

DATED _____ **201[]**

THE SECRETARY OF STATE FOR DEFENCE

to

[]

Draft/

**CONDITIONS OF SALE
AND FORM OF TENDER**

relating to

[*DESCRIPTION OF PROPERTY*]

[*SOLICITOR'S NAME*]
[*SOLICITOR'S ADDRESS*]
[*SOLICITOR'S REFERENCE*]

CONDITIONS OF SALE

1 DEFINITIONS

In these Conditions of Sale (and unless the context shall require otherwise) the following words shall have the following meanings:

- 1.1 "Acceptance" shall mean the form of acceptance of offer annexed hereto and headed "Form of Acceptance"
- 1.2 "Buyer" shall mean the person or body whose offer for the Property is accepted pursuant to the provisions of Conditions of Sale 9.8 and 9.9 hereinafter contained
- 1.3 "Clawback and Overage Provisions" shall mean (if option (a) or option (c) of the Tender is accepted by the Seller) the planning clawback and overage clauses set out in the Schedule to the Transfer ¹
- 1.4 "Completion Date" shall mean [DATE]
- 1.5 "Contract" shall mean the contract for sale and purchase of the Property constituted pursuant to Conditions of Sale 9.8 and 9.9 on posting of the Acceptance as therein provided
- 1.6 "Contract Rate" shall mean a rate equivalent to 4% per annum above the base rate of the Bank of England from time to time in force (or if that rate shall cease to exist for any reason, the rate referred to in the Standard Conditions as the "contract rate")
- 1.7 "Deposit" shall mean 10% exactly in pounds sterling of the price tendered in the Tender in question
- 1.8 "Environment" means any and all organisms (including humans), ecosystems, natural or man-made buildings or structures, and the following media:
- i. air (including air within buildings or structures, whether above or below ground)
 - ii. water (including surface and ground water and water in wells, boreholes, pipes, sewers and drains); and
 - iii. land (including surface land and sub-surface strata and any land under seabeds or rivers, wetlands or flood plains);
- 1.9 "Environmental Authority" means any person or legal entity (whether statutory or non-statutory or governmental or non-governmental) having regulatory authority under

¹ See Condition 18.1

Environmental Law and/or any court of law or tribunal or any other judicial or quasi-judicial body;

- 1.10 "Environmental Law" means all laws, regulations, directives, statutes, subordinate legislation, rules of common law and generally all international, EU, national and local laws and all judgments, orders, instructions, decisions, guidance awards, codes of practice and other lawful statements of any Environmental Authority applying from time to time in relation to the Property in respect of pollution of or protection of the Environment or the production, processing, treatment, storage, transport or disposal of Hazardous Substances, in each case insofar as having the force of law;
- 1.11 "Hazardous Substances" means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) capable of causing harm to the Environment and/or harm to the health of living organisms or other interference with the ecological systems of which they form part and/or harm to property and/or in the case of humans, offence caused to any sense;
- 1.12 "Plan" shall mean the plan annexed to these Conditions of Sale
- 1.13 "Price" shall mean the Price tendered by the Buyer
- 1.14 "Property" shall mean the land shown edged red on the Plan and known as
[*DESCRIPTION OF PROPERTY*]
- 1.15 "Sale Information Pack" shall mean the sale information pack prepared by the Seller's Agents (and which has been made available to the Buyer prior to the date of this Contract) containing (inter alia) the reports referred to in Condition 23
- 1.16 "Seller" shall mean the Secretary of State for Defence
- 1.17 "Seller's Address" shall mean Ministry of Defence Defence Infrastructure Organisation
[*ADDRESS*]
- 1.18 "Seller's Agents" shall mean [*NAME OF AGENTS AND ADDRESS*]
- 1.19 "Seller's Solicitors" shall mean [*NAME OF SOLICITORS AND ADDRESS*] (reference [*SELLER'S SOLICITORS REFERENCE*])
- 1.20 "Standard Conditions" shall mean the Standard Commercial Property Conditions (Second Edition)
- 1.21 "Tender" shall mean the form of offer annexed hereto and headed "Form of Tender"

- 1.22 "Tender Acceptance Date" shall mean [*DATE*]
- 1.23 "Tender Date and Time" shall mean [*TIME*] am on [*DATE*]
- 1.24 "Transfer" shall mean the document effecting the transfer of the Property to the Buyer

2 INTERPRETATION

- 2.1 Should there be any inconsistency between the Sale Information Pack and these Conditions of Sale the latter shall prevail
- 2.2 Where the context so admits the expression 'the Buyer' includes the personal representatives of the Buyer and 'the Buyer' shall include any successors in title of the Buyer
- 2.3 Words importing one gender shall be construed as importing any other gender
- 2.4 Words importing the singular shall be construed as importing the plural and vice versa
- 2.5 Words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa
- 2.6 Where any party comprises more than one person the obligations and liabilities of that party under the Conditions of Sale shall be joint and several obligations and liabilities of those persons
- 2.7 The condition or clause headings do not form part of the Conditions of Sale and shall not be taken into account in their construction or interpretation; and
- 2.8 Unless otherwise provided any reference to a condition or a clause or a paragraph or a schedule is to one so numbered in these Conditions of Sale

3 INVITATION TO TENDER

The Seller invites Tenders for the purchase of the Property subject to the Conditions of Sale set out above and below and requests any person tendering to submit two tenders:-

- 3.1 one Tender including the Clawback and Overage Provisions; and
- 3.2 one Tender free from and not including the Clawback and Overage Provisions

4 NO ALTERATION TO THE TENDER OR TO THESE CONDITIONS OF SALE

Every person firm or company desiring to tender shall fill in and sign the Tender attached at the end of these Conditions of Sale and save as otherwise provided for in these Conditions of Sale no alterations shall be made to these Conditions of Sale and without prejudice to the generality of the foregoing when the Tender has been submitted in accordance with Condition of Sale 5 it cannot be withdrawn or altered in any way

5 SUBMISSION OF TENDER

- 5.1 The Tender when completed and signed shall be enclosed in the attached tender envelope with these Conditions of Sale still attached and with a banker's draft drawn on a United Kingdom Bank in pounds sterling in favour of the Seller's Solicitors dated no later than the Tender Date and Time in respect of the Deposit and delivered to the Seller's Address no later than the Tender Date and Time.
- 5.2 The responsibility for ensuring the Tender arrives on time and at the Seller's Address and the risk generally is that of the person who is submitting the Tender

6 SIGNING OF THE TENDER AND SIGNATORY DETAILS

- 6.1 A partnership firm tendering shall have the Tender completed with the firm name specified and signed by a sufficient number of its partners to legally bind the partnership and witnessed by independent persons
- 6.2 A company or corporation tendering shall sign by two Directors or by one Director and the Secretary of the company the signatures being witnessed by independent persons, or affix its Common or Corporate Seal duly witnessed according to its Articles or Charter with the corporate name being specified in any event and details of its registered office being provided
- 6.3 A Trust tendering must give full details of the name of the Trustees and the address to which communications must be sent
- 6.4 A corporation registered outside the United Kingdom shall attach to its Tender a certificate signed by a lawyer acceptable to the Seller (and if the certificate is in a foreign language it shall be provided together with a notarial translation) whereby it shall be certified that: -
 - 6.4.1 the lawyer giving the certificate is qualified to practise in the jurisdiction where the corporation is registered
 - 6.4.2 the corporation executing the Tender is properly and duly incorporated in such jurisdiction and of good standing
 - 6.4.3 the Tender has been validly executed in accordance with the constitution of the corporation and the law of such jurisdiction and

