

**Document guidance note – Freehold Agreement for sale and purchase (conditional on planning):**

This agreement is intended for use where the landowner/seller is selling and the developer/buyer is purchasing the site/property as part of the Small Sites programme on the basis that:

- 1 the landowner/seller:
  - (a) owns the property freehold and its title is registered at the Land Registry;
  - (b) the property is vacant and does not include the sale of anything in addition to the property and no one is employed in the property;
  - (c) needs to see/approve the planning permission obtained by the developer/buyer;
  - (d) is disposing of the whole of the property, this will not be the case where the landowner/seller is retaining land adjoining the property and has requirements relating to reservation of rights and obligations concerning the adjoining land being retained by the landowner/seller;
- 2 the accompanying drafting notes are for use by the landowner/seller (and should not be disclosed to the developer/buyer or their advisers) and intended to draw attention to the key issues and to make the agreement easier to use – they are not exhaustive and do not cover all the issues that may apply;
- 3 the facts of each transaction must be considered carefully and this agreement should be used as the basis for the transaction but may need to be tailored on a case by case basis;
- 4 it remains the responsibility of the user of this agreement to ensure that it meets their requirements and that they do not use this agreement without consulting their legal advisers where necessary.

MIK/VG/043574.00001/62273154.01

Agreement for sale and purchase relating to property at

***[Insert details of the Property]***

**Dated**

[                      ]  
(the Seller)

[                      ]  
(the Buyer)

Annexures :      Plan

# Contents

<b>Contents</b>	<b>i</b>
<b>Agreement for sale of freehold property</b>	<b>1</b>
<b>1 Definitions and interpretation</b>	<b>1</b>
<b>2 Sale and Purchase</b>	<b>8</b>
<b>3 Conditionality</b>	<b>8</b>
<b>4 Title</b>	<b>11</b>
<b>7 Transfer</b>	<b>12</b>
<b>8 Possession</b>	<b>13</b>
<b>9 Completion</b>	<b>13</b>
<b>10 Standard Commercial Conditions and ancillary matters</b>	<b>14</b>
<b>11 Representations</b>	<b>15</b>
<b>12 Notices</b>	<b>16</b>
<b>13 Assignment</b>	<b>16</b>
<b>14 Appointment of Independent Person</b>	<b>16</b>
<b>15 [Freedom of Information</b>	<b>17</b>
<b>16 Confidentiality and Transparency</b>	<b>18</b>
<b>17 Environmental Matters</b>	<b>20</b>
<b>18 Terminating Events</b>	<b>21</b>
<b>19 General</b>	<b>22</b>
<b>Schedule 1 – Encumbrances</b>	<b>25</b>

ANNEX 1 - Plan

# Agreement for sale of freehold property

**Dated**

**Between**

- (1) [Details of relevant party to be inserted] (the **Seller**) [company registration number [Details to be inserted] whose registered office is at [Details to be inserted]; and
- (2) [Details of relevant party to be inserted] (the **Buyer**) [company registration number [Details to be inserted] whose registered office is at [Details to be inserted];

## *Drafting Note 1*

**It is agreed**

### **1 Definitions and interpretation**

#### **1.1 1.1 Definitions**

In this Agreement the following definitions apply:

**Act** means the Town and Country Planning Act 1990.

**Actual Area** means the Net Internal Area for the Proposed Development consented by the Satisfactory Planning Permission obtained in accordance with Schedule 1.

**Buyer's Solicitors** means [Insert name of firm representing the Buyer of Insert the address of the firm representing the Buyer] (ref: [Insert the firm's reference number for this matter]) or such other firm as the Buyer may nominate by notice in writing to the Seller or the Seller's Solicitors for the purposes of this Agreement.

**Community Infrastructure Levy** means the charge known by that name, as provided for in the Planning Act 2008 and any charge, levy, tax or imposition substituted for it and including related interest, penalties, liabilities, surcharges and costs of compliance.

**Competent Authority** means any government body, the Seller, court, tribunal or other body deriving power under Environmental Law

**Completion Date** means the date [20] Working Days after the Unconditional Date or (if later) the date 20 Working Days after any adjustment of the Initial Purchase Price pursuant to clause 6.3 has been agreed or determined.

**Conditional Period** means the period commencing on the date of this Agreement and expiring on the Unconditional Date.

## *Drafting Note 2*

**Contract Rate** means 4% above [National Westminster Bank Plc] base rate from time to time in force as well after as before judgment which rate shall also be the contract rate referred to in the Standard Commercial Conditions.

## *Drafting Note 3*

**Deposit** means [*Insert 10% of Purchase Price in words (£ [insert 10% of Purchase Price in figures])*].

**Dwelling** means any house, bungalow, flat, maisonette or other single unit of residential accommodation constructed on the Property together with any land forming its curtilage and any other appurtenant structures.

#### **Drafting Note 4**

**EIR Legislation** means the Environmental Information Regulations 2004 and any subordinate legislation made under it, any amendment or re-enactment of any of them; and any guidance and/or codes of practice issued by the Information Commissioner, any relevant Government Department, or decisions made by other appropriate legislative bodies (including in each case its successors or assigns) in relation to such legislation from time to time.

**Encumbrances** means the encumbrances and matters affecting the Property (to the extent that such are still subsisting and capable of being enforced) mentioned contained or referred to in the documents listed in Schedule 1.

**Enactment** means statute, statutory instrument, statutory guidance, treaty, regulation, directive, byelaw, code of practice, guidance note, circular, common law and any notice, order, direction or requirement given or made pursuant to any of them for the time being in force.

**Enquiry Replies** means any written replies made by the Seller's Solicitors in reply to written questions or enquiries made by the Buyer's Solicitors in relation to the Property including replies to Commercial Property Standard Enquiries.

**Environment** means all or any of the following media, alone or in combination: the air (including the air within buildings and the air within any other natural or man-made structures above or below ground), water (including water under or within land or in pipes or sewerage systems), soil, land and any ecological systems and living organisms supported by those media and buildings.

**Environmental Law** means all European Community, national and local statutes, and the common law, from time to time in force concerning:

- (a) pollution of, damage to or protection of the Environment or health and safety and/or the provision of remedies in respect of or compensation for damage or harm to the Environment or to health and safety and/or
- (b) emissions, discharges, releases or escapes into the Environment or the presence in the Environment of Hazardous Substances or the production, processing, management, treatment, storage, transport, handling or disposal of Hazardous Substances

and any bylaws, regulations or subordinate legislation, judgments, decisions, notices, orders, circulars, codes of practice and permits from time to time issued or made thereunder having force of law.

**Estimated Area** means the estimated Net Internal Area of the Proposed Development being in total [                      ] square feet.

**Exempted Information** means any Information that is designated as falling or potentially falling within any applicable exemption to the FOIA Legislation or the EIR Legislation.

**Finally Determined** means (in relation to a Satisfactory Planning Permission) six weeks have elapsed since the date of issue of the Satisfactory Planning Permission and either:

- (a) no Proceedings have been instituted in respect of that Satisfactory Planning Permission; or
- (b) any Proceedings which may have been instituted in respect of that Satisfactory Planning Permission have been exhausted (which shall occur on the withdrawal of such Proceedings or when the time for appealing against the decision of any court has expired and no appeal has been lodged) with that Satisfactory Planning Permission being finally upheld.

