

RECEIVED - 9 NOV 2017

Dated

2017

(1) ORONA LIMITED

(2) SAABON LIMITED

**SUB-CONTRACTOR'S DEED OF
WARRANTY**

**in favour of a funder of a development at
Southern Gate, Block B, Chichester,
PO19 8SG**

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Memorandum

Date of this Deed	
Developer	Saabon Limited (No. 08182897) whose registered office is at The Music Rooms Tanbridge Park Horsham West Sussex RH12 1SU
Main Contractor	W. Stirland Limited (No. 0486441), whose registered office is at Redmoor Estate, Birdham, West Sussex PO20 7HT
Sub-Contractor	Orona Limited (No. 01317466) whose registered office is at 9 Europa View, Sheffield Business Park, Sheffield, South Yorkshire, S9 1XH
Beneficiary	Saabon Limited (No. 08182897) whose registered office is at The Music Rooms Tanbridge Park Horsham West Sussex RH12 1SU
Development	The development of a Commercial Unit containing 9 offices over 3 floors
Site	Southern Gate, Chichester, PO19 8SG
Date of Main Contract	26 th August 2017
Date of Sub-Contract	8 th November 2017
Sub-Contract Works	Design, supply, delivery, installation and commissioning of Lifts
Beneficiary's interest	Funder/Employer
Clause 6: Insurance	Professional indemnity insurance: (a) Limit of indemnity: not less than £5,000,000.00 for any occurrence or series of occurrences arising out of each and every event, provided that such limit of indemnity may be in the aggregate for each year of insurance in respect of claims for date recognition. (b) To be maintained until 12 years after the practical completion of the whole of the Works.

Prohibited Materials

Any materials:

- (a) which by their nature or application contravene any British Standard or EU equivalent;
- (b) which contravene the recommendations of British Council for Offices publication Good Practice in the Selection of Construction Materials (2011); or
- (c) which are generally considered to be deleterious within the building design professions in the UK.

Parties

- (1) The Sub-Contractor
- (2) The Beneficiary

Whereas

- (A) The Developer and the Main Contractor have entered into a building contract (**Main Contract**), under which the Main Contractor has agreed to carry out and complete the works (**Works**) required for the purposes of the Development (which expression means the Site and the Works or either of them as the case requires).
- (B) The Main Contractor and the Sub-Contractor have entered into the Sub-Contract, under which the Sub-Contractor has agreed to design or complete the design of and to supply and erect or install the Sub-Contract Works as part of the Works.

It is agreed in consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Sub-Contractor acknowledges:

1 Duty of care

The Sub-Contractor warrants to the Beneficiary that the Sub-Contractor has carried out or will carry out and complete the Sub-Contract Works in accordance with and subject to the terms of the Sub-Contract and has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Sub-Contract and (without qualification to or derogation from the foregoing) has exercised and will exercise all reasonable skill and care and diligence in and about the performance of the Sub-Contract Works.

2 Design warranty

2.1 Without derogation from clause 1 the Sub-Contractor warrants to the Beneficiary that all reasonable skill and care have been and will be exercised in the following, to the extent of the Sub-Contractor's responsibility for the same:

- (a) the design of the Sub-Contract Works;
- (b) the selection of goods, materials, equipment or plant for the Sub-Contract Works; and
- (c) the satisfaction of any performance requirement or specification of or for the Sub-Contract Works.

2.2 For the purposes of clause 2.1, the Sub-Contractor shall be responsible for any design or the selection of any goods, materials, equipment or plant, if such design or selection is produced or made by the Sub-Contractor or by any other person on the Sub-Contractor's behalf.

3 Prohibited materials

The Sub-Contractor warrants to the Beneficiary that the Sub-Contractor has not specified and shall not specify for use and has not used and shall not use in the Development any Prohibited Materials.

