

DATED

2016

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SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL

- and -

Example of standard Section 38 Agreement where the land owner is also the developer. The correct draft wording will be forwarded to applicants as part of the Technical Approval process. Agreements written by third parties will not be considered.

## **A G R E E M E N T**

**Under Section 38 of the Highways Act 1980 containing covenants under section 33 of the  
Local Government (Miscellaneous Provisions) Act 1982  
in connection with**

land at **[Development name]** situated in the  
District of South Gloucestershire.

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The Schedule (parts 1 2 and 3)

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_ Two Thousand and Sixteen **BETWEEN** [Developer name and company no] whose registered office is [Developer's registered address] (hereinafter called the "Owner and Developer") of the first part SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL of The Civic Centre Civic Centre, High Street, Kingswood BS15 9TR (hereinafter called the "Council") of the second part and [Surety] whose registered office is [Surety's registered address] ( hereinafter called the "Surety") of the third part

**WHEREAS :**

(1) The Council is the local highway authority and the local planning authority for the purposes of the Highways Act 1980

(2) The Owner and Developer is the registered proprietor with absolute title under Title number [XXXX] at HM Land Registry of the Land known as [Development name] which is shown for the purpose of identification only by blue edging on the drawing annexed hereto which includes the site of the proposed road or roads shown coloured pink and all the other land required for the works hereinafter referred to (including all necessary rights of drainage shown coloured green on the drawing) and intends to make up the Road or Roads indicated on the said drawing and intends to dedicate the Road or Roads as a Highway so that the same shall become a Highway or Highways Maintainable at the Public Expense

(3) The Owner and Developer has requested that when the works hereinafter referred to for making up of the road or roads have been executed and maintained as hereinafter appearing the Council shall undertake the maintenance of the road or roads as highway or highways maintainable at the public expense which the Council has agreed to do upon the terms and conditions hereinafter appearing

(4) The Owner and Developer intends to make up the road or roads indicated on the drawing annexed hereto so that the Owner and Developer will dedicate the road or roads as a highway so that the same shall become a highway or highways maintainable at the public expense

(5) The Surety has agreed to guarantee the performance of the works by the Owner and Developer on the terms set out in this agreement.

**IT IS HEREBY AGREED AND DECLARED** by and between the parties hereto as follows:

**1 Interpretation :**

The words and expressions below shall mean the following:

- 1.1 "The Act" means the Highways Act 1980 (as amended)
- 1.2 "Adopted Highway" means Highway Maintainable at the Public Expense
- 1.3 "Adoption" means the process whereby the Highway Authority agrees to undertake the maintenance of a Highway as defined in Section 38 of The Act

- 1.4 “Ancillary Assets” means any street furniture signalling equipment and similar intended to be adopted and not already defined by Road or Roads
- 1.5 “Bond” means a sum equal to the estimated cost of the Works guaranteed by the Surety in this agreement
- 1.6 “Construction” for the purposes of this agreement means the physical works on site including any associated works
- 1.7 “The Council as Highway Authority” is defined in Part 1 (2) of The Act
- 1.8 “Dedication Drawings” means the drawing or drawings numbered **XXXX** annexed hereto showing the proposed Road or Roads coloured pink intended for dedication as Highway signed on behalf of the parties hereto or any amended drawing signed by the Director
- 1.9 “Default Cost” means the full outstanding value of the Bond at the time Default Notice is sent to the Surety
- 1.10 “Default Notice” is detailed in **clause 21** hereof
- 1.11 “Development” means all Works and Construction undertaken by the Owner and Developer on the Land
- 1.12 “Director” shall mean the Council's Director of Environment and Community Services for the time being or his duly appointed agent
- 1.13 “Dispute Notice” means the referral of any technical or legal disagreement to an Expert at the expense of the Owner and Developer
- 1.14 “Engineering Drawings” means the drawing or drawings submitted to the Director for Technical Approval detailing the full engineering design for the making up of the Road or Roads
- 1.15 “Estimated Cost” is the sum of **XXXX** pounds and **XXXX** pence (£**XXXX**) being the amount which is in the opinion of the Director the cost of carrying out the Works as specified in **clauses 4 14** and **15** plus any miscellaneous design accommodation traffic management equipment and plant which may be required
- 1.16 “Expert” is defined in **clause 25** hereof
- 1.17 “Final Certificate” means the certificate to be issued on satisfactory completion of the Works in accordance with **clause 15** hereof
- 1.18 “Highway” means a way over which all members of the public have the right to pass and repass at all times without hindrance
- 1.19 “Highway Maintainable at the Public Expense” is defined in Section 36 of The Act
- 1.20 “Inspection/Admin fee” means the sum calculated by the Director for the purposes of carrying out design Technical Approval inspection of the Works creation of the Section 38 agreement and any ancillary administration hereto the Inspection/Admin Fee is calculated as a direct percentage of the Bond figure which is agreed by the Council

