

DATED 21 December 2017

**AGREEMENT FOR LEASE WITH TENANT'S WORKS (NEW BUILD) AND EARLY ACCESS
FOR TENANT'S FITTING OUT WORKS CONDITIONAL ON PLANNING PERMISSION**

relating to

**LAND AT WEST BLATCHINGTON PRIMARY SCHOOL
HANGLETON WAY HOVE BN3 8BN**

between

BRIGHTON & HOVE CITY COUNCIL (1)

and

**SECRETARY OF STATE FOR
COMMUNITIES
AND LOCAL GOVERNMENT (2)**

Head of Legal Services (ref: FC705.3063)
Room 101 Hove Town Hall
Norton Road Hove BN3 3BQ

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THIS AGREEMENT is dated 21 December 2018 >

PARTIES

- (1) **BRIGHTON & HOVE CITY COUNCIL** of Hove Town Hall Norton Road Hove BN3 3BQ (Landlord).
- (2) **SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT** 4th Floor Fry Building, 2 Marsham Street, London SW1P 4DF (Tenant).

BACKGROUND

- (A) The Landlord owns the freehold of the Landlord's Property at West Blatchington Primary School Hangleton Way Hove BN3 8BN and has agreed to grant the Tenant or its nominee 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 apply for detailed planning permission for its proposed works and, subject to obtaining a satisfactory planning permission for those works and the Adjoining Development, to construct the Development as a licensee before the grant of the Lease.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Academy: an Academy falling within the description contained in section 1(10) Academies Act 2010.

Adjoining Agreement: a development agreement ~~of even date herewith~~ entered into by (1) the Landlord and (2) the Tenant in respect of the Adjoining Development

Adjoining Agreement Unconditional Date: the date upon which the conditions precedent specified in the Adjoining Agreement have been fully discharged or waived in accordance with its terms

Adjoining Development: the works to be carried out by the Tenant on the Adjoining Property pursuant to the Adjoining Agreement.

Adjoining Property: that part of the Landlord's Property shown edged blue on the Plan

w80 for Tenant

Architect: such person as may be appointed as architect for the time being by the Tenant 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 base rate from time to time of Lloyds Bank PLC.

Building Contract: a building contract for the Works to be entered into between the Tenant and the Building Contractor based on the JCT Design and Build Contract, 2011 edition and incorporating such amendments as may be approved in writing by the Landlord (such approval not to be unreasonably withheld or delayed) or such other building contract with similar effect as may be approved by the Landlord (such approval not to be unreasonably withheld or delayed).

Building Contractor: such suitably experienced and competent building contractor as may be appointed by the Tenant to carry out the Works and approved by the Landlord (such approval not to be unreasonably withheld or delayed), together with any replacement building contractor that may be appointed by the Tenant in accordance with the terms of this agreement and approved by the Landlord (such approval not to be unreasonably withheld or delayed).

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

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 or delayed).

Committee: the Landlord's Policy Resources and Growth Committee

Committee Consent: the Committee endorsing a recommendation that the Landlord enter into the Lease.

Committee Long Stop Date: 26 January 2018.

Committee Meeting: a meeting of the Committee.

Compensation Event: an event which impacts upon the delivery and completion of the Works in accordance with the Building Contract which is not the fault of the Building Contractor, Design Sub-contractors or a member of the Professional Team.

Condition: any one of the Part 1 Conditions.

Condition Precedent: the occurrence of the Satisfaction Date.

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

Contractor Related Party:

- (a) an officer, agent or employee, contractor or sub-contractor (of any tier) of the Building Contractor acting in the course of his office, employment or appointment (as appropriate); and
- (b) any person visiting the Property at the invitation (whether express or implied) of the Building Contractor and over whom the Building Contractor is able to exercise control.

Court Confirmatory Decision: either:

- (a) a judgment of the High Court or Court of Appeal confirming the grant of Planning Permission, 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 Planning Permission.

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

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

Development: the construction of the Works on the Property in accordance with the Development Specification.

Development Specification: the plans, specifications, drawings and other data in respect of that part of the Development in the form agreed between the Landlord and the Tenant including any variations or amendments that may be made in accordance with clause 17.6 and clause 17.8.

Direct Losses: all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Losses.

Employer's Agent: such person as may be appointed as employer's agent for the time being by the Tenant in relation to this agreement and the Building Contract.

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) where a Quashing Order has been issued and the Determining Authority has issued a further Planning Permission, the Review Period in respect of that Planning Permission has expired.

Force Majeure Event: the occurrence, after the date of this agreement of:

- (a) war, civil war, armed conflict or terrorism; or
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of any act of the Tenant or a director, officer, agent, employee, contractor or sub-contractor (of any tier) of the Tenant; or
- (c) pressure waves caused by devices travelling at supersonic speeds;

which directly causes either party to be unable to comply with all or a material part of its obligations under this agreement or which directly causes the Tenant or the Building Contractor to be unable to comply with all or a material part of their obligations under the Building Contract.

Independent Surveyor: the surveyor appointed under clause 12.

Indirect Losses: loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature

Infrastructure Agreements: Any agreement with or disposition within the meaning of section 27(2) of the Land Registration Act 2002 in favour of:

- (a) a statutory undertaker or statutory service provider or local authority in connection with (and containing provisions reinstating the use of the land to) an electricity sub-station, gas governor house, pumping station, balancing pond or other similar utility (including for the avoidance of doubt the grant of rights to such statutory body or demise supply company); or
- (b) a local authority or other statutory body pursuant to a planning, statutory or road dedication obligations.

Landlord's Conveyancer: Head of Legal Services (ref: OA/FC705.3063) Room 101 Hove Town Hall Norton Road Hove BN3 3BQ.

Landlord's Property: the land and premises at West Blatchington Primary School Hangleton Way Hove BN3 8BN registered at the Land Registry under title number ESX310316.

Landlord's Surveyor: the Estates Surveyor of Hove Town Hall Norton Road Hove BN3 3BQ or such other officer that the Landlord shall designate from time to time.

Landlord's Unacceptable Condition: a condition imposed by the Planning Permission or a provision in a Planning Agreement which in the Landlord's reasonable opinion:

- (a) will cause the Planning Permission to be for a limited period only;
- (b) will restrict the operating and servicing hours of the Adjoining Property to hours which are inconsistent with the reasonably anticipated operational requirements of the Landlord; or
- (c) will prevent the Adjoining Land from being used for educational purposes or make it materially more expensive to use it for that use;

Lease: a lease of part of the Property in the agreed form annexed to this agreement subject only to any minor amendments necessitated by any variations made to the Development Specification under clause 17.6 or clause 17.8.

Lease Completion Date: the day that is 10 working days after the Practical Completion Date

Licence Period: the period of up to 12 months from and including the Practical Completion Date until the earlier of completion of the Lease and termination of this agreement.

LTA 1954: Landlord and Tenant Act 1954.

M&E Engineer: such person as may be appointed as mechanical and electrical engineer for the time being by the Tenant, 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 Tenant's 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 Tenant's 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 is responsible under the Building Contract have been made good.

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).

Plan: the plan attached to this agreement at Annex F

Planning Agreement:

- (a) an agreement in respect of and affecting the Property and/or the Adjoining Property, whether or not also affecting other property, entered into pursuant to:
 - (i) section 106 or 106A of the Town and Country Planning Act 1990;
 - (ii) section 111 of the Local Government Act 1972;
 - (iii) section 38 and/or 278 of the Highways Act 1980;
 - (iv) section 104 of the Water Industry Act 1991; or
 - (v) any provision of similar intent;
- (b) an agreement with a water or sewerage undertaker or other appropriate authority as to the water supply to or drainage of surface water and/or effluent from the Property and/or the Adjoining Property; or
- (c) an agreement with any competent authority or body relating to other services including without limit telecommunications, internet or cable providers or other media.

Planning Appeal: an appeal by the Tenant against:

- (a) the refusal of the Determining Authority to grant Planning Permission; or
- (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: the application for Planning Permission that has been submitted to the local planning authority by the Tenant.

Planning Long Stop Date: the date defined in clause 13 and which may be extended as set out in the clause.

Planning Permission: detailed planning permission for the Development and the Adjoining Development.

Practical Completion Date: the date stated in the Practical Completion Statement.

Practical Completion Statement: the Employer's Agent's written statement issued in accordance with the Building Contract stating that practical completion of the Works has occurred according to the terms of the Building Contract and setting out the date on which practical completion occurred.

President: the president for the time being of the RICS.

Principal Designer: such person as may be appointed as a 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 Appointment: the appointment of a member of the Professional Team.

Professional Team: the Architect, the Principal Designer, the Employer's Agent, the M&E Engineer, 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 Development.

Property: the part of the Landlord's Property shown edged red on the Plan.

Quashing Order: the decision of the court to nullify the Planning Permission granted by either:

- (a) the Determining Authority; or
- (b) the Secretary of State following a Planning Appeal.

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.

Rent: a peppercorn per annum (if demanded).

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.

Review Period: either:

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

RICS: Royal Institution of Chartered Surveyors.

Satisfaction Date: the latest of the following dates:

- (a) the date on which it is established under this agreement 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; and

- (d) the date upon which Committee Consent is provided in accordance with this agreement.

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 in its capacity as Minister of the Crown responsible for determining any Planning Appeal including (where relevant) any inspector appointed to determine any Planning Appeal or the National Assembly for Wales.

Structural Engineer: such person as may be appointed as structural engineer for the time being by the Tenant, with the approval of the Landlord (such approval not to be unreasonably withheld or delayed), in relation to this agreement.

Target Date: 31 January 2020 (as may be extended in accordance with clause 17.3).

Tenant's Conveyancer: Bond Dickinson LLP of St Ann's Wharf, 1123 Quayside, Newcastle upon Tyne NE1 3DX (ref: WJB2/PAR/214.1315).

Tenant's Nominee:

- (a) an Academy or proposed proprietor of an Academy; and/or

- (b) Located Limited (company registration number 07766600); and/or
- (c) a body which is also to become a party to the Building Contract; and/or
- (d) a Minister of the Crown

Tenant's Surveyor: any surveyor whose details may be given in writing from time to time by the Tenant to the Landlord.

Tenant's Unacceptable Condition: a condition imposed by the Planning Permission or a provision in a Planning Agreement which in the Tenant's reasonable opinion is unacceptable

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:

- (a) a Third Party's application for judicial review of a decision by the Determining Authority to grant a Satisfactory Planning Permission; or
- (b) 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 a 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: the earlier of:

- (a) the Satisfaction Date; and
- (b) the Adjoining Agreement Unconditional Date;
- (c) the date on which the Condition Precedent is waived in accordance with clause 2.3.

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

Works: the works to construct the Development on the Property to be carried out by the Tenant in accordance with the Development Specification.

Works Long Stop Date: the date which is three years after the Unconditional Date.

- 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 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** does not include fax or email.
- 1.11 References to a document in **agreed form** are to that document in the form agreed by the parties.
- 1.12 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.
- 1.13 Unless the content 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.
- 1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative

and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 1.15 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.16 Unless this agreement otherwise expressly provides, a reference to the **Landlord's Property** the **Adjoining Property** the **Property** the **Adjoining Development** the **Development** or the **Works** is to the whole and any part of them.
- 1.17 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. CONDITION PRECEDENT

- 2.1 Subject to clause 2.2, this agreement comes into force on the date of this agreement.
- 2.2 Clause 6, clause 8 to 12 (inclusive), clause 15, clause 17 to clause 26 (inclusive), clause 28 to clause 31 (inclusive), clause 34 and clause 35 are conditional on the satisfaction or waiver in accordance with clause 2.3 of the Condition Precedent and shall come into force on the Unconditional Date.
- 2.3 The Landlord and Tenant may only waive the Condition Precedent or any element of it by agreement in writing.

3. COMMITTEE CONSENT

- 3.1 Grant of the Lease is conditional on the Landlord obtaining Committee Consent.
- 3.2 The Landlord will procure that the issue of whether to grant Committee Consent is considered at the next Committee Meeting following the date of this agreement.
- 3.3 The Landlord must keep the Tenant updated with regard to the grant of Committee Consent.
- 3.4 The Landlord must inform the Tenant, and provide a copy of the Committee Consent, within 2 working days of the Committee Consent being granted.

4. LICENCE TO CARRY OUT WORKS

- 4.1 With effect from the date of this agreement the Landlord shall permit the Tenant Building Contractor Design Sub-contractors and the Professional Team to enter upon the Property at its or their risk subject to such reasonable requirements as may be imposed by the Landlord solely for the purpose of carrying out their respective obligations in connection with the Development, including any site investigation and/or preparation or enabling works ahead of commencement of the Works.
- 4.2 The Landlord shall ensure vacant possession is available for the Building Contractor Design Sub-contractors and the Professional Team at all times from the date of this agreement and the Landlord shall at the cost of the Tenant join in any actions or proceedings against trespassers at the Tenant's reasonable request.
- 4.3 If the Tenant enters into occupation of the Property before the Satisfaction Date then as from the date of such occupation the Tenant shall:
- (a) occupy the Property only as the licensee and not otherwise;
 - (b) perform and observe the covenants and conditions contained in the Lease as if a lease in the form of the Lease had been granted so far as the same may be applicable to the licence created by this clause.
- 4.4 Any works carried out at or to the Property by the Tenant before the Satisfaction Date shall be at the sole risk and expense of the Tenant.

5. PLANNING APPLICATION

- 5.1 The Tenant shall use reasonable endeavours to obtain the grant of a Satisfactory Planning Permission as soon as reasonably possible.
- 5.2 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 application for Planning Permission. Any material amendment, withdrawal and substitution shall be approved by the Landlord (such approval not to be unreasonably withheld or delayed).
- 5.3 The Tenant shall not do anything which may prejudice or obstruct the progress of any Planning Application or Planning Appeal made pursuant to this agreement.

6. PLANNING APPEAL

If the Tenant elects to lodge a Planning Appeal, then the Tenant shall pursue the Planning Appeal with all due diligence.

7. CO-OPERATION OF LANDLORD

7.1 The Landlord shall co-operate with the Tenant and without prejudice to clause 42 use reasonable endeavours to assist the Tenant in obtaining a Satisfactory Planning Permission which shall include entering into a Planning Agreement if reasonably required by the Tenant or the Determining Authority.

