



PART 1 – THIRD PARTY RIGHTS NOTICE

[INSERT ADDRESSEE DETAILS]

[INSERT DATE] 20[]

Dear Sirs

| | |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title: | Third Party Rights Notice |
| Client: | The Secretary of State for Justice of the Ministry of Justice of 102 Petty France, Westminster, London SW1H 9AJ (with such term including its successors in title and permitted assigns) |
| Constructor: | [INSERT NAME OF CONSTRUCTOR] (company number [INSERT COMPANY NUMBER]) whose registered office is at [INSERT ADDRESS] (with such term including its successors in title and permitted assigns) |
| Sub-Consultant: | [INSERT NAME] (company number [INSERT COMPANY NUMBER], whose registered office is at [INSERT ADDRESS] dated [INSERT DATE] |
| Construction Contract: | means the FAC-1 Contract and any Orders and/or Notice to Proceed issued pursuant to the FAC-1 Contract; |
| FAC-1 Contract: | means the contract dated [INSERT DATE] between the Client and the Constructor based on an amended form of the ACA FAC-1 Framework Alliance Contract; |
| Notice to Proceed: | means a notice to proceed issued pursuant to the terms of the FAC-1 Contract in respect of the Project based on the PPC2000 (Amended 2013) – ACA Standard Form of Contract for Project Partnering (as amended) dated [INSERT DATE] and made between (1) the Client; (2) the Constructor and (3) [insert other partnering team members] in connection with the Project; |
| Order: | means an order issued pursuant to the terms of the FAC-1 Contract in respect of the Project; |
| Project: | Has the meaning given to such term in the Construction Contract |
| Appointment: | An appointment [in the form of a [INSERT DETAILS]] between (1) the Constructor and (2) the Sub-Consultant dated [INSERT DATE] |
| Services: | [INSERT DESCRIPTION OF THE SERVICES] (as more particularly described in the Appointment) |
| P11 Indemnity Amount: | [[INSERT AMOUNT IN WORDS] (£[INSERT AMOUNT AS A NUMBER in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent) and in the annual aggregate] ¹ |
| Beneficiary: | [The Client][[INSERT NAME] ([[INSERT COMPANY NUMBER] and] whose [registered] address is set [INSERT ADDRESS]] ² |

This notice of third party rights (the "**Third Party Rights Notice**") is issued pursuant to the Appointment and relates to the above-mentioned Construction Contract and Project. Unless otherwise stated, all capitalised terms in this Third Party Rights Notice have the meaning ascribed to them in the Appointment.

Pursuant to the rights granted to us pursuant to and in accordance with clause [INSERT CLAUSE REFERENCE] of the Appointment, we hereby notify you, as the Sub-Consultant under the Appointment, that the benefits of the rights set out in [INSERT LOCATION] of the Appointment (the "**Third Party Rights Schedule**") are hereby vested in the Beneficiary for the purposes of [INSERT CLAUSE REFERENCE] of the Appointment.

The Beneficiary and its permitted assignees shall accordingly be entitled to enforce the rights set out in the Third Party Rights Schedule pursuant to and in accordance with the provisions of the Third Party Rights Schedule. For the purposes of this Beneficiary, the provisions of paragraph [7] of the Third Party Rights Schedule [do / do not] apply.

Notwithstanding whether you sign and return the acknowledgement below to us or not, the rights granted to the Beneficiary by this Third Party Rights Notice shall take effect from the date on which you receive the same

¹ **DRAFTING NOTE:** Update to reflect the coverage in the Appointment.

² **DRAFTING NOTE:** Update accordingly.



(or are deemed to receive the same in accordance with the provisions of the Appointment). We should, however, be grateful if you sign and return a copy of this notice in acknowledgement of receipt.

Yours faithfully

For and on behalf of [INCLUDE DETAILS OF THE SUB-CONSULTANT]

cc. [INSERT CONTACT DETAILS OF CONTACT AT BENEFICIARY]

We hereby confirm receipt of the "Third Party Rights Notice" granting third party rights to [INSERT DETAILS OF BENEFICIARY] pursuant to and in accordance with an appointment [in the form of a [INSERT DETAILS]] between (1) [INSERT NAME OF CONSTRUCTOR] and (2) [INSERT NAME OF SUB-CONSULTANT] dated [INSERT DATE].

