

DATED 201[]

AGREEMENT FOR LEASE CONDITIONAL ON PLANNING PERMISSION

relating to

**ROEHAMPTON PLAYING FIELDS,
DOVER HOUSE ROAD,
WANDSWORTH**

between

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF
WANDSWORTH**

and

[TENANT]



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THIS AGREEMENT is dated [] 201[]

PARTIES

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH** of Town Hall Wandsworth High Street London SW18 2PU (the '**Landlord**')
(2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Tenant**').

BACKGROUND

- (A) The Landlord owns the freehold of the property at Roehampton Playing Fields, Dover House Road, Wandsworth, London and has agreed to grant the Tenant a lease of the Property on the terms contained in this agreement.
(B) The Lease shall contain an agreement between the Landlord and the Tenant that the provisions of sections 24-28 of the Landlord and Tenant Act 1954 will be excluded in relation to the tenancy to be created by the Lease.
(C) The Tenant has agreed to undertake the Development at the Property before the grant of the Lease.

AGREED TERMS

1 INTERPRETATION

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

1.1 Definitions:

Approved Design: mean the Detailed Design Documents for the Planning Application from time to time approved by the Landlord in accordance with the provisions of this Agreement.

Approved Design Condition: means the Landlord approving the Detailed Design Documents.

Approved Design Condition Notice: date of the notice in writing issued by the Landlord in accordance with clause 3.3.

Approved Design Long Stop Date: being [6 months] from the date of this Agreement.

[Architect: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement architect for the time being by the Tenant [or the Building Contractor], with the approval of the Landlord (such approval not to be unreasonably withheld or delayed), in relation to this Agreement and the Building Contract.]

Base Rate: the higher of 5% and the base rate from time to time of National Westminster Bank PLC.

Building: a sports pavilion appropriate to service the Property and built to meet Sport England guidance.

Building Contract: a building contract for the construction of the Building on the Property and ancillary works including but not limited to replacing part of the existing boundary fencing based upon the [JCT Standard Form of Building Contract [EDITION] **OR** [SPECIFY OTHER CONTRACT]] with such amendments as may be approved by the Landlord.

Building Contractor: [NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS], or such other reputable contractor as may be appointed as a replacement building contractor for the time being by the Tenant, with the approval of the Landlord.

CDM Regulations: the Construction (Design and Management) Regulations 2015 (SI 2015/51).

Certificate of Practical Completion: the Employer's Agent's certificate or written statement issued in accordance with the Building Contract certifying that the Development is practically complete according to the terms of the Building Contract.

CIL: the Community Infrastructure Levy introduced by sections 205-225 of the Planning Act 2008 payable in respect of the Development.

Collateral Warranties: deeds of collateral warranty from the parties identified in the relevant annex to this Agreement together with any replacement party that may from time to time be appointed by the Tenant or the Building Contractor, such deeds to be in the agreed forms annexed to this Agreement with such amendments as may be approved by the Landlord (such approval not to be unreasonably withheld).

Completion Date: the date being the later of: (i) 10 Working Days after the satisfaction of all of the Conditions; and (ii) 25 Working Days after the Practical Completion Date.

Condition: any one of the Conditions.

Conditions: means all of the following conditions:

- a) the Approved Design Condition.
- b) the Planning Condition.
- c) the Development Condition.
- d) the Statutory Consent Condition.

Conditions Long Stop Date: [42 months] from the date of this Agreement.

Conditions Satisfaction Date: means [33 months] from the date of this Agreement.

Contract Rate: 4% per annum above the Base Rate.

Court Confirmatory Decision: either:

- (a) a judgment of the High Court or Court of Appeal confirming the grant of Satisfactory Planning Permission by the Determining Authority or by the Secretary of State following a Planning Appeal, and the period for an appeal against such a decision has expired without a further Third Party Application being made; or

- (b) a judgment of the Supreme Court confirming the grant of Satisfactory Planning Permission by the Determining Authority or by the Secretary of State following a Planning Appeal.

Design Sub-Contractors: all sub-contractors of the Building Contractor having a design responsibility in relation to the Works under the Building Contract.

Detailed Design Documents: the detailed drawings, specifications, layout plans, landscaping layout and scheme constraint plans, highway drainage and other infrastructure works and any other plans and specification or other documents as may be required by the Landlord (acting reasonably) comprising or describing the Development and/or other matters relating or ancillary to it (or of the forgoing also adding details to and being in accordance and consistent with any design statements, design codes, supplementary planning guidance, the Planning Permission and/or Planning Agreements together with such agreements as may from time to time be approved by the Landlord (such approval not to be unreasonably withheld or delayed).

Determining Authority: the local planning authority or other appropriate determining body or person.

Development: the Tendered Scheme for the development of the Property as further set out in Schedule 2 in accordance with the Planning Permission to be obtained. [*To include construction of the Building and replacement of part of the existing 1.8m high boundary and anti-ball fence with a 3.6m high anti ball fence along the boundary shared with the Lodge adjacent to the Coppice Drive entrance to the playing fields.*]

Development Condition Satisfaction Date: means the date being [15 months from the Unconditional Date.]

Development Condition: means the Tenant completing the development of the Property in accordance with the Satisfactory Planning Permission and the Works Completion Date occurring on or before the Conditions Satisfaction Date.

EIR: the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Employer's Agent: means [] or such other reputable and suitably qualified person appointed by the Tenant to supervise the Works.

Event of Default: any of the events set out in clause 32.1.

Exempt Information: has the meaning given under section 84 of FOIA.

Finally Determined: where a Third Party Application has been made, the first of the following events to occur:

- (a) permission to bring a Third Party Application (where required) has not been granted and the period within which an application for permission to appeal against such refusal has expired without a further Third Party Application being made;
- (b) all Third Party Applications have been withdrawn;
- (c) a Court Confirmatory Decision has been issued; or

- (d) a Quashing Order has been issued and the Determining Authority has issued a further Planning Permission which is a Satisfactory Planning Permission and the Review Period in respect of that Satisfactory Planning Permission has expired.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Information: has the meaning given under section 84 of FOIA.

Landlord's Conveyancer: Amrita Chuhan in-house legal or any other conveyancer whose details may be notified in writing from time to time by the Landlord to the Tenant.

Landlord's Representative: means a member of the Landlord's valuation asset management service or otherwise nominated and informed in writing by the Landlord to the Tenant.

Landlord's Unacceptable Condition: a Planning Requirement which in the Landlord's reasonable opinion]:

- (a) will or is likely to increase materially the cost of carrying out the Development; or
- (b) [ANY OTHER CONDITIONS].

Lease: a lease in the agreed form annexed to this Agreement subject only to any minor amendments necessitated by any variations made to the Detailed Design Documents under clause 18.5.

LTA 1954: Landlord and Tenant Act 1954.

[M&E Engineer: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement mechanical and electrical engineer for the time being by the Tenant [or the Building Contractor], with the approval of the Landlord (such approval not to be unreasonably withheld or delayed), in relation to this Agreement and the Building Contract.]

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works.

Notice of Completion of Making Good: the Employer's Agent's certificate or written statement issued in accordance with the Building Contract certifying that any defects, shrinkages or faults appearing in the Works during the Rectification Period and for which the Building Contractor was responsible under the Building Contract have been made good.

Operations Agreement: the operations agreement to be completed by the parties on Completion and in substantially the same form as the draft at Schedule 4.

Part 1 Conditions: part 1 of the Standard Commercial Property Conditions (Second Edition).

Part 2 Conditions: part 2 of the Standard Commercial Property Conditions (Second Edition).

Planning Agreement: an agreement or unilateral undertaking under section 106 of the Town and Country Planning Act 1990 required to obtain Planning Permission.

Planning Appeal: an appeal by the Tenant against:

- (a) the refusal of the Determining Authority to grant Planning Permission;
- (b) the non-determination of the Planning Application; or
- (c) any one or more conditions attached to the Planning Permission.

Planning Appeal Decision: the written decision of the Secretary of State on the Planning Appeal.

Planning Application: an application for Planning Permission in the joint names of the Tenant and the Landlord approved by the Landlord under clause 4 of this Agreement.

Planning Condition: means the Unconditional Date occurring on or before the Planning Long Stop Date.

Planning Condition Long Stop Date: means 18 months from the date of satisfaction of the Approved Design.

Planning Permission: detailed planning permission for the Development in accordance with the Approved Design.