**Financial Resource** means the Internal Resource and/or Third Party Finance Resource.

**FOIA Legislation** means the Freedom of Information Act 2000, all regulations made under it and any subordinate legislation made under them, any amendment or re-enactment of any of them; and any guidance and/or codes of practice issued by the Information Commissioner, any relevant Government Department, including the DCLG Code of Practice, or decisions made by other appropriate legislative bodies (including in each case its successors or assigns) in relation to such legislation from time to time.

**Group** means in relation to an undertaking, that undertaking, any subsidiary undertaking or parent undertaking of that undertaking, any other subsidiary undertaking of any parent undertaking of that undertaking (as each such term is defined in section 1161 or section 1162 (as applicable) of the Companies Act 2006).

**Hazardous Substances** means any wastes, pollutants, contaminants and any other natural or artificial substance, including, for the avoidance of doubt, radioactive material (in each case whether in the form of a solid, liquid, gas or vapour, and whether alone or in combination) which is capable of causing harm or damage to the Environment or to the health and safety of persons.

**Independent Person** means a person who shall be a specialist in and professionally qualified for a period of not less than 10 years in respect of the subject matter of any dispute or difference agreed or otherwise appointed pursuant to the provisions of clause 11 for the purpose of determining a dispute between the Parties

**Information** means:

- (a) in relation to FOIA Legislation has the meaning given under section 84 of the FOIA Legislation; and
- (b) in relation to EIR Legislation has the meaning given under the definition of "environmental information" in section 2 of EIR Legislation;

**Information Request** means a valid request for any Information under the FOIA Legislation and/or EIR Legislation

**Initial Purchase Price** means [insert figures in words] Pounds (£X).

**Internal Resource** means equity or other financial resource (including additional guarantors) available to the Buyer (other than Third Party Finance Resource).

**Local Planning Authority** means London Borough of Brent or such other authority as shall have during the currency of this Agreement jurisdiction to deal with planning applications in respect of the Property.

**Longstop Date** means [X weeks from the date of this Agreement].

**Measurement Code** means the edition of the RICS Property Measurement published on behalf of RICS which is current at the date of this Agreement.

**Net Internal Area** means the net internal area of the Proposed Development as calculated in accordance with the Measurement Code.

**Onerous Conditions** means a condition contained in a Planning Permission or in a Planning Agreement which falls within any of the sub-paragraphs of paragraph 2.1 of Schedule 1.

**Party** means a party to this Agreement and "Parties" means more than one Party.

**Planning Acts** means all Enactments relating to town and country planning.

**Planning Agreement** means any planning obligation under the Planning Acts or any other agreement required by the Local Planning Authority to be entered into as a condition of the grant of a Planning Permission.

**Planning Application** means any valid application for planning permission for the Proposed Development made pursuant to this Agreement in a form acceptable to the Seller (acting reasonably) and any amendment of it, fresh application made in substitution for it or any additional application (in each case made pursuant to the provisions of Schedule 2) and (where requisite) any application for any necessary listed building or conservation area consent.

**Planning Condition** means the grant of Satisfactory Planning Permission which has been Finally Determined.

**Planning Permission** means outline or full planning permission granted pursuant to a Planning Application, whether granted by the Local Planning Authority or by the Secretary of State and includes (where requisite) any necessary listed building or conservation area consent.

**Planning Refusal** means a refusal of Planning Permission (including a deemed refusal arising under section 78(2) of the Act) or the grant of Planning Permission which is not a Satisfactory Planning Permission.

**Proceedings** means all or any of the following as the case may be:

- (a) an application by a third party for judicial review under Part 54 of the Civil Procedure Rules arising from the grant of Satisfactory Planning Permission, including any appeals to a higher court following a judgement of a lower court;
- (b) an application by a third party under section 288 of the Act arising from the grant of Satisfactory Planning Permission by the Secretary of State, including any appeals to a higher court following a judgement of a lower court;

- (c) any reconsideration by the Local Planning Authority of a Planning Application or by the Secretary of State of an appeal (as the case may be) following a previous Satisfactory Planning Permission being quashed pursuant to an application within the meaning of paragraphs (a) or (b) above and the matter being remitted to the Local Planning Authority or the Secretary of State (as the case may be).

**Prohibited Person** means an individual or entity:

- (a) which is a company incorporated in or an individual resident in a country outside the United Kingdom unless it agrees to be bound by the jurisdiction of the English Courts and in respect of which a legal opinion from a reputable independent law firm in the relevant jurisdiction is provided in a form reasonably satisfactory to the Seller (acting reasonably) relating to:
  - (i) the authority and capacity of the company or individual to act as the assignee, guarantor or funder (as applicable); and
  - (ii) the enforceability of the obligations of the company or individual as assignee, guarantor or funder (as applicable);
- (b) which enjoys sovereign or state immunity, unless it is a department, body or agency of the United Kingdom Government;
- (c) which uses funds that are derived from illegal or illegitimate activities;
- (d) which has been convicted of criminal activities, or is or has been involved in organised crime;
- (e) which is named on the Consolidated List of Terrorists maintained by the Bank of England pursuant to any authorising statute, regulations or guideline;
- (f) which is, or professes to be, resident in a nation state which at the relevant time is not recognised by the Government of the United Kingdom;
- (g) which is otherwise prohibited from entering into the proposed transaction pursuant to any applicable law or requirements of any country or governmental authority (including any exchange control regulations applicable thereto);
- (h) with whom the Seller or any member of its Group may not lawfully contract, or with whom the established policy of the UK Government is that they should not contract;
- (i) whose activities would prevent the discharge by the Seller or any member of its Group of its or their statutory duties or other legal functions;
- (j) which has a substantial direct interest(s) in gambling, gaming, pornography, the production or sale of alcoholic drinks, the production or sale of products containing or derived from tobacco or the manufacture or sale of arms and weapons (provided that any organisation that is engaged in legitimate investment and lending to any such business shall not constitute a Prohibited Person); or
- (k) whose activities could pose a threat to national security.

**Property** means all that property known as [*insert description of Property*] [as the same is] [forming part of the property] [registered at the HM Land Registry with [freehold title absolute]



[freehold possessory title] under the Registered Title (as shown edged red on the plan annexed to this Agreement at Annex 1).

**Proposed Development** means the construction on the Property of buildings for use as Dwellings comprising not less than [X] square feet (NIA) of Dwellings as may be amended by a Planning Application approved by the Seller.

*Drafting Note 6*

**Purchase Price** means the Initial Purchase Price (subject to any required adjustment in accordance with clause 6.3).

*Drafting Note 7*

**Registered Title** means the freehold interest [registered at HM Land Registry under title number[s] *[insert relevant title number(s) of the Property]*].

*Drafting Note 8*

**Representation** means any written oral or implied representation warranty confirmation or statement in relation to the Property or to any matter contained or referred to in this Agreement made (innocently or negligently) by or on behalf of the Seller to the Buyer or to any agent adviser or other person acting for the Buyer .

**Relevant Costs** means the aggregate of:

- (a) the Purchase Price; and
- (b) the reasonable estimate by the Buyer of the all costs to be incurred in connection with the construction of and subsequent disposal of Dwellings within the Proposed Development (including professional fees).

**Satisfactory Planning Permission** means a Planning Permission which is free from Onerous Conditions.

**Secretary of State** means the minister or other authority for the time being having or entitled to exercise, the powers conferred by sections 77, 78 and 79 of the Act, or an inspector appointed to act on behalf of the minister or other authority.