7.2 Without prejudice to clause 42 the Landlord shall give all reasonable assistance to the Tenant in pursuing a Planning Appeal.

8. NOTIFICATION OF PLANNING DECISIONS

8.1 The Tenant shall promptly inform the Landlord 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.

8.2 Within fifteen working days of receiving notice of the grant of Planning Permission, the Tenant shall give notice to the Landlord in writing whether or not a condition imposed on the Planning Permission is a Tenant's Unacceptable Condition. The Tenant shall give reasons if it considers that a condition or requirement is a Tenant's Unacceptable Condition.

8.3 Within 10 working days of receiving notice from the Tenant under clause 8.2 of the grant of Planning Permission, the Landlord shall give notice to the Tenant in writing whether or not a condition imposed on the Planning Permission is a Landlord's Unacceptable Condition. The Landlord shall give reasons if it considers that a condition is a Landlord's Unacceptable Condition.

9. PLANNING AGREEMENTS

9.1 If a Planning Agreement is required, the Tenant shall (in consultation with the Landlord (who shall act reasonably and promptly)) use reasonable endeavours to negotiate and agree the terms of the Planning Agreement free from any Tenant's Unacceptable Conditions as quickly as reasonably possible.

9.2 Within 10 working days of the final form of the Planning Agreement being agreed, the Tenant shall send a copy of it to the Landlord.

9.3 At the same time as the Tenant sends the final form of the Planning Agreement to the Landlord in accordance with clause 9.2, the Tenant shall give notice to 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.

9.4 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 except in respect of any provision of a Planning Agreement that relates to the ongoing use and management of the Landlord's Property or to the use and occupation of any part or parts of the Landlord's Property other than the Property.

10. RIGHT TO WAIVE UNACCEPTABLE CONDITIONS

10.1 The Tenant may waive its right to treat any condition to a Planning Permission or provision of a Planning Agreement 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 Landlord serves a notice under clause 8.2 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 9.3 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 a condition to the Planning Permission or provision of the Planning Agreement is a Tenant's Unacceptable Condition.

10.2 The Landlord may waive its right to treat any condition to a Planning Permission 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 10 working days after the date on which the Landlord serves a notice under clause 8.3 that the condition is a Landlord's Unacceptable Condition; and
- (b) 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 a condition to the Planning Permission is a Landlord's Unacceptable Condition.

11. THIRD PARTY APPLICATIONS

If a Third Party Application is made, the Tenant shall:

- (a) keep the Landlord regularly informed of the progress of any Third Party Application; and
- (b) within 10 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.

12. UNACCEPTABLE CONDITION DISPUTES

12.1 In the event of any dispute arising between the Landlord and the Tenant about whether or not a condition to the Planning Permission is an Unacceptable Condition or a provision of the Planning Agreement is a Tenant's Unacceptable Condition, the Landlord and the Tenant shall use 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.

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:

- (a) 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
- (b) 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 is an Unacceptable Condition or provision of the Planning Agreement is a Tenant's 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 10 working days of the date of the Independent Surveyor's appointment.

12.6 The Independent Surveyor's written decision shall be final and binding in the absence of manifest error or fraud.

12.7 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 LONG STOP DATE

13.1 Subject to clause 13.3, the Planning Long Stop Date is the date which falls 18 months after the date upon which the Planning Application is submitted unless on the date which falls 18 months after the submission of the Planning Application:

- (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 agreement 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 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 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 it is established under this agreement that the Planning Permission granted pursuant to the Planning Application is a Satisfactory Planning Permission, the date on which the Review Period expires; and
 - (iv) if it is established under this agreement that the Planning Permission granted pursuant to the Planning Application 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 it is established under this agreement that the Planning Permission granted pursuant to the Planning Appeal is a Satisfactory Planning Permission, the date on which the Review Period in respect of the Planning Appeal Decision expires; and
 - (iv) if it is established under this agreement that the Planning Permission granted pursuant to the Planning Appeal 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;
- (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;
 - (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 36 months of the date hereof.

14. TERMINATION

14.1 If the Committee Consent has not been provided by the Committee Long Stop Date, either party may at any time after the Committee Long Stop Date (but only before the date upon which Committee Consent has been provided) give written notice to terminate this agreement.

14.2 If the Unconditional Date has not occurred by the Planning Long Stop Date either the Landlord or the Tenant may at any time after the Planning Long Stop Date (but only before the Unconditional Date) give written notice to the other to determine this agreement.

15. AGREEMENT FOR LEASE

15.1 In consideration of the Tenant's obligations under this agreement and the Adjoining Agreement and subject to obtaining Committee Consent under Clause 3, the Landlord shall grant to the Tenant with full title guarantee 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.

15.2 The Tenant cannot require the Landlord to grant the Lease to any person other than the Tenant or the Tenant's Nominee.

15.3 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 Landlord's Property save that the Tenant can assign the whole of the benefit of this agreement to a Tenant's Nominee.

15.4 Conditions 1.5 and 2.2 do not apply to this agreement.

16. EXCLUSION OF SECURITY OF TENURE

16.1 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) ~~William John Elsworth~~ [Tenant], who was duly authorised by the Tenant to do so], made a statutory declaration dated [19/12/2017] 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).

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17. WORKS

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

17.2 The Landlord hereby permits the Tenant to enter onto the Landlord's Property in order to carry out and complete the Works.

17.3 The Tenant shall use reasonable endeavours to procure that the Practical Completion Date occurs by the Target 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 Works is delayed due to an event or cause that is beyond the Tenant's reasonable control.

17.4 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 Development Specification and the Requisite Consents;
- (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;
- (f) take all proper steps to ensure that carrying out the Works does not make any neighbouring land or buildings unsafe.
- (g) so as to cause as little disturbance and inconvenience as reasonably possible to the Landlord and the owners and occupiers of the building of which the Landlord's Property forms part of any neighbouring land and not infringe any of their rights nor the rights of any other person in relation to the Landlord's Property; and
- (h) 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 Landlord's Property and the Landlord's Property.

17.5 The Tenant shall:

- (a) co-ordinate or procure co-ordination of the Professional Team;
- (b) keep the Landlord's Surveyor regularly informed as to progress of the Works;
- (c) without prejudice to clause 17.2, promptly inform the Landlord's Surveyor 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 five working days' notice to the Landlord's Surveyor of all meetings to be held in connection with the progress of the Works and permit the Landlord's Surveyor to attend and to make representations.

17.6 The Tenant shall:

- (a) agree in writing with the Landlord that the Tenant is to be treated as the only client in respect of the Works for the purposes of the CDM Regulations and the parties agree that this clause is such an agreement;
- (b) comply with its obligations as a client for the purposes of the CDM Regulations;
- (c) ensure that the Principal Designer and Building Contractor comply with their respective obligations under the CDM Regulations;
- (d) ensure that all relevant documents relating to the Works are placed in the health and safety file for the Property by the Principal Designer or Building Contractor in accordance with the CDM Regulations.

17.7 The Tenant shall not (subject to clause 17.8) vary, alter, add to or remove anything from the Development Specification without the Landlord's consent (such consent not to be unreasonably withheld or delayed).

17.8 The Tenant may make variations to the Development Specification without the Landlord's consent provided that:

- (a) the variations are insubstantial and immaterial;
- (b) the variations are in accordance with the Satisfactory Planning Permission, the Requisite Consents in respect of the Works and any statutory requirements;
- (c) any substitute materials used are of an equal or better quality and suitability to those originally specified;
- (d) the variations do not delay the completion of the Works;
- (e) the Tenant informs the Landlord of the variations within a reasonable time; or
- (f) the variations are required by any local or competent authority or statutory undertaking as a condition of the grant or continuance of the Satisfactory Planning Permission or any of the Requisite Consents

17.9 The Tenant may make other variations to the Development Specification required as a result of policy or funding alterations in respect of the Works with the consent of the Landlord (such consent not to be unreasonably withheld or delayed)

17.10 Subject to clause 9.4 the Landlord will at the direction of the Tenant enter into Infrastructure Agreements which the Tenant (acting reasonably) specifies are required for the purposes of the Development

18. INSPECTION

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

16.1 not give any instructions or make any representations directly to the Building Contractor or Professional Team; and

16.2 comply with the Tenant's and Building Contractor's health and safety and site rules.

19. PROFESSIONAL TEAM

- 19.1 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.
- 19.2 Subject to clause 19.1, the Tenant shall once such of the Requisite Consents have been obtained so as to enable the Works to commence appoint the members of the Professional Team and shall supply certified copies of each Professional Appointment to the Landlord.
- 19.3 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.
- 19.4 The Tenant shall use 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 materially 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).
- 19.5 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 inform the Landlord as soon as reasonably practicable if the Landlord believes that any member of the Professional Team may be intending to rescind its Professional Appointment.
- 19.6 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 Tenant 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).

20. BUILDING CONTRACT

- 20.1 The Tenant confirms it shall take, 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.

- 20.2 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.
- 20.3 The Tenant shall use reasonable endeavours to procure that the Building Contractor performs and observes the terms of the Building Contract. The Tenant agrees not to materially 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).
- 20.4 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 inform the Landlord as soon as reasonably practicable if the Tenant believes the Building Contractor may be intending to rescind the Building Contract.
- 20.5 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).

21. PRACTICAL COMPLETION AND RECTIFICATION PERIOD

- 21.1 The Tenant shall use reasonable endeavours to procure that the Employer's Agent:
- (a) gives at least five working days' notice to the Landlord of the Employer's Agent's intention to inspect the Works for the purpose of issuing the Practical Completion Statement and allows the Landlord and the Landlord's Surveyor 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 21.1(a) when considering whether to issue the Practical Completion Statement in accordance with the terms of the Building Contract.
- 21.2 The Tenant shall use reasonable endeavours to procure that the Employer's Agent gives a copy of the Practical Completion Statement

to the Landlord as soon as practicable after its issue together with a copy of any accompanying snagging list.

- 21.3 The issue of the Practical Completion Statement shall be conclusive evidence binding on the parties that the Works have been completed in accordance with the terms of this agreement
- 21.4 The Tenant shall use 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.
- 21.5 The Tenant shall use reasonable endeavours to procure the grant of the Collateral Warranties in favour of the Landlord as soon as reasonably practicable after the Unconditional Date and in any event prior to the date on which the Lease is completed.

22. WORKS LONG STOP DATE

If the Practical Completion Date has not occurred by 4.00 pm on the Works Long Stop Date, either the Landlord or the Tenant may, at any time after the Works Long Stop Date (but before the Practical Completion Date), give written notice to the other that, unless the Practical Completion Date occurs within 20 working days of the receipt of that notice (time being of the essence), it may determine this agreement. If the Practical Completion Date does not occur within 20 working days of receipt of that notice then it may, by further written notice determine this agreement with immediate effect.

23. INSURANCE

- 23.1 From the Unconditional Date until the Practical Completion Date, the Tenant shall insure or shall procure that the Building Contractor insures the Works and all plant and unfixed materials and goods delivered to or placed on or adjacent to the Landlord's 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 Landlord 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
- 23.2 In the event of any loss or damage occurring before the Practical Completion Date to the Works or the Landlord's Property, 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.

23.3 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 Landlord's Property for an indemnity of not less than £10,000,000 for any one occurrence or series of occurrences arising out of the same event. Such insurance shall be maintained from the Unconditional Date until the end of the Rectification Period.

23.4 The Tenant shall require the Building Contractor, each member of the Professional Team and each Design Sub-Contractor, as a condition of its appointment or contract, to maintain professional indemnity insurance cover with a reputable insurer for an amount not less than that stated in ~~it~~. The insurance cover must be maintained for a minimum of 6 years following the Practical Completion Date, provided that the insurance is available at commercially reasonable rates and terms.

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23.5 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.

23.6 Conditions 7.1.1, 7.1.2, 7.1.3 and 7.1.4(b) do not apply to this agreement.

24. DAMAGE AFTER PRACTICAL COMPLETION

24.1 The Landlord 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 Landlord's Property or any part of it;
- (b) any damage to the means of access to the Landlord's Property;
or
- (c) any deterioration in the Landlord's Property's condition

25. INDEMNITIES

25.1 The Landlord shall indemnify and keep the Tenant indemnified at all times from and against liability for Direct Losses arising from:

- (a) any claim for or in respect of death and/or personal injury of any employee of or person engaged by the Tenant or the Building Contractor or a Contractor Related Party;

- (b) any physical loss or damage to the Building Contractor's or a Contractor Related Party's assets or to the Tenant's assets (which for the purposes of this indemnity shall include the assets comprised within the Works);
- (c) any breach of statutory duty for which the Tenant is liable;
- (d) any third party actions, claims and/or demands including costs, charges and expenses (including legal expenses on an indemnity basis) arising in consequence thereof brought against the Tenant or the Building Contractor or a Contractor Related Party;

which may arise out of or in consequence of the performance or non-performance of this agreement by the Landlord or any negligent or wilful act or omission of the Landlord which in each case is a breach of the Landlord's obligations under this agreement other than to the extent that such performance or non-performance or negligent or wilful misconduct would not have occurred but for a breach by the Tenant of its obligations under this agreement.

25.2 The Landlord further agrees that (to the extent not already provided for under the provisions of clause 25.1) any breach by the Landlord of its obligations under this agreement which results in the occurrence of a Compensation Event and the occurrence of a Compensation Event arising as a consequence of a request by the Landlord for the Tenant to do or omit to do anything under this Agreement or the Building Contract shall in either case be the responsibility of the Landlord and accordingly the Landlord shall indemnify and keep the Tenant and any Tenant's Nominee indemnified (subject to the Tenant's duty to secure the mitigation of any loss arising) against any Direct Losses incurred by the Tenant or the Tenant's Nominee or on behalf of the Tenant or the Tenant's Nominee by reason of the occurrence of a Compensation Event for which the Landlord is responsible under the provisions of this agreement other than to the extent that such Compensation Event would not have occurred but for a breach by the Tenant or the Tenant's Nominee (as the case may be) of its obligations under the Building Contract. For the avoidance of doubt the indemnity in this clause 25.1 applies to the liabilities of the Tenant or the Tenant's Nominee under the form of the Building Contract and shall not apply to any increase in such liabilities arising from a variation of the terms of the Building Contract which materially increases liabilities under the Building Contract.