Planning Requirement: any of the following:

- (a) a condition attached to a Planning Permission;
- (b) a provision of a Planning Agreement; or
- (c) a requirement to pay CIL.

Practical Completion Date: the date stated in the Certificate of Practical Completion.

[Principal Designer: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement principal designer for the time being by the Tenant with the approval of the Landlord (such approval not to be unreasonably withheld or delayed) for the purposes of this Agreement and the CDM Regulations.]

Professional Team: [the Architect] [, the Principal Designer] [, the Employer's Agent] [, the M&E Engineer] [, the Quantity Surveyor] [, the Structural Engineer] and any other specialist advisors or sub-consultants that may, with the approval of the Landlord (not to be unreasonably withheld or delayed), be appointed for the time being in connection with the design and/or management of the Works.

Property: the property at Roehampton Playing Fields, Dover House Road, Wandsworth as more particularly defined in the Lease.

[Quantity Surveyor: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement quantity surveyor for the time being by the Tenant [or Building Contractor], with the approval of the Landlord (such approval not to be unreasonably withheld or delayed),] in relation to this Agreement and the Building Contract.]

Rectification Period: the rectification period or defects liability period for the making good of defects, shrinkages or other faults in the Works under the Building Contract.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

Requisite Consents: building regulation approvals, by-law approvals, and any other consents, licences and authorisations required from any competent authority, statutory undertaker or person for the carrying out of the Works.

Rent: the [initial] rent of £[FIGURE] per annum (subject to review) exclusive of VAT.

Retained Facilities: the retention of Winter Pitches and Summer Pitches.

Review Period: either:

- (a) six weeks and ten Working Days following the date of issue of a Satisfactory Planning Permission by the Determining Authority; or
- (b) six weeks following the date of issue of a Planning Appeal Decision.

Satisfactory Planning Permission: a Planning Permission and Planning Agreement (if any) free from:

- (a) any Landlord's Unacceptable Condition (unless any Landlord's Unacceptable Condition is waived by the Landlord in accordance with this Agreement); and
- (b) any Tenant's Unacceptable Condition (unless any Tenant's Unacceptable Condition is waived by the Tenant in accordance with this Agreement).

Secretary of State: the Secretary of State for Communities and Local Government or other appropriate Minister including (where relevant) any inspector appointed to determine any Planning Appeal.

Statutory Consent Condition: means (if applicable): the consent of the Secretary of State in compliance with Section 77 of the School Standards and Framework Act 1998 and any other relevant statutory consent.

[Structural Engineer: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement structural engineer for the time being by the Tenant [or the Building Contractor], with the approval of the Landlord (such approval not to be unreasonably withheld or delayed), in relation to this Agreement and the Building Contract.]

Summer Pitches: 1 grass cricket square incorporating an artificial wicket, 3 rounders' pitches, 1 grass athletic running track including a sprinting straight, 5 tarmac tennis courts / 4 netball courts and athletic fields facilities (long jump, high jump and shot put).

Tenant's Conveyancer: [NAME, ADDRESS, FAX NUMBER, REFERENCE] or any other conveyancer whose details may be notified in writing from time to time by the Tenant to the Landlord.

Tenant's Surveyor: [NAME, ADDRESS, FAX NUMBER, REFERENCE] [or any other surveyor whose details may be confirmed in writing from time to time by the Tenant to the Landlord].

Tenant's Unacceptable Condition: a Planning Requirement which in the Tenant's reasonable opinion:

- (a) will limit the occupation or use of the whole or any part of the Development to any designated person or occupier.
- (b) will cause the Planning Permission (once implemented) to be for a limited period only.
- (c) will increase materially the cost of carrying out the Development.

Tendered Scheme: the scheme submitted and approved by the Landlord as part of the procurement process for the development of the Property as further set out in Schedule 2.

Third Party: a person other than:

- (a) the Landlord;
- (b) the Tenant; or
- (c) anyone acting on the Landlord's or Tenant's behalf.

Third Party Application: either of the following:

- (d) a Third Party's application for judicial review of a decision by the Determining Authority to grant Satisfactory Planning Permission; or
- (e) a Third Party's application under section 288 of the Town and Country Planning Act 1990 in respect of a decision by the Secretary of State to grant Satisfactory Planning Permission following a Planning Appeal;

including an application to a higher court appealing against a judgment in respect of an application made under (a) or (b) above, given in a lower court.

Unacceptable Condition: a Landlord's Unacceptable Condition or a Tenant's Unacceptable Condition.

Unconditional Date: is the latest of the following dates:

- (a) the date on which it is established under this contract that a Satisfactory Planning Permission has been granted;
- (b) the next Working Day after the expiry of the Review Period (provided that no Third Party Application is commenced by such date); and
- (c) in the event that any Third Party Application is commenced, the next Working Day after the date on which:
 - (i) the Third Party Application is Finally Determined; and
 - (ii) a Satisfactory Planning Permission is finally granted or upheld whether after a reference back to the Determining Authority;

so that the Satisfactory Planning Permission is no longer open to challenge in any way by the issue of further Third Party Applications or (if earlier) the date on which the Planning Condition is waived in accordance with clause 11.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

Winter Pitches: 2 full-size football pitches, 1 9v9 junior football pitch, 4 7v7 junior football pitches (2 of which are overlaid with a Lacrosse pitch) and 5 tarmacadam tennis courts / 4 netball courts).

Works: means all the works required to carry out and complete the Development.

Works Completion Date: means the date that all Works are completed pursuant to the Building Contract and the Development can be lawfully used and occupied for its intended purposes and Certificates of Practical Completion can be issued.

Working Day: has the same meaning given to the term "working day" in the Part 1 Conditions.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 (Subject to clause 26) **Landlord** includes the Landlord's successors in title and any other person who is or becomes entitled to the reversion (whether immediate or not) expectant on the term to be created by the Lease.
- 1.9 **Tenant** does not include the Tenant's successors in title.
- 1.10 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.11 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.12 A reference to **writing** or **written** includes fax but not email.

- 1.13 References to a document in **agreed form** are to that document in the form agreed by the parties.
- 1.14 A reference to **this Agreement** or to any other agreement or document referred to in this agreement is a reference to this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.14.1 references to "this Agreement" include any Schedules;
- 1.14.2 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;
- 1.14.3 the words "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;
- 1.15 Unless the context otherwise requires, references to clauses, Schedules and Annexes are to the clauses, Schedules and Annexes of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.16 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.17 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.18 Unless this Agreement otherwise expressly provides, a reference to the **Property** is to the whole and any part of them.
- 1.19 Any reference to the Landlord's consent or approval being required is to a consent or approval in writing which must be obtained before the relevant act is taken or event occurs.

2 CONDITIONS PRECEDENT

- 2.1 The grant of the Lease is conditional upon satisfaction of each of the relevant Conditions by the respective Conditions Long Stop Date as provided for in this Agreement.
- 2.2 The Tenant shall use reasonable endeavours to procure the satisfaction of the Conditions in accordance with but subject to the terms of this Agreement and in any event no later than the Conditions Satisfaction Date.

- 2.3 If all of the Conditions shall be satisfied then this Agreement shall become unconditional unless it shall have been first determined in accordance with the provisions of this Agreement.
- 2.4 Save for Clause 16, Clauses 18 to 26 and Clauses 34 to 35 which shall not come into effect until the Conditions have been satisfied, all provisions of this Agreement shall be of immediate effect.
- 2.5 If the Conditions shall not have been satisfied by the Conditions Long Stop Date (as extended) or the Unconditional Date has not occurred by the Planning Condition Long Stop Date (as extended) then either the Landlord or the Tenant may at any time thereafter (but before all of the Conditions have been satisfied) terminate this Agreement by giving not less than 10 Working Days' notice in writing to the other party and on the expiry of such notice this Agreement shall cease to have effect and the parties shall be released from their respective obligations hereunder but without prejudice to any right of action available to either the Landlord or the Tenant in respect of any breach by the other of its obligations under this Agreement.

3 PERFORMANCE BOND

[A performance bond may be required if the Council commits an investment]

3 APPROVAL OF DESIGN CONDITION

- 3.1 The Tenant shall within [20 Working Days] after the date of this Agreement submit to the Landlord its proposed Detailed Design Documents for approval by the Landlord and shall in any event use reasonable endeavours to agree the same with the Landlord by no later than [40 Working Days] after the date of this Agreement.
- 3.2 The Landlord will not unreasonably withhold or delay its approval provided that such Detailed Design Documents are consistent and substantially in accordance with the Tendered Scheme.
- 3.3 The Approved Design Condition shall be satisfied when the Landlord is satisfied and approves (acting reasonably) the Detailed Design Documents in writing.

