



## **Call-Off Schedule 19**

### **Collateral Warranty**

### **Regional Accommodation Maintenance Service (RAMS)**

REF: RM6089 Lot 2B

## CALL-OFF SCHEDULE 19

### COLLATERAL WARRANTY AGREEMENTS

If the Order Form indicates that the Supplier is to provide collateral warranty agreements, the Supplier shall provide collateral warranty agreement(s) in the form set out in part 1 of this Schedule below (or as otherwise stated at Call Off ) in favour of the party(ies) identified in the Order Form and shall deliver executed copies in duplicate to the Buyer no later than 10 Working Days after the Buyer has provided the Supplier with appropriate collateral warranty agreements suitable for execution.

If the Order Form indicates that the Supplier is to procure collateral warranty agreements from Subcontractors, the Supplier shall procure collateral warranty agreement(s) in the form set out in part 2 of this Schedule from the Subcontractors identified in the Order Form in favour of the Buyer and also any other parties identified in the Order Form. The Supplier shall deliver executed copies in duplicate to the Buyer no later than 15 Working Days after the Buyer has provided the Supplier with appropriate collateral warranty agreements suitable for execution.

If the Supplier fails to deliver the required collateral warranty agreements in the manner and within the time stipulated by the Call-Off Contract **Redacted – Commercially Sensitive Information** of the Charges payable under the Call-Off Contract shall be retained from payments due to the Supplier until the Supplier has remedied the failure.

## Part 1 - Supplier Collateral Warranty

**THIS DEED** is made on

**BETWEEN:**

- (1) **[NAME OF SUPPLIER]** (**company number**) whose registered office is at **[insert]** ("**Supplier**"); and
- (2) **[NAME OF BENEFICIARY]** (**company number**) whose registered office is at **[insert]** ("**Beneficiary**" which term includes its legal successors and permitted assignees).

**BACKGROUND:**

- A The Buyer intends to procure the Deliverables.
- B By the Contract the Supplier has agreed with the Buyer to provide the Deliverables upon the terms and conditions of the Contract.
- C It has been agreed that the Supplier enters into this deed with the Beneficiary in relation to the Deliverables.

**IT IS AGREED:**

By this deed and in consideration of the sum of **Redacted – Commercially Sensitive Information** paid by the Beneficiary (receipt of which the Supplier hereby acknowledges) the Supplier agrees to enter into the obligations set out in this deed.

### 1. DEFINITIONS AND INTERPRETATION

In this deed:

- 1.1 the following words and expressions have the following meanings, unless the context requires otherwise:

**"Business Day"** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday;

**"Contract"** means the contract dated **[insert date]** made between the Buyer and the Supplier;

**"Deliverables"** means the works and services to be undertaken by the Supplier under the Contract;

**"Documents"** means all drawings, CAD materials, plans, designs, diagrams, details, specifications, technical data (including asset data and all other data held in the CAFM system, including paper based data that is held on documentation which has been delivered as part of the Deliverables), bills of quantities, reports and other design information which have been or are hereafter written, prepared or provided by or on behalf of the Supplier for any purpose whatsoever in connection with the Deliverables;

**"Intellectual Property Rights"** means copyrights, moral rights, related rights, patents, trademarks, trade names, service marks, design rights, database rights,

semiconductor topography rights and any undisclosed or confidential information such as knowhow, trade secrets or inventions (whether patentable or not);

**"Limitation Period"** means the period of 12 years from the date of completion of the Deliverables (or, if sooner, 12 years after termination of the employment of the Supplier under the Contract); and

**"Supplier"** means [insert] [address].

1.2 unless the context requires otherwise:

1.2.1 reference to any gender includes all genders, reference to the singular includes the plural (and vice versa) and reference to persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of them have a separate legal personality);

1.2.2 reference to a recital or clause is a reference to a recital to or clause of this deed; and

1.2.3 reference to any legislative provision will be deemed to include any subsequent reenactment or amending provision;

1.3 the list of contents and clause headings are included for convenience only and do not affect its interpretation;

1.4 where a party comprises two or more persons:

1.4.1 any obligations on the part of that party contained or implied in this deed are deemed to be joint and several obligations on the part of those persons; and

1.4.2 references to that party include references to each and any of those persons; and

1.5 periods of time will be calculated in accordance with section 116 of the Housing Grants, Construction and Regeneration Act 1996.

