

DATED

2026

- (1) [name of developer]
- (2) **WEST SUSSEX COUNTY COUNCIL**

**DEVELOPMENT AND SALE AGREEMENT
RELATING TO LAND EAST OF ANSTY, ANSTY,
CUCKFIELD, WEST SUSSEX**

DATE

2026

PARTIES

- (1) [NAME OF DEVELOPER] registered in England and Wales under Company Registration Number whose registered office is at (the **Developer**); and
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, West Street, Chichester, West Sussex PO19 1RQ (**Council**).

INTRODUCTION

- (A) The Developer owns the freehold of the Property and intends to develop the Property as more particularly set out in the Planning Permission
- (B) The Developer has obtained the Planning Permission from the Local Planning Authority to develop the Property
- (C) Under the Outline Planning Permission, the Developer agreed to enter into the Planning Agreement which included (amongst other things) a covenant by the Developer with Mid Sussex District Council and West Sussex County Council to build the School for the Council
- (D) The School is to be built in an area in respect of which the Council has responsibility for education services and has duties to secure necessary capacity and to promote high standards in education.
- (E) Once the Developer has procured the construction of the School on the Property, and the School has been practically completed in accordance with the terms of this Agreement then the Developer will transfer the Property to the Council .
- (F) The Council will make all necessary arrangements for the operation of the School once practically completed .

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement the following definitions shall apply unless the context requires otherwise:

2002 Act

the Land Registration Act 2002;

Academy Trust

such academy trust as may be selected by West Sussex County Council and approved by the Secretary of State for Education

Act

the Town and Country Planning Act 1990;

Act of God

the happening of some event which could not be caused by the action or intervention of man and the loss from which could not have been avoided or prevented by any reasonable amount of foresight, pains or care;

Act of Terrorism

an act (including the use of force or violence or the threat of them) of any person or group of persons whether acting alone, or on behalf of, or in connection with, any organisation or government committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear and such other acts or things as may be included within the wording adopted in the London insurance market from time to time for the exclusion of cover in respect of acts of terrorism;

Actual Completion

actual completion of the Transfer and **Date of Actual Completion** shall be interpreted accordingly;

All Risks Insurance;

has the meaning given to that expression in JCT DB 2016;

Appointments

the deeds of appointment to be entered into between the Developer and the members of the Design Team and the Employer's Agent in the form of the drafts set out in Appendix 1;

Approved Scheme

the scheme for carrying out the Developer's Works in accordance with the Programme as varied from time to time pursuant to the terms of this agreement;

Architect

.....(Company Registration Number) of or such other independent person, firm or such other experienced and suitable company (being in the case of an individual a professional associate or fellow of the Royal Institute of British Architects and in the case of a firm or company having at least one partner or director (as the case may be) who is an associate or fellow of the said Institute) as may be appointed by the Developer or the Building Contractor to be the Architect for the purposes of this agreement and who shall be approved by the Council (such approval not to be unreasonably withheld or delayed);

Buildings

A two form entry (FE) primary school with associated facilities and hard and soft play areas and early years facility and special support centre provided as part of the Development on the Primary School Land in accordance with the Primary School Facility Scheme at the Property in accordance with BB103 and BB104, the Specification and the Drawings, all fitted out with Fixtures, Fittings and ICT Equipment so that the primary school and special support centre are ready for immediate use on Practical Completion;

Building Contract

the building contract or contracts to be entered into as a deed between the Developer and the Building Contractor for the carrying out of the Developer's Works and which is annexed at Annex A with such amendments (if any) as the Council may require or as the Developer shall obtain the approval of the Council to the Employer's Requirements and the Contractor's Proposals;

Building Contractor

a substantial and financially sound and experienced building contractor as the Developer shall employ from time to time under the Building Contract and who shall be approved by the Council (such approval not to be unreasonably withheld or delayed);

CDM Principal Designer

such person as is appointed under regulation 5(1)(a) to perform the duties specified in regulations 11 and 12 CDM Regulations;

CDM Regulations

the Construction (Design and Management) Regulations 2015 (SI 2015/51) and any modification or statutory re-enactment thereof or any amendment to a regulation therein;

Certificates

any of the Practical Completion Certificate and the Notice of Completion of Making Good;

Collateral Warranty Deeds

deeds of collateral warranty in favour of the Council in the form of the agreed drafts set out in Appendix 2 to be entered into by the respective members of the Construction Team together with any replacement party that may from time to time be appointed by the Developer or the Building Contractor subject only to such minor amendments as do not materially attenuate the liability of the warrantor and which shall first be approved by the Council;

Communication

any notice, application, approval, certificate or other communication from or on behalf of one party to another pursuant to the terms of this agreement;

Completion Date

the tenth Working Day after the Date of Practical Completion or such earlier date as the parties may mutually agree;

Construction Phase Plan

the plan that the Principal Contractor must prepare to comply with regulations 12 or 15 CDM Regulations;

Construction Team

the Building Contractor, the Design Team, the Employer's Agent and the Warranting Sub-Contractors;

Contract Rate

4% above the base rate of the Bank of England from time to time;

Contractor's Proposals

the documents showing and describing the Building Contractor's proposals for the design and construction of the Developer's Works to be supplied to the Developer in response to the Employer's Requirements;

Council's Technical Advisor

means such suitably qualified person as may be appointed by the Council and notified to the Developer for the purposes of this Agreement;

Court

a court of competent jurisdiction;

Date of Practical Completion

the date of issue of the Practical Completion Certificate;

DBS

Means the Disclosure Barring Services

Deed of Covenant

A deed of covenant in favour of the Council in the agreed form attached to this Agreement at Appendix 7.

Defects

any defects, shrinkages or other faults in the Developer's Works which are due to materials or workmanship or frost or landscape features or landscape planting which fail to thrive within the 12 (twelve) month defect liability period under the Building Contract due

to a failure of specification, or installation or

a failure to following the maintenance required within the first twelve-month period following planting of the Landscape Works on the part of the Developer or Building Contractor ;

Deleterious Materials

any building materials or agents used in connection with the construction process which at the time of specification or proposed use are generally considered by construction industry professionals at such time as (either in themselves or in combination with other materials with which they may be used in combination in works or as acted upon by environmental factors with which they may come into connection (either during the carrying out of works or thereafter) or when used in a particular situation or in particular quantities or concentrations):

- (a) being hazardous to health;
- (b) damaging to structures of a comparable type to the structure in which they are intended to be incorporated or impairing the performance of or reducing the stability of such structures;
- (c) giving rise to a requirement for maintenance of structures of a comparable type to the structure in which they are intended to be incorporated at a higher level of frequency or expense than that which would normally be expected in a structure of comparable type;
- (d) tending to reduce the life expectancy below the design-life expectancy of any materials with which they are intended to be combined or any materials to which they are intended to be affixed, or the structure in which they are intended to be incorporated or affixed; or

Design Data

all drawings, reports, documents, plans, software, formulae, calculations and other data whatsoever in any medium prepared by or on behalf of the Developer relating to the design and construction of the Developer's Works;

Design Team

the Architect, the Landscape Architect, Construction Engineer and any other consultants who are involved with the design of the Developer's Works;

Developer

the first party to this agreement and includes its successors-in-title and permitted assigns;

Developer's Solicitors

..... [(ref:)] or such other firm of solicitors appointed by the Developer from time to time and notified to the Council;

Developer's Works

the works to be carried out by or on behalf of the Developer as more particularly shown or described in the Drawings and may include any part of the Developer's Works and shall include:

- (a) the demolition of any existing buildings and structures and site clearance and preparation;
- (b) the construction and laying of the Services to the Buildings;
- (c) the construction of the Buildings;
- (d) the Landscaping Works;
- (e) the carrying out of any works required to remediate the contamination of the Property as required pursuant to the terms of the Planning Permission;
- (f) the installation of Fixtures, Fittings and ICT Equipment to enable the immediate use of the school and special support centre from the date of Practical Completion

Dispute

a dispute, issue, difference, question or claim as between the Council and the Developer relating to or arising at any time out of this agreement;

Dispute Notice

a notice requiring a dispute to be referred to a Specialist and proposing an appropriate Specialist;

Drawings

the drawings annexed at Appendix 3 and as listed as follows:

Together with the Specification and the expression shall include all such variations and alterations to them from time to time made pursuant to and in accordance with the terms of this agreement;

Dwelling

Means the dwelling units to be constructed on the Site pursuant to the Outline Planning Permission for the use as a private residence of the occupier

Electronic Payment

payment by electronic means in same day cleared funds from an account held in the name of the payor's solicitors at a clearing bank to an account in the name of the payees' solicitors;

Employer's Agent

..... (Company Registration Number ofor such other experienced and qualified person as employer's agent as shall be appointed by the Developer and approved by the Council (such approval not to be unreasonably withheld or delayed);

Employer's Requirements

the documents to be supplied to the Building Contractor by the Developer showing and describing or otherwise stating the Developer's requirements for the design and construction of the Developer's Works;

Event of Default

- (a) the Developer not substantially commencing the Developer's Works within 10 (ten) Working Days of the relevant date set out in the Programme which relates to commencement of the Developer's Works;
- (b) the Developer (before the Date of Practical Completion but not otherwise) committing a material breach of this agreement and failing within 10 (ten) Working Days of notice being given by the Council or the Council's Surveyor (or sooner in case of emergency) to commence appropriate action to investigate such breach and thereafter failing diligently to remedy such breach as soon as reasonably practicable to the reasonable satisfaction of the Council ;
- (c) the Developer ceasing to carry out the Developer's Works or repudiating this agreement;

Event of Insolvency

- (a) in relation to a company;
 - (i) it being deemed unable to pay its debts as defined in section 123 Insolvency Act;
 - (ii) a proposal being made for a voluntary arrangement under Part I Insolvency Act;
 - (iii) an administration order being made under Part II Insolvency Act, or an administrator being appointed out of Court;
 - (iv) a receiver or manager (including an administrative receiver) being appointed over any property of the company;
 - (v) an order being made, or resolution being passed for its winding-up or an order being made for the winding-up of the company under Part IV Insolvency Act or or voluntary winding-up (other than a members' voluntary winding-up which is for the sole purpose of amalgamation and reconstruction while solvent);
 - (vi) a provisional liquidator being appointed under section 135 Insolvency Act;

