

Appendix G - Redacted Draft Development Agreement

Dated

2023

(1) Winchester City Council

(2) [REDACTED]

Development Agreement

relating to the redevelopment of central Winchester

DRAFT

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CAB3371 CABINET - CENTRAL WINCHESTER REGENERATION (CWR) APPOINTMENT OF DEVELOPMENT PARTNER AND NEXT STEPS

Date:

2023

parties:

- (1) WINCHESTER CITY COUNCIL of The Guildhall, Colebrook Street, Winchester, SO23 9LJ (the "Council");
- (2) [REDACTED] incorporated and registered in [REDACTED] under company registration number [REDACTED], the registered office of which is at [REDACTED] (the "Developer");

NOTE: Please refer to Appendix D(i) - Recommended Development Partner's commercial position (Exempt).

all collectively referred to as the "parties" and each in their own right referred to as a "party".

RECITALS

- (A) On 17 March 2022, a notice was despatched to Find a Tender seeking a development partner with appropriate skills and track record to work in partnership with the Council to carry out the Development.
- (B) Following a competitive process, the final submission made by the Developer (the "Developer's Tender") was accepted by the Council.
- (C) The Council has (in its capacity as landowner only and not in any other capacity) agreed to appoint the Developer to procure the carrying out and completion of the Development in order to deliver the outcomes described in the Development Brief and upon the terms set out in this Agreement.
- (D) The Deed of Guarantee has been executed and delivered to the Council.

IT IS AGREED AS FOLLOWS:-

1 Definitions and interpretations

1.1 In this Agreement the following words and phrases shall have the following meanings:

"Abandonment"

means the Developer has:

- (a) ceased the Works in respect of a Phase after the relevant start on site date but before the relevant Completion Date at any time for a period of not less than thirty (30) Working Days for any reason other than as a result of a Delay Event; or
- (b) ceased to carry out the activities required to be performed by the Developer under this Agreement (including the satisfaction of the Primary Conditions or Phase Conditions) at any time for a period of not

less than forty (40) Working Days for any reason other than as a result of a Delay Event;

“Advance Payment”

means the sum of [REDACTED]

NOTE: Redacted as commercially sensitive. Please refer to Appendix D - Development Agreement Summary paragraph 16.1 and Appendix D(i) - Recommended Development Partner’s commercial position (Exempt).

“Aggregate Phase Site Consideration Threshold”

means the aggregate total of the Phase Site Consideration Threshold applicable to the Development;

“Agreement”

means this agreement, including its schedules;

“Antiquities”

means any relic, article or structures of antiquity, rarity or historical value which may be found in or under any part of the Development Site or in or upon any buildings currently standing or remains of buildings formerly standing on the Development Site;

“Appeal”


means any of the following:

- (a) an appeal to the Secretary of State in accordance with sections 78 and 79 of the Planning Act against a Planning Refusal or a Deemed Refusal by the local planning authority;
- (b) an appeal against a Planning Refusal by the Secretary of State under section 288 of the Planning Act; and
- (c) Call In proceedings are instituted;

“Appeal Notice”

means a notice served by the Developer on the Council confirming that they intend to lodge an Appeal in respect of a Planning Application or that the Planning Application has been Called In by the Secretary of State and such notice shall be accompanied with a copy of Counsel’s opinion if requested pursuant to paragraph 3 of Schedule 4

NOTE: Redacted as commercially sensitive.

“Approval of Reserved Matters”	means an approval granted by the local planning authority or the Secretary of State on Appeal or otherwise (as the case may be) of all matters reserved by the Satisfactory Planning Permission in relation to the relevant Phase;
“Arbitrator”	means an arbitrator appointed pursuant to clause 24.5;
“Associated Body”	means in relation to the Developer: <ul style="list-style-type: none"> (a) any subsidiary or holding company of that body (as the terms "subsidiary" and "holding company" are defined in section 1159 of the Companies Act 2006 as amended) or any analogous relationships in the case of other forms of body corporate; or (b) any subsidiary of the holding company of that company and or any analogous relationships in the case of other forms of body corporate; or (c) any body with whom the Developer merges with or becomes part of by way of statutory amalgamation or transfer of engagements and “Associated” shall be construed accordingly;
“Base Build Cost”	
	<i>NOTE: Redacted as commercially sensitive.</i>
“Base TPI”	BCIS All-in Tender Price Index as at the quarter date and year that the Land Value Thresholds are agreed;
“Board”	has the meaning given to such term in paragraph 2 of Schedule 8;
“Building Contract”	means the building contract or building contracts to be entered into between the Developer and the Contractor in respect of each Phase for the execution of the Works on that Phase;
“Building Contract Dispute”	has the meaning given to it in clause 24.6.1;

- “Called In”** means the referral of the Planning Application to the Secretary of State pursuant to section 77 of the Planning Act or any similar statutory provisions and “Call In” will be construed accordingly;
- “Capable of Implementation”** means in relation to the Planning Permission:
- (a) any matters requiring approval by the local planning authority prior to implementation which had previously been reserved are now approved; and
 - (b) all Planning Agreements which are required prior to the commencement of the Works have been obtained; and
 - (c) the Challenge Period has expired;
- “Challenge Period”** means whichever of the following shall apply:
- (a) the period up to and including three months and two weeks following the Grant Date of a Planning Permission pursuant to the Planning Application by the local planning authority; or
 - (b) the period of eight weeks from the Grant Date of a Planning Permission by the Secretary of State;
- in each case following any order, action or decision of any court following the final determination of any Planning Proceedings commenced during such period;
- “Change of Control”** means in relation to the Developer, the power of the Developer’s ultimate/immediate parent company to secure that the affairs of the Developer are conducted in accordance with the wishes of the Developer’s ultimate/immediate parent company:
- (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) by virtue of any powers conferred by the constitutional or corporate document, or any other document, regulating that or any other body corporate,
- and a ‘Change of Control’ of the Developer shall occur if, who control the Developer as at the date of this Agreement, ceases to have such control or if another person acquires control of the Developer;

“Community and Stakeholder Engagement Plan”	means the plan for community and stakeholder engagement set out in Schedule 11 and which the Developer shall carry out in accordance with clause 10;
“Community Infrastructure Levy”	means any community infrastructure levy (or any similar or equivalent replacement levy/charge as may be introduced by the relevant authorised government department or body) in respect of the Development/Development Site (and “CIL” shall be construed accordingly);
“Completion Certificate”	means the certificate issued pursuant to the Building Contract certifying that the Works (or part of the Works where applicable) concerned have been completed in all material respects and are therefore practically complete (as such term is usually understood in the context of a standard form of contract issued by the Joint Contracts Tribunal);
“Completion Date”	means any date of Practical Completion in respect of the Works;
“Compulsory Purchase Order”	means (subject always to clause 9 and clause 34) a compulsory purchase order made under section 226 of the Town and Country Planning Act 1990 in respect of the Third Party Interests;
“Connected Person”	mean any person or corporation who is connected or associated with the relevant person or corporation in any way and includes the relationships specified in sections 1122, 1123 and 449 to 451 of the Corporation Tax Act 2010;
“Consents”	means the Stopping Up Order, building regulation approvals, by-law approvals, and any other consents, licences and authorisations required from any competent authority, statutory undertaker or person for the carrying out of the Development and/or the Works, save for where any of those are Council Obtained Consents;
“Construction Products Regulations”	means Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011, the Construction Products (Amendment etc.) (EU Exit) Regulations 2020 and any regulations or legislation that replace, extend, re-enact, consolidate or amend either of the foregoing;
“Consultation Condition”	means the Developer having consulted in accordance with the obligations in the Community and Stakeholder Engagement Plan;

"Contamination"	means the presence of any Hazardous Substances in, on at or under the Property and howsoever caused or arising;
"Contingency"	means any contingency incorporated into the Financial Model;
"Contractor"	means any contractor appointed by the Developer or any replacement contractor appointed by the Developer in respect of a Phase of the Development in accordance with this Agreement;
"Council's Authorised Officer"	means the officer notified by the Council to the Developer in accordance with clause 26;
"Council Default"	means any act or omission on the part of the Council which constitutes any of the following: <ul style="list-style-type: none"> (a) failure to comply with any material term or obligation in this Agreement; or (b) failure to satisfy any of the Phase Conditions for which the Council has sole or primary responsibility under this Agreement by the Phase Conditions Long Stop Date or Extended Phase Conditions Long Stop Date;
"Council Obtained Consents"	means any of the Consents which can only reasonably be obtained by the Council, and as may (but need not necessarily) be further described in the Delivery Plan and/or a Phase Delivery Plan;
"Council Procurement Costs"	means the reasonable and necessarily external advisor fees incurred by the Council in relation to the procurement of the Developer, totalling <div style="background-color: black; height: 40px; width: 100%;"></div>
	<i>NOTE: Redacted as commercially sensitive. Please refer to Appendix D - Development Agreement Summary paragraph 16.2 and Appendix D(i) - Recommended Development Partner's commercial position (Exempt)..</i>
"Council Project Costs"	means <div style="background-color: black; display: inline-block; width: 150px; height: 1em;"></div> payable by the Developer to the Council <div style="background-color: black; display: inline-block; width: 100px; height: 1em;"></div> <div style="background-color: black; display: inline-block; width: 150px; height: 1em;"></div> in respect of the Council's costs in working with the Developer on the Development;
	<i>NOTE: Redacted as commercially sensitive. Please refer Appendix D - Development</i>

Agreement Summary paragraph 16.3 and Appendix D(i) - Recommended Development Partner's commercial position (Exempt).

- “Council Rectification Notice”** has the meaning given to it in clause 22.5.2;
- “Counsel”** means either a counsel with not less than 10 years’ experience in planning law or a planning consultant with not less than 10 years’ experience in planning matters of a similar nature to the Planning Application, in either case who shall be proposed by the Developer and first approved in writing by the Council (such approval not to be unreasonably withheld or delayed);
- “Current TPI”** means the BCIS All-in Tender Price Index from time to time;
- “Data Protection Laws”** means any and all laws, statutes, enactments, orders or regulations or other similar instruments of general application and any other rules, instruments or provisions in force from time to time relating to the processing of Personal Data and privacy applicable to the performance of this Agreement, including where applicable the UK GDPR, the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018 (“DPA”) and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
- “Deed of Guarantee”** means the form of guarantee to be entered in to by [REDACTED];
- “Deemed Refusal”** means a non-determination of the Planning Application as set out in section 78(2)(a) of the Planning Act;
- “Defect Certificate”** means the list of defects notified by the Developer pursuant to clause 13.16.2 before the Defects Date which the Contractor has not corrected or, if there are no such defects, a statement that there are none;
- “Defects Correction Period”** [REDACTED]
- NOTE: Redacted as commercially sensitive.**
- “Delay Event”** means any of the following events:
- (a) any action taken by third parties to instigate a challenge in relation to this

Agreement, the Development or Works where the result of such challenge may prejudice the Developer's rights under this Agreement;

- (b) any delay in the Council discharging its obligations under this Agreement (including in relation to the Delivery Plan) to the extent that the same adversely impacts on the Developer's ability to comply with its obligations under this Agreement;
- (c) the exercise by the Council of any rights granted to it by this Agreement to the extent that the same adversely impacts on the carrying out of the Development other than the proper exercise of a discretion which is expressed to be absolute pursuant to this Agreement;
- (d) a Force Majeure Event;
- (e) any other Relevant Event (as such term is defined by the relevant Building Contract) for which the Contractor shall be entitled to an extension of time except to the extent that such Relevant Event arises as a result of a default by the Developer under the terms of the relevant Building Contract;
- (f) any delay in obtaining any Consents which is not due to the failure or omission or act of the Developer;
- (g) the execution of work by the Council or by persons employed or otherwise engaged by the Council which adversely impacts on the carrying out of the Development;
- (h) delay to the Works as a result of a find of unforeseeable Antiquities (provided the Developer has complied with its obligations in Schedule 5) or a find of unforeseeable Contamination that was not evident from the Developer's reasonable searches, surveys and reports conducted by the Developer prior to commencing the Works; and
- (i) any delays or extensions agreed as part of the outcome of a Review;

“Deleterious”	<p>any materials, equipment, products or kits that are generally accepted, or suspected, in the construction industry at the relevant time as:</p> <ul style="list-style-type: none"> (a) posing a threat to the health and safety of any person; (b) posing a threat to the structural stability, performance or physical integrity of the Development; (c) reducing, or possibly reducing, the normal life expectancy of the Development or any part or component of the Development; (d) not being in accordance with any legislation, British Standard, relevant code of practice, good building practice or any applicable certificate issued by the British Board; or (e) having been supplied or placed on the market in breach of the Construction Products Regulations;
“Delivery Plans”	means the Development Delivery Plan, the Infrastructure Delivery Plan, and the Public Realm Delivery Plan;
“Delivery Plans Long Stop Date”	has the meaning given in clause 5.2;
“Design Principles”	means the design principles for the Development approved by the Council included in this Agreement at Schedule 10 (as will be reflected and further amplified in the Development Delivery Plan and agreed Phase Delivery Plans) and which must at all times be in accordance with the Development Brief and Supplementary Planning Document;
“Developer’s Authorised Officer”	means the person appointed by the Developer in accordance with clause 26;
“Developer Default”	<p>means any act or omission of the Developer that constitutes any of the following:</p> <ul style="list-style-type: none"> (a) failure to comply with any material term or obligation in this Agreement; (b) failure to pay, when due under this Agreement, the Council Procurement Costs, the Council Project Costs, any Phase

Site Consideration or any Overage Payment;

- (c) where applicable, failure to achieve a long stop date by the Relevant Date;
- (d) failure to implement the Works required to deliver the Infrastructure in respect of a Phase;
- (e) failure to implement the Works required to deliver the Public Realm in respect of a Phase;
- (f) where the Developer has agreed to deliver Infrastructure under the Infrastructure Delivery Plan and not under any of the Phase Delivery Plans, a failure to implement the Works required to deliver that Infrastructure;
- (g) where the Developer has agreed to deliver Public Realm under the Public Realm Delivery Plan and not under any of the Phase Delivery Plans, a failure to implement the Works required to deliver that Public Realm;
- (h) where the Developer has been granted a Phase Building Lease in relation to a Phase, a forfeiture of that Phase Building Lease due to a default by the Developer under its terms;
- (i) Abandonment;
- (j) an Insolvency Event;
- (k) ceasing to carry on the whole of its business or disposing of all of its assets (other than on the terms of this Agreement); or
- (l) any Change of Control which has not been agreed by the Council in accordance with clause 25.3;

“Developer Profit”

means (where applicable) the levels of profit required by the Developer, accepted by the Council as part of the Developer’s Tender, to be accounted for as part of the Financial Model, as set out in Schedule 14 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOTE: Redacted as commercially sensitive. Please refer to Appendix D(i) - Recommended Development Partner's commercial position (Exempt).

“Developer Rectification Notice”

has the meaning given to it in clause 22.3.2;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOTE: Redacted as commercially sensitive. Please refer to Appendix D(i) - Recommended Development Partner's commercial position (Exempt).

“Development”

means the proposed redevelopment of the entire Development Site, subject to and in accordance with the terms of this Agreement, the Development Objectives, the Delivery Plan, the Design Principles, the Infrastructure Delivery Plan, the Public Realm Delivery Plan, the Planning Permission and the Consents;

“Development Brief”

means the development brief, and all documents it refers to (including, for avoidance of doubt, the Supplementary Planning Document), for the

Development included in this Agreement at Schedule 1;

“Development Delivery Plan” means the delivery plan for the Development incorporating the Developer’s Tender, and being in accordance with the Development Objectives, as set out in Schedule 3, which is to be updated and thereafter amended as necessary from time to time by written agreement of the Council in accordance with clause 5;

“Development Management Fee” means (where applicable) the fee due to the Developer in respect of the development management services provided by the Developer in relation to a Phase, accepted by the Council as part of the Developer’s Tender, to be accounted for as part of the Financial Model, developed in accordance with Schedule 14

NOTE: Redacted as commercially sensitive. Please refer to Appendix D(i) - Recommended Development Partner’s commercial position (Exempt).

“Development Objectives” shall have the meaning given in clause 2.1;

“Development Site” means those parts of central Winchester shown for identification purposes edged red on the Site Plan;

“Development Viability Check” means the test to be carried out as part of the satisfaction of the Development Viability Condition, by operating the Financial Model, to determine whether the Development is Viable;

“Development Viability Condition” means the Development is shown by the Development Viability Check to be Viable;

“Dispute” means any difference or dispute between the parties (or any of them) arising out of or in connection with this Agreement and shall include any question as to the validity or interpretation of this Agreement and any dispute arising before or after termination of this Agreement;

“Dwelling” means a single self-contained dwelling forming part of the Development, and the term **“Dwellings”** shall be construed accordingly;

“Enhanced Planning Permission”

[Redacted]



NOTE: Redacted as commercially sensitive.

"Environment"

means any of the following media wherever situated, namely, air (including air within buildings and within other natural or man-made structures above or below the ground), water, land (including any natural or man-made structures above or below ground) and any human, plant or animal life and all living organisms supported by any of these media;

"Excluded Disposal"

means:

(a) a disposal of any affordable housing to a registered provider of affordable housing;

(b) a disposal of any electricity substation, gas governor station, pumping station energy centre, combined heat and power plant or similar;

(c) a disposal or dedication of any roads, cycleways or footpaths with the intent that they be maintained at the public expense;

(d) a disposal of land to a supplier of services or utilities to the Property;

(e) a disposal of the reversion to any completed residential or other units (together with a reasonable curtilage) (each a "**Completed Unit**") which have been sold by way of lease;

(f) where all Completed Units within a building have been sold by way of lease, any disposal of the reversion to that building and its curtilage;

(g) any land designated for use in common by or which accommodates facilities which are designated for use in common by some or all of the Completed Units that have been sold by way of lease;

(h) a disposal of any open space and/or play areas or land ancillary thereto or infrastructure land pursuant to a Planning Agreement or otherwise; or

(i) the grant or reservation of any easements pursuant to a disposal referred to in paragraphs (a) to (h) above;

“Expert”

means an independent expert appointed pursuant to clause 24.4 and who has been professionally qualified in respect of the subject matter of the dispute or difference for not less than ten (10) years and who is a specialist in relation to that subject matter;

“Extended Phase Conditions Long Stop Date”

has the meaning given to it in clause 4.5;

“Extended Primary Conditions Long Stop Date”

has the meaning given to it in clause 3.5;

“Fair Value”

means the financial amount for which an asset or liability could be exchanged in an arm’s length transaction between unrelated, willing parties who are reasonably well-informed;

“Final Reconciliation Date”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOTE: Redacted as commercially sensitive.

“Financial Model”

means the financial model, to be initially prepared by the Developer prior to submission of the Planning Application and agreed by the parties in accordance with the provisions of clause 5, incorporating and premised upon the inputs and other requirements set out in Schedule 14 including, without limitation, the Developer Profit and the Development Management Fee (as appropriate) and to contain a summary sheet by way of an appraisal, then updated and shared with the Council at regular intervals throughout the Development in accordance with clause 6 for the purposes of establishing (without limitation):

- (a) the Land Value Thresholds;
- (b) project costs and income;
- (c) Land Value psf; and
- (d) Overage;

“Financial Model Long Stop Date”

has the meaning given in clause 6.1;

“Force Majeure Event”

means the occurrence after the date of the Agreement of any of the following events or circumstances:

- (a) war, civil war, armed conflict, or terrorism; or
- (b) nuclear contamination; or
- (c) chemical or biological contamination caused by war, civil war, armed conflict, or terrorism;
- (d) pressure waves caused by devices travelling at supersonic speeds;

which directly causes either party to be unable to comply with all or a material part of its obligations under this Agreement;

[REDACTED]

NOTE: Redacted as commercially sensitive. Please refer to Appendix D(i) - Recommended Development Partner's commercial position (Exempt).

[REDACTED]

NOTE: Redacted as commercially sensitive.

- “GDV”** means gross development value;
- “Grant”** means any grant, public subsidy or public equity to be applied for and used in relation to the Development pursuant to clause 16 and in accordance with the Grant Strategy and which will be factored into the Financial Model;
- “Grant Date”** means the date on which Planning Permission is issued in writing by the local planning authority or the Secretary of State or any other person or body having appropriate jurisdiction and authority to effect such permission pursuant to the Planning Application and which for the avoidance of doubt shall not occur until the completion of any relevant Planning Agreement;
- “Grant Strategy”** means the strategy developed and agreed under clause 16.1 and included in this Agreement at Schedule 13 (as the same may be revised from time to time by agreement of the parties);
- “Gross Internal Area”** means gross internal area calculated in accordance with the principles of IPMS 2 - Office and IPMS 2 - Residential as set out in Part 1 and Part 2 of RICS Property Measurement 2nd edition,

and the term “GIA” shall be construed accordingly;

- “Harm”** means harm to the Environment and for the avoidance of doubt (but without limitation) harm to the health of living organisms or other interference with the ecological systems of which they form part and in the case of man includes offence caused to any of his senses or harm to his property;
- “Hazardous Substances”** means any substance capable of causing Harm;
- “Infrastructure”** means all of the infrastructure work, facilities or other items reasonably necessary for the proper and lawful implementation of the Development as identified in the relevant Phase Delivery Plan (including but not limited to):
- (a) all highways, junctions, roads, access ways and paths to be constructed or improved either within or outside the Development Site;
 - (b) all car-parking, refuse storage and recycling collection facilities;
 - (c) all Services and Service Media required to serve the Development including all service mains domestic connections upgrading of facilities and all pumping, substations, gas governors or similar installations, surface water balancing and attenuation, facilities, sustainable, drainage, systems, flood alleviation and compensation whether within or outside of the Development Site;
 - (d) all works associated with the bus solution as described in the Development Brief; and
 - (e) all works required under any Planning Agreement;
- “Infrastructure Condition”** means in relation to the Infrastructure the Developer:
- (a) obtaining the Council’s approval (not to be unreasonably withheld or delayed) to:
 - i. the Infrastructure Delivery Plan;
 - ii. the design, detailed specification, all the other necessary statutory approval for the carrying out the

	Works comprising the Infrastructure; and
	iii. the form of Building Contract and procurement process of the Contractor for the Infrastructure; and
	(b) providing evidence to the satisfaction of the Council (acting reasonably) that the Developer can fund the completion of the Infrastructure and complete the same in accordance with the Infrastructure Delivery Plan;
“Infrastructure Delivery Plan”	means the infrastructure delivery plan to be developed in accordance with and in order to satisfy the Development Objectives and agreed under clause 13.9 (as the same may be revised from time to time in accordance with this Agreement);
“Insolvency Event”	means the Developer (other than as part of any form of corporate reorganisation or restructuring): <ul style="list-style-type: none"> (a) becoming the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986; (b) having a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertakings, assets or income; (c) having passed a resolution for its compulsory winding-up; or (d) being the subject of any process or event similar or analogous to the events in limbs (a) to (c) above in any jurisdiction;
“Land Value psf”	means land value per square foot for each use class and residential tenure type, established by the Financial Model pursuant to the provisions of Clause 6, for the purposes of the Planning Overage calculation in Clause 17.5;
“Land Value Threshold”	means: <ul style="list-style-type: none"> (a) the Aggregate Phase Site Consideration Threshold; or

- (b) any one of the Phase Site Consideration Thresholds;

“Market Valuation”

means a market value established in accordance with the principles of the prevailing edition of the RICS Valuation & Standards Manual (Red Book) or the then equivalent by an independent Member or Fellow of the Royal Institution of Chartered Surveyors (RICS) jointly appointed by unanimous agreement of the parties or, in the absence of such agreement, by the President of RICS or any successor body, taking into account the satisfaction of all Primary Conditions or Phase Conditions (as the case may be) as at the date of such calculation and specifically the use permitted in the Satisfactory Planning Permission and any planning conditions or planning obligations associated with the Satisfactory Planning Permission, and being in such from as will enable the Parties to settle the Phase Site Consideration;

“Onerous Condition”

means any condition or conditions of a Planning Permission or a Planning Agreement which would, either individually or in combination:

- (a) result in an additional development cost (as set out in the Financial Model);
- (b) make the Planning Permission temporary or for a limited period of time (excluding any statutory constraints relating to the date by which works under the Planning Permission must be commenced);
- (c) make the Planning Permission personal to the Developer or any other class of person;
- (d) require the approval cooperation or agreement of a third party (other than the local planning authority or any other local planning authority or any highway authority or water authority who is party to a Planning Agreement) who is not a party to this agreement;
- (e) limit the occupation and/or use of the Development Site to any designated occupier or class of occupier - whether by imposing a geographical qualification or otherwise where this condition is not a natural consequence of the Development Delivery Plan (made in accordance with

the Development Objectives) and/or the Planning Application;

- (f) require or have the effect of requiring the payment or expenditure of money or the carrying out of work on the Development Site on matters which could not have been reasonably foreseen by the Developer and which a reasonably prudent developer would consider unreasonable and excessive in all relevant circumstances where this condition is not a natural consequence of the Development Delivery Plan (made in accordance with the Development Objectives) and/or the Planning Application;

“Overage” means the Planning Overage and/or the Revenue Overage (as the case may be);

“Overage Payment” means the sums calculated in accordance with clause 17.5;

“Overage Payment Date”



NOTE: Redacted as commercially sensitive.