Where unforeseen elements of the Road or Roads are encountered additional fees may be required

- 1.21 “Land” means the land indicated on the associated Land Registry Title Plan and defined in the Dedication Drawings annexed hereto
- 1.22 “Maintenance Period” means the period specified in **clauses 13 and 14** hereof
- 1.23 “Part 1 Certificate” means the certificate to be issued on satisfactory completion of Part 1 Works in accordance with **clause 11** hereof
- 1.24 “Part 1 Works” means the works referred to in Part 1 of the Schedule hereto
- 1.25 “Part 2 Certificate” means the certificate to be issued on satisfactory completion of the Part 2 Works in accordance with **clause 13** hereof
- 1.26 “Part 2 Works” means the works referred to in Part 2 of the Schedule hereto
- 1.27 “Reports” means documentation submitted in support of Technical Approval the Road Safety Audit or as part of the process of Expert
- 1.28 “Road Land” means the site of the Road or Roads
- 1.29 “Road or Roads” means the carriageway and footways including any on and off-site highway drainage street lighting traffic signals landscaping service strips signs lines vehicular crossings and all other things ancillary thereto as shown on Dedication Drawings
- 1.30 “Road Safety Auditor” shall mean a person or persons that works on all aspects of the Road Safety Audit independent of the designer and approved for a particular Road Safety Audit by the Council the Road Safety Auditor shall have the appropriate levels of training skills and experience in road safety engineering and/or accident investigation the Road Safety Auditor may be drawn from within the design organisation or from another body but must be approved in advance by the Council in accordance with the Council’s Road Safety policy
- 1.31 “Road Safety Audit” shall mean an audit in accordance with the approved procedures of the South Gloucestershire Council Safety Audit policy of the safety aspects of the Engineering Drawings and the construction of the Works
- 1.32 “Schedule” means the schedule identifying all the works required to obtain the Part 1 Certificate and Part 2 Certificate and listing all Structures and Ancillary Assets to be adopted
- 1.33 “Specification” means the final compilation of documented technical requirements given to a producer in terms of performance or composition as detailed in the Standards
- 1.34 “Standards” means the latest edition of the publication entitled “Adoption Standards for Highways in South Gloucestershire” a copy of which the Owner and Developer hereby acknowledges has been supplied to him

- 1.35 “Statutory Undertaker” means a statutory undertaker as defined in Section 329(1) of The Act and any undertaker deemed by any enactment to be a statutory undertaker for the purposes of that Act and any telecommunications code operator
- 1.36 “Street Manager” means the liability of the Owner and Developer in accordance with the New Roads and Street Works Act 1991
- 1.37 “Structural Works” means any works associated with any Structures and or Ancillary Assets shown on the Dedication Drawings marked “to be adopted” and listed in Part 3 of the Schedule
- 1.38 “Structures” includes bridges culverts drainage pipes retaining walls reinforced concrete protection features public art steps and ramps and the capping of mine workings or other voids for the purposes of this Agreement
- 1.39 “Technical Approval” means the notification by the Director to the Owner and Developer that the Engineering Drawings and any associated Reports and/or Specifications are in accordance with South Gloucestershire Council Standards
- 1.40 “Traffic Regulation Order” means the legal document required to support a range of measures which govern or restrict the use of public roads
- 1.41 “Works” means the works specified in the Schedule hereto and any associated works for the making up of the Road or Roads