25.3 The Landlord shall have no liability to the Tenant or the Tenant's Nominee pursuant to this Agreement including this clause 25 to the extent that any Direct Losses or Indirect Losses are covered by insurance pursuant to this agreement, the Building Contract or any

other contract to which the Tenant or Tenant's Nominee is a party and are recovered under such insurance, or are recovered pursuant to any other contract to which the Tenant or Tenant's Nominee is a party.

26. COMPENSATION AND RELIEF EVENTS

26.1 The Tenant shall be entitled at its sole discretion to agree to any proposals made by the Building Contractor that would lead to the mitigation of any losses that arise, the prompt reinstatement of any parts of the Works that may have been damaged or destroyed and to any proposals for any extension of time that may be forthcoming from the Building Contractor and which may result in the Works not being completed within the programme previously established by the Contractor and to make any payment or settle any claim arising from a Compensation Event in each case consulting with the Landlord so far as is reasonably practicable and advising the Landlord of the outcome.

26.2 The Landlord agrees that it shall upon reasonable request and within a reasonable time stated in the request (which timescale will be considered reasonable, without prejudice to other reasons, where it is required in order to comply with timescales under the Building Contract and where the request has been made as soon as reasonably practicable) provide such information, documents and any records in the possession of the Landlord and which the Landlord is lawfully entitled to disclose that are reasonably required by the Tenant or the Tenant's Nominee to operate the Building Contract effectively in relation to a Compensation Event which it is alleged has been caused by the Landlord.

26.3 In the event that a claim is made by the Building Contractor to which this clause 26 applies, the Tenant shall take due account of all information provided by the Landlord where the Landlord may be in whole or in part responsible for the circumstances that give rise to the Compensation Event and the Tenant shall use all reasonable endeavours to resist such claim and to require mitigation of the claim where it ought reasonably to do so but otherwise shall be entitled to act in its sole discretion in its negotiations with the Building Contractor regarding any claim that the Building Contractor makes under the terms of the Building Contract.

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(d) is amended so that "completion date" means the "Lease Completion Date" as defined in this agreement.

27.4 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.

27.5 Condition 1.1.4(a) does not apply to this agreement.

**28. TENANT'S FURTHER OCCUPATION FOLLOWING COMPLETION OF THE WORKS
BUT PRIOR TO THE GRANT OF THE LEASE**

28.1 During the Licence Period the Tenant is entitled to occupy the Landlord's Property for the purpose of:

- (a) carrying out and completing the Works;
- (b) following notification of the Landlord: moving materials and equipment into the Property and carrying out preparatory work and activities in anticipation of the Property being used for the purpose authorised by the Lease Provided That the Tenant shall comply at all times with the terms of this agreement and use all reasonable endeavours to avoid disturbing the Landlord or any occupiers of the Landlord's Property or other neighbouring land.

28.2 This agreement does not operate as a demise of the Property and during the Licence Period:

- (a) any occupation of the Landlord's Property by the Tenant is by way of licence only;
- (b) the Tenant does not have, and is not entitled to, any estate, right or interest in the Landlord's Property;
- (c) the Tenant shall not open and trade from the Landlord's Property nor (save as provided for by way of a separate written agreement with the Landlord by deed) use the Landlord's Property for the purpose authorised by the Lease;
- (d) the parties shall observe and perform their respective obligations imposed by the covenants and conditions in the Lease (to the extent that they are not inconsistent with the

other provisions of this agreement) as if the Lease had been completed on the Practical Completion Date;

- (e) the Landlord shall have the same rights and remedies in respect of any breach of the obligations imposed on the Tenant by the covenants and conditions in the Lease as if the Lease had been completed on the Practical Completion Date; and
- (f) the Tenant shall pay to the Landlord by way of licence fees sums (if any) equal to the rents and other monies that would be payable by the Tenant under the Lease at the same times and in the same manner as if the Lease had been granted on the Practical Completion Date.

28.3 The parties agree that any licence fees paid by the Tenant pursuant to clause 28.2(f) shall be taken into account when calculating the rents payable under the Lease for the same period following completion of the Lease.

29. DEDUCING TITLE

29.1 The Landlord's freehold title to the Landlord's 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 the Landlord's title.

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 The Landlord shall grant the Lease with no title guarantee and with no covenants for title, whether express or implied.

30.2 Condition 6.6.2 does not apply to this agreement.

31. MATTERS AFFECTING THE LANDLORD'S 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 the Land Registry as at 17 November 2016 at 10:58:45 under title number ESX310316;

- (b) all matters contained or referred to in the Lease;
- (c) any matters discoverable by inspection of the Landlord's 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;
- (h) any Planning Agreement.

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 save in respect of enquiries arising as a result of pre-completion Land Registry searches and requisitions on title undertaken and issued by the Tenant's Conveyancer.

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 MATERIAL NON-COMPLIANCE BY THE TENANT AND TERMINATION ON TERMINATION OF THE ADJOINING AGREEMENT

32.1 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 20 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;

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 14, clause 22 or clause 32 or the Tenant gives notice to determine this agreement under clause 14, clause 22 or clause 32:

- (a) 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 except for:
 - (i) the rights of any party in respect of any earlier breach of this agreement; and
 - (ii) the obligations in clause 32 which shall continue in force notwithstanding the termination of this agreement;
- (b) the Tenant shall immediately cancel all entries relating to this agreement registered against the Landlord's title;
- (c) the Tenant shall as soon as reasonably practicable following termination of this agreement:
 - (i) vacate the Landlord's Property; and
 - (ii) remove all of the Tenant's chattels from the Landlord's Property

34. TIMETABLE FOR ENGROSSMENTS

34.1 The Landlord's Conveyancer shall send the engrossed counterpart Lease to the Tenant's Conveyancer within 5 working days after the Practical Completion Date;

34.2 The Tenant shall execute the counterpart Lease within five working days after it has been submitted to the Tenant's Conveyancer.

35. COMPLETION OF GRANT OF THE LEASE

35.1 Completion of the grant of the Lease shall take place on the Lease Completion Date.

35.2 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".

35.3 Condition 9.3 does not apply to this agreement.

36. VAT

- 36.1 Each amount stated to be payable under or pursuant to this agreement is exclusive of VAT (if any).
- 36.2 If any VAT is chargeable on any supply made by one party to the other party under or pursuant to this agreement, the paying party shall pay to the other party an amount equal to that VAT.
- 36.3 Condition 1.4 does not apply to this agreement.

37. ENTIRE AGREEMENT

- 37.1 This agreement the Adjoining Agreement and the documents annexed to them 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.
- 37.2 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) made or provided in response to enquiries raised as a result of pre-completion Land Registry searches or requisitions on title; or
 - (iii) 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 Landlord's Property for the Works.
- 37.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 37.4 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."

38. JOINT AND SEVERAL LIABILITY

38.1 Where the Tenant comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Tenant arising under this agreement. The Landlord may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.

38.2 Condition 1.2 does not apply to this agreement.

39. NOTICES

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

39.2 Any notice or document to be given or delivered under this agreement may be:

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

39.3 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 Room 101 Hove Town Hall Norton Road Hove BN3 3BQ
- (b) to the Tenant at 4th Floor Fry Building, 2 Marsham Street, London SW1P 4DF and Sanctuary Buildings, Great Smith Street, Westminster, London SW1P 3BT

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

39.4 Any change of the details in clause 39.3 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.

- 39.5 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.
- 39.6 Any notice or document given or delivered in accordance with clause 39.1, clause 39.2 and clause 39.3 will be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address 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.
- 39.7 In proving delivery of a notice or document, it will be sufficient to prove that:
- (a) a delivery receipt was signed or that the notice or document was left at the address; 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.
- 39.8 A notice or document given or delivered under this agreement shall not be validly given or delivered if sent by email.
- 39.9 Condition 1.3 does not apply to this agreement.
- 39.10 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.

40. THIRD PARTY RIGHTS

(Save in respect of any party to whom this agreement has been assigned in accordance with clause 15.3) 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.

41. POWERS OF THE LOCAL AUTHORITY

This document being executed by the Landlord as freeholders of the Landlord's Property and nothing herein contained shall be deemed to

affect the powers authorities and rights of Brighton & Hove City Council as a local authority or as owners of any other Landlord's Property

42. DISPUTES

Save as provided for in clause 12 of this agreement any disputes between the parties shall be resolved by a person nominated by or on behalf of the Secretary of State for Education (or the successor government body which assumes his functions for funding educational organisations) or if pursuant to clause 15.3 the Secretary of State for Education (or the successor government body which assumes his functions for funding educational organisations) becomes a party to this agreement such dispute shall be referred on the application of either party to the Centre for Effective Dispute Resolution (CEDR Solve).

43. CONSULTATION AND LIAISON

43.1 Each of the Landlord and the Tenant shall ensure that in the case of the Landlord the Landlord's Surveyor and in the case of the Tenant, the Tenant's Surveyor shall consult and regularly liaise with each other in relation to all matters relating to the performance of the Building Contract and in particular each party will:

- (a) use all reasonable endeavours to avoid unnecessary disputes and claims against the other party to this agreement
- (b) not interfere with the rights of any other party and its servants, agents, representatives, contractors or subcontractors (of any tier) in performing its obligations under this agreement nor in anyway hinder or prevent such other party or its servants, agents, representatives or subcontractors (of any tier)) on its behalf from performing those obligations; and
- (c) use reasonable endeavours to assist the other party (and their servants, agents, representatives or subcontractors (of any tier) in performing its obligations under this agreement so far as is reasonably practicable.

43.2 Nothing in this Clause 43 shall:

- (a) interfere with the right of each party to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this agreement and in the manner in which it consider to be the most effective and efficient;
- (b) oblige any party to incur any additional cost or expense or suffer any loss of profit in excess of that required by its proper performance of its obligations under this agreement;

- (c) relieve a party from any obligation under any indemnity contained in this agreement or from any obligation to pay any debt due or payable under such documents;
- (d) fetter in any manner the discretion of the Landlord or the Tenant in performing their respective statutory duties;
- (e) oblige the Landlord to perform the Tenant's obligations under this agreement or under the Building Contract; or
- (f) oblige either party to waive any entitlement it may have in connection with this agreement.

44. FORCE MAJEURE

No party shall be entitled to bring a claim for a breach of obligations under this agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and the relevant party is prevented from carrying out its obligations by that Force Majeure Event. Neither party to this agreement shall be entitled to any compensation or other payment from the other party by reason of the occurrence of Force Majeure Event.

45. GOVERNING LAW

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

46. JURISDICTION

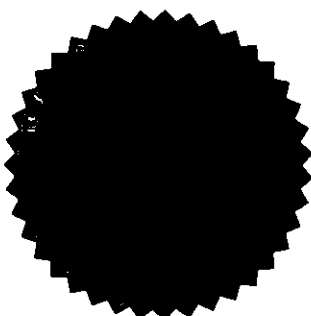
Without prejudice to clause 41 each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The Common Seal of **Brighton & Hove Council** was hereunto affixed in the presence of:)
)
)

Authorised Signatory

The Common Seal of The **Secretary of State for Communities and Local Government** was hereunto affixed in the presence of:)
)
)



Seal ref: JHE 1202

Smith

Authorised Signatory

Schedule 1 Professional indemnity insurance

Role	Identity	Required level of insurance
Contractor	Martin Perry (Kier)	£10,000,000
Architect	Alfonso Padro (HKS)	£10,000,000
M&E Engineer	Gavin Owens (Gyoury Self)	£10,000,000
Other		£10,000,000

Annex A List of parties required to give Collateral Warranties

Contractor

Architect

Civil Engineer

M&E Engineer – Design

M&E Engineer – Installation

Structural Engineer

Annex B. Agreed forms of Collateral Warranties

Part 1: Form to be provided by Contractors

THIS AGREEMENT is dated [DATE]

Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Contractor).
- (2) BETWEEN BRIGHTON & HOVE CITY COUNCIL of Hove Town Hall Norton Road Hove BN3 3BQ (Beneficiary).
- (3) SECRETARY OF STATE FOR THE DEPARTMENT OF COMMUNITIES AND LOCAL GOVERNMENT 4th Floor Fry Building, 2 Marsham Street, London SW1P 4DF (Employer).]

Background

- (A) The Employer has engaged the Contractor to carry out [design and] construction work.
- (B) The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the [design and] construction work. *WDD for Design*
- (C) The Employer requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.
- (D) The Contractor has agreed to enter into this agreement with [the Employer and] the Beneficiary for the benefit of the Beneficiary.
- (E) [The Beneficiary has paid £10 to the Contractor [and the Employer] as consideration under this agreement.]

Agreed terms

1. Interpretation

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

1.1 Definitions:

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

Business Day: a day other than a Saturday, Sunday or public holiday in [England] when banks in [London] are open for business.

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

Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person; or
- (b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or

- (c) reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
- (e) having been supplied or placed on the market in breach of the Construction Products Regulations.

[Employer: [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS].]

Funder: a person that has provided, or is to provide, finance in connection with:

- (f) the whole or any part of the Works or the completed Works; or
- (g) the site of the Works,

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the 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.

Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement[, extension], building information modelling and repair of the Landlord's Property and the Works.

Landlord's Property: [DESCRIPTION OF LANDLORD'S PROPERTY].

Works: the [design,] construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Contractor under the Building Contract.

- 1.2 **Clause headings shall not affect the interpretation of this agreement.**
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's personal representatives, successors and permitted assigns].
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.

- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to **writing** or **written** includes fax[and email OR but not email].
- 1.12 [Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.]
- 1.13 [A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.]
- 1.14 References to clauses are to the clauses of this agreement.
- 1.15 [Unless otherwise expressly provided, the obligations and liabilities of [the persons forming the] [PARTIES] under this agreement are joint and several.]
- 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.