**Seller's Solicitors** means Dentons UK and Middle East LLP of One Fleet Place, London EC4M 7WS (ref. gmg/043574.00001) or such other firm as the Seller may nominate by notice in writing to the Buyer or the Buyer's Solicitors for the purposes of this Agreement.

**Standard Commercial Conditions** means the Standard Commercial Property Conditions (Second Edition) and any reference to a Standard Commercial Condition shall be construed accordingly and have the same meaning as the expression **condition** in the Standard Commercial Conditions.

**Target Date** means [X weeks from the date of this Agreement] subject to extension pursuant to clause 2.6.

**Tenure Price** means [Insert figures in words] Pounds (£X) per square foot.

**Title Documentation** means official copies of the HM Land Registry entries of the Registered Title and other copy documents (as appropriate) in respect of the Property.

**Transfer** means the transfer of the Property to the Buyer to be executed pursuant to the provisions of this Agreement.

**Transparency Commitment** means compliance with the requirements of the Local Government Transparency Code 2015 published by the Department for Communities and Local Government;

**Transport Assets and Premises** means the whole or any part or parts of the transport infrastructure, roads, pavements, track, buildings, works, conducting media, lifts, escalators, bridges, tunnels, structures, plant, apparatus and equipment and all other things serving or used, controlled or enjoyed in connection with the Transport Undertaking from time to time including all those over, under, adjoining or near to the Property at any time.

**Transport Undertaking** means the transport undertakings or networks operated by the Seller, relevant member(s) of the Seller's Group or any successor to its functions (including London Underground system, the Docklands Light Railway and the Elizabeth Line or any London railway system running on, under, over or through the Property).

**Unconditional Date** means the date upon which the Planning Condition is satisfied.

**Value Added Tax** means value added tax charged under the Value Added Tax Act 1994 and shall include any interest fine penalty or surcharge in respect of value added tax charged.

**Working Day** means a day other than a Saturday or Sunday or a bank or public holiday in England.

## **1.2 Statutes**

References to laws statutes bye-laws regulations orders and delegated legislation shall include any law statute bye-law regulation order or delegated legislation modifying amending re-enacting consolidating or made pursuant to the same.

## **1.3 Headings**

Headings are for ease of reference only and shall not affect the construction of this Agreement.

## **1.4 Construction**

In this Agreement:

- (a) The headings in this Agreement are for reference only. They are not to be used to interpret the text beneath.
- (b) References to clauses, schedules and annexures shall be references respectively to the clauses of and schedules and annexures to this Agreement.
- (c) References to this Agreement include any schedules and annexures.
- (d) The expression "**this Agreement**" used in this Agreement shall include any document or the terms of any document which are incorporated by reference into this

Agreement and shall have the same meaning as the expression the “**contract**” referred to in the Standard Commercial Conditions.

- (e) The expressions “**including**” and “**in particular**” shall be construed as being by way of illustration or emphasis only and shall not limit the generality of the preceding words.
- (f) The word “**assignment**” includes a legally binding contract for assignment.
- (g) Where a Party includes two or more persons, the covenants made by that party are made by those persons jointly and severally.
- (h) Where the consent or approval of the Seller is required such consent or approval must be in writing and obtained before the act requiring it.
- (i) All agreements and obligations by a Party in this Agreement (whether or not expressed as covenants) are to be read as covenants by that Party.
- (j) Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

## **2 Conditionality**

### **2.1 Condition**

This agreement to sell is conditional upon the Planning Condition being satisfied and Clauses Error! Reference source not found., Error! Reference source not found. and Error! Reference source not found. shall not come into effect until the Planning Condition has been satisfied.

### **2.2 Satisfaction of the Planning Condition**

The rights and obligations of the parties with regard to the satisfaction of the Planning Condition are set out in Schedule 1.

### **2.3 Planning Application Submission End Date**

Where no Planning Application has been validated by the Local Planning Authority through its planning portal by [X weeks from the date of this Agreement] (or such later date as the parties may agree) the Seller may terminate this Agreement by giving written notice to the Buyer but without prejudice to the rights and remedies of either Party in relation to any breach or non-performance of this Agreement by the other.

### **2.4 Termination on the Target Date**

- 2.4.1 Subject to the provisions of clause 3.6 if the Target Date occurs before the Planning Condition has been satisfied then either the Seller or the Buyer may, at any time before the Planning Condition is satisfied give written notice to the other terminating this Agreement.
- 2.4.2 Subject to the following provisions of this clause 3.4, on the giving of the notice referred to in clause 3.4.1 this Agreement shall terminate with immediate effect.
- 2.4.3 Termination of this Agreement in accordance with the provisions of this clause 3.4 shall be without prejudice to any rights which the parties may have against one another in respect of prior breaches of this Agreement.

2.4.4 The Party seeking to terminate this Agreement under this clause 3.4 may only do so if it has performed its obligations set out in the Schedules in all material respects.

2.4.5 On termination of this Agreement in accordance with the provisions of clauses 3.3 or 3.4 the Buyer shall at its own expense remove any Land Registry or Land Charges Registry entry made against the Registered Title in respect of this Agreement.

## **2.5 Consequences of Termination**

2.5.1 Following termination of this Agreement in accordance with the provisions of clause 3.3, 3.4 or clause Error! Reference source not found. the Seller may:

- (a) continue to seek Planning Permission in such manner as the Seller sees fit;
- (b) notify the Buyer that it requires the Buyer to and the Buyer shall (at their cost) as soon as reasonably practicable after receipt of such notice:
  - (i) supply to the Seller the originals of all material documents and correspondence under the Buyer's control relating to the progress of the Planning Application and any Planning Agreement;
  - (ii) complete and sign any documents and correspondence reasonably necessary to enable the Seller to progress the Planning Application and any Planning Agreement;
  - (iii) take such steps as are reasonably necessary to ensure that the Seller has the right to use any drawings or other documents prepared for the Proposed Development without payment to anyone;
- (c) require the Buyer to use reasonable endeavours to procure letters of reliance in relation to any surveys, ground investigations or planning related reports which the Buyer has obtained and that the Seller may request on the basis that the Seller will be responsible for the reasonable cost of obtaining these.

## **2.6 Extension of the Target Date**

2.6.1 The Target Date is to be extended in the following circumstances and by the following periods:

- (a) if the Planning Application has been validated by the Local Planning Authority prior to [insert original Target Date - X weeks from the date of this Agreement] the Target Date will be extended to the Working Day after the Satisfactory Planning Permission has been Finally Determined;
- (b) if prior to [insert original Target Date – X weeks from the date of this Agreement] a Satisfactory Planning Permission has been granted but has not been Finally Determined, the Target Date will be extended to the Working Day after the Satisfactory Planning Permission has been Finally Determined;
- (c) following a Planning Refusal which occurs within six weeks prior to the Target Date, the Target Date will be extended to the date which is six weeks after the date of the Planning Refusal, subject to further extensions under paragraph (d);

- (d) if, before the Target Date, the Buyer makes an appeal or begins or procures the beginning of Proceedings following a Planning Refusal then:
- (i) if the appeal or Proceedings results in the grant of a Satisfactory Planning Permission, the Target Date will be extended to the Working Day after that Satisfactory Planning Permission is Finally Determined assuming no further Proceedings have commenced during that period;
  - (ii) if the Appeal or Proceedings results in a Planning Refusal, the Target Date will be extended to the date six weeks after the date of that Planning Refusal, subject to further extensions under this paragraph (d);
  - (iii) if Proceedings are begun by a third party before the Target Date, the Target Date will be extended to the date 10 Working Days after all Proceedings have been exhausted or discontinued;
  - (iv) if, before the Target Date, a resolution is passed by the Local Planning Authority to grant Planning Permission subject to the completion of one or more Planning Agreements, the Target Date will be extended to the date will be extended to the Working Day after the Satisfactory Planning Permission has been Finally Determined weeks ,

provided that the Target Date may not be extended beyond the Longstop Date.

