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Date 18 November 2025

By email to [roisin.hogan@mishcon.com](mailto:roisin.hogan@mishcon.com)

Dear Mishcon de Reya,

**The Borough Council of Sandwell (Cranford Street, Smethwick) Compulsory Purchase Order 2025 (the CPO)**

**Your client: Portal Construction Limited (PCL)**

- 1 We act for Sandwell Metropolitan Borough Council (the **Acquiring Authority**) and write in response to your letter of statutory objection dated 12 September 2025 (the **Objection**).
- 2 We note from the Objection that PCL have four areas of concern (the **Objections**) in respect of the Acquiring Authority's proposal to bring forward residential development at Cranford Street, Smethwick (the **Site**).
- 3 This letter will address the Objections which have been raised to enable PCL to understand the Acquiring Authority's position in respect of them. We hope that PCL will subsequently reconsider the Objections and agree to engage in the next steps suggested at paragraph 10, negating the need for a public inquiry and enabling the Site to come forward for residential development without delay in the public interest.
- 4 The Objections which have been raised are as follows:
  - 4.1 PCL considers that the Acquiring Authority have failed to demonstrate that there is a compelling case in the public interest to acquire the Site (**Ground 1**);
  - 4.2 PCL suggests that residential development proposed by the Acquiring Authority at the Site can be brought forward by alternative means (other than by the CPO) (**Ground 2**);
  - 4.3 PCL believe that the Acquiring Authority have failed to take appropriate and proportionate steps to seek to acquire the Site by private treaty (**Ground 3**); and
  - 4.4 It is PCL's view that there are insufficiently compelling reasons for the Site to be acquired compulsorily at this time (**Ground 4**).

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5 This letter will respond to each of the above in turn.

6 **Ground 1 – Compelling Case in the Public Interest to Acquire the Site**

6.1 The Objection suggests that there is no compelling case in the public interest for the Site to be compulsorily acquired by the Acquiring Authority. This has been raised on the premise that PCL intend to procure the delivery of residential housing at the Site themselves (by disposing of the Property to a private developer) (the **PCL Proposal**). The suggestion is that a CPO is not necessary to achieve the aims of the Acquiring Authority.

6.2 The PCL Proposal has been considered by the Acquiring Authority in detail. However, based on the history of the Site and PCL's conduct during its period of ownership, the Acquiring Authority considers there is no merit in this objection. This is based on the following factors:

6.2.1 Between 2021 and 2025, the Acquiring Authority commissioned four independent valuations of the Site. All four valuations were significantly less than the valuation which PCL is holding out for (which, as far as we are aware, is the only valuation they have commissioned). The Acquiring Authority is satisfied that its valuations accurately represent the price that a developer will be willing to pay for the Site on the open market. The Acquiring Authority considers that PCL's unrealistic price expectations for the Site continue to be a barrier to any private developer interest.

6.2.2 As explained in the Statement of Reasons (the **SoR**), the Site is derelict (save for its recent temporary use as an open car park) and has adverse ground conditions and will require extensive remediation to be carried out in order to bring a residential scheme forward. As such, any potential developer will incur substantial remediations costs (the **Additional Costs**). There is a material risk that these Additional Costs are likely to lead potential private developers to conclude that the development is not viable (particularly given PCL's overvaluation of the Site). Public sector funding is therefore likely required to bring the development forward (this is further explained at paragraph 6.3(b) below).

6.2.3 It should also be noted that, in the unlikely event that a private developer agreed to purchase the Site from PCL, PCL's control over the Site would cease upon the disposal. It could not, therefore, guarantee that residential development would be brought forward, and certainly could not ensure that it is brought forward within the required timescales. There is therefore a

material risk that the Site will continue to lay vacant even if terms can be agreed with a private developer.

6.2.4 The Objection states that PCL have not yet been in a position to bring forward residential development on the Site due to the existence of a lease at the Site. We understand that there are two relevant leases here: a lease of Land and Buildings at Cranford Street, Smethwick dated 21 December 2018 and made between (1) PCL and (2) Sandwell and West Birmingham Hospitals NHS Trust (the **Previous Lease**) and a lease of Land and Buildings at Cranford Street, Smethwick dated 29 September 2023 and made between (1) PCL and (2) Sandwell and West Birmingham Hospitals NHS Trust (the **Current Lease**). We have appended copies of the leases at Appendix 1. The suggestion that the aforementioned leases have prevented/are preventing PCL from progressing the PCL Proposal is not borne out by the facts, namely:

- (a) PCL were under no obligation to grant the Current Lease following the termination of the Previous Lease;
- (b) As per Clause 13 of the Current Lease PCL has the right to terminate the Current Lease on 3 months written notice;
- (c) PCL is receiving an annual rent of £300,000 per annum from the current tenant, indicating that PCL are holding the Site as an income generating investment rather than as a site it wishes to develop for housing; and
- (d) The existence of a valuable lease is not a barrier to the submission of a planning application or indeed exchanging contracts with a private developer contingent on vacant possession being obtained.

6.2.5 The Acquiring Authority has seen no evidence that PCL have actively and competently promoted the Site for residential development since October 2021. In any event if PCL were able to demonstrate an active promotion campaign since October 2001, the failure of such a campaign to deliver any tangible progress would be telling. PCL has not submitted a planning application for residential development and nor has it secured a conditional contract for sale with a third party developer. The Site has been allocated for residential use in the Acquiring Authority's Local Plan since 2008 and as such the resolute failure to deliver on the objectives of the site allocation present a clear case for intervention through the use of compulsory purchase powers.