“Personal Data” has the meaning set out in the Data Protection Laws;

“Phase” means (including Phase 1 and all Subsequent Phases):

- (a) one or more of the areas of the Development (more than one of which may be delivered concurrently) indicated in the Phasing Plan and the expression **“Phases”** shall be construed accordingly; and
- (b) a reference to a Phase identified by a number shall be a reference to the Phase allocated that number on the Phasing Plan;

subject to any necessary adjustment to the extent of any Phase which is agreed by the Council (acting reasonably) in writing pursuant to the provisions of clauses 8 and 18;

“Phase Building Lease”	means, in each case, a building lease of a Phase Site substantially in the form set out in Appendix 1 (subject to any amendments required to give effect to the drafting notes in the form of building lease or requested by either party and approved by the other party acting reasonably);
“Phase Building Lease Completion Date”	means the date on which a Phase Building Lease is granted by the Council in accordance with clause 7.2;
“Phase Conditions”	means the conditions set out in clause 4;
“Phase Conditions Long Stop Date”	means, in respect of any Subsequent Phase, the later of: (i) the relevant long stop date detailed in the relevant agreed Phase Delivery Plan or (ii) the date falling [REDACTED] after the relevant Phase Conditions Satisfaction Date applicable to the preceding Phase;
	<i>NOTE: Redacted as commercially sensitive.</i>
“Phase Conditions Satisfaction Date”	means, in each case, the date on which the Phase Conditions have been satisfied or waived for the relevant Phase;
“Phase Delivery Plan”	means the document prepared by the Developer (in such format as the parties shall agree from time to time) for delivery of a Phase reflecting the Delivery Plan and the Development Objectives;
“Phase Funding Condition”	means that written confirmation and evidence of available and sufficient funding to bring forward the relevant Phase, satisfactory to the Council (acting reasonably), has been provided to the Council by the Developer;
“Phase Long Lease”	means, in each case, save for in circumstances where the Council in its absolute discretion agrees to a freehold transfer of a Phase Site, a long leasehold transfer of a Phase Site to the Developer, in all cases substantially in the form set out in Appendix 2 (subject to any amendments required to give effect to the drafting notes in the form of Phase Long Lease, or as requested by either party to the relevant Phase Long Lease and approved by the other party acting reasonably);
“Phase Site”	means: <ul style="list-style-type: none"> (a) any one or more parts of the Development Site which are encompassed within a particular Phase, and the expression

“Phase Site” shall be construed accordingly; and

- (b) reference to a Phase Site identified by a number shall be reference to the Phase Site allocated that number on the Phasing Plan,

subject to, where applicable, any necessary adjustments to the extent of a Phase agreed by the Council (acting reasonably) in writing pursuant to the provisions of clauses 8 and 18;

“Phase Site Consideration”

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

NOTE: Redacted as commercially sensitive. Please refer to Appendix D(i) - Recommended Development Partner’s commercial position (Exempt).

“Phase Site Consideration Threshold”

means, in each case, the minimum threshold for the Phase Site Consideration applicable to the relevant Phase Site, generated when the Financial Model is first prepared and approved in accordance with clause 6;

“Phase Site Income”

means the income payable to the Council under clause 5.3;

“Phase Site Premium”

means the premium payable by the Developer under a Phase Building Lease;

“Phase Valuation Condition”	<p>means, in each case, in relation to the relevant Phase Site:</p> <p>(a) the procurement of a Market Valuation which determines the relevant Phase Site Consideration at a level which is equal to or greater than the applicable Phase Site Consideration Threshold; or</p> <p>(b) where the Market Valuation procured pursuant to limb (a) above is not agreed in writing by both parties acting reasonably, the determination of a Market Valuation which determines the relevant Phase Site Consideration at a level which is equal to or greater than the applicable Phase Site Consideration Threshold by an Expert in accordance with clause 24.4;</p>
“Phase 1”	means the Phase labelled “Phase 1” in the Phasing Plan;
“Phasing Plan”	means the phasing plan, to be prepared by the Developer and agreed by the parties as part of the updated version of the Delivery Plan in accordance with the provisions of clause 5 as may be amended from time to time in accordance with this Agreement;
“Planning Act”	means the Town and Country Planning Act 1990 and any statutory re-enactment or modification of it;
“Planning Agreement”	means any agreement pursuant to section 106 of the Planning Act and/or section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or section 111 of the Local Government Act 1972 and/or section 38 and/or 278 of the Highways Act 1980 and/or section 104 of the Water Industry Act 1991 (or any provision to the same or similar intent and/or any agreement with a water undertaker and/or a drainage undertaker (within the meaning of the Water Act 1989) or other appropriate authority as to water supply or drainage of surface water and/or foul water from the Development Site) or any other statute which regulates the planning, development or use of any part of the Development Site;
“Planning Application”	means a hybrid planning application for planning permission in respect of the Development, seeking a detailed Planning Permission in relation to Phase 1 and an outline Planning Permission in relation to the remainder of the Development, and any substitute duplicate or further planning

application, any written modifications or variation of such application in each case made pursuant to this Agreement to be submitted by the Developer to the local planning authority in the joint names of the Council and the Developer and in accordance with this Agreement;

“Planning Application Date”

means the date on which a Planning Application in respect of the Development is actually submitted by the Developer to the local planning authority in accordance with this Agreement;

“Planning Application Long Stop Date”

means the date falling [REDACTED] after the date on which the Council approves the Developer’s Development Delivery Plan in accordance with clause 5.2 of this Agreement;

NOTE: Redacted as commercially sensitive.

“Planning Condition”

means the obtaining of Satisfactory Planning Permission by or on the Planning Long Stop Date;

“Planning Long Stop Date”

means the date falling [REDACTED] after the date on which the Council approves the Developer’s Development Delivery Plan in accordance with clause 5.2 of this Agreement, provided that the Planning Long Stop Date shall be extended by such period of time as shall be agreed by the parties where:

NOTE: Redacted as commercially sensitive.

- (a) both a notice is given in accordance with paragraph 4.5.1 and the Appeal has been submitted by the Developer to the Secretary of State before the expiry of the period prescribed in paragraph 4.5.7 (in which event the Planning Long Stop Date shall be extended until eight weeks after the Secretary of State’s decision on such Appeal proceedings has been published or (if earlier) after such Appeal proceedings have been withdrawn or otherwise determined);
- (b) the Planning Application (as appropriate) has been Called In by the Secretary of State (in which event the Planning Long Stop Date shall be extended until five Working Days after the determination of the Call In shall be published by the Secretary of State or (if earlier) such Call In proceedings have been withdrawn or otherwise determined);

- (c) Planning Permission which is not subject to an Onerous Condition has been granted within twelve months from the Planning Application Date or during such extended period which arises pursuant to paragraph (a) or paragraph (b) of this definition but the Planning Discharge Date has not occurred in respect of the Planning Permission therefore making such Planning Permission not yet Capable of Implementation in which event the Planning Long Stop Date shall be extended until the Planning Discharge Date has occurred in respect of the Planning Permission;

“Planning Overage”



NOTE: Redacted as commercially sensitive.

“Planning Performance Agreement”

any agreement between the Developer and the Council (as local planning authority) in relation to the timetable for determining planning applications and the key milestones required to achieve that;

“Planning Permission”

means planning permission granted pursuant to the Planning Application by the local planning authority or the Secretary of State on Appeal or otherwise;

“Planning Proceedings”

means either of the following:

- (a) an application made for judicial review following the grant of Planning Permission by the local planning authority;
- (b) an application made under section 288 of the Planning Act, including by the local planning authority, following the grant of Planning Permission by the Secretary of State following an Appeal;

“Planning Refusal”

means either:

- (a) an actual refusal to grant a Planning Permission pursuant to the Planning

Application by the local planning authority or the Secretary of State; or

- (b) the grant of a Planning Permission subject to an Onerous Condition by the local planning authority or the Secretary of State;

“Practical Completion” means the date of the relevant Completion Certificate;

“Prescribed Rate” means interest shall be payable on the late payment of any undisputed sums of money properly due and payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended by the Late Payment of Commercial Debts Regulations 2002 and the Late Payment of Commercial Debts Regulations 2013, and which for the purposes of this Agreement shall (unless otherwise required by the aforementioned regulations) mean -

a rate of interest of 4 per cent (4%) per annum above the base rate from time to time of the Bank of England or such other clearing bank of the Council from time to time or (in the event that base rates are no longer published and used) such other comparable rate of interest as (in default of agreement) may be certified by a member for the time being of the Institute of Chartered Accountants in England and Wales (or if the said Institute shall cease to exist such comparable body of professional accountants as the Council may nominate) appointed by the Council to determine the same;

“Primary Conditions” means the primary conditions set out in clause 3.2;

“Primary Conditions Long Stop Date” means the date falling [REDACTED] after the date on which the Council approves the Developer’s Development Delivery Plan in accordance with clause 5.2 of this Agreement, save for where such date is extended in accordance with the provisions of clause 3.5;

NOTE: Redacted as commercially sensitive.

“Primary Conditions Satisfaction Date” means the date on which the Primary Conditions have been satisfied or waived;

“Private Residential Dwellings” means those Dwellings to be constructed during the Development which shall be made available for sale on the open market;

“Processing” has the meaning set out in the Data Protection Laws and **“Process”** and **“Processed”** shall be construed accordingly;

“Processor” has the meaning set out in the Data Protection Laws;

“Professional Team” means,

(a) in relation to the satisfaction of the Primary Conditions and Phase 1, the following:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

who are appointed by the Developer or Contractor, and

NOTE: Redacted as commercially sensitive. Recommended Development Partner’s professional team named in their final tender submission.

(b) in relation to each Subsequent Phase, the professional team appointed by the Developer or Contractor in consultation with, and subject to the prior approval of, the Council, such approval not to be unreasonably withheld or delayed;

“Prohibited Act” means:

(a) offering or giving or agreeing to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not doing any action in relation to the obtaining or

execution of this Agreement or any other contract with the Council;

- (b) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;
- (c) giving any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972;
- (d) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences in respect of fraudulent acts; and/or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; and/or
- (e) defrauding or attempting to defraud or conspiring to defraud the Council;

“Project Long Stop Date”

means the earlier of [REDACTED] from the Primary Conditions Satisfaction Date and being the Completion Date for the final phase of development under the Delivery Plan;

NOTE: Redacted as commercially sensitive.

“Project Team”

has the meaning given to such term in paragraph 2.1 of Schedule 15;

“Public Realm”

means the public realm requirements required by or described in the Development Brief;

“Public Realm Condition”

means in relation to the Public Realm the Developer:

- (a) obtaining the Council’s approval (not to be unreasonably withheld or delayed) to:
 - i. the Public Realm Delivery Plan;
 - ii. the design, detailed specification, all the other necessary statutory approval for the carrying out the Works comprising the Public Realm; and
 - iii. the form of Building Contract and procurement process of the

Contractor for the Public Realm;
and

- (b) providing evidence to the satisfaction of the Council (acting reasonably) that the Developer can fund the completion of the Public Realm and complete the same in accordance with the Public Realm Delivery Plan;

“Public Realm Delivery Plan”

means the public realm delivery plan to be developed in accordance with and in order to satisfy the Development Objectives and agreed under clause 5 (as the same may be revised from time to time in accordance with this Agreement);

**“Quarter Date/
Quarterly Review Date”**

means 20th April, 20th July, 20th October and 20th January (or the next Working Day if such date is not a Working Day) or such other dates as the Council and the Developer shall agree in writing;

“Quarterly Review Meeting”

has the meaning given to it in paragraph 2.1 of Schedule 8;

“Relevant Date”

means any Target Handover Date, Target Start on Site Date or Target Completion Date, the Planning Application Long Stop Date, the Planning Long Stop Date, the Primary Conditions Long Stop Date, the Extended Primary Conditions Long Stop Date, Phase Conditions Long Stop Date, the Extended Phase Conditions Long Stop Date, the Delivery Plans Long Stop Date, the Start on Site Long Stop Date, the Infrastructure Long Stop Date, the Public Realm Long Stop Date or the Project Long Stop Date (in each case as such date may be amended in accordance with this Agreement);

“Revenue Overage”

[REDACTED]

NOTE: Redacted as commercially sensitive.

**“Revenue Overage
Final Reconciliation
Date Threshold”**

[REDACTED]

NOTE: Redacted as commercially sensitive.

“Review”	has the meaning given in paragraph 4.1 of Schedule 9;
“Satisfactory Planning Permission”	means a Planning Permission granted by the local planning authority or the Secretary of State on Appeal or otherwise (as the case may be) which: <ul style="list-style-type: none"> (a) permits the construction of the Works in accordance with the Design Principles and the Development Objectives; (b) does not contain any Onerous Condition; (c) is Capable of Implementation;
“SDLT”	means Stamp Duty Land Tax;
“Senior Representatives”	means [REDACTED] in respect of the Council and [REDACTED] in respect of the Developer; <p>NOTE: Redacted as personal information.</p>
“Service Media”	means all drains, manholes, culverts, channels, watercourses, pipes, gutters, outlets, storage facilities, mains, wires, fibres optic cables, ducts, flues and soakaways and all and any other conduits apparatus and ancillary equipment for the creation, storage, supply and/or transmission of Services to, from and within the Development;
“Services”	means the supply of water, gas, electricity, heat, coolant or other fuel supply or source, telephone, telecommunication, cable television and all other appropriate services and the treatment and/or disposal of foul and surface water or other effluent bi-product or other excess services;
“Site Plan”	means the plan of the Development Site, set out in Schedule 2;
“Social and Economic Value Protocol”	means the protocol set out in Schedule 12;
“Start on Site Long Stop Date”	means, in relation to each Phase Site, [REDACTED] from the date on which the relevant Phase Building Lease is granted; <p>NOTE: Redacted as commercially sensitive.</p>
“Stopping Up Order”	means such highways stopping up and diversion orders as are necessary or desirable for the relevant Phase to proceed issued under the Highways Act 1980 or any other relevant powers or provisions;

“Subsequent Phase”	means any Phase (as detailed in the Phasing Plan) brought forward after Phase 1, more than one of which shall be collectively referred to as “Subsequent Phases” ;
“Supplementary Planning Document”	means the Supplementary Planning Document for the Central Winchester Regeneration (CWR) area adopted by the Council in June 2018;
“Target Completion Date”	means the target date for achieving Practical Completion in relation to each Phase, in each case as set out in the Development Delivery Plan;
“Target Handover Date”	means any target handover date in relation to a Phase as set out in the Development Delivery Plan;
“Target Start on Site Date”	means, subject to any variations pursuant to clause 18, the target start on site date in relation to each Phase, in each case as set out in the Development Delivery Plan;
“Termination Notice”	means a notice issued by the relevant party in accordance with clause 22.3.1 or clause 22.5.1 clearly marked that it is a Termination Notice and setting out the type and nature of the Developer Default or the Council Default (as the case may be) that has occurred;
“Third Party Interests”	means the whole of the freehold or leasehold interests in those parts of the relevant Phase Site, title to which is not vested in the Council and such rights, easements, covenants and other interests of whatsoever nature (including, but not limited to chancel repair liability), whether over the Phase Site or other land, and whether private or public, the acquisition or extinguishment of which is necessary or appropriate to enable the Phase to be carried out, disposed of and occupied without hinderance, provided that any rights, easements, covenants and other interests as may be expressly granted, reserved and/or imposed in the Phase Long Lease/Phase Building Lease or any other document entered into pursuant to this Agreement relating to the Development shall not be Third Party Interests;
“UK GDPR”	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of DPA;
“Vacant Possession”	means that: <ul style="list-style-type: none"> (a) any relevant Third Party Interests are vested in the Council or extinguished or will be capable of being overridden pursuant to section 203 of the Housing and

Planning Act 2016 because the Council has either acquired or appropriated all its interests in the relevant Phase Site pursuant to the powers contained in Part IX of the Town and Country Planning Act 1990 as amended and vacant possession is given to the Council; and

- (b) any leases which have been surrendered or determined have been removed from the registers of title relating to the relevant Phase Site;

“Vacant Possession Condition” means Vacant Possession of the relevant Phase Site has been obtained;

“VAT” means value added tax and the expression "exclusive of VAT" means in the case of any sum forming all or part of the consideration for a supply which is taxable at a positive rate of VAT such sum as after deduction from that VAT at the proper rate shall be equal to the stated amount and references to sums exclusive of VAT shall be references to sums as so reduced;

“Viable” means that the Development is shown by Development Viability Check to achieve equal to or greater than:

- (a) the Aggregate Phase Site Consideration Threshold; and
- (b) the Developer Profit;

“Waiver of Termination Notice” has the meaning given to it in clause 22.7.4;

“Working Day” means a day on which clearing banks in the City of London are (or would be but for strike lock-out or other stoppage affecting particular banks or banks generally) open during banking hours and **“Working Days”** shall be interpreted accordingly;

“Works” means all the works and operations to be carried out and performed or procured by the Developer to effect the Development as specified in this Agreement; and

“Works Obligations” means the obligations in respect of the Works contained in Schedule 5.

- 1.2 Any reference to a clause, sub-clause or schedule shall be construed to be a reference to a clause, sub-clause or schedule of this Agreement.

- 1.3 Words importing the singular number include the plural number and vice versa and words importing gender include any other gender.
- 1.4 Any reference in this Agreement to any statute or section of any statute or statutory instrument includes a reference to any statutory amendment, modification, replacement or re-enactment for the time being in force and to every instrument, order, direction, regulation, bye-law, permission, licence, consent, condition, scheme and matter made in pursuance of that statute or statutory instrument and any legislation which replaces, supersedes or supplements any of the above as a result of the United Kingdom ceasing to be a member of the European Union.
- 1.5 Any obligation on a party to do anything shall be construed and interpreted as an obligation on that party to do or procure that any such thing is done.
- 1.6 Any obligation on a party not to do anything shall be deemed to include an obligation not to permit or suffer anything to be done by anyone within its control.
- 1.7 Any reference to a party or parties means any party or parties to this Agreement.
- 1.8 Any reference to obtaining approval under this Agreement shall be deemed to include a requirement that every such approval is in writing.
- 1.9 The clause headings and the headings to the schedules in this Agreement shall not affect the construction of this Agreement.
- 1.10 The expression the "Developer" shall wherever the context so admits include their assignees, novatees or transferees (as the case may be and only where such assignment, novation or transfer is permitted under this Agreement) and the expressions " the Council" shall, wherever the context so admits, include any statutory successors to the Council.
- 1.11 All references to costs in this Agreement shall be to costs properly and reasonably incurred or, in relation to forecast costs, shall be to costs anticipated to be properly and reasonably incurred.
- 1.12 In the event of any conflict between the terms of this Agreement and the contents of the schedules, the terms of this Agreement shall take precedence.

2 Development Objectives

- 2.1 The parties agree (subject always to the further terms of this agreement) that the objectives for the Development are as set out in the Development Brief (the "**Development Objectives**").
- 2.2 The parties expressly acknowledge to each other and agree that they are entering into this Agreement with the intention of completing the Development and shall at all times act in good faith to achieve the Development Objectives in accordance with the Delivery Plans and their respective obligations under this Agreement.

3 Primary Conditions (Phase 1)

- 3.1 In respect of Phase 1 the Primary Conditions must be satisfied in order for the Developer to take a Phase 1 Building Lease and commence development of that Phase Site.
- 3.2 The Primary Conditions are:
- 3.2.1 the Developer satisfying its obligations under clause 5 and clause 6 and the Council approving the Delivery Plans, the Financial Model and the Land Value Thresholds;
 - 3.2.2 the Developer preparing and the Council approving the Phase Delivery Plan in relation to Phase 1 in accordance with clause 5.4;
 - 3.2.3 the Developer satisfying the Planning Condition;
 - 3.2.4 the Developer satisfying the Development Viability Condition;
 - 3.2.5 it being agreed in writing by both parties acting reasonably that the Phase Valuation Condition has been satisfied in relation to Phase 1;
 - 3.2.6 the Developer satisfying the Phase Funding Condition in relation to Phase 1;
 - 3.2.7 the Developer satisfying the Consultation Condition in relation to Phase 1;
 - 3.2.8 the Developer satisfying the Public Realm Condition;
 - 3.2.9 the Developer satisfying the Infrastructure Condition;
 - 3.2.10 the Developer securing any required Stopping Up Order in relation to Phase 1;
 - 3.2.11 the Developer obtaining all necessary Consents in relation to Phase 1;
 - 3.2.12 the Council obtaining (where applicable) all necessary Council Obtained Consents in relation to Phase 1;
 - 3.2.13 it being agreed in writing by both parties acting reasonably that the Vacant Possession Condition has been satisfied in relation to Phase 1;
 - 3.2.14 the Developer providing evidence satisfactory to the Council of the implementation of the Social and Economic Value Protocol;
 - 3.2.15 the Developer providing evidence satisfactory to the Council of the implementation of the Sustainability Protocol.
- 3.3 The Council and the Developer shall use reasonable endeavours to satisfy those Primary Conditions which are their respective responsibilities as soon as reasonably practicable and in any event by the Primary Conditions Long Stop Date (provided that the reasonable endeavours obligation under this

clause shall in no way limit the obligations of the Developer in relation to planning as set out in Schedule 4).