Signed [Partner][Member][Director]

PART 2 – THIRD PARTY RIGHTS SCHEDULE

THIRD PARTY RIGHTS PROVIDED BY THE SUB-CONSULTANT IN FAVOUR OF A BENEFICIARY PURSUANT TO AND IN ACCORDANCE WITH A THIRD PARTY RIGHTS NOTICE

The Constructor and the Sub-Consultant acknowledge and agree that:

1. INTERPRETATION

1.1 In this Schedule:

"Appointment" means the appointment identified as such in the Third Party Rights Notice;

"Assignee" has the meaning given to such term at paragraph 6.2;

"Beneficiary" is the party identified as such in the Third Party Rights Notice (with such term including its successors in title and permitted assigns);

"Construction Contract" means the contract identified as such in the Third Party Rights Notice;

"Constructor" is the party identified as such in the Third Party Rights Notice (with such term including its successors in title and permitted assigns);

"End of Liability Date" is the date twelve (12) years from the later of:

- (a) the last date on which the Sub-Consultant performed any works and/or services in connection with the Project; and
- (b) the date on which a written notice is issued to the Constructor confirming that the Constructor has fulfilled its obligations pursuant to clause 21.5 of the Construction Contract as determined pursuant to and in accordance with the Construction Contract;

"Project" means the project identified as such in the Third Party Rights Notice;

"Materials" means all technical information, drawings, models, plans, specifications, schedules, digital models and databases (provided that the same do not contain any personal data) (including relating to building information modelling), costings, budgets, calculations, bill of quantities, estimates and valuations (except where the same relate to documents produced solely for the Sub-Consultant's own internal pricing purposes), photographs, brochures, reports, meeting notes, and any other materials, in any medium provided by or prepared on behalf of the Sub-Consultant (in each case, as may be amended or replaced from time to time) in connection with the Appointment and/or the Project;

"PII Indemnity Amount" means the level (and type) of professional indemnity insurance specified in the Third Party Rights Notice (which shall be no greater than that (if any) specified in the Appointment).

"Reasonable Rates and Terms" has the meaning given to such term in paragraph 4.1;

"Schedule" means this schedule of third party rights;

"Services" means the services identified as such in the Third Party Rights Notice;

"Third Party Rights Notice" means the notice issued to the Sub-Consultant pursuant to and in accordance with the provisions of the Construction Contract and the Appointment; and



- 1.2 In interpreting this Schedule:
- 1.2.1 if the Sub-Consultant is a partnership then the provisions of this Schedule will bind each and every partner in that partnership jointly and severally;
 - 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "person" shall be deemed to include any individual firm unincorporated association or body corporate;
 - 1.2.3 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
 - 1.2.4 headings to paragraphs shall be disregarded when construing this Schedule; and
 - 1.2.5 where the words "include(s)" or "including" are used in this Schedule, they are deemed to have the words "without limitation" following them.

1. SKILL AND CARE

- 1.1 The Sub-Consultant undertakes with and warrants to the Beneficiary that:
- 1.1.1 it has carried out and will continue to carry out the Services and its duties and obligations on its part to be performed under the Appointment in accordance with the Appointment;
 - 1.1.2 in providing the Services and any services that are ancillary or otherwise related to the Appointment under or in connection with the Appointment (including in relation to designs prepared by or on behalf of the Sub-Consultant in connection with the Project and in respect of the preparation of any reports, summaries, recommendations and/or any other analogous deliverable in relation to the Project) it has exercised and will exercise all of the reasonable skill, care, diligence and prudence to be expected of an appropriately qualified, skilled, competent and experienced professional (and, in the context of any design provided by or on behalf of the Sub-Consultant, professional designer) experienced in the carrying out of such activities for projects of a similar size, scope, value, character and complexity to the Project; and
 - 1.1.3 the Sub-Consultant has exercised and will continue to exercise the standard of skill and care referred to in paragraph 2.1.2 to ensure that it has not and shall not specify, authorise, cause or allow to be used in the Project any products or materials which:
 - (a) do not conform with British or European Standards (where appropriate) or industry codes of practice (or where no such standard exists do not conform with a British Board of Agrément Certificate);
 - (b) are generally known in the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures;
 - (c) do not comply with the guidance set out in the publication "Good Practice in the Selection of Construction Materials 2011" published by the British Council of Offices and/or
 - (d) are specifically prohibited by the Appointment and/or the Construction Contract.
- 1.2 The Sub-Consultant shall have no greater liability to the Beneficiary, and shall owe to the Beneficiary no greater a standard of duty under this Schedule than would have been owed if the Beneficiary had been named as the Constructor under the Appointment. If a claim is brought against the Sub-Consultant by the Beneficiary, the Sub-Consultant may rely on any defence or limitation available to



it under the terms of the Appointment, save that the Sub-Consultant may not raise by way of defence or set-off or abatement or bring any counterclaim in respect of any monies due to it under or in connection with the Appointment. The Sub-Consultant may not plead a "no-loss" defence, including one based on an argument that since the Constructor under the Appointment has not suffered a loss then the Beneficiary is not entitled to recover a loss it has suffered or that the Beneficiary's loss is irrecoverable because it would not be foreseeable that the Constructor under the Appointment would suffer such a loss.

