

DATED 18 June 2013

WATFORD BOROUGH COUNCIL

and

WEST HERTFORDSHIRE HOSPITALS NHS TRUST

and

WATFORD HEALTH CAMPUS PARTNERSHIP LLP

---

CAMPUS AGREEMENT

relating to Watford Health Campus Partnership LLP

---



N A B A R R O

Lacon House  
84 Theobald's Road  
London WC1X 8RW

Tel: +44 (0)20 7524 6000

## CONTENTS

Clause	Subject matter	Page
1.	DEFINITIONS AND INTERPRETATION .....	1
2.	COMPLETION.....	13
3.	PURPOSE OF THIS AGREEMENT.....	13
4.	CONDITIONALITY .....	13
5.	CAMPUS DEVELOPMENT AND WHHT PROJECTS .....	14
6.	SHRODELL SITE .....	16
7.	WHHT LAND CONTRIBUTION .....	16
8.	COUNCIL AS LOCAL AUTHORITY.....	17
9.	WHHT AS NHS TRUST .....	18
10.	CONSTITUTION OF THE CAMPUS FORUM .....	18
11.	REPRESENTATIVES ON THE CAMPUS FORUM .....	18
12.	LABV DEVELOPMENT MANAGER AND OBSERVER STATUS .....	19
13.	CAMPUS FORUM MEETINGS AND RESOLUTIONS .....	19
14.	BINDING EFFECT OF RESOLUTIONS .....	20
15.	LABV BUSINESS PLANS .....	21
16.	COMPENSATION .....	21
17.	EXCHANGE OF INFORMATION.....	23
18.	RESTRICTIONS ON ACTIVITIES OF PARTIES.....	23
19.	GENERAL OBLIGATIONS.....	24
20.	LABV OBLIGATIONS AND WHHT APPROVALS ETC.....	25
21.	COUNCIL RIGHTS.....	25
22.	INFRASTRUCTURE .....	25
23.	WHHT FUNDING .....	25
24.	PROGRESS MONITORING .....	27
25.	FINANCIAL INFORMATION .....	27
26.	LAND DRAWDOWN FROM WHHT.....	27
27.	WHHT CO-OPERATION PLAN .....	27
28.	LAND EQUALISATION .....	27
29.	DEFAULT .....	28
30.	DURATION AND TERMINATION .....	28
31.	WHHT MEMBERSHIP OF LABV .....	29
32.	WARRANTIES .....	29
33.	CONFIDENTIAL INFORMATION.....	29
34.	FOIA AND EIR .....	30
35.	DISPUTES .....	32
36.	ANTI-CORRUPTION.....	33
37.	ANNOUNCEMENTS .....	34
38.	NOTICES .....	34
39.	INVALIDITY AND SEVERANCE.....	35
40.	NHS FOUNDATION TRUST STATUS.....	36
41.	VALUE ADDED TAX.....	36
42.	SURVIVAL.....	36
43.	WAIVER .....	36
44.	THIRD PARTY RIGHTS.....	37
45.	COSTS.....	37

46.	ENTIRE AGREEMENT .....	37
47.	AMENDMENTS .....	38
48.	FURTHER ASSURANCE .....	38
49.	SUCCESSORS AND ASSIGNS .....	38
50.	LAW .....	38
51.	COUNTERPARTS .....	39
Schedule 1	.....	40
	Existing WHHT Contractual Commitments .....	40
Schedule 2	.....	41
	Approval process for Capital Building Projects .....	41
Schedule 3	.....	43
	Dispute resolution procedure .....	43
Schedule 4	.....	44
	Not used .....	44
Schedule 5	.....	45
	Not used .....	45
Schedule 6	.....	46
	Part 1 .....	46
	Land equalisation arrangements .....	46
	Part 2 .....	48
	Land contribution contingencies .....	48
Schedule 7	.....	49
	Land Drawdown .....	49
	Part 1 .....	49
	Part 2 .....	54
	Zone selection .....	54
	Part 3 .....	55
	Business Plans .....	55
	Part 4 .....	57
	Infrastructure Zone .....	57
	Part 5 .....	59
	Development Licence .....	59
	Part 6 .....	59
	The Conditions .....	59
Schedule 8	.....	61
	Overage Provisions .....	61
Annexure 1	.....	68
	Plans .....	68

## CAMPUS AGREEMENT

DATE 18 June 2013

### PARTIES

- (1) WATFORD BOROUGH COUNCIL of Town Hall, Watford, Hertfordshire WD17 3EX (the "Council");
- (2) WEST HERTFORDSHIRE HOSPITALS NHS TRUST of Watford General Hospital, Vicarage Road, Watford, Hertfordshire WD18 0HH ("WHHT"); and
- (3) WATFORD HEALTH CAMPUS PARTNERSHIP LLP (a limited liability partnership registered in England and Wales under company registration number OC384954), the registered office of which is at Tempsford Hall, Sandy, Bedfordshire SG19 2BD (the "LABV"),

each a "Party" and together the "Parties".

### RECITALS

- (A) The Council and the PSP have agreed to incorporate the LABV to undertake the Campus Development and deliver associated and other property development activity in the Area. The objectives of the LABV are set out in the Members' Agreement and its activities in respect of land owned by the Council, including the scope of the LABV's exclusive rights, are set out in the Development Agreement.
- (B) WHHT has agreed to include certain of its land and requirements in the scope of the exclusive rights granted to the LABV, subject to limitations expressed in this Agreement.
- (C) The Parties have agreed to execute this Agreement to regulate their respective responsibilities and the dealings between them in relation to the Campus Development.

### IT IS AGREED AS FOLLOWS:

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions apply in this Agreement:

**"Agreement"**

means this deed (including any schedule or appendix to it), as amended, varied, supplemented or replaced from time to time in accordance with its terms;

**"Allotment Land"**

means the land which sits outside the Site and is shown edged red and coloured green on Plan 2 attached at Annexure 1

**"Alternative Land"**

shall have the meaning given to it in **clause 7.2**;

**"Alternate Representatives"**

means a person appointed by a Party to act as a Representative on the Campus Forum in the place of an appointed Representative from time to time in accordance with this Agreement;

**"Approved Zone Business Plan"**

means an Indicative Zone Business Plan adopted pursuant to **Schedule 7**;

**"Area"**

shall have the meaning given to it in the Members' Agreement;

**"Business Day"**

means 9 a.m. to 5 p.m. on any day (other than a Saturday or Sunday or a public holiday in the United Kingdom) on which clearing banks in the City of London are open for the transaction of normal sterling banking business;

**"Business Plan"**

means the LABV Business Plan, an Indicative Zone Business Plan or an Approved Zone Business Plan as the case may be;

**"Campus Development"**

means the development of the Watford Health Campus on the Site in accordance with the LABV Business Plan and Masterplan approved by WHHT in accordance with **clause 15**;

**"Campus Forum"**

means the body constituted to determine matters relating to this Agreement in accordance with **clause 10**;

**"Capital Building Projects"**

means those planned projects of WHHT which involve the construction of buildings by WHHT on the Site excluding any such projects of a projected value of less than two hundred and fifty thousand pounds (£250,000);

**"Car Park Business Plan"**

means the car park business plan as approved from time to time in accordance with the Members' Agreement and this Agreement;

**"Car Park Zone"**

means the Zone to which the Car Park Business Plan relates (and the area which it is intended as at the date of this Agreement that the Car Park Business Plan will relate) shown edged in red, coloured blue and numbered 3 on Plan 2 attached at **Annexure 1**;

**"Chairman"**

means the chairman from time to time of the Campus Forum appointed in accordance with **clause 11.5**;

**"Cooperation Plan"**

shall have the meaning given to it in **clause 25.1**;

**"Conditional Clauses"**

means **clauses 5, 7, 16 and 18** (except insofar as those clauses relate to the Infrastructure Business Plan);

**"Council Joint Ownership Condition"**

shall have the meaning given to it in the Development Agreement;

**"Council Land"**

means those parts of the Site owned by the Council shown hatched blue on Plan 1 attached at **Annexure 1**;

**"Council Representative"**

means the representative appointed by the Council to the Campus Forum pursuant to **clause 11**;

**"Default Event"**

means an event as more particularly identified in **clause 29.2**;

**"Dependencies"**

means any action, input, deliverable, information and/or agreement that the LABV is reliant on WHHT providing or approving (as appropriate) to enable the LABV to implement an Indicative Zone Business Plan;

**"Dependencies Estimate"**

shall have the meaning given to it in **clause 16.1.2(c)**;

**"Dependencies Notice"**

shall have the meaning given to it in **clause 16.1.2**;

**"Development Agreement"**

means the agreement in respect of the Campus Development entered into between (1) the Council and (2) the LABV on or before the date of this Agreement;

**"Development Appraisal"**

means the development appraisal to be prepared by the LABV or a Development Subsidiary in relation to each Zone in the form appended to the Development Management Agreement (or in such comparable form agreed between the Parties) reflecting the proposed development to be carried out on the Zone in accordance

with the relevant Business Plan for the purposes of satisfaction of the Viability Condition;

**"Disclosing Party"**

shall have the meaning given to it in **clause 33**;

**"Effective Date"**

means the date of this Agreement;

**"Encumbrances"**

shall have the meaning given to it in the Development Agreement;

**"Estimate"**

shall have the meaning given to it in **clause 16.1.1(a)**;

**"Exclusive Facilities"**

means:

- (a) car parking facilities;
- (b) office accommodation; and
- (c) medical records facilities;

**"Expert"**

means:

- (a) (where a dispute or difference hereunder is on a point of law or legal drafting) a Queen's Counsel practising in English real property law or construction law or partnership law or banking law (as applicable) being such Counsel as may be appointed by the Parties (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of any of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society; or
- (b) (where a matter concerns a planning matter) a Queen's Counsel practising at the planning bar being such Counsel as may be appointed by the Parties (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of any of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society; or
- (c) (where a matter concerns a financial dispute or difference) a qualified accountant from The Institute of Chartered Accountants in England and Wales may be jointly appointed by the Parties (acting unanimously) or, failing agreement, such accountant as shall be appointed at the request of any of the Parties by or on behalf of the President of the ICAEW or CIPFA; or
- (d) (in the case of any other matter) a senior Chartered Surveyor having at least 10 years' post-qualification experience in the development and/or management of premises in the south east region of England as may be jointly appointed by the Parties (acting unanimously) or, failing agreement,

such surveyor as shall be appointed at the request of any of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Royal Institution of Chartered Surveyors, such experience to be in relation to dealing with disputes of a kind of those which may be referred to him or her hereunder,

and "falling agreement" shall for these purposes mean failing any such joint appointment by the Parties of an Expert within five Business Days of notice by one Party to the others that the dispute or difference is to be referred to an Expert;

**"Full Business Case"**

means any business case to be prepared by WHHT following Outline Business Case Approval and then to be submitted for approval by the TDA or authorising body for the relevant Capital Building Project;

**"Full Business Case Approval"**

means final approval by the TDA of the Full Business Case;

**"Funding Condition"**

means demonstration by the LABV to WHHT that either:

- (a) the LABV has entered into an agreement with a fund, other financial institution or bank whereby such fund, other financial institution or bank is obliged to make available to the LABV such finance as is required for the LABV to develop the whole of the relevant WHHT Zone; or
- (b) where the LABV intends to procure funding from another source (including any grant funding) (including from a member of the LABV) the LABV has secured an arrangement comparable to paragraph (a) above;

**"Highways Agreement"**

shall have the meaning given to it in the Development Agreement;

**"Indicative Zone Business Plan"**

means the indicative zone business plan to be worked up by the LABV and provided to WHHT pursuant to Part 3 of Schedule 7 or agreed prior to the date of this Agreement;

**"Infrastructure Business Plan"**

means the infrastructure business plan as agreed from time to time in accordance with the Members' Agreement and approved in accordance with this Agreement;

**"Infrastructure Costs"**

means the total cost of road and associated infrastructure for the Campus Development in accordance with the Infrastructure Business Plan, estimated at the date of this Agreement to be in the region of eighteen million six hundred thousand pounds (£18,600,000) (excluding value added tax);



**"Infrastructure Repayment Capability"**

shall have the meaning given to it in **clause 7.3**;

**"Infrastructure Zone"**

means the Zone to which the Infrastructure Business Plan relates;

**"KPI Dependencies"**

shall have the meaning given to "Dependencies" in the Development Agreement;

**"KPI Dependencies Notice"**

shall have the meaning given to "Dependencies Notice" in the Development Agreement;

**"LABV Business Plan"**

shall have the meaning given to it in the Members' Agreement;

**"LABV Future Expenditure"**

means the anticipated costs, fees (including reasonable and proper professional fees) and expenses (including but not limited to re-design, re-masterplanning, re-submission of planning applications) that may necessarily and reasonably be incurred by the LABV (always taking into account the provisions of **clause 16.3**) in taking forward an Indicative Zone Business Plan;

**"LABV Project Expenditure"**

means the costs set out in the relevant Indicative Zone Business Plan that the LABV has incurred or is committed to incur under and in accordance with an Indicative Zone Business Plan to satisfy the Conditions (as defined in **Schedule 7**) and obtain an Approved Zone Business Plan;

**"LABV Representative"**

means the representative appointed by the LABV to the Campus Forum pursuant to **clause 11**;

**"Land Equalisation Arrangements"**

means the arrangements between the Council and WHHT relating to land equalisation in respect of the Campus Development as contained in **Part 1 of Schedule 6**, and subject to the contingencies set out in **Part 2 of Schedule 6**;

**"Market Value"**

means the market value of a Zone as calculated in accordance with the Royal Institution of Chartered Surveyors' valuation professional standards (March 2012) or future editions/replacements therefore (incorporating the international valuation standards), with the following special assumptions:

- (a) market value is to be determined on the consented or proposed scheme;
- (b) Site-Wide Infrastructure Costs allocated to the scheme as set out in the LABV Business Plan are to be taken into account in the valuation;

- (c) the proposed development of the scheme is part of the Masterplan;
- (d) there is an assumed market for the scheme; and
- (e) the LABV's developer rate of return as set out in the LABV Business Plan and/or the relevant Approved Zone Business Plan shall apply to the valuation unless sold to a third party;

**"Masterplan"**

shall have the meaning given to it in the Members' Agreement;

**"Material Breach"**

means a breach of any of the terms of this Agreement which, where capable of remedy have not been remedied and which is material and/or persistent having regard to all relevant circumstances including, without limitation, the nature of the relationship between the Parties and the need for each such Party to maintain the confidence of the others, the nature of the breach (and in particular whether it be intentional, negligent or otherwise), the regularity with which the obligation which has been breached falls to be performed and the consequences of the breach;

**"Members"**

shall have the meaning given to it in the Members' Agreement;

**"Members' Agreement"**

means the agreement in respect of the establishment of the LABV entered into between (1) the Council (2) the PSP and (3) the LABV on or before the date of this Agreement;

**"NHS Consents Condition"**

means consents and/or approvals required by WHHT from the TDA including compliance with the NHS Estate Code;

**"NHS Foundation Trust"**

means a National Health Service foundation trust authorised pursuant to section 35 of the National Health Service Act 2006;

**"NHS Trust"**

means a National Health Service trust established pursuant to section 25 of the National Health Service Act 2006;

**"Non-Exclusive Facilities"**

means all facilities, including but not limited to any private patient unit promoted by WHHT, other than Exclusive Facilities;

**"Objectives"**

shall have the meaning given to it in the Members' Agreement;

**"Outline Business Case"**

means any outline business case to be prepared by WHHT and then to be submitted for approval to the TDA for a Capital Building Project;

**"Outline Business Case Approval"**

means approval by the TDA of the Outline Business Case;

**"Partnership Board"**

shall have the meaning given to in the Members' Agreement;

**"Planning Agreement"**

shall have the meaning given to in the Development Agreement;

**"Planning Application"**

means each and every planning application submitted by the LABV or a Development Subsidiary in accordance with this Agreement for the Campus Development;

**"Planning Condition"**

shall have the meaning given to in the Development Agreement;

**"Procurement Policy"**

shall have the meaning given to it in the Members' Agreement;

**"Project Agreements"**

shall have the meaning given in the Members' Agreement together with any ancillary agreement made pursuant to this Agreement;

**"PSP"**

shall have the meaning given to it in the Members' Agreement;

**"Public Sewer Agreement"**

means an agreement under section 104 of the Water Industry Act 1991 together with a supporting bond to be entered into by the LABV or a Development Subsidiary in order to facilitate the Campus Development;

**"Receiving Party"**

shall have the meaning given to it in clause 33;

