

DATED

2019

[NAME OF EMPLOYER] (1)

[NAME OF SUB-CONTRACTOR] (2)

[NAME OF CONTRACTOR] (3)

DEED OF WARRANTY

**relating to [DESCRIPTION OF SUB-
CONTRACT WORK]**

THIS DEED is made on

2019

BETWEEN:

- (1) [] whose registered office is situate at [] (“**Employer**”) which expression shall include its successors in title and its assigns and those deriving title under it or them;
- (2) [] whose registered office is situate at [] (“**Sub-Contractor**”).
- (3) [] whose registered office is situate at [] (“**Contractor**”)

WHEREAS:

- (A) The Employer has entered into a contract with the Contractor for the carrying out and completion of certain building works in connection with [] (“**Project**”).
- (B) The Contractor has entered into a sub-contract dated [] (“**Sub-Contract**”) with the Sub-Contractor for the carrying out and completion of works defined in the Sub-Contract (“**Sub-Contract Works**” which expression shall include any additional works carried out by the Sub-Contractor under the Sub-Contract in connection with any modifications or variations made thereunder) in connection with the Project.

NOW in consideration of the payment of one pound by the Employer to the Sub-Contractor (receipt of which the Sub-Contractor acknowledges) **THIS DEED WITNESSES:**

1 The Sub-contract works

1.1 The Sub-Contractor warrants to the Employer that:

- 1.1.1 the Sub-Contractor has carried out and completed the Sub-Contract Works and/or shall carry out and complete the Sub-Contract Works in accordance with the Sub-Contract;
- 1.1.2 the Sub-Contractor has complied with and/or shall comply with all the Sub-Contractor’s obligations under the Sub-Contract in accordance therewith;
- 1.1.3 to the extent that the Sub-Contract Works have been or will be designed by the Sub-Contractor they have been or will be designed using all the skill care and diligence and best up-to-date practice to be expected of a qualified and competent sub-contractor experienced in designing and

carrying out work of a similar scope, nature, complexity and size to the Sub-Contract Works;

- 1.1.4 to the extent that the Sub-Contractor has selected or will select materials and/or goods for the Sub-Contract Works they are or will be of new and satisfactory quality in every regard; and
- 1.1.5 the Sub-Contract Works satisfy or will when completed satisfy any performance or other standard or specification or requirement included in or referred to in the Sub-Contract.

2 Deleterious materials

2.1 The Sub-Contractor warrants to the Employer that unless otherwise authorised or instructed on behalf of the Employer it has not specified, selected and/or approved and will not specify, select and/or approve for use in the Sub-Contract Works any material, substance or building practice or technique which is:

- 2.1.1 prohibited by the Sub-Contract; and/or
- 2.1.2 not in accordance with British Standards and/or relevant European Standards and/or Codes of Practice; and/or
- 2.1.3 generally known within the construction industry at the time of use to be deleterious or hazardous to the health and safety of occupants of the Sub-Contract Works or to the durability and stability of the Sub-Contract Works in the particular circumstances in which such materials, substances, building practices or techniques are used and having regard to the published guidance issued by Ove Arup entitled "Good Practice in the Selection of Construction Materials" in 1997 sponsored by the British Council for Offices and the British Property Federation.

3 Determination by sub-contractor

3.1 The Sub-Contractor shall not exercise or seek to exercise any right which the Sub-Contractor may have to rescind or determine the Sub-Contract or the employment of the Sub-Contractor thereunder for whatever reason unless the Sub-Contractor has given at least 21 days prior written notice to the Employer specifying the breach or default of the Sub-Contract which the Sub-Contractor claims entitles it to rescind or

determine the Sub-Contract or the employment of the Sub-Contractor thereunder, and the amount of any sums properly due and payable to the Sub-Contractor.

3.2 If, within 21 days of receipt of the notice under clause 3.1, the Employer notifies the Sub-Contractor that it wishes to enter into a new agreement with the Sub-Contractor on the same terms and conditions as are contained in the Sub-Contract to continue and complete all the Sub-Contractor's obligations in relation to the Project:

3.2.1 the Sub-Contractor shall enter into a new agreement with the Employer subject to clause 3.3 but otherwise on the same terms and conditions as the Sub-Contract and if it does so the Sub-Contract shall terminate but subject to clause 3.2 without prejudice to any accrued rights of the parties;

3.2.2 where the Sub-Contract is terminated in accordance with clause 3.2.1 the Sub-Contractor shall have no claim against the Contractor by reason only of that termination; and

3.2.3 without prejudice to clause 3.1, if the Sub-Contract has been terminated the Sub-Contractor shall pending entry into the new agreement accept and act in accordance with the instructions of the Employer in relation to the Sub- Contract and the Employer shall pay any and all sums accrued due for work carried out by the Sub-Contractor pursuant to those instructions.

