|  |  |  |
| --- | --- | --- |
| DATE |  | 20[ ] |

**(1) [Sub-Contractor/Sub-Consultant]**

**(2) [Beneficiary]**

**(3) [Contractor]**

|  |  |  |
| --- | --- | --- |
|  | **[Sub-Contractor/Sub-Consultant] Collateral Warranty relating to the design, supply and installation of artificial grass pitches at [ ]** |  |



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DATE 20[ ]

PARTIES

1. **[Sub-Contractor/Sub-Consultant]** a company incorporated in England and Wales with registered number [          ], whose registered office is at [          ] (the **'Sub-Contractor/Sub-Consultant'**);
2. **[ ]** of[ ] (the '**Beneficiary**'); and
3. **[ ]** a company incorporated in England and Wales with registered number [          ], whose registered office is at [          ] (the **'Contractor'**).

RECITALS

1. The Contractor has engaged the Sub-Contractor to perform the Sub-Contract Works.
2. The Beneficiary, as the [ ], has an interest in the Works.
3. The Contractor requires the Sub-Contractor to enter into a collateral warranty in favour of the Beneficiary.
4. The Sub-Contractor has agreed to enter into this Agreement with the Beneficiary, for the benefit of the Beneficiary.

OPERATIVE PROVISIONS

1. Definitions and interpretation
   1. The definitions and rules of interpretation in this Clause apply in this Agreement:

|  |  |
| --- | --- |
| **'Building Contract'** | the JCT Design and Build Contract 2016 as amended entered into between the Employer and the Contractor (and any further agreement(s) varying or supplementing it) for the Works; |
| **'Business Day'** | a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business; |
| **'CDM Regulations'** | the Construction (Design and Management) Regulations 2015 (SI 2015/51), and any related guidance requirements including the Approved Code of Practice, amended or replaced from time to time by the Health & Safety Executive; |
| **'Deleterious'** | materials or equipment that are not in conformity with any relevant British Standard or codes of practice (or European Union equivalent) or which are generally known, or which ought to have been known, in the construction industry at the time of specification or approval for use to be deleterious to health and safety of any person or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used; |
| **'Employer'** | [ ]; |
| **'Funder'** | a person that has provided, or is to provide, finance in connection with:  (a) the whole or any part of the Works or the completed Works; or  (b) the site of the Works,  whether that person acts on its own account, as agent for a syndicate of other parties or otherwise; |
| **'Material'** | all the information, formulae, data, drawings, models, plans, elevations, sections, perspectives, specifications, schedules, designs (including those prepared on any CAD system), reports prints, samples and other documents and information (including any stored electronically) and software or similar items and technology including improvements in the same used in or otherwise which have been or will be prepared or provided by or on behalf of the Sub-Contractor in connection with the Works; |
| **'Permitted Uses'** | the design, construction, completion, reconstruction, modification, advertisement, reinstatement, extension maintenance, funding, sale, letting, fitting-out and repair of the Property and the Works; |
| **'Programme'** | the programme, as defined in the Sub-Contract; |
| **'Property'** | [ ]; |
| **'Required Standard'** | all the reasonable skill, care and diligence to be expected of a properly qualified and competent professional designer of the relevant discipline undertaking equivalent sub-contract works on projects of a similar size, scope, complexity, value and purpose to the Works; |
| **'Sub-Contract** | the [          ] entered into between the Contractor and the Sub-Contractor (and any further agreement(s) varying or supplementing it) for the Sub-Contract Works; |
| **'Sub-Contract Works'** | the sub-contract works and/or services referred to in the Sub-Contract, performed by or on behalf of the Sub-Contractor under the Sub-Contract. |
| **'Works'** | as defined in the Building Contract. |

* 1. Clause headings shall not affect the interpretation of this Agreement.
  2. A '**person**' includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
  3. A reference to a '**company**' includes any company, corporation or other body corporate, wherever and however incorporated or established.
  4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
  5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
  6. A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
  7. A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
  8. A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
  9. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
  10. A reference to '**writing**' or '**written**' includes faxes but not e-mail.
  11. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this Agreement) at any time.
  12. References to Clauses are to the Clauses of this Agreement.
  13. Where the words '**include(s)**', '**including**' or '**in particular**' are used in this Agreement, they are deemed to have the words "without limitation" following them.