**"Representatives"**

means the Council Representative, WHHT Representative and/or the LABV Representative as the context may require appointed by each Party from time to time and for the avoidance of doubt shall include any Alternate Representatives as may be appointed and **"Representative"** shall mean any one of them;

**"Satisfaction Date"**

shall have the meaning given to it in the Development Agreement;

**"Satisfactory Detailed Planning Permission"**

means in relation to each WHHT Zone detailed planning permission free from any conditions that in the reasonable opinion of the LABV would or would be likely to hinder, delay or prejudice the performance by the LABV of its obligations contained or referred to in this Agreement and which shall permit the Works or any part of the Works;

**"Shortfall"**

shall have the meaning given to it in clause 23.2.6;

**"Shortfall Grant Date"**

shall have the meaning given to it in clause 23.3;

**"Shrodell Site"**

means the area shown edged in blue on Plan 2 attached at Annexure 1;

**"Site"**

means the site of the Watford Health Campus as identified outlined in red on Plan 1 attached at Annexure 1;

**"Site-Wide Infrastructure Costs"**

has the meaning given to it in the Members' Agreement;

**"Statutory Agreements"**

means any Highways Agreement, Planning Agreement, Public Sewer Agreement, transfers, leases, easements, wayleave agreements or other agreements with utility/service suppliers or statutory undertakers for the supply of services to a WHHT Zone;

**"Supplier"**

shall have the meaning given to it in clause 41.3;

**"TDA"**

means the National Health Service Trust Development Authority established pursuant to the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012 or its successor body or any other statutory body having the function of giving approval to NHS Trusts;

**"TDA Approval"**

means approval by the TDA of WHHT entering into the contractual commitments set out in the Conditional Clauses;

**"TDA Approval Longstop Date"**

means the date occurring six months after the Effective Date, or such longer period as the Parties may agree;

**"TDA Unconditional Date"**

means the date of receipt of written notification from WHHT of TDA Approval by the LABV and the Council pursuant to **clause 4.5** or confirmation by the LABV that it waives conditionality on the Conditional Clauses pursuant to **clause 4.6**;

**"Title Condition"**

means WHHT is registered at the Land Registry as the registered proprietor with freehold title absolute free from Encumbrances in respect of the relevant WHHT Zone;

**"Unconditional"**

means in relation to any Zone, all of the Conditions to its drawdown have been satisfied or waived in accordance with this Agreement;

**"Variations Estimate"**

shall have the meaning given to it in **clause 16.1.6(a)**;

**"Viability Condition"**

means confirmation by the LABV to the Council that the results of its Viability Test of a proposed development of a Zone show that the Zone is Viable;

**"Viability Test"**

means a test undertaken by the LABV in accordance with **paragraph 3 of Part 1 of Schedule 7** by the running of the Development Appraisal in relation to a Zone in accordance with the relevant Business Plan in order to ascertain whether the proposed development of the Zone would be Viable if the development were commenced within three months thereof;

**"Viable"**

means in relation to:

- (a) Zones other than the Infrastructure Zone, that the relevant Viability Test demonstrates that the development of a Zone will achieve the profit and returns set out in the relevant Indicative Zone Business Plan and that the Market Value of the relevant Zone (or where the Zone is a WHHT Zone and forms part of a Zone, the Market Value of the Zone as a whole) is equal to or greater than zero; or
- (b) the Infrastructure Zone, that the costs of meeting the LABV's obligations pursuant to the Infrastructure Business Plan do not exceed eighteen million six hundred thousand pounds (£18,600,000);

**"WHHT Committed Land"**

means WHHT Land not drawn down by the LABV but not substituted for Alternative Land by WHHT pursuant to **clause 7**;

**"WHHT Contribution"**

means either:

(a) WHHT's proportion of LABV Project Expenditure and LABV Future Expenditure as determined pursuant to **clause 16** (such proportion always taking into account the provisions of **clause 16.3**); or

(b) the pre-agreed proportion of LABV Project Expenditure and LABV Future Expenditure set out in the relevant Indicative Zone Business Plan or otherwise agreed in writing between the LABV and WHHT ("**Pre-Agreed WHHT Contribution**")

payable to the LABV on the terms of this Agreement;

**"WHHT Funding"**

shall have the meaning given to it in **clause 23.1**;

**"WHHT Joint Ownership Condition"**

means where a Zone consists of both Council Land and WHHT Land the Conditions pursuant to the Development Agreement (other than the Council Joint Ownership Condition) have all been satisfied;

**"WHHT Land"**

means those parts of the Site owned by WHHT shown hatched green on Plan 1 attached at **Annexure 1**;

**"WHHT Representative"**

means the representative appointed by WHHT to the Campus Forum pursuant to **clause 11**;

**"WHHT Variation Costs"**

shall have the meaning given to it in **clause 23.7.2**;

**"WHHT Variation Estimate"**

shall have the meaning given to it in **clause 23.7.1(b)**;

**"WHHT Zone"**

means a Zone forming part of the Campus Development and being on WHHT Land and which for the avoidance of doubt may form part of a Zone;

**"WHHT Zone Transfer"**

means the grant of a 250 year lease or the freehold transfer of the relevant WHHT Zone as agreed by WHHT and the LABV in the relevant Approved Zone Business Plan;

**"WHHT Zone Transfer Value"**

means the Market Value of a WHHT Zone;

**"Works"**

means the works, operations, services and other matters to be performed in order to carry out and complete the design and construction of a WHHT Zone in accordance with the relevant Business Plan;

**"Zone"**

means a zone forming part of the Campus Development identified on the Masterplan.

- 1.2 This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 1.2.1 the headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement;
- 1.2.2 a statutory provision includes a reference to:
- (a) the statutory provision as modified or re-enacted or both from time to time (whether before or after the date of this Agreement); and
  - (b) any subordinate legislation made under the statutory provision (whether before or after the date of this Agreement),
- provided that any such modification, re-enactment or legislation made after the date of this Agreement does not materially change the relevant provision.
- 1.3 Except where the context expressly requires otherwise, references to clauses, paragraphs, parts and schedules are references to clauses, paragraphs and parts of and schedules to this Agreement and references to sections, appendices and attachments (if any) are references to sections, appendices and attachments to or contained in this Agreement.
- 1.4 The schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the schedules.
- 1.5 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.
- 1.6 Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.
- 1.7 The language of this Agreement is English. All correspondence, notices, and information shall be in English.
- 1.8 References to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation.

- 1.9 The words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
- 1.10 In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word other or including or in particular shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 1.11 Where this Agreement states that an obligation shall be performed no later than or within or by a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event the latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.
- 1.12 Unless expressly stated otherwise, where consent or approval of any party to this Agreement is required for any purpose under or in connection with the terms of this Agreement it shall be given in writing and within a reasonable time following a receipt for a request in writing for such consent or approval.

## 2. COMPLETION

On the Effective Date the relevant parties shall execute the agreements listed in clause 2.2 of the Members' Agreement.

## 3. PURPOSE OF THIS AGREEMENT

- 3.1 The purpose of this Agreement is to regulate the relationship between the LABV (as the vehicle having rights and obligations under the Development Agreement and Members' Agreement to take forward delivery of the Campus Development), and the Council and WHHT (as landowners of the Site).
- 3.2 The Parties shall comply with their respective obligations under this Agreement having regard to the Overarching Objectives and any Zone-Specific Objectives as these may be expressed in a Business Plan.
- 3.3 The Parties agree and acknowledge the business and activities of the LABV as described in clause 5 of the Members' Agreement.
- 3.4 Nothing in this Agreement shall interfere with or cancel contractual commitments made by WHHT under any of the agreements set out in **Schedule 1**.

## 4. CONDITIONALITY

- 4.1 This Agreement, other than the Conditional Clauses, shall take effect on the Effective Date.
- 4.2 The Conditional Clauses are conditional on TDA Approval and shall take effect on the TDA Unconditional Date.



- 4.3 WHHT shall use all reasonable endeavours to obtain TDA Approval as soon as reasonably possible following the date of this Agreement.
- 4.4 The LABV and the Council will assist WHHT in complying with its obligation under **clause 4.3** by providing all information WHHT reasonably requires to obtain TDA Approval.
- 4.5 As soon as reasonably practicable and in any event within five Business Days of TDA Approval, WHHT shall confirm in writing to the Council and the LABV that TDA Approval has been achieved.
- 4.6 In the event that TDA Approval is given subject to conditions, the LABV may decide at its absolute discretion whether to waive the conditionality of the Conditional Clauses.
- 4.7 If the TDA Unconditional Date has not occurred by the TDA Approval Longstop Date, then:
  - 4.7.1 the Parties shall meet to discuss the alternative means by which the Campus Development may be undertaken and/or appropriate alternative approvals that may be sought by WHHT; and
  - 4.7.2 the clauses of this Agreement which are not Conditional Clauses shall continue with full force and effect.
- 4.8 Prior to the TDA Unconditional Date or, provided that the TDA Unconditional Date has not occurred, prior to the TDA Approval Longstop Date, WHHT agrees not to:
  - 4.8.1 market, negotiate or enter into any agreements with any third party for the sale, lease, disposal or development of any WHHT Land, nor to instruct any agents to do so; or
  - 4.8.2 make any arrangement (whether formal or otherwise) to commit itself to proceed with any third party in respect of any WHHT Land.

## 5. **CAMPUS DEVELOPMENT AND WHHT PROJECTS**

- 5.1 Subject to **clause 5.4**, subject to the LABV having not lost exclusivity pursuant to Schedule 4 of the Development Agreement, WHHT acknowledges and agrees that in accordance with **Part 1 of Schedule 7** the LABV shall have the exclusive right to undertake the Campus Development during the term of this Agreement.
- 5.2 Where the LABV loses exclusivity pursuant to Schedule 4 of the Development Agreement:
  - 5.2.1 WHHT may undertake or procure the undertaking of development on those parts of the WHHT Land which have not been transferred to the LABV pursuant to **Schedule 7**; and
  - 5.2.2 the LABV shall notwithstanding the loss of such exclusive rights be entitled to bid for any opportunity in relation to the Campus Development where such an opportunity is tendered or advertised by WHHT and, if successful, undertake any such development.
- 5.3 During the term of this Agreement, and subject to **clause 5.4**:
  - 5.3.1 WHHT shall inform the LABV and the Council of any proposed Capital Building Projects on the Site as soon as reasonably practicable and in any event so as to provide the LABV and the Council with sufficient time and opportunity to comment on and make representations to WHHT, having regard to the Objectives and Business Plans;

- 5.3.2 when considering any Capital Building Projects WHHT shall have regard to the business planning timetable of the LABV pursuant to the LABV Business Plan and/or any other Business Plan;
- 5.3.3 WHHT may offer Capital Building Projects in relation to Non-Exclusive Facilities on the Site to the LABV provided that the LABV shall only undertake such Capital Building Projects if its proposals in respect of those Capital Building Projects meet WHHT's requirements and WHHT's obligations in respect of value for money and satisfy any NHS Consents Condition.
- 5.3.4 WHHT shall offer all Capital Building Projects in relation to Exclusive Facilities on the Site to the LABV, provided that the LABV shall only undertake such Capital Building Projects if its proposals in respect of those Capital Building Projects meet WHHT's requirements and WHHT's obligations in respect of value for money and satisfy any NHS Consents Condition.
- 5.3.5 any Capital Building Project of any kind carried out by WHHT on the WHHT Land shall be consistent with the Business Plans approved by WHHT pursuant to **Schedule 7** and/or **clause 15**; and
- 5.3.6 the Parties shall observe and perform their respective obligations in **Schedule 2**.
- 5.4 WHHT shall not be in breach of its obligations under **clauses 5.1** and **5.3** where, acting reasonably and for reasons arising from operational necessity and having regard to its statutory obligations, compliance with these obligations is impracticable or impossible provided that in such case the provisions of **clause 16** shall apply.
- 5.5 **Clause 5.4** shall be without prejudice to any obligations or liabilities under agreements in force between the Parties, including any Project Agreements.
- 5.6 During the term of this Agreement the LABV shall keep WHHT informed of the developments to be or being undertaken by the LABV, and of any delays to such developments, having regard to the exclusive rights granted to the LABV pursuant to **clause 5.1**.
- 5.7 If at any time WHHT can demonstrate to the satisfaction of the Council that the Council would be entitled to exercise its rights under **Schedule 4** of the Development Agreement in respect of a failure to meet Pre-Drawdown KPIs in respect of a WHHT Zone, or a failure to meet Post-Drawdown KPIs, WHHT may, by written notice, require that the Council exercise those rights and the Council shall then serve a Council Notice under **Schedule 4** of the Development Agreement and thereafter be obliged to pursue its rights:
- 5.7.1 in respect of Pre-Drawdown KPI Breach to withdraw the LABV's exclusivity under the Development Agreement; or
- 5.7.2 in respect of Post Drawdown KPI Breach to terminate the Development Agreement;
- and in each case acting in consultation with WHHT and in accordance with **Schedule 4** of the Development Agreement.

5.8 Where the Council receives a KPI Dependencies Notice from the LABV in respect of KPI Dependencies that the LABV requires WHHT to deal with pursuant to paragraph 3 of Schedule 4 of the Development Agreement the Council shall promptly notify WHHT of the relevant KPI Dependencies and the timescale in which the LABV requires the KPI Dependencies to be dealt with and either:

5.8.1 WHHT shall confirm if it does not agree with the KPI Dependencies Notice either as to the detail or the timescales stipulated within it, in which case the Council will confirm to the LABV pursuant to paragraph 4.2 of Schedule 4 of the Development Agreement that it does not agree with the KPI Dependencies Notice, provided that WHHT shall accept the outcome of the dispute resolution pursuant to Schedule 6 of the Development Agreement; or

5.9 WHHT shall deal with the relevant KPI Dependencies to the satisfaction of the Council and the LABV (acting reasonably) within the timescale set out in the KPI Dependencies Notice.

5.10 The Parties shall observe and perform their respective obligations contained in **Schedule 7**.

## 6. SHRODELL SITE

The Parties shall each use reasonable endeavours to procure the acquisition by one or more of them (as may be agreed by the Parties) of the Shrodel Site from Hertfordshire Partnership NHS Foundation Trust and upon acquisition agree that the Shrodel Site shall be used for decant purposes in accordance with the Cooperation Plan.

## 7. WHHT LAND CONTRIBUTION

7.1 WHHT and the Council each undertake to the LABV to contribute the land identified for development under the LABV Business Plan, subject to **paragraph 5 of Schedule 6** and subject to the land contribution contingencies set out in **Part 2 of Schedule 6**.

7.2 In relation to WHHT Land, WHHT may determine to exercise the right to contribute alternative land to the LABV in place of a WHHT Zone (or any part thereof) under this **clause 7** (the "Alternative Land").

7.3 In the event that WHHT decides to exercise its right to contribute Alternative Land to the LABV in place of a WHHT Zone (or any part thereof), WHHT shall provide alternative parcels of land to the LABV which will be capable of supporting the repayment of up to a maximum of three million seven hundred thousand pounds (£3,700,000) less the Site-Wide Infrastructure Costs which were allocated to and have been recovered (or are recoverable) from WHHT Land drawn down by the LABV under **Schedule 7** of this Agreement and which in addition will deliver a profit to the LABV as provided for in the LABV Business Plan as at the Effective Date (the "Infrastructure Repayment Capability"), and such Alternative Land shall be a WHHT Zone (or part thereof) for the purposes of **Schedule 7**.

