Professional Team; and
- sub-contractors, including Principal Sub-Contractors, and the respective agents and employees of the above parties at sub-clauses **4.2.1-4.2.3**.
- 4.3 The licence granted pursuant to **clause 4.1** is to be granted for the purposes only of:
- 4.3.1 carrying out surveys, environmental, soil and other tests, investigations and inspections and measurements;
  - 4.3.2 preparing an environmental Impact or other studies;
  - 4.3.3 preparing applications for Planning Permission;
  - 4.3.4 discharging any pre-commencement planning conditions contained in any Planning Permission or Planning Agreement; and
  - 4.3.5 such other purposes as are agreed in accordance with the Change Procedure.
- 4.4 The licence to be granted pursuant to **clause 4.1** is not to confer on the Developer or any other person any legal or equitable right, title, interest or estate in the Development Area.



- 4.5 The Licence to be granted pursuant to **clause 4.1** ends on the earlier of the following dates:
- 4.5.1 the date on which this Agreement is lawfully terminated; and
  - 4.5.2 the Date of Actual Completion of the final Plot.
- 4.6 When an Access Licence ends then the Developer is to procure that the relevant part of the Development Area to which such Access Licence relates is vacated by the persons listed in **clause 4.2** and that all vehicles, plant, equipment and materials belonging to them are removed from such parts of the Development Area.
- 4.7 The parties will comply with the Vacant Plot Strategy, the Plot Delivery Strategy and the Management and Maintenance Strategy sections of the Business Plan in relation to any Interim Uses.
- 4.8 The Developer is to use reasonable endeavours to identify Interim Uses for the Development Area for the period expiring on the Agreement Longstop Date or, if earlier, the date of termination of this Agreement.
- 4.9 Where the Developer identifies a potential Interim Use it is to provide details of such Interim Use and the proposed occupier to the Owner for approval.
- 4.10 Where a proposed occupier has been identified and approved by the Owner the Developer is to prepare a draft Interim Use Lease for the Owner's approval and the Owner is to act reasonably and without undue delay in considering the terms of such Interim Use Lease.
- 4.11 Where the Owner approves the proposed Interim Use and the terms of the Interim Use Lease the parties are to use reasonable endeavours to procure the Interim Use Lease is entered into as soon as reasonably practicable.
- 4.12 Lettings for Interim Uses shall (unless the parties agree otherwise) be by way of the grant of an Interim Use Lease to be granted in accordance with the provisions of **Schedule 12**.

## 5. **CONDITIONS PRECEDENT AND PLOT CONDITIONALITY**

- 5.1 The obligations (inter alia) at clauses **5.7, 6, 7, 9, 10 and 12**, are subject to the Conditions Precedent being previously satisfied (or where permitted by this Agreement, waived) and for each Plot the obligations (inter alia) at clauses **6, 9, 10 and 12** are subject to the Plot Conditions being previously satisfied (or where permitted by this Agreement, waived) on the terms of this Agreement in accordance with the relevant Milestone Dates and subject to the Agreement Longstop Date.
- 5.2 The Conditions Precedent are:
- 5.2.1 approval of the Business Plan by the Project Board in accordance with **Schedule 2**;
  - 5.2.2 approval of the Masterplan in accordance with **Schedule 5**;
  - 5.2.3 the obtaining of a Satisfactory Outline Planning Permission or Hybrid Planning Permission (as determined by the Planning Strategy) in accordance with **Schedule 5**; and
  - 5.2.4 the satisfaction of the Development Viability Condition for the Development Area in accordance with **Schedule 3**.
- 5.3 The Plot Conditions for each Plot are:
- 5.3.1 the Conditions Precedent being satisfied;



- 5.3.2 the Plot Planning Condition being satisfied for the relevant Plot in accordance with **Schedule 5** (which for the avoidance of doubt depends on whether the Planning Strategy anticipates a detailed planning consent or reserved matters application for the relevant Plot being made by the Developer);
- 5.3.3 the satisfaction (or where permitted by this Agreement, waiver) of the Funding Condition for the relevant Plot in accordance with **Schedule 2**;
- 5.3.4 the satisfaction of the Vacant Plot Condition for the relevant Plot in accordance with **Schedule 2**;
- 5.3.5 the satisfaction of the Plot Viability Condition in accordance with **Schedule 3**;
- 5.3.6 approval of the Plot Delivery Strategy by the Project Board in accordance with **clause 5.12**; and
- 5.3.7 there being no outstanding breach of the Minimum Requirements.



- 5.5 The Developer and the Owner are to comply with their respective obligations in **Schedules 2, 3, 4, and 5** so as to endeavour to procure that the Conditions Precedent and the Plot Conditions are satisfied on the terms of this Agreement during the period up to the date of the approval of the Business Plan, the Developer is not to be obliged to commence to comply with its obligations in relation to satisfying the Conditions Precedent at 5.2.3 – 5.2.4 above or the Plot Conditions at 5.3 above
- 5.6 Subject to **clause 5.4**, the Developer is to use reasonable endeavours to satisfy the Conditions Precedent (other than the Vacant Plot Condition, where it shall provide such reasonable assistance as the Owner may request) as soon as reasonably practicable after the date of this Agreement in accordance with the Business Plan (once the Business Plan Condition is satisfied) and in accordance with the other terms of this Agreement.
- 5.7 Subject to **clause 5.4** and **clause 5.5**, the Developer is to use all reasonable endeavours to satisfy the Plot Conditions for all Plots within the Development Area in accordance with the Phasing Programme and the Business Plan.
- 5.8 Immediately following the satisfaction of a Condition Precedent or Plot Condition by the Owner, the Owner is to provide to the Developer such written evidence as the Developer reasonably requires that the relevant condition has been satisfied on the terms of this Agreement.
- 5.9 Immediately following the satisfaction of a Condition Precedent or Plot Condition by the Developer, the Developer is to provide to the Owner such written evidence as the Council reasonably requires that the relevant condition has been satisfied on the terms of this Agreement.
- 5.10 The Developer is to give written notice to the Owner within five Working Days of the last of the Conditions Precedent or the Plot Conditions for a relevant Plot being satisfied.
- 5.11 No Condition Precedent or Plot Condition may be waived unless expressly permitted by this Agreement or otherwise without the agreement of the parties. It is acknowledged



by the parties that it may be beneficial to the delivery of the Development for early stage development to be carried out such as meanwhile uses and in such circumstances where the Owner at its discretion to agree to such meanwhile or other uses, it may elect to procure access by way of Interim Use Lease (to be in a form agreed in accordance with clause 4 above) or may consider waiver of the relevant Condition(s) Precedent or Plot Condition(s).

- 5.12 Where the Owner at its discretion elects to fund the Developer's activity pursuant to the proviso of **clause 5.4**, the following provisions are to apply:



5.12.3 where the budget and programme for carrying out the Works is agreed or determined pursuant to **clause 5.12.2** above, the Developer is to carry out the Required Workstreams in accordance with the agreed or determined budget and programme, and the Owner is to reimburse the Developer on written request (to be made no more than once a month) the Developer's reasonable and proper incurred costs for carrying out the Required Workstreams such obligation to reimburse to be subject to receipt by the Owner of a certificate from the Employer's Agent certifying that such costs have been properly incurred in accordance with the relevant Building Contract and/or Appointments or where the costs are not derived from an Appointment or Building Contract that they have otherwise been properly incurred in accordance with the Developer's obligations pursuant to this Agreement.

5.12.4 The Developer shall on reasonable written request by the Owner provide such additional information as may be required by the Owner (acting reasonably) to enable it to review the costs incurred so that the Owner can reimburse such costs pursuant to **clause 5.12.3** above;

5.12.5 where there is a dispute in relation to whether costs have been validly incurred pursuant to **clause 5.12.3** above either party may refer the matter for determination pursuant to **clause 17** and pending settlement of the dispute the Owner (acting reasonably) is to pay to the Developer its estimate of costs incurred and payable in accordance with **clause 5.12.3** above.

5.12.6 Where the circumstances allowing for the suspension of the Developer's obligations at **clause 5.4** (as the case may be) have ceased and the Developer is obliged to comply with the relevant workstream(s) the Developer is to reimburse to the Owner within 60 Working Days the sums paid by the Owner pursuant to this **clause 5.12**, and such costs once reimbursed by the Developer are to be treated as Developer's Costs.

- 5.13 Within 20 Working Days of the Planning Condition being satisfied the Developer is to update the Plot Delivery Strategy for the Project Board's approval (or otherwise confirm it



does not require updating), such approval not to be unreasonably withheld or delayed where the Plot Delivery Strategy is in accordance with the Business Plan (including (but not limited to) the Milestones in the Business Plan at the date of the revision to the Plot Delivery Strategy) and the Minimum Requirements.

- 5.14 It is acknowledged that the Owner requires the ability to vary the Development Area where necessary to enable the AW Relocation Requirements to be achieved and accordingly the Owner will use reasonable endeavours to provide confirmation as to whether any changes are required to the Development Area once it is practical to do so (it being acknowledged that this will only be practical once the designs for the AW Relocation Site are sufficiently advanced).

**6. DEVELOPMENT OF PLOTS, PLOT INFRASTRUCTURE AND THE PLOT INFRASTRUCTURE PROPORTION**

- 6.1 For each Plot the Owner is to procure the issue of the engrossment Plot Licence for the Plot Infrastructure Area for the relevant Plot within ten Working Days of the Plot Conditions for the relevant Plot being agreed or determined to be satisfied pursuant to this Agreement.
- 6.2 The Developer shall and the Owner shall procure that the relevant Landowner(s) shall enter into the Plot Licence for the relevant Plot on the Plot Licence Completion Date.
- 6.3 Where a Plot Licence has been granted the Developer is to carry out or procure that the Plot Infrastructure Works relating to the Plot (as determined by the Plot Delivery Strategy) are carried out in accordance with **Schedule 7** in accordance with the Plot Delivery Strategy.
- 6.4 The Developer and the Owner are to comply with their respective obligations in **Schedule 6** to procure that as soon as reasonably practicable after the Plot Conditions are satisfied for a Plot all of the Pre-Development Obligations are satisfied on the terms of this Agreement.
- 6.5 Once each Pre-Development Obligation has been satisfied for a Plot, the Developer is to provide to the Owner such written evidence as the Owner reasonably requires that the relevant obligation has been satisfied on the terms of this Agreement.
- 6.6 The Developer is to give written notice to the Owner within five Working Days of the last of the Pre-Development Obligations being satisfied.
- 6.7 It is a requirement of this Agreement that the Owner receive the Minimum Return for all of the Development Area, notwithstanding that the Minimum Return is not anticipated to be achieved for Infrastructure Land comprised within the Development Area, so the following provisions are to apply:
- 6.7.1 on any Disposal the Owner is entitled to receive the Minimum Return for a) the Plot and b) the Infrastructure Proportion attributable to that Plot;
- 6.7.2 the Infrastructure Strategy is at all times to include the gross acreage of the proposed total area of the Infrastructure Land for the whole of the Development Area, so the Infrastructure Proportion can be calculated for each Plot;



6.7.4 any disputes in relation to this clause 6.7 may be referred to a Specialist appointed pursuant to **clause 17**.

**7. MARKETING AND DISPOSAL OF THE PLOTS**

7.1 The parties agree that the Marketing and Disposal Strategy for the Development Area will be developed as part of the agreement of the initial Business Plan and the Marketing and Disposal Strategy will then be updated by the Owner's Representative (in accordance with the provisions at **clause 7.2** below) on the grant of the Satisfactory Hybrid Planning Permission or Satisfactory Outline Permission (as the case may be). The Marketing and Disposal Strategy will require detailed individual plot-specific marketing and disposal strategies consistent with the Marketing and Disposal Strategy for the Development Area to be agreed or determined for each Plot in accordance with **clause 7.2**.

7.2 The Owner is to use reasonable endeavours to procure that:

7.2.1 the Owner's Disposals Representative (which in this **clause 7** shall mean such surveyors acting as marketing and disposal specialists in Cambridge) prepares a detailed Marketing and Disposal Strategy for each Plot by the relevant Milestone in the Business Plan, such Marketing and Disposal Strategy to be consistent with the requirements of the HIF Agreement, including the HIF Milestones; and

7.2.2 the Owner's Disposals Representative is to prepare each Marketing and Disposal Strategy for the Development Area and each Plot in consultation with the Developer, and take into account any reasonable representations made by the Developer in relation to such Marketing and Disposal Strategies.

and shall procure that the Owner's Disposals Representative prior to preparation of the Marketing and Disposal Strategy provides a reliance letter in a form prepared by the Owner and approved by the Developer (acting reasonably) so that the Developer is entitled to a duty of care from the Owner's Representative in relation to the services carried out by the Owner's Representative.

7.3 The Developer must upon request of the Owner's Representative share as soon as reasonably practicable all information relevant to the preparation of each Marketing and Disposal Strategy on an open book basis, and is to act reasonably in seeking to assist the development of the Marketing and Disposal Strategies.

7.4 In preparing any Marketing and Disposal Strategy the Developer and the Owner (acting by the Owner's Representative) shall seek to maximise the Plot Price reasonably achievable in a reasonable timescale taking into account:

7.4.1 subject to **clause 7.13**, the need to achieve the Minimum Return, whilst securing the disposal of all the Plots;

7.4.2 the incidence of obligations in the Planning Agreement and how they may be mitigated;

7.4.3 the terms of (as the case may be) the Satisfactory Outline Planning Permission, the Satisfactory Hybrid Planning Permission and the Plot Planning Permission;

7.4.4 the current capacity and state of the residential and commercial market;

7.4.5 the programme for the release of the Plots and the need to provide all Plot Infrastructure Works for each Plot;

7.4.6 the manner and method by which the Disposals of the Plot are to be achieved;



- 7.4.7 the marketing process, including sales agents, and personnel to be employed to achieve the Disposals of the Plots;
- 7.4.8 the need to secure possession of the Plots in accordance with the Vacant Plot Condition;
- 7.4.9 all relevant professional reports held by the Developer relating to the Development Area;
- 7.4.10 the Infrastructure Strategy, by aligning the Marketing and Disposal Strategy with it, particularly in the context of the cash flow and programme of sales receipts;
- 7.4.11 the requirement for the Developer to recover the Developer's Costs and the Developer's Minimum Return;
- 7.4.12 the need to minimise Sale Costs so far as reasonable to do so, having due regard to the Objectives and the requirements of this clause;
- 7.4.13 the need to ensure compliance with the requirements of **clause 13.1**;
- 7.4.14 the intent to ensure tax efficiency so far as reasonable to do so, having due regard to the Objectives and the requirements of this clause; and
- 7.4.15 the need to ensure compliance with the obligations imposed on the Project Partners in the HIF Agreement,

provided that the matters referred to in **paragraphs 7.4.1 to 7.4.15** are not exclusive and the parties may (acting reasonably) take into account and/or include any other matters which would maximise the financial return or which are in line with the Objectives.

- 7.5 The Owner will (in consultation with the Developer) review the Marketing and Disposal Strategy from time to time as part of the review of the Business Plan.
- 7.6 The Owner and the Owner's Solicitors shall, in consultation with the Developer and the Developer's Solicitors (both acting reasonably and without delay), settle the contents of:
  - 7.6.1 the template forms of the Disposal Documents agreed as part of the Initial Marketing and Disposal Strategy; and
  - 7.6.2 the draft Plot Transfer Agreement, Plot Transfer and other ancillary documentation in relation to the Disposal of the Plot (the "**Plot Disposal Documents**") when required for a Disposal to enable drafts of the Plot Disposal Documents to be made available to prospective Plot Purchasers in accordance with the Marketing and Disposal Strategy.
- 7.7 In preparing the Plot Disposal Documents the parties will consider each of the following matters:
  - 7.7.1 the identity and location of the Plot;
  - 7.7.2 the completion date for the disposal of the Plot, which will be four weeks after exchange of contracts unless the Developer and the Owner, both acting reasonably, agree otherwise;
  - 7.7.3 such rights, exceptions and reservations over the Development Area and the Plot as shall reasonably be required for the use of the Plot and the Development Area as development land and its subsequent use (and if appropriate the use of land for Plot Infrastructure Works);



- 7.7.4 obligations for the provision of any Infrastructure whether within or outside the boundaries of the Plot and/or the Development Area (as appropriate) and for the adoption of such roads and Service Media and for the completion and provision of any necessary adoption agreements and any necessary bonds within reasonable time scales to be agreed and incorporated in the transfer or other relevant document;
- 7.7.5 security for performance of the proposed Plot Purchaser's obligations, including the grant of the Legal Charge, particularly having regard to an assessment of the ability of the proposed Plot Purchaser to carry out its obligations;
- 7.7.6 step in rights in default of performance of the proposed Plot Purchaser's obligations by a nominee of the Owner;
- 7.7.7 apportionment of obligations under any Planning Agreement and covenants (with indemnities) to comply with the relevant obligations contained in any Planning Agreement (including but not limited to the provision of Affordable Housing) within timescales so that there will be no delay in commencing or continuing with development of the Development Area or Plot or in the occupation of dwellings to be constructed on such land;
- 7.7.8 obligations on the part of the proposed Plot Purchaser to pay additional consideration if future value is realised by, for example, obtaining and implementing an improved planning permission or obtaining planning permission in respect of non-developable land;
- 7.7.9 a suitable deposit (if any) to be paid on exchange;
- 7.7.10 provisions for the payment of VAT;
- 7.7.11 specific obligations to be complied with by the proposed Plot Purchaser in relation to site maintenance/co-operation issues, location of compounds, signage strategy etc. and other co-operation obligations as may be reasonably required;
- 7.7.12 provision that the proposed Plot Purchaser will not create or seek to create any ransom over the remainder of the Development Area;
- 7.7.13 appropriate density restrictions;
- 7.7.14 restrictions on dealing pending completion of the Proposed Development;
- 7.7.15 provisions in relation to the Management and Maintenance Strategy and as agreed in the Business Plan; and
- 7.7.16 the requirement that completion of the transfer of the land comprised within the Plot pursuant to the Landowner's Option(s) for a Plot is to be simultaneous with completion of the Disposal (unless the Owner otherwise agrees), to enable tax efficiency.

Any dispute in relation to the terms of the Plot Disposal Documents shall be determined in accordance with the provisions of **clause 17**.

- 7.8 The Owner and the Developer shall take all reasonable steps to ensure that the Plots are marketed in accordance with the Marketing and Disposal Strategy as updated for each Plot pursuant to **clause 7.5** and that the offer which maximises the value of each Plot (provided such offer must achieve the Minimum Return) is progressed to an exchange of contract as soon as possible.
- 7.9 The Developer shall be responsible for negotiating the final forms of the Plot Disposal Documents with the prospective Plot Purchasers, but shall not be entitled to agree any



material amendments to the draft forms of the Plot Disposal Documents agreed or determined in accordance with **clauses 7.6 and 7.7** without the approval of the Owner, not to be unreasonably withheld or delayed. Once the Plot Disposal Documents have been agreed with the prospective Plot Purchaser, the Developer shall procure that the Developer's Solicitors procure that the engrossments of the Plot Disposal Documents are delivered to the Owner and the prospective Plot Purchaser within five Working Days. Subject to **clause 7.10**, the Owner shall execute the Plot Disposal Documents within five Working Days of receipt and return them to the Developer with a view to entering into the Plot Disposal Documents as soon as reasonably possible.

**7.10** Unless otherwise agreed by the Owner at its discretion the Owner shall not be required to enter into a Plot Transfer Agreement:

**7.10.1** unless (subject to **clause 7.11 and 7.13**) the amount receivable by the Owner pursuant to **clause 9** pursuant to the Plot Transfer Agreement will equal an amount equal to or more than the Minimum Return for the Plot and the Infrastructure Proportion allocated to the Plot in accordance with **clause 6.7** and the Infrastructure Strategy;

**7.10.2** unless where any payments pursuant to the Plot Transfer Agreement are proposed to be deferred, the Plot Transfer Agreement requires the Plot Purchaser to provide appropriate security acceptable to the Owner (acting reasonably);

**7.10.3** If the terms of the Disposal will result in a breach of a) any statutory obligations upon the Owner and/or the Council and/or AWS (or any Group Company of AWS), including (but not limited to) obligations to comply with s123 Local Government Act "best value" obligations and the requirements of Condition K in the OFWAT licence to AWS and b) Subsidy Control Law; and

**7.10.4** If the proposed Plot Purchaser is an Unacceptable Person.

**7.11** Subject to **clause 7.13** if notwithstanding the marketing of a Plot in accordance with the Marketing and Disposal Strategy, the proposed Disposal would not result in the Owner receiving at least the Minimum Return in respect of the Plot pursuant to the Plot Transfer Agreement then either:

**7.11.1** the Developer may at its discretion agree that the allocation of payments pursuant to **clause 9** be varied such that all or some of the Developer's Costs which would otherwise be due are not recovered out of the Disposal of the relevant Plot, but are instead carried over and paid from receipts of future Disposals pursuant to **clause 9.6**;

**7.11.2** the Owner may at its discretion agree a lower sum in respect of the Minimum Return, in which case the relevant Plot Transfer Agreement will be entered into in accordance with **clause 7.9**; or

**7.11.3** the Owner may require that the Disposal of the relevant Plot is deferred, in which case the parties will agree a revised Marketing and Disposal Strategy for the Plot such that the relevant Plot will be re-marketed at such time as the Developer and the Owner agree (acting reasonably) that there is a reasonable prospect that terms for a Disposal could be agreed which would result in the Owner receiving at least the Minimum Return.

**7.12** Where the Agreement Longstop Date would otherwise occur but there is an exchanged Plot Disposal where either completion has not yet occurred or there are outstanding proceeds payable pursuant to a completed Plot Disposal, the Agreement Longstop Date is to be varied to the date three months after the later of the date a) completion has occurred (or alternatively the Agreement is terminated) or b) any outstanding receipts have been received but in such circumstances: i) the Owner may on written notice thereafter terminate this Agreement in relation to any other Plots not subject to the outstanding Plot Disposal/ proceeds; and ii) the Developer is to take reasonable steps pursuant to the Plot Disposal Agreement so that completion and the receipt of any



outstanding proceeds is procured as soon as is reasonable in the relevant circumstances.

7.13 It is acknowledged that there may be circumstances where a Planning Agreement, planning condition or planning obligations or the need to transfer shared infrastructure or common parts to a management company may require disposals of part of a Plot ("the Relevant Part") in circumstances where the Minimum Return is not achieved for that Relevant Part. In such circumstances the Owner is to act reasonably in entering into such Disposals provided that it will not be obliged to enter into a Disposal of a Relevant Part where:

7.13.1 entering into such Disposal may (in the Owner's opinion (acting reasonably) a) cause it, the Council or AWS to breach any statutory obligations (including (but not limited to) the obligation on the Council and AWS to ensure their statutory obligations to achieve best value on disposals pursuant to s123 of the Local Government Act 1972 and Condition K of the licence granted by OFWAT to AWS have been met); or b) result in a breach of Subsidy Control Law;

7.13.2 where at the date of the Disposal it is not considered that the whole of the Plot of which the Relevant Part forms parts will achieve the Minimum Return;

7.13.3 the Developer waives the requirement for the Developer's Minimum Return for such Disposal.

7.14 Where the Owner considers clauses 7.13.1 or 7.13.2 apply, if the Developer does not agree, such matters may be referred to a Specialist in accordance with clause 17, but where clause 7.13.1 applies the Specialist's decision is to be advisory only, but in such circumstances both parties will agree to consider all reasonable options to ensure that the relevant Disposal can proceed without breach of clause 7.13.1.

7.15 The Owner has the benefit of the Landowner's Options to enable (subject to the satisfaction of the conditionality in the Landowner's Options) the transfer of the Development Area as Plots to Plot Purchasers and as Infrastructure Land to a management company or such other party as identified pursuant to the Management and Maintenance Strategy, and the parties agree:

7.15.1 to (subject to clause 7.15.3) co-operate where a Plot Transfer Agreement has been entered into, so as to enable the transfer (either directly or by way of sub-sale) of the land subject to the Plot Transfer Agreement pursuant to the Landowner's Option to the Plot Purchaser on the completion date specified in the Plot Transfer Agreement (provided it is acknowledged that the Owner and the Landowners may elect to complete a transfer pursuant to any Landowner's Option (or Landowner's Options) of any part of the Development Area at their discretion notwithstanding that this completes prior to disposal to a third party purchaser);

7.15.2 to (subject to clause 7.15.3) co-operate where a sale agreement to dispose of any Infrastructure Land has been entered into (such agreement to be in a form agreed by the parties acting reasonably or other determined pursuant to clause 17), so as to enable the transfer of the relevant Infrastructure Land pursuant to the Landowner's Option (either directly or by way of sub-sale) on the completion date specified in the sale agreement (provided it is acknowledged that the Owner and the Landowners may elect to complete a transfer pursuant to any Landowner's Option (or Landowner's Options) of any part of the Development Area at their discretion notwithstanding that this completes prior to disposal to a third party purchaser); and

7.15.3 that the Developer is to notify the Owner of the contractual completion date under any Plot Transfer Agreement or sale agreement of Infrastructure Land as soon as practicable and is in any event to give the Owner at least 30 Working Days' notice of the anticipated completion date, to enable notice to be served in accordance with the terms of the Landowner's Option.

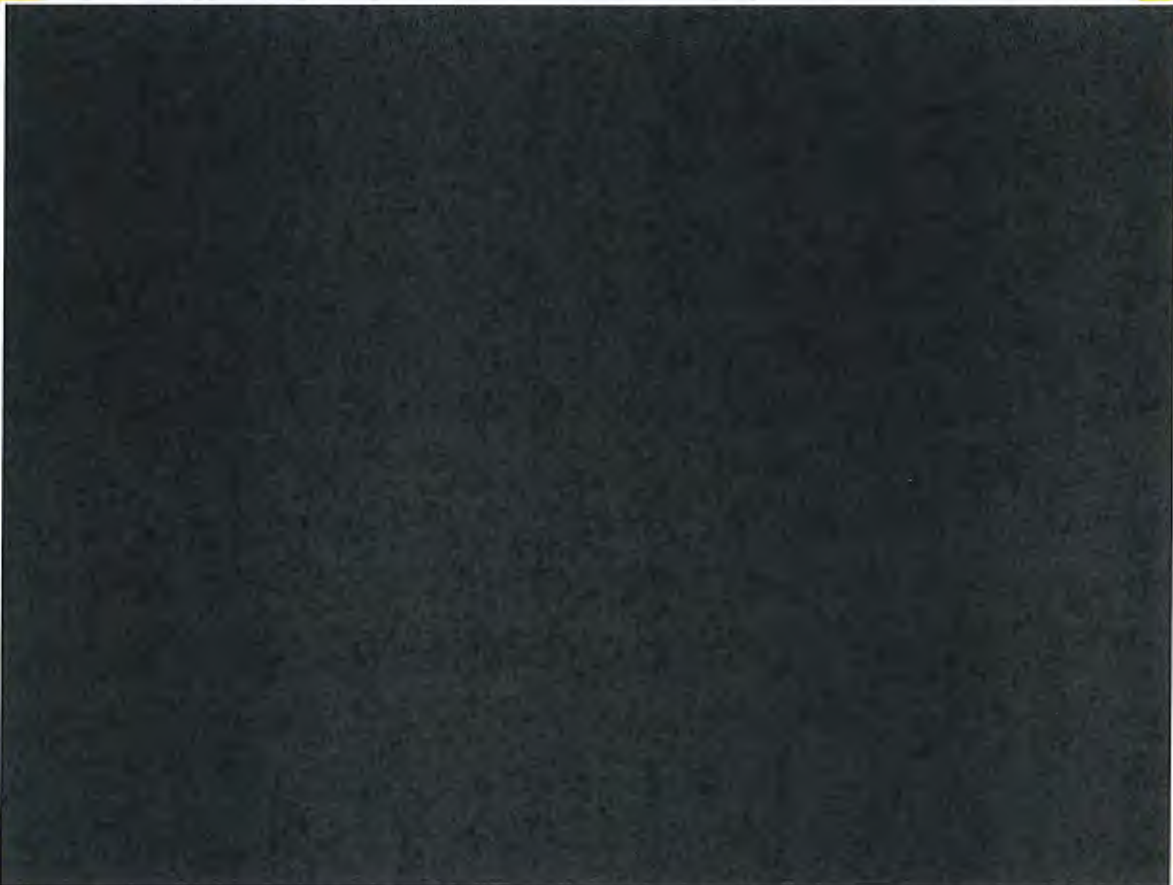


8. **DEVELOPER'S COSTS**

The Developer is to maintain the Development Account and record the Developer's Costs relating to the Proposed Development as a whole and each Plot in accordance with **Schedule 8**.

9. **UTILISATION AND DISTRIBUTION OF RECEIPTS FROM PLOT SALES**

- 9.1 The Plot Price from each Disposal and any other consideration received in respect of a Disposal (whether on Actual Completion or at any other time) is to be paid by the Owner into an interest bearing escrow account (or into such other account or arrangement as may be agreed by the parties (acting reasonably) (the "**Account**"). The Owner shall make payments from the Account in accordance with **clauses 9.2 and 9.3** below. The amounts payable to the Developer (the "**Developer's Fee**") from the account shall be transferred in consideration of the Developer's services performed under this Agreement, save for any disbursements that are not subject to VAT, which are incurred by the Developer as agent for the Owner and are not to be included in the Developer's Fee but reimbursed in accordance with **clauses 9.2 and 9.3** below. Prior to payment of any monies pursuant to **clause 9.2.5** below the Owner and the Developer shall consult in good faith (but at their absolute discretion) as to whether the monies should be held in the Account and released against Developer's Costs to be incurred in the future so as to reduce the interest which would otherwise accrue as Developer's Costs in respect of future Plots.



- 9.3 For any Disposal the Owner is to procure the payments from the Account in accordance with the order of priority of payment set out at **clause 9.2** above within 10 Working Days of the later of:

- 9.3.1 completion of the Disposal of the Plot (or if later the receipt of the proceeds for the Disposal); and



9.3.2 agreement between the parties of the Sales Costs, the Eligible Developer's Costs applicable to that Disposal, the Eligible Planning and Promotion Costs and the Developer's Return (or where the parties are unable to agree such sums within 20 Working Days determination of such sums by a Specialist appointed pursuant to **clause 17**).

9.4 Where the terms of a Disposal permit receipts for a Plot to be received on a staged basis, (including where there are unquantified payments such as overage), the procedure at **clauses 9.1-9.3** is to be repeated for each stage payment received by the Owner for the Disposal, with, in respect of any calculation of any distribution of proceeds, due account being made by the parties of any distributions of previous stage payments in relation to such Disposal.

9.5 On each Calculation Date the Minimum Return and the Developer's Minimum Return are respectively to be the higher of:

9.5.1 the Minimum Return or the Developer's Minimum Return (as appropriate) at the date of this Agreement; and

9.5.2 the revised Minimum Return or the Developer's Minimum Return (as appropriate) (to the nearest £10) calculated in accordance with the following formula:

$$R = A \times \frac{C}{B}$$

Where:

R is the revised Minimum Return or Developer's Minimum Return (as appropriate);

A is the Minimum Return or Developer's Minimum Return (as appropriate) at the date of this Agreement;

C is the Current Figure; and

B is the Base Figure,

Provided that the Owner may at its absolute discretion substitute a lower sum for the Minimum Return in respect of one, some or all of the Plots and if it does so it shall notify the Developer in writing of the new Minimum Return for the relevant Plot or Plots and the Developer may at its absolute discretion substitute a lower sum for the Developer's Minimum Return in respect of one, some or all of the Plots and if it does so it shall notify the Developer in writing of the new Developer's Minimum Return for the relevant Plot or Plots.

9.6 To the extent that on any Disposal any amounts referred to in **clauses 9.2.1 to 9.2.5** are not recovered in full, such amounts can be carried over and paid from receipts of future Disposals provided that this shall be without prejudice to the requirement for the Owner to receive the Minimum Return on each Disposal.

9.7 Where a Relevant Part is permitted to be disposed of pursuant to **clause 7.13**, any proceeds are to be applied in accordance with **clause 9.2**, save that the payment to the Owner pursuant to **clause 9.2.2** is to reflect the land price agreed by the Owner for that Disposal, and the Developer is not to be entitled to a Developer's Minimum Return pursuant to **clause 9.2.3** for that Relevant Part.

9.8 For the avoidance of doubt, **clause 16.3** shall apply to any payment of the Developer's Fee under this **clause 9** so that VAT (where properly chargeable) shall be paid to the Developer in addition to the Developer's Fee.



- 9.9 For the purposes of information only worked examples of the mechanics set out in this **clause 9** are attached to this Agreement at **Appendix 4**. The examples are for illustrative purposes only and are not designed to be comprehensive. In the event of any conflict between the terms of this Agreement and the illustrative examples, the terms of this Agreement shall prevail.
10. **INSURANCE**
- 10.1 In respect of each Plot it is agreed that the risk of damage to or loss or destruction of any Licence Area including all buildings, fixtures, fittings, plant and equipment, is to pass to the Developer on the date of grant of each Plot Licence and until the Building Contractor becomes responsible for the insurance of the Plot Infrastructure Works under the Building Contract, the Developer is to insure the relevant Licence Area:
- 10.1.1 in the joint names of the Developer, the Owner and the Landowners;
  - 10.1.2 in its Reinstatement Cost;
  - 10.1.3 against the Insured Risks;
  - 10.1.4 with reputable insurance offices in or having a business office in the United Kingdom or through underwriters at Lloyd's; and
  - 10.1.5 on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover.
- 10.2 The Developer is to procure that the Building Contractor keeps the Plot Infrastructure Works and all unfixured goods and materials insured under the terms of the Building Contract:
- 10.2.1 in the joint names of the Building Contractor, Developer, the Owner, Homes England and the Landowners;
  - 10.2.2 in their Reinstatement Cost;
  - 10.2.3 against the Insured Risks;
  - 10.2.4 with reputable insurance offices in or having a business office in the United Kingdom or through underwriters at Lloyd's; and
  - 10.2.5 on reasonable commercial terms and subject only to reasonable excesses, exclusions and conditions of such cover.
- 10.3 Where such cover is available in the market on reasonable commercial terms, the Developer is to use reasonable endeavours to procure that any exclusion in respect of terrorist activity is removed from the insurance maintained under **clauses 10.1** and **10.2**.
- 10.4 The Developer is to use all reasonable endeavours to procure that the insurers of the Development Area under **clause 10.1** and the Plot Infrastructure Works under **clause 10.2** undertake with the Owner not to cancel the insurance without first giving to the Owner 15 Working Days' prior written notice of their intention to do so.
- 10.5 The Developer is to provide the Owner within 3 Working Days of request:
- 10.5.1 a copy of the insurance policy maintained under **clauses 10.1** and **10.2** and evidence for the payment of the premium for the insurance;
  - 10.5.2 evidence of its renewal when reasonably requested by the Owner; and
  - 10.5.3 any endorsements or other amendments to the relevant policies of insurance or of any notification or other correspondence received from the insurers.



10.6 If the Development Area, the Plot Infrastructure Works or a Section of the Plot Infrastructure Works (if applicable) are damaged or destroyed by any of the Insured Risks:

10.6.1 the Developer is to use all reasonable endeavours promptly to obtain the maximum payment of insurance moneys;

10.6.2 the Developer is to procure that the Building Contractor rebuilds, repairs or otherwise reinstates the Plot Infrastructure Works or Section of the Plot Infrastructure Works (as the case may be) and the Development Area (to the extent appropriate in the context of the Proposed Development as agreed by the parties or otherwise determined in accordance with **clause 17**) in a good and substantial manner in accordance with the terms of this Agreement and the Building Contract to the reasonable satisfaction of the Owner;

10.6.3 If the moneys received in respect of such insurance are insufficient for the purpose of rebuilding, repairing or reinstating the Plot Infrastructure Works or Section of the Plot Infrastructure Works (as the case may be) and the Development Area (to the extent appropriate in the context of the Proposed Development as agreed by the parties or otherwise determined in accordance with **clause 17**), the Developer is to make good any deficiency out of its own moneys; and

10.6.4 Practical Completion (or if applicable Sectional Completion) is not to take place unless and until the rebuilding, repairing and reinstating the Plot Infrastructure Works or Section of the Plot Infrastructure Works (as the case may be) and the Development Area (to the extent appropriate in the context of the Proposed Development) has been completed.

10.7 During the carrying out of the Plot Infrastructure Works, the Developer is to procure the Building Contractor, its Sub-contractors and Professional Team maintain:



10.7.2 non-negligence insurance under the Building Contract.

10.8 If the Developer does not insure or procure all or any of the insurances required by this **clause 10** or fails to produce reasonable evidence that such insurances are in force, the Owner may itself effect such insurance cover as it may consider prudent and the cost of so doing together with the Owner's management and administrative costs for so doing will be payable by the Developer to the Owner on written demand and in such circumstances the costs of the insurance cover (but not the Owner's management and administrative costs) will be Development Costs.

## 11. PROJECT BOARD

11.1 On the date of this Agreement the Owner and the Developer are to establish the Project Board and from such date both Parties are to use all reasonable endeavours to procure that the Project Board carries out the Project Board Objectives and otherwise complies with the requirements of this clause.

11.2 The Project Board shall (as a minimum) be made up of the Owner's Board Members and the Developer's Board Members.

11.3 Additional representatives of the Owner and the Developer may attend the Project Board meetings but the Project Board is not to be quorate without one Owner's Board Member representing the Council and one Owner's Board Member representing AWS and at least one Developer's Board Member (or their appointed proxies as permitted by **clause 11.11**), and (unless otherwise agreed by the Parties) only the Owner's Board Members



and Developer's Board Member are to have the right to vote on any decision made by the Project Board. At every meeting the Owner (acting through the Owner's Board Members) and Developer (acting through the Developer's Board Members) shall have one vote each, with no casting vote.

- 11.4 It is acknowledged that the Project Board is intended to facilitate decision-making between the Owner and the Developer and the parties will act reasonably in taking (where appropriate to do so) the steps referred to at **clause 11.5** below so that the procedure at **clause 11.4.1** can be followed and (so far as reasonably practicable) decisions can be made at Project Board meetings, but no decision made by the Project Board is to be binding unless:
- 11.4.1 both the Developer's Board Members and the Owner's Board Members confirm in writing that the relevant decision does not require ratification; or
- 11.4.2 the relevant decision has been ratified by the Developer and the Owner, and where any such ratification is required, the relevant party is to use reasonable endeavours to procure that such ratification be obtained within six weeks of the relevant meeting (although it is accepted that neither party can fetter itself as to whether the ratification will be forthcoming).
- 11.5 To ensure that ratification pursuant to **clause 11.4.2** is obtained as soon as is practicable, the parties will agree as part of the Business Plan terms of reference for its decision-making procedure so that:
- 11.5.1 where it is appropriate to do so, decision-making can be delegated to the Developer's Board Members and Owner's Board Members from the Developer and Owner respectively;
- 11.5.2 where decision-making cannot be delegated pursuant to **clause 11.5.1**, both parties will notify each other as soon as they foresee the need for ratification of a potential decision to be made by the Project Board so that ratification can be accelerated as much as practical.
- 11.6 The administration of the Project Board shall be undertaken by the Developer.
- 11.7 The Project Board is to meet at intervals of no greater than 3 months. The Project Board Objectives and the administrative procedures of the Project Board are to be reviewed by the Parties every twelve months.
- 11.8 The chairperson for the Project Board meetings will be appointed by the Owner.
- 11.9 The chairperson is to be responsible for chairing the meeting and co-ordinating the discussion of the agenda by the Project Board.
- 11.10 The chairperson is not to have an additional casting vote, so each party is equally represented.
- 11.11 Any Developer's Board Member or Owner's Board Member shall each be entitled to appoint a proxy representative to attend meetings and vote on their behalf. Such proxy is to be of suitable seniority and expertise so as to be able to act and vote, and the relevant party is to procure that any proxy is fully briefed as to the Proposed Development and progress against the Milestones.
- 11.12 Where the Owner wishes to replace an Owner's Board Member, or the Developer wishes to replace a Developer's Board Member, they may do so provided that such replacement person is of not materially lesser experience and expertise. The relevant party must notify the other prior to the appointment of the replacement person and have due regard to any representations made in relation to the suitability of the candidate.
- 11.13 Meetings of the Project Board shall be held at least once every three months at the Owner's offices and if either the Owner or the Developer reasonably requires on such



other occasions and at such other location in Cambridge as shall be reasonably agreed between the Developer and the Owner on no less than ten Working Days written notice. It is anticipated that meetings may be more frequent (e.g. monthly) where appropriate.

- 11.14 The Developer will prepare a draft agenda for each meeting of the Project Board and endeavour to deliver a copy to the Owner at least three Working Days prior to the date of the meeting and the Owner shall add to the agenda items any other business which ought to be discussed at such meeting.
- 11.15 Promptly following each meeting the Developer will prepare complete and accurate minutes (including a log of all material decisions made and action points, and identifying any decisions which require ratification by the Owner and the Developer) and deliver a copy in duplicate to the Owner and other Project Board members signed on behalf of the Developer by a Developer's Board Member. If the Owner disputes the content of the minutes it is to notify the Developer and the parties are to seek to agree the form of minutes as soon as reasonably practicable and in any event within 10 Working Days of such notice. Where the minutes have been agreed the Owner is to sign and return one copy of the minutes to the Developer for its records.
- 11.16 Both Parties shall procure the attendance at such Project Board meetings of such of the Developer's and Owner's personnel and consultants as the other party shall reasonably require having regard to the agenda for that meeting.
- 11.17 At least once in every year, and more regularly on reasonable request by the Owner, the Developer shall update the Business Plan (including in particular the Phasing Programme) and submit the same to the Project Board for approval, or confirm to the Project Board that no amendments are proposed to the Business Plan or the Phasing Programme. The Project Board shall be required to act reasonably in considering any update of the Business Plan and the Phasing Programme, having regard to the Objectives, but no decisions relating to the update of the Business Plan and/or the Phasing Programme shall be subject to dispute resolution. Unless and until an updated Business Plan has been approved by the Project Board, the existing Business Plan shall continue to apply.
- 11.18 At the Project Board meetings and any Business Plan review meeting the Developer's Board Members will inform the Owner's Board Members of all material measures taken and stages reached by the Developer in performing its obligations under this Agreement and any material problems or delays affecting the Development in all cases since the last meeting.
- 11.19 In considering any matter which relates to any potential extensions to any Milestone Date and/or HIF Milestone Date;
- 11.19.1 the parties shall act reasonably having regard (inter alia) to the impact or likely impact of:-
- 11.19.2 any event of Force Majeure;
- 11.19.3 any breach of the terms of this Agreement or any of the Disposal Documents by the Owner or the Developer; or
- 11.19.4 the consequences of a failure to agree any extension, including whether allowing for termination by the Owner in accordance with this Agreement would be an appropriate and proportionate remedy in all the circumstances.
- 11.20 The Owner and the Developer may invite local stakeholders (e.g. Homes England, local authorities, BIDs etc.) and other interested parties to any Project Board meeting subject to the prior approval of the other party, such approval not to be unreasonably withheld or delayed.
- 11.21 Where any matter or issue in this Agreement is subject to the approval of the Project Board, the Owner and the Developer shall act reasonably in considering such matter or



issue (save where it is specifically provided that the matter is subject to either party's absolute discretion or is not subject to dispute resolution) and in the absence of agreement in respect of any such matter or where specifically provided to the contrary, the relevant matter or issue shall be subject to dispute resolution in accordance with **clause 17**.