1. Comply With the Sub-Contract
   1. The Sub-Contractor warrants to the Beneficiary that:
      1. it has performed and complied, and shall continue to comply, with its obligations under or arising out of the Sub-Contract, including (without limitation) its obligations to:
         1. (where applicable) carry out and fulfil in all respects the duties of a designer under the CDM Regulations; and
         2. in respect of any works carried out, use workmanship and materials of the quality and standard specified in the Sub-Contract; and
      2. to the extent the Sub-Contractor has design responsibility in relation to the Sub-Contract Works, it has exercised and shall continue to exercise the Required Standard when performing the Sub-Contract Works; and
      3. it has exercised and shall continue to exercise the Required Standard to not specify or use any products or materials in the Sub-Contract Works which at the time of specification or use are Deleterious;
      4. in relation to the Sub-Contract Works, it has complied with any:
         1. Act of Parliament
         2. instrument, rule or order made under any Act of Parliament; and
         3. regulation or bye-law of any local authority, statutory undertaker or public or private utility or undertaking that has any jurisdiction over the Works or with whose systems or property the Works are or will be connected; and
      5. it shall carry out and fulfil, in all respects, the duties of a designer under the CDM Regulations.
   2. The Sub-Contractor shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Sub-Contractor's professional responsibilities in relation to the Works provided that the Sub-Contractor shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named as joint client with the Contractor in the Sub-Contract.
   3. The Sub-Contractor's duties or liabilities under this Agreement shall not be negated or diminished by:
      1. any approval or inspection of:
         1. the Property; or
         2. the Works; or
         3. any designs or specifications for the Property or the Works; or
      2. any testing of any work, goods, materials, plant or equipment; or
      3. any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Contractor.

* 1. This Agreement shall not negate or diminish any other liability or otherwise owed to the Beneficiary by the Sub-Contractor.

1. [[[1]](#footnote-2)Step-In Rights: Sub-Contractor May Not Terminate or Discontinue
   1. The Sub-Contractor shall not exercise, or seek to exercise, any right to:
      1. terminate its employment under the Sub-Contract; or
      2. discontinue the performance of the Sub-Contract Works,

for any reason (including any breach on the part of the Contractor) without giving the Beneficiary at least 21 days' written notice of its intention to do so and the basis for this. Any notice from the Sub-Contractor shall specify the grounds for the Sub-Contractor's proposed termination or discontinuance.

* 1. If the Sub-Contract allows the Sub-Contractor a shorter notice period for the exercise of a right referred to in Clause 3.1, the notice period in the Sub-Contract shall be extended to take account of the notice period required under Clause 3.1.
  2. The Sub-Contractor's right to terminate its employment under the Sub-Contract, or to discontinue performance of the Sub-Contract Works, shall cease if, within the period referred to in Clause 3.1, the Beneficiary gives notice to the Sub-Contractor, copied to the Contractor:
     1. requiring the Sub-Contractor not to terminate its employment or not to discontinue the performance of the Sub-Contract Works under the Sub-Contract;
     2. acknowledging that the Beneficiary (or its nominee) will assume all the Contractor's obligations under the Sub-Contract; and
     3. undertaking that the Beneficiary or its nominee will pay to the Sub-Contractor:
        1. any sums due and payable to the Sub-Contractor under the Sub-Contract in future; and
        2. any sums then due and payable to the Sub-Contractor under the Sub-Contract that are unpaid.
  3. If the Beneficiary (or its nominee) serves notice on the Sub-Contractor under Clause 3.3, then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Contractor and the Beneficiary (to the exclusion of the Contractor).
  4. In complying with this Clause 3, the Sub-Contractor:
     1. does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Contractor; and
     2. may exercise its right to terminate its employment under the Sub-Contract, or discontinue the performance of the Sub-Contract Works, after the expiry of the notice period referred to in Clause 3.1, unless the Sub-Contractor's right to terminate or discontinue has ceased under Clause 3.3.

1. Step-In Rights: Beneficiary May Step-In
   1. Without affecting Clause 3.1, if the Beneficiary serves a notice on the Sub-Contractor, copied to the Contractor, that:
      1. confirms that the Beneficiary wishes to step-in to the Sub-Contract; and
      2. complies with the requirements under Clauses 3.3(b) and 3.3(c),

then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Contractor and the Beneficiary (or its nominee) to the exclusion of the Contractor.

* 1. The Sub-Contractor shall assume that, between the Contractor and the Beneficiary, the Beneficiary may give notice under Clause 4.1. The Sub-Contractor shall not enquire whether the Beneficiary is entitled to give that notice.
  2. In complying with this Clause 4, the Sub-Contractor does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Contractor.

1. Step-In Rights: Sub-Contractor's Position and Contractor's Consent
   1. The Sub-Contractor shall not incur any liability to the Contractor by acting in accordance with Clause 3 or Clause 4.
   2. The Contractor has executed this Agreement to confirm its consent to such step-in arrangement.
2. Step-In Rights: Beneficiary's Guarantee

If a Beneficiary's notice under Clause 3 or Clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Sub-Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Sub-Contractor from the Beneficiary's nominee.]