7.4 In ascertaining the Infrastructure Repayment Capability of such Alternative Land the Parties shall, in addition to the Masterplan, take into account

7.4.1 the quantum of WHHT Land which has been drawn down by the LABV under **Schedule 7**;

- 7.4.2 the financial projections for each WHHT Zone set out in the LABV Business Plan;
- 7.4.3 the proposed massing and density of development on WHHT Zones;
- 7.4.4 any other relevant factors contained in the LABV Business Plan by which the equivalent quantum may be fairly and accurately ascertained;
- 7.4.5 the quantum of any WHHT Land which will continue to be WHHT Committed Land; and
- 7.4.6 shall assume that such the Site-Wide Infrastructure Costs as are allocated to a WHHT Zone which have been drawn down under **Schedule 7** are or will be recovered.
- 7.5 In the event that the Parties are unable to reach an agreement regarding the acceptability of the Alternative Land pursuant to **clause 7.3** above, the provisions of **clause 35** shall apply.
- 7.6 Pursuant to **clause 7.5** above, in the event that an Expert determines that the Alternative Land will not satisfy the Infrastructure Repayment Capability, then WHHT shall, by no later than the date falling 12 years from the Effective Date, pay to the LABV on a pound for pound basis for the Site-Wide Infrastructure Costs apportioned to the WHHT Committed Land (and not otherwise allocated to a WHHT Zone which has been drawn down under **Schedule 7**) as shown in the LABV Business Plan (up to a maximum of three million seven hundred thousand pounds (£3,700,000)).
- 7.7 In the event that:
- 7.7.1 the LABV is wound up in accordance with **clause 35** of the Members' Agreement following a Termination Event (except where that Termination Event is a Default Event of the Council); and
- 7.7.2 the road to be built in accordance with the Infrastructure Business Plan has been adopted,
- then WHHT's obligations in relation to WHHT Land, Alternative Land and payments set out in **clauses 7.2** to **7.6** shall apply in favour of the Council rather than in favour of the LABV and the obligations contained therein shall survive termination of this Agreement, the Council and WHHT executing such agreement as may be necessary to give effect thereto.
- 7.8 Where **clause 7.7** applies, any WHHT land transfers to the Council shall be governed by and subject to the terms of **Schedules 6, 7 and 8** such that where reference in those Schedules is made to the LABV, reference where necessary and appropriate shall instead be made to the Council.
- 7.9 The repayment amount which the Alternative Land contributed by WHHT to the LABV is capable of supporting referred to in **clause 7.3** and the amount payable by WHHT to the LABV pursuant to **clause 7.6** shall not be subject to interest or value added tax and shall at all times be capped at three million seven hundred thousand pounds (£3,700,000).

## **8. COUNCIL AS LOCAL AUTHORITY**

- 8.1 Nothing contained in this Agreement or any ancillary or supplemental document shall prejudice or affect any of the statutory rights, powers, discretions, obligations and duties for the time being vested in the Council as local authority for the Area and all such rights, powers, obligations and duties shall in regard to the Council Land and any buildings or works on, or the occupiers of, the Council Land shall be enforceable and exercisable by the Council

as fully and freely as if the Council were not the owner of or otherwise interested in the Council Land and/or as if this Agreement or any supplemental or ancillary document had not been executed.

- 8.2 Any approval, consent, direction or authority given by the Council as local or other statutory authority shall not be or be deemed to be an approval, consent, direction or authority given under this Agreement and vice versa.

## 9. WHHT AS NHS TRUST

- 9.1 Nothing contained in this Agreement or any ancillary or supplemental document shall prejudice or affect any of the statutory rights, powers, discretions, obligations and duties for the time being vested in WHHT as an NHS body and all such rights, powers, obligations and duties shall thereof be enforceable and exercisable by WHHT as fully and freely as if this Agreement or any supplemental or ancillary document had not been executed provided that where the exercise of such statutory right, power, discretion, obligation or duty is in contradiction to a Business Plan approved by WHHT pursuant to clause 15 then the provisions of clause 16 shall apply.
- 9.2 Any approval, consent, direction or authority given by WHHT as an NHS body independently of this Agreement shall not be or be deemed to be an approval, consent, direction or authority given under this Agreement and vice versa.

## 10. CONSTITUTION OF THE CAMPUS FORUM

The Parties agree to establish and maintain the Campus Forum for the duration of the Development Agreement and agree that the Campus Forum shall operate in accordance with the provisions of this Agreement, having regard to prevailing Business Plans of the LABV.

## 11. REPRESENTATIVES ON THE CAMPUS FORUM

- 11.1 The Parties shall each be entitled to appoint one Representative to the Campus Forum, provided that the Representative of the LABV shall not be a Council Representative on the Partnership Board of the LABV.
- 11.2 Each Party shall be entitled to remove and replace the Representative appointed by it and appoint a further Representative. Any appointment, replacement or removal by a Party of its Representative shall be effected by notice in writing to the other Parties signed by or on behalf of the relevant Party and, subject to any contrary intention expressed in the notice, shall take effect when the notice is delivered to the other Parties.
- 11.3 The first Representatives shall be:
- 11.3.1 Council Representative: [REDACTED];
- 11.3.2 WHHT Representative: [REDACTED]; and
- 11.3.3 LABV Representative: [REDACTED].
- 11.4 No Representative shall receive any remuneration or expenses reimbursement from the LABV.

- 11.5 The Campus Forum shall have a Chairman which shall be occupied by a Council Representative or a WHHT Representative appointed on an annual rotating basis with the first Chairman being [REDACTED]. The Chairman shall not have any casting vote by virtue of being Chairman (but will retain his or her vote in their capacity as Council Representative or WHHT Representative).
- 11.6 Each Party may appoint an Alternate Representative, to substitute for the Representative appointed under clause 11.1, and shall notify the other Parties of the identity of such Alternate Representative. Each Alternate Representatives shall have authority to do all such things as the Representative whose place he is taking.
- 11.7 The Parties shall ensure that their Representatives, in exercising their role on the Campus Forum, shall be competent to act as Representatives on the Campus Forum having regard to the business of the LABV, and the terms of the Development Agreement and Members' Agreement.

## **12. LABV DEVELOPMENT MANAGER AND OBSERVER STATUS**

- 12.1 The LABV shall procure that the LABV Development Manager (or a suitable nominee of the LABV Development Manager) shall attend all meetings of the Campus Forum and be entitled to speak but not vote, subject to the Campus Forum being entitled by unanimous agreement to exclude the LABV Development Manager from any part or all of a meeting or its business.
- 12.2 The Campus Forum may by unanimous agreement agree to invite other parties to attend meetings of the Campus Forum as observers only and may allow such attendees to speak but not vote.
- 12.3 The LABV agrees to invite WHHT to nominate a representative to attend as observer all meetings of the Partnership Board and Operational Board of the LABV, save where the nature of the business to be conducted is such that the Partnership Board or Operational Board of the LABV resolves to exclude the WHHT observer.

## **13. CAMPUS FORUM MEETINGS AND RESOLUTIONS**

- 13.1 At least 10 Business Days' written notice of any proposed meeting of the Campus Forum shall be given to each of the Representatives provided that a shorter period of notice may be given with the written approval of all of the Representatives.
- 13.2 Unless otherwise agreed by all of the Representatives, each meeting notice will specify the date, time and place of the meeting (each to be convenient to all Representatives) and a meeting agenda identifying the matters to be discussed at the meeting and shall be accompanied by copies of any materials to be discussed at the meeting. Any matter to be decided at a Campus Forum meeting not appearing in the agenda shall not be decided upon unless by all of the Representatives present at the meeting.
- 13.3 Unless otherwise agreed by the Representatives:
- 13.3.1 meetings of the Campus Forum shall be held immediately before, immediately after or (with the agreement of the Partnership Board) concurrently with Partnership Board meetings, being not less than quarterly save that during the first year after the date of this Agreement, such meetings shall be held not less than every six weeks;

- 13.3.2 a telephone conference call or video conference or a combination of the same, at which all participants are able to speak to and hear each of the other participants shall be valid as a Campus Forum meeting provided that at all times at that telephone or video conference (or combination as appropriate) a quorum of the Representatives is able to participate;
- 13.3.3 a resolution (which may be in counterparts) in writing (including email or other electronic format) signed by all the Representatives (which, in respect of electronic resolutions shall be in pdf format) entitled to receive notice of and vote at a Campus Forum meeting shall be as valid as if it had been passed at a Campus Forum meeting duly convened and held;
- 13.3.4 any Representative shall by notice to each other Representative be entitled to convene a meeting of the Representatives on not less than 10 Business Days' written notice given in accordance with clause 13.1; and
- 13.3.5 draft minutes of meetings of the Campus Forum will be prepared and sent to each Representative for approval five Business Days after the meeting of the Campus Forum and the approved minutes shall be distributed to each Representative before the next Campus Forum meeting.
- 13.4 The quorum for any meeting of the Campus Forum to be present at the time when business is transacted shall be the LABV Representative, the Council Representative, and the WHHT Representative. If a quorum is not present within 30 minutes from the start time of the meeting or if a quorum subsequently ceases to be present during the meeting, the meeting shall be adjourned for five Business Days or such other period as the Representatives may unanimously decide.
- 13.5 Other than on resolutions in respect of which by prior agreement the Representatives have unanimously agreed that a majority vote shall apply, resolutions of the Campus Forum shall be passed only by a unanimous vote in favour of the resolution. Resolutions shall be binding on the respective Parties as provided for in clause 14.

#### **14. BINDING EFFECT OF RESOLUTIONS**

- 14.1 Each Party to this Agreement shall authorise its Representative to have authority, when voting at meetings of the Campus Forum, to bind its appointing body..
- 14.2 If, prior to any meeting of the Campus Forum at which a resolution is to be voted on, a Party has given its Representative a delegated authority to vote and bind the appointing Party to the outcome of that resolution, the Party concerned shall procure that its Representative informs the Campus Forum of that delegation, and shall provide evidence of such delegation to the other Representatives as the other Representatives may reasonably require.
- 14.3 Other than in respect of matters governed by clause 14.1 or 14.2, no resolution by the Campus Forum shall of itself require a Party to perform any obligation or create any liability, whether in contract or otherwise.



## 15. LABV BUSINESS PLANS

- 15.1 WHHT and the LABV shall, by entering into this Agreement, be deemed to have approved the LABV Business Plan and the Infrastructure Business Plan as Indicative Zone Business Plans.
- 15.2 The Parties shall observe and perform their respective obligations contained in **Part 3 of Schedule 7** in respect of the approval of Business Plans.
- 15.3 The Parties agree that the Car Park Business Plan as at the date of this Agreement constitutes a draft and, therefore, is not an Indicative Zone Business Plan. WHHT is in agreement with the strategy outlined in the Car Park Business Plan as at the date of this Agreement and that the LABV may progress the Masterplan on that basis.
- 15.4 The Parties agree that the size of the second hospital site car park envisaged in the Car Park Business Plan as at the date of this Agreement may need to be revisited. WHHT and the LABV shall work together in the three months following the date of this Agreement to update the Car Park Business Plan so that it becomes an Indicative Zone Business Plan.

## 16. COMPENSATION

- 16.1 Once a Business Plan becomes an Indicative Zone Business Plan then:
- 16.1.1 If WHHT subsequently desires to withdraw its approval of the Indicative Zone Business Plan for any reason (including where a government body indicates its intention to withdraw approval required by WHHT (other than as a direct result of the default of the Council or the LABV under this Agreement)) then WHHT shall serve notice on the LABV of this and the following shall apply:
- (a) the LABV shall notify WHHT in writing within 20 Business Days of receipt of the notice referred to in clause 16.1.1 of its estimate of the WHHT Contribution and the LABV Future Expenditure (the "Estimate");
  - (b) within 20 working days of receipt of the Estimate WHHT shall either:
    - (i) serve notice in writing to the LABV stating that:
      - (A) its approval to the relevant Indicative Zone Business Plan is being withdrawn; and
      - (B) whether it agrees or not with the Estimate; or
    - (ii) serve notice in writing to the LABV that it is not withdrawing its approval to the relevant Indicative Zone Business Plan;
  - (c) if WHHT fails to serve notice in writing pursuant to and within the timescales set out in clause 16.1.1(b) then clause 16.1.1(e) shall apply;
  - (d) if WHHT does not agree with the Estimate then the matter shall be resolved by reference to clause 35;
  - (e) WHHT shall pay to the LABV the WHHT Contribution on the date falling:
    - (i) on the earlier of:
      - (A) 40 Business Days following receipt by WHHT of the Estimate; and
      - (B) 20 Business Days following service of the notice by WHHT pursuant to clause 16.1.1(b) agreeing the WHHT Contribution;



- (ii) 10 Business Days following determination of the WHHT Contribution pursuant to **clause 16.1.1(d)**.
- 16.1.2 If the LABV considers that it is unable to implement an Indicative Zone Business Plan as a result of a failure by WHHT to meet its obligations to the LABV in relation to any Dependencies it shall serve written notice ("**Dependencies Notice**") on WHHT as soon as reasonably practicable setting out:
  - (a) the detail of the Dependencies that the LABV requires WHHT to deal with;
  - (b) the timescale in which the LABV requires the Dependencies to be dealt with;
  - (c) the LABV's estimate of the LABV Project Expenditure and LABV Future Expenditure incurred or to be incurred as a result of WHHT's failure to meet its obligations to the LABV in relation to any Dependencies ("**Dependencies Estimate**").
- 16.1.3 On receipt of a Dependencies Notice WHHT shall serve written notice on the LABV within 10 Business Days stating either:
  - (a) that it agrees with the Dependencies Notice in which case WHHT shall deal with the relevant Dependencies to the satisfaction of the LABV (acting reasonably) within the timescale set out in the Dependencies Notice and **clause 16.1.5** shall apply; or
  - (b) that it does not agree with the Dependencies Notice either as to the detail, the timescales or the Dependencies Estimate stipulated within it and in that event the matter will be referred for dispute resolution pursuant to **clause 35** of this Agreement.
- 16.1.4 If WHHT fails to serve notice on the LABV pursuant to **clause 16.1.3** then **clause 16.1.5** shall apply.
- 16.1.5 WHHT shall pay to the LABV the WHHT Contribution on the date falling:
  - (a) On the earlier of:
    - (i) 40 Business Days following receipt of a Dependencies Notice by WHHT; and
    - (ii) 20 Business Days following service on the LABV of a notice pursuant to **clause 16.1.3(a)**; or
  - (b) 10 Business Days following determination of the WHHT Contribution pursuant to **clause 16.1.3(b)**
- 16.1.6 If WHHT requires variations to any Indicative Zone Business Plan then WHHT shall serve notice on the LABV stipulating the variations required and the following provisions shall apply:
  - (a) the LABV shall notify WHHT in writing within 20 Business Days of receipt of the notice referred to in **clause 16.1.1** of its estimate of the LABV Project Expenditure and the LABV Future Expenditure incurred or to be incurred as a result of the requested variations together with its estimate of the WHHT Contribution (the "**Variations Estimate**");
  - (b) within 20 working days of receipt of the Variations Estimate WHHT shall either:
    - (i) serve notice in writing on the LABV stating that:
      - (A) it requires the variations to the Indicative Zone Business Plan; and

- (B) whether it agrees or not with the Variations Estimate; or
    - (ii) serve notice in writing to the LABV that it does not require the requested variations to the relevant Indicative Zone Business Plan;
  - (c) If WHHT fails to serve notice in writing pursuant to and within the timescales set out in clause 16.1.6(a) then clause 16.1.6(e) shall apply;
  - (d) If WHHT does not agree with the Variations Estimate then the matter shall be resolved by reference to clause 35 of this Agreement;
  - (e) WHHT shall pay to the LABV the WHHT Contribution on the date falling:
    - (i) on the earlier of:
      - (A) 40 Business Days following receipt by WHHT of the Variations Estimate; and
      - (B) 20 Business Days following service of the notice by WHHT pursuant to clause 16.1.6(b)(i) agreeing the Variations Estimate;
    - (ii) 10 Business Days following determination of the Variations Estimate pursuant to clause 16.1.6(d).
- 16.2 All LABV Project Expenditure and LABV Future Expenditure shall be properly evidenced by invoices, receipts or other appropriate documentation which the LABV shall make available for copying and/or inspection by WHHT.
- 16.3 The LABV shall use all reasonable endeavours to mitigate the exposure of WHHT to LABV Project Expenditure and LABV Future Expenditure.
- 16.4 Any variations to the agreed LABV Project Expenditure or any Pre-Agreed WHHT Contribution shall require the prior agreement of WHHT.

## 17. EXCHANGE OF INFORMATION

- 17.1 The LABV and the Council shall ensure that WHHT is aware of any material proposals or other matters under consideration which directly or indirectly relates to WHHT Land or the operations of WHHT in relation to the Campus Development, and shall do so either by way of a report to the next suitable meeting of the Campus Forum or, if the matter is such that WHHT ought reasonably be made aware sooner, by means of direct communication to WHHT.
- 17.2 WHHT shall ensure that that the LABV and the Council are aware of any material proposals or other matters under consideration by it which have a direct or indirect bearing on the LABV or Campus Development, and shall do so either by way of a report to the next suitable meeting of the Campus Forum or, if the matter is such that the LABV ought reasonably be made aware sooner, by means of direct communication to the LABV.

## 18. RESTRICTIONS ON ACTIVITIES OF PARTIES

- 18.1 Each Party to this Agreement shall use all reasonable endeavours to procure (so far as it is able) that it, its sub-contractors, agents and/or representatives shall not knowingly do or knowingly omit to do anything which brings the standing of the LABV and/or the Campus Development into serious disrepute save that this clause 18.1 shall not apply where the

relevant Party asserts a claim against another Party provided that such claim is not frivolous or vexatious. In this clause 18.1 "serious" shall be construed such that a consequence shall only be deemed to be serious where such consequences have an adverse and/or direct impact on the LABV's business (or in the case of the Council and WHHT its activities) and where a reasonable person would consider the act or omission which caused such consequence to be the sole reason as to why such serious disrepute has occurred.