6.4.4 (assuming the Tender to be legally valid and binding under English law) the Tender is legally binding and enforceable against the corporation according to the law under which the corporation is incorporated

7 VAT

No VAT is payable at the time that this Contract is issued in respect of the Price or the Deposit but in the event of any change in the law about VAT between the formation of this Contract and completion the Seller reserves the right to charge VAT on the Price (including the Deposit at the time it is paid)

8 LOCAL SEARCHES AND ENQUIRIES

The Buyer shall be deemed to have made all necessary searches and enquiries and to have knowledge of all matters that would be disclosed thereby and shall purchase subject to such matters whether disclosed or not

9 ADDITIONAL RESTRICTIONS AND TERMS OF THE TENDER

9.1 All Tenders must be for specific amounts and no Tender will be considered in which the amount of the offer is an indefinite sum of money or calculable only by reference to any other Tenders or offers or any other factor

9.2 No escalating Tenders will be considered

9.3 It is agreed and declared that a facsimile Tender or a Tender sent by e-mail to an e-mail address or by any other electronic means will not constitute or be accepted as a valid Tender

9.4 Persons submitting Tenders for the Property will not be allowed to attend the opening.

9.5 All offers of Tender received by the Tender Date and Time will be opened together by the Seller or the Seller's Agents as soon as possible on or after that date

9.6 The Seller does not bind himself to accept the highest or any Tender for the Property and reserves the right to disregard any Tender which is not submitted in accordance with these Conditions of Sale including without limitation any Tender marked "Subject to Contract" or qualified in any other way

9.7 The Seller also reserves the right to withdraw the Property at any time or to sell on different conditions or to any person whether or not they have tendered

9.8 The Seller will accept the Buyer's Tender by letter sent to the address given in its Tender on or before the Tender Acceptance Date with the Acceptance duly completed and signed on behalf of the Seller

- 9.9 Such copy of these Tender documents shall be deemed to have been received in due course of recorded delivery post and a contract of sale and purchase in the terms hereof shall come into existence on the posting of the same
- 9.10 Any bankers draft accompanying the successful tender will be deemed to be released to the Seller as the Deposit payable by the Buyer on the date of the contract on account of the Price **PROVIDED THAT** the said bankers draft is met on presentation
- 9.11 Any person firm or company whose Tender is not accepted will also be notified by post and the Deposit will be returned at their risk
- 9.12 No interest will be paid on any cheque or bankers draft which may have been presented or on the proceeds of it
- 9.13 Each person who submits a Tender shall be deemed to accept these Conditions of Sale and undertakes that its Tender is made in accordance with the Conditions of Sale and that its Tender will remain unvaried and open for acceptance until and will not be withdrawn before the second working day after the Tender Acceptance Date and in consideration of such undertaking the Seller will (if demanded) pay a peppercorn to each person tendering

10 OPEN GOVERNMENT POLICY

The Buyer acknowledges that in compliance with the "Open Government Policy" of the Government the Seller may disclose without consulting with the Buyer

- 10.1 the Price or any other term contained within this Contract at any time after exchange of contracts or
- 10.2 information which must be disclosed pursuant to any statutory legal or policy obligation placed upon the Seller including any requirements for disclosure under the Freedom of Information Act 2000 the Land Registration Act 2002 or the Environmental Information Regulations

11 INCORPORATION OF STANDARD CONDITIONS OF SALE

The Standard Conditions are (subject to Condition of Sale 11.2) incorporated in this Contract so far as they:

- 11.1 apply to a sale by private treaty;
- 11.2 are not inconsistent with the other clauses in this Contract;
- 11.3 have not been modified by the other clauses in this Contract and
- 11.4 shall be varied as follows:-

- 11.4.1 Sub-conditions 3.1.3; 3.3; 6.4.2; 6.6.2; 6.6.5.(b) and 7.1.4. (b) shall not apply;
- 11.4.2 Sub-condition 1.3.1 shall be amended so that at the end thereof there shall be added the words "and if any conveyancer has been appointed to act for the seller or buyer (as the case may be) shall be valid if served on that conveyancer only";
- 11.4.3 Having regard to the status of the Seller sub-condition 3.1.2(c) shall apply only to those incumbrances about which the Seller does not actually know whether or not the Seller could know about them;
- 11.4.4 At the end of sub-condition 3.1.2 add a new condition 3.1.2(f) as follows:-
- "(f) overriding interests which override registered dispositions under Schedule 3 of the Land Registration Act 2002 or what would be overriding interests on first registration (where the Property is not registered) under Schedule 1 of the Land Registration Act 2002 if the title were to be registered"; and
- 11.4.5 Sub-condition 9.1.1 shall be amended so that after the words "leading to it" there shall be inserted "(made or confirmed in writing by or on behalf of the seller)";

12 COMPLETION

The Buyer shall complete the purchase of the Property on the Completion Date at the office of the Seller's Solicitors when the balance of the Price shall be paid by the Buyer

13 TITLE

Title to the Property shall be deduced by the Seller in accordance with the Land Registration Act 2002 or if unregistered shall commence with
[*DESCRIPTION OF ROOT OF TITLE*]

14 TITLE GUARANTEE

The Seller sells with limited title guarantee

15 TOWN AND COUNTRY PLANNING ACTS

The Property will on sale become subject to all matters arising under the Town and Country Planning Acts to building regulations and also the bye-laws of the local authority and no warranty shall be implied as to the permitted use of the Property or that the Property conforms to such regulations or bye-laws

16 POSSESSION

The Property is sold with vacant possession on completion

17 INCUMBRANCES

The Property is sold subject to and with the benefit of (so far as the Seller is able to assign the same) the matters contained in or referred to in
[*LIST SUBJECTIONS*]

18 DEFENCE ACTS

- 18.1 Having regard to Section 14 of the Defence Act 1842 copies of the assurances of the Property to the Government Department whose properties rights and liabilities are now those of the Seller together with copies of such matters as are referred to in Condition of Sale 17 having been made available for inspection at the offices of the Seller's Agents the Buyer shall be deemed to have full notice of the said matters and shall raise no enquiry requisition or objection thereto.
- 18.2 The Buyer shall in the Transfer covenant to observe and perform such covenants and provisions as are hereinbefore referred to and to indemnify the Seller against all liability in respect of any breach or non-observance thereof if after completion the Seller remains under any liability in respect thereof
- 18.3 [Title to the Property vested in the Seller pursuant to the Defence (Transfer of Functions) Act 1964 and the Defence (Transfer of Functions) (Appointed Day) Order 1964 Statutory Instrument Number 487 and]²
- 18.4 The Seller shall not be obliged to provide copies of any statutes or statutory instruments or other documents that are matters of public record

19 TRANSFER

- 19.1 The Transfer of the Property shall be in the form set out and annexed to these Conditions of Sale³ with such modifications as shall be necessary to incorporate the name of the Buyer and the Price and incorporating as a Schedule to the Transfer:-
- 19.1.1 if the Tender under clause (a) is accepted with the Clawback and Overage Provisions or
- 19.1.2 if the Tender under clause (b) is accepted without the Clawback and Overage Provisions or
- 19.1.3 if the Tender under clause (c) is accepted with the Clawback and Overage Provisions but containing the Buyer's tracked changes where they have been agreed on acceptance of the Tender by the Seller

