

PLANNING STATEMENT

Prior Approval Application

Class MA, Part 3, Schedule 2 General Permitted Development Order 2015

Change of use of part of the existing commercial floor space on the first floor of the existing building to provide 9 no. residential units.

at

Preece House, 91-103 Davigdor Road, Hove, Brighton. BN3 1RE

1.0 Introduction

- 1.1 This Planning Statement has been prepared on behalf of Westmede Properties Ltd to support a prior approval determination application under Class MA, Part 3 of the GPDO 2015 (as amended) for the change of use of existing commercial floor space on part of the 1st floor of the existing building to provide 9 no. residential units.
- 1.2 The application is accompanied by the requisite plan drawings and information required under Paragraph W of the GPDO 2015 (as amended), as set out below. The application is also accompanied by a Transport Statement and an Internal Daylight Adequacy Report to assist assessment of some of the specific prior approval issues.
- Site layout plan (including location plan)
 - Existing floor plans
 - Proposed floor plans (ground, second and fourth floors)
 - Existing elevations
 - Proposed elevations
 - Planning Statement (Gemini Planning Services)
 - Transport Statement (Mode Transport)
 - Internal Daylight Adequacy Report (Delva Patman Redlar)
- 1.3 Prior Approval has previously been granted under Class O of the GPDO for a change of use of the ground, first, second, third and fourth floors from office space to a total of 35 flats under application BH2021/02667. Whilst Class O was removed from the GPDO by the T&C Planning (General Permitted Development etc.) (England) Amendment) Order 2021, this Class O scheme is still implementable, subject to the conditions in the GPDO.
- 1.4 Given that the definition of a building in the interpretation part of the GPDO 2015 (as amended) includes '*part of a building*', it is well-established that a Class MA application may be made for only part of a building. Indeed, Prior Approval under Class MA has already been granted for the second floor and part-fourth floors for 17 dwellings. (Application Reference BH2023/01403, approved on 7th July 2023).
- 1.5 This application seeks prior approval for part of the first floor of the existing building. The first floor became vacant on 13th October 2023 (see Appendix A which includes vacant possession documentation).
- 1.6 For information, a separate prior approval application has been made under Class AA, Part 20 of the GPDO for extensions to the top of the building to provide an additional 7 flats. (Application reference BH2023/03140). This application is currently awaiting a decision.

2.0 Class MA - Qualifications and Conditions

2.1 Class MA permits the change of use of buildings and any land in its curtilage from a use falling within Class E (commercial, business and service) to residential use within Use Class C3, subject to various qualifications, limitations and conditions, including the requirement to make a prior approval application to the Local Planning Authority (LPA) in respect of certain matters that can be assessed. Thus, as with its Class O predecessor, Class MA of the GPDO grants a deemed planning permission under Article 3 of the Order (i.e., not an exception under S55 of the TCPA). The prior approval application relates to the conditions stated in the Class.

2.2 Development is not permitted under Class MA if any of the following apply:-

Development not permitted.

MA.1.—

(1) Development is not permitted by Class MA—

- (a) unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;*
- (b) unless the use of the building fell within one or more of the classes specified in subparagraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;*
- (c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;*
- (d) if land covered by, or within the curtilage of, the building—*
 - (i) is or forms part of a site of special scientific interest;*
 - (ii) is or forms part of a listed building or land within its curtilage;*
 - (iii) is or forms part of a scheduled monument or land within its curtilage;*
 - (iv) is or forms part of a safety hazard area; or*
 - (v) is or forms part of a military explosives storage area;*
- (e) if the building is within—*
 - (i) an area of outstanding natural beauty;*
 - (ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981*
 - (iii) the Broads;*
 - (iv) a National Park; or*
 - (v) a World Heritage Site;*
- (f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or*
- (g) before 1 August 2022, if—*
 - (i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021;*
and
 - (ii) the development would not have been permitted under Class O immediately*
before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.