2. Comply with Building Contract

2.1 The Contractor warrants to the Beneficiary that:

- (a) it has complied, and shall continue to comply, with its obligations under the Building Contract, including its obligations to:
 - (i) carry out and complete the Works properly; and
 - (ii) use workmanship and materials of the quality and standard specified in the Building Contract;
- (b) [without affecting clause 2.1(a), and to the extent that it takes responsibility for the same under the Building Contract, it:
 - (i) has designed, or will design, the Works; and
 - (ii) has selected, or will select, goods, materials, plant and equipment for incorporation in the Works,

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

- (c) it [has used all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Works to OR has

not and will] not specify or use anything in the Works, which, at the time of specification [or use], is Deleterious.

- 2.2 In proceedings for breach of this clause 2, the Contractor may:
- (a) rely on any limit of liability or other term of the Building Contract; and
 - (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Employer, under the Building Contract [(for this purpose not taking into account any set-off or counterclaim against the actual employer under the Building Contract)].

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

- (a) any approval or inspection of:
 - (i) the Landlord's Property; or
 - (ii) the Works; or
 - (iii) any designs or specifications for the Landlord's Property or the Works; or
- (b) any testing of any work, goods, materials, plant or equipment; or
- (c) any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Employer.

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

3. [Step-in rights: Contractor may not terminate or discontinue

3.1 [Subject to clause 3.6,] the Contractor shall not exercise, or seek to exercise, any right to:

- (a) terminate its employment under the Building Contract; or
- (b) discontinue the [design and] construction of the Works,

for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least [ten OR 15 OR 20] Business Days' written notice of its intention to do so. Any notice from the Contractor shall specify the grounds for the Contractor's proposed termination or discontinuance.

3.2 If the Building Contract allows the Contractor a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Building Contract shall be extended to take account of the notice period required under clause 3.1.

3.3 The Contractor's right to terminate its employment under the Building Contract, or to discontinue the [design and] construction of the Works, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Contractor, copied to the Employer:

- (a) requiring the Contractor not to terminate its employment or not to discontinue the [design and] construction of the Works under the Building Contract;
- (b) acknowledging that the Beneficiary (or its nominee) will assume all the Employer's obligations under the Building Contract; and

- (c) undertaking that the Beneficiary or its nominee will pay to the Contractor:
 - (i) any sums due and payable to the Contractor under the Building Contract in future; and
 - (ii) any sums then due and payable to the Contractor under the Building Contract that are unpaid.
- 3.4 If the Beneficiary (or its nominee) serves notice on the Contractor under clause 3.3, then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).
- 3.5 In complying with this clause 3, the Contractor:
- (a) does not waive any breach of the Building Contract or default under the Building Contract by the Employer; and
 - (b) may exercise its right to terminate its employment under the Building Contract, or discontinue the [design and] construction of the Works, after the expiry of the notice period referred to in clause 3.1, unless the Contractor's right to terminate or discontinue has ceased under clause 3.3.
- 3.6 [If:
- (a) the Contractor enters into another agreement with a third party or grants third party rights to a third party concerning the Works at the request of the Employer; and
 - (b) that agreement or those third party rights include similar step-in rights to those in clause 3 or clause 4,
- then, on that third party's (or that third party's nominee's) exercise of those step-in rights:
- (c) the Contractor shall no longer be bound by clause 3.1 and clause 3.3; and
 - (d) the Beneficiary may no longer exercise its rights under clause 3 or clause 4.]]
- 4. [Step-in rights: Beneficiary may step-in**
- 4.1 [Subject to clause 3.6, and] without affecting clause 3.1, if the Beneficiary serves a notice on the Contractor, copied to the Employer, that:
- (a) confirms that the Beneficiary wishes to step-in to the Building Contract; and
 - (b) complies with the requirements for a Beneficiary's notice under clause 3.3,
- then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).
- 4.2 The Contractor shall assume that, between the Employer and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Contractor shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4, the Contractor does not waive any breach of the Building Contract or default under the Building Contract by the Employer.]

5. [Step-in rights: Contractor's position and Employer's consent

5.1 The Contractor shall not incur any liability to the Employer by acting in accordance with clause 3 or clause 4.

5.2 The Employer has [signed OR executed] this agreement to confirm its consent to the agreement.]

6. [Step-in rights: Beneficiary's guarantee

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Contractor from the Beneficiary's nominee.]

7. No instructions to Contractor by Beneficiary

[Unless the Beneficiary has stepped-in under clause 3 or clause 4,] the Beneficiary may not give instructions to the Contractor under this agreement.

8. Copyright

8.1 The Contractor grants to the Beneficiary, with immediate effect, 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 Contractor for any purpose relating to the Works and the Landlord's Property, including any of the Permitted Uses.

8.2 [This licence allows the Beneficiary to use the Material in connection with any extension of the Works, but not to reproduce the designs contained in the Material in any such extension.]

8.3 This licence carries the right to grant sub-licences[and is transferable to third parties without the consent of the Contractor].

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

8.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Contractor. On the Beneficiary's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Beneficiary.

9. [Professional indemnity insurance

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

(a) with reputable insurers lawfully carrying on insurance business in the [UK or EU];

(b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and

- (c) on terms that:
 - (i) do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and
 - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.
- 9.2 Any increased or additional premium required by insurers because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.
- 9.3 The Contractor shall not, without the Beneficiary's written consent:
 - (a) settle or compromise any claim with the insurers that relates to a claim by the Beneficiary against the Contractor; or
 - (b) by any act or omission lose or affect the Contractor's right to make, or proceed with, that claim against the insurers.
- 9.4 The Contractor shall immediately inform the Beneficiary if the Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates [and terms], so that the Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Contractor regarding the Works and the Landlord's Property, without that insurance.
- 9.5 [The Contractor shall fully co-operate with any measures reasonably required by the Beneficiary, including:
 - (a) completing any proposals for insurance and associated documents; or
 - (b) maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Contractor for the net cost of that insurance above commercially reasonable rates.]
- 9.6 Whenever the Beneficiary reasonably requests, the Contractor shall send the Beneficiary evidence that the Contractor's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Contractor's insurers or brokers confirming:
 - (a) the Contractor's then current professional indemnity insurance; and
 - (b) that the premiums for that insurance have been paid in full at the date of that letter.]

10. Liability period

The Beneficiary may not commence any legal action against the Contractor under this agreement after [six **OR** 12] years from the date of [practical completion **OR** making good of defects] of all of the Works.

11. Assignment

- 11.1 The Beneficiary may assign the benefit of this agreement:
 - (a) on two occasions to any person [with an interest in the Works]; and
 - (b) without counting as an assignment under clause 11.1(a):

- (i) by way of security [to a Funder] (including any reassignment on redemption of security); or
- (ii) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary [so long as that assignee company remains within the same group of companies as the Beneficiary].

11.2 The Beneficiary shall notify the Contractor [and the Employer] of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.

11.3 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under clause 11.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

12. Notices

12.1 [For the purposes of this clause, but subject to clause 12.7, notice includes any other communication.]

12.2 A notice given to a party under or in connection with this agreement:

- (a) shall be in writing [and in English[or accompanied by an accurate translation into English]];
 - (b) [shall be signed by or on behalf of the party giving it;]
 - (c) shall be sent to the party for the attention of the contact and at the address[, fax or DX number] listed in clause 12.3;
 - (d) [shall OR may] be sent by a method listed in clause 12.5; and
 - (e) [unless proved otherwise] is deemed received as set out in clause 12.5 if prepared and sent in accordance with this clause.

12.3 The parties' addresses and contacts are as set out in this table:

Party	Contact	Address	Fax number	DX number
Contractor	[POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]	[DX NUMBER]
Beneficiary	[POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]	[DX NUMBER]
[Employer]	[POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]	[DX NUMBER]

12.4 A party may change its details given in the table in clause 12.3 by giving notice, the change taking 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] Business Days after deemed receipt of the notice.

12.5 This table sets out:

- (a) delivery methods for sending a notice to a party under this agreement; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 12.6:

Delivery method	Delivery date and time
Delivery by hand.	On signature of a delivery receipt [or at the time the notice is left at the address].
Pre-paid first class [recorded delivery] post or other next working day delivery service[providing [proof of postage OR proof of delivery]].	[9.00 am] on the [second] Business Day after posting [or at the time recorded by the delivery service].
Pre-paid airmail [providing [proof of postage OR proof of delivery.]]	[[9.00 am] on the [fifth] Business Day after posting [or at the time recorded by the delivery service.] OR [INSERT TIME AND DATE].
Fax.	At the time of transmission.
Document exchange (DX).	[9.00 am] on the [second] Business Day after being put into the DX.

12.6 For the purpose of clause 12.5 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

12.7 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.

12.8 A notice given under [or in connection with] this agreement is not valid if sent by email.

13. Third party rights

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

14. Governing law

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.

15. Jurisdiction

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

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

OR

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Part 2: Form to be provided by the Professional Team

THIS AGREEMENT is dated [DATE]

Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Consultant**).
- (2) **BETWEEN BRIGHTON & HOVE CITY COUNCIL** of Hove Town Hall Norton Road Hove BN3 3BQ (**Beneficiary**).
- (3) **SECRETARY OF STATE FOR THE DEPARTMENT OF COMMUNITIES AND LOCAL GOVERNMENT** 4th Floor Fry Building, 2 Marsham Street, London SW1P 4DF (**Client**).

Background

- (A) The Client has engaged the Consultant to perform the Services in relation to the Project.
- (B) The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the Project.
- (C) The Client requires the Consultant to enter into a collateral warranty in favour of the Beneficiary.
- (D) The Consultant has agreed to enter into this agreement [with the Client and] the Beneficiary, for the benefit of the Beneficiary.
- (E) [The Beneficiary has paid £10 to the Consultant [and the Client] as consideration under this agreement.]

Agreed terms

1. INTERPRETATION

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

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in [England] when banks in [London] are open for business.

CDM Regulations: the Construction (Design and Management) Regulations 2007 (SI 2007/320) and the related Approved Code of Practice issued by the Health and Safety Commission.

[**Client:** [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS].]

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

Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person; or

- (b) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project; or
- (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project; or
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
- (e) having been supplied or placed on the market in breach of the Construction Products Regulations.

Funder: a person that has provided, or is to provide, finance in connection with:

- (a) the whole or any part of the Project or the completed Project; or
- (b) the site of the Project,

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

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

Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement[, extension], building information modelling and repair of the Landlord's Property and the Project.

Professional Appointment: an agreement in writing dated [DATE] between the Consultant and [the Client OR [ORIGINAL CLIENT]] and novated to the Client under a deed of novation dated [DATE] between the Consultant, [ORIGINAL CLIENT] and the Client].

Programme: the programme, as defined in the Professional Appointment.

Project: [DESCRIPTION OF PROJECT].

Landlord's Property: [DESCRIPTION OF LANDLORD'S PROPERTY].

Required Standard: all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services on works similar in scope and character to the Project.

Services: the services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.

Third Party Agreement: any agreement between the Client and a third party relating to the Project and of which:

- (a) a copy, or relevant extract, is attached at [Schedule 5 OR [REFERENCE]] to the Professional Appointment; or

- (b) the Client notifies the Consultant in writing after the date of the Professional Appointment [enclosing a copy or relevant extracts].
- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's personal representatives, successors and permitted assigns].
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision s a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to **writing** or **written** includes fax[and email OR but not email].
- 1.12 [A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.]
- 1.13 References to clauses are to the clauses of this agreement.
- 1.14 [Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.]
- 1.15 [Unless otherwise expressly provided, the obligations and liabilities of [the persons forming the] [PARTIES] under this agreement are joint and several.]
- 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.
- 2. Comply with Professional Appointment**
- 2.1 The Consultant warrants to the Beneficiary that:
- (a) it has complied, and shall continue to comply, with its obligations under the Professional Appointment, including its obligations to:

- (i) carry out and fulfil, in all respects, the duties of a designer [and CDM co-ordinator] under the CDM Regulations;
 - (ii) not, without the Client's written consent, make any material change to the designs or specifications for the Project after they have been settled or approved; and
 - (iii) act fairly and impartially when exercising its power to issue certificates and award extensions of time under any building contract relating to the Project.
- (b) it has exercised and shall continue to exercise the Required Standard:
- (i) when performing the Services;
 - (ii) not to specify for use anything in the Project, which is Deleterious at the time of specification or use;
 - (iii) to comply with (and ensure the completed Project complies with) any:
 - (A) Act of Parliament;
 - (B) instrument, rule or order made under any Act of Parliament; and
 - (C) regulation or bye-law of any local authority, statutory undertaker or public or private utility or undertaking that has any jurisdiction over the Project or with whose systems or Landlord's Property the Project is or will be connected;
 - (iv) to perform the Services and prepare all Material for those elements of the Project for which the Consultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;
 - (v) to ensure that the Project complies with all planning agreements, permissions and conditions; and
 - (vi) not to cause or contribute to any breach by the Client of any Third Party Agreement provided that, where the Client notifies the Consultant of a Third Party Agreement after the date of the Professional Appointment, the Consultant is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the date of the Professional Appointment.

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

- (a) rely on any limit of liability or other term of the Professional Appointment; and
- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Professional Appointment [(for this purpose not

taking into account any set-off or counterclaim against the actual client under the Professional Appointment)].

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

- (a) any approval or inspection of:
 - (i) the Landlord's Property; or
 - (ii) the Project; or
 - (iii) any designs or specifications for the Landlord's Property or the Project; or
- (b) any testing of any work, goods, materials, plant or equipment; or
- (c) any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Client.

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

3. [Step-in rights: Consultant may not terminate or discontinue

3.1 [Subject to clause 3.6,] the Consultant shall not exercise, or seek to exercise, any right to:

- (a) terminate its employment under the Professional Appointment; or
- (b) discontinue performance of the Services,

for any reason (including any breach on the part of the Client) without giving the Beneficiary at least [ten OR 15 OR 20] Business Days' written notice of its intention to do so. Any notice from the Consultant shall specify the grounds for the Consultant's proposed termination or discontinuance.

3.2 If the Professional Appointment allows the Consultant a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Professional Appointment shall be extended to take account of the notice period required under clause 3.1.