4 PLANNING CONDITION

- 4.1 Within [6 months] after the date of this Agreement, the Tenant shall submit the draft Planning Application to the Landlord for approval.

- 4.2 The Tenant shall use all reasonable endeavours to achieve the Unconditional Date by the Planning Long Stop Date and the Planning Condition shall be deemed satisfied when the Unconditional Date is achieved on or before the Planning Long Stop Date.
- 4.3 Within 25 Working Days after the Landlord has received the draft Planning Application, the Landlord shall notify the Tenant in writing whether the Landlord approves the draft Planning Application.
- 4.4 If the Landlord does not approve the Planning Application, the Tenant shall submit a revised draft Planning Application to the Landlord for approval. The procedure set out in clause 5.1 shall apply to any revised draft Planning Application as if it were the first draft Planning Application. The Tenant shall continue to submit revised draft Planning Applications to the Landlord for approval until a draft Planning Application is approved by the Landlord.
- 4.5 The Landlord shall not unreasonably withhold or delay giving approval to any draft Planning Application submitted to it by the Tenant.
- 4.6 The Tenant shall as soon as reasonably practicable after the Landlord has approved in writing the draft Planning Application, submit the Planning Application to the Determining Authority and shall use all reasonable endeavours to obtain the grant of a Satisfactory Planning Permission as soon as reasonably possible and in any event before the Planning Condition (as extended in accordance with clause 13) Long Stop Date.
- 4.7 If it appears necessary to obtain a Satisfactory Planning Permission, the Tenant may amend the Planning Application or withdraw and submit in substitution a revised Planning Application. Any such amendment, withdrawal and substitution shall be approved in writing by the Landlord (such approval not to be unreasonably withheld or delayed).
- 4.8 The Tenant may agree to any extension of the statutory period for determination of the Planning Application without the prior written approval of the Landlord.

5 PLANNING APPEAL

- 5.1 The Tenant may, but shall not be obliged to, make a Planning Appeal.
- 5.2 If the Tenant does lodge a Planning Appeal, the Tenant shall pursue the Planning Appeal with all due diligence.

6 THIRD PARTY APPLICATIONS

If a Third Party Application is made, the Tenant shall within 5 Working Days after receiving it, give the Landlord a copy of any judgment issued by the court in relation to the Third Party Application proceedings.

7 REPORTING AND MEETINGS

The Tenant will keep the Landlord regularly informed as to progress of the Planning Application, Planning Agreement, Planning Appeal or any Third Party Application and will:

- a) supply the Landlord with copies of all correspondence to or from the Tenant or to or from the Tenant's Conveyancer in connection with the Planning Application, Planning Agreement, Planning Appeal or any Third Party Application (including accompanying plans and other documents, but excluding correspondence exclusively between the Tenant and the Tenant's Conveyancer or other legal representative) within 5 Working Days after either:
 - i. the date of any correspondence sent by the Tenant or the Tenant's Conveyancer; or
 - ii. the date of receipt of any correspondence by the Tenant or the Tenant's Conveyancer.
- b) give the Landlord at least 5 Working Days' notice of any meetings to be held in connection with the Determining Authority, highway authority, service undertakers, local residents in connection with the Planning Application, Planning Agreement, Planning Appeal or any Third Party Application and will give the Landlord and the Landlord's representatives, agents, counsel and the Landlord's Conveyancer the opportunity to attend and a copy of any minutes.

8 NOTIFICATION OF PLANNING DECISIONS

- 8.1 The Tenant shall notify the Landlord within 5 Working Days of the receipt of any planning decision resulting from the Planning Application (whether original, amended or resubmitted) or the making of a Planning Appeal.
- 8.2 The Landlord shall promptly inform the Tenant of any decision it may take in relation to the making, amending or resubmission of a Planning Application or the making of a Planning Appeal.

9. APPROVAL OF PLANNING PERMISSION AND CIL

- 9.1 At the same time as the Tenant notifies the Landlord of the grant of a Planning Permission under clause 9, the Tenant shall notify the Landlord in writing whether or not a condition imposed on the Planning Permission or a requirement to pay CIL is a Tenant's Unacceptable Condition. The Tenant shall give reasons if it considers that such a condition or requirement is a Tenant's Unacceptable Condition.
- 9.2 Within 20 Working Days of receiving notice from the Tenant under clause 8 of the grant of Planning Permission, the Landlord shall notify the Tenant in writing whether or not a condition imposed on the Planning Permission or requirement to pay CIL is a Landlord's Unacceptable Condition. The Landlord shall give reasons if it considers that such a condition or requirement is a Landlord's Unacceptable Condition.

10. PLANNING AGREEMENTS

- 10.1 If a Planning Agreement is required, the Tenant shall (in consultation with the Landlord (who shall act reasonably and promptly) use all reasonable endeavours to negotiate and agree the terms of the Planning Agreement free from any Unacceptable Conditions as quickly as reasonably possible.
- 10.2 The Tenant shall keep the Landlord regularly informed as to the progress of the Planning Agreement.
- 10.3 Within 5 Working Days of the final form of the Planning Agreement being agreed, the Tenant shall send a copy of it to the Landlord.
- 10.4 At the same time as the Tenant sends the final form of the Planning Agreement to the Landlord in accordance with clause 10.3, the Tenant shall notify the Landlord in writing whether or not any provision of the final form of any Planning Agreement (if completed in that form) would be a Tenant's Unacceptable Condition. The Tenant shall give reasons if it considers that the final form of any Planning Agreement (if completed in that form) would be subject to any Tenant's Unacceptable Condition.
- 10.5 Within 20 Working Days of receiving the final form of any Planning Agreement under clause 10.3, the Landlord shall notify the Tenant in writing whether or not any provision of the final form of any Planning Agreement (if completed in that form) would be a Landlord's Unacceptable Condition. The Landlord shall give reasons if it considers that the final form of any Planning Agreement (if completed in that form) would be subject to a Landlord's Unacceptable Condition.
- 10.6 The Tenant shall keep the Landlord indemnified against all liabilities, proceedings, costs, claims, demands and expenses incurred or arising as a result of a Planning Agreement.
- 10.7 The Tenant shall keep the Landlord indemnified against all liabilities, proceedings, costs, claims, demands and expenses incurred or arising out of CIL.
- 10.8 If requested by the Tenant, the Landlord shall enter into any Planning Agreement provided that:
- a) any liabilities of the Landlord in the Planning Agreement:
 - i. are expressed to be dependent on the implementation of the Planning Permission; and
 - ii. shall cease on disposal of the Landlord's interest in the Property; and
 - b) the Planning Agreement does not include any Landlord's Unacceptable Conditions.

11. RIGHT TO WAIVE UNACCEPTABLE CONDITIONS

- 11.1 The Landlord may waive its right to treat a Planning Requirement as a Landlord's Unacceptable Condition by giving written notice to the Tenant on or before any of the following dates:
- a) the date which is 25 Working Days after the date on which the Landlord serves a notice under clause 9.2 that the condition or requirement is a Landlord's Unacceptable Condition;
 - b) the date which is 25 Working Days after the date on which the Landlord serves a notice under clause 10.4 that the provision of the final form of a Planning Agreement (if completed in that form) would be a Landlord's Unacceptable Condition; and
 - c) that date which is 25 Working Days after the date on which it receives the Independent Surveyor's written decision pursuant to clause 12.5(b) that a condition to the Planning Permission or provision of the Planning Agreement is a Tenant's Unacceptable Condition.
- 11.2 The Tenant may waive its right to treat any Planning Requirement as a Tenant's Unacceptable Condition by giving written notice to the Landlord on or before any of the following dates:
- a) the date which is 10 Working Days after the date on which the Tenant serves a notice under clause 9.1 that the condition or requirement is a Tenant's Unacceptable Condition;
 - b) the date which is 10 Working Days after the date on which the Tenant serves a notice under clause 10.5 that the provision of the final form of a Planning Agreement (if completed in that form) would be a Tenant's Unacceptable Condition; and
 - c) that date which is 10 Working Days after the date on which it receives the Independent Surveyor's written decision pursuant to clause 12.5(b) that the Planning Requirement is a Tenant's Unacceptable Condition.