- 2.6.2 If the Target Date is extended under this clause 2.6, any references to the Target Date elsewhere in this Agreement are to be read as references to the Target Date as so extended.

### **3 Sale and Purchase**

#### **3.1 Agreement to Sell**

The Seller agrees to sell and the Buyer agrees to purchase the Property on the Completion Date at the Purchase Price on the terms set out in this Agreement.

#### **3.2 Value Added Tax**

The Purchase Price and any other amount payable by the Buyer for any supply made by the Seller under this Agreement is stated exclusive of any Value Added Tax or similar tax duty or imposition which is or becomes chargeable on it and if any such sum is or becomes so chargeable the Buyer shall upon demand pay the same to the Seller.

#### **3.3 Deposit**

- 3.3.1 The Buyer will pay the Deposit to the Seller's Solicitor by a method that gives immediate available funds on the date of this Agreement.
- 3.3.2 The Seller's Solicitors shall hold the Deposit as stakeholders.
- 3.3.3 On termination of this Agreement under Clause 2.3, Clause 2.4 the Landlord shall return the deposit together with accrued interest to the Tenant within 10 Working days of such termination.

## **4 Title**

### **4.1 Deduction of title**

4.1.1 Title to the Property has been deduced by the Seller to the Buyer.

4.1.2 The Buyer shall purchase the Property with full knowledge of the title to the Property:

- (a) as set out in the Title Documentation; and
- (b) as set out in clause 3.2 below

(including all matters arising in connection with the Planning Acts) and shall raise no requisition nor objection (save for matters not disclosed to the Buyer before the date of this Agreement which are revealed by pre-completion searches in respect of the Property at the Land Registry).

### **4.2 Matters subject to which the Property is sold**

Without prejudice to Standard Commercial Condition 3.1.2, the Property shall be taken to be correctly described and is let subject to (and where applicable with the benefit of) the following:

- (c) the documents referred to in the property, proprietorship and charges registers of the Registered Title including all matters mentioned, contained or referred to in them;
- (d) [the Encumbrances]
- (e) all local land charges, whether or not registered before, on or after the Completion Date, and all matters capable of registration as local land charges;
- (f) all notices served and orders, demands, proposals or requirements made by any local or public authority or any body acting on statutory authority, whether before, on or after the Completion Date;
- (g) all actual or proposed charges, notices, orders, restrictions, agreements, conditions or other matters arising under the Planning Acts or highways legislation;
- (h) any unregistered interests which fall within any of the paragraphs of Schedule 3 of the Land Registration Act 2002 (except under paragraph 1 of that Schedule or under section 90 of that Act);
- (i) any matters disclosed or which would have been disclosed by the searches and enquiries which a prudent buyer would have made before entering into this Agreement; and
- (j) any easements, wayleaves, licences, rights or privileges to local authority or any organisation providing utilities to the Property entered into before or after the date of this Agreement.

#### ***Drafting Note 10***

## 6.4 Title guarantee

- 6.4.2 [The Property is sold with [full] [limited] [no] title guarantee but *[if sold with full or limited title guarantee]* the Seller's covenants for title shall be modified as set out [below]].

### *Drafting Note 11*

- 6.4.3 [Where the Property is sold with limited or no title guarantee the Seller shall have no liability under Standard Commercial Condition 3.1 save for such liability (if any) as may be imposed on it by section 3(3) of the Law of Property (Miscellaneous Provisions) Act 1994.]

[OR

[Where the Property is sold with full title guarantee:

- (i) the covenants set out in sections 2 and 3 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to matters which are referred to in this Agreement or which would be revealed by searches and enquiries of public records or matters which would be revealed by an inspection or survey of the Property (the sale being expressly made subject to all of them); [and]
- (ii) the covenant set out in section 2(1)(b) of that Act shall not extend to any action required of the Seller unless the Buyer pays the Seller's costs.]

### *Drafting Note 12*

## 7 Transfer

### 7.1 Form of Transfer

The Transfer shall contain the following covenants and declarations:

- (a) an express provision that the Seller transfers or conveys the Property with [full] [limited] title guarantee but the Transfer shall state that:
  - (i) the covenants set out in sections 2 and 3 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to matters which are referred to in this Agreement; [and]
  - (ii) the covenant set out in section 2(1)(b) of that Act shall not extend to any action required of the Seller unless the Buyer pays the Seller's costs [and]
  - (iii) *[if limited title guarantee]* the covenant set out in section 3(3) of that Act shall extend only to charges or other encumbrances created by the Seller]
- (b) a covenant by the Buyer with the Seller that the Buyer and its successors in title shall observe and perform the covenants stipulations obligations restrictions and other matters which fall to be observed and performed by the Seller (whether as original covenantor or by way of indemnity) contained or referred to in or in documents contained or referred to in:

(i) the entries (other than those relating to financial charges in favour of the Seller's chargees) appearing in the property and charges registers the Registered Title;

(ii) the Encumbrances;

and shall indemnify and keep indemnified the Seller against all demands claims liabilities losses damages costs and expenses suffered or sustained by the Seller as a result of any future breach, non-performance or non-observance of the same.

(c) ***[Note: to insert any Property specific reservations for access for Seller's adjoining land, access for maintenance and insert any restrictions such as "no build"]***

## **8 Possession**

The Property is sold with vacant possession on completion but the Buyer shall not object if any rubbish or other loose items are in or around the Property which do not materially adversely affect the Buyer's reasonable beneficial enjoyment of the Property.

### ***Drafting Note 13***

## **9 Completion**

### **9.1 Completion**

The Seller will sell and the Buyer agrees to purchase the Property on the Completion Date.

### **9.2 Time**

9.2.1 Completion of the sale of the Property shall take place on the Completion Date.

9.2.2 On the Completion Date, and in consideration of the transfer in accordance with the terms of this Agreement, the Buyer shall pay the balance of the Purchase Price to the Seller's Solicitors' client account or as the Seller's Solicitors shall reasonably direct by a method that gives immediate available funds on completion.

### ***Drafting Note 14***

9.2.3 [The Seller will on or before the Completion Date provide a certificate or release as appropriate in relation to the restriction referred to at entry *[Insert the details of the relevant entry number in the Proprietorship Register of the Registered Title]* in the Proprietorship Register of the Registered Title.]

### ***Drafting Note: 15***

9.2.4 [The Buyer shall provide the Seller on completion with written notice setting out the name and address for service within England and Wales of any Permitted Chargee (as defined in Schedule 2) and thereafter within 10 Working Days of the date of any further charge of the Property shall provide to the Seller the same information in respect of any further Permitted Chargee]

### ***Drafting Note: 16***



- 9.2.5 If, on the day completion actually takes place, completion occurs after 2.00 pm, then completion shall be deemed to have occurred on the next following Working Day.