- 6.3 In contrast to the PCL Proposal, and as previously set out in the SOR, the Acquiring Authority intend to partner with a residential developer through a joint venture arrangement. This is highly likely to be successful, based on the following:
- (a) Importantly, the Acquiring Authority will retain control of the Site (and the development), allowing it to secure the delivery of residential development. In addition, it can *'ensure that the design, layout and quality of development is of the highest quality, and that an appropriate level of affordable housing is provided'* (SOR, paragraph 6.7). As explained above, PCL will not have control in this regard.
  - (b) The Acquiring Authority has secured funding through the Towns Fund (to a sum of £4.35m) to deliver the Site which will negate the Additional Costs and make the site viable and attractive for any future JV partner.
  - (c) The Acquiring Authority has significant experience in entering into joint venture arrangements to bring forward residential development. Examples of such sites in which this was successfully implemented are: the Lyng housing development in West Bromwich, a partnership between Sandwell Council, Barratt Homes and the Lyng Community Association and the more recent development at the Windmill Eye which delivered 227 new homes – a partnership between Sandwell Council, Barrett Homes and Homes England.
- 6.4 Neither PCL nor any of its linked companies (as far as we are aware) operate in the residential development sector. PCL's experience in this area is therefore very limited (if it has any) which is problematic given that strong residential development experience is essential if the development is to be brought forward successfully and in a timely manner. Further, PCL submitted a pre-application request for residential development in August 2022 (the **Pre-Application**). The Objection fails to mention that after corresponding with the Acquiring Authority for 7 months, PCL ceased responding after the Highway and Urban Design Team provided their views on the Pre-Application and explained why the proposed form of development put forward by PCL would not be acceptable. Clearly, PCL were not prepared to seriously engage with the Acquiring Authority, and thus were not resolute in bringing forward residential development. For clarity, no planning application was submitted by PCL following the Pre-Application.
- 6.5 In summary of Ground 1, the PCL Proposal is unlikely to bring forward residential development at the Site within a reasonable timescale in the public interest. PCL and previous owners of the Site have had ample time to bring the Site forward for residential

development and has failed to do so. This contrasts with the Acquiring Authority's intended approach which will guarantee delivery in the public interest. As such, there is a compelling case in the public interest to acquire the Site compulsorily to ensure that much needed new housing is delivered.

## 7 **Ground 2 – Delivery by Alternative Means**

7.1 This ground is related to and largely repeats Ground 1, and we therefore refer you to paragraph 6 above.

7.2 We note that paragraph 7.16.4 of the Objection suggests that PCL have evidence to demonstrate that a residential-led development can viably be delivered on the Site by the market. This is not borne out by the facts, in particular PCL's failure to demonstrate any progress towards delivering a residential development during its period of ownership (or indeed prior to that).

7.3 In response to paragraph 7.17 of the Objection, we refer you to paragraph 10 of the SOR, where this query has previously been addressed.

## 8 **Ground 3 – Private Treaty**

8.1 CPO guidance requires reasonable steps to be taken to acquire interests by agreement. The Acquiring Authority has clearly satisfied this requirement, as demonstrated by the timeline at paragraph 8.2 below. The CPO guidance does not require an acquiring authority to wait until negotiations fail before starting the compulsory purchase process and in fact provides that it may be sensible for an acquiring authority to initiate the compulsory purchase order process in parallel with stakeholder discussions.

8.2 We note the summary timeline at paragraph 7.23 of the Objection and have corrected this below:

8.2.1 Following receipt of an independent valuation of the Site, in October 2021, the Acquiring Authority instructed its agents (Bruton Knowles) to commence negotiations with PCL's agent. Until May 2022, the respective agents engaged in negotiations. During this time:

- (a) The Acquiring Authority presented an offer of £960,000 to PCL. PCL rejected this offer and instructed its agent *'not to waste any further time discussing the matter...unless a more serious offer is put forward'*.

- (b) In February 2022, the Acquiring Authority increased their offer to £1,040,000, which represented a fair open market value of the Site at the time. This was rejected by PCL, who subsequently asked for no further offers to be made unless they were '*significantly*' higher. Continuing negotiations was therefore unwelcome, as the Acquiring Authority could not provide a significantly higher offer due to the requirement to '*operate within the realms of the Local Government Act to ensure that any offer reflected value for money for the public purse*' (SOR, paragraph 8.5).
- 8.2.2 The Objection then claims that between May 2022 and August 2024 '*there was no further contact (to a meaningful extent) by the Acquiring Authority to seek to acquire the Site by private treaty*'. Whilst this is acknowledged, the Objection fails to mention that between August 2022 and March 2023, PCL and the Acquiring Authority corresponded in relation to the Pre Application enquiry. As explained in paragraph 6.4 above, PCL ceased communication with the Acquiring Authority in March 2023 (and not the other way around).
- 8.2.3 In June 2024, the Acquiring Authority made further contact with PCL. Discussions were then referred to their respective agents. In the meantime, the Acquiring Authority arranged for a revised valuation to be produced to account for any changes in market conditions. In July 2024, this valuation was rejected by PCL.
- 8.2.4 To assist with negotiations, the parties agreed to swap valuations. It is notable that PCL confirmed that their valuation report would be ready in January 2025. In January 2025, PCL confirmed that the report would be provided within the following fourteen days. Finally, in April 2025, PCL provided the report. Unfortunately, PCL did not provide the associated appendices, so it was unclear how the valuation was reached. The following month, PCL provided some of the appendices, but only sent the remaining appendices in September 2025. It is nevertheless still unclear to the Acquiring Authority why this valuation has been reached, particularly given it does not take into account any necessary costs (including demolition, remediation and build costs).
- 8.2.5 In June 2025, PCL directly approached the Acquiring Authority's Chief Executive Officer (the **CEO**) to suggest that a meeting is arranged to try to make further progress. The CEO responded to say that he had requested further information regarding the outstanding issues.

- 8.2.6 In July 2025, the Acquiring Authority commissioned a further valuation, based upon a residential scheme of 100 new units. The revised valuation resulted in a figure significantly less than the original existing land use due the constraints of the Site and the costs required to bring forward development. This offer was put to PCL but was not accepted.
- 8.2.7 Following the above, PCL again contacted the CEO directly and stated that it would be happy to '*open dialogue directly*' and to '*commence an open market sales process on the asset and open up to best bids*'. The CEO reiterated that the Acquiring Authority is keen to reach an agreement with PCL but that the matter should be dealt with by their experienced teams and consultants in order to ensure it is complying with its duty to ensure that any offer reflects value for money for the public purse.
- 8.2.8 PCL subsequently advised that a sales process would be commenced. We are not aware that this has occurred.
- 8.3 It is clear from the above timeline that the Acquiring Authority have taken all reasonable steps (and more) to seek to acquire the Site from PCL by private treaty. PCL's unrealistic price expectations have prevented an agreement from being reached.
- 8.4 In any event, the Acquiring Authority recognises that it is appropriate and proportionate to continue its attempts to obtain a private treaty agreement with PCL and is open to further negotiations being had. Indeed, it has proposed three steps at paragraph 10 below to do so.
- 9 **Ground 4 – Compulsory Acquisition of the Site at this time**
- 9.1 The Objection suggests that there are not sufficiently compelling reasons for the CPO to be confirmed at this time. This is incorrect. As explained in the SOR, '*the use of compulsory purchase powers will enable the development to take place in a timely fashion, in order to derive the wider public benefits that the development will secure and to provide certainty on timescale*' (SOR, paragraph 6.8). The Site has been allocated for new housing since 2011, there is a chronic shortage of housing in Sandwell, and the private sector has failed to deliver any progress towards a residential development over a 14-year period.
- 9.2 We also confirm the following:
- 9.2.1 The Acquiring Authority will shortly be submitting an application for planning permission which seeks permission for a residential development of 100 new apartments and houses with ancillary open space, parking and highways.

