

**CREST NICHOLSON SUBCONTRACTOR TERMS AND CONDITIONS**

**MARCH 2026**

**Schedule 2 (*Sub-Contractor Collateral Warranty*)**

**Schedule 3 (*Sub-Contractor sub-contractor Collateral Warranty*)**

**Schedule 4 (*Sub-Contractor consultant Collateral Warranty*)**

**Schedule 5 (*Letter of Reliance*)**

**Schedule 2 (Sub-Contractor Collateral Warranty)**

**DATED**

**20[•]**

- (1) **[CONTRACTOR]**
- (2) **[BENEFICIARY]**
- (3) **[EMPLOYER]**

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**CONTRACTOR COLLATERAL WARRANTY**

relating to [the development of [•] [a development] at

[•]

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**PARTIES**

- (1) **[CONTRACTOR]** [of][[(Company Number [●]) whose registered office is at] [●] (the **Contractor**)
- (2) **[BENEFICIARY]** [of][[(Company Number [●]) whose registered office is at] [●] (the **Beneficiary**)
- (3) **[EMPLOYER]** [of][[(Company Number [●]) whose registered office is at] [●] (the **Employer**)

**INTRODUCTION**

The Employer has entered into the Contract with the Contractor.

[The Beneficiary has entered into the Property Agreement [with the Employer].][The Beneficiary has [the freehold][a long leasehold] interest in the Site.][The Beneficiary [is to manage the Site on the completion of the Works] [manages the whole or part of the Site].]

The Contractor has agreed to enter into this agreement with the Beneficiary.

**IT IS AGREED****1. DEFINITIONS AND INTERPRETATION**

- 1.1 The following words which begin with capital letters in this agreement have the meanings given below save where the context otherwise requires:

**Contract**

the contract dated [●] entered into by the Employer and the Contractor under which the Contractor is to [carry out and complete the design for the Works and to] carry out and complete the Works;

**Documents**

all technical information, models including building information models, bills of quantities, calculations, designs, details, drawings, electronically stored information, plans, reports, specifications and other documents or materials in any medium as are provided by or on behalf of the Contractor in connection with the Site and the Works;

**[Employer**

[●];

**Insured Amount**

a limit of indemnity of not less than £[●],000,000 for [for each and every claim] [for any one claim] [for any occurrence or series of occurrences arising out of each and every event] [for any one claim and in all] [in the annual aggregate] [in the annual aggregate with X [automatic] reinstatements] [except where claims arise out of pollution or contamination, where the limit of indemnity is not less than £[●],000,000 in the aggregate in any one period of insurance;]

**Project**

the development of the Site as [●] of which the Works form a part;

**[Property Agreement**

an agreement dated between [the Employer][a purchaser][a tenant] and the Beneficiary under which the Beneficiary is [to provide finance in connection with the Project and/or the purchase of the Site by [the Employer][a person][purchasing][taking a lease of] [the whole of the Site][that part of the site comprising [●][served by the Project]];

**Site**

[●];

**Works**

[●] [as more fully described in the Contract].]

- 1.2 In this agreement, a reference to:
- 1.2.1 a clause, schedule or appendix is, unless otherwise stated, a reference to a clause of, or a schedule or appendix to, this agreement and a reference to a paragraph is, unless otherwise stated, a reference to a paragraph of a schedule;
  - 1.2.2 a person includes a reference to an individual, body corporate, association, government, state, agency of state or any undertaking (whether or not having a legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
  - 1.2.3 a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
  - 1.2.4 a party means a party to this agreement and includes its permitted assignees;
  - 1.2.5 a statutory provision includes a reference to that statutory provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this agreement;
  - 1.2.6 "working day" excludes Saturdays, Sundays and any day which is a bank holiday under the Banking and Financial Dealings Act 1971.
- 1.3 The headings in this agreement are for convenience only and do not affect the interpretation or construction of this agreement.
- 1.4 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.5 Where any consent, authorisation or permission is required to be given to this agreement then such consent, authorisation or permission unless the contract provides otherwise, shall not be unreasonably withheld or delayed.
2. **CONSIDERATION**
- 2.1 In consideration of the payment of £1 by the Beneficiary to the Contractor, receipt of which the Contractor acknowledges, the Contractor has agreed to enter into this agreement with the Beneficiary.
3. **SKILL AND CARE**
- 3.1 The Contractor warrants that:
- 3.1.1 it has performed and will continue to perform diligently its obligations under the Contract;
  - 3.1.2 it has carried out and completed and will carry out and complete the Works in a timely and workmanlike manner using good, up to date building practices and good quality materials;
  - 3.1.3 [[insofar as it is required to carry out any design under the Contract][in carrying out and completing the design for the Works, ]it has exercised and will continue to exercise all the reasonable skill and care to be expected of a competent and properly qualified architect or, as the case may be, other appropriate competent and properly qualified professional designer experienced in carrying out and completing the design for works of a similar nature, value, complexity and timescale to the Works;]
  - 3.1.4 subject to clause 3.3 it owes to the Beneficiary the same (but no greater) duty of care as it owes to the Employer under the Contract.
- 3.2 Insofar as the Contractor has performed a part of its obligations under the Contract before the date of the Contract, the obligations and liabilities of the Contractor under this agreement shall take effect in all respects as if the Contract had been dated prior to the commencement of that part of its obligations by the Contractor.
- 3.3 In any action or proceedings brought by the Beneficiary under this agreement, the Contractor shall be entitled to rely on any limitation in the Contract and to raise the equivalent rights in

defence (other than in relation to set-off and counterclaim) as it would have had if the Contractor had been employed jointly by the Employer and the Beneficiary under the Contract.

3.4 The Contractor [has exercised and will continue to exercise the standard of skill and care referred to in clause 3.1.3 not to specify for use in the Works and the Contractor] has not used and will not use in the Works:

3.4.1 materials other than in accordance with the guidelines contained in the edition of "Good Practice in the Selection of Construction Materials" (British Council for Offices) current at the date of use; or

3.4.2 any products substances or materials or any combination of them which are themselves or which incorporate substances which at the time of use do not conform to current British or applicable European Standards or codes of practice or which are generally known in the construction industry to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are specified to be used.

3.5 The Contractor's duties obligations and liabilities under this agreement will not be released or reduced or in any way diminished by reason of any inspection or enquiry into any relevant matter or by any approval of the Works or attendance at site meetings by or on behalf of the Beneficiary.

#### 4. **[INSURANCE**

4.1 The Contractor has [professional indemnity][product liability] insurance of not less than the Insured Amount. The Contractor shall maintain such insurance during the carrying out of the Works and for a period of 15 years commencing on the date of practical completion of the Works, provided that such insurance remains available to contractors at commercially reasonable rates and on commercially reasonable terms.

