DATED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[2023]

**WEST SUSSEX COUNTY COUNCIL**

**and**

**[INSERT NAME OF SUB-CONTRACTOR]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUB CONTRACTOR’S COLLATERAL WARRANTY**

**IN RELATION TO [BRIEF DESCRIPTION OF WORKS] FOR**

**[NAME OF SITE]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Legal Services

West Sussex County Council

County Hall

West Street

Chichester

PO19 1RQ

Legal Services File Ref: [ ]

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This deed is dated\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_20[23]

Parties

1. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“Sub-Contractor”)
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“Employer”)

BACKGROUND

1. The Employer has appointed [ENTER NAME OF CONTRACTOR] (the **“Building Contractor”**) to carry out the design and execution of the works briefly described as the design, development, construction, testing, commissioning, maintenance and operation of [INSERT DESCRIPTION OF WORKS] at [INSERT NAME OF SITE] (the “**Project**”).
2. The Building Contractor has engaged the Sub-Contractor to carry out part of that [design and] construction work in relation to the Project and the Sub-Contractor has agreed to perform the [INSERT DESCRIPTION OF SERVICES] in relation to the execution of the Project.
3. The Sub-Contractor has agreed to provide a Collateral Warranty direct to the Employer on the following terms.
4. The Employer has paid £1.00 to the Sub-Contractor as consideration under this agreement.

Agreed terms

1. Interpretation

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

* 1. Definitions:

|  |  |
| --- | --- |
| Building Contract | means an agreement in writing dated [DATE] between the Employer and the Building Contractor. |
| Building Contractor | means [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] |
| Business Day | means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business. |
| CDM Regulations | the Construction (Design and Management) Regulations 2015 (SI 2015/51). |
| Construction Products Regulations | means UK Construction Products Regulations 2011 and the Construction Products Regulations 2013 (SI 2013/1387). |
| Deleterious | means materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:   1. posing a threat to the health and safety of any person; or 2. posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project; or 3. reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project; or 4. not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or 5. having been supplied or placed on the market in breach of the Construction Products Regulations. |
| Funder | means a person that has provided, or is to provide, finance in connection with:   1. the whole or any part of the Project or the completed Project; or 2. the site of the Project,   whether that person acts on its own account, as agent for a syndicate of other parties or otherwise. |
| Material | means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project. |
| Permitted Uses | means the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project. |
| Programme | means the programme, as defined in the Professional Appointment. |
| Project | [DESCRIPTION OF PROJECT]. |
| Property | [DESCRIPTION OF PROPERTY]. |
| Required Standard**:** | means all the reasonable skill, care and diligence to be expected of a qualified and experienced Building Contractor on works similar in scope and character to the Project. |
| Sub-Contract | means an agreement in writing dated [DATE] between the Building Contractor and the Sub-Contractor. |
| Sub-Contract Works | means the [design,] construction and completion of the building works referred to in the Sub-Contract, carried out by the Sub-Contractor under the Sub-Contract. |
| Third Party Agreement | means any agreement between the Employer and a third party relating to the Project. |
| UK Construction Products Regulations 2011 | means the UK version of Regulation (EU) No 305/2011, as it forms part of [English OR Scottish OR Northern Irish] law under the European Union (Withdrawal) Act 2018. |
| Works | means the [design,] construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Building Contractor under the Building Contract. |