- 9.2.2 The Acquiring Authority intends to procure a development partner by not later than March 2027 in order to ensure the residential Development is delivered in a timely manner. Procuring a development partner at this stage would be premature. However, there is nothing to suggest there will not be appetite for the Acquiring Authority's proposals.
- 9.2.3 The Acquiring Authority has requested access to the Site but PCL have refused to grant this. The ability to conduct surveys at the Site would enable the Acquiring Authority to ensure its valuations are accurate, which we consider would assist both parties with negotiations.

## 10 Next steps

- 10.1 As previously mentioned, the Acquiring Authority are committed to continuing negotiations with PCL to acquire the Site by agreement, rather than by continuing with the CPO. It also appears that PCL would be open to disposing of the Site to the Acquiring Authority. The only barrier preventing this from proceeding is the price expectations on the part of PCL. With this in mind, it is proposed that PCL agree with the Acquiring Authority to take the following steps:
- 10.1.1 Firstly, PCL should grant the Acquiring Authority access to the Site to allow it to conduct ground surveys. This will enable both PCL and the Acquiring Authority to update their valuations to reflect the actual ground conditions and therefore any Additional Costs that would be incurred as part of any residential development
- 10.1.2 If the Acquiring Authority is granted access to carry out surveys at the Site, but the parties remain apart on valuation, a valuer should be jointly appointed to opine on value; and
- 10.1.3 If either PCL or the Acquiring Authority do not agree with the joint valuation, a lands tribunal contract (the **Contract**) should be entered into (whereby the Acquiring Authority would initially agree a minimum payment (what it considers to be a fair value of the Site) to be secured by the Contract but the final value would be determined by the Upper Tribunal (Lands Chamber)). Any such valuation would then be in accordance with the CPOI compensation code, and would be assessed independently. The Contract would also provide for the Objection to be withdrawn.
- 10.2 It is clear from the Objection that the only real issue between PCL and the Acquiring Authority relates to price. We are therefore hopeful that PCL will agree to carry out the



above steps thereby resolving the principal dispute as to price and avoiding the need for a compulsory purchase order.

- 10.3 It is understood that there has been a recent approach to the Chief Executive of Sandwell Council, indicating that PCL has received a substantial offer from a reputable developer which exceeds the Acquiring Authority's previous offer. The communication also proposed that the Acquiring Authority re-engage with PCL to explore the possibility of reaching a negotiated resolution. As previously stated, the Acquiring Authority is committed to continuing negotiations with PCL. As such, it is willing to convene a meeting with relevant officers from Regeneration and Land and Assets to discuss the offer made to PCL (in addition to carrying out the above proposed steps). If this is something PCL would like to pursue, please contact [Hayley\\_insley@sandwell.gov.uk](mailto:Hayley_insley@sandwell.gov.uk) to arrange a suitable time for a meeting.

If you have any queries in respect of this letter, please contact [rstracey@trowers.com](mailto:rstracey@trowers.com).

Yours faithfully

Trowers & Hamlin LLP



**Appendix 1**

Dated

21 December 2018

**PORTAL CONSTRUCTION LIMITED**

and

**SANDWELL AND WEST BIRMINGHAM HOSPITALS NHS TRUST**

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LEASE

of

Land and Buildings at Cranford Street, Smethwick

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**CLARKE MAIRS LLP**  
ONE HOOD STREET,  
NEWCASTLE UPON TYNE  
NE1 6JQ  
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THIS LEASE is made on the date mentioned in the Lease Details

**BETWEEN**

- (1) the Landlord; and
- (2) the Tenant

**1. DEFINITIONS AND INTERPRETATION**

In this Lease:

- 1.1 **"the EPB Regulations"** means the Energy Performance of Buildings (Certificates and Inspectors) (England and Wales) Regulations 2007 and all amendments and revisions and **"EPC"** means an Energy Performance Certificate as defined in the EPB Regulations
- 1.2 **"Conduits"** means drains sewers pipes cables wires and mains
- 1.3 **"the Rent Days"** means 25 March, 24 June, 29 September and 25 December in each year of the Lease Term
- 1.4 **"Third Party Rights"** means the matters referred to on the register of title number WM379676 as at 11:50:16 on 21 September 2018
- 1.5 **"Contamination"** means contamination of the Property or any adjoining or neighbouring property by any substance:
  - 1.5.1 the presence of which is causing significant harm or which gives rise to the possibility of harm being caused to the health of living organisms or other significant interference of which they form part; or
  - 1.5.2 which is causing or is likely to cause pollution of surface or ground waters
- 1.6 Words printed in bold on the page headed Lease Details have the meaning printed opposite that word

1.7 Where there are two or more persons entering into an obligation jointly their liabilities will be joint and several

1.8 References to statutory requirements include all legislation on the relevant subject in force from time to time and all subsidiary orders and regulations

**2. GRANT OF LEASE**

The Landlord lets with full title guarantee to the Tenant the Property for the Lease Term subject to and where applicable with the benefit of the Third Party Rights together with the following rights in common with the Landlord and any other person authorised by the Landlord:

2.1 (so far as the Landlord is able to grant such right) the right to enter any part of any land buildings or structures adjoining the Property so far as is reasonably necessary to carry out any works to the Property required or permitted by this lease, subject to the person exercising such right doing so only on reasonable written notice (save in case of emergency), causing as little damage as possible in the exercise of such right, and making good any damage caused to the reasonable satisfaction of the Landlord; and

2.2 rights of light, air, support and protection to the extent that these rights are capable of being enjoyed at any time during the term

**3. TENANT'S PAYMENTS**

3.1 The Tenant agrees to pay the first instalment of Annual Rent on the Rent Commencement Date for the period from the Rent Commencement Date to the next Rent Day

3.2 Starting on the next Rent Day the Tenant agrees to pay (without deduction or set off save for any set off required or permitted by law) to

