**DATED 201[ ]**

**Date: 201[ ]**

**Parties:**

(1)

**RECITALS:**

A.

B. The Contractor has entered into a contract ("the Sub-Contract") with the Sub-Consultant for the design of the works therein referred to (the "Sub-Contract Works").

C. The Beneficiary has an interest in the Development and/or the Sub-Contract Works.

**NOW THIS DEED WITNESSETH** as follows:

# **DUTY OF CARE**

## The Sub-Consultant warrants and undertakes to the Beneficiary that it has and will continue to perform all his obligations under the Sub-Contract.

## Without prejudice to the generality of clause 1.1 or to any terms and conditions implied by law the Sub-Consultant warrants and undertakes to the Beneficiary that it has and will continue to exercise in performing his design obligations under the Sub-Contract the all skill and care to be expected of a properly qualified and competent design consultant experienced in the design of works of similar size, scope, nature and complexity to the Sub-Contract Works it has exercised and will continue to exercise such skill and care in:

### the design of the Sub-Contract Works;

### the selection of goods and materials for the Development;

## For the avoidance of doubt, the Sub-Consultant accepts that his liability under this Deed shall not be released diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Beneficiary or by the appointment by the Beneficiary of any person, firm or company to review and report to the Beneficiary in respect of the Sub-Contract Works or by any act or omission of any such person firm or company whether or not such act or omission might give rise to an independent liability of such person firm or company to the Beneficiary.

## For the avoidance of doubt it shall not be a defence to a claim by the Beneficiary that the loss it has suffered is different in type or character from the losses which the Contractor might have suffered or that the Contractor could not now suffer a loss of the type which the Beneficiary has incurred

## The Sub-Consultant shall have no greater liability in extent or time under this Deed than it would have had under the Sub-Contract if the Beneficiary had been named jointly with the Contractor under the Contract as "Contractor" and shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation or exclusion of liability in the Sub-Contract and to raise the equivalent rights in defence of liability as it would have against the Contract under the Sub-Contract save that the Sub-Consultant shall not be entitled to rely on any right of set off or counterclaim.

# **DELETERIOUS MATERIALS**

The Sub-Consultant will ensure that there shall not be used on or in connection with the Development unless authorised by the Contractor in writing or where such authorisation is given orally, confirmed by the Contractor to the Sub-Consultant in writing, substances which are contrary to the recommendations in "Good Practice in the Selection of Construction Materials" 2011 published by the British Council for Offices current at the time and any other substances which do not accord with British Standards and Codes of Practice of which have been publicised in the Building Research Establishment Digest or which are generally known in the construction industry as being deleterious to health and safety or to the durability of the Development in the particular circumstances in which they are used at the date upon which such materials were incorporated in the Development.

# **COPYRIGHT**

## The Sub-Consultant grants with full title guarantee to the Beneficiary a royalty free, irrevocable and non-exclusive licence to use and to reproduce all details, plans, specifications, schedules, documents, software, drawings and other documentation and information (together known as "the Documents") and the designs contained in the Documents prepared or provided by the Sub-Consultant or any person appointed or employed by the Sub-Consultant in connection with the Development for any purpose whatsoever related to the Development including, but without limitation, the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the same. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.

## To the extent that beneficial ownership of any copyright or other intellectual property right is vested in anyone other than the Sub-Consultant, the Sub-Consultant shall use its reasonable endeavours to procure that the beneficial owner thereof shall grant a like licence to the Beneficiary. The Sub-Consultant shall, if so requested by the Beneficiary, at any time execute such documents and perform such acts as may be required fully and effectively to pass to the Beneficiary the rights referred to in this clause. The Sub-Consultant shall not be liable for any use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Sub-Consultant.

## The Sub-Consultant acknowledges that in so far as it is the author (as referred to in the Copyright Designs and Patents Act 1988) of the Documents the Sub-Consultant waives any moral rights which it might otherwise be deemed to possess under chapter IV (Moral Rights) part I of such Act.

# **PROFESSIONAL INDEMNITY INSURANCE**

The Sub-Consultant has in place and shall maintain with Lloyd's underwriters or other reputable insurers licenced to carry on business in the United Kingdom professional indemnity insurance in an amount not less than **[FIVE MILLION POUNDS** £[ 5 ],000,000 for any one occurrence or series of occurrences arising out of any one event ("the Insurance") for a period of 12 years from the date of practical completion of the Development, provided the insurance is available at reasonable commercial rates and terms in the UK insurance market. As and when reasonably required to do so by the Beneficiary the Sub-Consultant shall produce for inspection documentary evidence (by way of a broker's note) that such insurance is properly maintained. Should the Sub-Consultant make default in insuring or continuing to insure as herein provided, the Beneficiary may insure against any risk with respect to which the default should have occurred and charge a sum or sums equivalent to the amount paid or payable in respect of premiums to the Sub-Consultant and the Sub-Consultant warrants and undertakes that:

## to the best of his knowledge, information and belief the Insurance is valid, all circumstances relevant to the policy have been disclosed to the insurer, there are no circumstances entitling the insurer to avoid the policy and the premiums for the current period of insurance have been paid;

## save as disclosed it is not aware of any circumstances likely to give rise to any claim under the Insurance for any amount greater than the excess of the Insurance; and

## he shall immediately inform the Beneficiary if the Insurance ceases to be available at commercially reasonable rates in order that the Sub-Consultant and the Beneficiary can discuss means of best protecting the respective positions of the Beneficiary and the Sub-Consultant in respect of the Sub-Contract Works in the absence of the Insurance.

# **ASSIGNMENT**

This Deed may be assigned without the consent of the Sub-Consultant on two occasions only.

# **NOTICE**

A notice required to be given under this Deed shall be in writing and shall be deemed to be properly given to a party when served at the address for such party set out above.

# **ADDITIONAL RIGHTS**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Consultant including, without prejudice to the generality of the foregoing, remedies in negligence. The Sub-Consultant acknowledges that the Beneficiary shall be deemed to have relied upon the Sub-Consultant’s skill and judgement in the performance of its duties to the Contractor under the Sub-Contract. The Beneficiary acknowledges that the Sub-Consultant will owe it no greater liability under the terms of this Deed than it would have owed to the Beneficiary had it been named joint employer with the Contractor under the Sub-Contract.

# **GOVERNING LAW**

This Deed shall be governed by and construed in accordance with English law, and disputes arising from this Deed shall be referred to and determined by the Courts of England and Wales.

# **THIRD PARTY RIGHTS**

Except as expressly stated nothing in this Deed confers or purports to confer on any third party any benefit or any right to enforce any term of this Deed pursuant to the Contract (Rights of Third Parties) Act 1999.

**IN WITNESS** whereof this Agreement was executed and delivered as a Deed on the date at the head of this document.