12. UNACCEPTABLE CONDITION DISPUTES

- 12.1 In the event of any dispute arising between the Landlord and the Tenant about whether or not a Planning Requirement is an Unacceptable Condition, the Landlord and the Tenant shall use all reasonable endeavours to seek to settle the dispute as quickly as possible. If the dispute has not been settled within a period of 20 working days of the dispute arising then it shall be referred to an Independent Surveyor to determine.
- 12.2 An Independent Surveyor shall be appointed by agreement between the Landlord and the Tenant or, if the Landlord and Tenant are unable to agree an appointment, either of them may request the appointment to be made by the President of the Royal Institution of Chartered Surveyors.

- 12.3 An Independent Surveyor must be a Fellow of the RICS, with at least ten years' post qualification experience including experience in development of the same type as the Development.
- 12.4 If an Independent Surveyor appointed dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause, then:
- c) either the Landlord or the Tenant may apply to the President to discharge the appointed Independent Surveyor and to appoint a replacement Independent Surveyor; and
 - d) this clause shall apply in relation to the replacement Independent Surveyor as if the first appointed Independent Surveyor.
- 12.5 The Independent Surveyor shall act as an expert and shall be required to:
- a) decide whether or not a condition to the Planning Permission or provision of the Planning Agreement or requirement to pay CIL is an Unacceptable Condition; and
 - b) prepare a written note of the decision and give a copy of the decision to both the Landlord and the Tenant within 15 working days of the date of the Independent Surveyor's appointment.
- 12.6 The Landlord and the Tenant shall each be entitled to make submissions to the Independent Surveyor and shall provide (or procure that others provide) the Independent Surveyor with the assistance and documents that the Independent Surveyor reasonably requires to reach a decision.
- 12.7 The Independent Surveyor's written decision shall be final and binding in the absence of manifest error or fraud.
- 12.8 The costs of the Independent Surveyor shall be borne equally by the Landlord and the Tenant or in such different proportion as the Independent Surveyor shall direct.

13. PLANNING CONDITION LONG STOP DATE

- 13.1 Subject to clause 13.3, the Planning Condition Long Stop Date is 18 months from date of satisfaction of the Approved Design Condition unless on that date:
- a) a Planning Application has been submitted to the Determining Authority but has not been determined;
 - b) a Planning Appeal has been lodged but has not been determined;
 - c) a Planning Permission has been granted but it is not yet established under this contract whether or not the Planning Permission is a Satisfactory Planning Permission;
 - d) a Satisfactory Planning Permission has been granted but the Review Period has not expired; or

- e) a Satisfactory Planning Permission has been granted but a Third Party Application has been made which has not been Finally Determined;

in which case the Planning Condition Long Stop Date shall be extended as set out in clause 13.2.

13.2 If any of the circumstances set out in clause 13.1(a) to clause 13.1(e) (inclusive) apply, the Planning Condition Long Stop Date shall be extended to:

- a) (where clause 13.1(a) applies) the date which is 10 Working Days after the latest of the following dates:
 - i. the date on which the Planning Application is refused by the Determining Authority (including a deemed refusal under section 78(2) of the Town and Country Planning Act 1990);
 - ii. if a Planning Permission is granted pursuant to the Planning Application, the date on which it is established under this Agreement that the Planning Permission is not a Satisfactory Planning Permission;
 - iii. if a Planning Permission is granted pursuant to the Planning Application and it is established under this Agreement that that Planning Permission is a Satisfactory Planning Permission, the date on which the Review Period expires; and
 - iv. if a Planning Permission is granted pursuant to the Planning Application and it is established under this Agreement that that Planning Permission is a Satisfactory Planning Permission and a Third Party Application is made within the Review Period, the date on which the Third Party Application is Finally Determined.
- b) (where clause 13.1(b) applies) the date which is 10 Working Days after the latest of the following dates:
 - i. the date on which the Planning Appeal is dismissed;
 - ii. if a Planning Permission is granted pursuant to the Planning Appeal, the date on which it is established under this Agreement that the Planning Permission is not a Satisfactory Planning Permission;
 - iii. if a Planning Permission is granted pursuant to the Planning Appeal and it is established under this Agreement that that Planning Permission is a Satisfactory Planning Permission, the date on which the Review Period in respect of the Planning Appeal Decision expires; and
 - iv. if a Planning Permission is granted pursuant to the Planning Appeal and it is established under this Agreement that that Planning Permission is a Satisfactory Planning Permission, the date on which the Third Party Application is Finally Determined.
- c) (where clause 13.1(c) applies) the date which is 10 Working Days after the latest of the following dates:
 - i. the date on which it is established under this Agreement that the Planning Permission is not a Satisfactory Planning Permission;

- ii. if it is established under this Agreement that the Planning Permission is a Satisfactory Planning Permission, the date on which the Review Period expires;
 - iii. if it is established under this Agreement that the Planning Permission is a Satisfactory Planning Permission and a Third Party Application is made within the Review Period, the date on which the Third Party Application is Finally Determined.
- d) (where clause 13.1(d) or clause 13.1(e) applies) the date which is 10 Working Days after the latest of the following dates:
- i. the date on which the Review Period expires; and
 - ii. if a Third Party Application is made within the Review Period, the date on which the Third Party Application is Finally Determined.

13.3 Notwithstanding the provisions of clause 13.1 and clause 13.2, the Planning Long Stop Date shall in no circumstances be later than [24 months] from the date of the Approved Design Condition Notice and the Conditions Satisfaction Date will be extended by such period as the Planning Long Stop Date is extended.

13.4 If the Unconditional Date has not occurred by the Planning Condition Long Stop Date either the Landlord or the Tenant may at any time after the Planning Condition Long Stop Date (but only before the Unconditional Date) give written notice to the other to terminate this Agreement in Clause 2.5.

14. **DEVELOPMENT CONDITION**

14.1 The Tenant is required to carry out the Development as detailed in Schedule 2.

15. **STATUTORY CONSENT CONDITION**

15.1 The Landlord shall use all reasonable endeavours to satisfy the Statutory Consent Condition on or before the Conditions Satisfaction Date.

15.2 The Statutory Consent Condition shall be deemed satisfied on the date a copy of the relevant consent decision is sent to the Tenant.

16. **AGREEMENT FOR LEASE**

16.1 In consideration of the Tenant's obligations under this Agreement, the Landlord shall grant to the Tenant and the Tenant shall accept from the Landlord the Lease on the terms set out in this Agreement. No purchase price, premium, or deposit is payable.

16.2 The Tenant cannot require the Landlord to grant the Lease to any person other than the Tenant (here meaning [Company Name], incorporated and registered in England and Wales with company number [], only).

16.3 The Tenant cannot assign, sublet, charge, or otherwise share or part with the benefit of this Agreement whether in relation to the whole or any part of the Property.

16.4 Conditions 1.5 and 2.2 do not apply to this Agreement.

17. EXCLUSION OF SECURITY OF TENURE

17.1 The parties confirm that:

- a) the Landlord served a notice on the Tenant, as required by section 38A(3)(a) of the LTA 1954 and which applies to the tenancy to be created by the Lease, before this Agreement was entered into (a certified copy of which notice is annexed to this Agreement); and
- b) [NAME OF DECLARANT], who was duly authorised by the Tenant to do so, made a statutory declaration dated [] in accordance with the requirements of section 38A(3)(b) of the LTA 1954 (a certified copy of which statutory declaration is annexed to this Agreement).

18. WORKS

18.1 The Tenant shall apply for and use all reasonable endeavours to obtain the Requisite Consents in respect of the Works.

18.2 The Tenant shall use all reasonable endeavours to procure that the Practical Completion Date occurs by the Works Completion Date which shall be extended commensurate with any extensions of time:

- a) allowed by the Employer's Agent under the terms of the Building Contract; or
- b) certified by the Employer's Agent as being fair and reasonable, having regard to the delay in question, where completion of the Landlord's Works is delayed due to an event or cause that is beyond the Landlord's reasonable control.