- (vii) a proposal being made for a scheme of arrangement under section 1 Insolvency Act;
 - (viii) an administrative receiver being appointed over the whole or any part of the property or assets of the company or any mortgagee taking possession of such property or assets;
 - (ix) it being removed from the Register of Companies;
- (b) in relation to an individual:
- (i) his being unable to pay his debts or being deemed unable to pay his debts under section 268 Insolvency Act;
 - (ii) an application being made for an interim order, or a proposal being made for a voluntary arrangement under Part VIII Insolvency Act;
 - (iii) a bankruptcy petition being presented to Court or his circumstances being such that a bankruptcy petition could be presented under Part IX Insolvency Act or the individual applying for an adjudication that he be made bankrupt;
 - (iv) entering into a deed of arrangement;
 - (v) suffering a receiver or manager to be appointed over the whole or any part of his property;
 - (vi) summoning a meeting of his creditors under section 98 Insolvency Act; and
- (c) in the case of any company or individual resident in a jurisdiction other than England or Wales the various references in this definition shall be deemed to relate to analogous proceedings or events applying in such jurisdiction;

Excluded Transfer

a transfer which is treated as neither the supply of goods nor a supply of services for the purposes of VAT by virtue of section 49 VAT Act and Article 5 Value Added Tax (Special Provisions) Order 1995;

Fixtures Fittings and Equipment

The loose and fitted fixtures and fittings for the school and ICT equipment for each classroom and office at the school

Force Majeure Event

any of the following events (and any circumstance that arises as a direct consequence of any of the following events):

- (a) Act of God
- (b) Act of Terrorism;
- (c) act of the public enemy or insurrection, civil war, civil disorder, civil commotion, , embargo, war or military operations, threat of war, invasion, act of foreign enemy hostilities (whether war is declared or not) , military or usurped power, confiscation or requisition or destruction or damage to property by or under the order of any government or public or local authority or seizure under legal process;
- (d) revolution, riot, civil commotion, demonstration ;

- (e) fire, earthquake, landslip subsidence have, collapse, aircraft, aerial devices and articles dropped or falling from them, impact;
- (f) exceptionally adverse weather conditions;
- (g) acts of vandalism or accidental damage or destruction of machinery or equipment
- (h) natural disasters or phenomena including extreme weather or environmental conditions, drought ;
- (i) nuclear, chemical or biological contamination of the Property or any adverse ground or soil conditions in or affecting the Property or the presence of any underground structure or object in the Property or in any nearby property;
- (j) pressure waves caused by devices travelling at supersonic speeds;
- (k) the presence or discovery of fossils, antiquities, bodies or other human remains or unexploded bombs;
- (l) industrial disputes and actions of any kind including working to rule, restrictive practices or lockouts, labour disturbances or threatened or actual strike
- (m) any disease epidemic pandemic pestilence plague or contagion;

Group Company

in relation to any company, a company which is a member of the same group of companies as that company within the meaning of section 42 Landlord and Tenant Act 1954;

Health and Safety File

the record in relation to the Developer's Works required under regulation 12(5) CDM Regulations;

Insolvency Act

the Insolvency Act 1986 as amended;

Intellectual Property

all intellectual and industrial property and all rights in them in any part of the world including any patent, petty patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, know-how, specification, improvement technique, copyright (including rights in computer software and database and topography rights), unregistered design right, technical information or drawing created by or procured by the Developer in connection with the Developer's Works;

JCT DB 2016

the JCT Design and Build Contract 2016 edition;

Joint Fire Code

the code so defined in JCT DB 2016;

Landscape Architect

.....(Company Registration Number) ofor such other Landscape Architect as may be appointed by the Developer for the purpose of this Agreement and as shall be approved by the Council (such approval not to be unreasonably withheld or delayed);

Landscaping Works

all hard and soft landscaping works to be carried out on or at the Property as described in Drawing Number [●] of the Drawings;

Longstop Date

such date on which xxx dwellings on the Site are occupied;

Mechanical and Electrical Services Engineers

such mechanical and electrical engineer or such other person, firm or company as may be employed for the purposes of being the mechanical and electrical services engineer for the purpose of this agreement by the Developer or the Building Contractor and who shall be approved by the Council (such approval not to be unreasonably withheld or delayed);

Necessary Consents

means the Planning Permission, the approvals of any reserved matters relating to the conditions attaching to any planning permission relating to the Works, any obligation under section 106 Town and Country Planning Act 1990, section 38 or section 278 Highways Act 1980 or section 104 Water Industry Act 1991, and all other permissions, consents, approvals, licences, certificates, and permits whether of a public or private nature as may be necessary lawfully to commence, carry out and complete the Developers Works;

Notice of Completion of Making Good

the notice defined in clause 2.36 JCT DB 2016;

Occupation

Means occupation for the purposes permitted by the Outline Planning Permission but not including occupation by personnel engaged in construction fitting out or decoration or occupation for marketing or display or occupation in relation to security operations

Off-Site Works

any works which must be completed other than on the Property as described in section [●] of the Drawings;

Option to Tax

an option to tax in respect of the Property within the meaning of paragraph 2 schedule 10 VAT Act;

Outline Planning Permission

outline planning permission referencedatedpermitting development of the Site (including the Property);

Part 1 Conditions

the conditions in Part 1 of the Standard Commercial Property Conditions (Third Edition – 2018 Revision) and **Standard Condition** means any one of them;

Part 2 Conditions

the conditions in Part 2 of the Standard Commercial Property Conditions (Third Edition – 2018 Revision);

Permitted Variations

means any variation:

- (a) which is insubstantial or immaterial and of routine nature; and/or
- (b) which involves a substitution of material provided that the material substituted is of equivalent or superior standard and is not less suitable for its purpose; and/or
- (c) where the variation is required to satisfy a change in law or is ordered by a competent authority and such variation would not materially adversely affect the Development; and/or
- (d) which does not add delay to the completion of the Works; and/or

- (e) any Variation which is not an Unacceptable Variation, and which is required by any local or other competent authority either as a condition of the grant or continuation in force of any consent or approval or in consequence of any variation, relaxation or waiver of any consent or approval; and/or
- (f) any other Variation which is not an Unacceptable Variation, and which is proposed by the Employer's Agent or other appropriate Consultant and approved in writing by the Council (which approval must not be unreasonably withheld or delayed).

PI Requirements

professional indemnity insurance cover for not less than £10,000,000 for any one occurrence or series of occurrences arising out of one event other than in respect of pollution contamination and date recognition claims where such cover shall apply on an annual aggregate basis (and £2,000,000 in the aggregate in respect of asbestos claims);

Plan

the plan attached at Appendix 4;

Planning Agreement

- (a) any planning obligation entered into or proposed to be entered into under section 106 of the Act; and/or
- (b) any agreement concluded or proposed to be concluded between a party to this agreement and the Planning Authority (whether or not under section 106 of the Act) and/or any other authority relating to the construction, maintenance or adoption of any road, sewer, drain or supply affecting or serving the Property (whether or not under sections 35 and 36 or section 278 Highways Act 1980 or section 104 Water Industry Act 1991);
- (c) AND including for the avoidance of doubt the S106 Agreement dated and made between

Planning Authority

the local planning authority;

Planning Permission

The Outline Planning Permission together with the reserved matters consent referencedatedbeing the planning permission for the Developer's Works;

Practical Completion Certificate

the certificate to be issued by the Employer's Agent pursuant to clause 2.27 JCT DB 2016 stating that the Developer's Works have been practically completed in accordance with the provisions of the Building Contract;

Principal Contractor

the person appointed under regulation 5(1)(b) CDM Regulations to perform the specified duties in regulations 12 to 14;

Programme

the provisional programme for carrying out the Developer's Works a copy of which is attached at Schedule 1;

Project

the carrying out of the Approved Scheme;

Property

the freehold estate of the area of land consisting of 2.1 hectares shown edged red on the Plan forming part of the Site registered (together with the remainder of the Site) with freehold title absolute under title number WSX195013;

Purchase Price

the sum of ONE POUND £1.00;

Rectification Period

the period so defined in JCT DB 2016 which shall be no fewer than 12 (twelve) months from the Date of Practical Completion;

Relevant Events

the events set out in clause 2.26 JCT DB 2016;

Secretary of State

the Secretary of State or other Minister or authority for the time being having or entitled to exercise the powers conferred by sections 77 and 78 of the Act;

Services

pipes, wires, troughs, cables, drains, channels, flues, conduits, ducts, watercourses, gutters, culverts, soakaways and other transmission media and installations and all fixings, louvres, cowls, covers and grilles and other ancillary apparatus, sewers and other conducting media for the transmission of water, gas, electricity, storm and foul drainage, telephone and other telecommunications (analogue, digital, laser or otherwise) electrical and radio impulses and signalling which are designed by the Drawings to be in or pass through, over or under the Property;

Site

the land known as land south east of the road from Ansty to Cuckfield, Ansty, Cuckfield, West Sussex registered at Land Registry with freehold title absolute under title number WSX195013 and shown edged blue on the Plan;

Specialist

a person qualified to act as an independent expert or arbitrator in relation to a Dispute having experience in the profession in which he practises of at least ten years immediately preceding the date of referral;

Specification

the specification attached at Annexure 5;

Statutory Requirements

requirements deriving from any Acts of Parliament and any instruments, rules, orders, regulations, notices, directions, byelaws, permissions and plans for the time being made under them or deriving validity from them and any rules, regulations, orders, byelaws or code of practice of any local authority or of any statutory undertaker having jurisdiction with regard to the Developer's Works;

Structural Engineer

..... ofor such other suitably qualified and experienced person, firm or company (being in the case of an individual a member or fellow of the Association of Consulting Engineers or the Institution of Civil Engineers and in the case of a firm or company at least one of whose partners or directors shall be a member or fellow of such Association or Institution) as may be employed for the purposes of this agreement by the Developer or the Building Contractor and who shall be approved by the Council (such approval not to be unreasonably withheld or delayed);

Sub-Contracts

the contracts entered into or to be entered into between the Building Contractor and the Warranting Sub-Contractors in such terms as shall be approved by the Council (acting reasonably and without delay);

Target Date

[●];

Terrorism Cover

cover against loss or damage to the Developer's Works or any unfixed goods and materials delivered to the Property which are intended for incorporation into the Developer's Works being caused by Act of Terrorism;

Title Documents

means Title Number WSX195013 and all documents, agreements and deeds contained or referred to in the title entries of Title Number WSX195013;

Transfer

the land registry form TP1 being the deed of transfer of the Property from the Developer to the Council in the form attached at Appendix 6;

Unacceptable Variation

Any Variation which would materially alter the design, layout, nature, size or capacity or the standard of construction of the Development or prejudice the use of the Development or any part of it for the purposes of an educational facility.