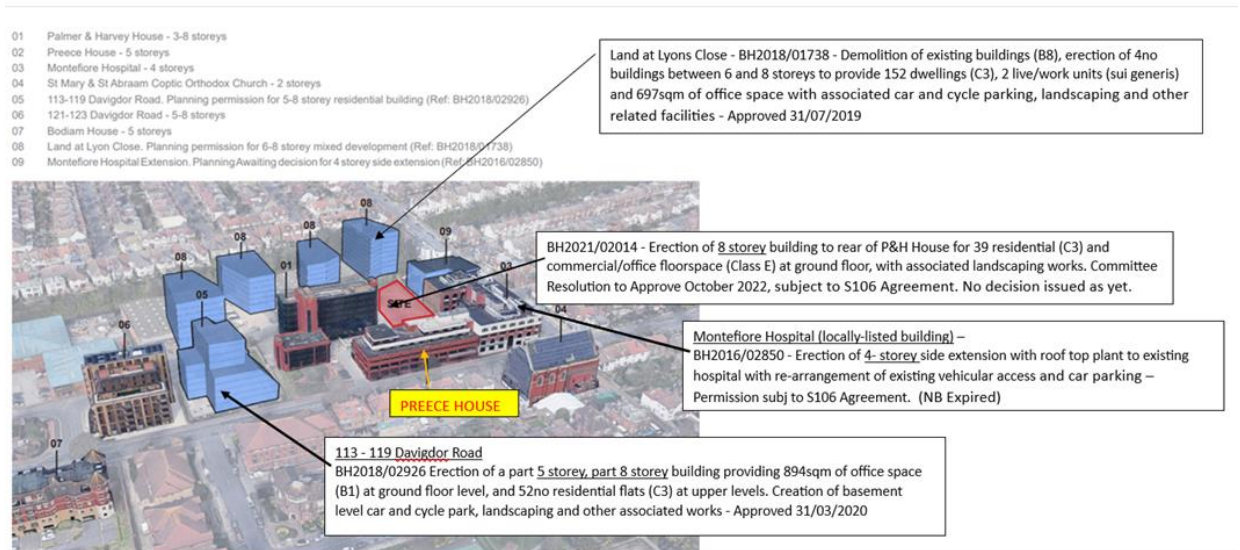
- 2.3 Paragraphs 9A and 9B of the GPDO require development to meet the nationally described space standards (NDSS) and its associated notes.
- 2.4 Development under Class MA is permitted subject to a condition that before development begins, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the following matters:-
- Transport impacts of the development, particularly to ensure safe site access.
 - Contamination risks in relation to the building
 - Flooding risks in relation to the building
 - Impacts of noise from commercial premises on the intended occupiers of the development
 - Provision of adequate natural light in all habitable rooms
 - [NB Other requirements of MA are not relevant as they only relate to buildings within conservation areas/where there will be a loss of nurseries/health care services/or where residential use will be impacted by general/heavy industry].
- 2.5 The procedural requirements for prior approval applications are set out in Paragraph W of the Order. It should be noted that only the specific requirements of Paragraph W can be insisted upon. In particular, the national and local validation checklists relevant to planning applications cannot be applied to prior approval applications under the GPDO. Furthermore, as set out in paragraph W - 10 (b) the LPA must have regard to the NPPF, “*so far as relevant to the subject matter of the prior approval, as if the application were a planning application*”.

3.0 Site and Surroundings

- 3.1 The application site is a 5-storey office building, plus a basement, which fronts onto Davigdor Road and lies adjacent to the Montefiore Hospital. The top storey (4th floor) comprises two separate blocks which are set well back from the main building line. There is also a substantial plant room on top of one of the 4th floor blocks. The building has a rectangular plan form which occupies the front of the site. Access to the rear surface car park and the basement level car park is from an existing vehicular access from Davigdor Road which is shared with the adjacent building to the rear and side (P&H House).
- 3.2 Immediately to the west is Palmer and Harvey (P&H) House which is set back from Davigdor Road and with a larger building wrapping around part of the rear car park. Planning Permission (under ref BH/2021/02014) has been granted for a part 8-storey building comprising 39 flats and commercial ground floorspace on the car park adjacent to P&H House and which wraps around the remainder of the application site car park. Further to the west, a new 5-storey building, rising to 8-storeys, is under construction at 113-119 Davigdor Road. This was granted permission under reference BH/2018/02926.
- 3.3 Immediately adjacent to the east is the Montefiore Hospital, a 4-storey building which is locally listed and comprises red brick and render. Permission has been granted for a 4-storey extension to the rear of the building, where it turns the corner

into Montefiore Road.

