

1200 2001 1000

DATED

24th January

2023 4

THE COUNCIL OF THE CITY OF MANCHESTER

- and -

KIER TRADE CITY LLP

- and -

EULER HERMES SA (NV)

A G R E E M E N T

made under Section 278 of the Highways Act 1980

relating to junction works off Elizabeth Street,

Cheetham Hill, Manchester

M8 8BB

City Solicitor

P O Box 532

Town Hall

Manchester

M60 2LA

Ref L/JGL/HIG006/00701

(Providing a legal service to Manchester City Council and Salford City Council)

THIS AGREEMENT is made the

24th day of January

2024

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of PO Box 532, Town Hall, Albert Square, Manchester M60 2LA ("**the Council**")
- (2) **KIER TRADE CITY LLP** (Company Reg'n No OC393739) whose registered office is situate at 2nd Floor, Optimum House, Clippers Quay, Salford M50 3XP ("**the Developer**")
- (3) **EULER HERMES SA (NV)** a company incorporated in Belgium with a company number 0403 248 596 and whose registered office is at Avenue des Arts 56, 1000 Brussels, Belgium and whose address for service is care of its registered branch Euler Hermes UK (Branch Number BR015404) 1 Canada Square, London, E14 5DX ("**the Surety**")

Recitals

- A. The Council is the local highway authority with statutory responsibility for all public highways within its jurisdiction including the Public Highway
- B. The Developer will undertake and complete the Works as agent of the Council as far as this Agreement is concerned for the purpose of Section 278 of the Act
- C. The Council is satisfied that the carrying out of Works will be of benefit to the public
- D. The Surety has agreed to enter into this Agreement to guarantee the performance of the Developer's obligations

1. INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires or admits the following terms and expressions shall have the meanings specified

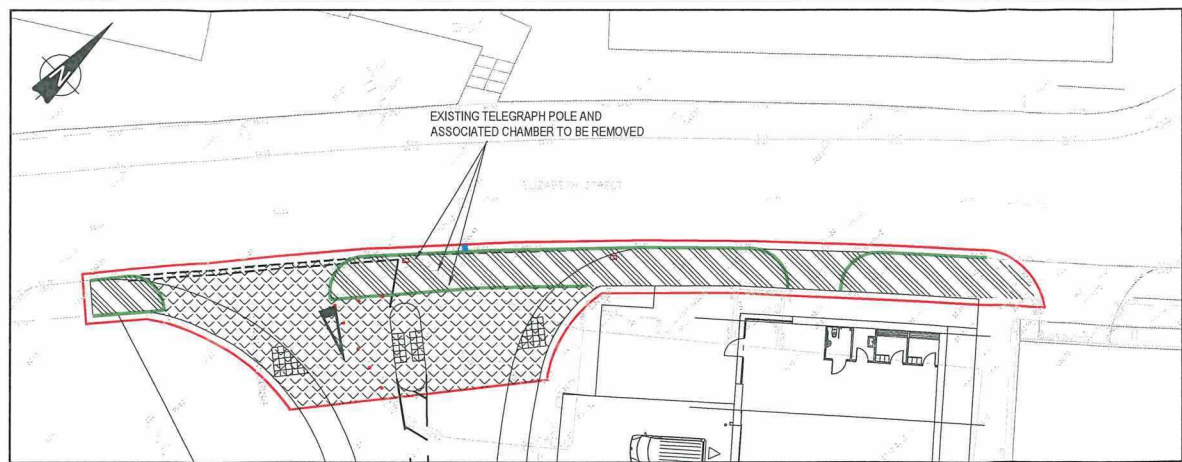
1.1.1 "**Act**" means the Highways Act 1980 (as amended) and any statutory modification on re-enactment of the same,

1.1.2 "**Advance Warning Signs**" means public information signs that give advance notice to highway users of the commencement of the Highway Works (or any part thereof) or that communicates other relevant information

- 1 1 3 **“Agreement Plan”** means the Drawing Number 080139-CUR-XX-XX-D-C-90100 (Rev P03) that is included in this Agreement and has been signed by or on behalf of the parties or such other plan or plans as may be approved from time to time by the Proper Officer either as amendments to the Agreement Plan or as part of the detailed design for the Highway Works
- 1 1 4 **“CDM Regulations”** means the Construction (Design and Management) Regulations 2015
- 1 1 5 **“Client”** means the client as defined by the CDM Regulations
- 1 1 6 **“Completion Certificate”** means the certificate to be issued on satisfactory completion of the Highway Works in accordance with Clause 7
- 1 1 7 **“Contractor”** means either the Developer or a contractor appointed by the Developer as the principal contractor under the CDM Regulations (as appropriate) to carry out the Highway Works
- 1 1 8 **“Council’s Cost”** means all administrative and other reasonable fees or establishment charges incurred or to be incurred by the Council in connection with the Works up until issue of the Final Certificate including but not limited to
- 1 1 8 1 the Engineer’s Fee,
- 1 1 8 2 all legal administrative and construction costs incurred by the Council in connection with any amendments required to existing Traffic Regulation Orders or the promotion of new or revocation and amendment of existing Traffic Regulation Orders arising as a consequence of the Highway Works,
- 1 1 8 3 all costs or expenses incurred in complying with the CDM Regulations insulating buildings against noise or in satisfying claims made under the noise abatement legislation and/or the Land Compensation Act 1973 Part 1 in connection with the Highway Works in accordance with Clause 17 2



KEY
EXTENT OF SECTION 278
EXTENT OF HIGHWAY ADOPTION
GENERAL ARRANGEMENT



KEY
EXISTING KERB, FOUNDATION AND BACKING TO BE REMOVED
EXISTING FOOTWAY TO BE REMOVED TO ACCEPT PROPOSED CONSTRUCTION
EXISTING CARRIAGEWAY TO BE REMOVED TO ACCEPT PROPOSED CONSTRUCTION
EXTENT OF SECTION 278
EXISTING BOLLARD AND FOUNDATION TO BE REMOVED
EXISTING GULLY TO BE REMOVED, CONNECTION SEALED AND BACK FILLED WITH C40 CONCRETE
SITE CLEARANCE



