

DATED 31 MARCH 2020

OXFORDSHIRE COUNTY COUNCIL

- and -

OXFORD CITY COUNCIL

COLLABORATION AGREEMENT

**relating to the design and construction of a new pedestrian and cycle
bridge at Oxpens, Oxford**

Director of Law & Governance and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND
GD Funding Agreement
LS ref: JMP/51271

THIS AGREEMENT is made the 31st day of March 2020

BETWEEN:

- (1) **OXFORDSHIRE COUNTY COUNCIL** of County Hall, New Road, Oxford OX1 1ND ("OCC");
- (2) **OXFORD CITY COUNCIL** of Town Hall, St Aldate's, Oxford, OX1 1BX (the "City Council") and

WHEREAS:

- A OCC is acting as the accountable body ("Accountable Body") for the Oxfordshire Growth Board ("Growth Board") in respect of its Housing & Growth Deal Funding allocation and is responsible for administering the allocation of funding on behalf of the Growth Board.
- B OCC, as accountable body, has agreed to provide the Funding on behalf of the Growth Board to the City Council to enable it to carry out the Works on the terms and conditions appearing below.
- C The City Council wishes to accept the Funding and to carry out the Works on the terms and conditions appearing below.
- D For the purposes of the Highways Act 1980 OCC will be the highway authority for the Bridge. The Works are works which OCC is authorised to execute by virtue of Part V of the Highways Act 1980 and are works which OCC are satisfied will benefit the public.
- E The Parties share the common objective of improving the accessibility for pedestrians and cyclists within Oxford.
- F The City Council is Local Planning Authority for Oxford and originally identified in the West End Area Action Plan 2007-2016 (adopted 2008) and the Oxpens Masterplan SPD (adopted 2013) that a new pedestrian bridge across the Thames to join Oxpens Field to the Thames Towpath would increase accessibility and improve connectivity by linking the West End to Osney Mead and the West Oxford Cycle Route. It was recognised that any new pedestrian bridge would need to be constructed to the Highway Authority's adoptable standards. The draft Local Plan for Osney Mead also states that a new bridge linking Osney Mead with the other side of the river should be created to support the development of Osney Mead.
- G The Works will not be carried out until the landowners of the Dedication Land have agreed to dedicate the Dedication Land for use as a public highway.

NOW IT IS AGREED as follows:

IT IS AGREED that this Agreement comprises this Agreement Form and the following documents attached to it:

- The Conditions of Agreement
- Schedule 1 – Works
- Schedule 2 – Funding
- Schedule 3 – Monitoring and Review
- Schedule 4 – Deed of Dedication
- Schedule 5 – Pre-Conditions
- Schedule 6 – Highway Conditions
- Schedule 7 – Deed of Grant
- Schedule 8 – Forms of Collateral Warranty

IN WITNESS of which the parties have executed this Agreement as a Deed the day and year first above written

THE COMMON SEAL OF
OXFORDSHIRE COUNTY COUNCIL

Was hereunto affixed in the presence of:



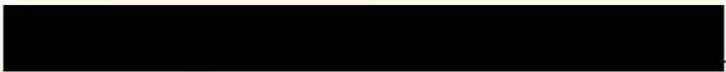
.....
Director of Law and Governance/Designated Officer



2023/19

THE COMMON SEAL OF
OXFORD CITY COUNCIL

Was hereunto affixed in the presence of:



.....
Authorised Officer

CONDITIONS OF AGREEMENT

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Part 1- Formalities

1 Definitions and Interpretation

1.1 In these Conditions, except where the context otherwise requires, the following expressions have the following meanings:

“Agreement” means the contract entered into between the Parties consisting of the Agreement Form, the Conditions and the Schedules;

“Appointments” means the appointments to be entered into by or on behalf of the City Council or the Works Contractor with each member of the Professional Team in relation to the Works;

“Authorisations” means the rights, approvals, consents and other actions required further to Condition 3;

“Base Rate Interest” means the base rate of the Bank of England (or such other bank as OCC may stipulate) from time to time (or such other rate as the Parties shall determine if such base rate shall not be readily ascertainable at any time);

“Bridge” means a new pedestrian and cycle bridge across the River Thames to join Oxpens to the Thames Towpath within the area edged with a broken red line on the plan at Annex A;

“Certificate of Completion/Completion Certificate” means the certificate issued under clause 10 of the Highway Conditions;

“City Council’s Representative” means Tom Bridgman (Executive Director of Development) or such other person as may be notified to OCC;

“Claim” means a request to OCC to approve expenditure of the Funding in the form set out in the Annex to Schedule 2 which must be accompanied by the Funding Report or in the case of the final claim, the Final Funding Report;

“Commencement Date” means the date of the Agreement;

“Commencement of Delivery/ Commence Delivery” means the commencement of the delivery of the Works which, for the avoidance of doubt, shall be evidenced by the City Council entering into the Works Contract;

“Completion Date” means 31 March 2023 or such other date as may be agreed by the Parties and Homes England;

“Completion of Works” means the date on which the Certificate of Completion is issued;

“Contractor” means the main contractor appointed to construct the Works;

“Data Protection Legislation” means the EU General Data Protection Regulation EU 2016/679(GDPR) and the Data Protection Act 2018 to the extent that its applicable, and any subordinate legislation made under such Acts from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Dedication Land” means all such land (including for the avoidance of doubt the Bridge) as is necessary to enable the Works to function as public highway (to be shown edged red on the Plan agreed with OCC further to Pre-Condition 6 of Schedule 5);

“Deed of Dedication” means a deed in the form annexed to this Agreement at Schedule 4 (subject to any amendments that the circumstances may reasonably and properly require) which provides for the dedication of land by all persons interested in the land to be dedicated;

“Deed of Grant” means a deed in the form annexed to this Agreement at Schedule 7 (subject to any amendments that the circumstances may reasonably and properly require);

“Defects Liability Period” means the defects liability period or rectification period for the making good of defects, shrinkages or other faults in the Works for the Scheme under the Works Contract;

“Design Funding” means the sum of £300,000 (Three Hundred Thousand Pounds) being part of the Funding;

“Easement Land” means the areas of land agreed with OCC further to Pre-Condition 6 of Schedule 5;

“End Date” means the third anniversary of the Completion of Works;

“Enactments” means directives, statutes, regulations, orders, instruments, national and governmental codes of practice and best practice guidelines or other similar instruments as the same may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, instrument, code or guidelines and references to any statute shall also include any secondary legislation made under it;

“Estimated Qualifying Expenditure Profile Plan” means the plan profiling the Estimated Qualifying Expenditure to be provided in accordance with the Pre-Conditions;

“Estimated Qualifying Expenditure” means the estimated qualifying expenditure set out the Estimated Qualifying Expenditure Profile Plan;

“EU Procurement Requirements” means the Public Contracts Regulations 2015 (SI No 102/2015) the EU Commission Interpretative Communication (2006/C 179/02) or the Utilities Contract Regulations 2006 and the principles of transparency, non-discrimination, equality of treatment, proportionality and mutual recognition in the Treaty on European Union and the Treaty on the Functioning of the European Union’ (2008/C 115/01) to the extent applicable in English Law;

“Final Funding Report” means a report to be submitted to OCC for the purpose of monitoring the use of the Funding which shall include, but not be limited to:-

- (i) a final statement on the progress of the Works and any deviation from the Works Programme;
- (ii) a final Project Expenditure Statement compared against the Estimated Qualifying Expenditure Profile Plan and confirming any deviation from the Estimated Qualifying Expenditure Profile Plan;
- (ii) information required for government reporting; and
- (vi) information required for Growth Board reporting;

“Funding” means the maximum funding of £5.9 million (Five Million and Nine Hundred Thousand Pounds);

“Funding Period” means the period for which the Funding is awarded starting on the Commencement Date and ending on the End Date;

“Funding Report” means a report to be submitted to OCC for the purpose of monitoring the use of the Funding which shall include, but not be limited to:-

- (i) a statement on the progress of the Works and any likely deviation from the Works Programme;
- (ii) a Project Expenditure Statement compared against the Estimated Qualifying Expenditure Profile Plan and confirming any likely future deviation from the Estimated Qualifying Expenditure Profile Plan;
- (iii) information required for government reporting; and
- (iv) information required for Growth Board reporting;

“Highway Conditions” means the highway conditions set out in Schedule 6;

“Intended Purpose” means the use by the public at all times in perpetuity on foot (including with wheelchairs and pushchairs) and for cycle use;

“Landowner” means the freehold owner or owners of the Dedication Land and any person with an interest in it;

“OCC’s Representative” means Eric Owens (Assistant Director Growth & Place) or such other person as may be notified to the City Council;

“Party” means a party to this Agreement;

“Post-Design Funding” means the sum of £ 5.6 million (Five Million and Six Hundred Thousand Pounds) being part of the Funding;

“Pre-Condition(s)” means the pre-condition(s) to the Design Funding and the Post-Design Funding to be satisfied prior to the approval of any Claim in respect of the Design Funding and Post-Design Funding respectively as set out in Schedule 5;

“Pre-Condition Longstop Date” means 31st March 2022 or such other date as may be agreed by the Parties;

“Professional Team” means the architect, the structural engineer, the civil engineer, the mechanical and electrical engineer, the project manager, the CDM co-ordinator, the quantity surveyor and any other specialist advisors or sub-consultants that may be appointed for the time being in connection with the design and/or management of the Works and any replacement thereof;

“Prohibited Act” means

- (a) offering, giving or agreeing to give to any servant of the OCC any gift or consideration of any kind as an inducement or reward for:
 - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council; or
 - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;
- (b) entering into this Agreement or any other contract with OCC where a commission has been paid or has been agreed to be paid by the City Council or on its behalf, or to its knowledge, unless before the

- relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to OCC;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with OCC; or
 - (d) defrauding or attempting to defraud or conspiring to defraud OCC;

Project Expenditure Statement” means a financial statement showing a running balance of the Project Expenditure actually incurred;

“Project Expenditure” means the actual expenditure of Qualifying Expenditure on the Works;

“Qualifying Expenditure” means capital costs which the Accountable Body is satisfied (i) qualify for the purposes for which a capital receipt may be used in accordance with regulations made under Section 11 of the Local Government Act 2003; and (ii) have been reasonably and properly incurred and paid by the City Council in procuring the delivery of the Works;

“Requisite Consents” means the consents set out in clause 10 of the Pre-Conditions, building regulation consents, by-law approvals, and any other consents, licences and authorisations required from any landlord including trustees where applicable, funders, adjoining landowners, statutory undertaker or person either for the carrying out of the Works or for the Intended Purpose;

“Safety Audit” means a safety audit in accordance with Oxfordshire Safety Audit Guidelines as revised from time to time and incorporating H.D. 19/15 (Road Safety Audit Volume 5 design manual for roads and bridges);

“Schedules” means Schedules 1-8 and their appendices or annexes, as attached to this Agreement;

“Scheme of Works” means the Works (Detailed Requirements), the Works Programme (as approved by the Council) and the measures for control of vehicles and plant and traffic safety measures for the control of vehicles and plant and traffic safety measures (as approved by the Council);

“Site” means the site for the Scheme of Works;

“State Aid Assessment” means the assessment to be carried by/on behalf of the City Council in accordance with Condition 14.1:

“State Aid Law” means any European Union State aid laws (including without limitation under Articles 106 to 109 inclusive of the Treaty on the Functioning of the European Union (as amended) and/or any applicable judgement, court order, statute, statutory instrument, regulation, directive or decision;

“Working Day” means Monday to Friday inclusive other than bank holidays and any other public holidays;

“Works” mean the Works as set out in Schedule 1 and to be detailed in the Scheme of Works and references to “Works” include each and every part of them;

“Works Contract” means the contract or contracts for the carrying out of the Works;

“Works Contractor” means the contractor(s) that may be appointed under the Works Contract, including any agent or sub-contractor, for the Works; and

“Works (Detailed Requirements)” means a detailed description of the Works which shall include a layout plan to a scale of 1:1250 or 1:2500 according to whichever is the Ordnance Survey base scale for the area), drawings and specifications of the Works (including the drainage of them) and the materials to be used to comply with the relevant standards and specifications of OCC for the time being in force, together with such structural and drainage calculations as OCC may consider necessary having regard to the nature of the Works;

“Works Programme” means the programme to be provided by the City Council to OCC in accordance with the Pre-Conditions, which is designed to ensure the orderly and timely execution and completion of the Works with a minimum of disturbance and disruption to any highway and occupiers of property and to facilitate the implementation of any measures in respect of undertaker’s apparatus as referred to in Schedule 5 (clause 6) and is approved by OCC.