11.22 Nothing in this Agreement creates any rights in favour of the Project Board in its own capacity.

## **12. AFFORDABLE HOUSING STRATEGY**

The parties have agreed that the Council shall have the ability to acquire all or part of any Affordable Housing within each Plot at market value (for affordable housing), and the parties are to agree within the Business Plan the mechanism to facilitate this, having regard:

12.1 to ensuring there be a fair basis for both parties for calculating the market value of the Affordable Housing to be acquired;

12.2 to ensuring that market competition for acquisition of such affordable housing is not detrimentally affected.

## **13. STATUTORY DUTIES OF THE OWNER AND OBLIGATIONS IN HIF AGREEMENT**

### **13.1 State Aid and Procurement**

It is agreed and declared by the parties that the Owner shall not be required to act in any way under this Agreement in a manner inconsistent with the Council's or AWS's statutory obligations including but not limited to their obligations to comply with s123 Local Government Act 1972 "best value" obligations and the requirements of Condition K in the OFWAT licence to AWS and in relation to Subsidy Control Law compliance and/or in a manner which is inconsistent with its statutory obligations under the Public Contracts Regulations 2015 (as amended or any successor legislation).

### **13.2 Statutory Powers**

13.2.1 The Owner enters into this Agreement in its capacity as a landowner and notwithstanding any other provisions of this Agreement, the obligations on the Owner are without prejudice to:

13.2.1.1 the Council's separate role as a local planning authority and nothing contained or referred to in this Agreement shall prejudice, affect or restrict the Council's rights, powers, duties and obligations in the exercise of its functions in any statutory capacity and the rights, powers, duties and obligations of the Council under all public and private laws, statutes, byelaws, orders and regulations; or

13.2.1.2 AWS's rights, powers, duties and obligations in the exercise of its functions in any statutory capacity under all public and private laws, statutes, byelaws, orders and regulations.

13.2.2 No approval, consent, direction or authority given by the Council as local planning authority shall be deemed to be an approval, consent, direction or authority given by the Owner under this Agreement or vice versa.

### **13.3 HIF Agreement**

13.3.1 It is acknowledged that the Project Partners have entered into the HIF Agreement to enable the Development to be carried out and that the HIF Agreement imposes obligations on the Project Partners with regard to the development of the Development Area.



- 13.3.2 The HIF Agreement requires the Project Partners to impose obligations upon the Developer and its team and accordingly the Developer agrees not to do any act or omission that will cause the Project Partners to breach the HIF Agreement and (without limitation) the Developer:
- 13.3.2.1 will enter into as soon as reasonably practicable the Direct Agreement with Homes England (subject to Homes England's approval to the same);
  - 13.3.2.2 will act reasonably in considering any changes to the form of Direct Agreement where required by Homes England or the Owner;
  - 13.3.2.3 will not commit, and will procure that the Developer's Team will not commit a General Default or Fundamental Default (as defined in the HIF Agreement), and will co-operate with the Project Partners and/or the Owner to do such acts as are reasonably required to ensure a General Default or Fundamental Default does not (and is not likely to) arise;
  - 13.3.2.4 will procure (subject to the satisfaction of the Conditions Precedent the Proposed Development is delivered in accordance with the Project Details so far as these relate to the Core Housing Outputs, in accordance with the HIF Milestones, and otherwise in accordance with the requirements of clause 6 of the HIF Agreement);
  - 13.3.2.5 will comply with the provisions of clauses 13 (public relations and publicity), 14 (reputation of the parties), 15 (Confidentiality and freedom of information), 16 (data protection), 17 (intellectual property), 26 (state aid) and 27 (co-operation) of the HIF Agreement as if it was a party to the HIF Agreement.
  - 13.3.2.6 Where the obligations in the clauses referred to at **clause 13.3.2.4** conflict with the provisions in this Agreement, the obligations in the HIF Agreement are to prevail.

#### 14. **LIMITATION OF DEVELOPER'S LIABILITY**

- 14.1 The Developer is not to be relieved of liability for any breach of its obligations in this Agreement by:
- 14.1.1 completion of the sale and purchase of any Plot or part of the Development Area;
  - 14.1.2 the consent or approval of the Owner to any matter under this Agreement, whether or not this Agreement expressly requires the consent or approval of the Owner;
  - 14.1.3 the issue of a Certificate of Practical Completion for any Plot Infrastructure Works or (if applicable) a Sectional Completion Certificate for a Section of any Plot Infrastructure Works or the absence of any objection by the Owner to its being issued or the terms which it contains;
  - 14.1.4 the making good of defects by the Building Contractor under the terms of a Building Contract;
  - 14.1.5 the grant of any Plot Licence;
  - 14.1.6 the payment of the Plot Price or any Additional Consideration;



- 14.1.7 the right of the Developer to make a claim against the Building Contractor or members of the Professional Team;
- 14.1.8 any delay or neglect by the Owner in enforcing the terms of this Agreement or any time allowed by the Owner for their performance;
- 14.1.9 any variation of the terms of this Agreement;
- 14.1.10 any legal limitation, immunity, disability, incapacity of other circumstances relating to the Developer, whether or not known to the Owner;
- 14.1.11 the exercise of any rights of step in pursuant to the Direct Agreement;
- 14.1.12 anything else which would have released the Developer whether by the variation of the Developer's obligations or by the conduct of the parties.

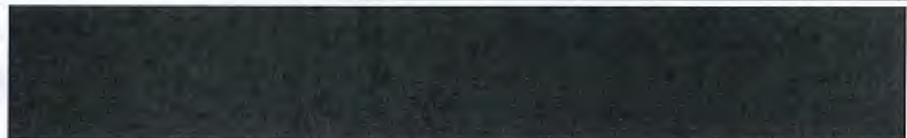
14.2 NOT USED



14.3.1



14.3.2



14.3.3 from the date of obtaining a Satisfactory Outline Planning Permission or a Satisfactory Hybrid Planning Permission the Developer is to be liable to at least the Base Liability Level, subject to additional liability under clause 14.3.4 below.

14.3.4



14.4 The liability caps set out in **clause 14.3** above are to be adjusted on each anniversary of this Agreement so the liability for the Developer is to be the higher of:

- 14.4.1 the relevant liability cap at **clause 14.3** above; and

- 14.4.2 a revised liability cap (to the nearest £10) calculated in accordance with the following formula;

$$R = A \times \frac{C}{B}$$

Where:

R is the revised liability cap;

A is the relevant liability cap as set out at **clause 14.3**;

C is the Current Figure; and

B is the Base Figure.

## 15. **DEVELOPER'S INDEMNITY**

- 15.1 Subject to the remaining provisions of this clause and the provisions of **clause 14**, the Developer is to indemnify the Owner in respect of any of the following matters arising directly or indirectly in relation to the Plot Infrastructure Works, any access onto the Development Area pursuant to **clause 4**, or any breach by the Developer of its obligations in this Agreement:

- 15.1.1 the death of, injury to or accident to any person;
- 15.1.2 the damage to or loss of any property;
- 15.1.3 any breach of the Statutory Consents or Statutory Requirements;
- 15.1.4 the infringement of the rights of any third party caused by the carrying out of any Plot Infrastructure Works;
- 15.1.5 any nuisance or disturbance suffered by any third party caused by the carrying out of the Plot Infrastructure Works;
- 15.1.6 any fine or penalty; and
- 15.1.7 any other claims.

- 15.2 Each party agrees to use its reasonable endeavours to mitigate the consequences of any breach by the other or any matter for which a claim under the indemnities may be made and the losses, costs, expenses, claims and demands it may claim as a result of that breach or in relation to such claim including, for the avoidance of doubt (but without limitation) any claim under any of the indemnities contained in this Agreement. This will not in any way restrict or reduce any obligation to mitigate loss or damage which may exist at common law.

- 15.3 In respect of any claim covered by an indemnity in this Agreement, the party claiming the benefit of the indemnity must:

- 15.3.1 give notice to the indemnifying party of the claim as soon as reasonably practicable after receiving notice of it (it being acknowledged that any delay in giving such notification is not to be construed so as to affect the validity of the indemnity);
- 15.3.2 provide the indemnifying party with any information and assistance in relation to the claim that the indemnifying party may reasonably require; and
- 15.3.3 mitigate its loss in accordance with **Clause 15.2**.



16. **VALUE ADDED TAX**

16.1 The Owner warrants to the Developer that:

16.1.1 It will within \_\_\_\_\_ Working Days of the date of this Agreement submit an application to HM Revenue and Customs to be registered as a taxable person for the purposes of VAT and It will provide evidence to the Developer of such registration as soon as is reasonably practicable after receipt of the registration;

16.1.2 It has validly exercised an Option to Tax; and

16.1.3 It has not revoked the Option to Tax and will not do so.

16.1 The Developer warrants to the Owner that

16.1.1 It is or will within 20 Working Days of the date of this Agreement be registered as a taxable person for the purposes of VAT;

16.2 The parties agree that it shall be a requirement of the Disposal Documents that any Plot Purchaser will be required to warrant that:

16.2.1 It is or will at the Date of Actual Completion be registered as a taxable person for the purposes of VAT;

16.2.2 the relevant Plot Purchaser will be required to have validly exercised, or will be required prior to the Date of Actual Completion to exercise, an Option to Tax which will have effect on the Date of Actual Completion; and

16.2.3 the relevant Plot Purchaser will be required to notify the Option to Tax prior to the Date of Actual Completion to HM Revenue and Customs.

16.3 Sums payable under this Agreement are exclusive of VAT. Where, under the terms of this Agreement, a supply is made that is subject to VAT, the person receiving the supply is to pay the VAT to the person making the supply subject to a valid VAT invoice being issued by the person making the supply.

16.4 The parties agree that it shall be a requirement of the Disposal Documents that any Plot Purchaser will be a) required to warrant that it shall not issue a certificate pursuant to paragraphs 6 or 10 Schedule 10 to the VATA, and b) indemnify the Owner against all irrecoverable VAT, costs, penalties and liabilities that the Owner incurs as a result of the issue of a certificate pursuant to either of those paragraphs.

17. **DETERMINATION OF DISPUTES**

17.1 If any dispute arises between the Developer and the Owner relating to or arising out of the terms of this Agreement, the Owner or the Developer may give to the other written notice requiring the dispute to be determined under this **clause 17**. The notice is to:

17.1.1 propose an appropriate Specialist;

17.1.2 state whether the Specialist is to act as an independent expert or an arbitrator, having regard to the terms of this **clause 17**; and

17.1.3 specify the nature and substance of the dispute and the relief sought in relation to the dispute.

17.2 For the purposes of this **clause 17** a "Specialist" is a person:

17.2.1 qualified to act as an expert or an arbitrator in relation to the dispute;

17.2.2 having not less than ten years' professional experience; and



- 17.2.3 having practical experience in relation to developments in the nature of the Proposed Development and Development Area in the same locality as the Development Area.
- 17.3 The recipient of a notice under **clause 17.1** will be deemed to accept the identity of the Specialist and the capacity in which he is to act unless it gives notice in writing to the party serving the notice rejecting one or more of the proposals within five Working Days of receipt of the notice and on the service of a notice rejecting one or more of the proposals, **clause 17.4** will apply.
- 17.4 Unless the Developer and the Owner agree or are deemed to agree the terms for resolving the dispute set out in the notice served under **clause 17.1**:
- 17.4.1 any dispute over the type of Specialist appropriate to resolve the dispute or the capacity in which a Specialist is to act may be referred at the request of the Developer or the Owner to the President or next most senior available officer of the Royal Institution of Chartered Surveyors who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination and to determine the capacity in which the Specialist is to act; and
- 17.4.2 any dispute over the identity of the Specialist is to be referred at the request of the Developer or the Owner to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist. If no such organisation exists, or the parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Royal Institution of Chartered Surveyors.
- 17.5 The reference to a Specialist is to be made to him as an expert unless:
- 17.5.1 the dispute is of such a nature that it is not capable of being determined by an expert;
- 17.5.2 both the Developer and the Owner agree, or are deemed to agree, that the Specialist should act as an arbitrator;
- 17.5.3 this Agreement specifies that the dispute is to be determined by an arbitrator; or
- 17.5.4 **clause 17.6** applies.
- 17.6 If any dispute raises or relates to the same or similar issues as those which have been or are being submitted to independent determination under the Building Contract or an Plot Transfer Agreement, the Owner and the Developer will endeavour to appoint the same person acting in the same capacity as may be appointed to resolve the dispute under the Building Contract or the relevant Plot Transfer Agreement and to have the dispute proceedings under this Agreement and the Building Contract or the Plot Transfer Agreement consolidated.
- 17.7 Where a Specialist is to act as an independent expert:
- 17.7.1 the Developer and the Owner may make written representations within ten Working Days of his appointment and will copy the written representations to the other party;
- 17.7.2 the Developer and the Owner are to have a further ten Working Days to make written comments on each other's representations and will copy the written comments to the other party;



- 17.7.3 the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;
  - 17.7.4 the Specialist is not to take oral representations from the Developer or the Owner without giving both parties the opportunity to be present and to give evidence and to cross-examine each other;
  - 17.7.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
  - 17.7.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 Working Days of his appointment.
- 17.8 Where a Specialist is to act as an arbitrator:
- 17.8.1 all submissions made or evidence supplied to him are to be in writing unless the parties agree within ten Working Days of his appointment that this requirement does not apply;
  - 17.8.2 the date of his award will be deemed to be the date on which he serves a copy of the award on the Developer and the Owner;
  - 17.8.3 he will not be entitled to order the rectification, setting aside or cancellation of this Agreement or any other deed or document;
  - 17.8.4 he will not be entitled to direct that the recoverable costs of the arbitration, or any part of it, be limited to a specified amount; and
  - 17.8.5 he will not be entitled to require that security be provided in respect of the costs of the arbitration.
- 17.9 Responsibility for the costs of referring a dispute to a Specialist under this **clause 17**, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute, will be decided by the Specialist.

**18. TERMINATION AND STEP-IN RIGHTS**

- 18.1 (Subject to **clause 18.2** below) if:
- 18.1.1 Practical Completion of any Plot Infrastructure Works to be completed by on behalf of the Developer pursuant to the Infrastructure Strategy have not occurred by the Agreement Longstop Date (as may be extended pursuant to **clause 7.12**);
  - 18.1.2 (subject to **clause 18.2.1**) the Business Plan is not agreed by the later of the date a) eight (8) months after the date of this Agreement and b) the date two months after the submission of the Business Plan to the Owner pursuant to **paragraph 1 of Schedule 2 part 1**;
  - 18.1.3 either an Outline Planning Permission or Hybrid Planning Permission (as determined pursuant to the Planning Strategy) is not obtained for the whole of the Development Area by the Planning Longstop Date;
  - 18.1.4 in respect of a Plot any Milestone is not achieved by the relevant Milestone Date in respect of that Plot; or
  - 18.1.5 an Event of Default occurs,



subject to any extensions of time agreed pursuant to **clause 11** then the Owner may give the Developer 40 Working Days' notice in writing and in such case this Agreement shall terminate on the expiry of such notice unless the set of circumstances leading to the right of termination has ceased to exist or has been reasonably addressed prior to the expiry of such 40 Working Day notice period. Where the Owner is not satisfied that the Developer is taking reasonable steps pursuant to **clause 18.1.3** to enable the Milestone at sub-paragraph (d) of the "Milestone" definition to be achieved as soon as is reasonably practicable, it may refer to a Specialist pursuant to **clause 17**. If the Specialist determines that the Developer is not taking all such steps as are reasonable in the circumstances to ensure the relevant Milestone is achieved as soon as reasonably practicable, the Owner shall be entitled to terminate this Agreement in respect of the relevant Plot by giving 40 Working Days' notice to the Developer and in such case this Agreement shall terminate on the expiry of such notice unless the set of circumstances leading to the right of termination has ceased to exist or has been reasonably addressed prior to the expiry of such 40 Working Day notice period.

18.2 Notwithstanding its rights pursuant to **clause 18.1**, the Owner may not terminate this Agreement:

18.2.1 pursuant to clause 18.1.1 if the delay in agreeing the Business Plan arises as a result of a delay by the Project Board in providing comments on/approving the Business Plan in accordance with the timetable in **Schedule 2 part 1**; or

18.2.2 on the grounds that a Plot is not Viable pursuant to the Plot Viability Condition; or

18.2.3 on the grounds that the Milestone to dispose of the Plot has been breached, where the Milestone at sub-paragraph (d) (Disposals) of the "Milestone" definition is not achieved, where the Developer is taking all such steps as are reasonable in the circumstances to ensure such Milestone is achieved as soon as reasonably practicable

18.3 Any rights of termination of the Owner pursuant to **clause 18.1.4** shall be subject to the terms of any Step-In Agreement.

18.4 On termination of this Agreement pursuant to **clause 7.12, 18.1** then (subject to **clause 18.3**) the Developer is at the request of the Owner and for no consideration to assign to the Owner or as the Owner otherwise directs the benefit of all or any of the following:

18.4.1 the Building Contract(s) (save where the Owner has been provided on or before the date of termination with Warranties or Third Party Rights giving the Owner the right to step into the Building Contract(s));

18.4.2 the Appointments (save where the Owner has been provided on or before the date of termination with Warranties or Third Party Rights giving the Owner the right to step into the relevant Appointment(s));

18.4.3 any other contracts or agreements (including any Plot Transfer Agreement) entered into by the Developer in relation to the Plot or Plots subject to the termination;

18.4.4 all warranties whether as to design, materials or otherwise in relation to the Proposed Development and any other guarantees and warranties given by any Building Contractor, Professional Team and suppliers and manufacturers in respect of all plant, machinery and apparatus installed as part of the Proposed Development; and

18.4.5 all rights of copyright vested in the Developer which relate specifically to the Development and which are vested in the Developer;



- 18.5 The Developer irrevocably appoints the Owner by way of security to be the attorney of the Developer with full power and authority to do all acts and things and execute and deliver in the name of the Developer all deeds and documents which may be necessary to give effect to the terms of this clause **18**.
- 18.6 This **clause 18** will continue to apply after any rescission or determination of this Agreement.
- 18.7 The termination of this Agreement will not prejudice:
- 18.7.1 any rights or remedies which either party have against the other in respect of any outstanding breaches of this Agreement;
  - 18.7.2 the rights for the Developer to receive any payments due pursuant to **clause 9** in respect of any Plot for which a Plot Transfer Agreement was entered into prior to termination of this Agreement.
- 18.8 In relation to any Plot where a Satisfactory Outline Planning Permission or Satisfactory Hybrid Planning Permission has been obtained if the Owner terminates this Agreement in relation to such Plot and subsequently within five years of such termination procures the Disposal of that Plot the Owner shall (after deducting the Minimum Return and its own proper costs of procuring the Disposal (which may include (but are not limited to) carrying out Plot Infrastructure Works and the costs of any Disposal) reimburse the Eligible Developer's Costs for the Plot from the proceeds of the Disposal (but excluding any project management fee included with the Developer's Costs at **paragraph 7 of Schedule 8**), such payments to be paid to the Developer within 20 Working Days of receipt by the Owner of proceeds of Disposal sufficient to enable such reimbursement solely from the proceeds of the Disposal once the Minimum Return and any costs properly incurred by the Owner in relation to the procuring the Disposal have been deducted.

## 19. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**

- 19.1 Subject to **clauses 19.3 to 19.11**, neither the Developer nor the Owner are without the prior written consent of the other knowingly to disclose or publish or permit or cause to be disclosed or published any details of this Agreement or its existence or any Confidential or Commercially Sensitive Information save only:
- 19.1.1 to the extent necessary in order to comply with the requirement of the any securities exchange or regulatory or governmental body to which any party is subject including without limitation the London Stock Exchange or is required to be disclosed in any other prospectus offering or other admission document;
  - 19.1.2 to HM Revenue and Customs or the rating authority;
  - 19.1.3 to the extent necessary to effect noting or registration at the Land Registry by means only of a Unilateral Notice but without sending this Agreement or any copy of it to the Land Registry;
  - 19.1.4 to the extent necessary to comply with legal or parliamentary obligations placed upon any of the parties or the rules of any governmental or regulatory authority having the force of law;
  - 19.1.5 to the extent necessary for audit purposes;
  - 19.1.6 In the case of the Developer, to any Group Company and their professional advisers and agents, and in the case of the Owner, to AWG and the Council and their professional advisers and agents;
  - 19.1.7 subject to **clause 19.2** to any Investor or its professional advisers and agents, and rating agencies or its insurance advisers;



- 19.1.8 subject to **clause 19.2** to the extent necessary to any Plot Purchaser and its professional advisers and agents;
  - 19.1.9 to the extent necessary to obtain professional advice in relation to the carrying out of obligations under this Agreement and/or the determination of any dispute under **clause 17** and to the Specialist;
  - 19.1.10 to the extent ordered to do so by the court or any other competent authority; or
  - 19.1.11 where such Information is in the public domain otherwise than by reason of a breach of the obligations under this clause
- 19.2 Where either party wishes to disclose details of this Agreement and any Confidential or Commercially Sensitive Information to an Investor or Plot Purchaser or their respective professional advisers and agents, it shall be required to obtain the prior approval of the other party, such approval to such disclosure shall not be unreasonably withheld where prior to such disclosure the Investor or the Plot Purchaser provides a non-disclosure agreement to the other party in a form approved by the party(acting reasonably).
- 19.3 The Developer and the Owner are to procure that their professional advisers and agents and in case of the Owner both AWG and the Council and their respective professional advisers and agents are fully instructed and required to comply with these restrictions on disclosure.
- 19.4 On the Date of Actual Completion, the Developer and the Owner, or either of them, may issue a press release in the form attached to this Agreement.
- 19.5 The parties acknowledge that while the Owner is not subject to the requirements of the Freedom of Information Act 2000 ("**FOIA**"), or the Environmental Information Regulations 2004 (the "**Environmental Information Regulations**"), the Council and AWS Limited (each a "Subject Body") are subject to this legislation. As such, the Owner and the Developer each acknowledge the requirements of the FOIA, and the Environmental Information Regulations and shall facilitate the Subject Body's compliance with its information disclosure requirements pursuant to the same in the manner provided for in **clauses 19.6** below.
- 19.6 Where the Owner receives a Request for Information from a Subject Body in relation to the Development and/or this Agreement, the Owner shall send a copy of such Request for Information to the Developer within Five Working Days of receipt by the Owner of such request and the Owner may require the Developer to
- 19.6.1 provide the Subject Body with a copy of any Information relevant to the Request for Information which is held on behalf of the Subject Body by a party in the form that the Subject Body requires within five Working Days (or such other period as the Subject Body may specify) of the Subject Body's request; and
  - 19.6.2 provide all necessary assistance as reasonably requested by the Subject Body in connection with any such Information, to enable the Subject Body to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 19.7 Subject to the provisions of **clause 19.8.4** below, following notification under **clause 19.6.2** and up until such time as the Developer has provided the Subject Body with the Information specified in **clause 19.6.1**, the Developer may make representations to the Subject Body as to whether or not or on what basis the Information requested should be disclosed.
- 19.8 The Subject Body in receipt of a Request for Information shall be responsible for determining at its absolute discretion:



- 19.8.1 whether the Information referred to in the Request for Information is exempt from disclosure under the FOIA, the Environmental Information Regulations or the Access to Information Legislation;
  - 19.8.2 where appropriate, whether or not in all circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the Information referred to in the Request for Information;
  - 19.8.3 whether the Information is to be disclosed in response to the Request for Information; and
  - 19.8.4 In no event shall the Developer respond directly to a Request for Information (including confirming or denying that the Information is held) unless expressly authorised to do so by the Subject Body in receipt of the Request for Information.
- 19.9 The Developer acknowledges that any lists provided by it listing or outlining Confidential Information, Commercially Sensitive Information and/or Exempt Information are of indicative value only and that a Subject Body may nevertheless be obliged to disclose Confidential Information, Commercially Sensitive Information and/or Exempt Information in accordance with the requirements of FOIA, the Environmental Information Regulations and/or the Access to Information Legislation.
- 19.10 The Developer acknowledges that (notwithstanding the provisions of this **Clause 19**) a Subject Body may, under the Access to Information Legislation or acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Developer or the Project:
- 19.10.1 In certain circumstances without consulting with the Developer; or
  - 19.10.2 following consultation with the Developer and having taken its views into account,
- provided always that where **clause 19.10.1** above applies the Subject Body shall, take reasonable steps wherever practicable to draw this to the attention of the Developer prior to any disclosure.
- 19.11 Where the Owner receives a Request for Information which is Confidential Information, Commercially Sensitive Information or Exempt Information, the Owner shall where reasonably practicable take reasonable steps prior to disclosure of such information: to notify the Developer of such Request for Information as soon as reasonably practicable; and to consult with the Developer and invite the Developer to make representations to the Subject Body as to whether or not in the Developer's view the Information is exempt from disclosure under the FOIA or the Environmental Information Regulations or the Access to Information Legislation and on what basis in the Developer's view the Information requested should be disclosed or withheld. Notwithstanding the provisions of this clause, the Developer acknowledges that the Subject Body may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under FOIA or the Environmental Information Regulations or Access to Information Legislation to disclose information without consulting the Developer or following consultation with the Developer and having taken the Developer's views into account.

**20. DATA PROTECTION**

- 20.1 Each of the parties shall comply with its obligations under the Data Protection Legislation at all times during the term of this Agreement.



- 20.2 Each of the parties acknowledges and agrees that it acts as an Independent Controller in relation to this Agreement and/or the Project and any related processing of Personal Data. The Developer will only process:
- 20.2.1 the Project Personal Data to the extent necessary for the proper performance of this Agreement and to complete the Project; and
  - 20.2.2 the Marketing Personal Data to the extent necessary for the proper performance of the Communications and Engagement Strategy and/or Marketing and Disposal Strategy,
- and in each case, will do so in accordance with its obligations in this Agreement and in particular this clause 20 and will not use the relevant Personal Data for any other purpose.
- 20.3 To enable the Owner to exercise its step-in rights pursuant to and in accordance with Clause 18 and/or any relevant Step In Agreement, the Developer will (and will procure its Processors will) and before and after any such exercise of rights, comply with its obligations in this Clause 20, and provide reasonable assistance to the Owner, to facilitate (and do nothing to prevent or limit):
- 20.3.1 the Owner being able to fairly and lawfully obtain and process all Project Personal Data from the Developer to complete the Project; and
  - 20.3.2 the Owner being able to fairly and lawfully obtain and process all Marketing Personal Data from the Developer to complete the Communications and Engagement Strategy, and/or Marketing and Disposal Strategy, with all related Marketing; and
  - 20.3.3 (unless and to the extent explicitly agreed otherwise in any Step In Agreement), the secure provision to the Owner (and/or as it directs in writing) on its written request all Project Personal Data (and in the form, format and by the means reasonably required by it) and to securely delete any remaining copies, and promptly certify (via a director) when this exercise has been completed,
- In each case promptly and without delay, disruption, or any need to pay any additional fees or charges to, or to settle any balancing payments with the Owner, or any of its processors, contractors and/or funders.
- 20.4 To give effect to clause 20.3, the Developer will (and will procure that each of its Processors will) ensure appropriate wording (which complies with Data Protection legislation obligations) to cover:
- 20.4.1 such intended fair and lawful data sharing and disclosure and processing by or for the Owner, is included in its privacy information provided by or for the Developer to relevant individuals (and including via its Project website privacy policy); and
  - 20.4.2 obtaining fair and lawful consent from such individuals in respect of Marketing Personal Data in relation to processing for the purposes of communications (including electronic communications) and/or Marketing by or for the Owner in accordance with the Communications and Engagement Strategy and/or Marketing and Disposal Strategy, is included in the forms of consent requested by or for the Developer from individuals in respect of the Communications and Engagement Strategy and/or Marketing and Disposal Strategy,
- and the Developer will comply with clause 20.5 before issuing or updating any such privacy information, website privacy policy and/or form of consent, provided always that the Developer shall remain legally responsible for all such drafts and its obligations to comply with Data Protection Legislation.



- 20.5 The Developer will (and will procure that its Processors will ensure its ability to):
- 20.5.1 provide the Owner with a draft of any proposed privacy information notice or policy (including any Project website privacy policy) and or form of data protection, privacy or marketing consent to be used by or for it in respect of the Project (and including any proposed updates or amendments to any of them) at least 10 clear Working Days before the proposed introduction and use of such draft;
  - 20.5.2 provide the Owner with a period of up to 5 clear Working Days to consider and provide the Developer with comments on and reasonably required changes to any such draft, as though necessary to ensure compliance with clause 20.4; and
  - 20.5.3 take proper account of such comments and make such changes so as to comply with clause 20.4.
- 20.6 The Developer will:
- 20.6.1 where it reasonably believes there to be a material risk which would be likely to cause reputational damage and/or Project related risk relevant to the Owner, notify the Owner promptly and without undue delay and in any event, within seventy two (72) hours of becoming aware of a reasonably suspected, "near-miss" or actual Personal Data Breach affecting the Project Personal Data (including the nature of the Personal Data Breach, the categories and approximate number of Data Subjects and Personal Data records concerned, the likely consequences of the Personal Data Breach and any measure(s) proposed to be taken to address the Personal Data Breach and to mitigate its possible adverse effects) unless it is otherwise legally prohibited from doing so and to the extent permitted by the Data Protection Legislation. Where, and in so far as, it is not possible to provide all the relevant information as set out in this clause 20.6.3 at the same time, the information may be provided in phases without undue delay, but the Developer may not delay notification under this clause 20.6.3 on the basis that an investigation is incomplete or ongoing;
  - 20.6.2 where it reasonably believes there to be a material risk which would be likely to cause reputational damage and/or Project related risk relevant to the Owner, in relation to any Data Subject Request or complaint from a Data Subject to the Developer (or for which it is legally responsible) relating to any Project Personal Data; and in any event in relation to any communication from the Commissioner in connection with the Project Personal Data, promptly and without undue delay (and in any event within 72 hours) notify the Owner of the details and provide reasonable assistance and information to the Owner in relation to them;
  - 20.6.3 ensure that any Processor appointed by it to process all or any of the Project Personal Data pursuant to this Agreement is appointed:
    - 20.6.3.1 in compliance with the Data Protection Legislation;
    - 20.6.3.2 on the basis that it is made aware of the Developer's obligations in **clause 18** and this **clause 20** and bound to enable the Developer to comply with its obligations accordingly; and
    - 20.6.3.3 on the basis that its data processing agreement is assignable to the Owner (or as it directs in writing) in the event that clause 18 step in rights are activated by the Owner; and
  - 20.6.4 ensure that any Restricted Transfer of any Project Personal Data is made in compliance with the Data Protection Legislation and that prior to making any



such Restricted Transfer, the Owner is notified in writing of the details of it and/or any change to it (including the parties to it, their names and addresses, the territory or country of the recipient data importer party, the affected Project Personal Data and processing, its duration and the appropriate safeguards applied to it under Data Protection Legislation).

20.7 The Parties shall each designate a Data Protection Officer if required by the Data Protection Legislation.

## 21. DEALINGS

21.1 The Developer may assign this Agreement to a Group Company with the written consent of the Owner (not to be unreasonably withheld) but otherwise this Agreement is incapable of being assigned, charged, held on trust or in any way being dealt with by the Developer save that the Developer may with the prior approval of the Owner (acting reasonably) charge this Agreement by way of security to an Investor.

21.2 The Owner may assign, charge, hold on trust or in any way deal with this Agreement save it shall not be permitted to assign, charge, hold on trust or in any way deal with this Agreement to a direct competitor of the Developer.

21.3 For the purposes of **clause 21.2** a direct competitor to the Developer is either (i) an undertaking whose principal business is residential land promotion, and/or (ii) who is engaged in sites of similar scale and complexity to the Development (and for the avoidance of doubt "direct competitor" shall not include a person or entity whose principal business activity is as a long term investor in or funder of real estate investments).

21.4 Any dispute in relation to the operation of this **clause 21** may be referred to determination in accordance with **clause 17**.

## 22. EFFECT OF THIS AGREEMENT

22.1 The parties acknowledge that this Agreement forms the entire agreement between them relating to its subject matter.

22.2 No modification, variation or waiver of any of the terms of this Agreement will be effective unless made in writing and signed by the parties to this Agreement.

22.3 This Agreement does not create and is not in any circumstances to be taken as having created a partnership between the Owner and the Developer.

22.4 The Developer is not and will not at any time hold itself out as the agent of the Owner for any purposes (save as permitted pursuant to **clause 9.1**) and under no circumstances will the Developer have the authority to bind the Owner or hold itself out to the public, the Building Contractor or any member of the Professional Team as having such authority.

22.5 All contracts and agreements entered into by the Developer pursuant to this Agreement will be contracts or agreements between the Developer as principal and the respective third parties and the Owner will have no obligation or liability under them.

22.6 The Developer acknowledges that it does not have and will not have any lien over the Development Area or the Development in respect of payments due to it under this Agreement.

22.7 Each of the parties undertakes with the other that it will at all times act in an open and transparent manner with the utmost good faith towards the other in relation to all matters covered by this Agreement.



23. **DEVELOPER'S GUARANTOR**

The Developer's Guarantor is to comply with its obligations in **Schedule 11**.

24. **SURVIVAL OF THIS AGREEMENT**

Notwithstanding completion of the sale and purchase of the Development Area or any part of it all of the provisions of this Agreement shall continue in full force and effect to the extent that any remain to be implemented.

25. **COUNTERPARTS**

This Agreement may be signed in any number of parts which taken together on exchange constitute one contract.

26. **SEVERANCE**

26.1 If any provision or part of a provision of this Agreement is found by a court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

26.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the parties.

27. **ANTI-BRIBERY**

27.1 In this clause:

"**Adequate Procedures**" means procedures which satisfy the requirements of section 7(2) of the Bribery Act and comply with any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act;

"**Associated Person(s)**" means any person (including an employee, agent or subsidiary of a party) who is authorised to perform services for, or on behalf of, that party;

"**Bribery Act**" means the Bribery Act 2010 as amended, superseded or replaced from time to time during the term of this Agreement; and

"**Bribery Offence**" means any offence under Sections 1, 2, 6 or 7 of the Bribery Act.

27.2 Each party warrants to the other that it has not at any time prior to the date of this Agreement:

27.2.1 committed a Bribery Offence; or

27.2.2 been formally notified that it is subject to an investigation or prosecution which relates to an alleged Bribery Offence.

27.3 Each party undertakes to the other that, during the term of this Agreement, it shall not, and it shall use reasonable endeavours to procure that its Associated Persons shall not:

27.3.1 engage in any activity, practice or conduct which could constitute a Bribery Offence;

27.3.2 do or permit anything to be done which would cause the other party or any of the other party's employees, sub-contractors or agents to contravene any section of the Bribery Act or otherwise incur any liability in relation to the Bribery Act; or

- 27.3.3 offer, give or agree to give the other party or any of the other party's employees, sub-contractors or agents any benefit of any kind as an inducement or reward for any act or omission in relation to this Agreement or any other agreement.
- 27.4 Each party undertakes with the other that, during the term of this Agreement, it shall and it shall use reasonable endeavours to procure that its Associated Persons shall:
- 27.4.1 on receipt of a written request from the other party, repeat the warranties set out in **clause 27.2**;
- 27.4.2 establish and maintain Adequate Procedures which are designed to prevent it and its Associated Persons from engaging in any activity, practice or conduct which could constitute a Bribery Offence;
- 27.4.3 comply with all obligations arising out of the Bribery Act; and
- 27.4.4 keep appropriate records of its compliance with its obligations under this **clause 27** and make such records available to the other party on request.
- 27.5 Each party shall notify the other immediately if it becomes aware, or has reason to believe that:
- 27.5.1 It has, or any of its Associated Persons have, breached any of its obligations under this **clause 27**; or
- 27.5.2 any person or party directly or indirectly connected with this Agreement has committed any Bribery Offence; or
- 27.5.3 any person or party directly or indirectly connected with this Agreement has made, given, procured, received or obtained any bribe (or attempted to do so).
- 27.6 Any breach of this **clause 27** by a party or any of its Associated Persons (whether with or without the knowledge of the other) shall allow the other party to terminate this Agreement.

28. **COMPLIANCE WITH LAWS**

28.1 In this clause:

"**Anti Tax Evasion Laws**" means Part 3 of the UK Criminal Finances Act 2017 (Corporate Offences of Failure to **Prevent** Facilitation of Tax Evasion) as amended from time to time, any guidance, rules and regulations thereunder, and any similar laws or regulations in any other jurisdiction.

"**Sanctions Laws**" means any applicable export control and economic sanctions laws and regulations of the United Kingdom, the European Union (or any Member State thereof), United States of America, the United Nations and each other jurisdiction in which the Tenant or any of its associated persons operates or to which such person is subject from time to time, including, without limitation, the US Export Administration Regulations, the US International Traffic in Arms Regulations, the US Department of Treasury Office of Foreign Asset Control's economic sanctions regulations, sanctions programmes maintained by Her Majesty's Treasury and any applicable European Union restrictive measure that has been implemented pursuant to any European Council or Commission Regulation or Decision adopted pursuant to a Common Position in furtherance of the European Union's Common Foreign and Security Policy.

- 28.2 Notwithstanding **Clause 3** of this Agreement each party warrants to the other that in connection with its entry into this Agreement and the arrangements contemplated by this Agreement:



- 28.2.1 It and its directors, officers, employees or authorised representatives, any person for whose acts it may be vicariously liable, and any other person that acts for or on behalf of, or provides services for or on behalf of it, in each case whilst acting in his capacity as such (**associated persons**) has conducted its or their respective businesses at all times in compliance with applicable Sanction Laws, and has not carried out or omitted to carry out any act that would or would reasonably be expected to cause the counterparty to be in breach of applicable Sanctions Laws;
- 28.2.2 neither it nor any of its associated persons employ or use any form of forced, bonded or compulsory labour, or other forms of slavery or human trafficking (**modern slavery**);
- 28.2.3 It and its associated persons have taken appropriate steps to ensure that there is no form of modern slavery employed or used within its business or in its supply chains;
- 28.2.4 It has not and so far as it is aware, none of its associated persons has engaged in any activity or omitted to do anything, and it shall not, and shall procure that its associated persons shall not engage in any activity or omit to do anything, in each case, which would amount to or would reasonably be expected to amount to an offence under any applicable Anti Tax Evasion Laws;
- 28.2.5 It has not committed any offence under any applicable law, including but not limited to common law and statutory law, or any legislation derived thereunder, as in force from time to time, and it will not, and shall procure that its associated persons will not, engage in any activity, practice or conduct which would otherwise constitute criminal facilitation of criminal tax evasion by another taxpayer;
- 28.2.6 It has in place, appropriate processes, procedures and protocols to comply with the foregoing **paragraphs 28.2.1 to 28.2.5**.

**29. CONSTRUCTION INDUSTRY SCHEME**

29.1 In this clause 29 (but not otherwise):

<b>Contract Payment</b>	has the meaning given to it under section 60(1) FA 2004;
<b>Contractor</b>	means a person who is a contractor for the purposes of Chapter 3 Part 3 FA 2004;
<b>FA 2004</b>	means the Finance Act 2004;
<b>Regulations</b>	means the Income Tax (Construction Industry Scheme) Regulations 2004 (SI 2005/2045);
<b>Sub-Contractor</b>	means a person who is a sub-contractor for the purposes of Chapter 3 Part 3 FA 2004;
<b>HMRC</b>	HM Revenue and Customs.

29.2 The Developer undertakes to comply with all the requirements of Chapter 3 Part 3 FA 2004.



- 29.3 All obligations of the Owner and all rights of the Developer under this agreement are subject to Chapter 3 Part 3 FA 2004 and the Regulations (insofar as Chapter 3 Part 3 FA 2004 and the Regulations apply to any such rights and obligations).
- 29.4 The Developer warrants that prior to entering into a Building Contract it shall take all necessary steps to procure that it is registered for gross payment with HMRC as a Sub-Contractor under the Regulations and shall following completion of such registration provide the Owner with the registration number.
- 29.5 The Developer shall take such steps as may be required to obtain, renew or protect its registration under the Regulations as a Sub-Contractor entitled to receive payments gross (without deduction), and is not aware of any reason why such registration would not be permitted or would be revoked, and shall use all reasonable endeavours to procure that any Building Contractor take such steps in relation to its registration and shall notify the Owner forthwith should any such registration be withdrawn or lapse for any reason.
- 29.6 If the Owner, as Contractor, is required to make a Contract Payment to the Developer, as Sub-Contractor, under this Agreement, the Owner, as Contractor, shall verify, in accordance with Section 69 FA 2004 and paragraph 6 of the Regulations, whether the Developer, as Sub-Contractor, is registered for gross payment or for payment under deduction or is not registered under Chapter 3 Part 3 FA 2004, and shall, once it has so verified, make the payment to the Developer subject to the following:
- 29.6.1 the Developer warrants that it holds such evidence as is prescribed in Regulation 27 and 29 of the Regulations for the purposes of satisfying HMRC that the factual conditions in Paragraph 10 and 11, respectively, of Schedule 11 of the Finance Act 2004 are met;
  - 29.6.2 the Developer warrants that it has met the requirements of paragraph 12 of Schedule 11 of the Finance Act 2004;
  - 29.6.3 If the Developer is registered for gross payment under section 63(2) FA 2004, the Owner shall make the payment to the Developer without any deduction;
  - 29.6.4 If the Developer is not registered under section 63(2) FA 2004 for gross payment under that section, the Owner shall make the payment to the Developer, subject to the deduction of the relevant percentage in accordance with section 61 FA 2004 and the Regulations;
- provided that if HMRC notifies the Owner that the Developer's registration status has changed, then the Owner shall make the Contract Payment subject to such direction made by HMRC in accordance with section 69 FA 2004 and the Regulations, and this proviso shall be applied as often as may be required.
- 29.7 The Developer shall provide the Owner with such information as the Owner may request for the purpose of making the verification in accordance with Section 69 FA 2004 and paragraph 6 of the Regulations (including, without limitation, the information prescribed by paragraph 6(2)(b) of the Regulations) and shall notify the Owner of any change in the circumstances of the Developer's registration status with HMRC.
- 29.8 If for any reason the Developer is no longer entitled to be paid gross then the Owner may withhold tax at the relevant rate prescribed for the purposes of section 61 Finance Act 2004 for so long as such sum can properly be withheld by the Owner.
- 29.9 The Sub-Contractor or the Developer's Guarantor shall indemnify the Contractor and keep it indemnified (in each case on an after-tax basis) against any loss, damage, cost or expense incurred by the Contractor arising out of any breach by the Sub-Contractor of its obligations under this **clause 29** and/or under the Act and the Regulations including the inaccuracy or inadequacy of any evidence or other information furnished to the Contractor under this **clause 29**.