## **2. Statutory Powers**

**THIS** Agreement will be registered as a Local Land Charge and is entered into pursuant to Section 38 of the Act containing covenants under Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and shall be enforceable (without any limit of time) against any person deriving title from the original covenantor in respect of his interest in any of the Land defined in the Drawing annexed hereto and any person deriving title under him in respect of any lesser interest in that Land as if that person had also been an original covenanting party in respect of the interest for the time being held by him

## **3. Substantive Covenants**

**The** Owner and Developer for and on behalf of itself and its heirs assigns and successors in title with the intention that the following provisions shall bind the Land and every part of it into whosoever's hands it may come covenants with the Council that it will comply with the covenants under **clauses 4 – 30** and Schedules contained herein

## **4. Owner and Developer's Covenants**

- 4.1 **The** Owner and Developer dedicates a right of way as a Highway for the use of the public for all purposes over the land shown coloured pink on the Dedication Drawing in accordance with the conditions hereinafter appearing
- 4.2 **The** Owner and Developer shall carry out and complete the Part 1 Works and Part 2 Works at its own expense in a good and workmanlike manner and with proper approved

materials in accordance in all respects with the Standards and the Engineering Drawings to the satisfaction of the Director within 18 calendar months from the date hereof

- 4.3 **The** Owner and Developer shall secure a Bond equal to the Default Cost with the Surety which shall be released in accordance with **clause 16**
- 4.4 **SUBJECT** to **clause 8** hereof any works carried out prior to the granting of Technical Approval of the Engineering Drawings will be carried out at the Owner and Developer's risk
- 4.5 **THE** Part 1 Works shall be completed within 12 calendar months from the date hereof and the Part 2 Works shall be completed within 6 calendar months of the date of issue of the Part 1 Certificate
- 4.6 **Before** commencing any part of the Works the Owner and Developer shall submit the completed Engineering Drawings to the Road Safety Auditor for a Road Safety Audit the Safety Audit and any report on the recommendations shall be submitted to the Director for final approval and the Owner and Developer shall amend the Engineering Drawings in accordance with the Road Safety Audit
- 4.7 **When** the Works have been completed the Owner and Developer shall give notice to the Road Safety Auditor requesting the Road Safety Auditor to carry out the final Road Safety Audit of all safety aspects of the Works Any report on the recommendations shall be submitted to the Director for final acceptance The Owner and Developer shall carry out any amendments to the Works pursuant to such audit prior to the issue of the Part 2 Certificate
- 4.8 **Without** prejudice to the Council's right to take action under Sections 59 of the Act (or otherwise) the Owner and Developer shall either reimburse to the Council the cost of repairing any damage caused to any Highway Maintainable at the Public Expense by the carrying out of the Works or the Development or alternatively (at the option of the Council) effect such remedial works as may be required by the Director at their own expense
- 4.9 **The** Owner and Developer shall pay the Council its reasonable costs in connection with any temporary or permanent Traffic Regulation Orders and any associated consultation procedures for the Development or the Works and carry out forthwith any consequential physical works including associated works prior to the issue of the Part 2 certificate
- 4.10 **The** Owner and Developer will fulfil the role of Street Manager in accordance with Section 49 of the New Roads and Street Works Act 1991 to the satisfaction of the Director until the issue of the Final Certificate
- 4.11 **The** Owner and Developer shall complete any Works during the Maintenance Period to the satisfaction of the Director and prior to the issue of the Final Certificate
- 4.12 **Subject** to **clause 18** the Owner and Developer shall pay the Council its proper costs in respect to inspection and legal fees

## **5. Declaration :**

**THE** Owner and Developer hereby declare and warrant to the Council that it has and will throughout the duration of this Agreement maintain full right liberty and consent to carry out such Works as may be necessary to comply with the terms of this Agreement and to connect the Road or Roads to a vehicular Highway or Highway Maintainable at the Public Expense

