

20. CDM REGULATIONS

- 20.1 The Developer elects to be treated for the purposes of the CDM Regulations as the only Client. The Authority agrees with such election by the Developer.
- 20.2 The Developer agrees to undertake all the obligations of a Client and to use its best endeavours to ensure that the Works are carried out in accordance with the CDM Regulations.
- 20.3 Before commencement of the Works, the Developer shall ensure that the Works are properly notified to the Health and Safety Executive in accordance with the CDM Regulations and shall give the Authority a copy of the notification and any acknowledgement from the Health and Safety Executive.
- 20.4 The Developer shall ensure that the Health and Safety File is maintained correctly and is available for inspection in accordance with the CDM Regulations.
- 20.5 The Developer warrants it has taken or shall take all reasonable steps to be satisfied that all contractors engaged on the Works are suitable and competent having regard to their responsibilities in relation to the Works and the CDM Regulations.
- 20.6 The Developer shall indemnify and keep the Authority indemnified against any breach of the Developer's obligations under this clause 19.2(b).

21. SURETY'S OBLIGATIONS

- 21.1 If any of the default events listed in clause 28 occur, the Proper Officer may, without affecting any statutory rights or powers or any other right, claim, or remedy under this agreement for such non-performance or non-observance, give to the Surety a Default Notice:
- (a) specifying the Default Work; and
 - (b) containing an estimate by the Proper Officer of the Default Cost. The Default Cost shall not exceed the greater of:
 - (i) 10 % of the Estimated Cost or an amount to be determined by the Proper Officer, exercising absolute discretion, after the issue of a Certificate of Partial Completion but in any event the surety's liability is limited to an amount not exceeding GBP 1,678,336.40.
- 21.2 Within 20 Working Days following the date of receipt of the Default Notice, the Surety shall pay the Default Cost to the Authority.

21.3 Following the issue of a Final Certificate for:

- (a) any part of the Road, the liability of the Surety shall be reduced by an amount as may be directed by the Proper Officer; or
- (b) all of the Road or the final part of the Road, the Surety shall be released from all liability under this agreement.

22. AUTHORITY'S COVENANTS

24.1 The Authority covenants with the Developer and the Surety for the benefit of each and every building plot fronting, adjoining, abutting, or having access to the Road:

- (a) to use reasonable endeavours in consultation with the Surety to mitigate any loss or damage sustained because of any default by the Developer, by taking such reasonable steps as the Authority thinks fit;
- (b) to use all monies received from the Surety pursuant to clause 21 towards the carrying out or completing the Works and maintaining and making good all defects for a period of 12 calendar months after completion of the Works. The amount received from the Surety shall be deducted from any sum that would otherwise be recoverable from the owners of premises fronting the Road under the Highways Act 1980;
- (c) if the sum paid by the Surety to the Authority exceeds the cost of carrying out or completing the Works and maintaining and making good all defects as set out in this agreement (together with the amount of the Authority's usual establishment charges) to repay to the Surety within 20 Working Days following the date of the Final Certificate, the amount of any excess; and
- (d) on the issue of the Final Certificate to give such notices and do whatever else may be required for securing that the Road or any part thereof, as the case may be, shall become a highway maintainable at public expense.

23. SPECIFICATION TO TAKE PRECEDENCE

If there is any conflict between the Specification and the Drawings, the Specification shall take precedence unless otherwise agreed in writing by the Proper Officer or in accordance with clause 15.2.

24. TECHNICAL ADVICE

If the Proper Officer determines that technical advice is required before any feature or structure included as part of the Works or that is under or over the Road can be approved, the Developer shall reimburse to the Authority, within 20 Working Days following receipt of an invoice, all reasonable and proper costs incurred by the Authority in obtaining such technical advice.

25. MAKING UP OF PRIVATE STREETS

If the Developer fails to perform any of its obligations under this agreement, nothing in this agreement shall prevent or restrict the Authority from exercising its powers under the Private Street Works Code contained in Part XI of the Highways Act 1980 or any other statutory provision.

26. INDEMNITIES

26.1 Other than those actions, charges, claims, costs, expenses, losses, damages, demands, liabilities and proceedings arising out of or in consequence of any negligent act default or omission of the Authority, the Developer shall indemnify the Authority in respect of any actions, charges, claims, costs, losses, damages, demands, liabilities and proceedings arising out of any breach or non-observance of the Developer's obligations in this agreement including (but not limited to):

- (a) third party claims for death, personal injury or damage to property;
- (b) statutory or other liability for the safety or security of the Land, working methods, employment practices, protection of the environment and control of pollution; and
- (c) third party claims for unlawful interference with any rights of light, air, support, water, drainage or any other easement or right.

