

THIS DEED is dated [DATE]

PARTIES

- (1) **Barclays Bank PLC** (Company No. 1026167) of/whose registered office is at 1 Churchill Place, London, E14 5HP (**Surety**).
- (2) (i) **CPPI Bridgewater Place General Partner Limited** (Company No. 04764988) of/whose registered office is at Liberty House, 222 Regent Street, London, W1B 5TR (on behalf of itself and on behalf of CPPI Bridgewater Place Limited Partnership) (ii) **CPPI Bridgewater Place Limited Partnership** (LP008923) and (iii) **CPPI Bridgewater Place Nominee Limited** (Company No. 09360721) of/whose registered office is at Liberty House, 222 Regent Street, London, W1B 5TR (together “**the Owner**”); and
- (3) **LEEDS CITY COUNCIL** of Civic Hall, Leeds, LS1 1UR (**Council**).

BACKGROUND

- (A) The Owner has requested that the Council grant it licence to carry out works on the public highway pursuant to the Highways Act 1980 and the New Roads and Street Works Act 1991.
- (B) The Council requires the Owner to procure a bond in the form of this deed for the benefit of the Council.
- (C) The Surety has agreed to enter into this deed with the Council and the Owner for the benefit of the Council.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Agreement: means the agreement dated on or about the date of this deed between (1) the Council (2) the Owner and (3) the Bank relating to licences granted to the Owner to carry out works on the public highway pursuant to the Highways Act 1980 and the New Roads and Street Works Act 1991 (among other things);

Breach: means a breach or non-observance or non-performance of any of the provisions of the Agreement relating to the undertaking of the Section 50 Works and/or the Highway Works by or on behalf of the Owner which gives rise to an emergency situation and/or otherwise adversely affects public safety (the decision of the Officer in this respect being final);

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

Default: means a breach or non-observance or non-performance of any of the provisions of the Agreement relating to the undertaking of the Section 50 Works and/or the Highway Works by or on behalf of the Owner in relation to which (a) a

Default Notice has been issued to the Owner and a copy has been delivered to the Surety in accordance with the Agreement and (b) the Owner has not remedied the said breach or non-observance or non-performance within the period of time specified in the Default Notice;

Default Notice: has the meaning given to that expression in the Agreement;

Expiry Date: the earlier of 2 June 2018 and (b) the date of expiry of the Reinstatement Guarantee Period;

First Step-Down Date: means the later of (a) the date on which a construction compliance certificate is issued in respect of the Section 50 Works pursuant to paragraph 15 of Schedule 7 of the Agreement and (b) the date on which a provisional certificate is issued in respect of the Highway Works pursuant to paragraph 17 of Schedule 6 of the Agreement;

Highway Works: has the meaning given to that expression in the Agreement;

Maximum Amount: means (a) prior to the First Step-Down Date the sum of Six hundred and seventy two thousand pounds (£672,000); (b) on and from the First Step-Down Date to the day prior to the Second Step-Down Date the sum of One hundred and seventeen thousand two hundred pounds (£117,200); (c) on and from the Second Step-Down Date the sum of fifty thousand pounds (£50,000); and (d) on or from expiry of the Reinstatement Guarantee Period, zero (£0).

Officer: has the meaning given to the expression in the Agreement;

Reinstatement Guarantee Period: means the period for which the reinstatement of the highway is guaranteed pursuant to paragraph 12 of Schedule 7 of the Agreement;

Second Step-Down Date: means the date on which a final certificate is issued in respect of the Highway Works pursuant to paragraph 20 of Schedule 6 of the Agreement;

Section 50 Works: has the meaning given to that expression in the Agreement; and

Works: has the meaning given to that expression in the Agreement.

- 1.2 Clause headings shall not affect the interpretation of this deed.
- 1.3 A **Default** is continuing if it has not been waived by the Council.
- 1.4 A **person** includes a natural person corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires a reference to one gender shall include a reference to the other genders.