4.2 The insurance shall be with an insurance office or underwriter licensed to carry on business in the United Kingdom.

4.3 If the insurance ceases to be available at commercially reasonable rates or on commercially reasonable terms the Contractor shall:

4.3.1 give notice to the Beneficiary immediately; and

4.3.2 take out and maintain the highest level of insurance which is available to contractors at commercially reasonable rates and on commercially reasonable terms; and

4.3.3 give notice to the Beneficiary of the level of insurance purchased in accordance with clause 4.3.

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

4.5 As and when the Contractor is reasonably requested to do so by the Beneficiary, the Contractor shall produce promptly for inspection documentary evidence in the form of an original broker's letter or verification certificate that the required insurance is being maintained.]

#### 5. **COPYRIGHT**

5.1 The Contractor grants to the Beneficiary, or where it does not own the copyright in the Documents the Contractor shall procure the grant to the Beneficiary of, an irrevocable, royalty-free and non-exclusive licence to copy and use the Documents for any purpose related to the Works or the Site, other than the reproduction of the designs contained in the Documents for an extension of the Works or the Site.

5.2 The benefit of the licence is assignable and the licence includes the right to grant sub-licences on the same terms as are contained in clause 5.1.

- 5.3 At the request of the Beneficiary and upon the Beneficiary agreeing to pay the reasonable copying costs of the Contractor, the Contractor shall provide copies of the Documents to the Beneficiary.
- 5.4 The Contractor shall not be liable for any use of the Documents by the Beneficiary or its assignee or sub-licensee for any purpose other than that for which the same were prepared and provided by or on behalf of the Contractor.
- 5.5 The Contractor waives any moral right which it may have as the author of the Documents. Where the Contractor is not the author, the Contractor shall use its reasonable endeavours to obtain for the Beneficiary a corresponding waiver from the author.
6. **[STEP-IN**
- 6.1 The Contractor shall not:
- 6.1.1 terminate the Contract or its employment thereunder;
  - 6.1.2 treat the Contract as having been repudiated by the Employer;
  - 6.1.3 treat its employment as determined under the Contract; or
  - 6.1.4 discontinue or suspend the carrying out of the Works;
- before giving to the Beneficiary not less than 28 days' notice (the **Termination Notice**) or 7 days' notice in the case of suspension for non-payment under the terms of the Contract. The notice shall give particulars of any alleged breach of the Contract by the Employer.
- 6.2 The Beneficiary:
- 6.2.1 [upon a breach of the Property Agreement by the Employer; or
  - 6.2.2 ]within 28 days of the Termination Notice,
- may give notice to the Contractor that the Contractor is to accept the instructions of the Beneficiary or its nominee instead of the Employer under the Contract. Upon receipt of the notice, the Contractor shall comply with it and shall not do any of the actions referred to in clauses 6.1.1 to 6.1.4. The Contract shall continue as if it had been entered into at the outset between the Contractor and the Beneficiary or its nominee instead of the Employer.
- 6.3 [Where the Contractor has given rights in relation to the Contract similar to those contained in this clause 6 to any other person then if both the Beneficiary and any such other person serve notice under clause 6.2 or its equivalent the notice served by the Beneficiary shall [prevail] [not prevail] [not prevail over any notice served by [●]but prevail over any notice served by any other person] .]
- 6.4 Any notice which the Beneficiary gives under clause 6.2 shall state that the Beneficiary or its nominee accepts all the obligations of the Employer under the Contract, including payment of any part of the contract sum due to the Contractor and unpaid on the date of the notice. Where the Contractor is to accept the instructions of a nominee, the notice from the Beneficiary shall only be effective if the Beneficiary agrees to guarantee the obligations of the nominee to the Contractor.
- 6.5 Any notice which is given under clauses 6.1 or 6.2 shall be copied concurrently to the Employer.
- 6.6 The Employer acknowledges that the Contractor shall:
- 6.6.1 be entitled to rely upon a notice which the Beneficiary gives to it under clause 6.2 as conclusive evidence, for the purpose of clause 6.2, that the Employer has breached the Property Agreement;
  - 6.6.2 not breach the Contract if the Contractor complies with clause 6.
- 6.7 Any notice which the Contractor gives under clause 6.1 shall not constitute a waiver of any of its rights under the Contract.]

7. **ASSIGNMENT**

- 7.1 Subject to clause 7.4, the Beneficiary may assign or otherwise transfer all or any of its rights and benefits arising under this agreement on two occasions only without the consent of the Contractor. The Beneficiary's rights and benefits arising under this agreement may not be assigned or otherwise transferred further without the prior written consent of the Contractor.
- 7.2 Within 28 days after any assignment under clause 7.1, notice of the assignment shall be given to the Contractor. Failure to give this notice shall not affect the validity of any assignment.
- 7.3 The Contractor agrees with the Beneficiary not to contend or argue that any person to whom this agreement shall be assigned or otherwise transferred by the Beneficiary shall be precluded or prevented from recovering under this agreement any loss or damage resulting from any breach of this agreement by the Contractor (whenever it happens) by reason of the fact that such person is an assignee only or otherwise not the original Beneficiary or because the loss or damage suffered has been suffered by such a party only and not the original Beneficiary.
- 7.4 Notwithstanding clause 7.1 above, the benefit of this agreement may be assigned or otherwise transferred:
- 7.4.1 by way of mortgage (whether legal or equitable and whether or not by charge), charge or security to anyone who provides finance to the Beneficiary or to any nominee, agent or trustee of such a person;
  - 7.4.2 upon resignation of a security trustee or agent and appointment of a new one;
  - 7.4.3 by way of reassignment to the Beneficiary; and/or
  - 7.4.4 to any company which is a member of the same group of companies as the Beneficiary,

and such assignment(s) or transfer(s) shall not count as an assignment or transfer for the purpose of the limitation in clause 7.1 above.

8. **[FURTHER WARRANTIES**

- 8.1 The Contractor, if requested by the Beneficiary, shall enter into collateral warranty agreements with any person as would be entitled to a collateral warranty under the Contract in relation to the whole or any part of the Works as the Beneficiary may require. The collateral warranty agreements shall be in the same terms as this agreement (but excluding clause 6 and this clause 8) and with such consequential amendments to those parts of the collateral warranty agreements comprising the Parties, Introduction and Definitions as are appropriate to reflect the actual factual position.
- 8.2 The Contractor shall provide each further collateral warranty agreement duly executed by it to the Beneficiary within 28 days of a notice from the Beneficiary requesting the same accompanied by the collateral warranty agreement to be executed by the Contractor on each occasion.
- 8.3 The Beneficiary acknowledges that the Contractor shall not be obliged to enter into any further or other collateral warranty agreements under clause 8.1 than it would have if the Employer had requested such collateral warranty agreements pursuant to the Contract.]

9. **COMMON LAW**

Except as this agreement otherwise provides, this agreement does not affect the rights or remedies of any party in contract, tort or otherwise.

10. **NOTICES**

- 10.1 Any notice to be given under this agreement shall be in writing and shall be deemed to be given properly if it is delivered by hand, or sent by first class post to the registered office or if there is no registered office to the address of the relevant party on page 1 or such other address as may be notified from time to time as the address for service.
- 10.2 If the notice is sent by first class post, it shall be deemed to be received two working days after the day it was posted.

