[Date]

(1) [SUB-CONTRACTOR]

and

(2) [BENEFICIARY]

SUB-CONTRACTOR'S DEED OF WARRANTY
in favour of a [mortgagee] [purchaser] [tenant]
relating to a development at [●]

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THIS DEED OF WARRANTY is dated [●] and made between:

(1) the Sub-Contractor;

(2) the Beneficiary,

(whose names and addresses are set out in the schedule (**Project Data**)).

BACKGROUND

(A) The Developer and the Main Contractor have entered into a construction contract (**Main Contract**), under which the Main Contractor has agreed to carry out and complete the works (**Works**) required for the purposes of the Development (which expression means the Site and the Works or either of them as the case requires).

(B) The Main Contractor and the Sub-Contractor have entered into a sub-contract (**Sub-Contract**), under which the Sub-Contractor has agreed to design or complete the design of and to supply and erect or install the Sub-Contact Works as part of the Works.

TERMS AGREED

IT IS AGREED in consideration of the sum of £1 paid by the Beneficiary, receipt of which the Contractor acknowledges, as follows:

1. **Definitions and interpretation**

1.1 In this Deed the following words shall have the following meanings:

Development	includes part of the Development;
Group Company	means any subsidiary company or holding company of the Beneficiary, or another subsidiary or holding company of such company, as **subsidiary** and **holding company** are defined in section 1159, Companies Act 2006, (as amended);
Mortgagee	means a person having or acquiring a mortgage or charge over the Development, or providing finance in respect of the Developer, or any part of it;
person	includes a firm and any entity having legal capacity;
Purchaser	means a person having or acquiring a freehold interest in the Development or any part of it, or a purchaser for a capital consideration of a leasehold interest;
Tenant	means a person having or acquiring a leasehold interest in the Development or any part of it (other than a Purchaser).

1.2 Any term importing gender shall gender any gender.

1.3 Any term importing the singular includes the plural and vice versa.

1.4 Any reference to any clause or schedule or appendix is a reference to such clause or schedule or appendix of or to this Deed.

1.5 Clause headings do not form part of nor affect the interpretation of this Deed.

2. Primary obligations

2.1 Performance of the Sub-Contract

(a) The Sub-Contractor warrants that it;

(i) has carried out or will carry out and complete the Sub-Contract Works in accordance with and subject to the terms of the Sub-Contract; and

(ii) has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Sub-Contract.

(b) The Sub-Contractor warrants to the Beneficiary that the Sub-Contractor has carried out or will carry out and complete the Sub-Contract Works in accordance with and subject to the terms of the Sub-Contract and has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Sub-Contract and (without qualification to or derogation from the foregoing) has exercised and will exercise all reasonable skill and care and diligence in and about the performance of the Sub-Contract Works.

2.2 Design warranty

The Sub-Contractor warrants that all reasonable skill and care have been and will be exercised in the following, to the extent of the Sub-Contractor's responsibility for the same:

(a) the design of the Sub-Contract Works;

(b) the selection of goods, materials, equipment or plant for the Sub-Contract Works; and

(c) the satisfaction of any performance requirement or specification of or for the Sub-Contract Works,

and for this purpose, the Sub-Contractor is responsible for any design or the selection of any goods, materials, equipment or plant, whether such design or selection is produced or made by the Sub-Contractor or by another person on the Sub-Contractor's behalf.

2.3 Prohibited materials

The Sub-Contractor warrants that it has not specified and shall not specify for use and has not used and shall not use in the Development any Prohibited Materials.

3. Copyright

3.1 The Sub-Contractor grants to the Beneficiary an irrevocable, non-exclusive, royalty-free, assignable licence to use and reproduce any drawings, calculations, specifications and/or other documents produced by the Sub-Contractor under the Sub-Contract and any designs contained in them (**Documents**) for any purpose connected with the Development (other than by the reproduction of any such designs in any extension to the Development) and to grant sub-licences in the terms of this licence, but copyright in the Documents shall remain vested in the Sub-Contractor.

3.2 The Sub-Contractor will not be liable for any use of the Documents for any purposes other than those for which the same are or were produced.

2.3 The Sub-Contractor warrants that the use of the Documents for the purposes of the Development will not infringe the rights of any third person.

3.3 The Beneficiary shall on written request and upon paying a reasonable copying charge, be entitled to be supplied by the Sub-Contractor with full and proper copies of the Documents.

4. **Insurance**

4.1 The Sub-Contractor warrants that there is in force a policy of insurance covering the liabilities of the Sub-Contractor under the Sub-Contract and under this Deed in respect of the risks usually covered by such insurance, conforming to the relevant requirements specified in the Project Data.

4.2 The Sub-Contractor agrees to maintain such insurance continuously in place for the relevant period specified in the Project Data, provided such insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms available.

4.3 Whenever required to do so, the Sub-Contractor shall provide to the Beneficiary documentary evidence that such insurance is being maintained.

5. **[Substitution provisions]**

5.1 [If the employment of the Main Contractor under the Main Contract is terminated, the Beneficiary may within 28 days after the date of termination give notice requiring the Sub-Contractor to enter into a new contract (**New Contract**) with the Beneficiary or its appointee on the same terms as the Sub-Contract, executed as a deed, but with such revisions as the Beneficiary may reasonably require to reflect altered circumstances, for the continuation and completion of the Sub-Contract Works; and the Sub-Contractor shall comply with such notice.

