

Dated 12th March 2019

Contractor's Funder Collateral Warranty
relating to the conversion works and fit out of the premises at New Mint
House, Vision Park, Bedford Road, Petersfield

Space & Solutions Limited ⁽¹⁾
Handelsbanken ⁽²⁾ and
Moneybarn Limited ⁽³⁾

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DATE

PARTIES

- (1) Space & Solutions Limited (No. 06578145) whose registered office is at Towngate House, 2-8 Parkstone Road, Poole, Dorset, BH15 2PW (**Contractor**).
- (2) Handelsbanken (No. 11305395) 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) By an agreement in writing made 11/2/19 (**Building Contract**) the Contractor agreed with the Employer to design, construct and complete 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).
- (B) 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 Contractor hereby acknowledges, it is agreed as follows:

1. BUILDING OBLIGATIONS

- 1.1 The Contractor undertakes with and warrants to the Beneficiary that the Contractor has carried out and completed and will carry out and complete the Works with all due diligence, in accordance with and subject to the terms of the Building Contract, and has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Building Contract and (without qualification to or derogation from the foregoing) has exercised and will exercise all reasonable skill and care and diligence in and about the execution of the Works to be expected from a contractor experienced in constructing works of a similar nature, value, complexity and timescale to the Works.
- 1.2 Without derogation from Clause 1.1 and to the extent that under the Building Contract the Contractor takes responsibility for the design of the Works or the selection of goods, materials, plant and equipment for incorporation in the Works, the Contractor warrants that the same have been and will be designed and selected with all the reasonable skill and care set out in Clause 1.1.

2. PROHIBITED MATERIALS

The Contractor warrants that it will not specify or use 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 to be used.

3. PROFESSIONAL INDEMNITY INSURANCE

- 3.1 The Contractor shall maintain professional indemnity insurance covering (inter alia) all its design 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 £5,000,000 (five 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 Contractor 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 Contractor shall not, without the prior approval in writing of the Beneficiary, settle or compromise with the insurers any claim which the Contractor may have against the insurers and which relates to a claim by the Beneficiary against the Contractor, or by any act or omission lose or prejudice the Contractor'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 Contractor's own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.
- 3.3 The Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Beneficiary can discuss means of best protecting the respective positions of the Beneficiary and the Contractor 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 Contractor shall produce for inspection reasonable documentary evidence that its professional indemnity insurance is being maintained.

4. STEP IN RIGHTS

- 4.1 The Contractor covenants with the Beneficiary that it will not exercise nor seek to exercise any right of termination of its employment under the Building Contract or to discontinue the Works for any reason whatsoever (including any breach on the part of the Employer) without giving not less than 21 days written notice of its intention to do so to the Beneficiary and specifying the grounds for the proposed termination or discontinuance.
- 4.2 Any period stipulated in the Building Contract for the exercise of a right of termination by the Contractor of its employment under the Building Contract or to discontinue the Works 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 Contractor to terminate its employment under the Building Contract or to discontinue the Works shall cease within the period of 21 days referred to in Clause 4.1 if the Beneficiary shall give notice to the Contractor:
 - 4.3.1 requiring the Contractor to continue its obligations under the Building Contract 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 Building Contract; and
 - 4.3.3 undertaking that the Beneficiary or its nominee will discharge all payments which may subsequently become due to the Contractor under the terms of the Building Contract and will pay to the Contractor any sums which have been due and payable to him under the Building Contract but which remain unpaid.
- 4.4 Upon service by the Beneficiary or its nominee of a notice complying with the requirements of Clause 4.3 the Building Contract will continue in full force and effect as if the same had been entered into between the Contractor and the Beneficiary to the exclusion of the Employer.
- 4.5 Compliance by the Contractor 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 Contractor from exercising its 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 Contractor under the Building Contract 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 Contractor shall enter into a new building contract with the Beneficiary or its Appointee on the same terms as the Building Contract but with such revisions as the Beneficiary shall reasonably require to reflect altered circumstances. Forthwith upon the execution of such new building contract, the Beneficiary shall pay to the Contractor an amount equal to the sum which, immediately before termination of the Contractor's employment, was owing to the Contractor by the Employer under the Building Contract for work done and materials delivered and which remains unpaid.

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 Contractor and such person.

5. **CONTRACTOR'S POSITION**

By acting in accordance with Clause 4 the Contractor 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 Contractor 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 Contractor as beneficial owner hereby grants to the Beneficiary without further charge and notwithstanding the completion or abandonment of the Works or determination or alleged determination of the Building Contract an irrevocable, non-exclusive, royalty-free licence to use and reproduce any of the drawings, details, plans, specifications, CAD materials, calculations, correspondence, meeting minutes and other information which have been or are prepared by or on behalf of the Contractor relating to the Works and the designs contained in them (**Documents**) for the construction of the Works and the advertisement, sale, letting, maintenance, repair, reinstatement, reconstruction and extension of it, and to grant sub-licences in the terms of this licence but copyright in the Documents shall remain vested in the Contractor. The Contractor will not be liable for any use of the Documents by the Beneficiary or its nominees for any purposes other than those for which the same are or were prepared. The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Contractor with copies of the Documents.

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 Contractor 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 Contractor to the Beneficiary.
- 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 Contractor 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 Contractor under this Deed more than 12 years after Practical Completion (or, if earlier, more than 12 years after the employment of the Contractor under the Building Contract 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 as certified by the Employer's Agent in accordance with the terms of the Building Contract. The term **Employer's Agent** shall be as defined in 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;

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 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 **Space & Solutions Limited** acting by two directors or one director and the company secretary:


.....
Director Signature
STEVE O'CALLAGHAN
.....
Director Name

.....
Director/Secretary Signature
STEVE O'CALLAGHAN
.....
Director/Secretary Name

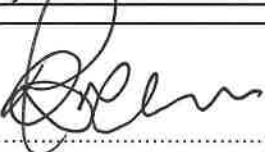
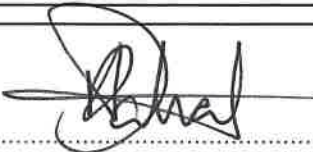
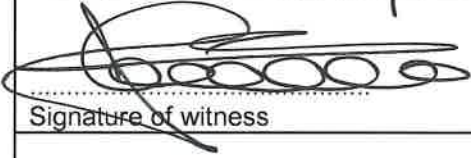
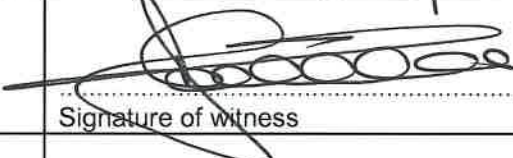
Executed as a deed (but not delivered until the date hereof) by **Handelsbanken PLC** acting by two directors or one director and the company secretary:

.....
Director Signature
.....
Director Name
.....
Director/Secretary Signature
.....
Director/Secretary Name

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


.....
Director Signature
Shamus Hodgson
.....
Director Name

.....
Director/Secretary Signature
LOUISE LYNCH
.....
Director/Secretary Name

Signed as a deed by [SIMON BRIGGS - 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 Name of witness (IN BLOCK CAPITALS)	JEFFREY SOUTHERN 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 Occupation of witness	BANK OFFICIAL Occupation of witness