18.2 WHHT shall not dispose of any WHHT Land until WHHT has met its obligations to the LABV under clause 7.

18.3 Subject to clause 5, WHHT shall not:

18.3.1 act in a manner, engage in or carry on or be interested in (whether alone or jointly with others, or whether as principal, agent, shareholder or otherwise and whether for its own benefit or that of others) any development activities in the Area which compete either directly or indirectly with the provisions of any Business Plan;

18.3.2 dispose of any WHHT land within the Area for residential development (other than to the LABV) within five years from the Effective Date;

18.3.3 enter into any new car park management agreement prior to the date that the LABV takes over responsibility for management of the car parks pursuant to its obligations set out in the Car Park Business Plan once the Car Park Business Plan becomes an Indicative Zone Business Plan,

which is directly in competition with any scheme, development or activity being pursued by, promoted or likely to be promoted by the LABV in the Area in accordance with any of its Business Plans which have been approved by WHHT without the written consent of the LABV.

18.4 The restriction contained in clause 18.3 shall not extend to those activities engaged in or carried on, or those interests held by WHHT at the date of the signing of this Agreement.

18.5 The LABV and the Council undertake to WHHT not to bring forward as a Zone Business Plan or otherwise a private patient unit development on the Site without the prior approval of WHHT.

## 19. GENERAL OBLIGATIONS

Each Party undertakes to each of the other Parties to this Agreement that it shall (so far as reasonably possible):

19.1 notify the Campus Forum immediately on becoming aware of any matter which it considers (acting reasonably) is likely to materially affect the Campus Development;

19.2 procure that each Representative it appoints will, at all times, act in the best interests of the Campus Development when acting in its capacity as Representative; and

19.3 act in a manner that will promote the Campus Development and at all times act in good faith towards and co-operate with the other Parties.

## 20. LABV OBLIGATIONS AND WHHT APPROVALS ETC.

- 20.1 The LABV undertakes to WHHT to comply at all times with its obligations under the Members' Agreement, having regard to the interests of WHHT as landowner and in respect of the operations of WHHT.
- 20.2 If at any time the LABV requires WHHT to give an approval, consent or licence (or for WHHT to obtain such approval, consent or licence) for the carrying out of the Campus Development, WHHT shall use all reasonable endeavours to give or obtain such approval, consent or licence as soon as reasonably practicable.

## 21. COUNCIL RIGHTS

Nothing in this Agreement shall confer on the Council any greater or additional rights in respect of its membership of the LABV than as are set out in the Members' Agreement, or confer on the LABV any greater or additional rights than as are set out in the Campus Agreement.

## 22. INFRASTRUCTURE

- 22.1 The LABV shall procure the funding by the Members for the infrastructure requirements for the Campus Development in accordance with the Infrastructure Business Plan, such funding to be provided by the Members in accordance with clause 23 of this Agreement and Schedule 15 of the Members' Agreement.
- 22.2 The LABV shall implement the Infrastructure Business Plan in accordance with its terms.
- 22.3 The LABV undertakes to WHHT that it shall, when entering into any direct or indirect contractual arrangements for the supply of works or services to the LABV which relate to WHHT facilities, comply in all material respects with the relevant provisions of the Infrastructure Business Plan and Procurement Policy.

## 23. WHHT FUNDING

- 23.1 Subject to clause 22.2 the Parties agree that WHHT shall contribute 48.3 per cent of the Infrastructure Costs up to a maximum of nine million pounds (£9,000,000) to the Council in accordance with this clause 23 (the "WHHT Funding").
- 23.2 The WHHT Funding shall be paid to the Council in the following tranches:
- 23.2.1 two million pounds (£2,000,000) on or before 30 June 2013;
- 23.2.2 one million pounds (£1,000,000) on or before 30 September 2013;
- 23.2.3 one million pounds (£1,000,000) on or before 31 December 2013;
- 23.2.4 one million pounds (£1,000,000) on or before 31 March 2014;
- 23.2.5 two million pounds (£2,000,000) on or before 30 June 2014; and
- 23.2.6 the remainder (being 48.3 per cent of the Infrastructure Costs less seven million pounds (£7,000,000) (the "Shortfall")), pursuant to clauses 23.3 to 23.6,

and in any event WHHT shall transfer a total of seven million pounds (£7,000,000) to the Council before 1 July 2014.

- 23.3 If within 12 years of the Effective Date WHHT invests between thirty million pounds (£30,000,000) and forty million pounds (£40,000,000) in new clinical buildings on the Site then on the date of practical completion of the first of those clinical buildings (the "**Shortfall Grant Date**") WHHT will pay to the Council one million pounds (£1,000,000) (unless the Shortfall is less than one million pounds (£1,000,000), in which case WHHT shall pay the whole amount of the Shortfall to the Council on the Shortfall Grant Date).
- 23.4 If within 12 years of the Effective Date WHHT invests forty million pounds (£40,000,000) or more than forty million pounds (£40,000,000) in new clinical buildings on the Site then on the Shortfall Grant Date WHHT will pay to the Council the Shortfall up to a maximum of two million pounds (£2,000,000).
- 23.5 If on the twelfth anniversary of the Effective Date any of the Shortfall due under **clause 23.3** or **clause 23.4** has not been paid by WHHT to the Council then WHHT shall commence repayment of the outstanding amount by annual instalments of one hundred thousand pounds (£100,000) to be paid from the twelfth anniversary of the Effective Date until the Shortfall has been paid (up to a maximum of two million pounds (£2,000,000)).
- 23.6 The WHHT Funding (including the Shortfall) shall not be subject to interest or value added tax and shall at all times be capped at nine million pounds (£9,000,000), subject to **clause 23.7**.
- 23.7 If WHHT requests a variation to the Infrastructure Business Plan:
- 23.7.1 the LABV shall as soon as reasonably practicable consider such variation and notify WHHT:
- (a) whether such variation is approved; and
  - (b) if such variation is approved, the cost payable by WHHT to the LABV resulting from the implementation of the variation (the "**WHHT Variation Estimate**");
- 23.7.2 WHHT shall within 20 Business Days of receipt of the WHHT Variation Estimate confirm in writing whether it agrees or not with the WHHT Variation Estimate (if it agrees the WHHT Variation Estimate shall be the "**WHHT Variation Costs**"), provided that if WHHT does not agree with the WHHT Variation Estimate then the matter shall be resolved by reference to **clause 35** (in which case the "**WHHT Variation Costs**" shall be the sum resolved pursuant to **clause 35**);
- 23.7.3 if WHHT does not confirm in writing whether it agrees or not with the WHHT Variation Estimate within the timescales set out in **clause 23.7.2** then WHHT shall be deemed to have agreed the WHHT Variation Estimate; and
- 23.7.4 WHHT shall pay the WHHT Variation Costs to the LABV or, if agreed by the Parties, to the Council (in the Council's capacity as member of the LABV) within 20 Business Days of confirmation of agreement or determination pursuant to **clause 23.7.2** or in the event that **clause 23.7.3** applies within 40 Business Days of receipt of the WHHT Variation Estimate.

- 23.8 WHHT shall not be obliged to contribute towards any LABV costs resulting from the implementation of variations to the Infrastructure Business Plan except where those variations have been requested by WHHT.

#### 24. PROGRESS MONITORING

- 24.1 Progress against the Business Plans shall be reviewed at meetings of the Campus Forum called in accordance with clause 13.
- 24.2 If, at any time, the WHHT Representative reasonably considers that, there has been a material failure of the LABV to comply with a Business Plan, and that such failure directly or indirectly relates to WHHT Land or the operations, including the future premises requirements, of WHHT, the WHHT Representative may call for a meeting of the Campus Forum to take place as soon as reasonably practicable to discuss appropriate action to rectify such failure and/or mitigate the effects of such failure as far as possible.

#### 25. FINANCIAL INFORMATION

- 25.1 The LABV shall provide WHHT with all reasonably necessary financial information, sufficient to keep WHHT properly informed about the Campus Development to the extent that it impacts on WHHT only and at WHHT's cost. Nothing in this clause shall oblige the LABV to provide to WHHT financial information over and above the financial information it provides to its Members under clause 27 of the Members' Agreement.
- 25.2 Notwithstanding the provisions of clause 33, WHHT may disclose financial information received from the LABV, any Development Subsidiary or a Representative, to its auditors or to any statutory body having right to such financial information, or any representative of such statutory bodies.

#### 26. LAND DRAWDOWN FROM WHHT

The Parties shall comply with their respective obligations under **Schedule 7**.

#### 27. WHHT CO-OPERATION PLAN

WHHT shall prepare, in consultation with the LABV and within three months of the date of this Agreement, a co-operation plan setting out the means by which it intends to enable the Campus Development to be carried out insofar as the Masterplan is dependent on WHHT undertaking decant, relocation works, or other activity (the "Cooperation Plan").

#### 28. LAND EQUALISATION

- 28.1 The Council and WHHT acknowledge and agree and shall perform the Land Equalisation Arrangements.
- 28.2 The LABV agrees to comply with any reasonable instruction made jointly by the Council and WHHT as to the payment of the distributable profits or proceeds referred to in the Land Equalisation Arrangements where such instruction relates to the destination of moneys and

is not adverse to the legitimate business interests of the LABV or contrary to the provisions of any Business Plan.

- 28.3 Where moneys are due to WHHT under this Agreement, or any agreement made pursuant to this Agreement, WHHT may, at its sole discretion direct that such moneys are held by the LABV as reserves for the purposes of expenditure by the LABV to be authorised by WHHT in the following financial year.

## 29. DEFAULT

- 29.1 Termination of this Agreement pursuant to this clause 29 will be without prejudice to the accrued rights of either of the other Parties.
- 29.2 WHHT may terminate this Agreement where the LABV fails to perform and observe any covenant or obligation on its part contained in this Agreement in any material respect ("Default Event").
- 29.3 Where a Default Event has occurred WHHT shall be entitled to serve notice of default on the LABV specifying in reasonable detail the circumstances breach or breaches which comprise the Default Event.
- 29.4 If the Default Event specified in the notice of default served by WHHT is not capable of remedy the WHHT shall be entitled to serve notice on the LABV terminating this Agreement.
- 29.5 WHHT shall not be entitled to terminate this Agreement in relation to a Default Event that is capable of being remedied until a period of 20 Business Days has elapsed from the date of service of the notice of default served by WHHT during which period WHHT and the LABV shall meet and endeavour to agree a methodology and timescale for the remediation of the Default Event and if the LABV during that period of 20 Business Days has commenced and thereafter diligently proceeds to remedy the Default Event then WHHT shall not be entitled to terminate this Agreement.

## 30. DURATION AND TERMINATION

This Agreement shall terminate automatically on:

- 30.1 the twentieth anniversary of the date of this Agreement unless otherwise agreed by the Parties;
- 30.2 the expiry or termination of the Development Agreement;
- 30.3 the insolvency, winding up, dissolution or liquidation of the LABV (other than for the purposes of an amalgamation or reconstruction);
- 30.4 any Default Event occurring (which is not capable of remedy or is not remedied in accordance with clause 29); or
- 30.5 WHHT becoming a Member of the LABV.



### **31. WHHT MEMBERSHIP OF LABV**

- 31.1 WHHT may, at any time, request to become a Member of the LABV either in its own right or by means of arrangements it may make with the Council for a new legal entity jointly owned by WHHT and the Council to take the place of the Council as a LABV member.
- 31.2 WHHT acknowledges that any decision in relation to a request by WHHT pursuant to clause 31.1 shall be a member decision of the LABV.

### **32. WARRANTIES**

Each of the LABV, the Council, and WHHT warrants and represents to each of the other Parties at the date of their execution to this Agreement that:

- 32.1 in relation to the LABV, it is duly incorporated under the law of England and Wales and has the corporate power to enter into and to exercise its rights and perform its obligations under this Agreement and the Project Agreements, to which it is a Party;
- 32.2 each Project Agreement to which it is a Party constitutes, or will when executed constitute legal, binding and enforceable obligations on it;
- 32.3 it has taken all necessary action to authorise the execution of and the performance of its obligations under the Project Agreements (and in the case of a Project Agreement to be executed after the date of this Agreement will take all necessary action to authorise the execution of that Project Agreement);
- 32.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against them or any of their assets which will or might have a material adverse effect on their ability to perform their obligations under the Project Agreements;
- 32.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Project Agreements; and
- 32.6 no proceedings or other steps have been taken and not discharged (nor, to the best of their knowledge, are threatened) for its winding up or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, administrator or similar officer in relation to any of its assets or revenue.

### **33. CONFIDENTIAL INFORMATION**

- 33.1 During the term of this Agreement and after termination or expiry of the Agreement for any reason whatsoever, the Receiving Party shall:
- 33.1.1 keep Confidential Information confidential;
- 33.1.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party or in accordance with clause 33.2; and
- 33.1.3 not use Confidential Information for any purpose other than the performance of its obligations under this Agreement and the Project Agreements.



- 33.2 During the term of this Agreement, the Receiving Party may disclose Confidential Information to its employees, contractors, sub-contractors, agents and advisers (and members of its Group) under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Agreement, or any other Project Agreement and may disclose Confidential Information to its funders, prospective funders, prospective Members of the LABV or prospective purchasers of its assets under conditions of confidentiality. In each case the permitted recipient of such Confidential Information shall be known as a Recipient.
- 33.3 The Receiving Party shall so far as practicable procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient were a Party to this Agreement.
- 33.4 The obligations contained in clauses 33.2 and 33.3 shall not apply to any Confidential Information which:
- 33.4.1 is at the date of this Agreement in, or at any time after the date of this Agreement comes into, the public domain other than through a breach of this Agreement by the Receiving Party or any recipient;
- 33.4.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party and not subject to any obligations of confidentiality before disclosure by the Disclosing Party to the Receiving Party;
- 33.4.3 subsequently comes lawfully into the possession of the Receiving Party from a third party and not subject to any obligations of confidentiality;
- 33.4.4 in respect of disclosure by the PSP, if such information is received from the LABV, any of its Development Subsidiaries or a Representative where disclosure is required by the rules of the London Stock Exchange, any tax authority, any other regulatory duty in the UK;
- 33.4.5 is required by law or a regulatory authority or body or any government department or by the Project Agreements to be disclosed; or
- 33.4.6 is required to be disclosed to enable an Expert Determination to be made under clause 34.2.
- 33.5 For the purposes of this clause 33, "**Confidential Information**" means all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one Party (the "**Disclosing Party**") to another Party ("**Receiving Party**") whether before or after the date of this Agreement including, without limitation, any information relating to the Disclosing Party's operations, processes, plans or intentions, know-how, design rights, trade secrets, market opportunities and business affairs, or any information whose disclosure would be likely to prejudice the commercial interests of any Party.

#### 34. FOIA AND EIR

- 34.1 The Parties acknowledge that the Council and WHHT are subject to FOIA and the EIR and that any third parties making any request for Information under the terms of FOIA or the EIR (a "**Request for Information**") may be provided with information relating to the LABV and/or this Agreement.