26.2 The Developer shall indemnify the Authority in respect of any claims for compensation under section 10 of the Compulsory Purchase Act 1965 and claims under the Land Compensation Act 1973 arising out of, in connection with or incidental to, the carrying out of the Works and their subsequent use other than those arising out of or in consequence of any negligent act default or omission of the Authority provided always that:

(a) prior to settling any claim under Part 1 and / or Part II of the Land Compensation Act 1973 or Section 10 of the Compulsory Purchase Act 1965, the Authority will provide full and sufficient details of the particulars and quantum of the claim and the proposed settlement to the Developer and shall

give the Developer the opportunity to comment and to take advice from the Developer's own independent consultant in relation to any such proposed settlement ; and

(b) the Developer and / or its consultant shall be entitled to make representations to the Authority in relation to any proposed settlement in respect of any claim under Part I and / or Part II of the Land Compensation Act 1973 or Section 10 of the Compulsory Purchase Act 1965; and

(c) the Authority shall have proper regard to any representations made by the Developer or its consultant in accordance with Clause 18.2(b) above.

26.3 The indemnification referred to in clause 26.2 includes:

- (a) compensation payments under Part I of the Land Compensation Act 1973;
- (b) all fees incurred by claimants, and those of the Authority or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);
- (c) statutory interest payments to claimants and their professional advisors; and
- (d) the Authority's reasonable and proper legal costs in making the compensation, fees and interest payments under clause 26.3.

27. INSURANCE

From and including the date of completion of this agreement until the date of issue of the Final Certificate, the Developer shall maintain public liability insurance in the Developer's own name to cover claims for injury to or death of any person or loss or damage to any real or personal property for an indemnity of not less than £10 million for any one occurrence or series of occurrences arising out of the same event.

28. DEFAULT EVENTS

The Authority may terminate this agreement (except for clause 1, clause 3, clause 9, clause 20, clause 21, clauses 23-24, and clauses 31-40) immediately by written notice to the Developer without prejudice to any other rights the Authority may have, if any of the following events occur:

- (a) the Developer is in fundamental breach of any of its conditions, stipulations or obligations and liabilities in this agreement; or

- (b) the Developer is in substantial breach of any of its conditions, stipulations or obligations and liabilities in this agreement and has failed to rectify the breach within a reasonable time after receiving written notice to rectify from the Head of Legal Services; or
- (c) where the Developer is a corporation:
 - (i) has an administrative receiver or receiver appointed over the whole or part of the Developer's assets or suffers the appointment of an administrator; or
 - (ii) any step is taken in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or
 - (iii) an application is made for an administration order in relation to the Developer; or
 - (iv)
 - (v) in relation to the Developer, the appointment of an administrator, the filing of documents with the court for the appointment of an administrator or the giving of notice of intention to appoint an administrator by the Developer or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - (vi) a receiver or manager is appointed in relation to any property or income of the Developer; or
 - (vii) a liquidator is appointed in respect of the Developer; or
 - (viii) a voluntary winding-up of the Developer is commenced, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or
 - (ix) a petition is made for a winding-up order for the Developer; or
 - (x) the Developer is struck-off from the Register of Companies; or
 - (xi) the Developer otherwise ceases to exist; or
- (d) Where the Developer is an individual:
 - (i) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or

- (ii) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Developer.

29. AUTHORITY'S POWER TO EXECUTE WORKS IN DEFAULT

29.1 Without affecting clause 2 and clause 30, if the Developer fails to carry out or complete the Works in accordance with the Developer's obligations under this agreement, the Authority, after giving to the Developer and the Surety not less than 20 Working Days written notice, shall be entitled to carry out or complete the Works in default, using the Authority's own employees, or by contractors or otherwise and to recover from the Developer or Surety the cost or carrying out or completing the Works as certified by the Proper Officer.

29.2 The Developer hereby grants to the Authority and the Authority's agents, contractors and employees full right and licence to enter onto and remain on the Land together with all machinery plant and materials in order to carry out or complete the Works and remedy any defects or damage to the Road pursuant to clause 31.1.

30. DISPUTES

If any dispute arises out of this agreement, the dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity the arbitrator shall be appointed on either party's request by the President for the time being of the Institution of Civil Engineers. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

31. LEGAL AND OTHER COSTS

31.1 On the date of completion of this agreement or whenever demanded, within ten Working Days of written demand, the Developer shall pay to the Authority:

- (a) The Inspection Fee in respect of the reasonable and proper costs and expenses incurred or to be incurred by the Authority in connection with the technical assessment, safety audit and inspection of the Works being 7.5 % of the total of the Estimated Cost;
- (b) the Authority's Legal Fee in connection with the preparation, completion and registration of this agreement;
- (c) any costs incurred by the Authority in making and implementing any orders that regulate traffic which the Proper Officer deems necessary