- the Landlord the Annual Rent by quarterly payments in advance on the Rent Days and if required by the Landlord by direct debit or standing order
- 3.3 The Tenant also agrees to pay (without deduction or set off) to the Landlord (but not as rent):
- 3.3.1 a fair proportion (decided by the Landlord acting reasonably) of any charges for the supply of water gas electricity and/or drainage services to the Property in the event that the relevant service is not supplied directly to the Property from the statutory service provider
- 3.3.2 the reasonable and proper cost (including professional fees) of any works to the Property which the Landlord does (acting reasonably) arising from a default by the Tenant
- 3.3.3 the reasonable and proper costs (including professional fees) which the Landlord incurs in:
- (a) dealing with any application by the Tenant for consent or approval whether or not it is given (unless the Landlord unreasonably withholds its approval or consent)
  - (b) complying with any duty or obligation under the EPB Regulations as a result of any act or proposal of the Tenant
  - (c) preparing and serving notices of disrepair or schedules of dilapidations during the Lease Term or recording failure to give up the Property in the appropriate state of repair when this Lease ends
  - (d) enforcing the obligations of the Tenant
- 3.3.4 interest at 4% above the base lending rate of Barclays Bank Plc on any of the above payments when more than 14 days overdue to be calculated from the due date
- 3.3.5 (on provision of a valid value added tax invoice addressed to the Tenant) value added tax ("VAT") on all sums to be paid by the Tenant under this Lease
- all such payments to be made within 14 days of written demand unless a later date is specified
- 3.4 The Tenant also agrees to make the following payments (without deduction) where and when payable:
- 3.4.1 all periodic rates taxes and outgoings of a recurring and non-capital nature relating to the Property or a fair proportion (decided by the Landlord acting reasonably) of such rates taxes and outgoings if the Property is not separately assessed
- 3.4.2 a fair contribution (decided by the Landlord acting reasonably) of the cost of repair or maintenance of any common structure service or facility shared with other property
- 3.5 The Tenant also agrees not to claim void or unoccupied rating relief for the Property nor to accept any assessment for such relief and to indemnify the Landlord against any loss of rating relief applicable to unoccupied premises after the end of the Lease Term by reason of any such relief having been allowed to the Tenant before the end of the Lease Term
- 3.6 In the event of the Tenant failing to pay the Annual Rent or other amounts payable under this Lease on the due date for payment, then without prejudice to all other rights and entitlements which the Landlord has by reason of that default, whether under this Lease or otherwise, the rent or other amounts due and payable together with any interest payable thereon shall again become due and payable on each and every day that it remains unpaid so that each day there is a failure to pay the rent or other amounts due will give rise to a default in

compliance with the obligation for payment on that date

#### **4. CONDITION OF THE PROPERTY**

The Tenant agrees:

- 4.1 To repair the Property and to keep it in good repair and condition provided always that the Tenant shall not be liable to put or keep the Property in any better state of repair and condition than that in which it is at the date of this Lease as evidenced by the Schedule of Condition annexed hereto and provided further that the Tenant shall not be liable to remediate any Contamination in existence prior to the date of this lease
- 4.2 To decorate the inside of the Property when reasonably necessary and at least in the last year of the Lease provided always that the Tenant shall not be liable to put or keep the Property in any better decorative repair and condition than that in which it is at the date of this Lease as evidenced by the Schedule of Condition annexed hereto
- 4.3 That when decorating under this clause the Tenant will use colours and types of finish used previously or as agreed in writing by the Landlord (such agreement not to be unreasonably withheld or delayed)
- 4.4 To keep the Property clean and tidy
- 4.5 Not to make any alterations additions or improvements to the Property except that after obtaining the Landlord's written consent (such consent not to be unreasonably withheld or delayed) the Tenant may make non-structural alterations but will need to comply with the EPB Regulations and such reasonable conditions as the Landlord may specify in its consent
- 4.6 To comply with any statutory requirements relating to the Tenant's use of the Property

- 4.7 That if it fails to do any work which this Lease requires the Tenant to carry out the Landlord can do the work itself after giving written notice and if the Tenant still fails to start and proceed quickly with the work within 2 months of the notice

#### **5. USE OF THE PROPERTY**

- 5.1 The Tenant agrees to use the Property only for the Permitted Use or for such other use for which the Tenant has obtained both Landlord's written consent (not to be unreasonably withheld or delayed) and planning permission and in doing so not to carry out any illegal activities or to cause a nuisance to the Landlord or to nearby occupiers or neighbours
- 5.2 In using the Property, the Tenant will comply with all statutory requirements and will apply for and maintain any licences and consents which may be required
- 5.3 The Tenant will maintain third party liability insurance and employers liability
- 5.4 The Tenant will not display any signs or notices at the Property unless approved in writing by the Landlord (such approval not to be unreasonably withheld or delayed) save that any signage and branding required in relation to the Permitted Use shall not require the Landlord's approval
- 5.5 The Tenant accepts that the Landlord gives no warranty that the Permitted Use is the authorised use of the Property under planning restrictions and that it is the Tenant's responsibility to confirm this

#### **6. LANDLORD'S RIGHTS**

- 6.1 The Tenant agrees that the Landlord can enter the Property at any reasonable time for:

- 6.1.1 inspection of the Property
- 6.1.2 the enforcement of the Tenant's obligations
- 6.1.3 marketing and reletting in the last 6 months of the Lease Term
- 6.2 In exercising these rights the Landlord agrees that:
  - 6.2.1 except in emergencies (when as much notice as reasonably possible will be given) the Landlord will enter only during normal business hours and after reasonable prior written notice to the Tenant
  - 6.2.2 the Landlord will cause as little disruption and inconvenience as is practicable and will make good any damage caused to the Property

**7. TRANSFER**

- 7.1 The Tenant agrees not to share occupation or share or part with possession of any part or the whole of the Property with anyone else other than in accordance with clause 7.3
- 7.2 The Tenant agrees not to sublet the whole or any part of the Property
- 7.3 The Tenant agrees not to assign the whole or any part of this Lease save that the Tenant may assign the whole of this Lease to a contractor under contract to the Tenant to complete the development of the Midland Metropolitan Hospital with the prior written consent of the Landlord (not to be unreasonably withheld or delayed)
- 7.4 As a condition of its consent to assign the Landlord may require a written guarantee from the Tenant that the assignee will perform its obligations as the new tenant and the guarantee will be in such terms as the Landlord shall reasonably require

- 7.5 Within 7 days after this Lease has been assigned the Tenant is to give a copy of the assignment document to the Landlord and such copy will be certified as a true copy by the Tenant or by any professional adviser to the Tenant