3.3 The Consultant's right to terminate its employment under the Professional Appointment, or to discontinue performance of the Services, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Consultant, copied to the Client:

- (a) requiring the Consultant not to terminate its employment or not to discontinue performance of the Services under the Professional Appointment;
- (b) acknowledging that the Beneficiary (or its nominee) will assume all the Client's obligations under the Professional Appointment; and
- (c) undertaking that the Beneficiary or its nominee will pay to the Consultant:
 - (i) any sums due and payable to the Consultant under the Professional Appointment in future; and
 - (ii) any sums then due and payable to the Consultant under the Professional Appointment that are unpaid.

3.4 If the Beneficiary (or its nominee) serves notice on the Consultant under clause 3.3, then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (to the exclusion of the Client).

3.5 In complying with this clause 3, the Consultant:

- (a) does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client; and
- (b) may exercise its right to terminate its employment under the Professional Appointment, or discontinue performance of the Services, after the expiry of the notice period referred to in clause 3.1, unless the Consultant's right to terminate or discontinue has ceased under clause 3.3.

3.6 [If:

- (a) the Consultant enters into another agreement with a third party or grants third party rights to a third party concerning the Project at the request of the Client; and
- (b) that agreement or those third party rights include similar step-in rights to those in clause 3 or clause 4,

then, on that third party's (or that third party's nominee's) exercise of those step-in rights:

- (c) the Consultant shall no longer be bound by clause 3.1 and clause 3.3; and
- (d) the Beneficiary may no longer exercise its rights under clause 3 or clause 4.]

4. [Step-in rights: Beneficiary may step-in

4.1 [Subject to clause 3.6 and] without affecting clause 3.1, if the Beneficiary serves a notice on the Consultant, copied to the Client, that:

- (a) confirms that the Beneficiary wishes to step-in to the Professional Appointment; and
- (b) complies with the requirements for a Beneficiary's notice under clause 3.3,

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

4.2 The Consultant shall assume that, between the Client and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Consultant shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4 the Consultant does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client.]

5. [Step-in rights: Consultant's position and Client's consent

5.1 The Consultant shall not incur any liability to the Client by acting in accordance with clause 3 or clause 4.

5.2 The Client has entered into this agreement to confirm its consent to the agreement.]

6. [Step-in rights: Beneficiary's guarantee

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Consultant, as guarantor, for the payment of any sums due and payable from time to time to the Consultant from the Beneficiary's nominee.]

7. No instructions to Consultant by Beneficiary

[Unless the Beneficiary has stepped-in under clause 3 or clause 4,] the Beneficiary may not give instructions to the Consultant under this agreement.

8. Copyright

8.1 The Consultant grants to the Beneficiary, with immediate effect, 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 Consultant for any purpose relating to the Project and the Landlord's Property, including any of the Permitted Uses.

8.2 [This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.]

8.3 This licence carries the right to grant sub-licences[and is transferable to third parties without the consent of the Consultant].

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

8.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

9. Professional indemnity insurance

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

- (a) with reputable insurers lawfully carrying on insurance business in the [UK or EU];
- (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- (c) on terms that:
 - (i) do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and

- (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.
- 9.2 Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 9.3 The Consultant shall not, without the Beneficiary's written consent:
 - (a) settle or compromise any claim with the insurers that relates to a claim by the Beneficiary against the Consultant; or
 - (b) by any act or omission lose or affect the Consultant's right to make, or proceed with, that claim against the insurers.
- 9.4 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates [and terms], so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project and the Landlord's Property, without that insurance.
- 9.5 [The Consultant shall fully co-operate with any measures reasonably required by the Beneficiary, including:
 - (a) completing any proposals for insurance and associated documents; or
 - (b) maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Consultant for the net cost of that insurance above commercially reasonable rates.]
- 9.6 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Consultant's insurers or brokers confirming:
 - (a) the Consultant's then current professional indemnity insurance; and
 - (b) that the premiums for that insurance have been paid in full at the date of that letter.

10. Liability period

The Beneficiary may not commence any legal action against the Consultant under this agreement after [six OR 12] years from the date of [practical completion OR making good of defects] of all of the Project.

11. Assignment

- 11.1 The Beneficiary may assign the benefit of this agreement:
 - (a) on two occasions to any person [with an interest in the Project]; and
 - (b) without counting as an assignment under clause 11.1(a):
 - (i) by way of security [to a Funder] (including any reassignment on redemption of security); or
 - (ii) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary

[so long as that assignee company remains within the same group of companies as the Beneficiary].

11.2 The Beneficiary shall notify the Consultant [and the Client] of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.

11.3 The Consultant shall not contend that any person to whom the benefit of this agreement is assigned under clause 11.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

12. Notices

12.1 [For the purposes of this clause, but subject to clause 12.7, notice includes any other communication.]

12.2 A notice given to a party under or in connection with this agreement:

- (a) shall be in writing [and in English[or accompanied by an accurate translation into English]];
- (b) [shall be signed by or on behalf of the party giving it;]
- (c) shall be sent to the party for the attention of the contact and at the address[, fax or DX number] listed in clause 12.3;
- (d) [shall OR may] be sent by a method listed in clause 12.5; and
- (e) [unless proved otherwise] is deemed received as set out in clause 12.5 if prepared and sent in accordance with this clause.

12.3 The parties' addresses and contacts are as set out in this table:

Party	Contact	Address	Fax number	DX number
Consultant	[POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]	[DX NUMBER]
Client	[POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]	[DX NUMBER]
Beneficiary	[POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]	[DX NUMBER]

12.4 A party may change its details given in the table in clause 12.3 by giving notice, the change taking 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] Business Days after deemed receipt of the notice.

12.5 This table sets out:

- (a) delivery methods for sending a notice to a party under this agreement; and
- (b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place

provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 12.6:

Delivery method	Delivery date and time
Delivery by hand.	On signature of a delivery receipt [or at the time the notice is left at the address].
Pre-paid first class [recorded delivery] post or other next working day delivery service[providing [proof of postage OR proof of delivery]].	[9.00 am] on the [second] Business Day after posting [or at the time recorded by the delivery service].
Pre-paid airmail [providing [proof of postage OR proof of delivery.]]	[[9.00 am] on the [fifth] Business Day after posting [or at the time recorded by the delivery service.] OR [INSERT TIME AND DATE].
Fax.	At the time of transmission.
Document exchange (DX).	[9.00 am] on the [second] Business Day after being put into the DX.

12.6 For the purpose of clause 12.5 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

12.7 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.

12.8 A notice given under [or in connection with] this agreement is not valid if sent by email.

13. Third party rights

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

14. Governing law

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.

15. Jurisdiction

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

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

OR

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Annex C. Agreed form of Lease

- LR1. Date of lease: 201[]
- LR2. Title number(s): LR2.1 Landlord's title number(s):
ESX310316
LR2.2 Other title number(s):
None
- LR3. Parties to this lease:
Landlord: BRIGHTON & HOVE CITY COUNCIL of Hove
Town Hall Norton Road Hove BN3 3BQ
Tenant: []
Surety: None
- LR4. Property: Please see the definition of "Property" in
(referred to in the remainder of this clause 1.1
lease as the "Property")
- LR5. Prescribed statements etc: None
- LR6. Term for which the Property is leased: The term is as follows: 125 years from and
(referred to in the remainder of this including []
lease as the "Term")
- LR7. Premium: None

- LR8. Prohibitions or restrictions on disposing of this lease:** This lease contains a provision that prohibits or restricts dispositions
- LR9. Rights of acquisition etc:**
- LR9.1** Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land:
None
- LR9.2** Tenant's covenant to (or offer to) surrender this lease:
None
- LR9.3** Landlord's contractual rights to acquire this lease:
None
- LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property:** None
- LR11. Easements:**
- LR11.1** Easements granted by this lease for the benefit of the Property:
Schedule 2
- LR11.2** Easements granted or reserved by this lease over the Property for the benefit of other property
Schedule 3

**LR12. Estate rentcharge
burdening the
Property:**

None

**LR13. Application for
standard form of
restriction:**

The Parties to this Lease apply to enter the following standard form of restriction against the title of the Property:

No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charged registered before the entry of this restriction, is to be registered without a written consent signed by The Secretary of State for Education of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT

**LR14. Declaration of trust
where there is more
than one person
comprising the
Tenant:**

Not applicable

THIS LEASE is made the day of 201[]

BETWEEN:

(1) **BRIGHTON & HOVE CITY COUNCIL** of Hove Town Hall Norton Road Hove BN3 3BQ ("the Landlord")

(2) [.....] ("the Tenant")

NOW IT IS HEREBY AGREED as follows:-

PART A: PRELIMINARY

1. Definitions and Interpretation

1.1 In this Lease unless the context otherwise requires the following words and expressions shall have the following meanings:

- | | |
|------------------------------|---|
| "Academy" | an academy falling within the description contained in section 1(10) Academies Act 2010; |
| "Amenities" | drainage water gas electricity telephone and any other services or amenities of like nature; |
| "Break Date" | each of the 25 th , 50 th , 75 th and 100 th anniversaries of the date of this Lease. |
| "Break Notice" | written notice to terminate this Lease. |
| "Contaminated Regime" | Land the contaminated land regime under Part 2A of the Environmental Protection Act 1990 (as amended from time to time) and any statutory instrument, circular or guidance issued under it. |
| "Conduits" | gutters gullies pipes sewers drains watercourses channels ducts flues wires aerials cables mains cisterns tanks and all other conducting media together with all meters and other apparatus used in connection with them; |
| "End Date" | the date that falls 90 working days after the Funding Termination Date; |
| "Enforcing Authority" | the relevant regulator for the Property under the Contaminated Land Regime; |
| "Environment Acts" | the Environmental Protection Act 1990, the Environment Act 1995, the Water Resources Act 1991, the Water Industry Act 1991 and any other Law or Laws of a similar nature in force at any time during the Term; |

"Environmental Law"	all applicable laws, statutes, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes (as amended from time to time) in so far as they relate to the protection of the Environment;
"Fixtures and Fittings"	all fixtures and fittings in or upon the Property to include plant and machinery lifts boilers central heating air conditioning lighting plumbing sanitary and sprinkler systems and any other apparatus from time to time in or upon the Property;
"Funding Agreement"	<p>(a) an agreement pursuant to [Section 1 of the Academies Act 2010] made between (1) the Secretary of State for Education and (2) [name of Academy Trust] [supplemental to a Master Funding Agreement made between the same parties]; and</p> <p>(b) any replacement or renewal of such agreement between the same parties and in substantially the same form; and</p> <p>(c) any replacement agreement made between the Tenant and the Secretary of State for Education (or the successor government body which assumes his functions for funding educational organisations of the Tenant's kind) and which provides funding for the Tenant in relation to the operation of educational services at the Property;</p>
"Funding Termination Date"	the date that falls 30 working days after the termination of the Funding Agreement;
"Hazardous Substances"	any material, substance or organism which, alone or in combination with others, is capable of causing harm to the Environment or which is likely to cause an actionable nuisance.
"Insured/Covered Risks"	(a) where the Tenant is not a member of the Risk Protection Arrangement; fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting or overflowing of water tanks and pipes,

damage by aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Tenant insures against from time to time; or

- (b) where the Tenant is a member of the Risk Protection Arrangement such risks as are covered by the Risk Protection Arrangement

subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters or by the terms of the Risk Protection Arrangement, provided that if in respect of any period of time the Tenant is unable to effect insurance against any one or more of such risks upon terms or at a premium which the Tenant considers reasonable or if the risks are not covered by the Risk Protection Arrangement of which the Tenant is a member then during such period such risk or risks are deemed to be excluded from the definition of "Insured/Covered Risks";

"Interest"

interest at the rate of four per cent (4%) per annum above Lloyds Bank plc Base Rate for the time being in force (both before and after any judgment) such interest to be compounded with rests on the usual quarter days or if such Base Rate ceases to be published then at the rate of one per cent (1%) per annum above the rate at which the Landlord could reasonably borrow from time to time;

"Landlord's Property"

land and buildings including the Property registered at the Land Registry under Title Number ESX310316;

"Law"

any statute or any order instrument or regulation made under it or any notice or order issued by a government department the legislative making institutions of the European Union minister or local public regulatory or other authority;

"Lease"

this Lease as varied from time to time together with any other deed document or agreement at any time during the Term amending supplemental or collateral to it;

"Outgoings"

all present and future rates taxes duties charges assessments impositions and outgoings whatsoever (whether parliamentary local or of any other description including capital or non-

	recurring and including any novel expenses);
"Plan"	the plan annexed to this Lease;
"Planning Acts"	the Town and Country Planning Act 1990 the Planning (Listed Buildings and Conservation Areas) Act 1990 the Planning (Hazardous Substances) Act 1990 the Planning (Consequential Provisions) Act 1990 the Planning and Compensation Act 1991 the Planning and Compulsory Purchase Act 2004 and any other Law or Laws of a similar nature in force at any time during the Term;
"Playing Fields"	shown edged [] on the Plan;
"Premises Acts"	the Occupiers' Liability Act 1957 the Factories Act 1961 the Offices Shops and Railway Premises Act 1963 the Regulatory Reform (Fire Safety) Order 2005 the Defective Premises Act 1972 the Health and Safety at Work etc. Act 1974 the Occupiers' Liability Act 1984 and any other Law or Laws regulating the safety of premises and those occupying or visiting the same in force at any time during the Term;
"President"	the President of the Institution of Chartered Surveyors;
"Property"	the property described in Part 1 Schedule 1;
"Reinstatement Value"	the full cost of reinstating the Property including:- <ul style="list-style-type: none"> (a) temporarily making the Property safe and protecting any adjoining structures; (b) debris removal demolition and site clearance; (c) obtaining planning and any other requisite consents or approvals; (d) complying with the requirements of any Law; (e) architects' surveyors' and other fees incurred by the Tenant in relation to the reinstatement; (f) all construction costs; (g) any VAT chargeable on any of the reinstatement costs (save where the Tenant is able to recover such VAT as an input in relation to supplies made by the Tenant);