VAT

value added tax chargeable under the VAT Act or any equivalent or substituted tax;

VAT Act

the Value Added Tax Act 1994 or any equivalent tax Act;

Warranting Sub-Contractors

any sub-contractors with a design responsibility for any part of the Developer's Works and any sub-contractors who undertake work on the substructure, superstructure, curtain walling, cladding, building services, and fire protection;

Working Day

any day except Saturday, Sunday and bank or other public holidays in England or Wales;

Works Long Stop Date

The Occupation of the (words) Dwelling - PLACEHOLDER – TIE IN WITH SEC 106

1.2 In this agreement, unless the contrary intention appears, references to:

1.2.1 the **Developer** or the **Council** shall include their respective successors and assigns;

1.2.2 any statute, byelaw, regulation, rule, standard, delegated legislation or order include references to:

(a) that statute, byelaw, regulation, rule, standard, delegated legislation or order as amended or re-enacted or as other statutes modify its application from time to time, and

(b) any subordinate legislation, byelaw, regulation, rule, standard, delegated legislation or order made or to be made thereunder;

1.2.3 clauses or schedules are references to clauses in or schedules to this agreement and references to paragraphs are references to paragraphs in the schedule in which those references are made and references to this agreement include the schedules to this agreement;

1.2.4 the singular includes the plural and vice versa;

1.2.5 persons include individuals, companies, firms, partnerships, joint ventures, associations, organisations or trusts (in each case whether or not having separate legal personality) and corporations sole and aggregate, government agencies, committees, department, authorities and other bodies incorporated or unincorporated;

- 1.2.6 the masculine gender includes the feminine and the neuter genders and vice versa.
- 1.3 The headings shall not affect the interpretation of this agreement.
- 1.4 Any obligations entered into by more than one person in this agreement are entered into jointly and severally.
- 1.5 Any obligation on the part of either party not to do any act or thing shall be deemed to include an obligation not to do or permit or suffer such act or thing to be done by any person under its control.
- 1.6 If any provision in this agreement is held to be illegal, void, invalid or unenforceable for any reason the legality, validity and enforceability of the remainder of this agreement shall not be affected.
- 1.7 The words **other, include, including** and **in particular** do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.8 The words **unreasonably withheld** shall be deemed to be followed by the words “or delayed or refused or proffered subject to unreasonable conditions”.
- 1.9 Any reference to an approval, consent or permission which is required under this agreement shall connote an approval, consent or permission in writing given either under hand or (where the circumstances require) by deed signed or executed by a duly authorised person or persons.
- 1.10 Any reference to an approval, consent or permission which is required under the terms of this agreement shall be deemed to be one which shall not be unreasonably withheld except where the relevant provision indicates to the contrary.
- 1.11 References to this agreement mean this agreement as amended, varied, supplemented, modified or novated from time to time and shall include all schedules and appendices.
- 1.12 The word **month** means a calendar month.
- 1.13 Any reference to **writing** shall include typewriting, printing, lithography, photography, telex, facsimile and the printed-out version of a communication by electronic mail and other modes of representing or reproducing words in a legible form other than on a transitory basis and the word **written** shall be construed accordingly and any writing must be on paper, acetate, celluloid or some other durable and easily transportable medium.
- 1.14 References to an **indemnity** means an indemnity against all actions, claims, demands and proceedings made against the party having the benefit of the indemnity and all costs, expenses, liabilities and losses incurred by that party and **indemnity** and **indemnified** shall be construed in the same way.
- 1.15 References to a **party** or to **parties** means a party or parties to this agreement.
2. **STANDARD CONDITIONS**
- 2.1 The Part 1 Conditions as varied pursuant to clause 28 shall be incorporated into this agreement as far as they are applicable to it and are consistent with its terms.
- 2.2 The Part 2 Conditions are not incorporated into this agreement.
3. **NECESSARY CONSENTS**
- 3.1 The Developer shall obtain the Necessary Consents (in so far as they remain to be obtained) as quickly as possible after the date of this agreement and shall promptly notify the Council of the outcome of each application in relation to them and shall supply to the Council copies of any documents issued and until the Completion Date shall keep the Necessary Consents valid and unrevoked.
- 3.2 The Developer shall keep the Council regularly and promptly informed as to progress in obtaining any Necessary Consents.
- 3.3 The Developer shall not implement any Necessary Consent (save for those already obtained and copies of which have been supplied to the Council or the Council 's Solicitors before the

date of this agreement) until it has been approved by the Council (such approval not to be unreasonably withheld or delayed).

- 3.4 The Developer, prior to Commencement of the Works, shall comply with, and discharge all pre-commencement conditions within the Necessary Consents which prevent lawful commencement of the Works

4. **BUILDING CONTRACT AND APPOINTMENTS**

- 4.1 The Developer will take (or in the case of any replacement contractor shall take) all reasonable steps to be satisfied that the Contractor has sufficient experience to carry out the Works and is suitable and competent having regard to its responsibilities in relation to the carrying out of the Works, the relevant Building Contract and the CDM Regulations.
- 4.2 The Developer shall supply a completed copy of the Building Contract to the Council as soon as reasonably practicable after it has been entered into.
- 4.3 The Developer shall procure that a certified copy of the Collateral Warranty duly executed by the Contractor is delivered to the Council and to the Academy Trust as soon as reasonably practicable (and in the case of the Academy Trust only after the identity of the Academy Trust is known) after the making of the Building Contract and that the Contractor shall procure that Warranting Sub Contractors shall provide a Collateral Warranty in favour of the Council and the Academy Trust as soon as reasonably practicable (and in the case of the Academy Trust only after the indemnity of the Academy Trust is known) after their appointment.
- 4.4 As soon as practicable after the date of this agreement the Developer shall seek the approval (such approval not to be unreasonably withheld or delayed) of the Council (in so far as it has not already obtained it) to the final form of the Building Contract and Appointments and to the respective members of the Construction Team and procure that the Building Contract is entered into by the Building Contractor and that the Appointments are entered into by the respective members of the Design Team and the Employer's Agent.
- 4.5 As soon as reasonably practicable after the approvals mentioned in clause 3.1 have been obtained the Developer shall commence and thereafter diligently proceed with the carrying out of the Developer's Works.
- 4.6 The Developer shall comply with its obligations under the Building Contract and the Appointments and shall enforce the terms of the Building Contract and the Appointments and shall secure the observance and performance by the Building Contractor, the Design Team and the Employer's Agent of the provisions on their respective parts to be observed and performed, none of which provisions shall without the prior approval of the Council be varied or waived or released nor (without the prior approval of the Council) shall any action to secure the compliance with such provisions be discharged, settled or compromised.
- 4.7 The Developer shall not make any amendment or variation to the Building Contract or the Appointments without the written consent of the Council (such consent not to be unreasonably withheld or delayed) nor shall the Developer agree to an assignment of the benefit of the Building Contract by the Building Contractor or an assignment of the benefit of the relevant Appointment by a member of the Design Team or the Employer's Agent respectively without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed).
- 4.8 The Developer shall procure that the duly executed and completed Collateral Warranty Deeds to be given by the Construction Team and the deeds of warranty in favour of the Council are unconditionally delivered to the Council promptly following the date on which each of the Building Contract, the Appointments and the Sub-Contracts are completed and together with a certified copy of the Building Contract, the relevant Appointment or Sub-Contract (as the case may be).
- 4.9 The Developer shall not terminate the employment of any member of the Construction Team without the consent of the Council (such consent not to be unreasonably withheld or delayed) provided that, if the employment of any member of the Construction Team is terminated, the Developer shall forthwith, or as soon as the Developer is informed of it (in the case of the termination of a Sub-Contract), give notice in writing to the Council of such event and, as

soon as reasonably practicable, appoint or employ or procure the appointment of a substitute (as appropriate) to be approved by the Council (such approval not to be unreasonably withheld or delayed), provided that on his appointment the Developer shall have procured that the substitute has entered into:

4.9.1 a deed of warranty with the Council substantially in the form of the relevant agreed draft annexed as appropriate;

and the terms of any new building contract or deed of appointment (as the case may be) shall also be approved by the Council which approval shall be at the discretion of the Council where the relevant document imposes lesser obligations upon the building contractor or professional or sub-contractor than those as are imposed by the Building Contract or Appointment or Sub-Contract of the relevant member of the Construction Team or is not entered into as a deed or where the PI Requirements are not satisfied.

5. **THIRD PARTY RIGHTS AND SERVICES**

5.1 The Developer shall, with the prior approval of the Council, but at the Developer's cost enter into such agreements relating to rights of light and other easements and party structures and pay such compensation as may be necessary to carry out the Developer's Works lawfully.

5.2 The Developer shall, with the Council's prior approval, negotiate such agreements with statutory undertakers and others as may be required to secure for the Development all Services required and the diversion in a satisfactory manner of all Services which are located in a position which would interfere with the Developer's Works.

