

**Schedule 3**  
**Warranty Agreement**



**[Funder Collateral Warranty]** shall have the meaning given to it in the Building Contract;

**Funder Required Period** means the period (if any) during which the Contractor is not permitted to exercise or seek to exercise any right to terminate the Building Contract pursuant to the [Funder Collateral Warranty];

**Moral Rights** means moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988;

**Outline Planning Permission** means any planning permission granted by the Planning Authority which will enable the Regeneration to go ahead subject to the resolution and/or determination of any reserved planning matters;

**Planning Permission** means the Outline Planning Permission(s) and/or the Detailed Planning Permission(s) (as the case may be);

**Practical Completion** means the date of practical completion of the whole of the Works pursuant to the Building Contract;

**Regeneration** means the proposed regeneration of the Regeneration Site by the demolition of the existing buildings and structures and the phased construction thereon of housing, car-parking, roads and community facilities with all ancillary features and facilities in accordance with the Planning Permission and the provisions of the Regeneration Agreement;

**Regeneration Agreement** means the agreement entered into between the Beneficiary and the Client for the delivery of the Regeneration;

**Regeneration Site** means the Dollis Valley estate as is the subject of the Regeneration pursuant to the Regeneration Agreement;

**RIBA Work Stages** means the work stages set out in the "Outline Plan of Work 2007" published by the Royal Institute of British Architects;

**[RP Collateral Warranty]** shall have the meaning given to it in the Building Contract;

**RP Required Period** means the period (if any) during which the Contractor is not permitted to exercise or seek to exercise any right to terminate the Building Contract pursuant to the [RP Collateral Warranty];

**Working Day** means a day on which clearing banks in the City of London are (or would be but for strike lock-out or other stoppage affecting particular banks or banks generally) open during banking hours and **Working Days** shall be interpreted accordingly;

**Works** means the works of design, demolition, construction, completion and defects rectification to be carried out on the Regeneration Site pursuant to the Building Contract.

- 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 both 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 Consideration**

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Contractor (receipt of which the Contractor hereby acknowledges) the Contractor covenants to the Beneficiary as set out in this warranty.

## **3 Duty of care**

The Contractor warrants and undertakes to the Beneficiary that:

- 3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Building Contract; and
- 3.2 it has exercised and shall continue to exercise all the reasonable skill and care to be expected of a properly qualified and competent building contractor and (to the extent that it has design responsibility in relation to the Works or any part of the Works) the design has been and shall be carried out using all the reasonable skill and care to be expected of a properly qualified and competent design and build contractor, in each case experienced in the carrying out of such work for projects of a similar size scope value character and complexity to the Regeneration; and
- 3.3 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Contractor's responsibilities in relation to the Regeneration **provided that** the Contractor shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named as client instead of the Client in the Building Contract; and
- 3.4 the Beneficiary shall be deemed to have relied and shall continue to rely upon the Contractor's skill and judgement in respect of all matters which lie within the scope of the Contractor's responsibilities in relation to the Regeneration.

## **4 Prohibited materials**

- 4.1 Without prejudice to the generality of clause 3 the Contractor warrants that it has not used and shall not use and has exercised and shall continue to exercise the standard of skill and care required by clause 3.2 to ensure that it has not and shall not specify authorise cause or allow to be used in the Regeneration any products or materials which:
- 4.1.1 do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or

- 4.1.2 are generally known to the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
  - 4.1.3 do not comply with the guidance set out in the publication by Ove Arup and Partners entitled "Good Practice in the Selection of Construction Materials"; and/or
  - 4.1.4 are specifically prohibited under the Building Contract.
- 4.2 The Contractor shall as soon as reasonably practicable notify the Beneficiary if it becomes aware of any proposed or actual specification and/or use in the Regeneration of any materials which do not comply with clause 4.1.
- 5 **Step-in**
  - 5.1 The Contractor covenants with the Beneficiary that if any event of default shall occur under the Regeneration Agreement at any time the Contractor shall, if so required by notice in writing given by the Beneficiary in accordance with clauses 5.4.1 to 5.4.3 inclusive, accept the instructions of the Beneficiary or its appointee to the exclusion of the Client upon the terms and conditions of the Building Contract and the Client acknowledges that the Contractor shall be entitled to rely on the notice given to the Contractor by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.
  - 5.2 The Contractor hereby covenants that it shall not exercise nor seek to exercise any right to terminate or treat as terminated the Building Contract and/or its employment or discontinue or suspend the performance of any of its obligations under the Building Contract without first giving to the Beneficiary prior written notice specifying the Contractor's ground for terminating or treating as terminated the Building Contract and/or its employment and/or discontinuing or suspending its performance under the Building Contract. If the grounds are that sums which are due have not been paid by the final payment date and no effective notice to withhold payment has been given the Contractor shall give 5 Working Days' notice otherwise the Contractor shall give 15 Working Days' notice provided that any such notice period shall be deemed (regardless of when the written notice is served on the Beneficiary) not to start until the expiry of any Funder Required Period and/or any RP Required Period.
  - 5.3 Compliance by the Contractor with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Client giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Contractor from exercising its rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provision of clause 5.4.
  - 5.4 Within the relevant notice period referred to in clause 5.2 the Beneficiary or its appointee may give written notice to the Contractor:
    - 5.4.1 acknowledging that it assumes all the obligations of the Client;
    - 5.4.2 requiring the Contractor to continue with the performance of its duties and obligations under the Building Contract;