10.3 If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered if delivered before 4.45pm on a working day and, if not, it shall be deemed to be received on the next working day.

## 11. **LIMITATION**

11.1 Subject to clause 11.5, the Contractor shall have no liability under this agreement in any action or proceedings for any breach of this agreement which may be commenced against the Contractor after the date 12 years from the date of practical completion of the Works.

11.2 The Contractor shall have no liability for delay in the completion of the Works under this agreement [unless and until the Beneficiary serves notice under clause 6.2 of this agreement and then only to the extent that damages for delay to completion have not been paid to or deducted by the Employer under the Contract].

11.3 Subject to clause 11.5, notwithstanding the manner in which this agreement has been entered into, the limitation period in respect of the Contractor's obligations and liabilities in connection with this agreement shall extend to the expiration of twelve (12) years from the date of practical completion of the Works.

11.4 Section 5 of the Limitation Act 1980 shall not apply to this agreement and neither party will rely upon a defence pleading Section 5 of the Limitation Act 1980 (including any amendment, extension or re-enactment) in any proceedings commenced under this agreement.

11.5 Either party may commence an action or proceedings against the other:

- (a) in accordance with sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; or
- (b) for a breach of the Contract that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or that gives rise to a failure to comply with that legislation in relation to the works or any part thereof, provided that any such action or proceedings is subject to the limitation periods that would apply if they were commenced under that legislation or the Civil Liability (Contribution) Act 1978.

11.6 Nothing in this clause 11 limits either party's obligation to maintain insurance for the periods specified in this agreement or rights in relation to any failure to maintain insurance for such periods.

## 12. **THIRD PARTY RIGHTS**

Any person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement provided always that this shall not affect any right or remedy of such person which exists or is available apart from this Act.

## 13. **GOVERNING LAW AND JURISDICTION**

This agreement (including any associated non-contractual disputes or claims) is governed by the law of England and the parties agree to submit to the non-exclusive jurisdiction of the English Courts in relation to any claim or matter (whether contractual or non-contractual) arising under this agreement.

## 14. **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original. All the counterparts shall together form one and the same agreement, which shall be deemed executed when counterparts executed by all of the parties are delivered.

## 15. **ELECTRONIC EXECUTION AND COMPLETION**

15.1 The parties each hereby agree that:

- 15.1.1 for the purposes of the execution of this agreement an electronically affixed seal and/or electronic signature (duly attested/authenticated/witnessed in accordance

with the relevant execution block) shall be accepted by each party in lieu of a wet-ink signature and/or physically affixed seal (as applicable) for the purposes of the lawful execution of this agreement;

15.1.2 this agreement may be electronically dated and completed; and

15.1.3 further to completion of this agreement each party will accept an electronic copy of the executed and completed agreement in lieu of a hardcopy document.

**THE PARTIES** have executed this agreement as a deed and delivered it on the date first set out above.

[EXECUTED AS A DEED BY SIGNING PARTIES]

**Schedule 3 (*Sub-Contractor sub-contractor Collateral Warranty*)**

**DATED**

**[•]**

(1) **[SUB-CONTRACTOR]**

(2) **[BENEFICIARY]**

[(3) **[CONTRACTOR]]**

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**SUB-CONTRACTOR COLLATERAL WARRANTY**

for [xxxx] sub-contract works

relating to [the development of [•] [a development] at

**[•]**

---

DATE

20[●]

## PARTIES

- (1) **[SUB-CONTRACTOR]** [of][[(Company Number [●]) whose registered office is at] [●]] (the **Sub-Contractor**)
- (2) **[BENEFICIARY]** [of][[(Company Number [●]) whose registered office is at] [●]] (the **Beneficiary**)
- (3) **[CONTRACTOR]** [of][[(Company Number [●]) whose registered office is at] [●]] (the **Contractor**)

## INTRODUCTION

The [Beneficiary][Employer] has entered into the Contract with the Contractor.

The Contractor has entered into the Sub-Contract with the Sub-Contractor.

[The Beneficiary has entered into the Property Agreement with the Employer.][The Beneficiary has [the freehold][a long leasehold] interest in the Site.][The Beneficiary [is to manage the whole of or part of the Site on completion of the Works] [manages the whole or part of the Site].]

The Sub-Contractor has agreed to enter into this agreement with the Beneficiary.

## IT IS AGREED

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The following words which begin with capital letters in this agreement have the meanings given below save where the context otherwise requires:

#### **Contract**

the contract entered into by the [Employer][Beneficiary] and the Contractor under which the Contractor is to [carry out and complete the design for the Works and to] carry out and complete the Works;

#### **[Contractor**

[●];]

#### **Documents**

all technical information, models including building information models, bills of quantities, calculations, designs, details, drawings, electronically stored information, plans, reports, specifications and other documents or materials in any medium as are provided by or on behalf of the Sub-Contractor in connection with the Site and the Works;

#### **[Employer**

[●];]

#### **[Insured Amount**

##### **Insured Amount**

a limit of indemnity of not less than £[●],000,000 for [for each and every claim] [for any one claim] [for any occurrence or series of occurrences arising out of each and every event] [for any one claim and in all] [in the annual aggregate] [in the annual aggregate with X [automatic] reinstatements] [except where claims arise out of pollution or contamination, where the limit of indemnity is not less than £[●],000,000 in the aggregate in any one period of insurance;]

#### **Project**

the development of the Site as [●] of which the Works form a part;

#### **[Property Agreement**

an agreement dated between [the Employer] [a purchaser][a tenant] and the Beneficiary under which the Beneficiary is to [provide finance in connection with the Project and/or the purchase

of the Site by [the Employer][a person][purchasing][taking a lease of][the whole of the Site][that part of the site comprising [●][served by the Project];]

**Site**

[●];

**Sub-Contract**

the Sub-Contract entered into by the Contractor and the Sub-Contractor under which the Sub-Contractor is to [carry out and complete the design for the Sub-Contract Works and] carry out and complete the Sub-Contract Works;

**Sub-Contract Works**

[●];

**Works**

[●] [as more fully described in the Contract].

- 1.2 In this agreement, a reference to:
  - 1.2.1 a clause, schedule or appendix is, unless otherwise stated, a reference to a clause of, or a schedule or appendix to, this agreement and a reference to paragraph is, unless otherwise stated, a reference to a paragraph of a schedule.
  - 1.2.2 a person includes a reference to an individual, body corporate, association, government, state, agency of state or any undertaking (whether or not having a legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
  - 1.2.3 a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
  - 1.2.4 a party means a party to this agreement and includes its permitted assignees;
  - 1.2.5 a statutory provision includes a reference to that statutory provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this agreement;
  - 1.2.6 "working day" excludes Saturdays, Sundays and any day which is a bank holiday under the Banking and Financial Dealings Act 1971.
- 1.3 The headings in this agreement are for convenience only and do not affect the interpretation or construction of this agreement.
- 1.4 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.5 Where any consent, authorisation or permission is required to be given to this agreement then such consent, authorisation or permission unless the contract provides otherwise, shall not be unreasonably withheld or delayed.

