

Sub-Contractor's Collateral Warranty (Authority)

DATED \_\_\_\_\_ 20

[insert] Limited  
(the "Sub-Contractor")

and

WEST SUSSEX COUNTY COUNCIL  
(the "Authority")

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SUB-CONTRACTOR'S DIRECT AGREEMENT

relating to the design and construction of [description and location of works]  
in the County of West Sussex

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[File ref: ]

*SUB-CONTRACTOR'S DIRECT AGREEMENT*

## BETWEEN

- (1) [name of Sub-Contractor] (company number [insert]) whose registered office is at [insert address] (the "Sub-Contractor");
- (2) WEST SUSSEX COUNTY COUNCIL of County Hall, Chichester, West Sussex PO19 1RQ (the "Employer"), which term shall include its successors and assignees.

## BACKGROUND

- (A) The Employer has appointed [insert contractor] (the "Building Contractor") to carry out the design and execution of works briefly described as the design, construction, testing and commissioning of a [describe works] project no PC-[insert] (the "Works") and the Sub-Contractor has agreed to provide the service of [insert type of service to be provided] to the Building Contractor in connection with the execution of the works.
- (B) The Building Contractor has entered into a Sub-Contract dated [insert date] (the "Sub-Contract") with the Sub-Contractor for the provision by the Sub-Contractor of certain services as [insert type of service to be provided] more particularly described in the Sub-Contract.
- (C) The Sub-Contractor has agreed to provide a Collateral Warranty Direct Agreement to the Employer in the following terms.

IN consideration of one pound (£1) paid by the Employer to the Sub-Contractor (receipt of which the Sub-Contractor hereby acknowledges) **IT IS AGREED** as follows:

### 1. DEFINITIONS AND INTERPRETATION

In this Agreement, including the Recitals, unless the context shall otherwise require:

#### 1.1 Definitions

The following expressions shall have the following meanings:

**"Building Contract":** an agreement in the form of the JCT [insert type of contract] between the Employer and the Contractor.

**“Business Day”:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**“Practical Completion Certificate, Section Completion Certificate, Practical Completion Statement and Section Completion Statement”:**

the Certificate(s) or Statement(s) issued under the Building Contract as appropriate.

**“Prohibited Materials”:** has the same meaning as set out in the Sub-Contract.

**“Services”:** has the same meaning as set out in the Sub-Contract.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 This agreement shall be binding on, and enure 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.
- 1.8 References to clauses are to the clauses of this agreement.

## **2. SUB-CONTRACTOR’S OBLIGATIONS AND WARRANTIES TO THE EMPLOYER**

- 2.1 The Sub-Contractor warrants to the Employer that it has duly performed and observed, and will continue duly to perform and

observe, all the terms of the Sub-Contract on the Sub-Contractor's part to be performed and observed and, without prejudice to the generality of the foregoing, the Sub-Contractor warrants that it has exercised and will continue to exercise reasonable skill, care and diligence in the performance of the Services to be expected of a competent professional [type of service] Sub-Contractor experienced in providing services in relation to works of a similar size, scope, nature, value and complexity as the Works.

- 2.2 The Sub-Contractor warrants and undertakes to the Employer that it:
  - 2.2.1 has not specified for use or knowingly permitted the use of; and
  - 2.2.2 shall use such degree of skill, care and diligence as is referred to in clause 2.1 of this Agreement to see that other parties do not specify for use in the Works or permit it to be used with its knowledge, any Prohibited Materials.
- 2.3 Should the Sub-Contractor become aware during the course of performing the Services under the Sub-Contract that any Prohibited Materials have been used in the Works, the Sub-Contractor will inform the Employer immediately in writing.
- 2.4 The copyright in all schedules, plans, drawings, deposits, specifications, calculations and all other information and documents together with any design contained therein prepared by or on behalf of the Sub-Contractor (the "Documents") shall remain vested in the Sub-Contractor but the Employer shall have an irrevocable non-exclusive licence free of any charge to copy and use such Documents and to reproduce the designs contained in them for any purpose related to the Works including, (but without limiting the generality thereof), the construction, completion, maintenance, use, reinstatement, modification, extension, repair, disposal and advertisement of the Works. Such licence shall entitle the Employer to grant sub-licences without the consent or approval of the Sub-Contractor and the licence shall be freely assignable by the Employer. The Sub-Contractor shall not be liable for any misuse of the Documents by the Employer or its sub-licensees. The Sub-Contractor shall, if the Employer so requests and undertakes in writing to pay the Sub-Contractor's reasonable copying charges, promptly supply the Employer with conveniently reproducible copies of all such Documents.
- 2.5 The Sub-Contractor shall maintain professional indemnity insurance covering (inter alia), all liability hereunder, upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount not less than £[insert£2million] (in words) for any one occurrence or series of

occurrences arising out of any one event, with the sole exception of insurance cover in respect of pollution and contamination, date recognition and asbestos which may apply in aggregate during the insurance year and not on an any one occurrence or series of occurrences arising out of one event basis, for a period beginning now and ending 12 years from the date of issue of the Practical Completion Certificate or last Section Completion Certificate or Practical Completion Statement or last Section Completion Statement (as appropriate) for the purposes of the Building Contract, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or any amendment or re-enactment thereof.