### **9.3 Late completion**

If as a result of any breach by the Buyer the sale and purchase is not completed on the Completion Date then, without prejudice to any other rights of the Seller:

- (a) if the Deposit has been held as stakeholders it may at the option of the Seller then be held as agent for the Seller and the Seller's Solicitors may immediately pay the same to the Seller;
- (b) the Buyer shall on demand pay interest on any sums due under this Agreement at the Contract Rate from the Completion Date until the later of completion and actual payment (after as well as before any judgment) calculated on a daily basis, both before and after any judgement; and
- (c) the Buyer shall on demand pay the Seller's Solicitors proper and reasonable costs, including Value Added Tax, for preparing and serving any notice to complete on the Buyer.

### **9.4 Registration**

- 9.4.3 The Buyer shall at the same time as applying to register the Transfer, apply to the Land Registry on form RX1 together with the requisite fee for a restriction in the form of the restriction set out in Schedule 2 paragraph 10.1 to be entered onto the proprietorship register of the title to the Property.
- 9.4.4 The Buyer shall immediately after registration of the Transfer of the Property to the Buyer provide the Seller's Solicitors with official copies of the register showing the Buyer as proprietor of the Property.

## **10 Standard Commercial Conditions and ancillary matters**

### **10.1 Standard Commercial Conditions**

- 10.1.1 The Standard Commercial Conditions as varied in clause 7.2 shall be incorporated in this Agreement insofar as they are not inconsistent with the express terms and conditions of this Agreement and in the event of any conflict between the express terms and conditions of this Agreement and the Standard Commercial Conditions the former shall prevail.
- 10.1.2 All references to the **property** in the Standard Commercial Conditions shall be deemed to be references to the Property and shall be construed accordingly.

### **10.2 Variation of Standard Commercial Conditions**

The Standard Commercial Conditions shall be varied as follows:

- (a) Standard Commercial Conditions 1.4, 3.1.1, 3.1.3, 6.1, 6.2, 6.3, 6.4.2, 6.6.2, 6.6.5, 7.1.2, 7.1.4(b), 8.4, 9.1, 9.3, 10.1.3, 10.2.4 and 10.3 shall be deleted;
- (b) in Standard Commercial Condition 1.1.1(g) the words "from the buyer's conveyancer's client account" shall be added after the words "cleared funds";

- (c) In Standard Commercial Condition 1.1.1(l) the definition of **public requirement** shall be deleted and replaced by the following:

**public requirement** means any notice order demand request requirement or proposal having specific reference to the property which is given or made (whether before on or after the date of the contract and whether or not subject to any confirmation) by a body acting on statutory authority or any competent authority and includes:

- (i) all matters registered or registrable as local land charges (whether or not so registered); and
  - (ii) all actual or proposed charges orders directions conditions proposals demands restrictions agreements notices or other matters whatsoever (whether registered or not before today's date) affecting or relating to the property or any part thereof or any building or other structure thereon or any part thereof arising under the Planning Acts;
- (d) Standard Commercial Condition 1.3 shall be amended as set out in clause 10;
- (e) In Standard Commercial Condition 3.1.2(c) the words "and could not reasonably" shall be deleted;
- (f) the following shall be added to the end of Standard Commercial Condition 3.1.2:
- (i) "all outgoing, consents, restrictions, easements and liabilities affecting the property;
  - (ii) any interests which override under the Land Registration Act 2002."; and
- (g) at the end of Standard Commercial Condition 8.8.2 add the words "on completion the party on whom a notice to complete was served shall pay to the other party its reasonable legal costs incurred in connection with the service of the notice and recalculating the completion statement together with disbursements properly incurred and VAT".

## **11 Representations**

### **11.1 Authority to make Representations**

Save for the Seller's Solicitors in respect of any Enquiry Replies no agent adviser or other person acting for the Seller has at any time had the authority of the Seller to make any Representations whatsoever.

### **11.2 Inaccurate Representations**

If any Representation is made:

- (a) and the fact that it was inaccurate either was known to the Buyer before today or might reasonably be expected to have been discoverable as a result of enquiries a prudent buyer would have raised before agreeing to buy the Property then the Buyer shall be deemed not to have been in any way influenced, induced or persuaded to enter into this Agreement by such Representation; and

- (b) the Seller shall have no liability to the Buyer in respect of the same unless the Buyer notifies the Seller of any inaccuracy breach or claim within six months of the Completion Date.

### **11.3 Reliance on Representations**

The Buyer confirms that it has not entered into this Agreement in reliance (wholly or in part) upon any Representation (whether written, oral or implied) not expressly set out in this Agreement (other than the Enquiry Replies).

## **12 Notices**

For the avoidance of doubt the provisions of Standard Commercial Condition 1.3 as amended by this Agreement shall apply:

- (a) No notice or document served on the Seller's Solicitors shall be valid unless it quotes the reference for the recipient solicitor as set out in clause 1 or such other reference as may be expressly notified in writing for the purposes of this clause.
- (b) "5.30pm" shall be substituted for "4.00pm" in Standard Commercial Conditions 1.3.5 and 1.3.7.
- (c) No notice or document may be validly served by email.

## **13 Assignment**

This Agreement is personal to the Buyer. The Buyer shall not assign or otherwise part with the benefit of this Agreement and the Seller shall not be required to transfer the Property to any person or body other than the Buyer.

### *Drafting Note 17*

## **14 Appointment of Independent Person**

- 14.1 Where this Agreement expressly provides for a particular dispute or difference to be referred for determination by an independent person it shall (subject as otherwise provided in this clause) be referred for determination by an Independent Person appointed under the provisions of this clause.
- 14.2 The Seller and the Buyer may agree that any other dispute or difference between them be referred to an Independent Person.
- 14.3 The Independent Person shall be agreed between Seller and the Buyer or, failing agreement, be nominated within 10 Working Days after the relevant Party has given to the other a written request requiring the appointment by the President or duly authorised officer of the professional body or institution governing the discipline the subject matter of the dispute or difference.
- 14.4 Any dispute or difference as to the discipline of which the specialist is to be appointed and, if applicable, as to the appropriate professional body or institution to appoint him or her shall be referred to or determined by an independent barrister or solicitor of not less than 10 years' standing to be agreed between the Seller and the Buyer or failing agreement, to be nominated by the President or duly authorised officer of the Royal Institute of Chartered Surveyors on the application of any Party.

- 14.5 The reference to an Independent Person is to be made to him as an expert and:
- (a) the Seller and the Buyer may make written representations within 10 Working Days of his or her appointment and will copy the written representations to the other Party;
  - (b) the Seller and the Buyer are to have a further 10 Working Days to make written comments on each other's representations and will copy the written comments to the other Party;
  - (c) the Independent Person is to be at liberty to call for such written evidence from the Parties and to seek such legal or other expert assistance as he or she may reasonably require;
  - (d) the Independent Person is not to take oral representations from the Seller and the Buyer without giving both Parties the opportunity to be present and to give evidence and to cross examine each other;
  - (e) the Independent Person is to have regard to all representations and evidence before him or her when making his or her decision which is to be in writing and is to give reasons for his or her decision;
  - (f) the Independent Person is to use all reasonable endeavours to publish his or her decision within 25 Working Days of his appointment or such earlier date as the Parties shall agree as a term of the Independent Person's appointment; and
  - (g) the Independent Person's decision shall be final and binding on the parties (save in the case of manifest error).
- 14.6 Responsibility for the costs of referring a dispute to an Independent Person under this clause 11, including costs connected with his or her appointment and the Independent Person's own costs but not the legal and other professional costs of any Party in relation to a dispute, will be decided by the Independent Person.
- 14.7 The previous provisions of this clause 11 do not apply to any dispute or difference that arises in relation to the exercise by the Seller and the Buyer of any rights of termination under this Agreement.