* 1. Clause headings shall not affect the interpretation of this agreement.
  2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  3. A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
  4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
  5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
  6. This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
  7. Reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
  8. A reference to writing or written includes and email.
  9. References to clauses are to the clauses of this agreement.
  10. Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
  11. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1. Comply with Sub-Contract
   1. The Sub-Contractor warrants to the Employer that:
      1. it has complied, and shall continue to comply, with its obligations under the Sub-Contract, including its obligations to:
         1. not, without the Employer’s written consent, make any material change to the designs or specifications for the Project after they have been settled or approved;
         2. not to specify for use or use anything in the Project, which is Deleterious at the time of specification;
         3. to comply with (and ensure the completed Project complies with) any Act of Parliament and any instrument, rule or order made under any Act of Parliament; and
         4. to comply with (and ensure the completed Project complies with) any regulation or bye-law of any local authority, statutory undertaker or public or private utility or undertaking that has any jurisdiction over the Project or with whose systems or property the Project is or will be connected.
      2. it has exercised and shall continue to exercise the Required Standard:
         1. when performing the Services;
         2. to perform the Services and prepare all Material for those elements of the Project for which the Sub-Contractor is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;
         3. to ensure that the Project complies with all planning agreements, permissions and conditions; and
         4. not to cause or contribute to any breach by the Employer of any Third Party Agreement provided that, where the Employer notifies the Sub-Contractor of a Third Party Agreement after the date of the Sub-Contract, the Sub-Contractor is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the date of the Professional Appointment.
   2. In complying with clause 2.1, the Contractor shall owe no greater obligations to the Employer under this agreement than it owes to the Building Contractor under the Building Contract. In proceedings for breach of clause 2.1, the Sub-Contractor may:
      1. rely on any limit of liability or other term of the Sub-Contract; and
      2. raise equivalent rights of defence as it would have had, if the Employer had been named as a joint employer, with the Building Contractor, under the Sub-Contract (for this purpose not taking into account any set-off or counterclaim against the Contractor under the Sub-Contract).
   3. The Sub-Contractor's duties or liabilities under this agreement shall not be negated, diminished or otherwise affected by:
      1. any approval or inspection of:
         1. the Property; or
         2. the Works; or
         3. the Sub-Contract Works; or
         4. any designs or specifications for the Property or the Works; or
      2. any testing of any work, goods, materials, plant or equipment; or
      3. any omission to approve, inspect or test,

by or on behalf of the Employer or the Contractor.

* 1. Nothing in this agreement shall in any way limit or affect any other rights or remedies (whether under contract, at law, in equity or otherwise) which the Employer would have against the Sub-Contractor in the absence of this agreement.

1. Step-in rights: Sub-Contractor may not terminate
   1. Subject to clause 3.4, the Sub-Contractor shall not exercise, or seek to exercise, any right to terminate its employment under the Sub-Contract for any reason (including any breach on the part of the Employer) without giving the Employer at least [ten] Business Days' written notice of its intention to do so. Any notice from the Sub-Contractor shall specify the grounds for the Sub-Contractor's proposed termination.
   2. If the Sub-Contract allows the Sub-Contractor a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Sub-Contract shall be extended to take account of the notice period required under clause 3.1.
   3. In complying with this clause 3, the Sub-Contractor:
      1. does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Employer; and
      2. may exercise its right to terminate its employment under the Sub-Contract after the expiry of the notice period referred to in clause 3.1, unless the Sub-Contractor's right to terminate has ceased.
   4. If:
      1. the Sub-Contractor enters into an agreement with another third party or grants rights to a third party concerning the Project at the request of the Employer; and
      2. that agreement or those third party rights include similar step-in rights to those in clause 3,

then, on that third party's (or that third party's nominee's) exercise of those step-in rights:

* + 1. the Sub-Contractor shall no longer be bound by clause 3.1; and
    2. the Employer may no longer exercise its rights under clause 3.