18.3 The Tenant shall use all reasonable endeavours to procure that the Works are carried out:

- a) with due diligence and in a good and workmanlike manner;
- b) using only good quality materials and well-maintained plant and equipment;
- c) in accordance with this agreement, the Satisfactory Planning Permission, the Detailed Design Documents and the Requisite Consents in respect of the Works;
- d) in accordance with all statutory or other legal requirements and the recommendations or requirements of the local authority or statutory undertakings;
- e) in compliance with all relevant British Standards, codes of practices and good building practice; and
- f) by selecting and using materials so as to avoid known hazards to the health and safety of any person and to ensure the long term integrity of the Property.

18.4 The Tenant shall:

- a) co-ordinate or procure co-ordination of the Professional Team;
- b) keep the Landlord's Representative regularly informed as to progress of the Works;
- c) without prejudice to clause 18.2, promptly inform the Landlord's Representative of any material problems or delays in the performance of the Building Contract together with the Tenant's recommendations for overcoming and/or mitigating them; and
- d) give at least [10] working days' notice to the Landlord's Representative of all meetings to be held in connection with the progress of the Works and permit the Landlord's Representative to attend and to make representations.

18.5 The Tenant shall not vary, alter, add to or remove anything from the Detailed Design Documents without the Landlord's consent (such consent not to be unreasonably withheld or delayed).

19. **LIQUIDATED DAMAGES**

19.1 If the Practical Completion Date has not occurred on or before the Works Completion Date, the Tenant shall pay the Landlord liquidated damages at the rate of £[AMOUNT OF RENT] for every week (or pro rata for part of a week) from the Works Completion Date up to and including the Practical Completion Date.

19.2 Any liquidated damages payable under clause 19.1 shall be payable weekly in arrears and shall be due for payment within [10] working days of demand, such demand to take the form of an invoice from the Landlord to the Tenant specifying the sum that the Landlord considers to be due on the payment due date and the basis on which that sum is calculated, accompanied by any relevant supporting documents.

20. **INSPECTION**

20.1 The Landlord and the Landlord's Representative may enter the Property, at any time after the commencement of the Works, upon reasonable notice to the Building Contractor, to inspect progress of the Works and the materials used. In entering the Property, the Landlord and the Landlord's Representative shall not obstruct progress of the Works and shall:

- a) not give any instructions or make any representations directly to the Building Contractor or Professional Team; and
- b) comply with the Tenant and Building Contractor's health and safety and site rules.

20.2 The Tenant shall procure that any instructions or representations made to the Tenant by the Landlord and the Landlord's Representative that comply with the terms of this Agreement are promptly dealt with to the Landlord's reasonable satisfaction.

21. PROFESSIONAL TEAM

- 21.1 The Tenant confirms it has taken (or in the case of a substitute member of the Professional Team shall take) all reasonable steps to be reasonably satisfied that each member of the Professional Team is suitable and competent having regard to its responsibilities in relation to the Development and the Building Contract.
- 21.2 The Tenant shall submit details of the proposed terms of the Professional Appointment of each member of the Professional Team to the Landlord for approval (such approval not to be unreasonably withheld or delayed).
- 21.3 Subject to clause 21.1 and clause 21.2, the Tenant shall as soon as reasonably practicable after the Unconditional Date appoint the members of the Professional Team and shall supply certified copies of each Professional Appointment to the Landlord.
- 21.4 The Tenant shall procure that the terms of the Professional Appointment of the Employer's Agent requires it to act impartially when exercising its power to issue statements, certificates and award extensions of time under the Building Contract and under this Agreement.
- 21.5 The Tenant shall use all reasonable endeavours to procure that each member of the Professional Team performs and observes the terms of its Professional Appointment. The Tenant agrees not to vary, waive or release any member of the Professional Team's Professional Appointment without the Landlord's consent (such consent not to be unreasonably withheld or delayed).
- 21.6 The Tenant shall not do or omit to do anything that would entitle any member of the Professional Team to regard its employment under its Professional Appointment as terminated. The Tenant shall immediately inform the Tenant if the Tenant believes that any member of the Professional Team may be intending to rescind its Professional Appointment.
- 21.7 The Tenant shall not terminate the employment of any member of the Professional Team under its Professional Appointment or treat such Professional Appointment as repudiated without first informing the Landlord of its intention to do so and discussing with the Landlord the appointment of a suitable substitute approved by the Landlord (such approval not to be unreasonably withheld or delayed).

22. BUILDING CONTRACT

- 22.1 The Tenant confirms it has taken (and in the case of a substitute Building Contractor shall take), all reasonable steps to be reasonably satisfied that the Building Contractor is suitable and competent having regard to its responsibilities in relation to the Development and the Building Contract.

- 22.2 The Tenant shall once such of the Requisite Consents have been obtained so as to enable the Works to commence enter into the Building Contract with the Building Contractor, appoint the Building Contractor as the principal contractor for the purposes of the CDM Regulations, and supply a certified copy of the Building Contract to the Landlord.
- 22.3 The Tenant shall procure that the Building Contractor and each Design Sub-Contractor grants to the Landlord an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by or on behalf of the Building Contractor or the relevant Design Sub-Contractor for any purpose relating to the Works. Such licence shall:
- a) carry the right to grant sub-licences and shall be transferable to third parties without the consent of the Building Contractor or the relevant Design Sub-Contractor; and
 - b) provide that the Building Contractor or the relevant Design Sub-Contractor has no liability for use of the Material for any purpose other than that for which it was prepared or provided.
- 22.4 The Tenant shall use all reasonable endeavours to procure that the Building Contractor performs and observes the terms of the Building Contract. The Tenant agrees not to vary, waive or release any of the terms of the Building Contract without the Landlord's consent (such consent not to be unreasonably withheld or delayed).
- 22.5 The Tenant shall not do or omit to do anything that would entitle the Building Contractor to regard the Building Contract as terminated by breach. The Tenant shall immediately inform the Landlord if the Tenant believes the Building Contractor may be intending to rescind the Building Contract.
- 22.6 The Tenant shall not terminate the employment of the Building Contractor or treat the Building Contract as repudiated without first informing the Landlord of its intention to do so and discussing with the Landlord the appointment of a suitable substitute contractor approved by the Landlord (such approval not to be unreasonably withheld or delayed).

23. PRACTICAL COMPLETION AND RECTIFICATION PERIOD

- 23.1 The Tenant shall use all reasonable endeavours to procure that the Employer's Agent:
- a) gives at least 5 working days' notice to the Landlord of the Employer's Agent's intention to inspect the Works for the purpose of issuing the Certificate of Practical Completion and allows the Landlord and the Landlord's Representative to attend the inspection and make representations to the Tenant either during the inspection or in writing immediately thereafter; and
 - b) without fettering the discretion of the Employer's Agent in carrying out duties under the Building Contract, takes proper account of any representations that are made in accordance with clause 23.1(a) when considering whether to issue the Certificate of Practical Completion in accordance with the terms of the Building Contract.

- 23.2 The Tenant shall use all reasonable endeavours to procure that the Employer's Agent gives a copy of the Certificate of Practical Completion to the Landlord as soon as practicable after its issue together with a copy of any accompanying snagging list.
- 23.3 The issue of the Certificate of Practical Completion shall be conclusive evidence binding on the parties that the Works have been completed in accordance with the terms of this agreement, subject to the Tenant's obligations during the Rectification Period.
- 23.4 Without prejudice to the generality of clause 22.4, the Tenant shall use all reasonable endeavours to enforce the Building Contractor's obligations under the Building Contract to remedy any defects, shrinkages or faults appearing in the Works during the Rectification Period.
- 23.5 During the Rectification Period, the Landlord or the Landlord's Representative may make written representations to the Tenant identifying defects, shrinkages or faults in the Works which the Building Contractor is obliged to remedy in accordance with the Building Contract. Without fettering the discretion of the Employer's Agent in carrying out duties under the Building Contract, the Tenant shall use reasonable endeavours to ensure that the Employer's Agent takes proper account of any such representations.
- 23.6 The Tenant shall use all reasonable endeavours to procure that the Employer's Agent:
- a) gives at least 5 working days' notice to the Landlord of the Employer's Agent's intention to inspect the Works for the purpose of issuing the Notice of Completion of Making Good and allows the Landlord and the Landlord's Representative to attend the inspection and make representations to the Tenant either during the inspection or in writing immediately thereafter; and
 - b) without fettering the discretion of the Employer's Agent in carrying out duties under the Building Contract, takes proper account of any representations that are made in accordance with clause 23.6(a) when considering whether to issue the Notice of Completion of Making Good in accordance with the terms of the Building Contract.
- 23.7 The Tenant shall use all reasonable endeavours to procure that the Employer's Agent gives a copy of the Notice of Completion of Making Good to the Landlord as soon as practicable after its issue.
- 23.8 The Tenant shall use all reasonable endeavours to procure the grant of the Collateral Warranties in favour of the Tenant as soon as reasonably practicable after the Unconditional Date and in any event on or before the date on which the Lease is completed.

