

ITEM NO: 11 APPENDIX 1

DEVELOPMENT AGREEMENT:

Definitions:

Authority's Representative: -

With effect from the signing the Development Agreement the Authority's Representative shall be the person who shall exercise the functions and powers of the Authority in relation to the performance of the Development Agreement. The Authority shall be entitled from time to time to amend the identity of its appointed representative by giving prior notice in writing to the Academy.

Authorities Obligations:

1. Enter into the D&B Contract upon the signing of the Development Agreement.
2. Use reasonable endeavours to require the D&B Contractor to complete the Works to enable the Completion Certificate to be issued by the Date or Dates for Completion (as defined in the D&B Contract).
3. The Authority shall ensure that the Academy's Representative shall so far as reasonably practicable be duly informed of matters relevant to the operation of the Development Agreement.
4. The Authority is entitled to authorise the Contractor to proceed with the finalisation of the design and the implementation of the Works. The Authority shall consult with the Academy so far as is reasonably practicable however the Authority shall be entitled to proceed with the finalisation of the design and its incorporation within the Works without prior agreement or authorisation from the Academy.

Academies' Responsibilities:

- To perform the obligations of the Development Agreement
- Confirms that the Academy is satisfied with the D&B contract by entering into the Development Agreement.
- To provide the contractor with access, permission to be present on site, rights of egress.

Indemnity:

The Authority shall be responsible for and shall release and indemnify the Academy on demand from and against all liability for Direct Losses arising from:

- Death and/or personal injury;
- Loss of or damage to property (including property belonging to the Academy or for which it is responsible);
- Third party actions, claims and/or demands including costs, charges and expenses (including legal expenses on an indemnity basis) arising as a result thereof brought against the Academy or any Academy Related Party which may arise out of or in consequence of:

The Authority shall not be responsible for or be obliged to indemnify the Academy:

- for any matter that arises as a direct result of the Authority acting on any written instruction issued by the Academy
- for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Academy or any Academy Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for the breach by the Authority of its obligations under this Agreement) or by the breach by the Academy of its obligations under this Agreement
- where the claim arises from any matter concerning the carrying out of the Works by the Contractor or any Contractor Related Party or the performance or non-performance by the Contractor of its obligations under the D&B Contract or the presence of the Contractor or any Contractor Related Party at the Property or at a Relevant School to the extent that the Authority having used all reasonable endeavours to do so is unable to claim indemnity or (notwithstanding being so entitled to claim) and having used its reasonable endeavours is unsuccessful in claiming indemnity from the D&B Contractor

The Academy shall indemnify and keep the Authority indemnified at all times from and against:

- any claim for or in respect of death and/or personal injury of any employee of or person engaged by the Authority or any Authority Related Party or the Contractor or a Contractor Related Party;
- any physical loss or damage to the Contractor's or a Contractor Related Party's assets or to the Authority's Assets.
- any breach of statutory duty for which the Authority is liable;
- any third party actions, claims and/or demands including costs, charges and expenses (including legal expenses on an indemnity basis) arising in consequence thereof brought against the Authority or an Authority Related Party or the Contractor or a Contractor Related Party.
- which may arise out of or in consequence of the performance or non performance of this Agreement by the Academy or any negligent or wilful act or omission of the Academy which is a breach of the Academy's obligations under this Agreement other than to the extent that such negligent or wilful misconduct

would not have occurred but for a breach by the Authority of its obligations under this Agreement.

- The Academy further agrees that (to the extent not already provided for under the provisions of Sub-Clauses 0) any breach by the Academy of its obligations under this Agreement which results in the occurrence of a Compensation Event shall be the responsibility of the Academy and accordingly the Academy shall indemnify and keep the Authority indemnified (subject to the Authority's duty to secure the mitigation of any loss arising) against any losses costs and expenses and other expenditure incurred by the Authority or on behalf of the Authority by reason of the occurrence of a Compensation Event for which the Academy is responsible under the provisions of this Agreement

Variations:

The Authority shall consult with the Academy prior to the agreement of any Variation which may arise in respect of the Works so far as is reasonably practicable. The Authority shall be entitled to proceed with any Variation without prior agreement or authorisation from the Academy and accordingly the following provisions shall apply in respect of any request made by the Authority or the Contractor that the Works be varied:

Failure to achieve completion:

The Parties shall thereupon meet as soon as practicable to consider the circumstances that have arisen and seek to agree such actions as should be taken in the circumstances and (if appropriate) the basis upon which this Agreement should remain in existence and any variations to the terms and conditions which when agreed in writing shall thereupon govern the performance of this Agreement.