4 Copyright

- 4.1 The Sub-Contractor grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Sub-Contractor under the Sub-Contract and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Sub-Contractor. The Sub-Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced. The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Sub-Contractor with full and proper copies of the Documents.
- 4.2 The Sub-Contractor warrants to the Beneficiary that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

5 Insurance

- 5.1 The Sub-Contractor warrants to the Beneficiary that there is in force a policy of insurance covering the liabilities of the Sub-Contractor under the Sub-Contract and under this Deed in respect of the risks usually covered by such insurance, conforming to the relevant requirements specified in the Memorandum. The Sub-Contractor agrees to maintain such insurance continuously in place for the relevant period specified in the Memorandum, provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms available.
- 5.2 When reasonably required to do so by the Beneficiary the Sub-Contractor shall provide to the Beneficiary documentary evidence that the insurance required under clause 5.1 is being maintained.

6 Substitution provisions

- 6.1 If the employment of the Main Contractor under the Main Contract is terminated, the Beneficiary may within 28 days thereafter give notice requiring the Sub-Contractor to enter into a new contract in writing (**New Contract**) with the Beneficiary or its appointee on the same terms as the Sub-Contract, but with such revisions as the Beneficiary may reasonably require to reflect altered circumstances, for the continuation and completion of the Sub-Contract Works; and the Sub-Contractor shall comply with such notice and the cost of preparing the New Contract shall be met by the Beneficiary.
- 6.2 Forthwith upon the execution of the New Contract the Beneficiary shall pay to the Sub-Contractor a sum equal to all amounts due to the Sub-Contractor under the Sub-Contract for work done or materials supplied (less the retention percentage specified in the Sub-Contract which shall be payable under the New Contract as if the work or materials to which such retention relates had been supplied pursuant to the New Contract).
- 6.3 In return for the payment to be made under clause 6.2 the Sub-Contractor shall assign to the Beneficiary the Sub-Contractor's right to receive all amounts due from the Main Contractor in respect of the relevant work and materials, and shall pay to the Beneficiary all such amounts thereafter received from the Main Contractor. The cost of preparing such assignment shall be met by the Beneficiary.

- 6.4 In addition the Beneficiary shall be liable to the Sub-Contractor for any demobilisation costs, and for any remobilisation costs incurred by the Sub-Contractor wholly and necessarily in consequence of the Beneficiary's notice given under clause 6.1.
- 6.5 Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause 6 to any other person then if both the Beneficiary and any such other person serve notice under clause 6.1 or its equivalent the notice served by the Beneficiary shall prevail over any notice served by any other person.
- 6.6 If a New Contract is entered into pursuant to this clause 6 then for the purposes of this Deed the term **Sub-Contract** shall be deemed to include the New Contract.

7 Deeds of warranty

- 7.1 The Sub-Contractor shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds in the terms of this Deed, mutatis mutandis, but excluding clause 6 and this clause 7, in favour of each or any person having or acquiring a mortgage or charge over or a freehold or leasehold interest in the Development or any part of it.
- 7.2 If the Sub-Contractor fails to execute and deliver any such deed pursuant to clause 7.1 within 7 days of the Beneficiary's written request the Beneficiary may execute such deed on the Sub-Contractor's behalf and the Sub-Contractor hereby appoints the Beneficiary as the Sub-Contractor's attorney for the purpose of executing any such deed. The Sub-Contractor agrees to ratify and confirm any act done by the Beneficiary pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4 of the Powers of Attorney Act 1971.

8 Assignment

- 8.1 The Beneficiary may assign all of its rights under this Deed:
- (a) To any Mortgagee and by way of re-assignment on redemption; and
 - (b) by absolute assignment to any Group Company of the Beneficiary; and
 - (c) by absolute assignment on two other occasions only.
- 8.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Deed to another trustee of the same trust.
- 8.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees, but not so as to permit more than two assignments under clause 8.1(c).
- 8.4 The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 8.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

9 Extraneous rights

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

9.2 No approval or inspection of the Development or of any designs or specifications nor the 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 Sub-Contractor arising under this Deed.

10 **Contracts (Rights of Third Parties) Act 1999**

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

11 **Expiry of warranty**

No proceedings shall be commenced against the Sub-Contractor under this Deed more than 12 years after the practical completion of the Works under the Building Contract (or, if earlier, more than 12 years after the employment of the Sub-Contractor under the Sub-Contract is terminated).