6. **DEVELOPER'S WORKS**

6.1 The Developer shall use reasonable endeavours to procure that the Developer's Works are carried out and completed at its own cost (save for any costs as per clause 7.3 by the Target Date:

6.1.1 in a good and workmanlike manner and in accordance with good design practice;

6.1.2 using the materials specified in the Drawings and/or the Building Contract (with such variations as may be approved by the Council in accordance with the provisions of this agreement and (where applicable) and where none are specified using good quality and suitable materials;

6.1.3 without using any Deleterious Materials;

6.1.4 in such a manner that the rights of owners or occupiers of any adjoining or neighbouring property are not infringed;

6.1.5 in accordance with the Drawings;

6.1.6 in compliance with the Necessary Consents;

6.1.7 in compliance with the Building Contract;

6.1.8 in compliance with all Statutory Requirements and all other statutory provisions and every applicable instrument, order, direction, regulation, byelaw, local act, permission, licence and consent;

6.1.9 in accordance with all relevant British Standards, Institution Standards and Codes of Practice ;

6.1.10 diligently and expeditiously and in accordance with the Programme so that the Date of Practical Completion is achieved by the Target Date ;

6.1.11 in compliance with the CDM Regulations;

6.1.12 in compliance with the Construction Phase Plan;

6.1.13 in compliance with the Planning Agreements;

6.1.14 so that (excepting only the Off-Site Works) all of the Developer's Works are within the Property;

6.1.15 without infringement of any rights, reservations, covenants, restrictions or stipulations binding upon or affecting the Property;

- 6.1.16 in accordance with the Joint Fire Code;
- 6.1.17 in accordance with all relevant "Guidance Notes" published by the Health and Safety Executive and the guidelines and specifications for safe working published by the National Joint Utilities Group and National Grid plc.
- 6.1.18 In compliance with Department for Education Building Bulletin 103 and Department for Education Building Bulletin 104.
- 6.1.19 In compliance with the provisions of the Building Safety Act 2022; and
- 6.1.20 In compliance with the provisions of the Fire Safety (England) Regulations 2022
- 6.2 The Developer shall:
 - 6.2.1 take such steps as are necessary to divert all Services in, under or above the Property or any adjoining or neighbouring property which need to be diverted as a result of the Developer's Works;
 - 6.2.2 install all Services to the Property which are required as part of the Developer's Works and ensure that the same connect directly to the mains without crossing land not within the Property unless appropriate legal easements (approved by the Council) are obtained;
 - 6.2.3 serve such notices and enter into such arrangements (approved by the Council) with statutory undertakers or other companies as may be necessary to so install the Services.
- 6.3 The Developer shall at its own expense procure the carrying out and completion of any unfinished landscaping, seeding and planting works comprised in the Developer's Works by the Date of Practical Completion and otherwise in accordance with the Building Contract.
- 6.4 The Developer shall observe and perform the obligations on its part or on the part of the owner of the Property arising in connection with the Planning Agreements including the making of any requisite payments and the giving of any bond or other security.
- 6.5 In carrying out the Developer's Works the Developer shall comply with any agreements, deeds, documents, rights, easements, exceptions, reservations and covenants (restrictive or otherwise) affecting the title to the Property and binding on or directly or indirectly enforceable against any owner or occupier of the Property and of all other agreements, deeds or documents affecting the Property or the title to it including the Title Documents.
- 6.6 The Developer shall, in carrying out the Developer's Works, take all such precautions as shall be reasonably practicable and necessary to avoid nuisance, annoyance, inconvenience, injury, loss or danger to or interference with the public or any owners or occupiers of adjoining or neighbouring property or any other persons.
- 6.7 The Developer shall not permit or suffer use of the Property for any illegal purpose.
- 6.8 The Developer shall not permit or allow:
 - 6.8.1 any encroachment or easement to be made or acquired in or against the Property; or
 - 6.8.2 any claim for Common Land or Town and Village Green registration to be made or acquired in or against the Property; or

during the carrying out of the Developer's Works and shall notify the Council immediately upon becoming aware of any such encroachment or easement or any such claim for Common Land or Town and Village Green registration being made or attempted.
- 6.9 The Developer may at its own expense (with the prior written consent of the Council) substitute other materials for those mentioned in the Drawings (and subject always to any substitution being in accordance with the terms of the this Agreement) where the materials mentioned are in short supply or otherwise not readily available, provided that such alternative materials are equal to or superior in quality and suitability and of substantially the same appearance (in so far as they will be visible after incorporation into the Developer's Works) to the materials which they replace.

- 6.10 As soon as the variation is apparent the Developer shall supply a copy of any proposed variations to the Programme or the Construction Phase Plan and all reasonably requested information to the Council for approval (such approval not to be unreasonably withheld or delayed).
- 6.11 The Developer shall give to the Council and the Council 's Surveyor 10 (ten) Working Days' notice of the date upon which it is intended to commence the Developer's Works and procure that the Council and the Council 's Surveyor shall be kept informed of the progress of the Developer's Works and of any delays to the Programme and give to the Council and the Council 's Surveyor full details and all reasonably required information about the delay in writing of the causes of any delay.
- 6.12 The Developer shall use all reasonable endeavours to procure that the Developer's Works are completed by the Target Date.
- 6.13 The Target Date shall be extended by such periods as the Employer's Agent shall certify by reason of the happening of any Relevant Event or Force Majeure but if the Developer's Works shall not be completed by the Longstop Date, then the provisions of clause shall apply.
- 6.14 The Developer shall obtain the prior written consent of the Council in respect of all matters to be approved by the Planning Authority pursuant to the terms of the Planning Permission.
- 6.15 The Developer shall at all times retain the Employer's Agent to receive and issue applications, consents, instructions, notices, requests or statements under the terms of the Building Contract, and this agreement and to give the Certificates.
- 6.16 The Developer shall balance, test and commission any lifts, heating and other plant and machinery or mechanical and electrical engineering equipment comprised in the Developer's Works to the reasonable satisfaction of the Council.

7. **VARIATIONS**

- 7.1 The Developer may, in consultation with the Council but without the need to obtain the formal approval of the Council make Permitted Variations (save that the Developer must inform the Council of any such Permitted Variations) or otherwise the Developer may (subject to there being no material effect to the Programme) and subject to first obtaining the approval of the Council (such approval not to be unreasonably withheld or delayed) , make changes to the Approved Scheme
- 7.2 Without prejudice to the forgoing the Developer shall not be permitted to make any Unacceptable Variation without the approval of the Council Technical Advisor (at the Council's absolute discretion).
- 7.3 The Council may (subject to there being in the Developer's opinion no effect to the build programme), after consultation with the Developer, make a request in writing to vary the Approved Scheme and the Developer shall, provided that the Council shall first agree in writing to pay the costs of any such variation as calculated in accordance with the provisions of the Building Contract within 20 (twenty) Working Days of any invoice for such increased costs incurred being provided to the Council or such shorter period as may be required pursuant to the Building Contract, procure that any such variation is implemented as a variation under the Building Contract Provided That any such variation is requested in accordance with the extant Department for Education specification and derogation schedule in effect at the relevant time of such variation request.

8. **SITE MEETINGS AND INSPECTION**

- 8.1 The Developer shall:
 - 8.1.1 hold or procure that there are held site and Project meetings (which for the avoidance of doubt shall include a meeting with the Building Contractor following the appointment of the Building Contractor but before the commencement of the Developer's Works) at appropriate intervals;
 - 8.1.2 procure that the Council shall be invited with at least 5 (five) Working Days prior notice to attend all such meetings, and that the Council receives copies of the minutes of the meetings without delay and without the need for the Council to request them;

- 8.1.3 procure that the Council and the Council's Technical Advisor shall be entitled at all reasonable times during normal working hours, upon giving reasonable prior notice to the Employer's Agent, to inspect the Developer's Works and all materials used, subject to the Council and the Council 's Surveyor complying with the Building Contractor's reporting and safety procedures at the Property;
 - 8.1.4 procure that all reasonable representations made by the Council or the Council's Technical Advisor that comply with the terms of this Agreement are promptly dealt with or are duly considered and, if considered to comply with the requirements set out in this Agreement or the Specification, acted upon;
 - 8.1.5 the Developer will ensure that any party issuing a certificate of defects pursuant to the Building Contract gives at least 5 (five) Working Days' notice to the Council's Technical Advisor of its intention to prepare a schedule of all defects shrinkage or other faults in all or any part of the Works to be carried out in the last calendar month before the end of the Defects Correction Period.
 - 8.1.6 the Developer will ensure that the Contractor's obligations to remedy defects during the Defects Correction Period are enforced and that all such defects are remedied promptly. The Developer shall ensure that the Employer's Agent (or other representative if appropriate) gives a copy of the certificate of completion of making good defects issued pursuant to each Building Contract to the Council promptly after its issue;
 - 8.1.7 the Developer shall regularly inspect or procure the inspection of the Development (and no fewer than two during the defects liability period under the Building Contract and one within the last two weeks of the defect liability period under the Building Contract) and procure that any defects, shrinkages or other faults in the Works and ancillary works that appear during the carrying out of the Development are promptly remedied.
- 8.2 The Developer shall procure that the Council and the Council 's Technical Advisor shall (if it is reasonable to do so) be entitled to require the appropriate member of the Design Team or the Employer's Agent to arrange for the Building Contractor to take any samples and make any tests which the Council reasonably considers appropriate in respect of the Developer's Works (any proposed opening up to be considered in accordance with the criteria set out in schedule 4 JCT DB 2016) and the Council and the Council 's Technical Advisor shall be entitled to attend the making of all such tests provided that:
- 8.2.1 where the results of such testing indicate that the Developer has failed to perform its obligations under this agreement, the Developer shall at its own expense carry out any works or do any other thing which is necessary to secure the proper performance of its obligations without delay;
 - 8.2.2 where the results of such testing indicate that the Developer has not failed to perform its obligations under this agreement, the Council shall pay the cost of taking such samples and making such tests and shall make good to the Developer any additional loss or expense occasioned.
- 8.3 The Developer shall procure that there are handed to the Council prior to the first site meeting fully dimensioned drawings in respect of the Developer's Works such drawings to be of the scale of 1:100 or 1:50. Either as paper or electronic copies
- 8.4 The Developer shall procure that the Council 's Surveyor is given at least 5 (five) Working Days' notice of all commissioning tests of plant and systems and shall permit the Council 's Technical Advisor to attend the same.
- 9. NOTIFICATION**
- 9.1 The Developer shall procure that:
- 9.1.1 the Council and the Council 's Technical Advisor shall be given no fewer than 10 (ten) weeks' prior written notice of the expected Date of Practical Completion;