KEY
K1 HALF BATTERED KERB 125mm FACE
K2 BULL NOSE DROPPED KERB 0-6mm FACE
K3 TRANSITION KERB
K4 EDGING KERB
FOOTWAY CONSTRUCTION
30mm AC6 DENSE SURF 100/150
90mm AC20 DENSE BIN 160/220
150mm TYPE 1 SUB-BASE
CARRIAGEWAY CONSTRUCTION
30mm SURFACE COURSE - AC10 CLOSE SURF 100/150 TO BS EN 13108-1
60mm BINDER COURSE - AC20 DENSE BIN 100/150 TO BS EN 13108-1
150mm BASE COURSE - AC20 DENSE BASE 100/150 TO BS EN 13108-1
210mm TYPE 1 GRANULAR SUB-BASE MATERIAL TO CLAUSE 803, (TOP OF SUB BASE TO ACHIEVE 40% CBR)
BASED ON ASSUMED SUBGRADE CBR > 5%
PROPOSED TACTILE PAVING- BUFF
BLISTER TACTILE PAVING SLAB (400 x 400 x 50)
35mm COMPACTED SAND BED
200mm TYPE 1 SUB-BASE
CARRIAGEWAY TIE-IN DETAIL
KERB EDGE RE-INSTATEMENT-300mm WIDE
30mm AC10 CLOSE SURF 100/150 TO BS EN 13108-1 SURFACE COURSE (CLAUSE 911)
CONCRETE BED FOR KERBING TO BE EXTENDED
EXTENT OF SECTION 278

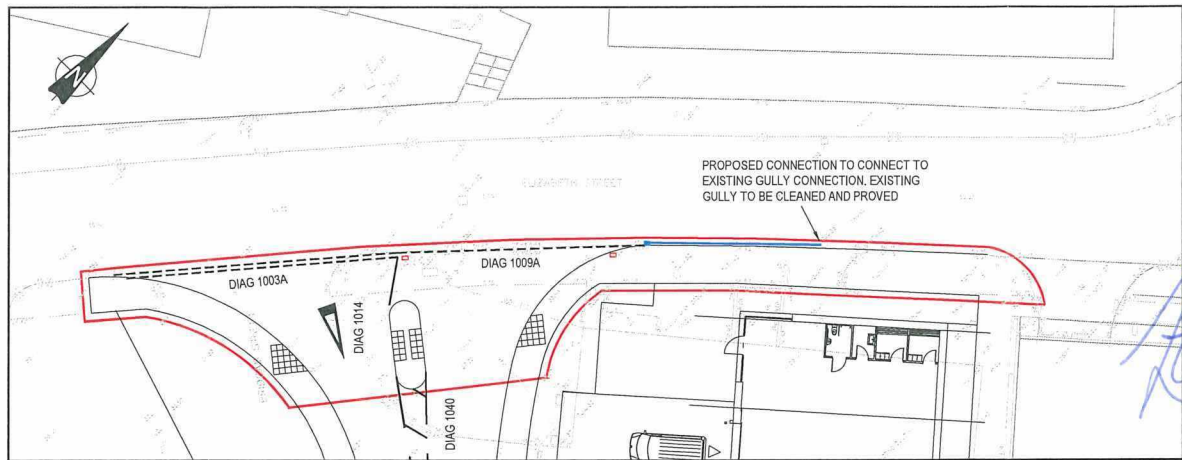
THE COMMON SEAL of THE COUNCIL OF THE CITY OF MANCHESTER was hereunto affixed in pursuance of an Order of the Council of the said City:-

Authorised Signatory

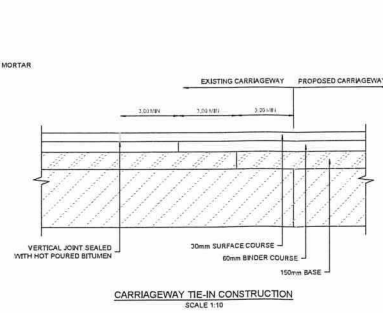
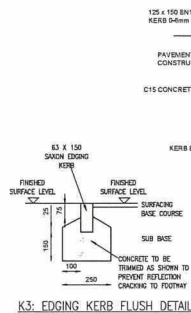
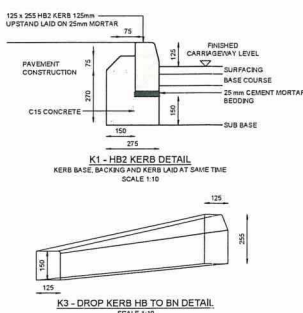
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CONSTRUCTION AND KERBING



REFER TO "TRAFFIC SIGN REGULATIONS AND GENERAL DIRECTIONS 2016" FOR DIAG NUMBERS
PROPOSED GULLY WITH D400 GRATING AND FRAME
PROPOSED 150mm GULLY CONNECTION
ROAD MARKINGS AND DRAINAGE



HAZARD REGISTER

Hazard Ref.	Item (Feature, Element or Activity)	Potential Hazard Identified	Action (Information to Assist Control)
8.01	Works in Public Highway	Risk to operatives & Public off site from construction traffic.	Traffic Management plan to be developed

GENERAL NOTES:

- THIS DRAWING IS TO BE READ IN CONJUNCTION WITH ALL RELEVANT ARCHITECTS AND ENGINEERS DRAWINGS AND SPECIFICATIONS.
- DO NOT SCALE THIS DRAWING. ANY AMBIGUITIES, OMISSIONS AND ERRORS ON DRAWINGS SHALL BE BROUGHT TO THE ENGINEERS ATTENTION IMMEDIATELY. ALL DIMENSIONS MUST BE CHECKED / VERIFIED ON SITE.
- ALL WORKS AND MATERIALS TO BE IN ACCORDANCE WITH CURRENT BRITISH STANDARDS AND BUILDING REGULATIONS.
- ALL SUB-BASES AND CAPPING LAYERS TO BE GRADED AND COMPACTED IN ACCORDANCE WITH THE SPECIFICATION FOR HIGHWAY WORKS (SFHW).
- ALL PAVEMENT CONSTRUCTIONS ARE BASED ON AN ASSUMED CBR VALUE OF 5%. TO BE CONFIRMED BY INSITU TESTING AT FORMATION.
- IT IS RECOMMENDED THAT CBR TESTS ARE CARRIED OUT TO CONFIRM AND SUB-BASE ADJUSTED IN ACCORDANCE WITH THE CAPPING AND SUB-BASE THICKNESS TABLE.
- CBR TEST PROCEDURE IS DETAILED WITHIN DMRB IAN3105 AND BS 1377-4.
- MEASURED CBR VALUE TO BE AT FORMATION LEVEL AND TO BE A 'SOAKED' CONDITION.
- ANY VARIATIONS IN GROUND CONDITIONS SHOULD BE NOTIFIED TO THE ENGINEER PRIOR TO CONSTRUCTION.
- THE CONSTRUCTION DEPTHS GIVEN ARE THE MINIMUM REQUIRED (COMPACTED).
- THE CONSTRUCTION DEPTHS GIVEN ASSUME FORMATION IS NON-FROST SUSCEPTIBLE.
- WHERE FORMATION IS FROST SUSCEPTIBLE PROVIDE CAPPING MATERIAL TO GIVE A MINIMUM 450mm OVERALL CONSTRUCTION THICKNESS.
- IN AREAS WHERE LEVELS ARE TO BE RAISED, ACCEPTABLE FILL MATERIAL IS TO BE USED TO THE UNDERSIDE OF THE PROPOSED CONSTRUCTION MAKE UP.
- NO REGULATING OR FILL MATERIAL HAS BEEN INCLUDED IN CONSTRUCTION BUILD UP. CONTRACTOR TO INCLUDE FOR REGULATING/FILL MATERIAL IN THEIR RATES.
- IN AREAS WHERE LEVELS ARE TO BE LOWERED, EXISTING CONSTRUCTION IS TO BE REMOVED (FULL DEPTH).
- LAYING COURSE TO BE NATURALLY OCCURRING SAND OR MORTAR IN ACCORDANCE WITH BS7533 REQUIREMENTS.
- TYPE 1 SUB-BASE IN ACCORDANCE WITH SFHW.
- CAPPING MATERIAL TO BE 6F1, 6F2 OR 6F5 MATERIAL IN ACCORDANCE WITH SFHW 600 SERIES.
- EXISTING UTILITY COVERS AFFECTED BY THE WORKS TO BE LIFTED AND RESET TO PROPOSED LEVELS.

P03	SITE CLEARANCE UPDATED	17/05/23	HS	HS
P02	GULLY RELOCATION ADDED	15/03/22	HS	HS
P01	FIRST ISSUE	21/07/22	HS	AR
Rev.	Description	Date	By	Chkd

Curtins

Merchant Exchange, 17-19 Whitworth Street West, Manchester, M1 5WG
0161 236 2394
manchester@curtins.com
www.curtins.com

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Status: **SUITABLE FOR INTERNAL REVIEW / COMMENT** **S3**

Project: **ELIZABETH STREET, CHEETHAM HILL**

Drawn By: HS

Section 278
DETAILED DESIGN

Designed By: HS

Checked By: AR

Date: 21/07/22
Scales @ A1: 1:500
Project No - Originator - Function - Spatial - Form - Discipline - Number: 080139 - CUR - XX - XX - D - C - 90100
Revision: P03

- 1 1 15 “**Development**” means the erection of two storey Industrial and Logistics Warehouse Units (Use Class B2 / B8), including ancillary offices and trade counters, with associated landscaping, car parking and creation of access from Elizabeth Street following demolition of existing buildings and other associated works as permitted by the Planning Permission
- 1 1 16 “**Due Date**” is the date when a payment is due in accordance with the terms and conditions of this Agreement
- 1 1 17 “**Engineer’s Fee**” means the sum of TWENTY THOUSAND SEVEN HUNDRED AND SIXTY TWO POUNDS (£20,762 00) less the Deposit leaving a balance of SEVENTEEN THOUSAND SEVEN HUNDRED AND SIXTY TWO POUNDS (£17,762 00) to be paid by the Developer to the Council on the date of this Agreement representing the estimated cost of checking and approval of the Design Works, monitoring, and inspecting the undertaking of the Highway Works, issuing certificates and preparing reports
- 1 1 18 “**Estimated Cost**” means the sum of EIGHTY FOUR THOUSAND FIVE HUNDRED AND FIFTY SEVEN POUNDS AND FIFTY TWO PENCE (£84,557 52) being the amount which in the opinion of the Proper Officer represents the cost of carrying out the Highway Works within the period specified in Clause 7 3
- 1 1 19 “**Final Certificate**” means the certificate to be issued by the Proper Officer to the Developer following expiry of the Maintenance Period in accordance with Clause 9
- 1 1 20 “**Further Works**” means all those works as may be required in accordance with Clause 9 2 2 prior to issue of the Final Certificate
- 1 1 21 “**Health and Safety File**” means the file or other permanent record containing the information required by the CDM Regulations
- 1 1 22 “**Highway Works**” mean the highway works briefly described in the Schedule as part of the Design Works and shown in principle on the Agreement Plan and

1 1 9 “**Default Cost**” mean both

1 1 9 1 1 1 9 1 the cost of carrying out the Default Work, and

1 1 9 2 1 1 9 2 the whole (or any part) of the Council’s Cost

1 1 10 “**Default Event**” includes the following events

1 1 10 1 the Developer at any time failing to perform or observe any of the conditions stipulations or obligations on its part contained in this Agreement, or

1 1 10 2 a receiving order in bankruptcy being made in respect of the Developer’s estate, or

1 1 10 3 the Developer being wound up, or

1 1 10 4 the Developer entering into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation)

1 1 11 “**Default Notice**” means a notice served by the Proper Officer on the Surety in accordance with Clause 19 1

1 1 12 “**Default Work**” means work required to be carried out in connection with the Highway Works by or on behalf of the Surety following a Default Event in order to secure the performance of the Developer’s covenants obligations and liabilities contained in this Agreement

1 1 13 “**Deposit**” means the sum of THREE THOUSAND POUNDS (£3,000 00) that has been paid by the Developer to the Council in advance of this Agreement the receipt whereof the Council hereby acknowledge as an advance contribution towards the Council’s Cost

1 1 14 “**Design Works**” means undertaking a feasibility study and preparing the detailed highway design and the Specification all such work to be undertaken by the Developer and approved separately by the Proper Officer prior to commencement of the Highway Works

in any detailed design subsequently approved by the Proper Officer in accordance with this Agreement

1 1 23 **"Interest"** means the interest at the rate of 4% per annum above the base rate from time to time of Barclays Bank PLC

1 1 24 **"Latent Defect"** means a defect in the Works which is not detectable prior to the issue of the Final Certificate