- 1.2 Words denoting an obligation on a Party to do any act, matter or thing include an obligation to procure that it is done and words placing a Party under a restriction include an obligation not to cause permit or allow infringement of this restriction.
- 1.3 The headings and titles in the Agreement are for ease of reference only and shall not be taken into account in its construction or interpretation.

- 1.4 The expression "person" used in the Agreement shall include any individual, partnership, local authority or incorporated or unincorporated body.
- 1.5 The expression "including" means including without limitation or prejudice to the generality of any preceding description, defining term, phrase or word(s) and "include" shall be construed accordingly;
- 1.6 Words importing the masculine gender include the feminine gender and words in the singular include the plural and vice versa.
- 1.7 The Agreement constitutes the entire understanding between the Parties in relation to the subject matter of the Agreement and supersedes all prior contracts, undertakings, representations and negotiations whether oral or written except that nothing in this Condition 1.7 shall exclude or restrict liability for fraudulent misrepresentations.
- 1.8 The Schedules to this Agreement are an integral part of this Agreement and references to the Agreement include the Schedules.

2 Warranties and Representations

2.1 At the date of this Agreement the City Council represents and warrants to OCC that:-

2.1.1 It has full capacity and authority and all necessary consents to enter into and perform the Agreement.

2.1.2 Neither the execution of this Agreement by City Council nor the performance of its obligations under it will:-

- (a) conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument, obligation or duty to which the City Council is bound; or
- (b) cause any unlawful limitation on any of the powers whatsoever of the City Council or on the right or ability of the officers of the City Council to exercise such powers.

2.1.3 All information, documents and accounts of the City Council submitted to OCC are true and accurate and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect.

2.1.4 It has disclosed to OCC all information which would or might reasonably be thought to influence OCC in making the Funding available.

2.1.5 It is not aware, after due enquiry, of anything which materially threatens the success of the Works.

2.1.6 it has surveyed the Dedication Land and is satisfied that the Dedication Land is physically suitable for the Works.

2.2 Each time the City Council makes a Claim the Representations and Warranties will be deemed repeated by the City Council as if made with reference to the facts and circumstances then existing at the date of the Claim.

2.3 The Parties acknowledge that

2.3.1. The Agreement is intended to establish a co-operation between the Parties with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;

2.3.2 The implementation of this co-operation is governed solely by considerations relating to the public interest;

and the Parties hereby warrant to each other that they perform on the open market less than 20% of the activities concerned by the Agreement.

3 Approvals and Certificates

3.1 No approval consent or authorisation as specified in Condition 3.3 shall create any contractual relationship between the City Council and OCC beyond that contained in the Agreement or operate in any way as a warranty or otherwise imply that the subject matter of such approval consent authorisation or payment is fit for its Intended Purpose nor shall it relieve the City Council or any professional adviser or contractor engaged in connection with the Works from their respective obligations to use all proper skill and care in respect of the Works.

3.2 OCC will not be liable for any loss damage or injury which the City Council may sustain arising from action taken in consequence of such approval consent or authorisation, save as contained in this Agreement.

3.3 The matters referred to in Condition 3.1 are:

3.3.1 any approval or consent given by OCC in respect of the discharge by the City Council of any obligations under this Agreement; or any technical approval or consent issued by the OCC in respect of the Works.

- 3.3.2 any authorisation given or implied by or under this Agreement in respect of anything done or to be done by the City Council on or in relation to any highway.

4 Commencement Date and Duration of the Agreement

The Agreement shall commence on the Commencement Date and shall continue in force until the End Date unless and until terminated in accordance with the provisions of Condition 15 (Withholding, Suspending, Repayment of Grant and Termination).

5 Authorised Representatives

- 5.1 Each Party will appoint an Authorised Representative and ensure that any changes in the identity or contact details of its Authorised Representative are notified to the other Parties as soon as reasonably practicable.
- 5.2 The Council's Authorised Representative may delegate acting in relation to the Highway Conditions (Schedule 6) and related aspects of this Agreement to another council officer.

Part 2 – The Works

6 Procurement

- 6.1 The City Council shall comply with current EU Procurement Requirements (as applicable) in connection with the procurement of any works, any goods, or any services in respect of which Funding is to be provided by OCC.
- 6.2 The City Council will procure that procurement of works, goods and services by the City Council and the Works Contractor relating to the Works shall be based on value for money. In determining how this requirement should be met, the City Council will (and will procure that the Works Contractor will) take account of accountability and probity and shall document the decision making process.
- 6.3 The City Council will take all reasonable steps to satisfy itself that the Works Contractor's procurement policies and procedures in relation to employees, suppliers and contractor (and its employees) are suitable and competent in all respects to allow the proper performance of all necessary works or tasks in relation to the Works.

7 Works Obligations

- 7.1 The City Council shall carry out and complete the Works during the Funding Period (the Works shall be deemed complete upon the issue of the Certificate of Completion) provided always that the City Council shall not Commence Delivery of any part of the Works on the

Dedication Land until and unless a Deed of Dedication has been entered into.

- 7.2 The City Council warrants to OCC that as at the date it enters into the Works Contract it has applied for,(or will apply for, or procure the application of) and obtained, (or will obtain or procure the obtainment of) the Requisite Consents and that it knows of no impediment to the carrying out of the Works in accordance with the Agreement. The City Council will produce such evidence to OCC as OCC may require in this regard.
- 7.3 The City Council shall execute and complete the Works in compliance with the approved Scheme of Works and in accordance with the Highway Conditions.
- 7.4 The City Council shall for the purpose of carrying out the Works:
 - 7.4.1 employ appropriate staff to provide necessary administrative services in respect of the Works;
 - 7.4.2 co-ordinate or procure co-ordination of the Professional Team;
 - 7.4.3 take all reasonable steps to be reasonably satisfied that each member of the Professional Team and the Works Contractor are suitable and competent having regard to its responsibilities in relation to the Works and the Works Contracts;
 - 7.4.4 use all reasonable endeavours to procure that the Works Contractor and any member of the Professional Team perform and observe the terms of their respective contracts or professional appointments;
 - 7.4.5 not do or omit to do anything that would entitle the Works Contractor or any member of the Professional Team to regard their respective Works Contracts or professional appointments as terminated by breach; and
 - 7.4.6 ensure that the Works Contractor's obligations to remedy defects, shrinkages or other faults in the Works during the Defects Liability Period are enforced.
- 7.5 Collateral Warranties
 - 7.5.1 The City Council shall procure that each member of the Professional Team provides a collateral warranty in favour of OCC in the form or substantially in the form of the relevant form of warranty attached to this Agreement at Schedule 8 (subject to any reasonable amendments that may be agreed between OCC and the City Council) and shall supply to OCC certified

copies of the actual terms of each appointment forthwith on appointment.

7.5.2 The City Council shall procure that the Works Contractor and each sub-contractor with material design responsibility ("Principal Sub-Contractors") provide a collateral warranty in favour of OCC in the form or substantially in the form of the relevant form of warranty attached at Schedule 8 (subject to any reasonable amendments that may be agreed between OCC and the City Council) and shall supply to OCC a certified copy of the Works Contract and relevant sub-contracts forthwith on its execution.

7.5.3 The City Council shall procure that the Works Contractor, each Principal Sub-Contractor and member of the Professional Team takes out and maintains in force professional indemnity insurance ("PI Insurance") at appropriate levels provided that such insurance is generally available in the market to members of the relevant trade of the Works Contractor, the Principal Sub-Contractor and the Professional Team member at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the Works Contractor's, the Principal Sub-Contractor's or Professional team member's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates.

7.5.4 The City Council shall provide evidence satisfactory to OCC (as and when reasonably required by OCC) of the PI Insurance being in full force and effect in accordance with Condition 7.5.3 and ending twelve (12) years after the date of Completion of the Works.

8 Insurance and Limitation of Liability

8.1 The City Council shall at all times maintain insurance cover with a reputable company, as follows:

8.1.1 public liability insurance and insurance covering the City Council or its contractor and OCC for any third-party actions claims costs charges and proceedings which may arise in relation to execution and completion of the Works. Such insurance shall afford indemnity of not less than £10,000,000 (ten million pounds) in respect of every occurrence or series of occurrences caused by or attributable to any event giving rise to a claim; and

8.1.2 employer's liability insurance (minimum of £10,000,000 (ten million) per claim).

- 8.2 From the date of Commencement of Delivery up to and including the date of issue of the Completion Certificate the City Council shall insure, or shall procure that the Works Contractor insures, all works undertaken as part of the Works and all plant and unfixed materials and goods delivered to or placed on or adjacent to the Site(s) and intended for incorporation in the Works against all perils resulting in loss or damage thereto on customary contractor's all risks terms for not less than the full reinstatement value thereof (taking into account the progress of the Works) together with all site clearance and professional fees incurred in connection with such reinstatement.
- 8.3 The City Council shall supply to OCC within 14 days of request a copy of all insurance policies, cover notes, premium receipts or such other documents as may satisfy OCC that such insurance is in place.
- 8.4 In the event of any loss or damage to the works undertaken as part of the Works the City Council shall procure that their reinstatement or replacement is carried out diligently and with all reasonable speed. The City Council shall apply the proceeds of the insurance towards such reinstatement or replacement and shall make good any deficiency out of its own funds.
- 8.5 OCC accepts no liability for any consequences, whether direct or indirect, that may come about from the City Council delivering the Works, the use of the Funding or from withdrawal of the Funding under Condition 15 only. The City Council shall indemnify and hold harmless OCC, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages proceedings and all other liabilities arising from or incurred by reason of the actions and/or omissions of the City Council and/or its contractors in relation to the Works, the non-fulfilment of obligations of the City Council under this Agreement or its obligations to third parties.
- 8.6 Subject to Condition 8.5, OCC's liability under this Agreement is limited to the payment of the Funding.
- 9 Joint Working
- 9.1 The City Council shall keep the OCC's Representative regularly informed as to progress of the Works including promptly notifying the OCC's Representative of any material problems or delays in the performance of the Works Contract together with City Council's recommendations for overcoming and/or mitigating them.
- 9.2 Subject to Conditions 9.3 and 9.4, all parties shall ensure that any information supplied by other parties' is treated as confidential and shall not be disclosed to any person other than except as may be required by law or when such disclosure is in accordance with any shared information protocol which has been approved by OCC

9.3 Any Party may request a meeting of the Parties at any time on reasonable notice (save in the case of emergency).

9.4 Each party acknowledges that the other may be required under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) to disclose information without consulting or obtaining consent from the City Council. OCC shall take reasonable steps to notify the City Council of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) OCC shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA or the EIRs.

10 Change Request Process

10.1 Subject to clause 3 of the Highway Conditions, the City Council shall not in any circumstances vary or make any Material Alteration to the Works without the prior written consent of the OCC.

10.2 The City Council shall apply for consent under Condition 10.1 by submitting a change request in writing to OCC and supplying any additional information that OCC may reasonably request. One Party may request a meeting with the other Party to discuss the application and to identify alternative solutions for dealing with the Material Alteration both parties acting collaboratively

10.3 OCC will use reasonable endeavours to respond to a change request either within 10 Working Days of receipt or within 10 Working Days of any meeting held pursuant to Condition 10.2 above and shall consider the change request acting reasonably. Failure to respond within this time shall not deem consent to have been given to the proposed Material Alteration.