24. **INSURANCE**

- 24.1 From the date of this Agreement until the Practical Completion Date, the Tenant shall insure or shall procure that the Building Contractor insures, the Works, the Property and all plant

and unfixed materials and goods delivered to or placed on or adjacent to the Property and intended for incorporation in the Works against all perils resulting in loss or damage thereto on customary contractors' all risks terms:

- a) in the joint names of the Tenant and the Building Contractor; and
- b) for not less than their full reinstatement value (taking into account the progress of the Works) together with all site clearance and professional fees incurred in connection with such reinstatement[.] [;]

[and if insurance is taken out in compliance with clause 6.7 and insurance options A, B or C of Schedule 3 to the Building Contract the Landlord shall be deemed to have complied with this obligation.]

- 24.2 In the event of any loss or damage occurring before the Practical Completion Date to the Works, the Property, plant, materials or goods so insured, the Tenant shall procure that their reinstatement or replacement is carried out diligently and with all reasonable speed. The Tenant shall apply the proceeds of the insurance towards such reinstatement or replacement and shall make good any deficiency out of the Tenant's own funds.
- 24.3 The Tenant shall maintain, or procure that the Building Contractor maintains, insurance in respect of injury to or death of any person or loss or damage to any real or personal property for an indemnity of not less than £15,000,000 for any one occurrence or series of occurrences arising out of the same event. Such insurance shall be maintained from the date of this Agreement until the end of the Rectification Period.
- 24.4 The Landlord and the Tenant mutually agree not knowingly to do or permit anything to be done that may render any insurance policy void or voidable.
- 24.5 Conditions 7.1.1, 7.1.2, 7.1.3 and 7.1.4(b) do not apply to this Agreement.

25. DAMAGE AFTER PRACTICAL COMPLETION

- 25.1 The Tenant shall not be entitled to refuse to complete or to delay completion of the grant of the Lease due to any event occurring after the Practical Completion Date that results in:
 - a) any damage to the Property or any part of it; or
 - b) any damage to the means of access to the Property; or
 - c) any deterioration in the Property's condition.
- 25.2 The provisions in the Lease relating to insurance of the Property shall apply from the Practical Completion Date to the date of grant of the Lease.

26. LANDLORD'S OBLIGATIONS

- 26.1 The obligations in clause 3 to clause 15 and clause 18 to clause 24 are personal and binding only on [COMPANY NAME], incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS].
- 26.2 [COMPANY NAME] shall be released from all liability in respect of its obligations referred to in clause 26.1 after a period of [NUMBER] [months] after the Practical Completion Date, except in relation to any claim made against or of which it is given notice prior to the end of that period.

27. CONDITIONS

- 27.1 The Part 1 Conditions are incorporated in this Agreement, in so far as they:
- a) are applicable to the grant of a lease;
 - b) are not inconsistent with the other clauses in this Agreement; and
 - c) have not been modified or excluded by any of the other clauses in this Agreement.
- 27.2 The Part 2 Conditions are not incorporated in this Agreement.
- 27.3 Condition 1.1.1(e) is amended so that reference to the contract rate in Condition 1.1.1(e) refers instead to the Contract Rate as defined in this Agreement.
- 27.4 Condition 1.1.4(a) does not apply to this Agreement.

28. VACANT POSSESSION

- 28.1 The Landlord shall give the Tenant vacant possession subject to electrical substation lease of the Property on completion of the grant of the Lease.
- 28.2 The Tenant is not entitled to and shall not be permitted to take occupation or possession of the Property or of any part of it prior to completion of the grant of the Lease and this Agreement does not operate as a demise.

29. DEDUCING TITLE

- 29.1 The Landlord's freehold title to the Property has been deduced to the Tenant's Conveyancer before the date of this Agreement.
- 29.2 The Tenant is deemed to have full knowledge of the Landlord's title and is not entitled to raise any objection, enquiry or requisition in relation to it.

29.3 Conditions 6.1, 6.2, 6.3, 6.4.2, 10.2.4, 10.2.5, and 10.3 do not apply to this Agreement.

30. TITLE GUARANTEE

30.1 Subject to the other provisions of this clause, the Landlord shall grant the Lease with full title guarantee.

30.2 The implied covenants for title are modified so that:

- a) the covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to costs arising from the Tenant's failure to:
 - i. make proper searches; or
 - ii. raise requisitions on title or on the results of the Tenant's searches before the date of this Agreement (or by completion in the case of searches referred to in clause 31.1); and
- b) the covenant set out in section 3(3) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend only to charges or encumbrances created by the Landlord.

30.3 Condition 6.6.2 does not apply to this Agreement.

31. MATTERS AFFECTING THE PROPERTY

31.1 The Landlord shall grant the Lease to the Tenant free from encumbrances other than:

- a) any matters, other than financial charges, contained or referred to in the entries or records made in registers maintained by HM Land Registry as at 13 April 2016 at 11:25:01 under title number TGL34299;
- b) all matters contained or referred to in the Lease;
- c) any matters discoverable by inspection of the Property before the date of this Agreement;
- d) any matters which the Landlord does not and could not reasonably know about;
- e) any matters, other than financial charges, disclosed or which would have been disclosed by the searches and enquiries that a prudent tenant would have made before entering into this Agreement;
- f) public requirements;
- g) any matters which are, or (where the Lease will not be registered) would be, unregistered interests which override first registration under Schedule 1 to the Land Registration Act 2002; and
- h) any matters disclosed in the documents listed in Schedule 3.

31.2 The Tenant is deemed to have full knowledge of the matters referred to in clause 31.1 and shall not raise any enquiry, objection, requisition or claim in respect of any of them.

31.3 Conditions 3.1.1, 3.1.2, 3.1.3, 3.2.1, 3.3 and 6.6.3 do not apply to this Agreement.

32. TERMINATION ON TENANT'S INSOLVENCY

32.1 An Event of Default is any of the following:

- a) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant;
- b) the making of an application for an administration order or the making of an administration order in relation to the Tenant;
- c) the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Tenant;
- d) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant;
- e) the commencement of a voluntary winding-up in respect of the Tenant, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
- f) the making of a petition for a winding-up order or a winding-up order in respect of the Tenant;
- g) the striking-off of the Tenant from the Register of Companies or the making of an application for the Tenant to be struck-off; or
- h) the Tenant otherwise ceasing to exist; or
- i) [the making of an application for a bankruptcy order, the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Tenant.]

32.2 If an Event of Default occurs, the Landlord may, at any time prior to grant of the Lease, determine this Agreement by giving written notice to the Tenant.

32.3 If at any time there is any material non-compliance by the Tenant with any of its obligations under this Agreement and such default is either:

- a) not capable of being remedied; or
- b) is capable of remedy but the Tenant has not remedied the default within 10 working days (or such longer period as may be reasonable in the circumstances) after service on the Tenant by the Landlord of a notice specifying the default;
- c) the Landlord may, at any time prior to grant of the Lease, determine this Agreement by giving written notice to the Tenant.

33. CONSEQUENCES OF TERMINATION

If the Landlord gives notice to determine this Agreement under clause 2.5, clause 13.4, clause 32.2 or clause 32.3 or the Tenant gives notice to determine this Agreement under clause 2.5 or clause 13.4:

- a) subject to clause 34(b) this Agreement shall be terminated with immediate effect from the date of the notice to determine and none of the parties shall have any further rights or obligations under this agreement save for:
 - (i) the rights of any party in respect of any earlier breach of this Agreement; and
 - (ii) the obligations in the clauses referred to in clause 34(b);
- b) clause 33 and clause 35 shall continue in force notwithstanding the termination of this agreement under clause 33(a);
- c) the Tenant shall immediately cancel all entries relating to this agreement registered against the Landlord's title; and
- d) the Tenant shall immediately:
 - (iii) vacate the Property;
 - (iv) remove all of the Tenant's chattels from the Property;
 - (v) (to the extent required by the Landlord) remove the Works or any other fixtures constructed by or for the Tenant;
 - (vi) make good all damage caused by the Tenant as a result of such removal;
 - (vii) the Landlord may enforce its rights contained in the Collateral Warranties to substitute itself in the Tenant's place in relation to the Building Contract and the appointments of the Professional Team; and
 - (viii) assign all rights of action it may have against the Building Contractor and the Professional Team to the Landlord absolutely and the Tenant hereby irrevocably appoints the Landlord as its attorney to sign, execute and deliver on its behalf all deeds and documents and to do all acts and things necessary to give effect to such assignment.

