

WARWICKSHIRE COUNTY COUNCIL

DEVELOPERS' GUIDE TO SECTION 278 HIGHWAY WORKS AGREEMENTS – DEVELOPER LETTING CONTRACT

OUTLINE OF TERMS & CONDITIONS

The purpose of this guide is to provide information for developers about the likely terms and conditions to be included in a section 278 highway works agreement with Warwickshire County Council, in circumstances where the Council has approved a request to allow the developer to let the construction contract. Whilst this guide gives a broad overview of the likely terms and conditions to be included in the section 278 agreement, it should be noted that the draft agreement may include different or alternative provisions.

GENERAL INTRODUCTION

The purpose of this guide is to provide information for developers about a type of section 278 highway works agreement under which the developer is authorised to let the construction contract, and the likely terms and conditions to be imposed to ensure that matters can be dealt with expeditiously.

A condition or conditions imposed on a planning consent may require alterations or improvements to the public highway to be completed before a development is occupied or, in some instances, before it is commenced.

In order for the necessary works to be executed, the developer must enter into an appropriate form of highway works agreement with the Highway Authority pursuant to section 278 of the Highways Act 1980 ("the Act").

Section 278 of the Act provides Warwickshire County Council ("the Council") with a power as a local highway authority, to enter into an agreement with any person, if they are satisfied it will be of benefit to the public, for the execution of highway works which the authority are, or may be authorised, to execute, on terms that that person pays for the cost of those works.

The Council recognises that whilst in the majority of circumstances it is most appropriate for the Council to let the construction contract, there are specific circumstances in which it may be beneficial for developers to act as an agent for the Council and to let the construction contract itself. This is at the Council's sole discretion and a senior officer will determine whether or not this is appropriate on a case by case basis.

This Guidance is not intended to be a definitive guide to, nor substitute for the relevant law, and independent legal advice should be sought. Only courts can interpret statutory legislation with any authority. It should only be used to gain a general understanding of the likely terms and conditions which may be applied if authority is given for a developer to let a construction contract for a section 278 highway works scheme.

PARTIES

The parties to the agreement will be:-

- Warwickshire County Council acting in its capacity as highway authority;
- The developer (being the party who is responsible for letting the construction contract, paying the cost of the works and all of the costs and fees associated therewith);
- The freehold owner(s) of any land required to be dedicated as highway (if different from the developer); and
- A surety (bondsman) who has been approved by the Council's Treasurers to provide a bond (unless a cash security is provided instead).

FEES

All of the Council's fees will be payable by the Developer. This will include (but is not limited to):-

- Design Check fees
- Inspection fees
- Commuted sums for the future maintenance of any specific features such as highway trees, traffic signals, block paving, drainage etc.)
- Administration fees
- Legal fees
- CAVAT sums any loss of tree amenity values

BOND OR CASH SECURITY

A bond or cash security will be required for 150% of the contract price - evidence of the contract price must be provided to the Council.

The bond or cash security will be called upon where there are any monies owed to the Council pursuant to the agreement which have not been paid within the timescale outlined within the agreement. Interest for late payment will also be charged.

Upon the issue of a Certificate of Practical Completion (providing there are no monies owed to the Council or any outstanding claims), the bond or cash security will be reduced to 50% of the original sum secured.

Two years following the issue of a Certificate of Practical Completion (providing a Stage 3 Safety Audit has been undertaken and all remedial works completed), the bond or cash security will be reduced to 25% of the original sum secured.

Upon the issue of a Final Certificate, the bond or cash security will be fully released.

CONSTRUCTION CONTRACT & PROCUREMENT

The permitted form of contract is NEC4 using only variations agreed by the Council. Communications must be managed using CEMAR. A Supervisor and a Project Manager must be appointed under the Contract.

The contract must be procured in accordance with the Council's Contract Standing Orders AND, in situations where the estimated cost of the works exceeds the relevant threshold published by the Government in [PPN 023: 2026 Threshold Amounts \(HTML\) - GOV.UK](#) , in accordance with the rules of the Procurement Act 2023.