² Applies only to land acquired before 1 April 1964

³ Seller's solicitor is required to complete a draft Transfer based on a form of Land Registry Transfer (TR1 or TP1) for annexation to the Contract

19.2 In respect of clause (a) of the Tender the Buyer is required to insert:-

A = the Termination Date being the date up to which the Clawback and Overage Provisions shall operate in paragraph 1.14 of Part I of the Clawback and Overage Provisions

B = the percentage of clawback offered in respect of planning clawback in paragraph 2.1 of part I of the Clawback and Overage Provisions

E = the amount of the Threshold offered in the calculation of the Overage as referred to in paragraphs 1.1 and 1.6 of Part II of the Clawback and Overage Provisions

F = the percentage figure offered in the calculation of the Overage in paragraph 1.1 of Part II of the Clawback and Overage Provisions

19.3 The Transfer shall be engrossed in duplicate by the Seller's Solicitors (with both engrossments executed by the Buyer before the Completion Date) and the Buyer shall complete the transfer to it in accordance with such form

19.4 Immediately after completion the Buyer shall register contemporaneously under the provisions of the Land Registration Act 2002 both the Transfer and the Clawback Legal Charge which Clawback Legal Charge is to be provided in accordance with the Clawback and Overage Provisions and shall immediately after registration deliver to the Seller's Solicitor the title information document thereupon issued by the Land Registry

20 RESCISSION

If the Buyer either:-

20.1 (being a body corporate) has a winding-up petition or petition resolution (other than for the purposes of an amalgamation or reconstruction resulting in a solvent corporation) or resolves to present its own winding-up petition or is wound-up (whether in England or elsewhere) or the directors of the Buyer resolve to present a petition for an administration order in respect of the Buyer or an Administrative Receiver or a Receiver or a Receiver and Manager of the Buyer is appointed in respect of the Property or any part thereof; or

20.2 (being a body corporate) makes an application to the Court under Section 425 of the Companies Act 1985 or submits to its creditors or any of them a proposal pursuant to Section 1 of the Insolvency Act 1986 or enters into any arrangement scheme compromise moratorium or composition with its creditors or any of them; or

20.3 (being a limited company) is dissolved or struck off the Register of Companies or equivalent registry in another jurisdiction; or

20.4 (being an individual or being more than one individual any one of them) shall have a receiving order made against him or become bankrupt or a bankruptcy petition is presented or a proposal is made for a voluntary arrangement or he enters into a Deed of Arrangement

THEN the Seller may serve written notice addressed to the Buyer withdrawing from this Contract and Condition 9.2 of the Standard Conditions then applies with such event being treated as a breach of contract by the Buyer

21 STATE OF REPAIR AND CONDITION OF PROPERTY

21.1 The Seller having made the Property available for inspection by appointment through the Seller's Agents prior to the Tender Date and Time the Property shall (including with regard to the terms contained in Condition 23) be purchased in its existing state of repair and condition and the Buyer hereby acknowledges that:

21.1.1 it shall be deemed to purchase with full knowledge of the existing state of repair and condition of the Property

21.1.2 the Seller makes no representation or warranty that the Property is fit for the Buyer's intended use or for any other future use and that the Buyer has not entered into this Contract in reliance upon any express or implied representation whether made orally or in writing or otherwise howsoever by or on behalf of the Seller save for the written replies of the Seller's Solicitors to written enquiries made by Solicitors representing the Buyer

21.2 The Buyer confirms that the Price is discounted to reflect the existing state of repair and condition of the Property including the transfer of all liability as to that state to the Buyer and whereby any obligation to carry out any remedial work to any contamination on or in the soil of the Property is with effect from completion transferred to the Buyer in accordance with the terms contained in Condition 23

21.3 From the Tender Acceptance Date the Buyer will raise no objection requisition or enquiry in respect of any deterioration to the Property and the Seller will not be liable for any claims and / or demands that may be made in respect thereof including any that may arise from the growth of grass trees or other vegetation or inclement weather (including damage arising from frost) or for dilapidations arising from or through the acts of third parties (other than the acts of the Seller or the Seller's Agents) and without limitation to the terms of the preceding Condition of Sale 21.1 the Buyer acknowledges the former use of the Property as a Crown establishment and agrees to make no claim against the Seller or the Crown in respect of any liabilities incurred or any loss suffered in connection with or as a result of the purchase of the Property

22 RISK AND INSURANCE

With effect from the formation of this Contract: -

- 22.1 The Property is at the Buyer's risk and the Seller is under no obligation to the Buyer to insure the Property
- 22.2 No damage to or destruction of the Property nor any deterioration in its condition (however caused) will entitle the Buyer either to any reduction of the Price or to refuse to complete or to delay completion.

23 ENVIRONMENTAL LAWS AND ENVIRONMENTAL

- 23.1 The Seller and the Buyer agree (as to Environmental Liabilities) that:
- 23.1.1 if any notice or requirement of any Environmental Authority made pursuant to Environmental Law is served on or made on either of them in respect of the Property or any Hazardous Substances attributable to the Property, then, as between the Seller and the Buyer, the sole responsibility for complying with such notice or requirement is to rest with the Buyer to the exclusion of the Seller; and
- 23.1.2 if any Environmental Authority wishes to recover costs incurred by it in carrying out any investigation, assessment, monitoring, removal, remedial or risk mitigation works under Environmental Law in respect of the Property or any Hazardous Substances attributable to the Property from either or both of the Seller and the Buyer then, as between the Seller and the Buyer, the sole responsibility for the payment of such costs is to rest with the Buyer to the exclusion of the Seller.
- 23.2 The agreements outlined under Conditions of Sale 23.1.1 and 23.1.2 are made with the intention that any Environmental Authority serving any notice or seeking to recover any costs should give effect to the agreements pursuant to the statutory guidance issued under Part IIA of the Environmental Protection Act 1990.
- 23.3 The Seller and the Buyer agree that the appropriate Environmental Authority may be notified in writing of the provisions of Condition of Sale 23 if required to give effect to the agreements outlined under Conditions of Sale 23.1.1 and 23.1.2.
- 23.4 The Buyer acknowledges to the Seller that:-
- 23.4.1 The Property has been sold with information and whereby it has been provided (within the Sale Information Pack) with the following reports, surveys and other environmental information prior to the Tender Date and Time:-
- 23.4.1.1 [Land Quality Assessment Phase [.] Project Number [....] prepared by [....] Limited dated [....] 201[.], together with accompanying Technical Note on Remediation and Development Considerations;]
- 23.4.1.2 [.....insert any other reports, surveys and other environmental information that may be relevant for the Buyer in ascertaining whether, and if so the extent to which, Hazardous Substances are present in, on, under or over the Property]