## **6. Statutory Undertakers - Connections to Existing Services :**

**THE** Owner and Developer shall before connecting the Road or Roads with any Highway or Highway Maintainable at the Public Expense give notice to each person board or authority being the Statutory Undertaker for the time being of any service or services laid in upon or under such Highway or Highways of the proposal to make such connection as if the connection were a work to be executed for road purposes and were mentioned in Section 86(2) of the New Roads and Street Works Act 1991 and shall indemnify the Council in respect of the cost of any Works or measures considered necessary by any Statutory Undertaker in consequence of the proposal to make such connection

## **7. Traffic Management Measures :**

**The** Director shall in accordance with **clause 4.8** obtain at the Owner and Developer's expense any temporary or permanent order required in accordance with the Traffic Regulation Act 1984 or other relevant legislation relating to the Road or Roads

## **8. Technical Approval**

- 8.1 **Subject** to his satisfaction the Director will grant Technical Approval for all the Engineering Drawings and any associated reports and / or specifications
- 8.2 **ANY** works carried out prior to the granting of Technical Approval of the Engineering Drawings and any associated reports and specifications will be carried out at the Owner and Developer's risk

## **9. Indemnity :**

**THE** Owner and Developer hereby indemnifies the Council in respect of all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works other than those arising out of or in consequence of any act of neglect default or liability of the Council

## **10. Access for Inspection Purposes :**

10.1 **the** Owner and Developer shall during the carrying out of the Works give to the Director access to every part of the Works thereof and the places where materials or plant for the Works may be stored or are in the course of preparation manufacture or use for the purpose of inspecting the Works and all materials and plant used or intended to be used in the carrying out thereof

### **10.2 Testing of Materials :**

**in** accordance with the Standards the Director shall be permitted at the Owner and Developer's expense to test any materials plant and workmanship used or proposed to be used in the Works and to reject any which prove to be unsatisfactory as a result of testing



**10.3 Inspection of Work :**

**the** Owner and Developer will give the Director at least two full working days' notice of any Works requiring inspection the Owner and Developer shall at the Owner and Developer's expense and in accordance with the Standards open up for inspection to the Director any portion of the Works which has been covered up without first being inspected by the Director provided the Director was not first given an opportunity to inspect the Work and failed to do so

**11. Part 1 Certificate :**

11.1 **ON** the completion of the Part 1 Works as detailed under The Schedule to the satisfaction of the Director in all respects and so long as the Road or Roads are connected to a Highway or Highway Maintainable at the Public Expense the Director shall issue his Part 1 Certificate to the Owner and Developer and from the date thereof the Road or Roads shall become dedicated as a Highway or Highways and remain forever open for the use of the public at large but shall not become maintainable at the public expense until the issue of the Final Certificate.

11.2 **Prior** to the issue of the Part 1 Certificate the Director shall ensure that all sewers constructed beneath the Road or Roads are subject to an agreement pursuant to Section 104 of the Water Industry Act 1991

12.3 **Prior** to the issue of the Part 1 Certificate and in accordance with **clause 4.9** the Owner and Developer shall ensure all areas of construction are isolated from occupied areas and areas accessible to the general public

**12. Occupation of Buildings :**

**NO** building erected by the Owner and Developer or on his behalf fronting adjoining or abutting on to the Road or Roads shall be occupied until the Director has issued his Part 1 Certificate in respect of the Road or Roads or such part of the Road or Roads as will provide the occupier with access to a Highway or Highway Maintainable at the Public Expense

**13. Part 2 Certificate :**

**ON** completion of the Part 2 Works to the satisfaction of the Director in all respects and so long as the Road or Roads are connected to a Highway or Highway Maintainable at the Public Expense the Director shall if all sewers constructed beneath the Road or Roads under Section 104 of the Water Industry Act 1991 have been adopted issue his Part 2 Certificate to the Owner and Developer and from the date thereof :

13.1 **the** Maintenance Period of twelve calendar months shall commence to run

13.2 **in** the event that **clauses 14** and **15** are not complied with due to breach by the Owner and Developer the Maintenance Period shall continue to run until such time as the requirements of **clauses 14** and **15** have been met

