

Dated 20 March 2019

Employer's Agent , Principal Designer (Pre –Contract) and CDM Adviser (Post – Contract) Landlord 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⁾ and Woodpecker Limited ⁽²⁾

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DATE 20 March 2019

PARTIES

- (1) DAVID SOUTHERN (T/A DSA SURVEYORS) of 24A Market Street, HEXHAM, Northumberland, NE46 3NU (**Consultant**).
- (2) WOODPECKER LIMITED (No. 01977500) whose registered office is at Bailey House, 4-10 Barttelot Road, Horsham, West Sussex, RH12 1DQ (**Beneficiary**).

BACKGROUND

- (A) The Consultant is in practice as a Quantity and Building Surveyor.
- (B) By Agreement in writing dated 11 February 2019 (**Building Contract**) Moneybarn Limited (No. 02766324) whose registered office is at The New Barn, Bedford Road, Petersfield, Hampshire, GU32 3LJ (**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 the landlord of the premises known as New Mint House, Vision Park, Bedford Road, Petersfield (**Premises**) forming part 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. ASSIGNMENT

- 4.1. The Beneficiary may assign all of its rights under this Deed:
 - 4.1.1. by way of security or by way of re-assignment on redemption;
 - 4.1.2. by absolute assignment to any Group Company of the Beneficiary; and
 - 4.1.3. by absolute assignment on two other occasions only.
- 4.2. In this Deed references to the Beneficiary include where the context admits its permitted assignees.
- 4.3. The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 4.1 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.

5. COPYRIGHT

- 5.1. 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 5.1 and to provide copies of it at the Beneficiary's expense
- 5.2. If the use of the Documents as specified in Clause 5.1 is found to infringe the rights of any third person, the Consultant shall indemnify the Beneficiary against all resulting costs, damages and expense.

6. EXTRANEOUS RIGHTS

- 6.1. This Deed shall not negate nor diminish any duty or liability otherwise owed by the Consultant to the Beneficiary or to the Employer.
- 6.2. 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.
- 6.3. This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

7. 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.

8. 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.

9. 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.

10. GOVERNING LAW AND INTERPRETATION

- 10.1. The law of this deed is English law and the English courts shall have jurisdiction with regard to all matters arising under it.
- 10.2. The definitions given in the recitals apply to this Deed.
- 10.3. In this Deed:
- 10.3.1. **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);
 - 10.3.2. **Practical Completion** means the date of practical completion of the Works in accordance with the Building Contract;
 - 10.3.3. **person** includes a firm and any entity having legal capacity;
 - 10.3.4. any term importing **gender** shall include any gender;
 - 10.3.5. any term importing the **singular** includes the plural and vice versa; and
 - 10.3.6. any reference to any **Clause** or **Schedule** or **Appendix** is a reference to such clause or schedule or appendix of or to this Deed.
- 10.4. 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.
- 10.5. 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.

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

X *David Burt* X

Signature of Witness

[Handwritten Signature]

Name of Witness

Jason Wells

Address

5 Waterlark Farm, Beacon Close

Occupation

Project Finance Manager

Executed as a deed (but not delivered until the date hereof) by **Woodpecker Limited** acting by ~~two directors~~ or one director and the company secretary.

[Handwritten Signature]

Director Signature

D P K CHRISTIAN

Director Name

Director/Secretary Signature

Director/Secretary Name

In the presence of:

[Handwritten Signature]

So Roney, Solicitor

asblaw LLP

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