10.4 A Material Alteration is any alteration which:

- (a) changes the overall cost of the Work as set out in the Estimated Qualifying Expenditure Profile Plan; or
- (b) results in a significant change of financial profile in comparison to the Estimated Qualifying Expenditure Profile Plan but does not change the overall cost of the Works; or
- (c) results in any changes to the Works (Detailed Requirements) or changes to the Works Programme to such extent that the issue of the Completion Certificate cannot be achieved before the Completion Date.

10.5 In the event that the City Council is uncertain as to whether a proposed variation is a Material Alteration or not, or is concerned whether a variation may be perceived by OCC to be a Material Alteration, it shall contact OCC's Representative for clarification. Where OCC's Representative decides that the variation is a Material Variation having regard to the grounds set out in Condition 10.4 above, the City Council shall apply for consent in accordance with Condition 10.2 above.

11 Obligations relating to Site, Dedication and Deed of Grant

11.1 The City Council shall procure a Deed of Dedication is entered into by the relevant Landowner with OCC, as Highway Authority, in respect of the Dedication Land prior to Commencement of Delivery.

11.2 OCC may after consideration of the as-built drawings for the Works require the substitution of a modified dedication area in which event that shall be agreed with the Landowner and the dedication as provided in the Deed of Dedication shall have effect in respect of the modified area.

11.3 The City Council shall, where it is a Landowner, forthwith following the issue of the Certificate of Completion complete the Deed of Grant (in so far as the same is required by OCC) and the City Council shall procure that all parties with an interest in the Easement Land join in the Deed of Grant for the purpose of consenting to and confirming such easement (and further the Landowner shall grant to OCC and/or the City Council (if it is not the Landowner) shall procure the grant to OCC of any other easement which in the OCC's opinion is necessary to ensure the permanent and satisfactory drainage or lighting of the Works and such easement shall be in a form previously approved by OCC and the Landowner and/or the City Council will procure that any person with an interest in the relevant land joins in the deed of easement for the purpose of consenting to and confirming such easement.

11.4 OCC shall not be liable for the payment of compensation or legal or any other costs or fees arising from any such transfer or grant of easement pursuant to this Agreement.

Part 3 – Funding and Termination

12 Funding of the Works

12.1 OCC will pay the Funding to the City Council within 28 days of the date of this Agreement.

12.2 The City Council shall only use the Funding for expenditure as set out

in the Qualifying Expenditure Profile Plan and shall not spend any part of the Funding on the delivery of the Works after the Funding Period. Should any of the Funding remain unspent at the End Date, the City Council shall return such monies to OCC.

- 12.3 OCC shall not be liable for any costs or funding in addition to the Funding unless otherwise agreed pursuant to Condition 10. By making payments of the Funding to the City Council or by approving any Claim, neither OCC nor the Growth Board are underwriting the Works or providing any representation, commitment or guarantee as to the provision of funding.
- 12.4 The City Council will comply with the provisions of Schedule 2.
- 12.5 Without prejudice to the provisions of Condition 15 in the event that the City Council fails to carry out the Works in accordance with the Agreement, OCC reserves the right to process any Claim (linked to the default) until the default is rectified.
- 12.6 The payment of the Funding by OCC under this Agreement is believed to be outside the scope of Value Added Tax but if any Value Added Tax shall become chargeable all amounts payable by one party to another party under this Agreement are deemed to be exclusive of VAT. If an amount so payable constitutes consideration for taxable or deemed taxable supply of such other party to the first party, the first party shall on demand and upon receipt of an appropriate VAT invoice pay in addition the amount of VAT properly chargeable by such other party in respect of the taxable or deemed taxable supply in question to the extent that such VAT is not otherwise recoverable by the other party.

13 Pre-Conditions

- 13.1 OCC will not be under any obligation to process and/or approve any Claim unless it is satisfied that the Pre-Conditions numbered 1-3 have been met in respect of the Design Funding and Pre-Conditions numbered 4-15 have been satisfied in respect of the Post Design Funding.
- 13.2 OCC may, in its absolute discretion, and on such terms as it may specify, authorise a Claim before the Pre-Conditions have been satisfied, but if OCC does so, this will not prejudice its right to refuse to authorise any further Claim until the Pre-Conditions are met or to exercise its right to require repayment of any Funding paid to the City Council.
- 13.3 The Pre-Conditions must be satisfied by the Pre-Condition Longstop Date.

13.4 The City Council shall not Commence delivery until and unless the Pre-Conditions have been complied with.

14 State Aid

14.1 The City Council shall undertake its own independent assessment of the compatibility of the Works with State Aid Law and shall provide this to OCC in accordance with the Pre-Conditions.

14.2 The City Council confirms to OCC that the Works will be structured so as to be compliant with State Aid Law. Where OCC has provided its views on any aspect of State Aid Law, the City Council confirms that it has considered this information alongside all other sources of State Aid Law available at the time of entering into this Agreement (including regulations and decisions published on the European Commission website) in undertaking its own assessment of the Works' compliance.

14.3 The City Council shall procure and maintain the necessary expertise and resources to ensure that the delivery of the Works remains compliant with State Aid Law for the full term of this Agreement. The City Council agrees to maintain appropriate records of compliance with the State Aid Law and agrees to take all reasonable steps to assist OCC to comply with State Aid Law requirements and respond to any investigation(s) instigated by the European Commission into the Works. Any changes to the City Council's assessment shall be promptly notified to OCC.

14.4 A finding of State Aid non-compliance in respect of the Works by the European Commission or a Court of competent jurisdiction may lead to the City Council being ordered to repay the Funding with interest in accordance with the European Commission's reference rates. OCC may also vary or withhold any Funding covered by such findings.

15 Withholding, Suspending, Repayment of Grant and Termination

15.1 OCC's intention is that the Funding will be paid to the City Council in full. However, without prejudice to OCC's other rights and remedies, OCC may at its discretion withhold its approval of any Claim and/or terminate the Agreement and/or require repayment of all or part of the Funding (together with costs and expenses and any such recoveries to be paid to OCC within three (3) Working Days of OCC's demand), if:

(a) the City Council uses the Funding for purposes other than those for which it has been awarded;

(b) Commencement of Delivery does not occur by 31st March 2022 (or such other date as may be agreed by the Parties) and the City Council has failed to provide OCC with a reasonable explanation for the delay;

(c) OCC considers that the City Council has not made satisfactory progress with the delivery of the Works (subject to allowing the City Council to provide explanation on progress and opportunity to remedy);

(d) the City Council is, in the reasonable opinion of OCC, delivering the Works in a negligent or fraudulent manner;

(e) the City Council obtains duplicate funding from a third party for the Works;

(f) the City Council, in the reasonable opinion of OCC, undertakes activities that are likely to bring the reputation or name of OCC into disrepute;

(g) the City Council makes any representation or warranty that is incorrect, incomplete, untrue or misleading;

(h) the City Council or any member of it commits a Prohibited Act in connection with the Agreement or gives any financial or other advantage to any person working for or engaged by OCC in connection with the Agreement;

(i) any member of the governing body, employee or volunteer of the City Council has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Works or (b) taken any actions which, in the reasonable opinion of OCC, bring or are likely to bring the OCC's name or reputation into disrepute;

(j) the City Council ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);

(k) the City Council becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;

(l) the City Council fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure;

(m) The European Commission or a European Court or other such court with appropriate jurisdiction requires any of the Funding paid to the City Council to be recovered by reason of a breach of State Aid Law;

PROVIDED that where any of the circumstances listed in (b),(c),(e), (f), (g), (h), (i), (j), (k) and (l) above apply, the City Council shall not be

obliged to repay to OCC any part of the Funding that the City Council has properly expended or is contractually obliged to pay to a third party in relation to delivery of the Works in accordance with the terms of the Agreement.

15.2 OCC may retain or set off any sums owed to it by the City Council which have fallen due and payable against any sums due to the City Council under this agreement or any other agreement pursuant to which the City Council provides goods or services to OCC.

15.3 The expiration or termination of the Agreement for whatever reason shall not affect any provisions of the Conditions capable of surviving or operating in the event of expiration or termination of the Agreement and the expiration or termination of the Agreement shall be without prejudice to the rights and remedies of any Party against any other Party.

15.4 If:-

15.4.1 A Claim is approved for something that is not Qualifying Expenditure; or

15.5.2 At any time OCC has approved a Claim for more than it is liable to approve under any provision of this Agreement;

the City Council will within 30 days on written demand by OCC return the amount stipulated by OCC to the Fund Account (as defined in condition 16.1 below) as having been overpaid with interest at the Base Interest Rate from the date of demand to the date of payment.

16 Accounts and Records

16.1 The Funding shall be shown in the City Council's accounts as a ringfenced budget line (the "Fund Account") and shall not be included under general funds.

16.2 The City Council shall comply and facilitate the OCC's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and OCC.

16.3 The City Council shall maintain current and accurate records of the Works and shall provide OCC with access to records, reports, certificates, data and any other information reasonably required by the OCC's Representative as detailed in Schedule 3 (Monitoring and Review).

Part 4 – Not used

17 Not used

Part 5 – General

18 Statutory Obligations

The Parties will comply with all Enactments when acting in connection with the Agreement.

19 Data Protection and Freedom of Information

19.1 The City Council shall comply with the Data Protection Legislation and shall:

19.1.1 act only on the instructions of OCC when processing personal data (as defined in that Act) received from OCC;

19.1.2 take all appropriate security measures to protect against any unauthorised or unlawful processing or accidental loss or destruction of or damage to such personal data;

19.1.3 provide OCC with all such personal data as OCC may reasonably require to satisfy itself that the City Council is complying with these obligations; and

19.1.4 return to OCC all such personal data at the expiry or earlier termination of the Agreement.

19.2 The Parties acknowledge that in responding to requests received by the other under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 each party will be entitled to provide information relating to the Agreement.

20 Variations to the Agreement

No variation to the Agreement shall have any effect unless it is made in writing and signed by each Party.

21 Service of Notices

21.1 Any demand, notice or other communication required to be given under the Agreement shall be sufficiently served if served personally on the addressee or if sent by prepaid first class recorded delivery post to the address of the Party on the Agreement Form or such other address as may be notified by a Party to the other Parties from time to time.

21.2 Any such communication shall be deemed to have been received:

i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address (except that if

received on a day which is not a Working Day or after 4 p.m. on any Working Day, it shall be deemed received on the next Working Day); or

- ii) if posted, two Working Days from the date of posting.

22 Waiver

- 22.1 The failure of any Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 22.2 No waiver shall be effective unless it is communicated by the Party giving the waiver in writing.
- 22.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

23 Severance

If any of these Conditions shall become or shall be declared by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way impair or affect any other provisions all of which shall remain in full force and effect.

24 Assignment

The City Council shall not assign the benefit of the Agreement in whole or in part.

25 Applicable Law and Jurisdiction

This Agreement shall be governed by and interpreted in accordance with English law and shall be subject to the jurisdiction of the courts of England and Wales.

26 The Contracts (Rights of Third Parties) Act 1999

The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement, but this does not affect any rights which are available apart from this Act.

27 Dispute Resolution

- 27.1 In the event of a dispute arising regarding the Agreement, the Parties (acting by their Authorised Representatives within the scope of their respective delegated authority) shall, acting in good faith, use all reasonable endeavours to settle such dispute.