## 2. STANDARD OF CARE

The Supplier warrants and undertakes to the Beneficiary that:

2.1 it has carried out and will carry out its duties and obligations under the Contract subject to and in accordance with the terms of the Contract; and

2.2 in addition to and without derogation from clause 2.1:

2.2.1 it has carried out and will continue to provide the Deliverables in a good and workmanlike manner;

2.2.2 it has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of a competent contractor experienced in providing similar Deliverables for a project of the same size, scope and complexity as that related to the Deliverables in the design of the Deliverables or any part thereof insofar as the same have been or will be designed by the Supplier or by the Supplier's servants, agents, consultants, Subcontractors or suppliers on its behalf; and

2.2.3 the Deliverables will on completion comply in all respects with the requirements of the Contract.

## 3. MATERIALS

The Supplier further warrants to the Beneficiary that it has not specified or approved for use or used and will not specify or approve for use or use in connection with the Deliverables any materials which at the time of specification or use (as the case may be):

- 3.1 are known to be deleterious when used in the manner in which they are to be used (either to health and safety or to the durability of the Deliverables); or
- 3.2 contravene any relevant standard or code of practice issued from time to time by the BSI Group or under a European directive relating to standards or good building practice; or
- 3.3 do not accord with the guidelines contained in the edition of the publication *Good Practice in Selection of Construction Materials* (British Council for Offices (BCO)), current at the date of specification or use.

#### **4. COPYRIGHT LICENCE**

- 4.1 The Supplier hereby grants to the Beneficiary an irrevocable, royalty free and nonexclusive licence to copy and use the Documents and to reproduce the designs and works contained in them for all purposes relating to or connected with the Deliverables including (but without limitation) the execution, completion, mortgaging, letting, management, sale, advertisement, extension, alteration, maintenance, reinstatement and repair of the same. The licence will carry the right to grant sublicences and be freely transferable to third parties.
- 4.2 The Supplier will not be liable or responsible for any use of the Documents for any purpose other than that for which the same was originally prepared and provided by the Supplier.
- 4.3 The Intellectual Property Rights in the Documents will remain vested in the Supplier. Insofar as ownership of any Intellectual Property Right in any Document is vested in any person other than the Supplier, including, without limitation, any sub-Supplier, supplier or consultant, the Supplier will procure for the Beneficiary the benefit of such a licence as is referred to in clause 4.1 for the purposes referred to in that clause.
- 4.4 The Supplier warrants to the Beneficiary that the use, by the Beneficiary, of any of the Documents for any purpose provided for in clause 4.1 will not infringe the Intellectual Property Rights of any third party in relation to the Documents.
- 4.5 The Supplier will, if so requested at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Beneficiary or any third party the rights referred to in this clause 4.
- 4.6 The Supplier will provide to the Beneficiary a copy of any of the Documents within 7 days of receipt by the Supplier of a written request from the Beneficiary to do so. The Beneficiary agrees to pay the reasonable copying charges of the Supplier for provision of the same to the Beneficiary.

#### **5. PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Supplier warrants that:
  - 5.1.1 it has maintained and will maintain, during the provision of the Deliverables and the Limitation Period, professional indemnity insurance with an insurer authorised to carry out insurance business in the United Kingdom for an amount not less than [insert] million pounds (£insert), any one claim, in respect of any negligence on the part of the Supplier in the performance of its design obligations under the Contract, so long as such insurance is

available at commercially reasonable rates and on commercially reasonable terms; and

- 5.1.2 cover under the professional indemnity insurance is extended to include the Supplier's liabilities under this deed.
- 5.2 For the purposes of this clause 5, insurance that is subject to any increased or additional premium because of the Supplier's claims record or other acts, omissions or circumstances particular to the Supplier will be deemed to be insurance available at commercially reasonable rates.
- 5.3 As and when required by the Beneficiary, the Supplier will produce for inspection documentary evidence that such insurance is being properly maintained.
- 5.4 If the Supplier is unable to obtain professional indemnity insurance at reasonably commercial rates and on reasonably commercial terms, or if its insurance policy becomes void or unenforceable, it will promptly give notice of this to the Beneficiary.

