

**Schedule 34 (Collateral Warranty)**

Dated \_\_\_\_\_ 202[ ]

(1) [CONSULTANT]

- and -

(2) [BENEFICIARY]

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**CONSULTANT'S DEED OF WARRANTY**

relating to works at

[ ]

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**THIS DEED** is made the \_\_\_\_\_ day of \_\_\_\_\_ 202[ ]

**BETWEEN:**

- (1) [ \_\_\_\_\_ ] (company registration no. [ \_\_\_\_\_ ]) whose registered office is at [ \_\_\_\_\_ ] ("**the Consultant**").
- (2) [**BENEFICIARY**] (company registration no. [ \_\_\_\_\_ ]) whose registered office is at [ \_\_\_\_\_ ] ("**the Beneficiary**").

**WHEREAS:**

- (A) [LocatED] ("**the Client**") desires to procure the design and construction of [ \_\_\_\_\_ ] ("**the Works**") at [ \_\_\_\_\_ ] ("**the Premises**").
- (B) The Client has entered into an agreement dated \_\_\_\_\_ 202[●] ("**the Appointment**") with the Consultant under which the Consultant has provided and will provide to provide consultancy services in connection with the Works ("**the Services**").
- (C) [The Client] has entered into a contract for the [design and] construction of the Works ("**the Building Contract**") with [ \_\_\_\_\_ ] ("**the Contractor**").
- (D) The Beneficiary [owns] [ operates from] [ state interest] the Premises.
- (E) The Consultant has agreed to execute a deed of warranty in favour of the Beneficiary.

**NOW BY THIS DEED** and in consideration of £1 (One Pound) (receipt of which the Consultant hereby acknowledges) **IT IS HEREBY AGREED AS FOLLOWS:**

**1. EXERCISE OF SKILL AND CARE**

The Consultant warrants and undertakes to the Beneficiary that:

- 1.1 with respect to the Services it has exercised and will continue to exercise all the reasonable skill and care as may be expected of a properly qualified consultant of the appropriate discipline experienced in carrying out work on developments of a similar size, scope and complexity to the Works;
- 1.2 it has complied and shall continue to comply with the terms of \_\_\_\_\_ under the Appointment.

**2. PROHIBITED MATERIALS**

The Consultant warrants to the Beneficiary that it has exercised and will continue to exercise the standard of care referred to in Clause 1.1 to ensure that it has not and shall not specify for use or authorise or permit to be used or specified in relation to the Works or any part or parts thereof any substances, materials, processes or methods of working which are contrary to the recommendations in the latest edition of "Good Practice In The Selection of Construction Materials" published by the British Council for Offices or which are substances, materials, processes or methods of working generally known to consultants of the same profession at the time of use to be deleterious to health and safety or to the durability of the Works in the particular circumstances in which they are used or which are not in accordance with British Standards and Codes of Practice (where applicable standards exist). If in the performance of its duties hereunder the Consultant becomes aware that it or any other person has specified or used or authorised or approved the specification or use by others of any such substances, materials, processes or methods of working the Consultant shall notify the Beneficiary in writing immediately.

**3. COPYRIGHT**

- 3.1 The Consultant hereby grants to the Beneficiary its successors in title assigns and appointees an irrevocable royalty-free non-exclusive licence to use and reproduce all drawings, details, plans, specifications, schedules, reports, calculations and other work

("the Documents") and the designs contained in the Documents which have been or are hereafter written, originated or made by or on behalf of the Consultant for any purpose whatsoever connected with the Works and/or the Premises including the execution, completion, maintenance, use, letting, management, sale, advertisement, modification, re-instatement, refurbishment and repair thereof. Such licence shall enable the Beneficiary its successors in title assigns and appointees to copy and use the Documents for the extension of the Premises and/or the Works but such use shall not include a licence to reproduce the designs contained in them for any extension of the Premises and/or the Works. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties and the Beneficiary its successors in title assigns and appointees hereby acknowledge that the Consultant shall not be liable for any use of the Documents for any purpose other than that for which the same were prepared and provided by the Consultant.

- 3.2 The Consultant warrants that the use of the Documents for the purposes set out in Clause 3.1 will not infringe the rights of any third party.
- 3.3 The Consultant shall on request subject to payment of reasonable copying charges provide the Beneficiary with copies of any of the Documents.
- 3.4 The Consultant now waives and agrees to waive and not to assert its moral rights in the Documents under Chapter IV of the Copyright Design & Patents Act 1988.