3.3 The Employer shall be liable under the new agreement in respect of work performed after the date of the new agreement but shall have no other liability in respect of the Sub-Contract except that the Employer shall pay the Sub-Contractor the amount of any sums properly due and payable as specified in clause 3.1 as set out in the notice given under clause 3.1.

4 Provision of documents

4.1 The Sub-Contractor shall provide to the Employer on demand and on payment of the Sub-Contractor's reasonable costs of producing the same copies of any drawings, details and specifications of materials, goods or workmanship and other related documents prepared for or by the Sub-Contractor in relation to the design and construction of the Sub-Contract Works and/or the Project whether in hard copy, on disk or any other computer generated format on any magnetic or optical storage medium and whether in existence or to come into existence ("**Documents**").

4.2 The Sub-Contractor hereby grants to the Employer an irrevocable, royalty-free, non-exclusive licence to copy and use the Documents and to reproduce the designs and content of them for any purpose relating to the Sub-Contract Works including, without limitation, the construction, reconstruction, use, completion, maintenance, letting, sale, reconstruction, alteration, extension, promotion, advertisement, reinstatement, refurbishment use and repair of the Sub-Contract Works and/or the Project or the Employer's interest in the Sub-Contract Works and/or Project. The Employer shall be entitled to grant sub-licences under its licence and both the Employer's licence and such sub-licences shall be transferable to others. The Employer's licence and any sub-licence shall enable the Employer and/or any such sub-licencee and/or assignee under clause 6 to copy and use the Documents for the extension of the Sub-Contract Works so that they can interface any extension of the Sub-Contract Works with the existing Sub-Contract Works.

5 Insurance

5.1 The Sub-Contractor hereby confirms that it has or will maintain professional indemnity insurance cover in the sum of not less than one million pounds (£1,000,000) each and every claim in respect of its liabilities in connection with the Sub-Contract Works and shall maintain that cover for not less than 12 years from practical completion of the Sub-Contract Works provided such insurance remains available at commercially reasonable rates.

5.2 At the request of the Employer, the Sub-Contractor shall produce for inspection documentary evidence that such professional indemnity insurance is being maintained.

5.3 The Sub-Contractor shall immediately give notice to the Employer if such insurance ceases to be available at commercially reasonable rates, and if so required by the Employer discuss with the Employer the best means of protecting their respective interests, including, but not limited to the Sub-Contractor maintaining professional indemnity insurance of a lower indemnity limit.

6 Assignment

6.1 The Employer shall be entitled to assign or transfer this Deed or any rights hereunder or any part, share or interest herein on two occasions only without the consent of the Sub-Contractor.

6.2 The Employer is entitled to charge and/or assign by way of security any part, share or interest in this Deed without the consent of the Sub-Contractor to:

6.2.1 Any party or parties providing finance in connection with the Project; and

6.2.2 A subsidiary or holding company of the Employer and any other subsidiary of the holding company of the Employer as defined under section 736 of the Companies Act 1985 (as amended) and any such assignment shall not count as an assignment under clause 6.1.

7 Independent inspection

7.1 None of the following by the Employer or any other third party shall in any way lessen or affect the liability of the Sub-Contractor under this Deed:

7.1.1 Any omission, investigation, approval or failure to approve any matter in connection with the Works; and/or

7.1.2 Any inspection of or failure to inspect the Works.

8 Limitations

8.1 No actions or proceedings shall be made by the Employer against the Sub-Contractor in relation to this Deed more than 12 years following Practical Completion of the Sub-Contract Works.

9 Notices

9.1 Any notice or confirmation in writing provided for in this Deed shall be deemed to be duly given if delivered by hand or sent by prepaid recorded delivery to a party at its registered office or, if that party is not a limited company or a limited liability partnership, its main trading address.

9.2 Such notice shall be deemed to have been received on the day of delivery if delivered by hand, or on the second working day after the day of posting if sent by prepaid recorded delivery.

10 Governing law and jurisdiction

10.1 This Deed shall be governed by and construed in accordance with the laws of England.

10.2 The parties agree to submit any dispute or difference arising out of, or in connection with this Deed to the exclusive jurisdiction of the English Courts except for the purpose of enforcement proceedings in respect of any judgment or award of the English Courts in another jurisdiction.

11 Contract (Rights of Third Parties) Act 1999

11.1 The Contract (Rights of Third Parties) Act 1999 is excluded from applying to this Deed and nothing in it, save as expressly stated, confers or purports to confer to any third party, any benefit or right to enforce any of its terms and/or conditions.

12 Execution as a deed

12.1 This instrument is executed as a deed and was delivered when it was first dated.

Signed as a deed by **[SUB-CONTRACTOR]**)
acting by [a director and its company)
secretary] [two directors]

.....
Director

.....
Director/Secretary

Signed as a deed by **[CONTRACTOR]** acting)
by [a director and its secretary] [two directors])

.....
Director

.....
Director/Secretary

Signed as a deed by **[EMPLOYER]** acting by)
[a director and its secretary] [two directors])

.....
Director

.....
Director/Secretary