**2. CONSIDERATION**

In consideration of the payment of £1 by the Beneficiary to the Sub-Contractor, receipt of which the Sub-Contractor acknowledges, the Sub-Contractor has agreed to enter into this agreement with the Beneficiary.

**3. SKILL AND CARE**

- 3.1 The Sub-Contractor warrants that:
  - 3.1.1 it has performed and will continue to perform diligently its obligations under the Sub-Contract;

- 3.1.2 it has carried out and completed and will carry out and complete the Sub-Contract Works in a timely and workmanlike manner using good, up to date building practices and good quality materials;
- 3.1.3 [[insofar as the Sub-Contractor is required to carry out design under the Sub-Contract, ][in carrying out and completing the design for the Sub-Contract Works, ][it has exercised and will continue to exercise all the reasonable skill and care to be expected of a competent and properly qualified architect or, as the case may be, other appropriate competent and properly qualified professional designer experienced in carrying out and completing the design for works of a similar nature, value, complexity and timescale to the Sub-Contract Works;]
- 3.1.4 subject to clause 3.3 it owes to the Beneficiary the same (but no greater) duty of care as it owes to the Contractor under the Sub-Contract.
- 3.2 Insofar as the Sub-Contractor has performed a part of its obligations under the Sub-Contract before the date of the Sub-Contract, the obligations and liabilities of the Sub-Contractor under this agreement shall take effect in all respects as if the Sub-Contract had been dated prior to the commencement of that part of its obligations by the Sub-Contractor.
- 3.3 In any action or proceedings brought by the Beneficiary under this agreement, the Sub-Contractor shall be entitled to rely on any limitation in the Sub-Contract and to raise the equivalent rights in defence (other than in relation to set-off and counterclaim) as it would have had if the Sub-Contractor had been employed jointly by the Beneficiary and the Contractor under the Sub-Contract.
- 3.4 The Sub-Contractor [has exercised and will continue to exercise the standard of skill and care referred to in clause 3.1.3 not to specify for use and] has not used and will not use in the Works:
  - 3.4.1 materials other than in accordance with the guidelines contained in the edition of "Good Practice in the Selection of Construction Materials" (British Council for Offices) current at the date of use; or
  - 3.4.2 any products substances or materials or any combination of them which are themselves or which incorporate substances which at the time of use do not conform to current British or applicable European Standards or codes of practice or which are generally known in the construction industry to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are specified to be used.
- 3.5 The Sub-Contractor's duties obligations and liabilities under this agreement will not be released or reduced or in any way diminished by reason of any inspection or enquiry into any relevant matter or by any approval of the Works or attendance at site meetings by or on behalf of the Beneficiary.
- 4. **[INSURANCE]**
- 4.1 The Sub-Contractor has [professional indemnity][product liability] insurance of not less than the Insured Amount. The Sub-Contractor shall maintain such insurance during the carrying out of the Sub-Contract Works and for a period of 15 years commencing on the date of practical completion of the Works, provided that such insurance remains available to sub-contractors at commercially reasonable rates and on commercially reasonable terms.
- 4.2 The insurance shall be with an insurance office or underwriter licensed to carry on business in the United Kingdom.
- 4.3 If the insurance ceases to be available at commercially reasonable rates or on commercially reasonable terms the Sub-Contractor shall:
  - 4.3.1 give notice to the Beneficiary immediately, and
  - 4.3.2 take out and maintain the highest level of insurance which is available to sub-contractors at commercially reasonable rates and on commercially reasonable terms, and

- 4.3.3 give notice to the Beneficiary of the level of insurance purchased in accordance with clause 4.3.
- 4.4 Any increased or additional premium required by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things particular to the Sub-Contractor's shall be deemed to fall within commercially reasonable rates.
- 4.5 As and when the Sub-Contractor is reasonably requested to do so by the Beneficiary, the Sub-Contractor shall produce promptly for inspection documentary evidence in the form of an original broker's letter or verification certificate that the required insurance is being maintained.]
5. **COPYRIGHT**
- 5.1 The Sub-Contractor grants to the Beneficiary, or where it does not own the copyright in the Documents the Sub-Contractor shall procure the grant to the Beneficiary of, an irrevocable, royalty-free and non-exclusive licence to copy and use the Documents for any purpose related to the Works or the Site, other than the reproduction of the designs contained in the Documents for an extension of the Works or the Site.
- 5.2 The benefit of the licence is assignable and the licence includes the right to grant sub-licences on the same terms as are contained in clause 5.1.
- 5.3 At the request of the Beneficiary and upon the Beneficiary agreeing to pay the reasonable copying costs of the Sub-Contractor, the Sub-Contractor shall provide copies of the Documents to the Beneficiary.
- 5.4 The Sub-Contractor shall not be liable for any use of the Documents by the Beneficiary or its assignee or sub-licensee for any purpose other than that for which the same were prepared and provided by or on behalf of the Sub-Contractor.
- 5.5 The Sub-Contractor waives any moral right which it may have as the author of the Documents. Where the Sub-Contractor is not the author, the Sub-Contractor shall use its reasonable endeavours to obtain for the Beneficiary a corresponding waiver from the author.
6. **[STEP-IN**
- 6.1 The Sub-Contractor shall not:
- 6.1.1 terminate the Sub-Contract or its employment thereunder;
- 6.1.2 treat the Sub-Contract as having been repudiated by the Contractor;
- 6.1.3 treat its employment as determined under the Sub-Contract; or
- 6.1.4 discontinue or suspend the carrying out of the Sub-Contract Works
- before giving to the Beneficiary not less than 28 days' notice (the **Termination Notice**) or 7 days' notice in the case of suspension for non-payment under the terms of the Sub-Contract. The notice shall give particulars of any alleged breach of the Sub-Contract by the Contractor.
- 6.2 The Beneficiary[:
- 6.2.1 upon a breach of the [Contract by the Contractor][Property Agreement by the Employer]; or
- 6.2.2 ]within 28 days of the Termination Notice,
- may give notice to the Sub-Contractor that the Sub-Contractor is to accept the instructions of the Beneficiary or its nominee instead of the Contractor under the Sub-Contract. Upon receipt of the notice, the Sub-Contractor shall comply with it and shall not do any of the actions referred to in clauses 6.1.1 to 6.1.4. The Sub-Contract shall continue as if it had been entered into at the outset between the Sub-Contractor and the Beneficiary or its nominee instead of the Contractor.
- 6.3 [Where the Sub-Contractor has given rights in relation to the Sub-Contract similar to those contained in this clause 6 to any other person then if both the Beneficiary and any such other person serve notice under clause 6.2 or its equivalent the notice served by the Beneficiary

shall [prevail] [not prevail] [not prevail over any notice served by [●] but prevail over any notice served by any other person].]