- 3.4 Opposite the site on the other side of Davigdor Road is the St. Mary and St Abraam Orthodox Church which comprises 2-storeys under a steeply pitched roof. Terraced and semi-detached residential properties either side are 2-storey in height.
- 3.5 See diagram below showing the application site in its context and photographs in Appendix B:-



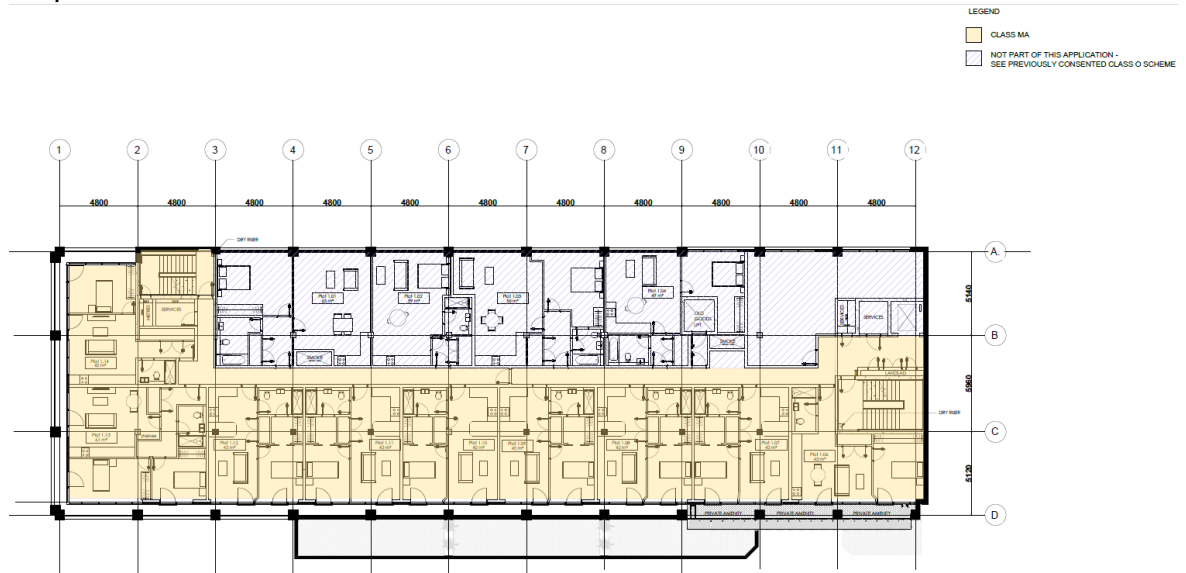
- 3.6 The site lies in a highly accessible location, within easy walking and cycling distance of local shops, amenities and facilities of Hove. (See Transport Statement).

4.0 The Proposals

- 4.1 This application seeks prior approval for a total of 9 flat units on part of the first floor. The remaining floorspace on this first floor not included in this application will be built-out under the previous Class O scheme (4 units). This means that the first floor will have 13 units (an uplift of 2 units from the original Class O scheme).
- 4.2 In terms of how this application fits with previous consents for this building, as set out above, the original Class O Prior Approval consented the change of use of the building to a total of 35 flats. In July 2023, a further Prior Approval consent (Ref: BH2023/01403) was granted under Class MA (GDPO) to create an uplift of 6 units from the 35 previously consented to 41 units, achieved through the approved reconfiguration / development of the second and fourth floors. This involved 4 additional units on the second floor (ie 15 units instead of 11 units) and 2 additional two units on the fourth floor through the conversion of the caretaker's office thereby bringing the total at fourth floor level from 2 to 4 units.
- 4.3 As a result of this Class MA prior approval application for the first floor, the total number of units within the existing building would be 43 units. A further prior

approval application has been submitted under Class AA for 7 unit (BH2023/03140). If consented, this would bring the total to 50 units.

Proposed First Floor Plan



- 4.4 In terms of the proposed mix, 8 of the flats will be 1-bed units and 1 unit will be a 2-bed unit. Access will be from two separate staircases at each end of the building.
- 4.5 Each flat has been designed to meet the nationally described space standards (NDSS) both in terms of overall floorspace but also in compliance with the notes regarding sizes of bedrooms, storage space etc.
- 4.6 A total of 39 parking spaces will be available for the existing building (43 flats), including the 9 units submitted for this application both within the basement car park (10 spaces) and in the surface car park (29 spaces). The proposed parking provision includes 4 disabled spaces. Long term cycle storage for 60 cycles will be provided for residents within the existing building in a double-stacking arrangement. In addition, a further 18 short-stay visitor cycle spaces will be provided for visitors outside the building using Sheffield stands. 6 car parking spaces within the surface car park will have fast charge EV points.
- 4.7 Provision for refuse storage will be made in a detached refuse store which is shown on the ground floor plan. This was granted planning permission as part of application reference BH2023/02121 on 6th October 2023.