29.10 In the event of any conflict between this **clause 29** and any other term of this Agreement, the provisions of this **clause 29** shall prevail.

**30. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The Council, AWG and AWS shall have the right to enforce the provisions of **clause 20** but otherwise it is not intended that a third party should have the right to enforce provisions of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

**31. ENFORCEMENT**

31.1 This Agreement is to be governed by and interpreted in accordance with English law.

31.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement. This clause operates for the benefit of the Owner who retains the right to sue the Developer and the Developer's Guarantor and enforce any judgment against the Developer or the Developer's Guarantor in the courts of any competent jurisdiction.

**32. EXECUTION**

32.1 The Developer, the Developer's Guarantor and the Owner have executed this Agreement as a deed on the date set out in the Particulars.

32.2 Any person who witnesses the sealing of this Agreement is to be treated as having signed this Agreement for the purposes of section 2 Law of Development Area (Miscellaneous Provisions) Act 1989.

## SCHEDULE 1

### Sale and Purchase of the Development Area

#### PART 1: GENERAL PROVISIONS

##### 1. Title

- 1.1 The Owner has deduced title to the Development Area to the Developer and the Developer is not entitled to raise any requisition or objection to the title except in respect of any matters registered against the Title Number(s) after the following dates and times:

Title number CB288631: 17:07:39 on 14 May 2019;

Title number CB209927: 17:05:07 on 14 May 2019;

Title number CB283648: 17:08:40 on 14 May 2019;

Title number CB283649: 17:09:12 on 14 May 2019; and

Title number CB288636: 19:05:31 on 23 July 2019.

- 1.2 The Owner shall deduce title to prospective Plot Purchasers in accordance with the Marketing and Disposal Strategy so as to facilitate Disposals in accordance with the Marketing and Disposal Strategy.

- 1.3 The Owner shall not enter into any lease over the Development Area without the consent of the Developer (such consent not to be unreasonably withheld and not to be withheld for occupational leases outside of the Landlord and Tenant Act 1954 security of tenure provisions) where such leases a) terminate on no more than three calendar months' notice and b) have a term expiring prior to the anticipated date of drawdown of the Plot Licence for the part of the Development Area subject to the lease as set out in the current Business Plan at the time of grant of the lease.

##### 2. Title Matters

- 2.1 The relevant Plot will be sold subject to and, to the extent that the Owner/Landowners are able to transfer them, with the benefit of the Title Matters.

- 2.2 The relevant Plot will be sold subject to:

2.2.1 the matters contained or referred to in Commercial Condition 3.1.2;

2.2.2 any registered local land charges and any matter capable of being registered as a local land charge even if not so registered at the Date of Actual Completion;

2.2.3 any notice, order or proposal given or made by a government department or by any public or local authority, statutory undertaker or other competent body or person;

2.2.4 all charges, orders, proposals, restrictions, agreements, notices or other matters arising under the town and country planning or highways legislation which affect or relate to the Development Area and to any orders or regulations made under that or any other legislation;

2.2.5 all rates, charges and other outgoings which affect or are charged on the Development Area except for any mortgage or legal charge relating to money secured on the Development Area;



- 2.2.6 any unregistered Interest that overrides the disposition effected pursuant to this Agreement under Schedules 1, 3 or 12 Land Registration Act 2002;
- 2.2.7 all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Development Area; and
- 2.2.8 all liability to repair and maintain roads, paths, conduits, fences and other like matters or to contribute to the cost of their repair and maintenance.

**3. Land Registry Applications**

- 3.1 The Developer is not to send this Agreement or any copy of it to the Land Registry and is not to protect the benefit of this Agreement at the Land Registry except by the registration of a Unilateral Notice. The Owner agrees not to object to and shall procure that the Landowners shall not object to the registration of a Unilateral Notice.
- 3.2 The Developer is to require that any Plot Purchaser will be required to use all reasonable endeavours to procure the registration of any Plot Transfer at the Land Registry as soon as reasonably practicable after the Date of Actual Completion and, on completion of that registration, is to provide the Owner with official copies of the title to the Plot showing the Plot Purchaser registered as proprietor together with any title plan produced or updated by the Land Registry as part of that registration.
- 3.3 As part of the Plot Purchaser's application to register the Plot Transfer at the Land Registry, the Developer is to require that the Plot Purchaser:
  - 3.3.1 request that the Land Registrar notes the benefit of any easements reserved by the transfer over the remainder of the Development Area against the Title Number(s); and
  - 3.3.2 request that the Land Registrar notes the benefit of any easements granted by the transfer in favour of the remainder of the Development Area against the title number to the Development Area allocated by the Land Registry.

**PART 2: TITLE MATTERS**

**1. Register entries**

The matters contained or referred to in the Development Area and Charges Registers of the Title Number(s) as at the dates and times referred to at paragraph 1 of Part 1 of this **Schedule**. A copy of the register entries referred to in this **paragraph 1** is attached to this Agreement.

**2. Other deeds and documents**

The matters contained or referred to in the following deeds and documents:

Date	Document	Parties
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## SCHEDULE 2

### Conditions

#### Part 1 Conditions Precedent

##### 1. Business Plan Condition

1.1 The Developer is to prepare and provide the draft Business Plan to the Owner and the Project Board as soon as reasonably practicable after the date of this Agreement and in any event the Developer is to provide the Business Plan to the Project Board for approval within six months of this Agreement.

1.2 The Business Plan will:

1.2.1 comply with the Objectives and the terms of the HIF Agreement (including but not limited to the obligation to satisfy the HIF Milestones);

1.2.2 comply with the Minimum Requirements;

1.2.3 comply with the Local Planning Policy and any planning guidance issued by the local planning authority, including any draft or finalised Area Action Plan;

1.2.4 be designed to ensure the Proposed Development is and remains Viable; and

1.2.5 include the information and details set out in **paragraph 2.3** below and such additional information or detail as may be reasonably requested by the Project Board and/or the Owner from time to time,

it being acknowledged that some of the strategies within the Business Plan may be developed over time and the Project Board (at its absolute discretion) may agree that an outline strategy be provided, provided that where it is agreed that an outline strategy be provided, a programme for delivery of the detailed strategy (with corresponding Milestone and Milestone Date) will be also agreed and included in the Business Plan.

1.3 The Business Plan shall include:

1.3.1 financial modelling for the Proposed Development using the Financial Model (such Financial Model to be designed to ensure that the Proposed Development is and remains commercially fundable while satisfying the Viability Requirement);

1.3.2 the Milestone Dates for the satisfaction of the Milestones, such Milestone Dates to be consistent with the delivery of the whole of the Proposed Development by the Agreement Longstop Date and the requirement to achieve the HIF Milestones by the HIF Milestone Dates;

1.3.3 the Phasing Programme;

1.3.4 the Planning Strategy;

1.3.5 the Infrastructure Strategy, including the allocation of the Infrastructure Land to the Plots so that the Infrastructure Proportion for each Plot can be determined;

1.3.6 the Sustainability Strategy;

1.3.7 the Transport Strategy;

1.3.8 the initial Marketing and Disposal Strategy for the Development Area;



- 1.3.9 the Communications and Engagement Strategy;
  - 1.3.10 the Management and Maintenance Strategy;
  - 1.3.11 the Vacant Plot Strategy;
  - 1.3.12 the Plot Delivery Strategy;
  - 1.3.13 the Procurement Strategy;
  - 1.3.14 a Housing Needs Assessment;
  - 1.3.15 a methodology for achieving the Minimum Requirements;
  - 1.3.16 the Early Phases Strategy; and
  - 1.3.17 the Funding Strategy
- 1.4 The parties are to procure that the Project Board confirms within 20 Working Days of submission of the draft Business Plan whether or not it approves the Business Plan, such approval not to be unreasonably withheld or delayed, and where the draft Business Plan is not approved is to give reasons.
- 1.5 In agreeing the Business Plan the Owner and the Project Board will not be obliged to agree any provisions which would be a breach of the statutory responsibilities of the Council or AWS.
- 1.6 The Project Board and/or Owner may provide comments to the Developer as to the draft Business Plan and the Developer is to act reasonably in taking such comments into account, and where appropriate to do so, the Developer is to review and revise the draft Business Plan and is to re-submit the draft Business Plan to the Owner and Project Board (and (subject to clause 18.1.2) the process is to be repeated until the Project Board is able to approve the Business Plan).
- 1.7 Any dispute in relation to the Business Plan may be referred to an Specialist (appointed in accordance with clause 17 of this Agreement) but the Specialist is not permitted to determine the matter in dispute in such a way that could have the effect that the Minimum Requirements are not achieved.
- 1.8 Once approved (or determined to be approved) by the Project Board no changes may be made to the Business Plan unless:
- 1.8.1 (where there is a conflict between the terms of the Business Plan and the terms of this Agreement) as required by the Project Board (acting reasonably);
  - 1.8.2 where otherwise expressly permitted by the terms of this Agreement; or
  - 1.8.3 such change is proposed by the Developer and the Owner (acting reasonably) has reasonably approved such change.
- 1.9 In the event of a conflict between the terms of the Business Plan and the terms of this Agreement, the terms of this Agreement shall prevail.
- 1.10 No inspection or approval by the Project Board of the Business Plan is to lessen the obligations of the Developer, any Building Contractor, any member of the Professional Team or any Principal Sub-Contractor in relation to the design and construction of the Infrastructure and/or the Proposed Development, whether under this Agreement or otherwise.



## **Part 2 Plot Conditions**

### **1. Plot Planning Condition**

1.1 For any Plot the Developer is not obliged to comply with any obligations in relation to satisfying the Plot Planning Condition until the Vacant Plot Trigger Date has arisen.

### **2. Vacant Plot Condition**

2.1 For any Plot the Owner is not obliged to comply with its obligations in relation to the Vacant Plot Condition until the Vacant Plot Trigger Date has arisen and the Developer has confirmed to the Owner that it requires the Vacant Plot Condition to be satisfied;

2.2 Subject to paragraphs 2.1 and 2.3 and the proviso to this paragraph the Owner is to use reasonable endeavours to satisfy the Vacant Plot Condition for the Plots in accordance with the Milestones and the Vacant Plot Strategy and the Developer is to do such acts as are reasonably required to assist the Owner in satisfying the Vacant Plot Condition in accordance with the Vacant Plot Strategy, provided that the Owner is not to be deemed to be in breach of such obligation for parts of the Development Area which are subject to occupational tenancies within the Landlord and Tenant Act 1954 where a) it is taking reasonable steps to secure possession from tenants in accordance with the timescales envisaged in the Vacant Plot Strategy and b) in relation to the land occupied by the AW Centre where the AW Centre has not been declared surplus to requirements by AWS in accordance with its statutory and regulatory obligations.

2.3 It is acknowledged that that some elements of the existing AWS apparatus and infrastructure at the Development Area may need to be retained by AWS at the Development Area but at the date of this Agreement the Owner is unable to advise as to the precise requirements. The Owner is to use reasonable endeavours to provide such details as soon as it reasonably can as part of the agreement of the Business Plan pursuant to part 2 of this Schedule so the Business Plan can take these requirements into account.

### **3. Funding Condition**

3.1 Subject to paragraph 3.2 below, the Funding Condition for a Plot is:

3.1.1 the Developer entering into the Developer Funding Agreement or confirming to the Owner that the Developer is wholly self-funding the relevant Plot Infrastructure Works and any Planning Agreement and/or Community Infrastructure Levy obligations/ liabilities for such Plot (unless such liabilities have been agreed or determined as being appropriate to the responsibility of the Plot Purchaser of the relevant Plot pursuant to the Marketing and Disposal Strategy)) and no Developer Funding Agreement is necessary and the Developer providing such evidence as the Owner may reasonably require to evidence that it has sufficient access to Developer Funding for the successful delivery of the Plot Infrastructure Works and any Planning Agreement and/or Community Infrastructure Levy obligations/ liabilities for such Plot (unless such liabilities have been agreed or determined as being appropriate to the responsibility of the Plot Purchaser of the relevant Plot pursuant to the Marketing and Disposal Strategy)) (such evidence might include a letter from the Developer's chief finance officer and/or Developer's bankers);

3.1.2 where a Developer Funding Agreement is required the Developer Funding Agreement becoming unconditional upon its own terms (save for any condition relating to the obligations relating to the Plot to become unconditional); and

3.1.3 Where a Developer Funding Agreement is required the Owner approving the Developer Funding Agreement and the identity of the Investor proposed to provide the Developer Funding (such approval not to be unreasonably withheld or delayed).



3.2 The Developer's Obligations

3.2.1 The Developer shall notify the Owner whether a Developer Funding Agreement for a Plot is required in accordance with the Milestones for delivery of the Plot and the requirements of the Business Plan and where it does so it is to use reasonable endeavours to negotiate and agree both the quantum of Developer Funding and (where a Developer Funding Agreement is required) the terms and conditions of the Developer Funding Agreement as soon as reasonably practicable and considered expedient for the relevant Plot having regard to the Milestones and the requirements of the Business Plan.

3.2.2 Where a Developer Funding Agreement is required the Developer shall use all reasonable endeavours to enter into and exchange the Developer Funding Agreement as soon as reasonably practicable after the quantum of Developer Funding and the terms and conditions of the Developer Funding Agreement have been agreed pursuant to **paragraph 3.1**.

3.2.3 The Developer shall act reasonably in seeking to enter into a Developer Funding Agreement as soon as reasonably practicable where such funding is available in the market at a reasonable rate at the relevant time where otherwise the Funding Condition cannot be waived pursuant to **clause 3.3.1**.

3.3 Waiver

3.3.1 Subject to **paragraph 3.3.3** below, where the funding of Plot Infrastructure Works and any associated Community Infrastructure Levy or financial liability pursuant to a required Planning Agreement for a Plot would not require the Current Infrastructure Commitment to exceed the Rolling Infrastructure Commitment the Funding Condition for the Plot may be waived by the Owner at its discretion by giving six months' notice to the Developer.

3.3.2 Subject to **paragraph 3.3.3** below where the funding of Plot Infrastructure Works and any associated Community Infrastructure Levy or financial liability pursuant to a required Planning Agreement for a Plot would require Current Infrastructure Commitment to exceed the Rolling Infrastructure Commitment the Funding Condition for the Plot may only be waived by mutual consent of the parties.

3.3.3 At any time the Owner may require by notice to the Developer for the Current Infrastructure Commitment to be agreed or determined, so as to determine whether the Funding Condition for any Plot can be waived by the Owner alone in accordance with **paragraph 3.3.1** or whether it must be mutually waived pursuant to **paragraph 3.3.2**, and where the Owner serves such notice the following procedure is to apply:

3.3.3.1 the Developer is to as soon as reasonably practicable (and in any event within 10 Working Days of the notice by the Owner pursuant to this **paragraph 3.3**) provide its calculation of the Current Infrastructure Commitment with such supporting evidence as is reasonable in the circumstances;

3.3.3.2 the Owner may at any point after service of its notice pursuant to this **paragraph 3.3.3** request any information from the Developer as it reasonably requires so as to enable the Owner to effectively assess whether the Current Infrastructure Commitment exceeds the Rolling Infrastructure Commitment including (but not limited to) as to the Developer's incurred and anticipated Infrastructure Costs and any associated Community Infrastructure Levy or financial liability pursuant to a required Planning Agreement for a Plot (both self-funded and funded by a third party) for the relevant Plot and/or Plot Infrastructure Area, as well as any correspondence and other communications with any Investor(s) or other potential third party funders as to the

actual or potential financing of the relevant Plot Infrastructure Works

3.3.3.3 the parties are to seek to agree (acting reasonably) within 20 Working Days of the Owner's Initial notice served pursuant to **paragraph 3.3.3** the Current Infrastructure Commitment, but if the parties are not able to agree the Current Infrastructure Commitment within such 20 Working Day period, either party may refer the matter for determination by a Specialist in accordance with **clause 17**.

3.4 Where the Funding Condition for a Plot remains not satisfied or waived by the date when a) all other Plot Conditions for the Plot have either been satisfied or waived or such conditions cannot be satisfied due to the Funding Condition not being satisfied, or b) the Funding Condition remains outstanding three months before the relevant Milestone Date for the Plot Conditions to be satisfied or waived for the Plot, then the parties are to meet to consider (acting reasonably) what amendments may be made to the Business Plan so as to enable the Funding Condition to be satisfied (which may include (but is not limited to):

3.4.1.1 revising the Infrastructure Strategy so as to ensure the Current Infrastructure Commitment does not exceed the Rolling Infrastructure Commitment; or

3.4.1.2 revising the interest rate chargeable on Infrastructure Costs and any associated Community Infrastructure Levy or financial liability pursuant to a required Planning Agreement for a Plot.



## SCHEDULE 3

### Viability Condition

#### 1. Definitions

In this Schedule the following words and expressions have the following meanings:

- "Disposal Receipts"** all monies or anything representing monies worth or value in lieu of money of a capital nature received or anticipated to be received as consideration for a Disposal
- "Eligible Development Receipts"** the aggregate of the Disposal Receipts estimated to be receivable for the relevant Plot whether before or after practical completion of the relevant Plot as calculated as at the date of submission of the relevant Financial Appraisal to the Owner
- "Financial Appraisal"** an appraisal to determine the estimated Residual Land Value for a Plot or the Development Area (as the context requires) to be carried out by the Developer using the Financial Model and otherwise to be carried out in accordance with the requirements of this Agreement so as to determine whether the relevant Plot or the Development Area (as the context requires) is Viable
- "Market Value"** the best price which the Plot might reasonably be expected to be sold at arm's length in the open market assuming:
- (a) a willing buyer and seller;
  - (b) there has been a reasonable period prior to the valuation date within which to negotiate the sale taking into account the nature of the Plot and the state of the market;
  - (c) values have remained static throughout the period;
  - (d) the Plot will be freely exposed to the market;
  - (e) no account has to be taken on any additional bidder by a buyer with a special interest;
  - (f) both the buyer and the seller have acted knowledgeably, prudently and without compulsion;
  - (g) that the sale will be on the terms of the Disposal Documents;
  - (h) the Plot will have the benefit of a) either an Outline Planning Permission or Hybrid Planning Permission, b) a Plot Planning

Permission (where the Planning Strategy envisages the Developer to obtain the Plot Planning Permission) and all necessary Plot Infrastructure Works required to enable the Plot to be accessed and serviced have been carried out; and

- (l) that the Plot will be marketed in accordance with the Marketing and Disposal Strategy

**"Residual Land Value"**

the sum calculated as follows:

$$RLV = EDR - (EDC + R)$$

where:

RLV= Residual Land Value

EDR = the estimated Eligible Development Receipts

R = Developer's Return (as referred to in the definition of Viable below)

EDC = estimated Eligible Developer's Costs (but here excluding the Developer's Return)

**"RICS New Rules of Measurement Guidance"**

the RICS document entitled "RICS NRM1: New Rules of Measurement – Order of Cost Estimating and Elemental Cost Planning, 2<sup>nd</sup> edition dated 24 April 2012 and available from the RICS website as may be updated from time to time

**"Valuation Panel"**

a panel approved by the Project Board of no less than three valuers with experience in major housing projects and knowledge of the local market

**"Viable"**

means for any Plot or Plots (as the context may require) that the anticipated Eligible Development Receipts by way of a disposal to a bona fide arm's length purchaser or purchasers of a Plot or Plots (as the context may require) following the obtaining of the Plot Planning Permission (or Plot Planning Permissions) and completion of the Plot Infrastructure Works being sufficient so that the disposal of the Plot or Plots will achieve the agreed Developer's Return (as provided for in clause 9.2.5 but calculated based on estimated Market Value rather than actual receipts), and the repayment of Eligible Developer's Costs for the Plot and a positive Residual Land Value of no less than the Minimum Return

**"Viability Test"**

a test to determine whether (as the context requires) the Development Area or a Plot is Viable, such Viability Test to be carried out in accordance with this Schedule



1. **The Development Viability Condition**

1.1 The Development Viability Condition is the current Financial Appraisal at the date of the relevant Viability Test for the whole of the Development Area showing the Development of the Development Area to be Viable (excluding any Plots where the Unconditional Date has arisen).

1.2 For the avoidance of doubt, in assessing Viability for the Development Area it is acknowledged that some Plots may not, at the date of the Financial Appraisal, be, on their own, Viable; the intention is to assess whether the development of the Development Area (excluding any Plots where the Unconditional Date has arisen) as a whole is Viable.

1.3 A Viability Test for the whole of the Development Area shall be run following the satisfaction of the Conditions Precedent (excluding the Development Viability Condition).

2. **The Plot Viability Condition**

The Plot Viability Condition is the Financial Appraisal current at the date of satisfaction or (where permitted by this Agreement) waiver of the balance of the Plot Conditions (excluding the Vacant Plot Condition) for the relevant Plot showing the Development of the relevant Plot in accordance with the Satisfactory Plot Planning Permission to be Viable.

3. **Viability Test**

3.1 Whenever a Financial Appraisal is carried out the Developer shall:

3.1.1 do so in a fair and reasonable manner;

3.1.2 measure any Incurred, Eligible Developer's Costs as accurately as reasonably possible;

3.1.3 estimate the Eligible Developer's Costs and Eligible Development Receipts on a fair and reasonable basis and as accurately as practicable, it being acknowledged that in relation to the Eligible Developer's Costs it will be reasonable for contingencies and allowances appropriate to the stage of design development and in accordance with the RICS New Rules of Measurement Guidance to be permitted as Eligible Developer's Costs for the purposes of assessing whether the Plot is Viable only; and

3.1.4 subject to **paragraph 3.2**, estimate the Eligible Development Receipts and the estimated Developer's Return in good faith.

3.2 In estimating the Eligible Development Receipts for a Plot if the Project Board is unable to reach agreement and the matter is referred to dispute resolution under **clause 17**, then the Owner may require the Developer to instruct (on behalf of both the Owner and the Developer) the Valuation Panel to provide their estimate (addressed to both the Developer and the Owner) for the Plot (such estimate to be calculated on the basis of estimated values at the date of the Financial Appraisal) of the Market Value of the Plot, on the assumption that:

3.2.1 the Plot has the benefit of the Satisfactory Outline Planning Permission or Satisfactory Hybrid Planning Permission for the Proposed Development and (where applicable) the Satisfactory Plot Planning Permission; and

3.2.2 all necessary Plot Infrastructure Works required to enable the development and occupation of the Plot for the Proposed Development have been completed in accordance with the Planning Permission,



and the aggregate of such values shall be divided by the number of valuers appointed and shall then be taken for the purposes of the Financial Appraisal as the Eligible Development Receipts for the relevant Plot.

- 3.3 The Developer shall be responsible for the costs (if any) of the said valuers, which may be included as Developer's Costs.
- 3.4 At any time either the Owner or the Developer may recommend suitable valuers for consideration for the Valuation Panel and the parties shall act reasonably in agreeing the Valuation Panel as soon as reasonably practicable after written request by either Party.
- 3.5 If the Parties are unable to agree at least three valuers for the Valuation Panel within 20 Working Days of request from either party, either party may refer the matter for determination pursuant to **clause 17** of this Agreement.
- 3.6 The Developer is to procure that any member of the Valuation Panel giving a valuation pursuant to **paragraph 3.2** above provides a collateral warranty in a form acceptable to the Owner (acting reasonably) to the Owner on or before the date of the valuation so the Owner can rely on such valuation.
- 3.7 Forthwith following the carrying out of each Financial Appraisal the Developer shall provide the Owner with full details as to how the Financial Appraisal has been carried out, which shall include (without limitation) full details of the incurred Eligible Developer's Costs and the estimated Eligible Developer's Costs and the estimated Eligible Development Receipts and a copy of the Financial Appraisal as run.
- 3.8 The Owner may at any time approve in writing any Financial Appraisal either without referring it to the Valuation Panel or regardless of its findings and such Financial Appraisal shall be deemed to have satisfied the Viability Test.
- 3.9 Where either party requires a Viability Test to be carried out so as to determine whether a Plot is Viable for the purposes of the "Vacant Plot Trigger Date", it may request a Viability Test is carried out by service of written notice on the other, and the Developer will then procure that a Viability Test is carried out pursuant to the terms of this Schedule as soon as is reasonably practicable.

#### 4. **Where the Viability Test is not satisfied**

- 4.1 If at any time before the Unconditional Date for a Plot the Developer carries out a Financial Appraisal and considers that there is no reasonable prospect of satisfying the Development Viability Condition and/or Plot Viability Condition the Developer may serve a notice (a "**No Viability Notice**") on the Owner stating that there is no reasonable prospect of satisfying the Development Viability Condition and/or Plot Viability Condition (as the case may be). Any such notice must include with it the information referred to in **paragraph 3.7** of this **Schedule** above.
- 4.2 Within 20 Working Days of receipt of a No Viability Notice the Owner may serve notice ("**Viability Referral Notice**") on the Developer requiring that the matter as to whether there is no reasonable prospect of satisfying the Development Viability Condition and/or Plot Viability Condition (as the case may be) is referred for dispute resolution which is to be in accordance with **clause 17**.
- 4.3 Any dispute resolution sought pursuant to **paragraph 4.2** above is to cover, without limitations, any of the following:
- 4.3.1 whether the Developer has estimated the future Eligible Developer's Costs and the Eligible Development Receipts on a fair and reasonable basis and as accurately as possible;
- 4.3.2 whether the Developer has measured the incurred Eligible Developer's Costs accurately; and



4.3.3 whether the Developer, in undertaking the Financial Appraisal, has adopted the methodology shown in the Financial Model.

4.4 If the Specialist determines that at the time that the Specialist makes his determination there is no reasonable prospect of satisfying the Development Viability Condition and/or Plot Viability Condition (as the case may be) then the Developer and the Owner are within 20 Working Days of such determination to meet to seek to consider whether there are:

4.4.1 amendments to the Business Plan for the relevant Plot or the terms of the Disposal Documents that could be made which are acceptable to the Parties at their discretion and which could allow the Plot and/or Development to become Viable;

4.4.2 whether it would be appropriate for the Owner to reduce or defer the Minimum Return and/or the Developer to defer its Developer's Minimum Return or the recovery of Developer's Costs or otherwise agree any changes to the basis for allocation of the proceeds of any Disposal in the context of the relevant Plot (including the Developer's Minimum Return) which could allow the Plot and/or Development to be Viable; and

such proposals to be considered in accordance with the Change Procedure (provided that it is agreed that no change may be made which results in a) the Owner receiving less than its Minimum Return for a Plot unless agreed by the Owner at its absolute discretion or b) the Developer receiving less than the Developer's Minimum Return for a Plot unless agreed by the Developer at its absolute discretion).

4.5 If such changes are agreed, the Developer is to re-run the Financial Appraisal for the Plot and the Development, and is to confirm as soon as reasonably practicable whether the Developer now considers the Plot and/or Development to be Viable and the parties are then to follow the procedure set out in this Schedule to determine whether the Plot and the Development are Viable.

4.6 If a Plot is not found to be Viable then the Phasing Programme and any relevant Milestones will be reviewed by the Project Board to allow the potential Development of that Plot to be deferred until such time as it becomes Viable

4.7 Where a Plot is found to be subsequently Viable after previously being considered not Viable, the Owner will (acting reasonably and having regard to the considerations set out in **paragraph 4.4**) within the forum of the Project Board consider, at the Developer's request, an extension to any Milestones affected due to the delay in satisfying the Plot Viability Condition for the Plot provided that the cumulative extensions to any Milestones do not extend beyond the Agreement Longstop Date. Any changes agreed pursuant to **paragraph 4.4** are to be considered in the context of their effect on the timing of the implementation of the Development over the entirety of the Development Area.

## 5. **Waiver**

The Development Viability Condition and the Plot Viability Condition for a Plot may only be waived by mutual agreement of the parties.



## SCHEDULE 4

### Development Plan and Programme of Works

1. **Preparation and approval of Plot Development Plans**
  - 1.1 Within six weeks of the satisfaction of the Plot Conditions for a Plot the Developer is to prepare the Plot Infrastructure Specification and the Plot Development Plans for the Plot Infrastructure for such Plot and provide them to the Owner for the Owner's approval such approval not to be unreasonably withheld or delayed.
  - 1.2 The Owner is not unreasonably to withhold or delay its approval of the Plot Infrastructure Specification and Plot Development Plans where they have been produced in accordance with the Business Plan and do not contain any Adverse Matters.
  - 1.3 Where the Plot Infrastructure Works are to be carried out pursuant to a design and build contract references to the Plot Infrastructure Specification and Plot Development Plans will include:
    - 1.3.1 all employer's requirements submitted to the Building Contractor under the Building Contract, and the Developer will not submit the employer's requirements unless and until they have been approved by the Owner under **paragraph 1.1**; and
    - 1.3.2 all contractor's proposals produced by the Building Contractor under the Building Contract, and the Developer will not approve the contractor's proposals under the Building Contract unless and until they have been approved by the Owner under **paragraph 1.1**.
  - 1.4 Once approved by the Owner, no changes to the Plot Infrastructure Specification and Plot Development Plans may be made except in accordance with the Change Procedure.
  - 1.5 The Developer is not to start Plot Infrastructure Works until the Plot Infrastructure Specification and Plot Development Plans have been approved under this Schedule.
  - 1.6 No inspection or approval by the Owner of the Plot Infrastructure Specification and Plot Development Plans is to lessen the obligations of the Developer, the Building Contractor, any member of the Professional Team or any Principal Sub-Contractor in relation to the design and construction of the Development, whether under this Agreement or otherwise.
2. **Programme of Works**
  - 2.1 Within six weeks of the satisfaction of the Plot Conditions for a Plot the Developer is to produce and provide the Owner with a Plot Programme of Works for its approval such approval not to be unreasonably withheld or delayed giving details of:
    - 2.1.1 the date on which the Plot Infrastructure Works and, if applicable, the date on which a Section of the Plot Infrastructure Works will begin;
    - 2.1.2 the timetable for the carrying out of the Plot Infrastructure Works showing the estimated duration of each stage and, if applicable, each Section of the Plot Infrastructure Works and the date on which it is intended that Practical Completion and, if applicable, Sectional Completion of each Section will be achieved; and
    - 2.1.3 the extent (if any) to which the costs of any Plot Infrastructure Works should be allocated against a Combined Infrastructure Area provided that it is presumed that such costs will be allocated against each Plot on a pro-rata basis based on the proportion of Gross External Area of each Plot as a proportion of the Gross External Area of the Combined Infrastructure Area (as defined by the Code of Measuring Practice) unless the Project Board shall,



acting reasonably agree otherwise, or the agreed Infrastructure Strategy otherwise permits.

2.2 Once approved by the Owner, the Developer is not to vary the Plot Programme of Works except in accordance with the Change Procedure.

2.3 The Developer is not to start the Plot Infrastructure Works until the Plot Programme of Works has been approved by the Owner, such approval not to be unreasonably withheld or delayed.

2.4 **Owner's Costs**

The Developer is to pay within ten (10) Working Days of written demand all proper costs charges and expenses of the Owner (including solicitors' and surveyors' and other professional costs charges and fees) incurred in relation to any approvals granted by the Owner or subsequent monitoring by the Owner of the Plot Infrastructure Works but for the avoidance of doubt such costs charges and expenses shall constitute Development Costs for the purposes of **Schedule 8**.

## SCHEDULE 5

### Planning Condition

#### Part 1 DEFINED TERMS

In this Schedule, the following words and expressions have the following meanings:

<b>"Appeal"</b>	all or any of the following: <ul style="list-style-type: none"><li>(a) an application to the local planning authority under section 73 of the Planning Act against the presence of an Onerous Condition in a Planning Permission, but not including future section 73 applications to a Satisfactory Planning Permission made by Plot Purchasers;</li><li>(b) an application to the Secretary of State under sections 78 and 79 of the Planning Act following a Planning Refusal by the local planning authority; or</li><li>(c) a Calling-In</li></ul>
<b>"Calling-In"</b>	a direction by the Secretary of State that a Planning Application be referred to him for determination under section 77 of the Planning Act
<b>"Challenge Period"</b>	following the grant of Satisfactory Outline Planning Permission, Satisfactory Hybrid Planning Permission or Satisfactory Plot Planning Permission the period of six weeks calculated from the relevant Permission Date
<b>"Detailed Planning Permission"</b>	detailed planning permission for a Plot including approval of use, access, appearance, layout and scale and whether or not reserving approval for landscaping
<b>"Developer's Onerous Conditions"</b>	has the meaning given to it in <b>paragraph 1 of Part 6</b> of this Schedule (unless and to the extent waived in writing by the Developer)
<b>"Hybrid Planning Application"</b>	an application where part of the application is for detailed permission and part is in outline for the part of the Development comprised within a Plot to be approved prior to submission by the Owner in accordance with the <b>paragraph 2 of Part 4</b> of this schedule where envisaged by the Planning Strategy for the Development
<b>"Hybrid Planning Permission"</b>	a hybrid planning permission pursuant to a Planning Application granted by the local planning authority or by the Secretary of State
<b>"Masterplan"</b>	the site wide planning masterplan for all Plots of the Proposed Development to be prepared by the Developer and approved by the Owner (acting



	reasonably)
<b>"Onerous Conditions"</b>	means the Developer's Onerous Conditions and/or the Owner's Onerous Conditions (as the context requires)
<b>"Outline Planning Application"</b>	an application for an Outline Planning Permission (as defined by the Town and Country Planning Act 1990) to be approved prior to submission by the Owner in accordance with <b>paragraph 2 of Part 3</b> of this Schedule for such of the Plots for the Development where envisaged by the Planning Strategy
<b>"Outline Planning Permission"</b>	an outline planning permission pursuant to a Planning Application granted by the local planning authority or by the Secretary of State
<b>"Owner's Onerous Conditions"</b>	has the meaning given to it in <b>paragraph 2 of Part 6</b> of this Schedule (unless and to the extent waived in writing by the Owner)
<b>"Permission Date"</b>	the date of the Satisfactory Outline Planning Permission, or the relevant Satisfactory Plot Planning Permission or the Satisfactory Hybrid Planning Permission (as the case may be) (or where the relevant Planning Permission and any relevant conservation area consent (if any) are granted on different dates then the later of those) which in each case means the date written, printed or stamped on the relevant Planning Permission (or if applicable relevant conservation area consent) issued by the local planning authority or the letter or other document issued by the Secretary of State or the Inspector following an Appeal or a Calling-In
<b>"Planning Application"</b>	as the context requires: <ul style="list-style-type: none"> <li>(a) an Outline Planning Application; and/or</li> <li>(b) a Hybrid Planning Application; and/or</li> <li>(c) a Plot Planning Application</li> </ul>
<b>"Planning Counsel"</b>	means such Queen's Counsel of not less than ten years' calling experienced in town and country planning matters as the Owner and the Developer may agree from time to time both acting reasonably
<b>"Planning Decision"</b>	a Planning Refusal or the grant of Planning Permission whether by the local planning authority, the Secretary of State or an Inspector
<b>"Planning Default"</b>	one or more of the following: <ul style="list-style-type: none"> <li>(a) the Developer does not submit the Planning Application in accordance with <b>paragraph 1.1 of Part 2</b> of this Schedule and/or <b>paragraph 1.1 of Part 4</b> of this Schedule and/or <b>paragraph 1.2 of Part 5</b></li> </ul>

of this Schedule;

- (b) where the Planning Strategy requires an Outline Planning Application to be made for a Plot, a failure to obtain Satisfactory Outline Planning Permission within the Outline Planning Period;
- (c) where the Planning Strategy requires a Hybrid Planning Application to be made for a Plot, a failure to obtain Satisfactory Hybrid Planning Permission within the Hybrid Planning Period or a failure to exchange any Planning Agreement necessary to implement a Satisfactory Hybrid Planning Permission within the Hybrid Planning Period; and/or
- (d) where the Planning Strategy requires a Plot Planning Application to be made for a Plot, a failure to obtain a Satisfactory Plot Planning Permission or to exchange any Planning Agreement necessary to implement a Satisfactory Plot Planning Permission within the Plot Planning Period,

In all cases where this would cause the relevant Milestone to not be complied with

**"Planning Permission"**

any planning permission for the Development Area (or Plot) granted:

- (a) pursuant to a Planning Application; and
- (b) by the local planning authority or by the Secretary of State or an Inspector

**"Planning Proceedings"**

all of any of the following:

- (a) an application made for judicial review by a third party following the grant of a Planning Permission by the local planning authority;
- (b) an application for judicial review by the Developer following a Planning Refusal by the local planning authority;
- (c) an application made under section 288 of the Planning Act by a third party following the grant of Planning Permission by the Secretary of State or an Inspector;
- (d) an application made under section 288 of the Planning Act by the Developer following a Planning Refusal by the Secretary of State or an Inspector; and
- (e) includes any appeal to a higher court made against a judgment given in a lower court



**"Planning Refusal"**

any of the following:

- (a) a refusal by the local planning authority to grant planning permission pursuant to a Planning Application;
- (b) a refusal by the local planning authority to vary or remove an Onerous Condition pursuant to an application made by the Owner or the Developer (as the case may be) under section 73 of the Planning Act;
- (c) a refusal by or on behalf of the Secretary of State to grant planning permission following a Planning Appeal or a Calling-In;
- (d) a failure by the local planning authority to determine the Planning Application within the period required under section 78(2) of the Planning Act; or
- (e) the grant of a Planning Permission which is subject to any Onerous Condition or requires a Planning Agreement to be entered into on terms which contain an Onerous Condition

**"Plot Planning Application"**

the application for a Detailed Planning Permission or alternatively a reserved matters consent pursuant to a Satisfactory Hybrid Planning Permission or a Satisfactory Planning Outline Planning Permission for the part of the Development comprised within a Plot to be approved prior to submission by the Owner in accordance with **paragraph 2 of Part 5** of this schedule

**"Plot Planning Condition"**

the satisfaction of the Planning Condition for the relevant Plot

**"Plot Planning Period"**

the period of months to be agreed pursuant to the Business Plan from and including the date of the satisfaction of the Plot Planning Condition subject to extension in accordance with **Part 5** of this Schedule

**"Satisfactory Hybrid Planning Permission"**

a Hybrid Planning Permission for the Plot or Plots that does not contain:

- (a) any Onerous Conditions; or
- (b) any conditions or stipulations requiring a Planning Agreement to be entered into on terms that contain any Onerous Conditions

**"Satisfactory Outline Planning Permission"**

an Outline Planning Permission for the Plot or Plots that does not contain:

- (a) any Onerous Conditions; or
- (b) any conditions or stipulations requiring a Planning Agreement to be entered into on terms that contain any Onerous Conditions

**"Satisfactory Plot Planning Permission"**

a Detailed Planning Permission or a full reserved matters approval pursuant to a Satisfactory Outline Planning Permission or a Satisfactory Hybrid Planning Permission for a Plot that does not contain:

- (a) any Onerous Conditions; or
- (b) any conditions or stipulations requiring a Planning Agreement to be entered into on terms that contain any Onerous Condition

**"Secretary of State"**

the Secretary of State or any other minister or authority for the time being entitled to exercise the powers given under sections 77, 78 and 79 of the Planning Act

**Part 2 MASTERPLAN**

**1. Obtaining the Masterplan**

- 1.1 The Developer is in accordance with the Milestones and requirements of the Business Plan to provide the Masterplan for the development and servicing of all the Plots to the Owner's Representative for its approval (such approval not to be unreasonably withheld or delayed provided that the same is materially in accordance with the Local Planning Policy) prior to its submission to the local planning authority, and once approved by the Owner's Representative, the Developer is to lodge the Masterplan with the local planning authority and is to use all reasonable endeavours to agree the Masterplan as soon as reasonably practicable after submission and in accordance with the Planning Strategy and Milestones.
- 1.2 The Developer may enter into negotiations or discussions with the local planning authority to facilitate the agreement of the Masterplan.
- 1.3 The Developer is to:
  - 1.3.1 keep the Owner informed at reasonable intervals, but not more than once in each calendar month, of the progress of discussions relating to the Masterplan, any amendments made, and details of all material discussions and negotiations with the local planning authority;
  - 1.3.2 give the Owner reasonable prior notice of any meetings with the local planning authority and allow the Owner and its planning consultants to attend those meetings; and
  - 1.3.3 provide the Owner with copies of all notes, correspondence, documents and minutes of meetings concerning the Masterplan.
- 1.4 The Owner is to co-operate with the Developer at the Developer's cost (such costs to comprise Developer's Costs for the purposes of **Schedule 8**) to assist the Developer in agreeing the Masterplan.



### **Part 3 OUTLINE PLANNING PERMISSION**

#### **1. Obtaining Outline Planning Permission**

- 1.1 For all Plots where the Planning Strategy requires an Outline Planning Permission the Developer is in accordance with the Milestones and requirements of the Business Plan to provide the Outline Planning Application to the Owner for its approval (not to be unreasonably withheld or delayed where it complies with the Planning Strategy and Masterplan) prior to submission of the Outline Planning Application, and once approved by the Owner, lodge the Outline Planning Application for the Plot and is to use all reasonable endeavours to obtain a Satisfactory Outline Planning Permission as soon as reasonably practicable after submission and in accordance with the Planning Strategy and Milestones.
- 1.2 Neither the Developer nor the Owner is to commence Planning Proceedings following the grant of a Satisfactory Outline Planning Permission.
- 1.3 Following the grant of Satisfactory Outline Planning Permission, the Planning Condition will not be satisfied until:
- 1.3.1 the relevant Challenge Period has expired without Planning Proceedings being commenced;
  - 1.3.2 If Planning Proceedings are commenced during the Challenge Period, those proceedings are finally disposed of leaving in place a Satisfactory Outline Planning Permission; and
  - 1.3.3 In each case, any Planning Agreement required to implement the terms of a Satisfactory Plot Planning Permission has been completed.
- 1.4 If the Outline Planning Period would otherwise come to an end, the Outline Planning Period is to be extended as follows:
- 1.4.1 following the grant of Satisfactory Outline Planning Permission, to the day after the Challenge Period expires;
  - 1.4.2 following a Planning Refusal, to the date eight weeks after the date of the Planning Refusal, subject to further extensions under **paragraph 1.4.3**;
  - 1.4.3 If the Developer makes an Appeal or commences Planning Proceedings in accordance with this Schedule following a Planning Refusal:
    - 1.4.3.1 if the Appeal or Planning Proceedings result in the grant of a Satisfactory Plot Planning Permission, the date following the disposal of the Appeal or Planning Proceedings calculated in accordance with **paragraph 1.4.1**; and
    - 1.4.3.2 if the Appeal or Planning Proceedings result in a Planning Refusal, the date following the disposal of the Appeal or Planning Proceedings calculated in accordance with **paragraph 1.4.2**;
  - 1.4.4 If Planning Proceedings are begun by a third party during a Challenge Period, to the date 10 Working Days after all Planning Proceedings have been determined or discontinued; and
  - 1.4.5 If an application is made to Planning Counsel or a Specialist under **clause 17** of this Agreement to the date eight weeks after the Developer receives written notice of his determination.