**8. OTHER MATTERS**

- 8.1 The Tenant:
  - 8.1.1 is to send to the Landlord promptly copies of any notices received by the Tenant relating to the Property or to any neighbouring property
  - 8.1.2 is not to apply for planning permission in respect of the Property without the Landlord's written consent (not to be unreasonably withheld or delayed)
  - 8.1.3 is to indemnify the Landlord against any claims made against the Landlord arising from any failure by the Tenant to perform its obligations under this Lease and all costs incurred by the Landlord relating to any such claims provided that the Landlord shall use its reasonable endeavours to mitigate any such loss and shall not settle any claims without the Tenant's consent (not to be unreasonably withheld or delayed)
  - 8.1.4 is not to breach the Third Party Rights
- 8.2 The Property includes all additions and alterations and landlord's fixtures and fittings
- 8.3 An obligation by the Tenant not to do anything shall include an obligation not to permit anyone else do to it

**9. LANDLORD'S OBLIGATIONS**

- 9.1 While the Tenant materially complies with its obligations under this Lease the Landlord will allow the Tenant to possess and use the Property without interference from the

Landlord or anyone permitted by the Landlord

## **10. END OF LEASE**

When this Lease ends the Tenant is to:

10.1 return the Property to the Landlord leaving it in the state and condition in which this Lease requires the Tenant to keep it

10.2 if the Landlord so reasonably requires remove anything the Tenant has fixed to the Property (including any partitioning) and make good any damage caused by that removal

## **11. FORFEITURE**

11.1 This Lease comes to an end if the Landlord forfeits it by entering any part of the Property which the Landlord is entitled to do whenever:

11.1.1 payment of the Annual Rent is 14 days overdue even if it was not formally demanded

11.1.2 the Tenant has not materially complied with any of the terms of this Lease

11.1.3 the Tenant if an individual (and if more than one any of them) is adjudicated bankrupt or an interim receiver of its property is appointed

11.1.4 the Tenant if a company (and if more than one any of them) goes into liquidation (unless solely for the purpose of amalgamation or reconstruction when solvent) or has an administrative receiver appointed or has an administration order made in respect of it

11.2 The forfeiture of this Lease does not cancel any outstanding obligation of either party

## **12. BREAK OPTION**

12.1 The Tenant may terminate this Lease by serving a Break Notice on the Landlord

12.2 A Break Notice served by the Tenant shall be of no effect if, at the Break Date stated in the Break Notice the Tenant has not paid any part of the Annual Rent, or (provided that a valid VAT invoice addressed to the Tenant has been supplied) any VAT in respect of it, which was due to have been paid; or vacant possession of the whole of the Property is not given

12.3 Subject to clause 13.2, following service of a Break Notice this Lease shall terminate on the relevant Break Date

12.4 Termination of this Lease on a Break Date shall not affect any other right or remedy that either party may have in relation to any earlier breach of this Lease

12.5 If this Lease terminates in accordance with clause 13.3 then, within 14 days after the relevant Break Date, the Landlord shall refund to the Tenant the proportion of the Annual Rent, and any VAT paid in respect of it, for the period from and excluding the relevant Break Date up to and excluding the next Rent Payment Date, calculated on a daily basis

## **13. AGREEMENT**

It is confirmed that this Lease has not been entered into following a prior agreement between the parties

## **14. SERVICE OF NOTICES**

14.1 Any notice to be served by the Tenant on the Landlord under this Lease shall be sent to the Landlord at the address from which rent demands are issued

14.2 Any notice to be given by the Landlord to the Tenant under this Lease shall be sent to the Tenant addressed to its registered office and marked for the attention of its Chief Executive

purport to confer on any third party any benefit or the right to enforce any terms of this Lease

**15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 nothing in the Lease shall confer or

Executed as a Deed by the parties hereto the day and year first before written.

Signed as a Deed by PORTAL  
CONSTRUCTION LIMITED acting by a  
Director and its Secretary

.....  
Director

.....  
Director/Secretary

EXECUTED AS A DEED by SANDWELL  
AND WEST BIRMINGHAM HOSPITALS  
NHS TRUST in the presence of:

