

MPF2

Major Projects Framework 2

Contractor's Warranty to Purchaser / Tenant

CONTRACTOR’S WARRANTY TO PURCHASER/TENANT

[CONTRACTOR] (1)

- and –

[BENEFICIARY] (2)

- and –

[EMPLOYER] (3)

CONTRACTOR’S WARRANTY

in respect of the development of

[.....]

CONTRACTOR'S WARRANTY TO PURCHASER / TENANT

This Agreement dated () between

- (1) [company name] [company number] whose registered office is at [registered office] ("**the Contractor**"); and
- (2) [company name] [company number] whose registered office is at [registered office] ("**the Beneficiary**"); and
- (3) [company name] [company number] whose registered office is at [registered office] ("**the Employer**").

WHEREAS:

- A The Beneficiary has [entered into a development agreement ("**the Agreement**") with the Employer (as developer) [and (inter alia) [.....] (as landowner)] whereunder the Employer has agreed to procure the development of the development at [.....] comprising the design and construction of [.....] to be designed and constructed by the Contractor and other contractors appointed by the Employer or a related party to the Employer].
- B The Contractor has entered into a building contract ("the Contract") with the Employer for the carrying out and completion of the design and construction of the [.....] and related works ("**the Works**").
- C The Beneficiary has agreed to [take a lease of/purchase] the whole or part of the Works at [.....]. The Contractor at the request of the Employer pursuant to the requirements of the [Development Agreement] has agreed to enter into an agreement with the Beneficiary in the terms set out herein.

AGREED TERMS

- 1.1 The Contractor warrants to the Beneficiary that:-
- 1.1.1 it has designed and built or will design and build the Works with all reasonable skill care and due diligence according to the terms and conditions of the Contract and has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Contract and has exercised and will continue to exercise in and about the

construction of the Works all the skill care and diligence reasonably to be expected of a contractor experienced in the construction of works of similar size scope and complexity to the Works.

1.1.2 without prejudice to or derogation from sub-clause 1.1.1 above and to the extent that under the Contract the Contractor takes responsibility for the design of the Works and/or the selection of goods materials plant and/or equipment for incorporation therein the Contractor warrants that the same have been or will be designed or selected with all the reasonable skill care and diligence to be expected of a suitably qualified and competent professional designer experienced in carrying out the design and specification of works of similar size scope and complexity to the Works.

1.1.3 It has not used or specified for use and shall not use or specify for use in connection with the Works any goods, materials, substances or products not in accordance with relevant British Standards and Codes of Practice or otherwise generally known or suspected within the construction industry at the time of use or specification (as appropriate) to be deleterious to health and safety or to the durability of the Works or otherwise not in accordance with the requirements of the Contract in the particular circumstances in which they are used.

1.2 The Contractor acknowledges that it owes to the Beneficiary a duty of care in respect of its duties and obligations under the Contract provided that the Contractor shall have no greater liability to the Beneficiary by virtue of this Agreement than it would have had if the Beneficiary had been named as a joint Employer under the Contract (excluding counterclaim and set off).

1.3 In the event of any breach of this Agreement:-

1.3.1 the Contractor shall have no obligation, duty or liability to the Beneficiary in respect of any delay to the completion of the Works unless the Beneficiary shall have exercised their step-in rights as referred to in clauses 5 and 6, and

1.3.2 the Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation (excluding counterclaim and set-off) in the Contract and to raise the equivalent rights in defence of liability (excluding counterclaim and set off) as it would have against the Employer under the Contract, and

2 The Beneficiary has no authority to issue any direction or instruction to the Contractor in relation to performance of the Contractor's duties under the Contract.