- 6.4 Any notice which the Beneficiary gives under clause 6.2 shall state that the Beneficiary or its nominee accepts all the obligations of the Contractor under the Sub-Contract, including payment of any part of the sum due to the Sub-Contractor and unpaid on the date of the notice. Where the Sub-Contractor is to accept the instructions of a nominee, the notice from the Beneficiary shall only be effective if the Beneficiary agrees to guarantee the obligations of the nominee to the Sub-Contractor.
- 6.5 Any notice which is given under clauses 6.1 or 6.2 shall be copied concurrently to the Contractor.
- 6.6 The Contractor acknowledges that the Sub-Contractor shall[:
- 6.6.1 be entitled to rely upon a notice which the Beneficiary gives to it under clause 6.2 as conclusive evidence, for the purpose of clause 6.2, that the [Contractor has breached the Contract] [Employer has breached the Property Agreement];
- 6.6.2 ]not breach the Sub-Contract if the Sub-Contractor complies with clause 6.
- 6.7 Any notice which the Sub-Contractor gives under clause 6.1 shall not constitute a waiver of any of its rights under the Sub-Contract.]

## 7. **ASSIGNMENT**

- 7.1 Subject to clause 7.4, the Beneficiary may assign or otherwise transfer all or any of its rights and benefits arising under this agreement on two occasions only without the consent of the Sub-Contractor. The Beneficiary's rights and benefits arising under this agreement may not be assigned or otherwise transferred further without the prior written consent of the Sub-Contractor.
- 7.2 Within 28 days after any assignment under clause 7.1, notice of the assignment shall be given to the Sub-Contractor. Failure to give this notice shall not affect the validity of any assignment.
- 7.3 The Sub-Contractor agrees with the Beneficiary not to contend or argue that any person to whom this agreement shall be assigned or otherwise transferred by the Beneficiary shall be precluded or prevented from recovering under this agreement any loss or damage resulting from any breach of this agreement by the Sub-Contractor (whenever it happens) by reason of the fact that such person is an assignee only or otherwise not the original Beneficiary or because the loss or damage suffered has been suffered by such a party only and not the original Beneficiary.
- 7.4 Notwithstanding clause 7.1 above, the benefit of this agreement may be assigned or otherwise transferred:
- 7.4.1 by way of mortgage, charge or security to anyone who provides finance to the Beneficiary or to any nominee, agent or trustee of such a person;
- 7.4.2 upon resignation of a security trustee or agent and appointment of a new one;
- 7.4.3 by way of reassignment to the Beneficiary; and or;
- 7.4.4 to any company which is a member of the same group of companies as the Beneficiary,

and such assignment(s) or transfer(s) shall not count as an assignment or transfer for the purpose of the limitation in clause 7.1 above.

## 8. **[FURTHER WARRANTIES**

- 8.1 The Sub-Contractor, if requested by the Beneficiary, shall enter into collateral warranty agreements with any person as would be entitled to a collateral warranty under the Sub-Contract in relation to the whole or any part of the Works as the Beneficiary may require. The collateral warranty agreements shall be in the same terms as this agreement (but excluding clause 6 and this clause 8) and with such consequential amendments to those parts of the collateral warranty agreements comprising the Parties, Introduction and Definitions as are appropriate to reflect the actual factual position.

8.2 The Sub-Contractor shall provide each further collateral warranty agreement duly executed by it to the Beneficiary within 28 days of a notice from the Beneficiary requesting the same accompanied by the collateral warranty agreement to be executed by the Sub-Contractor on each occasion.

8.3 The Beneficiary acknowledges that the Sub-Contractor shall not be obliged to enter into any further or other collateral warranty agreements under clauses 8.1 than it would have if the Contractor had requested such collateral warranty agreements pursuant to the Sub-Contract.]

## 9. **COMMON LAW**

Except as this agreement otherwise provides, this agreement does not affect the rights or remedies of any party in contract, tort or otherwise.

## 10. **NOTICES**

10.1 Any notice to be given under this agreement shall be in writing and shall be deemed to be given properly if it is delivered by hand, or sent by first class post to the registered office or if there is no registered office to the address of the relevant party on page 1 or such other address as may be notified from time to time as the address for service.

10.2 If the notice is sent by first class post, it shall be deemed to be received two working days after the day it was posted.

10.3 If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered if delivered before 4.45pm on a working day and, if not, it shall be deemed to be received on the next working day.

## 11. **LIMITATION**

11.1 Subject to clause 11.4 clause, the Sub-Contractor shall have no liability under this agreement in any action or proceedings for any breach of this agreement which may be commenced against the Sub-Contractor after the date 12 years from the date of practical completion of the Works.

11.2 Subject to clause 11.4 clause, notwithstanding the manner in which this agreement has been entered into, the limitation period in respect of the Sub-Contractor's obligations and liabilities in connection with this agreement shall extend to the expiration of twelve (12) years from the date of practical completion of the Works.

11.3 Section 5 of the Limitation Act 1980 shall not apply to this agreement and neither party will rely upon a defence pleading Section 5 of the Limitation Act 1980 (including any amendment, extension or re-enactment) in any proceedings commenced under this agreement.

11.4 Either party may commence an action or proceedings against the other:

(a) in accordance with sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; or

(b) for a breach of the Sub-Contract that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or that gives rise to a failure to comply with that legislation in relation to the Sub-Contract Works or any part thereof, provided that any such action or proceedings is subject to the limitation periods that would apply if they were commenced under that legislation or the Civil Liability (Contribution) Act 1978.

11.5 Nothing in this clause 11 limits either party's obligation to maintain insurance for the periods specified in this agreement or rights in relation to any failure to maintain insurance for such periods.

## 12. **THIRD PARTY RIGHTS**

Any person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement provided always that this shall not affect any right or remedy of such person which exists or is available apart from this Act.

13. **GOVERNING LAW AND JURISDICTION**

This agreement (including any associated non-contractual disputes or claims) is governed by the law of England and the parties agree to submit to the non-exclusive jurisdiction of the English Courts in relation to any claim or matter (whether contractual or non-contractual) arising under this agreement.

14. **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original. All the counterparts shall together form one and the same agreement, which shall be deemed executed when counterparts executed by all of the parties are delivered.

15. **ELECTRONIC EXECUTION AND COMPLETION**

15.1 The parties each hereby agree that:

15.1.1 for the purposes of the execution of this agreement an electronically affixed seal and/or electronic signature (duly attested/authenticated/witnessed in accordance with the relevant execution block) shall be accepted by each party in lieu of a wet-ink signature and/or physically affixed seal (as applicable) for the purposes of the lawful execution of this agreement;

15.1.2 this agreement may be electronically dated and completed; and

15.1.3 further to completion of this agreement each party will accept an electronic copy of the executed and completed agreement in lieu of a hardcopy document.

