

DATED

2020

(1) [CONTRACTOR]

and

(2) [CLIENT] COUNCIL

and

(3) [BENEFICIARY]

DEED OF CONTRACTOR COLLATERAL WARRANTY

relating to the provision of

[]

Date of Agreement:
Project: []
Works: [] (as more particularly described in the Building Contract)
Client: [] COUNCIL of []
Contractor: [] Company Registration Number: [] of/whose registered office is at: []
Beneficiary: [] Company Registration Number: [] of/whose registered office is at: []
Building Contract dated: [] Parties: The Client (1) and the Contractor (2)
Professional/Contractor's Indemnity Insurance: [£2,000,000.00] million (minimum cover)

1 INFORMATION

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

2 BACKGROUND

2.1 The Contractor has been appointed by the Client under the Building Contract to undertake the construction and the design (if any) of the Works.

2.2 The Beneficiary has an actual or prospective interest in the Project.

3 CONSIDERATION

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

4 WARRANTY AND LIABILITY

4.1 The Contractor warrants to the Beneficiary that it has complied, and will at all times comply, with the terms of the Building Contract and any specifications or requirements included or referred to in the Building Contract and that it has exercised, and will continue to exercise, the degree of skill, care and diligence reasonably to be expected of a competent contractor, and (to the extent that the Contractor is responsible for any design under the Building Contract) the degree of skill, care and diligence reasonably to be expected from a competent professional designer or combination of designers, holding himself or themselves out as being competent to carry out the construction and design of the Works.

4.2 The Contractor has no liability under this agreement which is greater or of longer duration than it would have had if the Beneficiary had been a party to the Building Contract as joint employer and the Contractor shall be entitled in any action or proceedings by the Beneficiary under this agreement to rely on any limitation in the Building Contract and to raise the equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have had if the Beneficiary had been named as the Client under the Building Contract. It shall not be a defence to any action brought against the Contractor under this Agreement that the Client has suffered no loss under the Building Contract previously. Upon the expiration of 12 years from the date of completion of the Works in accordance with the Building Contract the liability of the Contractor under this agreement shall cease, save in relation to any claims made by the Beneficiary against the Contractor and notified previously in writing by the Beneficiary to the Contractor.

5 STANDARDS OF PRODUCTS AND MATERIALS

5.1 The Contractor warrants to the Beneficiary that (unless otherwise authorised or instructed by or on behalf of the Client):

5.1.1 in relation to any part of the Works for which the Contractor 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 Works any product or material or building practice or technique which is prohibited by the Building Contract 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 Works.

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

6 INSURANCE

6.1 The Contractor covenants:

- 6.1.1 in relation to any design of the Works for which the Contractor is responsible, to take out and maintain with reputable insurers in the UK insurance market professional indemnity insurance in an amount 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 practical completion of the Works in accordance with the Building Contract, 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 Contractor's own claims record or other acts or omissions particular to the Contractor shall be deemed to be within commercially reasonable rates;
- 6.1.2 to inform the Beneficiary 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 Contractor and the Beneficiary can discuss the means of best protecting their respective positions in the absence of such insurance; and
- 6.1.3 when reasonably requested by the Beneficiary 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 Contractor in the course of performing its obligations under the Building Contract ("Documents") the Contractor hereby grants, or agrees to grant, to the Beneficiary 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 Project. 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 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 Beneficiary nor any recipient of any sub-licence under this clause shall hold the Contractor 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 Contractor agrees, on reasonable request at any time, and following reasonable written prior notice, to give the Beneficiary or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Beneficiary's expense.
- 7.3** The Contractor warrants to the Beneficiary 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-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

8 ASSIGNMENT

- 8.1** The benefit of this agreement may be assigned by the Beneficiary to any beneficiary having a bona fide actual or prospective legal or commercial interest in the Project or any part [twice] only without the consent of the Contractor provided that the Contractor shall be entitled to receive notice of such an assignment in writing within a reasonable period of the assignment taking place. The Contractor 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 Works or that that original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.
- 8.2** Notwithstanding clause 8.1 the Beneficiary may assign the benefit of this agreement without restriction to any company within the same "group" as the Beneficiary (as defined by Section 42 of the Landlord and Tenant Act 1954)

9 INSPECTION OF DOCUMENTS

The Contractor'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 inquiry or inspection which the Beneficiary may make or procure to be made for its benefit or on its behalf.

10 SUCCESSORS

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

11 SUBCONTRACTORS

Following a written request from the Beneficiary the Contractor will (unless it has already done so) use all reasonable endeavours to procure that its subcontractors (if any) execute deeds of warranty in the same or equivalent terms as are set out in this agreement in favour of any person in whose favour the Building Contract obliged the Contractor to give, or procure the giving, of such warranties.

12 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 second working day after the same shall have been posted.

13 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.

14 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 **CONTRACTOR** by the signatures of:

Director

Director

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

Director

Director

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

Authorised Signatory

Authorised Signatory