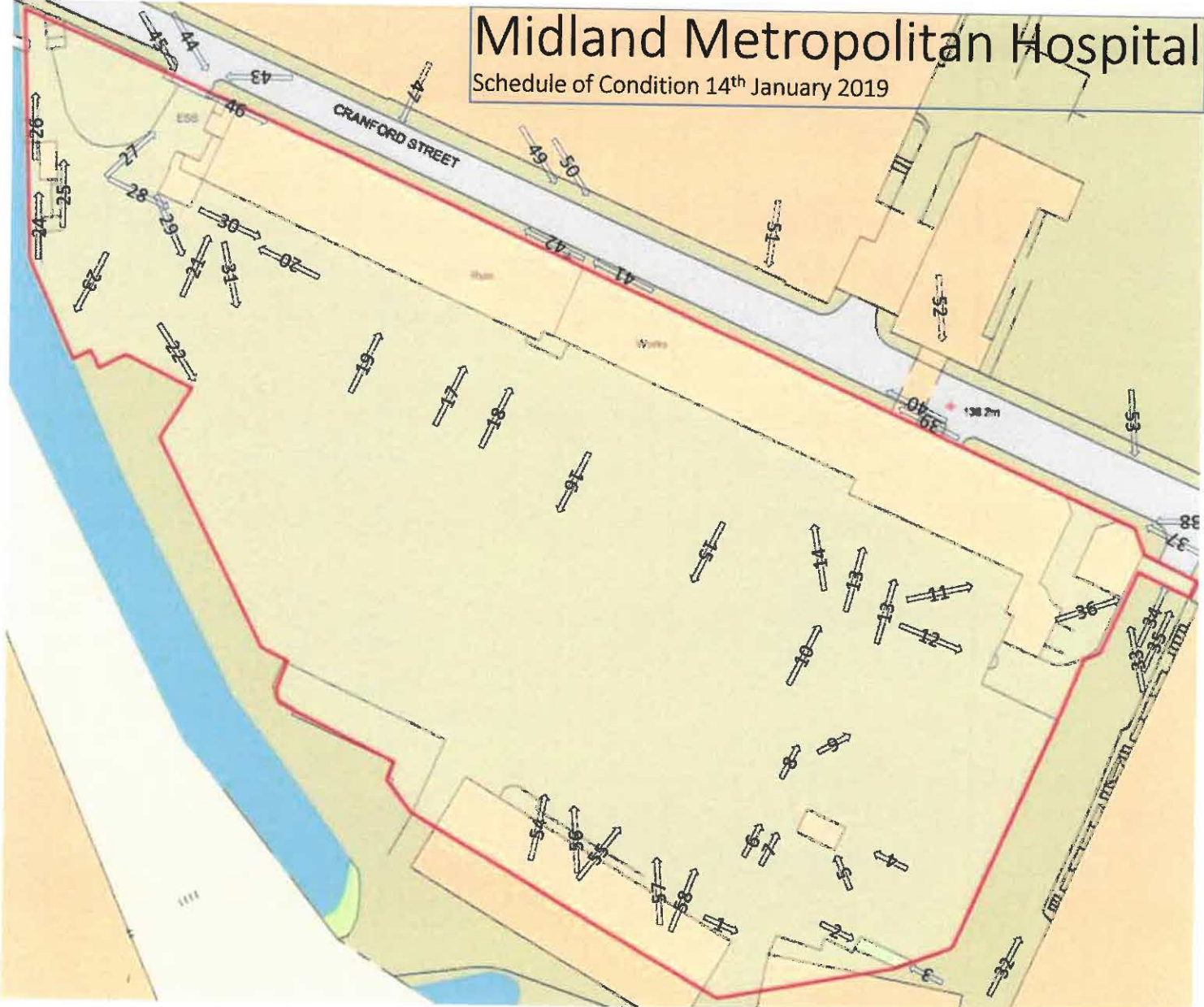


*Raj Saini*  
.....  
Authorised Signatory

*[Signature]*  
.....  
Authorised Signatory

# Midland Metropolitan Hospital

Schedule of Condition 14<sup>th</sup> January 2019



**Dated** 29 September **2023**

**PORTAL CONSTRUCTION LIMITED**

**and**

**SANDWELL AND WEST BIRMINGHAM HOSPITALS NHS TRUST**

---

**ESTATE UNIT LEASE**

**of**

Land and Buildings at Cranford Street, Smethwick

---



CLARKE MAIRS  
ONE HOOD STREET  
NEWCASTLE UPON TYNE  
NE1 6JQ  
TEL. 0191 245 4737  
FAX. 0191 261 5023  
REF: GB/55097

## LEASE DETAILS

<b>Date of this Lease</b>	29 September 2023
<b>Landlord</b>	PORTAL CONSTRUCTION LIMITED whose registered office is at New Burlington House, 1075 Finchley Road, London NW11 0PU (Company Number 01011605)
<b>Tenant</b>	SANDWELL AND WEST BIRMINGHAM HOSPITALS NHS TRUST of Sandwell General Hospital, Lyndon, West Bromwich, B71 4HJ
<b>Property</b>	Land and building at Cranford Street, Smethwick being part of the land registered at the Land Registry under title number WM379676 and shown edged red on the plan annexed to this Lease
<b>Term Commencement</b>	25 December 2023
<b>Lease Term</b>	Two years from and including the Term Commencement
<b>Rent Commencement Date</b>	25 December 2023
<b>Rent</b>	Three hundred thousand pounds (£300,000.00) each year exclusive of Value Added Tax
<b>Permitted Use</b>	Any use within Use Classes E(g) or B2 or B8 of The Town and Country Planning (Use Classes) Order 1987 (as amended)
<b>Break Date</b>	Any date from and including 25 December 2024 and which is at least 3 months after service of the Break Notice
<b>Break Notice</b>	Written notice specifying the Break Date served by either the Landlord or the Tenant on or before the date falling three months before the Break Date (in respect of which time is of the essence) stating the intention to terminate this Lease in accordance with in accordance with clause 13 of this Lease.

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**THIS LEASE** is made on the date mentioned in the Lease Details.

**BETWEEN**

- (1) The Landlord; and
- (2) The Tenant.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

In this Lease the definitions given in the Lease Details page shall apply, along with:

- 1.1 **“the EPB Regulations”** means the Energy Performance of Buildings (England and Wales) Regulations 2012 and all amendments and revisions and **“EPC”** means an Energy Performance Certificate as defined in the EPB Regulations
- 1.2 **“Conduits”** means drains sewers pipes cables wires and mains
- 1.3 **“Estate”** means the land and building at Cranford Street, Smethwick registered at the Land Registry under title number WM379676 but excluding the Property.
- 1.4 **“the Rent Days”** means 25 March, 24 June, 29 September and 25 December in each year of the Lease Term
- 1.5 **“Third Party Rights”** means the matters referred to on the register of title number WM379676 as at 25 May 2023 timed at 10:10:05.
- 1.6 **“Contamination”** means contamination of the Property or any adjoining or neighbouring property by any substance:
  - 1.6.1 the presence of which is causing significant harm or which gives rise to the possibility of harm being caused to the health of living organisms or

other significant interference of which they form part; or

- 1.6.2 which is causing or is likely to cause pollution of surface or ground waters
- 1.7 Where there are two or more persons entering into an obligation jointly their liabilities will be joint and several
- 1.8 References to statutory requirements include all legislation on the relevant subject in force from time to time and all subsidiary orders and regulations
- 1.9 In relation to any payment, a reference to a fair proportion is to a fair proportion of the total amount payable, determined conclusively (except as to questions of law) by the Landlord acting reasonably

**2. GRANT OF LEASE**

The Landlord lets to the Tenant with full title guarantee the Property for the Lease Term subject to and where applicable with the benefit of the Third Party Rights together with the following rights in common with the Landlord and any other person authorised by the Landlord:

- 2.1 (so far as the Landlord is able to grant such right) the right to enter any part of any land buildings or structures adjoining the Property so far as is reasonably necessary to carry out any works to the Property required or permitted by this Lease, subject to the person exercising such right doing so only on reasonable written notice (save in case of emergency), causing as little damage as possible in the exercise of such right, and making good any damage caused to the reasonable satisfaction of the Landlord; and
- 2.2 rights of light, air, support and protection to the extent that these