1. No Instructions to Sub-Contractor by Beneficiary

[Unless the Beneficiary has stepped-in under Clause 3 or Clause 4,][[2]](#footnote-3) the Beneficiary may not give instructions to the Sub-Contractor under this Agreement.

1. Copyright
   1. The Sub-Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Sub-Contractor for any purpose relating to the Works and the Property, including any of the Permitted Uses.
   2. This licence allows the Beneficiary to use the Material in connection with any extension of the Works, but not to reproduce the designs contained in the Material in any such extension.
   3. This licence carries the right to grant sub-licences and shall be transferrable.
   4. The Sub-Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
   5. The Beneficiary may request a copy (or copies) of some or all of the Material from the Sub-Contractor and the Sub-Contractor shall provide the copy (or copies) to the Beneficiary.
2. Professional Indemnity Insurance
   1. The Sub-Contractor shall maintain professional indemnity insurance for an amount of at least [£5,000,000.00] for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this Agreement and ending 12 years after the date of practical completion of the Works, provided that such insurance is available to members of the Sub-Contractor's profession at commercially reasonable rates and terms. The Sub-Contractor shall maintain that professional indemnity insurance:
      1. with reputable insurers lawfully carrying on insurance business in the UK;
      2. on customary and usual terms and conditions prevailing for the time being in the insurance market; and
      3. on terms that:
         1. do not require the Sub-Contractor to discharge any liability before being entitled to recover from the insurers; and
         2. would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.
   2. Any increased or additional premium required by insurers because of the Sub-Contractor's claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.
   3. The Sub-Contractor shall not, without the Beneficiary's written consent:
      1. settle or compromise any claim with the insurers that relates to a claim by the Beneficiary against the Sub-Contractor; or
      2. by any act or omission lose or affect the Sub-Contractor's right to make, or proceed with, that claim against the insurers.
   4. The Sub-Contractor shall immediately inform the Beneficiary if the Sub-Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Sub-Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Sub-Contractor regarding the Works and the Property, without that insurance.
   5. The Sub-Contractor shall fully co-operate with any measures reasonably required by the Beneficiary, including:
      1. completing any proposals for insurance and associated documents; or
      2. maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Sub-Contractor for the net cost of that insurance above commercially reasonable rates.
   6. Whenever the Beneficiary reasonably requests, the Sub-Contractor shall send the Beneficiary evidence that the Sub-Contractor's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Sub-Contractor's insurers or brokers confirming:
      1. the Sub-Contractor's then current professional indemnity insurance; and
      2. that the premiums for that insurance have been paid in full at the date of that letter.
3. Liability Period

The Beneficiary may not commence any legal action against the Sub-Contractor under this Agreement after 12 years from the date of practical completion of all of the Works.

1. Assignment
   1. The Beneficiary may assign the benefit of this Agreement:
      1. on two occasions to any person with an interest in the Works; and
      2. without counting as an assignment under Clause 11.1(a):
         1. by way of security to a Funder (including any reassignment on redemption of security); or
         2. to and from a subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.
   2. The Beneficiary or its assignee shall notify the Sub-Contractor and the Contractor of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.
   3. The Sub-Contractor shall not contend that any person to whom the benefit of this Agreement is assigned under Clause 11.1 may not recover any sum under this Agreement because that person is an assignee and not a named party to this Agreement.
   4. The Sub-Contractor shall not without the consent of the Beneficiary assign its rights under this Agreement.
2. Delay
   1. The Sub-Contractor shall not be liable to the Beneficiary in respect of any delay to the completion of the Sub-Contract Works unless and until the Beneficiary has given notice to the Sub-Contractor under either Clause 3 or Clause 4.
3. Notices
   1. Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, or recorded delivery or by commercial courier, to each party required to receive the notice as set out on page 1.
   2. A notice shall be deemed to have been duly received:
      1. if delivered personally, when left at the address and for the contact referred to in this Clause; or
      2. if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
      3. if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
   3. A notice required to be given under this Agreement shall not be validly given if sent by e-mail.
   4. This Clause shall not apply to the service of any proceedings or other documents in any legal action.
4. Third Party Rights

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

1. Governing Law and Jurisdiction

This Agreement shall be read and construed in accordance with the laws of England. Each party irrevocably agrees that subject as provided below, the courts of England shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this Clause shall limit the right of any party to take enforcement proceedings against the other in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of enforcement proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

*[Execution blocks]*

1. Delete step-in provisions if not applicable. [↑](#footnote-ref-2)
2. Delete if no step-in provision. [↑](#footnote-ref-3)