- 27.2 Where the Authorised Representatives are not able to settle any such dispute within one month of the date of the dispute then, except where the dispute arises in relation to Conditions 7.1, 7.2 & 7.3 (which relate to works on the highway), the City Council or OCC may refer the matter to mediation in accordance with the Centre for Effective Dispute Resolution's ("CEDR") Model Mediation Procedure.
- 27.3 To initiate the mediation, either party may give notice in writing to the other requesting mediation in accordance with this Condition 27. The initiating party shall send a copy of such request to CEDR.
- 27.4 If there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of either party, decide the issue.
- 27.5 If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation either party may commence proceedings.
- 27.6 For the avoidance of doubt, the use of the disputes procedure will not delay, or take precedence over, any use of the default or termination procedures nor shall it cease or delay the delivery of the Works.
- 27.7 Nothing in this Condition 27 shall prejudice the right of either Party to apply to the court for interim relief to prevent the violation by the other Party of any proprietary interest or any breach of that Party's obligations.

28 No Partnership or Agency

This Agreement shall not create any partnership or joint venture between OCC and the City Council nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

29. Joint and Several Liability

Not used.

30 Counterparts

This Agreement may be executed in any number of counterparts and each counterpart shall, when executed be an original of this Agreement and all counterparts together shall constitute one instrument.

31. No Fetter

Nothing in this Deed shall prejudice or affect the rights, powers, duties and obligations of OCC in the exercise of its functions in any capacity.

Schedule 1

The Works

The design and construction of the Bridge and onwards connections to enable public access. As a minimum this should include provision of a connection to Oxpens Road. The City should also use their best endeavours to secure or safeguard a separate connection to Osney Lane.

Schedule 2

Funding

- 1.1 OCC will subject to clause 1.2 below process and approve any Claim in respect of Qualifying Expenditure within 30 Working Days of receipt of a valid Claim provided always that OCC shall have no obligation to approve any Claim for expenditure in excess of the Funding.
- 1.2 OCC shall not approve any Claim:-
- (a) unless a Claim accords with the Estimated Qualifying Expenditure Profile Plan (or is accompanied by evidence to the satisfaction of OCC to justify any deviation from the Estimated Qualifying Expenditure Profile Plan);
 - (b) more than once in any quarter;
 - (d) if the City Council is in breach of the Agreement;
 - (e) if the Representations and Warranties do not remain true and correct; and/or
 - (f) in relation to expenditure to make good damage to the Works occasioned by insurable risks or to make good any defects in the Works.
- 1.3 OCC may vary or withhold the sum of the Funding in the following circumstances: -
- (a) On receipt of, or acceptance of and offer for, other public sector funding for the Works by the City Council or the Works Contractor; and/or
 - (b) in exercise of its rights under Condition 15.

Schedule 3

Monitoring and Review

1.1 Meetings and Information

1.1.1 The City Council will:-

- (a) provide minutes of any meetings it attends in relation to the Works and such other reports as are requested by the Council;
- (b) procure that the City Council's Representative and/or any other officers of the City Council attends such meetings as OCC may reasonably request which are held to discuss or review progress of the Works;
- (c) provide OCC with such information as OCC reasonably requires in connection with the Works from the date of this Agreement to the termination; and
- (d) notify OCC in writing as soon as it becomes aware of any possible delay or defect or other issue with the Works which means they will or may not be delivered as envisaged by this Agreement.

1.2 Monitoring requirements

The City Council will establish effective appraisal project monitoring and financial systems so that the costs of the Works, the pattern of expenditure and the progress in delivering the Works can be clearly identified and the propriety and regularity of all payments ensured.

1.3 Inspection and audit facilities

1.3.1 The City Council will maintain full and accurate accounts and documentary evidence for the Works on an open book basis and the City Council shall permit OCC and persons authorised by OCC to inspect, audit and take copies of all reports, books, accounting records and vouchers which the OCC properly considers relevant to the Works.

1.3.2 The City Council will comply with the OCC's audit requirements and will ensure that any report or document

required reaches OCC on the due date.

1.4 Retention of documents

1.4.1 The City Council will ensure that all original documents relating to the Works their implementation and financing are retained for 6 years from the end date of this Agreement.

1.4.2 The City Council will make available the original documents or verified true copies of the documents relating to the Works, its implementation and financing if and when required to do so by the Council, the European Court of Auditors, the European Commission auditors and/or local or central government.

1.5 Review

The City Council will participate in any review of the Works held by the OCC or the Growth Board.

**Schedule 4
Deed of Dedication**

NOTE: at adoption will need to liaise with Legal Services to ensure requisite drainage easements in place

DATED _____ 20

- and -

THE OXFORDSHIRE COUNTY COUNCIL

AGREEMENT

S38 Highways Act 1980 (and
S106 Town and Country Planning Act 1990)

Director of Law & Governance and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

THIS DEED OF AGREEMENT is made on the _____ day of
Two Thousand and []

B E T W E E N :-

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** ("the Council")
- (2) **OXFORD CITY COUNCIL** ("the Developer")
- (2) _____ ("the Owner")
- (3) ("Mortgagee/Lessee etc)

1. **Interpretation**

In this Deed of Agreement:-

- 1.1. "the 1980 Act" means the Highways Act 1980
- 1.2. "the 1990 Act" means the Town and Country Planning Act 1990
- 1.3. "As-Built Drawings" means detailed plans and drawings showing the Works in the form in which they have actually been executed and completed and where any part of the highway drainage system will pass through or will discharge onto land of a third party the route of the highway drainage system and the discharge point(s) shall be shown on the As-Built Drawings
- 1.4. "Certificate of Adoption" means a certificate issued by the Council under clause 12.3
- 1.5. "Certificate of Completion" means a certificate issued by the Engineer under clause 12.1
- 1.6. "Collaboration Agreement" means the agreement between the Council and Oxford City Council dated []
- 1.7. "**Commutated Sum**" means the sum of [] Index Linked toward the future maintenance and as applicable renewal of the Works
- 1.8. "the Council" means the said Oxfordshire County Council whose principal office is at County Hall New Road Oxford OX1 1ND and any successor to its statutory functions as highway authority street works authority or county planning authority and any duly appointed employee or agent of the Council or such successor

- compiled in such other manner as may be agreed in writing by the Owner and the Council
- 1.16. "the Land" means the land at [] Oxfordshire shown edged red on the Plan
- 1.17. "the Owner" means the said (company number) of/whose registered office is at and their successors in title and assigns
- 1.18. "the Plan" means the plan (drawing (s) number annexed to this Deed of Agreement
- 1.19. "the Roads" means the footways cycleways and verges margins and visibility splays which are to be constructed on the Dedication Land as defined in the Collaboration Agreement and which are coloured [grey magenta and green] respectively on the Plan and including highways drains road gulleys swales and soakaways and connections [and any off site highway drainage] which are shown coloured blue on the Plan and any street lighting equipment which is shown coloured red on the Plan
- 1.20. "the Specification" means the specification plans and sections approved by the Engineer which shall comply with the Council's conditions and technical specifications for the construction of roads in residential areas and shall include the provision of means for lighting the Roads in accordance with the Council's requirements
- 1.21. "Statutory Undertaker" means a body with a statutory right as defined in Section 105 (1) New Roads and Street Works Act 1991 to undertake street works as defined in that Act
- 1.22. "the Works" means the construction of the Roads and the Highway Works
- 1.23. Reference in this Agreement to fees for inspection of Works shall include fees for consideration of plans drawings and specification for the Works

- 1.24. Any reference to an enactment includes any amendment to or modification of it and the version of it for the time being in force shall apply
- 1.25. Headings in this Agreement are for convenience only and shall not be taken into account in its construction and interpretation
- 1.26. References to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Agreement
- 1.27. Where the context so requires:-
 - 1.27.1. the singular includes the plural and vice versa
 - 1.27.2. the masculine includes the feminine and vice versa
 - 1.27.3. persons includes bodies corporate associations and partnerships and vice versa
- 1.28. Where a party comprises more than one person the obligations and liabilities on that party shall be joint and several obligations and liabilities of those persons
- 1.29. Where more than one party enters into any obligation or liability those parties are jointly and severally liable
- 1.30. Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction

2. **Preliminary**

- 2.1. The Owner is the owner of the freehold of the Land registered at the Land Registry with title absolute under title number [] free from incumbrances/ subject to [] as the Owner hereby warrants
- 2.2. For the purposes of the 1990 Act the Council is the county planning authority for the area which includes the Land

- 2.3. The Developer intends to construct the Roads further to the Collaboration Agreement
- 2.4. For the purposes of the 1980 Act the Council is the highway authority and the street works authority for certain highways in the area which includes the Land
- 2.5. The Owner intends to dedicate the Roads as highways
- 2.6. The Council has agreed with the Owner and the Developer that upon the Council being satisfied that the Roads have been constructed executed and carried out to the Council's satisfaction and in accordance with the Collaboration Agreement it will adopt the Roads as highways maintainable at the public expense
- 2.7. The Highway Works are works which the Council is authorised to execute by virtue of Part V of the 1980 Act and it has been agreed between the Owner and the Council that in lieu of the Developer paying the costs of the Highway Works the Highway Works should be executed by the Developer in conjunction with the Roads
- 2.8. This Deed of Agreement is made under Section 38 and Section 278 of the 1980 Act and Section 111 of the Local Government Act 1972 and all other enabling powers

3. **Payment**

- 3.1. The Developer will pay the Commuted Sum to the Council prior to the issue of the Certificate of Adoption
- 3.2. The Developer will pay on demand (or if later together with payment further to clause 10.2) to the Council the aggregate sum of £13 multiplied by the number of street lighting columns
- 3.3. In the event that any payment due to the Council pursuant to this Agreement is not paid by the due date then interest at 4% per annum above the base rate from time to time of Lloyds Bank Plc will be paid to the Council on the amount outstanding from the due date to the date of payment

3.4. The Developer will pay to the Council within 14 days of demand any costs incurred by the Council in the promotion of and where applicable making and implementing any orders that regulate traffic which the Council deems appropriate because of the Works and whether promoted, made or implemented before, during or after completion of the Works

4. **Certificate of Final Completion and Adoption**

4.1. It is agreed by the Owner that on the issue of a Certificate of Completion for the Works the whole of the Dedication Land (subject to modification as provided in clause 4.2) shall be deemed to have been dedicated as public highway (for all public highway purposes including use by mechanically propelled vehicles) [and shall thereafter be highway maintainable at public expense.]/[and the Council shall issue a Certificate of Adoption the date of which shall be the specified date on which the Roads as shown on the As-Built Drawings shall become for the purposes of the 1980 Act highway maintainable at the public expense]

4.2. The Council may after consideration of the as-built drawings for the Works require the substitution of a modified dedication area in which event that shall be agreed with the Owner and Developer and the dedication as provided in Condition 4.1 shall have effect in respect of the modified area.

4.3. The Owner consents to the noting of the provisions of clause 12.3 and clause 12.4 of (and the schedule to) this Agreement on the registers of Title No. []

5. **Alienation**

5.1. The benefit of this Agreement may not be assigned by the Owner and/or the Developer without the prior consent of the Council which shall not be unreasonably withheld

5.2. The Owner will give the Council written notice of any disposal of its interest in the Land or any part of it and of the name and address of the new owner and the date of the disposal within 14 days of such disposal

6. Notice

6.1. Any notice or notification to be given to the Council under this Agreement shall be sent to the Director for Environment and Economy of the Council (Ref) County Hall, New Road, Oxford OX1 1ND or to such other person at such other address as the Council shall direct from time to time

6.2. Any notice or notification to be given to the Developer under this Agreement shall be sent to the [] of the Developer (Ref) Town Hall, St Aldate's, Oxford, OX1 1BX or to such other person at such other address as the Developer shall direct from time to time

6.3. Any notice or notification to be given to the Owner under this Agreement shall be sent to [] at [] or to such other person at such address as the Owner shall notify to the Council in writing

7. Jurisdiction

This Deed is governed by and interpreted in accordance with the Law of England

8. Delivery

The provisions of this Deed shall be of no effect until this Deed has been dated

IN WITNESS whereof the parties hereto have executed this Deed of Agreement as a deed the day and year first before written

THE COMMON SEAL of)
)
was affixed to this Deed in the)
presence of:-

Director

Secretary

SIGNED AS A DEED by the said)
)

**Schedule 5
Pre-Conditions**

Design Funding Pre-Conditions

1. The provision of the State Aid Assessment to OCC.
2. The submission to OCC of that part of the Works Programme covering the design phase and the approval by OCC of such programme (such approval not to be unreasonably withheld or delayed).
3. The submission to OCC of that part of the Estimated Qualifying Expenditure Profile Plan relating to the design phase.*

Post-Design Funding Pre-Conditions

4. The submission to OCC of the remainder of the Works Programme and the approval by OCC of such detailed programme (such approval not to be unreasonably withheld or delayed).
5. The submission to OCC of the Works (Detailed Requirements) and the approval by OCC of such Works (Detailed Requirements) (such approval not to be unreasonably withheld or delayed).
6. The submission to OCC of a plan(s) showing the Dedication Land and the Easement Land at scale of 1:1250 or 1:2500 (according to whichever is the Ordnance Survey base scale for the area) and the approval by OCC of such plan(s) (such approval not to be unreasonably withheld or delayed)
7. The submission to OCC of the remainder of the Estimated Qualifying Expenditure Profile Plan.*
8. The submission to OCC of
 - i. measures for the control of vehicles and plant to be used in the course of execution of the Works (including vehicles engaged on the transport of materials and equipment to and from the Works) and measures for traffic regulation in order to minimise and/or alleviate damage to the Highway, disturbance to occupiers of property and disturbance and disruption to use of the Highway (including traffic congestion); and
 - ii. traffic safety measures and measures including lights, guards, fencing and warning signs in order to protect the Works and/or for the safety and convenience of the public.