#### **2. The Outline Planning Application**



- 2.1 Any Outline Planning Application is to be submitted in the joint names of the Owner and the Developer save where the Owner (at its discretion) directs the application to be made in the sole name of the Developer.
- 2.2 The Developer may submit the Outline Planning Application in duplicate.
- 2.3 The Developer having lodged any Outline Planning Application may, with the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed:
  - 2.3.1 amend any Outline Planning Application made to the local planning authority;
  - 2.3.2 withdraw an Outline Planning Application and promptly submit a fresh Outline Planning Application where it is reasonable to do so in order to obtain a Satisfactory Outline Planning Permission; and
  - 2.3.3 may agree with the local planning authority any extension to the statutory period not exceeding six months for determining the Planning Application under section 78(2) of the Planning Act.
- 2.4 The Developer may enter into negotiations or discussions with the local planning authority to facilitate the grant of the Satisfactory Outline Planning Permission but will not enter into any Planning Agreement with the local planning authority without the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed.
- 2.5 The Developer is to:
  - 2.5.1 provide to the Owner a copy of each Outline Planning Application made to the local planning authority;
  - 2.5.2 keep the Owner informed at reasonable intervals, but not more than once in each calendar month, of the progress of each Outline Planning Application, amendments made to each Outline Planning Application, each withdrawal of an Outline Planning Application and details of all material discussions and negotiations with the local planning authority;
  - 2.5.3 give the Owner reasonable prior notice of any meetings with the local planning authority and allow the Owner and its planning consultants to attend those meetings; and
  - 2.5.4 provide the Owner with copies of all notes, correspondence, documents and minutes of meetings concerning the Outline Planning Application.
- 2.6 The Owner is to co-operate with the Developer at the Developer's cost (such costs to comprise Developer's Costs for the purposes of **Schedule 8**) to assist the Developer to obtain Satisfactory Outline Planning Permission.

### 3. **Planning Agreements**

- 3.1 The Developer is to use reasonable endeavours to procure completion of any Planning Agreement required by the local planning authority as a condition of the grant of Planning Permission subject to the following conditions being satisfied:
  - 3.1.1 the Planning Agreement does not contain terms which:
    - 3.1.1.1 take effect before the date of the Planning Permission; or
    - 3.1.1.2 are Onerous Conditions;
  - 3.1.2 the Planning Agreement is to be conditional on the development envisaged by the relevant Planning Permission being implemented;



- 3.1.3 the Developer is to as soon as reasonably practicable after receipt from the local planning authority provide the first draft of the Planning Agreement to the Owner for its review and comment;
- 3.1.4 the Developer is to keep the Owner updated as to progress of the negotiation of the Planning Agreement and is to take into account any reasonable representations made by the Owner in relation to the Planning Agreement;
- 3.1.5 the Owner is to approve the form of the proposed Planning Agreement (acting reasonably) and on receipt of an engrossment of the agreed form Planning Agreement, shall promptly provide a signed engrossment to enable the Planning Agreement to be completed.

3.2 Notwithstanding **paragraph 3.1**:

- 3.2.1 the Developer is to indemnify the Owner on a full indemnity basis against all proper and reasonable legal fees and other costs, expenses and liabilities incurred in complying with those terms where the Owner is required to do so by the local planning authority and in so far as the costs, expenses and liabilities arise prior to the Date of Actual Completion; and
- 3.2.2 to the extent that any Planning Agreement imposes continuing liability on the Owner after the Date of Actual Completion of any Plot to be drawn down, the form of the Plot Transfer Agreement is to require that the Plot Purchaser indemnifies the Owner on a full indemnity basis against all actions, claims, demands and proceedings taken or made against the Owner and all costs, damages, expenses, liabilities and losses incurred by the Owner arising from any breach of that Planning Agreement by the Plot Purchaser or the Plot Purchaser's successors in title to that Plot,

and any payments incurred by the Developer shall be Developer's Costs for the purposes of **Schedule 8**.

- 3.3 Subject to the provisions of **paragraph 3.2** applying (amended as appropriate) the Owner will if requested by the Developer be a party to any Planning Agreement that is contemplated by the Business Plan.

4. **Planning Decisions**

- 4.1 The Developer is to notify the Owner of each Planning Decision in respect of the Outline Planning Application and provide a copy of such Planning Decision to the Owner not later than 10 Working Days after notice of the Planning Decision has been given to the Developer.
- 4.2 If there is a Planning Refusal (and subject to **paragraph 5**), the Developer is to notify the Owner in writing within eight weeks after the date of the Planning Refusal whether it wishes to make an Appeal or commence Planning Proceedings in respect of that Planning Refusal.
- 4.3 Within 10 Working Days of receipt of a Planning Permission issued pursuant to an Outline Planning Application and any related Planning Agreement, the Developer is to notify the Owner in writing whether it considers that they contain Developer's Onerous Conditions which are unacceptable to the Developer and:
  - 4.3.1 If the Developer does not do so, the Owner may serve written notice on the Developer requiring the Developer to comply with this **paragraph 4.3**; and
  - 4.3.2 If the Developer does not respond within 10 Working Days of a notice served under **paragraph 4.3.1**, the Outline Planning Permission and any Planning Agreement, as the case may be, are to be treated as not containing Developer's Onerous Conditions.



- 4.4 Within 10 Working Days of receipt of the relevant Planning Permission and any Planning Agreement in respect of it the Owner is to notify the Developer in writing whether it considers that they contain Owner's Onerous Conditions which are unacceptable to the Owner.
- 4.5 If the Developer serves notice under **paragraph 4.3** that the relevant Planning Permission or any Planning Agreement in respect of it contains one or more Developer's Onerous Conditions the Owner may serve notice on the Developer within 10 Working Days of the date of the Developer's notice, time being of the essence, requiring the question of whether the Planning Permission contains Developer's Onerous Conditions to be determined by a Specialist appointed in accordance with this Agreement.
- 4.6 If the Owner serves notice under **paragraph 4.4** that the relevant Planning Permission or any Planning Agreement in respect of it contains one or more Owner's Onerous Conditions the Developer may serve notice on the Owner within 10 Working Days of the date of the Owner's notice, time being of the essence, requiring the question of whether the Planning Permission or the Planning Agreement, as the case may be, contains Owner's Onerous Conditions to be determined by a Specialist.
- 4.7 The Developer may waive its right to object to the terms of the relevant Planning Permission or any Planning Agreement in respect of it because of the presence of a Developer's Onerous Condition by serving written notice to this effect on the Owner and on the service of notice under this **paragraph 4.7**, the Developer will lose any right to object to the presence of Developer's Onerous Conditions which it has waived in that Planning Permission or Planning Agreement, as the case may be.
- 4.8 The Owner may waive its right to object to the terms of the relevant Planning Permission or any Planning Agreement in respect of it because of the presence of an Owner's Onerous Condition by serving written notice to this effect on the Developer and on the service of notice under this **paragraph 4.8**, the Owner will lose any right to object to the presence of Owner's Onerous Conditions which it has waived in that Planning Permission or Planning Agreement, as the case may be.
- 4.9 Under this **paragraph 4** the Owner and the Developer agree that the Owner may object only to conditions which are Owner's Onerous Conditions and the Developer may object only to conditions which are Developer's Onerous Conditions.

## **5. Appeals and Planning Proceedings**

- 5.1 Following a Planning Refusal the Developer shall Appeal or commence Planning Proceedings where Planning Counsel advises there is a greater than 50% prospect of success.
- 5.2 If the Developer makes an Appeal or commences Planning Proceedings it is to:
- 5.2.1 prosecute the Appeal or Planning Proceedings diligently and in an efficient manner;
  - 5.2.2 continue the Appeal or Planning Proceedings to their conclusion unless either the Developer or the Owner reasonably require otherwise agrees or planning Counsel so advises;
  - 5.2.3 keep the Owner and its planning consultants informed on the progress of the Appeal or Planning Proceedings including all material correspondence, notifications, instructions to and advice of counsel, evidence of expert and other witnesses and the dates of any inquiry, hearing or for the submission of written representations; and
  - 5.2.4 allow the Owner and its planning consultants to attend at conferences with counsel and other relevant meetings.



**Part 4 HYBRID PLANNING PERMISSION**

**1. Obtaining Hybrid Planning Permission**

- 1.1 For all Plots where the Planning Strategy requires a Hybrid Planning Permission the Developer is to provide the Hybrid Planning Application to the Owner for its approval (not to be unreasonably withheld or delayed where the application is in accordance with the Planning Strategy) prior to submission of the Hybrid Planning Application, and once approved by the Owner (the Owner using reasonable endeavours to do so within 10 Working Days of submission), lodge the Hybrid Planning Application for the Plot and is to use all reasonable endeavours to obtain a Satisfactory Outline Planning Permission as soon as reasonably practicable after submission and in accordance with the Planning Strategy and Milestones.
- 1.2 Neither the Developer nor the Owner is to commence Planning Proceedings following the grant of a Satisfactory Hybrid Planning Permission.
- 1.3 Following the grant of Satisfactory Hybrid Planning Permission, the Planning Condition will not be satisfied until:
- 1.3.1 the relevant Challenge Period has expired without Planning Proceedings being commenced;
  - 1.3.2 If Planning Proceedings are commenced during the Challenge Period, those proceedings are finally disposed of leaving in place a Satisfactory Hybrid Planning Permission; and
  - 1.3.3 In each case, any Planning Agreement required to implement the terms of a Satisfactory Plot Planning Permission has been completed.
- 1.4 If the Hybrid Planning Period would otherwise come to an end, the Hybrid Planning Period is to be extended as follows:
- 1.4.1 following the grant of Satisfactory Hybrid Planning Permission, to the day after the Challenge Period expires;
  - 1.4.2 following a Planning Refusal, to the date eight weeks after the date of the Planning Refusal, subject to further extensions under **paragraph 1.4.3**;
  - 1.4.3 If the Developer makes an Appeal or commences Planning Proceedings in accordance with this Schedule following a Planning Refusal:
    - 1.4.3.1 If the Appeal or Planning Proceedings result in the grant of a Hybrid Plot Planning Permission, the date following the disposal of the Appeal or Planning Proceedings calculated in accordance with **paragraph 1.4.1**; and
    - 1.4.3.2 If the Appeal or Planning Proceedings result in a Planning Refusal, the date following the disposal of the Appeal or Planning Proceedings calculated in accordance with **paragraph 1.4.2**;
  - 1.4.4 if Planning Proceedings are begun by a third party during a Challenge Period, to the date 10 Working Days after all Planning Proceedings have been determined or discontinued; and
  - 1.4.5 If an application is made to Planning Counsel or a Specialist under **clause 17** of this Agreement to the date eight weeks after the Developer receives written notice of his determination.



## 2. **The Hybrid Planning Application**

- 2.1 The Hybrid Planning Application is to be submitted in the joint names of the Owner and the Developer save where the Owner (at its discretion) directs the application to be made in the sole name of the Developer.
- 2.2 The Developer may submit the Hybrid Planning Application in duplicate.
- 2.3 The Developer having lodged any Hybrid Planning Application may, with the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed:
- 2.3.1 amend any Hybrid Planning Application made to the local planning authority; or
  - 2.3.2 withdraw any Hybrid Planning Application and promptly submit a fresh Hybrid Planning Application where it is reasonable to do so in order to obtain a Satisfactory Hybrid Planning Permission; and
  - 2.3.3 may agree with the local planning authority any extension to the statutory period not exceeding six months for determining the Planning Application under section 78(2) of the Planning Act.
- 2.4 The Developer may enter into negotiations or discussions with the local planning authority to facilitate the grant of the Satisfactory Hybrid Planning Permission but will not enter into any Planning Agreement with the local planning authority without the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed.
- 2.5 The Developer is to:
- 2.5.1 provide to the Owner a copy of each Hybrid Planning Application made to the local planning authority;
  - 2.5.2 keep the Owner informed at reasonable intervals, but not more than once in each calendar month, of the progress of each Hybrid Planning Application, amendments made to each Hybrid Planning Application, each withdrawal of an Hybrid Planning Application and details of all material discussions and negotiations with the local planning authority;
  - 2.5.3 give the Owner reasonable prior notice of any meetings with the local planning authority and allow the Owner and its planning consultants to attend those meetings; and
  - 2.5.4 provide the Owner with copies of all notes, correspondence, documents and minutes of meetings concerning the Hybrid Planning Application.
- 2.6 The Owner is to co-operate with the Developer at the Developer's cost (such costs to comprise Developer's Costs for the purposes of **Schedule 8**) to assist the Developer to obtain a Satisfactory Hybrid Planning Permission.

## 3. **Planning Agreements**

- 3.1 The Developer is to use reasonable endeavours to procure completion of any Planning Agreement required by the local planning authority as a condition of the grant of a Hybrid Planning Permission subject to the following conditions being satisfied:
- 3.1.1 the Planning Agreement does not contain terms which:
    - 3.1.1.1 take effect before the date of the Planning Permission; or
    - 3.1.1.2 are Onerous Conditions;



- 3.1.2 the Planning Agreement is to be conditional on the development envisaged by the relevant Planning Permission being implemented;
- 3.1.3 the Developer is to as soon as reasonably practicable after receipt from the local planning authority provide the first draft of the Planning Agreement to the Owner for its review and comment;
- 3.1.4 the Developer is to keep the Owner updated as to progress of the negotiation of the Planning Agreement and is to take into account any reasonable representations made by the Owner in relation to the Planning Agreement; and
- 3.1.5 the Owner is to approve the form of the proposed Planning Agreement (acting reasonably) and on receipt of a engrossment of the agreed form Planning Agreement, promptly providing a signed engrossment to enable the Planning Agreement to be completed.

3.2 Notwithstanding **paragraph 3.1**:

- 3.2.1 the Developer is to indemnify the Owner on a full indemnity basis against all proper and reasonable legal fees and other costs, expenses and liabilities incurred in complying with those terms where the Owner is required to do so by the local planning authority and in so far as the costs, expenses and liabilities arise prior to the Date of Actual Completion; and
- 3.2.2 to the extent that any Planning Agreement imposes continuing liability on the Owner after the Date of Actual Completion of any Plot to be drawn down, the form of the Plot Transfer Agreement is to require that the Plot Purchaser indemnify the Owner on a full indemnity basis against all actions, claims, demands and proceedings taken or made against the Owner and all costs, damages, expenses, liabilities and losses incurred by the Owner arising from any breach of that Planning Agreement by the Plot Purchaser or the Plot Purchaser's successors in title to that Plot,

and any payments incurred by the Developer shall be Developer's Costs for the purposes of **Schedule 8**.

- 3.3 Subject to the provisions of **paragraph 3.2** applying (amended as appropriate) the Owner will if requested by the Developer be a party to any Planning Agreement that is contemplated by the Business Plan.

4. **Planning Decisions**

- 4.1 The Developer is to notify the Owner and Homes England of each Planning Decision in respect of the Hybrid Planning Application and provide a copy of such Planning Decision to the Owner not later than 10 Working Days after notice of the Planning Decision has been given to the Developer.
- 4.2 If there is a Planning Refusal (and subject to **paragraph 5**), the Developer is to notify the Owner in writing within eight weeks after the date of the Planning Refusal whether it wishes to make an Appeal or commence Planning Proceedings in respect of that Planning Refusal.
- 4.3 Within Ten Working Days of receipt of a Planning Permission issued pursuant to an Hybrid Planning Application and any related Planning Agreement, the Developer is to notify the Owner in writing whether it considers that they contain Developer's Onerous Conditions which are unacceptable to the Developer and:
  - 4.3.1 If the Developer does not do so, the Owner may serve written notice on the Developer requiring the Developer to comply with this **paragraph 4.3**; and
  - 4.3.2 If the Developer does not respond within 10 Working Days of a notice served under **paragraph 4.3.1**, the Hybrid Planning Permission and any Planning



Agreement, as the case may be, are to be treated as not containing Developer's Onerous Conditions.

- 4.4 Within 10 Working Days of receipt of the relevant Planning Permission and any Planning Agreement in respect of it the Owner is to notify the Developer in writing whether it considers that they contain Owner's Onerous Conditions which are unacceptable to the Owner.
- 4.5 If the Developer serves notice under **paragraph 4.3** that the relevant Planning Permission or any Planning Agreement in respect of it contains one or more Developer's Onerous Conditions the Owner may serve notice on the Developer within 10 Working Days of the date of Developer's notice, time being of the essence, requiring the question of whether the Planning Permission contains Developer's Onerous Conditions to be determined by a Specialist appointed in accordance with this Agreement.
- 4.6 If the Owner serves notice under **paragraph 4.4** that the relevant Planning Permission or any Planning Agreement in respect of it contains one or more Owner's Onerous Conditions the Developer may serve notice on the Owner within 10 Working Days of the date of the Owner's notice, time being of the essence, requiring the question of whether the Planning Permission or the Planning Agreement, as the case may be, contains Owner's Onerous Conditions to be determined by a Specialist.
- 4.7 The Developer may waive its right to object to the terms of the relevant Planning Permission or any Planning Agreement in respect of it because of the presence of a Developer's Onerous Condition by serving written notice to this effect on the Owner and on the service of notice under this **paragraph 4.7**, the Developer will lose any right to object to the presence of Developer's Onerous Conditions which it has waived in that Planning Permission or Planning Agreement, as the case may be.
- 4.8 The Owner may waive its right to object to the terms of the relevant Planning Permission or any Planning Agreement in respect of it because of the presence of An Owner's Onerous Condition by serving written notice to this effect on the Developer and on the service of notice under this **paragraph 4.8**, the Owner will lose any right to object to the presence of Owner's Onerous Conditions which it has waived in that Planning Permission or Planning Agreement, as the case may be.
- 4.9 Under this **paragraph 4** the Owner and the Developer agree that the Owner may object only to conditions which are Owner's Onerous Conditions and the Developer may object only to conditions which are Developer's Onerous Conditions.

## 5. Appeals and Planning Proceedings

- 5.1 Following a Planning Refusal the Developer shall Appeal or commence Planning Proceedings where Planning Counsel advises there is a greater than 50% prospect of success.
- 5.2 If the Developer makes an Appeal or commences Planning Proceedings it is to:
- 5.2.1 prosecute the Appeal or Planning Proceedings diligently and in an efficient manner;
  - 5.2.2 continue the Appeal or Planning Proceedings to their conclusion unless either the Developer or the Owner reasonably require otherwise agrees or planning Counsel so advises;
  - 5.2.3 keep the Owner and its planning consultants informed on the progress of the Appeal or Planning Proceedings including all material correspondence, notifications, instructions to and advice of counsel, evidence of expert and other witnesses and the dates of any inquiry, hearing or for the submission of written representations; and



- 5.2.4 allow the Owner and its planning consultants to attend at conferences with counsel and other relevant meetings.

## **Part 5 PLOT PLANNING PERMISSION**

### **1. Obtaining Satisfactory Plot Planning Permission**

- 1.1 In accordance with the relevant Business Plan where the Planning Strategy envisages the Developer obtaining the Plot Planning Permission for a Plot the Developer is to provide the relevant Plot Planning Application to the Owner for its approval (not to be unreasonably withheld or delayed where the Planning Application is in accordance with the Planning Strategy) in accordance with the Milestones and the timetable set out in the Business Plan for the relevant Plot.
- 1.2 Subject to the Owner approving the Plot Planning Application pursuant to **paragraph 1.1** above the Developer is to use all reasonable endeavours to obtain a Satisfactory Plot Planning Permission for each relevant Plot as soon as reasonably practicable after submission of the Plot Planning Application and in accordance with the timetable set out in the Business Plan for the relevant Plot.
- 1.3 Neither the Developer nor the Owner is to commence Planning Proceedings following the grant of a Satisfactory Plot Planning Permission.
- 1.4 Following the grant of Satisfactory Plot Planning Permission, the Planning Condition for the Plot will not be satisfied until:
- 1.4.1 the relevant Challenge Period has expired without Planning Proceedings being commenced;
- 1.4.2 if Planning Proceedings are commenced during the Challenge Period, those proceedings are finally disposed of leaving in place a Satisfactory Plot Planning Permission; and
- 1.4.3 In each case, any Planning Agreement required to implement the terms of a Satisfactory Plot Planning Permission has been completed.
- 1.5 If the Plot Planning Period would otherwise come to an end, the Plot Planning Period is to be extended as follows:
- 1.5.1 following the grant of Satisfactory Plot Planning Permission, to the day after the Challenge Period expires;
- 1.5.2 following a Planning Refusal, to the date eight weeks after the date of the Planning Refusal, subject to further extensions **under paragraph 1.5.3**;
- 1.5.3 If the Developer makes an Appeal or commences Planning Proceedings in accordance with this Schedule following a Planning Refusal:
- 1.5.3.1 If the Appeal or Planning Proceedings result in the grant of a Satisfactory Plot Planning Permission, the date following the disposal of the Appeal or Planning Proceedings calculated in accordance with **paragraph 1.5.1**; and
- 1.5.3.2 If the Appeal or Planning Proceedings result in a Planning Refusal, the date following the disposal of the Appeal or Planning Proceedings calculated in accordance with **paragraph 1.5.2**;
- 1.5.4 If Planning Proceedings are begun by a third party during a Challenge Period, to the date 10 Working Days after all Planning Proceedings have been determined or discontinued; and



- 1.5.5 If an application is made to Planning Counsel or a Specialist under this Schedule, to the date eight weeks after the Developer receives written notice of his determination.

## **2. The Planning Application**

- 2.1 The Developer having lodged any Plot Planning Application the Developer may, with the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed:

- 2.1.1 amend any Plot Planning Application made to the local planning authority;

- 2.1.2 withdraw a Plot Planning Application and promptly submit a fresh Plot Planning Application where it is reasonable to do so in order to obtain a Satisfactory Plot Planning Permission; and

- 2.1.3 may agree with the local planning authority any extension to the statutory period not exceeding six months for determining the Planning Application under section 78(2) of the Planning Act.

- 2.2 The Developer may enter into negotiations or discussions with the local planning authority to facilitate the grant of the Satisfactory Plot Planning Permission but will not enter into any Planning Agreement with the local planning authority without the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed.

- 2.3 The Developer is to:

- 2.3.1 provide to the Owner a copy of each Plot Planning Application made to the local planning authority;

- 2.3.2 keep the Owner informed at reasonable intervals, but not more than once in each calendar month, of the progress of each Plot Planning Application, amendments made to each Plot Planning Application, each withdrawal of an Plot Planning Application and details of all material discussions and negotiations with the local planning authority;

- 2.3.3 give the Owner reasonable prior notice of any meetings with the local planning authority and allow the Owner and its planning consultants to attend those meetings; and

- 2.3.4 provide the Owner with copies of all notes, correspondence, documents and minutes of meetings concerning the Plot Planning Application.

- 2.4 The Owner is to co-operate with the Developer at the Developer's cost to assist the Developer to obtain Satisfactory Plot Planning Permission.

## **3. Planning Agreements**

- 3.1 The Developer is to use all reasonable endeavours to procure completion of any Planning Agreement required by the local planning authority as a condition of the grant of a Plot Planning Permission subject to the following conditions being satisfied:

- 3.1.1 the Planning Agreement does not contain terms which:

- 3.1.1.1 take effect before the date of the Planning Permission; or

- 3.1.1.2 are Onerous Conditions;

- 3.1.2 the Planning Agreement is to be conditional on the development envisaged by the relevant Planning Permission being implemented;



- 3.1.1 the Developer is to as soon as reasonably practicable after receipt from the local planning authority provide the first draft of the Planning Agreement to the Owner for its review and comment;
- 3.1.2 the Developer is to keep the Owner updated as to progress of the negotiation of the Planning Agreement and is to take into account any reasonable representations made by the Owner in relation to the Planning Agreement; and
- 3.1.3 the Owner is to approve the form of the proposed Planning Agreement (acting reasonably) and on receipt of a engrossment of the agreed form Planning Agreement, promptly providing a signed engrossment to enable the Planning Agreement to be completed.

3.2 Notwithstanding **paragraph 3.1:**

- 3.2.1 the Developer is to indemnify the Owner on a full indemnity basis against all proper and reasonable legal fees and other costs, expenses and liabilities incurred in complying with those terms where the Owner is required to do so by the local planning authority and in so far as the costs, expenses and liabilities arise prior to the Date of Actual Completion; and
- 3.2.2 to the extent that any Planning Agreement imposes continuing liability on the Owner after the Date of Actual Completion of any Plot to be drawn down, the form of the Plot Transfer Agreement is to require that the Plot Purchaser indemnifies the Owner on a full indemnity basis against all actions, claims, demands and proceedings taken or made against the Owner and all costs, damages, expenses, liabilities and losses incurred by the Owner arising from any breach of that Planning Agreement by the Plot Purchaser or the Plot Purchaser's successors in title to that Plot;

and any payments incurred by the Developer shall be Developer's Costs for the purposes of **Schedule 8**.

- 3.3 Subject to the provisions of **paragraph 3.2** applying (amended as appropriate) the Owner will if requested by the Developer be a party to any Infrastructure Agreement that is contemplated by the Business Plan.

4. **Planning Decisions**

- 4.1 The Developer is to notify the Owner of each Planning Decision relating to a Plot Planning Application and provide a copy of the Planning Decision to the Owner not later than 10 Working Days after notice of the Planning Decision has been given to the Developer.
- 4.2 If there is a Planning Refusal relating to a Plot Planning Application (and subject to **paragraph 5**), the Developer is to notify the Owner in writing within four weeks after the date of the Planning Refusal whether it wishes to make an Appeal or commence Planning Proceedings in respect of that Planning Refusal.
- 4.3 Within 10 Working Days of receipt of the Planning Permission relating to a Plot Planning Application and any related Planning Agreement the Developer is to notify the Owner in writing whether it considers that they contain Developer's Onerous Conditions which are unacceptable to the Developer and:
  - 4.3.1 If the Developer does not do so, the Owner may serve written notice on the Developer requiring the Developer to comply with this **paragraph 4.3** of this **Part 4**; and
  - 4.3.2 If the Developer does not respond within 10 Working Days of a notice served under **paragraph 4.3.1** of this **Part 4**, the relevant Planning Permission and any Planning Agreement, as the case may be, are to be treated as not containing Developer's Onerous Conditions.



- 4.4 Within 10 Working Days of receipt of the Planning Permission and any Planning Agreement from the Developer under **paragraph 4.1** of this **Part 4**, the Owner is to notify the Developer in writing whether it considers that they contain Owner's Onerous Conditions which are unacceptable to the Owner.
- 4.5 If the Developer serves notice under **paragraph 4.3** of this **Part 4** that the Planning Permission or any Planning Agreement contains one or more Developer's Onerous Conditions the Owner may serve notice on the Developer within 10 Working Days of the date of the Developer's notice, time being of the essence, requiring the question of whether the Planning Permission or the Planning Agreement, as the case may be, contains Developer's Onerous Conditions to be determined by a Specialist in accordance with **clause 17**.
- 4.6 If the Owner serves notice under **paragraph 4.4** of this **Part 4** that the Planning Permission or any Planning Agreement contains one or more Owner's Onerous Conditions the Developer may serve notice on the Owner within 10 Working Days of the date of the Owner's notice, time being of the essence, requiring the question of whether the Planning Permission contains Owner's Onerous Conditions to be determined by a Specialist in accordance with **clause 17**.
- 4.7 The Developer may waive its right to object to the terms of the Planning Permission or any Planning Agreement because of the presence of a Developer's Onerous Condition by serving written notice to this effect on the Owner and on the service of notice under this **paragraph 4.7** of this **Part 4**, the Developer will lose any right to object to the presence of Developer's Onerous Conditions which it has waived in that Planning Permission or Planning Agreement, as the case may be.
- 4.8 The Owner may waive its right to object to the terms of the Planning Permission or any Planning Agreement because of the presence of an Owner's Onerous Condition by serving written notice to this effect on the Developer and on the service of notice under this **paragraph 4.8** of this **Part 4**, the Owner will lose any right to object to the presence of Owner's Onerous Conditions which it has waived in that Planning Permission or Planning Agreement, as the case may be.
- 4.9 The Developer and the Owner agree that the Developer may object only to conditions which are Developer's Onerous Conditions and the Owner may object only to conditions which are Owner's Onerous Conditions.

## **5. Appeals and Planning Proceedings**

- 5.1 Following a Planning Refusal the Developer shall Appeal or commence Planning Proceedings where Planning Counsel advises there is a greater than 50% prospect of success.
- 5.2 If the Developer makes an Appeal or commences Planning Proceedings it is to:
- 5.2.1 prosecute the Appeal or Planning Proceedings diligently and in an efficient manner;
  - 5.2.2 continue the Appeal or Planning Proceedings to their conclusion unless either the Developer or the Owner reasonably require otherwise agrees or planning Counsel so advises;
  - 5.2.3 keep the Owner and its planning consultants informed on the progress of the Appeal or Planning Proceedings including all material correspondence, notifications, instructions to and advice of counsel, evidence of expert and other witnesses and the dates of any inquiry, hearing or for the submission of written representations; and
  - 5.2.4 allow the Owner and its planning consultants to attend at conferences with counsel and other relevant meetings.



**Part 6 ONEROUS CONDITIONS**

**1. Developer's Onerous Conditions**

A Developer's Onerous Condition is a condition which:

- 1.1 makes the Planning Permission personal to the Developer or to any specific person or class of persons (Including a geographical location on proposed occupiers);
- 1.2 makes the Planning Permission limited in time or limited to a specific time of year;
- 1.3 imposes time limits within which development must be commenced or applications for approval of reserved matters must be made which are more restrictive than those set out in sections 91 and 92 of the Planning Act;
- 1.4 requires the payment of expenditure or other consideration by way of planning gain or Community Infrastructure Levy which in aggregate exceeds the sum allocated in the Business Plan;
- 1.5 has or would have the effect of preventing the carrying out of the Development Works;
- 1.6 could not be satisfied without the agreement of an independent third party (including the local planning authority) unless such agreement has unconditionally been received;
- 1.7 limits construction works at any time between 7 a.m. and 7 p.m. Monday to Friday or 7 a.m. to 1 p.m. on Saturdays;
- 1.8 requires the acquisition of rights or consents from third parties or the use of land outside the relevant Plot unless available at no cost and without delay;
- 1.9 prevents the carrying out of the Development in accordance with the Business Plan;
- 1.10 prevents the Development being carried out in accordance with the requirements of the HIF Agreement (or otherwise would cause a breach of the HIF Agreement); and/or
- 1.11 prevents the Core Outputs Housing Outputs (as defined in the HIF Agreement) being delivered

**2. Owner's Onerous Conditions**

2.1 An Owner's Onerous Condition is:

- 2.1.1 a condition which will (where the Development Area is to be developed out in two or more Plots) materially detrimentally affect the ability to develop any subsequent Plot within the Development Area;
- 2.1.2 a condition which prevents (or in the opinion of the Owner (acting reasonably) is likely to prevent) the achievement of the Objectives and/or Milestones in relation to any part of the Development Area;
- 2.1.3 prevents the Development being carried out in accordance with the requirements of the HIF Agreement (or otherwise would cause a breach of the HIF Agreement); and/or
- 2.1.4 prevents the Core Housing Outputs (as defined in the HIF Agreement) being delivered.

## SCHEDULE 6

### Pre-Development Obligations

1. **Statutory Consents**
  - 1.1 As soon as reasonably practicable after the date of completion of the Plot Licence (if not already done) the Developer is to make applications for and use all reasonable endeavours to obtain the Statutory Consents or obtain lawful relaxations or waivers of them.
  - 1.2 The Developer is to keep the Owner properly informed as to the progress of each application for the Statutory Consents and of all negotiations relating to those applications.
  - 1.3 If any of the Statutory Consents are refused, the Developer is to appeal against the refusal and use all reasonable endeavours to obtain the relevant Statutory Consents.
  - 1.4 The Developer is to provide copies of the Statutory Consents obtained to the Owner.
  - 1.5 The Developer is to use all reasonable endeavours to procure that all Statutory Consents obtained remain valid and unrevoked and use all reasonable endeavours to renew any that become invalid or revoked.
2. **CDM Regulations**
  - 2.1 By entering into this Agreement, the Developer agrees, for the purposes of regulation 4(8) of the CDM Regulations, to be treated as the only client in respect of the Proposed Development and the Plot Infrastructure Works.
  - 2.2 The Developer is to appoint the Principal Designer as the principal designer and the Building Contractor as the principal contractor for the Plot Infrastructure Works in accordance with regulation 5 of the CDM Regulations and make all other appointments required under the CDM Regulations.
  - 2.3 The Developer is:
    - 2.3.1 to comply with its obligations as the client under the CDM Regulations;
    - 2.3.2 to procure that the persons appointed under **paragraph 2.2** comply with their obligations under the CDM Regulations;
    - 2.3.3 to procure that designers and contractors for the purposes of the CDM Regulations comply with their obligations in the CDM Regulations; and
    - 2.3.4 In conjunction with the Principal Designer to procure that:
      - 2.3.4.1 full details of the Plot Infrastructure Works are given to the Health and Safety Executive in accordance with regulation 6 of the CDM Regulations; and
      - 2.3.4.2 a Construction Phase Plan is prepared in accordance with regulations 12 or 15 of the CDM Regulations.
    - 2.3.5 not to start the Plot Infrastructure Works until the provisions of this **paragraph 2** have been complied with.



3. **Community Infrastructure Levy**

The Developer is to be responsible for all sums payable by way of Community Infrastructure Levy pursuant to Part 11 Planning Act 2008 in respect of the Proposed Development and indemnify the Owner against any liability on the part of the Owner to pay those sums, save to the extent that the liability is assumed by a Plot Purchaser pursuant to a Plot Transfer Agreement or Plot Transfer (it being acknowledged by the parties that the Owner is not obliged to enter into any such Plot Transfer Agreement or Plot Transfer where an equivalent indemnity to this provision (to the extent liability is being assumed by the Plot Purchaser) is not given to the Owner).

## SCHEDULE 7

### Development Obligations

1. **Carrying out the Plot Infrastructure Works**
- 1.1 The Developer is to proceed diligently with and carry out and complete the Plot Infrastructure Works:
  - 1.1.1 In a good, proper and workmanlike manner, free from defects and using good quality and suitable materials; and
  - 1.1.2 In accordance with:
    - 1.1.2.1 the Specification and Development Plans;
    - 1.1.2.2 the Programme of Works;
    - 1.1.2.3 the terms of the Building Contract;
    - 1.1.2.4 the Planning Permission;
    - 1.1.2.5 the Statutory Consents;
    - 1.1.2.6 all Statutory Requirements, including the CDM Regulations;
    - 1.1.2.7 the Construction Phase Plan;
    - 1.1.2.8 the Procurement Strategy;
    - 1.1.2.9 the requirements, if any, of the Insurers of the Development Area;
    - 1.1.2.10 the requirements (if any) and terms of the HIF Funding; and
    - 1.1.2.11 British and European standards and any applicable codes of practice;
  - 1.1.3 without using or specifying the use of any Prohibited Materials.
- 1.2 Without prejudice to **paragraph 1.1**, the Developer is to procure that each Section of the Plot Infrastructure Works (if applicable) and the whole of the Plot Infrastructure Works for a Plot are carried out and completed by the relevant Milestone Date and in any event all Plot Infrastructure Works are to be completed by the Agreement Longstop Date.
- 1.3 The Developer is to procure that:
  - 1.3.1 proper provision is made for the security of the relevant Plot Infrastructure Area and the remainder of the Development Area during the carrying out of the Plot Infrastructure Works and for the protection of any materials, plant and equipment in or on it;
  - 1.3.2 proper precautions are taken for the safety of all persons upon or in the vicinity of the relevant Plot Infrastructure Area and the remainder of the Development Area including maintaining such hoardings, fences, security patrols, safeguards and arrangements of lighting the Plot Infrastructure Works as may be necessary or desirable in the interest of public safety;
  - 1.3.3 the Plot Infrastructure Works are carried out in a manner which does not cause any nuisance, annoyance, inconvenience, injury, loss or danger to or



- Interference with the public or any owners or occupiers of adjoining or neighbouring Development Area; and
- 1.3.4 proper provision is made for the support of land, buildings and boundaries adjoining the relevant Plot Infrastructure Area and the remainder of the Development Area and for the protection of all services benefiting land adjoining or near to the relevant Plot Infrastructure Area and the remainder of the Development Area.
- 1.4 The Developer is to:
- 1.4.1 procure that the rights and interests of third parties are not infringed by the carrying out of the Plot Infrastructure Works;
- 1.4.2 comply with any agreements, deeds, documents, rights, easements, exceptions, reservations and covenants, restrictive or otherwise, affecting the Development Area or the title to it;
- 1.4.3 not permit any encroachment or easement to be made or acquired against or over the Development Area;
- 1.4.4 negotiate the terms of agreements with owners and occupiers of neighbouring land for the release of rights of way, light and air or any other legal or equitable rights over the Development Area which would be infringed by the Proposed Development or Plot Infrastructure Works or prevent or impede the carrying out of the Plot Infrastructure Works; and
- 1.4.5 apply for and use all reasonable endeavours to obtain any orders which may be required for the temporary stopping-up or temporary diversion of any highways, footpaths or public rights of way to the extent that these may be required to enable the Plot Infrastructure Works to be carried out.
- 1.5 Where any Plot Infrastructure Works are to be carried out pursuant to a Planning Agreement the Developer is to:
- 1.5.1 carry out the Plot Infrastructure Works or procure that a Plot Purchaser covenants to carry out the Plot Infrastructure Works in accordance with the Planning Agreement and is to indemnify (or procure that a Plot Purchaser indemnifies) the Owner against any breach of its terms where the Owner is a party to the Planning Agreement;
- 1.5.2 complete the Plot Infrastructure Works on or before the Date of Practical Completion for the relevant Plot or require (on terms and to a timescale acceptable to the Owner (acting reasonably) that a Plot Purchaser covenants to complete them after the Date of Actual Completion;
- 1.5.3 following completion of the relevant works, repair, maintain and remedy any defects in them pursuant to the terms of the Planning Agreement until the Date of Actual Completion; and
- 1.5.4 use all reasonable endeavours to procure that where the works or any part of them are to be adopted by the local authority, the works are so adopted on the terms of the Planning Agreement.
- 1.6 In carrying out the Plot Infrastructure Works the Developer is to:
- 1.6.1 take such steps as are necessary to divert all pipes, wires, cables or other conduits in, under or over the Development Area or any adjoining or neighbouring land which need to be diverted as a result of the Proposed Development or Plot Infrastructure Works;

1.6.2 install the Services Works and procure that they connect to the public mains without crossing land not within the ownership of the Developer; and

1.6.3 negotiate such agreements with statutory undertakers, utilities companies and others as may be required to secure for the Proposed Development all services required and the diversion in a satisfactory manner of all services which are located in a position which would interfere with the Plot Infrastructure Works.

## 2. Extensions of time

2.1 If any extension of time is granted under a Building Contract that does not result from the act, omission or default of the Developer, the period or periods of time for carrying out and completing the Plot Infrastructure Works or a Section of the Plot Infrastructure Works (as the case may be) is to be extended by the extension of time granted to the Building Contractor under the Building Contract.

2.2 If there is any delay in completing the Plot Infrastructure Works or a Section of the Plot Infrastructure Works (as the case may be) arising from:

2.2.1 any default of the Building Contractor under the terms of the Building Contract;

2.2.2 the Insolvency of the Building Contractor;

2.2.3 Force Majeure, to the extent not covered under **paragraph 2.1**; or

2.2.4 any loss or damage caused by any of the Insured Risks,

the period or periods of time for carrying out and completing the Plot Infrastructure Works or the relevant Section of the Plot Infrastructure Works (as the case may be) is to be extended by such period as is agreed by the Project Board as being reasonable and proper in the light of the reasons for the delay.

2.3 Where the Developer is entitled to claim an extension of time under both **paragraph 2.1** and **paragraph 2.2**, **paragraph 2.1** will take priority and the Developer will not be entitled to any additional extension of time under **paragraph 2.2**.

## 3. Variations

3.1 If any of the materials, plant or equipment required for the Plot Infrastructure Works cannot be obtained within a reasonable time or at a reasonable cost, the Developer will be entitled to use alternative materials, plant or equipment in their place so long as the alternative materials, plant or equipment are of no lesser quality than the materials, plant or equipment which they replace.

3.2 The Developer may make changes to the Specification and Development Plans without consent of the Owner where:

3.2.1 the changes are required to comply with Statutory Requirements or are minor changes of a non-structural nature; and

3.2.2 the changes do not include or result in any Adverse Matters arising.

3.3 All other changes to the Development Plans and Specification will require the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed where the changes do not include or result in Adverse Matters arising.

## 4. Inspection by the Owner

4.1 During the carrying out of the Plot Infrastructure Works, the Owner and the Owner's Representative may enter the Development Area to view the state and progress of the Plot Infrastructure Works.



- 4.2 The Owner and the Owner's Representative will:
- 4.2.1 give reasonable prior notice to the Developer before exercising these rights unless prior arrangements have been made with the Developer for regular visits;
  - 4.2.2 exercise the rights at reasonable times and at reasonable intervals;
  - 4.2.3 be accompanied by the Developer's Representative if the Developer so requires;
  - 4.2.4 comply with the reasonable requirements of the Building Contractor;
  - 4.2.5 comply with any health and safety requirements in the Construction Phase Plan; and
  - 4.2.6 refer all matters arising to the Developer and not to the Building Contractor or its agents, workmen or sub-contractors.