- rights are capable of being enjoyed at any time during the term
- breach of covenant by the Tenant
- 3. TENANT'S PAYMENTS**
- 3.1 The Tenant agrees to pay the first instalment of Rent on the Rent Commencement Date for the period from the Rent Commencement Date to the next Rent Day
- 3.2 Starting on the next Rent Day the Tenant agrees to pay (without deduction or set off save for any set off required or permitted by law) to the Landlord the Rent by quarterly payments in advance on the Rent Days and if required by the Landlord by direct debit or standing order
- 3.3 The Tenant also agrees to pay (without deduction or set off) to the Landlord by way of further rent:
- 3.3.1 a fair proportion (according to user and sub-meter readings where possible) of the costs for the supply of water gas electricity and/or drainage services to the Property in the event that the relevant service is not supplied directly to the Property from the statutory service provider
- 3.3.2 the reasonable and proper cost (including professional fees) of any works to the Property which the Landlord (acting reasonably) does arising from a default by the Tenant
- 3.3.3 the reasonable and proper costs (including professional fees) which the Landlord incurs in:
- (a) dealing with any application by the Tenant for consent or approval whether or not it is given (except where the Landlord withholds consent unreasonably)
- (b) complying with any duty or obligation under the EPB Regulations as a result of any
- (c) preparing and serving notices of disrepair or schedules of dilapidations during the Lease Term or recording failure to give up the Property in the appropriate state of repair when this Lease ends
- (d) enforcing the obligations of the Tenant
- 3.3.4 interest at 4% above the base lending rate of Barclays Bank Plc on any of the above payments when more than 7 days overdue to be calculated from the due date
- 3.3.5 (on provision of a valid value added tax invoice addressed to the Tenant) value added tax ("VAT") on all sums to be paid by the Tenant under this Lease
- all such payments to be made within 14 days of demand unless a different date is specified
- 3.4 The Tenant also agrees to make the following payments (without deduction) where and when payable:
- 3.4.1 all periodic rates taxes and outgoings of a recurring and non-capital nature relating to the Property or a fair proportion (decided by the Landlord acting reasonably) of such rates taxes and outgoings if the Property is not separately assessed
- 3.4.2 a fair proportion of the cost of repair or maintenance of any common structure service or facility shared with other property
- 3.5 The Tenant also agrees not to claim void or unoccupied rating relief for the Property nor to accept any assessment for such relief and to indemnify the Landlord against any loss of rating relief applicable to unoccupied premises after the end

of the Lease Term by reason of any such relief having been allowed to the Tenant before the end of the Lease Term

- 3.6 In the event of the Tenant failing to pay the Rent or other amounts payable under this Lease on the due date for payment, then without prejudice to all other rights and entitlements which the Landlord has by reason of that default, whether under this Lease or otherwise, the rent or other amounts due and payable together with any interest payable thereon shall again become due and payable on each and every day that it remains unpaid so that each day there is a failure to pay the rent or other amounts due will give rise to a default in compliance with the obligation for payment on that date

**4. CONDITION OF THE PROPERTY**

The Tenant agrees:

- 4.1 To keep the Property in good repair and condition but if damage is caused by a risk against which the Landlord has arranged insurance the Tenant need only make good that damage to the extent that the insurance money has not been paid out because of any act or default of the Tenant Provided always that the Tenant shall not be liable to keep the Property in any better state of repair and condition than that evidenced by the Schedule of Condition annexed hereto and provided further that the Tenant shall not be liable to remediate any Contamination in existence prior to the date of this Lease
- 4.2 To keep the Property clean and tidy
- 4.3 Not to make any alterations additions or improvements to the Property except that after obtaining the Landlord's written consent (such

consent not to be unreasonably withheld or delayed) the Tenant may install internal non-structural partitioning but will need to comply with the EPB Regulations and such reasonable conditions as the Landlord may specify in its consent

- 4.4 To comply with any statutory requirements or the requirements of the Landlord's insurers in so far as they relate to the Tenant's use of the Property PROVIDED THAT the Tenant shall not be required to carry out any works or incur any expenditure of a capital and/or non-recurring nature (except where the works or expenditure relates to a breach by the Tenant of its obligations

- 4.5 That if it fails to do any work which this Lease requires the Tenant to carry out the Landlord can do the work itself after giving written notice and if the Tenant still fails to start and proceed quickly with the work within 2 months of the notice

**5. USE OF THE PROPERTY**

- 5.1 The Tenant agrees to use the Property only for the Permitted Use or for such other use for which the Tenant has obtained both Landlord's written consent (not to be unreasonably withheld or delayed) and planning permission and in doing so not to carry out any illegal activities or to cause a nuisance to the Landlord or to nearby occupiers or neighbours
- 5.2 In using the Property the Tenant will comply with all statutory requirements and will apply for and maintain any licences and consents which may be required
- 5.3 The Tenant will maintain third party liability insurance and employers liability PROVIDED that the Tenant shall be permitted to carry the risk of such insurance itself or to procure

- insurance via the Risk Pooling Scheme for Trusts provided by NHS Resolution (or any successor scheme) and the Tenant shall not be required to provide evidence of payment of premiums or note the name of the Landlord on the insurance policy.
- 5.4 The Tenant will not display any signs or notices at the Property unless approved in writing by the Landlord (such approval not to be unreasonably withheld or delayed) save that any signage and branding required in relation to the Permitted Use shall not require the Landlord's approval
- 5.5 The Tenant accepts that the Landlord gives no warranty that the Permitted Use is the authorised use of the Property under planning restrictions and that it is the Tenant's responsibility to confirm this
- 6. LANDLORD'S RIGHTS**
- 6.1 The Tenant agrees that the Landlord can enter the Property at any reasonable time for:
- 6.1.1 inspection of the Property
- 6.1.2 the enforcement of the Tenant's obligations
- 6.1.3 marketing and reletting in the last 6 months of the Lease Term
- 6.1.4 for any other reasonable purpose associated with the repair and maintenance of the and any Conduits or management of the Estate
- 6.2 In exercising these rights the Landlord agrees:
- 6.2.1 except in emergencies (when as much notice as reasonably possible will be given) the Landlord will enter only during normal business hours and after reasonable prior written notice to the Tenant
- 6.2.2 in carrying out any works the Landlord will cause as little disruption and inconvenience as is practicable and will make good any damage caused to the Property
- 6.3 The Tenant accepts that the Landlord and others have the right to free passage of services through any Conduits in the Property serving other parts of the Estate together with rights of shelter and support and all rights previously enjoyed over the Property by other parts of the Estate and its occupiers
- 7. TRANSFER**
- 7.1 The Tenant agrees not to share occupation or share or part with possession of any part or the whole of the Property with anyone else other than in accordance with clause 7.3
- 7.2 The Tenant agrees not to sublet the whole or any part of the Property
- 7.3 The Tenant agrees not to transfer this Lease save that the Tenant may assign the whole of this Lease to a contractor under contract to the Tenant to complete the development of the Midland Metropolitan Hospital with the prior written consent of the Landlord (not to be unreasonably withheld or delayed)
- 7.4 As a condition of its consent to assign the Landlord may require a written guarantee from the Tenant that the assignee will perform its obligations as the new tenant and the guarantee will be in such terms as the Landlord shall reasonably require
- 7.5 Within 7 days after this Lease has been transferred the Tenant is to give a copy of the transfer document to the Landlord and such copy will be certified as a true copy by the Tenant or by any professional adviser to the Tenant

