

Dated 12th March 2019

Employer's Agent , Principal Designer (Pre –Contract) and CDM Adviser (Post – Contract) Funder Collateral Warranty relating to the conversion works and fit out of the premises at New Mint House, Vision Park, Bedford Road, Petersfield

David Southern T/AS DSA Surveyors ⁽¹⁾
Handelsbanken PLC ⁽²⁾ and
Moneybarn Limited ⁽³⁾

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DATE

PARTIES

- (1) DAVID SOUTHERN (T/A DSA SURVEYORS) of 24A Market Street, HEXHAM, Northumberland, NE46 3NU (**Consultant**).
- (2) HANDELSBANKEN PLC (No. 111305395) whose registered office is at 3 Thomas More Square, London; E1W 1WY (**Beneficiary**).
- (3) MONEYBARN LIMITED (No. 02766324) whose registered office is at The New Barn, Bedford Road, Petersfield, Hampshire, GU32 3LJ (**Employer**).

BACKGROUND

- (A) The Consultant is in practice as a Quantity and Building Surveyor.
- (B) By Agreement in writing dated 11th February 2019 (**Building Contract**) the Employer employed Space & Solutions Limited (No. 06578145) whose registered office is at Towngate House, 2-8 Parkstone Road, Poole, Dorset, BH15 2PW (**Contractor**) to design and construct the conversion and fit out works upon land at New Mint House, Vision Park, Bedford Road, Petersfield (**Works** which expression means the said land and the works constructed or to be constructed on it or either of them as the case shall require).
- (C) By Agreement in writing between the Employer and the Consultant dated 20/2/2019 (**Appointment**), the Employer appointed the Consultant as the Employer's Agent Principal Designer (Pre-Contract) and CDM Adviser (Post-Contract) (**Services**) in connection with the Works.
- (D) The Beneficiary is a funder of the Works.

AGREED TERMS

In consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Consultant hereby acknowledges, it is agreed as follows:

1. DUTY OF CARE

The Consultant undertakes with and warrants to the Beneficiary that he has carried out and will carry out the Services and obligations on his part to be performed under and in connection with the Appointment and that in performing the same he has used and shall use all the reasonable skill, care and diligence to be expected of a properly qualified and competent member of its profession experienced in carrying out work such as its duties under the Appointment in relation to works of a similar nature, value, complexity and timescale to the Works.

2. PROHIBITED MATERIALS

The Consultant warrants that it will not specify or approve the specification for use by others of any products or materials not in conformity with (save where they exceed) relevant British or European standards or codes of practice or which are generally known in the construction industry at the time of use to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are specified.

3. PROFESSIONAL INDEMNITY INSURANCE

- 3.1 The Consultant shall maintain professional indemnity insurance covering (inter alia) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than £3,000,000.00 (three million pounds) for any one occurrence or series of occurrences arising out of any one event for a period beginning now and ending 12 years after the date of Practical Completion, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition

to the effect that the Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof. The Consultant shall not, without the prior approval in writing of the Beneficiary, settle or compromise with the insurers any claim which the Consultant may have against the insurers and which relates to a claim by the Beneficiary against the Consultant, or by any act or omission lose or prejudice the Consultant's right to make or proceed with such a claim against the insurers.

- 3.2 Any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 3.3 The Consultant shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates in order that the Consultant and the Beneficiary can discuss means of best protecting the respective positions of the Beneficiary and the Consultant in respect of the Works in the absence of such insurance.
- 3.4 As and when reasonably requested to do so by the Beneficiary the Consultant shall produce for inspection documentary evidence that his professional indemnity insurance is being maintained.