And the approval by OCC of such measures (such approval not to be unreasonably withheld or delayed).

9. Confirmation / Evidence from the City Council that in preparing the Works for the Scheme it has consulted with every undertaker within the meaning of the New Roads and Street Works Act 1991 whose apparatus or services lie in, on, under or over the site of the Works or may otherwise be affected by the Works (whether or not it is intended to connect into such services in connection with the Works) with a view to the identification and implementation of any measures considered necessary by the undertakers for the protection of, or otherwise in relation to, their apparatus or services and that such measures have been incorporated in the Works .
10. Confirmation that in progressing the design of proposed works, and during the period of construction, appropriate assessments of potential user safety (including for on-site operatives during construction) has been undertaken and the Safety Audit Stage 2 Report has been approved by OCC.
11. The submission of a conditions survey comprising photographs of land and highway adjoining and neighbouring the site of the Works.
12. Evidence of the insurances required pursuant to Condition 8.1 and 8.2 of the Agreement being provided to OCC.
13. The City Council has supplied to OCC evidence of all rights, approvals and consents and any other requisite action to enable the Works to be properly and lawfully executed and completed (in accordance with the Agreement including these Pre-Conditions) and the subsequent implementation and functioning of the Works including (but not so as to provide an exhaustive list of examples):-
 - 13.1 planning permission for the Works;
 - 13.2 authority for stopping up diversion or other alteration of any existing highway so far as necessary to enable the Works to proceed and/or be implemented and function;
 - 13.3 authority or agreement for stopping up (including relocating) any private access to any existing highways which is necessary in the opinion of OCC to enable the Works to proceed and/or be implemented and function;
 - 13.4 street works licence further to the New Roads and Street Works Act 1991;
 - 13.5 authorisation for any traffic regulation measures including prohibitions, restrictions and controls where necessary in OCC's opinion to enable the Works to proceed and/or to be implemented and function;
 - 13.6 any rights and easements which in OCC's opinion are necessary to ensure the permanent and satisfactory drainage or lighting of

- the Works such rights and easements to be in a form previously approved by OCC; and
- 13.7 a Scheme/Order under s106(3) Highways Act 1980.

And it is agreed that

- a. Save in so far as any consent is expressly granted under this Agreement nothing in this Agreement shall prejudice or affect in any way the exercise by OCC of its powers and duties relating to any application for an authorisation further to this clause 10 including the consideration and processing of an application, the carrying out of any procedural requirements (pursuant to any enactment or OCC policies or protocols) and the determination as to whether or not such authorisation should be made, granted or confirmed.
- b. Where the procedures for securing such authorisation entail consultation and in consequence of such consultation OCC determines that the Works/the Scheme of Works shall be varied and/or augmented then any reference to the Works and/or the Scheme of Works shall be construed as a reference to the Works and/or the Scheme of Works as so varied and/or augmented.

14. The City Council having submitted the final draft of the Works Contract to OCC for approval (such approval not to be unreasonably withheld or delayed).

15. Works Contracts having been entered into on unconditional terms in relation to the Works and a copy of the completed construction contract(s) having been supplied to OCC.

Note

* The Parties acknowledge that where the City intend to claim Funding for their staffing costs in managing/overseeing the Works, actual expenditure will be monitored and, where such expenditure will exceed £25000, approval of expenditure in excess of this sum will be subject to OCC obtaining the necessary exemption(s) in accordance with OCC's Contract Procedure Rules.

Schedule 6

Highway Conditions

1. The City Council shall at all reasonable times give to OCC free access to every part of the Works and shall permit them to monitor and inspect all materials used or intended for use in the Works.
2. If in the opinion of OCC some part of the Works ought not properly to be commenced or continued by reason either of:-
 - 2.1 the dependence of that part on the completion of remedial steps specified in a notice given under Clause 3; or
 - 2.2 adverse weather conditions such as to prejudice the structure or stability of that part if executed under those conditions;

The City Council shall on the written order of OCC suspend the progress of that part of the Works for such time or times and in such manner as OCC may consider necessary, and shall during such suspension properly protect and secure the Works so far as is necessary in the opinion of OCC Provided always that if it shall appear to OCC at any time during the course of execution of the Works that danger to persons or prejudice to the structure or stability of the public highway or of adjoining land exists or is imminent, and that it is not reasonably practicable to cause the City Council to take the necessary remedial steps forthwith OCC may take such steps themselves to the exclusion of the City Council.

3. In the event that any of the following circumstances arising in the course of execution of the Works: -
 - 3.1 if discovery is made of adverse ground conditions or artificial obstruction or any other unforeseen factor which in the opinion of OCC necessitate a modification of the Works to avoid or compensate for such conditions, obstruction or other factor in the interests of the satisfactory completion and subsequent function of the Works; or
 - 3.2 if it shall appear to OCC requisite, in accordance with good engineering practice and to ensure satisfactory completion and subsequent functioning of the Works that any work or materials should be added, or that any such work or materials proposed by the City Council to be done or used should be omitted or changed; or

- 3.3 if it shall appear to OCC expedient that any obligation arising from the approved Scheme of Works should be deferred by reason of delay incurred by the City Council arising from some cause not within the City Council's control; or
- 3.4 otherwise if in a particular case the City Council and OCC so agree;

the Works in relation to the Scheme shall be varied and/or augmented in manner notified in writing by OCC to City Council, and any reference to the Works shall be construed as a reference to the Works as so varied and/or augmented.

4.

- 4.1 All work shall be carried out without unreasonable noise and disturbance and in such manner as not to interfere unnecessarily or unreasonably with the use and enjoyment of property adjoining or near the Works by their owners and occupiers.
- 4.2 Without prejudice to the generality of Clause 4.1 no work shall be carried out on between the hours of 8.00pm and 7.00am the following day or on any Sunday or public holiday except insofar as:-
 - 4.2.1 any operations are necessary to avoid disruption to or for the control of traffic on any highway; or
 - 4.2.2 any work is unavoidable or absolutely necessary for the safety of life or property or the safety of the Works; or
 - 4.2.3 OCC have in writing otherwise agreed.

- 5.1 Insofar as the Works affect in any respect the existing highway such part shall be executed with the minimum of disturbance to that highway and traffic using that highway consistent with the work in hand.
- 5.2 In the event of it appearing to OCC at any time that such disturbance has occurred or is likely to occur to such extent as to prejudice the structure of the highway or the safety of users, the City Council shall forthwith take such remedial steps as OCC may require.
- 5.3 Prior to commencement of the Works the City Council will provide suitable vehicle and wheel cleaning apparatus and ensure that such apparatus is maintained in good and

useable condition and used by all vehicles immediately before leaving the site of the Works to prevent mud or other materials being deposited on the adjoining existing highway.

- 5.4 In the event of the City Council receiving any complaint it will promptly notify OCC.
6. The City Council shall until OCC have issued the Certificate of Completion take all steps necessary to protect and maintain those parts of the Works which have been executed, so that upon substantial completion of the whole of the Works every part of the Works is in a sound and workmanlike condition and free from any damage and any material wear and tear.

Pre-completion

- 7.
- 7.1 On substantial completion of the Works the City Council shall clear away and remove from the site of the Works all plant, surplus material, rubbish and temporary works and items of every kind, and shall leave the whole of the site of the Works clean and in a workmanlike condition to the satisfaction of OCC.
- 7.2 On substantial completion of the Works (and clearance of the site of the Works) the City Council shall lodge a stage 3 Safety Audit report together with the 'Designer's response' with OCC and the City Council shall execute and complete all works as advised by OCC arising from the Safety Audit recommendations.
- 8.
- 8.1 The City Council shall furnish to OCC the Health and Safety file prepared in accordance with Interim Advice Note 105/08 – Implementation of Construction (Design and Management) 2007 issued by the Highways Agency (now Highways England) as revised and/or replaced from time to time. The Health and Safety File shall include detailed plans and drawings showing the Works as the same have actually been executed and completed and the City Council shall at his own cost ensure that OCC shall not be prevented by copyright or otherwise from reproducing such plans and drawings or part of them as OCC may require for purposes relating only to the Works and the highway and the City Council shall furnish satisfactory evidence to OCC that this has been done.
- 8.2 The City Council shall provide to OCC (if applicable in

relation to the Scheme) a Deed of Dedication in the form of Schedule 4

9. The City Council shall ensure that insurance as referred to in Condition 8 of this Agreement shall be maintained throughout the carrying out of the Works.

Completion Certificate

10. Subject always to prior compliance with the pre completion requirements of Clause 7 and with Clause 8 (above), OCC shall issue the Certificate of Completion forthwith if OCC is satisfied that the Works (save for such minor outstanding works as OCC shall agree) have been completed in accordance with the Agreement.

Default

11. If in the course of execution of the Works it shall appear to OCC that:
 - 11.1 : any error has arisen in the position, levels, dimensions or alignment of the Works; or
 - 11.2 any work carried out or materials used for the purpose of the Works are defective to such extent as to prejudice in any respect the structure, stability, durability or subsequent functioning of the Works; or
 - 11.3 damage has occurred in respect of the Works; or
 - 11.4 in any other respect the Works are not in accordance with the Scheme of Works;

and OCC notify City Council in writing of this then City Council shall forthwith take such remedial steps as OCC shall specify in the notice to the satisfaction of OCC. The Funding may be applied to such remedial steps where there are sufficient balances allowing for expenditure to date and payment of any sums required pursuant to the Deed of Dedication.

12. If the City Council shall be materially in default in respect of any of the provisions of this Agreement as to work to be done or not done, or to be done in a particular manner or by a particular time and if such default continues after OCC have given to the City Council not less than 21 days' written notice of the steps they require to be taken to remedy such default OCC may take such steps itself to the exclusion of the City Council and charge the expenses incurred to the City Council.

13. The City Council shall indemnify OCC and keep them indemnified against all actions, liabilities, claims, costs and proceedings which may arise from the execution and completion of the Works (except insofar as may arise from the negligence or default of OCC) and from anything done or not done by the City Council or by its employees or contractors in connection with the Works.