1 1 25 **"Maintenance Period"** means a minimum period of twelve (12) calendar months (Excepting That in circumstances where the Highway Works include soft landscaping or tree planting the Maintenance Period shall be extended to twenty-four (24) months) from the date upon which the Completion Certificate is issued or if construction vehicles continue to travel along the Public Highway such longer period as the Proper Office may reasonably determine unless at the end of that period the Proper Officer forms the view that the Final Certificate cannot be issued on the basis that the Further Works have not been completed in accordance with this Agreement in which case the Maintenance Period shall include such further period as shall elapse until issue of the Final Certificate

1 1 26 **"Planning Permissions"** shall mean the planning permission approved on the 1st July 2022 under reference number 133125/FO/2022

1 1 27 **"Programme"** means the period for completion of the Highway Works as defined in Clause 7 3

1 1 28 **"Proper Officer"** means the person for the time being appointed by the Council for the purposes of this Agreement or of any provision contained herein

1 1 29 **"Public Highway"** means all that part of Elizabeth Street, Cheetham Hill, Manchester M8 8BB that is maintainable at public expense as more particularly shown edged in red on the Agreement Plan on which the Highway Works are proposed to be carried out including all footpaths Street Furniture verges service strips service margins vehicular crossings and road surface water drainage systems (if any) and all other things ancillary thereto

- 1 1 30 **"Public Liability Insurance Policy"** shall mean an insurance policy with an insurance company regulated and registered with the Association of British Insurers for a sum of not less than £10,000,000 in respect of any single claim the number of claims being unlimited in the Developer's or 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
- 1 1 31 **"Road Safety Audits"** shall mean audits of the Highway Works to be carried out in accordance with the Department for Transport Road Traffic Audit Standard DMRB-GG119 or any other modification or replacement of the same
- 1 1 32 **"Road Safety Audit Report"** shall mean the report to be prepared by the Safety Auditor following the carrying out of the Road Safety Audits
- 1 1 33 **"RSA3"** shall mean a Stage 3 Road Safety Audit Report relating to the completed Highway Works to be carried out prior to issue of the Completion Certificate
- 1 1 34 **"RSA4"** shall mean a Stage 4 Road Safety Audit Report relating to the completed Highway Works to be carried out (if required) within twelve (12) months following issue of the Completion Certificate
- 1 1 35 **"Safety Auditor"** shall mean an independent and suitably qualified highway or traffic engineer appointed by the Developer at the Developer's expense to carry out the Road Safety Audits such appointment having been previously approved in writing by the Proper Officer
- 1 1 36 **"Specification"** shall mean the publication entitled "Specification for Highway Works" published by the Stationery Office as Volume 1 of the Manual of Contract Document for Highway Works as modified and extended by the latest edition of the publication entitled "Roads for Adoption a Guide for Developers" and by the Council's Standard Detail Drawing and those drawings submitted

by or on behalf of the Developer and subsequently approved in writing by the Proper Officer

1 1 37 “**Statutory Undertaker**” shall mean public utility undertakers statutory undertakers and water undertakers as defined in Section 329(1) of the Act and British Telecom PLC or other such similar organisation

1 1 38 “**Street Furniture**” shall mean all types of street furniture including (but not limited to) bollards fencing street lighting traffic lights and illuminated traffic signs installed or to be installed as part of the Highway Works

1 1 39 “**Traffic Regulation Order**” shall mean any temporary or permanent order required in connection with the commencement construction and subsequent use of the Highway Works pursuant to the Road Traffic Regulation Act 1984 including any amendment required to an existing order

1 1 40 “**VAT**” shall mean the value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax

1 1 41 “**Working Day**” shall mean any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England or Wales

1 1 42 “**Works**” means both the Design Work and the Highway Works

1 2 The Schedule hereto will form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement will include the Schedule

1 3 A reference to a company shall include any company corporation or other body corporate wherever and however incorporated or established

1 4 A reference to any party shall include that party’s personal representatives and successors and in the case of the Council the successors to their respective statutory functions

1 5 Unless the context otherwise requires a reference to a statute or statutory provision is a reference to it as amended extended or re-enacted from time to time

- 1 6 Unless the context otherwise requires a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision
- 1 7 Where any approval or agreement of the Council or the Proper Officer is required pursuant to this Agreement such approval or agreement shall be in writing
- 1 8 A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other document or agreement as varied or novated (in each case other than in breach of the provisions of this Agreement from time to time)
- 1 9 References to clause numbers are to the relevant clauses of this Agreement and references to paragraphs are to paragraphs of the Schedule
- 1 10 Words in the singular include the plural and vice versa and words importing one gender include any gender
- 1 11 The clause headings are for reference only and shall not affect the construction hereof

2. STATUTORY PROVISION

This Agreement is made as a deed under Section 278 of the Act Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and any other power or authority thereby enabling

3. LICENCE TO ENTER AND UNDERTAKE WORK

The Council gives the Developer, its Contractor and all those authorised by the Developer licence to enter upon the Public Highway with or without workmen plant and machinery to enable the Developer to comply with its obligations under this Agreement and **Subject To** the terms of this Agreement the Council agrees that the Developer and its Contractor are permitted to break open the surface of the Public Highway to an extent reasonably necessary for the carrying out of the Highway Works **Provided That** the Developer (or its Contractor) will make good any damage to the Public Highway at

its entire cost and expense and will leave the Highway Works in a good clean tidy and workmanlike condition to the satisfaction of the Proper Officer

4. DEVELOPER'S OBLIGATIONS

- 4 1 The Developer has paid the Deposit in advance of this Agreement the receipt of which the Council hereby acknowledge as a contribution towards the Council's Cost

Pre-commencement obligations

- 4 2 The Developer covenants that it will pay the Engineer's Fee to the Council on the date of this Agreement to be utilized by the Council in accordance with Clause 22
- 4 3 The Developer shall obtain the prior written approval of the Proper Officer for the Design Works prior to undertaking the Highway Works
- 4 4 Prior to commencing the Highway Works the Developer shall provide evidence to the Council that it holds the benefit of a current Public Liability Insurance Policy in accordance with Clause 18
- 4 5 The Developer shall install the Advance Warning Signs in such locations as the Proper Officer advises and to the Proper Officer's satisfaction