- 9.1.2 at least 10 (ten) Working Days before the Employer's Agent proposes to issue any of the Certificates, he shall notify the Council and the Council 's Technical Advisor in writing of his proposal to issue the same and permit the Council to accompany the Employer's Agent in an inspection of the Developer's Works so that the Council 's views about the content of any list of Defects or outstanding matters or any snagging list which the Employer's Agent proposes to issue and/or whether or not such Certificate shall be issued on the intended date may be considered by the Employer's Agent;
- 9.1.3 without fettering the discretion of the Employer's Agent in carrying out its duties under the Building Contract, the Employer's Agent takes proper consideration of any proper and reasonable representations that are made by the Council's Technical Advisor when considering whether to issue the Certificate of Completion in accordance with the terms of the Building Contract.
- 9.2 Upon the proposed date in respect of the issue of any Certificate the Employer's Agent shall be required by the Developer either to issue the Certificate or inform the Developer and the Council of any items which require to be remedied or works which require to be carried out before the Certificate can be issued.
- 9.3 Notwithstanding anything else contained in this agreement the Certificate of Practical Completion cannot be issued until all of the following criteria (the "**Completion Criteria**") have been satisfied:
 - 9.3.1 the Council has full access to and egress from the public highway known asto the Buildings via a vehicular access constructed to base course level;
 - 9.3.2 all surface water and foul drainage to the Buildings is tested and operational as confirmed by a successful CCTV survey and such drainage is connected to the public sewers either directly or through a private system.
 - 9.3.3 all incoming mains services are supplied and fully connected to the Buildings and are tested and operational.
 - 9.3.4 all Buildings are wind and watertight and secure;
 - 9.3.5 all builders' materials cabins temporary structures and rubbish have been removed from the Buildings;
 - 9.3.6 the turfed playing fields are ready for use and certified as ready for use by the Council's Surveyor ;
 - 9.3.7 the Developer has provided the Council with all operational manuals (if any), as built drawings, Health and Safety File, keys (if any) and codes (if any) required by the Council to use the Buildings;
 - 9.3.8 any works which are required under the Necessary Consents and Statutory Agreements before the completed Buildings can be lawfully used have been carried out;
 - 9.3.9 the Developer has obtained a building regulations completion certificate for all parts of the Buildings which require building regulations
 - 9.3.10 any conditions which are required to be discharged under the Necessary Consents before the completed Works can be lawfully commenced or used have been discharged to the satisfaction of the local planning authority
 - 9.3.11 the Collateral Warranty Deeds have been provided by the Developer to the Council; and
 - 9.3.12 any MEP in the Buildings has been balanced, tested, commissioned, certified, explained and demonstrated to the Council's personnel.
- 9.4 If the Employer's Agent notifies the Developer and the Council of any items which remain to be remedied or works which require to be carried out pursuant to clause 9.2 and 9.3, the

Employer's Agent shall at the same time give notice of the date upon which he shall carry out a further inspection for the purpose of issuing the relevant Certificate and such procedure and the procedures specified in clauses 9.1 and 9.2 shall be repeated in full until the relevant Certificate may be and is actually issued by the Employer's Agent.

- 9.5 Immediately following the issue of any Certificate, the Developer shall cause the Employer's Agent to issue certified copies of the same to the Council and the Council's Technical Advisor.

10. **INSURANCE**

- 10.1 The Developer shall insure the Developer's Works and any unfixed goods and materials delivered to the Property which are intended for incorporation into the Developer's Works in accordance with Insurance Option B of JCT DB 2016 or procure that the Building Contractor maintains insurance of the Developer's Works until the Date of Practical Completion in accordance with Insurance Option A of JCT DB 2016 such insurance to be on an All Risks Insurance Basis to the full reinstatement value of the Developer's Works including Terrorism Cover for so long as it is available.

- 10.2 The Developer shall pay or procure the payment of all premiums and other monies necessary to effect and maintain all insurances referred to in this clause 10 and shall produce to the Council (if demanded) copies or other suitable details of any policy or policies of insurance referred to in this agreement and of the receipt or receipts for the then current year's premium.

- 10.3 The Developer shall procure that the Building Contractor maintains cover until the Date of Practical Completion in respect of injury to persons or damage to property pursuant to clause 6.4.1 and clause 6.5.1 JCT DB 2016 at the greater amount of

10.3.1 with a minimum amount of indemnity for any one occurrence or series of occurrences arising out of one event of £10,000,000; or

10.3.2 for an amount not less than that stated in the Building Contract

- 10.4 the insurance cover must be maintained for a minimum of 6 (six) years following the Practical Completion Date

- 10.5 In the event of damage or destruction (whether or not caused by any insured risk) before the Date of Practical Completion, the Developer shall (subject to all Necessary Consents being obtained which the Developer shall use reasonable endeavours to procure with all due expedition) procure that the relevant damage or destruction is made good as soon as possible in a good and substantial manner in accordance with the provisions of this agreement (to the reasonable satisfaction of the Council's Surveyor) and in case insurance proceeds and ex gratia payments shall be insufficient for that purpose the Developer (as between the Developer and the Council) shall make up any deficiency out of its own money and (without prejudice to the generality of the foregoing) the Developer shall procure the commencement of the rebuilding and/or reinstatement or repair of the Developer's Works as soon as possible from the date of destruction or damage (subject to all Necessary Consents being obtained) and shall not cease (subject to the provisions of the Building Contract) such rebuilding or reinstatement until the Developer's Works are rebuilt and reinstated in accordance with the provisions of this agreement and the Developer shall not give notice of termination pursuant to clause 6.11.2.2 JCT DB 2016. . whilst the works of replacement and reinstatement are underway and from the date of damage or destruction the Developer shall provide temporary accommodation for the Academy Trust or County Council in onsite or offsite temporary accommodation

- 10.6 The Developer shall cause the Buildings to be insured with effect from the Date of Practical Completion until the Actual Completion of the transfer.

- 10.7 It is agreed that the risk of damage to or loss or destruction of the Developer's Works shall pass to the Council only on Actual Completion.

11. **INDEMNITY**

- 11.1 The Developer shall indemnify the Council in respect of any liability for the following matters:

11.1.1 death or personal injury to any person arising out of the carrying out of the Developer's Works;

- 11.1.2 injury or damage to any property, real or personal, other than the Developer's Works in so far as such injury or damage arises out of the carrying out of the Developer's Works and to the extent that the same is due to any negligence, breach of any Statutory Requirement or default of the Developer, the Building Contractor or any sub-contractor;
- 11.1.3 any liability in respect of, and any fees or charges or payments legally demandable or due under, any Statutory Requirement or Planning Agreements;
- 11.1.4 the infringement of the rights of any third party in connection with the Property.

12. **SITE MANAGEMENT**

- 12.1 The Developer shall ensure that during the carrying out of the Developer's Works and in the rectification of Defects:
 - 12.1.1 hoardings are erected around the Property or the relevant part or parts of the Property in a secure manner and that all reasonable safety and other measures (including adequate lighting) are taken to prevent damage and injury;
 - 12.1.2 no material or equipment is brought on the Property except that required for the Developer's Works or the rectification of Defects;
 - 12.1.3 all material stored on the Property is kept in a secure compound and adequately protected;
 - 12.1.4 all surplus material is removed from the Property when it is no longer required;
 - 12.1.5 there is no excavation of the Property or extraction of soil or minerals except as required for the Developer's Works;
 - 12.1.6 proper precautions are taken for the safety of all personnel upon or in the vicinity of the Property;
 - 12.1.7 proper provision is made for the support of land and buildings adjoining the Property and for the protection of all Services;
 - 12.1.8 as often as may be necessary any adjoining highways, roads or pavements are cleansed;
 - 12.1.9 proper wheel-washing and plant and machinery cleaning facilities are provided at the Property so as to minimize the amount of mud, debris and other materials being deposited upon any adjoining highways, roads or pavements or becoming airborne;
 - 12.1.10 any flora and fauna which are subject to conservation, and which may be affected by the Developer's Works are relocated to a suitable environment; and
 - 12.1.11 the Property is at all times secured as fully as may be reasonably practicable against unauthorised entry.
- 12.2 The Developer shall procure that any damage caused to adjoining or neighbouring land, roads, surfaces, shrubs, plants or landscaping by the Developer, the Building Contractor or other persons involved in the Project is made good at no cost to the Council.

13. **CDM REGULATIONS**

- 13.1 The Developer and the Council agree that the Developer shall assume the obligations of the client for the purposes of the CDM Regulations and shall ensure that the execution of all works comply with the CDM Regulations.
- 13.2 Before commencement of the Works, the Developer shall ensure that the Works are properly notified to the Health and Safety Executive in accordance with the CDM Regulations and shall give the Council a copy of the notification and any acknowledgement from the Health and Safety Executive.
- 13.3 The Developer shall procure that the Principal Designer and Contractor (as principal contractor and contractor) each comply with their respective obligations under the CDM Regulations.

- 13.4 The Developer shall ensure that the Principal Designer and Contractor are both promptly:
- 13.4.1 supplied with all relevant information required under the CDM Regulations; and
 - 13.4.2 notified of any changes relating to the Development which may have any effect on their responsibilities or duties under the CDM Regulations.
- 13.5 The Developer shall:
- 13.5.1 ensure that the Contractor prepares the Construction Phase Plan;
 - 13.5.2 not allow the construction phase of the Works to commence until the Construction Phase Plan is prepared;
 - 13.5.3 not allow the construction phase of the Works to commence until the Site Welfare Facilities are in place; and
 - 13.5.4 ensure that the Health and Safety File is prepared by the Principal Designer and is maintained correctly and is available for inspection in accordance with the CDM Regulations.
- 13.6 The Developer shall indemnify and keep the Council indemnified against liability for any breach of the Developer's obligations under or in connection with this clause 13.
- 13.7 In the course of carrying out such obligations the Developer shall:
- 13.7.1 give notice to the Health and Safety Executive in accordance with regulations 6(2) and 6(3) CDM Regulations or to the Office for Nuclear Regulation in accordance with regulation 6(5) as the case may be;
 - 13.7.2 appoint a CDM Principal Designer and a Principal Contractor in respect of the Developer's Works.

14. **PRODUCTION OF NOTICES**

The Developer shall, within 3 (three) Working Days of receipt, produce to the Council any and every order, direction, requisition, permission, notice or other matter of whatever nature affecting or likely to affect the Property or the Developer's Works or any part of them served on the Developer by any competent authority or given by the Developer before the Date of Practical Completion.