## **6. ASSIGNMENT**

- 6.1 The Beneficiary may without the consent of the Supplier assign all or any of its rights under this deed to any person provided that no more than two such assignments will be permitted. Any assignment by the Beneficiary to a subsidiary or associated company of the Beneficiary or a member of the same group of companies (as defined by Section 42 of the Landlord and Tenant Act 1954) will not count as an assignment pursuant to this clause. *[Where the Beneficiary is a partnership, add: Any assignment between the Beneficiary and any other partner of [insert the name of the partnership] (or any successor firm or company of [insert the name of the partnership]) will not count towards the number of assignments permitted by this clause].*
- 6.2 The Supplier undertakes for the benefit of the Beneficiary and any lawful assignee not to contend in any proceedings under this deed that any such assignee is to be precluded from recovering any loss resulting from any breach of this deed (whenever happening) by reason that the Beneficiary or any intermediate assignee of the Beneficiary escaped loss resulting from such breach by reason of the disposal of its rights under or interest in the same.

## **7. LIABILITY OF THE SUPPLIER**

- 7.1 The Supplier's liability under this collateral warranty shall be no greater than the Supplier's liability under the Contract.
- 7.2 Unless the contrary is stated, no provision of this deed is intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.
- 7.3 The responsibility of the Supplier under this deed is not to be reduced or in any way released or limited by any enquiry or inspection by or on behalf of any person notwithstanding that such enquiry or inspection may give rise to a claim by the Beneficiary against a third party.
- 7.4 The rights and benefits conferred upon the Beneficiary by this deed are in addition to any other rights and remedies that the Beneficiary may have against the Supplier including (without prejudice to the generality of the foregoing) any remedies in negligence.

## **8. EXPIRY OF DEED**

The Beneficiary will be entitled to commence legal proceedings against the Supplier at any time up to the expiry of the Limitation Period. For the avoidance of doubt, the parties agree that any provision of the Limitation Act 1980 to the contrary will not apply to this deed.

## **9. NOTICES**

9.1 All notices to be given under this deed shall be in writing and shall be delivered personally (which includes delivery by courier) or sent by special delivery post to the party concerned at its address set out in this deed or to such other addresses as may be notified by such party for the purposes of this clause. Notices sent by email or fax shall not be valid for the purposes of this deed.

9.2 Subject to clause 9.3, any notice given under this deed will be deemed to have been served as follows:

9.2.1 if delivered personally, at the time of delivery; and

9.2.2 if sent by special delivery post, upon receipt (to be evidenced by a paper copy or an electronic copy of a proof of delivery issued by the Royal Mail that the relevant notice was served and of the time and date it was served).

9.3 If service occurs either on a Business Day after 4.00pm or on a day which is not a Business Day, then service will be deemed to have occurred on the next Business Day.

## **10. RIGHTS OF THIRD PARTIES**

A person who is not a party to this deed will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **11. JURISDICTION AND LAW**

This deed is governed by and is to be construed according to English law and the English courts will have jurisdiction in relation to all matters arising under it.

## EXECUTION

### By Supplier

Executed as a deed by [**NAME OF**  
**SUPPLIER**] by a director in the presence  
of a witness: )  
)  
)

Signature .....

Name (block  
capitals) .....

**Director**

Witness  
signature .....

Witness name  
(block capitals) .....

Witness address .....

.....

.....

### By Beneficiary

Executed as a deed by [**NAME OF**  
**BENEFICIARY**] by a director in the  
presence of a witness: )  
)  
)

Signature .....

Name (block  
capitals) .....

**Director**

Witness  
signature .....

Witness name  
(block capitals) .....

Witness address .....

.....

.....