Ongoing obligations

- 4 6 The Developer covenants with the Council to undertake construct and complete the Highway Works in accordance with the terms of this Agreement and the Design Works
- 4 7 The Developer covenants to pay to the Council within ten (10) Working Days following receipt of a written demand
- 4 7 1 All legal administrative and construction costs incurred by the Council in connection with any amendments required to existing Traffic Regulation Orders or the promotion of new Traffic Regulation Orders arising as a consequence of the Highway Works, and
- 4 7 2 Any costs associated with diversions or protection of Statutory Undertakers' equipment if required as part of the construction process and to allow completion of the Highway Works

- 4 7 3 Any other outstanding amount being part of the Council's Cost on a monthly basis or as otherwise approved by the Proper Officer
- 4 8 Upon execution of this Agreement the Developer covenants to pay the Council's legal costs and disbursements in connection with the preparation and completion of this Agreement and duplicates thereof on the date of this Agreement
- 4 9 Receipt by the Council of the Council's Cost or the legal costs or any other amounts (or any part thereof) referred to in Clauses 4 1, 4 2, 4 7 and 4 8 shall not be deemed to create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon it by the terms of this Agreement or by statute or at common law and the Council shall not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the Works by the Proper Officer
- 4 10 The Developer shall not interfere with the free flow of traffic on the existing highway or in any way obstruct the Public Highway without the express written permission of the Proper Officer and the bringing into force of any necessary Traffic Regulation Order
- 4 11 The Developer shall
- 4 11 1 submit to the Council noise readings supporting information calculations and any other information or data that the Council may reasonably request for the purposes of ascertaining whether any properties are eligible for an offer of insulation works or a grant to cover the cost of such works pursuant to the Noise Insulation Regulations 1975,
- 4 11.2 consult with place orders with and pay any costs to Statutory Undertakers in relation to any works to their mains services plant or equipment necessitated by the Highway Works including works required by the Statutory Undertakers to divert the services to the satisfaction of the Proper Officer and will also consult with Statutory Undertakers about their maintenance schedule on the Public Highway and ensure that this does not conflict with the Developer's

Programme for the duration of the construction of the Highway Works and the Maintenance Period to the satisfaction of the Proper Officer

4 11 3 provide the Proper Officer with the contact details of a Developer's representative for the duration of the construction of the Highway Works and the Maintenance Period including a telephone contact number for such representative which number will be manned on a twenty-four (24) hour basis in case of emergency, and

4 11 4 apply for any necessary Traffic Regulation Orders which may be required in connection with the Highway Works

5. ACCESS TO WORKS

5 1 During construction of the Highway Works the Developer shall give to the Proper Officer and any other Council officer free access to every part of the Highway Works for the purpose of inspecting the Highway Works and all material used or intended to be used for the Highway Works

5 2 During construction of the Highway Works the Proper Officer may require the Developer to open up or expose any of the Highway Works that have been covered up without having previously been inspected by the Proper Officer and if the Developer fails to comply with any such request the Council may take up or expose the relevant part of the Highway Works and the Developer shall pay the Council's fees costs and expenses in arranging for such taking up and exposure and the Developer shall at its own cost and expense reinstate and make good any damage caused by such taking up and exposure to the satisfaction of the Proper Officer

6. THE COUNCIL'S OBLIGATIONS

6 1 The Council covenants with the Developer that it will comply with its obligations contained in this Agreement **Provided That** In the event that the Developer fails to pay any of the monies due on the Due Date the Proper Officer will cease to inspect the site or works being undertaken on site for the purpose of accepting and certifying the

Highway Works and in that case the Council shall not be under any obligation to accept or certify any of the Highway Works under this Agreement

6 2 Following a reasonable request from the Developer in writing and receipt of payment in accordance with Clause 4 7 1 the Council shall as soon as reasonably practicable commence the statutory process relating to any Traffic Regulation Order required for the Highway Works

6 3 The Council shall disregard this Agreement when considering any objections to any Traffic Regulation Order which they may propose to make and if any objections are made the Council shall have no duty or obligation to the Developer by reason of this Agreement or otherwise to make the Traffic Regulation Order other than the duty it would have to all persons interested in the Traffic Regulation Order in its capacity as a local highway authority

6 4 If there are no objections to any Traffic Regulation Order and the Council resolves to make one or all of the Traffic Regulation Orders any Traffic Regulation Order shall be made and the statutory formalities completed as soon as reasonably practicable

7. CONSTRUCTION OF THE WORKS

7 1 The Developer shall at its own cost carry out and complete the Works

7 1 1 in a good and workmanlike manner,

7 1 2 using only good quality materials approved by the Proper Officer, and

7 1 3 in accordance with the Design Works approved by the Proper Officer prior to commencement of the Highway Works

7 2 During the carrying out of the Highway Works the Developer shall comply with

7 2 1 the Traffic Signs Regulations and General Directions 2016 and any statutory modification or re-enactment of the same,

7 2 2 Any directions of the Police and the Proper Officer in respect of lighting and signing of the Highway Works and any diversion routes, and

7 2 3 if requested by the Proper Officer the Developer shall remove any existing Street Furniture (if applicable) and relocate or deliver it for local storage

- 7 3 The Developer shall complete the Highway Works to the satisfaction of the Proper Officer by 12 July 2024 (unless otherwise agreed with the Proper Officer)
- 7 4 The Developer shall within twenty (20) Working Days following completion of the Highway Works apply to the Proper Officer for issue of a Completion Certificate and the Developer will provide the Proper Officer with suitable evidence to verify the completion, replacement or renewal of any highway drainage pipelines and any works to the other drainage and culverted watercourses contained within the Public Highway and (without prejudice to the generality of the above) the Proper Officer may require that such evidence will be required in the form of any audio visual recordings and/or reports compiled following CCTV surveys of all or any highway drainage pipelines and any works to other drainage and culverted watercourses
- 7 5 Before applying for the Completion Certificate the Developer shall either
- 7 5 1 commission the preparation and completion of an RSA3 in relation to the Highway Works and after providing the result of such RSA3 to the Proper Officer within the timetable provided on behalf of the Council the Developer shall fully address remedy and resolve any issues that are identified by the RSA3 to the entire satisfaction of the Proper Officer and will provide such evidence within the timetable as the Proper Officer may require to prove that the Developer has complied with all and any recommendations referred to in the RSA3 to the satisfaction of the Proper Officer, or
- 7 5 2 apply to the Proper Officer for consent (or the Proper Officer may recommend) that the said RSA3 be postponed until after issue of the Completion Certificate and that such RSA3 be carried out within eight (8) weeks following issue of the Completion Certificate so that the Safety Auditor can record the movement of traffic following completion of the construction of the Highway Works
- 7 5 3 The RSA3 will be **Subject To** scrutiny by the Proper Officer at every stage in accordance with the conditions contained in this Agreement