- 23.4.2 it has carried out its own investigations of the Property for the purposes of ascertaining whether, and if so the extent to which, Hazardous Substances are present in, on, under or over the Property;
- 23.4.3 such information is sufficient to make the Buyer aware of the presence in, on, under or over the Property of any Hazardous Substances referred to in the reports;
- 23.4.4 it relies at its own risk on the contents of any report, plan and other written material and information either disclosed to it or orally communicated to it by or on behalf of the Seller both as to the condition of the Property and as to the nature and effect of any remedial works which may have been carried out (including but not limited to those reports contained within the Sale Information Pack and referred to in Condition of Sale 23.4.1 above) and no warranty is given or representation made by or on behalf of the Seller in this respect; and
- 23.4.5 it has satisfied itself as to the condition of the Property.
- 23.5 Both parties agree that:-
- 23.5.1 the Buyer has been given permission and adequate opportunity to carry out its own investigations of the Property for the purpose of ascertaining whether, and if so the extent to which, Hazardous Substances are present in, on, under or over the Property; and
- 23.5.2 immediately after completion of the Transfer to the Buyer of the Property the Seller will not retain any interest in the Property or any rights to occupy or use the Property.
- 23.6 The acknowledgements in this Condition of Sale 23 are made in order to exclude the Seller from liability under Part IIA of the Environmental Protection Act 1990 so that the Seller is not an appropriate person, as defined therein.
- 23.7 The Buyer will indemnify the Seller in respect of all and any actions, losses, damages, liabilities, charges, claims, costs and expenses which may be paid, incurred, suffered or sustained by the Seller arising (directly or indirectly) out of or in connection with the presence of any Hazardous Substances in, on or under the Property or migrating to or from the Property.

24 CONTRACT CONSTITUTES THE ENTIRE AGREEMENT

It is agreed by the Seller and the Buyer that this Contract constitutes the entire agreement between them and may not be varied except by a written variation made and signed by the parties hereto

25 RESTRICTION ON ASSIGNMENT

The Seller shall not be under any liability to convey the Property (whether by way of sub-sale or pursuant to a direction by the Buyer or in any other manner) other than by means of the Transfer or to any person or body other than the person or body named as the Buyer in the Acceptance

26 DEFINING THE PROPERTY

The Sale Information Pack and Plan have been carefully prepared and are believed to be correct nevertheless the attention of prospective buyers is drawn to the condition numbered 6.4.1 of the Standard Conditions and they shall be deemed to have inspected the Property and to have satisfied themselves that it is correctly described in such Sale Information Pack and Plan

27 MERGER ON COMPLETION

The provisions of this Contract shall not merge on completion of the Transfer so far as they remain to be performed

28 CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999

The parties agree that the Contract (Rights of Third Parties) Act 1999 shall not apply to this Contract

29 NATURE OF THIS CONTRACT

This Contract is not a deed and has not been executed by the parties to it as a deed

MOD CLAWBACK AND OVERAGE PROVISIONS -

FOR INSERTION IN FORM OF LAND REGISTRY TRANSFER (TR1 OR TP1)⁴

.....

CLAWBACK AND OVERAGE PROVISIONS⁵

The Transferor transfers the Property subject to the planning clawback and overage clauses set out in the Schedule to this Transfer and in this Transfer the term “Clawback and Overage Provisions” shall mean the planning clawback and overage clauses set out in the Schedule to this Transfer and with the intention of binding the Property and each and every part of it into whosoever hands the same may come the Transferee covenants with the Transferor that the Transferee will at all times after the date hereof observe and perform the Clawback and Overage Provisions

THE SCHEDULE

“CLAWBACK AND OVERAGE PROVISIONS”

1 IN THIS SCHEDULE UNLESS THE CONTEXT OTHERWISE REQUIRES:

1.1 “Base Value” shall mean:

1.1.1 for the first year of the Clawback Period, namely from and including the date hereof, the purchase price of the Property⁶ amounting to the sum ofPOUNDS (£.....)⁷

and

1.1.2 for the second and subsequent years of the Clawback Period the Base Value shall be incremented annually in line with the Annual Change percentage published in the Land Registry House Price Index by reference to the Region in which the Property is situated between the month of the date of this Transfer and the same month in the relevant year of the Clawback Period (and all

⁷ To be used only if option (a) or option (c) of the Tender is accepted. For TR1 insert within Panel 12 and for Form TP1 insert within Panel 13

⁵ Insert as a covenant by the Transferee, the numbering of the clause to be dictated by the drafting requirements

⁶ It should be noted that the term “Property” is now defined in the statutory form of Land Registry Transfer. If only a part of the Property is to be charged, all references to “the Property” ought to be amended to refer to “said land” and the term “said land” defined as meaning “the land charged in favour of the Transferor by the Clawback Legal Charge”

⁷ Insert Purchase Price except where the sale is to a residential sitting tenant with security of tenure when the market value with vacant possession should be provided

capitalized words in this paragraph 1.1.2 having the meaning given to them in such Index, with the exception of Clawback Period, Property and Transfer)

Provided That: -

- (a) upon the happening of the first Trigger Event for the Relevant Land the Base Value for that land shall be such sum as is proportionately equivalent by area to the Base Value of the whole of the Property
- (b) where a valuation of the Market Value of the Relevant Land occurs as a result of a Trigger Event then upon the date of such determination of the Market Value of the Relevant Land there shall be substituted for any earlier calculation of the Base Value a new Base Value for the Relevant Land based upon such valuation and which is to be used as the Base Value on the next Trigger Event only provided that all payments arising from the Trigger Event have been made before adjusting the Base Value and that nothing in this provision shall prevent the Base Value of the Relevant Land in the second and subsequent years of the Clawback Period being incremented annually in the manner and by the percentage specified above , and
- (c) where a Trigger Event occurs that relates to Relevant Land comprising all or part of any part of the Property that has been the subject of a previous Trigger Event, the Base Value of the Relevant Land shall equal the sum of:-
 - (i) the pro rata (by area) Base Value applicable to the area(s) of the Relevant Land in respect of which no such previous Trigger Event has occurred; and
 - (ii) the pro rata (by area) Base Value (evaluated as provided in subparagraph (b) of this proviso applicable to the area(s) of the Relevant Land in respect of which a previous Trigger Event has occurred.

1.2 “Clawback Legal Charge” means the legal charge by which the Transferee charges the Property in favour of the Transferor with payment of all such sums (with interest) as may become due under this Schedule from time to time and which shall be based on the current form of land registry legal charge of a registered estate (Form CH1) as contained in the Annex hereto with such variations as the Transferor may reasonably require hereto

1.3 “Clawback Period” means the period starting on the date of this Transfer and ending with the Termination Date but if before that date any application is made for the grant of Planning Permission, or the issue of a Section 191 Certificate and/or a Section 192 Certificate which in either case is not Finally Determined by the Termination Date (a “potential Trigger Event”) the period shall not end until all potential Trigger Events have been Finally Determined