#### **4. INSURANCE**

- 4.1 The Consultant has at all relevant times maintained and shall continue to maintain professional indemnity insurance (with a well-established insurance office or underwriter of repute carrying on business in the United Kingdom and without any material excesses or exclusions) covering the performance of the Consultant's duties hereunder with an indemnity limit of not less than £[●],000,000 ([●] million pounds) for each and every claim [*but in the annual aggregate for pollution and contamination and fire safety claims*] throughout the period when the Services are provided and for a period of [six (6)] [twelve (12)] years from practical completion of the Works (pursuant to the terms of the Building Contract) provided always that such insurance is available in the market at commercially reasonable rates. For the avoidance of doubt payments of any increased or additional premiums required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to it will be deemed to be within the Consultant's obligations.
- 4.2 On the date hereof the Consultant shall provide the Beneficiary with written evidence from the Consultant's professional indemnity insurers or brokers of the Consultant's insurance cover.
- 4.3 The Consultant shall when reasonably required to do so from time to time produce to the Beneficiary for inspection within 14 days of a request by the Beneficiary documentary evidence (by way of a verification letter from the Consultant's broker or as may otherwise be agreed) that the insurance referred to in Clause 4.1 is being properly maintained.
- 4.4 The Consultant shall immediately inform the Beneficiary if such insurance ceases to be maintained in order that the Beneficiary and the Consultant can discuss means of best protecting the respective positions of the Beneficiary and the Consultant in respect of the Works in the absence of such insurance.

#### **5. ASSIGNMENT**

- 5.1 The benefit of this Deed may be assigned on two occasions only without the prior written consent of the Consultant.
- 5.2 The Consultant will not contend that any permitted assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary

under this Deed or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Works or that the original Beneficiary or any intermediate Beneficiary has not suffered any the same or as much loss.

## **6. LIABILITY**

- 6.1 Save where a longer limitation period is provided for by law or statute, it is acknowledged and agreed that whatever the manner in which the parties have executed this Deed, the period of limitation applicable to any claim or claims arising out of or in connection with this Deed shall be [six (6)] [twelve (12)] years from practical completion of the Works pursuant to the terms of the Building Contract or, if earlier, [six (6)] [twelve (12)] years after the employment of the Consultant under the Appointment is terminated.
- 6.2 The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights or remedies the Beneficiary may have against the Consultant including without prejudice to the generality of the foregoing any remedies in tort.
- 6.3 The Consultant shall have no greater duty or obligation to the Beneficiary under this Deed than the Consultant would have if the Beneficiary had been party to the Appointment as joint employer.
- 6.4 The Consultant shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Appointment and to raise equivalent rights in defence of liability (but excluding set-off and counterclaim) as it would have had if the Beneficiary had been a party to the Appointment as joint employer.

## **7. INDEPENDENT ENQUIRY**

The responsibility of the Consultant shall not be diminished or in any way relinquished by any independent inspection, investigation or enquiry by or on behalf of the Beneficiary notwithstanding that such independent inspection, investigation or enquiry may give rise to a claim by the Beneficiary against any third party provided always that in the event of a claim against the Consultant, the Consultant's right to a contribution (whether in equity, common law or pursuant to statute) shall not be affected by this Clause.

## **8. NOTICES**

Any notice to be given under this Deed shall be in writing and shall be either delivered personally or sent by special delivery post. The addresses for service of the Beneficiary and of the Consultant shall be those stated at the head of this Deed or such other address for service as the party to be served may have previously notified in writing to the other party. A notice shall be deemed to have been served as follows:

- 8.1 if personally delivered, at the time of delivery;
- 8.2 if posted, at the expiration of forty-eight hours after posting.

## **9. GOVERNING LAW AND JURISDICTION**

This Deed shall be governed and construed according to the laws of England and Wales and the parties hereto hereby submit to the non-exclusive jurisdiction of the English Courts.

## **10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No term of this Deed confers or purports to confer on any third party any benefit or right to enforce any term of this Deed by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **11. JOINT AND SEVERAL LIABILITY**

Where the Consultant is a partnership references in this Deed to "the Consultant" shall be deemed to include reference to each and every present and future partner of such partnership

and the liability of each and every such partner under this Deed shall be deemed to be joint and several.

**12. COUNTERPARTS**

This Deed may be executed in any number of counterparts, which shall together constitute one contract. Any party may enter into this Deed by signing any such counterpart.

**13. INTERPRETATION**

13.1 Unless the context otherwise requires or unless expressly stated otherwise in this Deed words and expressions shall have the same meaning ascribed thereto in the Appointment.

13.2 This Deed is intended to take effect as a deed notwithstanding that the Beneficiary may have executed under hand only.

**EXECUTED AND DELIVERED** by the parties as a Deed the day and year first before written.

**EXECUTED** as a Deed )  
by **THE CONSULTANT** )  
acting by two directors or )  
one director and the company )  
secretary )

Director

Director/Secretary

OR

**EXECUTED** as a DEED )  
by the **CONSULTANT** )  
acting by two members )

Member

Member

OR

**EXECUTED** as a Deed )  
by **THE CONSULTANT** )  
acting by a director in the presence of )  
a witness )

Director

I confirm that I was physically present to witness the above Director's signature.

Signature of witness

Name (in BLOCK CAPITALS)

Address

**EXECUTED** as a Deed )  
by **THE BENEFICIARY** )  
acting by two directors or )  
one director and the company )  
secretary )

Director

Director/Secretary

OR

[insert appropriate execution clause]