2. COPYRIGHT

- 2.1 The Sub-Consultant grants to the Beneficiary and its nominees with full title guarantee an irrevocable, royalty-free, worldwide and non-exclusive licence in perpetuity to use, copy and reproduce the Materials for any purpose whatsoever, including in relation to the Project and (but without limitation) the design, construction, completion, operation, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of any part of the same, with this licence including a licence to grant sub-licences and to transfer the same to third parties.
- 2.2 The Sub-Consultant shall not be liable for any such use by the Beneficiary or its nominees of any Materials for any purpose other than that for which the same were prepared by the Sub-Consultant.
- 2.3 The Beneficiary shall on written request, be entitled to be supplied by the Sub-Consultant with electronic copies of any Materials at no cost to the Beneficiary at cost to the Beneficiary.
- 2.4 The Sub-Consultant unconditionally and irrevocably waives (and shall ensure that any sub-contractors waive), in respect of the Materials, all moral rights to which the Sub-Consultant (or any relevant sub-contractors) may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 as amended from time to time or under any other applicable laws.
- 2.5 The waiver referred to in paragraph 3.4 is made in favour of the Beneficiary and shall extend to the Beneficiary's sub-licensees, assignees and successors in title in accordance with this Schedule.
- 2.6 The Sub-Consultant warrants that:
 - 2.6.1 the Materials (save to the extent that duly authorised sub-contractors have been used to prepare the same) are the Sub-Consultant's own original work and that in any event their use in connection with the Services and/or the Project will not infringe the rights of any third party; and
 - 2.6.2 where duly authorised sub-contractors are used their work will be original and that the Sub-Consultant will obtain the necessary consents in relation to paragraph 3.1.

3. INDEMNITY INSURANCE

- 3.1 The Sub-Consultant shall maintain professional indemnity insurance covering (inter alia) its potential liability under this Schedule for the given insurance policy year in the event that it breaches this Schedule upon market norm terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than the PII Indemnity Amount until the End of Liability Date, provided always that such insurance is available at commercially affordable rates and on terms such that members of the Sub-Consultant's profession generally carry such insurance ("**Reasonable Rates and Terms**").
- 3.2 Any increased or additional premium required by insurers by reason of the Sub-Consultant's own claims record or other acts, omissions, matters or things particular to the Sub-Consultant shall be deemed to be within Reasonable Rates and Terms.



- 3.3 The Sub-Consultant shall immediately inform the Beneficiary if such insurance ceases to be available upon Reasonable Rates and Terms in order that the Sub-Consultant and the Beneficiary can discuss means of best protecting their respective positions in respect of the Appointment and the wider Project in the absence of such insurance.
- 3.4 The Sub-Consultant shall co-operate fully with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the Beneficiary undertakes in writing to reimburse the Sub-Consultant in respect of the net cost of such insurance to the Sub-Consultant above Reasonable Rates and Terms.
- 3.5 As and when reasonably requested to do so by the Beneficiary the Sub-Consultant shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.
- 3.6 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of the Appointment for any reason whatsoever, including (without limitation) breach by the Constructor.

4. **LIABILITY PERIOD**

It is agreed that the period of limitations (in respect of which the Beneficiary and the Sub-Consultant hereby waive all and any rights whether already existing, arising now and/or in the future to raise as a defence to any claim brought under this Schedule, the Limitation Act 1980 and any statute, regulation or similar amending, consolidating and/or replacing that Act) applicable to any claim or claims arising out of or in connection with this Schedule shall expire on the End of Liability Date.

