DATE 20

**[CONSULTANT]**

**-and-**

**[BENEFICIARY]**

**-and-**

**[EMPLOYER/CONTRACTOR]**

# Collateral warranty relating to the Development at the Carfax Site, Winchester

Anthony Collins Solicitors LLP

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Ref: 45410.0001

**THIS DEED** is made the day of 20[ ]

**BETWEEN:**

1. **[CONSULTANT]** (company number [ ]) whose [principal place of business] [registered office] is at [address] (**“the Consultant”**); and

1. **[BENEFICIARY]** (company number [ ]) whose [principal place of business] [registered office] is at$/[address] (**"the Beneficiary"**) its successors in title and permitted assigns[; and

3. **[EMPLOYER/CONTRACTOR]** company number [ ]) whose [principal place of business] [registered office] is at [address] (**"the Employer"**).] *(only if clause 15 applies)*

**AGREEMENT**

1. INTERPRETATION
   1. Any reference to "person" "firm" or "company" includes any entity which has legal capacity.
   2. Any term importing the singular number includes the plural number and vice versa.
   3. Clause headings are for convenience only and do not form part of or affect the interpretation of this Deed.
2. definITIONS
   1. Throughout this Deed the following words and expressions which begin with capital letters shall have the following meanings:

|  |  |
| --- | --- |
| **“Appointment”** | means the appointment dated [ ] made between the Consultant and the Employer; |
| **“Contractor”** | means [ ] whose registered office is at [ ]; |
| **“Development”** | means the development at the Carfax Site, Winchester; |
| [**“Employer”**  **“Services”** | means Winchester City Councilwhose principal place of business is at City Offices, Colebrook Street, Winchester, Hants, SO23 9LJ]; and  means the services provided by the Consultant under the Appointment. |

1. INTRODUCTION
   1. The Consultant has agreed, under the Appointment to provide architectural and other services to the Employer in respect of the Development.
   2. [The Appointment has been novated from the Employer to the Contractor.]
   3. The Beneficiary has as the [Employer/funder/purchaser/tenant] an interest in the Development.
   4. The Consultant has agreed to execute this Deed for the benefit of the Beneficiary.
2. CONSIDERATION

In consideration of the payment of £1 (one pound) by the Beneficiary to the Consultant receipt of which the Consultant acknowledges the Consultant has agreed to enter into this Deed with the Beneficiary.

1. WARRANTIES

5.1 The Consultant warrants to the Beneficiary that it has complied and will continue to comply with the terms of the Appointment and that:

* + 1. it has exercised and will continue to exercise in the performance of its duties under the Appointment the reasonable skill, care and diligence to be expected of a properly qualified, experienced and competent professional undertaking Services similar to the Services in relation to projects of a similar scale and character to the development; and
    2. it has used and will use all reasonable skill care and diligence required by clause 5.1.1**Error! Reference source not found.** not to specify any products or materials for use in the Development (to the extent that the Consultant specifies any products or materials) which:

(a) are not in accordance with the version of the publication Good Practice in the Selection of Construction Materials published by the British Council for Offices in force at the time of their specification;

1. do not conform with European or British Standards or Codes of Practice or good building practice; or
2. are generally known to be deleterious to health and safety and/or to the durability of buildings or structures in the particular circumstances in which they are used.
   * 1. it owes to the Beneficiary the same (but no greater) duty of care as it would owe to the Beneficiary under or in connection with the Appointment if the Beneficiary was named as joint employer in the Appointment (excluding any set-off, contributory negligence or counterclaim the Consultant may have against the Employer); and
     2. it acknowledges that the Beneficiary relies upon the exercise of the Consultant’s skill and care pursuant to the Appointment under this Deed.
3. INSURANCE
   1. The Consultant shall maintain professional indemnity insurance with a limit of indemnity of not less than £[10,000,000] ([ten] million pounds for each and every claim from the date of this Deed until 12 years after the completion or termination of the Services under the Appointment, provided such insurance is available on commercially reasonable rates and terms to the Consultant’s profession.
   2. If for any period such insurance is not obtainable on commercially reasonable rates and terms to the Consultant’s profession, the Consultant shall inform the Beneficiary and shall obtain in respect of that period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for the Consultant to obtain.
   3. When reasonably requested by the Beneficiary, the Consultant shall provide documentary evidence to the Beneficiary that the insurance required under this Deed is being maintained.
4. COPYRIGHT
   1. The Consultant grants to the Beneficiary an irrevocable, non-exclusive, royalty-free licence (including the right to grant sub-licences) to copy, use, adapt and modify all designs and documents he makes available in connection with the Appointment. The Consultant shall not be liable for the use of any of the designs and documents for any purpose other than those for which the Consultant produced them.
   2. The Consultant agrees and undertakes that he waives any rights he may have pursuant to Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patent Act 1988 in relation to the designs and documents and upon reasonable request from the Beneficiary at any time shall obtain a written waiver from the Consultant’s employees or sub-consultants of any rights that they may have in respect of the same.
   3. The Consultant shall supply to the Beneficiary on request copies of the designs and documents. The Beneficiary shall pay the Consultant’s reasonable reproduction costs.
   4. The Consultant warrants that the use of the designs and documents for the purposes of the Development will not infringe the rights of any third party.
5. other remedies
   1. The provisions of this Deed are without prejudice to and shall not be construed so as to exclude or limit such rights or remedies (if any) which the Beneficiary may have against the Consultant from time to time otherwise than as a result of this Deed (including, without limitation, for breach of statutory duty or in tort).
   2. The Consultant’s duties and obligations and liability under or pursuant to this Deed shall not be released, diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by the Beneficiary or any firm, company or party on the Beneficiary’s behalf nor by any action or omission by the Beneficiary or any such firm, company or party whether or not such action or omission might give rise to an independent liability of such firm, company or party to the Beneficiary.
   3. This Deed shall continue in full force and effect notwithstanding the determination of the Appointment for any reason.
6. ASSIGNMENT
   1. The benefit of this Deed may be assigned on two occasions only without the consent of the Consultant.
   2. The Consultant shall not contend that any such assignee is precluded from recovering any such loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Development or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.
   3. The Consultant shall not be entitled to assign transfer charge or otherwise dispose of all or any of its rights or liabilities arising under this Deed to any other party.
7. NOTICES