**Schedule 7
Deed of Grant**

DATED

20[]

[

]

-and-

OXFORDSHIRE COUNTY COUNCIL

DEED OF GRANT

relating to road drainage at

[

]



Director of Law & Governance and Monitoring Officer
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

- 1.2. Reference to clauses sub-clauses and schedules are references to clause sub-clauses and schedules in this Agreement
 - 1.3. Where the context so requires:-
 - 1.3.1. the singular includes the plural and vice versa
 - 1.3.2. the masculine includes the feminine and vice versa
 - 1.3.3. persons includes bodies corporate associations and partnerships and vice versa
 - 1.4. Where a party comprises more than one person the obligations and liabilities on that party shall be joint and several obligations and liabilities of those persons
 - 1.5. Where more than one party enters into any obligation or liability those parties are jointly and severally liable
 - 1.6. Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause or permit or allow infringement of this restriction
- 2. Recitals/Preliminary**
- 2.1. The Owner owns the Owner's Land free from incumbrances
 - 2.2. The Owner has constructed the New Roads and surface water drainage from the New Roads is conveyed through the Drains¹

¹ [and the soakaways]

2.3. The Council is the highway authority for all highways in Oxfordshire which are not highways for which the Secretary of State is the highway authority

2.4. The Council and the Owner have entered into an agreement further to Section 38 of the Highways Act 1980 for the adoption of the New Roads and agree that the Drains² should become part of the highway network

3. **Grant**

The Owner grants to the Council with full title guarantee the following rights to hold them in fee simple for the benefit of the Roads:-

3.1. To have use inspect clean repair maintain renew replace (with the same or updated apparatus) and remove the Drains and Soakaways for the purpose of conveying surface water from the Roads

3.2. To enter upon the Servient Land with or without vehicles plant tools equipment and apparatus for the purposes of inspecting cleaning repairing maintaining renewing replacing (with the same or updating apparatus) or removing the Drains and Soakaways as may be necessary from time to time on prior reasonable notice except in case of emergency when no notice will be required and the person exercising such rights shall cause as little damage as reasonably practicable to the Servient Land and make good damage caused to the Servient Land in the exercise of such rights

- 3.3. To open up the surface of the Servient Land for the purpose of carrying out any such inspection cleaning repair maintenance renewal replacement or removal as may be necessary from time to time and the person exercising such rights shall cause as little damage as reasonably practicable to the Owner's Land and make good all damage caused to the Owner's Land in the exercise of such rights

4. The Owner's Obligations

The Owner for itself and its successors in title covenants with the Grantee and its successors in title so as to bind the Owner's Land into whosoever hands it may come and for the benefit and protection of the Roads at all times after the date of this Deed to observe and perform the following:-

- 4.1. Not to build or erect any building or structure whether of a temporary or permanent nature on the Servient Land
- 4.2. Not to plant any trees shrubs or hedge in or on the Servient Land
- 4.3. Not to carry out mole ploughing subsoil drainage works or any other works which may damage or otherwise adversely affect or interfere with the Drains or the Soakaways

5. Reservation of rights and exclusivity

- 5.1. All rights not specifically and expressly included are reserved to the Owner
- 5.2. The rights hereby granted are granted exclusively to the Council and its successors in title to the intent that no other

Witness

Signature :

Name :

Address :

.....

.....

Occupation :

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of)
[NAME OF COMPANY] in the presence of :)

[Director]

[Director] [Secretary]

THE COMMON SEAL of **THE**)
OXFORDSHIRE COUNTY COUNCIL)
was affixed to this Deed)
in the presence of:-)

Director of Law &
Governance/
Designated Officer

Schedule 8
Forms of Collateral Warranty

PART A

WARRANTY TO BE PROVIDED BY PROFESSIONAL TEAM MEMBER

DATED _____ 202[]

(1) [Consultant]

(2) [Employer]

(3) [Contractor where step-in]

CONSULTANT'S WARRANTY

TO [EMPLOYER/END USER/FUNDER/FIRST PURCHASER /
FIRST TENANT]

relating to

[Project]

THIS DEED is made on 202[]

BETWEEN:-

- (1) [NAME OF CONSULTANT] (company registration number ([])) of/whose registered office is at [ADDRESS] (the "Consultant"); and
- (2) [BENEFICIARY] (company registration number []) of/whose registered office is at [ADDRESS] (the "Beneficiary" which term shall include its permitted assigns);
- (3) [Contractor etc. if step in].

BACKGROUND

- A The Contractor has appointed the Consultant to act in the capacity of [architect etc.] in relation to the Development.
- B The Beneficiary is [describe the Beneficiary's interest in the Property].
- C The Consultant has agreed to enter into this Deed with the Beneficiary.

AGREED TERMS

1. INTERPRETATION

1.1 In this Deed:-

"Appointment" mean the appointment dated [] made between (1) the Contractor and (2) the Consultant under which the Consultant is providing professional services in relation to the Development;

"Contract" means the building contract(s) entered into by the Employer and the Contractor to procure the design, construction and completion of the Development;

"Contractor" means [];

"Development" means the design and construction of [Description of Development] at [];

"Documents" includes all drawings, details, plans, reports, calculations, specifications, bills of quantities levels and setting out details and other documents of any nature whatsoever (including those in electronic format) and designs contained in them (and any works executed from them) provided by or on behalf of the Consultant in the course of performing its obligations under its contract with the Contractor in relation to the Development;

"Employer" [].

1.2 In interpreting this Deed:-

- 1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "person" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.3 references to the Beneficiary shall be deemed to include its successors in title and permitted assigns;

- 1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 1.2.5 headings to Clauses shall be disregarded when construing this Deed;
- 1.2.6 where the words include(s) or including are used in this Deed, they are deemed to have the meaning "without limitation" following them.

2. SKILL AND CARE

2.1 The Consultant undertakes with and warrants to the Beneficiary that:-

2.1.1 in carrying out and performing the services under or in connection with the Appointment the Consultant has exercised and will continue to exercise all the reasonable skill, care and diligence that could be expected of a competent and appropriately qualified member of the Consultant's profession who is experienced of and who holds himself out as being experienced in carrying out services of a type equivalent to those undertaken by the Consultant under the Appointment in connection with the Development of the same type, complexity, value and timescale to the Development;

2.1.2 the Consultant has exercised and will continue to exercise the standard of skill, care and attention referred to in Clause 2.1.1 not to specify any products or materials for use in the Project which are referred to in Clause 2.1.1 not to specify any products or materials for use in the Project which

- (a) do not conform with British and European Standards or Codes of Practice; or
- (b) are generally known within the Consultant's profession to be deleterious, in particular circumstances in which they are specified for use, to health and safety and/or the durability of the building or structure or structure in which they are used;

2.1.3 it has carried out and will continue to carry out the duties and obligations on its part to be performed under the Appointment.

2.2 If a claim is brought against the Consultant by the Beneficiary the Consultant may rely on any defence available to it under the terms of the Appointment save that the Consultant may not raise by way of defence or set off or abatement or to bring any counterclaim in respect of any monies due to it under or in connection with the Appointment. The Consultant may not plead a "no-loss" defence, including one based on an argument that since the Employer under the Appointment has not suffered a loss then the Beneficiary is not entitled to recover a loss it has suffered or that the Beneficiary's loss is irrecoverable because it would not be foreseeable that the Employer under the Appointment would suffer such a loss.

3. COPYRIGHT

3.1 Copyright and all intellectual property rights subsisting over the Documents which are vested in the Consultant will remain vested in the Consultant but the Consultant hereby grants (or if such a grant cannot legally take place until a later date shall grant) to the Beneficiary with effect from the date of this Deed or, in the case of Documents not yet in existence, with effect from the creation of them an irrevocable fully paid up royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Consultant's obligations or termination of its employment under the Appointment or any dispute under the Appointment) to use and reproduce all Documents and the designs contained in them in built or physical form for any purpose whatsoever connected with the Development (including but without limitation the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Development). Such licence will carry the right to grant sub-licences and will be transferable to third parties. Such licence shall enable the Beneficiary to copy and use the Documents for an extension of the Development but such licence shall not include a licence to reproduce the designs contained in the Documents as an extension to the Development save to the extent that such reproduction is reasonably necessary to facilitate the join of the extension to the Development or to obtain planning or any other relevant consent for the extension or to make the extended building a reasonably harmonious whole. The Consultant shall not be liable for any use by the Beneficiary of any of the Documents for any purpose other than that for which the same were prepared by or on behalf of the Consultant.

3.2 The Beneficiary may request copies of part or all of the Documents and, upon paying a reasonable copying charge for them, the Consultant shall supply the copies.

4. INDEMNITY INSURANCE

4.1 The Consultant shall maintain professional indemnity insurance covering (inter alia) its potential liability under this Deed for the given insurance policy year in the event that it breaches this Deed upon market norm 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 **£5,000,000.00 (Five million pounds)** in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar where such limited cover is the norm for a period beginning now and ending 12 years after the date of completion of the services under the Appointment or termination of the Appointment if earlier, provided always that such insurance is available at commercially affordable rates and on terms such that members of the Consultant's profession generally carry such insurance ("**Reasonable Rates and Terms**").

4.2 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 Reasonable Rates and Terms.

4.3 The Consultant shall immediately inform the Beneficiary if such insurance ceases to be available upon Reasonable Rates and Terms in order that the Consultant and the Beneficiary can discuss means of best protecting their respective positions in respect of the Development in the absence of such insurance.

4.4 The Consultant shall co-operate fully with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the Beneficiary undertakes in writing to reimburse the Consultant in respect of the net cost of such insurance to the Consultant above Reasonable Rates and Terms.

4.5 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.

4.6 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of the Appointment for any reason whatsoever, including (without limitation) breach by the Employer.

5. LIABILITY PERIOD

Actions or proceedings for any breach of this Deed may be commenced up to and including but not after the expiry of 12 years from the date of completion of the services under the Appointment or termination of the Appointment if earlier.

6. ASSIGNMENT

6.1 The Consultant consents to the benefit of this Deed being assigned two times only **PROVIDED ALWAYS** that the maximum number of two assignments referred to above shall not be affected by assignments or charges by way of security and their release or assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.

6.2 Despite any other provision of this Deed the Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 6.1 (an "**Assignee**") 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 the original named party to this Deed.

6.3 The Consultant may not defend any claim brought by the Beneficiary or an Assignee on the basis of a no loss argument whether based on the logic that the Beneficiary or an Assignee has not suffered a recoverable loss because the Contractor or Employer has not suffered that loss or because the Contractor or Employer would not suffer a similar loss because of their different interests in the completed Development compared to the interest of the Beneficiary or Assignee and/or if assigned that the original

Beneficiary has not suffered such loss because he has parted with his interest in the Deed otherwise.

7. [IN EMPLOYER / FUNDER WARRANTY – OBLIGATIONS PRIOR TO TERMINATION APPOINTMENT BY THE CONSULTANT]

- 7.1 The Consultant shall not exercise nor seek to exercise any right of termination of its employment or to discontinue the performance of the Appointment for any reason whatsoever (including a breach on the part of the Employer) without giving not less than 21 days' written notice of its intention to the Beneficiary and specifying the grounds for the proposed termination or discontinuance.
- 7.2 Any period stipulated in the Appointment for the exercise of a right of termination by the Consultant under the Appointment or to discontinue the performance of the Appointment nevertheless, be extended as may be necessary to take account of the period of notice required by Clause 7.1.
- 7.3 The right of the Consultant to terminate its employment under the Appointment or to discontinue the performance of the Appointment shall cease within the period of 21 days referred to in Clause 7.1. Beneficiary shall give notice to the Consultant:-
- 7.3.1 requiring the Consultant to continue its obligations under the Appointment with the Beneficiary or its nominee; and
- 7.3.2 acknowledging that the Beneficiary or its nominee will assume all the obligations of the Employer under the Appointment; and
- 7.3.3 undertaking that the Beneficiary or its nominee will discharge all payments which are 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 him under the Appointment but which remain unpaid.
- 7.4 Upon service by the Beneficiary or its nominee of a notice complying with the requirements of Clause 7.3, the Appointment will continue in full force and effect as if the same had been entered into between the Consultant and the Beneficiary to the exclusion of the Employer.
- 7.5 Compliance by the Consultant with the provisions of this Clause 7 will not be treated as a waiver of a breach on the part of the Employer giving rise to the right of termination nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice issued pursuant to Clause 7.1 unless the rights of termination have ceased under the provisions of Clause 7.3.
- 7.6 This Clause 7 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 Project and entered into between the Consultant and such person at the request of the Employer.].