34. TIMETABLE FOR ENGROSSMENTS

The Landlord's Conveyancer shall send the engrossed counterpart Lease to the Tenant's Conveyancer within 15 Working days after the Practical Completion Date.

35. COMPLETION OF GRANT OF THE LEASE

- 35.1 Completion of the grant of the Lease and the Operations Agreement shall take place on the Completion Date.

- 35.2 On completion, the Tenant shall pay to the Landlord the Rent due for the period from the Lease Commencement Date to the day before the next rent payment day (as provided for in the Lease).
- 35.3 If completion is delayed due to the Tenant's default or the Tenant fails to pay any sum due under this Agreement in full on completion, the Tenant shall pay interest in addition to damages for losses incurred by the Landlord as a result of the delayed completion. The interest shall be payable at the Contract Rate on any unpaid amount for the period from the Completion Date to the date of actual payment.
- 35.4 Condition 8.7 is amended to read: "The Tenant is to pay the money due on completion to the Landlord's Conveyancer by a method that gives immediately available funds".
- 35.5 Condition 9.3 does not apply to this Agreement.

36. INDEMNITY

- 36.1 The Tenant shall indemnify the Landlord against all liabilities, costs, expenses, claims, damages, losses, demands, actions and proceedings suffered or incurred by the Landlord arising out of or in connection with any breach or negligent performance or non-performance of the Tenant's obligations in this Agreement including (but not limited to):
- a) any claims for death, personal injury or damage to property;
 - b) any statutory or other liability for the safety or security of the Property, working methods, employment practices, protection of the environment and control of pollution; and
 - c) any claims for unlawful interference with any right of light, air, support, water, drainage or any other easement or right.

37. VAT

- 37.1 Each amount stated to be payable by the Tenant to the Landlord under or pursuant to this Agreement is exclusive of VAT (if any).
- 37.2 If any VAT is chargeable on any supply made by the Landlord under or pursuant to this Agreement, the Tenant shall pay the Landlord an amount equal to that VAT as additional consideration on completion.
- 37.3 Condition 1.4 does not apply to this Agreement.

38. ENTIRE AGREEMENT

- 38.1 This Agreement and the documents annexed to it constitute the whole agreement between the parties and supersede all previous discussions, correspondence, negotiations,

arrangements, understandings and agreements between them relating to their subject matter.

38.2 The Tenant acknowledges that:

- a) in entering into this Agreement and any documents annexed to it the Tenant does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) other than those:
 - (i) set out in this Agreement or the documents annexed to it; or
 - (ii) contained in any written replies that the Landlord's Conveyancer has given to any written enquiries raised by the Tenant's Conveyancer before the date of this agreement; and
- b) no representation or warranty is given or is to be implied by:
 - (i) the Landlord entering into this Agreement; or
 - (ii) any step taken by or on behalf of the Landlord in connection with this Agreement;

as to the suitability of the Property for the Works.

38.3 For the purposes of clause 38.2, written enquiries and written replies include:

- a) any pre-contract enquiries and any replies to pre-contract enquiries that are requested or given by reference to the [SPECIFY THE STANDARD FORM OF ENQUIRIES USED, INCLUDING THE EDITION]; and

38.4 Nothing in this clause shall limit or exclude any liability for fraud.

38.5 Condition 9.1.1 is varied to read "If any plan or statement in the agreement or in written replies which the Landlord's Conveyancer has given to any written enquiries raised by the Tenant's Conveyancer before the date of the Agreement is or was misleading or inaccurate due to an error or omission, the remedies available are as follows."

39. REPRESENTATIONS

39.1 Save for the Landlord's Conveyancer in respect of any written replies no agent adviser or other person acting for the Landlord has at any time had the authority of the Landlord to make any representations whatsoever.

39.2 If any representation is made:-

- (a) and the fact that it was inaccurate either was known to the Tenant before today or might reasonably be expected to have been discoverable as a result of enquiries a prudent Tenant would have raised before agreeing to enter into a Lease of the

Property then the Tenant 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 Landlord shall have no liability to the Tenant in respect of the same unless the Tenant notifies the Landlord of any inaccuracy breach or claim within six months of the date of completion of the Lease.

40. NOTICES

40.1 Any notice given under this agreement must be in writing and signed by or on behalf of the party giving it.

40.2 Any notice or document to be given or delivered under this agreement must be:

- (a) delivered by hand; or
- (b) sent by pre-paid first class post or other next working day delivery service; or
- (c) sent by fax.

40.3 Any notice or document to be given or delivered under this agreement must be sent to the relevant party as follows:

- (a) to the Landlord at:

Town Hall Wandsworth High Street London SW18 2PU

Fax: [FAX NUMBER]]

marked for the attention of:

or at the Landlord's Conveyancer, quoting the reference [REFERENCE];

- (b) to the Tenant at:

[ADDRESS]

Fax: [FAX NUMBER]

marked for the attention of: [NAME/POSITION]

or at the Tenant's Conveyancer, quoting the reference [REFERENCE];

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

40.4 Any change of the details in clause 40.3 specified in accordance with that clause shall take effect for the party notified of the change at 9.00 am on the later of:

- (a) the date, if any, specified in the notice as the effective date for the change; or
- (b) the date five working days after deemed receipt of the notice.

40.5 Giving or delivering a notice or a document to a party's conveyancer has the same effect as giving or delivering it to that party.

40.6 Any notice or document given or delivered in accordance with clause 40.1, clause 40.2 and clause 40.3 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt 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; or
- (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
- (c) if sent by fax, at the time of transmission provided that if transmission occurs before 9.00 am on a working day, the notice or document will be deemed to have been received at 9.00 am on that day, and if transmission 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.

40.7 In proving delivery of a notice or document, it will be sufficient to prove that:

- (a) a delivery receipt was signed; or
- (b) the envelope containing the notice or document was properly addressed and posted by pre-paid first class post or other next working day delivery service; or
- (c) the fax was properly addressed and transmitted.

40.8 A notice or document given or delivered under this Agreement shall not be validly given or delivered if sent by email.

40.9 Condition 1.3 does not apply to this Agreement.

40.10 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

41. THIRD PARTY RIGHTS

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

42. GOVERNING LAW

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

43. JURISDICTION

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

44. NO ASSIGNMENT OR MERGER

- 44.1 The Tenant shall not be permitted to assign mortgage charge or otherwise part with the benefit of this Agreement nor make any disposition of the Property and the Landlord shall not be required to grant the Lease to any person or body other than the Tenant.
- 44.2 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.
- 44.3 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.

45. LANDLORD POWERS

- 45.1 Save as permitted by law, nothing contained or implied in this agreement shall prejudice or affect the rights, powers, duties and obligations of the Landlord in the exercise of its functions as a local planning, highway or buildings regulation authority or as a local authority under any other statutory provision or its rights as a landowner and the rights, powers, duties and obligations of the Landlord under all public and private statutes, bye-laws, orders and regulations may be as fully and effectually exercised in relation to the Property and the Development as if it were not the owner of any interest therein.
- 45.2 Notwithstanding any other provisions of this agreement the Landlord shall not be obliged to do or omit to do any act or thing the doing or omission of which would be unlawful or ultra vires.

46. FREEDOM OF INFORMATION

- 46.1 The Tenant acknowledges that the Landlord is subject to legal duties which may require the release of Information under FOIA and/or EIR and that the Landlord may be under an

obligation to provide Information subject to a Request for Information. The parties acknowledge that such information may include matters relating to, arising out of or under this Agreement and any information provided by the Tenant prior thereto.

46.2 The Landlord shall be responsible for determining in its absolute discretion whether:-

- (a) any Information is Exempt Information or remains Exempt Information; or
- (b) any Information is to be disclosed in response to a Request for Information,

and in no event shall the Tenant respond directly to a Request for Information to which the Landlord is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Landlord, unless otherwise expressly authorised to do so by the Landlord.