The procurement requirements must be checked with the Council as these may change from time to time. As an overview:-

- Procurement notices may be required
- A competitive tendering procedure must be followed
- Invitations to tender must be sent to at least 3 tenderers
- If the contract value exceeds the applicable procurement threshold, the procedure must also be compliant with procurement legislation

DETAILS / DOCUMENTS TO BE SUBMITTED FOR APPROVAL

- Application Form
- Details of the relevant planning permission
- Names of all proposed contractors to be invited to tender for the works
- Contractor evaluation questionnaire
- Name of proposed Principal Designer
- Detailed design drawings, including private land to be dedicated as highway coloured pink and the existing highway extent to be worked on edged blue
- Site location plan showing extent of site owned by developer edged red
- Specification
- Method Statement
- Construction Phase Plan
- Environment Plan
- Traffic Management Plan
- Fees as notified by the Council
- CDM checklist

STREET WORKS PERMIT & SECTION 50 LICENCE

A Street Works Permit must be obtained separately from the Council's Traffic Manager.

A section 50 licence may also be required (to be obtained separately) where the works will include the installation, adjustment, repair, alteration or removal of any apparatus within the highway.

PRE-COMMENCEMENT CERTIFICATE

Before commencing any works on the highway, a pre-commencement certificate must be obtained from the Council. To obtain a Pre-Commencement Certificate, the following list of documents / information require the Council's approval:-

- evidence of the procurement process
- the Principal Designer
- the Detailed Design for the Highway Works
- the Specification
- the Method Statement
- the Contractor
- the estimated cost of the highway works
- the Traffic Management Plan
- the Environment Plan
- quality test and inspection plans
- noise readings and supporting information
- details of any works affecting Statutory Undertakers' apparatus (including evidence of payment to the relevant Statutory Undertaker(s))
- details of the site accommodation, car parking and welfare facilities provision for the Authorised Officer who will be based on site

- the location of site accommodation car parking and welfare facilities for site and construction personnel during the carrying out of the highway works
- provision of the Programme
- provision of the Street Works Permit Number
- the completed s278 agreement
- the payment of a cash security or a completion of a bond
- a copy of the completed Construction Contract
- the completed Collateral Warranty
- a copy of the Stage 2 Safety Audit
- the Construction Phase Plan
- the contractor's certificate of insurance cover
- quality test and inspection plans
- any other information that the Council may require
- Payment of all fees due
- Details of advance warning signs
- Noise readings

COLLATERAL WARRANTY

A collateral warranty will be required from the contractor to the Council (in the form to be provided by the Council – please see Appendix 1 for an example) in respect of the remedying and making good of any latent damage or defect in the Highway Works for a period of 12 years from the date of the Certificate of Practical Completion. This warranty will also include the design work where the contractor has been engaged to carry out the design of the highway works.

INSURANCE

The developer must ensure that the contractor has public liability insurance for a sum of not less than Ten Million Pounds (£10,000,000.00) in respect of any single claim, the number of claims being unlimited, in the Contractor's own name, to cover claims for injury to, or death of, any person or loss or damage to any real or personal property arising out of the execution and use of the highway works. The Council's interest must be endorsed on the insurance policy and evidence of such insurance must be provided to the Council.

TRAFFIC REGULATION ORDERS / TEMPORARY TRAFFIC REGULATION ORDERS

Any permanent traffic regulation / parking / speed limit orders required in connection with the highway works must be separately applied for in advance of the section 278 agreement and any consultation required (either statutory or non-statutory) should be concluded by the Council and authorisation obtained pursuant to the Council's constitution prior to the completion of the section 278 agreement.

Any temporary traffic regulation order required in connection with the highway works must be applied for a minimum of 12 weeks prior to commencement of the highway works.

Additional costs will be payable for these orders.

ROAD HUMPS / TRAFFIC CALMING / CYCLE TRACKS CONSULTATION

Where any road humps, traffic calming measures, or cycle track / footway conversions are proposed to be installed as part of the works, these must be applied for separately and any consultation required (either statutory or non-statutory) must be concluded by the Council and authorisation obtained pursuant to the Council's constitution prior to the completion of the section 278 agreement. Additional costs will be payable for these consultations.

STEP IN RIGHTS IN DEFAULT

If the developer or the contractor fails to carry out, or complete or maintain the works to the Council's satisfaction in accordance with the terms of the agreement, the Council shall have step in rights to carry out and complete the highway works at the developer's expense. The bond or cash security may be called upon.