5. **Site Meetings**

5.1 The Developer is to hold site meetings not less than once every month and procure that the Building Contractor, the Developer's Representative, members of the Professional Team and any relevant Principal Sub-Contractors attend such meetings to review or plan progress or deal with any other matter relating to the carrying out of the Plot Infrastructure Works.

5.2 The Developer is to:

- 5.2.1 give the Owner and Homes England not less than five Working Days' written notice of any site meetings called under **paragraph 5.1** unless it has been agreed that site meetings will be held at regular intervals on dates and at times agreed in advance;
- 5.2.2 permit the Owner, Homes England and the Owner's Representative, if they so desire, to attend and participate in those site meetings;
- 5.2.3 permit the Owner, Homes England, and the Owner's Representative to make representations in connection with the Plot Infrastructure Works; and
- 5.2.4 supply the Owner, Homes England, and the Owner's Representative with copies of full minutes of the site meetings, whether or not they attend.

5.3 In respect of any representations made by the Owner, Homes England, or the Owner's Representative under **paragraph 5.2**:

- 5.3.1 the Developer is to take proper account of them;
- 5.3.2 the Developer is to procure that the members of the Professional Team, the Building Contractor and any Principal Sub-Contractors take proper account of those representations; and
- 5.3.3 the Developer is to notify the Owner, Homes England, and the Owner's Representative of any observations made by the members of the Professional Team, the Building Contractor or the Principal Sub-Contractors on representations made by the Owner or the Owner's Representative.

6. **Certificate of Practical Completion and Sectional Completion Certificates**

6.1 The Developer is to procure that the Developer's Representative inspects the Plot Infrastructure Works or (if applicable) each Section of the Plot Infrastructure Works with a view to the issue of the Certificate of Practical Completion and each Sectional Completion



Certificate (as the case may be) in accordance with the terms of the Building Contract. The Developer is to give Homes England and the Owner's Representative not less than ten Working Days' prior written notice of the date and time, being a Working Day during the hours of daylight, when the Developer's Representative will carry out this inspection.

6.2 Homes England, the Owner and the Owner's Representative will be entitled to accompany the Developer's Representative on the inspection of the Plot Infrastructure Works or (if applicable) each Section of the Plot Infrastructure Works and to make representations on the proposal to issue the Certificate of Practical Completion or the Sectional Completion Certificate (as the case may be) and the Developer is to procure that the Developer's Representative takes proper account of any representations made by them.

6.3 If there are any defects in the Plot Infrastructure Works or (if applicable) a Section of the Plot Infrastructure Works, other than defects in the nature of minor snagging items which would not be an impediment to the issue of the Certificate of Practical Completion or a Sectional Completion Certificate (as the case may be) in accordance with the terms of the Building Contract, the Developer is to make representations to the Developer's Representative that the Developer's Representative does not issue the Certificate of Practical Completion or Sectional Completion Certificate (as the case may be) until those defects have been made good it being acknowledged by the Owner and the Developer that the Developer's Representative's discretion shall not be fettered by this provision.

6.4 Subject to paragraph 6.3, the Developer is to serve a copy of the Certificate of Practical Completion and (if applicable) each Sectional Completion Certificate on the Owner and the Owner's Representative as soon as reasonably practicable after the date of the inspection of the Plot Infrastructure Works or Section of the Plot Infrastructure Works (as the case may be).

## 7. Following Practical Completion or Sectional Completion

7.1 As soon as reasonably practicable following Practical Completion of the Plot Infrastructure Works or (if applicable) Sectional Completion of a Section of the Plot Infrastructure Works (as the case may be) the Developer is to:

7.1.1 procure that the Building Contractor carries out any further works that are required to make good any defects, omissions and snagging items identified in the Certificate of Practical Completion or Sectional Completion Certificate as the case may be);

7.1.2 carry out and complete in the next planting season any landscaping works which it was not possible to complete by the Date of Practical Completion or Date of Sectional Completion (as the case may be) because of the planting season in which the Date of Practical Completion fell; and

7.1.3 use all reasonable endeavours to procure that all defects in the Plot Infrastructure Works or Section of the Plot Infrastructure Works (as the case may be) for which the Building Contractor is responsible under the Building Contract that arise within the Defects Liability Period in respect of the whole of the Plot Infrastructure Works or a Section of the Plot Infrastructure Works (as the case may be) are made good in accordance with the terms of the Building Contract.

## 8. Owner's Costs

The Developer is to pay within fourteen (14) days of written demand all reasonable and proper costs charges and expenses of the Owner (including solicitors' and surveyors' and other professional costs charges and fees) incurred in relation to any approvals granted by the Owner or subsequent monitoring by the Owner of the Plot Infrastructure Works but for the avoidance of doubt such costs charges and expenses shall constitute Development Costs for the purposes of **Schedule 8**.



## SCHEDULE 8

### Developer's Costs

#### PART 1: DEVELOPMENT ACCOUNT

1. **Development Account**
- 1.1 The Developer is to operate and maintain a Development Account for the Development ("the **Site Development Account**") and each Plot ("the **Plot Development Account**") from the date on which the Developer was procured until the Agreement Longstop Date, or if later the date that all payments due to any party pursuant to this Agreement have been paid.
- 1.2 The Developer is to debit directly to the relevant Development Account all Developer's Costs paid or incurred by the Developer in carrying out the Proposed Development and the Plot Infrastructure Works for the Plot Infrastructure Area for the Plot on or before the Payment Date. There shall be no double-counting of Developer's Costs between the Site Development Account and the Plot Development Accounts or between Plot Development Accounts.
- 1.3 The Developer is to credit to the Plot Development Account:
  - 1.3.1 on receipt, a sum or sums equal to any income from or in respect of the Plot, insurance proceeds, capital receipts, licence fees, damages, compensation and mesne profits which are received in respect of a period or on a date prior to the Completion Date for the Plot and any Disposal Proceeds; and
  - 1.3.2 on receipt, any VAT recovered from HM Revenue and Customs where the corresponding amount of VAT has already been debited to the Development Account as a Development Cost.
- 1.4 The Developer is to submit to the Owner a statement of each Development Account at monthly intervals and where terms are agreed for a Plot Transfer.
- 1.5 The Developer is to retain at a place where the Owner can reasonably inspect them and allow the Owner and its accountants to have access to and inspect all accounts and other written or computer records or documents which are, or in the reasonable opinion of the Owner ought to be, maintained for the purpose of recording and verifying the Developer's Costs including:
  - 1.5.1 all VAT and other tax returns and records;
  - 1.5.2 bank records and statements;
  - 1.5.3 copies of invoices, certificates, bill and demands relating to the Plot Infrastructure Works; and
  - 1.5.4 copies of the certificates issued under the Building Contract authorising or certifying that a payment is due under the Building Contract.
- 1.6 The Developer acknowledges to the Owner that it owes the Owner a duty of the utmost good faith to maintain full and accurate Plot Development Accounts and Site Development Account to enable the Owner properly and accurately to determine the Developer's Costs.
- 1.7 The Owner may at any time require the Site Development Account and any and all Plot Development Account to be audited by an independent firm of chartered accountants. If such an audit shows that Developer's Costs have been overstated by more than 2%, the cost of the audit is to be paid by the Developer to the Owner on demand and such cost is not to be treated as a Development Cost.

2. **Cashflow statement**

2.1 The Developer is to provide to the Owner monthly a written cashflow statement showing:

- 2.1.1 the total of all Developer's Costs Incurred by or on behalf of the Developer;
- 2.1.2 the Developer's Costs which the Developer reasonably anticipates will be incurred before the next cashflow statement is produced; and
- 2.1.3 except in the case of the first cashflow statement, the Developer's Costs incurred by the Developer since the previous cashflow statement indicating:
  - 2.1.3.1 whether the Developer's Costs incurred were included in the anticipated expenditure shown in the previous cashflow statement; and
  - 2.1.3.2 any variations between the sums anticipated and the sums actually incurred.

**PART 2: DEVELOPER'S COSTS**

1. **Developer's Costs**

- 1.1 The Developer's Costs are set out below and for the avoidance of doubt include such costs incurred by the Developer prior to the date of this agreement but after the date on which the Developer was procured pursuant to the negotiated procurement process. Unless expressly stated to the contrary they are exclusive of Value Added Tax.
- 1.2 The Developer is not to debit any costs to the Development Account where the Developer has incurred those costs as a direct or indirect result of any default of the Developer under this Agreement, under the Building Contract, under any Appointment or under any Agreement for Lease.

2. **Planning and Promotion**

- 2.1 The Developer's Costs for planning are:
  - 2.1.1 the proper and reasonable legal fees, planning consultants' fees, masterplanners fees, civil engineers fees, and all other required consultants fees and fees of the Professional Team and disbursements for obtaining Planning Permission;
  - 2.1.2 the fees payable to the local planning authority for applications for Planning Permission;
  - 2.1.3 any Community Infrastructure Levy payable in respect of the Development pursuant to Part 11 Planning Act 2008 and any other land related tax, levy or surcharge paid by the Developer;
  - 2.1.4 the costs of entering into and complying with any Planning Agreement;
  - 2.1.5 the reasonable and proper costs incurred by the Developer (including costs of the Professional Team) in assisting the Owner in negotiating and entering into the HIF Agreement;
  - 2.1.6 the reasonable and proper costs incurred by the Developer (including costs of the Professional Team) in participating in the North East Cambridge Area Action Plan;
  - 2.1.7 the reasonable and proper costs approved by the Owner (acting reasonably) incurred by the Developer (including costs of the Professional Team) in marketing and promoting the Development Area; and



- 2.1.8 any other costs and fees relating to the promotion of the Development Area and the obtaining of a Planning Permission as agreed in the Business Plan or otherwise by the parties in writing.

### 3. **Infrastructure Works**

#### 3.1 The Developer's Costs Its Infrastructure Works are:

- 3.1.1 all payments to be made to the Building Contractor under the Building Contract and any trade contractors under any trade contracts and/or to any management contractors;
- 3.1.2 the proper and reasonable fees incurred by the Developer for obtaining the Statutory Consents;
- 3.1.3 the reasonable and proper costs incurred by the Developer in procuring all securities, bonds, insurances or other products to ensure suitable cover for liability of the Developer under this Agreement for design and construction of all Plot Infrastructure Works; and
- 3.1.4 the proper and reasonable fees payable by the Developer to any company or authority for the carrying out of the Services Works.

### 4. **Professional fees**

#### 4.1 The Developer's Costs for their professional fees are:

- 4.1.1 the proper and reasonable legal fees and disbursements of the Developer in relation to the negotiation and management of the Appointments and the Building Contract;
- 4.1.2 the proper and reasonable fees payable to the members of the Professional Team under the terms of their Appointments;
- 4.1.3 the proper and reasonable fees of the Developer's Representative for complying with its obligations under this Agreement;
- 4.1.4 the proper and reasonable fees payable to the Owner in respect of its ongoing monitoring, decision making and liaison roles under this Agreement;
- 4.1.5 the proper and reasonable legal fees and disbursements of the Developer in relation to the negotiation and management of this Agreement;
- 4.1.6 the Sales Costs and other proper and reasonable fees payable in relation to the Marketing and Disposal Strategy; and
- 4.1.7 the costs of and in connection with any proceedings, arbitration, expert determination, mediation or other dispute resolution undertaken or defended by the Developer in relation to the Development and otherwise of enforcing rights and remedies against the contractors, the professional consultants and other professional advisers the other parties hereto and tenants.

- 4.2 If an Appointment Default occurs due to the act or default of the Developer, the costs set out in **paragraph 4.1.1** for entering into a new Appointment or Building Contract will not form part of the Developer's Costs.

### 5. **Site assembly, preparation and management**

#### 5.1 The Developer's Costs in relation to site assembly, preparation and management are:

- 5.1.1 any costs incurred in assisting the Owner in satisfying the Vacant Plot Condition;

- 5.1.2 the costs of seeking to obtain or obtaining any release or variation of any easement, covenant, right or other interest in or over the Development Area that would impede or restrict the Proposed Development or the use and enjoyment of the Development Area;
- 5.1.3 the costs of seeking to obtain or obtaining any grant from a third party of any easement or other interest in land or right for the benefit of the Phase required for the purposes of carrying out Development Works on that Phase;
- 5.1.4 the costs of obtaining any order for the stopping up or diverting of any highway, bridleway, footpath or sewer and the costs of implementing the order;
- 5.1.5 the costs of any site, soil, water or environmental test, investigation or survey carried out on the Development Area;
- 5.1.6 the costs of carrying out any demolition works and any demolition, site preparation and clearance works and other works required to render the site safe, including the cost of removing and disposing of toxic noxious or other materials, liquids or substances and all professional consultants' supervision fees, costs or disbursements in respect of the same, and the cost of and in connection with any claims brought against the Developer by third parties in respect of such matters;
- 5.1.7 the costs of carrying out any demolition, site clearance and the works to construct the Proposed Development, including the costs of any enabling works and utility diversions; and
- 5.1.8 the costs of managing the Development Area, including the costs of fitting out management suites and acquiring all property management, materials and equipment and all ongoing site management costs.

**6. Insurance**

- 6.1 The Developer's Costs for insurance are the proper and reasonable costs incurred by or on behalf of the Developer in insuring the Plot Infrastructure Works and any other insurances required in accordance with this Agreement.
- 6.2 Monies expended by the Developer relating to reinstatement following damage or destruction not recoverable from insurance.

**7. Project and Development Management**

The Developer's Costs for project and development management are an amount equal to 4.5% of the aggregate of Eligible Development Costs incurred whether or not funded by a third party funder pursuant to a Developer Funding Agreement, after the date of the obtaining of a Satisfactory Outline Planning Permission or Hybrid Planning Permission in accordance with **Schedule 5** or in relation to any phase commenced prior thereto with the approval of the Owner from the date that the Owner approves such commencement (but the capital costs of the costs in **paragraphs 2.1.5- 2.1.7** already incurred and reimbursed are to be excluded from the Eligible Development Costs for the purpose of this paragraph).

**8. Other costs**

- 8.1 The Developer's Costs include:

- 8.1.1 In respect of any Developer's Costs (that are not Infrastructure Costs) which are not funded by a third party funder pursuant to a Developer Funding Agreement, an amount equal to 5% above LIBOR calculated daily and compounded quarterly from the date on which the relevant cost was incurred until the date of recovery pursuant to **clause 9** or such other rate as may be



agreed pursuant to the Funding Condition for a Plot from time to time provided that such rate will not be lower than the rate set out above unless agreed by the Developer at its discretion;

8.1.2 In respect of any Developer's Costs (that are Infrastructure Costs) which are not funded by a third party funder pursuant to a Developer Funding Agreement, an amount equal to the relevant rates set out in paragraph 8.1.3 below calculated daily and compounded on a quarterly basis from the date on which the relevant cost was incurred until the date of recovery pursuant to **clause 9** or such other rate as may be agreed pursuant to the Funding Condition for a Plot from time to time provided that such rate will not be lower than the rate set out above unless agreed by the Developer at its discretion;

8.1.3 The rates applicable to Developer's Costs (that are Infrastructure Costs) referred to in paragraph 8.1.2 are as follows:

8.1.3.1

8.1.3.2

8.1.3.3

8.1.3.4

8.1.3.5

8.1.3.6

8.1.4 The calculation of Interest pursuant to paragraph 8.1.3 shall be based on the outstanding Developer's Costs funded by the Developer at the relevant time which have not been paid to the Developer pursuant to clause 9.

8.1.5 any costs incurred in entering into or pursuant to a Developer Funding Agreement (excluding any interest payments recoverable pursuant to clause **8.1.6**); and

8.1.6 In respect of any Developer's Costs which are funded pursuant to a Developer Funding Agreement, an amount equal to the interest payable pursuant to such Developer Funding Agreement.

8.2 Where the Developer is, on making any payment of the Developer's Costs, entitled to make a retention from the amount paid, whether under the Building Contract or otherwise, the Developer will be entitled to debit the whole of the payment to the Development Account notwithstanding that the retention has been made.

8.3 The Developer's Costs shall also include such other costs reasonably and properly incurred by the Developer in seeking to achieve the Objectives and in relation to the Development as are agreed by the Project Board.

8.4 The Developer's Costs do not include:

8.4.1 the Developer's internal overheads and administrative expenses; or

8.4.2 the costs incurred by the Developer in remedying any breach of this Agreement.

## SCHEDULE 9

### Appointments of Building Contractor and Professional Team

1. **Basis of Appointments**
  - 1.1 For a Plot where the Plot Conditions are satisfied the Developer is to as soon as reasonably practicable:
    - 1.1.1 appoint the Building Contractor;
    - 1.1.2 appoint or procure the appointment of each member of the Professional Team; and
    - 1.1.3 procure that each Principal Sub-Contractor is appointed by the Building Contractor.
  - 1.2 In appointing any Building Contractor, Principal Sub-Contractor or member of the Professional Team not named in this Agreement, the Developer is to comply with the Procurement Strategy.
  - 1.3 Before appointing any Building Contractor, Principal Sub-Contractor or member of the Professional Team not named in this Agreement, the Developer is to make due enquiry as to their repute, competence and suitability with respect to the Plot Infrastructure Works.
  - 1.4 Subject to **paragraph 1.5**, the Developer will procure (unless otherwise agreed by the Project Board) at least three competitive tenders for all Building Contracts are obtained in accordance with the Procurement Strategy to demonstrate to the satisfaction of the Owner (acting reasonably) that a competitive procurement process has been undertaken and competitive pricing has been achieved in each case.
  - 1.5 Where the Developer considers it more effective to procure the same person by way of a single appointment for more than one Plot it must obtain the prior approval from the Owner (such approval not to be unreasonably withheld or delayed) and provide evidence to the Owner acceptable to the Owner (acting reasonably) to have shown this results in cost savings and is otherwise in accordance with the Procurement Strategy.
2. **Terms of Appointments**
  - 2.1 Each:
    - 2.1.1 Building Contract is to be executed as a deed in the such form of building contract as the Developer shall propose and the Owner shall acting reasonably agree (with such amendments so as to require the Building Contractor to not commit a General Default or Fundamental Default (as respectively defined in the HIF Agreement) with such other proper and reasonable amendments agreed between the Developer and the Building Contractor and approved by the Owner (acting reasonably); and
    - 2.1.2 Appointment is to be executed as a deed in the form annexed at **Appendix 6** with such amendments so as to require the Building Contractor to not commit a General Default or Fundamental Default (as respectively defined in the HIF Agreement) and such other proper and reasonable amendments agreed between the Developer and the Building Contractor and approved by the Owner (acting reasonably).
  - 2.2 The Building Contract and the Appointments must permit the Owner and Homes England to exercise step-in rights (subject to the terms of any Step-In Agreement) and become the employer of the contracting party following termination as a result of an Event of Default under this Agreement.



2.3 The Developer is to require that professional indemnity insurance is maintained throughout the period of the Development and for twelve years after the Date of Practical Completion or (if applicable) the date of Sectional Completion in relation to the final Section to achieve Sectional Completion with reputable insurers:

2.3.1 by each member of the Professional Team for at least £5 million in respect of each claim that may be made;

2.3.2 the Building Contractor for at least £10 million in respect of each claim that may be made; and

2.3.3 by each Principal Sub-Contractor for at least £2 million in respect of each claim that may be made,

or in each case such other level of insurance that the parties agree (acting reasonably), having due regard to the value of services/works being provided pursuant to the relevant Building Contract/ Appointment

2.4 The obligations in **paragraph 2.3** will apply in respect of each member of the Professional Team, the Building Contractor and each Principal Sub-Contractor for so long as professional indemnity insurance is generally available in the insurance market to those persons at a reasonable cost. Payment of any increased or additional premiums required by insurers by reason of those persons' own claim records or other acts or omissions or things peculiar to those persons are to be disregarded in determining whether such insurance is available at a reasonable cost.

2.5 The Developer is to provide the Owner with:

2.5.1 a certified copy of each Appointment, Building Contract and Principal Sub-Contract within five Working Days of it being entered into; and

2.5.2 approvals by the professional indemnity insurers of the person appointed of the forms of Building Contract, Appointments, Principal Sub-Contracts and Warranties.

### 3. **Warranties**

3.1 The Developer is to procure that each Building Contractor, Principal Sub-Contractor, each member of the Professional Team and the Developer's Representative unconditionally delivers either Warranties or notices of the grant of Third Party Rights to the Owner and Homes England on the date of their appointment.

3.2 Any Warranties to be provided pursuant to **paragraph 3.1** above are to be in the form attached to this Agreement at Appendix 6 with such amendments as the Owner or Homes England (as the context requires) may approve, such approval to be subject to the provisions of **paragraph 3.3** and otherwise not to be unreasonably withheld or delayed.

3.3 The Owner will act reasonably in considering changes requested by the proposed appointees, taking into account market practice at such time but is not to be obliged to approve any amendments to the terms of any Warranties that:

3.3.1 include a net contribution clause; or

3.3.2 include a limitation on liability so that only the costs of making good defects in the Plot Infrastructure Works are recoverable.

### 4. **Developer's obligations**

4.1 The Developer is to use all reasonable endeavours to procure that:

4.1.1 each member of the Professional Team complies with the terms of its Appointment;

- 4.1.2 any Building Contractor complies with the terms of their Building Contract; and
- 4.1.3 any Building Contractor and each Principal Sub-Contractor comply with the terms of their Principal Sub-Contracts.
- 4.2 The Developer is to procure that any Building Contract requires the Building Contractor to procure that each Principal Sub-Contractor comply with the terms of their Principal Sub-Contracts.
- 4.3 The Developer is not without the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed to dismiss any member of the Professional Team, or the Building Contractor, or permit a Principal Sub-Contractor to be dismissed.
- 4.4 The Developer is not to:
  - 4.4.1 waive, release nor estop itself from enforcing or seeking redress for any breach of the Appointments, the Building Contract or the Principal Sub-Contracts;
  - 4.4.2 do or omit to do any act or thing which would entitle:
    - 4.4.2.1 any member of the Professional Team to treat its Appointment as terminated by breach;
    - 4.4.2.2 the Building Contractor to treat the Building Contract as terminated by breach; and
    - 4.4.2.3 a Principal Sub-Contractor to treat a Principal Sub-Contract as terminated by breach;
  - 4.4.3 receive any commissions, inducements, or pecuniary or other advantages at any time arising from the appointment of the members of the Professional Team, the Building Contractor or any Principal Sub-Contractor.

## 5. **Appointment Default**

- 5.1 If there is an Appointment Default, the Developer is immediately to notify the Owner in writing of the Appointment Default and the reasons for it.
- 5.2 Following an Appointment Default:
  - 5.2.1 where the Developer was responsible for the original appointment, the Developer is to use its all reasonable endeavours to appoint another person on the terms of this Schedule in substitution for the person whose appointment was terminated; and
  - 5.2.2 where the Building Contractor was responsible for the original appointment, the Developer is to use all reasonable endeavours to procure that the Building Contractor appoints another person on the terms of this Schedule in substitution for the person whose appointment was terminated.

## 6. **Proceedings**

If the Building Contractor, any Principal Sub Contractor or any member of the Professional Team is in default or has committed a breach of their obligations in relation to the Development or any part of it, the Developer will use all reasonable endeavours to enforce its rights and remedies in respect of that breach.



## SCHEDULE 10

### Insolvency Defaults

1. **Defined terms**

1.1 In this Schedule, the following words and expressions have the following meanings:

"1986 Act"	Insolvency Act 1986
"1994 Order"	Insolvent Partnerships Order 1994
"LPA"	Law of Development Area Act 1925

2. **Insolvency Default**

2.1 Insolvency occurs if:

2.1.1 a person is a company and:

2.1.1.1 it enters into a voluntary arrangement under Part I of the 1986 Act or it enters into a scheme of arrangement with its creditors in satisfaction or composition of its debt;

2.1.1.2 an administrator is appointed under Part II of the 1986 Act;

2.1.1.3 a receiver or manager, including an administrative receiver, is appointed whether under Part III of the 1986 Act, under the LPA or otherwise;

2.1.1.4 a resolution to wind-up is passed or a provisional liquidator is appointed or a winding-up order is made under Part IV of the 1986 Act unless for the purpose of a solvent amalgamation or reconstruction of the company;

2.1.1.5 It changes its status from unlimited to limited; or

2.1.1.6 It is struck off the register of companies or otherwise ceases to exist;

2.1.2 a person is an individual and:

2.1.2.1 an interim order or voluntary arrangement is made under Part VIII of the 1986 Act;

2.1.2.2 a trustee in bankruptcy is appointed or the individual is otherwise declared to be bankrupt;

2.1.2.3 the individual enters into a deed of arrangement or composition with his or her creditors;

2.1.2.4 a receiver is appointed under the Mental Health Act 1983 or the individual becomes incapable of managing his or her affairs; or

2.1.2.5 the individual dies;

2.1.3 two or more people are in partnership and:



2.1.3.1 they enter into a voluntary arrangement under Part II of the 1994 Order;

- 2.1.3.2 an administration order is made under Part III of the 1994 Order;
  - 2.1.3.3 a winding up order is made under Parts IV or V of the 1994 Order; or
- 2.1.4 a person is incorporated or resident in a jurisdiction outside England and Wales and any event or circumstance occurs which under the laws of that jurisdiction has an analogous or equivalent effect to any of the events in this **paragraph 2.1.**



## SCHEDULE 11

### Guarantor's Obligations

1. **Obligations guaranteed**
  - 1.1 Subject to paragraph 1.5 below, the Developer's Guarantor as primary obligor, and not only as guarantor, guarantees to the Owner that the Developer will comply with the terms of this Agreement.
  - 1.2 As an independent obligation, the Developer's Guarantor agrees with the Owner to comply with the terms of this Agreement if the Developer does not do so and to indemnify the Owner against any breach of those terms.
  - 1.3 The Developer's Guarantor agrees that the Owner may make a claim under this guarantee and indemnity at any point after the Owner has served notice of default on the Developer which has not been remedied within the stated time period but such claim may be made without first making a claim against the Developer.
  - 1.4 The Developer's Guarantor is to pay all sums due to the Owner under this guarantee and indemnity within 28 days of written demand and without any legal or equitable set-off, counterclaim or deduction.
  - 1.5 The Developer's Guarantor's liability pursuant to this Agreement shall:
    - 1.5.1 at any time be limited to the lower of:
      - 1.5.1.1 
      - 1.5.1.2 
    - 1.5.2 cease (save for any claims previously notified to the Developer's Guarantor in writing) on the later date of a) three years from the expiry of this Agreement or b) the date twelve years from the Certificate of Practical Completion (or, if applicable, the last Sectional Completion Certificate) for all Plot Infrastructure Works.
2. **Continuation of the guarantee**
  - 2.1 The obligations of the Developer's Guarantor are not to be released by:
    - 2.1.1 any delay or neglect by the Owner in enforcing the terms of this Agreement or any time allowed by the Owner for their performance;
    - 2.1.2 any variation of the terms of this Agreement;
    - 2.1.3 any Event of Default;
    - 2.1.4 the disclaimer of this Agreement by the Crown or by a liquidator or trustee in bankruptcy of the Developer;
    - 2.1.5 If the Developer is a company, the Developer is struck off the register of companies or otherwise ceases to exist;
    - 2.1.6 the Developer or the Owner giving consent to any matter under this Agreement;
    - 2.1.7 any legal limitation, immunity, disability, incapacity or other circumstances relating to the Developer, whether or not known to the Owner; or

2.1.8 anything else which would have released the Developer's Guarantor whether by the variation of the obligations guaranteed or by the conduct of the parties.

3. **Development documentation**

3.1 The provisions of this **paragraph 3** will apply:

3.1.1 If the Owner exercises its step-in rights following an Event of Default;

3.1.2 following the disclaimer of this Agreement by the Crown or by a liquidator or trustee in bankruptcy of the Developer;

3.1.3 If the Developer is a company, the Developer is struck off the register of companies or otherwise ceases to exist; or

3.1.4 If any of the provisions in **paragraph 3.1** apply and the Owner requests the Developer's Guarantor to do so in writing, the Developer's Guarantor is to:

3.1.4.1 enter into a new agreement with the Owner on the terms of this Agreement with the substitution of the Developer's Guarantor for the Developer and with due allowance to be made in the new agreement for any sums paid by the Owner or the Developer under this Agreement when calculating any sums due under the new agreement;

3.1.4.2 take all steps necessary to become the employer of the Building Contractor and the members of the Professional Team;

3.1.4.3 if the Owner has already become the employer of the Building Contractor or the members of the Professional Team, act as the agent of the Owner in discharging the employers obligations and indemnify the Owner against any liability which the Owner may have as an employer until such time as the Developer's Guarantor has become the employer under **paragraph 4.2**; and

3.1.4.4 comply with the Developer's obligations under any Agreement for Lease.

4. **No assignment**

4.1 The Developer's Guarantor is not to take an assignment of this Agreement from the Developer.

4.2 The Developer's Guarantor is not to become the employer of the Building Contractor or the members of the Professional Team except on the terms set out in **paragraph 3**.

5. **Additional provisions**

5.1 The Developer's Guarantor is not to claim any rights of subrogation in respect of the obligations guaranteed by the Developer's Guarantor and is not entitled to participate in any security held by the Owner in respect of those obligations unless and until those obligations have been performed or discharged in full.

5.2 The Developer's Guarantor is not to claim in competition with the Owner in the insolvency of the Developer and is not to take any security, indemnity or guarantee from that person in respect of those obligations.

5.3 If any payment made to the Owner is set aside or avoided under the laws relating to insolvency, the Owner may claim under this guarantee and indemnity in respect of that payment and any settlement, release or discharge of the obligations guaranteed by the Developer's Guarantor is to take effect subject to this condition.



5.4 If there is more than one Developer's Guarantor, the obligations which they undertake can be enforced against them all jointly or against each individually.

6. **Guarantor Substitution**

6.1 In this paragraph 6:

**"Net Assets"** means the aggregate amounts paid up or credited as paid up on the issued share capital of the relevant party (other than any redeemable shares) and the aggregate amount of the reserves of the relevant party including:

- 6.1.1 any amount credited to the share premium account;
- 6.1.2 any capital redemption reserve fund;
- 6.1.3 any balance owing to the debit or credit of the profit and loss account;
- 6.1.4 the fair value of any share based payments;
- 6.1.5 any own shares held, at their then market value; and
- 6.1.6 any other amount included as equity attributable to shareholders
- 6.1.7 as stated in the latest audited accounts or as confirmed in a certificate from two directors.

6.2 The Guarantor shall with immediate effect be automatically released from all of its past, present and future obligations and liabilities under this Agreement if the Guarantor delivers to the Developer a guarantee in favour of the Owner on the same terms as this paragraph 6 as a deed by:

(i) a party approved in writing by the Owner (acting reasonably, provided it shall be reasonable to withhold consent where the requirement at (ii) below is not satisfied); or

(ii)



## SCHEDULE 12

### Grant of Interim Use Leases

1. **Agreement for leases**
  - 1.1 Part 1 of the Commercial Conditions apply to the grant of each Interim Use Lease so far as they are applicable and are consistent with the express terms of this Agreement but:
    - 1.1.1 Commercial Conditions 2.2, 2.3, 3.2, 3.3, 4, 5, 6.3, 7, and 11 do not apply;
    - 1.1.2 In Commercial Condition 1.3, all references to service by e-mail are deleted;
    - 1.1.3 Commercial Condition 1.4.1 reads "An obligation to pay money includes an obligation to pay any value added tax chargeable in respect of that payment."; and
    - 1.1.4 Commercial Condition 8.3.2 reads "Apportionment is to be made with effect from the date of actual completion."
  - 1.2 Neither party will be under any obligation to complete an Interim Use Lease on a day that is not a Working Day or before 9:30 am or after 5:30 pm on a Working Day, even where time is of the essence for completion.
  - 1.3 **Grant of Interim Use Lease**
    - 1.3.1 Where the Unconditional Date has not arisen on a Plot and it is agreed by the parties that an Interim Use Lease is to be granted to an agreed occupier pursuant to the Business Plan the Owner agrees to use reasonable endeavours to procure the grant by the relevant Landowner, and the Developer agrees to accept the grant of an Interim Use Lease at a nil rent for the part of a relevant Plot on the date agreed by the Owner and the Developer pursuant to the Business Plan and the Developer is to simultaneously grant an underlease on materially the same terms as the Interim Use Lease (save as to the rent) to the agreed occupier (such underlease to be prepared by the Developer and approved by the Owner (acting reasonably)).
    - 1.3.2 Where the Unconditional Date has arisen on a Plot and it is agreed by the parties that an Interim Use Lease is to be granted to an agreed occupier pursuant to the Business Plan, the Developer agrees to grant an underlease in materially the form of the Interim Use Lease to the agreed occupier on the date agreed by Owner and the Developer pursuant to the Implementation Strategy.
    - 1.3.3 For any Plot (or part thereof) where it is agreed that there is to be an Interim Lease the Developer's Solicitors are to prepare a draft for the Owner's approval as soon as reasonably practicable after the heads of terms for such Interim Lease are agreed.
    - 1.3.4 For the avoidance of doubt the Interim Use Lease will not grant or reserve any rights or easements or other encumbrances or permit any other thing to be done which would adversely affect the Development of any Plot or any Infrastructure Works not yet developed at the time of the relevant lease.
    - 1.3.5 Any Interim Use Lease is to be executed in duplicate and the Developer is to procure that the duplicate is returned to the Owner's Solicitors as soon as possible after completion.



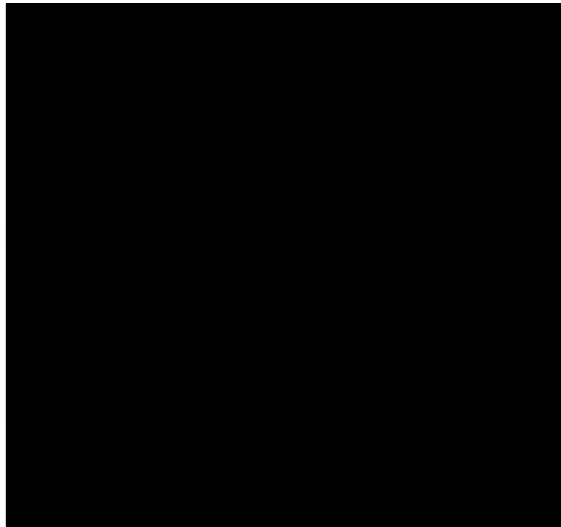
1.3.6 Any party that executes an Interim Use Lease pursuant to a power of attorney is to provide a copy of that power of attorney in English, certified in accordance with section 3 Powers of Attorney Act 1971, to the other parties on the Date of Actual Completion.

1.4 **Issue of lease engrossments**

Subject to the leases being approved the Owner is to use reasonable endeavours to procure the Issue of engrossments of any Interim Use Lease prior to the proposed completion date for such lease.

**EXECUTED AS A DEED**  
by **Cambridge 4 LLP**  
acting by its two members;

)  
)  
)



Signed as a deed by  
**U and I (Cambridge) Limited**  
acting by two directors or  
one director and its secretary

)  
)  
)

*Signature of director*

*Signature of director/secretary*

Signed as a deed by  
**Land Securities Property Holdings Limited**  
acting by two directors or  
one director and its secretary

)  
)  
)

*Signature of director*

*Signature of director/secretary*



**APPENDIX 1**

**Plan**



LEGEND

Property Boundary



Sheet No.	101
Sheet Size	11" x 17"
Scale	1" = 100'
Project Title	Anglian Water - CHWTR
Plan Title	Anglian Water Property Boundary
Drawn By	
Checked By	
Approved By	
Date	

A3 Original Site



**APPENDIX 2**

**Plot Licence**

---

**Dated:**

- (1) [JV DETAILS TO BE INSERTED]
  - (2) [DEVELOPER DETAILS TO BE INSERTED]
  - (3) [GUARANTOR DETAILS TO BE INSERTED]
- 

**Licence to carry out Plot Infrastructure Works**

---

relating to Property at [Cambridge 4] Cambridge [details of relevant Plot Infrastructure Area/Plot (or part thereof) to be granted access by the licence to be inserted]



THIS LICENCE is made on

[ ]

**BETWEEN**

- (1) [JV DETAILS TO BE INSERTED] [(registered number [COMPANY NUMBER]) whose registered office is at][of] [ADDRESS] ("the Owner"); and
- (2) [DEVELOPER'S DETAILS TO BE INSERTED] [(registered number [COMPANY NUMBER]) whose registered office is at][of] [ADDRESS] ("the Developer"),
- (3) [GUARANTOR'S DETAILS TO BE INSERTED] [(registered number [COMPANY NUMBER]) whose registered office is at][of] [ADDRESS] ("the Guarantor").

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The following words and expressions shall have the following meanings:

**Access Period** [ ] [months] from and including the date of this Licence, or if earlier the date of termination of this Licence pursuant to clause [ ]. [Note: licence period will depend on the extent of the programme for the works and will be agreed pursuant to the Master Development Agreement]

**Archaeological Finds** all fossils, coins, articles of value or antiquity and structures or other remains or things of prehistoric, geological or archaeological interest

**Authorised Use** the use of the Property described in **clause 9.1**

**Master Development Agreement** means the master development agreement for the Property and other land dated [ ] made between the parties to this deed.

**Plot Infrastructure Works** Means the Plot Infrastructure Works (as defined in the Master Development Agreement) at the Property.

**Property** the property at [Cambridge 4] Cambridge [shown for identification edged red on the plan attached to this Licence].

**Rights** the rights granted in **clause 2**.

1.2 In this Licence the clause headings do not affect its interpretation; references to clauses are to clauses of this Licence; references to the Property includes any part of it and references to the end of the Access Period are to the date on which this Licence ends.

1.3 An obligation on the Developer not to do or omit to do any act or thing includes an obligation not to permit or allow that act or thing to be done or omitted, as the case may be.

1.4 The obligations of the Developer bind the Developer's contractors, consultants and their respective employees, agents, and workmen and the Developer is to be liable for any breach of the terms of this Licence by any of them.

1.5 Where two or more persons form a party to this Licence, the obligations they undertake may be enforced against them all jointly or against one or more of them individually.

- 1.6 Any notice under this Licence is to be given in accordance with section 196 Law of Property Act 1925.
- 1.7 The parties to this Licence do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
2. **RIGHTS**
- 2.1 Subject to **clauses 2.8 and 4**, the Owner will allow the Developer and its contractors and consultants to enter and remain on the Property with all necessary plant, machinery and equipment at all reasonable times during the Access Period to carry out the Plot Infrastructure Works in accordance with the Development Agreement.
- 2.2 The Developer acknowledges that:
- 2.2.1 the Owner is entitled to exclusive control and possession of the Property<sup>1</sup>; and
- 2.2.2 nothing in this Licence is intended to create a letting of the Property or to confer any rights on the Developer greater than a bare licence on the terms of this Licence.
- 2.3 The Owner may terminate this Licence:
- 2.3.1 If the Developer materially breaches any of its obligations in this Licence and fails to remedy such breaches within a reasonable period in accordance the Plot Delivery Strategy and/or Master Development Agreement; or
- 2.3.2 where the Master Development Agreement has been terminated in relation to the Property.
- 2.4 Without prejudice to clause 2.5 the Owner will not exercise its right under clause 2.3 unless and until it has:
- 2.4.1 given written notice to the Developer of its intention to do so together with details of the breach complained of; and
- 2.4.2 given the Developer a reasonable period of time (being no less than 40 Working Days) in which to remedy the breach and the breach has not been remedied in such period.
- 2.5 If the Owner has received written notice of any charge, debenture, mortgage or any other security granted over the Master Development Agreement by the Developer it will not exercise its rights under clause 2.3 unless and until it has:
- 2.6 given written notice to the holder of that security of its intention to do so together with details of the breach complained of; and
- 2.7 given the holder of that security a reasonable period of time in which to remedy the breach after the Developer has failed to do so and the breach has not been remedied in such period.

---

<sup>1</sup> The licence is drafted on the basis that a letting will not be created; if there is a risk of a letting being implied, the parties will need to take the necessary steps so that security of tenure does not arise.



- 2.8 If either the Developer or the holder of any security (as contemplated by clause 2.5) disputes whether or not there is any breach and/or whether it is material and/or whether the period to remedy is reasonable it then the Developer or the holder of the security must give notice to the Owner (time to be of the essence) within 10 Working Days of the Owner's notice at clause 2.4.1 and where such notice has been served the matter in dispute may be referred by the Developer or the holder of any security for determination pursuant to and in accordance with the clause 17 of the Master Development Agreement.

3. **CONDITIONS OF ENTRY**

- 3.1 Before beginning the Plot Infrastructure Works, to the extent the same has not already been carried out under the Master Development Agreement, the Developer must:

- 3.1.1 provide details of the Developer's public liability insurance to the Owner for approval, such approval not to be unreasonably withheld or delayed;
- 3.1.2 obtain at the Developer's own cost all consents required from any local authority or any other public or statutory body in respect of the Plot Infrastructure Works and provide copies of them to the Owner for the Owner's approval, such approval not to be unreasonably withheld or delayed;
- 3.1.3 give to the Owner written notice of the identity of the contractors and consultants who are to be engaged in carrying out the Plot Infrastructure Works;
- 3.1.4 give to the Owner such other information in respect of the Plot Infrastructure Works as the Owner reasonably requires;
- 3.1.5 verify with the relevant statutory undertakers that there are no pipes, cables or other conduits beneath the Property that might be affected by the Plot Infrastructure Works;

- 3.2 The Developer must procure that its contractors and consultants comply with the provisions of **clause 3.1** before carrying out the Plot Infrastructure Works.

4. **PLOT INFRASTRUCTURE WORKS**

- 4.1 The Developer must:

- 4.1.1 take all reasonable precautions against causing unnecessary damage to any adjoining land and must make good any loss or damage caused by the Plot Infrastructure Works;
- 4.1.2 take all proper and sufficient precautions during the carrying out of the Plot Infrastructure Works:
- 4.1.2.1 to maintain the structural integrity of any adjoining property;
- 4.1.2.2 not to infringe, interrupt or destroy any rights, easements, privileges or services enjoyed by the Property or any neighbouring or adjoining property; and
- 4.1.2.3 to cause as little inconvenience as reasonably practicable to the Owner and any tenants or other occupiers of the Property or any adjoining property; and
- 4.1.3 ensure that no contamination is spread laterally or down into any aquifer beneath the Property;
- 4.1.4 ensure that the obligations in the Development Agreement are complied with in relation to the carrying out of works at the Property.

5. **YIELDING UP**

5.1 When the licence in **clause 2** ends then, unless completion of the sale and purchase of the Property has been completed, the Developer is to procure that the Property is vacated by the persons listed in **clause 2** and that all vehicles, plant, equipment and materials belonging to them are removed from the Property.