- 3.4 The Developer shall be responsible for obtaining a Satisfactory Planning Permission and the Council and the Developer shall comply with their respective obligations as set out in Schedule 4.

Extension

- 3.5 If by the Primary Conditions Long Stop Date any one or more of the conditions under clause 3.2 have not been satisfied then the Council and the Developer may agree in writing to extend the Primary Conditions Long Stop Date as many times as they may agree is necessary to satisfy the relevant Primary Conditions, and any extension to the Primary Conditions Long Stop Date in accordance with this clause 3 shall be the "**Extended Primary Conditions Long Stop Date**" and, in any event, prior to terminating this Agreement in accordance with the provisions of clause 3.11 for reason of a failure to satisfy the Primary Conditions, the Council and the Developer each acting reasonably shall meet and explore in good faith by way of a Review available options reconfigure the Development by written agreement in a manner that may help better facilitate the satisfaction of the Primary Conditions.

Failure to satisfy the Development Viability Condition and/or the Phase Valuation Condition in relation to Phase 1

- 3.6 If either the Development Viability Condition and/or the Phase Valuation Condition in relation to Phase 1 are not satisfied, the Council and the Developer agree and acknowledge that the Development shall be subject to a Review, in which case clause 18 and Schedule 9 shall apply. Where both the Development Viability Condition and/or the Phase Valuation Condition in relation to Phase 1 are satisfied, the Developer and the Council shall continue to proceed with their respective obligations under this Agreement.

Waiver

- 3.7 The Developer shall be entitled to notify the Council that it proposes to waive all or any of the Planning Condition, the Development Viability Condition and/or the Primary Condition related to the Developer obtaining all necessary Consents. The Council shall within a reasonable time period confirm in writing to the Developer, whether, in its absolute discretion, it agrees to such waiver or not (and for the avoidance of doubt, such written confirmation from the Council shall be required in all circumstances and there shall be no deemed agreement or otherwise to a proposed waiver where written confirmation from the Council is not provided within a reasonable time period).
- 3.8 The Council shall be entitled to notify the Developer that it proposes to waive the Primary Condition related to the Council obtaining (where applicable) all necessary Council Obtained Consents. The Developer shall within a reasonable time period confirm in writing to the Council whether, in its absolute discretion, it agrees to such waiver or not (and for avoidance of doubt, such written confirmation from the Developer shall be required in all circumstances and there shall be no deemed agreement or otherwise to a proposed waiver where written confirmation from the Developer is not provided within a reasonable time period).

- 3.9 Either the Council or the Developer shall be entitled to notify the other that it proposes to waive the Vacant Possession Condition. The other party shall within a reasonable time period confirm in writing whether, in its absolute discretion, it agrees to such waiver or not (and for avoidance of doubt, such written confirmation shall be required and there shall be no deemed agreement or otherwise to a proposed waiver where written confirmation is not provided by the other party within a reasonable time period).
- 3.10 The Council and the Developer shall keep each other informed of the progress in satisfying the Primary Conditions (including, where it is considered necessary, instigating a Review) and shall notify each other in writing within five (5) Working Days following the date upon which each of the Primary Conditions for which they are responsible has been satisfied.

Termination

- 3.11 Subject to the provisions of clause 3.5 and clause 3.6, if the Primary Conditions have not be satisfied by 5.30 pm on the Primary Conditions Long Stop Date or the Extended Primary Conditions Long Stop Date (if relevant) and the Council and the Developer agree (both acting reasonably) that this Agreement should be terminated accordingly, then with effect from 5.30 pm on that date this Agreement shall terminate and, subject to the consequences of such termination described in clause 22.1, cease to have any further effect and the respective rights and obligations of the parties shall cease to have any further effect, without prejudice to any existing right or remedy of any party against the other.

4 Subsequent Phase Conditions

- 4.1 In respect of each Subsequent Phase the Phase Conditions must be satisfied in order for the Developer to take a Phase Building Lease and commence development of the relevant Phase Site.
- 4.2 The Phase Conditions are:
- 4.2.1 the Developer obtaining Approval of Reserved Matters in relation to the relevant Phase;
 - 4.2.2 the Developer preparing and the Council approving the Phase Delivery Plan in relation to relevant Phase Site in accordance with clause 13.2;
 - 4.2.3 the Developer satisfying the Development Viability Condition;
 - 4.2.4 it being agreed in writing by both parties acting reasonably that the Phase Valuation Condition has been satisfied in relation to the relevant Phase Site;
 - 4.2.5 the Developer satisfying the Phase Funding Condition in relation to the relevant Phase Site;
 - 4.2.6 the Developer satisfying the Consultation Condition in relation to the relevant Phase Site;

- 4.2.7 the Developer securing (where applicable) any necessary Stopping Up Order in relation to the relevant Phase Site;
- 4.2.8 the Developer obtaining all necessary Consents in relation to the relevant Phase Site;
- 4.2.9 the Council obtaining (where applicable) all necessary Council Obtained Consents in relation to the relevant Phase Site;
- 4.2.10 it being agreed in writing by both parties acting reasonably that the Vacant Possession Condition has been satisfied in relation to the relevant Phase Site;
- 4.2.11 the Developer providing evidence satisfactory to the Council of the implementation of the Infrastructure Delivery Plan;
- 4.2.12 the Developer providing evidence satisfactory to the Council of the implementation of the Public Realm Delivery Plan;
- 4.2.13 the Developer providing evidence satisfactory to the Council of the implementation of the Social and Economic Value Protocol;
- 4.2.14 the Developer providing evidence satisfactory to the Council of the implementation of the Sustainability Protocol;
- 4.2.15 where relevant in relation to the relevant Phase Site, the Deed of Guarantee being provided to the Council.

Parties' obligations

- 4.3 The Council and the Developer shall use reasonable endeavours to satisfy those Phase Conditions which are their respective responsibilities as soon as reasonably practicable and in any event by the Phase Conditions Long Stop Date.
- 4.4 The Developer shall be responsible for obtaining a Satisfactory Planning Permission for each Phase and the Council and the Developer shall comply with their respective obligations as set out in Schedule 4.

Extension

- 4.5 If by the Phase Conditions Long Stop Date (for the avoidance of doubt subject to extension in accordance with the terms of this Agreement for a Delay Event) any one or more of the Phase Conditions have not been satisfied or waived by the Phase Conditions Long Stop Date then the Council and the Developer may agree (acting reasonably) in writing to extend the Phase Conditions Longstop Date as many times as they may agree is necessary to satisfy the Phase Conditions, and any extension to the Phase Conditions Longstop Date in accordance with this clause 4 shall be the "**Extended Phase Conditions Long Stop Date**".
- 4.6 Prior to terminating this Agreement in accordance with the provisions of clause 4.12 for reason of a failure to satisfy the Phase Conditions, the Council and the Developer each acting reasonably shall meet and explore in good faith by way of a Review available options to reconfigure the Development

by written agreement in a manner that may help better facilitate the satisfaction Phase Conditions.

Failure to satisfy the Development Viability Condition and/or the Phase Valuation Condition in relation to a Subsequent Phase

- 4.7 If either the Development Viability Condition and/or the Phase Valuation Condition in relation a Subsequent Phase are not satisfied, the Council and the Developer agree and acknowledge that the Development shall be subject to a Review, in which case clause 18 and Schedule 9 shall apply. Where both the Development Viability Condition and/or the Phase Valuation Condition in relation to a Subsequent Phase are satisfied, the Developer and the Council shall continue to proceed with their respective obligations under this Agreement.

Waiver

- 4.8 The Developer shall be entitled to notify the Council that it proposes to waive all or any of the Phase Conditions. The Council shall within a reasonable time period (being not more than ten (10) Working Days) confirm in writing to the Developer, whether, in their absolute discretion, they agree to such waiver or not (and for the avoidance of doubt, such written confirmation from the Council shall be required in all circumstances and there shall be no deemed agreement or otherwise to a proposed waiver where written confirmation from the Council is not provided within a reasonable time period) provided that the Council are to act reasonably in respect of agreeing to waiver by the Developer of the Phase Funding Condition.
- 4.9 The Council shall be entitled to notify the Developer that they propose to waive a Phase Condition related to the Council obtaining (where applicable) all necessary Council Obtained Consents. The Developer shall within a reasonable time period confirm in writing to the Council whether, in its absolute discretion, it agrees to such waiver or not (and for avoidance of doubt, such written confirmation from the Developer shall be required in all circumstances and there shall be no deemed agreement or otherwise to a proposed waiver where written confirmation from the Developer is not provided within a reasonable time period).
- 4.10 The Council or the Developer shall be entitled to notify the other that they propose to waive the Vacant Possession Condition. The notified party shall within a reasonable time period confirm in writing whether, in their absolute discretion, they agree to such waiver or not (and for avoidance of doubt, such written confirmation shall be required and there shall be no deemed agreement or otherwise to a proposed waiver where written confirmation is not provided by the other party within a reasonable time period).
- 4.11 The Council and the Developer shall keep each other informed of the progress in satisfying the Phase Conditions (including, where it is considered necessary, instigating a Review) and shall notify each other in writing within ten (10) Working Days following the date upon which each of the Phase Conditions for which they are responsible has been satisfied.

Termination

- 4.12 If the Phase Conditions are not satisfied or waived by the Phase Conditions Long Stop Date or the Extended Phase Conditions Long Stop Date in respect of a Phase by the relevant Phase Conditions Long Stop Date and the Council and the Developer agree (acting reasonably) that this Agreement should be terminated accordingly, then with effect from 5.30 pm on that date this Agreement shall terminate and, subject to the consequences of such termination described in clause 22.2, cease to have any further effect and the respective rights and obligations of the parties shall cease to have any further effect, without prejudice to any existing right or remedy of any party against the others.

5 Delivery Plans, Phasing Plan and Phase Delivery Plan in relation to Phase 1

- 5.1 The parties acknowledge and agree that the version of the Development Delivery Plan included in Schedule 3 is based on proposals contained within the Developer's Tender in accordance with and to satisfy the Development Brief.
- 5.2 As soon as reasonably practicable prior to the submission of the Planning Application, and in any event by no later than the date falling [REDACTED] after the date of this Agreement (the "**Delivery Plans Long Stop Date**"), the Developer shall prepare, agree and circulate for Council approval a draft updated version of the Development Delivery Plan (including the Phasing Plan), such approval not to be unreasonably withheld or delayed. The Council shall be acting reasonably in withholding approval or requiring amendments where:
- 5.2.1 all or part of the draft updated version of the Delivery Plans circulated by the Developer is not in accordance with the Development Objectives; and/or
- 5.2.2 the draft updated version of the Delivery Plans circulated by the Developer is not coherent across the Phases.

NOTE: Redacted as commercially sensitive.

- 5.3 In preparing a draft updated version of the Development Delivery Plan and Planning Application, the Developer shall seek to identify opportunities from the Development which secure an income stream for the Council (by way of Phase Site Income (or other means approved by the Council)) in accordance with the Development Objectives.
- 5.4 The Infrastructure Delivery Plan, Public Realm Delivery Plan and Phase Delivery Plan in relation to Phase 1 are to be developed by the Developer alongside the Development Delivery Plan and submitted for the Council's approval with the draft updated version of the Development Delivery Plan (and may be incorporated in the Development Delivery Plan as schedules or appendices), such approval not to be unreasonably withheld or delayed. The Council shall, in each case, be acting reasonably in withholding approval or requiring amendments where:
- 5.4.1 all or part of the draft Infrastructure Delivery Plan, Public Realm Delivery Plan and/or Phase Delivery Plan in relation to Phase 1 circulated by the Developer is not in accordance with the Development Objectives; and/or

- 5.4.2 in the case of the Infrastructure Delivery Plan and/or Public Realm Delivery Plan, the version circulated by the Developer is not coherent across the Phases; and/or
- 5.4.3 any one or more of the draft Infrastructure Delivery Plan, Public Realm Delivery Plan and/or Phase Delivery Plan in relation to Phase 1 are in any material respect inconsistent with the Development Delivery Plan.
- 5.5 The draft updated version of the Development Delivery Plan (with such amendments as reasonably required by the Council) shall become the Development Delivery Plan in place of the first version of the same immediately following the Council's approval.
- 5.6 Review of Delivery Plans
 - 5.6.1 The Council and the Developer acknowledge that given the nature of the Development the Delivery Plans may be changed over time, such amendments to be effected in accordance with this clause 5.6.
 - 5.6.2 The Developer will present to the Council on a not less than quarterly basis updated versions of the Delivery Plans taking into account all progress and developments to that date.
 - 5.6.3 The Council and the Developer acting reasonably will discuss the amendments proposed to the Delivery Plans under clause 5.6.2 above at the Quarterly Review Meeting and will use reasonable endeavours to agree the changes to the Delivery Plans. Any changes made to the Development Delivery Plan (except for in relation to the Phasing Plan which may only be amended pursuant to clause 8), the Infrastructure Delivery Plan or the Public Realm Delivery Plan shall require the unanimous consent of the parties and, save for where the Council in its sole discretion agrees otherwise in writing, any such changes shall be in accordance with the Development Objectives. For the avoidance of doubt, no change may be made which would result in a departure from the Development Objectives without the consent of the Council.
 - 5.6.4 Any amendments to the Delivery Plans agreed under clause 5.6.3 above will be reflected in the Delivery Plans by the Developer.
 - 5.6.5 Without prejudice to the remainder of this clause 5.6, the Developer will update the Delivery Plans to reflect any change to any Relevant Date as a result of a Delay Event as agreed in accordance with clause 14.5 within ten (10) Working Days of such agreement.
 - 5.6.6 The Developer shall provide the Council with a written report within ten (10) Working Days of each Quarterly Review Date providing full details of the progress of the Works and those matters specified in the Delivery Plans.

5.6.7 The Council and the Developer shall each comply with their respective obligations set out in paragraphs 2 and 3 of Schedule 8 in relation to each Quarterly Review Meeting.

6 Financial Model, Land Value Thresholds and Land Value psf

6.1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOTE: Redacted as commercially sensitive.

6.2 The parties acknowledge that the Council is subject to section 123 of the Local Government Act 1972 and the Council confirms that it shall comply with its obligations thereunder.

6.3 For the purposes of establishing the Land Value Thresholds and Phase Site Consideration Thresholds, the Development Delivery Plan and relevant Phase Delivery Plan shall identify to the satisfaction of the Council the Market Valuation special assumptions that are to be used in establishing the Market Valuation attributable to any relevant asset that will generate Phase Site Income (having regard to clause 6.2).

6.4 Where any of the Phase Site Consideration Thresholds generated by the Financial Model pursuant to clause 6.1.2, or any of the assumptions used in the Financial Model, are not agreed in writing by both parties acting reasonably, the matter shall be referred to an Expert for determination in accordance with clause 24.4.

6.5 Following Council approval of the Financial Model and Phase Site Consideration Thresholds, the Developer shall provide and continue to update the Financial Model in accordance with this clause 6. The logical integrity and assumptions used in the Financial Model shall remain the responsibility of the Developer but shall always incorporate and be premised upon the inputs included in the appraisal summary sheet included in the Financial Model. Any changes to the logical integrity and assumptions set out in the appraisal summary sheet and used in the Financial Model shall be notified promptly to the Council in writing and agreed (both parties acting reasonably) before being implemented.

6.6 The Developer acknowledges and agrees that the Phase Site Consideration Thresholds generated by and incorporated in the Financial Model in accordance with clause 6.1 and agreed by the parties shall not be altered and/or revised without the prior written consent of the Council.

6.7 The Developer acknowledges and agrees that at any time the Council may (acting reasonably) request supporting information as is necessary to explain

and justify any assumptions, inputs and/or outputs contained in the Financial Model.

- 6.8 The Developer shall provide an updated Financial Model to the Council on the following dates:
- 6.8.1 at each Quarterly Review Date for monitoring purposes; and
 - 6.8.2 five (5) Working Days following the Final Reconciliation Date (the “**Final Financial Model**”).
- 6.9 An audit trail of each updated Financial Model shall be maintained by the Developer, together with supporting documentation and information available to the Council and its nominated advisors at any time on request with reasonable prior written notice, and each updated Financial Model shall:
- 6.9.1 be provided to the Council in electronic MS excel format;
 - 6.9.2 not be structurally altered from the format and structure of the previous version of the Financial Model other than where agreed in advance with the Council in writing;
 - 6.9.3 be prepared on an open book basis;
 - 6.9.4 include, as a minimum, the inputs included in the appraisal summary sheet in the Financial Model which (subject to clause 18) cannot be altered without the prior consent of the Council in its absolute discretion;
 - 6.9.5 be accompanied by a statement prepared by or on behalf of the Developer detailing and describing the changes from the information provided in connection with the previous version of the Financial Model and the reasons why such changes have been made and the financial consequences of the changes;
 - 6.9.6 be used to assess the progress of the Development, including to assess project costs and project income, potential Overage and Overage (as appropriate);
 - 6.9.7 contain the version date of the updated Financial Model in its title in the form ‘ddmmy’; and
 - 6.9.8 contain any changes required pursuant to the Planning Permission.

7 Handover and Building Leases

7.1 Handover

In relation to each Phase Site, following the relevant Phase Condition Satisfaction Date, the Developer shall request in writing that the Council hand over the relevant Phase Site on such date (“**Phase Handover Date**”) as the Developer shall specify in the notice (“**Phase Handover Notice**”) provided that the Phase Handover Date shall be:

- 7.1.1 no fewer than ten (10) Working Days after the date of the Phase Handover Notice; and
- 7.1.2 within twenty (20) Working Days of the Phase Condition Satisfaction Date;

and clause 7.2 shall apply.

7.2 Building Leases

- 7.2.1 Provided that the Developer has complied in full with clause 7.1, on any Phase Handover Date the parties shall enter into a Phase Building Lease in respect of the relevant Phase and the Developer shall simultaneously comply with its payment obligations under clause 17.3.

NOTE: Redacted as commercially sensitive. Please refer to Appendix D(i) - Recommended Development Partner's commercial position (Exempt).

- 7.2.2 The Council and the Developer confirm that before this Agreement was entered into:

- (a) the Council served a notice on the Developer, as required by section 38A(3)(a) of the LTA 1954 and which applies to the tenancy to be created by any Building Lease not less than 14 days before this agreement was entered into; and
- (b) the Developer made a statutory declaration dated _____ in accordance with the requirements of section 38A(3)(b) of the LTA 1954.

- 7.2.3 If, after the date of this Agreement, the extent of the Development Site is varied in accordance with this Agreement then:

- (a) the Council will promptly serve a notice on the Developer in relation to the tenancy to be created by any Building Lease as required by section 38A(3)(a) of the LTA 1954; and
- (b) unless the Developer makes a statutory declaration relating to the tenancy to be created by any Building Lease in compliance with the requirements of section 38A(3)(b) of the LTA 1954, the Council shall not be obliged to grant any Building Lease (of the varied Development Site) on the relevant Phase Handover Date and instead may either:
 - (i) delay the Phase Handover Date until such time as the required statutory declaration is made; or

- (ii) grant the relevant Building Lease in respect of the part of the Phase Site comprised in the relevant Phase prior to the variation of the same.

7.3 Building Contract

On or shortly after the any Phase Building Lease Completion Date, but in any event no more than twenty (20) Working Days after such date, the Developer shall enter into a Building Contract with the Contractor in respect of the Works applicable to that Phase.

7.4 Phase Long Lease

In the event that either party serves notice to terminate any Phase Building Lease in accordance with clause [REDACTED] of the Phase Building Lease, the Council shall grant and the Developer shall accept a Phase Long Lease in respect of the relevant Phase on the date of termination set out in the notice (such grant to take effect immediately following the termination of the relevant Phase Building Lease).



NOTE: Redacted as commercially sensitive. Please refer to Appendix D(i) - Recommended Development Partner's commercial position (Exempt).

7.5 Standard Conditions of Sale

The sale conditions set out in Schedule 7 shall apply to the grant of the Phase Building Leases pursuant to this clause 7.

8 Phasing reconfiguration

- 8.1 At any time during the carrying out of the Development, the Developer may, subject to obtaining the prior written consent of the Council (such consent not to be unreasonably withheld or delayed) reconfigure the phasing of the Development.
- 8.2 The Council shall not be acting unreasonably in withholding consent in circumstances where the Developer cannot demonstrate to the reasonable satisfaction of the Council that the proposed phasing reconfiguration will enhance and/or accelerate the delivery of the Development in accordance with the Development Objectives or increase the chance of securing a Satisfactory Planning Permission.

9 Vacant Possession and CPO

- 9.1 The parties shall work together to satisfy the Vacant Possession Condition.
- 9.2 The Council reserves the right to pursue a Compulsory Purchase Order in order to achieve Vacant Possession of all or part of the Development Site where, in its sole discretion subject to considering the merits of the approach and any related statutory requirements, it considers it appropriate to do so.

- 9.3 Where the parties agree, both acting reasonably, that it would be appropriate for the purposes of satisfying the Vacant Possession Condition, the Council agrees to consider the merits of a decision to use its powers of appropriation as well as the related statutory tests and, where it considers it appropriate to do so, will seek the necessary authority to appropriate all or part of the Development Site for planning purposes.

10 Community and stakeholder involvement

- 10.1 The Developer shall, at its own cost, use reasonable endeavours to implement the Community and Stakeholder Engagement Plan, as may be varied by the agreement of the Council from time to time.
- 10.2 By agreement of the parties under a Phase Delivery Plan, additional or different steps may be required in relation to the community and stakeholder engagement for each Phase.
- 10.3 In addition to the Community and Stakeholder Engagement Plan, the Developer shall ensure that there is regular and meaningful engagement with the Council by way of attending agreed meetings.

11 Social and economic value and sustainability

- 11.1 The Developer shall comply with the Social and Economic Value Protocol in performing its obligations pursuant to this Agreement and other agreements entered into pursuant to or in connection with this Agreement, in compliance with and in order to satisfy the Development Objectives.
- 11.2 The Developer shall comply with the Sustainability Protocol in performing its obligations pursuant to this Agreement and other agreements entered into pursuant to or in connection with this Agreement in compliance with and in order to satisfy the Development Objectives.

12 Council obligations

12.1 Security and insurance

Security of the Development Site and arrangements for buildings and public liability insurance (as necessary) shall be the responsibility of the Council as landowner, up to the date on which their land interest(s) within the Development Site are transferred to the Developer in accordance with and/or pursuant to this Agreement.

12.2 Access for site investigation

The Council shall, to the extent that it is possible for it to do so given the extent of the Council's land interests within the Development Site from time to time, where necessary in advance of the date on which any Phase Building Lease is granted to the Developer in accordance with this Agreement, subject to the Developer complying with the provisions of clauses 13.6.2 and 13.6.3 below, allow the Developer and its contractors and consultants with or without requisite plant and machinery such access by way of licence to parts of the Development Site at the relevant time to carry out such reasonable tests surveys and investigations as the Developer reasonably require in order to assess the suitability of the Development Site for the Development.

12.3 Novation of surveys and reports

The Council shall use reasonable endeavours to procure the novation to the Developer of any relevant surveys or reports relating to the Development Site which have been shared with the Developer as part of the procurement, and the subject matter of which the Developer is expected to rely upon.

12.4 Infrastructure

The Council shall meet any obligations which it has agreed to accept in respect of funding contributions towards Infrastructure (if any) under a Phase Delivery Plan or (where applicable) Delivery Plan, including by way of applicable Grant or loan.