5.4.3 undertaking unconditionally to the Contractor to pay to the Contractor within 15 Working Days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Contractor under the Building Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Contractor from the appointee.

5.5 In the event of the Beneficiary or their appointee giving notice to the Contractor in accordance with clause 5.4 the Building Contract shall continue in full force and effect and in all respects as if the Building Contract had been made between the Contractor and the Beneficiary or its appointee (as applicable) to the exclusion of the Client (but without prejudice to any rights of recovery as between the Contractor and the Client) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.

5.6 The Client confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.

## **6 Copyright and moral rights**

6.1 The Contractor hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Regeneration and/or the property comprising the Regeneration and/or any structures to be demolished or erected on the Regeneration Site including but without limitation the development of the design of the Regeneration throughout and up to the end of each and every RIBA Work Stage, the obtaining of Planning Permission in respect of the Regeneration, Demolition; and the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Regeneration and/or the property comprising the Regeneration and/or any structures to be demolished or erected on the Regeneration Site **provided always** that the Contractor shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Contractor.

6.2 The licence referred to in clause 6.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding:

6.2.1 any termination of the Building Contract and/or the Contractor's employment under the Building Contract; and/or

6.2.2 whether or not the Client and the Beneficiary enter into the Regeneration Agreement; and/or

6.2.3 any termination of the Regeneration Agreement; and/or

6.2.4 whether or not the Contractor's obligations under the Building Contract extend to services beyond RIBA Work Stages D and E; and/or

6.2.5 whether or not Planning Permission is granted for the Regeneration.

6.3 The Contractor warrants that the use of the Documents for the purposes of the Regeneration and/or pursuant to the licence granted pursuant to clause 6.1 shall not infringe the rights of any third party.



6.4 The Contractor waives absolutely all Moral Rights the Contractor may have in the Documents and/or the Works and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents and/or the Works.

6.5 When requested to do so by the Beneficiary the Contractor shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Contractor's reasonable copying charges in connection with complying with such request.

## **7 Insurance**

7.1 The Contractor shall effect and maintain professional indemnity insurance in the sum of ten million pounds (£ 10,000,000) for each and every claim (or such other amount as may be agreed by the Beneficiary, acting reasonably, given the nature and value of the Works) without unusual or onerous conditions or excesses with reputable insurers carrying on business in the EU with effect from the date of commencement of the Works and for a period expiring no earlier than 12 years from Practical Completion **provided that** such insurance remains available to organisations of equivalent size and type to the Contractor's practice/organisation at commercially reasonable rates and on commercially reasonable terms.

7.2 The Contractor undertakes to provide to the Beneficiary on demand from time to time such evidence as the Beneficiary may reasonably require to satisfy himself that the insurance required by clause 7.1 is being maintained.

7.3 The Contractor shall inform the Beneficiary if the insurance required by clause 7.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Contractor and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.

7.4 The Contractor shall not compromise settle or waive any insurance claim it may have relating to any liability under this warranty without the Beneficiary's prior consent **provided that** nothing in this clause shall prevent the Contractor's insurers from taking over (in the Contractor's name) the defence of any claim made by the Beneficiary under this warranty and (in that capacity) from conducting and settling it as they see fit.

## **8 Assignment**

8.1 The Contractor shall not without the consent of the Beneficiary assign its rights under this warranty.

8.2 The Beneficiary may (without the consent of the Contractor and the Client) assign its rights under this warranty on two other occasions only.

8.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 8.2.

8.4 The Contractor undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary

named in this warranty or any intermediate owner of the Beneficiary's interest in the Regeneration shall escape loss resulting from such breach by reason of the disposal of its interest in the Regeneration.

**9 Notices**

9.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered office for the time being.