**THE PARTIES** have executed this agreement as a deed and delivered it on the date first set out above.

[EXECUTED AS A DEED BY SIGNING PARTIES]

**Schedule 4 (Sub-Contractor consultant Collateral Warranty)**

**DATED**

**20[•]**

---

- (1) **[CONSULTANT]**
- (2) **[BENEFICIARY]**
- (3) **[CONTRACTOR]]**

---

**CONSULTANT COLLATERAL WARRANTY** for [insert  
description] services  
relating to a development] at  
[•]

---

DATE

20

**PARTIES**

- (1) **[CONSULTANT]** [of][[(Company Number [●]) whose registered office is at] [●] (the **Consultant**)
- (2) **[BENEFICIARY]** [of][[(Company Number [●]) whose registered office is at] [●] (the **Beneficiary**)
- (3) **[CONTRACTOR]** [of][[(Company Number [●]) whose registered office is at] (the **[Employer][Contractor]**)]

**INTRODUCTION**

The [Employer][Contractor][Beneficiary] has entered into the Appointment with the Consultant [which Appointment has been novated to the Contractor].

The [Employer][Beneficiary] has entered into the Building Contract with the Contractor.

[The Beneficiary has entered into the Property Agreement[.]] [with the Employer.] [The Beneficiary has [the freehold][a long leasehold] interest in the Site.] [The Beneficiary [is to manage the whole or part of the Site on the completion of the Works] [manages the whole or part of the Site]].

The Consultant has agreed to enter into this agreement with the Beneficiary.

**IT IS AGREED :**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 The following words which begin with capital letters in this agreement have the meanings given below save where the context otherwise requires:

**Appointment**

the appointment dated [●] entered into by the [Employer][Contractor][Beneficiary] and the Consultant [and novated to the Contractor] under which the Consultant is to perform the Services in relation to the Works;

**Building Contract**

the contract entered into or to be entered into by the [Employer][Beneficiary] and the Contractor in relation to the Works;

**[Contractor**

[●];]

**Documents**

all technical information, models including building information models, bills of quantities, calculations, designs, details, drawings, electronically stored information, plans, reports, specifications and other documents or materials in any medium as are provided by or on behalf of the Consultant in connection with the Site and the Works;

**[Employer**

[●];]

**Insured Amount**

**Insured Amount**

a limit of indemnity of not less than £[●],000,000 for [for each and every claim] [for any one claim] [for any occurrence or series of occurrences arising out of each and every event] [for any one claim and in all] [in the annual aggregate] [in the annual aggregate with X [automatic]

reinstatements] [except where claims arise out of pollution or contamination, where the limit of indemnity is not less than £[●],000,000 in the aggregate in any one period of insurance;]

### **Project**

the development of the Site as [●] including the carrying out of the Works;

### **[Property Agreement**

an agreement dated between [the Employer][a purchaser][a tenant] and the Beneficiary under which the Beneficiary is to [provide finance in connection with the Project and/or the purchase of the Site by [the Employer][a person][purchasing][taking a lease of] [the whole of the Site][that part of the site comprising [●]][served by the Project];

### **Services**

the [●] services relating to the Project which the Consultant performs or is to perform under the Appointment [whether before or after novation of the Appointment];

### **Site**

[●];

### **Works**

[●] [as more fully described in the Building Contract].

- 1.2 In this agreement, a reference to:
- 1.2.1 a clause, schedule or appendix is, unless otherwise stated, a reference to a clause of, or a schedule or appendix to, this agreement and a reference to paragraph is, unless otherwise stated, a reference to a paragraph of a schedule.
  - 1.2.2 a person includes a reference to an individual, body corporate, association, government, state, agency of state or any undertaking (whether or not having a legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
  - 1.2.3 a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
  - 1.2.4 a party means a party to this agreement and includes its permitted assignees;
  - 1.2.5 a statutory provision includes a reference to that statutory provision as replaced, modified or re-enacted from time to time and any subordinate legislation made under that statutory provision from time to time, in each case whether before or after the date of this agreement;
  - 1.2.6 "working day" excludes Saturdays, Sundays and any day which is a bank holiday under the Banking and Financial Dealings Act 1971.
- 1.3 The headings in this agreement are for convenience only and do not affect the interpretation or construction of this agreement.
- 1.4 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
- 1.5 Where any consent, authorisation or permission is required to be given to this agreement then such consent, authorisation or permission unless the contract provides otherwise, shall not be unreasonably withheld or delayed.
2. **CONSIDERATION**
- 2.1 In consideration of the payment of £1 by the Beneficiary to the Consultant, receipt of which the Consultant acknowledges, the Consultant has agreed to enter into this agreement with the Beneficiary.

### 3. **SKILL AND CARE**

- 3.1 The Consultant warrants that:
- 3.1.1 it has performed and will continue to perform its obligations under the Appointment;
  - 3.1.2 in performing the Services, it has exercised and will continue to exercise the reasonable skill and care to be expected of a competent and properly qualified [●] experienced in performing similar services for works of a similar nature, value, complexity and timescale to the Project;
  - 3.1.3 subject to clause 3.3 it owes to the Beneficiary the same (but no greater) duty of care as it owes to the [Employer][Contractor] under the Appointment.
- 3.2 Insofar as the Consultant has performed a part of the Services before the date of the Appointment, the obligations and liabilities of the Consultant under this agreement shall take effect in all respects as if the Appointment had been dated prior to the commencement of that part of the Services by the Consultant.
- 3.3 In any action or proceedings brought by the Beneficiary under this agreement, the Consultant shall be entitled to rely on any limitation in the Appointment and to raise the equivalent rights in defence (other than in relation to set-off and counterclaim) as it would have had if the Consultant had been employed jointly by the Beneficiary and the [Employer][Contractor] under the Appointment.
- 3.4 The Consultant has exercised and will continue to exercise the standard of skill and care referred to in clause 3.1.2 not to authorise or specify for use in the Project:
- 3.4.1 materials other than in accordance with the guidelines contained in the edition of "Good Practice in the Selection of Construction Materials" (British Council for Offices) current at the date of authorisation or specification; or
  - 3.4.2 any products substances or materials or any combination of them which are themselves or which incorporate substances which at the time of authorisation or specification do not conform to current British or applicable European Standards or codes of practice or which are generally known in the construction industry to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are specified to be used.
- 3.5 The Consultant shall inform the Beneficiary immediately if the Consultant becomes aware whilst performing the Services that any goods or materials referred to above have been specified for use or used in the Project.
- 3.6 The Consultant's duties obligations and liabilities under this agreement will not be released or reduced or in any way diminished by reason of any inspection or enquiry into any relevant matter or by any approval of the Project or Services or attendance at site meetings by or on behalf of the Beneficiary.