6. **INDEMNITY**

6.1 The Developer must indemnify the Owner in respect of personal injury to or the death of any person and any loss injury or damage whatsoever to any property, real or personal, arising from the exercise of the Rights.

6.2



7. **INSURANCE**

8. The Developer is to comply with its obligations in clause [ ] of the Development Agreement.

9. **COSTS AND OUTGOINGS**

9.1 The Developer is to pay all outgoings of whatever nature in relation to the Property arising due to its occupation of the Property pursuant to this Licence, including (but not limited to) utilities costs (including standing charges and taxes payable on utility costs).

9.2 The Developer is to pay to the Landlord on written demand the reasonable and proper costs and expenses of the Owner's solicitors, surveyors and other professional advisors and bailiff's fees and commissions including any irrecoverable VAT arising from any application made by the Developer for the Owner's consent for or approval of any matter under this Licence whether or not consent or approval is given (unless the Owner acts unreasonably in withholding that consent or approval (or by attaching conditions) where the Owner is required by this Licence or otherwise to act reasonably) or the application is withdrawn.

10. **MAINTENANCE UNTIL COMPLETION**

10.1 Until completion of the Infrastructure Works, the Developer must keep and maintain the Property and all parts of the Infrastructure Works in accordance with the terms of the Master Development Agreement and in accordance with the principles of good estate management.

10.2 Archaeological Finds discovered at the Property shall be the property of the Owner and the Developer must:

10.3 not conceal, remove or damage or permit to be concealed, removed or damaged any Archaeological Finds;

10.4 as soon as reasonably practicable on discovery of any Archaeological Finds notify the Owner (or other local archaeology authority).

11. **USE OF THE PREMISES**

11.1 The Developer is not to use the Property other than for the carrying out the Infrastructure Works.

11.2 The Developer is not to use the Property:

11.3 for any illegal or immoral purpose or any lewd, obscene or pornographic nature or any activity which in the reasonable opinion of the Owner is of such nature; or



11.4 In a manner which creates a legal nuisance, physical damage or annoyance to the Owner or any tenants or occupiers of any adjoining premises.

11.5 The Owner gives no warranty to the Developer that the Authorised Use is or will remain a lawful or permitted use for the Property under planning legislation.

12. **EXCLUSION OF LIABILITY**

The Owner has entered into this Licence solely for the purposes of granting the rights contained in this Licence and does not undertake any responsibilities or liabilities under this Licence.

13. **ACKNOWLEDGMENT**

13.1 The Developer acknowledges that the Owner will be entitled to have regard to its own operational considerations in relation to its use and occupation of the Property in determining whether or not to give any approval under this Licence.

Executed as a deed by affixing )  
the common seal of )  
[NAME OF COMPANY / LLP] )  
in the presence of: )

*Signature of director*

*Signature of director/secretary*

Signed as a deed by )  
[NAME OF COMPANY / LLP] )  
acting by two directors or )  
one director and its secretary )

*Signature of director*

*Signature of director/secretary*

Signed as a deed by )  
[NAME OF COMPANY/LLP] )  
a [company][LLP] Incorporated in )  
[COUNTRY] )  
acting by [NAME OF OFFICER] )  
[and [NAME OF OFFICER]] )  
being [a person][persons] who, )  
in accordance with the laws of that )  
territory, [is][are] acting under the )  
authority of that [company][LLP] )

*Signature of authorised signatory*

*Signature of authorised signatory*

Signed as a deed by )  
[NAME COMPANY / LLP] )  
[acting by one director/member] )  
in the presence of: )

*Signature of [Individual/director/member]*

Witness Signature:

Witness Name:

Witness Address:



**APPENDIX 3**

**Access Licence**

---

**Dated:**

(1)     **AWG Land Holdings Limited**

(2)

---

**Licence to carry out survey and investigation works**

---

relating to land at



## PARTICULARS

<b>Date</b>	
<b>BETWEEN</b>	<b>(1) AWG LAND HOLDINGS LIMITED</b> (registered number 04530863) whose registered office is at Anglian House, Ambury Road, Huntingdon, Cambridgeshire, PE29 3NZ (" <b>AWG</b> "); and <b>(2) ("Operator")</b> .
<b>"AWS"</b>	Anglian Water Services Limited (company number 02366656) whose registered office is at Anglian House, Ambury Road, Huntingdon, Cambridgeshire, PE29 3NZ
<b>Access Period</b>	The period of [     ] weeks from the date of this Licence
<b>Approved Activities</b>	
<b>Method Statement</b>	The method statement requested by AWG under the provisions of clause 3.1.1
<b>Plan</b>	The Plan attached.
<b>Property</b>	The land owned by AWG at Milton Cambs at the location shown on the Plan to which access is given under the terms of this Licence
<b>"Red Flag Actions"</b>	In relation to any adjoining land of AWS any matter or action which will or might in the reasonable opinion of AWS: <ul style="list-style-type: none"><li>• restrict and/or interferes with access.</li><li>• restrict and/or interferes with any treatment processes (if any).</li><li>• restrict hours of operational use (if any).</li><li>• increase the legal requirements imposed on AWS either temporarily or permanently.</li><li>• Restrict and/or interfere with the discharge of water and/or other substances from the AWS land (if any).</li><li>• Require AWS and/or an affiliate itself to carry out any works.</li></ul>
<b>Rights</b>	The rights granted in <b>clause 2</b> .

**THIS LICENCE** is made on the date set out in the Particulars

**BETWEEN**

- (3) AWG; and
- (4) the Operator.

**OPERATIVE PROVISIONS**

**1. Interpretation**

- 1.1 Words and expressions set out in the Particulars and/or defined in the Agreement for Lease and/or the Lease are defined terms in this Licence.
- 1.2 In this Licence the clause headings do not affect its interpretation; references to clauses are to clauses of this Licence; references to the Property includes any part of it; references to "include" or "including" mean "including without limitation"; and references to the end of the Access Period are to the date on which this Licence ends.
- 1.3 An obligation on the Operator not to do or omit to do any act or thing includes an obligation not to permit or allow that act or thing to be done or omitted, as the case may be.
- 1.4 The obligations of the Operator bind the Operator's contractors, consultants and their respective employees, agents, and workmen and the Operator is to be liable for any breach of the terms of this Licence by any of them.
- 1.5 Any notice under this Licence is to be given in accordance with section 196 Law of Property Act 1925.
- 1.6 The parties to this Licence do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

**2. Rights**

- 2.1 Subject to **Clauses 3 and 4**, AWG is to allow the Operator and its consultants, contractors and sub-contractors to enter and remain on the Property with all necessary plant, machinery and equipment at all reasonable times during the Access Period to carry out the Approved Activities in accordance with any applicable Method Statement.
- 2.2 The Operator acknowledges that:
  - 2.2.1 AWG is entitled to exclusive control and possession of the Property;
  - 2.2.2 nothing in this Licence is intended to create a letting of the Property or to confer any rights on the Operator, whether under common law or any enactment, greater than a bare licence on the terms of this Licence;
  - 2.2.3 It must at all times comply with the health and safety requirements of AWG (both before, during and after times when the privilege is granted by this Licence are exercised by the Operator including online procedures to verify that health and safety requirements have been understood, accepted and will be complied with);
  - 2.2.4 access may be on terms that the Operator is accompanied by a representative of AWS if AWS shall so reasonably require.

**3. Conditions of entry**

- 3.1 Before carrying out the Approved Activities or any of the activities comprising one or more of them the Operator is to:



- 3.1.1 agree with AWG the Method Statement required for that particular activity with AWG;
  - 3.1.2 give not less than 24 hours' prior written notice to AWG of the date on which it wishes to start carrying out the Approved Activities;
  - 3.1.3 on request to provide details of the Operator's public liability insurance to AWG;
  - 3.1.4 obtain AWG's prior written approval to any variations to the Method Statement, such approval not to be unreasonably withheld or delayed;
  - 3.1.5 obtain at the Operator's own cost all approvals, licences and other permissions which may be required in order to carry out the Approved Activities and on request provide copies of them to AWG for AWG's approval, such approval not to be unreasonably withheld or delayed;
  - 3.1.6 give to AWG written notice of the identity of the contractors, sub-contractors and consultants who are to be engaged in carrying out the Survey Works – so far as not apparent from the Method Statement;
  - 3.1.7 give to AWG such other information in respect of the Approved Activities as AWG reasonably requires;
  - 3.1.8 verify with the relevant statutory undertakers that there are no other pipes, cables or other conduits beneath the Property that might be affected by the Approved Activities;
  - 3.1.9 ensure that all access gates are kept locked at all times when the Operator or its Licensees properly authorised under the terms of this Licence are on site and on departure.
- 3.2 AWG may terminate this Licence immediately if there is any breach or threatened breach of its terms by the Operator.

**4. Approved Activities and Survey Works**

- 4.1 The Operator agrees with AWG:
- 4.1.1 to take all reasonable precautions against causing unnecessary damage to the Property and to make good any loss or damage caused by the Approved Activities;
  - 4.1.2 to take all proper and sufficient precautions during the carrying out of the Approved Activities:
    - 4.1.2.1 to maintain the structural integrity of the Property and any adjoining property;
    - 4.1.2.2 not to infringe, interrupt or destroy any rights, easements, privileges or services enjoyed by the Property or any neighbouring or adjoining property; and
    - 4.1.2.3 to cause as little inconvenience as reasonably practicable to the AWG and any tenants or other occupiers of the Property or any adjoining property;
  - 4.1.3 to ensure that no contamination is spread laterally or down into any aquifer beneath the Property.
- 4.2 The Operator will not under any circumstances enter onto or attempt to enter onto the adjoining land of AWS whether or not such land is part of the operational site of AWS,

5. **Reinstatement**

The Operator agrees with AWG that prior to the expiry of the Access Period the Operator will reinstate the Property if requested and restore the Property to its state and condition immediately prior to the carrying out of the Approved Activities.

6. **Copies of and Reliance in respect of reports**

The Operator will procure that AWG receives copies of and is given formal reliance (either as joint addressee or by way of separate letter of reliance in a form approved by AWG acting reasonably in respect of all reports produced pursuant to the investigations carried out under this Licence.

7. **Indemnity**

7.1 The Operator agrees to indemnify AWG in respect of personal injury to or the death of any person and any loss injury or damage whatsoever to any property, real or personal, arising out of or in connection with this Licence save insofar as a consequence of the negligence of AWG or any servant or agent of AWG.

7.2



8. **Exclusion of Liability**

AWG has signed this Licence solely for the purposes of granting the rights contained in this Licence and does not undertake any responsibilities or liabilities under this Licence.

9. **Acknowledgment in relation to AWS**

9.1 The Operator acknowledges that it is aware that the Property is immediately adjacent to land owned by AWS and that a sewer runs under the Property.

9.2 The Operator acknowledges that AWG will be entitled to have regard to the requirements of AWS in relation to the protection, use and occupation of the adjoining property of AWS in determining whether or not to give any approval under this Licence and in particular that AWG may refuse consent under this Licence if any of the Red Flag Actions would or might arise if the Operator were to be allowed to carry out the Approved Activities/Survey Works in question or may impose conditions which ensure that a Red Flag event will not arise.

10. **Signing**

The parties to this Licence have signed it on the date set out in the Particulars.

Signed for and on behalf of AWG:

Signed for and on behalf of the Operator:



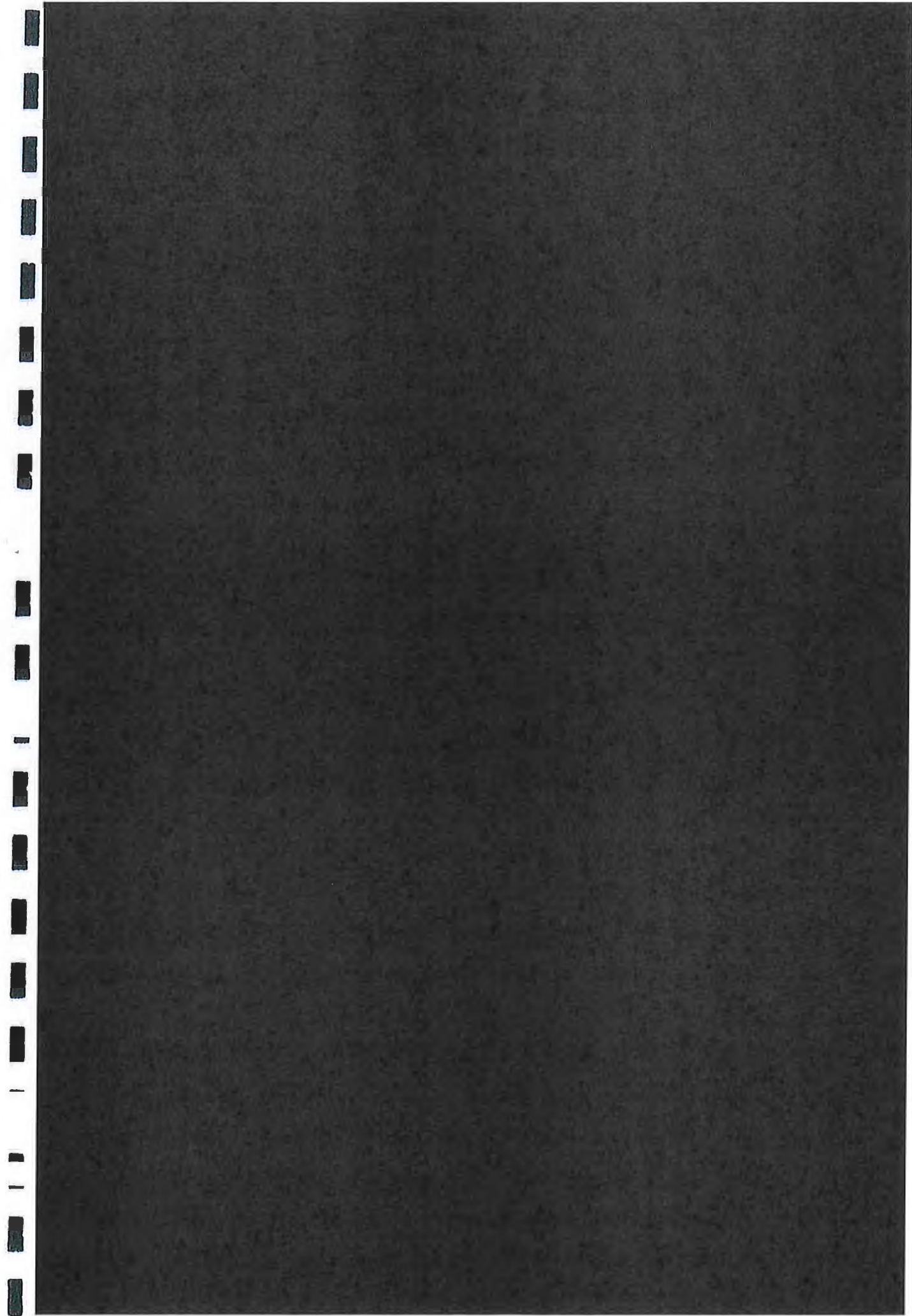
### INITIAL METHOD STATEMENT

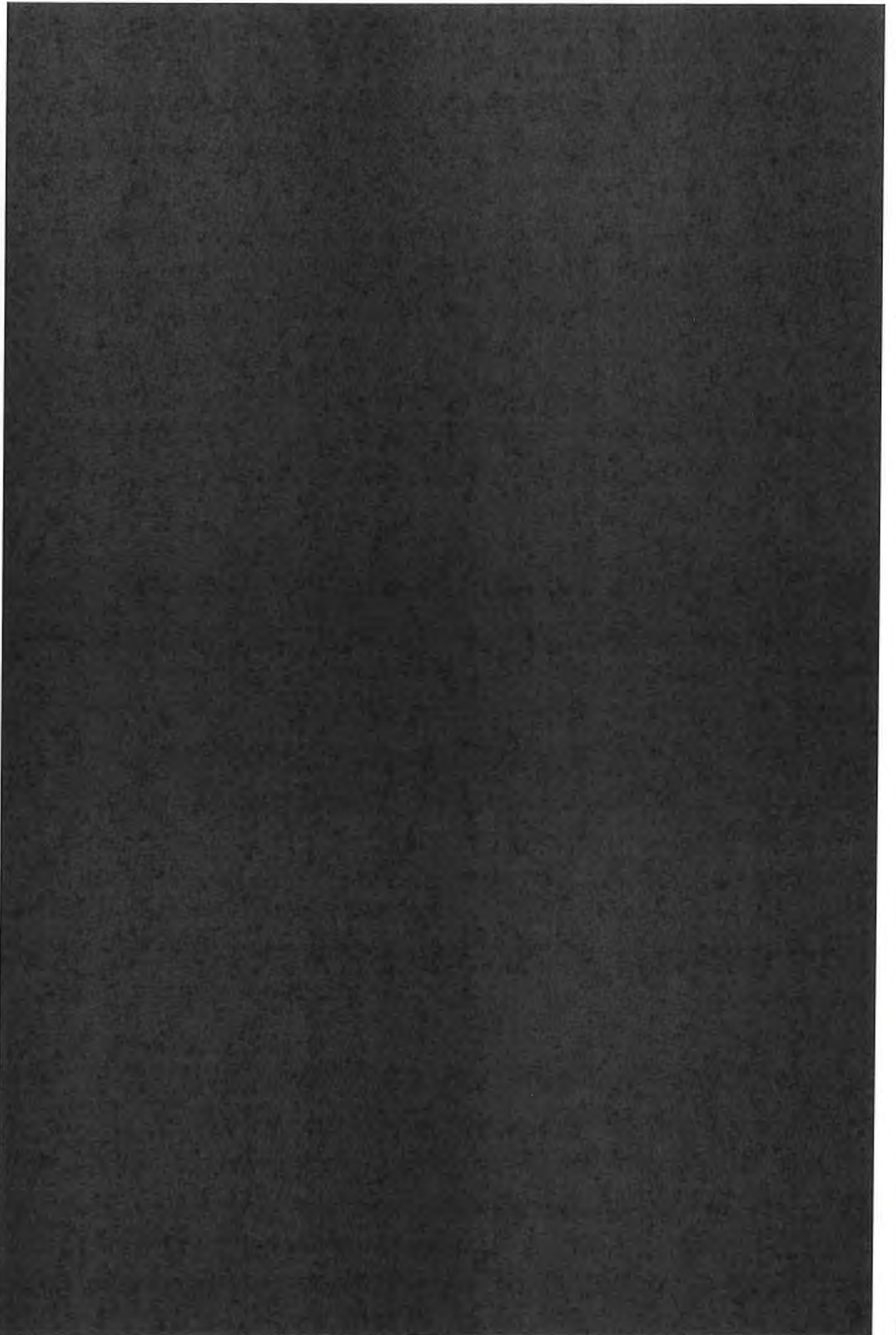
1. On each occasion entry is desired the Operator and subsequently each person wishing to effect entry who will not be accompanied by the Operator must
  - a. In good time before entry is required (Ideally at least 7 working days before entry is required) contact AWG to explain why entry is required and to obtain the access code for the Meridian DataSite;
  - b. Access the Meridian DataSite, read and understand and site specific risk assessment and all other relevant information and confirm this via the DataSite;
2. AWG will then e-mail the AWS site manager with such information and confirmation and ask the site manager to facilitate entry by arrangement; then
  - a. On site, any additional requirements of the AWS site manager must be satisfied and any additional information he may request in relation to the risk assessment and method statement must be provided/complied with, in particular if access is desired before the land to be accessed is fenced off by AWG from the AWS site;
  - b. A lone worker protocol must be produced if access is required by anyone who will be working alone on the site.

**APPENDIX 4**

**Worked Example**









**APPENDIX 5**  
**Draft Direct Agreement**

EVERSHEDS  
SUTHERLAND

\_\_\_\_\_  
**Dated:**

[Redacted]

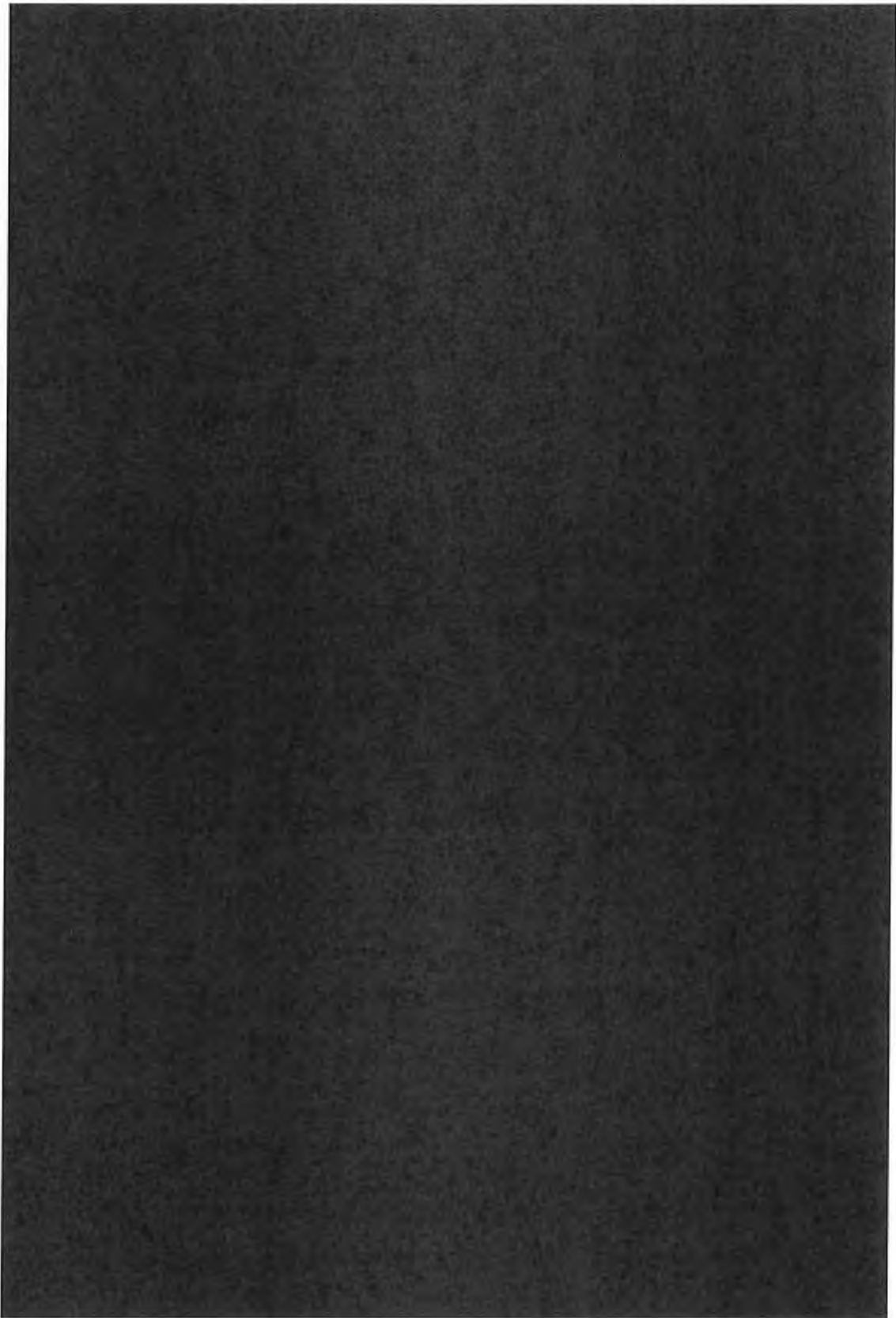
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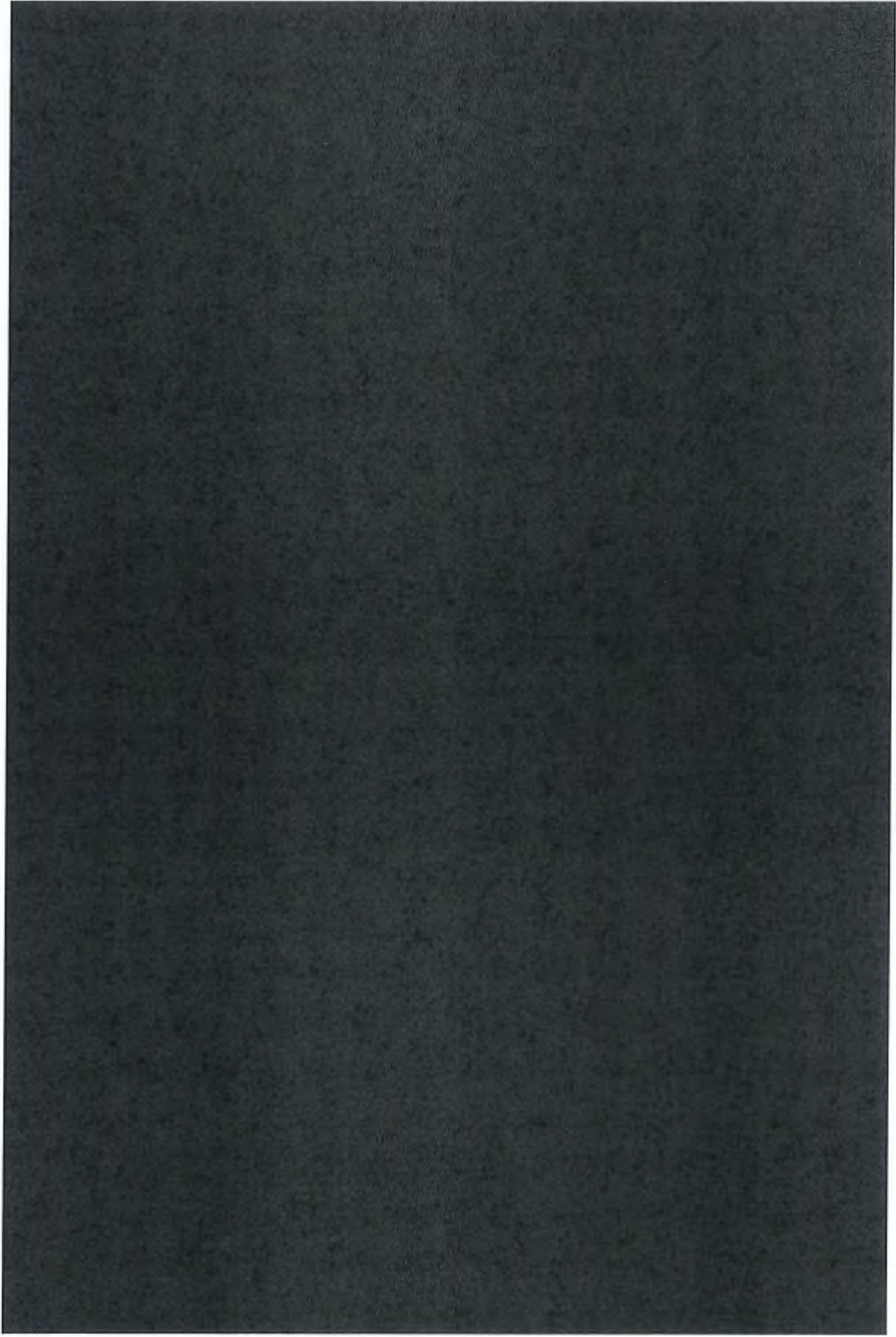
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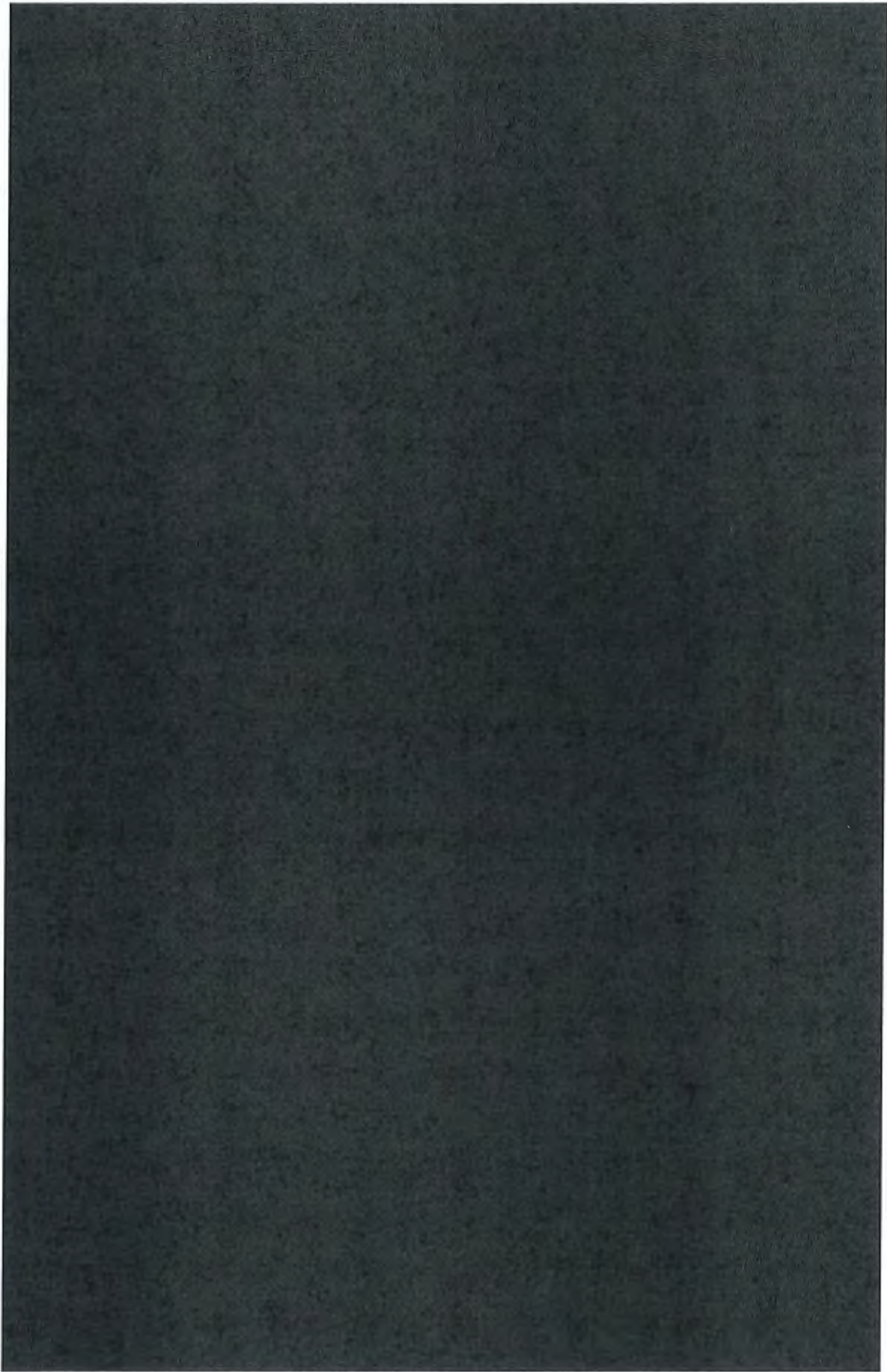
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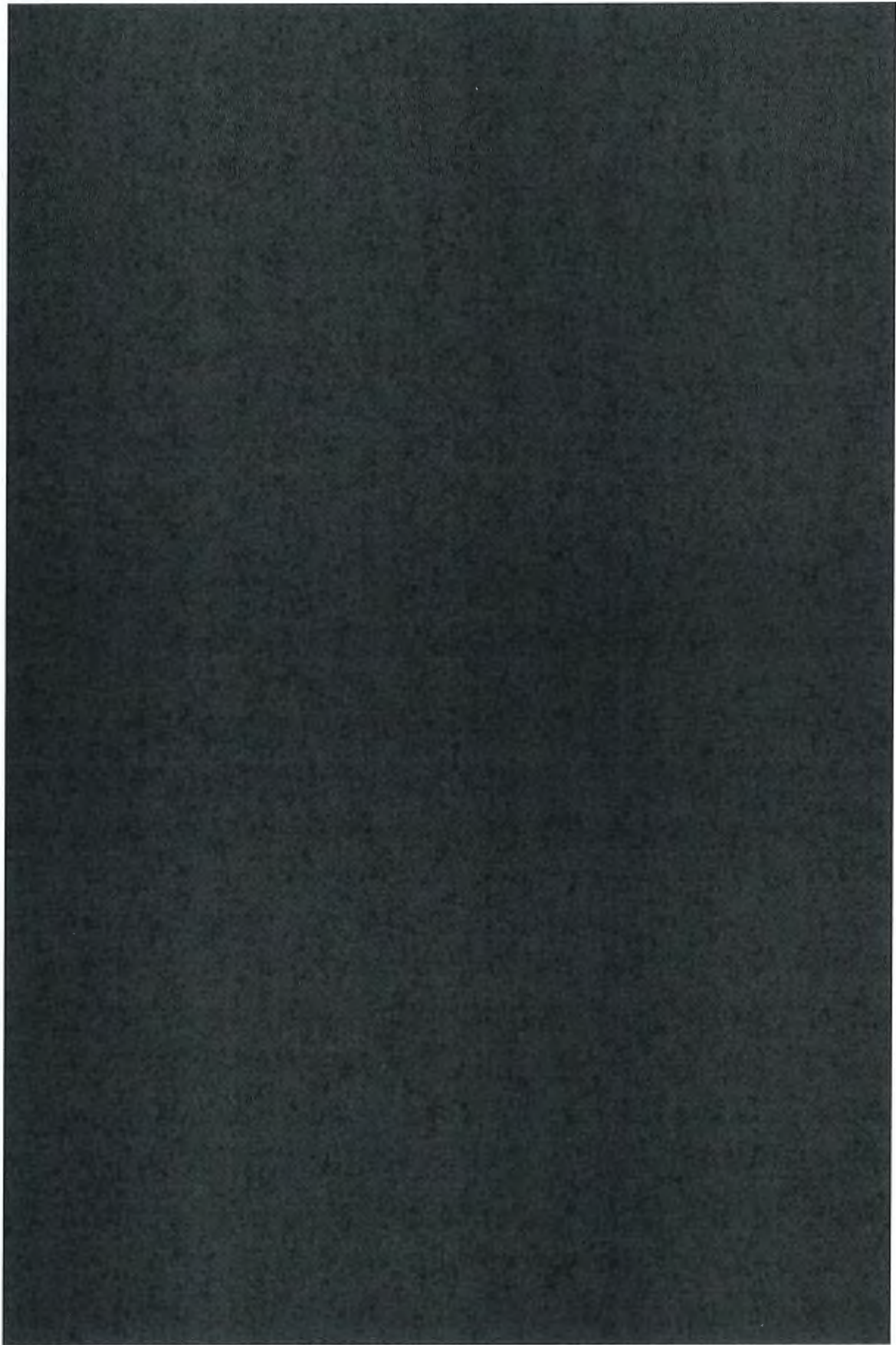






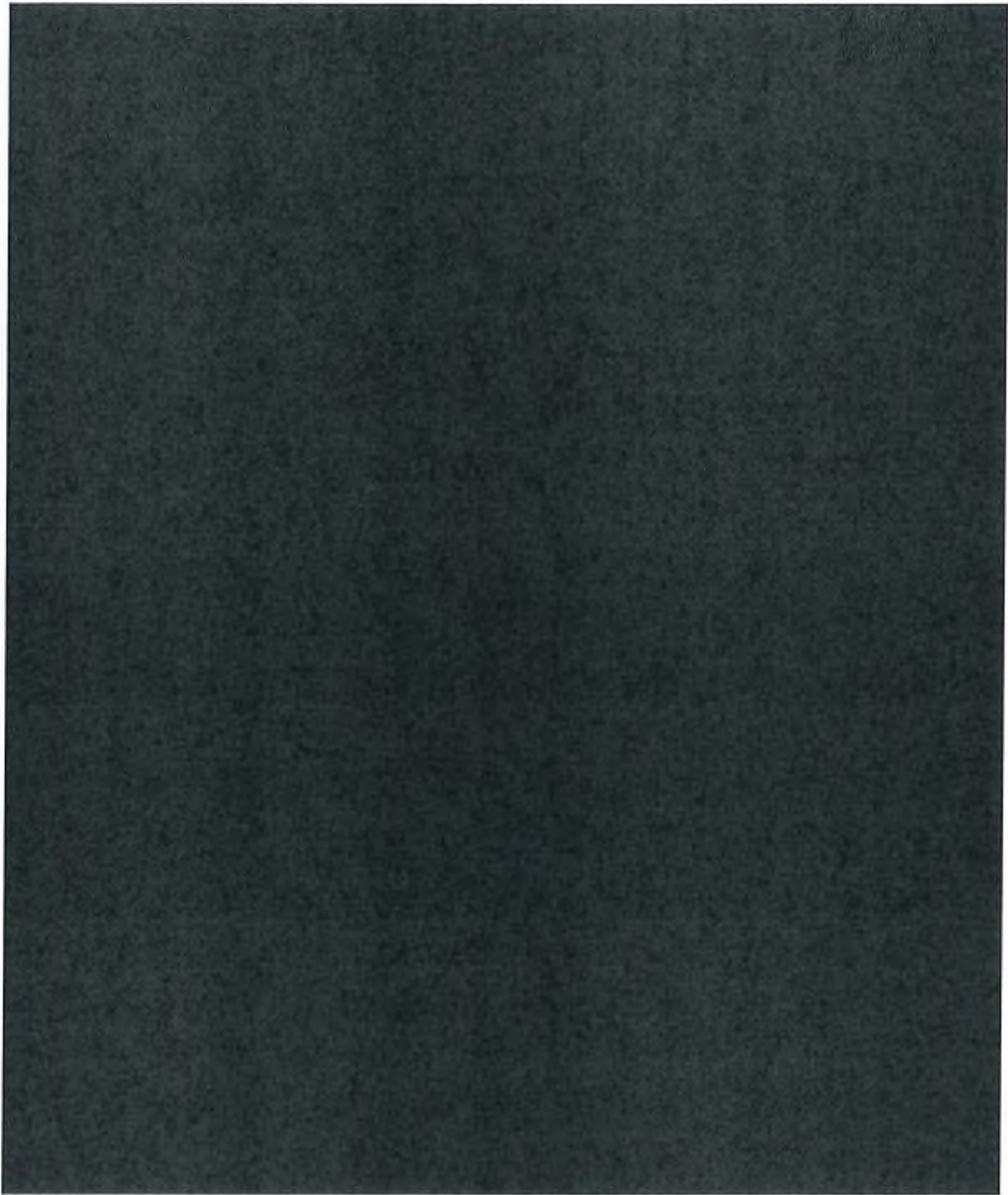














**APPENDIX 6**

**Form of Appointment and Warranty**

## **Consultancy Agreement**

In connection with a development at Cambridge 4, Cambridge

- (1) U & I (CAMBRIDGE) LIMITED
- (2) [INSERT NAME OF CONSULTANT]

Dated

2022



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DATE

2022

PARTIES

- (A) **U AND I (CAMBRIDGE) LIMITED** (Company registration No. [ ] whose registered office is at 7A Howick Place, London SW1P 1DZ; and
- (B) **[INSERT NAME OF CONSULTANT]** [(Company Registration No. [?])] whose [principal place of business] [registered office] is at.[?].

WHEREAS:

- (1) The Employer wishes to appoint the Consultant to provide certain [*insert description of the services/role*] services in connection with the Project on the terms and conditions set out in this Agreement and the Consultant has agreed so to act for the Project.

NOW IT IS HEREBY AGREED as follows:

1. **Definitions**

- 1.1 In this Agreement the following expressions shall have the following meanings:

"**Additional Fees**" means the fees calculated in accordance with Clause 11;

"**Additional Services**" means any of those services set out in Part 3 of Schedule 3 which the Employer may from time to time instruct the Consultant to carry out;

"**Adjudicator**" means the person named as such in Schedule 1 or if no person is named or if the person named is not available such other person as may be appointed from time to time in accordance with Schedule 1 to act as Adjudicator in place of the Adjudicator so appointed;

"**Architect**" means the person named as such in Part 1 of Schedule 3 or any other person to be appointed by the Employer from time to time and notified in writing to the Consultant to act as Architect in place of the person so named or appointed; [~~Delete if Consultant is the Architect~~];

"**Base Rate**" means the rate set from time to time by the Bank of England's Monetary Policy Committee or any successor to it;

"**Basic Services**" means the services set out in Part 2 of Schedule 3;

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2015;

"**Company**" means in Schedule 4 each of the persons notified in accordance with Clause 5.3 and shall include the Company's permitted assignees under Schedule 4;

"**Consultant**" means the second party to this Agreement;

"**Cost Plan**" means the cost plan for the Project contained in Schedule 2 prepared by or on behalf of the Employer, as the same may be amended by the Employer from time to time;

"**Design Documents**": means all existing and future plans, drawings, specifications, schedules, reports, calculations, correspondence and other documents (including any computer software developed by the Consultant and used to generate them and any designs contained in them) prepared or provided by the Consultant for or in connection with the Project and the BIM Model; [~~Delete the words "plans, drawings, specifications," if Consultant is not Architect, Mechanical & Electrical Engineer or Structural Engineer~~];



**"Development Agreement"** means the funding agreement made or to be made between the Employer (1) Cambridge 4 LLP and Land Securities Property Holdings Limited;

**"Employer"** means the first party to this Agreement and shall include the Employer's permitted assignees under this Agreement;

**"Employer's Brief"** means the brief set out in Schedule 2 identifying generally the Employer's requirements in relation to the Project as the same may be amended from time to time in accordance with the Employer's instructions;

**"Fee"** means the fee specified in Schedule 1 and payable to the Consultant in respect of the Basic Services;

**"Intellectual Property"** means all rights of copyright, and all trade-marks, service marks, trade names, patents, inventions, registered and unregistered design rights and other similar rights (including know-how);

**"Project"** means the works described in the Employer's Brief;

**"Project Documents"** means the Development Agreement;

**"Project Programme"** means the programme for the Project contained in Schedule 2 agreed or to be agreed by the Employer, the Consultant, and the other members of the Project Team as may be amended by the Employer from time to time;

**"Project Team"** means collectively the Consultant, those consultants listed in Part 1 of Schedule 3 and any further or other consultants engaged by the Employer in connection with the Project and notified in writing to the Consultant. Where the Consultant is novated pursuant to Clause 5, the Project Team shall after the date of novation be as stated in Part 1 of Schedule 3;

**"Reimbursable Expenses"** means the costs and expenses referred to in Schedule 1 wholly and necessarily incurred by the Consultant in performing the Services;

**"Services"** means the Basic Services and the Additional Services

**"Site"** means the site of the Project briefly described in the Employer's Brief;

**"Third Party Rights"** means the rights set out in Schedule 4, to be granted to the persons referred to in Clause 5.3; and

**"Work Stage"** means one of the stages into which the Basic Services are divided as set out in Part 2 of Schedule 3.

1.2 In this Agreement, unless the context otherwise requires:

- (a) references in the singular shall include references in the plural and vice versa, words denoting natural persons shall include corporations and any other legal entity and vice versa, and words denoting any gender shall include every gender;
- (b) the words "including", "includes" or "include" are to be construed without limitation;
- (c) headings are inserted for convenience only and are to be ignored for the purposes of construction; and
- (d) a reference to any statute or statutory instrument shall be construed as including a reference to any modification, extension or re-enactment of it.