12.5 Community Infrastructure Levy

The Council shall cooperate with the Developer so far as reasonably practicable in providing relevant information in relation to the Development Site to enable the Developer to comply with its obligations under clause 13.12.

13 Developer's obligations

13.1 General

The Developer shall:

- 13.1.1 carry out and/or procure the carrying out of the Development in accordance with the Development Objectives, the Delivery Plans, the Design Principles, the Social and Economic Value Protocol, the Sustainability Protocol, the Satisfactory Planning Permission and all Consents;
- 13.1.2 maintain and update the Delivery Plan and Community and Stakeholder Engagement Plan;
- 13.1.3 observe and perform all its other obligations it is under this Agreement,

subject to compliance by the Council with all relevant obligations on the Council under this Agreement affecting the Developer's ability to do so and to cooperation from the Council where required under this Agreement.

13.2 Phase Delivery Plans

- 13.2.1 The Phase Delivery Plan in relation to Subsequent Phases are to be developed by the Developer and submitted for the Council's approval, such approval not to be unreasonably withheld or delayed. The Council shall, in each case, be acting reasonably in withholding approval or requiring amendments where:
 - (a) all or part of the Phase Delivery Plan in relation to a Subsequent Phase circulated by the Developer is not in accordance with the Development Objectives; and/or

- (b) the Phase Delivery Plan in relation to a Subsequent Phase is in any material respect inconsistent with the Development Delivery Plan.

13.3 Consents

The Developer shall use reasonable endeavours to secure any Consents.

13.4 Demolition

13.4.1 The Developer shall carry out or procure the carrying out of the demolition for each Phase in accordance with the Delivery Plan, and shall be responsible for clearing the Development Site in preparation for the Works.

13.4.2 Demolition shall be carried out on the terms set out in the Building Contract.

13.4.3 The cost of all demolition under this clause 13.4 above shall be borne by the Developer under the Building Contract and shall be a project cost.

13.5 Security and insurance

The Developer shall be responsible for the security of the Development Site and arrangements for buildings and public liability insurance (as necessary) from the date on which the Council's land interest(s) within the Development Site are transferred to the Developer in accordance with and/or pursuant to this Agreement.

13.6 Access for site investigation

13.6.1 The Developer shall carry out such reasonable searches, surveys and reports prior to commencing the Works (and where reasonably practicable prior to submission of the Planning Application) as a reasonable Developer would carry out and shall give the Council at least ten (10) Working Days' prior written notice of the need to exercise the right granted pursuant to clause 12.2 above specifying (by reference to a plan if necessary) such part or parts of the Development Site to be accessed and the estimated length of licence period required, and the Council and the Developer shall thereafter promptly agree a date for such access to commence and the length of the licence period (both parties acting reasonably).

13.6.2 The Developer exercising such rights of access shall:

- (a) comply fully with the reasonable requirements of the Council in respect of health and safety, noise and nuisance at all times;
- (b) ensure continued and unfettered operation for users/occupiers;

- (c) carry out such tests, surveys and investigations with all reasonable due diligence and care and in compliance with clause 12.2 above and cause as little disturbance and inconvenience as is reasonably practicable;
- (d) once the tests, surveys and investigations are completed, unless the Council (acting reasonably) procure the restoration of the relevant part(s) of the Development Site affected to the same state and condition as it was prior to the carrying out of such tests, surveys and investigations including the removal of any plant, machinery, materials, excavated waste and rubbish which is on such part or parts of the Development Site; and
- (e) unless otherwise agreed by the Council (acting reasonably) forthwith make good or procure the making good of all damage caused to the relevant part(s) of the Development Site to the satisfaction of the Council (acting reasonably) including the back filling and making good of any boreholes, trial pits or other excavations.

13.6.3

[REDACTED]

NOTE: Redacted as commercially sensitive.

13.7 Execution of Works

The Developer shall comply (and shall procure that the Contractor complies) with the Works Obligations.

13.8

[REDACTED]

NOTE: Redacted as commercially sensitive.

13.9 Infrastructure

The Developer shall fund the Infrastructure and enter into the necessary contracts for its design and delivery and ongoing maintenance/upkeep in accordance with the Infrastructure Delivery Plan and each Phase Delivery Plan or (where applicable) Development Delivery Plan.

13.10 Public Realm

The Developer shall fund the Public Realm and enter into the necessary contracts for its design and delivery and ongoing maintenance/upkeep in accordance with the Public Realm Delivery Plan and each Phase Delivery Plan or (where applicable) Development Delivery Plan.

13.11 Section 106 obligations

Unless otherwise agreed by the Council or unless not required by the Satisfactory Planning Permission, the Developer shall not commence any Works until the Development Site is subject to the planning obligations in any agreement under section 106 of the Town and Country Planning Act 1990 ("**Section 106 Agreement**") affecting the Development Site.

13.12 Community Infrastructure Levy

Subject to the provisions of clause 12.5, the Developer shall be responsible for all payments under the Community Infrastructure Levy.

13.13

[REDACTED]

[REDACTED]

NOTE: Redacted as commercially sensitive.

13.14 Inspections

The Developer shall allow the Council and its authorised representatives and advisers access to the Development Site at reasonable times and on reasonable notice for the purpose of inspection and monitoring of the Works, subject to the such persons complying with the Developer's and/or the Contractor's health and safety requirements.

13.15 Practical Completion

13.15.1 The Developer shall procure that:

- (a) the Contractor gives at least 10 Working Days' notice to the Council of its intention to inspect the Development for the purposes of issuing a Completion Certificate. The Council's Senior Representative may attend the inspection and make representations to the Developer; and
- (b) without fettering the discretion of the Contractor in carrying out its duties under the Building Contract, the Contractor takes proper consideration of any representations that are made when considering whether to issue a Completion Certificate in accordance with the terms of the Building Contract.

13.15.2 The Developer shall ensure that the Contractor gives a copy of each Completion Certificate to the Council within two working days after its issue, together with a copy of any accompanying snagging list.

- 13.15.3 If the Council believes that the Contractor's decision to issue a Completion Certificate is incorrect or that the Completion Certificate ought to have been qualified, the Council may notify the Developer within 10 Working Days giving details of the Council's objections. The Council and Developer shall use their reasonable endeavours to agree what action should be taken, but if they cannot agree then either party may refer the matters they have been unable to agree to dispute resolution in accordance with clause 24.4. The Developer shall take whatever action, if any, which may be agreed with the Council or is required by the adjudicator.

13.16 Defects Correction

- 13.16.1 Prior to the Defects Correction Date and subject to the Council permitting the Developer and those authorised by it to have access to the Works for the purpose of complying with its obligations under this clause 13.16 the Developer shall inspect or procure such inspections of the Works as are reasonably necessary or appropriate to identify any defects, shrinkages or other faults in the Works.
- 13.16.2 The Developer shall prepare a list of all defects, shrinkages or other faults in the Works (incorporating any defects, shrinkages or other faults in the Works notified to it by the Council's Senior Representative) and give it to the Contractor within the time limits specified by the Building Contract.
- 13.16.3 The Developer shall ensure that the Contractor's obligations to remedy defects, shrinkages or other faults in the Works during the Defects Correction Period are enforced and that all such defects, shrinkages or other faults in the Works are remedied promptly in accordance with the Building Contract. If the Contractor fails to remedy defects, shrinkages or other faults within its Defect Correction Period the Council may instruct the Developer to procure (and the Developer shall procure) at the Developer's cost the rectification of the defect, shrinkage or other fault by others.
- 13.16.4 Without prejudice to any other remedy which the Council may have, throughout the carrying out of the Works the Council shall be entitled to serve notice on the Developer of any defect or failure to comply with the terms of this Agreement, and the Developer shall remedy such defects or failures forthwith.
- 13.16.5 Provided that the Developer has procured rectification of all notified defects either by the Contractor or by others pursuant to clause 13.16.3, the Developer shall cease to be liable and the Council shall make no claim against the Developer for breach or failure to perform the obligations under this Agreement in relation to the carrying out of the Works only and in so far only as carried out by the Contractor under the Building Contract, in contract, tort or under statute after the date which is the later of the expiry of the Defects Correction Period and the date of issue of the Defects Certificate under the Building Contract for the last Phase but without prejudice to any right or remedy of the Council for

any claim made against or notified to the Developer before such date in respect of any pre-existing breach. For the avoidance of doubt the Developer is not on such date released from any of the obligations contained in this Agreement which pertain to matters not to be carried out under the Building Contract.

14 Delay events

14.1 Notice

If at any time the Developer becomes aware of the occurrence or potential occurrence of a Delay Event such that any Relevant Date may not be achieved, the Developer shall promptly notify the Council to that effect specifying:

14.1.1 the nature of the Delay Event; and

14.1.2 an estimate of the likely effect of the delay to any Relevant Date (taking into account any measures that the Developer proposes to adopt to mitigate the consequences of the delay in accordance with clause 14.3 below).

14.2 Supply of information

Following service of a notice by the Developer under clause 14.1 above, the Developer shall promptly supply to the Council any further information relating to the Delay Event which:

14.2.1 is received by the Developer; or

14.2.2 is reasonably requested by the Council.

14.3 Duty to mitigate

The Developer shall take all reasonable steps to mitigate the effect of the Delay Event and the consequences of any delay which is the subject of a notice under clause 14.1 above.

14.4 Effect of a Delay Event

If, as a result of the occurrence of a Delay Event, the Developer is unable to meet any Relevant Date, then the Developer shall be entitled to apply for an extension of time to any Relevant Date.

14.5 Giving of an extension

If a Delay Event occurs, any Relevant Date shall be extended by such time as the parties shall agree, and which shall be reasonable for such Delay Event taking into account the likely effect of the delay, and the Developer shall update the Delivery Plan in accordance with clause 5.6.5.

14.6 Failure to agree

If the Council and the Developer cannot agree the extent of any delay incurred or the Council disagrees that a Delay Event has occurred (or as to its

consequences) or that the Developer is entitled to relief under this clause 14 above, the Council and the Developer shall resolve the matter in accordance with clause 24 below.

15 Condition of the site

- 15.1 Without prejudice to clause 15.2 below, the Developer shall take the Development Site in its existing state and condition as at the date of the grant of the relevant Phase Building Lease and the parties agree that the Council have not warranted that the Development Site or any part of it is fit or suitable for any purpose set out in this Agreement or any Building Contract or suitable and fit for the Development or any Works.
- 15.2 The Developer acknowledges that from the date of the grant of each Phase Building Lease to the Developer it:
- 15.2.1 accepts the relevant part of the Development Site in its state and condition as at the date of the relevant Phase Building Lease;
 - 15.2.2 has been given the opportunity, to the extent that it is possible given the extent of the Council's land interests within the Development Site from time to time, to inspect the Development Site to satisfy itself as to the physical nature and extent of the Development Site; and
 - 15.2.3 has not been induced to enter into this Agreement or any Phase Building Lease by any representation (whether oral or written) made by or on behalf of the Council with the exception of any written replies given by the Council to enquiries made by or on behalf of the Developer before the date of this Agreement.

16 Grant

- 16.1 The parties agree that any application for Grant in respect of the Development, or any part or parts of it, by any party must be made with the prior written approval of the other party, and all matters in respect of Grant shall be dealt with in accordance with the Grant Strategy.
- 16.2 In accordance with the Grant Strategy, the parties shall keep under review all feasible means for obtaining Grant in support of the Development Objectives. In doing so they shall consider, among other things:
- 16.2.1 the availability and types of Grant (and monetary benefit);
 - 16.2.2 the criteria for making application or for accepting a Grant offer;
 - 16.2.3 any Grant restrictions or terms which are either onerous or incompatible with the Development Objectives and/or the terms of this Development Agreement;
 - 16.2.4 any risk associated with the Grant, including state aid laws;
 - 16.2.5 any terms which may require repayment or clawback of the Grant; and

16.2.6 jointly procuring independent legal advice on any of the matters described in clauses 16.2.3, 16.2.4 and 16.2.5, and other legal considerations pertaining to Grant.

16.3 All Grant received by any party (or the parties jointly) in accordance with clause 16 shall, subject to compliance with any applicable subsidy control requirements or limitations, be applied in full towards the areas of the Development or other agreed costs for which purpose the Grant was awarded so that the allocation of the Grant between the parties is equal unless the parties shall agree otherwise in their absolute discretion.

16.4 No application for Grant or acceptance of a Grant offer shall be made other than with the agreement of all parties (acting reasonably), and shall in all cases be consistent with the Grant Strategy at the time. When applying for or accepting Grant, the parties shall agree terms in writing ensuring that (among other things):

16.4.1 any disproportionate benefit obtained by means of how the Grant will be applied;

16.4.2 any rights of clawback enjoyed by the Grant provider under the terms on which the Grant offer is made;

are to be dealt with on a fair and equitable basis as between the parties, having regard to the purpose for which the Grant is being used, and the benefit enjoyed by the parties individually as a result of the Grant.

17 Payments by the Developer

17.1 [REDACTED]

17.2 [REDACTED]

17.3 [REDACTED]

NOTE: Redacted as commercially sensitive. Please refer to Appendix D - Development Agreement Summary paragraph 16 and Appendix D(i) - Recommended Development Partner's commercial position (Exempt).

17.4 The Phase Site Consideration for each Phase shall be payable by the Developer to the Council under and in accordance with the relevant Phase Building Lease or Phase Long Lease as appropriate.

17.5 Overage

17.5.1 General duties

(a) It is agreed by the Developer that it shall pay Planning Overage and Revenue Overage in accordance with this Agreement.

(b) 

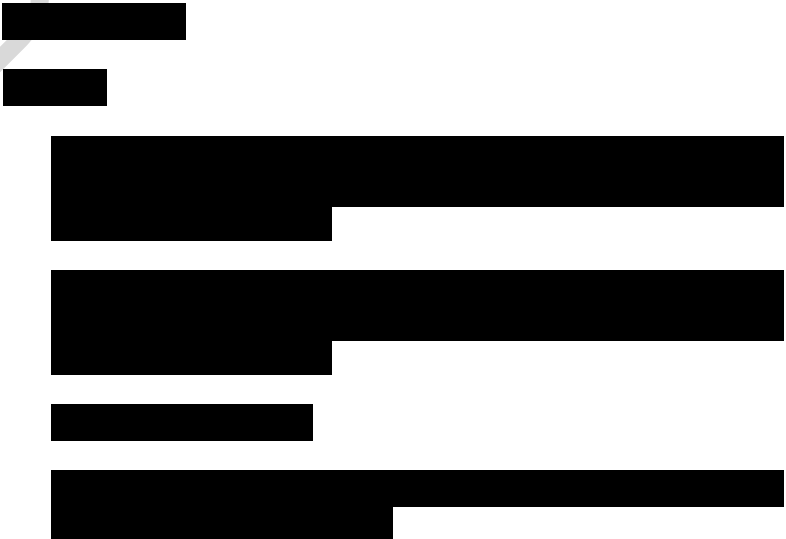
NOTE: Redacted as commercially sensitive. Please refer to Appendix D(i) - Recommended Development Partner's commercial position (Exempt).

(c) The Developer acknowledges that it owes the Council a duty of good faith to use reasonable endeavours and to act in a bona fide manner having regard to the liability on the part of the Developer to the Council for payment of the Overage.

17.5.2 Overage formula

Overage shall be calculated using the formulas below:

(a) The total of the **Planning Overage** shall be the sum calculated as follows:



(b) The total of the **Revenue Overage** in respect of each Phase shall be the sum calculated as follows:



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOTE: Redacted as commercially sensitive.

- 17.5.3 In relation to Overage payable, the Developer shall calculate Overage following the Final Reconciliation Date and within five (5) Working Days following the Final Reconciliation Date provide the Council with the Final Financial Model showing the calculation of Overage.
- 17.5.4 Within thirty (30) Working Days from receipt of the Final Financial Model showing the amount of Overage, the Council shall either (i) notify the Developer that it agrees the Overage calculation, in which case the Overage Payment shall become due and payable, or (ii) notify the Developer that it does not agree the Overage, in which case the Developer and the Council shall meet within ten

(10) Working Days of such notification to seek to agree the Overage. Any dispute as to the amount of Overage shall be subject to clause 24.

17.5.5 The Developer shall pay to the Council any Overage Payment by the Overage Payment Date.

17.5.6 The Developer shall keep all memorandum of sale (or similar), contracts, reports, accounts, recording payments made and/or received (as the case may be) which are to be maintained for the purpose of calculating and/or verifying compliance by the Developer with this clause 17.5 above for at least three (3) months after the Overage Payment Date and shall allow the Council and its accountants and authorised agents to inspect and have access to such records.

17.6 All payments to be made to the Council under this Agreement shall be made in sterling by electronic transfer of immediately available funds to the Council's nominated bank account with account number [REDACTED] and sort code [REDACTED], or such other bank account nominated by the Council from time to time, details of which are notified to the Developer in writing.

NOTE: Redacted as commercially sensitive.

17.7 All deferred Phase Site Consideration and Overage payable by the Developer shall be recognised and protected by a restriction to be entered onto the proprietorship register of the title to the Phase Site or Phase Sites in an agreed form.

17.8 All Overage due to the Council from the Developer shall be recognised and protected by a restriction on the title for the relevant Phase Long Lease(s) save that any such restriction shall not apply in relation to any disposal of a Private Residential Dwelling or any Excluded Disposal. A certificate confirming that the restriction does not apply to the disposals of Private Residential Dwellings can be given by the Developer's solicitors at the time of the disposal.

18 Review

18.1 The parties shall each comply with their respective obligations set out in Schedule 9 in relation to any Review and any consequential changes to scheme arrangements.

18.2 A Review shall be carried out where:

18.2.1 clause 3.6 applies; or

18.2.2 clause 4.7 applies.

18.3 A Review may be instigated at any point prior to the commencement of a Phase where the parties, each acting reasonably, agree that within the foreseeable future and by reference to reasonable and evidenced projections:

18.3.1 a Market Valuation of the relevant Phase Site is not likely to determine the relevant Phase Site Consideration at a level which is equal to or greater than the applicable Phase Site Consideration Threshold; and/or

18.3.2 the Development is not likely to be Viable.

18.4

[REDACTED]

NOTE: Redacted as commercially sensitive.

18.5 Only in respect of a Review where the Development Viability Condition is not satisfied but not otherwise, and only after all other options including those listed above in clauses 18.4.1 through to 18.4.7 inclusive have been considered, shall the parties discuss in good faith any reduction to the Land Value Thresholds.

18.6 Save for where the Council in its absolute discretion approves otherwise in writing, in no circumstances shall the Development Objectives be amended as part of a Review.

18.7 Duration of obligations

The obligations in this clauses 6 and 18 above shall continue until payment of Overage (if any) under clause 17 or, if no Overage is payable, until the final Completion Date.

19 Open book

- 19.1 The Developer shall keep or cause to be kept full and proper books of account in relation to the Development and the entries made in those books of account shall be kept up to date at all times and shall include all such matters and things which are usually entered in books of account in the United Kingdom kept by persons or companies engaged in concerns of a similar nature so as to enable the preparation from time to time of true and fair management accounts for the Development.
- 19.2 Books of account and all vouchers, receipts, invoices, orders, contractual documentation and other documentation relating thereto to which the Developer is a party shall be open to inspection by the Council or any persons appointed to act on their behalf at any reasonable time having made prior appointment with the Developer and the inspecting party shall be entitled to ask for a copy of the same which (subject to the prior payment of the reasonable copying and administrative charges) the Developer shall provide within ten (10) Working Days of the written request.
- 19.3 If the Council reasonably considers the books of account maintained by the Developer referred to in clauses 19.1 and 19.2 do not accurately represent and detail sums relating to this Agreement or the Development then the Developer shall instruct their respective external auditors (but no other person) to provide the Council's external auditor (but no other person) with documentary evidence that confirms whether or not in the Developer's external auditor's opinion such books of account do accurately represent sums arising from this Agreement or the Development.

20 Tax

20.1 General

The Developer and the Council will co-operate (including via the Project Team) and use their reasonable endeavours to minimise the adverse effect of any tax liabilities.

20.2 VAT

- 20.2.1 Save as the context requires or as otherwise stated, all references to payments made in this Agreement are references to such payments exclusive of any VAT chargeable in respect of the supply of goods or services for which the payment is or is deemed to be consideration and where such payments fall to be made under this Agreement such VAT shall be added to that amount and paid in addition to it.
- 20.2.2 Without prejudice to clause 20.2.1 above, where any supply is made or deemed to be made pursuant to this Agreement the recipient of such supply shall (subject to the receipt of a valid VAT invoice) pay to the supplier any VAT chargeable in respect of that supply.

20.2.3 Where any payment is required to be made under this Agreement to reimburse the payee for any expenditure which the payee may have incurred, such payment shall include an amount equal to any VAT comprised in that expenditure which is not recoverable by the payee as input tax under section 25 of the Value Added Tax Act 1994.

20.3 SDLT

20.3.1



NOTE: Redacted as commercially sensitive.

20.3.2 The Developer is responsible solely for any SDLT payment obligations relating to its purchase of the Development Site, including liability for SDLT on the Overage save where the Developer is able to obtain a valid exemption from SDLT. The Developer is not responsible for any SDLT liability of the Council beyond the scope of the Developer's funding obligations (so far as they are applicable to SDLT) pursuant to the terms of any CPO indemnity agreement.

21 Insurance

21.1 The Developer shall provide or procure and maintain the insurances set out in Schedule 6, provided that such insurances are available on commercially reasonable terms within the worldwide insurance market with reputable insurers of good standing.

21.2 The Developer shall ensure that the Building Contract and the terms of the appointment of the Professional Team require that the Contractor and each member of the Professional Team provide and maintain the insurances which are specified to be maintained by the Contractor or Professional Team (as applicable) in the second column of the table contained in Schedule 6.

21.3 The Developer shall:

21.3.1 comply with all proper requirements of the insurers in respect of the policies referred to in clause 21.2 above;

21.3.2 ensure that the Building Contract and the terms of the appointment of the Professional Team require that the Contractor and the Professional Team comply with all proper requirements of the insurers in respect of the policies referred to in clause 21.2 above and shall use reasonable endeavours to enforce such terms; and

21.3.3 not do or permit or suffer to be done on the Development Site or in relation to the Works anything which might render void or voidable any policy of insurance effected in accordance with the provisions of this clause 21 or as a result of which payment of the policy money might be withheld in whole or in part.

21.4 The Developer shall notify the Council immediately upon the occurrence of any material damage to or destruction of the Works prior to Practical Completion of the Works concerned (whether or not caused by any of the risks insured against) and in any such case shall (subject to all necessary approvals being obtained) promptly reinstate the Works and in accordance with the provisions of this Agreement.

22 Default, termination and consequences of termination

NOTE: Redacted as commercially sensitive. Please refer to Appendix D - Development Agreement Summary and Appendix D(i) - Recommended Development Partner's commercial position (Exempt).

22.1 No fault termination prior to the Primary Conditions Satisfaction Date

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

22.2 No fault termination following the Primary Condition Satisfaction Date

[REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

22.3 Developer Default

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

22.4 Consequences of terminations as a result of a Developer Default

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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- [REDACTED]

22.5 Council Default

- [REDACTED]

- [REDACTED]

- [REDACTED]

22.6 Consequences of termination as a result of a Council Default

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

22.7 General

22.7.1 The parties shall continue to comply with their respective obligations under this Agreement until the date of termination.