9.2 Notices may be served by:

9.2.1 personal delivery; or

9.2.2 pre-paid registered or recorded delivery mail; or

9.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre paid post.

9.3 Notices shall be deemed to have been served or received in the case of:

9.3.1 personal delivery on the date of delivery;

9.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice is posted;

9.3.3 facsimile transmission sent in accordance with clause 9.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

**10 Continuing effect**

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

**11 Miscellaneous**

11.1 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 Beneficiary would have against the Contractor in the absence of this warranty.

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

11.2.1 the appointment by the Beneficiary of any person to survey the Regeneration Site or to monitor the carrying out of the Works or to inspect any documents relating to the Regeneration Site and/or the Works on behalf of the Beneficiary or the failure to appoint such a person; or

11.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.

**12 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.

13      **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 Wales 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



by or on behalf of the Sub Contractor in the course of the carrying out of the Sub Contract Works whether in existence or to be made or produced and including all amendments and additions to them;

**[Funder Collateral Warranty]** shall have the meaning given to it in the Sub Contract;

**Funder Required Period** means the period (if any) during which the Sub Contractor is not permitted to exercise or seek to exercise any right to terminate the Sub Contract pursuant to the [Funder Collateral Warranty];

**Moral Rights** means moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988;

**Outline Planning Permission** means any planning permission granted by the Planning Authority which will enable the Regeneration to be constructed subject to the resolution and/or determination of any reserved planning matters;

**Planning Permission** means the Outline Planning Permission(s) and/or the Detailed Planning Permission(s) (as the case may be);

**Practical Completion** means the date of practical completion of the whole of the Works pursuant to the Building Contract;

**Regeneration** means the proposed regeneration of the Regeneration Site by the demolition of the existing buildings and structures and the phased construction thereon of housing, car-parking, roads and community facilities with all ancillary features and facilities in accordance with the Planning Permission and the provisions of the Regeneration Agreement;

**Regeneration Agreement** means the agreement entered into between the Beneficiary and the Client for the delivery of the Regeneration;

**Regeneration Site** means the Dollis Valley estate as is the subject of the Regeneration pursuant to the Regeneration Agreement;

**RIBA Work Stages** means the work stages set out in the "Outline Plan of Work 2007" published by the Royal Institute of British Architects;

**[RP Collateral Warranty]** shall have the meaning given to it in the Sub Contract;

**RP Required Period** means the period (if any) during which the Sub Contractor is not permitted to exercise or seek to exercise any right to terminate the Building Contract pursuant to the [RP Collateral Warranty];

**Sub Contract** means the [ ] entered into between the Contractor and the Sub Contractor dated [ ] (and any further agreement(s) varying or supplementing it) for the Sub Contract Works;

**Sub Contract Works** means the sub contract works of [ ] to be carried out by the Sub Contractor under the Sub Contract in relation to the Regeneration;

**Working Day** means a day on which clearing banks in the City of London are (or would be but for strike lock-out or other stoppage affecting particular banks or banks generally) open during banking hours and **Working Days** shall be interpreted accordingly;

**Works** means the works of design, demolition, construction, completion and defects rectification to be carried out on the Regeneration Site pursuant to the Building Contract.

- 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 both 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 Consideration**

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Sub Contractor (receipt of which the Sub Contractor hereby acknowledges) the Sub Contractor covenants to the Beneficiary as set out in this warranty.

## **3 Duty of care**

The Sub Contractor warrants and undertakes to the Beneficiary that:

- 3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Sub Contract; and
- 3.2 it has exercised and shall continue to exercise all the reasonable skill and care to be expected of a properly qualified and competent sub contractor and (to the extent that it has carried out any design of the Sub Contract Works or any part of the Sub Contract Works) designer experienced in the carrying out of such work for projects of a similar size scope value character and complexity to the Regeneration; and
- 3.3 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Sub Contractor's responsibilities in relation to the Regeneration; and
- 3.4 the Beneficiary shall be deemed to have relied and shall continue to rely upon the Sub Contractor's judgement in respect of all matters which lie within the scope of the Sub Contractor's responsibilities in relation to the Regeneration.

## **4 Prohibited materials**

- 4.1 Without prejudice to the generality of clause 3 the Sub Contractor warrants that it has not and shall not use and has exercised and shall continue to exercise the standard of skill

and care required by clause 3.2 to ensure that it has not and shall not specify authorise cause or allow to be used in the Regeneration any products or materials which:

- 4.1.1 do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
  - 4.1.2 are generally known to the construction industry to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
  - 4.1.3 do not comply with the guidance set out in the publication by Ove Arup and Partners entitled "Good Practice in the Selection of Construction Materials"; and/or
  - 4.1.4 are specifically prohibited under the Sub Contract.
- 4.2 The Sub Contractor shall as soon as reasonably practicable notify the Beneficiary if it becomes aware of any proposed or actual specification and/or use in the Regeneration of any materials which do not comply with clause 4.1.