- 34.2 The Parties acknowledge that any Request for Information under FOIA or the EIR will be a request made to the Council and/or WHHT and that the Council and/or WHHT will have Information in its possession which relates to the LABV and/or this Agreement and that the Council and/or WHHT will need to determine, upon receipt of a Request for Information, what Information relating to the LABV and/or the this Agreement is exempt from disclosure under FOIA or excepted from disclosure under the EIR.
- 34.3 The LABV shall and shall procure that its Development Subsidiaries and its Professional Consultants and sub-contractors, wherever possible, mark relevant Information considered to be of a commercial nature and which would be prejudicial to the LABV's commercial interests if such Information was disclosed to the public with the words "Watford Health Campus – Prejudice to Commercial Interests" (or such other similar wording) of and for the avoidance of doubt, the Parties agree that where, contrary to the above, any Information is considered by the Council and/or WHHT to be disclosable pursuant to FOIA or the EIR, the Council and/or WHHT must act in accordance with its usual practice in compliance with the FOIA and the EIR and will notify the LABV of any Information that is to be disclosed pursuant to a request, to the extent permitted by the relevant legislation.
- 34.4 The Parties acknowledge that the Council and WHHT are subject to the requirements of the FOIA and the EIR and the LABV shall facilitate the Council's and WHHT's compliance with their Information disclosure requirements pursuant to the same in the manner provided for in **clauses 34.1 to 34.8.**
- 34.5 Where the Council and/or WHHT receives a Request for Information in relation to Information that another Party to this Agreement is holding on its behalf the Council and/or WHHT shall transfer to that other Party (the "**Holding Party**") such Request for Information as soon as practicable and in any event within five Business Days of receiving such Request for Information:
- 34.5.1 the Holding Party in receipt of the Request for Information under **clause 34.5** may, within 10 Business Days (or such other shorter period as the Council and/or WHHT (as appropriate) may stipulate) after receipt of such notification, make representations to the Council and/or WHHT as to whether or not or on what basis the Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the Information requested, provided always that the Council and/or WHHT that has received the Request for Information shall be responsible for determining at their absolute discretion:
- (a) whether the Information is exempt from disclosure under the FOIA or excepted from disclosure under the EIR as applicable; and
  - (b) whether the Information is to be disclosed in response to a Request for Information,
- and in no event shall the LABV respond directly or allow the Development Subsidiaries, its Professional Consultants or its sub-contractors to reply directly to a Request for Information unless expressly authorised to do so by the Council;
- 34.5.2 the Holding Party shall provide the Council and/or WHHT with a copy of all such Information in the form that the Council and/or WHHT requires as soon as reasonably practicable and shall use all reasonable endeavours to provide such Information within 10 Business Days (or such other period as the Council and/or WHHT may acting reasonably specify) after the request; and

- 34.5.3 provide all necessary assistance as reasonably requested by the Council and/or WHHT in connection with any such Information, to enable the Council and/or WHHT to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or section 5 of the EIR as applicable.
- 34.6 The LABV shall ensure that all information held on behalf of the Council and/or WHHT is retained for disclosure for at least six years from the date it is required and shall permit the Council and/or WHHT to inspect such information as requested from time to time.
- 34.7 The LABV shall transfer to the Council and/or WHHT any Request for Information received by the LABV as soon as practicable and in any event within five Business Days of receiving it.
- 34.8 The LABV acknowledges that any lists provided by it listing or outlining Confidential Information, are of indicative value only and that the Council and/or WHHT may nevertheless be obliged to disclose Confidential Information.
- 34.9 The LABV acknowledges that the Council and/or WHHT may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 and the Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (together the "Codes"), under the FOIA or the EIR as appropriate, disclose Information concerning the LABV or this Agreement:
  - 34.9.1 in certain circumstances without consulting with the LABV; or
  - 34.9.2 following consultation with the LABV and having taken its views into account,
 provided always that where clause 34.9.1 applies, the Council and/or WHHT shall, in accordance with the recommendations of the Codes, draw this to the attention of the LABV prior to any disclosure.

**35. DISPUTES**

- 35.1 The Parties shall seek to resolve disputes through discussion within the Campus Forum but in the absence of such resolution, disputes relating to the matters governed by this Agreement shall be referred to determination in the first instance in accordance with **Schedule 3**.
- 35.2 Subject to clause 35.1 where this Agreement provides for any dispute or difference arising between the Parties to be referred to an Expert the following provisions shall apply.
- 35.3 The Expert shall be appointed on the following basis:
  - 35.3.1 the Expert shall have been qualified in respect of the general subject matter of the dispute or difference for not less than 10 years and shall be a specialist in relation to such subject matter;
  - 35.3.2 the Expert shall be appointed by agreement between the Parties but if within 10 Business Days after a request for agreement of the Expert they are unable to agree then the Expert shall be appointed on the application of either of the Parties by such one of the following persons as shall be agreed to be appropriate having regard to the nature of the dispute or difference in question:

- (a) the Chairman for the time being of the Law Society;
- (b) the President for the time being of The Royal Institute of British Architects;
- (c) the President for the time being of the Royal Institution of Chartered Surveyors;
- (d) the President for the time being of The Institute of Chartered Accountants in England and Wales; and
- (e) the President for the time being of the Institution of Civil Engineers,

or (in each such case) the duly appointed deputy of such President or Chairman or any other person authorised by him to make appointments on his behalf.

35.3.3 if within such period of 10 Business Days the Parties have been unable to agree which of the persons referred to in **clause 35.3.2** is appropriate to appoint the Expert then the person appropriate to appoint the Expert shall be declined on the application of either Party by the President for the time being of the Law Society or his duly appointed deputy or any other person authorised by him to make appointments on his behalf and either party may then apply to such person for the appointment of the Expert;

35.3.4 unless agreed in accordance with **clause 35.4** any person appointed under this **clause 35** shall act as an Expert and:

- (a) the Expert shall consider (inter alia) written representations and cross-representations and supporting evidence made on behalf of the Parties if made reasonably promptly (and shall notify the relevant party of any such representations and cross-representations made by the other and allow the relevant party a reasonable opportunity to reply thereto) but shall not be bound thereby;
- (b) the Parties shall use all reasonable endeavours to procure that the Expert shall give his decision as speedily as possible;
- (c) the fees and expenses of the Expert including the cost of his nomination shall be borne equally by the Parties or as the Expert directs;
- (d) where the Expert dies, refuses to act or is unable to act or fails to proceed with reasonable speed to discharge his duties the procedure contained in this **clause 35** for the appointment of the Expert may be repeated as often as necessary until a decision is obtained; and
- (e) the decision of the Expert shall be final and binding on the Parties.

35.4 The Parties may agree that any person appointed under this **clause 35** shall act as an arbitrator in accordance with the provisions of the Arbitration Act 1996.

## 36. ANTI-CORRUPTION

36.1 The LABV shall not:

36.1.1 offer, give or agree to give and shall have not offered, given or agreed to give to any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Agreement or any Project Agreement to show or forbear to show, favour or disfavour to any person in relation to this Agreement or Project Agreement or any other contract with the Council or WHHT;

- 36.1.2 in relation to any contract with the Council and/or WHHT, having committed any offence under the Bribery Act 2010;
- 36.1.3 have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972.
- 36.2 The LABV shall not act or make any omission or otherwise do anything which in the Council's or WHHT's opinion causes (or is likely to cause) damage to and/prejudice the Council's or WHHT's good name and/or reputation.
- 36.3 Without prejudice to the provisions of this Agreement, the Council and/or WHHT may terminate this Agreement (without penalty) with immediate effect if the LABV breaches this **clause 36**.
- 36.4 The LABV shall indemnify the Council and WHHT on demand from and against all losses, claims, liability, costs, damages, fines or expenses (including all legal costs) incurred or suffered by the Council or WHHT as a result of a breach of this **clause 36** by the LABV (including their its employees, agents, sub-contractors or suppliers).

### **37. ANNOUNCEMENTS**

- 37.1 Subject to **clause 37.2**, no Party shall make nor send before or after the Effective Date any announcement, communication or circular relating to the subject matter of this Agreement unless such Party has first obtained the other Parties' written consent to the form and text of such announcement, such consent not to be unreasonably withheld.
- 37.2 **Clause 37.1** does not apply to an announcement, communication or circular required by Law or by the rules of any stock exchange or by any governmental authority, in which event the Party required to make or send such announcement, communication or circular shall, where practicable, first consult with the other Parties as to the content of such announcement.

### **38. NOTICES**

- 38.1 Any demand, notice or other communication given or made under or in connection with this Agreement shall be in accordance with this **clause 38**.
- 38.2 Where any notices or demands are to be served in accordance with this Agreement which are more formal than day to day correspondence and communication, then such notices or demands shall be made in writing, served in non-electronic format and duplicated electronically to the party receiving the notice or demand. In these circumstances, notice will be deemed to have been duly given or made:
- 38.2.1 if sent by pre-paid first class post, on the second Business Day after the date of posting;  
or
- 38.2.2 if delivered by hand, upon delivery at the address provided for in **clause 38.5**; or
- 38.2.3 provided however that, if it is delivered by hand on a day which is not a Business Day or after 4 p.m. in the place of receipt on a Business Day, it will instead be deemed to have been given or made on the next Business Day.

- 38.3 Any such demand, notice or other communication will be addressed, in the case of service by post or delivery by hand, to the recipient's address and/or facsimile number set out in this Agreement (or at such other address as may from time to time be notified in writing by the recipient to the sender as being the recipient's address for service).
- 38.4 For the avoidance of doubt, where proceedings have been issued in the courts of England and Wales, the provisions of the civil procedure rules must be complied with in respect of the service of documents in connection with those proceedings.
- 38.5 Subject to **clause 38.2**, any notice or other communication pursuant to, or in connection with, this Agreement shall be in writing and delivered personally, or sent by pre-paid first class post (air mail if overseas), to the Party due to receive such notice at its registered office from time to time (or to such other address as may from time to time have been notified in writing to the other Party in accordance with this clause) or by sending it by electronic means to the Party concerned set out in this **clause 38.5**, (subject to the original notice or communication being sent by post on the same day in the manner specified above):
- 38.5.1 Council  
Email: [REDACTED]  
Attention: [REDACTED]
- 38.5.2 WHHT  
Email: [REDACTED]  
Attention: [REDACTED]; and
- 38.5.3 LABV  
Email: [REDACTED]  
Attention: [REDACTED]
- 38.6 Subject to **clause 38.7**, any notice or other communication shall be deemed to have been served:
- 38.6.1 if delivered personally, when left at the address referred to in **clause 38.5**;
- 38.6.2 if sent by pre-paid first class post (other than air mail), two days after posting it;
- 38.6.3 if sent by air mail, six days after posting it; or
- 38.6.4 if sent by electronic means (subject to the original notice or communication being sent by post) on the same day in the manner specified in **clause 38.5**.
- 38.7 If a notice is given or deemed given at a time or on a date which is not a Business Day, it shall be deemed to have been given on the next Business Day.

### 39. INVALIDITY AND SEVERANCE

If any provision of this Agreement is held to be unenforceable or illegal, in whole or in part, such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall remain unaffected. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a

mutually satisfactory provision, achieving so nearly as possible the same commercial effect, to be substituted for the provision so found to be unenforceable or void.

#### **40. NHS FOUNDATION TRUST STATUS**

In the event that WHHT is granted NHS Foundation Trust status the Parties shall re-visit the terms of this Agreement (in particular the requirements for approvals from the TDA) and make all necessary and consequential amendments (each Party acting in good faith at all times).

#### **41. VALUE ADDED TAX**

- 41.1 All payments to be made (and other consideration to be provided) under this Agreement by one Party to another shall (except where otherwise specifically stated) be taken to be exclusive of Value Added Tax (if applicable) and any Value Added Tax chargeable in respect of the matters giving rise to such payments (or other consideration) will be added to such payment or other consideration and paid in addition by the recipient of the supply following receipt of a valid Value Added Tax invoice in a form containing the particulars prescribed in regulation 13 of the Value Added Tax (General) Regulations 1985.
- 41.2 Any payment under this Agreement will be inclusive of Value Added Tax if the Council certifies that it is unable to recover such Value Added Tax from HM Revenue & Customs.
- 41.3 In the event that Value Added Tax is chargeable on any supply under this Agreement for a consideration not consisting or not wholly consisting of money the person to whom the supply is made will pay such Value Added Tax to the person by whom the supply is made (the "Supplier") on the same date as such Value Added Tax would be payable if the consideration in relation to which it is chargeable was monetary consideration or if there is no such date within 10 Business Days of the date on which the Supplier has served a written demand on the person to whom the supply is made in respect of such Value Added Tax either consisting of or accompanied by a Value Added Tax invoice in a form complying with regulation 13 of the Value Added Tax (General) Regulations 1985.
- 41.4 If any payment in respect of Value Added tax is made under this Agreement in circumstances where Value Added tax was not properly chargeable then where the supplier has accounted for such Value Added Tax to HM Revenue & Customs the supplier's obligation to repay any amounts to the payer shall be limited to such amount as the supplier is entitled to recover (by way of credit, repayment or otherwise) from HM Revenue & Customs in respect of the wrongly paid Value Added Tax

#### **42. SURVIVAL**

- 42.1 The expiry or termination of this Agreement (howsoever arising) shall be without prejudice to the rights and duties of any Party accrued prior to such expiry, termination and/or winding up.
- 42.2 The clauses in this Agreement which expressly or impliedly have effect after expiry and/or termination of this Agreement (howsoever arising) and any liability under any indemnity and/or guarantee will continue to be enforceable notwithstanding such expiry or termination.



#### **43. WAIVER**

- 43.1 The failure by a Party to exercise or delay in exercising any right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies such Party may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 43.2 The Parties' rights and remedies contained in this Agreement are in addition to, and not exclusive of, any other rights or remedies available at law.

#### **44. THIRD PARTY RIGHTS**

Save where expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act. No Party may declare itself as a trustee of the rights under this Agreement for the benefit of any third party save as expressly provided in this Agreement.

#### **45. COSTS**

Each of the Parties shall pay its own costs in relation to the negotiation, preparation, execution and implementation of this Agreement and of each document referred to in this Agreement. The costs of and incidental to the incorporation and establishment of the LABV shall be borne and paid by the LABV.

#### **46. ENTIRE AGREEMENT**

- 46.1 This Agreement and the Project Agreements set out the entire agreement and understanding between the Parties. Accordingly this Agreement and the Project Agreements supersede and extinguish all previous agreements, arrangements and/or understandings (whether written or oral) between the Parties save insofar as a third party may have rights under any of them. It is agreed that:
- 46.1.1 no Party has entered into this Agreement in reliance upon any representation, warranty or undertaking of any other Party or any of its Connected Persons which is not expressly set out or referred to in this Agreement;
- 46.1.2 all terms and conditions which are implied under the Sale of Goods Act 1979 (as amended) in a contract of sale of goods to which that Act applies are expressly excluded from the sale and purchase under this Agreement, save that this clause shall not exclude any liability under section 12 of that Act;
- 46.1.3 a Party may claim in contract for breach of warranty under this Agreement but shall have no claim or remedy in respect of any misrepresentation (whether negligent or otherwise, and whether made before or in this Agreement) or any untrue statement made by any other Party or any of its Connected Persons;
- 46.1.4 this clause shall not exclude any liability or remedy for fraud or fraudulent misrepresentation by a Party or any of its Connected Persons; and



- 46.1.5 save as expressly set out in this Agreement or in any other agreement or document referred to in this Agreement, no Party or Connected Person shall owe any duty of care to any other Party or any of its Connected Persons.

#### **47. AMENDMENTS**

This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each of the Parties.

#### **48. FURTHER ASSURANCE**

Each Party shall:

- 48.1 execute any document and do any thing; and
- 48.2 use all reasonable endeavours to procure that any third party (where necessary) executes any deed or document and does any thing,

reasonably necessary to implement the terms of this Agreement.

#### **49. SUCCESSORS AND ASSIGNS**

- 49.1 Except as otherwise specified in this Agreement and subject to clause 48.2, the provisions of this Agreement shall be binding on and enure to the benefit of the heirs, personal representatives, successors and assigns of the respective Parties.
- 49.2 The LABV shall not assign or otherwise transfer the benefit of this Agreement in whole or in part except with the prior written consent of the Council and WHHT.
- 49.3 The Council shall not assign or otherwise transfer the benefit of this Agreement (other than to a statutory successor) in whole or in part except with the prior written consent of the LABV and WHHT.
- 49.4 WHHT shall not assign or otherwise transfer the benefit of this Agreement (other than to a statutory successor) in whole or in part except with the prior written consent of the LABV and the Council.

#### **50. LAW**

- 50.1 This Agreement shall be governed by and construed in accordance with English law.
- 50.2 Each Party hereby submits to the exclusive jurisdiction of the English courts to hear and determine any suit, action or proceeding and to settle any disputes which may arise out of or in connection with this Agreement and each Party irrevocably waives any objection which it may have to the courts of England being nominated as the forum to hear and determine any such proceedings and to settle any such disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

## **51. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts, each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.

Executed as a deed by the Parties on the date which first appears in this deed.

## Schedule 1

### Existing WHHT Contractual Commitments

<b>NAME OF CONTRACT</b>	<b>PARTIES</b>	<b>DATE</b>
Contract for the provision of Facilities Services (Group 3, Car Parking and Security) to West Hertfordshire Hospitals NHS Trust	(1) West Hertfordshire Hospitals NHS Trust (2) CP Plus Limited	22 November 2010
Contract for the provision of Facilities Services (Groups 1, 2 and 4) to West Hertfordshire Hospitals NHS Trust	(1) West Hertfordshire Hospitals NHS Trust (2) Compass Contract Services (UK) Limited	21 February 2011
Arrangement with the League of Friends for the provision of hot and cold beverages and cold food (no written contract)	(1) West Hertfordshire Hospitals NHS Trust (2) Watford General Hospital League of Friends	N/A
CHP Project	(1) West Hertfordshire Hospitals NHS Trust (2) Integrated Health Projects (a Joint Venture between Sir Robert McAlpine and VINCI Construction UK)	October 2012

## **Schedule 2**

### **Approval process for Capital Building Projects**

#### **1. OUTLINE BUSINESS CASE APPROVAL**

As soon as reasonably practicable following notification given to the LABV of any Capital Building Projects pursuant to clause 5.3.3 or 5.3.4 (as the case may be) WHHT shall confirm to the LABV whether or not such Capital Building Project requires an Outline Business Case or not. Where an Outline Business Case is required which relates to a Business Plan in respect of a WHHT Zone WHHT shall develop that Outline Business Case so as to be, as necessary, consistent with the relevant Business Plan and shall use all reasonable endeavours to obtain an Outline Business Case Approval.