5. **ASSIGNMENT**

- 5.1 The Sub-Consultant consents to the benefit of this Schedule being assigned two (2) times only provided always that the maximum number of two (2) assignments referred to above shall not be affected by assignments or charges by way of security and their release or assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.
- 5.2 Despite any other provision of this Schedule the Sub-Consultant shall not be entitled to contend that any person to whom this Schedule is assigned in accordance with paragraph 6.1 (an "**Assignee**") is precluded from recovering under this Schedule any loss incurred by such Assignee resulting from any breach of this Schedule (whenever happening), by reason that such person is an assignee and not the original named party to this Schedule.
- 5.3 The Sub-Consultant may not defend any claim brought by the Beneficiary or an Assignee on the basis of a no loss argument whether based on the logic that the Beneficiary or an Assignee has not suffered a recoverable loss because:

5.3.1 (where the Beneficiary is not the Client) the Client; or

5.3.2 the Constructor,

has not suffered that loss or because (where the Beneficiary is not the Client) the Client or Constructor would not suffer a similar loss because of their (or its, as the context requires) different interest(s) in the completed Project compared to the interest of the Beneficiary or Assignee and/or if assigned that the original Beneficiary has not suffered such loss because it has parted with its interest in the Project or otherwise.



6. **STEP-IN RIGHTS**

This paragraph 7 shall apply in favour of the Beneficiary referred to in a Third Party Rights Notice where it is stated in that Third Party Rights Notice as so applying and in that case shall have effect according to its terms, but otherwise shall be of no effect

- 6.1 The Sub-Consultant shall not exercise nor seek to exercise any right of termination of its employment under the Appointment or discontinue the performance of the Appointment for any reason whatsoever (including any breach on the part of the Constructor) without giving not less than twenty-one (21) days' written notice of its intention to do so to the Beneficiary and specifying the grounds for the proposed termination or discontinuance.
- 6.2 Any period stipulated in the Appointment for the exercise of a right of termination by the Sub-Consultant of its employment under the Appointment or to discontinue the performance of the Appointment shall, nevertheless, be extended as may be necessary to take account of the period of notice required under paragraph 7.1.
- 6.3 The right of the Sub-Consultant to terminate its employment under the Appointment or to discontinue the performance of the Appointment shall cease within the period of twenty-one (21) days referred to in paragraph 7.1 if the Beneficiary shall give notice to the Sub-Consultant:
- 6.3.1 requiring the Sub-Consultant to continue its obligations under the Appointment with the Beneficiary or its nominee;
 - 6.3.2 acknowledging that the Beneficiary or its nominee will assume all the obligations of the Constructor under the Appointment; and
 - 6.3.3 undertaking that the Beneficiary or its nominee will discharge all payments which may subsequently become due to the Sub-Consultant under the terms of the Appointment and will pay to the Sub-Consultant any sums which have been due and payable to it under the Appointment but which remain unpaid.
- 6.4 Upon service by the Beneficiary or its nominee of a notice complying with the requirements of paragraph 7.3 the Appointment will continue in full force and effect as if the same had been entered into between the Sub-Consultant and the Beneficiary to the exclusion of the Constructor.
- 6.5 Compliance by the Sub-Consultant with the provisions of this paragraph 7 will not be treated as a waiver of any breach on the part of the Constructor giving rise to the right of termination nor otherwise prevent the Sub-Consultant from exercising its rights after the expiration of the notice issued pursuant to paragraph 7.1 unless the rights of termination have ceased under the provisions of paragraph 7.3.
- 6.6 This paragraph 7 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Project and entered into between the Sub-Consultant and such person at the request of the Constructor.
- 6.7 By acting in accordance with this paragraph 7, the Sub-Consultant shall not incur any liability to the Constructor.

7. **NOTICES**

Any notice to be given under this Schedule shall be in writing and shall be deemed to be duly given if it is delivered to the addressee's address as specified in the Third Party Rights Notice (or its registered office from time to time, if different). Notices shall be delivered by hand delivery, pre-paid registered or recorded delivery mail. Notices shall be deemed to have been delivered or received in the case of (a) hand delivery, on the date of delivery; and (b) pre-paid registered or



recorded delivery mail, two (2) days after the notice is posted, excluding Saturdays, Sundays and statutory holidays.

8. **EXTRANEIOUS RIGHTS**

- 8.1 This Schedule shall not negate or diminish any duty or liability otherwise owed by the Sub-Consultant to the Beneficiary.
- 8.2 No approval or inspection of the Services and/or of any designs or specifications and no 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-Consultant arising under this Schedule.
- 8.3 Any term of this Schedule, the benefit of which is expressly or purportedly conferred upon the Beneficiary (or any Assignee) pursuant to and in accordance with this Schedule may be enforced by such Beneficiary pursuant to The Contracts (Rights of Third Parties) Act 1999. Subject as aforesaid, this Schedule is not intended to confer any rights on any other third party pursuant to The Contracts (Rights of Third Parties) Act 1999.

9. **GOVERNING LAW**

This Schedule is subject in all respects to the laws of England and Wales and the English Courts shall have exclusive jurisdiction with regard to all matters arising under or in connection with it.