12 **Service of notice**

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

13 **Governing law and interpretation**

13.1 The law of this Deed is English law and the English courts shall have jurisdiction with regard to all matters arising under it.

13.2 The Memorandum is part of this Deed and the definitions given in the Memorandum and in the Recitals apply to this Deed.

13.3 In this Deed:

- (a) **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in s1159 Companies Act 2006, (as amended);
- (b) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it;
- (c) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest; and
- (d) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).

13.4 In this Deed:

- (a) **Development** includes part of the Development;

- (b) **person** includes a firm and any entity having legal capacity;
- (c) any term importing gender shall include any gender;
- (d) any term importing the singular includes the plural and vice versa; and
- (e) any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Deed.

13.5 Clause headings do not form part of or affect the interpretation of this Deed.

Executed and delivered as a deed:

Executed as a deed by
Orna Limited
 acting by two directors or by a director and its
 secretary

)
) Director
) **VICTOR BAYONA**
) Print name
) *Victor Bayona*
) Director
) **ANDREW TAYLOR**
) Print name

Executed as a deed by
Saabon Limited
 by the signature of a director and
 the secretary or of two directors

)
) Director
)
) Print name
)
) Director/Secretary
)
) Print name

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(2) SAABON LIMITED

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Beneficiary	Saabon Limited (No. 08182897) whose registered office is at The Music Rooms Tanbridge Park Horsham West Sussex RH12 1SU
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Clause 6: Insurance	Professional indemnity insurance: (a) Limit of indemnity: not less than £5,000,000.00 for any occurrence or series of occurrences arising out of each and every event, provided that such limit of indemnity may be in the aggregate for each year of insurance in respect of claims for date recognition. (b) To be maintained until 12 years after the practical completion of the whole of the Works.

Prohibited Materials

Any materials:

- (a) which by their nature or application contravene any British Standard or EU equivalent;
- (b) which contravene the recommendations of British Council for Offices publication Good Practice in the Selection of Construction Materials (2011); or
- (c) which are generally considered to be deleterious within the building design professions in the UK.

Parties

- (1) The Sub-Contractor
- (2) The Beneficiary

Whereas

- (A) The Developer and the Main Contractor have entered into a building contract (**Main Contract**), under which the Main Contractor has agreed to carry out and complete the works (**Works**) required for the purposes of the Development (which expression means the Site and the Works or either of them as the case requires).
- (B) The Main Contractor and the Sub-Contractor have entered into the Sub-Contract, under which the Sub-Contractor has agreed to design or complete the design of and to supply and erect or install the Sub-Contract Works as part of the Works.

It is agreed in consideration of the sum of £1.00 paid by the Beneficiary, receipt of which the Sub-Contractor acknowledges:

1 Duty of care

The Sub-Contractor warrants to the Beneficiary that the Sub-Contractor has carried out or will carry out and complete the Sub-Contract Works in accordance with and subject to the terms of the Sub-Contract and has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Sub-Contract and (without qualification to or derogation from the foregoing) has exercised and will exercise all reasonable skill and care and diligence in and about the performance of the Sub-Contract Works.

2 Design warranty

2.1 Without derogation from clause 1 the Sub-Contractor warrants to the Beneficiary that all reasonable skill and care have been and will be exercised in the following, to the extent of the Sub-Contractor's responsibility for the same:

- (a) the design of the Sub-Contract Works;
- (b) the selection of goods, materials, equipment or plant for the Sub-Contract Works; and
- (c) the satisfaction of any performance requirement or specification of or for the Sub-Contract Works.

2.2 For the purposes of clause 2.1, the Sub-Contractor shall be responsible for any design or the selection of any goods, materials, equipment or plant, if such design or selection is produced or made by the Sub-Contractor or by any other person on the Sub-Contractor's behalf.

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The Sub-Contractor warrants to the Beneficiary that the Sub-Contractor has not specified and shall not specify for use and has not used and shall not use in the Development any Prohibited Materials.