- 1.4 "Development" has the meaning given in TCPA 1990
- 1.5 "Disposition" includes a conveyance, transfer, sale of a legal interest, lease, tenancy, licence for the exclusive possession of all or part of the Property, mortgage and charge and "dispose of" or "disposal of" has a corresponding meaning but the following specifically shall not be treated as a disposition: -
- (a) a mowing or grazing licence
 - (b) a mortgage or a charge if (i) it ranks in priority after the Clawback Legal Charge and (ii) (when applying for registration of that charge) the chargee also applies for a restriction in a form referred to under Rule 91 of the Land Registration Rules 2003 (as set out in Schedule 4 of said Rules) to the effect that no disposition by the proprietor of that charge is to be registered without the consent of the Transferor and
 - (c) a renewal of any lease existing at the date of the commencement of the Clawback Period where such lease has been made under and is subject to the provisions of Section 24 to 28 inclusive of the Landlord and Tenant Act 1954 (or any renewal of such renewal) and such renewal is for a term not exceeding 15 years and at a rack rent
- 1.6 "Exempted Disposition" means a Disposition of the Property: -
- (a) to a local authority or other statutory body pursuant to a planning obligation within the meaning of Section 106 of the TCPA 1990;
 - (b) to a buyer or lessee of an individual residential Unit its immediate curtilage and garage thereto (such curtilage not to exceed in total 0.1 of a hectare and insofar only as such a Disposition is an arm's length transaction to a bona fide purchaser);
 - (c) to a housing association charity registered social landlord relevant local or other statutory authority if for the purpose of constructing housing on the Property and which the local planning authority require or will require (pursuant to a planning obligation) to be used for the provision of low cost or affordable housing;
 - (d) to a statutory body or service supply company if for the purpose of an electricity substation gas governor pumping station water pumping station or other statutory services which have been or are to be constructed or installed in or on the Property; and
 - (e) to a highway authority if for the purpose of adoption of the roads and footpaths and cycle ways to be constructed on the Property.
- 1.7 "Finally Determined" means that all time limits to do any act or thing in relation to the matter in question (including but without limitation making any appeal in the planning

process or making any application to court (including any application for judicial review) or appealing any court decision (including any decision in relation to judicial review)) have finally expired

- 1.8 "Market Value" means the estimated amount for which the Relevant Land should exchange at the date of the Trigger Event with vacant possession between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably prudently and without compulsion and assuming
- (a) that no previous Trigger Event has occurred that has reduced the market value of the Relevant Land;
 - (b) that no act or omission by the Transferee has occurred since the date hereof which has diminished the market value of the Relevant Land;
 - (c) the Relevant Land is in the same condition as at the date hereof and any damage to or destruction occurring to the Relevant Land after the date hereof has been fully reinstated
 - (d) the Relevant Land has the benefit of any easements, wayleaves, sight-line covenants and other agreements necessary to provide access, visibility splays or services to or from the Relevant Land and
 - (e) the provisions of this Schedule are disregarded
- 1.9 "Planning Permission" has the meaning given in TCPA 1990
- 1.10 "Relevant Land" means the relevant part or parts of the Property affected by a Trigger Event and any reference to Relevant Land includes a reference to any part of it
- 1.11 "Section 191 Certificate" means a certificate issued under Section 191 of TCPA 1990
- 1.12 "Section 192 Certificate" means a certificate issued under Section 192 of TCPA 1990
- 1.13 "TCPA 1990" means the Town and Country Planning Act 1990
- 1.14 "Termination Date" means [A] ⁸
- 1.15 "Transferee" includes the Transferee's successors in title and in particular (but without limitation) this applies to the references to the Transferee in paragraph 2 below
- 1.16 "Trigger Event" means in relation to the Relevant Land(subject to paragraph 2.1.1 in Part 1 of this Schedule):-

⁸ To be inserted

- (a) the grant of Planning Permission and in this context any reference to the date of the Trigger Event is a reference to the date of grant
 - (b) the issue of a Section 191 Certificate and in this context any reference to the date of the Trigger Event is a reference to the date of issue
 - (c) the issue of a Section 192 Certificate and in this context any reference to the date of the Trigger Event is a reference to the date of issue
- 1.17 "Unit" means any newly constructed structure or building ready for use and/or occupation and built on the Property substantially in accordance with the relevant Planning Permission and includes the curtilage of such structure or building any separate parking space garaging or storage area enjoyed with such structure or building and any other area apparatus or facility of which it has exclusive use
- 1.18 "Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday
- 1.19 Any reference to the Property except where the context otherwise so requires includes a reference to any part of the Property
- 1.20 Any reference to any Act or section of an Act includes a reference to any statutory modification or re-enactment of that Act or section for the time being in force
- 1.21 Headings herein shall be disregarded in construction of this Schedule

Part I: Planning Clawback Provisions

2 THE TRANSFEREE COVENANTS WITH THE TRANSFEROR:-

- 2.1 that if and so often as any Trigger Event occurs after the date of this deed but before the expiry of the Clawback Period (whether or not the Transferee at the time has any interest in the Relevant Land) the Transferee will on each such occasion pay to the Transferor a sum equal to [B%]⁹ of the difference between the Base Value of the Relevant Land and the Market Value of the Relevant Land on the date of the Trigger Event such sum to become due and payable on the first Working Day after the expiry of 3 months from and including the date of the Trigger Event save that the terms of this covenant shall have effect subject to the following:-
- 2.1.1 If there is any legal challenge to or appeal in respect of a Trigger Event the Trigger Event shall be deemed to occur when the challenge or appeal is Finally

⁹ To be inserted

Determined and if the challenge or appeal is successful the Trigger Event shall be deemed not to have occurred

2.1.2 (Except as mentioned in paragraph 2.1.4 below) if any Section 191 Certificate is issued following the application of some person other than the Transferee the sum due under this Schedule shall not become payable until the Transferee shall dispose of the Relevant Land or any interest in it

2.1.3 (Except as mentioned in paragraph 2.1.4 below) if any Planning Permission or any Section 192 Certificate is granted or issued following the application of some person other than the Transferee the sum due under this Schedule shall not become payable until either:-

(a) that permission or certificate is acted upon or

(b) the Transferee shall dispose of the Relevant Land or any interest in it

whichever shall happen first

2.1.4 Paragraphs 2.1.2 and 2.1.3 above shall not apply where the application referred to in paragraphs 2.1.2 and 2.1.3 is made in collusion with the Transferee or with the assistance, support or encouragement of the Transferee and in particular (but without limitation) those paragraphs shall not apply where the Transferee (and the Transferor as mortgagee) enter into a planning obligation under Section 106 of TCPA 1990 or any agreement which is entered into with the local planning authority or other relevant public authority in connection with or referable to the application to induce the Trigger Event

2.1.5 For the purposes of paragraph 2.1.3 above:

(a) a Planning Permission shall be regarded as having been acted upon on the date on which it is implemented in accordance with Section 56 of TCPA 1990; and

(b) a Section 192 Certificate shall be regarded as having been acted upon on the date on which the use or operation specified in the Certificate is instituted or begun

2.2 To notify the Transferor forthwith (and in any event within 5 Working Days) upon the happening of any Trigger Event or if the Trigger Event does not occur following the application of the Transferee or occurs without the Transferee taking any part (direct or indirect) in the occurrence of the Trigger Event then the Transferee covenants to notify

the Transferor forthwith (and in any event within 5 Working Days) upon such Trigger Event coming to the actual notice of the Transferee

- 2.3 During the Clawback Period the Transferee shall take all reasonable steps to ascertain whether a Trigger Event that is not yet within its actual knowledge has occurred

Part II : Sale Price Overage Provisions

1 IN THIS PART OF THE SCHEDULE:-

The definitions prescribed earlier in this Schedule shall apply if relevant and in addition the following expressions shall have the following meanings:-