8. [IN FUNDER WARRANTY – CONSULTANT'S POSITION]

By acting in accordance with Clause 7 the Consultant shall not incur any liability to the Contractor.]

9. NOTICES

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if delivered personally to the addressee at its address as shown above (or such other address as may be notified in writing from time to time as its address for service).

10. EXTRANEIOUS RIGHTS

- 10.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Consultant to the Beneficiary.
- 10.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Deed.

- 10.3 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.
- 10.4 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) 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.

11. GOVERNING LAW

This Deed is subject in all respects to English law and the English Courts shall have exclusive jurisdiction with regard to all matters arising under or in connection with it.

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

[Execution details here]

PART B

WARRANTY TO BE PROVIDED BY PRINCIPAL SUB-CONTRACTOR

DATE

202[]

(1) [Sub-Contractor]

(2) [Beneficiary]

(3) [Contractor in Fund Warranty if there is a Step in provision]

SUB-CONTRACTOR'S EMPLOYER/END USER/FUND/PURCHASER/TENANT WARRANTY

Relating to

[describe works and development]

THIS DEED is made on

202[]

BETWEEN:-

- 1 [] (No [] of/whose registered office is [] (the "Beneficiary"); and
- 2 [] (No [] of/whose registered office is a [] (the "Sub-Contractor").
- 3 [[] (No [] of/whose registered office is a [] (the "Contractor").]

BACKGROUND

- A The Employer has retained the Contractor under the terms of the Building Contract to carry out the Development.
- B The Contractor has retained the Sub-Contractor under the terms of the Sub-Contract to carry out the Works.
- C The Beneficiary has an interest in the Development as [describe Beneficiary's interest].
- D The Sub-Contractor has agreed to enter into this Deed with the Beneficiary as a condition of the Sub-Contract.

AGREED TERMS

1 INTERPRETATION

1.1 In this Deed:-

"Contract" means a contract dated [] made between (1) the Employer (2) the Contractor and (3) the Beneficiary in relation to the Development;

"Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business; "Contractor"

means [];

"Development" means [describe] at [];

"Documents" includes all drawings, details, plans, reports, calculations, specifications, bills of quantities, and other documents of any nature whatsoever (including those in electronic format) and designs contained in them (and any works executed from them) provided by or on behalf of the Sub-Contractor in the course of performing its obligations under the Sub-Contract;

"Employer" means [];

"Sub-Contract" means a contract dated [] made between the Contractor and the Sub-Contractor.

1.2 In interpreting this Deed:-

1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every partner jointly and severally;

1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to "person" shall be deemed to include any individual firm unincorporated association or body corporate;

1.2.3 references to the Beneficiary shall be deemed to include its successors in title and assigns;

1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;

1.2.5 headings to Clauses shall be disregarded;

1.2.6 where the words include(s) or including are used in this Deed, they are deemed to have the words "without limitation" following them.

2 SKILL AND CARE

2.1 The Sub-Contractor undertakes with and warrants to the Beneficiary that:-

2.1.1 it has and shall continue to:-

- (a) carry out and complete the Development in conformity with the Sub-Contract;
- (b) comply with its obligations contained in the Sub-Contract;
- (c) carry out and complete the works using workmanship and materials of the quality and standard specified in the Sub-Contract;
- (d) without limiting Clause 2.1 and to the extent that under the Sub-Contract the Sub-Contractor takes responsibility for the design of the Development and the selection of goods, materials, plant and equipment for incorporation therein the Sub-Contractor warrants that the same has been or will be designed or selected with all reasonable skill and care and diligence to be expected of a competent and appropriately qualified designer of the relevant discipline to the design services being carried out who is experienced in undertaking the design of sub contract works like the Sub-Contract works for developments of the same type, complexity, value and timescale to the Development and experienced in the same way in selecting goods, materials and so forth in connection with the same;

2.1.2 it has not specified or used nor will it specify for use or use any products or materials in the Development which at the time of use:-

- (a) do not conform with British and European Standards or Codes of Practice;
- (b) are generally known within the Sub-Contractor's trade to be deleterious in the particular circumstances in which they are used or specified for use to health and safety and/or the durability of the Development.

2.2 The Beneficiary has relied on the Sub-Contractor's performance of the Sub-Contract.

2.3 If a claim is brought against the Sub-Contractor by the Beneficiary the Sub-Contractor may rely on any defence or limitation available to it under the Sub-Contract except that it may not raise by way of defence, set off or counterclaim any monies claimed due from the Contractor under the Sub-Contract or otherwise.

3 [OBLIGATIONS PRIOR TO TERMINATION OF THE SUB-CONTRACT BY THE SUB-CONTRACTOR [For use in Funder Warranty]

3.1 The Sub-Contractor covenants with the Beneficiary that it will not exercise nor seek to exercise any right of termination of its employment under the Sub-Contract or to discontinue the performance of the Sub-Contract for any reason whatsoever (including any breach on the part of the Contractor) 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.

3.2 Any period stipulated in the Sub-Contract for the exercise of a right of termination by the Contractor of its employment under the Sub-Contract or to discontinue the performance of the Sub-Contract shall,

nevertheless, be extended as may be necessary to take account of the period of notice required under Clause 3.1.

3.3 The right of the Sub-Contractor to terminate its employment under the Sub-Contract or to discontinue the performance of the Sub-Contract shall cease within the period of 21 days referred to in Clause 3.1. The Beneficiary shall give notice to the Sub-Contractor:-

3.3.1 requiring the Sub-Contractor to continue its obligations under the Sub-Contract with the Beneficiary or its nominee; and

3.3.2 acknowledging that the Beneficiary or its nominee will assume all the obligations of the Sub-Contractor under the Sub-Contract; and

3.3.3 undertaking that the Beneficiary or its nominee will discharge all payments which subsequently become due to the Sub-Contractor under the terms of the Sub-Contract and to the Sub-Contractor any sums which have been due and payable to him under the Sub-Contract but which remain unpaid.

3.4 Upon service by the Beneficiary or its nominee of a notice complying with the requirements of Clause 3.3, the Sub-Contract will continue in full force and effect as if the same had been entered into between the Sub-Contractor and the Beneficiary to the exclusion of the Contractor.

3.5 Compliance by the Sub-Contractor with the provisions of this Clause 3 will not be treated as a waiver of any breach on the part of the Sub-Contractor giving rise to the right of termination nor otherwise entitle the Sub-Contractor from exercising its rights after the expiration of the notice issued pursuant to Clause 3.1 unless the rights of termination have ceased under the provisions of Clause 3.3.

3.6 This Clause 3 shall cease to have effect upon the prior exercise by any third person of any similar right of substitution contained in any other agreement concerning the Development and entered into between the Sub-Contractor and such person at the request of the Contractor.]

4 **[SUB-CONTRACTOR'S POSITION**

By acting in accordance with Clause 3 the Sub-Contractor shall not incur any liability to the Contractor.

5 **COPYRIGHT**

5.1 Copyright and all intellectual property rights subsisting over the Documents which are vested in the Contractor will remain vested in the Sub-Contractor but the Sub-Contractor hereby grants (or if such grant cannot legally take place until a later date agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the date of their issue an irrevocable fully paid up royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Sub-Contractor obligations or termination of its employment under the Sub-Contract or any dispute under the Sub-Contract) to use and reproduce all Documents and designs contained in them in built or physical form for any purpose whatsoever connected with the Development (including but without limitation the execution, completion, maintenance, repair, advertisement, modification, extension, reinstatement and repair of the Development). Such licence shall carry the right to grant sub-licences and will be transferable to third parties. Such licence shall enable the Beneficiary to copy and use the Documents for an extension of the Development but such licence shall not include a licence to reproduce the designs contained in the Documents as an extension of the Development save to the extent that such reproduction is reasonably necessary to facilitate the joint use of the extension to the Development or to obtain planning or any other relevant consent for the extension. The Contractor shall not be liable for the use by the Beneficiary of any of the Documents for any purpose other than that for which the same were prepared by or on behalf of the Sub-Contractor.

5.2 The Beneficiary may request copies of part or all of the Documents and upon paying a reasonable copying charge for them, the Sub-Contractor shall supply the copies.

6 INDEMNITY INSURANCE [if Sub-Contractor has a design responsibility]

- 6.1 The Sub-Contractor shall maintain professional indemnity insurance covering (inter alia) its potential liability under this Deed for the given insurance policy year in the event that it breaches its obligations under the Sub-Contract upon market norm terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying out such insurance business in the United Kingdom, in an amount of not less than £[] ([] million pounds) in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar where such limited cover is the norm for a period beginning now and ending 12 years after the date of completion under the Contract or termination of the Contract if earlier, provided always that such insurance is available at commercially affordable rates and on terms such that a prudent sub-contractor in the Sub-Contractor's trade who undertakes design would carry such insurance ("Reasonable Rates and Terms").
- 6.2 Any increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within Reasonable Rates and Terms.
- 6.3 The Sub-Contractor shall immediately inform the Beneficiary if such insurance ceases to be available upon Reasonable Rates and Terms in order that the Sub-Contractor and the Beneficiary can discuss means of best protecting the respective positions of the Beneficiary and the Sub-Contractor in respect of the Development in the absence of such insurance.
- 6.4 The Sub-Contractor shall fully co-operate with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the Beneficiary undertakes in writing to reimburse the Sub-Contractor in respect of the net cost of such insurance to the Sub-Contractor above commercially affordable rates.
- 6.5 As and when reasonably requested to do so by the Beneficiary the Sub-Contractor shall produce for inspection satisfactory documentary evidence (and a copy of an insurance broker's letter or similar certificate shall be satisfactory) that the required professional indemnity insurance is being maintained.
- 6.6 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of the Sub-Contract for any reason whatsoever, including (without limitation) breach by the Contractor.

7 LIABILITY PERIOD

Actions or proceedings may be brought against the Sub-Contractor under this Deed up to but not after the expiry of 12 years from the date of completion under the Contract or termination of the Contract if earlier.

8 ASSIGNMENT

- 8.1 The Sub-Contractor consents to the benefits of this Deed being assigned two times only provided always that the maximum number of two assignments referred to above shall not be affected by assignments or charges by way of security and assignment by way of release or releases from charges, and assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.
- 8.2 Despite any other provision of this Deed the Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause [8].1 (an "Assignee") 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 the original named party to this Deed.
- 8.3 Despite any other provision of this Deed the Sub-Contractor shall not be entitled to defend any claim brought by the Beneficiary or an Assignee on the basis of a no loss argument whether based on the logic that the Beneficiary or an Assignee has not suffered a recoverable loss because the Contractor has not

suffered that loss or because the Contractor would not suffer a similar loss because of his disinterest in the completed Development to the interest of the Beneficiary or Assignee and/or if assigned that the original Beneficiary has not suffered such loss because he has parted with his interest in the Development or otherwise.

9 NOTICES

Any notice required to be given under this Deed shall be in writing and shall be deemed to be given if delivered personally to the address for the party shown above or such other address as may be notified in writing.

10 EXTRANEEOUS RIGHTS

- 10.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor to the Beneficiary.
- 10.2 No approval or inspection of the Development or of any designs or specifications and no testing of work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Sub-Contractor arising under this Deed.
- 10.3 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.
- 10.4 This Deed does not create any right enforceable by any person not a party to it (pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or a permitted assignee of the rights of the Beneficiary is deemed to be a party to this Deed.

11 GOVERNING LAW

This Deed is exclusively subject in all respects to English law and the English Courts shall have exclusive jurisdiction with regard to all matters arising under or in connection with it.

12 [CONTRACTOR'S CONSENT – If Contractor is a party]

[The Contractor has executed this Deed to signify consent to its terms.]