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- 4.1 The Sub-Contractor grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Sub-Contractor under the Sub-Contract and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Sub-Contractor. The Sub-Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced. The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Sub-Contractor with full and proper copies of the Documents.
- 4.2 The Sub-Contractor warrants to the Beneficiary that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

5 Insurance

- 5.1 The Sub-Contractor warrants to the Beneficiary that there is in force a policy of insurance covering the liabilities of the Sub-Contractor under the Sub-Contract and under this Deed in respect of the risks usually covered by such insurance, conforming to the relevant requirements specified in the Memorandum. The Sub-Contractor agrees to maintain such insurance continuously in place for the relevant period specified in the Memorandum, provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms available.
- 5.2 When reasonably required to do so by the Beneficiary the Sub-Contractor shall provide to the Beneficiary documentary evidence that the insurance required under clause 5.1 is being maintained.

6 Substitution provisions

- 6.1 If the employment of the Main Contractor under the Main Contract is terminated, the Beneficiary may within 28 days thereafter give notice requiring the Sub-Contractor to enter into a new contract in writing (**New Contract**) with the Beneficiary or its appointee on the same terms as the Sub-Contract, but with such revisions as the Beneficiary may reasonably require to reflect altered circumstances, for the continuation and completion of the Sub-Contract Works; and the Sub-Contractor shall comply with such notice and the cost of preparing the New Contract shall be met by the Beneficiary.
- 6.2 Forthwith upon the execution of the New Contract the Beneficiary shall pay to the Sub-Contractor a sum equal to all amounts due to the Sub-Contractor under the Sub-Contract for work done or materials supplied (less the retention percentage specified in the Sub-Contract which shall be payable under the New Contract as if the work or materials to which such retention relates had been supplied pursuant to the New Contract).
- 6.3 In return for the payment to be made under clause 6.2 the Sub-Contractor shall assign to the Beneficiary the Sub-Contractor's right to receive all amounts due from the Main Contractor in respect of the relevant work and materials, and shall pay to the Beneficiary all such amounts thereafter received from the Main Contractor. The cost of preparing such assignment shall be met by the Beneficiary.

- 6.4 In addition the Beneficiary shall be liable to the Sub-Contractor for any demobilisation costs, and for any remobilisation costs incurred by the Sub-Contractor wholly and necessarily in consequence of the Beneficiary's notice given under clause 6.1.
- 6.5 Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause 6 to any other person then if both the Beneficiary and any such other person serve notice under clause 6.1 or its equivalent the notice served by the Beneficiary shall prevail over any notice served by any other person.
- 6.6 If a New Contract is entered into pursuant to this clause 6 then for the purposes of this Deed the term **Sub-Contract** shall be deemed to include the New Contract.

7 Deeds of warranty

- 7.1 The Sub-Contractor shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds in the terms of this Deed, mutatis mutandis, but excluding clause 6 and this clause 7, in favour of each or any person having or acquiring a mortgage or charge over or a freehold or leasehold interest in the Development or any part of it.
- 7.2 If the Sub-Contractor fails to execute and deliver any such deed pursuant to clause 7.1 within 7 days of the Beneficiary's written request the Beneficiary may execute such deed on the Sub-Contractor's behalf and the Sub-Contractor hereby appoints the Beneficiary as the Sub-Contractor's attorney for the purpose of executing any such deed. The Sub-Contractor agrees to ratify and confirm any act done by the Beneficiary pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4 of the Powers of Attorney Act 1971.

8 Assignment

- 8.1 The Beneficiary may assign all of its rights under this Deed:
- (a) To any Mortgagee and by way of re-assignment on redemption; and
 - (b) by absolute assignment to any Group Company of the Beneficiary; and
 - (c) by absolute assignment on two other occasions only.
- 8.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Deed to another trustee of the same trust.
- 8.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees, but not so as to permit more than two assignments under clause 8.1(c).
- 8.4 The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 8.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

9 Extraneous rights

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

9.2 No approval or inspection of the Development or of any designs or specifications nor the 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 Sub-Contractor arising under this Deed.

10 **Contracts (Rights of Third Parties) Act 1999**

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

11 **Expiry of warranty**

No proceedings shall be commenced against the Sub-Contractor under this Deed more than 12 years after the practical completion of the Works under the Building Contract (or, if earlier, more than 12 years after the employment of the Sub-Contractor under the Sub-Contract is terminated).