- 1.2 In interpreting this Lease:-
- 1.2.1 references to Clauses pages and Schedules are to Clauses and pages of and Schedules to this Lease unless stated otherwise;
 - 1.2.2 the expression "Landlord" includes the person for the time being entitled to the immediate possession of the Property on the expiry of the Term;
 - 1.2.3 the expression "Tenant" includes the person in whom for the time being the Tenant's interest under this Lease is vested;
 - 1.2.4 where reference is made to a statute this includes all prior and subsequent enactments amendments and modifications relating to that statute and any subordinate legislation made under such statute;
 - 1.2.5 references to a "person" include any individual firm unincorporated association or body corporate and words importing the singular number include the plural number and vice versa and words importing one gender include all genders;
 - 1.2.6 if the Tenant is or are at any time more than one person any reference to the Tenant is deemed to refer to each such person and any obligation on the part of the Tenant takes effect as a joint and several obligation;
 - 1.2.7 any covenant by the Tenant not to carry out any action is to be construed as if it is (where appropriate) additionally a covenant by the Tenant not to permit or suffer such action to be done;
 - 1.2.8 the words "include" and "including" are to be construed without limitation and in construing this Lease the eiusdem generis principle does not apply and general words are not to be given a restrictive meaning because they are followed by particular examples intended to be embraced by the general words;
 - 1.2.9 a reference to an act or omission of the Tenant includes an act or omission of any undertenant and any other person deriving title under the Tenant and includes an act or omission of their respective employees and visitors and anyone at the Landlord's Property with the express or implied authority of any one or more of them;
 - 1.2.10 a reference to the Property includes any part of it except where the word is used in Clause 3.12;
 - 1.2.11 a reference to the end of the Term or to the Termination Date is to the end of the Term however it terminates;
 - 1.2.12 a consent of the Landlord shall be valid if it is either:
 - (a) given in writing and signed by a person duly authorised on behalf of the Landlord; or

- (b) (if required by the Landlord after any request for consent from the Tenant but prior to consent being given) it is by deed; and

if a consent is not by deed it will not affect the Landlord's ability to require that any other consent should be by deed;

- 1.2.13 any notice given to the Landlord shall not be valid unless it is in writing;
- 1.2.14 the Landlord is entitled to withhold its consent where it requires the corresponding consent of any mortgagee or superior landlord of the Property until it obtains that consent (and the Landlord shall use all reasonable endeavours to obtain such consent and shall ensure that any charges or superior leases created after the date of this Lease shall contain obligations on the mortgagee or superior landlord not unreasonably to withhold or delay consent in circumstances where the Landlord's consent cannot be unreasonably withheld or delayed under this Lease);
- 1.2.15 a right of the Landlord or anyone else to have access to or entry upon the Property extends to any superior landlord and any mortgagee of the Landlord's Property and to anyone authorised by the Landlord or any superior landlord or mortgagee and includes a right of entry with workmen equipment and materials;
- 1.2.16 the table of contents and headings to Clauses paragraphs and Schedules do not affect the construction of this Lease;
- 1.2.17 a right granted by the Landlord is granted in common with all other persons entitled to it and/or authorised by the Landlord to exercise it;
- 1.2.18 a right excepted or reserved to the Landlord is also reserved to any other person entitled to it and/or authorised by the Landlord;
- 1.2.19 where the Landlord is entitled to enter the Property on giving notice it is also entitled to enter without notice in emergency and may break and enter if it considers it necessary;
- 1.2.20 nothing entitles the Tenant to enforce any obligation given by anyone to the Landlord;
- 1.2.21 any person undertaking any obligation under or by virtue of this Lease which is a 'landlord covenant' for the purposes of the 1995 Act does so only in respect of the period of time during which the immediate reversion to this Lease is vested in such person and not further or otherwise;
- 1.2.22 any works (whether of repair decoration alteration or otherwise) that the Tenant is permitted or obliged to carry out in accordance with this Lease shall be carried out in accordance with good modern practice;

- 1.2.23 a provision of this Lease which is void or unenforceable shall be severed from all other provisions of this Lease and the remaining provisions shall continue to have effect;
- 1.2.24 if a provision of this Lease extends beyond the limitations set by any Law or rule of law but if it were not so extended would remain unaffected by the Law or rule of law the provision is deemed to be varied so as not to extend beyond the limitations;
- 1.2.25 if any matter is referred to arbitration pursuant to this Lease:
- (a) it is to be conducted in accordance with the Arbitration Act 1996; and
 - (b) the arbitrator has no power:
 - (i) to order rectification setting aside or cancellation of this Lease;
 - (ii) to direct that the recoverable costs of the arbitration or any parts of the arbitral proceedings will be limited to a specific amount;
 - (iii) where there are provisions in this Lease for the payment of interest at a specified rate to award interest whether in addition to or in substitution for such interest provisions;
- 1.2.26 if any matter in this Lease is to be determined by an arbitrator:
- (a) he is to be appointed by agreement between the Landlord and the Tenant or at the request and option of either of them is to be nominated by the President;
 - (b) if he dies delays or declines to act the President may on the application of either the Landlord or the Tenant discharge him and appoint another to act in his place in the same capacity; and
 - (c) if either the Landlord or the Tenant pays his fees and expenses it may recover the proportion (if any) the other party was obliged to pay from that other party as a debt recoverable on demand;
- 1.2.27 wherever and to the extent that any provision of this Lease would or might contravene the provisions of section 25 of the 1995 Act then:-
- (a) such provision is to take effect only in so far as it may do so without contravening section 25 of the 1995 Act (and where such provision extends beyond the limits permitted by section 25 of the 1995 Act that provision is to be varied so as not to extend beyond those limits); and
 - (b) where such provision is incapable of having any effect without contravening section 25 of the 1995 Act this

Lease is to be construed and interpreted as if such provision were deleted; and

- (c) the legality validity and enforceability of any of the remaining provisions of this Lease is not in any way to be affected or impaired as a result.

2. Demise Rents and Other Payments

2.1 The Landlord demises the Property to the Tenant for the Term (subject to the provisions for earlier termination contained in this Lease) the Tenant paying therefor by way of rent throughout the Term without any deduction counterclaim or set off (whether legal or equitable) of any nature whatsoever:-

2.1.1 the Rent (if demanded);

2.1.2 all other sums (including VAT) due under this Lease from the Tenant to the Landlord.

2.2 The Property is demised:-

2.2.1 together with the rights specified in Schedule 2;

2.2.2 excepting and reserving to the Landlord and all others now entitled (or who may become entitled) and all others authorised by them (to include any adjoining or neighbouring owners or occupiers) as specified in Schedule 3; and

2.2.3 subject to and with the benefit of the matters contained or referred to in the documents listed in Schedule 4.

3. Tenant's Covenant

The Tenant covenants with the Landlord as follows:-

3.1 Rent and Payments

To pay the Rent and all other sums reserved as rent by this Lease at the times and in the manner at and in which they are reserved in this Lease.

3.2 Outgoings

3.2.1 Promptly to pay the Outgoings which are now or may during the Term be payable in respect of the Property or its owner or occupier except any payment occasioned by any disposition of or dealing with the ownership of any estate or interest expectant in reversion on the Term provided always that if any Outgoings are payable in respect of the Retained Land as well as the Property without apportionment to pay a fair and proper proportion of the same to be conclusively determined by the Landlord acting reasonably;

3.2.2 To pay for all Amenities exclusively used by or available to the Property (including all standing charges);

3.2.3 To observe and perform all present and future regulations and requirements of the authorities or companies supplying or providing the Amenities.

3.3 Repair and Upkeep

3.3.1 At all times during the Term to keep the Property (including for the avoidance of doubt all buildings structures landscaping and other erections) clean and tidy and make good:-

- (a) any damage it causes to the Property and/or
- (b) any deterioration to the condition of the Property that may arise from the Term Commencement date

provided that the Tenant shall not be in breach of this covenant if and for so long as disrepair arises due to damage caused to the Property by any of the Insured/Covered Risks and the Tenant is diligently pursuing its insurance claim or its claim under the Risk Protection Arrangement and reinstating such damage;

3.3.2 To notify the Landlord in writing immediately if any structural damage occurs to the Property.

3.4 Access of Landlord and Notice to Repair

To permit the Landlord and all persons authorised by the Landlord (with or without equipment) upon reasonable prior notice to the Tenant (but at any time without notice in case of emergency) to enter the Property as follows:-

3.4.1 in the final 3 years of the Term in order to take inventories of any Fixtures and Fittings to be yielded up at the end of the Term;

3.4.2 at reasonable intervals during the Term in order to view and examine the state of repair and condition of the Property and to give to the Tenant or the Tenant's agent or leave on the Property notice in writing to the Tenant of all breaches of any of the tenant covenants in this Lease relating to the condition or repair of the Property ("Repair Notice") and the Tenant covenants (subject to having obtained any necessary consents to any required works, which the Tenant shall use all reasonable endeavours to obtain as soon as possible) to repair and make good the Property according to such notice and the covenants in that behalf contained in this Lease within the following time periods:-

- (a) where (b) and (c) below do not apply or where the state of repair is causing a breach of health and safety or

other legislation or is causing structural damage ("Safety Breach"), the works shall be commenced within the period of fifty six (56) days after the service of the Repair Notice and shall be completed diligently thereafter;

(b) where there is no Safety Breach, if the Tenant does not immediately have the funds to carry out such works but could complete the works within a reasonable period without requiring further funding under the Funding Agreement it shall demonstrate this to the Landlord by providing to the Landlord within fifty six (56) days of the service of the Repair Notice:

(i) a statement of the maintenance budget for the Property (included within the funding already received under the Funding Agreement) and the sums expended that financial year to date on the repair and maintenance of the Property ("Funding Statement"); and

(ii) a programme of works setting out a reasonable time period for the works to be carried out taking into account the nature of the disrepair and the funds available;

and the works shall be commenced and carried out within the periods set out in the programme of works referred to at (ii) above;

(c) where there is no Safety Breach and where the Tenant cannot demonstrate that it can carry out the works within a reasonable time under (b) above but requires to make an application ("Funding Application") to the Secretary of State for funding under the Funding Agreement in order to carry out such works, the relevant section of works shall be commenced as soon as reasonably practicable after the Secretary of State grants permission under the programme of works agreed pursuant to the Funding Application ("Works Programme");

and if the Tenant fails satisfactorily to comply with such notice in accordance with (a) (b) or (c) above the Landlord and all persons authorised by the Landlord are entitled at any time without notice (but without prejudice to the right of re-entry contained in this Lease) to enter the Property with all necessary equipment to repair and make good the Property in accordance with the covenants and provisions contained in this Lease and the expense of such repairs together with all reasonable legal and surveyors' fees properly incurred in connection with this sub-clause must be repaid by the Tenant to the Landlord upon demand and on a full indemnity basis as a contractual debt;

- 3.4.3 where the Tenant has served notice on the Landlord pursuant to Clause 3.4.2 of the occurrence of structural damage to the Property then to permit the Landlord to enter onto the Property to view and examine the state of repair and condition of the Property;
- 3.4.4 at any time during the Term to view the Property in connection with any dealing or proposed dealing (by way of sale mortgage or otherwise) with the Landlord's reversionary interest in the Property;
- 3.4.5 (in circumstances only where the Landlord may have a liability under Law or under this Lease) to carry out such tests inspections and surveys as the Landlord reasonably requires;
- 3.4.6 at any time during the Term to fix and retain without interference upon any suitable part or parts of the Property one or more notice boards for reletting (but in the case of reletting only within six months before the Termination Date) or selling at any time the Landlord's reversionary interest in the Property;
- 3.4.7 at any time during the Term to exercise any rights reserved by this Lease and to comply with any obligations of the Landlord (whether arising under this Lease or otherwise);
- 3.4.8 at reasonable intervals during the Term in order to determine whether the Tenant has complied with all its obligations in this Lease (save that, for the avoidance of doubt, the Landlord shall not be entitled to inspect the financial records of the Tenant);

Provided that any exercise of the above rights by the Landlord does not constitute an action for forfeiture by the Landlord or evidence an intention to accept or effect the surrender of the Term and provided further that the exercise of the above rights by the Landlord shall not be in such a manner as materially to restrict or interrupt the operation of the school on the Property by the Tenant, shall cause as little damage as reasonably practicable and shall (save in relation to emergency access) be in accordance with the reasonable requirements of the Tenant in relation to the security of the Property and the health and safety of the students and others at the Property, and the Landlord shall make good any damage caused to the Property as soon as reasonably practicable.

3.5 Alterations and Additions

- 3.5.1 Not to commit any act of waste;
- 3.5.2 Not to erect any buildings or other structures on the Property nor make any structural or external alterations additions or variations to any structures for the time being on the Property without the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed) save that the Landlord can only refuse such consent if:-

- (a) such erection alteration addition or variation will adversely affect the Landlord's statutory obligations as a landlord or as a local authority; and/or
- (b) such erection alteration addition or variation will have an adverse effect on the structural integrity of any structures on the Property or any part or parts of any structures on the Property; and/or
- (c) such erection alteration addition or variation will adversely affect the value of the Landlord's reversionary interest in the Property;

3.5.3 As part of the application to the Landlord for its consent pursuant to Clause 3.5.2 the Tenant shall:-

- (a) submit to the Landlord adequate plans and specifications describing the proposed erection alteration addition or variation and shall consult with the Landlord on the proposed erection alteration addition or variation and shall take into account any representations that the Landlord may reasonably make in relation to the matters referred to at Clause 3.5.2 (a) (b) and (c);
- (b) make any necessary variations or alterations to the plans and specifications in accordance with the reasonable representations of the Landlord pursuant to sub-clause (a) above;
- (c) covenant with the Landlord as to the execution and (if it is agreed between the parties before the works are carried out that they will be reinstated at the determination of the Term) the reinstatement of any of the works as the Landlord may reasonably require;

3.5.4 In relation to any works permitted pursuant to Clauses 3.5.2 and 3.5.3 above to carry out all such works only in accordance with such plans and specifications as have been provided to and approved by the Landlord in writing or as have been subsequently varied in accordance with any representations of the Landlord;

3.5.5 After commencing any works of erection alteration addition or variation as permitted pursuant to Clauses 3.5.2 and 3.5.3 above to complete such works as soon as reasonably practicable and in any event no later than by the end of the Term;

3.5.6 To carry out any works permitted by this Lease in a good and workmanlike manner as soon as reasonably practicable with good quality materials strictly in accordance with all relevant British Standards including codes of practice and the requirements and regulations of all utility companies affected by such works and so that any easements rights privileges or liberties which third parties enjoy in over or under the Property are not interfered with and that no nuisance is caused to the

Landlord or any occupiers of any part or parts of the Retained Land.