- 1.1 The LABV will assist WHHT by providing all information WHHT reasonably requires to prepare an Outline Business Case that is, as necessary, consistent with the relevant draft or approved Indicative Zone Business Plan.
- 1.2 WHHT may submit the draft Outline Business Case to the LABV for comment prior to its submission for approval by the TDA.
- 1.3 Following approval of the Outline Business Case by the TDA, WHHT shall submit a copy of that approved Outline Business Case to the LABV but subject to WHHT having the right to redact information from the copy of the approved Outline Business Case submitted to the LABV in order to protect its commercial interests.
- 1.4 Following approval of the Outline Business Case by the TDA the LABV shall use all reasonable endeavours to satisfy the Conditions Precedent in paragraph 2 of Part 1 of Schedule 7.

#### **2. FULL BUSINESS CASE APPROVAL**

- 2.1 As soon as reasonably practicable following the Permission Date (as defined in the Development Agreement) for the relevant Zone WHHT shall to the extent that it is obliged to do so develop a Full Business Case for the Capital Building Project on the relevant Zone and shall use all reasonable endeavours to obtain a Full Business Case Approval.
- 2.2 The LABV will assist WHHT by providing all information WHHT reasonably requires to prepare a Full Business Case.
- 2.3 WHHT may submit the draft Full Business Case to the LABV for comment prior to its submission for approval by the TDA.
- 2.4 Within five Business Days of receiving notification from the TDA WHHT shall notify the LABV in writing whether the Full Business Case has been approved or rejected. If the Full Business Case has been approved by the TDA, WHHT shall submit a copy of that approved Full Business Case to the LABV but subject to WHHT having the right to redact information from the copy of the approved Full Business Case submitted to the LABV in order to protect its commercial interests.

- 2.5 If the Full Business Case has been approved then the relevant NHS Consents Condition (as defined in **Schedule 7**) shall (subject to any other NHS Consent Condition to be satisfied which WHHT shall use all reasonable endeavours also to satisfy) be satisfied and the terms of **Schedule 7** shall apply to the transfer of the WHHT Zone.
- 2.6 If the Full Business Case has been rejected then the LABV and WHHT shall work together to address the reasons for such rejection and shall attempt in good faith to produce a revised Full Business Case for submission to the TDA ("**New Full Business Case**") and the provisions of **paragraphs 2.2 to 2.5** shall apply to the New Full Business Case.
- 2.7 If the Full Business Case or the New Full Business Case (where the LABV and WHHT cannot agree any acceptable revisions to the Full Business Case pursuant to **paragraph 2.6** of the rejection of the Full Business Case) is rejected and in consequence the LABV Business Plan cannot be adopted or implemented then:
- 2.7.1 the LABV shall within 10 Business Days of receipt of the notice served by WHHT pursuant to **paragraph 2.4** notify WHHT in writing of its estimate of the WHHT Contribution;
- 2.7.2 WHHT shall confirm by serving written notice on the LABV whether it agrees or not with the WHHT Contribution within 10 Business Days of receipt of the notice served by the LABV pursuant to **paragraph 2.7.1** above;
- 2.7.3 if WHHT does not agree with the WHHT Contribution notified to it pursuant to **paragraph 2.7.1.1** then the matter shall be resolved by reference to **clause 35**;
- 2.7.4 if WHHT fails to serve a notice pursuant to **paragraph 2.7.2** then WHHT shall be deemed to have approved the WHHT Contribution; and
- 2.7.5 WHHT shall pay to the LABV the WHHT Contribution on the date falling:
- (a) 20 Business Days following service of the notice by WHHT pursuant to **paragraph 2.7.2** agreeing the WHHT Contribution; or
  - (b) 10 Business Days following determination of the WHHT Contribution pursuant to **paragraph 2.7.3**.

### Schedule 3

#### Dispute resolution procedure

1. The following definitions apply in this Schedule 3:

**"Dispute"**

means any dispute or claim arising out of, or in connection with, this Agreement or in respect of the legal relationships established by this Agreement;

**"Senior Representative"**

means a senior individual nominated from time to time by each party and empowered to represent the relevant party in relation to the operation of this Agreement (it being agreed that Council's initial senior representative shall be [REDACTED], WHHT's senior representative shall be [REDACTED], and the LABV's senior representative shall be [REDACTED]).

As and when disputes arise, the parties shall as soon as reasonably practicable form a committee known as a "Dispute Resolution Committee". Each party shall nominate one representative and a deputy (each a "Dispute Resolution Committee Nominee") to assess the progress of and resolve issues in relation to this Agreement.

2. The Dispute Resolution Committee shall meet as soon as reasonably practicable, and in any event within 10 Business Days of the Dispute being so referred (or such other period of time as the parties may agree).
3. The Dispute Resolution Committee Nominees shall have the authority to bind their respective party. For any agreement to be binding, it must be written and signed by the respective representative for each of the parties.
4. The Dispute Resolution Committee shall attempt in good faith to resolve the Dispute during the course of their meeting. If the Dispute is not resolved during such meeting, or it has not been possible to convene a meeting, for whatever reason (including lack of time to convene such meeting given the seriousness of a Dispute) the Senior Representative of each party shall seek to resolve the Dispute in good faith as expeditiously as possible and, in any event, within 10 Business Days of the Dispute being so referred (or such other period of time as the parties may agree) if the Senior Representatives are unable to resolve the dispute within such period, a party may take any further steps to which it is entitled, (including court action), in respect of such dispute.

**Schedule 4**

**Not used**

**Schedule 5**

**Not used**



## Schedule 6

### Part 1

#### Land equalisation arrangements

The Council and WHHT have agreed the following basis for making land commitments to the LABV, and as between them for future land equalisation payments, as follows:

1. It is agreed that, for the purposes of land equalisation, all Land Receipts derived from the Campus Development will be shared in the proportions 24.1 per cent WHHT and 75.9 per cent the Council. For this purpose, Land Receipts means receipts of WHHT or the Council derived directly or indirectly from the Campus Development and being:
  - 1.1 the consideration paid to WHHT or the Council (not being by way of a Loan Note payment) on the transfer of its land at the Site to the LABV whether by way of freehold transfer or grant of lease;
  - 1.2 the Zone Transfer Value of land transferred by the Council to the LABV in return for a Loan Note, together with any overage paid by the LABV to the Council in respect thereof. Land Receipts do not include interest accruing on Council A Loans or Council B Loans, arising from Council land transferred to the LABV;
  - 1.3 consideration paid to the Council or WHHT in respect of any disposal by the Council or WHHT of land on the Site to a third party (including Kier) other than the LABV provided where, in the case of WHHT, that land would otherwise have been committed to the LABV under **clause 7** of this Agreement or by the Council under the terms of the Development Agreement;
  - 1.4 any arrangement whereby a development is based on forward funding through a third party (including any institutional investor) such that the land value is not represented by a consideration paid but is a development cost (the land value to be ascertained by reference to the relevant Zone Business Plan or development appraisal);
  - 1.5 in respect of Council Land, any payment made by the LABV not by way of distribution under clause 29 of the Members' Agreement but as a clawback (as referred to in paragraph 5 of Schedule 18 of the Members' Agreement) for onward sale of land by the LABV for additional consideration not reflected in the Zone Transfer Value;
  - 1.6 in respect of WHHT Land, any payment by the LABV to WHHT representing clawback (as referred to in paragraph 5 of **Schedule 8**) of land value (not being overage) and arising from any on-sale of that land by the LABV to a third party; and
  - 1.7 any other payments and receipts which, having regard to the aims of the Council and WHHT in respect of land equalisation ought reasonably be regarded as a Land Receipt.
2. The agreed allocation of Land Receipts is 24.1 per cent to WHHT and 75.9 per cent to the Council and accordingly for every one pound (£1) received (or to be received) by way of Land Receipt in respect of the Campus Development, 24.1p shall accrue to WHHT and 75.9p shall accrue to the Council (the "**Land Equalisation**").

3. Land Equalisation payments shall be due and payable as follows:
  - 3.1 in respect of any Land Receipt of WHHT, within 30 days of such receipt;
  - 3.2 in respect of any Land Receipt of the Council, not being under a Loan Note, within 30 days of such receipt;
  - 3.3 in respect of any Land Receipt of the Council, being under a Loan Note, within 30 days of the loan note being due for payment to the Council in accordance with the Zone Business Plan, and irrespective of whether the LABV is able to or has made a payment under clause 29 of the Members' Agreement;
  - 3.4 in respect of a Land Receipt falling within **paragraph 1.3** of this **Schedule 6** on the date when payment representing land value is received or when such development has been completed (as determined by reference to the relevant Zone Business Plan or development appraisal); and
  - 3.5 in respect of any other Land Receipt, within 30 days of such receipt being due or owing.
4. For the purposes of calculating any Land Receipt of the Council, any decision by the Council to swap the capital amount of any Loan Note (reflecting land value) to which it is entitled to a distribution in substitution for a Loan Note (reflecting cash), shall be disregarded and the value of the Loan Note (reflecting land value) treated as a Land Receipt.
5. The Council and WHHT are committing to contribute, subject to the terms of the Development Agreement, Members' Agreement and this Agreement, a total quantum of developable land 7.868ha and 2.492ha of land respectively.
6. Not less than every fourth anniversary of this Agreement, and in any event immediately following the approval of the hybrid planning application for the Campus Development by the local planning authority and immediately prior to any draw down of Campus land to the LABV pursuant to the Campus Agreement or Development Agreement, WHHT and the Council shall review the total quantum of developable land being contributed and to be contributed by each of them under the approved LABV Business Plan, and shall make such adjustment to the Land Equalisation percentages as they agree should reflect those revised quantum.
7. Where, pursuant to the adjustment made under **paragraph 6** of this **Schedule 6**, there has been an over or under payment of Land Equalisation on earlier Land Receipts, an immediate adjustment payment shall be made at that time, unless the Council or WHHT (as the case may be) can demonstrate to the reasonable satisfaction of the other that such payment cannot be funded in which case such payment shall be made as soon as reasonably practicable and in any event by no later than the twelfth anniversary of the Effective Date. If there is an such amount due from Land Equalisation that is not capable of being paid out of future Land Receipts, that sum shall be treated as a debt, payable no later than on the twelfth anniversary of the Effective Date.

## Part 2

### Land contribution contingencies

For the purposes of the land commitments made by WHHT and the Council under this Agreement, the following factor shall be taken into account and dealt with as described in this **Part 2**, of this **Schedule 6**:

#### 1. School land

The Parties acknowledge that under a Satisfactory Planning Permission (as defined in the Development Agreement) for the Campus Development and/or any detailed planning consent in relation to a Zone a planning obligation may require the provision of a school on the Site. Any such school provision may require that land at the Site is transferred or used for this purpose. The Parties agree and acknowledge that, notwithstanding the extent to which such school provision may reduce the total quantum of land available at the Site for development by the LABV, this shall not mean that land commitment of either WHHT or WBC are in any way not being met.

#### 2. Allotments

The LABV and WHHT agree that the Council may:

- (i) dispose of part of the Council Land; or
- (ii) determine that a portion of Council Land be used for a different purpose than that envisaged at the Effective Date

for the purposes of any arrangement which may be made or agreed for the development of the Allotment Land, subject to any future decisions properly made in relation to the allotments. If any such disposal or determination is made, the Council shall, unless prohibited from doing so by reason of law, identify an area of the Allotment Land having equivalent developable area to the land disposed of as land which will constitute Council Land. The Allotment Land identified by the Council shall, on becoming Council Land, be allocated the pro rata share of Site-Wide Infrastructure Costs (as identified in the LABV Business Plan) previously allocated to the land disposed of.

## **Schedule 7**

### **Land Drawdown**

#### **Part 1**

## **1. WHHT ZONE SELECTION AND WHHT ZONE BUSINESS PLANS**

### **1.1 WHHT Zone selection and WHHT Zone Business Plans**

- 1.1.1 WHHT Zones shall be selected to be eligible for development in accordance with the process set out in **Part 2** of this **Schedule 7**.
- 1.1.2 The LABV shall prepare an Indicative Zone Business Plan in respect of each WHHT Zone which is approved as eligible for development in accordance with the process set out in this **Part 1** of this **Schedule 7**.
- 1.1.3 The Parties agree that the process for selection of a WHHT Zone can run in tandem to the process for preparation of an Indicative Zone Business Plan to avoid overlap of work but each of the processes must be completed. The Parties further agree that reference to a Zone Business Plan in this Agreement may refer to a Zone Business Plan which comprises a WHHT Zone and a Council Zone and that, in such circumstances, the process for preparation and approval of a Zone Business Plan under this Agreement will run in tandem with the process for the preparation and approval of that Zone Business Plan under the Development Agreement.
- 1.1.4 WHHT is under no obligation to consider or process any nomination for selection of a WHHT Zone or any Indicative Zone Business Plan until such time as a complete package of information is available to WHHT. Any time periods imposed on WHHT in this **Part 1** of this **Schedule 7** will only commence when WHHT has received a comprehensive set of information as required by this **paragraph 1.1.4**.
- 1.1.5 The LABV may only propose development on a WHHT Zone on the basis that the entirety of such WHHT Zone is to be developed. A proposal to develop less than the entire WHHT Zone must be approved by WHHT and can be accepted or rejected at WHHT's absolute discretion.
- 1.1.6 Once an Indicative Zone Business Plan has been approved in accordance with this Agreement, the LABV shall not amend that Approved Zone Business Plan without the prior approval of WHHT, such approval not to be unreasonably withheld or delayed.

## **2. CONDITIONS PRECEDENT**

- 2.1 The drawdown of a WHHT Zone is conditional upon satisfaction of all of following conditions precedent in respect of that WHHT Zone:
- 2.1.1 an Approved Zone Business Plan having been approved in accordance with this Agreement is in place in relation to the relevant WHHT Zone;
- 2.1.2 where a Development Subsidiary is to be established in relation to the WHHT Zone, the LABV having established the Development Subsidiary in relation to the WHHT Zone;

- 2.1.3 the completion of all relevant Statutory Agreements;
- 2.1.4 the Planning Condition;
- 2.1.5 the Funding Condition;
- 2.1.6 the Viability Condition;
- 2.1.7 the Title Condition;
- 2.1.8 the NHS Consents Condition;
- 2.1.9 WHHT securing vacant possession of the relevant WHHT Zone;
- 2.1.10 the Joint Ownership Condition;
- 2.1.11 any other conditions precedent agreed between the Parties and detailed in the relevant Approved Zone Business Plan,

(together the "Conditions" and each a "Condition").

- 2.2 The Parties shall use all reasonable endeavours to satisfy the Conditions to the extent that the relevant Condition is for that Party to satisfy.
- 2.3 Any of the Conditions for a WHHT Zone may be waived in respect of that WHHT Zone only in writing by both the LABV and WHHT except where the Condition is for the benefit of only one Party in which case the Party seeking to rely on the Condition may waive it and that Condition will be satisfied.
- 2.4 The LABV and WHHT shall keep each other informed of the progress in satisfying the Conditions in respect of each WHHT Zone. The LABV shall provide to WHHT in respect of the Conditions set out in paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4 and 2.1.5 of this Part 1 of this Schedule 7 and the WHHT shall provide to the LABV in respect of the Conditions set out in paragraphs 2.1.7, 2.1.8, and 2.1.9 of this Part 1 of this Schedule 7 and the appropriate Party shall provide to the other Party in respect of any Conditions set out in paragraph 2.1.11 of this Part 1 of this Schedule 7, a copy of all documents evidencing satisfaction of the relevant Conditions as soon as reasonably practicable after they have been satisfied.
- 2.5 At any time during the 12 month period from the date on which the relevant Indicative Zone Business Plan is approved, the LABV may make amendments to the Indicative Zone Business Plan in order to facilitate satisfaction of the Conditions provided these are notified to WHHT and subject to WHHT consent where these materially affect WHHT.