22.7.2 Save as otherwise expressly provided in this Agreement:

(a) termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement as at the date of termination; and

(b) termination of this Agreement shall not affect any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequence of such termination.

22.7.3 No provision contained within this clause 22 shall entitle either of the parties to:

- (a) recover any indirect or consequential losses from the other party; or
- (b) a double recovery in respect of any cost or loss.

22.7.4 Where either a Council Rectification Notice or a Developer Rectification Notice is served under this clause 22 requiring a default to be remedied, then at any time prior to the service of a Termination Notice, if the serving party wishes the Agreement to continue notwithstanding the default in question, the serving party shall be entitled to serve a notice on the defaulting party requiring the default in question to be remedied in accordance with clause 22.3.2 or clause 22.5.2 (as applicable) but waiving the right to terminate the Agreement for such default (a “**Waiver of Termination Notice**”).

22.7.5 Each party shall, and shall use reasonable endeavours to procure that any necessary third party shall, as soon as reasonably practicable execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the provisions of this clause 22.

22.7.6 Any payments to be made pursuant to the provisions of this clause 22 shall:

- (a) in the case of any payments due to the Council, shall be administered in accordance with clause 17.6; and
- (b) in the case of any payments due to the Developer, shall be made in sterling by electronic transfer of immediately available funds to the Developer’s nominated bank account with account number [REDACTED] and sort code [REDACTED], or such other bank account nominated by the Developer from time to time, details of which are notified to the Council in writing.

NOTE: Redacted as commercially sensitive.

22.7.7 Any Dispute between the parties in relation to the establishment of Fair Value pursuant to the provisions of this clause 22 shall be administered in accordance with the provisions of clause 24.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

24 Dispute resolution

NOTE: Redacted as commercially sensitive.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[REDACTED]

[REDACTED]

25 Assignment

25.1 Council's assignment

25.1.1 The rights and obligations of the Council under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any legislation or otherwise) other than in respect of the whole of this Agreement to any person other than any person (being a single entity) having the legal capacity, power and authority to become a party to and perform the obligations of the relevant Council under this Agreement being:

- (a) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975;
- (b) any local council which has sufficient standing or financial resources to perform the obligations of the relevant Council under this Agreement; or
- (c) any person whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Developer) by the relevant Council or a Minister of the Crown having the legal capacity, power and authority to perform the obligations of the relevant Council under this Agreement.

25.1.2 If an Council intends to assign novate or otherwise transfer its rights and obligations under this Agreement as permitted by clause 25.1 and the proposed assignee (where applicable) has served a notice on the Developer in relation to any tenancies created or to be created by any lease complying with Schedule 1 to the Regulatory Reform (Business Tenancies)(England and Wales) Order 2003 then the Developer shall make a statutory declaration relating to the tenancies to be created by the relevant Leases in compliance with paragraph 8 of Schedule 2 to that Order.

25.2 Developer's assignment

25.2.1 Without prejudice to the provisions of clause 25.2.2 and 25.2.3, the Developer may not assign, novate or otherwise transfer the rights and obligations of the Developer (or any part or parts thereof) to a body or organisation without obtaining the prior consent of the Council.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOTE: Redacted as commercially sensitive.

25.2.3 The Developer may assign this Agreement by way of security to a funder with the written consent of the Council (such consent not to be unreasonably withheld or delayed).

25.2.4 The Council, having provided consent to an assignment or charge pursuant to clauses 25.2.1 and 25.2.2 shall serve (where applicable) a notice on the approved assignee relating to any

tenancies created or to be created by a lease complying with Schedule 1 to the Regulatory Reform (Business Tenancies)(England and Wales) Order 2003 and the Developer shall not assign its rights and obligations under this Agreement to such approved assignee unless, before the assignee becomes contractually bound to take the assignment of the rights and obligations under this Agreement, such approved assignee has made a statutory declaration relating to the tenancies created or to be created by the relevant Leases in compliance with paragraph 8 of Schedule 2 to that Order.

- 25.3 No Change of Control may occur during the term of this Agreement without the prior written consent of the Council (not to be unreasonably withheld or delayed).

26 Authorised officers

26.1 The Council Authorised Officer

- 26.1.1 The Council Authorised Officer shall be its Strategic Director - Place or such other person (or any such replacement) notified by the Council to the Developer in writing from time to time in accordance with this clause 26.
- 26.1.2 The Council Authorised Officer may at any time notify the Developer in writing of the appointment of one or more (but not more than five) representatives to whom they have delegated the performance or exercise of any function under this Agreement and such notice shall specify the name, office address, telephone and facsimile numbers of such representative and shall define the matters in respect of which he has been given authority to act on behalf of the Council's Authorised Officer.
- 26.1.3 The Council Authorised Officer shall have full authority to act on behalf of the Council for all purposes of this Agreement and the Developer shall be entitled to treat any act of the Council's Authorised Officer as being expressly authorised by the Council and (save where the Council has notified the Developer to the contrary) shall not be required to determine whether any express authority has in fact been given.
- 26.1.4 Any notice, information, instruction or other communication given by or made to the Council's Authorised Officer shall be deemed to have been given or made to the Council provided that it has been given, made or subsequently recorded in writing.
- 26.1.5 The Developer shall afford to the Council's Authorised Officer, and their representatives, access to all relevant information for the duration of the Council's Authorised Officer's appointment. In particular, the Developer shall:
- (a) permit the Council's Authorised Officer and their duly authorised representatives to attend formal site meetings and formal design meetings relating to the Development and/or Works and shall give them reasonable notice thereof;

- (b) keep the Council's Authorised Officer fully apprised of the progress of the Development and Works; and
- (c) promptly provide to the Council's Authorised Officer copies of minutes of all formal site meetings and formal design meetings.

26.2 Developer's Authorised Officer

- 26.2.1 The Developer shall within fifteen (15) Working Days of the date of this Agreement appoint a person to be the Developer's Authorised Officer.
- 26.2.2 The Developer's Authorised Officer shall be the duly authorised representative of the Developer for all purposes connected with this Agreement and any notice, information, instruction or other communication given by or made to the Developer's Authorised Officer shall be deemed to have been given to or made by the Developer provided that it has been given, made or subsequently recorded in writing.
- 26.2.3 The Developer's Authorised Officer may at any time notify the Council in writing of the appointment of one or more (but not more than five) representatives to whom they have delegated the performance or exercise of any function under this Agreement and such notice shall specify the name, office address, telephone and facsimile numbers of such representative and shall define the matters in respect of which he has been given authority to act on behalf of the Developer's Authorised Officer.

26.3 Notification

- 26.3.1 The parties shall within fifteen (15) Working Days give the other party written notification of their respective appointments of Authorised Officers and such notification shall include the appointees:
 - (a) name;
 - (b) postal address of his offices;
 - (c) email address; and
 - (d) telephone number(s).
- 26.3.2 In the event a party replaces its Authorised Officer it shall give written notice to the other party within fifteen (15) Working Days of such replacement such notification shall include the information required under clause 26.3.1.

26.4 Availability and performance

The parties shall respectively ensure that their respective Authorised Officers or a competent deputy are available at all times (during general working hours) when the Development and the Works are being undertaken.

27 Confidentiality and freedom of information

27.1 Confidentiality

27.1.1 Without prejudice to clause 27.2, each party shall during the term of this Agreement and at all times following termination keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) save as provided by this Agreement any confidential information about the business of or belonging to the other party which has come to its attention as a result of or in connection with this Agreement provided always that this obligation shall not relate to any such information which:

- (a) comes into the public domain or is subsequently disclosed to the public (other than through default on the part of that party or any other person to whom that party is permitted to disclose such information under this Agreement);
- (b) is required to be disclosed by law; or
- (c) was already in the possession of that party (without restrictions as to its use) on the date of receipt.

27.1.2 The Council shall be entitled to use or disclose any confidential information about the content or operation of this Agreement insofar as this is reasonably necessary to the discharge of the Council's functions.

27.2 Freedom of information

27.2.1 The parties acknowledge that the Council may be obliged to disclose information relating to this Agreement pursuant to a request for such information made by a third party under the FOI Act or the EIRs (a "**Request**").

27.2.2 Where an Council receives a Request in relation to information relating to this Agreement which is being held by another party on behalf of the relevant Council and which the relevant Council does not have access to itself, the relevant Council shall notify the relevant party (the "**Receiving Party**") in writing of the Request and the Receiving Party shall, and shall procure that its sub-contractors shall, if the relevant Council so requires, provide the relevant Council at no additional charge with any such information which is in the Receiving Party's and/or its sub-contractors' possession and such other assistance as the relevant Council may reasonably require which is needed by the relevant Council to respond to the Request.

27.2.3 Where the Council requires information from a Receiving Party as envisaged by clause 27.2.2:

- (a) the relevant Council shall notify the Receiving Party in writing as soon as possible after receiving the relevant Request of the information and/or assistance required, the

form in which it should be provided and the date by which it is needed;

- (b) the Receiving Party shall provide the information to the relevant Council in accordance with the Relevant Council's notice; and/or
- (c) the Receiving Party shall notify the Relevant Council forthwith if it does not hold the requested information.

27.2.4 The Council shall not disclose any information relating to this Agreement that they consider, in their unfettered discretion, is exempt as described within the FOI Act or the EIRs.

27.2.5 The Developer shall not respond directly to any Request unless expressly authorised to do so by the Council.

27.2.6 Where the Developer receives a Request, it shall notify the Council as soon as practicable but in any event within five (5) Working Days of receiving the Request.

27.2.7 The Council shall inform the Developer (the "Receiving Party" in this context) in writing as soon as reasonably practicable (and in any event within five (5) Working Days) whenever they receive a Request for information relating to this Agreement setting out:

- (a) the nature of the Request;
- (b) where possible, the identity of the person making the Request;
- (c) what information relating to this Agreement is covered by the Request;
- (d) whether and to what extent the relevant Council intends to disclose the information requested (including the intention to disclose any Information relating to this Agreement); and
- (e) a reasonable timescale in which the Receiving Party must make any representations to the Relevant Council,

and the relevant Council will have due regard to any such representations.

27.2.8 The provisions of this clause 27 shall survive termination or expiry of this Agreement.

28 Partnership exclusion

Nothing contained in this Agreement or in any document entered into or in any assignment made or course of dealings conducted under or in any way relating to this Agreement or any provision of this Agreement shall be construed as effecting any partnership between the parties or between any of them.

29 Notices

- 29.1 Any notice decision direction approval authority permission or consent to be given by Council under this Agreement shall be valid and effectual if signed by such officer officers agent or agents as the Council may from time to time designate for the purpose and shall be deemed to have been validly served on or conveyed to the Developer if sent by prepaid first class post to the Developer marked “for the attention of [•]” at the registered office, or such other address in the United Kingdom (and marked for the attention of such other person(s)) as the Developer may from time to time notify to the Council in accordance with this clause 29 and in all cases shall be deemed to have been delivered on the second (2nd) Working Day following the date of dispatch.
- 29.2 Any notice to be given to the Council shall be deemed to be validly served if sent as aforesaid addressed and marked “for the attention of [•]” at [•], or such other address in the United Kingdom or person in place thereof as may be notified to the Developer in accordance with this clause 29 and shall be deemed to have been delivered on the second (2nd) Working Day following the date of dispatch.

30 Anti-corruption

If the Developer or any Associated Body commits a Prohibited Act, the Council shall be entitled to terminate this Agreement.

31 Compliance with Data Protection Laws

- 31.1 The parties acknowledge and agree that they will each be an independent Controller in their own right in respect of Personal Data Processed pursuant to this Agreement.
- 31.2 The parties shall each comply with their respective obligations under the Data Protection Laws in respect of Personal Data Processed pursuant to this Agreement.
- 31.3 Each party shall provide reasonable assistance to the other party in complying with its obligations under the Data Protection Laws in relation to Personal Data Processed pursuant to this Agreement, in particular in relation to each party’s transparency requirements under Article 13 and 14 UK GDPR.
- 31.4 The parties do not anticipate that either party shall Process Personal Data as a Processor on behalf of the other party under this Agreement. Where either party acts as a Processor on behalf of the other party, the parties shall enter into a separate data processing agreement.

32 Modern Slavery

- 32.1 The Developer shall, and shall procure that the Contract shall, comply with:
- 32.1.1 the Modern Slavery Act 2015 (“**Slavery Act**”); and
- 32.1.2 the Council’s anti-slavery policy as provided to the Developer from time to time (“**Anti-slavery Policy**”).

- 32.2 The Developer shall:
- 32.2.1 implement due diligence procedures for its supply chains, to ensure that there is no slavery or trafficking in its supply chains;
 - 32.2.2 respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Council from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
 - 32.2.3 prepare and deliver to the Council each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
 - 32.2.4 implement a system of training for its employees to ensure compliance with the Slavery Act.
- 32.3 The Developer represents, warrants and undertakes throughout the term of this Agreement that:
- 32.3.1 it conducts its business in a manner consistent with the Slavery Act and all analogous legislation in place in any part of the world;
 - 32.3.2 its responses to all slavery and trafficking due diligence questionnaires issued to it by the Council from time to time are complete and accurate; and
 - 32.3.3 neither the Developer, nor any persons associated with it:
 - (a) has been convicted of any offence involving slavery and trafficking; or
 - (b) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.
- 32.4 The Developer shall notify the Council as soon as it becomes aware of:
- 32.4.1 any breach, or potential breach, of the Anti-Slavery Policy; or
 - 32.4.2 any actual or suspected slavery or trafficking in a supply chain which relates to this Agreement.
- 32.5 If the Developer notifies the Council pursuant to clause 32.4, it shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation kept in accordance with this Agreement.

33 Prompt payment

Where the Developer enters into a sub-contract with a sub-contractor for the purpose of performing this Agreement, it shall cause a provision to be included in such sub-contract which requires payment to be made to the sub-contractor within

a specified period not exceeding 30 days from receipt of a valid invoice (as defined by the sub-contract requirements).

34 Non-fetter

34.1 Nothing contained in or implied by this Agreement shall prejudice or affect any of the statutory rights, powers or duties for the time being vested in the Council as a statutory authority and all such rights powers and duties shall be enforceable and exercisable by the Council as fully and freely as if this Agreement had not been executed and any consent or approval given by or under this Agreement shall be deemed a consent or approval by the relevant Council as landowner only and not as a statutory authority.

34.2 Notwithstanding any other provisions of this Agreement, the Council shall not be obliged to do or omit to do any act or thing the doing or omission of which would or may be unlawful or ultra vires or constitute maladministration by the Council.

35 Good faith and acting reasonably

The Council and the Developer undertake with each other that in respect of all matters contained or referred to in this Agreement they will at all times act reasonably and in good faith with one another.

36 Indemnity

To the extent permitted by law, the Developer shall indemnify and keep indemnified the Council against:

36.1 death or personal injury;

36.2 loss of or damage to property including property belonging to the relevant Council or for which the relevant Council is responsible; and

36.3 third party actions, claims, losses, demands, costs, charges and expenses;

arising due to any breach, performance or non-performance of this Agreement by the Developer to the extent that the same are not the direct result of any acts omissions or breach on the part of the relevant Council.

37 Press releases/marketing

Save for where required by law:

37.1 no press releases or any other media communication in relation to the Development shall be made by the Developer without the prior written consent of the Council; and

37.2 the Developer shall not adopt the Council's branding in relation to the sales and marketing of the Development without the prior written consent of the Council, such consent not to be unreasonably withheld.

38 Invalidity

If at any time any one or more of the provisions of this Agreement is or becomes invalid illegal or unenforceable in any respect under any law the validity legality and enforceability of the remaining provisions of it shall not be in any way affected or impaired.

39 Entire Agreement

This Agreement embodies the entire understanding of the parties and there are no other arrangements between the parties relating to the subject matter of this Agreement other than those entered into or to be entered into pursuant to this Agreement.

40 Variations

No amendment or variation of this Agreement shall be valid or binding on any party unless the same is made in writing and refers expressly to this Agreement and is signed by the other party.

41 Non-merger

Notwithstanding completion of any Phase, this Agreement shall remain in full force and effect in regard to anything remaining to be done performed or observed hereunder.

42 Interest on late payment

In the event of monies due and payable hereunder not being paid on the due date interest at the Prescribed Rate shall be payable upon the amount due from the date due to the date of payment.

43 Counterparts

This Agreement may be executed in any number of counterparts, all of which, when executed and delivered, shall constitute one and the same instrument. Any party may enter into this Agreement by executing any such counterpart.

44 Contracts (Rights of Third parties) Act 1999

No term of this Agreement shall be enforceable under the Contract (Rights of Third parties) Act 1999 by any person who is not a party to the Agreement.

45 Governing law

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales and shall be subject to the jurisdiction of the courts of England and Wales.

IN WITNESS of which this document has been executed and on the date set out above delivered as a Deed.

CAB3371 CABINET - CENTRAL WINCHESTER REGENERATION (CWR) APPOINTMENT OF DEVELOPMENT PARTNER AND NEXT STEPS

THE COMMON SEAL of the)
WINCHESTER CITY COUNCIL)
was hereunto affixed by causing its)
common seal to be affixed hereto)
in the presence of -

.....
Authorised Officer

Executed as a DEED by)
[REDACTED])
acting by two directors)

.....
Director

.....
Director

DRAFT

Schedule 1 Development Brief

NOTE: Please refer to Appendix A - Central Winchester Regeneration Development Brief.

DRAFT

Schedule 2 Site Plan

NOTE: Please refer to Appendix C - Recommended Development Partner Business Case.

DRAFT

Schedule 3 Development Delivery Plan

NOTE: The initial Development Delivery Plan is to be drawn from the final tender submitted by the recommended Developer Partner.

DRAFT

Schedule 4 Planning Obligations

1 Planning design and development programme

1.1 The Developer will at its own cost:

1.1.1 undertake or procure the undertaking of all the design work required to submit the Planning Application in respect of the Development provided:

- (a) subject to paragraph 1.1.1(b) the design work required by paragraph 1.1.1 shall be in accordance with the Design Principles and the Development Objectives;
- (b) in the event that the design work required by paragraph 1.1.1 is not in accordance with the Design Principles and the Development Objectives then, before the submission of the Planning Application, the Developer shall send details of the design work to the Council for approval (in its absolute discretion) together with an updated Financial Model and explanatory narrative which shows the consequences of the proposed departure from the Design Principles and/or the Development Objectives;
- (c) the Council shall confirm whether it approves any design work which is not in accordance with the Design Principles and/or the Development Objectives; and
- (d) where the Council withholds consent in accordance with paragraph 1.1.1(c) then the Council shall be deemed not to have approved the Planning Application and the Developer shall not be entitled to submit the same to the local planning authority;

1.1.2 submit a full copy of the draft Planning Application to the Council for the Council to approve (such approval not to be unreasonably withheld or delayed) which shall include design work which is either:

- (a) in accordance with the Design Principles and the Development Objectives; or
- (b) where not in accordance with the Design Principles and the Development Objectives, has been approved by the Council in accordance with paragraph 1.1.1(c); and

1.1.3 submit a Planning Application to the local planning authority by the Planning Application Long Stop Date.

2 Planning applications

2.1 The Developer shall ensure that the Planning Application is a valid application for the Works which:

2.1.1 is in accordance with:

- (a) the Design Principles; and
 - (b) the Development Objectives;
 - 2.1.2 provides that the design for the Works shall be tenure blind so that there are no distinguishing features between the external designs of the units; and
 - 2.1.3 has been approved by the Council in accordance with paragraph 1.1.2.
- 3 Obtaining planning permission
 - 3.1 Duty to pursue Planning Application
 - 3.1.1 The Developer shall pursue the Planning Application diligently and expeditiously and at its own cost and shall use reasonable endeavours to obtain the grant of a Satisfactory Planning Permission pursuant to the Planning Application by the Planning Long Stop Date.
 - 3.1.2 The Developer shall keep the Council regularly informed of any progress made on the Planning Application and shall if reasonably required by the Council supply copies of the Planning Application and relevant documents and correspondence which are issued or received by or on behalf of the Developer, such copies to be supplied within five Working Days of written request.
 - 3.1.3 Without limitation to paragraph 3.1.1, the Developer shall supply to the Council copies of the Planning Permission or any Planning Refusal within 5 Working Days of the same being received by the Developer.
 - 3.1.4 The Council shall at the request of the Developer and as soon as reasonably practicable and from time to time provide reasonable assistance and support to the Developer as reasonably necessary to facilitate the Planning Application provided that the Council shall not be required to do anything which would affect the rights, powers and obligations of the Council or fetter the discretion of the Council in the exercise of its functions as a local authority.
 - 3.2 Planning agreements
 - 3.2.1 The Developer (if required to do so by the local planning authority) shall (acting reasonably) diligently and expeditiously pursue agreement on the form of any Planning Agreement required by the local planning authority, highway authority or water authority or the Secretary of State (and which is free of any Onerous Condition) as a condition of or requirement for the grant of the Planning Permission and shall diligently and expeditiously pursue agreement of any related documents required by the local planning authority, highway authority or water authority (as the case may be) and upon such Planning Agreement and/or related documentation being agreed by the parties (each acting reasonably) with the local planning authority, highway authority

or water authority (as the case may be) the parties shall enter into and complete the same.

3.2.2 The Council (as land owner) shall, if requested to do so by the Developer and subject always to the parties (both acting reasonably) reaching agreement in advance as to how best to cooperate and work together to ensure suitable performance of any obligations contained within such agreement, enter into any form of Planning Agreement required to enable the Planning Condition to be satisfied subject to the terms of the Planning Agreement not being binding until the Planning Permission is implemented.

3.3 Local planning authority fees

The Developer shall bear the local planning authority's fees on the Planning Application being submitted and the local planning authority's reasonable costs in relation to the negotiation of any Planning Agreement.

3.4 Extensions of the timescale for determination of Planning Application

The Council acknowledges that it shall accept an application made by the Developer to the local planning authority for the extension of the period within which the local planning authority is required to determine the Planning Application submitted in accordance with this Agreement provided that for the avoidance of doubt such application shall not have the effect of extending the Planning Long Stop Date.

3.5 Planning Appeals

3.5.1 Where the Developer contemplates submitting an Appeal in respect of the Planning Application or where the Planning Application is Called In, the Developer shall first give notice to the Council.

3.5.2 The Developer shall within (ten) 10 Working Days of a written request of the Council following service of the notice in paragraph 3.5.1 submit to the Council for approval (such approval not to unreasonably withheld) its proposed choice of the Counsel who would be instructed to advise on the prospects of an Appeal and a draft of its proposed instructions to Counsel and where the Council does not make such request the Developer shall be entitled to submit an Appeal Notice without obtaining the opinion of Counsel.

3.5.3 The Developer shall include in the instructions to Counsel any proposals which are reasonably made by the Council provided that such proposals are provided by the Council to the Developer within five (5) Working Days of receipt of the initial draft instructions pursuant to paragraph 3.5.1.

3.5.4 In the event that the Council does not provide any comments or proposals pursuant to paragraphs 3.5.2 and 3.5.3 within five (5) Working Days of request then it shall be deemed to have no such comments and approve the choice of Counsel and instructions.