ALTERATIONS

The Council may require such changes to the works as it considers necessary by law, by virtue of current Government advice or guidance, for the satisfactory completion and functioning of the Highway Works, as required by a Road Safety Audit, to remedy any breach by the Developer, to meet with any current requirements of the highway authority (including (but not limited to) any requirements of the Council's Traffic Manager in discharging their duties in accordance with Part III of the 1991 Act (as amended by the 2004 Act)) or any other statutory authority including Highways England and High Speed Two (HS2) Ltd and the developer must ensure that any such necessary changes are implemented by the contractor via the construction contract at the developer's expense.

CERTIFICATE OF PRACTICAL COMPLETION

The highway works will be inspected by the Council upon completion. A definitive list of any further works (including to remedy any defects or damage or alterations required as a result of the interim Stage 3 Road Safety Audit) required to be carried out in order to achieve Practical Completion will be provided. Such works will be subject to the same inspection procedure until the Council is satisfied that the highway works are deemed safe and fit for purpose. Any sewers constructed on or under the highway must have been adopted or under a maintenance period.

MAINTENANCE PERIOD

A period of 52 weeks from and including the date of issue of the Certificate of Practical Completion (or, if construction vehicles continue to use the highway works, such longer period as an Authorised Officer may reasonably determine) unless at the end of that period an Authorised Officer forms the view that any remedial works have not been completed in accordance with the agreement in which case the Maintenance Period shall include such further period as shall elapse until all remedial works have been carried out to the satisfaction of the Council.

As soon as possible after the issue of a Certificate of Practical Completion, a Stage 3 Road Safety Audit should be carried out. Any additional works, alterations or amendments to the highway works required as a result of that audit shall be carried out at the Developer's expense and a further Street Works Permit may be required.

Any temporary construction access being used should be closed immediately upon the issue of the Certificate of Practical Completion and reinstated to its original condition in accordance with the relevant s278 agreement.

ROAD SAFETY AUDITS

Road Safety Audits will be required on completion of the detailed design of the highway works (stage 2), prior to the opening of the highway works (interim stage 3), following the opening of the highway works (stage 3) and prior to the issue of a final certificate (stage 4)

FINAL CERTIFICATE

To be issued 4 years following the issue of the Certificate of Practical Completion.

12 months prior to applying for a Final Certificate, a Stage 4 Road Safety Audit must be carried out and any works, alterations or amendments required carried out at the Developer's expense and a further Street Works Permit may be required.

Any commuted sums required must be paid prior to the issue of the Final Certificate. Any sewers constructed within the highway works must have been adopted by the sewer authority.

APPENDIX 1
(Form of Contractor's Collateral Warranty)

DATED _____ **202[]**

CONTRACTOR'S COLLATERAL WARRANTY

relating to

[]

Between

[Employer]

and

[Contractor]

and

Warwickshire County Council

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Two thousand

Construction Contract: an agreement in writing dated [] between the Employer and the Contractor relating to the construction of the Highway Works.

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

Construction Products Regulations: UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (SI 2013/1387).

Deleterious: materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- a) posing a threat to the health and safety of any person; or
- b) posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or
- c) reducing, or possibly reducing, the normal life expectancy of the Works or any part or component of the Works; or
- d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agreement; or
- e) having been supplied or placed on the market in breach of the Construction Products Regulations.

Highway Land: that part of the local highway network maintainable at the public expense by the Beneficiary shown between dashed blue lines on the drawing annexed hereto and numbered [] on which the Highway Works are to be carried out including all carriageways, footways, footpaths, cycle tracks, street furniture, verges, service strips, service margins, vehicular crossings, cuttings, embankments, and surface water drainage systems (if any)

Highway Works: the design (if any), construction and completion of the highway works referred to in the Construction Contract, to be carried out by or on behalf of the Contractor under the Construction Contract.

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Highway Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Highway Works.

Permitted Uses: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of the Highway Works in the Highway Land.

1.2 Clause headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** includes any company, corporation, or other body corporate, wherever and however incorporated or established.

- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, 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 deed shall be binding on, and ensure 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 under that statute or statutory provision.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to **writing** or **written** includes email.
- 1.12 References to clauses are to the clauses of this deed
- 1.13 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
- 1.14 Clause headings shall not affect the interpretation of this agreement.
- 1.15 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.16 A reference to a **company** includes any company, corporation, or other body corporate, wherever and however incorporated or established.
- 1.17 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, include the singular.
- 1.18 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.19 This deed shall be binding on, and ensure 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.
- 1.20 A reference to a statute or statutory provision is a reference to it as amended, extended, or re-enacted from time to time.
- 1.21 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.22 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.23 A reference to **writing** or **written** includes email.
- 1.24 References to clauses are to the clauses of this deed.
- 1.25 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. Comply with Construction Contract

- 2.1 The Contractor warrants to the Beneficiary that:
- (a) it has complied, and shall continue to comply, with its obligations under the Construction Contract, including its obligations to:
 - (i) carry out and complete the Highway Works properly; and
 - (ii) use workmanship and materials of the quality and standard specified in the Construction Contract.
 - (b) without affecting clause 2.1(a) and to the extent that it takes responsibility for the same under the Construction Contract, it:
 - (i) has designed, or will design, the Highway Works; and
 - (ii) has selected, or will select, goods, materials, plant and equipment for incorporation in the Highway Works,
- with all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Highway Works.

- (c) it has used all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Highway Works to not specify or use anything in the Highway Works, which, at the time of specification or use, is Deleterious.
- (d) it will, where reasonably requested by the Beneficiary, provide a complete certified copy of the Construction Contract; and
- (e) it will not vary the terms and conditions of the Construction Contract without prior approval from the Beneficiary.

2.2 In proceedings for breach of this clause 2, the Contractor may:

- (a) rely on any limit of liability or other term of the Construction Contract; and
- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Employer, under the Construction Contract (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Construction Contract).

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

- (a) any approval or inspection of:
 - (i) the Highway Land; or
 - (ii) the Highway Works; or
 - (iii) any designs or specifications for the Highway Land or the Highway Works; or
- (b) any testing of any work, goods, materials, plant or equipment; or
- (c) any omission to approve, inspect or test, by or on behalf of the Beneficiary or the Employer.

3. **STEP IN RIGHTS: CONTRACTOR MAY NOT TERMINATE**

3.1 The Contractor shall not exercise, or seek to exercise, any right to terminate its employment under the Construction Contract for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least 20 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.

3.2 If the Construction Contract allows the Contractor a shorter notice period for the exercise of a right referred to in Clause 3.1, the notice period in the Construction Contract shall be extended to take account of the notice period required under Clause 3.1.

3.3 The Contractor's right to terminate its employment under the Construction Contract shall cease if, within the period referred to in Clause 3.1, the Beneficiary gives notice to the Contractor, copied to the Employer:

- (a) requiring the Contractor not to terminate its employment under the Construction Contract.
- (b) acknowledging that the Beneficiary (or its nominee) will assume all the Employer's obligations under the Construction Contract; and
- (c) undertaking that the Beneficiary or its nominee will pay to the Contractor:
 - (i) any sums that may subsequently become due and payable to the Contractor under the Construction Contract; and
 - (ii) within twenty Business Days any sums then due and payable to the Contractor under the Construction Contract that are unpaid.

3.4 If the Beneficiary (or its nominee) serves notice on the Contractor under Clause 3.3, then, from the date of service of the notice, the Construction Contract shall continue in full force and effect, as if the Contractor's rights to terminate had not arisen and as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).

3.5 In complying with this Clause 3, the Contractor:

- (a) does not waive any breach of the Construction Contract or default under the Construction Contract by the Employer; and
- (b) may exercise its right to terminate its employment under the Construction Contract, after the expiry of the notice period referred to in Clause 3.1, unless the Contractor's right to terminate has ceased under Clause 3.3.

4. **STEP IN RIGHTS: BENEFICIARY MAY STEP IN**

4.1 Without affecting Clause 3.1, if the Beneficiary serves a notice on the Contractor, copied to the Employer, that:

- (a) confirms that the Beneficiary wishes to step-in to the Construction Contract; and
- (b) complies with the requirements for a Beneficiary's notice under Clause 3.3,

then, from the date of service of the notice, the Construction 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).

4.2 The Contractor shall assume that, between the Employer and the Beneficiary, the Beneficiary may give a notice under Clause 4.1. The Contractor shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this Clause 4, the Contractor does not waive any breach of the Construction Contract or default under the Construction Contract by the Employer.