3.5.7 Not to carry out any erection alteration addition or variation which hinders access to a Conduit.

3.6 Signs and Advertisements

3.6.1 To notify the Landlord of the affixing or display on the boundaries of the Property or on the outside of the buildings on the Property of any sign (which expression includes any signboard advertisement hoarding fascia poster placard bill notice or other notification) other than signs which:

- (a) are required by law to be affixed or displayed; or
- (b) do not require planning permission; or
- (c) are necessary or usual for the authorised use of the Property;

3.6.2 To display and maintain upon the Property notices required in relation to the Premises Acts and the Environment Acts.

3.7 Statutory Obligations

3.7.1 To comply with all Laws (including the Premises Acts) affecting the Property the physical condition or the user of them or the use of any Fixtures and Fittings in them;

3.7.2 As soon as reasonably practicable to give written notice to the Landlord of anything arising or being in the Property which may endanger or adversely affect health or safety and which might give rise to a duty of care imposed by common law or statute on the Landlord in favour of the Tenant or any other person;

3.7.3 The Tenant shall comply with its obligations, requirements and duties under the Construction (Design and Management) Regulations 2015 ("CDM Regulations") in relation to any works carried out at the Property, including all requirements in relation to the provision and maintenance of a health and safety file for the Property, which the Tenant shall maintain and shall give to the Landlord on the Termination Date;

3.7.4 The parties agree that the Tenant shall be treated as the only client as defined under the CDM Regulations in respect of any works carried out at the Property;

3.7.5 The Tenant shall supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord's obligations under the CDM Regulations.

3.8 Yield Up

On the Termination Date quietly to yield up the Property to the Landlord with vacant possession (subject only to any lease granted to a statutory undertaker) in accordance with the proper performance of

the Tenant's covenants contained in this Lease and with all refuse and (unless the Landlord notifies the Tenant to the contrary prior to the Termination Date) all Tenant's fixtures and fittings lettering and signs put up by the Tenant duly removed.

3.9 Use

3.9.1 Not to carry on upon the Property any noisy noxious offensive or dangerous trade or occupation provided that the proper use of the Property for the purposes permitted by clause 3.9.3 shall not be a breach of this Clause;

3.9.2 Not to use the Property for any illegal or immoral purpose;

3.9.3 Without prejudice to the preceding covenants in this Clause not to use the Property otherwise than:

(a) for the purposes of the provision of educational services; and

(b) for community, fundraising and recreational purposes which are ancillary to the use permitted under Clause 3.9.3 (a).

3.10 Planning and Environmental Matters

3.10.1 To provide to the Landlord copies of any plans specifications applications consents and permissions relating to applications under the Planning Acts and to deal with any queries that the Landlord acting reasonably may raise;

3.10.2 So often as occasion requires to obtain all consents and permissions required to authorise the use from time to time of the Property and the carrying out of any development (within the meaning of the Planning Acts) on the Property;

3.10.3 To pay and satisfy any charges that may hereafter be imposed under the Planning Acts in respect of the carrying out or maintenance of any such development;

3.10.4 To give written notice to the Landlord of the granting or refusal of any planning permission within twenty (20) days after its receipt by the Tenant;

3.10.5 If the Tenant receives any compensation because of any restriction placed upon the use of the Property under or by virtue of the Planning Acts then if this Lease is determined by surrender or re-entry immediately to make such provision as is just and equitable for the Landlord to receive due benefit from such compensation.

3.11 Notices

As soon as reasonably practicable following receipt to provide to the Landlord a copy of any communication or notice which may give rise to a liability on the part of the Landlord or which may adversely affect the value or nature of the Landlord's interest in the Property.

3.12 Dealings

3.12.1 Not to part with or share the possession or occupation of the whole or any part or parts of the Property Provided that:

(a) the Tenant may share occupation of the whole or part of the Property with a proprietor or proposed proprietor of an Academy or a body or individual providing services or facilities which are ancillary to and within the uses referred to in clause 3.9.3 where no relationship of landlord and tenant arises as a result of such occupation; and

(b) the Tenant may share occupation of the Playing Fields with individuals or bodies (whether or not in consideration of payment of a fee) where no relationship of landlord and tenant arises as a result of such occupation

3.12.2 Not to hold the Property or any part or parts of the Property or this Lease on trust for another;

3.12.3 Subject to sub-clause 3.12.4 not to assign or transfer any part or parts or the whole of the Property;

3.12.4 The Tenant is permitted to assign or transfer the whole of the Property to the relevant Secretary of State or an entity controlled by it or subsidiary of it or to a proprietor or proposed proprietor of an Academy or to a successor charitable or public body without the consent of the Landlord where the Secretary of State has given approval in writing to such an assignment or transfer;

3.12.5 The Tenant is permitted to underlet any part or parts or the whole of the Property without the Landlord's prior written consent

3.13 Rights of Light and Encroachments

Not to obstruct any windows or lights belonging to the Property nor to permit any encroachment upon the Property which might be or become a detriment to the Landlord and in case any encroachment is made or attempted to be made to give immediate notice of it to the Landlord.

3.14 Indemnity

3.14.1 To keep the Landlord indemnified against all actions proceedings costs claims demands and expenses in respect of any liability or alleged liability in respect of any injury to or the death of any person (however the same may be caused) damage to any property moveable or immovable Laws (including the Premises Acts the Planning Acts and the Environment Acts) the infringement disturbance or destruction of any right easement or privilege and every other liability arising directly or indirectly out of any defect in or the condition or use of the Property or anything done or omitted to be done

on them or any breach of the Tenant's obligations in this Lease;

3.14.2 To notify the Landlord in writing immediately upon any of the events or matters referred to in sub-clause 3.14.1 occurring or arising.

3.15 Costs

To pay to the Landlord on demand all reasonable and proper costs charges and expenses (including legal costs and surveyors' fees and other professional fees and any charges and/or commission payable to a bailiff) losses and liabilities which may be incurred by the Landlord:-

3.15.1 in connection with the preparation and service of any notice (including any schedule of dilapidations) served under this Lease relating to the repair or condition of the Property whether during the Term or within three (3) months after the Termination Date;

3.15.2 in connection with any application by the Tenant for any licence approval permission or consent required under the terms of this Lease whether or not the application is withdrawn or the licence approval permission or consent is refused (save where refused unreasonably contrary to the terms of this Lease) or is granted (save where granted subject to conditions declared by a court of competent jurisdiction to be unreasonable);

3.15.3 in or in contemplation of claiming or recovering any arrears of Rent or rents or in connection with or arising out of any breach by the Tenant of any of the Tenant's obligations hereunder whether or not the Landlord proves such matters by proceedings in any Court.

3.16 VAT

3.16.1 To pay VAT upon the Rent and upon any other sums payable by the Tenant under this Lease and in relation to any other supply of goods or services (within the meaning of section 5 and schedule 4 of the Value Added Tax Act 1994) made by the Landlord to the Tenant under this Lease so far as such tax is from time to time properly chargeable upon the same and in relation to taxable supplies made by the Landlord to the Tenant the Landlord must deliver to the Tenant a valid VAT invoice addressed to the Tenant;

3.16.2 Where the Tenant has agreed to reimburse or indemnify the Landlord in respect of any payment made by the Landlord under the terms of or in connection with this Lease also to reimburse any VAT properly paid by the Landlord on such payment unless the VAT is actually recovered by the Landlord as an input in relation to supplies to the Landlord.

3.17 Interest on Arrears

If any sums from time to time payable by the Tenant to the Landlord under this Lease are not paid to the Landlord within 14 days of the date when such sums became due (whether demanded or not) or are tendered to the Landlord but the Landlord reasonably refuses to accept them so as to preserve any rights the Landlord has to pay to the Landlord (without prejudice to any other right remedy or power available to the Landlord) interest on such sums (both before and after any judgement) from the date when such sums first became due until the date of actual payment inclusive of both dates at the Interest Rate.

3.18 Landlord's Property

To observe and perform the matters contained or referred to in the documents listed in Schedule 4 relating to the Landlord's Property so far as they are still subsisting and capable of taking effect and relate to the Property and to keep the Landlord indemnified against all actions proceedings costs claims demands and expenses relating to them (excluding the 1951 Conveyance, 1952 Conveyance and the 1955 Conveyance).

4. Landlord's Covenants

The Landlord covenants with the Tenant:-

4.1 Quiet Enjoyment

That the Tenant may peaceably and quietly hold and enjoy the Property during the Term without any interruption or disturbance by the Landlord or any person rightfully claiming through or under the Landlord.

5. Insurance and Risk Protection Arrangement

5.1 The Tenant covenants with the Landlord:-

5.1.1 to keep the Property insured with a reputable insurance office against loss or damage by the Insured Risks in the sum the Tenant is advised represents the Reinstatement Value of the Property from time to time, or to be a member of the Risk Protection Arrangement;

5.1.2 if not a member of the Risk Protection Arrangement to pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Property;

5.1.3 following the incidence of damage to or destruction of the Property and subject to receipt of all necessary consents licences permissions and the like to apply the proceeds of the policy of the insurance or payment under the Risk Protection Arrangement received for those purposes in rebuilding and reinstating the Property (provided that this covenant should be satisfied if the Tenant provides premises not necessarily identical to the Property as the same existing prior to such damage or destruction occurring) as soon as may be

reasonably practicable provided that in case it shall be impossible or impracticable to reinstate the Property in accordance with the provisions of this Clause 5 within three (3) years of the date of damage or destruction occurring the Tenant may but is not obliged to serve written notice on the Landlord to terminate this Lease and upon service of such notice this Lease shall immediately cease and determine but without prejudice to the rights of either party against the other in respect of any prior breach of any obligation contained in this Lease and any monies received under the said policy of insurance or under the Risk Protection Arrangement whether before or after the termination of this Lease shall be paid by the Tenant on receipt to the Landlord and shall:

- (a) as between the Landlord and the Tenant belong to the Landlord absolutely; and
- (b) be used by the Landlord solely for the provision of facilities or services within the City of Brighton and Hove

5.1.4 if not a member of the Risk Protection Arrangement to produce to the Landlord a copy of the insurance policy whenever reasonably requested and the receipt for the last premium paid or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of twelve (12) months in both cases);

5.1.5 not to knowingly do anything whereby any policy of insurance relating to the Property may become void or voidable.

5.2 The Tenant further covenants with the Landlord to insure against liability in respect of property owners' and third party risks if not a member of the Risk Protection Arrangement.

5.3 If for and as long as the Tenant is the Secretary of State for Communities and Local Government the insurance provisions will not apply and the Secretary of State for Communities and Local Government will self-insure.

6. Provisos

6.1 Re-Entry

6.1.1 Where there occurs a breach by the Tenant of Clause 3.9 and/or of Clause 5 of this Lease and the Landlord has served written notice specifying such breach and the remedial action required by the Tenant and if within a reasonable period (taking account of the breach complained of) the Tenant has not taken steps to remedy such breach or the Tenant is dissolved or struck off or removed from the Register of Companies or otherwise ceases to exist then it is lawful for the Landlord or any person authorised by the Landlord at any time afterwards to re-enter upon the Property or any part of it in the name of the whole and thereupon the Term absolutely

determines without prejudice to any right of action of the Landlord in respect of any breach of the Tenant's obligations contained in this Lease.

6.2 Landlord's Rights on Forfeiture

The Landlord's right to forfeit this Lease is not affected by any acceptance of or demand for rent or any action which would affirm this Lease by the Landlord with knowledge of a breach of any of the Tenant's covenants contained in this Lease and the Tenant is not in any proceedings for forfeiture or otherwise entitled to rely upon any such acceptance demand or affirmation as aforesaid as a defence provided that this provision only applies to any acceptance of or demand for rent or affirmation of this Lease made during such period as may in all the circumstances be reasonable for enabling the Landlord to conduct negotiations with the Tenant for remedying the breach.

6.3 Service of Notices

Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 applies to all notices which may require to be served under the terms of this Lease except that section 196 is deemed to be amended as follows:-

6.3.1 the final words of section 196(4) "and that service be delivered" are deleted and there is substituted "and that service is deemed to have been made on the third working day after the registered letter has been posted" and "working day" means any day from Monday to Friday (inclusive) other than Christmas Day Good Friday and any statutory or bank holiday;

6.3.2 any notice or document is also sufficiently served if sent by telephonic facsimile transmission to the party to be served and that service is deemed to be made on the day of transmission if transmitted before 4.00 pm on a working day but otherwise on the next following working day;

6.3.3 if the party to whom any notice to be served consists of more than one person the service of notice upon one of such persons constitutes service upon all of them;

6.3.4 any notice to be given by a party may be given by that party's solicitor or agent and when addressed to a party is not rendered invalid by reason of that party having died become insolvent or changed name whether or not the party serving notice is aware of the fact.

6.4 Exclusion of S.62 L.P.A.

The operation of section 62 of the Law of Property Act 1925 is excluded from this Lease and the only rights granted to the Tenant are those expressly set out in this Lease and the Tenant is not by virtue of this Lease deemed to have acquired or be entitled by any means whatsoever (other than express grant) to any easement from or over the Retained Land or affecting any other land or premises now or at

any time after the date of this Lease belonging to the Landlord and not comprised in this Lease.

6.5 Governance

6.5.1 This Lease is governed by English law.

6.5.2 The parties submit to the exclusive jurisdiction of the High Court of Justice in England.

6.6 Agreement to Exclude Sections 24 to 28 of the 1954 Act

6.6.1 The Landlord and the Tenant agree pursuant to section 38A(1) of the 1954 Act that the provisions of sections 24 to 28 (inclusive) of the 1954 Act are excluded in relation to the tenancy created by this Lease.

6.6.2 The Tenant confirms that:

(a) the Landlord served on the Tenant a notice (the "Notice") applicable to the tenancy created by this Lease on [12/12/2017] in accordance with section 38A(3)(a) of the 1954 Act; and

WBD for Tenant

(b) the Tenant or a person duly authorised by the Tenant made a declaration or a statutory declaration in relation to the Notice on [19/12/2017] in accordance with the requirements of section 38A(3)(b) of the 1954 Act;

before the Tenant entered into this Lease or (if earlier) became contractually bound to do so.