3.5.5 Upon the choice of Counsel and the form of the instructions to Counsel being agreed by the Developer and the Council (each party acting reasonably) or deemed to be approved pursuant to paragraph 3.5.4 the Council and the Developer shall jointly instruct Counsel (but at the sole cost of the Developer) to advise on the prospects of an Appeal.

3.5.6 If the Council and the Developer receive Counsel's opinion on the prospects of an Appeal in respect of any Planning Application and Counsel advises that there is a greater than [REDACTED] chance of success on that Appeal then (subject to paragraph 3.5.8) the Developer may (but shall not be obliged) at any time before the expiry of the Planning Long Stop Date serve on the Council an Appeal Notice.

NOTE: Redacted as commercially sensitive.

3.5.7 Where the Developer serves an Appeal Notice on the Council the Developer shall within twenty (20) Working Days of the Appeal Notice submit an Appeal to the Secretary of State in respect of the Planning Application and shall diligently and expeditiously pursue such Appeal at its own cost.

3.5.8 Notwithstanding any other provision contained in this Agreement:

(a) subject to paragraph 3.5.10 the Developer may only serve an Appeal Notice in respect of the Planning Application during the initial period of twelve months from the Planning Application Date;

(b) no Appeal Notice may be served in respect of the Planning Application unless the Council and the Developer have first received a Counsel's opinion if requested under paragraph 3.5.6 that there is a greater than [REDACTED] chance of success on that Appeal; and

NOTE: Redacted as commercially sensitive.

(c) no Appeal may be submitted by the Developer nor shall the Developer challenge any Call In without first giving the Council a valid Appeal Notice under this paragraph 3.5.

3.5.9 Where any Appeal shall be submitted by the Developer to the Secretary of State or where the Planning Application has been Called In the Developer shall not delay or withdraw the Appeal without the prior consent of the Council (such approval not to be unreasonably withheld or delayed).

3.5.10 Where notice is given by the Developer under paragraph 3.5.1 together with all the information prescribed in paragraph 3.5.2 but the Council unreasonably withholds its approval to the proposed choice of Counsel or the form of instructions to Counsel then the Developer shall be entitled to an extension of time to the initial twelve month period referred to in paragraph 3.5.8(a) equal to the delay caused by the Council.

3.5.11 Any dispute between the parties in relation to any matter concerning the Planning Application shall be referred to and resolved in accordance with clause 24.

3.6 Satisfactory Planning Permission

3.6.1 Where Planning Permission has been granted on or before the Planning Long Stop Date the Developer shall within ten (10) Working Days of receipt of such Planning Permission confirm by notice in writing to the Council whether in its opinion the Planning Permission is or is not, subject to paragraph 3.6.5, subject to an Onerous Condition.

3.6.2 Any notice served under paragraph 3.6.1 shall be irrevocable except that the Developer shall be able to revoke a notice that has been served stating that the Planning Permission is subject to an Onerous Condition if the Developer subsequently decides that it is not subject to an Onerous Condition (provided that nothing in this paragraph 3.6.2 shall extend the Planning Long Stop Date).

3.6.3 Without prejudice to paragraph 3.6.1 if the Developer fails to give notice pursuant to paragraph 3.6.1 in respect of the Planning Permission within the period referred to in paragraph 3.6.1, or if the Council disagrees with the Developer's opinion, the Council or the Developer may refer the matter for resolution in accordance with clause 24 as to whether the Planning Permission is or is not subject to an Onerous Condition whereupon the Planning Long Stop Date shall be 10 Working Days after the date on which the matter referred for resolution is finally determined in accordance with clause 24.

3.6.4 If Planning Permission is subject to an Onerous Condition (which for avoidance of doubt is undisputed following a referral to dispute resolution in accordance with paragraph 3.6.3 or otherwise) then the Developer may elect by notice in writing to the Council to submit a new Planning Application provided the period of twelve months from the Planning Application Date has not expired and nothing in this paragraph 3.6.4 shall extend the Planning Long Stop Date.

3.6.5 The Developer shall be entitled at its sole discretion to waive any condition or conditions of planning which would otherwise comprise an Onerous Condition for the purposes of this Agreement provided that any costs associated with such condition or conditions shall be project costs.

3.7 Failure to secure Satisfactory Planning Permission

Where either:

3.7.1 the Planning Long Stop Date has expired before the Planning Permission has been granted, or

3.7.2 Planning Permission has been granted before the Planning Long Stop Date but it is subject to an Onerous Condition (which for

avoidance of doubt is undisputed following a referral to dispute resolution in accordance with paragraph 3.6.3 or otherwise); or

3.7.3 Planning Permission is granted before the Planning Long Stop Date and the Developer gives notice under paragraph 3.6.1 that such Planning Permission is subject to an Onerous Condition (which for avoidance of doubt is undisputed following a referral to dispute resolution in accordance with paragraph 3.6.3 or otherwise) in respect of which the Developer wishes to appeal and either:

- (a) the Developer fails to give a valid Appeal Notice to the Council under paragraph 3.6.1 before the expiry of the Planning Long Stop Date, or
- (b) the Developer gives a valid Appeal Notice to the Council before the Planning Long Stop Date but fails to submit the Appeal to the Secretary of State within the time prescribed in paragraph 3.5.7, or
- (c) the Developer elects not to make a further Planning Application pursuant to paragraph 3.5.6 before the expiry of the Planning Long Stop Date; or

3.7.4 the local planning authority refuses Planning Permission for any Planning Application or fails to determine such Planning Application by the Planning Long Stop Date and either:

- (a) the Developer fails to give a valid Appeal Notice to the Council under paragraph 3.5.7 before the expiry of the Planning Long Stop Date, or
- (b) the Developer gives a valid Appeal Notice to the Council before the Planning Long Stop Date but fails to submit the Appeal to the Secretary of State within the time prescribed in paragraph 3.5.7; or
- (c) the Developer elects not to make a further Planning Application pursuant to paragraph 3.6.4 before the expiry of the Planning Long Stop Date,

then this shall constitute a failure to satisfy the Planning Condition for the purposes of clause 2.1 of this Agreement.

Schedule 5 Works Obligations

1 Definitions and interpretation

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

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

"**Concern**" has the meaning given to such term in paragraph 2.5;

"**Health and Safety Executive**" means the non-departmental public body set up by the Department for Work and Pensions under the Health and Safety at Work etc. Act 1974 (as amended), the main aims of which are to secure the health, safety and welfare of people at work and protect others from risks to health and safety from work activity;

"**Project Meeting**" has the meaning given to such term in paragraph 2.4; and

"**Project Manager**" means the project manager(s) appointed by the Developer in accordance with paragraph 2.2 (and including any new and/or replacement project manager appointed in accordance with paragraph 2.3).

2 Project management

2.1 It is agreed acknowledged and declared between the parties that the Contractor is responsible for the carrying out of the Works on behalf of the Developer, in accordance with the Building Contract.

2.2 The Developer will appoint the Project Manager prior to the commencement of the Works and notify the Council of the name and contact details of the Project Manager.

2.3 The Developer shall be entitled to appoint a new and/or replacement Project Manager from time to time taking account of the need to provide continuity in respect of the project and provided that the Developer shall continue to comply with the notification requirements in paragraph 2.2 in respect of any such new and/or replacement Project Manager.

2.4 The Project Manager will liaise with the Council in respect of the project on a regular basis and shall attend regular meetings (each a "**Project Meeting**") to discuss and review the progress of the Development and Works, such meetings not being less than once every three (3) months throughout the carrying out of the Development.

2.5 In the event that the Council has reason to believe, acting reasonably, that the Developer is not able to comply with its obligations under this Agreement or the Council becomes aware of any issue which may affect the delivery of the project (a "**Concern**") the Council shall without prejudice to clause 24 approach the Project Manager to discuss the Concern.

2.6 The Project Manager shall use reasonable endeavours on behalf of the Developer (as appropriate) to resolve any Concerns.

3 Council contact

The Council will provide a single point of contact to the Developer in respect of the Development.

4 Building contract

4.1 The Developer shall enter into a Building Contract with the Contractor in accordance with the Agreement.

4.2 Any Building Contract entered into in accordance with this Agreement shall:

4.2.1 contain as a minimum the provisions of one of the construction industry standard forms with such amendments as shall be agreed by the Contractor, the Council and the Developer (each acting reasonably), including without limitation rights of step-in in favour of the Council subject to any prior funder rights;

4.2.2 require the Contractor as soon as reasonably practicable and not later than twenty (20) Working Days from the date of their appointment to procure that each member of the Professional Team and each key sub-contractor employed by the Contractor executes and delivers to the Council a warranty substantially in the form of the Professional Team Warranty set out in Appendix 3 with such amendments as the relevant member of the Professional Team or key sub-contractor may reasonably require) together with a certified copy of the relevant appointment or sub-contract to which the warranty relates;

4.2.3 require the Contractor as soon as reasonably practicable and not later than twenty (20) Working Days from the date of the Building Contract to execute and deliver to the Council a warranty substantially in the form of the Contractor Warranty set out in Appendix 3 (with such amendments as the Contractor may reasonably require) together with a certified copy of the Building Contract;

4.2.4 set the start on site date in accordance with the relevant Target Start on Site Date;

4.2.5 set the date for Practical Completion by the relevant Target Completion Date; and

4.2.6 be in a form that is capable of novation to the Council (such novation to provide that the Developer shall be liable in respect of liabilities arising under the same Building Contract prior to such novation) in circumstances where the Council may require such a novation following a Developer Default pursuant to the provisions of clause 24.

5 Execution of works

Subject to the prior satisfaction or waiver of the Primary Conditions, the Developer shall (or where applicable shall procure that the Contractor shall):

- 5.1 substantially commence the Works in respect of each Phase on the relevant Target Start on Site Date and use reasonable endeavours to complete the Works on each Phase by the relevant Target Completion Date;
- 5.2 having commenced the Works in a Phase, proceed with the Works in that Phase diligently in a good and substantial and workmanlike manner having regard to the purposes for which they are designed and intended to be used with good quality materials and in accordance with the design and quality statements published by the Homes and Communities Agency from time to time (in relation only to the Dwellings which fall within the scope of the definition of “Affordable Housing” in Annex 2 of the National Planning Policy Framework dated 27th March 2012 (as updated from time to time)), all legislation, the Delivery Plan, the Development Objectives, the Satisfactory Planning Permission, the Consents, and other provisions of this Agreement;
- 5.3 obtain all necessary Consents (other than any the Council Obtained Consent for which the Council is responsible under this Agreement) as may be required to carry out the Works and comply with such Consents accordingly;
- 5.4 construct all Infrastructure in a good and workmanlike manner and in a manner that does not prejudice the Development and/or use of any Phases;
- 5.5 carry out the Works during the designated hours prescribed by the Planning Permission or (provided in compliance with the Planning Permission) the agreed Development Delivery Plan and/or Phase Delivery Plan;
- 5.6 carry out the Works subject always to the following maximum permitted noise levels prescribed by the Planning Permission or (provided in compliance with the Planning Permission) the agreed Development Delivery Plan and/or Phase Delivery Plan;
- 5.7 comply with any applicable code of conduct (including the Council’s Developer’s Charter), so far as reasonably practicable ensuring continued and unfettered operations for neighbouring users and occupiers; and
- 5.8 have regard to the Development Objectives;

provided that if there is any Delay Event the Developer shall be entitled to an extension of time equal to such delay.

6 Delivery Plan

The Developer shall procure that the Contractor and the Project Manager shall provide all reasonable assistance to the Developer and to the Council in relation to changes to, and reporting on the progress of the Works and those matters specified in, the Delivery Plan under clause 13.10, including but not limited to: provision of all relevant information in relation to the progress of the Works and attendance at meetings with the Developer and/or the Council (or authorised representatives of either of the parties) as the case may be.

7 Competitive Tendering

- 7.1 The Developer shall procure that all contracts (but not the Building Contract(s)) and sub-contracts are competitively tendered obtaining three quotes in each case, based on a detailed specification and that the successful

contractor and/or sub-contractor is in each case selected on the basis of best value (or by using such alternative arrangement agreed by the parties).

- 7.2 If the Developer or Contractor wishes to appoint a sub-contractor or member of the Professional Team (other than the Contractor) which is a Connected Person to the party appointing it then the price of the cheapest of the three tenders (or such alternative arrangement agreed by the parties) shall be the price for the Connected Person.
- 7.3 In relation to the appointment of the Contractor, the Building Contract(s) shall be referred by the Council to a cost consultant as independent expert for an independent audit as to best value. For this purpose, the Developer shall provide reasonable evidence to the Council that the Building Contract demonstrates best value, including a full breakdown of the management contractor costs, management overheads, site overheads, breakdown of preliminaries and percentage profit in order to provide a full response and evidence to answer any concerns raised by the independent cost consultant

8 CDM regulations

Insofar as the Council is a client for the purposes of the CDM Regulations in relation to the Development and any Works, the Developer accepts complete responsibility and liability for fulfilling the client's duties, to the exclusion of the Council, to the extent permitted by Regulation 8 of the CDM Regulations and, in the course of carrying out those duties, the Developer will:

- 8.1 fulfil all of the duties imposed by the CDM Regulations on a "client" (as defined in the CDM Regulations);
- 8.2 ensure that all notifications and declarations which have to be given under the CDM Regulations are so given and provide certified copies of them to the Council;
- 8.3 promptly send to the Council copies of all relevant notices it receives from the Health and Safety Executive or from any other relevant body in relation to the Development and any Works; an
- 8.4 promptly give the Council a copy of the health and safety file that is produced, in accordance with the CDM Regulations, in relation to the Development in respect of the Works, and on Practical Completion of the Works or any Phase, deliver a copy of the relevant file relating to the Works or Phase (as the case may be) to the Council.

9 Fossils & antiquities

- 9.1 The Developer shall as soon as reasonably practicable upon becoming aware of the finding of any Antiquities notify the Council of that find and respond to the Council's reasonable requirements to observe, monitor and record the same and coordinate the removal of the same through the Project Manager if so required by the Council and in accordance with any Planning Agreement and/or Planning Permission.
- 9.2 Any Antiquities removed or removable from the Development Site shall be the property of the Council and any delay to any such Works as a result of such find shall be a Delay Event under this Agreement.

10 Warranties for new homes

The Developer shall procure building warranties for all new Dwellings, the form of such warranties to be approved by the Council (which shall include but not be limited to the NHBC guarantee and the Local Council Building Control Completion Certificate), such approval not to be unreasonably withheld or delayed.

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Schedule 6 Insurances

The Developer shall maintain or (as applicable) shall procure that the Contractor shall maintain the following insurances:

Insurance	Party to maintain	Level of Cover Required	Period of Cover
Public Liability Insurance	The Developer The Contractor	Not less than [REDACTED] <i>NOTE: Redacted as commercially sensitive.</i>	From the date of this Agreement to the Completion Date for the final Phase.
Professional Indemnity Insurance	The Developer The Contractor	Not less than [REDACTED] <i>NOTE: Redacted as commercially sensitive. Please refer to Appendix D(i) - Recommended Development Partner's commercial position (Exempt).</i>	From the date of this Agreement to the date which is 12 years after the Completion Date for the final Phase.
Any other insurances required by law	As applicable	As applicable	For the duration of the Works

Schedule 8 Governance

1 Purpose

This schedule sets out the process for on-going engagement and authorised approvals between the parties from the signing of the Agreement until the later of (a) the issue of the final Completion Certificate, (b) the issue of any certificate of completion of making good defects in relation to the final phase of the Works and (c) payment of all amounts due and payable to the Council under the terms of the Agreement.

2 Board

2.1 The parties will establish a project steering board (the “**Board**”), which will be comprised of four (4) representatives from each of the parties. The first Board representatives shall be:

2.1.1 As Council representatives:

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

2.1.2 As Developer representatives:

■ [REDACTED]
■ [REDACTED]
■ [REDACTED]
■ [REDACTED]

2.2 Either party may replace its representatives, notifying the other in writing in advance.

2.3 It will not be a requirement for meetings that all representatives are in attendance, save that there must be at least two (2) from each party.

2.4 Meetings of the Board shall be held on a monthly basis or such other frequency as the parties agree acting reasonably having regard to the progress of the Development and the need for meetings to be held, and may be held in person or on a virtual basis.

2.5 Where matters are taken to a vote, block voting shall apply, each party having one (1) vote. Where the parties are unable to agree on a matter raised at the Board, the provisions of clause 23 shall apply save where the provisions of the Development Agreement expressly allow for a decision or determination by other means.

2.6 The calling and conduct of meetings will be regulated by agreement but always on the basis that there will be an agenda published in advance and

minutes (with actions identified) taken and promptly issued. The Developer will provide the administrative support for these purposes, unless agreed otherwise.

2.7 Meetings of the Board shall be chaired on an alternate basis by a Council and Developer representative, a Council representative chairing the first meeting.

2.8 The Board will have such decision-making ability as the Council and Developer may from time to time agree, but subject always to paragraph 4.

3 Project Team

3.1 The parties will also assemble an operational team (the “**Project Team**”) to oversee implementation of the decisions of the Board in relation to the Development. The Project Team will be comprised of representatives from each of the parties and, as necessary, third parties. The Project Team representatives shall be as from time to time notified by each of the parties.

3.2 Within five (5) Working Days from the date of this Development Agreement each party shall confirm its initial Project Team representatives.

3.3 The Project Team will meet on a weekly basis or such other frequency as the parties agree acting reasonably having regard to the progress of the Development and the need for meetings to be held, and may be held in person or on a virtual basis

3.4 Third party representatives will not attend meetings of the Project Team unless agreed unanimously by the Board in advance (such decision not requiring a Board meeting and may be confirmed by written communication, (and which may be by way of a general consent/delegation)).

4 Scope of decision-making

4.1 Neither the Board nor Project Team may make or implement decisions which are in conflict with the terms of the Development Agreement and shall (unless agreed in writing by the parties, each in their absolute discretion) always be without prejudice to those matters that are expressly subject to the Council’s or Developer’s consent or approval under the terms of the Development Agreement.

5 Quarterly Review Meetings

5.1 A review meeting will meet every quarter for the purpose of reviewing progress of the scheme and identifying and agreeing key actions to secure successful execution of the Development (“**Quarterly Review Meeting**”).

5.2 Invitees shall comprise:

- The Board members
- Such other persons as the Council may nominate, including representatives from the Council’s Regeneration Committee or such other body with equivalent function from time to time confirmed by the Council to the Developer.

- 5.3 The Developer shall use reasonable endeavours to procure that representatives of the professional team, sub-consultants, contractors, funders or any other relevant parties attend each Quarterly Review Meeting and provides such information and/or other assistance and support as may be required to meet the purpose referred to in paragraph 5.1 .
 - 5.4 Unless the parties agree otherwise in writing, no less than one duly authorised representative of each of the Council and the Developer, and one representative of the Regeneration Committee shall be in attendance for any Quarterly Review Meeting.
 - 5.5 No voting shall take place at a Review meeting, but a written record will be circulated after the meeting in accordance with paragraph 7.6.
 - 5.6 The Review meeting will be chaired by a Council representative.
- 6 Regeneration Committee
- 6.1 The Regeneration Committee shall meet on a quarterly basis (or such other reasonable occasions in light of the progress of the Development and any milestones in the Developer's programme). Meetings of the Regeneration Committee will ordinarily be open to the public to attend.
 - 6.2 The Developer shall provide such assistance at a Regeneration Committee as the Council may reasonably require, including by way of the attendance meeting of one or more of the Developer's Board representatives and appropriate members of its professional team.
- 7 Reporting
- 7.1 For the purposes of the Board and Project Team meetings, the agendas shall be as these may from time to time be determined in each case.
 - 7.2 For the purposes of the Quarterly Reviews, the Developer shall procure that a report pack is issued to the Council ten (10) Working Days ahead of each Quarterly Review Meeting along with a draft agenda. The Board may determine what additional information should supplement the report pack for the next following Quarterly Review.
 - 7.3 The Council may request any supplementary information or evidence regarding the progress, costs and values related to the project in line with the "open book" principles set out in the Development Agreement.
 - 7.4 The Council may (in a timely manner) respond to the agenda and report pack information and invite or request the presence of any other party for all/any part of a Quarterly Review Meeting.
 - 7.5 For the purposes of the Quarterly Review the Council will also respond to any request made by the Developer for information in relation to matters relating to the Development that are within the Council's responsibility. Notwithstanding the ability of the Developer to call for such information, the Council may also provide reports on actions being undertaken by the Council or any other relevant matter.

- 7.6 The Developer will procure administrative support by way of the provision of a minute and action list from each Quarterly Review Meeting which the Developer shall issue to the Council for comment by the date which is five (5) Working Days after each meeting.
- 7.7 The Council will have ten (10) Working Days to respond to the Developer with any changes to the minutes and action list and the Developer shall issue a final minute to the Council by the date which is five (5) Working Days following receipt of all comments.

8 Reporting information

- 8.1 Subject to paragraph 0 the report pack referred to in paragraph 7.2 will include (without limitation) an update on each of the following:

Prior to satisfaction of Primary Conditions

Delivery Plans - progress in relation to Delivery Plans against with key milestones and long stop dates for the entire Development and reflecting any projected impacts of delay or acceleration on the overall scheme.

Primary Conditions - progress in relation to satisfying these conditions, including but not limited to the Planning Application.

Stakeholder and Community Engagement - progress made and actions taken.

Financial Model and financials - an update on matters relating to The Development Viability Condition and Land Value Thresholds.

Professional team inputs - a report on activity and outcomes, including but not limited to in relation to design, public realm and Archaeology

Vacant Possession - an update on steps taken and current position.

Risk register - including designations, likelihood, impact and mitigation actions with risk owner identified.

After satisfaction of Primary Conditions

Delivery Plans - progress in relation to Delivery Plans against with key milestones and long stop dates for the entire Development and reflecting any projected impacts of delay or acceleration on the overall scheme.

Progress on Phases

Phase Conditions - progress in relation to satisfying these conditions.

Stakeholder and Community Engagement - actions taken.

Financial Model and financials - an update.

Professional team inputs - a report on activity and outcomes

Third party matters - in relation to occupiers, sales, etc.

Sales report (or equivalent) - with variances against the initially projected values and volumes with explanatory narrative explaining projected impact on Development outcomes.

Cost report with variations against the initial projections with an explanatory narrative. On the tendering of the construction works, the Council will have access to the tender documents upon receipt and will verify to the Board whether it is satisfied with the tendering process (and will verify resultant amendments to the Financial Model) to reduce costs as a result of tendered prices being lower than the estimates in any previous model.

Design report setting out any agreed changes in the design or specifications from the previous report pack.

Social value report - progress on sustainability, diversity and inclusion, modern slavery, use of SMEs, and other social value imperatives under the Delivery Plan and any s106 agreement(s).

Risk register - including designations, likelihood, impact and mitigation actions with risk owner identified.

