

**SCHEDULE 5**

**FORM OF COLLATERAL WARRANTY**

DATED **[Insert Date]** 20 **[Insert]**

**[CONSULTANT]** (1)

and

**[BENEFICIARY]** (2)

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**COLLATERAL WARRANTY**

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In relation to

**[Insert Details of Project]**

THIS COLLATERAL WARRANTY is made the **[Insert]** day of **[Insert]**

**20 [Insert]**

**BETWEEN:-**

- (1) **[CONSULTANT]** of/( registered in England and Wales number **[Insert Number]**) whose registered office is at **[Insert Address]** (the "Consultant"); and
- (2) **[BENEFICIARY]** of/(registered in England and Wales number **[Insert Number]**) whose registered office is at **[Insert Address]** (the "Beneficiary").

## **1. BACKGROUND**

- 1.1 By an agreement dated **[Insert Date]** (the "Project Appointment") the Consultant was appointed by **[Insert Name & Address]** (the "Employer") to undertake and perform the Services (as defined in the Project Appointment) upon the terms and conditions contained in the Project Appointment in connection with the carrying out of an actual or proposed project comprising **[Insert Details]** ("the Project").
- 1.2 **[Insert details of the Beneficiary's relationship to the Project].**
- 1.3 In consideration of the payment to the Consultant of £1, receipt of which the Consultant hereby acknowledges, the Consultant has agreed to enter into this collateral warranty deed (the "Warranty") in favour of the Beneficiary.

## **2. WARRANTIES**

- 2.1 The Consultant hereby warrants with the Beneficiary that it will at all times comply with the terms of the Project Appointment and any specifications or requirements included, or referred to, in the Project Appointment.
- 2.2 Without prejudice to the generality of clause 2.1, the Consultant warrants to and covenants with the Beneficiary that in the performance of the Services, the Consultant has exercised and will continue to exercise the degree of skill, care and diligence as is reasonably to be expected of a skilled and qualified professional person providing such services in relation to a project of a similar size, scope and nature as the Project provided that the Consultant shall be entitled in any action or proceedings by the Beneficiary under this Warranty to rely on any limitation in the

Project Appointment and to raise the equivalent rights in defence of liability (but excluding set-offs or counterclaims) as it would have had if the Beneficiary had been named as the Employer under the Project Appointment.

### 3. LIMITATION PERIOD

No action or proceedings for any breach of this Warranty shall be commenced by the Beneficiary against the Consultant after the expiry of 12 years after **Completion of the whole of the services within the Project Appointment**. The Consultant agrees neither to assert any right to nor plead by way of defence to any claim by the Beneficiary any statutory limitation period which has expired or would expire sooner than the above mentioned agreed period of 12 years after **Completion of the whole of the services within the Project Appointment**.

### 4. INSURANCE

- 4.1 In relation to the performance of the Services, the Consultant shall effect and maintain with reputable insurers in the UK insurance market appropriate professional indemnity insurance for a period expiring no earlier than 12 years after **Completion of the whole of the services within the Project Appointment**. Such insurance shall provide a limit of indemnity of not less than **[Insert Words]** million pounds (£**[Insert figures]**m) for each and every claim, provided always that such insurance continues to be available in the UK insurance market at commercially reasonable premium rates.
- 4.2 Upon request, the Consultant will provide the Beneficiary with sufficient details of the policy of insurance effected in accordance with clause 4.1 (by way of Insurer's Certificate or otherwise), so as to demonstrate that clause 4.1 is being complied with.
- 4.3 The Consultant shall immediately inform the Beneficiary of any failure or inability to maintain insurance in accordance with clause 4.1 and of any circumstances likely to render such insurance void or voidable in order that the Consultant and the Beneficiary can discuss the means of best protecting the respective positions of the Beneficiary and the Consultant in the absence of such insurance.

- 4.4 Any increased or additional premiums required by insurers by reason of the Consultant's own claims records or other acts or omissions particular to the Consultant shall be deemed to be within commercially reasonable rates.

## **5. COPYRIGHT**

- 5.1 The copyright in all plans, drawings, specifications, calculations, schedules, reports, software (whether or not computer generated) and other work prepared by or on behalf of the Consultant in relation to the Project and all amendments and additions to the same whether now or hereafter at any time in existence and any works, designs or inventions of the Consultant incorporated or referred to in them (together referred to as "Copyright Material") shall remain vested in the Consultant.
- 5.2 The Consultant hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use and reproduce any Copyright Material for all purposes relating to the Project including, without limitation, the construction, completion, reconstruction, modification, extension, alteration, refurbishment, repair, maintenance, letting, promotion, advertisement or use of the Project, but such licence shall not include a licence to reproduce the designs contained in any Copyright Material for any extension of the Project.
- 5.3 The Consultant shall not be liable for the consequences of any use by the Beneficiary or any other party of any Copyright Material for any purpose other than that for which it was prepared or provided.

## **6. ASSIGNMENT**

- 6.1 The Beneficiary may at any time assign or transfer the benefit of this Warranty or any rights arising hereunder to any person acquiring an interest in the Project or part thereof (subject to a maximum of two such assignments) without the consent of the Consultant being required.

## **7. NOTICES**

- 7.1 Any notice, request, demand, consent or approval given under or in connection with this Warranty must be given or confirmed in writing.
- 7.2 Any such notice, request, demand, consent or approval shall be delivered personally or addressed to the respective address of the parties set out in this Warranty or to the registered office or the principal business address of either party for the time being and, if sent by post, shall be sent by first class pre-paid post or recorded delivery and shall be deemed to have been received on the second working day after the same shall have been posted.

## **8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 8.1 Unless expressly stated to the contrary nothing in this Warranty confers on anyone other than the parties to it and their respective assignees any right or benefit pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **9. RELEVANT LAW**

- 9.1 The application and interpretation of this Warranty shall in all respects be governed by the laws of England and Wales as applied in Wales and any dispute or difference arising hereunder shall be subject to the jurisdiction of the courts of England and Wales.

**SIGNED AND DELIVERED** as a deed the day and year first before written.

**EXECUTED AS A DEED** by **THE CONSULTANT** by the signatures of those partners authorised to bind the Consultant: -

[Partner:] (name)

(signature)

In the presence of: (witness signature)

Full name of Witness

Occupation of Witness

Address of Witness

**SIGNED AND DELIVERED AS A DEED**

by the **BENEFICIARY**

by the signatures of:-

Director

Director/Company Secretary

***NOTE: ATTESTATION CLAUSES WILL BE SUBJECT TO CHANGE DEPENDING UPON EACH LOCAL AUTHORITY'S SPECIFIC REQUIREMENTS.***