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

[Execution details here]

PART C

WARRANTY FROM WORKS CONTRACTOR RELATING TO END USER/FUND/PURCHASER/TENANT

DATE _____ **2021**

(1) [Beneficiary]

(2) [Contractor]

(3) [Employer in Fund Warranty if there is a Step in provision]

CONTRACTOR'S COLLATERAL WARRANTY

Relating to a project at

[describe works and development]

THIS DEED is made on

202[]

BETWEEN:-

1. [] (No [] of/whose registered office is at [] (the "**Beneficiary**");
2. [] (No [] of/whose registered office is at [] (the "**Contractor**");
3. [] (No [] of/whose registered office is at [] (the "**Employer**").]

BACKGROUND

- A The Employer has engaged the Contractor to carry out [design and] construction work;
- B The Beneficiary, as [set out nature of beneficiary's interest], has an interest in the [design and] construction work.
- C The Employer requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.
- D The Contractor has agreed to enter into this agreement with [the Employer and] the Beneficiary for the benefit of the Beneficiary.

AGREED TERMS

1. INTERPRETATION

1.1 In this Deed:-

"**Contract**" means a contract dated [] made between (1) the Employer (2) the Contractor for the Development;

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

"**Development**" means [describe] at [describe];

"**Documents**" includes all drawings, details, plans, reports, calculations, specifications, bills of quantities levels and setting out details and other documents of any nature whatsoever (including those in electronic format) and designs contained in them (and any works executed from them) provided by or on behalf of the Contractor in the course of performing its obligations under the Contract.

1.2 In interpreting this Deed:-

- 1.2.1 if a party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "**person**" include any individual, firm, unincorporated association or body corporate;
- 1.2.3 references to the Beneficiary include its successors in title and assigns;
- 1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 1.2.5 headings to Clauses shall be disregarded;
- 1.2.6 where the words include(s) or including are used in this Deed, they are deemed to have the words "without limitation" following them.

2. CONTRACTOR'S OBLIGATIONS AND WARRANTIES

2.1 The Contractor undertakes with and warrants to the Beneficiary that:-

2.1.1 it has and shall continue to:-

- (a) carry out and complete the Development in accordance with the Contract;
- (b) comply with its obligations in the Contract;
- (c) carry out and complete the Development using workmanship and materials of the quality and standard specified in the Contract;

2.1.2 without limiting Clause 2.1 and to the extent that under the Contract the Contractor is responsible for the design of the Development and the selection of goods, materials, plant and equipment for incorporation in it, the Contractor warrants that the same has been or will be designed or selected with all reasonable skill and care and diligence to be expected of a contractor and appropriately qualified designer of the relevant discipline for the design work being performed who is experienced in undertaking the design of developments of the same type, complexity and timescale as the Development and experienced of selecting goods, materials and services in connection with the same;

2.1.3 it has not specified or used nor will it specify for use or use any products or materials in the Development which at the time of use:-

- (a) do not conform with British and European Standards or Codes of Practice;
- (b) are generally known within the Contractor's trade to be deleterious in the particular circumstances in which they are used or specified for use to health and safety and the durability of the Development.

2.2 The Beneficiary has relied on the Contractor.

2.3 If a claim is brought against the Contractor by the Beneficiary, the Contractor may rely on any defence or limitation available to it under the Contract except that it may not raise by way of defence, set-off or counterclaim any monies claimed due from the Employer under the Contract or otherwise.

2.4 The Contractor's duties or liabilities under this Deed shall not be negated or diminished by:

2.4.1 any approval or inspection of:

- (a) the Development; or
- (b) any designs or specifications for the Development; or

2.4.2 any testing of any work, goods, materials, plant or equipment; or

2.4.3 any omission to approve, inspect or test, by or on behalf of the Beneficiary or the Employer.

3. COPYRIGHT

3.1 Copyright and all intellectual property rights subsisting over the Documents which are vested in the Contractor will remain vested in the Contractor but the Contractor hereby grants (or if such a grant is not legally take place until a later date agrees to grant) to the Beneficiary with effect from the date of the grant or in the case of Documents not yet in existence with effect from the creation of them an irrevocable, non-exclusive, paid up royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding the completion of the Contractor obligations or termination of its employment under the Contract) to use and reproduce all Documents and the designs contained in them in any form or physical form for any purpose whatsoever connected with the Development (including but not limited to the execution, completion, maintenance, letting, advertisement, modification, repair, replacement, reinstatement and repair of the Development). Such licence will carry the right to grant sub-licences and will be transferable to third parties. Such licence shall enable the Beneficiary to copy and use

Documents for an extension of the Development but such licence shall not include a licence to reproduce the designs contained in the Documents as an extension to the Development save to the extent that such reproduction is reasonably necessary to facilitate the join of the extension to the Development or to obtain planning or any other relevant consent for the extension or to make the extended building a reasonably harmonious whole. The Contractor shall not be liable for any use by the Beneficiary of any of the Documents for any purpose other than that for which the same were prepared by or on behalf of the Contractor.

3.2 The Beneficiary may request copies of part or all of the Documents and upon paying a reasonable copying charge for them, the Contractor shall supply the copies.

4. PROFESSIONAL INDEMNITY INSURANCE [if Contractor has a design responsibility]

4.1 The Contractor shall maintain professional indemnity insurance covering (inter alia) its potential liability under this Deed for the given insurance policy year in the event that it breaches this Deed upon market norm 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. 00 (Five million pounds)** in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar where such limited cover is the norm for a period beginning now and ending 12 years after the date of completion or termination of the Contract if earlier, provided always that such insurance is available at commercially affordable rates and on terms such that prudent building contractors who undertake design generally carry such insurance ("**Reasonable Rates and Terms**").

4.2 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 Reasonable Rates and Terms.

4.3 The Contractor shall immediately inform the Beneficiary if such insurance ceases to be available upon Reasonable Rates and Terms in order that the Contractor and the Beneficiary can discuss means of best protecting their respective positions in respect of this Deed and the Development in the absence of such insurance.

4.4 The Contractor shall immediately inform the Beneficiary if the Contractor's required professional indemnity insurance ceases to be available within Reasonable Rates and Terms, so that the Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Contractor regarding the Development, without that insurance.

4.5 The Contractor shall co-operate fully with any measures reasonably required by the Beneficiary including completing any proposals for insurance and associated documents.

4.6 When reasonably requested to do so by the Beneficiary the Contractor shall produce promptly for inspection and or provide a copy of satisfactory documentary evidence (and a copy of an insurance broker's letter or similar certificate shall be satisfactory) that the required professional indemnity insurance is being maintained.

4.7 These obligations in respect of professional indemnity insurance shall continue notwithstanding termination of the Contract for any reason whatsoever, including breach by the Employer.

[5 Step-in rights: Contractor may not terminate or discontinue

5.1 [Subject to clause 5.5.] the Contractor shall not exercise, or seek to exercise, any right to:

5.1.1 terminate its employment under the Contract; or

5.1.2 discontinue the [design and] construction of the Development;

for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least 15 Business Days' written notice of its intention to do so. Any notice from the Contractor shall specify the grounds for the Contractor's proposed termination or discontinuance.

- If the Contract allows the Contractor a shorter notice period for the exercise of a right referred to in clause 5.1, the notice period in the Contract shall be extended to take account of the notice period required under this clause 5.1.
- 5.2 The Contractor's right to terminate its employment under the Contract, or to discontinue the [design and] construction of the Development, shall cease if, within the period referred to in clause 5.1, the Beneficiary gives notice to the Contractor, copied to the Employer:
- 5.2.1 requiring the Contractor not to terminate its employment or not to discontinue the [design and] construction of the Development under the Contract;
- 5.2.2 acknowledging that the Beneficiary (or its nominee) will assume all the Employer's obligations under the Contract; and
- 5.2.3 undertaking that the Beneficiary or its nominee will pay to the Contractor:
- (a) any sums due and payable to the Contractor under the Contract in future; and
- (b) any sums then due and payable to the Contractor under the Contract that are unpaid.
- 5.3 If the Beneficiary (or its nominee) serves notice on the Contractor under clause 5.2, then, from the date of service of the notice, the Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).
- 5.4 In complying with this clause 5, the Contractor:
- 5.4.1 does not waive any breach of the Contract or default under the Contract by the Employer; and
- 5.4.2 may exercise its right to terminate its employment under the Contract, or discontinue the [design and] construction of the Development, after the expiry of the notice period referred to in clause 5.2, unless the Contractor's right to terminate or discontinue has ceased under clause 5.2.
- 5.5 [If:
- 5.5.1 the Contractor enters into another agreement with a third party or grants third party rights to a third party concerning the Development at the request of the Employer; and
- 5.5.2 that agreement or those third party rights include similar step-in rights to those in this Deed, then, on that third party's (or that third party's nominee's) exercise of those step-in rights:
- 5.5.3 the Contractor shall no longer be bound by clause 5.1 and clause 5.2; and
- 5.5.4 the Beneficiary may no longer exercise its step-in rights under this Deed.]]
- [Step-in rights: Beneficiary may step-in
- 5.6 [Subject to clause 5.5, and] without affecting clause 5.1, if the Beneficiary serves a notice on the Contractor, copied to the Employer, that:
- 5.6.1 confirms that the Beneficiary wishes to step-in to the Contract; and
- 5.6.2 complies with the requirements for a Beneficiary's notice under clause 5.2, then, from the date of service of the notice, the Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).
- 5.7 The Contractor shall assume that, between the Employer and the Beneficiary, the Beneficiary may give notice under clause 5.2. The Contractor shall not enquire whether the Beneficiary may give that notice.
- 5.8 In complying with this clause 5, the Contractor does not waive any breach of the Contract or default under the Contract by the Employer.]

[Step-in rights: Contractor's position and Employer's consent

5.9 The Contractor shall not incur any liability to the Employer by acting in accordance with clause 5.

5.10 The Employer has executed this Deed to confirm its consent to the agreement.]

[Step-in rights: Beneficiary's guarantee

5.11 If a Beneficiary's notice under this Deed refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Contractor from the Beneficiary's nominee.]

No instructions to Contractor by Beneficiary

5.12 [Unless the Beneficiary has stepped-in under this Deed,] the Beneficiary may not give instructions to the Contractor under this Deed.

6 LIABILITY PERIOD

Actions or proceedings may be brought against the Contractor under this Deed up to but not after the expiry of 12 years from the date of completion of the Development.

7 ASSIGNMENT

7.1 The Contractor consents to the benefits of this Deed being assigned two times only provided always that the maximum number of two assignments referred to above shall not be affected by assignments or charges by way of security and assignment by way of release or releases from charges, and assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.

7.2 The Contractor shall not contend that any person to whom this Deed is assigned in accordance with Clause [7].2 (an "Assignee") 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 the original named party to this Deed.

7.3 The Contractor shall not defend any claim brought by the Beneficiary or an Assignee on the basis of a no loss argument whether based on the logic that the Beneficiary or an Assignee has not suffered a recoverable loss because the Employer has not suffered that loss or because the Employer would not suffer a similar loss because of his different interest in the completed Development compared to the interest of the Beneficiary or Assignee and/or if assigned that the original Beneficiary has not suffered such loss because he has parted with his interest in the Development or otherwise.

8 NOTICES

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if delivered personally to the address for the party shown above or such other address as may be notified in writing.

9 EXTRANEIOUS RIGHTS

9.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Contractor to the Beneficiary.

9.2 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

9.3 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999.

10 GOVERNING LAW

This Deed is governed by and shall be construed in accordance with English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales with regard to all matters arising under or in connection with it.

11 [EMPLOYER'S CONSENT – If Employer is a party]

The Employer has executed this Deed to signify consent to its terms.]

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

[Execution details here]

Annex A
Location Plan



Map 1 - Oxpens
Bridge and Onward

Area of Oxpens Bridge and onwards connections



Key



Area of proposed Oxpens Bridge and onwards connections