- 1.1 “**Overage**” means the sum from time to time calculated as follows:-

$$C = (D - E) \times F$$

Where

C means the Overage

D means the aggregate of the Revenues from Sales in respect of all Dispositions of a Unit during the Overage Period

E means the threshold amount of [**E**]¹⁰

F means the Overage Percentage [**F**]¹¹

- 1.2 “**Overage Payment**” means the sum calculated in respect of the Overage as being due for payment at the end of each Relevant Period and for such purposes: -

- (i) any sums previously paid by the Transferee to the Transferor by way of Overage shall be taken into account and deducted from any payment due and
- (ii) if the sum calculated is a negative number it shall be deemed to be nil

- 1.3 “**Overage Period**” means the period starting on the date of this Transfer and ending with the Termination Date

- 1.4 “**Relevant Period**” means each period of twelve months during which any Unit on the Property remains to be constructed and completed or disposed of during the Overage Period, the first such period of twelve months to commence on the date of completion of

¹⁰ To be inserted

¹¹ To be inserted

the first Disposition of a Unit on the Property and all subsequent such periods thereafter to be annual periods commencing on the relevant anniversary dates of the commencement of the first such period of twelve months and expiring annually on the day preceding the next annual period

1.5 **“Revenue from Sales”** (subject to paragraphs 5 and 6 below) means the amount (VAT exclusive) in respect of each Unit:

1.5.1 received by or on behalf of the Transferee from any freehold sale;

1.5.2 received by or on behalf of the Transferee from any premium paid for the grant of a lease of any interest; and/or

1.5.3 calculated as representing the Market Value of the reversionary interest in respect of any lease granted where the rent reserved under the same exceeds [a peppercorn or some other level]

Provided Always and pursuant to the terms of the undertaking on the part of the Transferee contained in paragraph 3 below: -

- (a) the amount received or calculated in respect of each Unit shall include any additional sum agreed between the Transferee and its purchaser in respect of any additions or extras to the Unit that are not included in the lease or contract of sale; and
- (b) insofar as any Disposition by the Transferee is not an arms length transaction in respect of the Unit or Units then there shall be substituted for any figure calculated under sub-paragraphs 1.5.1 1.5.2 or 1.5.3 of this definition (but only if such substitution is of a higher amount) the Market Value for each Unit on the assumption that each such Unit has been built substantially in accordance with the relevant Planning Permission; and
- (c) any amount contractually receivable by the Transferee in respect of a Unit but not yet paid (including but not limited to any unpaid purchase price or premium secured or intended to be secured by a mortgage in favour of the Transferee or an associate) shall be treated for the purposes of this definition as having been received already

1.6 **“Threshold Amount”** means the sum of £ [E] ¹²

2 Upon the disposal of Units during the Overage Period the Transferee shall pay to the Transferor the Overage in the following manner: -

¹² To be inserted

- 2.1 at the end of every Relevant Period the Transferee shall forthwith provide to the Transferor at the address stated in paragraph 12 of Part III of this Schedule a statement specifying all Dispositions of a Unit effected during that Relevant Period and full details of the terms of the Disposition of all such Units;
 - 2.2 the Transferor shall have the right (upon reasonable prior notice) to inspect the originals and/or be given complete copies by the Transferee of all documentation on which the statement is based; and
 - 2.3 the Transferee shall make such Overage Payment so as to be received by the Transferor within 20 Working Days of the end of any Relevant Period
- 3 The Transferee undertakes that during the Overage Period it shall not enter into any Disposition of a Unit which is not at arm's length on open market terms Provided That
 - 3.1 nothing herein shall prohibit the Transferee from arranging a block sale provided that the same is at arm's length of more than one Unit and accepting a discounted price for such block sale commensurate with discounts then generally accepted in the local market place in which such Units are being offered; and
 - 3.2 for the avoidance of doubt the total Revenue from Sales received by the Transferee from any Disposition of any Unit shall include any additional sum agreed between the Transferee and its purchaser in respect of any additions or extras to the Unit that is not included in the lease or contract of sale.
 - 3.3 insofar as there are not arms length transactions in respect of the Disposition of the Units then there shall be substituted the Market Value for each Unit on the assumption that each such Unit has been built substantially in accordance with the relevant Planning Permission
 - 3.4 the date of the Disposition of any Unit or Units shall be treated as the date of completion or settlement unless a contract for the disposal of any Unit or Units is substantially performed (within the meaning of Section 44 (5) of the Finance Act 2003) otherwise than by completion and in which case the effective date for the Disposition shall be treated as if it were itself the date on which the contract is substantially performed
- 4 Following an Overage Payment being received by the Transferor in respect of any Unit then that Unit shall be released from future liability for any further Overage Payments
- 5 In the event that there shall be any Disposition of any legal interest in the Property (including any easement or privilege) for money or monies worth and which neither qualifies as: -

- 5.1 an Exempted Disposition; or
- 5.2 a disposal of a Unit or an intended Unit (and its curtilage)

then the Disposition shall be treated as a "Turnover Disposition" and the terms of the following paragraph 6 below shall apply so that the receipts or value of the consideration received in respect of a "Turnover Disposition" shall be taken into account when calculating the Revenue from Sales

- 6. The terms applying to any "Turnover Disposition" are as follows: -
 - 6.1 the amount or value of the consideration received (VAT exclusive) from any "Turnover Disposition" shall be treated as a Revenue from Sales;
 - 6.2 the term or expression "Revenue from Sales" shall be deemed to incorporate such appropriate provision whereby such sums may be accounted for in respect of any "Turnover Disposition" (in accordance with the terms of the preceding sub paragraph); and
 - 6.3 in the event that any "Turnover Disposition" precedes the completion of the first Disposition of a Unit on the Property then the first Relevant Period shall be deemed to commence on the date of completion of that "Turnover Disposition"

Part III : General Provisions

- 1.1 If the parties are unable to agree upon the determination of the quantum of (a) any sum or (b) any monetary obligation or other consideration due from one party to the other in connection with this Transfer the dispute or difference shall be referred to an independent person (the 'Expert') who shall act as an Expert and not as an arbitrator and whose decision in relation to the matter in dispute shall be final and binding upon the parties
- 1.2 The procedure for the appointment of the Expert in accordance with this paragraph shall be as follows: -
 - 1.2.1 The party wishing the appointment to be made shall give written notice to that effect to the other party and with such notice shall give details of the matters in dispute which it wishes to refer to an Expert
 - 1.2.2 If within 15 Working Days from the service of the notice by the party wishing to refer a matter to an Expert the parties have failed to agree upon the identity of

the person to be appointed as the Expert then that party may apply to the President for the time being of the Royal Institution of Chartered Surveyors (the 'Appointing Authority') to appoint a person to act as an Expert to determine the matters in dispute requesting that the appointment be made within 15 Working Days of receipt of the request by the Appointing Authority