### 4. **INSURANCE**

- 4.1 The Consultant has professional indemnity insurance of not less than the Insured Amount. The Consultant shall maintain such insurance during the performance of the Services and for a period commencing on the date hereof and ending on the date 15 years after the date of [practical completion of the Works][completion of the Services] provided that such insurance remains available to the profession of the Consultant at commercially reasonable rates and on commercially reasonable terms.
- 4.2 The insurance shall be with an insurance office or underwriter licensed to carry on business in the United Kingdom.
- 4.3 If the insurance ceases to be available at commercially reasonable rates or on commercially reasonable terms, the Consultant shall:
- 4.3.1 give notice to the Beneficiary immediately; and

- 4.3.2 take out and maintain the highest level of insurance which is available to the profession of the Consultant at commercially reasonable rates and on commercially reasonable terms; and
- 4.3.3 give notice to the Beneficiary of the level of insurance purchased in accordance with clause 4.3.
- 4.4 Any increased or additional premium required by reason of the Consultant's own claims record or other acts omissions matters or things particular to the Consultant shall be deemed to fall within commercially reasonable rates.
- 4.5 As and when the Consultant is reasonably requested to do so by the Beneficiary, the Consultant shall produce promptly for inspection documentary evidence in the form of an original broker's letter or verification certificate that the required insurance is being maintained.

## 5. **COPYRIGHT**

- 5.1 The Consultant grants to the Beneficiary, or where it does not own the copyright in the Documents the Consultant shall procure the grant to the Beneficiary of, an irrevocable, royalty-free and non-exclusive licence to copy and use the Documents for any purpose related to the Project or the Site, other than the reproduction of the designs contained in the Documents for an extension of the Project or the Site.
- 5.2 The benefit of the licence is assignable and the licence includes the right to grant sub-licences on the same terms as are contained in clause 5.1.
- 5.3 At the request of the Beneficiary and upon the Beneficiary agreeing to pay the reasonable copying costs of the Consultant, the Consultant shall provide copies of the Documents to the Beneficiary.
- 5.4 The Consultant shall not be liable for any use of the Documents by the Beneficiary or its assignee or sub-licensee for any purpose other than that for which the same were prepared and provided by or on behalf of the Consultant.
- 5.5 The Consultant waives any moral right which it may have as the author of the Documents. Where the Consultant is not the author, the Consultant shall use its reasonable endeavours to obtain for the Beneficiary a corresponding waiver from the author.

## 6. **[STEP-IN**

- 6.1 The Consultant shall not:
  - 6.1.1 terminate the Appointment or its employment thereunder;
  - 6.1.2 treat the Appointment as having been repudiated by the [Employer][Contractor];
  - 6.1.3 treat its employment as determined under the Appointment; or
  - 6.1.4 discontinue or suspend the performance of all or any of the Services,before giving to the Beneficiary not less than 28 days' notice (the **Termination Notice**) or 7 days' notice in the case of suspension for non-payment under the terms of the Appointment. The notice shall give particulars of any alleged breach of the Appointment by the [Employer][Contractor].
- 6.2 The Beneficiary:
  - 6.2.1 upon a breach of the [Building Contract by the Contractor][Property Agreement by the Employer]; or
  - 6.2.2 within 28 days of the Termination Notice,may give notice to the Consultant that the Consultant is to accept the instructions of the Beneficiary or its nominee instead of the [Employer][Contractor] under the Appointment. Upon receipt of the notice, the Consultant shall comply with it and shall not do any of the actions referred to in clauses 6.1.1 to 6.1.4. The Appointment shall continue as if it had been entered into at the outset between the Consultant and the Beneficiary or its nominee instead of the [Employer][Contractor].

- 6.3 [Where the Consultant has given rights in relation to the Appointment similar to those contained in this clause 6 to any other person then if both the Beneficiary and any such other person serve notice under clause 6.2 or its equivalent the notice served by the Beneficiary shall [prevail][not prevail][not prevail over any notice served by [●] but prevail over any notice served by any other person].]
- 6.4 Any notice which the Beneficiary gives under clause 6.2 shall state that the Beneficiary or its nominee accepts all the obligations of the [Employer][Contractor] under the Appointment, including payment of any part of the fee due to the Consultant and unpaid on the date of the notice. Where the Consultant is to accept the instructions of a nominee, the notice from the Beneficiary shall only be effective if the Beneficiary agrees to guarantee the obligations of the nominee to the Consultant.
- 6.5 Any notice which is given under clauses 6.1 or 6.2 shall be copied concurrently to the [Employer][Contractor].
- 6.6 The [Employer][Contractor] acknowledges that the Consultant shall:
- 6.6.1 be entitled to rely upon a notice which the Beneficiary gives to it under clause 6.2 as conclusive evidence, for the purpose of clause 6.2, that the [Contractor has breached the Building Contract][Employer has breached the Property Agreement];
- 6.6.2 not breach the Appointment if the Consultant complies with clause 6.
- 6.7 Any notice which the Consultant gives under clause 6.1 shall not constitute a waiver of any of its rights under the Appointment.]

## 7. **ASSIGNMENT**

- 7.1 Subject to clause 7.4, the Beneficiary may assign or otherwise transfer all or any of its rights and benefits arising under of this agreement on two occasions only without the consent of the Consultant. The Beneficiary's rights and benefits arising under of this agreement may not be assigned or otherwise transferred further without the prior written consent of the Consultant.
- 7.2 Within 28 days after any assignment under clause 7.1, notice of the assignment shall be given to the Consultant. Failure to give this notice shall not affect the validity of any assignment.
- 7.3 The Consultant agrees with the Beneficiary not to contend or argue that any person to whom this agreement shall be assigned or otherwise transferred by the Beneficiary shall be precluded or prevented from recovering under this agreement any loss or damage resulting from any breach of this agreement by the Consultant (whenever it happens) by reason of the fact that such person is an assignee only or otherwise not the original Beneficiary or because the loss or damage suffered has been suffered by such a party only and not the original Beneficiary.
- 7.4 Notwithstanding clause 7.1 above the benefit of this agreement may be assigned or otherwise transferred:
- 7.4.1 by way of mortgage (whether legal or equitable and whether or not by way of charge), charge or security to anyone who provides finance to the Beneficiary or to any nominee, agent or trustee of such a person;
- 7.4.2 upon resignation of a security trustee or agent and appointment of a new one;
- 7.4.3 by way of reassignment to the Beneficiary; and/or
- 7.4.4 to any company which is a member of the same group of companies as the Beneficiary,

and such assignment(s) or transfer(s) shall not count as an assignment or transfer for the purpose of the limitation in clause 7.1 above.

## 8. **[FURTHER WARRANTIES**

- 8.1 The Consultant, if requested by the Beneficiary, shall enter into and deliver to the Beneficiary such further collateral warranty agreements with any person with whom the Consultant may be required under the Appointment to enter into a collateral warranty agreement. The further collateral warranty agreements shall be in the same terms as this agreement (but excluding

clause 6 and this clause 8) and with such consequential amendments to those parts of the collateral warranty agreements comprising the Parties, Introduction and Definitions as are appropriate to reflect the actual factual position.

8.2 The Consultant shall provide each further collateral warranty agreement duly executed by it to the Beneficiary within 28 days of a notice from the Beneficiary requesting the same accompanied by the collateral warranty agreement to be executed by the Consultant on each occasion.