## 2. Consultant's Obligations

2.1 The Consultant shall provide the Services in accordance with the terms of this Agreement. The Consultant warrants that it has exercised and that it will continue to exercise in the performance of the Services the reasonable skill, care and diligence to be expected of an appropriately qualified consultant in the discipline to which the Services relate holding itself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project.

### 2.2

(a) For the purposes of this Clause 2.2, material is "prohibited" if, in the context of its use in the Project (whether alone or in combination with other materials):

- (i) it poses a hazard to the health and safety of any person who may come into contact with the Project (whether during its construction or after its completion);
- (ii) either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or
- (iii) it poses a threat to the structural stability or performance or the physical integrity of the Project or any part or component of the Project.

(b) The Consultant warrants that it has not and will continue not to specify and shall exercise the standard of care referred to in Clause 2.1 not to permit to be used any materials which at the time the Project is being carried out are not in accordance with the guidelines contained in the edition of the publication "*Good Practice in the Selection of Construction Materials*" (2011: British Council for Offices) current at the date of specification or generally accepted or reasonably suspected of:

- (i) being prohibited in themselves;
- (ii) becoming prohibited when used in a particular situation or in combination with other materials;
- (iii) becoming prohibited with the passage of time;
- (iv) becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or
- (v) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.

#### ***[Delete Clause 2.2 for the Quantity Surveyor]***

2.3 The Consultant shall, exercising the standard of care referred to in Clause 2.1, co-ordinate the design of the Project by the Project Team. The Consultant shall give such instructions and directions to the Project Team as shall be necessary in relation to such co-ordination. The Consultant shall programme the activities of the Project Team and shall report to the Employer any failure by any member of the Project Team to comply with the Consultant's programme for the same. The Consultant shall, exercising the standard of care set out in Clause 2.1, co-ordinate design services and produce design information and co-ordinate and integrate into the overall design for the Project the designs produced by the Consultant and the Project Team. ***[Delete for all consultants except Architect and delete final sentence if Architect is not novated]***



- 2.4 The Consultant shall co-operate with the Architect in the co-ordination by the *[use these words in brackets for the Employer's Agent & Quantity Surveyor appointments]* of the design of the Project by the Project Team. The Consultant shall comply with any instructions and directions given by the Architect in relation to such co-ordination and shall, in particular, but without limitation, comply with the Architect's programme for the activities of the Project Team unless prevented or delayed by causes outside the Consultant's control. *[Delete for Architect]*
- 2.5 The Consultant shall comply at all times with the Employer's (or his appointed representative's) *[Do not use words in brackets in Employer's Agent appointment]* instructions and directions in relation to the Project.
- 2.6 The Consultant shall perform the Services in accordance with the Project Programme unless prevented from so doing by circumstances outside the Consultant's reasonable control. The Consultant shall promptly notify the Employer if it has been so prevented from performing the Services and shall take all reasonable steps to mitigate any delay to the Project Programme.
- 2.7 If the Consultant has provided any part of the Services in relation to the Project, whether for the Employer or any other party, before the date of the Agreement, the provision of such Services shall be deemed to be subject to the terms of this Agreement and the Fee shall be deemed to include payment for such Services. Any payment made for any part of the Services prior to the date of this Agreement shall be deemed included in the Fee.
- 2.8 The Consultant shall:
- (a) comply with the reasonable requirements of the Employer with regard to any access to the Site;
  - (b) not make any material alteration or addition to, or omission from, any design approved by or on behalf of the Employer without the Employer's prior written approval;
  - (c) attend all site meetings relevant to the Services and shall also attend meetings of the other consultants relating to the Project, where reasonably required, and such other meetings as may reasonably be necessary for the proper performance of the Services and the completion of the Project; and
  - (d) ensure that the Services and any design contained therein comply with any measurement requirements set out in any agreements for lease, the Development Agreement.
- 3. Employer's Brief and Statutory Requirements**
- 3.1 The Consultant shall comply with the requirements of the Employer's Brief but not so as to exclude the exercise of independent judgment on the part of the Consultant. The Consultant shall promptly notify the Employer if, acting reasonably and fairly, it believes that amendment to the Employer's Brief is necessary to ensure that the Project complies with the provisions of this Clause 3 or for any other reason. Nothing contained in the Employer's Brief shall relieve the Consultant from any of its obligations to the Employer under this Agreement.
- 3.2 The Consultant warrants to the Employer that it will carry out the Services so as to see to it that the Design Documents shall comply with all relevant statutory requirements, regulations and permissions.
- 4. Health and Safety**
- 4.1 *[Insofar as it is relevant to the Consultant,] [use for Employer's Agent]* The Consultant shall perform all the functions and duties required of a "designer" under the CDM Regulations. The Consultant warrants that it is competent to act as a "designer" for the Project and that it has



and will continue to allocate adequate resources to enable It fully to perform all functions and duties required of It under the CDM Regulations. *[Delete for Quantity Surveyor]*

- 4.2 The Consultant shall perform all the functions and duties of the Principal Designer for the Project as defined in the CDM Regulations. The Consultant warrants that it is competent to act as Principal Designer for the Project and that it has and will continue to allocate adequate resources to enable It fully to perform all the functions and duties of the Principal Designer under the CDM Regulations. *[Delete if the Consultant is not the Principal Designer]*
- 4.3 The Consultant shall liaise with and co-operate with the Principal Designer for the Project in the performance by It of all functions and duties as defined in the CDM Regulations. *[Delete if the Consultant is the Principal Designer]*
- 4.4 The Consultant shall in the performance of the Services observe the requirements of the current edition of the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation published by the Construction Confederation and the Fire Protection Association.
- 4.5 The Consultant shall in the performance of the Services comply with the Employer's health and safety requirements and any other policy statements produced by the Employer and as notified to the Consultant from time to time.

## 5. Third Parties

- 5.1 The Consultant acknowledges that the Employer may enter into agreements with third parties in connection with the development, funding, sale or letting of the whole or part of the Project and that at the date of this Agreement the Employer is committed to obligations under the Project Documents. The Consultant shall review any such documents (including the Project Documents) on receipt of the same and shall notify the Employer if the Consultant considers that any aspect of such documents are incompatible with the Employer's requirements for the Project. The Consultant warrants that It has used and shall continue to use the standard of care described in clause 2.1 to assist the Employer in complying with such agreements and Project Documents and so as not to cause a breach by the Employer of the obligations owed by the Employer to any such third parties under such agreements and Project Documents to the extent that the Employer shall have notified the Consultant of them and provided the Consultant with copies of the same or of the relevant extracts therefrom.
- 5.2 The Employer and the Consultant hereby confirm that, subject to the Third Party Rights but otherwise notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
- 5.3 The rights set out in Parts 1 and/or 2 of Schedule 4 shall vest in any of the following on the date on which the Employer or U and I (Projects) Limited issues a written notice to the Consultant identifying such person and the nature of its interest in the Project:-
- (a) Cambridge 4 LLP
  - (b) Homes England
  - (c) any affordable housing provider and/or social housing provider;
  - (d) any person providing finance in connection with the Site and/or Project;
  - (e) any first purchaser of all or of each and every separate part of the Site and/or Project; and/or
  - (f) any mortgagee of such first purchaser(s); and/or



- (g) any first tenant of all or of each and every separate part of the Site and/or Project; and/or
- (h) any estate management company; and/or
- (i) any group company of the Employer (meaning a subsidiary of the Employer, a holding company of the Employer or a subsidiary of a holding company of the Employer); and/or
- (j) any third party with a commercial or legal interest in the Project.

Provided that the Employer shall not be entitled to give notice under this Clause 5.3 with respect to any person with whom the Consultant has entered into a deed of collateral warranty pursuant to Clause 5.6.

- 5.4 No right of the Employer and the Consultant to agree any amendment, variation, waiver or settlement in respect of this Agreement or to terminate the Consultant's engagement under this Agreement shall be subject to the consent of any person who has rights under this Agreement by virtue of Contracts (Rights of Third Parties) Act 1999. Notwithstanding the foregoing, the Employer and the Consultant shall not be entitled to amend or vary the express provisions of Parts 1 and 2 of Schedule 4 of this Agreement without the consent of any person who has been identified by the Employer in any notice issued to the Consultant under Clause 5.3.
- 5.5 The Employer acknowledges that the Consultant shall not be in breach of this Agreement by complying with the obligations imposed on it as contained in paragraphs 5 and 6 of Part 1 of Schedule 4.
- 5.6 The Employer or U and I (Projects) Limited may, as an alternative to the Third Party Rights, request the Consultant in writing to provide a deed or deeds of collateral warranty in favour of any person referred to in Clause 5.3 and the Consultant shall within 14 days of receiving such a request execute and deliver to the Employer or U and I Projects Limited a deed of collateral warranty in favour of such person on terms set out in Schedule 5 with such amendments as may be proposed by the Employer or U and I (Projects) Limited and approved by the Consultant (such approval not to be unreasonably withheld or delayed).
- 5.7 The Employer shall bear the costs of preparing the legal documents referred to in Clause 5.6. Otherwise, the Consultant shall bear its own costs.

#### **6. Consultant's Personnel**

- 6.1 The persons named in Schedule 1 or any replacements of them in accordance with Clause 6.3 shall carry out the functions respectively allocated to them and for the period specified in Schedule 1. The person identified in Schedule 1 as the partner or director in charge shall direct and control the overall performance by the Consultant of the Services and such person or any replacement in accordance with Clause 6.3 shall have full authority to act on behalf of the Consultant for all purposes in connection with this Agreement.
- 6.2 The Consultant shall not remove the persons named in Schedule 1 or any replacements of any of them in accordance with Clause 6.3 without the prior written consent of the Employer which consent shall not be required in case of permanent incapacity, death, sickness or where such person leaves the employment of the Consultant. The Employer shall be entitled to require the removal from the performance of the Services of any persons employed by the Consultant whose performance or conduct is, in the reasonable opinion of the Employer, unsatisfactory.
- 6.3 If any of the persons named in Schedule 1 or any replacements of them in accordance with Clause 6.3 are removed in accordance with Clause 6.2, the Consultant shall replace such person with a person of at least the same experience and expertise whose identity shall be subject to the prior written approval of the Employer, which approval shall not be unreasonably withheld or delayed.



**7. Consultant's Authority**

7.1 Except in the case of an emergency, the Consultant shall not, without the prior written approval of the Employer:

- (a) make any amendment to the Employer's Brief;
- (b) make any alteration to or omission from the design of any part of the Project which has previously been approved or agreed by the Employer;
- (c) make any alteration to the lettable area of the Project as stated in the Employer's Brief;
- (d) enter into any contractual or other commitment on behalf of the Employer;
- (e) commence those of the Services comprised in any Work Stage.

7.2 No approvals, comments or consents from the Employer in connection with the Project shall in any way relieve the Consultant of its obligations under this Agreement.

**8. Professional Indemnity Insurance**

8.1 Without prejudice to its obligations, the Consultant shall effect and shall maintain for a period of 12 years from the date of practical completion of the Project a professional indemnity insurance policy with a limit of indemnity of not less than the amount stated in Schedule 1 for any one occurrence or series of occurrences arising out of any one event in respect of any negligence and/or breach of contract by the Consultant in the performance of the Services, provided always that such insurance is available in the market at commercially reasonable premium rates. Such insurance shall be with a well-established insurance office or underwriter of repute.

8.2 The Consultant shall immediately inform the Employer if the insurance referred to in Clause 8.1 ceases to be available at commercially reasonable premium rates and terms or if, for any other reason, the Consultant believes that it will be unable to maintain insurance, in order that the means of best protecting each party's respective position in respect of the Project in the absence of such insurance can be discussed.

8.3 As and when reasonably requested to do so by the Employer, the Consultant shall produce for inspection documentary evidence to the reasonable satisfaction of the Employer that the insurance referred to in Clause 8.1 is being maintained.

**9. Employer's Obligations**

9.1 The Employer shall supply to the Consultant in such reasonable time as not to delay or disrupt the performance by the Consultant of the Services, any necessary and relevant data and information in the possession of the Employer or which may only be obtained by the Employer.

9.2 The Employer shall give, and shall procure the Project Team give, such assistance to the Consultant as shall reasonably be required by the Consultant in the performance of the Services, provided that any such obligation of the Employer shall be without prejudice to the Consultant's obligations under this Agreement.

9.3 The Employer has appointed the person named in Schedule 1 to act on its behalf in relation to the Project. Such person has full authority to act on the Employer's behalf in relation to any matter in respect of the Project or this Agreement. Such person may delegate to any other person or persons the right and authority to exercise or perform any of its rights or obligations under this Agreement and may thereafter at any time revoke the whole or any part of such right or authority by notice in writing to the Consultant.



10. **Payment**

- 10.1 The Employer shall pay to the Consultant for the performance of the Consultant's obligations in accordance with this Agreement:
- (a) The Fee;
  - (b) Any Additional Fees; and
  - (c) The Reimbursable Expenses.
- 10.2 The Fee shall be payable by the instalments set out in Schedule 1, provided that the Employer shall be entitled to reschedule such instalments appropriately if at any time the amount of the Fee which would otherwise be due and payable does not correspond as a proportion of the whole of the Fee to the Basic Services performed as a proportion of the whole of the Basic Services.
- 10.3 The Additional Fees shall, unless otherwise agreed under Clause 11, be payable following completion of the Additional Services to which they relate.
- 10.4 The Reimbursable Expenses and the charges for resident site staff shall be payable following the performance of the Services to which they relate upon production of such documents, vouchers and receipts as shall be necessary to substantiate the same.
- 10.5 The Consultant shall submit to the Employer valid VAT invoices from time to time as and when any sums become due to the Consultant under this Agreement but not more frequently than monthly. Such invoices shall show both sums due and all sums previously invoiced. Such invoices shall be supported by such evidence as may reasonably be required to prove that the sums shown on them are properly due and payable. Payment shall be due to the Consultant on the date of receipt by the Employer of each VAT invoice.
- 10.6 Not later than five days after the date on which any payment becomes due to the Consultant under this Agreement, the Employer shall give notice to the Consultant specifying the sum that the Employer considers to be due as at the due date and the basis on which that sum is calculated. Subject to any notice given by the Employer under Clause 10.7 the amount to be paid by the Employer under Clause 10.8 shall be the sum stated as due in its notice pursuant to this clause. If the Employer does not give a notice in accordance with this clause then, subject to any notice given by the Employer under Clause 10.7, the amount to be paid by the Employer under Clause 10.8 shall be the sum stated as due in the Consultant's invoices pursuant to Clause 10.5.
- 10.7 The Employer may give to the Consultant notice of the Employer's intention to pay less than the sum notified or due pursuant to Clause 10.6 and such notice shall specify:
- (a) the amount that the Employer considers to be due on the date the notice is served; and
  - (b) the basis on which that sum is calculated.
- Such notice shall be given not later than five days before the final date for payment of each invoice under Clause 10.8.
- 10.8 The Employer shall pay the Consultant all sums properly due under this Agreement (which shall not be less than the amount stated in any notice given pursuant to Clause 10.7) on or before the final date for payment of them which shall be the expiry of 60 days of receipt of the Consultant's VAT invoices under Clause 10.5.
- 10.9 If the Employer fails to pay the Consultant any sum properly payable under this Agreement on or before the final date for payment of it, the Employer shall pay the Consultant simple interest



on that sum from the relevant final date for payment of it until the actual date of payment calculated at a rate of 5% in excess of the Base Rate. It is agreed that this provision constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

- 10.10 Where the Employer does not comply with Clause 10.8, the Consultant shall be entitled (without prejudice to any other right or remedy) to suspend performance of any or all of its obligations under this Agreement by giving not less than seven days' notice to the Employer stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when the Employer makes payment in full of the amount due. Any period during which performance is validly suspended in pursuance of, or in consequence of, the right to suspend shall be disregarded in computing the time taken by the Consultant to complete any of the Services affected by the suspension. The Employer shall pay the Consultant a reasonable amount in respect of costs and expenses reasonably incurred by the Consultant as a result of the valid exercise of the right to suspend.

## 11. Additional Services

- 11.1 Immediately upon it becoming apparent that any of the Additional Services are or are likely to be required, the Consultant shall give written notice to the Employer specifying the circumstance or circumstances and, as soon as possible thereafter, shall submit full and detailed particulars of such Additional Services to the Employer.
- 11.2 The Employer may at any time instruct the Consultant in writing to perform any of the Additional Services. Save in the case of an emergency, the Consultant shall not perform any Additional Services unless and until so instructed by the Employer in writing.
- 11.3 The Employer may at any time require the Consultant to provide an estimate of the Additional Fees which it would require for performing any of the Additional Services and of the effect of such of the Additional Services on the Employer's programme for the Project and the Employer and the Consultant shall endeavour to agree an amount in respect of the Additional Fees.
- 11.4 The Additional Fees payable to the Consultant in respect of any of the Additional Services instructed by the Employer shall be such sum as is agreed between the Employer and the Consultant under Clause 11.3 or, failing such agreement, a sum calculated on the basis of the time wholly and necessarily expended by the Consultant in performing such Additional Services calculated at the hourly rates set out in Schedule 1. Such rates are inclusive of all fees, costs, expenses, disbursements and profits in connection with the Additional Services other than the Reimbursable Expenses.
- 11.5 No Additional Fees shall be payable to the Consultant to the extent that any of the Additional Services are necessitated, in whole or in part, by any negligence, omission or default on the part of the Consultant.

## 12. Copyright and Confidentiality

- 12.1 All Intellectual Property in the Design Documents shall remain vested in the Consultant, but the Consultant hereby grants to the Employer an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Design Documents and to reproduce the designs and contents of them for any purpose whatsoever relating to the Project including, but without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable the Employer to copy and use the Design Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained in them for any extension of the Project. Such licence shall continue to subsist notwithstanding the termination (for any reason) of this Agreement. The Employer shall be entitled to grant sub-licences to others in relation to the Design Documents. The Consultant shall not be liable to the Employer or any sub-licensee for any use of the Design Documents for any purpose other than that for which the



same was prepared or provided by the Consultant. Copyright in all information in accordance with the BIM Protocol shall vest in the Employer. Copyright in the BIM Model and the BIM Protocol shall remain vested in the Employer. The Employer hereby grants to the Consultant a royalty-free, irrevocable, non-exclusive, non-terminable sub-licence to use the BIM Model for purposes connected with the design of the Works. The sub-licence shall not carry the right to grant sub-sub-licences and this sub-licence shall not be transferable to third parties without the Employer's express written consent. The Consultant shall not during its engagement hereunder (save to essential employees, suppliers, contractors and consultants in the proper course of their duties and save as required by law or for Stock Exchange compliance) or at any time after its expiry or termination for any reason disclose to any person any information relating to this Agreement or the Project (including, but without limitation, the identity of any potential purchaser or tenant of the Project or part thereof) unless and until such information becomes public knowledge through no fault of the Consultant. The Consultant shall ensure that any persons having access to such information are aware of these obligations.

- 12.2 The Consultant shall not, without the prior written approval of the Employer, take or permit to be taken any photographs of the Project for use in any publicity or advertising or publish alone or in conjunction with any other person, any articles, photographs or other illustrations relating to the Project or any part thereof. The Consultant shall not impart to any publication, journal or newspaper or any radio or television programme any information regarding the Project.
- 12.3 The Employer shall, wherever in its discretion it considers the same to be appropriate, endeavour to identify the Consultant as being the author of the Design Documents. The Consultant agrees and undertakes:
- (a) that it will not assert against the Employer or any other person, who with the permission of the Employer publishes commercially, exhibits in public, films, broadcasts, includes in a cable programme service, photographs or otherwise copies or deals (electronically or otherwise) with any image of the Project or any of the Design Documents any right which the Consultant may have to be identified as author of the Project or any part thereof or such Design Documents under Section 77 of the Copyright, Designs and Patents Act 1988 ("**the 1988 Act**").
  - (b) that it hereby waives any rights it may have pursuant to Section 80 of the 1988 Act or any legislation which may supplement the 1988 Act.
  - (c) that it shall obtain a written waiver of all rights any of its employees, agents or sub-consultants from time to time may have under or pursuant to Chapter IV of Part 1 of the 1988 Act in relation to the Project or any part thereof or any of the Design Documents. [*Use this Clause 12.3 only for Architect, Mechanical and Electrical Engineer, Structural Engineer*]
- 12.4 The Consultant warrants that:
- (a) it is and will be the legal and beneficial owner of all Intellectual Property in the Design Documents free from any restrictions or encumbrances;
  - (b) the Design Documents are and will be original and have not and will not be copied from any other works or materials;
  - (c) the Design Documents have not and will not infringe any rights of any third party; and
  - (d) the use and reproduction of the Design Documents by the Employer and any other persons involved in the Project does not and will not infringe any rights of any third party.



**13. Assignment and Sub-Contracting**

- 13.1 The Consultant shall not assign, transfer or sub-contract to any person the performance of any of the Services or all or any of its rights or obligations under or pursuant to this Agreement.
- 13.2 Subject to clause 13.3, the Employer may not, without the prior written consent of the Consultant, such consent not to be unreasonably withheld or delayed, assign or transfer any obligation under this Agreement.
- 13.3 The Consultant hereby consents to any assignment by the Employer of all of its rights and obligations under or pursuant to this Agreement to any person providing any finance to the Employer in connection with the Project and/or to any of the Employer's holding companies or subsidiaries (within the meaning of Section 1159 of the Companies Act 2006) and any other company in which the Employer or any such holding company or subsidiary holds more than 25 per cent of the issued equity share capital (as defined by Section 548 of the Companies Act 2006)

**14. Termination**

- 14.1 The Employer may terminate the Consultant's engagement under this Agreement at any time forthwith by notice in writing to the Consultant.
- 14.2 Without prejudice to the generality of Clause 14.1, the Employer may terminate the Consultant's engagement under this Agreement at any time forthwith by notice in writing to the Consultant if in relation to this Agreement or any other contract with any company which is directly or indirectly owned or controlled by U and I Group plc the Consultant or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010.
- 14.3 Upon any termination of the Consultant's engagement under this Agreement, the Consultant shall take immediate steps to bring to an end the Services in an orderly manner, but with all reasonable speed and economy. The Consultant shall also deliver to the Employer within 14 days of any such termination all of the Design Documents prepared or in the course of preparation by the Consultant or in the Consultant's possession relating to the Project.
- 14.4 Without prejudice to the Employer's rights in respect of any breach by the Consultant of its obligations under this Agreement, the Employer shall, in accordance with Clause 10, pay to the Consultant any sums which have accrued due to the Consultant up to the date of termination together with a proportion of the next following instalment of the Fee and a proportion of the Additional Fees, charges for resident Site staff and any Reimbursable Expenses, commensurate with the Services properly performed up to the date of termination. Where the Consultant is not in breach at the date of any such termination, the Employer shall in addition pay the Consultant a further amount in respect of the Fee calculated as if the Consultant had continued to provide the Services for one month following the date of termination.
- 14.5 No termination of the Consultant's engagement under this Agreement shall render the Employer liable to the Consultant for any claim for loss of profit, loss of fees or other similar losses.

**15. General**

- 15.1 The addresses for service of the parties shall be those set out in Schedule 1 or subsequently notified in accordance with this Clause 15.1. Any notice required to be given by either party shall be in writing and service shall be effected either:

(a) personally, in which case service shall be deemed effective on delivery; or



- (b) by pre-paid recorded delivery post, in which case service shall be deemed effective two days after the day after posting.
- 15.2 Any dispute or difference arising under this Agreement may be referred at any time to adjudication in accordance with the following provisions:
  - (a) The Scheme for Construction Contracts SI 1998 No. 649 (as amended as at the date of this Agreement) shall apply.
  - (b) The Adjudicator's decision is binding until the dispute or difference is finally determined by the Courts as provided in Clause 15.4 or by agreement.
- 15.3 The Adjudicator shall have power to allocate his fees and expenses as between the parties.
- 15.4 Disputes shall be referred to the exclusive jurisdiction of the English Courts. This Agreement shall be governed by and construed in accordance with English law.
- 15.5 This Agreement supersedes any previous agreements between the parties in respect of the Services. Notwithstanding the date of this Agreement, the Consultant's engagement shall take effect from the date when the Consultant first commenced performance of the Services in respect of the Project.
- 15.6 No variation in the terms of this Agreement after the date hereof shall be effective unless contained in a written memorandum signed by the parties.
- 15.7 Where Clause 10 requires an act to be done within a specified period after or from a specified date, the period begins immediately after that date. Where the period would include Christmas Day, Good Friday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in England and Wales, that day shall be excluded.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a deed and delivered the same the day and year first before written.

**EXECUTED and DELIVERED as a DEED** )  
by the Employer acting by: )

.....  
Director

.....  
Director / Company Secretary

**EXECUTED and DELIVERED as a DEED** )  
by the Consultant acting by: )

.....  
Director

.....  
Director / Company Secretary

**OR**

**SIGNED and DELIVERED as a DEED by [** )  
] in the presence )  
of: )

~~[to be repeated for all equity partners]~~

Witness Signature:

.....

Name:

.....

Address:

.....

.....



Schedule 1

Fee, Reimbursable Expenses and Project Details

- 1 The Fee is the lump sum of \_\_\_\_\_ pounds (£ \_\_\_\_\_) but excluding the following:
- 1.1 the Additional Fees;
- 1.2 the Reimbursable Expenses;
- 1.3 value added tax.

The Fee shall be paid by the following instalments:

*[This must amount to an enforceable mechanism for making Interim payments. Amount of Instalment and when it becomes due (milestone or date) must be certain.]*

- 2 The Reimbursable Expenses are as follows:
- 3 The persons referred to in Clause 6.1, their respective functions and periods of involvement in the Project are as follows:

Partner or Director in charge - \_\_\_\_\_

*[Include Identity of Partner or Director, details of principal members of Consultant's team including Site staff who should be specifically identified as such]*

- 4 The minimum number of weekly Site visits referred to in Clause Error! Reference source not found! is \_\_\_\_\_.

- 5 The Fee excludes payment for resident Site staff as referred to, which shall be charged at the following rates and for the following periods:

Name/Title	Rate	Period
[?]	[?]	[?]

- 6 The amount of the Consultant's professional indemnity insurance under Clause 8.1 is ten million pounds (£10,000,000) for any one occurrence or series of occurrences arising out of any one event.

- 7 The Employer's representative referred to in Clause 9.3 is \_\_\_\_\_.

- 8 The rates for Additional Services as referred to in Clause 11.4 are as set out below:

Category of Staff	Rate (per hour)
[?]	[?]

9 The Employer's address and numbers for service are as follows:

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

The Consultant's address and numbers for service are as follows:

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

10 The Adjudicator shall be a partner in the firm of [Gardiner & Theobald LLP], to be nominated from time to time by the senior partner.



**Schedule 2**

**The Employer's Brief, Project Programme, Cost Plan and BIM Protocol**

The Employer's Brief is as follows:

[Insert]

*[Insert Project Programme, Cost Plan]*

**Schedule 3**

**Part 1 - Scope of Services**

1

- 1.1 Save only for those elements that are identified below to be designed by other consultants, sub-contractors or suppliers, the works to be designed by the Consultant under this Agreement are:

*[Identify the physical extent of the works to be designed and, in particular, fringe areas.]*

*[As defined in the Employer's Design Responsibility Matrix.]*

*[As defined in [                      ].]*

2 **Project Team**

- 2.1 The Employer will appoint the following consultants to provide services in connection with the Project:

*[Set out other consultants. Where specialist consultants are appointed then their scope of work should be described.]*



**Schedule 3**

**Part 2 – Basic Services**

*[Insert relevant section of Services matrix depending on Consultant and procurement route]*

**The Basic Services comprise the following documents appended hereto:**

- **The Employer's Design Responsibility Matrix;**
- **The [insert any other services relevant to the Consultant's role] [For example, any reports prepared which might fall outside the scope of the matrix];**

**For the purposes of Interpretation, the priority of the documents describing the Basic Services shall be as set out above.**

### Schedule 3

#### Part 3 – Additional Services

The Employer may from time to time in writing instruct the Consultant to carry out any of these Additional Services:

- 1 Provide assistance in connection with planning appeals or public enquiries.
- 2 Substantially modify any design prepared by the Consultant and agreed by the Employer following any instructions from the Employer. Provided that the modification of design in discussion with the Employer before it is finally agreed by the Employer and/or the Project Team and the preparation of alternatives shall not constitute Additional Services.  
*[Delete for Employer's Representative and Quantity Surveyor]*
- 3 Provide advice and assist the Employer in the submission of and settlement of any substantial claims pursuant to the Project insurances.
- 4 Provide such services as may be necessary if at any time before the completion of the Project or any part thereof any materials, plant or equipment whether incorporated in the Project or not shall be materially damaged or destroyed.



## Schedule 4

### Part 1 - Third Party Rights

These rights may be given to any Company providing finance for the Project.

Expressions defined in Clause 1 of the Agreement shall have the same meanings for the purposes of the Third Party Rights set out in this Schedule 4 Part 1.

- 1 The Consultant warrants to the Company that it has complied with and shall continue to comply with its obligations pursuant to the Agreement and that it has exercised and shall continue to exercise in the performance of the Services the reasonable skill, care and diligence to be expected of an appropriately qualified consultant in the discipline to which the Services relate holding itself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project. In the event of any breach of this warranty:
  - 1.1 the Consultant shall be entitled in any action or proceedings by the Company to rely on any limitation in the Agreement and to raise the equivalent rights in defence of liability (save in relation to set-off and counterclaim under the Agreement or any other contract) as it would have had against the Company under the Agreement if in lieu of these rights the Company had been named as the Employer in the Agreement;
  - 1.2 the obligations of the Consultant under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Company to carry out any independent enquiry into any relevant matter.
  - 1.3 Notwithstanding any other provision, the Consultant agrees that it shall not be entitled to contend in defence of proceedings under the Agreement or otherwise that its liability to the Company is reduced or affected by virtue of the fact that the Employer has suffered no loss or a different loss from the Company as a consequence of any breach by the Consultant.
- 2
  - 2.1 For the purposes of this paragraph 2, material is "prohibited" if, in the context of its use in the Project (whether alone or in combination with other materials when specified as intended to be used by the Consultant):
    - (a) it poses a hazard to the health and safety of any person who may come into contact with the Project (whether during its construction or after its completion);
    - (b) either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or
    - (c) it poses a threat to the structural stability or performance or the physical integrity of the Project or any part or component of the Project.
  - 2.2 The Consultant warrants to the Company that it has not and will continue not to specify and shall exercise the standard of care referred to in paragraph 1 not to permit to be used any materials which at the time the Project is being carried out are not in accordance with the guidelines contained in the edition of the publication "*Good Practice in Selection of Construction Materials*" (2011: British Council for Offices) current at the date of specification or generally accepted or reasonably suspected of:
    - (a) being prohibited in themselves;



- (b) becoming prohibited when used in a particular situation or in combination with other materials;
- (c) becoming prohibited with the passage of time;
- (d) becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or
- (e) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

In the event of any breach of this warranty the provisions of paragraphs 1.1, 1.2 and 1.3 shall apply.

- 3 The Company has no authority to issue any direction or instruction to the Consultant in relation to performance of the Services unless and until the Company has given notice under paragraph 5 or 6.
- 4 The Company has no liability to the Consultant in respect of amounts due under the Agreement unless and until the Company has given notice under paragraph 5 or 6.
- 5 The Consultant agrees that, in the event of the termination of the agreement between the Employer and the Company ("the Finance Agreement") by the Company, the Consultant shall, if so required by notice in writing given by the Company and subject to paragraph 7, accept the instructions of the Company or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of the Agreement.
- 6 The Consultant further agrees that it shall not without first giving the Company not less than 28 days' notice in writing exercise any right it may have to terminate the Agreement or to treat the same as having been repudiated by the Employer or to discontinue or suspend the performance of any of the Services. Such right to terminate the Agreement or treat the same as having been repudiated or discontinue or suspend performance shall cease if, within such period of notice and subject to paragraph 7, the Company shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Company or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of the Agreement.
- 7 It shall be a condition of any notice given by the Company under paragraph 5 or 6 that the Company or its appointee accepts in such notice liability to the Consultant for payment of the amounts payable to the Consultant under the Agreement and for performance of the Employer's obligations including payment of any amounts outstanding at the date of such notice. Upon the issue of any notice by the Company under paragraph 5 or 6, the Agreement shall continue in full force and effect as if no right of termination on the part of the Consultant had arisen and the Consultant shall be liable to the Company and its appointee under the Agreement in lieu of its liability to the Employer. If any notice given by the Company under paragraph 5 or 6 requires the Consultant to accept the instructions of the Company's appointee, the Company shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Company's appointee.
- 8 If two or more valid notices claiming rights similar to those set out in paragraphs 5 and 6 are received by the Consultant the deemed order of priority of such notices shall be as follows:
  - 8.1 any person providing finance in connection with the Site and/or Project;
  - 8.2 Parkdale Investments Limited second; and
  - 8.3 any affordable housing provider or social housing provider third.



Only the notice deemed to have first priority, unless previously withdrawn or the rights thereunder are not exercised, shall take immediate effect and any notice by any other party shall be postponed until the notice from the party with prior priority is withdrawn or deemed to be withdrawn or the right to claim rights similar to those set out herein is at an end.

- 9 All Intellectual Property in the Design Documents shall remain vested in the Consultant but, the Company and its appointee shall have an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Design Documents and to reproduce the designs and content of them for any purpose related to the Project including, but without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable the Company and its appointee to copy and use the Design Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained in them for any extension of the Project and such licence shall continue to subsist notwithstanding the termination (for any reason) of this Agreement. The licence shall include the right to grant sub-licences on the same terms as the licence and shall be assignable. The Consultant shall not be liable for any such use by the Company or its appointee of any of the Design Documents for any purpose other than that for which the same were prepared by or on behalf of the Consultant.
- 10 The Consultant has and shall maintain professional indemnity insurance in the amount and for the period referred to in Clause 8 of the Agreement, provided always that such insurance is available in the market at reasonable premium rates. The Consultant shall immediately inform the Company if such insurance ceases to be available in the market at reasonable premium rates in order that the Consultant and the Company can discuss means of best protecting the respective positions of the Company and the Consultant in respect of the Project in the absence of such insurance. As and when it is reasonably requested to do so by the Company or its appointee under paragraph 5 or 6, the Consultant shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.
- 11 The rights conferred by this Schedule 4 Part 1 may be assigned:
- 11.1 to any group company of the Company (meaning a subsidiary of the Company, a holding company of the Company or a subsidiary of a holding company of the Company); and /or
- 11.2 as security to any person having or acquiring a mortgage or charge over the Site or Project or any part of it (and such rights may be reassigned on redemption); and/or
- 11.3 without the consent of the Consultant by the Company by way of absolute legal assignment to another company ("P1") taking any interest in the Project and/or the Site and by P1 by way of absolute legal assignment to another person ("P2") taking any interest in the Project and/or the Site without the consent of the Employer or the Consultant being required and such assignment shall be effective upon written notice thereof being given to the Employer and to the Consultant. Thereafter any assignment shall only be permitted with the consent of the Consultant (such consent not to be unreasonably withheld or delayed).
- 12 Any notice to be given by the Consultant hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Company at its registered office and any notice given by the Company hereunder shall be deemed to be duly given if it is addressed to "The Senior Partner"/"The Managing Director" and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Consultant or to the principal business address of the Consultant for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received 48 hours after being posted.
- 13 No action or proceedings for any breach of the rights conferred by this Schedule 4 Part 1 shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Project.

- 14 The Consultant shall, as the Company may at any time or times require, promptly execute and deliver a deed or deeds of warranty substantially in the form appended at Schedule 5 of the Agreement in favour of any third party contemplated by clause 5.3 of the Agreement (and for these purposes reference to the "Employer" in clause 5.3 of the Agreement shall be deemed to be reference to the Company).



#### Schedule 4

##### Part 2 – Third Party Rights – Purchasers/Tenants

These rights may be given to any first purchaser and/or first tenant each and every separate part of the Project

Expressions defined in Clause 1 of the Agreement shall have the same meanings for the purposes of the Third Party Rights set out in this Schedule 4 Part 2.

- 1 The Consultant warrants to the Company that it has complied with and shall continue to comply with its obligations pursuant to the Agreement and that it has exercised and shall continue to exercise in the performance of the Services the reasonable skill, care and diligence to be expected of an appropriately qualified consultant in the discipline to which the Services relate holding itself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project. In the event of any breach of this warranty:
  - 1.1 the Consultant's liability to the Company shall be limited to the proportion of the Company's losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same, on the following assumptions, namely that:
    - (a) the Project Team has provided third party rights to the Company as regards the performance of their services in connection with the Project in accordance with the terms of their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreements;
    - (b) that the Project Team and the Contractor have paid to the Company such proportion of the Company's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Company's losses.
  - 1.2 the Consultant shall be entitled in any action or proceedings by the Company to rely on any limitation in the Agreement and to raise the equivalent rights in defence of liability (save in relation to set-off and counterclaim under the Agreement or any other contract) as it would have against the Company under the Agreement if in lieu of these rights the Company had been named the Employer in the Agreement;
  - 1.3 the obligations of the Consultant under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Company to carry out any independent enquiry into any relevant matter.
  - 1.4 Notwithstanding any other provision, the Consultant agrees that it shall not be entitled to contend in defence of proceedings under the Agreement or otherwise that its liability to the Company is reduced or affected by virtue of the fact that the Employer has suffered no loss or a different loss from the Company as a consequence of any breach by the Consultant.
- 2
  - 2.1 For the purposes of this paragraph 2, material is "prohibited" if, in the context of its use in the Project (whether alone or in combination with other materials when specified as intended to be used by the Consultant):
    - (a) it poses a hazard to the health and safety of any person who may come into contact with the Project (whether during its construction or after its completion);
    - (b) either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life



expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or

- (c) it poses a threat to the structural stability or performance or the physical integrity of the Project or any part or component of the Project.

2.2 The Consultant warrants to the Company that it has not and will continue not to specify and shall exercise the standard of care referred to in paragraph 1 not to permit to be used any materials which at the time the Project is being carried out are not in accordance with the guidelines contained in the edition of the publication "*Good Practice in Selection of Construction Materials*" (2011: British Council for Offices) current at the date of specification or generally accepted or reasonably suspected of:

- (a) being prohibited in themselves;
- (b) becoming prohibited when used in a particular situation or in combination with other materials;
- (c) becoming prohibited with the passage of time;
- (d) becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or
- (e) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

In the event of any breach of this warranty the provisions of paragraphs 1.1, 1.2 and 1.3 shall apply.

3 The Company has no authority to issue any direction or instruction to the Consultant in relation to the Agreement.

4 All Intellectual Property in the Design Documents shall remain vested in the Consultant but, the Company and its appointee shall have an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Design Documents and to reproduce the designs and content of them for any purpose related to the Project including, but without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable the Company and its appointee to copy and use the Design Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained in them for any extension of the Project. Such licence shall continue to subsist notwithstanding the termination (for any reason) of the Agreement. The licence shall include the right to grant sub-licences on the same terms as this licence and shall be assignable. The Consultant shall not be liable for any use by the Company or its appointee of any of the Design Documents for any purpose other than that for which the same were prepared by or on behalf of the Consultant.

5 The Consultant has and shall maintain professional indemnity insurance in the amount and for the period referred to in Clause 8 of the Agreement, provided always that such insurance is available in the market at reasonable premium rates. The Consultant shall immediately inform the Company if such insurance ceases to be available in the market at reasonable premium rates in order that the Consultant and the Company can discuss means of best protecting the respective positions of the Company and the Consultant in the absence of such insurance. As and when it is reasonably requested to do so by the Company or its appointee the Consultant shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.



- 6 The rights conferred by this Schedule 4 Part 2 may be assigned:
  - 6.1 to any group company of the Company (meaning a subsidiary of the Company, a holding company of the Company or a subsidiary of a holding company of the Company); and /or
  - 6.2 without the consent of the Consultant by the Company by way of absolute legal assignment to another person ("P1") taking any interest in the Project and/or the Site and by P1, by way of absolute legal assignment, to another person ("P2") taking any interest in the Project and/or the Site without the consent of the Employer or the Consultant being required and such assignment shall only be effective upon written notice thereof being given to the Consultant. Thereafter any assignment shall only be permitted with the consent of the Consultant (such consent not to be unreasonably withheld or delayed).
- 7 Any notice to be given by the Consultant hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Company at its registered office and any notice given by the Company hereunder shall be deemed to be duly given if it is addressed to "The Senior Partner"/"The Managing Director" and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Consultant or to the principal business address of the Consultant for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received 48 hours after being posted.
- 8 No action or proceedings for any breach of the rights conferred by this Schedule 4 Part 2 shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Project.

Schedule 5

Collateral Warranty

DATE

200[ ]

PARTIES

- (1) [ ] (Company registration No. [ ]) whose registered office is at [ ] ("the Consultant").
- (2) [ ] (Company registration No. [ ]) whose registered office is at [ ] ("the Employer").
- (3) [ ] (Company registration No. [ ]) whose registered office is at [ ] ("the Company" which expression where the context admits shall include its permitted successors in title and assigns).

RECITALS

- (A) By a deed of appointment dated [ ] made between the Employer (1) and the Consultant (2) ("the Agreement") the Employer appointed the Consultant to provide the services described in the Agreement in connection with the Project. Words and expressions defined in the Agreement shall have the same meaning in this Deed.
- (B) By an agreement dated [ ] and made between the Company (1) and the Employer (2) ("the [Finance Agreement/Purchase Agreement/Agreement for Lease]") the Employer has agreed to procure a collateral warranty from the Consultant in the form of this Deed.