7 6 On completion of the Highway Works to the satisfaction of the Proper Officer in all respects the Proper Officer (having regard to any additional works alterations or amendments which may be required by virtue of Clauses 7 4 and 7 5) shall issue the Completion Certificate to the Developer **Provided That** (i) a RSA3 has been carried out (unless the Developer has applied for consent to postpone the RSA3 in accordance with Clause 7 5 2) and (ii) the Proper Officer is satisfied that the Highway Works (including any highway drainage) have been completed in accordance with the Design Works (including the Specification) and Agreement Plan the Proper Officer shall issue the Completion Certificate to the Developer and from the date thereof the Maintenance Period shall commence to run

8. **MAINTENANCE**

8 1 Throughout the Maintenance Period the Developer shall at its own expense and to the satisfaction of the Proper Officer

8 1 1 maintain the Highway Works,

8 1 2 be responsible for the supply of energy and all associated costs for street lighting and Street Furniture, and

8 1 3 carry out routine maintenance of the Public Highway including (but not limited to) sweeping gully emptying and snow clearance and the removal and clearance of all abandoned vehicles rubbish or other unauthorised materials from the site of the Highway Works

8 2 Before expiry of Maintenance Period the Developer will (if required by the Proper Officer)

8 2 1 commission the preparation and completion of a RSA4 in relation to the Highway Works, and

8 2 2 after providing the result of such RSA4 to the Proper Officer the Developer shall fully address remedy and resolve any issues that are identified by the RSA4 to the satisfaction of the Proper Officer, and

8 2 3 will provide such evidence as the Proper Officer may require in order to prove that the Developer has complied with all and any recommendations referred to in the RSA4 to the satisfaction of the Proper Officer

9 **FINAL CERTIFICATE**

9 1 Within twenty (20) Working Days following expiry of the Maintenance Period **Subject To** the Developer having commissioned prepared and submitted to the Proper Officer an RSA4 (if required) the Developer shall apply to the Proper Officer in writing for a Final Certificate

9 2 Within twenty (20) Working Days following receipt of a written application for the issue of a Final Certificate the Proper Officer shall

9 2 1 inspect the Highway Works to which the application relates, and

9 2 2 provide the Developer (where necessary) with a definitive written list of any further works required to be carried out and a timetable for carrying out these works in order to remedy and make good any defect or damage to the Highway Works or any necessary reinstatement works which may have arisen during the Maintenance Period (including any defect in or damage to the road surface water drainage system) or any other works reasonably required as a result of the RSA3 and RSA4 (as applicable)

9 3 The Developer shall carry out any Further Works without delay and at its own cost

9 4 The Further Works shall be **Subject To** the same inspection procedure detailed in Clause 9 2 until such time as the Developer has remedied or made good any such defect or damage to the satisfaction of the Proper Officer

9 5 Within twenty (20) Working Days following a satisfactory inspection in accordance with Clauses 9 2 and 9 4 the Proper Officer shall issue the Final Certificate to the Developer **Provided That**

9 6 the Developer has paid to the Council the balance of the Council's Cost,

9 6 1 any Further Works have been completed to the satisfaction in all respects of the Proper Officer,

9 6 2 the Developer has delivered to the Proper Officer and the Proper Officer has accepted

9 6 2 1 one (1) set of drawings in PDF and in CAD format showing to a scale of no less than 1 500 the Highway Works as constructed, and

9 6 2 2 one (1) copy of the Health and Safety File and one (1) copy of the final Health and Safety Plan (both in electronic format), and

9 6 3 any works required by a Statutory Undertaker pursuant to Clause 14 have been undertaken by the Developer and any costs incurred by the Council pursuant to Clause 14 have been reimbursed by the Developer, and

9 6 4 audio visual evidence to the satisfaction of the Proper Officer and reports from CCTV surveys of any highway drainage pipelines and any works to other drainage and culverted watercourses contained within the Public Highway verifying that any required Further Works have been satisfactorily completed and/or that no defects have arisen during the Maintenance Period, and

9 6 5 the provisions relating to the grant of easements in Clause 15 have (if required) been complied with

9 7 Upon issue of the Final Certificate the Developer shall be released from all liability hereunder **SAVE FOR** the Developer's obligation to remedy any Latent Defect and **SAVE FOR** the indemnity provisions as referred to in Clause 17

10. INTEREST ON PAYMENTS

10 1 If any payment due under any of the provisions of this Agreement is not made on or before the Due Date the Developer shall pay to the Council the Interest as at the Due Date for the period starting with the Due Date and ending with the actual date of payment

10 2 The Council shall be under no obligation to place any sums paid to them by the Developer pursuant to this Agreement in an account which bears interest on such sums

and (without prejudice to Clause 10 1) any sums repaid to the Developer hereunder shall not carry the payment of any interest thereon

11 MINOR ALTERATIONS

- 11 1 If the Developer wishes to amend the Design Works or revise the proposals for implementation of the Highway Works (including the Programme) it shall submit details in writing to the Council and no amendments or revisions shall be implemented without the prior written approval of the Proper Officer
- 11 2 If the Proper Officer considers it necessary and reasonable and notifies the Developer in writing the Developer may be required to incorporate minor alterations or additions to the Design Works or construction of the Highway Works
- 11 3 The terms and provisions of this Agreement shall apply to any such amended or revised works as they apply to the Highway Works as originally designed

12 MATERIALS SAMPLING AND TESTING

- 12 1 The Developer shall (if requested by the Proper Officer) make all necessary arrangements for an independent accredited testing facility approved by the Proper Officer to test the materials proposed to be used in connection with the Highway Works and the Developer shall bear the full cost of such testing and give to the Proper Officer at no expense to the Council copies of all material testing certificates
- 12 2 Any materials rejected by the Proper Officer as a result of the tests carried out shall not be used by the Developer for any of the Highway Works

