

DATED

2020

(1) [SUBCONTRACTOR]

AND

(2) [CONTRACTOR]

AND

(3) [CLIENT] COUNCIL

DEED OF SUB-CONTRACTOR COLLATERAL WARRANTY

relating to the provision of

[]

Date of Agreement:
Project: []
Works: [] (as more particularly described in the Building Contract)
Subcontract Works: [] (as more particularly described in the Subcontract)
Client: [] COUNCIL of []
Contractor: [] Company Registration Number: [] of/whose registered office is at: []
Subcontractor: [] Company Registration Number: [] of/whose registered office is at: []
Building Contract dated: []
Subcontract dated: []
Professional/Contractor's Indemnity Insurance: [£2,000,000.00] million (minimum cover)

1 INFORMATION ON PAGE 2

The information completed on page 2 of this agreement forms part of this agreement.

2 BACKGROUND

- 2.1** The Client has appointed the Contractor under the Building Contract to carry out the Works.
- 2.2** The Contractor has entered into, or intends to enter into, the Subcontract with the Subcontractor for the design (if applicable) and construction of the Subcontract Works.

3 CONSIDERATION

This agreement is made on the date appearing on page 2 between the Contractor, the Subcontractor, and the Client in consideration of the payment of £1 by the Client to the Subcontractor (receipt of which the Subcontractor hereby acknowledges).

4 WARRANTY AND LIABILITY

- 4.1** The Subcontractor warrants to the Client that it has complied, and will at all times comply, with the terms of the Subcontract and any specifications or requirements included or referred to in the Subcontract and that it has exercised and will continue to exercise the degree of skill, care and diligence reasonably to be expected of a competent Subcontractor, and (to the extent that the Subcontractor is responsible for any design under the Subcontract) the degree of skill, care and diligence reasonably to be expected of a competent professional designer or combination of designers holding himself or themselves out as being experienced in carrying out works [and design in relation to works] of a similar size, scope and nature to the Subcontract Works.
- 4.2** The Subcontractor has no liability under this agreement which is greater or of longer duration than it would have had if the Client had been a party to the Subcontract as joint employer and the Subcontractor shall be entitled in any action or proceedings by the Client under this agreement to rely on any limitation in the Subcontract and to raise the equivalent rights in defence of liability (but excluding set offs and counterclaims) as it would have had if the Client had been named as such under the Subcontract. Upon the expiration of 12 years from the date of completion of the Subcontract Works in accordance with the Subcontract the liability of the Subcontractor under this agreement shall cease save in relation to any claims made by the Client against the Subcontractor and previously notified in writing by the Client to the Subcontractor.

5 STANDARDS OF PRODUCTS AND MATERIALS

- 5.1** The Subcontractor warrants to the Client that (unless otherwise authorised or instructed by or on behalf of the Client):
 - 5.1.1** in relation to any part of the Subcontract Works for which the Subcontractor is responsible for the design, it has exercised, and will exercise, all reasonable skill, care and diligence in accordance with this agreement to see that it has not specified, selected, approved or authorised for use and will not specify, select, approve or authorise for use; and
 - 5.1.2** it has not used, and will not use, in connection with the Subcontract Works:

any product or material or building practical or technique which is prohibited by the Subcontract or is not in conformity with relevant British or European Union Standards and/or Codes of Practice or which at the time of specification, selection, approval or authorisation is otherwise generally known within the UK construction industry to be deleterious or hazardous to health and safety or to the durability of the Subcontract Works.

- 5.2** If in the performance of its duties under the Subcontract the Subcontractor becomes aware that it or any other person has specified, used, authorised or approved the specification or use by others of any such product or materials, building practices or techniques, the Subcontractor will notify the Client forthwith. This clause does not create any additional duty for the Subcontractor to inspect or check the work of others which is not required by the Subcontract.