## Part 2 - Subcontractor Collateral Warranty

THIS AGREEMENT is made on

### BETWEEN:

- (1) **[NAME OF SUBCONTRACTOR]** (company number) whose registered office is at (insert) OR **[THE SEVERAL PERSONS]** named in the schedule hereto carrying on business in partnership under the name of **[name of Subcontractor's firm]** at **[address]** ("Subcontractor"); and
- (2) **[NAME OF BENEFICIARY]** (company number) whose registered office is at (insert) ("Beneficiary" which term includes its legal successors and permitted assignees); and
- (3) **[NAME OF SUPPLIER]** (company number) whose registered office is at (insert) ("Supplier").

### BACKGROUND:

- A The Supplier intends to procure the Deliverables.
- B By the Contract the Supplier has agreed with the Supplier to provide the Deliverables upon the terms and conditions of the Contract.
- C By the Sub-Contract the Subcontractor has agreed with the Supplier to provide the Sub-Contract Deliverables upon the terms and conditions of the Sub-Contract.
- D It has been agreed that the Subcontractor enters into this deed with the Beneficiary in relation to the Sub-Contract Deliverables.

### WITNESSES as follows:

By this deed and in consideration of the sum of £10 paid by the Beneficiary (receipt of which the Subcontractor hereby acknowledges), the Subcontractor agrees to enter into the obligations set out in this deed.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this deed:

The following words and expressions shall have the following meanings, unless the context requires otherwise:

**"Appointee"** means the Beneficiary or any appointee or nominee of the Beneficiary notified in writing by the Beneficiary to the Subcontractor;

**"Business Day"** means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday;

**"Buyer"** means **[name]**;

**"Contract"** means the contract dated **(insert date)** made between the Buyer and the Supplier;

**"Deliverables"** means the works and services to be undertaken by the Supplier under the Contract.

**"Documents"** means all drawings, CAD materials, plans, designs, diagrams, details, specifications, technical data (including asset data and all other data held in the CAFM system, including paper based data that is held on documentation which has been delivered as part of the Deliverables), bills of quantities, reports and other design information which have been or are hereafter written, prepared or provided by or on behalf of the Subcontractor for any purpose whatsoever in connection with the Deliverables;

**"Intellectual Property Rights"** means copyrights, moral rights, related rights, patents, trademarks, trade names, service marks, design rights, database rights, semiconductor topography rights and any undisclosed or confidential information such as knowhow, trade secrets or inventions (whether patentable or not);

**"Limitation Period"** means the period of 12 years from the date of completion of the Deliverables, as established pursuant to and for the purposes of the Contract (or, if sooner, 12 years after termination of the employment of the Supplier under the Contract);

**"Site"** means [address];

**"Sub-Contract"** means the sub-contract dated (insert date) made between the Supplier and the Subcontractor; and

**"Sub-Contract Deliverables"** means the works and services to be undertaken by the Subcontractor under the Sub-Contract.

## **1.2 Interpretation**

Unless the context requires otherwise:

- 1.2.1 reference to any gender includes all genders, reference to the singular includes the plural (and vice versa) and reference to persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of them have a separate legal personality);
- 1.2.2 reference to a recital or clause [or a schedule] is a reference to a recital to or clause of [or the schedule] to this deed; and
- 1.2.3 reference to any legislative provision will be deemed to include any subsequent re-enactment or amending provision.
- 1.3 The list of contents and clause headings are included for convenience only and do not affect its interpretation.
- 1.4 Where a party comprises two or more persons:
  - 1.4.1 any obligations on the part of that party contained or implied in this deed are deemed to be joint and several obligations on the part of those persons; and
  - 1.4.2 references to that party include references to each and any of those persons.
- 1.5 Periods of time will be calculated in accordance with section 116 of the Housing Grants, Construction and Regeneration Act 1996.