#### **14. Obligations During the Maintenance Period :**

**DURING** the Maintenance Period :

- 14.1 **the** Owner and Developer shall remain the Street Manager for the purposes of Section 49 of the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof until such time as the Road or Roads shall become Highway Maintainable at the Public Expense
- 14.2 **the** Owner and Developer shall be responsible for the payment of all energy charges attributable to street lighting and those Ancillary Assets listed in Part 3 of the Schedule until the issue of the Final Certificate
- 14.3 **prior** to the end of the Maintenance Period the Owner and Developer shall meet the cost of inspecting the road surface water drainage system by means of closed circuit television to be approved by the Director

#### **15. Final Certificate :**

**PRIOR** to the expiration of the Maintenance Period the Owner and Developer shall forthwith at his own expense reinstate and make good any defect or damage which may have arisen from any cause whatsoever (including any defect in or damage to the road surface water drainage system) of which he has been notified in writing by the Director so that the Works comply with the Standards

#### **AND THEN PROVIDED THAT :**

- 15.1 **the** Owner and Developer has paid to the Council all amounts due to the Council under this Agreement and
- 15.2 **any** necessary reinstatement or other Works have been completed to the satisfaction in all respects of the Director and
- 15.3 **the** Owner and Developer has delivered to the Director As Built construction Drawings and asset register information showing the works as correct on site and
- 15.4 **the** Owner and Developer has delivered to the Director copies of all electrical certificates drainage test certificates and the health and safety file
- 15.5 **the** Road or Roads are connected to an existing Highway Maintainable at Public Expense

the Director shall issue his Final Certificate to the Owner and Developer and shall release the Surety from all liability hereunder

#### **16. Procedure for Inspection and Issue of Certificates :**

- 16.1 **WITHIN** 20 working days of receipt of written application from the Owner and Developer for the issue of a Part 1, Part 2 or Final Certificate pursuant to this Agreement the Director shall inspect the Works and where necessary provide the Owner and Developer

with a definitive list in writing of any remedial Works required to be carried out before the issue of that certificate. Any such remedial works shall be subject to the inspection procedure as per **clause 10.3** until such time as they shall be completed to the satisfaction of the Director who within 20 working days thereafter shall issue the relevant certificate.

16.2 **On** the issue of the Part 1 Certificate the Bond may be reduced to 60% of the Default Cost

16.3 **On** the issue of the Part 2 Certificate the Bond may be reduced to 10% of the Default Cost

16.4 **On** the issue of the Final Certificate the Bond may be released

**17. Adoption :**

**UPON** the issue of the Final Certificate the Road or Roads shall become a Highway or Highways Maintainable at the Public Expense

**18. Inspection / Legal Fee :**

18.1 **forthwith** upon the completion of this Agreement the Owner and Developer shall pay to the Council:

18.1.1 the sum of **XXXX** pounds and **XXXX** pence (£**XXXX**) in respect of the costs incurred in providing design Technical Approval inspecting the Works and any ancillary administration

18.1.2 legal costs incurred in the preparation negotiation drafting and completion of this agreement

18.2 **receipt** by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Owner and Developer nor absolve the Owner and Developer from any liability or obligation imposed upon him by the terms of this Agreement or by statute or at common law and the Council will not be liable for any loss damage or injury which the Owner and Developer may sustain by reason of insufficient or faulty inspection of the Works by the Council

**19. Determination by the Council :**

**IF** the Owner and Developer fails to perform or observe any of the conditions stipulations or obligations on his part contained herein or if a receiving order in bankruptcy is made against him or if the Owner and Developer is being wound up or if the Owner and Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Owner and Developer in respect of such non-performance or non-observance determine this Agreement (except for **clauses 20, 21 and 22**) hereof and such provision hereof as may be necessary for their interpretation) by notice in writing signed by the Director and delivered to the Owner and Developer or sent by post to the address stated in this Agreement

## **20. Power to Execute Works in Default :**

**WITHOUT** prejudice to **clauses 4** and **19** hereof if the Owner and Developer fails to execute or complete the Works in accordance with the Owner and Developer's obligations hereunder the Council shall after not less than twenty eight days' notice in writing to the Owner and Developer be entitled to execute or complete the Works in default by its own employees or by contract or otherwise to issue the requisite certificates and to recover the cost of doing so as certified by the Director from the Owner and Developer