### 3. VIABILITY AND TRANSFER VALUE

- 3.1 The LABV shall carry out a Viability Test in relation to each WHHT Zone (other than the Infrastructure Zone where paragraph 3.2 shall apply) as soon as reasonably practicable following the grant of a Satisfactory Detailed Planning Permission. For the avoidance of doubt, where a WHHT Zone forms part of a Zone, the Viability Test shall be carried out in relation to the Zone as a whole and not just in relation to the WHHT Zone.
- 3.2 The LABV shall carry out a Viability Test in relation to the Infrastructure Zone as soon as reasonably practicable following receipt of the final tenders from the building contractor in relation to the works set out in the Infrastructure Business Plan.

- 3.3 The LABV shall provide WHHT with a copy of the relevant Viability Test together with its confirmation as to whether it considers the relevant Zone to be Viable within 20 Business Days after completing the Viability Test.
- 3.4 Wherever a Viability Test shows a particular Zone to be Viable then (subject to any other Conditions or other pre-conditions to development of that WHHT Zone being satisfied) the Viability Condition shall be satisfied.
- 3.5 The WHHT Zone Transfer Value for each WHHT Zone shall be the Market Value of the relevant WHHT Zone as agreed between the LABV and WHHT acting reasonably or in the absence of agreement:
- 3.5.1 the Market Value shall be determined by two separate independent valuations both to be carried out by an Expert appointed in accordance with the provisions of **clause 35** with the average of those two valuations being used to calculate the new Market Value provided that if the higher of the two valuations is more than 25 per cent higher than the other then:
- (a) WHHT and the LABV shall agree a revised valuation methodology;
  - (b) a further valuation shall be carried out by an Expert appointed in accordance with **clause 35** using the revised valuation methodology to establish the Market Value;
- or
- 3.5.2 if either:
- (a) WHHT and the LABV cannot agree a revised valuation methodology pursuant to **paragraph 3.5.1(a)**; or
  - (b) following the further valuation carried out pursuant to **clause 3.5.1(b)** WHHT and the LABV do not agree the Market Value then the Market Value shall be determined in accordance with **clause 35**.

#### 4. LAND DRAWDOWN

- 4.1 Subject to **paragraph 4.2** within 10 Business Days of a WHHT Zone becoming Unconditional (the "Completion Date"), WHHT shall transfer the WHHT Zone to the LABV or a Development Subsidiary (as appropriate) and the LABV or Development Subsidiary (as appropriate) shall accept the WHHT Zone Transfer.
- 4.2 Each WHHT Zone Transfer shall be in a form agreed between WHHT and the LABV and taking into account:
- 4.2.1 such modifications as shall be approved by the LABV and WHHT acting reasonably, having regard to the Business Plan;
  - 4.2.2 the manner in which the Conditions have been satisfied;
  - 4.2.3 the use(s) of the land specified in any restrictions on the title;
  - 4.2.4 the WHHT Zone Transfer Value;
  - 4.2.5 the rights and reservations reasonably required for the use and enjoyment by WHHT for the remainder of WHHT Land; and
  - 4.2.6 the rights and reservations reasonably required for the use and enjoyment by the LABV for the remainder of the Campus Development.

- 5.6 As soon as reasonably practicable following receipt of the same WHHT shall produce to the LABV copies of all notices served and orders demands or proposals or requirements made by any local or other public authority in relation to the whole or any part of the WHHT Zone after the date of the Campus Agreement and WHHT shall (where reasonably requested by the LABV and at the cost of the LABV):
- 5.6.1 make such representations as shall be requested by the LABV having regard to the proposed development; or
- 5.6.2 join with the LABV in making such representations in consequence of such notices orders demands or proposals or requirements.
- 5.7 Part 1 of the Standard Commercial Property Conditions of Sale (Second Edition) are incorporated in this **paragraph 5** insofar as the same are not varied by or inconsistent with the provisions of this Agreement except that:
- 5.7.1 standard conditions 3.2.1, 4 and 5 do not apply to this Agreement;
- 5.7.2 standard condition 1.1.3(b) is varied by the addition of the following words at the end of it: "or if the Seller produces reasonable evidence that the Property will be released from such mortgages on or before the Completion Date". Condition 8.8.1 is varied by the addition of the following at the end: "under this condition but not otherwise";
- 5.7.3 standard condition 1.3.2 is varied by the addition of the words "at the address and with the reference (if any) stated in the contract" after the words "parties solicitor";
- 5.7.4 standard condition 1.3.3 does not apply and the following wording is substituted for it: "Transmission by fax is a valid means of giving a notice or delivering a document where delivery of the original document is not essential provided all relevant parts of the document or notice are received by the intended recipient in a legible state. Transmission by email is not a valid means of giving a notice or delivering a document." Conditions 1.3.5(c) and 1.3.7(e) do not apply to this Agreement";
- 5.7.5 standard condition 1.3.7(a) is varied by the deletion of the words "first class post" and the addition in their place of the words "a registered post service within the meaning of the Postal Services Act 2000". Standard conditions 1.3.7(b) and 1.3.8 do not apply to this Agreement;
- 5.7.6 standard condition 6.4.2 is varied by the deletion of the words "if to do so is reasonable" and the addition in their place of the words "if the contract so states" and by the deletion of the words "or obtain, pay for" and the addition of the words "at the Buyer's Expense" in their place and by the addition of the following words at the end "The Seller shall not be required to include any matter in a statutory declaration which is not, after reasonable enquiry, within its personal knowledge";
- 5.7.7 standard condition 6.1.2 is varied by the deletion of the words "after 2 p.m." and the addition of the words "by the bank account specified by the Council's solicitors for the purpose after 1 p.m." in their place;
- 5.7.8 standard conditions 9.5.2(b) and 9.6.2(b) are both varied by the addition of the words: "and any other materials" after the words: "return any documents"; and
- 5.7.9 standard conditions 1.1.4, 1.2 and 3.2.1 do not apply to this Agreement.



- 5.8 Each WHHT Zone Transfer will be granted subject to and with the benefit of all and any of the following in existence before the Completion Date:
- 5.8.1 the matters contained or referred to in the property and charges registers of the title(s) to the WHHT Zone to the extent that they are still subsisting and capable of being enforced or of taking effect other than charges to secure the repayment of money;
  - 5.8.2 all matters discoverable by inspection of the WHHT Zone before the date of this Agreement;
  - 5.8.3 all matters relating to the WHHT Zone which WHHT does not know about;
  - 5.8.4 entries in any public register (whether made before or after the date of this Agreement);
  - 5.8.5 public requirements and any matters arising by virtue of any legislation; and
  - 5.8.6 all matters disclosed or which might reasonably be expected to be disclosed by searches and enquiries made by the LABV or which a prudent purchaser or tenant ought to make.
- 5.9 The LABV will be deemed to take each WHHT Zone Transfer with full knowledge of the matters subject to which the WHHT Zone is sold, and shall not make any requisition or claim in respect of any of those matters.
- 5.10 Standard conditions 3.1.1, 3.1.2 and 3.1.3 do not apply to this Agreement.

## 6. VACANT POSSESSION

Each WHHT Zone is transferred with vacant possession on the Completion Date but subject to any matters it is transferred subject to.

### Part 2

#### Zone selection

1. The LABV will nominate which WHHT Zone shall be the next to be eligible for development in accordance with the LABV Business Plan and the Masterplan. WHHT may request that the LABV nominates a WHHT Zone to be the next to be eligible for development and, on receipt of such a request, the LABV will consider the request in good faith and, acting reasonably, confirm to WHHT whether it will nominate the WHHT Zone.
2. The LABV shall supply such documentation as may be reasonably required by WHHT to enable it to consider the proposed nomination.
3. WHHT shall consider the proposed nomination and shall inform the LABV within 20 Business Days of receiving the information WHHT reasonably requires of whether or not it approves the nomination in accordance with paragraphs 4 to 6 of this Part 2 of this Schedule 7.
4. If WHHT approves the WHHT Zone as eligible for development, Part 3 of this Schedule 7 shall apply in respect of that WHHT Zone.
5. If WHHT does not approve the nominated WHHT Zone as eligible for development, WHHT shall inform the LABV of the reasons why.
6. WHHT may approve the nominated WHHT Zone as eligible for development subject to certain conditions, in which case the LABV and WHHT shall enter into such documentation as may be



reasonably required to satisfy such conditions and, when WHHT confirms that the conditions have been met to the satisfaction of WHHT, WHHT will approve the WHHT Zone as eligible for development and **paragraph 2 to 6 of Schedule 7** shall apply in respect of that WHHT Zone.

### Part 3

#### Business Plans

1. Once:
  - 1.1 a nominated WHHT Zone has been approved as eligible for development pursuant to **Part 2** of this **Schedule 7**; and
  - 1.2 where that WHHT Zone forms part of a Zone which comprises a Council Zone, that Council Zone has been approved as eligible for development pursuant to Part 1 of Schedule 5 to the Development Agreement,

the LABV shall prepare a draft Indicative Zone Business Plan in respect of such WHHT Zone in consultation with WHHT and in accordance with this **Part 3** of **Schedule 7**.
2. The development of a draft Indicative Zone Business Plan shall be undertaken in as many stages as the LABV reasonably considers necessary and the LABV may submit up to three drafts of the Indicative Zone Business Plan to WHHT for review prior to tabling the draft Indicative Zone Business Plan at a meeting of the Campus Forum.
3. Each Indicative Zone Business Plan (and any draft thereof) shall include:
  - 3.1 **WHHT Zone**
    - 3.1.1 Location summary.
    - 3.1.2 Description of WHHT Zone:
      - (a) current,
      - (b) proposed.
  - 3.2 **Scheme details**
    - 3.2.1 Quantum of development/split of use.
    - 3.2.2 Specification overview.
    - 3.2.3 Phasing of development
    - 3.2.4 Local market commentary – evidence of demand for the proposed development marketing strategy and pre-let opportunity.
    - 3.2.5 Planning and compliance with development plan policies.
    - 3.2.6 Land issues.
  - 3.3 **Development plan**
    - 3.3.1 Property strategy and achieving viability.
    - 3.3.2 Strategy for delivery including any phasing.
    - 3.3.3 Car park and traffic strategy.

- 3.3.4 Target stage dates and indicative programme.
- 3.3.5 Conditions precedent.
- 3.3.6 Any other issues considered relevant to achieving the development objectives.
- 3.4 **Financial appraisal and budget**
  - 3.4.1 Commercial strategy.
  - 3.4.2 Appraisal – outline/detailed – with scenario testing.
  - 3.4.3 Pre-development costs budget.
  - 3.4.4 Supply chain arrangement and cost control.
  - 3.4.5 Funding solution (including benchmarking).
  - 3.4.6 Tax assumptions.
  - 3.4.7 Returns.
  - 3.4.8 Negative value carry forward and allocation plan (where relevant).
- 3.5 Risk appraisal/register.
- 3.6 Programme – outline/detailed.
- 3.7 Details of LABV Project Expenditure and any Pre-Agreed WHHT Contribution.
- 4. The LABV shall supply such documentation as may be reasonably required by WHHT to enable WHHT to consider the draft Indicative Zone Business Plan.
- 5. The LABV shall ensure that WHHT has sufficient time and opportunity for consideration of, and the making of representations on, any draft Indicative Zone Business Plan circulated for review under this **Schedule 7**.
- 6. The LABV shall procure that its Members, through the Partnership Board, give full consideration to any WHHT representations made under **paragraph 5** of this **Part 3** of this **Schedule 7** in the course of its consideration and approval of such draft Indicative Zone Business Plan.
- 7. In respect of each draft Indicative Zone Business Plan relating to a WHHT Zone, the LABV shall bring such draft Indicative Zone Business Plan to a properly convened meeting of the Campus Forum for consideration and approval prior to its approval by the LABV under clause 25 of the Members' Agreement.
- 8. WHHT shall consider the draft Indicative Zone Business Plan at the meeting of the Campus Forum and the meeting of the Campus Forum shall decide whether or not the draft Indicative Zone Business Plan is approved in accordance with **paragraphs 9 to 12** of this **Part 3** of this **Schedule 7**.
- 9. If the draft Indicative Zone Business Plan is not approved at the meeting of the Campus Forum, the reasons why shall be noted at that meeting.
- 10. WHHT may approve the draft Indicative Zone Business Plan at the meeting of the Campus Forum subject to certain conditions, in which case the LABV and WHHT shall enter into such documentation as may be reasonably required to satisfy such conditions and, when WHHT confirms that the conditions have been met to the satisfaction of WHHT, WHHT will approve the

draft Indicative Zone Business Plan and the provisions of **paragraph 2 of Part 1** of this **Schedule 7** shall apply.

11. Once the draft Indicative Zone Business Plan has been approved by WHHT at the meeting of the Campus Forum it will form the basis for the Planning Application.
12. Following the grant of Satisfactory Detailed Planning Permission the LABV and WHHT shall as soon as reasonably practicable consider (both acting reasonably) whether the Indicative Zone Business Plan needs to be amended to reflect the Satisfactory Detailed Planning Permission and the Indicative Zone Business Plan shall either:
  - 12.1 be approved as the Approved Zone Business Plan and adopted in its existing form; or
  - 12.2 be amended to reflect any consequential amendments necessary as a result of the grant of Satisfactory Detailed Planning Permission and once such amendments have been made be adopted as the Approved Zone Business Plan.
13. WHHT agrees that, where an Indicative Zone Business Plan is adopted by the LABV or an existing Approved Zone Business Plan is amended or varied, in either case with WHHT approval under this Agreement, then WHHT shall be deemed to have approved the automatic updating of the LABV Business Plan under clause 25.1 of the Members' Agreement.

#### Part 4

##### Infrastructure Zone

1. To the extent that any WHHT Land drawn down by the LABV as part of the Infrastructure Zone pursuant to **Part 1** of this **Schedule 7** is surplus to the requirements of the LABV, or is not used for any reason to meet its obligations to WHHT and the Council set out in the Infrastructure Business Plan then the LABV shall:
  - 1.1 as soon as reasonably practicable identify the surplus land by edging the surplus land red on a Land Registry compliant plan or plans ("**the Surplus Land**") and serving such plan(s) on WHHT for approval ("**Surplus Land Notice**");
  - 1.2 Within 10 Business Days of receipt of the Surplus Land Notice WHHT shall serve notice in writing on the LABV ("**WHHT Notice**") confirming whether:
    - 1.2.1 it agrees with the extent of the Surplus Land in which case **paragraph 1.3** of this **Part 4** of **Schedule 7** shall apply; or
    - 1.2.2 it does not agree with the extent of the Surplus Land in which case it shall state in such notice the reasons why and shall identify on a Land Registry compliant plan by edging in red the land it considers should form the Surplus Land and **paragraph 1.5** of this **Part 4** of **Schedule 7** shall apply.
  - 1.3 Within 10 Business Days of:
    - 1.3.1 receipt of a WHHT Notice pursuant to **paragraph 1.2.1** of this **Part 4** of **Schedule 7**; or
    - 1.3.2 a LABV Notice pursuant to **paragraph 1.5.1** of this **Part 4** of **Schedule 7**; or
    - 1.3.3 determination of the extent of the Surplus Land pursuant to **paragraph 1.5.2** of this **Part 4** of **Schedule 7**.

the LABV shall deliver to WHHT a form of transfer or transfers (as applicable) to transfer the Surplus Land from the LABV to WHHT such form of transfer to be agreed between the LABV and WHHT both acting reasonably but shall include as a minimum:

- (a) consideration of £1 (one pound);
- (b) full title guarantee;
- (c) the rights and reservations reasonably required for the use and enjoyment by WHHT for the remainder of the WHHT Land; and
- (d) the rights and reservations reasonably required for the use and enjoyment by the LABV for the remainder of the Campus Development.

- 1.4 Within 10 Business Days of approval by WHHT and the LABV of the form of transfer the LABV shall transfer the Surplus Land to WHHT and WHHT shall accept the transfer of the Surplus Land.
- 1.5 Within 10 Business Days of receipt of a WHHT Notice pursuant to **paragraph 1.2.2** of this **Part 4 of Schedule 7** the LABV shall serve written notice on WHHT ("**LABV Notice**") confirming whether:
  - 1.5.1 it agrees with the extent of the Surplus Land identified by WHHT in which case **paragraph 1.3** of this **Part 4 of Schedule 7** shall apply, or
  - 1.5.2 it does not agree with the extent of the Surplus Land identified by WHHT in which case the matter shall be referred to dispute resolution in accordance with the provisions of **clause 35**.
- 1.6 The reasonable and proper costs incurred in relation to the transfer of the Surplus Land from the LABV to WHHT shall be borne by the LABV.