3 The Contractor acknowledges that the Beneficiary has no liability to the Contractor in respect

of sums properly due under or pursuant to the Contract

- 4 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other similar documents prepared by the Contractor or on its behalf in connection with the Works shall remain vested in the Contractor but the Contractor hereby grants (and where the Contractor does not own the copyright in the Material or the designs contained in it shall procure that the person who can grant shall with full title guarantee in respect thereof grant) to the Beneficiary and its appointees an irrevocable royalty free non-exclusive licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Works including, but without limitation, the construction, completion maintenance, letting, promotion, advertisement, extension, reinstatement and repair thereof. The licence hereby granted shall carry with it the right to grant sub-licences. This clause shall operate as a copyright licence only and shall not of itself extend the liability of the Contractor who shall not be liable for any misuse of the copyright. The Contractor warrants to the Beneficiary that he has used the standard of skill, care and diligence as set out in clause 1 to see that the documents (save to the extent duly appointed subconsultants / subcontractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.
- 5.1 The Contractor warrants that it has and maintains professional indemnity insurance to cover any negligence omission or default on the part of the Contractor in relation to the Contractor's liabilities under the Contract and this Agreement of not less than [.....] million pounds (£.....) for each and every claim. The Contractor shall maintain such insurance for a period of twelve years from the date of practical completion of the Works under the Contract, provided always that such insurance is available at commercially reasonable rates and terms. For the avoidance of doubt any increased or additional premium required by the insurers by reason of the Contractor's own claims record or other acts or omissions matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates and terms.
- 5.2 Without prejudice to the Contractor's obligation to maintain professional indemnity insurance the Contractor shall immediately inform the Beneficiary as soon as possible if such insurance ceases to be available at commercially reasonable rates and terms in order that the Contractor and the Beneficiary can discuss means of best protecting their respective positions in respect of the Works in the absence of such insurance provided that in respect of such period the Contractor shall obtain such reduced cover as is available to the Contractor and as it would be reasonable to expect the Contractor to obtain and maintain.
- 5.3 As and when requested to do so by the Beneficiary, the Contractor shall produce for inspection

documentary evidence that its professional indemnity insurance is being maintained

- 6 The benefit of these terms may be assigned once by the Beneficiary and once by its permitted assignee without the consent of the Contractor being required and any further assignation shall require the written consent of the Contractor.
- 7 Notwithstanding clause 6 the benefit of these terms may be assigned freely by the Beneficiary:
 - 7.1 by way of security to a party providing finance in connection with the Works or secured on the completed Works (and by way of re-assignment on redemption); and
 - 7.2 to any member of the same group of companies as the Beneficiary, and
 - 7.3 the Contractor shall not be entitled to contend that any person to whom this Agreement is assigned in accordance with clause 6 or 7 is precluded from recovering under this Agreement any loss incurred by such assignee resulting from any breach of this Agreement (whenever happening) by reason that such person is an assignee and not the named promisee under this Agreement.
- 8 It is hereby agreed that the Contractor's liability hereunder shall cease upon the expiry of the period of twelve years from the date of practical completion of the Works under the Contract save in respect of and without prejudice to those claims which have been made prior to the expiry of that period.
- 9 It is agreed that this Agreement shall not negate or diminish any duty or obligation otherwise owed to the Beneficiary by the Contractor.
- 10 Any notice or other communication given under these terms must be in writing delivered personally or sent by first class post. Any notice sent by post is deemed to have been duly given on the third business day following the date on which it was sent by post.
- 11 These terms are governed by Scots law and are subject to the exclusive jurisdiction of the Courts of Scotland.
- 12 Notwithstanding any other provision of this Agreement there is no intention that anything in this Agreement confers or purports to confer any right to enforce any of its terms on any party who is not a party to this Agreement.

- 13 Notwithstanding any other provision of this Agreement the liability of the Contractor shall be limited to the cost of remedying any defect in the Works and the Contractor shall not have any liability to the Beneficiary for any indirect or consequential loss (each of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses.

IN WITNESS WHEREOF these presents on this and the [XX] preceding are executed as follows:

They are signed for and on behalf of **[CONTRACTOR]**:

signature of

Director/ Company Secretary/Authorised

full name of above (print)

date of signing

place of signing

signature of

Director/Company Secretary/Authorised

full name of above (print)

address of witness

They are signed for and on behalf of **[BENEFICIARY]**:

signature of

Director/ Company Secretary/Authorised

full name of above (print)

date of signing

place of signing

signature of

Director/Company Secretary/Authorised

full name of above (print)

address of witness

They are signed for and on behalf of **[EMPLOYER]**:

signature of
Director/ Company Secretary/Authorised

full name of above (print)

date of signing

place of signing

signature of
Director/Company Secretary/Authorised

full name of above (print)

address of witness



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