## **21. Surety's Obligations :**

21.1 **IF** the Owner and Developer at any time fails to perform or observe any of the conditions stipulations or obligations on his part contained in this Agreement or if a receiving order in bankruptcy is made in respect of the Owner and Developer's estate or if the Owner and Developer is being wound up or if the Owner and Developer enters into a composition or scheme of arrangement (otherwise than for the purposes of reconstruction or amalgamation) the Director may without prejudice to any statutory rights or powers or any other right claim remedy under this Agreement by sending to the Surety notice in writing (hereinafter referred to as the "Default Notice")

21.1.1 **specifying** the work (hereinafter referred to as the "Default Work") to be carried out in order that the Works may be executed or completed as the case may be in accordance with this Agreement; and

21.1.2 **requiring** payment of the Default Cost

21.2 **WITHIN** twenty eight days of receiving the Default Notice the Surety shall

21.2.1 **pay** the Default Cost to the Council; or

21.2.2 **send** to the Council notice in writing (hereinafter referred to as the "Surety's Counter Notice") of the intention of the Surety to carry out the Default Work in accordance with the Dedication Drawings and Specification and to the Directors satisfaction

21.3 **IF** the Surety having sent the Surety's Counter Notice to the Council fails to start the Default Work within fifty six days after the Surety received the Default Notice the Surety shall forthwith pay the Default Cost to the Council with simple interest thereon at the rate of four per cent per annum greater than the National Westminster Bank Plc base rate in force from time to time calculated on a daily basis from the date on which the Surety received the Default Notice

21.4 **IF** the Surety having sent the Surety's Counter Notice to the Council starts the Default Work and the Default Work is not completed within such further period as may be agreed by the Council the Surety shall subject to **sub-clause 21.5** forthwith on demand by the Director pay to the Council such sum as the Director may determine as being the cost of carrying out any Default Work not carried out by the Surety or the cost of maintaining the Works for the period of twelve months prior to the Road or Roads becoming maintainable at the public expense as may be the case (or as being the cost of both) and also pay to the Council the amount determined by the Director as being the amount of the appropriate usual establishment charges of the Council

21.5 **THE** sum payable under **sub-clause 21.4** shall not exceed the Default Cost and the covenant in **sub-clause 22.2** shall apply with respect to such sum and on the issue of the Final Certificate the Surety shall be released from all liability hereunder

## **22. Council's Covenants :**

**THE** Council **HEREBY COVENANTS** with the Owner and Developer and with the Surety for the benefit of all building plots fronting adjoining or abutting the Road or Roads and for each and every one of them :

22.1 to apply all monies received from the Surety as hereinbefore mentioned towards the expenditure involved in executing or completing the Works and maintaining the Works and making good all defects for a period of twelve months after completion and the amount so received shall be deducted from any sum which would otherwise be recoverable from the owners of premises fronting the Road or Roads under the provisions of the Private Street Works Code or any other act for the time being in force replacing or amending the same.

22.2 on completion of the Default Work the Council shall provide the Surety with a Schedule identifying the precise nature and extent of the Default Work undertaken and the Default Cost attributable to the Default Work

22.3 in the event of the sum paid by the Surety to the Council exceeding the cost of executing or completing the Works and maintaining the Works and making good all defects as aforesaid together with the amount of the Council's usual establishment charges to repay to the Surety within twenty eight days after the Road or Roads become Highway or Highways Maintainable at the Public Expense the amount of such excess with interest calculated at half yearly rests on the unexpended balance for the time being of the sum paid by the Surety to the Council at the rate of interest prevailing from time to time on monies held in a deposit account with the Council's bankers

**THE** Council **HEREBY FURTHER COVENANTS** that the Final Certificate will be issued in accordance with this Agreement and that the Surety will be released from all liability under this Agreement in accordance with this Agreement