- 1.2.3 The person identified to act as an Expert shall be requested to confirm within 10 Working Days whether or not he is willing and able to accept the appointment
- 1.2.4 In the event that the Expert so appointed does not confirm his availability to act within 10 Working Days then either party may request the Appointing Authority to suggest an alternative appointment until a person so identified confirms that he is willing and able to accept the appointment
- 1.2.5 No person shall be appointed to act as an Expert under this Transfer unless he is a chartered surveyor of more than 7 years standing
- 1.2.6 Any person appointed to act as an Expert pursuant to this Transfer shall at the time of confirming that he is willing and able to accept such appointment disclose in writing to all parties any contact or relationship with any party to the dispute and otherwise disclose to the parties any duty or interest which does or may create a conflict or otherwise impinge upon the matters in dispute which he is to be appointed to determine
- 1.2.7 If any such disclosure is made any party may object to the appointment within 5 Working Days of being notified of the disclosure, in which case the procedure for appointing an Expert referred to in paragraphs 1.2.1 to 1.2.6 above shall be repeated and for the avoidance of doubt no person shall be appointed an Expert under this Transfer who at the time of appointment is a director office holder or employee of or directly or indirectly retained as a consultant or in any other professional capacity by any party to the dispute or any company or other person associated with any party to the dispute
- 1.2.8 Upon the person appointed as Expert confirming his willingness and ability to accept the appointment and upon neither party having raised any objection to the appointment in the light of any disclosure made by the Expert the parties shall within 15 Working Days of the Expert confirming his willingness and ability to act jointly send a letter to the Expert containing the terms of his appointment including (inter alia) requirements that: -

- (a) the Expert shall not later than 10 Working Days after the confirmation of his appointment invite the parties to attend a meeting (“the Directions Meeting”) at which he shall give directions as to the future conduct of the matter and shall from time to time give such further directions as he shall see fit;
- (b) the Expert shall make his determination as soon as reasonably practicable after receipt of all written or oral submissions which the Expert orders should be made and conclusion of such further work as the Expert shall consider necessary and in any event the Expert shall endeavour to issue his decision within 3 months of the Directions Meeting;
- (c) the Expert shall be entitled to obtain such independent legal or other expert advice as he may reasonably require and may obtain such secretarial assistance as is reasonably necessary; and
- (d) the Expert shall give full written reasons for his determination

1.3 For the avoidance of doubt, any person appointed to determine a dispute in accordance with this paragraph shall act as an expert and not as an arbitrator and the provisions of the Arbitration Act 1996 (as amended from time to time) and the law relating to arbitrations shall not apply to such Expert or his determination or the procedure by which he reaches his determination

1.4 The determination of the Expert shall be final and binding upon the parties

1.5 The Expert shall be entitled to order that the costs of the reference of a dispute to him shall be paid by the parties in whatever proportions he thinks fit

1.6 Save for submissions made orally to the Expert at a meeting at which all parties are present any other communications between any party and the Expert shall be made in writing and a copy thereof shall be provided simultaneously to all other parties

1.7 No meeting between the Expert and a party shall take place unless all parties have had notice of such meeting and have been offered a reasonable opportunity to attend such meeting

1.8 In the event that the appointed Expert shall at any time become incapable of acting upon the determination (through death or other form of incapacity whether physical or otherwise) then the procedure for appointing an Expert referred to in paragraphs 1.2.1 to 1.2.6 above shall be repeated

- 1.9 For the avoidance of doubt if there is a reference to determine a dispute pursuant to the preceding terms such sum as shall be fixed as a result of the outcome of the Expert's decision as being the sum due under this Schedule shall nevertheless be payable (or be deemed to have become payable) at the date of the relevant Trigger Event (and interest shall be payable under the following paragraph from that date)
2. If any sum which has become due under this Schedule is not paid within two months of the date upon which it became payable then the Transferee will pay interest on that sum from the date upon which it became due until it is paid at a rate equivalent to 4% per annum above the base rate of the Bank of England from time to time in force (or if that rate shall cease to exist for any reason, at the Law Society interest rate)
3. The Transferee further covenants with the Transferor that on any Disposition other than an Exempted Disposition of any part of the Property prior to the expiry of the Clawback Period the Transferee will procure that the disponee of the same shall at its own expense enter into a Deed of Covenant with the Transferor whereby the disponee shall covenant with the Transferor to comply with the terms of this Schedule which covenant shall be based on the form of Deed of Covenant contained in the Annex hereto with such variations as the Transferor may reasonably require thereto
4. The Transferee covenants to enter at its own expense (including registration costs) into the Clawback Legal Charge contemporaneously with this Deed as a first legal charge of the Property
5. Subject to the covenants on the part of the Transferor contained in paragraph 7 below whilst the Clawback Legal Charge remains in force the Transferee shall not have any power to dispose of the Property without the consent in writing of the Transferor
6. The Transferee under the provisions of the Land Registration Acts will at his own expense do all things necessary to enable a restriction in the terms set out in the Clawback Legal Charge to be registered against the title of the Property at the Land Registry and (unless otherwise requested by the Transferor) will apply to the Land Registry to enter in the proprietorship register of the title to the Property a restriction in the terms set out in the Clawback Legal Charge
7. The Transferor covenants with the Transferee and the other owners and lessees for the time being of the Property (but subject as the case may be to reimbursement of the reasonable legal costs incurred on behalf of the Transferor for the procurement by the Transferee of the appropriate form of release or consent and/or Deed of Covenant) as follows :-
 - 7.1 to release any part of the Property which is the subject of an Exempted Disposition from

- the Legal Charge (including in respect of any obligation to pay any sums due under paragraph 2 of Part I of this Schedule) without consideration and not to unreasonably withhold consent to the registration of such a disposition;
- 7.2 when requested to do so (pursuant to the restriction contained in the Clawback Legal Charge) to provide a written consent signed on behalf of the Transferor to any Disposition which is an Exempted Disposition;
- 7.3 not to withhold consent to the registration of a Disposition of the Property if the disponee of the same shall have entered effectively into a Deed with the Transferor in the form referred to in paragraph 3 above and the Transferor shall have received the same from the disponee;
- 7.4 when requested to do so (pursuant to the restriction contained in the Clawback Legal Charge) to provide a written consent signed on behalf of the Transferor to any such disposition where the terms of the preceding sub paragraph have been complied with;
- 7.5 that the Transferor may be requested to consent (such consent not to be unreasonably withheld) to the postponement of the Clawback Legal Charge (as defined in paragraph **Error! Reference source not found.** of Part I of this Schedule) to a first legal charge to secure such sum as will enable the Transferee or any successor to complete its purchase of the Property or any part of the Property and/or (in the case of undeveloped land) to undertake development of it pursuant to Planning Permissions obtained or likely to be obtained provided that the Transferor's consent to the said postponement of the Clawback Legal Charge will not be granted if the proposed new first mortgagee does not first enter into a deed with the Transferor whereby it covenants not to exercise its power of sale without procuring from every person or body to whom it proposes to dispose of any part of the Property a covenant with the Transferor for clawback on the same terms as the provisions of this Schedule including a new Clawback Legal Charge to secure the same; and
- 7.6 that the Transferor will as mortgagee consent to and join in any agreement under section 106 of the TCPA1990 required by the local planning authority to induce the grant of a Planning Permission and any other agreement or deed required by any authority and/or service supply company to secure the provision of and adoption of all Conduits Services and roads to be constructed on the Property subject to the Transferee indemnifying the Transferor in respect of all such matters
8. At all times during the Clawback Period and the Overage Period the Transferee will: -

