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| **DATED** |

**CONTRACTOR WARRANTY**

relating

to the

**PARTIES**

(1)

**BACKGROUND**

1. The Employer has engaged the Contractor to carry out design works under the Contract (as hereinafter defined).
2. The Beneficiary, as financier, has/will have an interest in the Works.
3. The Employer requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.
4. The Contractor has agreed to enter into this agreement with the Employer and the Beneficiary for the benefit of the Beneficiary.
5. The Beneficiary has paid £1 to the Contractor and the Employer as consideration under this agreement (receipt of which the Sub-Contractor hereby acknowledges).

**AGREED TERMS**

1. **INTERPRETATION**

The following definitions and rules of interpretation apply in this agreement.

* 1. Definitions:

**Business Day:** any day which is not a Saturday, Sunday, Christmas, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

**Contract**: the contract dated February 07th 2017 entered into between the Consultant and the Employer (and any further agreement(s) varying or supplementing it) for the Works.

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|  | **Deleterious:** any materials or equipment that are generally accepted or suspected, in the construction industry at the relevant time as posing a threat to the health and safety of any person, or posing a threat to the structural stability, performance or physical integrity of the Works or any part or component of the Works; or reducing or possibly reducing, the normal life expectancy of the Works or any part or component of the Works, or not being in accordance with any relevant British Standard, relevant code of practice, good building practice or the guidance contained in the document "good practice in the selection of construction materials" (current version). |

**Documents**: all drawings, reports, specifications, bills of quantities, calculations and other documents and information prepared by or on behalf of the Consultant in connection with the Works.

**Standard of Care:** all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in size, scope, value, character and complexity to the Works

**Works:** the design of the works through to 1-7 RIBA stages as required by the 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).
  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. This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party’s personal representatives, successors and permitted assigns.
  7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
  8. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
  9. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
  10. A reference to **writing** or **written** includes fax but not email.

* 1. 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.
  2. References to clauses are to the clauses of this agreement.

* 1. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1. **COMPLY WITH BUILDING CONTRACT**  
   1. The Contractor warrants and undertakes to the Beneficiary that:
      1. it has performed and shall continue to perform all of its duties and obligations under or arising out of the Contract; and
      2. the design for which it is responsible pursuant to the Contract has been and will be carried out using the Standard of Care required by the Contract; and
      3. it has exercised and will continue to exercise the Standard of Care to see that no Deleterious materials have been or will be specified for use or used in relation to the Works or any part or parts thereof; and
      4. it will maintain all required insurances in accordance with the Contract.
   2. The Contractor's liability under this warranty shall not be released, diminished or in any other way affected by the appointment by the Beneficiary of any person to survey the Works or to monitor the carrying out of the Works or to inspect any documents relating to the Works on behalf of the Beneficiary or the failure to appoint such a person, or any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.
   3. In proceedings for breach of clause 2.1, the Contractor may:
      1. rely on any limit of liability or other term of the Contract; and
      2. raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the employer, under the Contract (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Contract).
   4. This agreement shall not negate or diminish any duty or liability otherwise owed to the Beneficiary by the Contractor.
2. **NO INSTRUCTIONS TO CONTRACTOR BY BENEFICIARY**

The Beneficiary may not give instructions to the Contractor under this agreement.

1. **COPYRIGHT**
   1. The copyright in the Documents shall remain vested in the Contractor but the Contractor hereby grants to the Beneficiary and its appointees an irrevocable, royalty-free, non-exclusive licence to copy and use the Documents and to reproduce the designs and contents of them for any purpose relating to the Works including but without limitation the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement and repair of the Works. Such licence shall enable the Beneficiary and its appointees to copy and use the Documents for any extension of the Works but shall not include any right or licence to reproduce the designs contained in them for any extension of the Works.
   2. The licence shall be assignable to any owner from time to time of the Works or any party of them and may be sub-licenced to any owner or tenant of the Works or part of them and to any person engaged for the purposes permitted by clause 3.1.
   3. The Contractor shall not be liable for any use by the Beneficiary of the Documents for any purpose other than for which they were prepared.
2. [**PROFESSIONAL INDEMNITY INSURANCE**  
   1. The 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 at commercially reasonable rates.
   2. As and when reasonably requested to do so by the Beneficiary, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.
   3. If the insurance referred to at 4.1 ceases to be available at commercially reasonable rates, the Contractor shall immediately give notice to the Employer and the Beneficiary so that the Contractor and the Employer and the Beneficiary can discuss the means of best protecting their respective positions in the absences of such insurance.]
3. **ASSIGNMENT**
   1. The Beneficiary may (without the consent of the Employer and the Contractor) assign the benefit of this warranty and/or its rights under this warranty to any mortgagee and by way of re-assignment on redemption, and on two other occasions only.
   2. Further assignments shall be permitted with the consent of the Employer and the Contractor, such consent not to be unreasonably withheld or delayed.
   3. In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 5.1.
   4. The Contractor undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary’s interest in the Works shall escape loss resulting from such breach by reason of the disposal of its interest in the Works.
4. **NOTICES**
   1. Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties’ registered or principal office for the time being (or if neither are known or applicable, the last known principal business address) by personal delivery or pre-paid registered or recorded delivery mail or facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre-paid post.
   2. Notices and communications shall be deemed to have been served or received in the case of:
      1. personal delivery on the date of delivery;
      2. pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted;
      3. facsimile transmission sent in accordance with clause 6.1 on the date and time the facsimile is successfully transmitted as evidenced by the sender’s facsimile transmission slip.
5. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
   1. Nothing in this warranty confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.
6. **GOVERNING LAW**
   1. This warranty shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the English courts.
7. **LIMITATION PERIOD**
   1. No action or proceedings for any breach of this warranty shall be commenced against the Contractor after the expiry of twelve years from the date of completion of the Works.

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

[INSERT EXECUTION BLOCKS]