12 **Service of notice**

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13 **Governing law and interpretation**

13.1 The law of this Deed is English law and the English courts shall have jurisdiction with regard to all matters arising under it.

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- (b) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it;
- (c) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest; and
- (d) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).

13.4 In this Deed:

- (a) **Development** includes part of the Development;

- (b) **person** includes a firm and any entity having legal capacity;
- (c) any term importing gender shall include any gender;
- (d) any term importing the singular includes the plural and vice versa; and
- (e) any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Deed.

13.5 Clause headings do not form part of or affect the interpretation of this Deed.

Executed and delivered as a deed:

Executed as a deed by
Orona Limited
 acting by two directors or by a director and its
 secretary

)
) Director
) **VICTOR BAYONA**
) Print name
) *Archulyk*
) Director
) **ANDREW TAYLOR**
) Print name

Executed as a deed by
Saabon Limited
 by the signature of a director and
 the secretary or of two directors

)
) Director
)
) Print name
)
) Director/Secretary
)
) Print name

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Dated

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(1) ORONA LIMITED

(2) SAABON LIMITED

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Beneficiary's interest	Funder/Employer
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- (2) The Beneficiary

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1 Duty of care

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2 Design warranty

2.1 Without derogation from clause 1 the Sub-Contractor warrants to the Beneficiary that all reasonable skill and care have been and will be exercised in the following, to the extent of the Sub-Contractor's responsibility for the same:

- (a) the design of the Sub-Contract Works;
- (b) the selection of goods, materials, equipment or plant for the Sub-Contract Works; and
- (c) the satisfaction of any performance requirement or specification of or for the Sub-Contract Works.

2.2 For the purposes of clause 2.1, the Sub-Contractor shall be responsible for any design or the selection of any goods, materials, equipment or plant, if such design or selection is produced or made by the Sub-Contractor or by any other person on the Sub-Contractor's behalf.

3 Prohibited materials

The Sub-Contractor warrants to the Beneficiary that the Sub-Contractor has not specified and shall not specify for use and has not used and shall not use in the Development any Prohibited Materials.

4 Copyright

- 4.1 The Sub-Contractor grants to the Beneficiary an irrevocable, non-exclusive royalty-free licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Sub-Contractor under the Sub-Contract and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Sub-Contractor. The Sub-Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced. The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Sub-Contractor with full and proper copies of the Documents.
- 4.2 The Sub-Contractor warrants to the Beneficiary that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

5 Insurance

- 5.1 The Sub-Contractor warrants to the Beneficiary that there is in force a policy of insurance covering the liabilities of the Sub-Contractor under the Sub-Contract and under this Deed in respect of the risks usually covered by such insurance, conforming to the relevant requirements specified in the Memorandum. The Sub-Contractor agrees to maintain such insurance continuously in place for the relevant period specified in the Memorandum, provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms available.
- 5.2 When reasonably required to do so by the Beneficiary the Sub-Contractor shall provide to the Beneficiary documentary evidence that the insurance required under clause 5.1 is being maintained.

6 Substitution provisions

- 6.1 If the employment of the Main Contractor under the Main Contract is terminated, the Beneficiary may within 28 days thereafter give notice requiring the Sub-Contractor to enter into a new contract in writing (**New Contract**) with the Beneficiary or its appointee on the same terms as the Sub-Contract, but with such revisions as the Beneficiary may reasonably require to reflect altered circumstances, for the continuation and completion of the Sub-Contract Works; and the Sub-Contractor shall comply with such notice and the cost of preparing the New Contract shall be met by the Beneficiary.
- 6.2 Forthwith upon the execution of the New Contract the Beneficiary shall pay to the Sub-Contractor a sum equal to all amounts due to the Sub-Contractor under the Sub-Contract for work done or materials supplied (less the retention percentage specified in the Sub-Contract which shall be payable under the New Contract as if the work or materials to which such retention relates had been supplied pursuant to the New Contract).
- 6.3 In return for the payment to be made under clause 6.2 the Sub-Contractor shall assign to the Beneficiary the Sub-Contractor's right to receive all amounts due from the Main Contractor in respect of the relevant work and materials, and shall pay to the Beneficiary all such amounts thereafter received from the Main Contractor. The cost of preparing such assignment shall be met by the Beneficiary.