8.3 The Beneficiary acknowledges that the Consultant shall not be obliged to enter into any greater number of collateral warranty agreements under clauses 8.1 and 8.2 than it would have if the [Employer][Contractor] requested such collateral warranty agreements pursuant to the Appointment.]

## 9. **COMMON LAW**

Except as this agreement otherwise provides, this agreement does not affect the rights or remedies of any party in contract, tort or otherwise.

## 10. **NOTICES**

10.1 Any notice to be given under this agreement shall be in writing and shall be deemed to be given properly if it is delivered by hand, or sent by first class post to the registered office or if there is no registered office to the address of the relevant party on page 1 or such other address as may be notified from time to time as the address for service.

10.2 If the notice is sent by first class post, it shall be deemed to be received two working days after the day it was posted.

10.3 If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered if delivered before 4.45pm on a working day and, if not, it shall be deemed to be received on the next working day.

## 11. **LIMITATION**

11.1 Subject to clause 11.4, the Consultant shall have no liability under this agreement in any action or proceedings for any breach of this agreement which may be commenced against the Consultant after the date 12 years from the date of [practical completion of the Works][completion of the Services].

11.2 Subject to clause 11.4, notwithstanding the manner in which this agreement has been entered into, the limitation period in respect of the Consultant's obligations and liabilities in connection with this agreement shall extend to the expiration of twelve (12) years from [the date of practical completion of the Works under the Building Contract][completion of the Services].

11.3 Section 5 of the Limitation Act 1980 shall not apply to this agreement and neither party will rely upon a defence pleading Section 5 of the Limitation Act 1980 (including any amendment, extension or re-enactment) in any proceedings commenced under this agreement.

11.4 Either party may commence an action or proceedings against the other:

11.4.1 in accordance with sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; or

11.4.2 for a breach of this agreement that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or that gives rise to a failure to comply with that legislation in relation to the Services or any part thereof, provided that any such action or proceedings is subject to the limitation periods that would apply if they were commenced under that legislation or the Civil Liability (Contribution) Act 1978.

11.5 Nothing in this clause 11 limits either party's obligation to maintain insurance for the periods specified in this agreement or rights in relation to any failure to maintain insurance for such periods.

12. **THIRD PARTY RIGHTS**

Any person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement provided always that this shall not affect any right or remedy of such person which exists or is available apart from this Act.

13. **GOVERNING LAW AND JURISDICTION**

This agreement (including any associated non-contractual disputes or claims) is governed by the law of England and the parties agree to submit to the non-exclusive jurisdiction of the English Courts in relation to any claim or matter (whether contractual or non-contractual) arising under this agreement.

14. **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original. All the counterparts shall together form one and the same agreement, which shall be deemed executed when counterparts executed by all of the parties are delivered.

15. **ELECTRONIC EXECUTION AND COMPLETION**

15.1 The parties each hereby agree that:

- 15.1.1 for the purposes of the execution of this agreement an electronically affixed seal and/or electronic signature (duly attested/authenticated/witnessed in accordance with the relevant execution block) shall be accepted by each party in lieu of a wet-ink signature and/or physically affixed seal (as applicable) for the purposes of the lawful execution of this agreement;
- 15.1.2 this agreement may be electronically dated and completed; and
- 15.1.3 further to completion of this agreement each party will accept an electronic copy of the executed and completed agreement in lieu of a hardcopy document.

**THE PARTIES** have executed this agreement as a deed and delivered it on the date first set out  
[EXECUTED AS A DEED BY SIGNING PARTIES]

**Schedule 5 (Letter of Reliance)**  
**TEMPLATE LETTER OF RELIANCE**

**[Address of Beneficiary]**

**[date]**

Dear Sirs

[ ] ("the [Property][Development]")

We confirm that we have been appointed by [ ] ("the Client") to prepare

[details of reports including the name of the report, the date of the report and report reference numbers]

("the Reports") in relation to the **[Property][Development]**, in connection with the proposed redevelopment of the Property.

We understand that you intend to **[provide finance for the Development][purchase the Property]** and should you do so, in consideration of the payment of TEN POUNDS (£10.00) (receipt of which is hereby acknowledged) we unequivocally undertake and confirm the following:-

1. In consideration of £1.00 paid to us by you, we warrant and undertake that in preparing the Reports we have exercised the level of skill and care which may reasonably be expected of a properly qualified and competent consultant experienced in preparing reports of similar scope and complexity to the Reports, and we agree that we owe a duty of care to you in respect of such matters and in using the Reports you may rely upon our professional skill and care with the same effect as if the Reports were originally addressed directly to you and your permitted assigns
2. You may use the Reports for all purposes in relation to your interest in the **[Property][Development]**.
3. We hereby grant you an irrevocable, royalty free non-exclusive licence to use and reproduce the Reports and any designs, calculations, specifications or drawings contained therein. Such licence shall include the right to grant sub-licences in the terms of this licence without our consent. Such licence shall be transferable to third parties without our consent and you, and your successors in title assigns and appointees, hereby acknowledge that we shall not be liable for any use of the Reports for any purpose other than that for which the same were prepared. Upon your request we will give you or persons authorised by you access to the Reports and will provide copies on payment of our reasonable copying charges.
4. The rights benefits and entitlements conferred on you by this letter may, in respect of the Property, be assigned twice only without our consent, and thereafter with our consent, such consent not to be unreasonably withheld or delayed. We will not contend that any person to whom the benefits and entitlements conferred on you by this letter is assigned may not recover any sum under this letter because that person is an assignee and not the named address of this letter.
5. We currently maintain in force professional indemnity insurance without any unusual excesses or exclusions taken out with reputable insurers lawfully carrying on business in the United Kingdom of not less than £[ ] ,000,000 [for each and every claim] [for any one claim] [for any occurrence or series of occurrences arising out of each and every event] [for any one claim and in all] [in the annual aggregate] [in the annual aggregate with X [automatic] reinstatements] [(but in the

aggregate in relation to pollution and contamination)]<sup>1</sup> and we confirm that we shall maintain such insurance for a period of 15 years after the date of the Reports provided such insurance is available on commercially reasonable rates and terms. For the avoidance of doubt payments of any increased or additional premiums required by insurers by reason of our own claims record or other acts, omissions, matters or things peculiar to us will be deemed to be within our obligations. If for any period such insurance is not available on commercially reasonable rates and terms we shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for us to obtain.

6. As and when we are requested to do so by you, we shall provide you with a copy of a letter from our insurance brokers as evidence that our professional indemnity insurance is being maintained and is in force.
7. You hereby agree that, save in relation to any claim pursuant to section 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act 1984 or to claim a contribution in relation to any liability in accordance with the Civil Liability (Contribution) Act 1978, no proceedings shall be commenced against us under the terms of this letter more than 12 years after the date of the Reports.
8. This letter shall be governed and construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction with regard to all matters arising from it.

[EXECUTION BLOCK TO BE ADDED ON ENGROSSMENT]

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<sup>1</sup> Amend to reflect Consultant's actual PI arrangements.