5. STEP IN RIGHTS: CONTRACTOR'S POSITION AND EMPLOYER'S CONSENT

5.1 The Contractor shall not incur any liability to the Employer by acting in accordance with Clause 3 or Clause 4.

5.2 The Employer has executed this deed to confirm its consent to the terms of this deed.

6. NO INSTRUCTIONS TO CONTRACTOR BY BENEFICIARY

6.1 Unless the Beneficiary has stepped in under Clause 3 or 4, the Beneficiary may not give instructions to the Contractor under this deed.

7. COPYRIGHT

7.1 The Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Contractor for any purpose relating to the Highway Works and the Highway Land, including any of the Permitted Uses.

7.2 This licence carries the right to grant sub-licences.

7.3 The Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

7.4 The Beneficiary may request a copy (or copies) of some or all of the Material from the Contractor. On the Beneficiary's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Beneficiary.

8. INSURANCES

8.1 The Contractor shall maintain insurances, in the minimum amounts specified below, in respect of:-

- (a) public liability insurance with a limit of at least £10 million in respect of any single claim, the number of claims being unlimited to cover claims for injury to, or death of, any person or loss or damage to any real or personal property arising out of or in the course of or by reason of the carrying out of the Highway Works;
- (b) works, plant and equipment insurance with a limit of at least £10 million per claim; and
- (c) employer's liability insurance with a limit of at least £10 million for claims arising from a single event or series of related events in a single calendar year

for a period beginning on the date of this deed and ending

- (i) on the date of issue of the Certificate of Final Completion pursuant to the Agreement in respect of the public liability insurance referred to in Clause 8.1(a) above; and
- (ii) upon the date of practical completion of all the Highway Works in respect of the insurances referred to in Clauses 8.1(b) and 8.1(c) above

with reputable insurers lawfully carrying on insurance business in the UK, on customary and usual terms and conditions prevailing for the time being in the insurance market; and on terms that:

- (iii) do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and
- (iv) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurer) Act 2010.
 - (i) do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and
 - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

8.2 Any increased or additional premium required by insurers because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.

- 8.3 Whenever the Beneficiary reasonably requests, the Contractor shall send the Beneficiary evidence that the Contractor's insurances are in force, including, if required by the Beneficiary, an original letter from the Contractor's insurers or brokers confirming:
- (d) the Contractor's then current insurance; and
 - (e) that the premiums for that insurance have been paid in full at the date of that letter.

9. LIABILITY PERIOD

- 9.1 The Beneficiary may commence legal action against the Contractor under this deed until 12 years from the date of practical completion of all the Highway Works pursuant to the Construction Contract.

10. ASSIGNMENT

- 10.1 The Beneficiary may assign the benefit of this deed on two occasions to any person with an interest in the Highway Works.
- 10.2 The Beneficiary shall notify the Contractor of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.
- 10.3 The Contractor shall not contend that any person to whom the benefit of this deed is assigned under clause 10.1 may not recover any sum under this deed because that person is an assignee and not a named party to this agreement.

11. NOTICES

- 11.1 A notice given to a party under or in connection with this deed:
- (a) shall be in writing;
 - (b) shall be sent to the party for the attention of the contact and sent on the same day to the address and email address listed in clause 0;
 - (c) may be sent by a method listed in clause 11.4; and
 - (d) unless proved otherwise is deemed received as set out in clause 11.4 if prepared and sent in accordance with this clause.

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

Party	Contact	Address	Email Address
Employer			
Contractor			
Beneficiary	Head of Legal and Governance and Deputy Monitoring Officer	Shire Hall, Market Place, Warwick CV34 4RL	NicholaVine@warwickshire.gov.uk

11.3 A party may change its details given in the table in clause 0 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 deemed receipt of the notice.

11.4 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 is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 11.5:

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 post or other next working day delivery service providing proof of delivery.	9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
Email.	At the time of transmission if before 5pm on a Business Day, alternatively at 9am the next Business Day.

11.5 For the purpose of clause 11.4 and calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

- 11.6 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.

12. THIRD PARTY RIGHTS

- 12.1 A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

13. GOVERNING LAW

- 13.1 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.

14. JURISDICTION

- 14.1 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.

(END OF FORM OF WARRANTY)