Notwithstanding the matters detailed in paragraph 8.1, the parties may (via the Board or Project Team) agree to vary the report pack as may be appropriate having regard to the progress of the Development

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Schedule 9 Review Procedure

- 1 Where either the Developer or the Council instigates a review of the Development ("Review"), the following shall apply:
 - 1.1 The instigating party (the "Instigator") shall serve written notice on the other (the "Other Party") that it wishes to instigate a Review requesting the provision of such information within such time as the Instigator shall specify (acting reasonably) in order to assess the status of the Development.
 - 1.2 On receipt of information referred to in paragraph 1.1 above, the Instigator may notify the Other Party of any proposed change to the Development.
 - 1.3 The Other Party will consider any request for a change and within ten (10) Working Days respond to the Instigator with views on the proposed change on the scheme.
 - 1.4 The Instigator will then either formally confirm the request to consider the change or withdraw the change. If the request is confirmed, the Instigator will set a reasonable deadline for the completion of the review required by the parties to assess the proposed change.
 - 1.5 The Developer and the Council shall use reasonable endeavours to produce and share such information as is reasonably required to assess the impact of the proposed change.
 - 1.6 Subject to paragraph 4 neither the Developer nor the Council shall unreasonably withhold or delay its consent to a proposed change.
 - 1.7 If a change is consented to by both the Developer and the Council, they shall (acting reasonably) agree the necessary legal documentation to document the change and how the costs of such documentation shall be shared.
- 2 Where a Review is triggered automatically under the Agreement, paragraph 1.1 to 1.7 (inclusive) shall apply except that the Developer shall be deemed always to be the Instigator and the written notice referred to in paragraph 1.1 shall state that the Instigator is required to instigate a Review (requesting the provision of such information within such time as the Instigator shall specify (acting reasonably) in order to assess the status of the Development).
- 3 The Developer and the Council shall not agree a proposed change where they agree that such change will mean that any Phase the Development will or may no longer be Viable.
- 4 No change may be made under a Review to the Development Objectives or Design Principles without the consent of the Council.

Schedule 10 Design Principles

NOTE: The Design Principles will be drawn from the final tender submitted by the recommended Developer Partner, and will be in accordance with the Development Brief, Development Objectives and Supplementary Planning Document.

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Schedule 11 Community and Stakeholder Engagement Plan

NOTE: The Community and Stakeholder Engagement Plan will be drawn from the final tender submitted by the recommended Developer Partner.

The Developer will act in accordance with the Planning Performance Agreement and Social and Economic Value Protocol and, shall where requested by the Council and/or with its prior approval:

- 1.1 organise/participate in regular events to showcase the proposed development scheme and any updates to the programme to the key local stakeholders, namely:
[REDACTED]
- 1.2 engage with key adviser/interest groups prior to the submission of the planning application, [REDACTED], to be agreed with the Council;
- 1.3 develop links and relationships with key stakeholders in the wider community, [REDACTED], and attend meetings to update them on the redevelopment; including attending meetings when requested with reasonable notice;
- 1.4 provide briefings to the media when needed, including leading or contributing to media releases and interviews with local media;
- 1.5 create and manage a 'Central Winchester Regeneration' website which will be accessible to the key local stakeholders;
- 1.6 keep Winchester City Council Councillors and MPs up to date on the progress of the Development; and
- 1.7 organise/participate in events to show the final plan approved by planning in relation to each Phase.

Schedule 12 Social and Economic Value Protocol and Sustainability Protocol

NOTE: The Social and Economic Value Protocol and Sustainability Protocol will be drawn from the final tender submitted by the recommended Developer Partner.

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Schedule 13 Grant Strategy

NOTE: The Grant Strategy will be drawn from the final tender submitted by the recommended Developer Partner.

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Schedule 14 Financial Model Instructions

1 Requirements of the Financial Model

1.1 The Financial Model is required to produce the following:

- 1.1.1 for each Phase Site and on a total Development Site basis, a residual land value (being the amount remaining once the gross development cost is deducted from its GDV and the agreed Developer's Profit has been deducted);
- 1.1.2 Land Value psf;
- 1.1.3 a calculation of the Planning Overage based upon the formula in Clause 17.5;
- 1.1.4 a calculation of the Revenue Overage payable per Phase Site, based upon the formula in Clause 17.5;
- 1.1.5 a sheet which deals with Phase Site Income by way of a geared long leasehold or otherwise and which captures the calculation and enables the relevant inputs to be adopted; and
- 1.1.6 a summary sheet which provides the following information:
 - (a) total scheme / phase floor area GIA and NIA psf / psm;
 - (b) total floor area GIA and NIA per use psf / psm;
 - (c) total floor area GIA and NSA per residential tenure psf / psm;
 - (d) total number of units per residential tenure;
 - (e) average NSA per unit type (e.g 1 bed, 2 bed) per tenure psf / psm;
 - (f) unit mix per tenure;
 - (g) rent per commercial use psf / psm;
 - (h) yield per commercial use;
 - (i) incentives (rent free periods etc) per commercial use;
 - (j) average weighted blended capital value psf / psm per residential tenure (based on unit mix) psf / psm;
 - (k) total GDV and NDV per commercial use;
 - (l) total GDV and NDV per residential tenure;
 - (m) build cost psf per use and residential tenure;
 - (n) total build cost per use and residential tenure;

- (o) total Infrastructure cost;
- (p) total Public Realm cost;
- (q) total development cost;
- (r) Developer's Profit (as % of cost);
- (s) total Developer's Profit;
- (t) Development Management Fee (as % of cost);
- (u) total Development Management Fee;
- (v) Land Value psf per use class and residential tenure;
- (w) aggregate Phase Site Consideration;
- (x) Phase Site Consideration per Phase; and
- (y) programme per Phase Site and Development Site.

1.2 The Developer will record actual cost and revenues on a quarterly basis in preparation for the Quarterly Review Meeting.

1.3 Any actual costs payable to the Council will be reflected in the quarter that they are reimbursed to the Council or paid by the Developer.

2 Financial Model

2.1 Where the Developer is required by the Council to provide an update to the Financial Model each change or group of changes must be clearly shown in the model change log sheet for review by the Council and its advisors and contain the following information:

2.1.1 version of the Financial Model to which the change has been made;

2.1.2 location of the change in the Financial Model;

2.1.3 description of the change including amounts;

2.1.4 explanation for the change; and

2.1.5 person making the change.

2.2 The Council may request further evidence for a change described in the model change log which must be provided by the Developer.

2.3 The Developer may not alter the format or structure of the Financial Model (without agreement from the Council).

Appendix 1 Form of Phase Building Lease

NOTE: The form of Phase Building Lease will be drafted in full prior to contractual close on the basis of, and in line with, the heads of terms agreed with the recommended Development Partner (as below). Appendix D - Development Agreement Summary summarises the Phase Building Lease provisions.

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DRAFT HEADS OF TERMS
SUBJECT TO CONTRACT

CENTRAL WINCHESTER REGENERATION

Building Lease of [TBC] at [Insert Phase Details]

[DATE]

Item	Description
Landlord	Winchester City Council of The Guildhall, Colebrook Street, Winchester, SO23 9LJ
Tenant	[Developer - TBC]
Landlord's Solicitor	[TBC]
Tenant's Solicitor	[TBC]
Premises demised	[TBC by reference to Phase plan] Appropriate rights will be granted/reserved over adjoining land/Phases (e.g. access, services and any other Phase specific rights).
Lease term	125 years - to be granted on the 'Phase Handover Date' (following satisfaction/waiver of conditions precedent) pursuant to the DA. Lease term will be subject to early break/termination provisions - please see below.
1954 Act	The lease will be contracted out of the security of tenure provisions under the Landlord and Tenant Act 1954.
Premium	[£TBC]
Rent/Phase income (if applicable)	[£TBC] [DRAFTING NOTE: The Council does not anticipate charging a rent under the building leases but acknowledges that further provision may need to be made for income generation arrangements on specific Phases.]
Outgoings	Tenant will be responsible for paying all rates, taxes and other outgoings in respect of the premises.
Assignment	Prohibited - unless the DA is assigned pursuant to its terms, in which case the lease is to be assigned to the same DA assignee entity.
Underletting	Prohibited
Charging	[DRAFTING NOTE: Developer requirements for building leases to be chargeable to be settled in the relevant Phase Delivery Plan.]

Item	Description
Repair and insurance	Tenant to bear full repair and insurance responsibility - insurance of the premises and Works to be maintained in accordance with the DA.
Alterations	No alterations to the premises will be permitted other than the carrying out of the Phase Works.
Use	<p>The Tenant may only use the Property for the carrying out the relevant Phase Works, in accordance with the terms of the DA (and by reference to the Satisfactory Planning Permission).</p> <p>Suitable 'meanwhile uses' approved by the Landlord will also be permitted.</p>
Early break provisions	<ul style="list-style-type: none"> • The Tenant will notify the Landlord of Practical Completion of the Phase Works - this will trigger the early termination of the lease (and subsequent grant of the Phase Long Lease). • The Landlord will have the right to terminate the lease: <ul style="list-style-type: none"> ○ If Phase Works are not commenced/completed by the relevant long stop date(s); and ○ In the event of Developer default under the DA, or Developer insolvency • The lease will terminate automatically if the DA is terminated pursuant to its terms.
Forfeiture rights	<p>Exercisable by the Landlord if:</p> <ul style="list-style-type: none"> • [There are outstanding rent arrears for at least 21 days] • The Tenant is in breach of its covenants under the lease
VAT	[TBC]
Costs	Each party to bear its own legal costs
Subject to	<ul style="list-style-type: none"> • Contract • [Any other conditions TBC]

Appendix 2 Form of Phase Long Lease

NOTE: The form of Phase Long Lease will be drafted in full prior to contractual close on the basis of, and in line with, the heads of terms agreed with the recommended Development Partner (as below). Appendix D - Development Agreement Summary summarises the Phase Long Lease provisions.

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DRAFT HEADS OF TERMS
SUBJECT TO CONTRACT

CENTRAL WINCHESTER REGENERATION

Long Lease of [TBC] at [Insert Phase Details]

[DATE]

Item	Description
Landlord	Winchester City Council of The Guildhall, Colebrook Street, Winchester, SO23 9LJ
Tenant	[Developer - TBC]
Landlord's Solicitor	[TBC]
Tenant's Solicitor	[TBC]
Premises demised	[TBC by reference to Phase plan] Appropriate rights will be granted/reserved over adjoining land/Phases (e.g. access, services and any other Phase specific rights).
Lease term	250 years - to commence immediately after termination of the relevant Phase Building Lease (once Phase Works have reached Practical Completion)
1954 Act	The lease will be contracted out of the security of tenure provisions under the Landlord and Tenant Act 1954.
Premium	[£TBC] [DRAFTING NOTE: Default position is that each premium will always be payable on the grant of the relevant phase building lease, rather than long lease. Payment of a premium on the grant of a long lease will only apply in circumstances where the Council has specifically agreed to defer payment of the same.]
Rent/Phase income (if applicable)	[DRAFTING NOTE: The Council does not anticipate charging a rent under the long leases but further provision may need to be made for income generation arrangements on specific Phases.]
Outgoings	Tenant will be responsible for paying all rates, taxes and other outgoings in respect of the premises.
Assignment	Assignments of whole to be permitted, subject to Landlord consent.
Underletting	Underletting permitted, but Landlord consent required: <ul style="list-style-type: none">for any proposed underlettings that are to be granted within LTA 54 protection

Item	Description
	<ul style="list-style-type: none"> for any proposed underlettings in the last 7 years of the term.
Charging	Charging of whole to be permitted.
Repair and insurance	<p>Tenant to bear full repair and insurance responsibility, including the obligation to rebuild/reinstate the premises where damaged/destroyed by any insured risks.</p> <p>Tenant to yield up premises at the end of the term in accordance with the FRI requirements under the lease.</p> <p>[DRAFTING NOTE: Insurance to be maintained in joint names with the Council.]</p>
Alterations	<ul style="list-style-type: none"> External/structural Internal/non-structural Service media
Use	<p>The Tenant may only use the Property for [TBC - according to Phase, with reference to Satisfactory Planning Permission secured pursuant to DA].</p> <p>Any other use(s) will require the Landlord's consent.</p>
Early break rights	<p>[TBC]</p> <p>[DRAFTING NOTE: Will be Phase specific.]</p>
Forfeiture rights	<p>Exercisable by the Landlord if:</p> <ul style="list-style-type: none"> The Tenant becomes insolvent The Tenant is in breach of its covenants under the lease
VAT	[TBC]
Costs	Each party to bear its own legal costs
Subject to	<ul style="list-style-type: none"> Contract [Any other conditions TBC]

Appendix 3 Form of Collateral Warranties

NOTE: *These forms are templates and subject to Schedule 5, paragraph 4 which recognises that consultants, contractors and sub-contractors may seek reasonable amendments.*

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Part A - Form of Consultant Collateral Warranty

brownejacobson^{LLP}

Dated

202[]

(1) [CONSULTANT]

(2) [EMPLOYER]

(3) Winchester City Council

Deed of Warranty

From Consultant

relating to the redevelopment of central Winchester

	<p>of the Project or any part or component of the Project or any part or component of the Project;</p> <p>(d) not being in accordance with any legislation, British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or</p> <p>(e) having been supplied or placed on the market in breach of the Construction Products Regulations.</p>
Material	all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.
Permitted Uses	without limitation the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.
Professional Appointment	an agreement in writing dated [DATE] between the Consultant and Employer.
Programme	the programme, as defined in the Professional Appointment.
Project	redevelopment of central Winchester
Property	the areas of central Winchester as more specifically defined [as the [Site/Property] within the Professional Appointment] [OR] [within the planning permission dated [DATE] with reference [REFERENCE]
Required Standard	all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services in relation to projects of a similar size, scope, complexity and character to the Project.
Services	the services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.

Third Party Agreement any agreement between the Employer and a third party relating to the Project.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.4 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to legislation is a reference to all legislation having effect in the United Kingdom from time to time, including:
 - 1.8.1 directives, decisions and regulations of the Council or Commission of the European Union;
 - 1.8.2 acts of Parliament;
 - 1.8.3 orders, regulations, consents, licences, notices and bye-laws made or granted;
 - (a) under any act of Parliament; or
 - (b) under any directive, decision or regulation of the Council or Commission of the European Union; or
 - (c) By a local authority or by a court of competent jurisdiction; and
 - 1.8.4 any mandatory codes of practice issued by a statutory body.
- 1.9 A reference to legislation is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to writing or written does not include fax or email.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 References to clauses are to the clauses of this Deed.
- 1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Comply with Professional Appointment

- 2.1 The Consultant warrants to the Beneficiary that
- 2.1.1 it has and shall continue to comply with the Professional Appointment:
- 2.1.2 it has complied, and shall continue to comply, with its obligations under the Professional Appointment, including its obligations to:
- (a) carry out and fulfil, in all respects, the duties of a designer [and Principal Designer] under the CDM Regulations;
 - (b) not, without the Employer's written consent, make any material change to the designs or specifications for the Project after they have been settled or approved; and
 - (c) if relevant, act fairly and impartially when exercising its power to issue certificates and award extensions of time under any building contract relating to the Project.
- 2.1.3 it has exercised and shall continue to exercise the Required Standard:
- (a) when performing the Services;
 - (b) not to specify for use anything in the Project, which is Deleterious at the time of specification or use;
 - (c) to comply with (and ensure the completed Project complies with) any legislation;
 - (d) to perform the Services and prepare all Material for those elements of the Project for which the Consultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;
 - (e) to ensure that the Project complies with all planning agreements, permissions and conditions; and
 - (f) not to cause or contribute to any breach by the Employer of any Third Party Agreement provided that, where the Employer notifies the Consultant of a Third Party Agreement after the date of the Professional Appointment, the Consultant is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the date of the Professional Appointment.
- 2.2 In proceedings for breach of this clause 2, the Consultant may:
- 2.2.1 rely on any limit of liability or other term of the Professional Appointment; and
- 2.2.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Employer, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).

2.3 The Consultant's duties or liabilities under this agreement shall not be negated or diminished by:

2.3.1 any approval or inspection of:

- (a) the Property; or
- (b) the Project; or
- (c) any designs or specifications for the Property or the Project; or

2.3.2 any testing of any work, goods, materials, plant or equipment; or

2.3.3 any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Employer.

2.4 This agreement shall not negate or diminish any other duty or liability otherwise owed to the Beneficiary by the Consultant.

3 Professional indemnity insurance

3.1 The Consultant shall maintain professional indemnity insurance for an amount of at least £[Sum] for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Project, provided that such insurance is available at commercially reasonable rates. The Consultant shall maintain that professional indemnity insurance:

3.1.1 with reputable insurers lawfully carrying on insurance business in the UK;

3.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and

3.1.3 on terms that:

- (a) do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and
- (b) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

3.2 Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

3.3 The Consultant shall not, without the Beneficiary's written consent:

3.3.1 settle or compromise any claim with the insurers that relates to a claim by the Beneficiary against the Consultant; or

3.3.2 by any act or omission lose or affect the Consultant's right to make, or proceed with, that claim against the insurers.

3.4 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Consultant and the Beneficiary can discuss how best to protect

the respective positions of the Beneficiary and the Consultant regarding the Project and the Property, without that insurance.

- 3.5 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Consultant's insurers or brokers confirming the Consultant's then current professional indemnity insurance and that the premiums for that insurance have been paid in full at the date of that letter.

4 Copyright

- 4.1 The Consultant grants to the Beneficiary, with immediate effect, with full title guarantee, a non-exclusive, irrevocable, non-terminable, fully paid up and royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant, and to reproduce the designs contained in them and to do so in built form for any purpose relating to the Project and the Property, including any of the Permitted Uses.
- 4.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.
- 4.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.
- 4.4 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 4.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

5 Liability period

The Beneficiary may not commence any legal action against the Consultant under this agreement after 12 years from the date of practical completion of all of the Project.

6 Assignment

- 6.1 The Beneficiary may assign the benefit of this agreement:
- 6.1.1 on two occasions to any person with an interest in the Project; and
- 6.1.2 without counting as an assignment under clause 6.1.1:
- (a) by way of security to a funder (including any reassignment on redemption of security); or
- (b) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.
- 6.2 The Beneficiary shall notify the Consultant of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.

- 6.3 The Consultant shall not contend that any person to whom the benefit of this agreement is assigned under clause 6.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

7 Notices

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if sent by pre-paid post and sent to the address for the party shown above or such other address as may be notified in writing. Notices so posted before 5pm shall be deemed served on the morning of the second Business Day following posting. Notices so posted after 5pm or posted on a day which is not a Business Day shall be deemed to have been posted on the next Business Day before 5pm. Notices may be delivered by hand if left at the relevant address for the party in question in an addressed envelope between the hours of 9am and 5pm on a Business Day and signed for.

8 Step-in rights: Consultant may not terminate

- 8.1 The Consultant shall not exercise, or seek to exercise, any right to terminate its employment under the Professional Appointment for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least 14 Business Days' written notice of its intention to do so. Any notice from the Consultant shall specify the grounds for the Consultant's proposed termination.
- 8.2 If the Professional Appointment allows the Consultant a shorter notice period for the exercise of a right referred to in clause 8.1, the notice period in the Professional Appointment shall be extended to take account of the notice period required under clause 8.1.
- 8.3 The Consultant's right to terminate its employment under the Professional Appointment shall cease if, within the period referred to in clause 8.1, the Beneficiary gives notice to the Consultant, copied to the Employer:
- 8.3.1 requiring the Consultant not to terminate its employment under the Professional Appointment;
 - 8.3.2 acknowledging that the Beneficiary (or its nominee) will assume all the Employer's obligations under the Professional Appointment; and
 - 8.3.3 undertaking that the Beneficiary or its nominee will pay to the Consultant:
 - 8.3.3.1 any sums due and payable to the Consultant under the Professional Appointment in future; and
 - 8.3.3.2 within five Business Days any sums then due and payable to the Consultant under the Professional Appointment that are unpaid.
- 8.4 If the Beneficiary or its nominee serves notice on the Consultant under clause 8.3, then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (to the exclusion of the Employer).

- 8.5 In complying with this clause 8.5, the Consultant:
- 8.5.1 does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Employer; and
 - 8.5.2 may exercise its right to terminate its employment under the Professional Appointment after the expiry of the notice period referred to in clause 8.1, unless the Consultant's right to terminate has ceased under clause 8.3.

9 Step-in rights: Beneficiary may step-in

- 9.1 Without affecting clause 8.1, if the Beneficiary serves a notice on the Consultant, copied to the Employer, that:
- 9.1.1 confirms that the Beneficiary wishes to step-in to the Professional Appointment; and
 - 9.1.2 complies with the requirements for a Beneficiary's notice under clause 8.3,

then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (to the exclusion of the Employer).

- 9.2 The Consultant shall assume that, between the Employer and the Beneficiary, the Beneficiary may give a notice under clause 9.1. The Consultant shall not enquire whether the Beneficiary may give that notice.
- 9.3 In complying with this clause 9, the Consultant does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Employer.

10 Step-in rights: Consultant's position and Employer's consent

- 10.1 The Consultant shall not incur any liability to the Employer by acting in accordance with clause 8 or clause 9.
- 10.2 The Employer has executed this agreement to confirm its consent to the agreement.

11 Step-in rights: Beneficiary's guarantee

If a Beneficiary's notice under clause 8 or clause 9 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Sub-Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Sub-Contractor from the Beneficiary's nominee.

12 **Extraneous rights**

- 12.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor to the Beneficiary.
- 12.2 No approval or inspection of the Project or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Sub-Contractor arising under this Deed.
- 12.3 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.
- 12.4 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Beneficiary is deemed to be a party to this Deed.
- 12.5 The Contractor and the Sub-Contractor undertake to the Beneficiary not to vary or depart from the terms and conditions of the Sub-Contract such that the obligations owed to the Beneficiary under this warranty are materially reduced or if they do so then the same shall not derogate from the obligations owed to the Beneficiary hereunder without the prior written consent of the Beneficiary (such consent not to be unreasonably withheld or delayed).

13 **Governing law**

This Deed is subject in all respects to English law and the English Courts shall have jurisdiction with regard to all matters arising under or in connection with it.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

Executed as a deed by [NAME OF CONSULTANT]
 acting by [NAME OF DIRECTOR], a director, in [SIGNATURE OF DIRECTOR]
 the presence of: Director

.....
 [SIGNATURE OF WITNESS]
 [NAME, ADDRESS AND OCCUPATION OF WITNESS]

Executed as a deed by [NAME OF EMPLOYER]
acting by [NAME OF DIRECTOR], a director, in
the presence of:

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF WITNESS]

.....

[SIGNATURE OF DIRECTOR]

Director

THE COMMON SEAL of the)
WINCHESTER CITY COUNCIL)
was hereunto affixed by causing its)
common seal to be affixed hereto)

in the presence of -

.....

Authorised Officer

DRAFT

Part B - Form of Contractor's Collateral Warranty

brownejacobson^{LLP}

Dated 2023

- (1) [CONTRACTOR]
- (2) [EMPLOYER]
- (3) Winchester City Council

Contractor's Collateral Warranty

Relating to Contract for the redevelopment of central Winchester

Date:

Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Contractor).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Employer).
- (3) WINCHESTER CITY COUNCIL of The Guildhall, Colebrook Street, Winchester, SO23 9LJ (Beneficiary).

Introduction

- A. The Employer has engaged the Contractor to carry out design and construction work.
- B. The Beneficiary, as landowner, has an interest in the design and construction work.
- C. The Employer requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.
- D. The Contractor has agreed to enter into this agreement with the Beneficiary for the benefit of the Beneficiary.
- E. The Beneficiary has paid £1 to the Contractor as consideration under this agreement.