4. STEP IN RIGHTS

- 4.1 The Consultant covenants with the Beneficiary that it will not exercise nor seek to exercise any right of termination of the Appointment or to discontinue the performance of any of its duties or obligations thereunder for any reason whatsoever (including any breach on the part of the Employer) without giving not less than 21 days written notice of his intention to do so to the Beneficiary and specifying the grounds for the proposed termination or discontinuance.
- 4.2 Any period stipulated in the Appointment for the exercise by the Consultant of a right of termination or to discontinue the performance of any of its duties or obligations shall, nevertheless be extended as may be necessary, to take account of the period of notice required under Clause 4.1.
- 4.3 The right of the Consultant to terminate the Appointment or to discontinue the performance of any of its duties or obligations thereunder shall cease within the period of 21 days referred to in Clause 4.1 if the Beneficiary shall give notice to the Consultant:
 - 4.3.1 requiring the Consultant to continue its duties and obligations under the Appointment with the Beneficiary or its nominee;
 - 4.3.2 acknowledging that the Beneficiary or its nominee will assume all the obligations of the Employer under the Appointment; and
 - 4.3.3 undertaking that the Beneficiary or its nominee will discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment and will pay to the Consultant any sums which have been due and payable to it thereunder but which remain unpaid.
- 4.4 Upon compliance by the Beneficiary or its nominee with the requirements of Clause 4.3 the Appointment will continue in full force and effect as if the Appointment had been entered into between the Consultant and the Beneficiary or its nominee to the exclusion of the Employer.
- 4.5 Compliance by the Consultant with the provisions of this Clause 4 will not be treated as a waiver of any breach on the part of the Employer giving rise to the right of termination nor otherwise prevent the Consultant from exercising his rights after the expiration of the notice issued pursuant to Clause 4.1 unless the rights of termination have ceased under the provisions of Clause 4.3.
- 4.6 If the employment of the Consultant under the Appointment is terminated before service of any notice under Clause 4.3, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Consultant shall enter into a new agreement with the Beneficiary or its Appointee on the same terms as the Appointment but with such revisions as the Beneficiary shall

reasonably require to reflect altered circumstances. Forthwith upon the execution of such new agreement, the Beneficiary shall pay to the Consultant an amount equal to the fees and disbursements (excluding cancellation fees) then owing to the Consultant under the Appointment.

- 4.7 This Clause 4 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Works and entered into between the Consultant and such person.

5. CONSULTANT'S POSITION

By acting in accordance with Clause 4 the Consultant shall not incur any liability to the Employer.

6. ASSIGNMENT

- 6.1 The Beneficiary may assign all of its rights under this Deed:

- 6.1.1 by way of security or by way of re-assignment on redemption;
- 6.1.2 by absolute assignment to any Group Company of the Beneficiary; and
- 6.1.3 by absolute assignment on two other occasions only.

- 6.2 In this Deed references to the Beneficiary include where the context admits its permitted assignees.

- 6.3 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 6.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

7. COPYRIGHT

- 7.1 The copyright in all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings CAD materials and any other materials provided by the Consultant in connection with the Works (whether in existence or to be made and hereinafter referred to as the **Documents**) and all amendments and additions to them and any works, designs or inventions of the Consultant incorporated or referred to in them shall remain vested in the Consultant but the Consultant hereby grants to the Beneficiary an irrevocable royalty-free, non-exclusive licence to use and reproduce the same for all purposes relating to the Works including (without limitation) the construction, completion, reconstruction, modification, extension, repair, reinstatement, refurbishment, redevelopment, maintenance, use, letting, promotion and advertisement of the Works such licence carrying the right to grant sub-licences and to be transferable without the prior consent of the Consultant provided always that the Consultant shall have no liability for use by the Beneficiary or its nominees of the Documents for any purpose other than that for which they were originally prepared. The Consultant agrees on request at any time to give the Beneficiary or any persons authorised by the Beneficiary access to material referred to in Clause 7.1 and to provide copies of it at the Beneficiary's expense

- 7.2 If the use of the Documents as specified in Clause 7.1 is found to infringe the rights of any third person, the Consultant shall indemnify the Beneficiary against all resulting costs, damages and expense.

8. EXTRANEOUS RIGHTS

- 8.1 This Deed shall not negate nor diminish any duty or liability otherwise owed by the Consultant to the Beneficiary or to the Employer.
- 8.2 No approval or inspection of the Works or of any designs or specifications nor any testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate nor diminish any duty or liability of the Consultant arising under this Deed.
- 8.3 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Deed is not intended to confer any benefit on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 except that a person who is the successor to or the permitted assignee of the rights of the Beneficiary is deemed to be a party to this Deed.

10. EXPIRY OF WARRANTY

No proceedings shall be commenced against the Consultant under this Deed more than 12 years after the Practical Completion of the Works under the Building Contract (or, if earlier, more than 12 years after the employment of the Consultant under the Appointment is terminated). For the avoidance of doubt, the parties agree that any provision of the Limitation Act 1980 to the contrary will not apply to this Deed.

11. SERVICE OF NOTICE

Any notice to be served under this Deed must be in writing and must be served by hand or by registered post or recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect two days after posting, excluding Saturdays, Sundays and statutory holidays.