15. **DEFECTS**

- 15.1 During the Rectification Period the Developer will procure that Employers Agent 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.
- 15.2 The Developer shall procure that the Employers Agent in collaboration with the Council's Technical Advisor and or Premises Manager shall prepare a list of all Defects in the Works (incorporating any defects, shrinkages or other faults in the Works and give it to the Contractor within the time limits specified by the Building Contract.
- 15.3 The Developer shall procure that the Building Contractor remedies and makes good without delay any Defects and other faults in the Developer's Works, for which the Building Contractor is responsible under the Building Contract, appearing within the Rectification Period and, if the Developer fails to procure that the Building Contractor carries out such works within a reasonable period of time, the Developer shall carry them out promptly at its own cost and the Developer shall, at its own expense as soon as reasonably practicable after the Date of Practical Completion, procure that any Defects or works which are outstanding at the Date of Practical Completion are made good or completed (as the case may be).
- 15.4 Following the remedy of such issues as described in clause 15.3 above the Developer shall use reasonable endeavours to procure the issue of all relevant certificates of making good defects in accordance with the terms of the Building Contract and that the Contractor provides a copy of all such certificates to the Council as soon as reasonably practicable following their issue.
- 15.5 After Actual Completion the Council shall permit the Developer and the Building Contractor to enter the Property as licensee to rectify Defects or carry out outstanding works subject to the

Developer and/or Building Contractor complying with any requirements for access which the School or Academy Trust or the Council may have).

16. **PLANT AND RUBBISH**

The Developer shall before the Date of Practical Completion cause to be cleared and removed from the Property all constructional plant, material, rubbish and temporary works of every kind and shall make good any damage resulting from such removal at its own expense without delay at times approved by the Council and leave the Property clean and tidy.

17. **INTELLECTUAL PROPERTY**

17.1 The Developer grants (or to the extent that ownership of the Intellectual Property is vested in a third party shall procure that there is granted) to the Council before the Date of Practical Completion an irrevocable, royalty-free, non-exclusive licence to use all the Intellectual Property for any purposes:

17.1.1 in connection with the Council 's rights and obligations under this agreement;

17.1.2 where necessary for the Council to prevent, address, alleviate or comply with (as applicable) a Statutory Requirement relating to the Developer's Works;

17.1.3 in connection with the maintenance, reinstatement or repair of the Property or the Buildings or Common Parts.

17.2 Such licence shall include the right to grant sub-licences and shall be freely assignable by the Council and no copyright in respect of or lien upon any Design Data shall be claimed by the Developer against the Council.

18. **DEDUCTION SCHEME**

The Developer shall (to the extent that it is required by law to do so) and shall procure that the Building Contractor shall operate the deduction scheme for sub-contractors contained in Part 3 Finance Act 2004.

19. **COMPLETION DOCUMENTS AND COMPLETION ITEMS**

19.1 On the Date of Practical Completion, the Developer shall supply to the Council:

19.1.1 the originals of the Necessary Consents and any Planning Agreements (save where they relate to the Property and other land or properties when certified copies shall be supplied) and the Certificate of Practical Completion;

19.1.2 four sets of as-built architectural plans, sections and elevations, structural drawings and foundation drawings and Services drawings in respect of the completed Developer's Works in both paper format and digital format including CAD/BIM models as appropriate;

19.1.3 two sets of the operating and maintenance manuals and manufacturers' warranties and guarantees (written in English) in relation to all aspects of the building, plant and equipment installed in the Property and a landscape maintenance plan and where originals are not available the Developer shall supply certified copies;

19.1.4 test certificates for all lifts, heating and other equipment (if any) installed in the Development and a schedule listing the names and addresses of all contractors, sub-contractors and suppliers and of any guarantees, warranties, service agreements and other relevant agreements or undertakings.

19.2 On the Date of Actual Completion, the Developer shall provide the Health and Safety File to the Council and the benefit of any defective title or restrictive covenant indemnity policy by a deed of assignment in terms reasonably specified by the Council.

19.3 The Developer shall on or before the Practical Completion Date deliver to the Council:

19.3.1 three sets of keys;

19.3.2 all operating and maintenance manuals required under the Building Contract;

- 19.3.3 originals of all warranties, guarantees and certificates or other documents then available in respect of plant, equipment and fittings installed in the Works; and
- 19.3.4 a copy of the original notice of passing of plans under the Building Regulations and confirmation from the relevant authority that all conditions under the Building Regulations have been complied with.

20. REPAIR

On and from the Date of Practical Completion and until Actual Completion, the Developer shall put and keep the Developer's Works in good repair, order and condition and keep them fully secure .

21. AGREEMENT FOR SALE

- 21.1 Subject to the satisfaction of the Condition Precedent the Developer shall sell and the Council shall buy the Property at the Purchase Price.

22. COMPLETION

- 22.1 Completion of the sale and purchase and payment by Electronic Payment of the following shall take place on the Completion Date

23. TITLE GUARANTEE

- 23.1 The Developer sells with full title guarantee.
- 23.2 The covenants implied by the Law of Property (Miscellaneous Provisions) Act 1994 shall be varied as follows and the Transfer shall contain the following declarations:
 - 23.2.1 the Transferor shall not be liable under any of the covenants set out in sections 2(1)(a) and 3 in respect of any matters now recorded in all registers open to or capable of public inspection, which matters are to be considered within the actual knowledge of the Transferee;
 - 23.2.2 the words "his own cost" shall be deleted from section 2(1)(b) and replaced with the words "the cost of the person to whom he disposes of the Property";
 - 23.2.3 the words "since the last disposition for value" shall be deleted from the covenant set out in section 3(3) and the words "since he became entitled to transfer the property" substituted for them in both places where those words occur.

24. VACANT POSSESSION

The Property is sold with vacant possession on Actual Completion.

25. INCUMBRANCES AND TRANSFER

- 25.1 The Property is sold subject to and (where appropriate) with the benefit of the matters contained or referred to in the Title Documents and the Property, Proprietorship and Charges registers of title number (save for any restrictions noted in the Proprietorship Register and the unilateral notices and charges affecting the Charges Register to the Land Registry title to the Property) WSX195013 as attimed atbeing the date of the official copy of the register or on which the Title Documents were supplied to the Council or the Council 's Solicitors and the Council is deemed to purchase with full notice and knowledge of such matters and shall not raise any requisition or enquiry or make any objection in relation to them save for any matters arising in the Council's Land Registry Official Search or in respect of any matters arising after the date of the official copy in this clause 25.1..
- 25.2 The transfer of the Property by the Developer to the Council will be in the form of the Transfer.

26. MATTERS AFFECTING THE PROPERTY

- 26.1 The Property is sold subject to (and where appropriate with the benefit of) the following matters:
 - 26.1.1 all local land charges (other than financial charges) whether or not registered before the date of this agreement and all matters capable of registration as local land charges whether or not actually so registered;

- 26.1.2 all notices served and orders, demands, proposals or requirements made by any local, public or other competent authority whether before or after the date of this agreement;
 - 26.1.3 all actual or proposed charges, notices, orders, restrictions, agreements, conditions, contraventions or other matters arising under any Statutory Requirements relating to town and country planning, the environment or highways;
 - 26.1.4 all easements, quasi-easements, rights, exceptions or wayleaves other similar matters whether or not apparent on inspection or disclosed in any of the documents referred to in this agreement affecting the Property;
 - 26.1.5 any unregistered interests which fall within any of the paragraphs of Schedule 1 or Schedule 3 of the 2002 Act or within section 11(4)(c) of the 2002 Act (other than leases and rights of occupation);
 - 26.1.6 such unregistered interests as may affect the Property to the extent and for so long as they are preserved by the transitional provisions of Schedule 12 of the 2002 Act; and
- 26.2 The Property is sold subject to any matters disclosed by the Council 's searches or which would have been disclosed by the searches and enquiries which a prudent buyer would have made before entering into this agreement.

27. **REPRESENTATIONS**

The Council admits that it enters into this agreement solely as a result of its own inspection and on the basis of the terms of this agreement and not in reliance upon any representation or warranty either written or oral or implied made by or on behalf of the Developer (save for any representation or warranty contained in written replies given by the Developer's Solicitors to any preliminary enquiries raised by the Council or the Council 's Solicitors).

28. **VARIATION OF THE STANDARD CONDITIONS**

- 28.1 The Part 1 Conditions are incorporated in this agreement so far as they:
- 28.1.1 apply to a sale by private treaty;
 - 28.1.2 relate to freehold property;
 - 28.1.3 are not consistent with the other clauses in this agreement;
 - 28.1.4 have not been modified or excluded by any of the other clauses in this agreement.
- 28.2 The Part 2 Conditions are not incorporated into this agreement.
- 28.3 The Part 1 Conditions shall be varied as follows for the purposes of this agreement:
- 28.3.1 in Standard Condition 1.1.1(e) the "contract rate" shall be the Contract Rate;
 - 28.3.2 at the end of Standard Condition 1.1.3(b) the following words shall be added: "or if the seller produces reasonable evidence that this is the case";
 - 28.3.3 Standard Conditions 1.3, 3.2, 4.1.1, 4.1.2, 4.1.3, 5, 7.1, 7.2, 7.3.1, 7.4.2, 7.6.2, 7.6.3, 8 and 9.2.1 shall not apply to this agreement.
 - 28.3.4 reference to the "purchase price" shall include the Purchase Price and any other sums payable to the Developer on Actual Completion under this agreement;
 - 28.3.5 the introductory wording to Standard Condition 10.1 is varied to read: "If any plan or statement in the contract or in written replies which the seller's solicitors have given to any written enquiry raised by the buyer's solicitors before the date of this agreement is or was misleading or inaccurate due to an error or omission the remedies available are as follows";
 - 28.3.6 Standard Condition 5.2.7(a) shall be varied by adding the words: "or delay" after the word "withhold";

28.3.7 Standard Condition 5.2.8 shall be replaced by the following wording: "The buyer is to indemnify the seller against any breach of condition 5.2.7."

29. **RESTRICTIONS ON ASSIGNMENT**

29.1 The Council shall be entitled to assign the benefit of this Agreement to any statutory successor only.

29.2 The Developer may not Dispose of part only of the Property

29.3 The Developer may not Dispose of the whole of the Property or assign or charge this Agreement or any benefit under it without

29.3.1 First obtaining the Council's prior consent: and

29.3.2 Without first procuring that the person or body corporate to whom the Council has consented to the Disposal of the Property is being made has executed, completed and delivered to the Council a Deed of Covenant .