Agreed terms

1 Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Building Contract an agreement in writing dated [DATE] between the Employer and the Contractor.

Business Day any day which is not a Saturday, Sunday or a Public Holiday.

Construction Products Regulations the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

Deleterious	<p>materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:</p> <ul style="list-style-type: none"> (a) posing a threat to the health and safety of any person; or (b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or (c) reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or (e) having been supplied or placed on the market in breach of the Construction Products Regulations.
Funder	<p>a person that has provided, or is to provide, finance in connection with:</p> <ul style="list-style-type: none"> (a) the whole or any part of the Works or the completed Works; or (b) the site of the Works, <p>whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.</p>
Material	<p>all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works.</p>
Permitted Uses	<p>the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Works.</p>
Property	<p>the areas of central Winchester as more specifically defined [as the [Site/Property] within the Building Contract] [OR] [within the planning permission dated [DATE] with reference [REFERENCE]</p>
Public Holiday	<p>Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.</p>
Works	<p>the design, construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Contractor under the Building Contract.</p>

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to writing or written includes faxes but not e-mail.
- 1.12 References to clauses are to the clauses of this agreement.
- 1.13 Where the words include(s), including or in particular are used in this agreement, they are deemed to have the words "without limitation" following.

2 Comply with Building Contract

- 2.1 The Contractor warrants to the Beneficiary that:
 - 2.1.1 it has complied, and shall continue to comply, with its obligations under the Building Contract, including its obligations to:
 - (a) carry out and complete the Works properly; and
 - (b) use workmanship and materials of the quality and standard specified in the Building Contract;
 - (c) not use or specify for use or permit to be used in relation to the Works anything which, at the time of specification or use, is Deleterious.
 - 2.1.2 without affecting clause 2.1.1, and to the extent that it takes responsibility for the same under the Building Contract, it:
 - (a) has designed, or will design, the Works; and

- (b) has selected, or will select, goods, materials, plant and equipment for incorporation in the Works,

with all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in size, scope and character to the Works.

2.2 In proceedings for breach of this clause 2, the Contractor may:

2.2.1 rely on any limit of liability or other term of the Building Contract; and

2.2.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Employer, under the Building Contract (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Building Contract).

2.3 The Contractor's duties or liabilities under this agreement shall not be negated or diminished by:

2.3.1 any approval or inspection of:

- (a) the Property;
- (b) the Works; or
- (c) any designs or specifications for the Property or the Works; or

2.3.2 any testing of any work, goods, materials, plant or equipment; or

2.3.3 any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Employer.

2.4 This agreement shall not negate or diminish any duty or liability otherwise owed to the Beneficiary by the Contractor.

3 Copyright

3.1 The Contractor grants to the Beneficiary, with immediate effect, (and if it cannot grant such a licence at the date of this agreement then the Contractor shall procure its ability to grant such a licence and shall then grant on the same terms when it is able to do so) with full title guarantee, a non-exclusive, irrevocable, non-terminable, fully paid up and royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Contractor for and to reproduce the designs contained in them and to do so in built form for any purpose relating to the Works (and completed Works) and the Property, including any of the Permitted Uses.

3.2 This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent.

3.3 The Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

3.4 The Beneficiary may request a copy (or copies) of some or all of the Material from the Contractor. On the Beneficiary's payment of the Contractor's reasonable

charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Beneficiary.

4 Professional indemnity insurance

4.1 The Contractor shall maintain professional indemnity insurance for an amount of at least £[SUM] for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Works, provided that such insurance is available at commercially reasonable rates and terms. The Contractor shall maintain that professional indemnity insurance:

4.1.1 with reputable insurers lawfully carrying on insurance business in the UK;

4.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and

4.1.3 on terms that:

(a) not require the Contractor to discharge any liability before being entitled to recover from the insurers; and

(b) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.

4.2 Any increased or additional premium required by insurers because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

4.3 The Contractor shall not, without the Beneficiary's written consent:

4.3.1 settle or compromise any claim with the insurers that relates to a claim by the Beneficiary against the Contractor; or

4.3.2 by any act or omission lose or affect the Contractor's right to make, or proceed with, that claim against the insurers.

4.4 The Contractor shall immediately inform the Beneficiary if the Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Contractor regarding the Works and the Property, without that insurance.

4.5 Whenever the Beneficiary reasonably requests, the Contractor shall send the Beneficiary evidence that the Contractor's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Contractor's insurers or brokers confirming:

4.5.1 the Contractor's then current professional indemnity insurance; and

4.5.2 that the premiums for that insurance have been paid in full at the date of that letter.

5 Liability period

The Parties agree that, notwithstanding any terms and effect of the Limitation Act 1980 to the contrary, any action or proceedings under or in connection with this agreement may be

commenced against the Contractor up until the expiry of 12 years from the date of practical completion of the Works and the Contractor agrees that, for the purposes of the Limitation Act 1980 it shall not seek to rely on any failure to commence any such action or proceedings within any shorter period (whether prescribed by the Limitation Act 1980 or otherwise) as a defence to any such action or proceedings.

6 Assignment

6.1 The Beneficiary may by absolute legal assignment assign the benefit of this agreement:

6.1.1 on two occasions to any person; and

6.1.2 without counting as an assignment under clause 6.1.1:

(a) by way of security to a Funder (including any reassignment on redemption of security); or

(b) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.

6.2 The Beneficiary shall notify the Contractor of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.

6.3 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under clause 6.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

7 Step-in rights: Contractor may not terminate

7.1 The Contractor shall not exercise, or seek to exercise, any right to terminate its employment under the Contract for any reason (including any breach on the part of the Contractor) without giving the Beneficiary at least 14 Business Days' written notice of its intention to do so. Any notice from the Contractor shall specify the grounds for the Contractor's proposed termination.

7.2 If the Building Contract allows the Contractor a shorter notice period for the exercise of a right referred to in clause 7.1, the notice period in the Building Contract shall be extended to take account of the notice period required under clause 7.1.

7.3 The Contractor's right to terminate its employment under the Building Contract shall cease if, within the period referred to in clause 7.1, the Beneficiary gives notice to the Contractor, copied to the Employer:

7.3.1 requiring the Contractor not to terminate its employment under the Building Contract;

7.3.2 acknowledging that the Beneficiary (or its nominee) will assume all the Employer's obligations under the Building Contract; and

7.3.3 undertaking that the Beneficiary or its nominee will pay to the Contractor:

(a) any sums due and payable to the Contractor under the Building Contract in future; and

- (b) within five Business Days any sums then due and payable to the Contractor under the Building Contract that are unpaid.

7.4 If the Beneficiary or its nominee serves notice on the Contractor under clause 7.3, then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).

7.5 In complying with this clause 7, the Contractor:

7.5.1 does not waive any breach of the Building Contract or default under the Building Contract by the Employer; and

7.5.2 may exercise its right to terminate its employment under the Building Contract after the expiry of the notice period referred to in clause 7.1, unless the Contractor's right to terminate has ceased under clause 7.3.

8 Step-in rights: Beneficiary may step-in

8.1 Without affecting clause 7.1, if the Beneficiary serves a notice on the Contractor, copied to the Employer, that:

8.1.1 confirms that the Beneficiary wishes to step-in to the Building Contract; and

8.1.2 complies with the requirements for a Beneficiary's notice under clause 7.3,

then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Contractor).

8.2 The Contractor shall assume that, between the Employer and the Beneficiary, the Beneficiary may give a notice under clause 8.1. The Contractor shall not enquire whether the Beneficiary may give that notice.

8.3 In complying with this clause 8, the Contractor does not waive any breach of the Building Contract or default under the Building Contract by the Employer.

9 Step-in rights: Contractor's position and Employer's consent

9.1 The Contractor shall not incur any liability to the Employer by acting in accordance with clause 7 or clause 8.

9.2 The Employer has executed this agreement to confirm its consent to the agreement.

10 Step-in rights: Beneficiary's guarantee

If a Beneficiary's notice under clause 7 or clause 8 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Sub-Contractor from the Beneficiary's nominee.

11 Notices

11.1 Any notice required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, or recorded delivery or by commercial courier, to each party required to receive the notice, as set out below:

11.1.1 Contractor: to [REDACTED]

11.1.2 Beneficiary: to [REDACTED]

or as otherwise specified by the relevant party by notice in writing to each other party.

11.2 A notice shall be deemed to have been duly received:

11.2.1 if delivered personally, when left at the address and for the contact referred to in this clause; or

11.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

11.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

11.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.

11.4 This clause shall not apply to the service of any proceedings or other documents in any legal action.

12 Third party rights

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

13 Governing law and jurisdiction

13.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

13.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into as a deed on the date stated at the beginning of it.

Executed as a deed by [NAME OF CONTRACTOR]
acting by [NAME OF DIRECTOR], a director, in [SIGNATURE OF DIRECTOR]
the presence of: Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS AND OCCUPATION OF WITNESS]

Executed as a deed by [NAME OF EMPLOYER]
acting by [NAME OF DIRECTOR], a director, in [SIGNATURE OF DIRECTOR]
the presence of: Director

.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS AND OCCUPATION OF WITNESS]

THE COMMON SEAL of the)
WINCHESTER CITY COUNCIL)
was hereunto affixed by causing its)
common seal to be affixed hereto)

in the presence of -

.....
Authorised Officer

DRAFT

Part C - Form of Sub-Contractor's Collateral Warranty

brownejacobson^{LLP}

Dated

202[]

- (1) [SUB-CONTRACTOR]
- (2) Winchester City Council

Sub-Contractor's Collateral Warranty

Relating to Contract for [Insert details of sub-contract works] in respect of the redevelopment of central Winchester

BETWEEN:

- (1) [SUB-CONTRACTOR] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the Sub-Contractor)
- (2) WINCHESTER CITY COUNCIL of the Guildhall, Colebrook Street, Winchester, SO23 9LJ (the Beneficiary)

INTRODUCTION

- A. The Employer has by the Building Contract employed the Contractor to carry out and complete the Project.
- B. By the Sub-Contract the Contractor has appointed the Sub-Contractor to carry out and complete the Sub-Contract Works at the Project on terms set out therein.
- C. The Sub-Contractor has agreed to enter into this Deed with the Beneficiary for the benefit of the Beneficiary.

NOW THIS DEED WITNESSES in accordance of the sum of £10.00 paid by the Beneficiary, receipt of which the Sub-Contractor acknowledges, as follows:

1 Interpretation

The following definitions and rules of interpretation apply in this Deed.

1.1 In this Deed:

- Building Contract** a contract dated [DATE] made between (1) the Employer and (2) the Contractor.
- Business Day** a day which is not a Saturday, Sunday or a Public Holiday.
- Contractor** [NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [OFFICE ADDRESS].
- Deleterious** any materials, equipment, products or kits that are generally accepted, or suspected, in the construction industry at the relevant time as:
 - (a) posing a threat to the health and safety or any person;
 - (b) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component or part of the Project;
 - (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;

- (d) not being in accordance with any legislation, British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agrément; or
- (e) not being in accordance with the guidance note: 'Good Practice in Selection of Construction Materials 2011' sponsored by the British Council for Offices;

Employer	[NAME], incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [OFFICE ADDRESS].
Material	all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project (and completed Project) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project;
Permitted Uses	without limitation the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, promotion, decommissioning, demolition, reinstatement, extension, building information modelling and repair of any part of or the whole of the Project;
Project	the redevelopment of existing offices at the Property;
Property	the areas of central Winchester as more specifically defined [as the [Site/Property] within the Sub-Contract] [OR] [within the planning permission dated [DATE] with reference [REFERENCE];
Required Standard	all the reasonable skill and care which is to be expected of an appropriately qualified, competent designer of the relevant discipline who is experienced in undertaking the design of developments similar in scope and character to the Project;
Sub-Contract	means a Sub-Contract dated [DATE] made between (1) the Contractor and (2) the Sub-Contractor for the carrying out of the Sub-Contract Works.
Sub-Contract Works	means the works carried out by the Sub-Contractor in connection with the Project and as described in the Sub-Contract.

1.2 Clause and paragraph headings shall not affect the interpretation of this Deed.

- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.8 Any obligation in this Deed on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to legislation is a reference to all legislation having effect in the United Kingdom from time to time, including:
- 1.9.1 directives, decisions and regulations of the Council or Commission of the European Union;
 - 1.9.2 acts of Parliament;
 - 1.9.3 orders, regulations, consents, licences, notices and bye-laws made or granted;
 - (a) under any act of Parliament; or
 - (b) under any directive, decision or regulation of the Council or Commission of the European Union; or
 - (c) By a court of competent jurisdiction; and
 - 1.9.4 any mandatory codes of practice issued by a statutory body.
- 1.10 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.11 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.12 Any reference to a party's consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.
- 1.13 A reference to writing or written includes faxes but not e-mail.
- 1.14 References to clauses are to the clauses of this Deed.
- 1.15 Where the words include(s), including or in particular are used in this Deed, they are deemed to have the words "without limitation" following them.

2 Skill and care

- 2.1 The Sub-Contractor undertakes and warrants to the Beneficiary that it has observed and performed and will continue to observe and perform its obligations under the Sub-Contract.
- 2.2 Without prejudice to the generality of the foregoing clause 2.1. the Sub-Contractor undertakes and warrants to the Beneficiary that if and only to the extent that the Sub-Contractor is required by the Sub-Contract to:
- 2.2.1 design any part of the Project; or
- 2.2.2 select materials or equipment for incorporation into the Project,
- that in designing, specifying or selecting the Sub-Contractor has and will use the reasonable skill and care which is to be expected of an appropriately qualified, competent designer of the relevant discipline who is experienced in undertaking the design of developments similar in scope and character to the Project and in terms of selecting materials and equipment who is equivalently experienced in selecting materials or equipment;
- 2.3 The Sub-Contractor undertakes and warrants to the Beneficiary that it has used and will use Required Standard not to specify for use anything in the Project which, at the time of specification or use, is Deleterious.
- 2.4 In the event of a claim brought against the Sub-Contractor by the Beneficiary the Sub-Contractor may rely on any defence or limitation available to it under the Sub-Contract save that it shall not be entitled to raise by way of defence, set off, abatement or counterclaim any monies claimed due from the Contractor under the Sub-Contract or otherwise. The Sub-Contractor shall not be entitled to defend any claim on the basis of a no loss argument whether based on the logic that the Beneficiary has not suffered a recoverable loss because the Contractor or the Employer has not suffered that loss or because the Contractor or the Employer would not suffer a similar loss because of their (or his) different interest(s) in the Project to that interest of the Beneficiary or a defence based on similar logic.
- 2.5 The Sub-Contractor has no obligation or liability under this Deed which is greater or of longer duration than it would have had if, in lieu of this Deed, the Beneficiary had been a party to the Sub-Contract as joint employer with the Contractor, provided that the Sub-Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Sub-Contractor from the Contractor.

3 Copyright

- 3.1 The copyright in the Material shall remain vested in the Sub-Contractor but the Sub-Contractor grants to the Beneficiary and its nominees (and if it cannot grant such a licence at the date of this Deed then the Sub-Contractor shall procure its ability to grant such licence and shall then grant on the same terms when it is able to do so) with full title guarantee a non-exclusive irrevocable, non-terminable, fully paid up and royalty free licence to copy and use the Material prepared by or on behalf of the Sub-Contractor for and to reproduce the designs contained in them and to do so in built form for any purpose relating to the Project (and completed Project) including any of the Permitted Uses.
- 3.2 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Sub-Contractor.

- 3.3 The Sub-Contractor shall not be liable for any such use by the Beneficiary of any Material for any purpose other than that for which they were originally prepared by the Sub-Contractor.
- 3.4 The Sub-Contractor warrants to the Beneficiary that the use of the Material for any Permitted Uses will not infringe any copyright, moral right, related right, patent, design right, database right, trademark, service mark, trade name or other intellectual property right such as know-how, trade secrets or inventions (whether patentable or not) of any third party, and the Sub-Contractor shall indemnify the Beneficiary from and against any and all losses, expenses, liabilities, claims, costs or proceedings whatsoever arising by reason of this warranty being or becoming incorrect.
- 3.5 The Beneficiary may, at any time (whether before or after completion of the Sub-Contract Works, or after termination of the Sub-Contractor's engagement under the Sub-Contract), request a copy or copies of (some or all of) the Material from the Sub-Contractor. On the Beneficiary's payment of the Sub-Contractor's reasonable charges for providing the copy (or copies), the Sub-Contractor shall provide the copy (or copies) to the Beneficiary.

4 Indemnity insurance

- 4.1 The Sub-Contractor shall maintain professional indemnity insurance covering (inter alia) all its design liabilities hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than £[SUM] [in the aggregate/for any one occurrence or series of occurrences arising out of any one event] for a period beginning now and ending 12 years after the date of practical completion of the Building Contract, provided always that such insurance is available at commercially affordable rates and on terms which are such that on a reasonable view such insurance is worth effecting (**Viable Rates and Terms**).
- 4.2 Any increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within Viable Rates and Terms.
- 4.3 The Sub-Contractor shall immediately inform the Beneficiary if such insurance ceases to be available on Viable Rates and Terms in order that the Sub-Contractor and the Beneficiary can discuss means of best protecting the respective positions of the Beneficiary and the Sub-Contractor in respect of the Project in the absence of such insurance.
- 4.4 The Sub-Contractor shall fully co-operate with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Viable Rates and Terms if the Beneficiary undertakes in writing to reimburse the Sub-Contractor in respect of the net additional cost of such insurance above such Viable Rates and Terms.
- 4.5 As and when reasonably requested to do so by the Beneficiary the Sub-Contractor shall produce for inspection reasonable documentary evidence (including if required by the Beneficiary, the originals of the relevant insurance documents) that its professional indemnity insurance is being maintained.
- 4.6 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Deed for any reason whatsoever.

5 Liability period

The Parties agree that, notwithstanding any terms and effect of the Limitation Act 1980 to the contrary, any action or proceedings under or in connection with this Deed may be commenced against the Sub-Contractor up until the expiry of 12 years from the date of practical completion of the whole of the Works as defined in the Building Contract and the Sub-Contractor agrees that, for the purposes of the Limitation Act 1980 it shall not seek to rely on any failure to commence any such action or proceedings within any shorter period (whether prescribed by the Limitation Act 1980 or otherwise) as a defence to any such action or proceedings.

6 Assignment

- 6.1 The Sub-Contractor consents to the benefit of this Deed being assigned two times only PROVIDED ALWAYS that the maximum number of two assignments referred to above shall not be affected by assignments by way of security and assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.
- 6.2 The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 6.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

7 Notices

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if sent by pre-paid post and sent to the address for the party shown above or such other address as may be notified in writing. Notices so posted before 5pm shall be deemed served on the morning of the second Business Day following posting. Notices so posted after 5pm or posted on a day which is not a Business Day shall be deemed to have been posted on the next Business Day before 5pm. Notices may be delivered by hand if left at the relevant address for the party in question in an addressed envelope between the hours of 9am and 5pm on a Business Day and signed for.

8 Step-in rights: Sub-Contractor may not terminate

- 8.1 The Sub-Contractor shall not exercise, or seek to exercise, any right to terminate its employment under the Sub-Contract for any reason (including any breach on the part of the Contractor) without giving the Beneficiary at least 14 Business Days' written notice of its intention to do so. Any notice from the Sub-Contractor shall specify the grounds for the Sub-Contractor's proposed termination.
- 8.2 If the Sub-Contract allows the Sub-Contractor a shorter notice period for the exercise of a right referred to in clause 8.1, the notice period in the Sub-Contract shall be extended to take account of the notice period required under clause 8.1.
- 8.3 The Sub-Contractor's right to terminate its employment under the Sub-Contract shall cease if, within the period referred to in clause 8.1, the Beneficiary gives notice to the Sub-Contractor, copied to the Contractor:
- 8.3.1 requiring the Sub-Contractor not to terminate its employment under the Sub-Contract:

- 8.3.2 acknowledging that the Beneficiary (or its nominee) will assume all the Contractor's obligations under the Sub-Contract; and
- 8.3.3 undertaking that the Beneficiary or its nominee will pay to the Sub-Contractor:
 - (a) any sums due and payable to the Sub-Contractor under the Sub-Contract in future; and
 - (b) within [five] Business Days any sums then due and payable to the Sub-Contractor under the Sub-Contract that are unpaid.
- 8.4 If the Beneficiary or its nominee serves notice on the Sub-Contractor under clause 8.3, then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Contractor and the Beneficiary (to the exclusion of the Contractor).
- 8.5 In complying with this clause 8, the Sub-Contractor:
 - 8.5.1 does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Contractor; and
 - 8.5.2 may exercise its right to terminate its employment under the Sub-Contract after the expiry of the notice period referred to in clause 8.1, unless the Sub-Contractor's right to terminate has ceased under clause 8.3.

9 Step-in rights: Beneficiary may step-in

- 9.1 Without affecting clause 8.1, if the Beneficiary serves a notice on the Sub-Contractor, copied to the Contractor, that:
 - 9.1.1 confirms that the Beneficiary wishes to step-in to the Sub-Contract; and
 - 9.1.2 complies with the requirements for a Beneficiary's notice under clause 8.38.3,

then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Contractor and the Beneficiary (to the exclusion of the Contractor).

- 9.2 The Sub-Contractor shall assume that, between the Contractor and the Beneficiary, the Beneficiary may give a notice under clause 9.1. The Sub-Contractor shall not enquire whether the Beneficiary may give that notice.

- 9.3 In complying with this clause 9, the Sub-Contractor does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Contractor.

10 Step-in rights: Sub-Contractor's position and Contractor's consent

- 10.1 The Sub-Contractor shall not incur any liability to the Contractor by acting in accordance with clause 8 or clause 9.

10.2 The Contractor has executed this agreement to confirm its consent to the agreement.

11 Step-in rights: Beneficiary's guarantee

If a Beneficiary's notice under clause 8 or clause 9 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Sub-Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Sub-Contractor from the Beneficiary's nominee.

12 Extraneous rights

- 12.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor to the Beneficiary.
- 12.2 No approval or inspection of the Project or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Sub-Contractor arising under this Deed.
- 12.3 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.
- 12.4 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Beneficiary is deemed to be a party to this Deed.
- 12.5 The Contractor and the Sub-Contractor undertake to the Beneficiary not to vary or depart from the terms and conditions of the Sub-Contract such that the obligations owed to the Beneficiary under this warranty are materially reduced or if they do so then the same shall not derogate from the obligations owed to the Beneficiary hereunder without the prior written consent of the Beneficiary (such consent not to be unreasonably withheld or delayed).

13 Governing law

This Deed is subject in all respects to English law and the English Courts shall have jurisdiction with regard to all matters arising under or in connection with it.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

Executed as a deed by [NAME OF SUB-
CONTRACTOR] acting by [NAME OF DIRECTOR],
a director, in the presence of:

.....

[SIGNATURE OF DIRECTOR]

.....

Director

[SIGNATURE OF WITNESS]

[NAME, ADDRESS AND OCCUPATION OF
WITNESS]

THE COMMON SEAL of the)

WINCHESTER CITY COUNCIL)

was hereunto affixed by causing its)

common seal to be affixed hereto)

in the presence of -

.....

Authorised Officer