## **23. Part or Parts :**

**NOTWITHSTANDING** anything hereinbefore contained the Owner and Developer may from time to time during the currency of this Agreement apply to the Director for his Part 1 Certificate or his Part 2 Certificate in respect of any Part of the Road or Roads (being the whole width of the Road or Roads between points to be defined in the application) and if the Director shall be satisfied that the Part so defined is in all respects suitable to be treated as a separate road for the purposes of construction and adoption in accordance with the several provisions contained in this Agreement and that the Road or Roads which form the Part are connected to an existing Highway or Highway Maintainable at the Public Expense then he shall issue a separate Part 1 Certificate or Part 2 Certificate as the case may be in respect of that Part and thereafter the same proceedings may be taken in respect of the said Part of the Road or Roads as if the said Part were the subject of a separate Agreement under which the terms of this Agreement applied to the said Part separately from the remainder of the Road or Roads but without prejudice to the

application of this Agreement to the remainder of the Road or Roads and the liability of the Surety shall be reduced as may be agreed by the Director with the Owner and Developer

**24. Assignment :**

**THIS** Agreement may not be assigned by the Owner and Developer without the consent of the Council which consent shall not be unreasonably withheld

**25. Expert Determination:**

25.1 If any dispute or difference shall arise between the parties as to the construction or meaning of this Agreement or their respective rights, duties and obligations under this Agreement or as to any matter arising out of or in connection with the subject matter of this Agreement including the refusal or withholding of any consent or failure to agree a matter stated to be subject to agreement and unless this Agreement expressly provides otherwise either party may by notice in writing to the other party (a "Dispute Notice") refer any issues between them at the Owner and Developer's expense to an independent professionally qualified expert to be agreed by both parties (the "Expert"). The Dispute Notice shall set out the terms with which the party giving the Dispute Notice disagrees and, in detail, the reasons for that disagreement.

25.2 The Expert shall be agreed by the parties or, failing agreement within 10 (ten) Working Days of the Dispute Notice being given, an independent expert shall be nominated by the President for the time being of the Law Society on the following basis:

- (i) if such dispute shall relate to matters concerning the construction, interpretation and/or the application of this Agreement the Expert shall be a barrister or a solicitor;
- (ii) if such dispute shall relate to matters necessitating any calculation or otherwise concerning a financial aspect of this Agreement the Expert shall be a chartered accountant;
- (iii) if such dispute shall relate to the valuation of any interest or estate in any part of the Site the Expert shall be a chartered surveyor;
- (iv) in any other case the Expert shall be (at the discretion of the President of the Chartered Institute of Arbitration) a chartered civil engineer; or
- (v) if the Expert nominated under such application shall die or decline to act another Expert may be appointed in his place.

25.3 The Expert shall act as an expert and not as an arbitrator.

25.4 The parties shall, within 10 (ten) Working Days of the date of the notification of the Expert's appointment, make written submissions to the Expert and/or send documents to him. The Expert shall, but is not obliged to, send copies of one party's submissions to the other for comment. In addition, the parties shall if requested make available to the Expert any documentation which the Expert, in his absolute discretion, considers necessary or helpful in reaching his decision on the issues between the parties.

25.5 The Expert's decision shall be final and binding on the parties. The Expert shall give reasons for his decision and his costs shall be in his award.

**26. Standards to Take Precedence :**

**IN** the event of any conflict between any provision of the Standards and any thing shown on the drawings including details or particulars thereon the provisions of the Standards shall take precedence over any such thing, details or particulars

**27. Structures and Ancillary Assets :**

27.1 If during the course of the Works the Owner and Developer shall propose to construct or install Structures and or Ancillary Assets as part of the Road or Roads or to support or retain the Road or Roads or land adjacent thereto or to carry out any Work whatsoever associated with such Structures and or Ancillary Assets ("the Structural Works") the Owner and Developer shall submit details thereof in advance to the Director and shall not commence the Structural Works on site until the submitted details have been approved in writing by the Director

27.2 The Structural Works shall be carried out to the satisfaction of the Director and within the time that he shall require. They shall be maintained by the Owner and Developer unless and until they are adopted under **clause 17** hereof and it is hereby agreed and declared that only the Structures and Ancillary Assets marked "to be adopted" on the plan annexed and listed in Part 3 of the Schedule hereto shall be adopted

