

# Employer's Agent warranty

dated [ ]

## Parties

- (1) [ ] (registration number [ ]) whose registered office is at [ ] (the **Agent**);
- (2) **Homes and Communities Agency** a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Central Business Exchange II, 414-428 Midsummer Boulevard, Central Milton Keynes MK9 2EA (the **HCA**).

## Introduction

- (A) The Agent has been appointed by the CLT to act in the capacity of Employer's Agent in connection with the Project and to undertake the Services upon the terms and conditions contained in the Appointment.
- (B) The HCA has an interest in the Project.
- (C) The Agent has agreed to enter into this warranty in favour of the HCA.

## Agreed terms

### 1 Interpretation and definitions

- 1.1 In this warranty unless the context otherwise requires the following expressions shall have the following meanings:

**Appointment** means the terms of appointment entered into between the Agent and the CLT dated [ ] 20[ ] (and any further agreement(s) varying or supplementing it) under which the Agent has agreed to provide the Services relating to the Project;

**CLT** means [ ];

**HCA** means the Homes and Communities Agency, a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Central Business Exchange II, 414-428 Midsummer Boulevard, Central Milton Keynes MK9 2EA;

**[Intellectual Property]** has the meaning given to such term in the Appointment;

**Practical Completion** has the meaning given in the Appointment;

**Project** means the construction of [ ];

**Services** means the services which the Agent has been retained to carry out under the Appointment;

**Working Day** means any day from Monday to Friday (inclusive) which is not a statutory bank holiday in England and Wales and which is not a day between 24<sup>th</sup> December to 1<sup>st</sup> January (inclusive).

- 1.2 The clause headings in this warranty are for convenience only and do not affect its interpretation.
- 1.3 Words importing the singular meaning include where the context so allows the plural meaning and vice versa.
- 1.4 Words of one gender include the feminine and neuter genders and words denoting natural persons include firms and companies and all are to be construed interchangeably in that manner.
- 1.5 A reference to any statute or statutory instrument shall include a reference to any modification extension or re-enactment of it.
- 1.6 References in this warranty to numbered clauses are references to the relevant clause in this warranty.

## 2 **Duty of care**

The Agent warrants and undertakes to the HCA that:

- 2.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Appointment; and
- 2.2 it has exercised and shall continue to exercise in the performance of the Services all the reasonable skill care and diligence as may reasonably be expected of a properly qualified, professional and competent person of the relevant discipline who is experienced in the provision of professional services for projects of a similar size scope value character and complexity to the Project; and
- 2.3 it shall owe a duty of care to the HCA in respect of all matters which lie within the scope of the Agent's professional responsibilities and the performance of the Services in relation to the Project **provided that** the Agent shall owe no greater duty of care to the HCA under this warranty than it would have done if, in lieu of this warranty, the HCA had been named as client instead of the CLT in the Appointment; and
- 2.4 the HCA shall be deemed to have relied upon and to continue to rely upon the Agent's professional skill and judgement in respect of all matters which lie within the scope of the Agent's professional responsibilities and the performance of the Services in relation to the Project.

## 3 **Copyright and provision of information**

- 3.1 The Agent hereby grants to the HCA an irrevocable, perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property, drawings, reports, specifications, calculations and other documents provided by the Agent or which are or become owned by the Agent and which relate to the Project, for any purpose relating to the Appointment. The Agent shall not be liable for any use of such documentation for any purpose other than that for which it has prepared.
- 3.2 To the extent that any of the data, materials and documents referred to in clause 3.1 are generated by or maintained on a computer or in any other machine readable format, the

Agent shall if requested by the HCA procure for the benefit of the HCA and at the cost of the HCA the grant of a licence or sub-licence for the term of this warranty for and supply any relevant software and/or database to enable the HCA to access and otherwise use such data for the purpose referred to in clause 3.1.

- 3.3 The Agent shall fully indemnify the HCA within five (5) Working Days of demand under this clause 3.3, against any action, claim, demand, proceeding, cost, charge or expense arising from, or incurred by it by reason of, any infringement or alleged infringement of any intellectual property rights of any third party by the activities described in this clause 3, any breach by the Agent of this clause 3 and against all costs and damages of any kind which the HCA may incur in connection with any actual or threatened proceedings before any court or adjudication body.
- 3.4 The Agent shall provide a copy of all certifications issued by the CLT pursuant to the Appointment to the HCA at the same time as they are issued pursuant to the Appointment.

#### 4 **Insurance and liability**

- 4.1 Without prejudice to its other obligations under this warranty or otherwise at law, the Agent shall effect and maintain with reputable insurers or underwriters from the date of commencement of the Services for a period [expiring no earlier than twelve (12) years after the completion of the Services or, if earlier, the termination for any reason of the Appointment,]<sup>1</sup> professional indemnity insurance with a limit of indemnity (excluding costs incurred in defending any claim against the Agent) of not less than five million pounds (£5,000,000) for each and every claim provided always that such insurance is available in the open market upon reasonable terms and at commercially reasonable premium rates to consultants of a similar size and standing to the Agent.
- 4.2 As and when it is reasonably required to do so by the HCA, the Agent shall produce to the HCA for inspection broker's certificates in respect of the insurance required by clause 4.1, confirming that the relevant premiums have been paid, and that the relevant policy remains in full force and effect.
- 4.3 The Agent shall forthwith notify the HCA if the insurance required to be maintained by it under clause 4.1 cease to be available upon reasonable terms and at commercially reasonable premium rates or if, for any other reason, the Agent is unable to continue to maintain such insurances and, in any case, shall continue to maintain insurances upon such terms and with such limits of indemnity as may then be so available.

#### 5 **Assignment**

- 5.1 The Agent shall not without the consent of the HCA assign its rights under this warranty.
- 5.2 The HCA may (without the consent of the Agent) assign its rights under this warranty on two occasions only.
- 5.3 In this warranty references to the HCA shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 5.2.

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<sup>1</sup> To be aligned with the terms of the Appointment.

6 **Notices**

6.1 Any formal notice or communication to be given under or in connection with this warranty shall be in writing which for this purpose shall not include e-mail or facsimile and shall be addressed as provided in clause 6.3.

6.2 Any such notice or communication, so addressed, must be delivered by hand, and will be deemed to have been delivered upon delivery during normal working hours on a Working Day at the relevant address.

6.3 Subject to clause 6.4, the address for each party is the address shown at the beginning of this warranty for the relevant party and the relevant addressee for that party shall be:

for the Agent:

Relevant addressee: [ ];

for the HCA:

Relevant addressee: [ ];

6.4 A party may give notice of a change to its name, address or relevant addressee for the purposes of this clause 6 provided that such notification shall only be effective on the date specified in the notification as the date on which the change is to take place.

7 **Continuing effect**

Notwithstanding the completion of the Project or any part of the Project this warranty shall continue to have effect.

8 **Miscellaneous**

8.1 Nothing in this warranty shall limit or affect any other rights or remedies (whether under any contract, at law, at equity or otherwise) which the HCA would have against the Agent in the absence of this warranty.

8.2 The Agent's liability under this warranty shall not be released, diminished or in any other way affected by:

8.2.1 the appointment by the HCA of any person to survey the Project or to monitor the carrying out of the Project or to inspect any documents relating to the Project on behalf of the HCA or the failure to appoint such a person; or

8.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the HCA.

9 **Contracts (Rights of Third Parties) Act 1999**

Nothing in this warranty confers or purports to confer any rights on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

10      **Law**

This warranty and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the jurisdiction of the English courts.

This warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**[Signature blocks]**