6.7 Termination

6.7.1 This Lease shall automatically determine on the Funding Termination Date in circumstances where there is no other Funding Agreement in existence unless either:

(a) the Landlord has received prior notice in writing from the Secretary of State for Education of an intention for this Lease to be assigned in accordance with the terms of this Lease; or

(b) this Lease has been assigned in accordance with the terms of this Lease.

6.7.2 This Lease shall automatically determine on the End Date if by that date this Lease has not been assigned in accordance with the terms of this Lease.

6.7.3 The Tenant shall give written notice to the Landlord as soon as possible after becoming aware that the Funding Agreement may be liable to termination, including where a notice terminating the Funding Agreement is served on the Tenant, and the notice served on the Landlord shall specify the date (or likely date) of termination of the Funding Agreement.

6.7.4 The Tenant shall give written notice to the Landlord at the same time as the Tenant serves any notice terminating the Funding Agreement and such notice shall specify the date (or likely date) of termination of the Funding Agreement.

6.7.5 On the termination of this Lease under Clause 6.7.1 or 6.7.2 everything contained in the Lease ceases and determines but without prejudice to any claim by either party against the other in respect of any antecedent breach of any obligation contained in the Lease.

7. Agreement on Environmental Liabilities

Notwithstanding any other provisions in this Lease, the Landlord and Tenant agree that:

7.1 any liability under Environmental Law (including, without limitation, any liability under the Contaminated Land Regime) arising in respect of Hazardous Substances in, on, under or emanating from the Property, on or before [*insert occupation date*] shall be the sole responsibility of the Landlord;

7.2 this Clause 7 constitutes an agreement on liabilities under the Department for Environment, Food and Rural Affairs' statutory guidance on the Contaminated Land Regime;

7.3 if the Enforcing Authority serves a notice under the Contaminated Land Regime on either party, either party may produce a copy of this Clause 7 to any Enforcing Authority or court for the purposes of determining liability under the Contaminated Land Regime, regardless of any confidentiality agreement that may exist between the parties relating to this Lease or any of its provisions;

7.4 neither party shall challenge the application of the agreement on liabilities set out in this Clause.

8. Landlord's Powers

8.1 The Landlord enters into this Lease pursuant to its powers under sections 111 ~~120~~ 122 and 123 of the Local Government Act 1972 the Education Act 1996 Section 2 of the Local Government Act 2000 and all other powers so enabling and warrants that it has full power to enter into this Lease and to perform all obligations on its part herein contained.

w/D for Tenant

8.2 Nothing in this Lease shall fetter the Landlord in the proper performance of its statutory functions.

9. New Tenancy

This Lease is a new tenancy for the purposes of the 1995 Act.

10. Contracts (Rights of Third Parties) Act

A person who is not a party to this Lease has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Lease but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

11. Charity

[The Property will as a result of this Lease be held by [] a non-exempt charity and the restrictions on dispositions imposed by section 117 to 121 of the Charities Act 2011 will apply to the Property (subject to section 117 (3) of that Act).]

[The property will as a result of this Lease be held by [] an exempt charity.]

12. Dispute Resolution Procedure

If the parties fail to agree on any of the provisions or terms of this Lease then either party may refer the matter to arbitration.

13. Tenant's Break Right

13.1 Provided that the Tenant produces to the Landlord evidence of the consent of the Secretary of State to it doing so the Tenant may terminate this Lease on any Break Date by serving a Break Notice on the Landlord at least nine (9) months before the Break Date as stated in the Break Notice.

13.2 The Break Notice shall state the Break Date in respect of which it is served.

13.3 Following service of the Break Notice, this Lease shall terminate on the Break Date specified in the Break Notice.

13.4 Termination of this Lease pursuant to this Clause shall be without prejudice to any right or remedy of either party in respect of any antecedent breach of the covenants contained in this Lease.

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

SIGNATURE PAGE

EXECUTED (but not delivered until the date hereof) AS A DEED by affixing the Common Seal of **BRIGHTON & HOVE CITY COUNCIL** in the presence of:-

.....
Authorised Signature)

EXECUTED (but not delivered until the date hereof) AS A DEED by affixing the Common Seal of [

.....
Director

] in the presence of:-

.....
Secretary

.....
(Date)

SCHEDULE 1

Part 1 – The Property

ALL THAT land and buildings known as Land at West Blatchington Primary School Hangleton Way Hove BN3 8BN shown edged red on the Plan and including the following so far as the same may exist at any time during the Term:-

- (a) all Conduits exclusively serving such premises; and
- (b) all Fixtures and Fittings (save for those that belong to the Tenant).

Part 2 – The Retained Land

ALL THAT land and buildings known as Land at West Blatchington Primary School Hangleton Way Hove BN3 8BN shown edged blue on the Plan in the ownership of the Landlord adjacent to the Property and including all Conduits exclusively serving such premises so far as the same may exist at any time during the Term

The right to connect into and pass Amenities to and from the Property through conduits now or at any time during the Term laid in or upon the Retained Land together with the right to enter upon the Retained Land upon giving reasonable prior notice to the Landlord (except in case of

SCHEDULE 2 emergency) in order to lay inspect cleanse renew and maintain the Conduits the person exercising such right causing as little damage disturbance or inconvenience as possible to the Landlord or the business being carried on upon the Retained Land and making good as soon as reasonably

1. Access practicable any damage occasioned to the Retained Land by the exercise of this right to the reasonable satisfaction of the Landlord.

~~The right for the Tenant and the Tenant's employees agents and visitors in common with the Landlord and all others from time to time so entitled to pass and repass with or without vehicles over and along the roadway at the Retained Land shown coloured brown on the Plan for the purpose of obtaining access to and egress from the Property but not for any other purpose whatsoever.~~

WBD for Tenant

2. Services

~~The right in common with the Landlord and all others from time to time so entitled and with the prior written consent of the Landlord (such consent not to be unreasonably withheld or delayed save as provided below) for the Tenant to connect into (in so far as there are no connections) and to pass Amenities to and from the Property through Conduits now or at any time during the Term laid in under or upon the Retained Land PROVIDED that the Landlord has the right at any time or times during the Term:-~~

~~2.1 to refuse consent for the Tenant to connect into any Conduits if in the reasonable opinion of the Landlord the Conduits are insufficient to bear the extra load which would be likely to result from the proposed connection by the Tenant; and~~

~~2.2 to divert or vary the positions of the Conduits upon giving reasonable prior notice to the Tenant (except in case of emergency) (which interruption the Landlord must however seek to minimise so far as is reasonably possible).~~

WBD for Tenant

3. Support

A right of support and protection to the Property from the Retained Land.

4. Access to Retained Land

The right upon giving reasonable prior written notice (except in case of emergency) to the Landlord and all others from time to time so entitled to enter only so far as is strictly necessary upon the Retained Land for the purpose of inspecting and executing repairs to or on the Property subject to the Tenant:-

4.1 causing as little damage disturbance or inconvenience as possible to the Landlord and all others from time to time so entitled; and

4.2 making good as soon as reasonably practicable to the reasonable satisfaction of the Landlord and to all others from time to time so entitled all damage caused by the exercise of this right.

SCHEDULE 3

Rights Excepted and Reserved

1. Services

The right to connect into and pass Amenities to and from the Retained Land and any other adjoining or neighbouring property of the Landlord in and through Conduits now or at any time during the Term laid in or upon the Property together with the right to enter upon the Property upon giving reasonable prior notice to the Tenant (except in case of emergency) in order to lay inspect cleanse renew and maintain the Conduits the person exercising such right causing as little damage disturbance or inconvenience as possible to the Tenant or the business being carried on upon the Property and making good as soon as reasonably practicable any damage occasioned to the Property by the exercise of this right to the reasonable satisfaction of the Tenant.

2. Access to Property

The right upon giving reasonable prior notice to the Tenant (except in case of emergency) to enter upon the Property for the purposes of:-

2.1 inspecting and executing repairs additions alterations and other works to or on the Retained Land or to any Conduits within the Property; and

2.2 the exercise of the rights powers privileges and permissions conferred or granted under the covenants and provisions of this Lease;

the person exercising such right causing as little damage disturbance or inconvenience as reasonably possible to the operation of the school on the Property and making good at its own cost as soon as reasonably practicable to the Tenant's reasonable satisfaction any damage to the Property caused by the exercise of this right.

In exercising its right of access to the Property, the Landlord and those authorised by it shall observe and comply with any safeguarding protocols that the Tenant may reasonably require.

3. Playing Fields

The right upon giving not less than three (3) weeks prior written notice to the Tenant and subject to the approval of the Tenant (such approval not to be unreasonably withheld or delayed) to access and use the Playing Fields as playing fields for the benefit of the adjoining primary school and nursery at the Landlord's Property provided that the Tenant shall be entitled to withhold its approval if the Tenant has:

3.1 arranged or planned to use the Playing Fields itself at the time required by the Landlord; or

3.2 previously agreed or arranged (whether formally or informally) with any third party for that third party to use the Playing Fields at the time required by the Landlord.

SCHEDULE 4

Landlord's Property

All that parcel of land registered at the Land Registry under title number ESX310316
excluding the following:

1951 Conveyance

1952 Conveyance

1955 Conveyance

Annex D. Copy of Landlord's warning notice served on Tenant

FORM OF NOTICE THAT SECTIONS 24 TO 28 OF THE LANDLORD
AND TENANT ACT 1954 ARE NOT TO APPLY TO A BUSINESS
TENANCY

To: SECRETARY OF STATE FOR COMMUNITIES AND LOCAL
GOVERNMENT 4th Floor Fry Building, 2 Marsham Street, London
SW1P 4DF

From: BRIGHTON AND HOVE CITY COUNCIL of King's House Grand
Avenue Hove BN3 2SR

IMPORTANT NOTICE

You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.

Business tenants normally have security of tenure – the right to stay in their business premises when the lease ends.

If you commit yourself to the lease you will be giving up these important legal rights.

- You will have no right to stay in the premises when the lease ends.
- Unless the landlord chooses to offer you another lease, you will need to leave the premises.
- You will be unable to claim compensation for the loss of your business premises, unless the lease specifically gives you this right.
- If the landlord offers you another lease, you will have no right to ask the court to fix the rent.

It is therefore important to get professional advice – from a qualified surveyor, lawyer or accountant – before agreeing to give up these rights.

If you want to ensure that you can stay in the same business premises when the lease ends, you should consult your adviser about another form of lease that does not exclude the protection of the Landlord and Tenant Act 1954.

If you receive this notice at least 14 days before committing yourself to the lease, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the lease.

But if you do not receive at least 14 days notice, you will need to sign a "statutory" declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).

Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

12/12/2017 M. A. Gibson-S/S

FORM OF NOTICE THAT SECTIONS 24 TO 28 OF THE LANDLORD
AND TENANT ACT 1954 ARE NOT TO APPLY TO A BUSINESS
TENANCY

To: RUSSELL EDUCATION TRUST 1 The Crescent Leatherhead
Surrey KT22 8DY
From: BRIGHTON AND HOVE CITY COUNCIL of King's House Grand
Avenue Hove BN3 2SR

IMPORTANT NOTICE

You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.

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Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

12/12/2017 M. A. Shobor-S/S

Annex E. Copy of Tenant's statutory declaration

I WILLIAM JOHN BOURN
of WOMBLE BOND DICKINSON (UK) LLP ST MARK'S CHURCH 112 QUAYSIDE
do solemnly and sincerely declare that - NEWCASTLE UPON TYNE NE1 3DX

1. ~~I~~ the tenant

proposes to enter into a tenancy of premises at Land at West Blatchington Primary School Hove

for a term commencing on not before the date of this statutory declaration

2. ~~I~~ the tenant propose to enter into an agreement with Brighton & Hove City Council (name of landlord) that the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954 (security of tenure) shall be excluded in relation to the tenancy.

3. The landlord has served on me/the tenant a notice in the form, or substantially in the form, set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. The form of notice set out in that Schedule is reproduced below.

4. ~~I have~~ The tenant has read the notice referred to in paragraph 3 above and accept(s) the consequences of entering into the agreement referred to in paragraph 2 above.

5. (as appropriate) I am duly authorised by the tenant to make this declaration.

To: SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT 4th Floor Fry Building, 2 Marsham Street, London SW1P 4DF

From: BRIGHTON AND HOVE CITY COUNCIL of King's House Grand Avenue Hove BN3 2SR

IMPORTANT NOTICE

You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.

Business tenants normally have security of tenure – the right to stay in their business premises when the lease ends.

If you commit yourself to the lease you will be giving up these important legal rights.

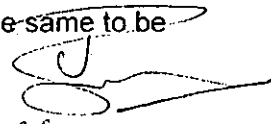
- You will have no right to stay in the premises when the lease ends.
- Unless the landlord chooses to offer you another lease, you will need to leave the premises.
- You will be unable to claim compensation for the loss of your business premises, unless the lease specifically gives you this right.

• If the landlord offers you another lease, you will have no right to ask the court to fix the rent.
It is therefore important to get professional advice – from a qualified surveyor, lawyer or accountant – before agreeing to give up these rights.
If you want to ensure that you can stay in the same business premises when the lease ends, you should consult your adviser about another form of lease that does not exclude the protection of the Landlord and Tenant Act 1954.
If you receive this notice at least 14 days before committing yourself to the lease, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the lease.

But if you do not receive at least 14 days notice, you will need to sign a "statutory" declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).

Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declaration Act 1835.



DECLARED at 8 WOODFIELD DRIVE, MORPETH NE1 2RH

this 14TH

day of DECEMBER 2017



Before me LARA KINCAID, NORTH OF ELUND PROTECTING AND WIDENING ASSOCIATION, 100 GRAYSIDE, NEWCASTLE UPON TYNE NE1 3DU
(signature of person before whom declaration is made)

A commissioner for oaths or A solicitor empowered to administer oaths or (as appropriate)

Annex F. Plan



orbis

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West Blatchington School

Scale 1:1,250 @A3