## **2. STANDARD OF CARE**

The Subcontractor warrants and undertakes to the Beneficiary that:

- 2.1 it has carried out and will carry out its duties and obligations under the Sub-Contract subject to and in accordance with the terms of the Sub-Contract; and
- 2.2 in addition to and without derogation from clause 2.1:
  - 2.2.1 it has carried out and will continue to carry out and complete the Sub-Contract Deliverables in a good and workmanlike manner;
  - 2.2.2 it has exercised and will continue to exercise all the reasonable skill, care and diligence to be expected of a competent contractor experienced in providing similar Deliverables for a project of the same size, scope and complexity as that relating to the Deliverables in the design of the Sub-Contract Deliverables or any part thereof insofar as the same have been or will be designed by the Subcontractor or by the Subcontractor's servants, agents, consultants, sub-subcontractors or suppliers on its behalf; and
  - 2.2.3 the Sub-Contract Deliverables will on completion comply in all respects with the requirements of the Sub-Contract.

## **3. MATERIALS**

The Subcontractor further warrants to the Beneficiary that it has not specified or approved for use or used and will not specify or approve for use or use in connection with the Sub-Contract Deliverables any materials which at the time of specification or use (as the case may be):

- 3.1 are known to be deleterious when used in the manner in which they are to be used (either to health and safety or to the durability of the Sub-Contract Deliverables); or
- 3.2 contravene any relevant standard code of practice issued from time to time by the BSI Group or under a European directive relating to standards or good practice; or
- 3.3 do not accord with the guidelines contained in the edition of the publication Good Practice in Selection of Construction Materials (British Council for Offices (BCO)), current at the date of specification or use.

## **4. COPYRIGHT LICENCE**

- 4.1 The Subcontractor hereby grants to the Beneficiary an irrevocable, royalty-free and non-exclusive licence to copy and use the Documents and to reproduce the designs and works contained in them for all purposes relating to or connected with the Deliverables including (but without limitation) the execution, completion, mortgaging, letting, management, sale, advertisement, extension, alteration, maintenance, reinstatement and repair of the same. The licence will carry the right to grant sub-licences and be freely transferable to third parties.
- 4.2 The Subcontractor will not be liable or responsible for any use of the Documents for any purpose other than that for which the same was originally prepared and provided by the Subcontractor.
- 4.3 The Intellectual Property Rights in the Documents will remain vested in the Subcontractor. Insofar as ownership of any Intellectual Property Right in any Document is vested in any person other than the Subcontractor including, without limitation, any sub-Subcontractor, the Subcontractor will procure for the Beneficiary

the benefit of such a licence as is referred to in clause 4.1 for the purposes referred to in that clause.

- 4.4 The Subcontractor warrants to the Beneficiary that the use, by the Beneficiary, of any of the Documents for any purpose provided for in clause 4.1 will not infringe the Intellectual Property Rights of any third party in relation to the Documents.
- 4.5 The Subcontractor will, if so requested at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Beneficiary or any third party the rights referred to in this clause 4.
- 4.6 The Subcontractor will provide to the Beneficiary a copy of any of the Documents within 7 days of receipt by the Subcontractor of a written request from the Beneficiary to do so. The Beneficiary agrees to pay the reasonable copying charges of the Subcontractor for provision of the same to the Beneficiary.

## **5. PROFESSIONAL INDEMNITY INSURANCE**

- 5.1 The Subcontractor warrants that:
  - 5.1.1 it has maintained and will maintain, during the provision of the Sub-Contract Deliverables and the Limitation Period, professional indemnity insurance with an insurer authorised to carry out insurance business in the United Kingdom for an amount not less than (insert) million pounds (£insert), any one claim, in respect of any negligence on the part of the Subcontractor in the performance of its design obligations under the Sub-Contract, so long as such insurance is available at commercially reasonable rates and on commercially reasonable terms; and
  - 5.1.2 cover under the professional indemnity insurance is extended to include the Subcontractor's liabilities under this deed.
- 5.2 For the purposes of this clause 5, insurance that is subject to any increased or additional premium because of the Subcontractor's claims record or other acts, omissions or circumstances particular to the Subcontractor will be deemed to be insurance available at commercially reasonable rates.
- 5.3 As and when required by the Beneficiary, the Subcontractor will produce for inspection documentary evidence that such insurance is being properly maintained.
- 5.4 If the Subcontractor is unable to obtain professional indemnity insurance at reasonably commercial rates and on reasonably commercial terms, or if its insurance policy becomes void or unenforceable, it will promptly give notice of this to the Beneficiary.