1. Step-in rights: Sub-Contractor's position and Employer’s consent
   1. The Sub-Contractor shall not incur any liability to the Building Contractor by acting in accordance with clause 3.
   2. The Employer has entered into this agreement to confirm its consent to the agreement.
2. Copyright
   1. The Sub-Contractor grants to the Employer, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Sub-Contractor for any purpose relating to the Project and the Property, including any of the Permitted Uses.
   2. This licence carries the right to grant sub-licences without the consent or approval of the Sub-Contractor and the licence shall be freely assignable by the Employer.
   3. The Sub-Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
   4. The Employer may request a copy (or copies) of some or all of the Material from the Sub-Contractor and the Sub-Contractor shall be entitled to request reasonable payment for copying charges.
3. Professional indemnity insurance
   1. The Sub-Contractor shall maintain professional indemnity insurance for an amount of at least £2 million for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this agreement and ending 12 years after the date of practical completion, provided that such insurance is available at commercially reasonable rates. The Sub-Contractor shall maintain that professional indemnity insurance:
      1. with reputable insurers lawfully carrying on insurance business in the UK;
      2. on customary and usual terms and conditions prevailing for the time being in the insurance market; and
      3. on terms that:
         1. do not require the Sub-Contractor to discharge any liability before being entitled to recover from the insurers; and
         2. would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.
   2. Any increased or additional premium required by insurers because of the Sub-Contractor's claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.
   3. The Sub-Contractor shall immediately inform the Employer if the Sub-Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Sub-Contractor and the Employer can discuss how best to protect the respective positions of the Employer and the Sub-Contractor regarding the Project and the Property, without that insurance.
   4. The Sub-Contractor shall fully co-operate with any measures reasonably required by the Employer, including:
      1. completing any proposals for insurance and associated documents; or
      2. maintaining insurance at rates above commercially reasonable rates, if the Employer reimburses the Sub-Contractor for the net cost of that insurance above commercially reasonable rates.
   5. Whenever the Employer reasonably requests, the Sub-Contractor shall send the Employer evidence that the Sub-Contractor's professional indemnity insurance is in force, including, if required by the Employer, an original letter from the Sub-Contractor's insurers or brokers confirming:
      1. the Sub-Contractor's then current professional indemnity insurance; and
      2. that the premiums for that insurance have been paid in full at the date of that letter.
4. Liability period
   1. The Employer may not commence any legal action against the Sub-Contractor under this agreement after 12 years from the date of practical completion of the Project.
5. Assignment
   1. The benefit of this Agreement may be assigned:
      1. on two occasions to any person with an interest in the Works; and
      2. without counting as an assignment under Clause 8.1(a):
         1. by way of security to a Funder (including any reassignment on redemption of security); or
         2. to and from subsidiary or other associated companies within the same group of companies as the Tenant so long as that assignee company remains within the same group of companies as the Tenant.
   2. The Tenant shall notify the Building Contractor and the Employer of any assignment.
   3. The Sub-Contractor shall not contend that any person to whom the benefit of this agreement is assigned under clause 8.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.
6. Notices
   1. A notice or communication given to a party under or in connection with this agreement shall be in writing and sent to the party at the address or email address given in this agreement or as otherwise notified in writing to the other party.
   2. This clause 9.2 sets out the delivery methods for sending a notice to a party under this agreement and, for each delivery method, the date and time when the notice is deemed to have been received (provided that all other requirements of this clause have been satisfied and subject to the provision in clause 9.3):
      1. if delivered by hand, at the time the notice is left at the address;
      2. if sent by pre-paid first class post or other next working day delivery service providing proof of postage **OR** delivery, at 9.00am on the second Business Day after posting;
      3. if sent by email, at the time of transmission.
   3. If deemed receipt under clause 9.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 9.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
   4. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
7. Third party rights

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

1. Governing law

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

1. Jurisdiction

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

IN WITNESS of which the parties have caused this Deed to be executed and delivered as a deedthe day and year first before written

**EXECUTED as a DEED**

by the affixing of the **COMMON SEAL** of

**WEST SUSSEX COUNTY COUNCIL**

in the presence of:

Authorised Signatory

**EXECUTED as a DEED**

by **[SUB-CONTRACTOR]**

acting by and under the signature of:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director (or Company Secretary)

**OR**

**EXECUTED as a DEED**

by **[SUB-CONTRACTOR]**

by the attested signature of:

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Director

In the presence of:

Witness Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_