27.3 Notwithstanding **clause 4** hereof the specification for the Structural Works shall be the Design Manual for Roads & Bridges and any subsequent amendment thereof

27.4 **Clauses 9 10 11 15 16 18 20 21** and **22** hereof shall have effect as if the Structural Works whether or not to be adopted were comprised within the Part 1 Works

**28. Visibility Splays :**

**THE** Owner and Developer **HEREBY COVENANTS** with the Council for the benefit of the Road or Roads and every part thereof that they will not plant sow grow place erect or construct anything in or upon any part of the land shown by red edging on the Dedication Drawings aforesaid and identified as a visibility splay on the Dedication Drawings that may be or become in excess of 600mm or such figure as may be specified in the Standards above the level of that part of the carriageway of the Road or Roads adjoining thereto

**29. Option in Support of Highway Dedication :**

29.1 Following the completion of this agreement and if requested by the Council the Owner and Developer shall without delay and at its own cost execute and complete or procure the completion by all necessary parties of a transfer to the Council of the Road Land with full title guarantee and at nil consideration.

- 29.2 The transfer shall be free from encumbrances other than those created prior to the date of this agreement (with the exception of any purely financial charge) which are consistent with the use of the Road Land for Highway purposes or the proper management and maintenance of the Road Land.
- 29.3 The Owner and Developer shall pay the Council's reasonable legal costs and disbursements associated with the transfer and shall assist in any application to the Land Registry for the registration of title to the Council with full title guarantee in respect of the Road Land.
- 29.4 The Owner and Developer shall not without the Council's prior written consent make a disposal of the whole or any part of the Road Land to any other person or persons or grant any rights over it except a right of way for all purposes in accordance with any planning permission granted by the local planning authority in respect of the Road Land

**30. Development Plan :**

**THE** Owner and Developer shall at his own expense supply the Council with a copy of the Development Plan showing the separation of the Land into plots relating to the land adjoining the Road or Roads prior to the issue of the Part 1 Certificate



# THE SCHEDULE

## Part 1

1. All highway drainage complete and operational including any flow control features
2. All other drainage contained within the Highway completed and operational
3. Public Sewer Authority adoption agreement (Water Industry Act 1991) completed
4. Carriageway constructed up to and including base and binder
5. All footpaths constructed up to and including surface and kerbing
6. All services / utilities apparatus contained within the public Highway completed
7. Creation of sight lines and clearance of visibility splays
8. All street lighting completed and operational
9. Any signal controlled features made operational
10. All vehicular crossings constructed up to and including surface and kerbing
11. All Structures completed including Structures supporting the Highway and Structures supporting land above or adjacent to the Highway
12. All street naming and postal addressing including erection of street nameplates
13. Street furniture installed
14. Any temporary signing and lining required at the Director's request
15. Ensure all areas of ongoing construction are isolated from occupied areas and areas accessible to the general public
16. Supply Development Plan

## Part 2

17. Any kerbing not completed in Part 1
18. Carriageway surface course completed
19. All highway landscaping completed
20. Road markings & signage completed and installed
21. All Ancillary Assets completed installed and energised
21. Completed Traffic Regulation Orders
22. A full CCTV survey of all highway drainage to be approved by the Director prior to highway surfacing
23. Adoption of sewers under Section 104 of the Water Industry Act 1991
24. All other works described in the Specification and shown in the drawings

## Part 3

25. List of Structures and Ancillary Assets marked "to be adopted" on the Dedication Drawing:

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**EXECUTED** as a deed by the parties and delivered the day and year first before written

EXECUTED AS A DEED BY AFFIXING THE COMMON SEAL of [Owner and Developer]

in the presence of :

Director

Secretary

EXECUTED AS A DEED BY AFFIXING THE COMMON SEAL of SOUTH  
GLOUCESTERSHIRE DISTRICT COUNCIL

in the presence of :

Head of Legal and Democratic Services

EXECUTED AS A DEED BY AFFIXING THE COMMON SEAL of [Surety]

in the presence of :

Authorised Officer