- 1.7 This agreement shall be binding on and enure to the benefit of the parties to this agreement and their respective personal representatives successors and permitted assigns and references to any party shall include that party's personal representatives successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.10 Any obligation on a party not to do something includes an obligation not to agree that thing to be done.
- 1.11 A reference to **writing** or **written** includes fax but not email.
- 1.12 A reference to this deed or to any other deed agreement or document referred to in this deed is a reference to this deed or such other deed agreement or document as varied or novated (in each case other than in breach of the provisions of this deed) from time to time.
- 1.13 References to clauses are to the clauses of this deed.
- 1.14 Any words following the terms '**including**' '**include**' '**in particular**' '**for example**' or any similar expression shall be construed as illustrative and shall not limit the sense of the words description definition phrase or term preceding those terms.

2. PROMISE TO PAY UP TO MAXIMUM AMOUNT

- 2.1 If either (a) there is Default continuing and/or (b) a Breach has occurred then the Council may give notice to the Surety in accordance with clause 3.1 requiring the Surety to pay to the Council a sum equal to the costs and expenses of the Council incurred in carrying out such works as may be required to remedy such breach non-observance or non-performance of the provisions of the Agreement that gave rise to the Default or the Breach (as the case may be) and subject to clause 2.2 and clause 3, the Surety shall pay that sum to the Council within five Business Days of receipt of the Council's notice.
- 2.2 The Council may give different notices to the Surety on different occasions each requiring the Surety to pay the sum referred to in clause 2.1 but the Surety shall not be obliged to pay to the Council more than the Maximum Amount in aggregate (and for the avoidance of doubt, if prior to (a) the First Step-Down Date the amount paid by the Surety exceeds One hundred and seventeen thousand two hundred pounds (£117,200) and/or (b) the Second Step-Down Date the amount paid by the Surety exceeds Fifty thousand pounds (£50,000) and/or (c) the date of expiry of the Reinstatement Guarantee Period the amount paid by the Surety exceeds £0 (zero), then on and after the First Step-Down Date or the Second Step-Down Date or the date

of expiry of the Reinstatement Guarantee Period (as the case may be) the Surety shall (a) have no right to require the Council to repay the excess amount, and (b) have no obligation to pay to the Council any further sum referred to in clause 2.1).

- 2.3 The Owner shall use all reasonable endeavours to secure a replacement bond on terms that are substantially the same as (or better than) those contained in this deed (or otherwise on terms acceptable to the Council) by 31 March 2018. In the event that the Owner does not secure a replacement bond on terms that are substantially the same as (or better than) those contained in this deed (or otherwise on terms acceptable to the Council) by 31 March 2018, then the Council may serve a notice on the Surety in accordance with clause 3.2 requiring it to pay within 5 Business Days of receipt of the notice an amount equal to the Maximum Amount (as prevailing on the date of the notice) less all sums paid by the Surety to the Council pursuant to clause 2.1 (provided that, for the avoidance of doubt, if that calculation produces a negative figure, no amount may be demanded by the Council). Subject to clause 3, the Surety shall pay the sum demanded to the Council within five Business Days of receipt of the Council's notice.

3. MAKING DEMAND

- 3.1 Any notice made under clause 2.1 of this deed must be received by the Surety at its address specified in and otherwise in compliance with clause 6 below before the Expiry Date and must be in the form of a statement signed by an officer of the Council that:
- (a) states that there is Default continuing and/or a Breach has occurred;
 - (b) specifies the costs and expenses of the Council incurred in carrying out such works as may be required to remedy such breach non-observance or non-performance of the provisions of the Agreement that gave rise to the Default or the Breach (as the case may be);
 - (c) specifies the aggregate sum already paid by the Surety under this deed, even if that sum is zero;
 - (d) specifies the Maximum Amount (as prevailing on the date of the notice); and
 - (e) specifies the sum claimed.
- 3.2 Any notice made under clause 2.3 of this deed must be received by the Surety at its address specified in and otherwise in compliance with clause 6 below on or before 30 April 2018 and must be in the form of a statement signed by an officer of the Council that:
- (a) states that Owner shall not have secured a replacement bond on terms that are substantially the same as (or better than) those contained in this deed (or otherwise on terms acceptable to the Council) by 31 March 2018;

- (b) specifies the aggregate sum already paid by the Surety under this deed, even if that sum is zero;
 - (c) specifies the Maximum Amount (as prevailing on the date of the notice); and
 - (d) specifies the sum claimed.
- 3.3 The Surety is entitled to treat any notice made by the Council pursuant to clause 2 and in accordance with clause 3.1 or clause 3.2 above (as the case may be) as prima facie evidence, for the purposes of this deed alone, that the sum claimed is due to the Council under this deed.