13 KEEPING THE HIGHWAY CLEAN AND TIDY

- 13.1 All roads footpaths rights of way and other means of passage that lead to from or cross the site of the Highway Works and are available for use by the public during the carrying out of the Highway Works shall be kept free from mud or other substances deposited through the construction operations of the Highway Works and any such substance deposited by the Developer or its Contractor shall be promptly removed at no cost to the Council

13 2 If such substances are not promptly and adequately removed the Council may close any associated crossings entrances and exits and in the event of there being a danger to highway users may arrange for the substances to be removed by its own employees or contractors and may recover its reasonable and proper costs from the Developer **Provided That** following the removal of any such substances to the satisfaction of the Proper Officer the Council shall allow such crossings entrances and exits to be reopened and any losses or expenses incurred as a result of these measures shall be borne by the Developer

13 3 On completion of the Highway Works the Developer shall clear away and remove from the Public Highway all construction plant surplus material rubbish and temporary works and leave the site of the Highway Works in a good clean tidy and workmanlike condition to the satisfaction of the Proper Officer

14 CONNECTING TO EXISTING SERVICES

14 1 Before connecting any part of the Highway Works to existing service media the Developer shall give notice to the relevant Statutory Undertaker of any service or services laid in on or under the Public Highway of the proposal to make such connection as if the connection were works for road purposes of major highway works as defined in Section 86 of the New Roads and Street Works Act 1991

14 2 The Developer shall

14 2 1 carry out at its own cost any works or measures required by a Statutory Undertaker as a result of the Highway Works, and

14 2 2 indemnify the Council for the cost of any works or measures carried out as a result of the Highway Works by the Council at the request of the Statutory Undertaker

15 GRANT OF EASEMENTS

15 1 Before the Proper Officer issues a Final Certificate the Developer shall (at no cost to

the Council) execute and complete or procure the execution and completion of

15 1 1 any deeds of easement that are in the opinion of the Council necessary to secure for the Council full drainage rights to such parts of the surface water drainage system of the Public Highway that are not within the Public Highway, and

15 1 2 any other deeds of easement required by the Council for the future maintenance by the Council of any Street Furniture

15 2 The Developer shall pay the Council's proper and reasonable legal costs and disbursements in connection with the grant of any deeds of easement

15 3 The Council shall not be liable for the payment of compensation or any other costs or fees arising on account of the completion of any deeds of easement referred to in this Clause 15 or due to the subsequent use of the easement

16 CDM REGULATIONS

16 1 The Developer agrees to undertake all the obligations of a Client (or principle Contractor) and to ensure that the Highway Works are carried out by itself or its Contractor in accordance with the CDM Regulations

16 2 The Developer will ensure that the Health and Safety File is maintained correctly and is available for inspection in accordance with the CDM Regulations

16 3 The Developer warrants it has taken or will take all reasonable steps to be satisfied that the Contractor and all contractors engaged on the Highway Works have the skills knowledge and experience in undertaking the Highway Works and in respect of the CDM Regulations

16 4 The Developer will indemnify and keep the Council indemnified against any breach of the Developer's obligations under this Clause 16

17 INDEMNITIES

17 1 The Developer will indemnify the Council against any actions charges claims costs expenses losses damages demands liabilities and proceedings arising out of any

damage or injury to person or property (including fatal injury) attributable to any breach or non-observance by the Developer of its obligations under this Agreement or at any time in connection with or incidental to the carrying out or use of the Highway Works (including without limitation any negligent or defective design or construction of the Highway Works) other than those arising out of any negligence or default of the Council

17 2 The Developer will indemnify the Council in respect of any claims under Section 10 of the Compulsory Purchase Act 1965, Part I of the Land Compensation Act 1973 and any claims for compensation under the Noise Insulation Regulations 1975 arising out of in connection with or incidental to the carrying out of the Highway Works and their subsequent use

17 3 The indemnity contained in this Clause 17 includes

17 3 1 all fees incurred by claimants which the Council is obliged to pay and those of the Council or its agent or contractor in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees), and

17 3 2 statutory interest payments to claimants and their professional advisors, and

17 3 3 the Council's reasonable and proper legal costs in making payment of any compensation fees and interest

18 INSURANCE

18 1 Before commencing the Highway Works or before completing this Agreement whichever is earlier the Developer shall provide the Council with a copy of a Public Liability Insurance Policy (which may be held by the Contractor) together with proof that it is in force and any such other information relating to the policy as the Council shall reasonably require

18 2 From and including the date applicable under Clause 18 1 above until the date upon which the Final Certificate is issued the Developer (or its Contractor) shall maintain the

Public Liability Insurance Policy

- 18 3 The Developer shall ensure that the Council's interest under this Agreement is endorsed on the Public Liability Insurance Policy

19 SECURITY FOR PERFORMANCE OF THE DEVELOPER'S OBLIGATIONS

- 19 1 If any Default Event occurs the Council 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 serve the Surety with a Default Notice which will specify the Default Work and will contain an estimate of the Default Cost **Provided** **That** this amount will not exceed the Estimated Cost

- 19 2 Within twenty (20) Working Days following the date of receipt of the Default Notice the Surety shall either

19 2 1 pay the Default Cost to the Council, or

19 2 2 send the Council a Notice ("the **Surety's Counter Notice**") of the Surety's intention to arrange for the Default Work to be carried out and completed at the entire cost and expense of the Surety within the period specified in Clause 19 4

- 19 3 If the Surety having sent the Surety's Counter Notice to the Council fails to start the Default Work within fifty-six (56) days from the date upon which the Surety received the Default Notice the Surety shall forthwith pay the Default Cost to the Council with Interest from the Due Date up to the date of payment

- 19 4 If the Surety having sent the Surety's Counter Notice to the Council starts the Default Work and the Default Work is not completed within four (4) calendar months from the date of the Surety's Counter Notice or within such further period as may be agreed in writing with the Proper Officer the Surety shall **Subject To** Clause 19 1 forthwith on demand pay to the Council such sum as the Proper Officer may determine as being the Default Cost for the remaining Default Work

- 19 5 A Final Certificate will be issued to the Surety when the Highway Work (including the

Default Work) has been completed to the satisfaction of the Proper Officer and the Surety has paid the Default Cost and for the avoidance of doubt nothing in this Agreement shall require the Council to issue a Final Certificate until the Surety has paid the Default Cost or has completed the Default Work to the satisfaction of the Proper Officer