12. GOVERNING LAW AND INTERPRETATION

- 12.1 The law of this deed is English law and the English courts shall have jurisdiction with regard to all matters arising under it.
- 12.2 The definitions given in the recitals apply to this Deed.
- 12.3 In this Deed:
- 12.3.1 **Appointee** means a person, partnership, company or other legal entity nominated by the Beneficiary to exercise the step-in rights contained in Clause 4;
 - 12.3.2 **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in the Companies Act 2006 (as amended);
 - 12.3.3 **Practical Completion** means the date of practical completion of the Works in accordance with the Building Contract;
 - 12.3.4 **person** includes a firm and any entity having legal capacity;
 - 12.3.5 any term importing **gender** shall include any gender;
 - 12.3.6 any term importing the **singular** includes the plural and vice versa; and
 - 12.3.7 any reference to any **Clause** or **Schedule** or **Appendix** is a reference to such clause or schedule or appendix of or to this Deed.
- 12.4 For the purposes of Clause 1, references to the Appointment include any previous appointment (whether or not in writing) of the Consultant by the Beneficiary to provide in connection with the Works services of the kind mentioned in recital C to this Deed.
- 12.5 Clause headings do not form part of nor affect the interpretation of this Deed.

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

David Southern

Executed as a deed (but not delivered until the date hereof) by **DAVID SOUTHERN, T/AS DSA SURVEYORS** in the presence of:-

Signature of Witness

[Signature]

Name of Witness

Jason Webb

Address

5 Waterlure Farm, Brecon Close

Occupation

Project Finance Manager

Executed as a deed (but not delivered until the date hereof) by **HANDELSBANKEN PLC** acting by two directors or one director and the company secretary: *attorneys*

Director Signature

First Attorney

Director Name + Address

First Attorney

Director/Secretary Signature

Second Attorney

Director/Secretary Name + Signature

Second Attorney

[Signature]

Director Signature

[Signature]

Witness Signature:

MARK CHIVERS

Witness Names:

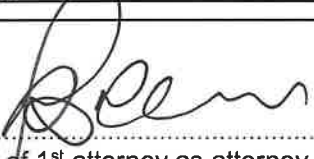
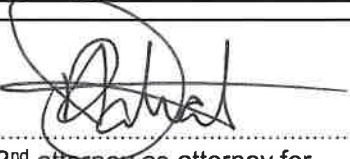
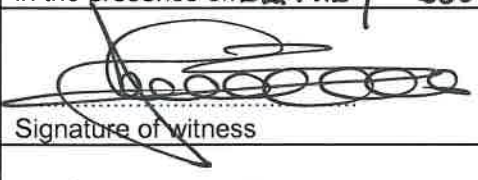
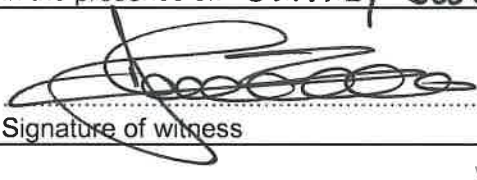
187 HAYLING AVENUE

Witness Address:

PORESMOUTH

PO3 6DZ

Executed as a deed (but not delivered until the date hereof) by **MONEYBARN LIMITED** acting by a director and in the presence of :

Signed as a deed by [SIMON BRIGES - BRANCH MANAGER] (name and role of 1 st attorney) and by [DARREN PALLANT - CORPORATE MANAGER] (name and role of 2 nd attorney) as attorneys for HANDELSBANKEN PLC	
	
Signature of 1 st attorney as attorney for Handelsbanken plc	Signature of 2 nd attorney as attorney for Handelsbanken plc
in the presence of: JEFFREY SOUTHERN	in the presence of: JEFFREY SOUTHERN
	
Signature of witness	Signature of witness
JEFFREY SOUTHERN	JEFFREY SOUTHERN
Name of witness (IN BLOCK CAPITALS)	Name of witness (IN BLOCK CAPITALS)
Address of witness Handelsbanken Unit 3 Peveril Court 6-8 London Road Crawley, West Sussex RH10 8JE	Address of witness Handelsbanken Unit 3 Peveril Court 6-8 London Road Crawley, West Sussex RH10 8JE
BANK OFFICIAL	BANK OFFICIAL
Occupation of witness	Occupation of witness