- 8.1 comply in all respects with the TCPA 1990 and any Act replacing or modifying it or any order or direction under it whether as to the permitted use of the Property or otherwise;
- 8.2 at its own expense obtain any permissions licences consents and approvals required by law for carrying out any operations on the Property or for any use of it that may constitute development within the meaning of the TCPA 1990;
- 8.3 not act in collusion with any third party with a view to avoiding or deferring any payment due or action required under the provisions of this Schedule;
- 8.4 not upon any renewal of a lease existing at the date of the commencement of the Clawback Period and which is subject to the provisions of Section 24 to 28 inclusive of the Landlord and Tenant Act 1954 renew for a term exceeding 15 years and/or otherwise than at a rack rent; and
- 9 For the avoidance of doubt the provisions of this Schedule shall apply: -
 - 9.1 only to produce sums payable by the Transferee to the Transferor and in no circumstances shall any sum become payable (or repayable) by the Transferor to the Transferee;
 - 9.2 (in relation to Planning Clawback) as often as any Trigger Event occurs prior to the end of the Clawback Period and shall not, for example, cease to apply on the occurrence of the first or any subsequent Trigger Event (even if relating to the same part of the Property); and
 - 9.3 so that the Clawback Legal Charge shall not be discharged by any payment within the Clawback Period but shall continue to apply until the Clawback Period has expired and all monies secured by the Clawback Legal Charge have been paid but for the avoidance of doubt the terms of this Schedule shall not be binding on the owners and occupiers of any part of the Property which having been the subject of an Exempted Disposition has been released from the Clawback Legal Charge
- 10 The Transferee shall be under an obligation when applying for the registration of this Transfer to register the Clawback Legal Charge and to direct on the application to the Land Registry for the return of the original documents lodged with the application to the Transferor's Solicitors following registration
- 11 The Transferee for itself and its successors in title being bodies corporate hereby covenants with the Transferor
 - 11.1 to comply with all laws whatsoever affecting them and take all appropriate steps so as to make the Clawback Legal Charge enforceable against them and their liquidators;

11.2 (without prejudice to the generality of the foregoing) if the Transferee or successor is a limited company registered under the Companies Acts, to produce to Companies House the original and procure registration of the Clawback Legal Charge or other document making the Transferee or successor liable thereunder at Companies House in accordance with the obligation placed on its directors by such Acts either (as the case may be):-

11.2.1 within 15 Working Days of the date of this Transfer; or

11.2.2 within 15 Working Days of the acquisition of the Property subject to the Clawback Legal Charge; and

11.3 to produce to the Transferor within 20 Working Days of the date of this Transfer the original or a copy certified by a solicitor to be a true copy of the certificate of registration of the Clawback Legal Charge at Companies House or with such other authority as is appropriate and failure to comply with this obligation will entitle the Transferor to notify Companies House of the failure and to require the Transferee to enter into a fresh Clawback Legal Charge and to pay the full costs and fees of this additional work.

12 Any notice notification or statement required under the terms of this Schedule shall be sent to the Transferor by recorded delivery post to [*ADDRESS OF TRANSFEROR*]

ANNEX - CLAWBACK LEGAL CHARGE¹³

**[for annexation to Form of Transfer – Form CH1
Clawback Legal Charge as defined in the Schedule Part I]**

¹³ To be used only if option (a) or option (c) of the Tender is accepted

ANNEX – DEED OF COVENANT¹⁴

[for annexation to Form of Transfer – Deed as referred to in Part III Para. 3]

¹⁴ To be used only if option (a) or option (c) of the Tender is accepted

FORM OF TENDER

SALE OF LAND AT [DESCRIPTION OF PROPERTY]

THIS FORM OF TENDER IS NOT TO BE DETACHED FROM THE CONDITIONS OF SALE

"NOTICE TO ANY PERSON TENDERING - PREVENTION OF CORRUPTION"

The Prevention of Corruption Acts 1889 to 1916 make it a criminal offence punishable by imprisonment to give or offer any gift or consideration of any kind as an inducement or reward to any person in Her Majesty's Service

I/WE:

AND:

of:

.....

.....

HAVING examined the foregoing Conditions of Sale including the Sale Information Pack hereby submits the following offers (as alternatives in (a) (b) or (c) and in all cases (a) and (b) or (b) and (c) must be fully completed) to purchase from the **SECRETARY OF STATE FOR DEFENCE** the Property on the terms specified in the foregoing Conditions of Sale at the price of

- (a) £.....(amount in figures)
(.....POUNDS (amount in words)

with the Clawback and Overage Provisions

The Buyer should insert values dates and percentages (where appropriate) for **A, B, E** and **F** as defined below. The tender may be rejected as non-compliant if values are not provided.

	Description	
A	The Termination Date being the date up to which the planning Clawback Provisions shall operate in paragraph 1.14 of Part I of the Clawback and Overage Provisions (this date must not be later than 80 years from the date of the contract)	
B	The percentage of clawback offered in respect of planning clawback in paragraph 2.1 of Part I of the Clawback and Overage Provisions (i.e. 0 – 100%)	
C	The Overage	
D	The aggregate of the Revenue from Sales received by or on behalf of the Buyer during the Overage Period	
E	The amount of the Threshold offered in the calculation of the Overage in paragraphs 1.1 and 1.6 of Part II of the Clawback and Overage Provisions	
F	The percentage figure offered in the calculation of the Overage in paragraph 1.1 of Part II of the Clawback and Overage Provisions (i.e. 0 – 100%)	

OR

(b) £.....(amount in figures)
(..... POUNDS
(amount in words)
without the Clawback and Overage Provisions

OR

(c) £.....(amount in figures)
(..... POUNDS
(amount in words)
with the Clawback and Overage Provisions containing in track changes any proposed changes made by the person tendering to the Conditions of Sale attached hereto. However, it is hereby acknowledged by the person tendering that the Seller is likely to prefer a Form of Tender where the Clawback and Overage Provisions have not been altered.

I/we annex Bankers Draft for the Deposit in favour of the Seller's Solicitors, for ten per cent of the higher sum specified in (a) (b) or (c) above

NB. The Seller reserves the right to require any person tendering to produce prior to acceptance of the Tender evidence of its/their financial ability to complete the purchase

If either variant expressed by us in this Tender shall be accepted, I/we agree to complete the purchase of the Property comprised in such acceptance in accordance with the said Conditions of Sale

My/our Solicitors are:

of

.....

.....

DATED this day of 201 []

SIGNED

*Mode of execution
must be in
accordance with
Condition of Sale 6*

FORM OF ACCEPTANCE

The Seller hereby accepts the above-mentioned Tender from
..... (“the Buyer”)
to purchase the Property at the price of £..... (amount in figures)
.....POUNDS
(amount in words) (including/excluding the Clawback and Overage Provisions with/without
changes shown by track changes to the Clawback and Overage Provisions) on the terms
specified in the foregoing Conditions of Sale and agrees to complete the sale of the Property to
the Buyer at that price in accordance with such Conditions of Sale

Receipt of the sum of £.....(amount in figures).....
.....POUNDS
(amount in words) by way of deposit is acknowledged

DATED this day of 201[]

SIGNED BY:
for and on behalf of the Secretary of State for Defence

The Seller’s Solicitor: [*SOLICITORS’ NAME*]
 [*SOLICITORS’ ADDRESS*]

[*DX NUMBER*]

Ref: [*SOLICITOR’S REFERENCE*]

Tel: []

Fax: []

E-mail: [*SOLICITOR’S EMAIL ADDRESS*]