## Part 5

### Development Licence

1. This Licence is exercisable by the LABV its contractors and all those authorised by it from the Effective Date until the completion of the relevant Business Plan Works.
2. Those exercising this Licence may enter onto those parts of WHHT Land identified in the relevant Indicative Zone Business Plan (the "Licensed Areas") with or without vehicles workmen plant machinery and equipment for the purpose only of carrying out and completing the works required pursuant to any Indicative Zone Business Plan (the "Business Plan Works").
3. The LABV acknowledges that all materials goods plant machinery equipment and other items belonging to the LABV or its servants agents or contractors will be at the sole risk and responsibility of the LABV and WHHT has no responsibility therefor and that WHHT has no responsibility for servants agents and contractors of the LABV.
4. In carrying out the Business Plan Works the LABV will comply with and procure that those exercising this Licence will comply with the Conditions set out in this **Schedule 7**.
5. This Licence does not create any interest in the Licensed Areas.
6. After completion of the Business Plan Works WHHT shall permit the LABV its contractor and all those authorised by it to have access to the Licensed Areas at all reasonable times upon prior reasonable written notice being given for the purpose of inspecting and remedying any defects (including snagging items) which any contractor is liable to remedy in accordance with its building contract the LABV making good as soon as reasonably practicable and to the reasonable satisfaction of WHHT all damage occasioned to the Licensed Areas by the exercise of this right.

## Part 6

### The Conditions

1. The LABV will give WHHT reasonable notice before entering onto the Licensed Areas.
2. No earth, clay, gravel, sand or other minerals will be removed from the Licensed Areas otherwise than may be necessary to enable the Business Plan Works to be carried out.
3. Proper provision will be made for the support and use of any land, walls, roads, footpaths upon, adjacent or near to the Licensed Areas and which are affected by the Business Plan Works.
4. Proper arrangements will be made with the supply authorities for the provision of water, gas, electricity, telephone and other services required for the carrying out of the Business Plan Works.
5. All necessary skip permits and scaffold licences will be obtained and complied with.
6. All noise vibration dust mud and disturbance will be kept to a minimum and the Licensed Areas will be kept in good order and in a clean tidy and safe condition and all refuse will be regularly removed.

7. The Business Plan Works will be carried out in such a way that as little damage as possible is caused to any roads footpaths service media street furniture land buildings or other structures adjoining or neighbouring the Licensed Areas .
8. Access for third parties will be maintained by the LABV as properly and reasonably required by WHHT.
9. The Licensed Areas are kept tidy and that no material is kept at the Licensed Areas which is not required within a reasonable time for the carrying out of the Business Plan Works.
10. Disturbance to owners and occupiers of neighbouring properties and members of the public is kept to a minimum.
11. Not to do or permit or suffer to be done anything which shall be or become a nuisance or cause damage to or to the owners or occupiers of any adjoining or neighbouring properties or any other person.

## Schedule 8

### Overage Provisions

**"Anniversary"**

means the anniversary of the Completion Date;

**"Building Costs"**

means all sums reasonably and properly payable for the carrying out of any construction works in relation to the development of the Property;

**"Buyer"**

means Watford Health Campus Partnership LLP;

**"Buyer's Solicitors"**

means [            ]

**"Calculation Date"**

means whichever is the earliest of:

- (a) if the whole of the Property is sold as a single transaction, the date of that Sale;
- (b) if the Property is sold piecemeal and the last part of the Property is sold prior to the fifth Anniversary, the date of completion of the Sale of the last part of the Property;
- (c) if the Property is sold piecemeal and only part has been sold by the fifth Anniversary, the fifth Anniversary (the "Fifth Anniversary Calculation Date");

**"Clawback Amount"**

means the amount expressed as a figure (in pounds) by which Receipts exceeds Expenditure;

**"Completion Date"**

means the date of this Transfer;

**"Estimated Profit"**

means the Buyer's estimated profit for the Property expressed as a figure (in pounds) by converting the forecast percentage profit set out in the LABV Business Plan current at the Completion Date by reference to the calculation of the actual percentage profit achieved.

**"Expenditure"**

means the aggregate of the items hereinafter specified insofar as they are properly and reasonably paid or incurred (or treated as such) in relation to the development or sale of the Property:

- (a) Building Costs;
- (b) Land Cost;
- (c) Legal Fees;
- (d) Letting Agents' Fees;
- (e) Selling Agents Fees;
- (f) all stamp duty land tax and Land Registry fees;
- (g) all insurance premiums which shall be incurred in connection with the development of the Property which shall not be recoverable from any third party;
- (h) any sums paid to any adjoining owner or occupier for rights licences or easement required in relation to the development of the Property
- (i) any rates and other outgoing properly paid in connection with the Property which are irrecoverable from any third party;
- (j) all sums paid in connection with site surveys ground tests and site investigations of the Property;
- (k) the cost of obtaining planning permission and of entering into and compliance with any agreement entered into pursuant to section 38 Highways Act 1980, section 104 Water Industry Act 1991, section 106 Town & Country Planning Act 1990 or section 278 Highways Act 1980 or any other agreement which may be required to be entered into with any local or statutory authority as a pre-requisite to the issue or implementation of planning permission or otherwise to facilitate the carrying out the development of the Property;
- (l) all sums paid to any tenant or tenants of any or all of the Units by way of or in the nature of reverse premiums for fitting out purposes or otherwise commonplace in the market at the time of granting and any reasonable rent-free periods granted to tenants;
- (m) any non-recoverable value added tax rates insurance charges and other outgoings payable by the Buyer in respect of the Property;
- (n) all advertising and promotional expenses paid in connection with the sale or initial letting of the Units and promotion of the Property; and
- (o) any other item of expenditure reasonably and properly incurred by the Buyer exclusively in connection with the carrying out of the development of the Property and the sale or initial letting thereof;

**"LABV Business Plan"**

means the LABV Business Plan adopted under the Members' Agreement;



**"Land Cost"**

means the sum of [*relevant land transfer value*] plus all reasonable and proper legal fees, reasonable and proper agents fees;

**"Legal Fees"**

means all sums payable to the Buyer's Solicitors in relation to the development of the Property in respect of their proper and reasonable professional fees and disbursements (excluding recoverable value added tax) but for the sake of certainty not including any such fees incurred in relation to the negotiation of this Agreement or any future dispute between the parties to this Agreement;

**"Letting Agents"**

means such letting agents as may be appointed by the Buyer from time to time in relation to the letting of the Units;

**"Letting Agents' Fees"**

means all sums payable to the Letting Agents in relation to the letting of the Units in respect of their proper and reasonable professional fees and disbursements;

**"Longlease"**

means a lease granted at a premium for a term in excess of 50 years;

**"Members' Agreement"**

means the agreement dated *18 June 2013* made between (1) Watford Borough Council (2) Kier Project Investment Limited and (3) Watford Health Campus Partnership LLP;

**"Open Market Value"**

means the greater of the Market Value, Worth and Fair Value, as defined by the latest edition of the RICS Red Book;

**"Overage Payment"**

means the sum calculated pursuant to paragraph 4.1

**"Profit"**

means the amount (if any) expressed as a figure (in pounds) by which Receipts exceed Expenditure plus, in the case where the calculation is taking place in respect of the Fifth Anniversary Calculation Date only, the Open Market Value of any parts of the Property that have not been the subject of a Sale at the Fifth Anniversary Calculation Date;

**"Property"**

means [*the parcel of land referred to in the Transfer to which these overage provisions relate*];

**"Receipts"**

means all moneys received from any Sale of all or any part of the Property and all rental income including the capitalised value of all rental income from leases not classified as a Longlease (if any) received from any tenant or occupier of the Property or otherwise arising in right of ownership of the Property and all bonuses premiums or other payments received from any tenant or occupier of the Property or otherwise arising in right of ownership of the Property insofar as such income bonuses premiums or other payments received are not refunded to a purchaser on a sale of the Property or part of it and any rebates refunds returns of business rates insurance premiums or other outgoings received by the Buyer;

**"Sale"**

means the sale (whether by freehold transfer or by way of the grant of a Longlease) of a part or parts or of the whole of the Property to a third party at arm's length with vacant possession or subject to a lease or leases at the best price reasonably obtainable and the word "sold" shall be construed accordingly;

**"Seller"**

means West Hertfordshire Hospitals NHS Trust;

**"Selling Agents"**

means the Letting Agents and/or such other selling agents as may from time to time be appointed by the Buyer in relation to the sale of the Property;

**"Selling Agents' Fees"**

means all sums payable to Selling Agents in relation to the sale of the Property in respect of their proper and reasonable professional fees and disbursements;

**"Surveyor"**

means the surveyor to be appointed in the manner envisaged by paragraph 3;

**"Units"**

means all buildings or parts thereof situated at the Property from time to time as may be capable of being let and/or sold as separate units; and

**"Working Day"**

means any day other than Saturday Sunday or any other day which is a public holiday.

**1. GOOD FAITH**

The Buyer and the Seller mutually covenant and agree that:

- 1.1 during the continuance of this schedule all transactions entered into between the Buyer on the one hand and any third party on the other shall be conducted in good faith and at arm's length and on the basis set out or referred to in this schedule.

- 1.2 each of them shall at all times act in good faith towards the other and shall use all reasonable endeavours to ensure the observance of the terms of this schedule
- 1.3 neither party will seek to increase its profit or reduce its loss at the expense of the other and in particular, the Buyer will use reasonable endeavours to maximise the Profit;
- 1.4 each of them will do all things necessary or desirable to give effect to this schedule and to the agreements referred to;
- 1.5 each of them will respond promptly to request properly made by the other for approval information or assistance; and
- 1.6 each of them will at all times make full disclosure to the other of all relevant information data reports and opinions with respect to the development of the Property.

## **2. GENERAL MATTERS**

- 2.1 Nothing in this schedule shall be deemed to constitute a partnership between the parties and none of them shall have any authority to bind any other in any way save as in this Agreement expressly so provided.
- 2.2 The parties hereby agree to do all such acts and execute all such documents as may be necessary to give effect to the provisions of this schedule
- 2.3 The terms and provisions of this schedule shall only be capable of being varied by a supplemental agreement in writing or memorandum endorsed hereon executed by or on behalf of the parties hereto.
- 2.4 In respect of any notice required or authorised to be served by this schedule a copy shall also be sent by first class registered or recorded delivery post to the Surveyor.
- 2.5 No consent agreement or approval required from or to be given by any party and no agreement to be reached between the parties under the terms of this schedule shall be delayed or unreasonably withheld by either party.
- 2.6 This schedule shall remain in force until such time as the respective obligations of the parties hereto have been fully discharged.

## **3. DISPUTES**

- 3.1 Any dispute between the parties hereto during the continuance of this schedule shall be promptly referred for determination to a Chartered Surveyor or firm of Chartered Surveyors (the "Surveyor") experienced in property and construction matters to be appointed by agreement between the parties or in default of agreement within five Business Days on the application of either party (which may be made at any time) by the President for the time being of the Royal Institution of Chartered Surveyors.
- 3.2 The Surveyor shall certify all matters to be determined by him pursuant to the last foregoing paragraph by a certificate in writing and such certificate will be conclusive and binding on all parties save as to any point of law or manifest error.
- 3.3 The Surveyor shall act as an arbitrator in accordance with the Arbitration Act 1996.

- 3.4 If the Surveyor relinquishes his appointment or dies or if for any reason it becomes apparent that he will be unable to complete his duties hereunder either party may apply for the appointment of a new Surveyor in his place and this procedure may be repeated as many times as may be necessary.
- 3.5 The Surveyor's fees or charges and any in connection with his appointment shall be deemed to be an item of Expenditure unless the Surveyor is of the opinion that having regard to the conduct of the parties or otherwise the said fees and charges should properly and reasonably be borne in some other manner in which event the same shall be stated in his notice of determination.

#### **4. CALCULATION OF OVERAGE PAYMENT**

- 4.1 Subject to **paragraph 5** below, within five Working Days of the Calculation Date the Overage Payment shall be calculated in accordance with the following formula.

$$A = B - C$$

where

A = the Overage Payment

B = the Profit

C = the Estimated Profit

- 4.2 The Overage Payment shall then be applied as set out in **paragraph 4.3** below.
- 4.3 Within 10 Working Days after the Calculation Date or as otherwise agreed between the parties a sum representing the Overage Payment shall be distributed in the following manner:
- 4.3.1 there shall first be paid to the Buyer the sum of £5,000 (five thousand pounds); and
- 4.3.2 any remaining Overage Payment shall be applied 50% to the Buyer and 50% to the Seller.
- such payments to be paid by direct credit to the nominated account.
- 4.4 If the Overage Payment calculation in **paragraph 4.1** above results in a negative sum, no Overage Payment shall be applied.

#### **5. CALCULATION OF CLAWBACK**

- 5.1 If the Calculation Date occurs within one calendar year of the Completion Date and the Buyer has carried out no development on the Property then within 10 Working Days after the Calculation Date the Clawback Amount shall be applied 80% to the Seller and 20% to the Buyer.
- 5.2 If the Calculation Date falls after the first Anniversary and the Buyer has carried out no development on the Property then within 10 working days after the Calculation Date the Clawback Amount shall be applied 50% to the Seller and 50% to the Buyer.

Executed as a deed by )  
**WEST HERTFORDSHIRE HOSPITALS** )  
**NATIONAL HEALTH SERVICE TRUST** )  
 whose corporate common seal was )  
 hereunto affixed in the presence of: )



Authorised signatory Sm Hassan

Authorised signatory SGJ

Executed under the Common Seal of  
**WATFORD BOROUGH COUNCIL**  
 in the presence of:

Carol Chen  
 Head of Legal and Property Service

VERIFIED	
MIN No	Case No 12 18 25/4/13
O/O S/H	cc

*25/4/13*

Executed as a deed by )  
**WATFORD HEALTH CAMPUS PARTNERSHIP** )  
**LLP** )  
 acting by duly authorised representatives of its JV )  
 Partners )

Carol Chen

Duly authorised for and on behalf of  
**Watford Borough Council (JV Partner)**

Arund Sme

Duly authorised for and on behalf of  
**Kier Project Investment Limited (JV Partner)**

**Annexure 1**

**Plans**



CLIENT  
 STRUCTURAL ENGINEER  
 SERVICES ENGINEER  
 CONSULTANT

NOTES  
 DO NOT SCALE. RELATED DRAWINGS ONLY TO BE TAKEN FROM THIS DRAWING ON SITE DIMENSIONS ON SITE AND BLOCK DISCREPANCIES TO THE ARCHITECT.

THIS DRAWING IS PROTECTED BY COPYRIGHT.  
 ALL AREAS HAVE BEEN RELEASED FROM CURRENT CONTAMINATION. THEY MAY VARY BECAUSE OF SOIL BATTERY DESIGN DEVELOPMENT. CONSTRUCTION OF THE SERVICES STATUTORY REQUIREMENTS OR RE-DEVELOPMENT OF THE AREAS TO BE REDRAWN.



P1 30.03.13 1000 hours  
 No. 500  
 Revision  
 Date  
 Drawn  
 Checked

**PRELIMINARY**  
 tp bennett  
 architecture  
 interiors  
 planning

City Avenue, Watford, London WD17 7PL  
 Watford Health Campus  
 Watford Health Campus

Project  
 Watford Health Campus  
 Development Agreement  
 Plan 1

Date: 30.03.13  
 Scale: A1  
 Drawing No.: A10336  
 Drawing No.: W0065  
 Rev: P1



CLIENT \_\_\_\_\_

STRUCTURAL ENGINEER \_\_\_\_\_

SERVICES PROVIDED \_\_\_\_\_

CONSULTANT \_\_\_\_\_

NOTES:

DO NOT SCALE, MEASURED DIMENSIONS ONLY TO BE TAKEN FROM THE DRAWING. CHECK DIMENSIONS ON SITE AND REPORT DISCREPANCIES TO THE ARCHITECT.

THIS DRAWING IS PROVIDED BY CONSULTANT.

ALL AREAS HAVE BEEN MEASURED FROM CURRENT POSITIONS. THEY MAY VARY SLIGHTLY FROM SURVEY DATA DEVELOPED BY CONSULTANT. TOLERANCES, STAIRWAY REQUIREMENTS OR PROVISIONS ON THE AREAS TO BE MEASURED.



Project Name: **PRELIMINARY**

Client: **tp bennett**

Services: **architects, interiors, planning**

Address: **Watford Health Campus**

Scale: **1:500**

Date: **20.08.13**

Drawn by: **W00066**

Checked by: **P1**

Development Agreement  
Plan 2

A10336 W00066 P1