## **15 [Freedom of Information]**

- 15.1 The Buyer acknowledges that the Seller is subject to legal duties which may require the release of information under the FOIA Legislation and the EIR Legislation and may be under an obligation to provide information subject to an Information Request without obtaining consent from the Buyer. The Parties acknowledge that such information may include matters relating to, arising out of or under this Agreement and any information provided by the Buyer prior thereto.
- 15.2 The Buyer agrees to assist and co-operate with the Seller so as to enable the Seller to comply with its obligations under the FOIA Legislation and/or the EIR Legislation (as applicable).
- 15.3 Without prejudice to the generality of clauses 12.2 to 12.2 (inclusive) the Buyer will (at its own expense) and will procure that its employees, officers, suppliers, sub-contractors and agents ("**personnel**") (at their own expense) will transfer to the Seller (or such other person

and/or nominated individual notified by the Seller to the Buyer) each Information Request that it receives as soon as practicable and in any event within two Working Days of receiving such Information Request.

- 15.4 In this clause 12.4 references to “**Information**” shall be references (as the context shall require) to Information held by the Buyer on behalf of the Seller and any obligations set out in this clause 12.4 imposed on the Buyer shall be construed accordingly so as to only refer to the Information they respectively hold. The Buyer will (at its own expense):
- (a) provide the Seller with details about and/or copies of all such Information that the Seller requests and such details and/or copies will be provided within five Working Days of a request from the Seller (or such other period as the Seller may reasonably specify), and in such form as the Seller may reasonably specify;
  - (b) use reasonable endeavours to assist and co-operate with the Seller to enable the Seller to comply with its obligations under the FOIA Legislation and/or the EIR Legislation (as applicable), including responding to the Information Request and dealing with its disclosure obligations; and
  - (c) provide the Seller with all necessary assistance as set out in clause 12.4(b) as reasonably requested by the Seller to enable the Seller to respond to the Information Request within the time for compliance under the FOIA Legislation and/or the EIR Legislation (as applicable).
- 15.5 The Seller will be solely responsible for determining whether Information is Exempted Information, whether any Information is to be disclosed in response to an Information Request, for determining what Information will be disclosed in response to an Information Request and whether the Information is to be published in accordance with the FOIA Legislation and/or the EIR Legislation (as applicable).
- 15.6 The Buyer will not (and will not allow any of the it’s personnel to respond to any person making an Information Request, save to acknowledge receipt, unless expressly authorised to do so by the Seller.
- 15.7 The Buyer acknowledges that, if the Seller requests the Buyer’s representations, failure to provide appropriate representations for non-disclosure of Information under the FOIA Legislation and/or the EIR Legislation to the Seller may prevent the Information from being withheld.
- 15.8 Nothing in this Agreement will prevent the Seller from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information.
- 15.9 This clause 12 shall survive the termination of this Agreement.

## 16 **Confidentiality and Transparency**

- 16.1 For the purposes of this clause 13 and clause 12, “**Confidential Information**” means all information (whether written or oral and whether received before or after the date of this Agreement) that by its nature may reasonably be regarded as confidential to a Party (or relevant member of its Group), whether commercial, financial, technical or otherwise, including information which relates to the business affairs, customers, suppliers, products,

software, telecommunications, networks, trade secrets, know-how or personnel of the relevant party and for the purposes of this clause 13:

- (a) **“Disclosing Party”** shall be the party directly or indirectly providing the Confidential Information and to whom the obligation of confidence set out in this clause 16 is owed; and
- (b) **“Receiving Party”** shall be the party to whom a Disclosing Party’s Confidential Information is directly or indirectly disclosed.

16.2 Subject to clauses 13.4, 13.5 and 13.6 the Receiving Party will:

- (c) keep any and all Confidential Information secret and will not, directly or indirectly, disclose or publish any Confidential Information that it may acquire in relation to a Disclosing Party without the Disclosing Party’s prior written consent;
- (d) not use Confidential Information for any purpose other than the performance of its obligations under this Agreement;
- (e) immediately notify the Disclosing Party in writing as soon as it/they become aware of any breach (or suspected breach) of confidence in relation to the Confidential Information by the Receiving Party, any member of their Group or any person to whom the Receiving Party (or relevant Group members or personnel) have directly or indirectly disclosed or published Confidential Information;
- (f) keep the Confidential Information safe and secure and will comply with any reasonable and practicable security guidelines as may be notified in writing by the Disclosing Party from time to time and will also exercise not less than reasonable care in relation to the same; and
- (g) not make any copies of the Confidential Information without the prior written consent of the Disclosing Party save as is strictly necessary in order to perform its obligations under this Agreement and any such copies will be deemed to be Confidential Information and will be kept separate from the Receiving Party’s and/or relevant member(s) of the Receiving Party’s Group’s own information.

16.3 The Receiving Party shall, so far as practicable, procure that each recipient which is not a party to this Agreement but which receives any Confidential Information from a Receiving Party pursuant to clause 13.5, or with the consent of the Disclosing Party is made aware of and complies with all the Receiving Party’s obligations of confidentiality under this Agreement as if such Recipient were a party to this agreement.

16.4 The obligations set out in this clause 13 will not apply to any Confidential Information which:

- (b) can be demonstrated by the Receiving Party to have been, at the time of disclosure, in the public domain, other than through a breach of this Agreement by the Receiving Party or any Recipient; and
- (c) can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party, to have been received by the Receiving Party or relevant member of the Receiving Party’s Group at any time from a third party who did not acquire it in confidence and who is free to make it available to the Receiving Party without limitation.

16.5 A Receiving Party and/or relevant member(s) of the Receiving Party's Group may disclose Confidential Information to the extent such disclosure ("**Permitted Disclosure**") is required:

- (b) by law, an order of a court of competent jurisdiction or any governmental or regulatory body (including, for the avoidance of doubt, in relation to stock exchange announcements) to which the Receiving Party and/or relevant member(s) of the Receiving Party's Group may be subject but then only to the extent of such legally required disclosure; or
- (c) [to be shown to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, the Mayor of London, the office of the Mayor of London, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agent and sub-contractors; or]

16.6 *Drafting Note 18*

- (a) to be disclosed to any Government Department for normal reporting, commercial, financial or budgetary, operational and/or approval reasons.