In consideration of £1 (one pound) paid by the Beneficiary to the Consultant (receipt of which the Consultant acknowledges) **THIS DEED WITNESSES**

- 1 The Consultant warrants to the Company that it has complied with and shall continue to comply with its obligations pursuant to the Agreement and that it has exercised and shall continue to exercise in the performance of the Services the reasonable skill, care and diligence to be expected of an appropriately qualified consultant in the discipline to which the Services relate holding itself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project. <sup>1</sup>[In the event of any breach of this warranty;
- 1.1 the Consultant's liability to the Company shall be limited to the proportion of the Company's losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same, on the following assumptions, namely that:
- (a) the Project Team has provided third party rights or a collateral warranty to the Company as regards the performance of their services in connection with the Project in accordance with the terms of their respective consultancy agreements and that there are no limitations on liability as between the respective consultants and the Employer in the consultancy agreements;
- (b) the Project Team and the Contractor have paid to the Company such proportion of the Company's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Company's losses.]

<sup>1</sup> Wording not to be included in funder or forward purchaser collateral warranty



- 1.2 the Consultant shall be entitled in any action or proceedings by the Company to rely on any limitation in the Agreement and to raise the equivalent rights in defence of liability (save in relation to set-off and counterclaim under the Agreement or any other contract) as it would have against the Company under the Agreement if in lieu of this Deed the Company had been named as the Employer in the Agreement;
- 1.3 the obligations of the Consultant under or pursuant to this Clause 1 shall not be released or diminished by the appointment of any person by the Company to carry out any independent enquiry into any relevant matter,
- 1.4 Notwithstanding any other provision, the Consultant agrees that it shall not be entitled to contend in defence of proceedings under this Deed or otherwise that its liability to the Company is reduced or affected by virtue of the fact that the Employer has suffered no loss or a different loss from the Company as a consequence of any breach by the Consultant.

## 2

- 2.1 For the purposes of this Clause 2, material is "prohibited" if, in the context of its use in the Project (whether alone or in combination with other materials when specified or used as intended to be used by the Consultant):
- (a) it poses a hazard to the health and safety of any person who may come into contact with the Project (whether during its construction or after its completion);
  - (b) either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or
  - (c) it poses a threat to the structural stability or performance or the physical integrity of the Project or any part or component of the Project.
- 2.2 The Consultant warrants to the Company that it has not and will continue not to specify and shall exercise the standard of care referred to in Clause 1 not to permit to be used any materials which at the time the Project is being carried out are not in accordance with the guidelines contained in the edition of the publication "*Good Practice in Selection of Construction Materials*" (2011: British Council for Offices) current at the date of specification or generally accepted or reasonably suspected of:
- (a) being prohibited in themselves;
  - (b) becoming prohibited when used in a particular situation or in combination with other materials;
  - (c) becoming prohibited with the passage of time;
  - (d) becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or
  - (e) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

In the event of any breach of this warranty the provisions of Clauses 1.1, 1.2 and 1.3 shall apply.

**[Delete Clause 2 for Quantity Surveyor]**

- 3 The Company has no authority to issue any direction or instruction to the Consultant in relation to performance of the Services [unless and until the Company has given notice under



Clauses 5 or 6] *[Include only in warranty to funder or purchaser before practical completion]*

*[Include Clauses 4 to 7 only in warranty to funder or purchaser before practical completion]*

- 4 The Company has no liability to the Consultant in respect of amounts due under the Agreement [unless and until the Company has given notice under Clauses 5 or 6].
- 5 The Consultant agrees that in the event of the termination of the [Finance/Purchase] Agreement by the Company the Consultant shall, if so required by notice in writing given by the Company and subject to clause 7, accept the instructions of the Company or its appointee to the exclusion of the Employer.
- 6 The Consultant further agrees that it shall not without first giving the Company not less than 28 days' notice in writing exercise any right it may have to terminate the Agreement or to treat the same as having been repudiated by the Employer or to discontinue or suspend the performance of any of the Services. Such right to terminate the Agreement or treat the same as having been repudiated or discontinue or suspend performance shall cease if, within such period of notice and subject to Clause 7, the Company shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Company or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of the Agreement.
- 7 It shall be a condition of any notice given by the Company under Clauses 5 or 6 that the Company or its appointee accepts in such notice liability to the Consultant for payment of the amounts payable to the Consultant under the Agreement and for performance of the Employer's obligations including payment of any amounts outstanding at the date of such notice. Upon the issue of any notice by the Company under Clauses 5 or 6, the Agreement shall continue in full force and effect as if no right of termination on the part of the Consultant had arisen and the Consultant shall be liable to the Company and its appointee under this Agreement in lieu of its liability to the Employer. If any notice given by the Company under Clauses 5 or 6 requires the Consultant to accept the instructions of the Company's appointee, the Company shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Company's appointee.
- 8 If two or more valid notices claiming rights similar to those set out in paragraphs 5 and 6 are received by the Consultant the deemed order of priority of such notices shall be as follows:
  - 8.1 any person providing finance in connection with the Site and/or the Project;
  - 8.2 Parkdale Investments Limited second; and
  - 8.3 any affordable housing provider or social housing provider third.
- 9 Only the notice deemed to have first priority, unless previously withdrawn or the rights thereunder are not exercised, shall take immediate effect and any notice by any other party shall be postponed until the notice from the party with prior priority is withdrawn or deemed to be withdrawn or the right to claim rights similar to those set out herein is at an end. All Intellectual Property in the Design Documents shall remain vested in the Consultant but, the Company and its appointee shall have an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Design Documents and to reproduce the designs and content of them for any purpose related to the Project including, but without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable the Company and its appointee to copy and use the Design Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained in them for any extension of the Project and such licence shall continue to subsist notwithstanding the termination (for any reason) of this Agreement. The licence shall include the right to grant sub-licences on the



same terms as the licence and shall be assignable. The Consultant shall not be liable for any such use by the Company or its appointee of any of the Design Documents for any purpose other than that for which the same were prepared by or on behalf of the Consultant.

- 10 The Consultant has and shall maintain professional indemnity insurance in the amount and for the period referred to in Clause 9 of the Agreement for a period expiring 12 years after the date of practical completion of the Project or the last part of it, provided always that such insurance is available in the market at reasonable premium rates. The Consultant shall immediately inform the Company if such insurance ceases to be available in the market at reasonable premium rates in order that the Consultant and the Company can discuss means of best protecting the respective positions of the Company and the Consultant in respect of the Project in the absence of such insurance. As and when it is reasonably requested to do so by the Company [or its appointee under Clauses 5 or 6] **[Include only in warranty to funder or purchaser before practical completion]**, the Consultant shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.
- 11 The rights conferred by this Deed may be assigned:
  - 11.1 to any group company of the Company (meaning a subsidiary of the Company, a holding company of the Company or a subsidiary of a holding company of the Company); and /or
  - 11.2 by way of security or charge to any entity providing finance or re-finance in connection with the carrying out of the Project and any re-assignment shall not form one of the permitted assignments under clause 10.3;<sup>2</sup>
  - 11.3 without the consent of the Employer or the Consultant by the Company by way of absolute legal assignment to another company or other entity ("P1") taking any interest in the Project and/or the Site and by P1 by way of absolute legal assignment to another company or other entity ("P2") taking any interest in the Project and/or the Site without the consent of the Employer or the Consultant being required and such assignment shall be effective upon written notice thereof being given to the Employer and to the Consultant. Thereafter any assignment shall only be permitted with the consent of the Consultant (such consent not to be unreasonably withheld or delayed).
- 12 Any notice to be given by the Consultant hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Company at its registered office and any notice given by the Company hereunder shall be deemed to be duly given if it is addressed to "The Senior Partner"/"The Managing Director" and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Consultant or to the principal business address of the Consultant for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received 48 hours after being posted.
- 13 No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Project.

**IN WITNESS** whereof the parties hereto have executed this Deed and delivered it the day and year first before written.

**EXECUTED and DELIVERED as a DEED** )  
by the Company acting by: )

-----

<sup>2</sup> Include in fund warranty only

-----  
Director

-----  
Director / Secretary

**EXECUTED and DELIVERED as a DEED )**  
by the Employer acting by: )

-----  
Director

-----  
Director / Company Secretary

**EXECUTED and DELIVERED as a DEED )**  
by the Consultant acting by: )

-----  
Director

-----  
Director / Company Secretary

OR





To: [insert] Limited (Company No. [insert]) [insert address];

From: U and I (Cambridge) Limited, (Company No: 12611883), 7A Howick Place, London, SW1P 1DZ

Dear Sirs

**Project: Cambridge 4, Cambridge**

We are writing to confirm your appointment to provide [insert description of services] services in connection with the Project upon the terms of this letter (the "Agreement").

These terms are as follows:

**1. The Services**

You will perform the services described in Appendix 1 (the "Services") in accordance with our lawful instructions and directions from time to time [but having regard to the contents of the document appended in Appendix 1A identifying generally our requirements in relation to the Project as the same may be amended from time to time in accordance with our instructions (the "Brief"), a copy of which has already been given to you.]<sup>1</sup> We may from time to time request a modification, whether by addition, modification or omission to the Services. If we do so we shall agree any addition to the fee in accordance with paragraph 7 below.

**2. Warranty**

You warrant to us that you have exercised and that you will continue to exercise in the performance of the Services the reasonable skill, care and diligence to be expected of an appropriately qualified consultant in the discipline to which the Services relate holding itself out as having the competence experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project.

**3. Professional Advisers**

You shall regularly liaise and consult as necessary with our other professional advisers as listed in Appendix 2 (the "Project Team") and have regard to any opinions or comments which they may have. You shall keep each of them and us fully informed of all matters relating to the Services. All liaison and consultation in relation to the design of the Project by the Project Team shall be co-ordinated by [insert] and you shall co-operate with [insert] (until the date of their novation to the main contractor) in the co-ordination by them of the design of the Project by the Project Team.

**4. Information**

We shall supply to you in such reasonable time so as not to delay or disrupt the performance by you of the Services, any necessary and relevant data and information in our possession or which can only be obtained by us.

**5. Key Persons**

You shall use the key persons listed below to carry out the functions respectively allocated to them and each of them will be available whenever we reasonably require in connection with the Services:

<sup>1</sup> Delete words in brackets if no "Brief" document.



[insert]

You shall inform us immediately of the names of any additional persons whom you may use from time to time in connection with the Services with details of their involvement in the Project.

All of these persons shall have full authority to act on your behalf for all purposes.

**6. Lump Sum Fee and Fee Instalments**

We shall pay you for the Services the lump sum of £[insert]. This sum shall be deemed to be inclusive payment for the Services and for all costs, expenses and overheads of every kind incurred by you in the performance of them.

Payment shall be made by instalments due at the end of each calendar month as follows:

Date	Instalment (£)	Cumulative Total (£)
[insert]	[insert]	[insert]

If at any time the Services are suspended or delayed, we shall be entitled to adjust these instalments and the date for payment of them to reflect the actual progress of the Services.

The following shall be paid to you, in addition to the lump sum fee, subject to our prior agreement:

[insert description of any agreed disbursements or other costs]

**7. Additional Services**

You may be required to perform any services additional to the Services, as we may reasonably require, and to which we have given you written authorisation to perform. You shall be entitled to an additional fee for any additional services carried out pursuant to this paragraph 7, which sum shall be agreed between us. Any such additional services agreed between us shall be deemed to form part of the Services.

**8. Payment**

You shall submit valid VAT invoices to us from time to time as and when any amounts are due to you under this Agreement, but not more frequently than monthly. Such invoices shall show both amounts due and all amounts previously invoiced and each such invoice shall constitute a payment notice for the purposes of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 (the "Construction Act"). Payments shall be due to you on the date of receipt by us of each such VAT invoice.

We shall pay you all amounts properly due to you under this Agreement on or before the final date for payment which shall be 60 days from receipt by us of your valid VAT invoices showing amounts and supported by such documents, vouchers and receipts as shall be necessary for checking the same.

We shall pay you the total amount of Value Added Tax properly chargeable by you on the supply to us of the Services.

If we fail to pay you any amount properly due to you on or before the final date for payment of it, we shall pay you simple interest on such amount from the relevant final date for payment until the actual date of payment calculated at the rate of 5%, in excess of the base rate set



from time to time by the Bank of England's Monetary Policy Committee or any successor of it. It is agreed that this provision constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

We may give pay less notices pursuant to the Construction Act not later than three days before the final date for payment which notices shall specify the sum that we consider to be due to you at that date and the basis upon which that sum is calculated.

9. **Authority**

You shall not have any authority whatsoever to act on our behalf or purport to bind us to third parties without first obtaining our prior written approval.

10. **Insurance**

Without prejudice to your obligations, you shall effect and shall maintain for a period of 12 years from the date of practical completion of the Project a professional Indemnity insurance policy with a limit of indemnity of not less than £10,000,000 (ten million pounds) for each and every claim in respect of any negligence and/or breach of contract by you in the performance of the Services, provided always that such insurance is available in the market at reasonable premium rates. Any increases in premiums or other sums due by reason of your claims history or any other matter peculiar to you shall be deemed to be within commercially reasonable rates. Such insurance shall be with a well established insurance office or underwriter of repute and its terms and conditions shall not include any provision which would require the insured party to discharge any liability before being entitled to recover from its insurers or any other provision which might adversely affect the right of any person to recover under the Third Parties (Rights Against Insurers) Act 1930. As and when reasonably requested to do so by us, you shall produce for inspection documentary evidence to our reasonable satisfaction that such insurance is being maintained.

11. **Copyright and Confidentiality**

All intellectual property (meaning all rights of copyright, and all trade marks, service marks, trade names, patents, inventions, registered and unregistered design rights and other similar rights (including know-how)) ("**Intellectual Property**") in all existing and future schedules, reports, calculations, correspondence and other documents (including any computer software developed by you and used to generate them and any designs contained in them) prepared or provided by you for or in connection with the Project (together referred to in this paragraph as the "**Design Documents**") shall remain vested in you, but you hereby grant to us an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Design Documents and to reproduce the designs and contents of them for any purpose whatsoever relating to the Project including, but without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable us to copy and use the Design Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained in them for any extension of the Project. Such licence shall continue to subsist notwithstanding the termination (for any reason) of this Agreement. We shall be entitled to grant sub-licences to others in relation to the Design Documents. You shall not be liable to us or any sub-licensee for any use of the Design Documents for any purpose other than that for which the same was prepared or provided by you.

You shall not during your engagement hereunder (save to essential employees, suppliers, contractors and consultants in the proper course of their duties and save as required by law or for Stock Exchange compliance) or at any time after its expiry or termination for any reason disclose to any person any information relating to this Agreement or the Project (including, but without limitation, the identity of any potential purchaser or tenant of the Project or part thereof) unless and until such information becomes public knowledge through no fault of your



own. You shall ensure that any persons having access to such information are aware of these obligations.

You shall not, without our prior written approval, take or knowingly permit to be taken any photographs of the Project for use in any publicity or advertising or publish, at one or in connection with any other person, any articles, photographs or other illustrations relating to the Project or any part thereof, nor shall you impart to any publication, journal or newspaper or any radio or television programme any information regarding the Services.

**12. Assignment**

You shall not, without our prior written consent, assign, transfer or sub-contract to any person the performance of any of the Services or all or any of your rights or obligations under or pursuant to this Agreement.

You hereby consent to any assignment or transfer by us at any time of all or any of our rights under or pursuant to this Agreement. In addition, you hereby consent to any assignment by us of all of our rights and obligations under or pursuant to this Agreement to any person providing any finance to us in connection with the Project and/or to any of our holding companies or subsidiaries (within the meaning of Section 1159 of the Companies Act 2006) and any other company in which we or any such holding company or subsidiary holds more than 25 per cent of the issued equity share capital (as defined by Section 548 of the Companies Act 2006).

Save as provided above, we may not, without your prior written consent, such consent not to be unreasonably withheld or delayed, assign or transfer any obligation under this Agreement.

**13. Time for Performance**

You shall perform the Services in accordance with the programme set out in Appendix 3 unless prevented from so doing by circumstances outside your reasonable control. You shall promptly notify us if you have been so prevented from performing the Services and shall take all reasonable steps to mitigate any delay to the programme.

**14. Health and Safety**

You shall co-operate with the "Principal Designer" and "Principal Contractor" (both of which terms are defined in the Construction (Design and Management) Regulations 2015 (the "CDM Regulations")) as required by the CDM Regulations.

**15. Termination and Suspension**

We shall be entitled by notice in writing to you at any time forthwith to terminate your engagement under this Agreement.

If we are in material or persistent breach of our obligations under this Agreement and shall fail to remedy the same within 30 days of written notice from you to us specifying the breach and requiring its remedy, you may forthwith by notice in writing to us terminate your engagement under this Agreement.

Alternatively, we shall be entitled by notice in writing to you at any time forthwith to require you to suspend performance of the Services. If we do not require you to resume the Services within 6 calendar months from the date of such notice, either of us may then forthwith terminate your engagement under this letter.

Upon any such termination, you will take immediate steps to bring to an end the Services in an orderly manner, but with all reasonable speed and economy. You shall cause to be delivered

to us within 14 days of any such termination all the Design Documents prepared or in the course of preparation by you or in your possession relating to the Project.

We shall pay to you any amounts which have accrued due under the terms of this Agreement prior to the date of such termination but without prejudice to our rights and remedies in relation to any negligence, omission or default by you prior to such date. No termination of your engagement under this Agreement shall render us liable to you for any claim for loss of profit, loss of fees or other similar losses.

The provisions of this Agreement shall continue to bind both of us, notwithstanding such termination, so far as may be necessary to give effect to our respective rights and obligations.

**16. Previous Agreements**

The terms of this Agreement supersede any previous agreements or arrangements between us in respect of the Services. Notwithstanding the date of this Agreement, your engagement shall take effect from the date when you first commenced performance of the Services in respect of the Project.

**17. English Law**

This Agreement shall be governed by and construed in accordance with English law and all disputes and differences between the parties shall be submitted to the exclusive jurisdiction of the English Courts.

Any dispute or difference under this Agreement may be referred to adjudication in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 and the adjudicator's decision shall be binding until the dispute or difference is finally determined by the Courts. The adjudicator shall be a partner in the firm of Gardiner & Theobald LLP as may be nominated from time to time by the senior partner.

**18. Third Party Rights**

The rights set out in Parts 1 and/or 2 of Appendix 4 (the "Third Party Rights") shall vest in any of the following on the date on which we issue a written notice to you identifying such person and the nature of its interest in the Project:

- Cambridge 4 LLP
- Homes England
- any affordable housing provider or social housing provider;
- any financier(s) of the Project or any part of it;
- any first purchaser(s) of the Project or any part of it;
- any mortgagee of such first purchaser(s); and/or
- any first tenant(s) of the Project or any part of it; and/or
- any group company of the Employer (meaning a subsidiary of the Employer, a holding company of the Employer or a subsidiary of a holding company of the Employer); and/or
- any estate management company; and/or



- any third party with a commercial or legal interest in the Project or any part of it.

We shall not be entitled to give notice under this paragraph with respect to any person with whom you have entered a deed of collateral warranty as provided below.

No right of either of us to agree any amendment, variation, waiver or settlement in respect of this Agreement or to terminate your engagement under this Agreement shall be subject to the consent of any person who has rights under this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999. Notwithstanding the foregoing, neither of us shall be entitled to amend or vary the express provisions of Parts 1 and 2 of Appendix 4 without the consent of any person who has been identified by us in any notice issued to you under paragraph 18.

We acknowledge that you shall not be in breach of this Agreement by complying with the obligations imposed upon you contained in paragraphs 5 and 6 of Part 1 of Appendix 4.

We may, as an alternative to the Third Party Rights, make a written request for you to provide a deed or deeds of collateral warranty in favour of any person referred to above. You agree that within 14 days of request by us you will enter into such a warranty deed or deeds in favour of any such person(s) to be in the form of Appendix 5 with such amendments as may be proposed by us and agreed by you (such agreement not to be unreasonably withheld or delayed).

Save as provided otherwise in this paragraph 18, nothing in this Agreement is intended to confer on any person any right which that person would not otherwise have had but for the Contracts (Rights of Third Parties) Act 1999.

Please return to us the copy of this Agreement which is enclosed, signed as a deed in the place indicated and dated.

Signed as a deed )  
by U and I )  
(Cambridge) Limited )  
acting by a director and its )  
secretary or two directors: )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

Signed as a deed )  
by [full name of company] )  
Limited/PLC )  
acting by a director and its )  
secretary or two directors: )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

**Appendix 1**

**The Services**

In this Appendix 1, the following terms shall have the following meanings:

1. [Insert any applicable definitions]

**The Services**

2. [Insert schedule of services]



**Appendix 1A<sup>2</sup>**

**The Brief**

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<sup>2</sup> Delete if no Brief document.

**Appendix 2**  
**Project Team**

[insert]



**Appendix 3**

**Programme**

[insert]

## Appendix 4

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

The "**Company**" means the third party notified to you (the "**Consultant**") by us (the "**Employer**") pursuant to paragraph 18 of the Agreement.

Save as otherwise provided in this Schedule, defined terms in the Agreement shall have the same meaning in this Schedule.

### Part 1

#### Third Party Rights – Funders/Cambridge 4 LLP/Homes England

These rights may be given to any Company providing finance for the Project.

Expressions defined in the Agreement shall have the same meanings for the purposes of the Third Party Rights set out in this Appendix 4 Part 1.

- 1 The Consultant warrants to the Company that it has complied with and shall continue to comply with its obligations pursuant to the Agreement and that it has exercised and shall continue to exercise in the performance of the Services the reasonable skill, care and diligence to be expected of an appropriately qualified consultant in the discipline to which the Services relate holding itself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project. In the event of any breach of this warranty:
  - 1.1 the Consultant shall be entitled in any action or proceedings by the Company to rely on any limitation in the Agreement and to raise the equivalent rights in defence of liability (save in relation to set-off and counterclaim under the Agreement or any other contract) as it would have had against the Company under the Agreement if in lieu of these rights the Company had been named as the Employer in the Agreement;
  - 1.2 the obligations of the Consultant under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Company to carry out any independent enquiry into any relevant matter.
  - 1.3 Notwithstanding any other provision, the Consultant agrees that it shall not be entitled to contend in defence of proceedings under the Agreement or otherwise that its liability to the Company is reduced or affected by virtue of the fact that the Employer has suffered no loss or a different loss from the Company as a consequence of any breach by the Consultant.
- 2
  - 2.1 For the purposes of this paragraph 2, material is "prohibited" if, in the context of its use in the Project (whether alone or in combination with other materials when specified as intended to be used by the Consultant):
    - (a) it poses a hazard to the health and safety of any person who may come into contact with the Project (whether during its construction or after its completion);
    - (b) either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or



- (c) it poses a threat to the structural stability or performance or the physical integrity of the Project or any part or component of the Project.

2.2 The Consultant warrants to the Company that it has not and will continue not to specify and shall exercise the standard of care referred to in paragraph 1 not to permit to be used any materials which at the time the Project is being carried out are not in accordance with the guidelines contained in the edition of the publication "Good Practice In Selection of Construction Materials" (2011: British Council for Offices) current at the date of specification or generally accepted or reasonably suspected of:

- (a) being prohibited in themselves;
- (b) becoming prohibited when used in a particular situation or in combination with other materials;
- (c) becoming prohibited with the passage of time;
- (d) becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or
- (e) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

In the event of any breach of this warranty the provisions of paragraphs 1.1, 1.2 and 1.3 shall apply.

- 3 The Company has no authority to issue any direction or instruction to the Consultant in relation to performance of the Services unless and until the Company has given notice under paragraph 5 or 6.
- 4 The Company has no liability to the Consultant in respect of amounts due under the Agreement unless and until the Company has given notice under paragraph 5 or 6.
- 5 The Consultant agrees that, in the event of the termination of the agreement between the Employer and the Company by the Company, the Consultant shall, if so required by notice in writing given by the Company and subject to paragraph 7, accept the instructions of the Company or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of the Agreement.
- 6 The Consultant further agrees that it shall not without first giving the Company not less than 28 days' notice in writing exercise any right it may have to terminate the Agreement or to treat the same as having been repudiated by the Employer or to discontinue or suspend the performance of any of the Services. Such right to terminate the Agreement or treat the same as having been repudiated or discontinue or suspend performance shall cease if, within such period of notice and subject to paragraph 7, the Company shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Company or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of the Agreement.
- 7 It shall be a condition of any notice given by the Company under paragraph 5 or 6 that the Company or its appointee accepts in such notice liability to the Consultant for payment of the amounts payable to the Consultant under the Agreement and for performance of the Employer's obligations including payment of any amounts outstanding at the date of such notice. Upon the issue of any notice by the Company under paragraph 5 or 6, the Agreement shall continue in full force and effect as if no right of termination on the part of the Consultant had arisen and the Consultant shall be liable to the Company and its appointee under the Agreement in lieu of its liability to the Employer. If any notice given by the Company under



paragraph 5 or 6 requires the Consultant to accept the instructions of the Company's appointee, the Company shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Company's appointee.

8 If two or more valid notices claiming rights similar to those set out in paragraphs 5 and 6 are received by the Consultant the deemed order of priority of such notices shall be as follows:

8.1 any person providing finance in connection with the site of the project and/or the Project;

8.2 Parkdale Investments Limited second; and

8.3 any affordable housing provider or social housing provider third.

Only the notice deemed to have first priority, unless previously withdrawn or the rights thereunder are not exercised, shall take immediate effect and any notice by any other party shall be postponed until the notice from the party with prior priority is withdrawn or deemed to be withdrawn or the right to claim rights similar to those set out herein is at an end.

9 All Intellectual Property in the Design Documents shall remain vested in the Consultant but, the Company and its appointee shall have an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Design Documents and to reproduce the designs and content of them for any purpose related to the Project including, but without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable the Company and its appointee to copy and use the Design Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained in them for any extension of the Project and such licence shall continue to subsist notwithstanding the termination (for any reason) of this Agreement. The licence shall include the right to grant sub-licences on the same terms as the licence and shall be assignable. The Consultant shall not be liable for any such use by the Company or its appointee of any of the Design Documents for any purpose other than that for which the same were prepared by or on behalf of the Consultant.

10 The Consultant has and shall maintain professional indemnity insurance in the amount and for the period referred to in paragraph 10 of the Agreement, provided always that such insurance is available in the market at reasonable premium rates. The Consultant shall immediately inform the Company if such insurance ceases to be available in the market at reasonable premium rates in order that the Consultant and the Company can discuss means of best protecting the respective positions of the Company and the Consultant in respect of the Project in the absence of such insurance. As and when it is reasonably requested to do so by the Company or its appointee under paragraph 5 or 6, the Consultant shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

11 The rights conferred by this Appendix 4 Part 1 may be assigned:

11.1 to any group company of the Company (meaning a subsidiary of the Company, a holding company of the Company or a subsidiary of a holding company of the Company); and /or

11.2 as security to any person having or acquiring a mortgage or charge over the site of the Project or Project or any part of it (and such rights may be reassigned on redemption); and/or

11.3 without the consent of the Consultant by the Company by way of absolute legal assignment to another company ("P1") taking any interest in the Project and/or the site of the Project and by P1 by way of absolute legal assignment to another person ("P2") taking any interest in the Project and/or the site of the Project without the consent of the Employer or the Consultant being required and such assignment shall be effective upon written notice thereof being given



to the Employer and to the Consultant. Thereafter any assignment shall only be permitted with the consent of the Consultant (such consent not to be unreasonably withheld or delayed).

- 12 Any notice to be given by the Consultant hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Company at its registered office and any notice given by the Company hereunder shall be deemed to be duly given if it is addressed to "The Senior Partner"/"The Managing Director" and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Consultant or to the principal business address of the Consultant for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received 48 hours after being posted.
- 13 No action or proceedings for any breach of the rights conferred by this Appendix 4 Part 1 shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Project.
- 14 The Consultant shall, as the Company may at any time or times require, promptly execute and deliver a deed or deeds of warranty substantially in the form appended at Schedule 5 of the Agreement in favour of any third party contemplated by clause 18 of the Agreement (and for these purposes reference to the "Employer" or "we" or "us" in clause 18 of the Agreement shall be deemed to be reference to the Company).

## Part 2

### Third Party Rights – Purchasers/Tenants

These rights may be given to any first purchaser and/or first tenant each and every separate part of the Project. Expressions defined in the Agreement shall have the same meanings for the purposes of the Third Party Rights set out in this Appendix 4 Part 2.

- 1 The Consultant warrants to the Company that it has complied with and shall continue to comply with its obligations pursuant to the Agreement and that it has exercised and shall continue to exercise in the performance of the Services the reasonable skill, care and diligence to be expected of an appropriately qualified consultant in the discipline to which the Services relate holding itself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project. In the event of any breach of this warranty:
  - 1.1 the Consultant's liability to the Company shall be limited to the proportion of the Company's losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same, on the following assumptions, namely that:
    - (a) the Project Team has provided third party rights to the Company as regards the performance of their services in connection with the Project in accordance with the terms of their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreements;
    - (b) that the Project Team and the Contractor have paid to the Company such proportion of the Company's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Company's losses.
  - 1.2 the Consultant shall be entitled in any action or proceedings by the Company to rely on any limitation in the Agreement and to raise the equivalent rights in defence of liability (save in relation to set-off and counterclaim under the Agreement or any other contract) as it would have against the Company under the Agreement if in lieu of these rights the Company had been named the Employer in the Agreement;



1.3 the obligations of the Consultant under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Company to carry out any independent enquiry into any relevant matter.

1.4 Notwithstanding any other provision, the Consultant agrees that it shall not be entitled to contend in defence of proceedings under the Agreement or otherwise that its liability to the Company is reduced or affected by virtue of the fact that the Employer has suffered no loss or a different loss from the Company as a consequence of any breach by the Consultant.

2

2.1 For the purposes of this paragraph 2, material is "prohibited" if, in the context of its use in the Project (whether alone or in combination with other materials when specified as intended to be used by the Consultant):

- (a) it poses a hazard to the health and safety of any person who may come into contact with the Project (whether during its construction or after its completion);
- (b) either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or
- (c) it poses a threat to the structural stability or performance or the physical integrity of the Project or any part or component of the Project.

2.2 The Consultant warrants to the Company that it has not and will continue not to specify and shall exercise the standard of care referred to in paragraph 1 not to permit to be used any materials which at the time the Project is being carried out are not in accordance with the guidelines contained in the edition of the publication "Good Practice in Selection of Construction Materials" (2011: British Council for Offices) current at the date of specification or generally accepted or reasonably suspected of:

- (a) being prohibited in themselves;
- (b) becoming prohibited when used in a particular situation or in combination with other materials;
- (c) becoming prohibited with the passage of time;
- (d) becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or
- (e) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

In the event of any breach of this warranty the provisions of paragraphs 1.1, 1.2 and 1.3 shall apply.

3 The Company has no authority to issue any direction or instruction to the Consultant in relation to the Agreement.

4 All Intellectual Property in the Design Documents shall remain vested in the Consultant but, the Company and its appointee shall have an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Design Documents and to reproduce the designs and content of them for any purpose related to the Project including, but without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement,



refurbishment and repair of the Project. Such licence shall enable the Company and its appointee to copy and use the Design Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained in them for any extension of the Project. Such licence shall continue to subsist notwithstanding the termination (for any reason) of the Agreement. The licence shall include the right to grant sub-licences on the same terms as this licence and shall be assignable. The Consultant shall not be liable for any use by the Company or its appointee of any of the Design Documents for any purpose other than that for which the same were prepared by or on behalf of the Consultant.

- 5 The Consultant has and shall maintain professional indemnity insurance in the amount and for the period referred to in paragraph 10 of the Agreement, provided always that such insurance is available in the market at reasonable premium rates. The Consultant shall immediately inform the Company if such insurance ceases to be available in the market at reasonable premium rates in order that the Consultant and the Company can discuss means of best protecting the respective positions of the Company and the Consultant in the absence of such insurance. As and when it is reasonably requested to do so by the Company or its appointee the Consultant shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.
- 6 The rights conferred by this Appendix 4 Part 2 may be assigned:
  - 6.1 to any group company of the Company (meaning a subsidiary of the Company, a holding company of the Company or a subsidiary of a holding company of the Company); and /or
  - 6.2 without the consent of the Consultant by the Company by way of absolute legal assignment to another person ("P1") taking any interest in the Project and/or the site of the Project and by P1, by way of absolute legal assignment, to another person ("P2") taking any interest in the Project and/or the site of the Project without the consent of the Employer or the Consultant being required and such assignment shall only be effective upon written notice thereof being given to the Consultant. Thereafter any assignment shall only be permitted with the consent of the Consultant (such consent not to be unreasonably withheld or delayed).
- 7 Any notice to be given by the Consultant hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Company at its registered office and any notice given by the Company hereunder shall be deemed to be duly given if it is addressed to "**The Senior Partner**"/"**The Managing Director**" and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Consultant or to the principal business address of the Consultant for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received 48 hours after being posted.
- 8 No action or proceedings for any breach of the rights conferred by this Appendix 4 Part 2 shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Project.

**Appendix 5**  
**Collateral Warranty**

Date 200[ ]

**Parties**

- (1) [ ] (Company registration No.[ ] ) whose registered office is at [ ] ("the Consultant").
- (2) [ ] (Company registration No. [ ] ) whose registered office is at [ ] ("the Employer").
- (3) [ ] (Company registration No. [ ] ) whose registered office is at [ ] ("the Company" which expression where the context admits shall include its permitted successors in title and assigns).

**Recitals**

- (A) By a deed of appointment dated [ ] made between the Employer (1) and the Consultant (2) ("the Agreement") the Employer, appointed the Consultant to provide the services described in the Agreement in connection with the Project. Words and expressions defined in the Agreement shall have the same meaning in this Deed.
- (B) By an agreement dated [ ] and made between the Company (1) and the Employer (2) ("the [Finance Agreement/Purchase Agreement/Agreement for Lease]") the Employer has agreed to procure a collateral warranty from the Consultant in the form of this Deed.

In consideration of £1 (one pound) paid by the Beneficiary to the Consultant (receipt of which the Consultant acknowledges) **This Deed Witnesses**

- 1 The Consultant warrants to the Company that it has complied with and shall continue to comply with its obligations pursuant to the Agreement and that it has exercised and shall continue to exercise in the performance of the Services the reasonable skill, care and diligence to be expected of an appropriately qualified consultant in the discipline to which the Services relate holding itself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size, scope and complexity similar to that of the Project. [In the event of any breach of this warranty:<sup>3</sup>
- 1.1 the Consultant's liability to the Company shall be limited to the proportion of the Company's losses which it would be just and equitable to require the Consultant to pay having regard to the extent of the Consultant's responsibility for the same, on the following assumptions, namely that:
- (a) the Project Team has provided third party rights or a collateral warranty to the Company as regards the performance of their services in connection with the Project in accordance with the terms of their respective consultancy agreements and that there are no limitations on liability as between the respective consultants and the Employer in the consultancy agreements;
  - (b) the Project Team and the Contractor have paid to the Company such proportion of the Company's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Company's losses.]

<sup>3</sup> Delete from funder or forward purchaser warranty.



- 1.2 the Consultant shall be entitled in any action or proceedings by the Company to rely on any limitation in the Agreement and to raise the equivalent rights in defence of liability (save in relation to set-off and counterclaim under the Agreement or any other contract) as it would have against the Company under the Agreement if in lieu of this Deed the Company had been named as the Employer in the Agreement;
- 1.3 the obligations of the Consultant under or pursuant to this Clause 1 shall not be released or diminished by the appointment of any person by the Company to carry out any independent enquiry into any relevant matter.
- 1.4 Notwithstanding any other provision, the Consultant agrees that it shall not be entitled to contend in defence of proceedings under this Deed or otherwise that its liability to the Company is reduced or affected by virtue of the fact that the Employer has suffered no loss or a different loss from the Company as a consequence of any breach by the Consultant.

## 2

- 2.1 For the purposes of this Clause 2, material is "prohibited" if, in the context of its use in the Project (whether alone or in combination with other materials when specified or used as intended to be used by the Consultant):
- (a) it poses a hazard to the health and safety of any person who may come into contact with the Project (whether during its construction or after its completion);
  - (b) either by itself or as a result of its use in a particular situation or in combination with other materials, it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed; or
  - (c) it poses a threat to the structural stability or performance or the physical integrity of the Project or any part or component of the Project.
- 2.2 The Consultant warrants to the Company that it has not and will continue not to specify and shall exercise the standard of care referred to in Clause 1 not to permit to be used any materials which at the time the Project is being carried out are not in accordance with the guidelines contained in the edition of the publication "Good Practice in Selection of Construction Materials" (2011: British Council for Offices) current at the date of specification or generally accepted or reasonably suspected of:
- (a) being prohibited in themselves;
  - (b) becoming prohibited when used in a particular situation or in combination with other materials;
  - (c) becoming prohibited with the passage of time;
  - (d) becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; or
  - (e) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

In the event of any breach of this warranty the provisions of Clauses 1.1, 1.2 and 1.3 shall apply.

- 3 The Company has no authority to issue any direction or instruction to the Consultant in relation to performance of the Services [unless and until the Company has given notice under



Clauses 5 or 6] *[Include only in warranty to funder or purchaser before practical completion]*

*[Include Clauses 4 to 7 only in warranty to funder or purchaser before practical completion]*

4 The Company has no liability to the Consultant in respect of amounts due under the Agreement [unless and until the Company has given notice under Clauses 5 or 6].

5 The Consultant agrees that in the event of the termination of the [Finance/Purchase] Agreement by the Company the Consultant shall, if so required by notice in writing given by the Company and subject to clause 7, accept the instructions of the Company or its appointee to the exclusion of the Employer.

6 The Consultant further agrees that it shall not without first giving the Company not less than 28 days' notice in writing exercise any right it may have to terminate the Agreement or to treat the same as having been repudiated by the Employer or to discontinue or suspend the performance of any of the Services. Such right to terminate the Agreement or treat the same as having been repudiated or discontinue or suspend performance shall cease if, within such period of notice and subject to Clause 7, the Company shall give notice in writing to the Consultant requiring the Consultant to accept the instructions of the Company or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of the Agreement.

7 It shall be a condition of any notice given by the Company under Clauses 5 or 6 that the Company or its appointee accepts in such notice liability to the Consultant for payment of the amounts payable to the Consultant under the Agreement and for performance of the Employer's obligations including payment of any amounts outstanding at the date of such notice. Upon the issue of any notice by the Company under Clauses 5 or 6, the Agreement shall continue in full force and effect as if no right of termination on the part of the Consultant had arisen and the Consultant shall be liable to the Company and its appointee under this Agreement in lieu of its liability to the Employer. If any notice given by the Company under Clauses 5 or 6 requires the Consultant to accept the instructions of the Company's appointee, the Company shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Company's appointee.

8 If two or more valid notices claiming rights similar to those set out in paragraphs 5 and 6 are received by the Consultant the deemed order of priority of such notices shall be as follows:

8.1 any person providing finance in connection with the site of the project and/or the Project;

8.2 Parkdale Investments Limited second; and

8.3 any affordable housing provider or social housing provider third.

Only the notice deemed to have first priority, unless previously withdrawn or the rights thereunder are not exercised, shall take immediate effect and any notice by any other party shall be postponed until the notice from the party with prior priority is withdrawn or deemed to be withdrawn or the right to claim rights similar to those set out herein is at an end.

9 All Intellectual Property in the Design Documents shall remain vested in the Consultant but, the Company and its appointee shall have an irrevocable, perpetual, royalty-free, non-exclusive licence to copy and use the Design Documents and to reproduce the designs and content of them for any purpose related to the Project including, but without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable the Company and its appointee to copy and use the Design Documents for the extension of the Project but such



use shall not include a licence to reproduce the designs contained in them for any extension of the Project and such licence shall continue to subsist notwithstanding the termination (for any reason) of this Agreement. The licence shall include the right to grant sub-licences on the same terms as the licence and shall be assignable. The Consultant shall not be liable for any such use by the Company or its appointee of any of the Design Documents for any purpose other than that for which the same were prepared by or on behalf of the Consultant.

- 10 The Consultant has and shall maintain professional indemnity insurance in the amount and for the period referred to in Clause 8 of the Agreement for a period expiring 12 years after the date of practical completion of the Project or the last part of it, provided always that such insurance is available in the market at reasonable premium rates. The Consultant shall immediately inform the Company if such insurance ceases to be available in the market at reasonable premium rates in order that the Consultant and the Company can discuss means of best protecting the respective positions of the Company and the Consultant in respect of the Project in the absence of such insurance. As and when it is reasonably requested to do so by the Company [or its appointee under Clauses 5 or 6] **[Include only in warranty to funder or purchaser before practical completion]**, the Consultant shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.
- 11 The rights conferred by this Deed may be assigned:
  - 11.1 to any group company of the Company (meaning a subsidiary of the Company, a holding company of the Company or a subsidiary of a holding company of the Company); and /or
  - 11.2 by way of security or charge to any entity providing finance or re-finance in connection with the carrying out of the Project and any re-assignment shall not form one of the permitted assignments under clause 11.3;
  - 11.3 without the consent of the Employer or the Consultant by the Company by way of absolute legal assignment to another company or other entity ("P1") taking any interest in the Project and/or the Site and by P1 by way of absolute legal assignment to another company or other entity ("P2") taking any interest in the Project and/or the Site without the consent of the Employer or the Consultant being required and such assignment shall be effective upon written notice thereof being given to the Employer and to the Consultant. Thereafter any assignment shall only be permitted with the consent of the Consultant (such consent not to be unreasonably withheld or delayed).
- 12 Any notice to be given by the Consultant hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the Company at its registered office and any notice given by the Company hereunder shall be deemed to be duly given if it is addressed to "**The Senior Partner**"/"**The Managing Director**" and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Consultant or to the principal business address of the Consultant for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received 48 hours after being posted.
- 13 No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of practical completion of the Project.
- 14 **In Witness** whereof the parties hereto have executed this Deed and delivered it the day and year first before written.

**EXECUTED and DELIVERED as a DEED )**  
by the Company acting by: )

.....  
Director

.....  
Director / Secretary

**EXECUTED and DELIVERED as a DEED )**  
by the Employer acting by: )

.....  
Director



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Director / Company Secretary

EXECUTED and DELIVERED as a DEED )  
by the Consultant acting by: )

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Director

-----  
Director / Company Secretary

OR

SIGNED and DELIVERED as a DEED by [ )  
of: ] in the presence )

[to be repeated for all equity partners]

Witness Signature:

Name:

Address:

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-----  
-----  
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## Get in touch

You can contact us by:



Emailing at [info@cwwtpr.com](mailto:info@cwwtpr.com)



Calling our Freephone information line on **0808 196 1661**



Writing to us at **Freepost: CWWTPR**



Visiting our website at [www.cwwtpr.com](http://www.cwwtpr.com)

You can view all our DCO application documents and updates on the application on The Planning Inspectorate website:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/cambri-dge-waste-water-treatment-plant-relocation/>