19 6 Following the issue of a Final Certificate in accordance with Clause 19 5 the Surety shall be released from all liability under this Agreement

19 7 The Council covenants with the Developer and the Surety for the benefit of each and every building plot fronting adjoining abutting or having access to the Public Highway

19 7 1 to use reasonable endeavours to mitigate any loss or damage sustained because of any default by the Developer by taking such steps as the Council thinks fit,

19 7 2 to use all monies received from the Surety to secure the performance of the Developer's covenants and obligations contained in this Agreement in accordance with the terms of this Agreement including but not limited to carrying out or completing the Highway Works and any Further Works and maintaining and making good all defects during the Maintenance Period,

19 7 3 if the sum paid by the Surety to the Council exceeds the cost of carrying out or completing the Highway Works and any Further Works and maintaining and making good all defects throughout the Maintenance Period as set out in this Agreement (together with the amount of the Council's usual establishment charges) to repay to the Surety within twenty (20) Working Days following the date of the Final Certificate the amount of any excess

20 **ADDITIONAL BOND**

It is hereby agreed between the Council and the Developer that in the event of the Developer being unable to undertake the Highway Works in accordance with the Programme or any longer period agreed by the Council the Developer shall

20 1 obtain forthwith when required to do so by the Council an additional guarantee or bond for an amount to be specified conclusively by the Council as representing the excess of the revised estimated cost of the outstanding works to be carried out under this Agreement over the Estimated Cost, and

20 2 pay forthwith to the Council when required to do so any increase in the Council's Cost resulting directly from the Developer's non-compliance with the Programme

21 POWER TO EXECUTE WORKS IN DEFAULT

Without prejudice to Clauses 19, 20, 22, 23 and 27 if the Developer fails to execute or complete the Highway Works in accordance with the Developer's obligations hereunder the Council shall after not less than twenty (20) Working Days' notice in writing to the Developer be entitled to execute or complete the Highway Works in default by its own employees servants workmen contractors or other duly authorised personnel or otherwise and to recover from the Developer all fees costs and expenses associated with undertaking any such default works as certified by the Proper Officer

22. ENGINEER'S FEE

22 1 The Engineer's Fee represents an estimate of the Council's highway engineer's fees made on the date of this Agreement

22 2 It is hereby agreed between the parties that within twenty (20) Working Days following issue of the Final Certificate -

22 2 1 the Council will refund to the Developer any balance of the Engineer's Fee that remains unexpended at that time, and

22.2.2 the Developer will pay to the Council within ten (10) Working Days following receipt of written demand any additional highway engineer's fee that has been reasonably and properly incurred after the Engineer's Fee has been expended

23. ARBITRATION

In the event of any dispute arising out of this Agreement the same shall be referred to an expert to be appointed by Agreement between the parties or failing agreement

23.1 Where the dispute involves the interpretation of the terms of this Agreement in the matter of the parties' rights liabilities or obligations by a suitably qualified barrister nominated by the President for the time being of the Law Society, and

23.2 where the dispute involves an issue not covered by Clause 23.1 by a suitably qualified expert nominated by the President for the time being of the Institution of Civil Engineers

AND in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof and each party shall bear its own costs of such arbitration (**Subject To** any direction as to or award of costs made by the arbitrator)

24. NOTICES

Any written notice to be served on the Council shall be delivered or posted to the Proper Officer and any notices to be served on the Developer or the Surety may be delivered or posted to its respective registered office or last known registered or head office

25. ASSIGNMENT

This Agreement shall not be assigned by the Developer and the assignment of this Agreement is hereby expressly prohibited

26. EXCLUSION OF THIRD PARTIES

No person other than a party to this Agreement and their respective successors shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement

27. THE COUNCIL'S STATUTORY POWERS

Nothing in this Agreement shall

- 27 1 Prevent or restrict the exercise by the Council acting in its capacity as a local highway authority of its powers under Part XI of the Act or any other statutory powers except that this Agreement is intended to be such an agreement as is mentioned in Section 219 sub-section (1) of the Act
- 27 2 Imply any obligation on the part of the Council to the Developer or to any person to ensure that the Highway Works are properly constructed
- 27 3 Affect the Council's rights powers duties and obligations in the exercise of its functions as a local authority planning authority or highway authority or in any other capacity whatsoever nor relieve the Developer from the necessity to obtain all such approvals or consents as may from time to time be requisite from the Council in any such capacity as aforesaid

28. APPLICABLE JURISDICTION

This Agreement is governed by and interpreted in accordance with the law of England

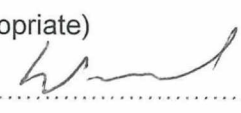
EXECUTED as a DEED by KIER TRADE CITY LLP

acting by two directors

Signed: 
Name (In Capitals): LEIGH THOMAS

Director

(* delete as appropriate)

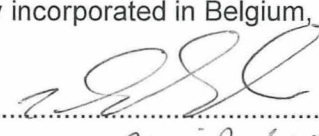
Signed: 
Name (In Capitals): LEE HOWARD

Director

EXECUTED as a DEED on behalf of **EULER HERMES SA (NV)**

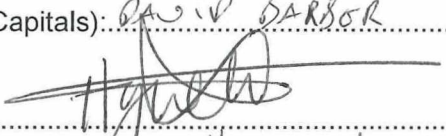
a company incorporated in Belgium,

by:

Signature: 

Name (In Capitals): DAVID BARBER

and:

Signature: 

Name (In Capitals): HANNAH WELLS

being persons who, in accordance with the laws of that territory,
are acting under the authority of the company.

OUR Ref: 162816/6004921
(1 of 3)

SCHEDULE

(Brief Description of the Works)

- Upgraded access to Bridcam Street
- Construction of Pedestrian Refuge Island
- Construction of new footway adjacent to access on Elizabeth Street as shown on the Agreement Plan
- Installation of new Tactile Crossing points on Bridcam Street
- Installation of Conservation Kerbs
- New lining associated with new upgraded access of Elizabeth Street
- Appropriate advance Traffic Regulation Order works including installation of signage and road lining.

IN WITNESS whereof the parties have executed this document as their Deed the day and year first above written

THE COMMON SEAL of **THE COUNCIL**

OF THE CITY OF MANCHESTER was

hereunto affixed in pursuance of

an Order of the Council of

the said City:-

Signature: *G. Coe*

Name (in Capitals):

Authorised Signatory

01122736