16.7 The Buyer acknowledges that the Seller and/or relevant members of its Group is/are subject to the Transparency Commitment under which the Seller may be required to publish certain information in relation to this Agreement (together "the **Main Terms**"). Accordingly, notwithstanding any other provision of this Agreement, the Buyer hereby gives its consent (and shall procure that relevant members of its Group give their respective consents) for the Seller (and/or relevant member(s) of its Group) to publish the Main Terms to the general public provided that, to the extent permitted by law, the Seller:

- (b) shall consult with the Buyer regarding any such proposed publication and may agree suitable redactions to the information to be published pursuant to this clause 13.6;
- (c) shall consider the Buyer's objections to disclosure;
- (d) may as a result apply appropriate FOI Legislation and/or EIR Legislation exemptions/exceptions to relevant information; and
- (e) may accordingly redact all or part of the Main Terms prior to their publication.]

*Drafting Note 19*

## 17 Environmental Matters

17.1 The parties agree that the apportionment by a Competent Authority of any liabilities that may arise under Part IIA of the Environmental Protection Act 1990 (as amended) (**Part IIA**) in respect of pollution or contamination present in on or under or originating from the Property shall be undertaken on the basis that the Buyer shall have full responsibility for any and all such liabilities and the commercial terms of this Agreement (including without limitation the Purchase Price) have been settled on that basis.

17.2 It is hereby acknowledged and intended by the parties that clause 14.1 is an agreement on liabilities for the purposes of Part IIA.

- 17.3 The parties agree that in the event of a notification being served on any of them which indicates that the Property is or is likely to be determined 'contaminated land' under Part IIA to notify the other as soon as is reasonably practicable.
- 17.4 The parties undertake to furnish the Competent Authority with a copy of this Agreement as soon as is reasonably practicable after receiving a note from the Competent Authority or a notification under clause 14.3 and individually to agree to the application of clause 16.1 and to confirm such individual agreement in writing to the Competent Authority following receipt of such notice or notification.
- 17.5 The parties hereby undertake to use all reasonable endeavours to ensure that the Competent Authority applies the agreement on liabilities set out in clause 14.1.
- 17.6 For the avoidance of doubt the Seller shall retain the right to appeal against a decision of a Competent Authority in accordance with Part IIA's appeal procedure.
- 17.7 The Buyer hereby undertakes to indemnify the Seller and keep the Seller indemnified in respect of all and any fines, penalties, charges, actions, losses, costs, claims, expenses, demands, duties, obligations, damages and other liabilities that the Seller may suffer:
- (a) as a result of any failure of the Buyer to adhere to the provisions of clause 14; or
  - (b) arising from any pollution or contamination present in or under or originating from the Property; or
  - (c) arising from any Planning Acts or Enactments .

17.8 *Drafting Note 20*

## **18 Terminating Events**

### **1.1 Definitions**

In this clause 15, **Terminating Event** means any of the following where the Buyer:

- (a) is the subject of an interim order under the Insolvency Act 1986;
- (b) has made any arrangement or composition for the benefit of its creditors which has not been discharged;
- (c) goes into liquidation whether voluntary or compulsory (save for the purpose of reconstruction or amalgamation without insolvency);
- (d) is, or is deemed for the purposes of section 123 of the Insolvency Act 1986 to be, unable to pay its debts as they fall due or admits inability to pay its debts as they fall due;
- (e) suffers the enforcement of any security over any of its material assets;
- (f) is otherwise dissolved, wound up, or ceases to exist;
- (h) has an administrator or a receiver or an administrative receiver appointed in respect of the whole or any part of its undertaking or assets; or



- (i) is the subject of an analogous procedure or step in any other jurisdiction

provided that a Terminating Event shall not have occurred solely by reason of the delivery of a petition for winding up a company where such petition is withdrawn within 10 Working Days.

## **1.2 Service of notice of Terminating Event**

If there occurs in relation to the Buyer (or where the Buyer comprises two or more persons there occurs in relation to any of such persons) a Terminating Event then the Seller may at any time thereafter serve written notice on the Tenant determining this Agreement but without prejudice to any rights or remedies of any Party in respect of any antecedent breach of any of the obligations contained in this Agreement.

### ***Drafting Note 21***

## **1.3 Return of Title Documentation**

Upon any rescission pursuant to this clause 15 the Buyer shall return all Title Documentation forwarded to it in respect of the Property and cancel any registration of this Agreement on the Registered Title.

## **19 General**

### **19.1 Schedules**

The Parties shall comply with their respective obligations in the Schedules to this Agreement.

### **19.2 Acknowledgements by the Buyer**

The Buyer confirms that it has been provided with all information necessary to assess the state and condition of the Property and that it has had full opportunity to enter the Property to conduct such surveys as it wished and has entered into this Agreement upon the basis of the express provisions of this Agreement.

### **19.3 Continuing effect**

19.3.4 This Agreement shall remain in full force and effect after completion in respect of any matters agreements or conditions which have not been done observed or performed before completion or which are of a continuing nature.

19.3.5 All representations or warranties indemnities undertakings and obligations of the parties shall (except for any obligations fully performed on completion) continue in full force and effect notwithstanding completion.

### **19.4 Severance**

If any provision of this Agreement is held to be invalid or unenforceable, it shall be deemed to be deleted (so far as invalid or unenforceable) and the remaining provisions of this Agreement shall continue in force.

### **19.5 No implied waivers, remedies cumulative**

19.5.3 The rights of each Party under this Agreement:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

19.5.4 Delay in exercising or non-exercise of any such right is not a waiver of that right.

#### **19.6 Set-off**

All payments (including interest) to be made by the Buyer under this Agreement shall be made without any withholding deduction legal or equitable set-off or counterclaim.

#### **19.7 Entire agreement**

This Agreement constitutes the entire agreement relating to the subject matter of this Agreement and supersedes all prior negotiations documents agreements statements and understandings relating to its subject matter.

#### **19.8 Variations**

This Agreement may only be varied or modified by a supplemental agreement which is made in writing by the parties or their solicitors and in such a form that complies with the requirements of the Law of Property (Miscellaneous Provisions) Act 1989.

#### **19.9 Performance of this Agreement**

Any failure by one Party to require the performance by the other Party of its obligations under this Agreement shall not affect the rights of that Party to require performance of those obligations.

#### **19.10 Contracts (Rights of Third Parties) Act 1999**

The Parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

#### **19.11 16.11 Governing law and jurisdiction**

19.11.7 English law governs

- (a) this Agreement;
- (b) its interpretation; and
- (c) any non-contractual obligations arising from or connected with it.

19.11.8 The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.

#### **19.12 Good Faith**

The Parties shall at all times act in good faith towards each other.

#### **19.13 Protecting this Agreement against the Seller's title**

The Buyer shall not be entitled to note this Agreement against the Seller's title other than by virtue of a unilateral notice and shall not without the consent of the Seller (which may be withheld in the Seller's absolute discretion) send this Agreement or a copy of it to the Land Registry.

#### **19.14 No Partnership**

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties or any of them, or to authorise any party to act as agent for any other, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**EXECUTED** by the Parties as a Deed and delivered on the date first above written.