6 INSURANCE

6.1 The Subcontractor covenants:

- 6.1.1 in relation to any design of the Subcontract Works for which the Subcontractor is responsible, to take out and maintain with reputable insurers in the UK insurance market professional indemnity insurance in an amount of not less than that stated on page 2 for each and every claim or series of claims arising out of the same originating cause, for a period expiring no earlier than 12 years after the date of completion of the Subcontract Works in accordance with the Subcontract, provided always that such insurance continues to be available in the UK insurance market at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Subcontractor's own claims record or other acts or omissions particular to the Subcontractor shall be deemed to be within commercially reasonable rates;
- 6.1.2 to inform the Client or its assignees in writing immediately of any failure or inability to maintain insurance in accordance with clause 6.1.1, and of any circumstances likely to render such insurance void or voidable, in order that the Subcontractor and the Client can discuss the means of best protecting their respective positions in the absence of such insurance;
- 6.1.3 when reasonably requested by the Client, to produce for inspection documentary evidence that its professional indemnity insurance cover is being maintained properly and that payment has been made in respect of the last preceding premium.

7 DOCUMENTS

- 7.1** In relation to all drawings, details, plans, reports, models, specifications, bills of quantities, calculations and other documents of any nature whatsoever which have been or are hereafter provided by the Subcontractor in the course of performing its obligations under the Subcontract ("Documents") the Subcontractor hereby grants, or agrees to grant, to the Client a royalty-free non-exclusive licence to use and reproduce all Documents for any purpose whatsoever connected with the Project and such other purposes as are reasonably foreseeable including but without limitation, the carrying out, completion, maintenance, letting, advertisement, modification, extension, reinstatement, reconstruction and repair of the Subcontract Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties but shall not entitle the owner of such licence or of any sub-licence to reproduce the designs contained in the Documents. Such licence shall take effect from the date of this agreement or (in relation to documents not yet in existence)

from the date of the creation of the relevant Document and shall continue notwithstanding any termination of this agreement. Neither the Client nor any recipient of any sub-licence under this clause shall hold the Subcontractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it.

7.2 The Subcontractor agrees, on reasonable request at any time, and following reasonable written prior notice, to give the Client or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Client's expense.

7.3 The Subcontractor warrants to the Client that it has used the standard of skill, care and diligence as set out in clause 4.1 to see that the Documents (save to the extent any duly appointed sub-subcontractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Subcontract Works will not infringe the rights of any third party.

8 ASSIGNMENT

8.1 The Client shall be entitled to assign the benefit of this agreement or any rights arising hereunder to a purchaser, mortgagee or tenant of the whole or any part of the Project twice only without the consent of the Subcontractor provided that the Subcontractor shall be entitled to receive notice of such an assignment in writing within a reasonable period of the assignment taking place. The Subcontractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this agreement (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder 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 Subcontract Project or the Project or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8.2 Notwithstanding clause 8.1, the Client may assign the benefit of this agreement without restriction to any company within the same "group" as the Client (as defined by Section 42 of the Landlord and Tenant Act 1954).

9 INSPECTION OF DOCUMENTS

The Subcontractor's liabilities under this agreement will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Client may make or procure to be made for its benefit or on its behalf.

10 SUCCESSORS

References to the Client shall include the person or persons from time to time entitled to the benefit of this agreement.

11 NOTICES

Any notice, request, demand, consent or approval given under or in connection with this agreement must be given or confirmed in writing. Any such notice, request, demand, consent or approval shall be delivered personally or addressed to the respective address of the parties set out in this agreement or to the registered office or the principal business address of either party for the time being and, if sent by post, shall be sent by first class pre-paid post or recorded delivery and shall be deemed to have been received on the second working day after the same shall have been posted.

12 THIRD PARTY RIGHTS

This agreement is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

13 APPLICABLE LAW AND JURISDICTION

This agreement will be construed in accordance with English law and be in all respects subject to the jurisdiction of the English courts.

IN WITNESS whereof this agreement has been executed as a deed and delivered on the date stated above

EXECUTED AS A DEED by the **SUBCONTRACTOR** by the signatures of:

Director

Director

EXECUTED AS A DEED by the **CONTRACTOR** by the signatures of:

Director

Director

EXECUTED AS A DEED by the **CLIENT** by the signatures of:

Authorised Signatory

Authorised Signatory