29.4 The Developer shall not make any Disposal of the whole of the Property at any time prior to the Practical Completion Date without first procuring that the person or body corporate to whom the Disposal of the whole of the Property is being made has executed, completed and delivered to the Council a Deed of Novation of the Building Contract and Deeds of Appointment

29.5 The Developer consents to the Council applying after the date hereof for the entry of the following restriction or a restriction in a form as near to as the Land Registry will allow against the Trust's title to the Property, WSX195013, at HM Land Registry:

"no disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by West Sussex County Council of County Hall, West Street, Chichester, West Sussex or its conveyancer that the provisions of clause 29.3 and 29.4 of the development agreement made between[the Developer] (1) and West Sussex County Council (2) and dated..... [insert date of agreement on completion] have been complied with or that they do not apply to the disposition"

29.6 The Developer will promptly provide to the Council all information and assistance required to enable the Council to register the land registry restriction referred to in clause 29.5 against the land registry title to the Property.

29.7 The Developer shall not be required to transfer the Property other than as a whole to the Council at the Purchase Price or by more than one transfer.

30. **VAT**

30.1 Unless the sale and purchase of the Property is an Excluded Transfer the Purchase Price and any other consideration payable by the Council under this agreement are exclusive of VAT and where properly chargeable VAT shall be added to such sums and shall be payable by the Council.

30.2 The Developer shall issue the Council with a VAT invoice containing the information prescribed by the VAT Act or in regulations made under it immediately upon the payment of any VAT due under this agreement or within such earlier time as may be required by law.

30.3 The Developer and the Council intend that the sale of the Property under this agreement should be an Excluded Transfer, and the following provisions shall therefore apply:

30.3.1 the Developer warrants to the Council that:

(a) it is or will [at the Date of Actual Completion] be registered as a taxable person for the purposes of VAT and if so registered at the date of this agreement, it is registered with VAT registration number [●] and will remain so registered until the Date of Actual Completion;

(b) it has validly made an Option to Tax;

- (c) it has not validly revoked the Option to Tax and will not do so before the Date of Actual Completion;
- (d) it intends to use the Property only for the business of letting to tenants;
- (e) none of the Tenants is treated as a member of the same VAT group of companies as the Developer for the purposes of sections 43 - 43D VAT Act, and
- (f) it will provide the Council with evidence of having complied with the conditions in clauses 30.3.1(a) and 30.3.1(b) before the Date of Actual Completion;

30.3.2 the Council warrants and undertakes to the Developer that:

- (a) it is or will [at the Date of Actual Completion] be registered as a taxable person for the purposes of VAT and if so registered at the date of this agreement it is registered with VAT registration number 193604455 and will remain so registered until the Date of Actual Completion;
- (b) it has validly made, or will before the [Date of Actual Completion] make an Option to Tax which will have effect on the [Date of Actual Completion];
- (c) its Option to Tax has been, or will before the [Date of Actual completion] be notified in writing to HM Revenue and Customs;
- (d) from the Date of Actual Completion, it will use the Property to carry on the same kind of business namely letting to tenants, whether or not as part of the existing business of the Council as that carried on by the Developer in relation to the Property before the Date of Actual Completion;
- (e) it will not revoke its Option to Tax before the Date of Actual Completion or within three months after the Date of Actual Completion;
- (f) none of the Tenants is treated as a member of the same VAT group of companies as the Council for the purposes of sections 43 - 43D VAT Act;
- (g) it will provide the Developer with evidence of having complied with the conditions in clauses 30.3.2(a), 30.3.2(b) and 30.3.2(c), before the [Date of Actual Completion]; and
- (h) Article 5(2B) Value Added Tax (Special Provisions) Order 199567 does not, and will not at the date of Actual Completion, apply to the Council.

30.4 If HM Revenue and Customs determines after the Date of Actual Completion that the sale of the Property under this agreement was not an Excluded Transfer:

30.4.1 the Developer shall notify the Council within 14 (fourteen) days of receiving notice of the determination;

30.4.2 the Council shall pay the relevant amount of VAT to the Developer within five Working Days of receiving the notice and the Developer shall issue a tax invoice in accordance with clause 30.2;

30.4.3 where HM Revenue and Customs determines that the sale of the Property under this agreement was not an Excluded Transfer as a result of a breach of the Council 's warranties in clause 30.3.2, the Council shall indemnify the Developer against any interest and/or penalty assessed by HM Revenue and Customs as a consequence of the Developer's failure to charge VAT on the Purchase Price; and

30.4.4 if the Developer or the Council successfully appeals against the determination of HM Revenue and Customs the Developer shall repay to the Council any VAT Council repaid to the Developer by HM Revenue and Customs within five Working Days of its receipt.

30.5 If any amount is paid by the Council to the Developer in respect of VAT which is not properly chargeable:

- 30.5.1 if the prescribed VAT accounting period of the Developer in which the VAT was charged has not yet ended the Developer shall repay such VAT promptly to the Council; and
- 30.5.2 if the prescribed VAT accounting period of the Developer in which the VAT was charged has ended the Developer shall use reasonable endeavours at the Council's expense to obtain credit or repayment of such VAT as soon as possible and shall pay the Council the amount received as soon as practicable after receiving any credit or repayment.
- 31. COMPLETION DATE**
- 31.1 Completion of the sale and purchase of the Property shall take place on the Completion Date at the offices of the Developer's Solicitors
- 31.2 On the Completion Date the Council shall pay to the Developer the balance of the Purchase Price together with any other sums due to the Developer under this agreement on Actual Completion by Electronic Payment.
- 31.3 The Transfer shall be executed in duplicate by each of the parties to this agreement and as soon as reasonably practicable after the Date of Actual Completion the Council shall deliver to the Developer a duly executed duplicate Transfer.
- 31.4 The Council shall not be entitled to note this agreement against the Developer's title other than by virtue of a unilateral notice and shall not without the consent of the Developer send
- 31.5 If completion of the sale and purchase of the Property is delayed beyond 2.00 pm on the Completion Date and this is not due to the act or default of the Developer, then without prejudice to any other rights of the Developer:
- 31.5.1 the Council shall pay interest on the balance of the Purchase Price and on any other sums due to the Developer under this agreement on Actual Completion at the Contract Rate from and including the Completion Date to and including:
- (a) the Date of Actual Completion or the following Working Day if Actual Completion takes place after 2.00 pm on such date; or
- (b) if applicable the date of determination of this agreement whether by rescission or otherwise;
- and interest at the Contract Rate shall accrue and be calculated on a daily basis, both before and after any judgment and shall be compounded quarterly;
- 31.5.2 the Developer shall in every case be entitled in respect of the same period of time both to be paid interest and to enjoy the income from the Property; and
- 31.5.3 the Council shall pay the Developer's Solicitors' costs including VAT for preparing and serving any notice to complete on the Council.
- 31.6 The Council shall use its best endeavours to register the Transfer at HM Land Registry as soon as reasonably practicable after the Date of Actual Completion and on completion of the registration the Council shall provide to the Developer official copies of the register entries showing the Council registered as the proprietor of the Property.
- 31.7 The Developer shall use reasonable endeavours to assist the Council with requisitions raised by the Land Registry in respect of the application at Clause 31.
- 31.8 The Developer on completion of the Transfer shall provide:
- 31.8.1 Consent to the disposition from the Developer and any beneficiary of any option agreement and any mortgage lender as required by the Land Registry to overreach any Restrictions, Unilateral Notices and or Charges affecting the Title to allow the Council to register the Transfer; and
- 31.8.2 Form RX4 or a certificate in relation to the removal of any restriction on its title to the Property to ensure that the new Land Registry title created by the registration of the Transfer is not burdened by any restrictions registered against the title to the Property at the date of this Agreement.

31.8.3 Form UN2 or a certificate in relation to the removal of any unilateral notice on its title to the Property to ensure that the new Land Registry title created by the registration of the Transfer is not burdened by any unilateral notice registered.

32. DEFAULT AND INSOLVENCY

32.1 Where an Event of Default occurs, the Council shall be entitled but not obliged to serve notice to determine this agreement.

32.2 Where there is an Event of Insolvency in relation to the Developer, the Council shall be entitled but not obliged to serve notice to determine this agreement.

33. EFFECT OF TERMINATION

33.1 Any termination of this agreement shall be without prejudice to the rights of one party in relation to antecedent breaches by another party.

33.2 The Council shall, within ten Working Days of the termination or rescission of this agreement, apply for the cancellation of all cautions, notices and other entries and registrations made by or on behalf of the Council to protect this agreement and the interest of the Council in the Property including those made at HM Land Registry or the Land Charges Department of HM Land Registry and the Council shall ensure that the Council's Solicitors provide certified copies of all such applications to the Developer's Solicitors.

33.3 This clause 33 shall continue to apply after any rescission or termination of this agreement.

34. COMMUNICATIONS

34.1 Any Communication given under this agreement shall be in writing and signed by or on behalf of the party giving it.

34.2 Any Communication or document to be given or delivered under this agreement shall be given by delivering it by hand or sending it by pre-paid first-class post or other next Working Day delivery service to the address and for the attention of the relevant party as follows:

34.2.1 to the Council at:
Legal Services, County Hall, West Street, Chichester, West Sussex PO19 1RQ
marked for the attention of: Lauren McCann
or at the Council's Solicitors quoting the reference Jonathan Brown;

34.2.2 to the Developer at:
.....
marked for the attention of:;
or at the Developer's Solicitors quoting the reference

34.3 Any such Communication or document will be deemed to have been received:

34.3.1 if delivered by hand, at the time of delivery provided that if delivery occurs before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day;

34.3.2 in the case of pre-paid first-class post or other next Working Day delivery service at 9.00 am on the second Working day after posting; and

34.3.3 in proving delivery, it will be sufficient to prove that delivery was made or that the envelope containing the Communication or document was properly addressed and posted as a prepaid first-class letter or by another next Working Day delivery service as the case may be.

34.4 A Communication or document delivered under this agreement will not be validly given or delivered if sent by fax or e-mail.

35. **DURATION**

All provisions of this agreement shall remain in force to the extent that and so long as they remain to be performed or observed.