5.0 Assessment against the GPDO 2015

5.1 The following assesses the proposals against Class O of the GPDO 2015 (as amended).

Qualifications/exclusions

5.2 The first floor of the building has been vacant for 3 months. This ensures compliance with Paragraph MA.1. (1a) and (1b). (See Deed of Surrender letter in Appendix A).

- 5.3 The total floorspace of this part of the first floor comprises 600sqm (GEA)/503sqm (GIA). This is under the 1,500sqm threshold in compliance with MA.1.(1c). Even when taken with the previous Class MA application (894sqm), it falls under the threshold.
- 5.4 The site is not, nor forms part of, a SSSI, a listed building or its curtilage, a Scheduled Ancient Monument, a military explosives storage area or a safety hazard area and therefore complies with MA.1. (1d)
- 5.5 The site does not lie within an AONB, National Park, World Heritage Site or Wildlife Area or The Broads. Therefore the application complies with MA.1. (1e).
- 5.6 The site is not occupied under an agricultural tenancy and therefore the application complies with MA.1. (1f).
- 5.7 The site is not covered by an Article 4 Direction.
- 5.8 There are no restrictive planning conditions nor S106 obligations that would prevent permitted development rights under Class MA from being exercised. This was acknowledged in the previous Class O prior approval and Class MA prior approval determinations.
- 5.9 The proposals meet the nationally described space standards and therefore complies with Article 3, Paragraphs 9a and 9b of the GPDO.

Assessment of Transport and Highway risks

- 5.10 The NPPF (2023) states in Paragraph 115 that “*development should only be prevented or refused on transport grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*”.
- 5.11 This is a highly accessible location in Hove and close to amenities, facilities and transport links. The Transport Statement accompanying this application demonstrates that there will be no transport or highway impacts from this application.
- 5.12 It also demonstrates how the scheme will meet the required car parking standards (maximum) and cycle parking standards.
- 5.13 There are therefore no reasons to require prior approval of highway impacts. If Prior approval is deemed to be required, there is no reason to withhold it on highway/transport grounds.

Assessment of Contamination Risks

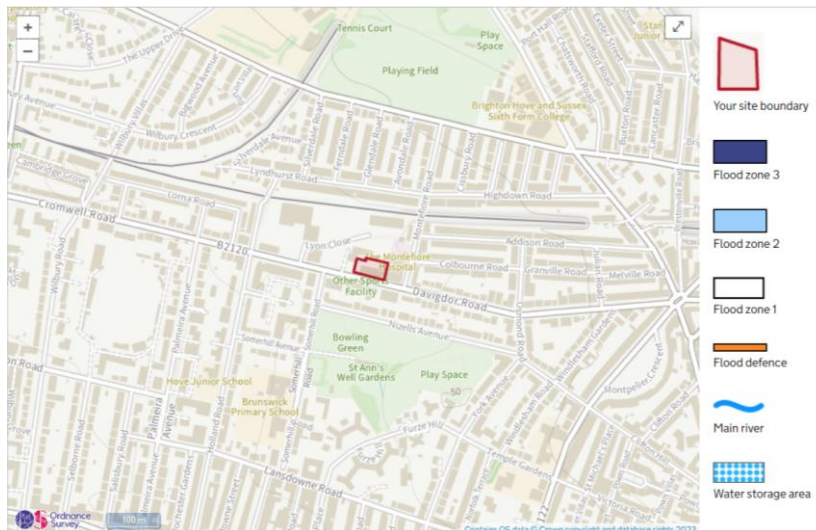
- 5.14 The previous application under Class O included Condition 3 requiring an asbestos survey of the premises and any necessary works to be carried out. A full asbestos survey has been carried out and submitted as part of the current Class AA Prior Approval application. This confirms that asbestos has been appropriately dealt-with.

It is therefore not expected that an asbestos condition would need to be re-imposed on any decision.

- 5.15 There is no risk from ground contamination given that this application relates to the first floor. This was accepted as part of the previous Class MA prior approval. Given the above, there is no reason prior approval should be refused on the grounds of contamination risks.

Assessment of Flood Risks

- 5.16 The site falls within Flood Zone 1 and in an area of low flood risk. There is therefore no reason to require prior approval of flood risk. This was accepted as part of the previous Class O Prior Approval determination.