**8. OTHER MATTERS**

- 8.1 The Tenant:
- 8.1.1 is to send to the Landlord promptly copies of any notices received by the Tenant relating to the Property or to any neighbouring property
- 8.1.2 is not to apply for planning permission in respect of the Property without the Landlord's written consent (not to be unreasonably withheld or delayed).
- 8.1.3 is to indemnify the Landlord against any claims made against the Landlord arising from any failure by the Tenant to perform its obligations under this Lease and all costs incurred by the Landlord relating to any such claims provided that the Landlord shall use its reasonable endeavours to mitigate any such loss and shall not settle any claims without the Tenant's consent (not to be unreasonably withheld or delayed)
- 8.1.4 is not to breach the Third Party Rights and is to comply with any requirements arising from the Landlord's title to the Property insofar as relevant to the use of the Property and notified to the Tenant by the Landlord in writing
- 8.2 The Property includes all additions and alterations and Landlord's fixtures and fittings
- 8.3 An obligation by the Tenant not to do anything shall include an obligation not to permit anyone else to do it

**9. LANDLORD'S OBLIGATIONS**

- 9.1 While the Tenant materially complies with its obligations under this Lease the Landlord will allow the Tenant to possess and use the Property without interference from the Landlord or anyone permitted by the Landlord

**10. END OF LEASE**

- When this Lease ends the Tenant is to:
- 10.1 return the Property to the Landlord leaving it in the state and condition in which this Lease requires the Tenant to keep it
- 10.2 if the Landlord so requires remove anything the Tenant has fixed to the Property (including any partitioning) and make good any damage caused by that removal

**11. FORFEITURE**

- 11.1 This Lease comes to an end if the Landlord forfeits it by entering any part of the Property which the Landlord is entitled to do whenever:
- 11.1.1 payment of any rent is 14 days overdue even if it was not formally demanded
- 11.1.2 the Tenant has not materially complied with any of the terms of this Lease
- 11.1.3 the Tenant if an individual (and if more than one any of them) is adjudicated bankrupt or an interim receiver of its property is appointed
- 11.1.4 the Tenant if a company (and if more than one any of them) goes into liquidation (unless solely for the purpose of amalgamation or reconstruction when solvent) or has an administrative receiver appointed or has an administration order made in respect of it
- 11.2 The forfeiture of this Lease does not cancel any outstanding obligation of either party.

**12. AGREEMENT**

12.1 It is confirmed that this Lease has not been entered into following a prior agreement between the parties

12.2 This Lease constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter

**13. OPTION TO BREAK**

13.1 Either the Landlord or the Tenant may terminate this Lease by serving a Break Notice on the Landlord at any time on or after 25 December 2024.

13.2 A Break Notice served by the Tenant shall be of no effect if at the Break Date:

13.2.1 the Tenant has not paid the Rent plus any VAT (provided that a valid VAT invoice addressed to the Tenant has been supplied) which was due to have been paid; or

13.2.2 vacant possession of the Property has not been given.

13.3 Subject to clause 13.2, following service of a Break Notice this Lease shall terminate on the Break Date as stated in the Break Notice.

13.4 Termination of this Lease on the relevant Break Date shall not affect any other right or remedy that either party may have in relation to any earlier breach of this Lease.

13.5 If this Lease terminates in accordance with clause 13.3 then, within 14 days after the relevant Break Date, the Landlord shall refund to the Tenant the proportion of the Annual Rent, and any VAT paid in respect of it, for the period from and excluding the relevant Break Date up

to and excluding the next Rent Payment Date, calculated on a daily basis

**14. SERVICE OF NOTICES**

14.1 Any notice to be served by the Tenant on the Landlord under this Lease shall be sent to the Landlord at the address from which rent demands are issued

14.2 Any notice to be given by the Landlord to the Tenant under this Lease shall be sent to the Tenant addressed to the Tenant and, provided the Tenant remains Sandwell And West Birmingham Hospitals National Health Service Trust, sent to Sandwell General Hospital, Lyndon, West Bromwich, B71 4HJ and marked for the attention of its Chief Executive otherwise addressed to the Tenant addressed to its registered office or other address given for service to the Landlord in writing.

**15. EXCLUSION OF THE LANDLORD AND TENANT ACT 1954**

15.1 Prior to the date of this Lease the Landlord served notice on the Tenant pursuant to the provisions of the Landlord and Tenant Act 1954 section 38A (3) as inserted by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and on <sup>25</sup>August 20<sup>23</sup>. A person authorised by the Tenant made a statutory declaration dated [ <sup>5</sup>September 20<sup>23</sup> ] pursuant to Schedule 2 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003

15.2 Pursuant to the provisions of the Landlord and Tenant Act 1954 section 38A (1) as inserted by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003, the parties agreed that the provisions of the Landlord and

Tenant Act 1954 Sections 24-28 inclusive are to be excluded in relation to the tenancy created by this Lease

**16. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 nothing in this Lease shall confer or purport to confer on any third party any benefit or the right to enforce any terms of this Lease

Executed as a Deed by the parties hereto the day and year first before written.

EXECUTED AS A DEED by **PORTAL CONSTRUCTION**)  
**LIMITED** acting by )  
two Directors: )

DocuSigned by:  
*Zeev Kraus*  
C907599E13184D1...  
.....  
Zeev Meir Kraus - Director

DocuSigned by:  
*Miriam Kraus*  
E18AC94E8AA54D8...  
.....  
Miriam Kraus - Director

EXECUTED as a DEED by )  
**Sandwell And West Birmingham Hospitals** )  
**National Health Service Trust** )  
whose Corporate Common Seal was hereunto

.....  
AUTHORISED SIGNATORY

.....  
AUTHORISED SIGNATORY

DocuSigned by:  
*Ben Kraus*  
C907599E13184D1...

DocuSigned by:  
*Miriam Kraus*  
E18AC94E8AA51D8...



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