## **6. SUBSTITUTION**

- 6.1 The Subcontractor will not exercise nor seek to exercise any right of determination of its employment under the Sub-Contract or to treat the Sub-Contract as having been repudiated by the Supplier or to discontinue the performance of any of the Subcontractor's obligations in relation to the Sub-Contract Deliverables by reason of breach on the part of the Supplier (or otherwise) without giving to the Appointee not less than 21 days' written notice of its intention to do so and specifying in such notice the grounds for the proposed termination. The Subcontractor will for the period of any such notice diligently and properly continue to perform the Subcontractor's obligations under the Sub-Contract.

- 6.2 Any period stipulated in the Sub-Contract for the exercise by the Subcontractor of a right of determination will nevertheless be extended as may be necessary to take account of the period of notice required under clause 6.1.
- 6.3 Compliance by the Subcontractor with the provisions of clause 6.1 will not be treated as a waiver of any breach on the part of the Supplier giving rise to the right of determination nor otherwise prevent the Subcontractor from exercising its rights after the expiration of the notice unless the right of determination will have ceased under the provisions of clause 6.4.
- 6.4 The right of the Subcontractor to determine its employment under the Sub-Contract or to treat the Sub-Contract as having been repudiated or to discontinue the performance of any of its obligations in relation to the Sub-Contract Deliverables will cease if within the period of 21 days referred to in clause 6.1 the Appointee will give written notice to the Subcontractor:
- 6.4.1 requiring the Subcontractor to continue with the performance of all its obligations under the Sub-Contract;
  - 6.4.2 acknowledging that the Appointee is assuming all the obligations of the Supplier under the Sub-Contract; and
  - 6.4.3 undertaking to the Subcontractor to discharge all amounts payable to the Subcontractor under the terms of the Sub-Contract,
- and pays to the Subcontractor any sums which have become due and payable to the Subcontractor under the Sub-Contract but which remain unpaid.
- 6.5 Upon compliance by the Appointee with the requirements of clause 6.4 the Sub-Contract will continue in full force and effect as if the right of determination on the part of the Subcontractor had not arisen and in all respects as if the Sub-Contract had been made between the Appointee and the Subcontractor to the exclusion of the Supplier.
- 6.6 Notwithstanding that as between the Supplier and the Subcontractor the Subcontractor's right of determination of its engagement under the Sub-Contract may not have arisen the provisions of clause 6.5 will nevertheless apply if the Appointee gives written notice to the Subcontractor and the Supplier to that effect and the Appointee complies with the requirements on its part under clause 6.4.
- 6.7 The Subcontractor does not need to be concerned or required to enquire whether, and will be bound to assume that, as between the Supplier and the Appointee the circumstances have occurred permitting the Appointee to give notice under clause 6.6.
- 6.8 By acting in accordance with the provisions of this clause 6 will not by so doing incur any liability to the Supplier.
- 6.9 Unless and until the Appointee has given notice under this clause 6:
- 6.9.1 the Appointee has no liability whatsoever to the Subcontractor in respect of amounts payable to the Subcontractor under the Sub-Contract; and
  - 6.9.2 the Appointee has no authority to issue any direction or instruction to the Subcontractor in relation to the performance of the Subcontractor's duties under the Sub-Contract.
- 6.10 Without prejudice to the provisions of clauses 6.1 to 6.9 inclusive, if prior to the service of any notice under clause 6.4 the employment of the Subcontractor under the Sub-Contract is determined for any reason whatsoever the Subcontractor will, if requested in writing so to do by the Appointee no later than 12 weeks after the date

of such determination, forthwith enter into a new agreement with the Appointee in relation to the carrying out of the Sub-Contract Deliverables on the same terms as the Sub-Contract, but with such revisions as the Appointee and the Subcontractor may reasonably require to reflect altered circumstances and the fact that it is the Appointee and not the Supplier employing the Subcontractor.