Source: Environment Agency Flood Map for Planning

Assessment of Noise Impacts (from commercial premises on future occupants)

- 5.17 The GPDO 2015 (as amended) spells out that the assessment of noise is restricted to those impacts from commercial premises. Noise from traffic is not for consideration. The application site is bounded to the rear by commercial office uses, the hospital, as well as residential properties, neither of which are likely to cause noise nuisance.
- 5.18 Given the above, there is no reason to withhold prior approval on the basis of noise impacts.

Assessment of Adequate Natural Light

- 5.19 The requirement to assess natural light was inserted into the GPDO by the T&C PI (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 and came into effect on 1 August 2020. Criterion 1(f) requires “*the provision of adequate natural light in all habitable rooms of the dwellinghouses*”. Habitable rooms are defined within the GPDO as meaning:- “*any rooms used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms*”.
- 5.20 All habitable rooms within the proposed scheme will have at least one window. The accompanying Internal daylight adequacy report concludes that all habitable rooms within all proposed units will meet the BRE guidance.
- 5.21 Given the above, there is therefore no reason to withhold prior approval on the basis of inadequate natural light.

6.0 Conclusion

- 6.1 In conclusion, the application meets all tests set out in the GPDO 2015 (as amended) and thus there is no reason Prior Approval should be withheld.

Report prepared by:-

Ruth Harding (Director – Gemini Planning Services Ltd)

Date: January 2024

APPENDIX A

Dated

13 OCTOBER

2023

(1) WM BRIGHTON LIMITED

- and -

(2) ITAD LIMITED

DEED OF SURRENDER

FOR OFFICES ON FIRST FLOOR OF PREECE HOUSE, DAVIDGOR ROAD, HOVE,
BN3 1RE



Herrington Carmichael LLP
Brennan House
Farnborough Aerospace Centre Business Park
Farnborough
Hants
GU14 6XR

THIS DEED is dated13 OCTOBER.....2023

PARTIES

- (1) **WM Brighton Limited** incorporated and registered in England and Wales with company number 14515607 whose registered office is at 3rd Floor, 114a Cromwell Road, London, United Kingdom, SW7 4AG (the **Landlord**); and
- (2) **ITAD Limited** incorporated and registered in England and Wales with company number 01869600 whose registered office is at Preece House, Davigdor Road, Hove, East Sussex, BN3 1RE (the **Tenant**).

WHEREAS

- (A) This Deed is supplemental to the Lease.
- (B) The Landlord is now entitled to the immediate reversion to the Lease.
- (C) The residue of the term granted by the Lease remains vested in the Tenant.

IT IS HEREBY AGREED

1 Interpretation

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

1.1 Definitions:

"Annual Rent" the rent reserved pursuant to clause 3.1 of the Lease.

"HMLR" HM Land Registry.

"Landlord's Conveyancer" Herrington Carmichael LLP of Brennan House, Farnborough Aerospace Centre Business Park, Farnborough, Hants, GU14 6XR (Ref: CLM-WES361/35) or any other conveyancer whose details may be notified in writing from time to time by the Landlord to the Tenant.

"Lease" the lease of the Property dated 23 May 2017 and made between (1) Aegon UK Property Fund Limited and (2) ITAD Limited, and all documents supplemental or collateral to that lease.

"Property" offices on the 1st Floor, Preece House, Davigdor Road, Hove, East Sussex, BN3 1RE as more particularly described in and demised by the Lease.

"Rent Deposit Deed" means the Rent Deposit Deed dated 23 May 2017 and made between (1) Aegon UK Property Fund Limited and (2) ITAD Limited, in relation to the Property.

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

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.7 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.9 A reference to **writing** or **written** includes fax but not email.
- 1.10 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Deed) at any time.
- 1.11 References to clauses are to the clauses of this Deed.
- 1.12 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.
- 1.13 References to the **Landlord** include a reference to the person entitled for the time being to the immediate reversion to the Lease.
- 1.14 The expressions **landlord covenant** and **tenant covenant** each have the meanings given to them by the Landlord and Tenant (Covenants) Act 1995.

2 Surrender

- 2.1 In consideration of:
 - 2.1.1 The Landlord waiving the Annual Rent from 24 June 2023 until the date of this Deed;
 - 2.1.2 the Landlord and the Tenant granting the releases contained in clause 3; and
 - 2.1.3 the Landlord's concessions in clause 5 of this Deed;
- the Tenant surrenders and yields up to the Landlord, with full title guarantee, all its estate, interest and rights in the Property and the Landlord accepts the surrender.