36. **RELATIONSHIP OF PARTIES**

36.1 This agreement does not create nor shall it in any circumstances be taken as having created a partnership or joint venture between the parties.

36.2 The Developer is not and shall not at any time hold itself out as the agent of the Council for any purposes and under no circumstances shall the Developer have the authority to bind the Council or hold itself out to the public, the Building Contractor or any member of the Design Team as having such authority.

36.3 All contracts and agreements entered into by the Developer pursuant to this agreement shall be contracts or agreements between the Developer as principal and the respective third parties and the Council shall have no obligation or liability under them.

37. **WAIVER**

No failure or delay by any party to exercise any right, power or remedy shall operate as a waiver of it nor shall any partial exercise preclude any further exercise of it or some other right, power or remedy.

38. **CAPITAL ALLOWANCES**

During the course of the Developer's Works and after the Date of Practical Completion the Developer shall supply to the Council such information as the Council may reasonably require (and the Council shall notify the Developer of its requirements in writing as soon as practicable after the date of this agreement) and shall provide the Council with such other assistance as it may reasonably require (including the making of any elections and the giving of any notices that may be reasonably requested by the Council) so as to enable the Council to claim capital allowances on plant and machinery comprised in the Development or any other tax allowances available and the Developer shall not make any claim for capital allowances or any similar allowance in addition to or in substitution for them.

39. **DISPUTES**

39.1 Either the Developer or the Council shall be entitled to give a Dispute Notice.

39.2 If the parties do not agree upon the type of Specialist or the identity of the Specialist, the question may be referred by either party to the president of the Royal Institution of Chartered Surveyors or his deputy who shall determine the question or nominate an appropriate Specialist.

39.3 Unless the parties otherwise agree, the reference to a Specialist shall be made to him as an arbitrator under the Arbitration Act 1996 but, if the parties agree to the Specialist acting as an expert, his decisions shall (save in the case of manifest error) be final and binding upon the parties.

39.4 The liability for paying all costs of referring a Dispute to a Specialist, including costs connected with the appointment of the Specialist, shall be decided by the Specialist.

39.5 If the Specialist should die or become unwilling to act or is incapable of acting or it becomes apparent that for any reason, he will be unable to determine the matter referred to him within a reasonable time after his appointment, his appointment shall be terminated and either the Developer or the Council shall be entitled to apply for another specialist to be appointed.

39.6 As between the Council and the Developer, the Certificates shall (save in the case of manifest error) be final and binding and shall not be referred to a Specialist.

40. **SAFEGUARDING**

40.1 The parties acknowledge that the Council is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

- 40.2 The Developer shall procure that the Contractor, the Contractors Supply Chain, and each of the Consultants together with all employees agents and other persons at the Property on their behalf:
- 40.2.1 ensure where appropriate that all individuals engaged in or in relation to the carrying out of the works in accordance with clause 15 relating to the remedying of defects at the Property after the Transfer ("Post Transfer Works") are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the adults' barred list or the children's barred list, as appropriate; and
- 40.2.2 monitor the level and validity of the checks under this clause 40 for each member of staff until the issue of the final defects certificate in accordance with the Building Contract.
- 40.3 The Developer shall procure that the Contractor, the Contractors Supply Chain and each of the Consultants confirm that it has no reason to believe that any person who is or will be employed or engaged in the carrying out of any Post Transfer Works is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 40.4 The Developer shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 40 have been met.
- 40.5 The Developer shall refer information about any person carrying out the Post Transfer Works to the DBS where it removes permission for such person to carry out any Post Transfer Works (or would have, if such person had not otherwise ceased to carry out the Post Transfer Works) because, in its opinion, such person has harmed or poses a risk of harm to the children and that the Contractor, Contractors Supply Chain and each of the Consultants shall make such referrals to the DBS as appropriate to ensure compliance with its obligations under this clause 40.
- 40.6 The Developer shall not, and shall procure that the Contractor and each of the Consultants shall not in relation to the Post Transfer Works, employ or use the services of any person for the Post Transfer Works who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out a Regulated Activity or who may otherwise present a risk to children.
41. **CONFIDENTIALITY**
- 41.1 This agreement and its terms shall be confidential to the parties both before and after the Date of Actual Completion.
- 41.2 Neither party shall make or permit any announcement or publication to be made concerning this agreement or its terms either in whole or in part or any comment or statement relating to this agreement except:
- 41.2.1 with the prior written consent of the other as to the form and content of any such announcement, publication, statement or comment;
- 41.2.2 as far as may be necessary for the proper performance of its obligations under this agreement;
- 41.2.3 in connection with any dealing or proposed dealing with its interest;
- 41.2.4 for the obtaining of any United Kingdom or foreign regulatory or government authorisation, approval or consent for the acquisition, financing, letting or occupation of the Property; or
- 41.2.5 as required by law or any relevant stock exchange or if ordered to do so by a Court or HM Revenue and Customs.
42. **EFFECT OF THIS AGREEMENT**
- 42.1 This agreement forms the entire agreement between the parties relating to its subject matter.
- 42.2 No modification, variation or waiver of any of the terms of this agreement shall be effective unless made in writing and signed by the parties to this agreement.

- 42.3 No person who is not a party to this agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 42.4 This agreement shall be governed by and construed in accordance with the law of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction in relation to all matters arising under this agreement.
- 42.5 The Developer and the Council respectively covenant each with the other that where pursuant to the terms of this agreement it is under an implied obligation not unreasonably to refuse any consent, approval, permission or acknowledgement required under the terms of this agreement, that it will not unreasonably refuse it nor proffer it subject to any unreasonable condition.

43. **ACTIONS AND PROCEEDINGS**

- 43.1 Until the Council [and Academy Trust] has received duly executed copies of all Collateral Warranties required by this Agreement, the Developer shall diligently pursue any actions or proceedings required by the Council against the entity that has not provided a Collateral Warranty in order to enforce the performance of their respective obligations.
- 43.2 The Developer shall hold any sums recovered as a result of such actions or proceedings where they are related to the Specification on trust for the Council and shall apply them in remedying the situation that gave rise to the action or proceedings.
- 43.3 The Developer shall take account of any requests or proposals made by the Council in relation to the conduct of any such actions or proceedings.

44. **LOCAL AUTHORITY POWERS**

- 44.1 Nothing contained or implied in this Agreement will prejudice or affect the Council's rights, powers, duties and obligations in the exercise of its functions as Local Authority, Local Planning Authority, Agent for the Highway Authority Local Education Authority, Children's Service Authority or for any other statutory body or public utility or otherwise under any public or private statute by laws orders and regulations all of which rights, powers, duties and obligations may be as fully and effectively exercised in relation to the Property as if the Council had not entered into this Agreement nor shall the Developer be relieved from the necessity of obtaining all approvals, permissions or consents as may from time to time be necessary for the carrying out of the Development from the Council in any capacity as aforesaid under or by virtue of any such Act by law order or regulation.

45. **STEP IN RIGHTS**

- 45.1 If the Developer fails to complete the Works by the Works Longstop Date then at any time after such date (but not after Practical Completion of the Works the Council may, but without obligation to do so, serve on the Developer notice in writing that it wishes to appoint its own reputable and suitably qualified contractor (the "Council's Contractor") and consultants (the "Council's Consultants") to carry out and complete those of the Works that remain incomplete ("Incomplete Works") and if the Incomplete Works have not been completed by the Developer within 20 (twenty) Working Days of the date of service of that notice the Council, the Council's Contractor and the Council's Consultants may at any time thereafter enter onto such parts of the Property as are reasonably necessary to carry out the Incomplete Works ("Step-In Right") and the provisions of clauses 45.2 to 45.4 (inclusive) shall apply to the carrying out of the Incomplete Works by the Council, the Council's Contractor and the Council's Consultants mutatis mutandis
- 45.2 If the Council exercises the Step-In Right pursuant to clause 45.1 then the Developer shall promptly instruct the Developer's Building Contractor and the Developer's Professional Team to cease that part of the Works which relate to the Incomplete Works and shall instruct the Developer's Building Contractor and the Developer's Professional Team to liaise with and provide reasonable assistance to the Council's Contractor and the Council's Consultants and to carry out the Incomplete Works with as little disturbance and inconvenience to the Developer and the Council as reasonably possible
- 45.3 If the Council exercises the Step-In Right, then the date of practical completion of the Incomplete Works shall be the date of Practical Completion of the Works for the purposes of this Agreement

- 45.4 Without prejudice to the Council's right to claim damages against the Developer for breach of any of the terms of this Agreement, the Developer shall be responsible for and shall pay to the Council within 20 (twenty) Working Days of written demand the following costs and expenses of the Council if the Council exercises its Step-In Right:
- a) professional fees reasonably and properly incurred by the Council together with any local or other competent authority's fees actually incurred by the Council in connection with the carrying out of the Incomplete Works together with proper and reasonable disbursements and expenses.
 - (b) the actual cost to the Council of carrying out and completing the Incomplete Works , including the costs of connecting the Works to all necessary services and utilities.
 - (c) any VAT payable by the Council in respect of this clause 45 subject to receipt of a valid VAT invoice

46. **SEVERANCE**

- 46.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement or the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

47. **COUNTERPARTS**

- 47.1 This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 47.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

THE PARTIES have executed this agreement as a deed and delivered it on the date first set out above

SCHEDULE 1

Programme for the Developer's Works

[insert details]

EXECUTED as a DEED

By[Developer]
acting by a director in the presence of:

.....

Director

Witness Signature

.....

Witness Name

.....

Witness Address

.....

.....

.....

EXECUTED as a DEED

by[Developer]
acting by a Member
in the presence of:

.....

Director

Witness Signature

.....

Witness Name

.....

Witness Address

.....

.....

.....

EXECUTED as a DEED)

WEST SUSSEX COUNTY COUNCIL)

[COMMON SEAL]

by affixing the common seal in the presence)
of:

.....

Authorised Signatory

APPENDIX 1
Deeds of Appointment

APPENDIX 2
Collateral Warranty Deeds

APPENDIX 3
Drawings

APPENDIX 4

Plan

APPENDIX 5
Specification

Appendix 6 The Land Registry Transfer of Part

Appendix 7 The Deed of Covenant