## **7. ASSIGNMENT**

- 7.1 The Beneficiary may without the consent of the Subcontractor assign all or any of its rights under this deed to any person provided that no more than two such assignments will be permitted. Any assignment by the Beneficiary to a subsidiary or associated company of the Beneficiary or a member of the same group of companies (as defined by Section 42 of the Landlord and Tenant Act 1954) will not count as an assignment pursuant to this clause.
- 7.2 The Subcontractor undertakes for the benefit of the Beneficiary and any lawful assignee not to contend in any proceedings under this deed that any such assignee is to be precluded from recovering any loss resulting from any breach of this deed (whenever happening) by reason that the Beneficiary or any intermediate assignee of the Beneficiary escaped loss resulting from such breach by reason of the disposal of its rights under or interest in the same.

## **8. LIABILITY OF THE SUBCONTRACTOR**

- 8.1 The Subcontractor's liability under this deed shall be no greater than the Supplier's liability under the Contract
- 8.2 Unless the contrary is stated, no provision of this deed is intended to exclude any obligation or liability which would otherwise be implied whether by statute, the law of contract, tort, equity or otherwise.
- 8.3 The responsibility of the Subcontractor under this deed is not to be reduced or in any way released or limited by any enquiry or inspection by or on behalf of any person notwithstanding that such enquiry or inspection may give rise to a claim by the Beneficiary against a third party.
- 8.4 The rights and benefits conferred upon the Beneficiary by this deed are in addition to any other rights and remedies that the Beneficiary may have against the Subcontractor including (without prejudice to the generality of the foregoing) any remedies in negligence.

## **9. EXPIRY OF DEED**

The Beneficiary will be entitled to commence legal proceedings against the Subcontractor at any time up to the expiry of the Limitation Period. For the avoidance of doubt, the parties agree that any provision of the Limitation Act 1980 to the contrary will not apply to this deed

## **10. CONSENT OF SUPPLIER**

The Supplier consents to the terms of this deed.

## **11. NOTICES**

- 11.1 All notices to be given under this deed shall be in writing and shall be delivered personally (which includes delivery by courier) or sent by special delivery post to the party concerned at its address set out in this deed or to such other addresses as

may be notified by such party for the purposes of this clause. Notices sent by email or fax shall not be valid for the purposes of this deed.

11.2 Subject to clause 11.3, any notice given under this deed will be deemed to have been served as follows:

11.2.1 if delivered personally, at the time of delivery; and

11.2.2 if sent by special delivery post, upon receipt (to be evidenced by a paper copy or an electronic copy of a proof of delivery issued by the Royal Mail that the relevant notice was served and of the time and date it was served).

11.3 If service occurs either on a Business Day after 4.00pm or on a day which is not a Business Day, then service will be deemed to have occurred on the next Business Day.

## **12. RIGHTS OF THIRD PARTIES**

A person who is not a party to this deed will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **13. JURISDICTION AND LAW**

This deed is governed by and is to be construed according to English law and the English courts will have jurisdiction in relation to all matters arising under it.

**Part 1: List of Partners of the Subcontractor**

*[Insert names of equity partners of the Subcontractor]*



## EXECUTION

### By Subcontractor

Executed as a deed by [**NAME OF**  
**SUBCONTRACTOR**] by a director in the  
presence of a witness: )  
)  
)

Signature .....

Name (block  
capitals) .....

**Director**

Witness  
signature .....

Witness name  
(block capitals) .....

Witness address .....

.....

.....

### By Beneficiary

Executed as a deed by [**NAME OF**  
**BENEFICIARY**] by a director in the  
presence of a witness: )  
)  
)

Signature .....

Name (block  
capitals) .....

**Director**

Witness  
signature .....

Witness name  
(block capitals) .....

Witness address .....

.....

.....

## By Supplier

Executed as a deed by [**NAME OF** )  
[**SUPPLIER**] by a director in the presence )  
of a witness: )

Signature .....

Name (block  
capitals) .....

**Director**

Witness  
signature .....

Witness name .....  
(block capitals)

Witness address .....

.....

.....