Any notice provided for in accordance with this Deed shall be in writing and shall be deemed to be duly given if delivered by hand or sent by first class post to the party named therein at the address of such party shown in this Deed or such other address in the United Kingdom as such party may by notice in writing nominate for the purpose of service and if sent by post shall be deemed to have been received 2 working days after the same shall have been posted.

1. LIMITATION

No action shall be brought against the Consultant under this Deed after the expiration of 12 years after the completion or termination of the Services under the Appointment.

1. GOVERNING LAW

This Deed shall be governed by and in accordance with the law of England and the English Courts shall have jurisdiction with regard to all matters arising from this Deed.

1. third party rights

Unless the right of enforcement is expressly provided it is not intended that a third party should have the right to enforce any terms of this Deed pursuant to the contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from this Act.

1. [STEP-IN RIGHTS – Funder/EMPLOYER ONLY]
   1. The Consultant agrees with the Beneficiary that it shall not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Appointment or discontinue the performance of any obligations thereunder without first giving to the Beneficiary 21 days’ prior notice of its intention to do so. Such notice shall specify the Consultant’s grounds for terminating or treating as terminated the Appointment or discontinuing or suspending its performance.
   2. Within 21 days of receipt of the notice from the Consultant under clause 14.1 the Beneficiary may give notice to the Consultant that the Beneficiary or its nominee is to be treated as the employer under the Appointment.
   3. The Beneficiary may at any time serve notice on the Consultant that the [Employer/Contractor] has breached the terms of its agreement with the Beneficiary and that the Beneficiary or its nominee is thereafter to be treated as the employer under the Appointment.
   4. Any notice by the Beneficiary under clause 14.2 and/or clause 14.3 shall contain an undertaking to the Consultant that the Beneficiary or its nominee will remedy any outstanding breach by the [Employer/Contractor] which shall be capable of remedy by the Beneficiary or its nominee and that the Beneficiary shall pay forthwith any sums due and outstanding under the Appointment.
   5. On service of a notice by the Beneficiary under clause 14.2 and/or clause 14.3 the Consultant shall treat the Beneficiary or its nominee as the employer under the Appointment. The Appointment shall be and remain in full force and effect and all rights and obligations of the employer under the Appointment shall be exercisable and performed by the Beneficiary or its nominee.
   6. Notwithstanding anything contained in this Deed the Beneficiary shall not be under any obligation to the Consultant whether in relation to the payment of sums due to the Consultant under the Appointment or otherwise unless and until the Beneficiary has given notice to the Consultant pursuant to clause 14.2 and/or clause 14.3 of this Deed.
   7. Where the Consultant has given rights in relation to the Appointment similar to those contained in this clause 14 to [any other person][a fund] then if both the Beneficiary and [any such other person][the fund] serve such notice under clause and/or clause the notice served by the [Beneficiary][the fund] shall prevail over any notice served by [any such other person][the Beneficiary].
   8. The [Employer/Contractor] has joined in this Deed to confirm its concurrence with the arrangements made and contemplated by this clause.]

**IN WITNESS** of which this document has been executed and on the date first set out above delivered as a deed.

[INSERT EXECUTION CLAUSES]