## Schedule 1 – Planning Permission

### 1 Application and negotiations for Planning Permission

- 1.1 Whenever the Buyer proposes to submit a Planning Application the Buyer shall submit a copy of the draft Planning Application (together with such supporting documents as the Seller shall reasonably require) to the Seller as soon as reasonably practical after the date of this Agreement for the Seller's approval, with such approval not to be unreasonably withheld or delayed, but provided that where the subject of such Planning Application may affect the operation of the Transport Undertaking and/or the Transport Assets and Property, then the approval of the Seller shall be at their absolute discretion.
- 1.2 The Seller shall use reasonable endeavours to approve or reject any draft Planning Application submitted pursuant to the provision of paragraph 1.1 above within 20 Working Days from the date of receipt of the draft Planning Application.
- 1.3 The Buyer shall not submit or procure the submission on its behalf of a Planning Application or any other planning application in respect of the Property during the subsistence of this Agreement unless the form and key constituent parts of the Planning Application shall have been approved by the Seller in accordance with the provisions of this Agreement.
- 1.4 If the Seller shall serve notice upon the Buyer stating that the form of the Planning Application is not approved it shall give full reasons why such approval is refused. The Buyer may amend the draft Planning Application having regard to those reasons and resubmit the draft application for approval again. Provided that on each occasion after the Seller has first refused the draft Planning Application the Seller shall use reasonable endeavours to approve or reject within 20 Working Days of any re-submission.
- 1.5 If there shall be a dispute as to whether or not the Seller is unreasonably withholding its approval to the form of the draft Planning Application, then the Buyer shall be entitled within 20 Working Days of receipt of any response from the Seller stating that the draft Planning Application is not approved to serve written notice of such dispute upon the Seller referring the matter for determination by an Independent Person in accordance with the provisions of clause Error! Reference source not found. of this Agreement.
- 1.6 If requisite or desirable to increase the likelihood of the grant of a Satisfactory Planning Permission, the Buyer shall enter into discussions or negotiations with the Local Planning Authority and the Buyer may, in consequence of such discussions or negotiations with the Local Planning Authority, if it appears requisite or desirable in order to obtain a Satisfactory Planning Permission, amend or withdraw and submit a fresh application or an additional application for Planning Permission provided that any such fresh or additional application must be in a form previously approved by the Seller (such approval not to be unreasonably withheld or delayed) and further provided that where the subject of such Planning Application may affect the operation of the Transport Undertaking and/or the Transport Assets and Property, then the approval of the Seller shall be at their absolute discretion.
- 1.7 The Seller shall:
  - (a) not knowingly do anything which may prejudice or obstruct the progress of any Planning Application made in accordance with this Agreement; and

- (b) co-operate with the Buyer and use reasonable endeavours to assist the Buyer in obtaining a Satisfactory Planning Permission.

## 2. Onerous Conditions

2.1 An Onerous Condition is one which contains an obligation or restriction of any one or more of the following kinds:

- (a) requiring the expenditure of money or other consideration on the provision of any infrastructure, affordable housing or other works or amenity inside the Property or elsewhere which are not contained in the Planning Application which infringe the tests of reasonableness of such obligations from time to time laid down by the Secretary of State whether by circular or otherwise;
- (b) limits the occupation and/or use of the whole or any material part of the Property to any designated occupier or class of occupier (whether by imposing a geographical qualification upon proposed occupiers or otherwise);
- (c) permits any use of the Property not materially in accordance with the Planning Application;
- (d) preventing development without:
  - (i) a further planning permission; or
  - (ii) the agreement or co-operation of an independent third partywhich cannot be obtained on terms, at a cost or within a time that are reasonable in the circumstances; and/or
- (e) requiring any matter, being something which is properly a reserved matter, to be submitted to the Local Planning Authority for approval within some period of less than three years after the grant of the Planning Permission.

2.2 The Buyer shall notify the Seller in writing within 10 Working Days of the receipt of Planning Permission of whether or not the Buyer regards the Planning Permission as a Satisfactory Planning Permission and include its reasons if it considers that it is not a Satisfactory Planning Permission.

2.3 A Planning Permission shall be treated as a Satisfactory Planning Permission unless the Buyer notifies the Seller within 20 Working Days of the receipt of the Planning Permission that the Buyer regards the Planning Permission as a Planning Refusal because of the presence of an Onerous Condition.

2.4 Any dispute between the Seller and the Buyer as to whether a Planning Permission is a Satisfactory Planning Permission may be referred by either the Seller or the Buyer to an Independent Person in accordance with clause **Error! Reference source not found.** of this Agreement.

3 The Buyer to keep the Seller informed

In complying with its obligations in this Schedule the Buyer shall:

- (a) keep the Seller fully informed of the progress of the Planning Application;

- (b) give reasonable prior notice to the Seller of any meetings with the Local Planning Authority so as to allow the Seller and its advisers to attend and or be represented at, such meetings and to participate at them;
- (c) notify the Seller within two Working Days of the receipt of any planning decision in relation to the Planning Application or the making of an appeal whether issued by the Local Planning Authority the Secretary of State or a court; and
- (d) promptly notify the Seller of any decision it may take as to the making, amending or resubmission of any application for Planning Permission or the making of an appeal against a Planning Refusal.

#### **4 Appeal against Planning Refusal**

- 4.1 The Buyer may, but will not be obliged to, appeal against a Planning Refusal, but if the Buyer does appeal it shall do so at its own expense.
- 4.2 The Buyer shall prosecute the appeal with all due diligence and shall conduct its part in the appeal proceedings in a good and efficient manner.
- 4.3 In prosecuting the appeal the Buyer shall keep the Seller fully and promptly informed of the progress of the appeal;
- 4.4 If a Satisfactory Planning Permission is granted but becomes the subject of Proceedings the Buyer shall be entitled at its own cost to assist the Local Planning Authority in the defence of such Proceedings and in such an event the Buyer shall keep the Seller fully informed of the progress of the Proceedings all material correspondence and documents, meetings, advice from counsel and any other material steps in the Proceedings.

#### **5 Community Infrastructure Levy**

The Buyer:

- (a) on the grant of Planning Permission, shall formally assume liability to pay by serving a written notice assuming liability to pay the same ; and
- (b) as soon as it becomes payable, shall pay the Community Infrastructure Levy arising from that Planning Permission and take all steps required by law to give effect to its assumption of liability and not withdraw or transfer that assumption of liability.

#### **6 Planning Agreements**

- 6.1 The Seller shall, if necessary to procure the grant of a Satisfactory Planning Permission, at the request and cost (including the proper costs of the Seller's legal advisers) of the Buyer enter into any Planning Agreement which is reasonably required in order to secure the grant of Planning Permission.
- 6.2 The Seller shall not be obliged to enter into any such Planning Agreement to secure the grant of a Satisfactory Planning Permission unless:
  - (a) such Planning Agreement shall not be binding (other than any obligation to pay the costs of its preparation) until the implementation of the Planning Permission;

- (b) such Planning Agreement shall not bind the Seller after the Seller has disposed of all of its estate or interest in the Property; and
  - (c) the Buyer indemnifies the Seller against all liability arising from the Planning Agreement and provides such security for performance of the Buyer's obligations under the Planning Agreement as the Seller may reasonably require.
- 6.3 The Buyer shall provide the Seller with a certified copy of any completed Planning Agreement within 20 Working Days of completion of the same.

## **Schedule 2– Encumbrances**

*Drafting Note 22*



**Drafting Note 34**

Executed as a deed by )

[Insert name of the Seller company] )

Acting by a Director in the presence of: )

Signature of Witness : .....

Name of Witness : .....

Address : .....

.....

.....

Occupation: .....

Executed as a deed by )

[ Insert name of the Buyer company] )

Acting by a Director in the presence of: )

Signature of Witness : .....

Name of Witness : .....

Address : .....

.....

.....

Occupation: .....

## **ANNEX 1**

### **Plan of the Property**