- 2.6 Any reasonably increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.
- 2.7 The Sub-Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates.
- 2.8 The Sub-Contractor shall fully co-operate with any measures reasonably required by the Employer, including (without limitation) completing any proposals for insurance and associated documents and maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Sub-Contractor in respect of the net cost of such insurance to the Sub-Contractor above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.
- 2.9 As and when it is reasonably requested to do so by the Employer the Sub-Contractor shall produce for inspection documentary evidence (including, if required by the Employer, the original of the relevant insurance documents) that its professional indemnity insurance is being maintained.
- 2.10 The Sub-Contractor's duties or liabilities under this agreement shall not be negated or diminished by:
  - (a) Any approval or inspection of:
    - (i) The Works; or
    - (ii) The Sub-Contract Works; or

- (iii) Any designs or specifications for the Works; or
- (iv) Any testing of any work, goods, materials, plant or equipment; or
- (v) Any omission to approve, inspect or test,

by or on behalf of the Employer or the Contractor.

2.11 The Sub-Contractor shall not exercise or seek to exercise any right to:

- (a) Terminate its employment under the Sub-Contract; or
- (b) Discontinue the [design and] construction of the Sub-Contract Works,

for any reason (including any breach on the part of the Contractor) without giving the Employer at least 10 Business Days' written notice of its intention to do so. Any notice from the Sub-Contractor shall specify the grounds for the Sub-Contractor's proposed termination or discontinuance.

### **3. ASSIGNMENT**

3.1 This Agreement may be assigned twice only by the Employer and its successors and assignees without the consent of the Sub-Contractor being required.

### **4. VARIATION**

4.1 The Sub-Contractor undertakes with the Employer not materially to vary, or depart from, the terms and conditions of the Sub-Contract without the prior written consent of the Employer, and agree that no such variation or departure made without such consent shall be binding on the Employer, or affect or prejudice the Employer's rights hereunder, or in any other way.

### **5. NOTICES**

5.1 Any notice to be given by the Sub-Contractor hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or

recorded delivery to the above-mentioned address of the Employer or to the principal business address of the Employer for the time being, and any notice to be given by the Employer hereunder shall be deemed to be duly given if it is addressed to the Sub-Contractor and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Sub-Contractor or to the principal business address of the Sub-Contractor for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received 48 hours after being posted.

- 5.2 Except as otherwise stated, all notices or other communications required in connection with this Agreement shall be in writing and sent by hand, by first class prepaid post or by facsimile transmission to the address or facsimile number shown below:

WEST SUSSEX COUNTY COUNCIL

Address: County Hall  
Chichester  
West Sussex  
PO19 1RQ

[LIMITED COMPANY NAME]

Address: insert

Facsimile: insert

## **6. THIRD PARTY RIGHTS**

- 6.1 Except as expressly set out in this Agreement nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any terms of this Agreement.

## **7. LIMITATION**

- 7.1 No action or proceedings for any breach of this Agreement shall be commenced against the Sub-Contractor after the expiry of 12 years from the date of issue of the Practical Completion Certificate or last Section Completion Certificate or Practical Completion Statement or last Section Completion Statement (as appropriate).

## **8. GOVERNING LAW**

- 8.1 This Agreement is governed by the laws of England and Wales as applied in England and is subject to the non-exclusive jurisdiction of the courts of England and Wales.

## **9. JURISDICTION**

- 9.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle 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).



**IN WITNESS** whereof the parties have executed this Agreement as a Deed and delivered it on the date first before written

**Executed as a Deed by the Sub-Contractor**

[insert name of Sub-Contractor]

(a) acting by a Director and the

Company Secretary/two Directors

..... and

.....  
(Insert names of signatories)

**OR** (b) by affixing  
hereto its  
common seal  
in the  
presence of

(Common seal of  
Company)

.....  
*Signature* Director

.....  
*Signature* Company Secretary/Director  
(signatures required for both options (a) & (b))

The Common Seal of the WEST SUSSEX )  
COUNTY COUNCIL )  
was hereunto affixed in the presence of: )

Authorised Officer