Remedies for delayed completion:

OPTION A

If a Completion Certificate has not been issued in accordance with the D&B Contract in respect of the Works or the relevant part of the Works by the relevant Date or Dates for Completion, the Academy acknowledges that the Authority is entitled to issue a notice or notices in writing to the Contractor to that effect. In the event of a revised Date or Dates for Completion being fixed after the issuing of any such notice, such fixing shall cancel the relevant earlier notice.

Provided a notice or notices has or have been issued under the D&B Contract (and has or have not been cancelled), **the Authority shall indemnify the Academy on demand by way of liquidated damages reflecting the losses of the Academy in respect of the non issue of the relevant Completion Certificate** by the required date. The relevant date is from the Date for Completion up to and including the relevant Completion Date and such debt shall be **payable by the Authority** within 5 Business Days of receipt of the relevant sum from the Contractor.

The Authority and the Academy agree and intend that the liquidated damages amounts which the Authority may become liable to pay are not a penalty but rather a **genuine pre-estimate of the loss which the Academy will suffer as a result of a**

delay in the achievement of the relevant Completion Date after the relevant Date for Completion. Calculation to be fixed by reference to provisions of the D&B Contract.

Option B

If a Completion Certificate has not been issued in accordance with the D&B Contract in respect of the Works or the relevant part of the Works by the relevant Date or Dates for Completion **the Academy acknowledges that the Contractor has obligations to supply, at its own cost, portacabins or other temporary accommodation within the curtilage of the Relevant School which meets the Authority's Requirements** and can be used without interfering with the provision of education to pupils to allow the School to accommodate all increases in pupil numbers at the School or to accommodate all pupils at the [Relevant School for whom accommodation is not available at the School prior to the Completion Date.

The Academy further acknowledges that the Authority is entitled to licence the Contractor in respect of any required area within the Relevant School for the purpose of the Contractor's compliance with the Design and Build Contract.

Other:

- D&B Contractor entitled to sub-let part/s of the Design & Build contract.
- Positive obligation on SCC to oversee & manage the D&B Contract.
- Obliges SCC to take up Warranties from contractors/consultants.
- No party shall be entitled to bring a claim for a breach of obligations under the agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs.
- Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of the Development Agreement, Occupational Licences and Leases.

Dispute resolution:

Any disputes between the Parties shall be resolved by a person nominated by or on behalf of the Secretary of State for Children Schools or any other Minister of the Crown becomes a party to this Agreement such dispute shall be referred on the application of either party to the Centre for Effective Dispute Resolution (CEDR Solve)

Termination:

In the event that any circumstances arise which cause the Authority to give consideration to the termination of this Agreement the Authority undertakes to consult with the Academy wherever practicable prior to the exercise of any right that it may have to so terminate.

The Authority shall be entitled to exercise any right available to it to terminate the D&B Contract and any such termination shall not constitute a breach of the Development Agreement or give rise to other claims or right of indemnity against the Authority. The Authority will where reasonable and practicable to do so notify the Academy if the Authority is entitled and intending to terminate the D&B Contract.

The Academy acknowledges that the rights of the Contractor to terminate exist in the event that the Authority defaults under the D&B Contract. If the Contractor threatens such termination the Parties to the development Agreement shall consult promptly with a view to taking such action as is appropriate particularly having regard to the rights available to the Authority to remedy any breach that has arisen.

In the event that any Party to the Development Agreement becomes aware of a breach of the D&B Contract which would constitute a default on the part of the Contractor the Parties shall consult promptly with a view to agreeing what action should be taken, which action shall at all times be taken by the Authority in its sole discretion

D&B contract Novation

The Authority undertakes to the Academy to promptly enter into the Deed of Novation.

The Academy shall not resist any requirement on the part of the Authority that it accepts the benefit and the burden of the Development Agreement by Novation and accordingly the Academy undertakes that it shall promptly enter into the Deed of Novation upon demand made by the Authority at any time following the expiry of the Defects Liability Period.

Agreement for Grant of Lease:

The Development agreement sets out that:

- The Authority shall grant and the Academy shall take the Lease
- The term of the Lease will be 125 years commencing on the Term Commencement Date (the date immediately following the day upon which the Defects Liability Period expires – 12 months post practical completion).