4. CONCLUSIVE LIABILITY AND EXTENT OF LIABILITY

- 4.1 No modification amendment or supplement to the Agreement shall affect release or impair the liability of the Surety under this deed and the Surety's liability shall extend to all the liabilities of the Owner under the Agreement as modified amended or supplemented.
- 4.2 The invalidity avoidance or termination of the Agreement shall not affect release or impair the liability of the Surety under this deed.
- 4.3 No waiver concession allowance of time compromise or forbearance given to or made with the Owner shall affect release or impair the liability of the Surety under this deed.
- 4.4 For the purposes of this deed any money judgment award or adjudicator's decision against the Owner in favour of the Council under or in connection with the Agreement shall be conclusive evidence of any liability of the Owner to which that judgment award or decision relates.
- 4.5 The inability of the Owner to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or the entry of the Owner into liquidation administration receivership bankruptcy or any compromise or arrangement with some or all of its creditors (or any equivalent process in any other jurisdiction) shall not reduce release or impair the liability of the Surety under this deed.
- 4.6 The Council may compromise release waive or delay in the enforcement of any other security that it holds and which secure the performance of the Owner under the Agreement as it sees fit without impairing its rights under this deed.
- 4.7 The Council shall not be obliged to pursue any means of recourse against the Company before being entitled to enforce this deed against the Surety.

5. EXPIRY

5.1 Subject to clause 5.2, this deed shall expire on the Expiry Date and the Surety shall be irrevocably and unconditionally released from all past, present and future liability under this deed and from all actions, claims and demand under or in connection with this deed.

5.2 If the Council has given any notice under clause 2.1 before the Expiry Date it shall not affect that notice and the Council may continue its claim under that notice, and the provisions of this agreement shall survive in so far they relate to the claim under that notice.

6. NOTICES

6.1 A notice given to a party under or in connection with this deed:

- (a) shall be in writing and in English;
- (b) shall be signed by or on behalf of the party giving it;
- (c) shall be sent to the party for the attention of the contact and at the address listed in clause 6.2;
- (d) shall be sent by a method listed in clause 6.4; and
- (e) unless proved otherwise is received as set out in clause 6.4 if prepared and sent in accordance with this clause.

6.2 The parties' addresses and contacts are as set out in this table:

Party	Contact	Address	Fax number	DX number
Council	City Solicitor	Civic Hall, Leeds, LS1 1UR	0113 247 4651	DX 715299 Leeds 33
Owner	Nick Sinfield	Liberty House, 222 Regent Street, London W1B 5TR	N/A	N/A
Surety	[POSITION OF CONTACT]	[ADDRESS]	[FAX NUMBER]	[DX NUMBER]

6.3 A party may change its details given in the table in clause 6.2 by giving notice the change taking effect for the party notified of the change at 9.00 am on the later of:

- (a) the date if any specified in the notice as the effective date for the change; or
- (b) the date five Business Days after receipt of the notice.

- 6.4 This table sets out:
- (a) delivery methods for sending a notice to a party under this deed; and
 - (b) for each delivery method the corresponding delivery date and time when delivery of the notice will take place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 6.5:

Delivery method	Delivery date and time
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address.
Pre-paid first class recorded delivery post or other next working day delivery service.	9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
Fax.	At the time of transmission.

6.5 For the purpose of clause 6.4 and calculating receipt all references to time are to local time in the place of receipt.

6.6 This clause does not apply to the service of any proceedings or other documents in any legal action or where applicable any arbitration or other method of dispute resolution.

6.7 A notice given under or in connection with this deed is not valid if sent by email.

7. ASSIGNMENT AND THIRD PARTY RIGHTS

This deed is personal to the Council and is not transferable or assignable. No one other than the Council and the Surety shall have any right to enforce any of the terms of this deed. Without prejudice to the foregoing, in the event that the Council assigns the benefit of the Agreement to any other person (the "Assignee"), the Council may request that the Surety issues a replacement bond in substantially the same form as this Bond to the Assignee. The Surety may, in its sole discretion, agree to such a request, subject always to (a) this Bond being cancelled on the issue of the replacement bond to the Assignee and (b) compliance with all "know your customer" and other legal and regulatory requirements or policy procedures.

8. GOVERNING LAW

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

9. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

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