- 2.2 The residue of the term of years granted by the Lease shall merge and be extinguished in the reversion immediately expectant on the termination of the Lease.

3 Releases

- 3.1 Subject to clause 3.2:
- 3.1.1 the Landlord releases the Tenant from all the tenant covenants of the Lease and from all liability for any subsisting breach of any of them; and
- 3.1.2 the Tenant releases the Landlord and its predecessors in title from all the landlord covenants of the Lease and from all liability for any subsisting breach of any of them.
- 3.2 The releases set out in clause 3.1.1, and clause 3.1.2 are conditional upon the surrender of the Lease pursuant to clause 2.1 taking effect so that, if the surrender of the Lease pursuant to clause 2.1 does not take effect for any reason whatsoever, the releases set out in clause 3.1.1, and clause 3.1.2 shall also not take effect.

4 Rent Deposit

- 4.1 The Landlord confirms that they hold the Deposit Balance (as defined in the Rent Deposit Deed) which is currently the sum of £46,483.24
- 4.2 On the date hereof, the Landlord shall repay to the Tenant the full amount of the Deposit Balance without deduction.

5 Yielding Up

- 5.1 Notwithstanding the obligations in clause 3.6.1 of the Lease, the Landlord hereby confirms that the Tenant is not required to redecorate the Property in the last three months of the Term.
- 5.2 Notwithstanding the obligations in clauses 3.5.1 and 3.8 of the Lease, the Landlord hereby confirms that the Tenant is not required to undertake any works to the Property to put them into any better condition than they are in as at the date of this Deed.
- 5.3 Notwithstanding the obligations in clause 3.8 of the Lease, the Landlord hereby confirms that the Tenant is permitted to leave the items of furniture listed Schedule 1 of this Deed at the Property and the Tenant shall not be required to contribute towards the costs incurred in respect of the removal of such items.
- 5.4 Notwithstanding Clause 3.9 of the Lease the Tenant shall not be required to remove any signage installed by the Tenant in the Building or make good

any damage caused to the Building as a result of the installation of any signage.

- 5.5 Notwithstanding the obligations in clause 3.10.10 of the Lease, the Landlord hereby confirms that the Tenant shall not be required to remove any existing partitioning or installations whether permanent or demountable in place at the Property or make good or contribute towards any costs incurred in respect of any such removal.

6 Documents and HMLR requirements

- 6.1 Within ten days of the date of this Deed, the Tenant shall deliver to the Landlord, or to the Landlord's Conveyancer:

6.1.1 the Lease; and

6.1.2 the original part of this Deed.

- 6.2 The Landlord shall apply within two weeks following completion of this Deed to HMLR for:

6.2.1 any notice of the Lease to be cancelled;

6.2.2 the registration of any easements or rights granted by or over, or reserved out of, the Lease to be cancelled; and

6.2.3 the registered title to the Lease to be closed.

- 6.3 The Tenant shall, within five working days of any written request from the Landlord, supply the Landlord with all further documents and information required in connection with any requisition raised by HMLR on such applications.

7 Joint and several liability

Where the Landlord or the Tenant is more than one person, those persons shall in each case be jointly and severally liable for their respective obligations and liabilities arising under this Deed. The Landlord may take action against, or release or compromise the liability of, or grant any time or other indulgence to, any one of the persons comprising the Tenant without affecting the liability of any other of them.

8 Third Party Rights

- 8.1 Except as expressly provided in clause 8.2, 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 Deed.

- 8.2 A third party given the benefit of a release in clause 3.1 is entitled to enforce such right. The rights of the parties to this Deed to rescind or vary it are not subject to the consent of any other person.

9 Governing law

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

10 Jurisdiction

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

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

Executed as a Deed by,) SACH OCKENOM
SACH OCKENOM a)
director, for and on behalf)
of **ITAD Limited**, in the)
presence of:)
)

Witness signature JASALMAN
Witness Name JULIE ANN SALMAN
Witness Address 3 HORSEFIELD GREEN
CUCKFIELD, WEST SUSSEX RH17 5GS
Witness Occupation: REGIONAL SUPPORT MANAGER

Executed as a Deed by,) _____
_____ a)
director, for and on behalf)
of **WM Brighton Limited**,)
in the presence of:)
)

Witness signature _____
Witness Name _____
Witness Address _____

Witness Occupation: _____