5.2 Upon the execution of the New Contract the Beneficiary shall pay to the Sub-Contractor a sum equal to the amount due to the Sub-Contractor under the Sub-Contract (less any retention, which shall be payable under the New Contract as if the work or materials to which such retention relates had been supplied under the New Contract).

5.3 Upon the execution of the New Contract, the Beneficiary shall pay the Sub-Contractor (to the extent not included in the sum payable under clause 5.2) the amount of any:

(a) demobilisation costs incurred in consequence of the termination of the Main Contract; and

(b) remobilisation costs incurred in consequence of the Beneficiary's notice given under clause 5.1,

to the extent reasonably or necessarily incurred by the Sub-Contractor.]

[***Note: Clause 5 shall be included in warranties in favour of the Developer and Mortgagees and Purchasers providing finance for the Development if the Developer shall so require***]

6. **[Deeds of warranty]**

6.1 [The Sub-Contractor shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds in the terms of this Deed, mutatis mutandis, but excluding clause 5 and this clause 6, in favour of each or any Mortgagee and/or Purchaser and/or Tenant.

6.2 If the Sub-Contractor fails to execute and deliver any such deed pursuant to clause 6.1 within seven days of the Beneficiary's written request the Beneficiary may execute such deed on the Sub-Contractor's behalf and the Sub-Contractor hereby appoints the Beneficiary as the Sub-Contractor's attorney for the purpose of executing any such deed. The Sub-Contractor agrees to ratify and confirm any act done by the Beneficiary pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4 of the Powers of Attorney Act 1971.]

6.3 Any New Contract under clause 5 shall incorporate the terms of this clause 6.

[***Note: Clause 6 shall be included in warranties in favour of the Developer and Mortgagees and Purchasers if the Developer shall so require***]

7. **Assignment**

7.1 The Beneficiary may assign all of its rights under this Deed:

(a) To any Mortgagee and by way of re-assignment on redemption; and

(b) by absolute assignment to any Group Company of the Beneficiary; and

(c) by absolute assignment on two other occasions only.

7.2 In this Deed references to the Beneficiary include where the context admits its permitted assignees, but not so as to permit more than two assignments under clause 7.1(c).

7.3 The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 7.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee under this Deed.

8. **Extraneous rights**

8.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor to the Beneficiary.

8.2 No approval or inspection of the Development or of any designs or specifications nor the testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Sub-Contractor arising under this Deed.

9. **Contracts (Rights of Third Parties) Act 1999**

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

10. **Expiry of warranty**

No proceedings shall be commenced against the Sub-Contractor under this Deed more than 12 years after the practical completion of the Works under the Construction Contract (or, if earlier, more than 12 years after the employment of the Sub-Contractor under the Sub-Contract is terminated).

11. **Service of notice**

Any notice to be served under this Deed must be in writing and must be served by hand or by recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect two days after posting, excluding Saturdays, Sundays and statutory holidays.

12. **Governing law**

12.1 The law of this Deed is English law and the English Courts shall have exclusive jurisdiction with regard to all matters arising under it.

12.2 The Project Data are part of this Deed and the definitions given in the Project Data and in the Recitals apply to this Deed.

IN WITNESS WHEREOF this document has been executed and delivered as a Deed.

THE SCHEDULE

Project Data

Date of this Deed	[●]
Developer	[●] (incorporated and registered in England and Wales with Company Number [●]) whose registered office is situate at [●]
Main Contractor	[●] (incorporated and registered in England and Wales with Company Number [●]) whose registered office is situate at [●]
Sub-Contractor	[●] (incorporated and registered in England and Wales with Company Number [●]) whose registered office is situate at [●]
Beneficiary	[●] (incorporated and registered in England and Wales with Company Number [●]) whose registered office is situate at [●]
Development	[●]
Site	[●]
Date of Main Contract	[●]
Sub-Contract Works	[●]
Beneficiary's interest	[Mortgagee] [Purchaser of [[●] forming part of] the Development] [Tenant of [[●] forming part of] the Development] [●]
Clause 4: (Insurance)	[Professional indemnity insurance] [Public and product liability insurance]: (a) limit of indemnity: not less than £[●],000,000.00 for any occurrence or series of occurrences arising out of each and every event, provided that such limit of indemnity may be in the aggregate for each year of insurance in respect of claims for pollution, contamination and date recognition; (b) to be maintained until 12 years after the practical completion of the whole of the Works.

Prohibited Materials

Any materials:

(a) which by their nature or application contravene any British Standard or EU equivalent;

(b) which contravene the recommendations of the British Council for Offices' publication Good Practice in the Selection of Construction Materials (2011); or

(c) which are generally considered to be deleterious within the construction design professions in the UK.

SIGNATURE PAGE

EXECUTED as a deed [and delivered by]	)	
for and on behalf of	)	…….
[**THE SUB-CONTRACTOR**]	)	Director
acting by a director	)	
	)	

in the presence of:

…….
Name

…….
Address

…….
Occupation

EXECUTED as a deed [and delivered by]	)	
for and on behalf of	)	…….
[**THE BENEFICIARY**]	)	Director
acting by a director	)	
	)	

in the presence of:

…….
Name

…….
Address

…….
Occupation