- 6.4 In addition the Beneficiary shall be liable to the Sub-Contractor for any demobilisation costs, and for any remobilisation costs incurred by the Sub-Contractor wholly and necessarily in consequence of the Beneficiary's notice given under clause 6.1.
- 6.5 Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause 6 to any other person then if both the Beneficiary and any such other person serve notice under clause 6.1 or its equivalent the notice served by the Beneficiary shall prevail over any notice served by any other person.
- 6.6 If a New Contract is entered into pursuant to this clause 6 then for the purposes of this Deed the term **Sub-Contract** shall be deemed to include the New Contract.

7 Deeds of warranty

- 7.1 The Sub-Contractor shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds in the terms of this Deed, mutatis mutandis, but excluding clause 6 and this clause 7, in favour of each or any person having or acquiring a mortgage or charge over or a freehold or leasehold interest in the Development or any part of it.
- 7.2 If the Sub-Contractor fails to execute and deliver any such deed pursuant to clause 7.1 within 7 days of the Beneficiary's written request the Beneficiary may execute such deed on the Sub-Contractor's behalf and the Sub-Contractor hereby appoints the Beneficiary as the Sub-Contractor's attorney for the purpose of executing any such deed. The Sub-Contractor agrees to ratify and confirm any act done by the Beneficiary pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4 of the Powers of Attorney Act 1971.

8 Assignment

- 8.1 The Beneficiary may assign all of its rights under this Deed:
- (a) To any Mortgagee and by way of re-assignment on redemption; and
 - (b) by absolute assignment to any Group Company of the Beneficiary; and
 - (c) by absolute assignment on two other occasions only.
- 8.2 If the interest of the Beneficiary in the Development is as trustee, it may also assign its rights under this Deed to another trustee of the same trust.
- 8.3 In this Deed references to the Beneficiary include where the context admits its permitted assignees, but not so as to permit more than two assignments under clause 8.1(c).
- 8.4 The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 8.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

9 Extraneous rights

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

- 9.2 No approval or inspection of the Development or of any designs or specifications nor the 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 Sub-Contractor arising under this Deed.

10 **Contracts (Rights of Third Parties) Act 1999**

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

11 **Expiry of warranty**

No proceedings shall be commenced against the Sub-Contractor under this Deed more than 12 years after the practical completion of the Works under the Building Contract (or, if earlier, more than 12 years after the employment of the Sub-Contractor under the Sub-Contract is terminated).

12 **Service of notice**

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect 2 days after posting, excluding Saturdays, Sundays and statutory holidays.

13 **Governing law and interpretation**

- 13.1 The law of this Deed is English law and the English courts shall have jurisdiction with regard to all matters arising under it.

- 13.2 The Memorandum is part of this Deed and the definitions given in the Memorandum and in the Recitals apply to this Deed.

- 13.3 In this Deed:

- (a) **Group Company** means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in s1159 Companies Act 2006, (as amended);
- (b) **Mortgagee** means a person having or acquiring a mortgage or charge over the Development or any part of it;
- (c) **Purchaser** means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest; and
- (d) **Tenant** means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).

- 13.4 In this Deed:

- (a) **Development** includes part of the Development;

- (b) **person** includes a firm and any entity having legal capacity;
- (c) any term importing gender shall include any gender;
- (d) any term importing the singular includes the plural and vice versa; and
- (e) any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Deed.

13.5 Clause headings do not form part of or affect the interpretation of this Deed.

Executed and delivered as a deed:

Executed as a deed by
Orona Limited
 acting by two directors or by a director and its
 secretary

)
) Director
) **VICTOR BAYONA**
) Print name
)
) Director
) **ANDREW TAYLOR**
) Print name

Executed as a deed by
Saabon Limited
 by the signature of a director and
 the secretary or of two directors

)
) Director
)
) Print name
)
) Director/Secretary
)
) Print name