46.3 The Tenant acknowledges that the Landlord may be obliged under FOIA or EIR to disclose Information:-

- (a) without consulting the Tenant; or
- (b) following consultation with the Tenant and having taken (or not taken, as the case may be) its views into account.

46.4 Without in any way limiting Clauses 46.1 and 46.3, in the event that the Landlord receives a Request for Information the Landlord will, where appropriate, as soon as reasonably practicable notify the Tenant.

46.5 The Tenant will assist and co-operate with the Landlord as requested by the Landlord to enable the Landlord to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its employees, agents and sub-contractors will) at their own cost:-

- (a) transfer any Request for Information received by the Tenant to the Landlord as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- (b) provide all such assistance as may be required from time to time by the Landlord and supply such data or information as may be requested by the Landlord;
- (c) provide the Landlord with any data or information in its possession or power in the form that the Landlord requires within five Working Days (or such other period as the Landlord may specify) of the Landlord requesting that Information; and
- (d) ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure; and
- (e) permit the Landlord to inspect all records retained in accordance with Clause 46.5(e) as requested from time to time.

46.6 Nothing in this Agreement will prevent the Council 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 Exempt Information.

47. **CONFIDENTIALITY**

47.1 The parties acknowledge that the terms of this Agreement (including the figures or financial expectations in or derived from the various appendices) are commercially sensitive and that disclosure of the same would prejudice the parties' commercial interests and shall be kept confidential and no party to this Agreement shall make any press release or announcement in respect of such terms without the approval of the other (such approval not to be unreasonably withheld) and nor shall any party disclose the terms of this Agreement to any third party save:-

- (a) for the purpose of complying with the provisions of this Agreement which, for the avoidance of doubt shall include disclosure to prospective tenants and/or occupiers and their respective professional advisers, funders (and their professional advisers); or
- (b) where the information is already in the public domain; or
- (c) where legally requisite; or
- (d) in the case of disclosure by the Tenant where commercially normal or sensible to do so; or
- (e) to financial advisers, funding partners, financial institutions, prospective Tenants, their funders and their respective professional advisers; or
- (f) to the extent necessary in order to comply with the requirements of the Stock Exchange; or
- (g) to HM Revenue and Customs or the Rating Authority; or
- (h) to respective auditors; or
- (i) to the extent necessary to obtain professional advice in relation to this Agreement,

and provided that in the case of disclosures to persons falling under the categories referred to in sub-clauses 47.1(d) to (i) prior to disclosure the party making the disclosure shall procure that the principal party to whom the disclosure is made shall enter into a confidentiality agreement containing substantially the same provisions as in this Clause 47 as well as committing to procure that all those to whom such information will necessarily be further disclosed complies with the obligation to keep such information confidential and in all other cases where reasonable and appropriate an undertaking shall be obtained from the party to whom the confidential information is disclosed to keep such information confidential mutatis mutandis.

48. **GENERAL**

48.1 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,
- Delay in exercising or non-exercise of any such right is not a waiver of that right.

- 48.2 All payments (including interest) to be made by the Tenant under this Agreement shall be made without any withholding deduction set-off or counterclaim.
- 48.3 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.
- 48.4 The Tenant is not to send this Agreement or any copy of it to the Land Registry and is not to protect the benefit of this Agreement at the Land Registry except by the registration of a Unilateral Notice. The Landlord agrees not to object to the registration of a Unilateral Notice.
- 48.5 On any termination of this Agreement the Tenant will at its own expense remove any Land Registry entry made against the Property in respect of this Agreement and shall return all title documentation or other documentation sent to it or its advisers.
- 48.6 It is agreed and acknowledged by the parties that the Landlord is not required to give funding or resources to the Tenant in such a way as would confer unlawful state aid.
- 48.7 The illegality, invalidity or unenforceability of any clause or part of this Agreement will not affect the legality, validity or enforceability of the remainder. If any clause or part is found by any competent court of authority to be illegal in valid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without rendering them illegal invalid or unenforceable.
- 48.8 Nothing herein contained or implied shall be deemed to restrict in any way the rights of the Landlord to lease, occupy, use, build on, develop or otherwise dispose of any land adjoining the Property and belonging to the Landlord and or Landlord upon such conditions and terms as the Landlord may reasonably think fit nor shall impose or be deemed to impose any restrictions on the use of any such land.
- 48.9 Nothing in this Agreement will:-
- a) constitute or be deemed to constitute a partnership between the parties to this Agreement; or
 - b) constitute or be deemed to constitute either the Landlord or the Tenant acting as agent of the other for any purpose whatsoever.

48.10 Neither the Landlord nor the Tenant shall hold itself out as agent of or have authority or power to procure the acceptance of any liabilities whatsoever on behalf of the other.

AS WITNESS the hands of the parties or their duly authorised representatives the day and year first above written

Schedule 1 Safe Guards and General provisions concerning Works

1. GENERAL

- 1.1** The provisions in this Schedule 1 shall apply only if and to the extent that the Tenant chooses to carry out or commence the Development.
- 1.2** The Tenant shall ensure that other than temporary suspension (by prior agreement) for carrying out the Development that access shall be maintained at all times. The Tenant is to provide suitable temporary changing/shower/WC facilities on the Property (if the existing pavilion cannot be maintained during the build of the new pavilion) which are comparable to the existing changing/shower/WC facilities on the Property for the period between decommissioning of the existing pavilion and practical completion of the replacement pavilion to maintain wherever possible the existing programme of use.
- 1.3** The Tenant shall be responsible for relocation of the existing electricity substations at the Property at its own cost.
- 1.4** The Tenant shall procure that the Retained Facilities are not affected in any way whatsoever by the Works and shall be maintained prior to the grant of the Lease.

2. THE WORKS

2.1 Precautions Regarding Adjoining Land

The Tenant will take or will procure to be taken reasonable precautions to prevent any danger or undue disturbance or inconvenience to the general public (having regard to the carrying on of the Works in accordance with this Agreement) and will take reasonable steps to minimise any damage to the owners and occupiers of any adjoining or neighbouring land or to any other persons.

2.2 Conduct of Persons and Works

The Tenant will ensure that the Works are managed in accordance with the criteria of both good site management and good building practice from time to time by reference to standards reasonably applicable to the Works.

2.3 Securing the Site

The Tenant will procure that during the period in which the Works are being carried out:

- 2.3.1** the Property will be at all times reasonably secured against unauthorised entry; and
- 2.3.2** the Site is kept tidy and properly cleared of surplus materials, rubble, rubbish or waste and no goods or materials be deposited or stored on the Property which are not required within a reasonable time for carrying out the Works.

2.4 Hours of Working

- 2.5** The Tenant shall ensure that Works are only carried out during the hours of:

- 2.5.1** Monday to Friday 8am to 6pm and

2.5.2 Saturday 8.30am to 1pm and

2.5.3 no working on Bank Holidays.

2.6 Considerate Contractors Scheme

The Tenant shall comply with the Considerate Contractors Scheme and the Code of Considerate Practice.

3. WORKS UNDER STATUTORY AGREEMENTS TO BE ADOPTED

The Tenant will on completion of any works undertaken as a result of or in compliance with statutory agreements and where such works are to be adopted:-

- 3.1** notify the relevant authority as soon as practicable after the relevant works have been carried out;
- 3.2** request the relevant authority to issue the provisional certificate of completion under the relevant statutory agreements so as to enable the maintenance period thereunder to commence;
- 3.3** carry out any further works as shall be required under the statutory agreements during the relevant maintenance period; and
- 3.4** on expiry of the maintenance period request the relevant authority to issue the final completion certificate under the statutory agreements and to confirm that the relevant facility is adopted.

Schedule 2 Tendered Scheme

[Details to be provided by Landlord]

Schedule 3 Disclosed matters

[To be confirmed]

Schedule 4 Operations Agreement

Signed by [NAME OF DIRECTOR]
for and on behalf of **THE MAYOR
AND BURGESSES OF THE
LONDON BOROUGH OF
WANDSWORTH**

.....

Director

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
TENANT]

.....

Director

Annex A. Copy Building Contract OR Agreed form of Building Contract

Annex B. List of parties required to give Collateral Warranties

Annex C. Agreed forms of Collateral Warranties

Annex D. Agreed form of Lease

Annex E. Certified copy of Landlord's warning notice served on Tenant

Annex F. Certified copy of Tenant's statutory declaration