## **5 Step-in**

- 5.1 The Sub Contractor covenants with the Beneficiary that if an event of default by the Contractor shall occur under the Building Contract at any time the Sub Contractor shall, if so required by notice in writing given by the Beneficiary in accordance with clauses 5.4.1 to 5.4.3 inclusive accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor upon the terms and conditions of the Sub Contract and the Contractor acknowledges that the Sub Contractor shall be entitled to rely on the notice given to the Sub Contractor by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.
- 5.2 The Sub Contractor hereby covenants that it shall not exercise nor seek to exercise any right to terminate or treat as terminated the Sub Contract and/or its employment or discontinue or suspend the performance of any of its obligations under the Sub Contract without first giving to the Beneficiary prior written notice specifying the Sub Contractor's ground for terminating or treating as terminated the Sub Contract and/or its employment and/or discontinuing or suspending its performance under the Sub Contract. If the grounds are that sums which are due have not been paid by the final payment date and no effective notice to withhold payment has been given the Sub Contractor shall give 5 Working Days' notice otherwise the Sub Contractor shall give 15 Working Days' notice provided that any such notice period shall be deemed (regardless of when the written notice is served on the Beneficiary) not to start until the expiry of any Funder Required Period and/or any RP Required Period.
- 5.3 Compliance by the Sub Contractor with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of determination discontinuance or suspension nor otherwise prevent the Sub Contractor from exercising its rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provision of clause 5.4

5.4 Within the relevant notice period referred to in clause 5.2 the Beneficiary or its appointee may give written notice to the Sub Contractor:

5.4.1 acknowledging that it assumes all the obligations of the Contractor;

5.4.2 requiring the Sub Contractor to continue with the performance of its duties and obligations under the Sub Contract;

5.4.3 undertaking unconditionally to the Sub Contractor to pay to the Sub Contractor within 15 Working Days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Sub Contractor under the Sub Contract but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Sub Contractor from the appointee;

5.5 In the event of the Beneficiary or the appointee giving notice to the Sub Contractor in accordance with clause 5.4 the Sub Contract shall continue in full force and effect and in all respects as if the Sub Contract had been made between the Sub Contractor and the Beneficiary or its appointee (as applicable) to the exclusion of the Contractor (but without prejudice to any rights of recovery as between the Sub Contractor and the Contractor and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination discontinuance or suspension.

5.6 The Contractor confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.

## 6 Copyright and moral rights

6.1 The Sub Contractor hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Regeneration and/or the property comprising the Regeneration and/or any structures to be demolished or erected on the Regeneration Site including but without limitation the development of the design of the Regeneration throughout and up to the end of each and every RIBA Work Stage, the obtaining of Planning Permission in respect of the Regeneration, Demolition; and the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Regeneration and/or the property comprising the Regeneration and/or any structures to be demolished or erected on the Regeneration Site **provided always** that the Sub Contractor shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Sub Contractor.

6.2 The licence referred to in clause 6.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding:

6.2.1 any termination of the Sub Contract and/or the Sub Contractor's employment under the Sub Contract; and/or

6.2.2 whether or not the Client and the Beneficiary enter into the Regeneration Agreement; and/or

6.2.3 any termination of the Regeneration Agreement; and/or



- 6.2.4 any termination of the Building Contract; and/or
- 6.2.5 whether or not the Contractor's obligations under the Building Contract extend to services beyond RIBA Work Stages D and E; and/or
- 6.2.6 whether or not Planning Permission is granted for the Regeneration.
- 6.3 The Sub Contractor warrants that the use of the Documents for the purposes of the Regeneration and/or pursuant to the licence granted pursuant to clause 6.1 shall not infringe the rights of any third party.
- 6.4 The Sub Contractor waives absolutely all Moral Rights the Sub Contractor may have in the Documents and/or the Sub Contract Works and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents and/or the Sub Contract Works.
- 6.5 When requested to do so by the Beneficiary the Sub Contractor shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Sub Contractor's reasonable copying charges in connection with complying with such request.
- 7 **Insurance**
- 7.1 The Sub Contractor shall effect and maintain professional indemnity insurance in the sum of five million pounds (£ 5,000,000) for each and every claim (or such other amount as may be agreed by the Beneficiary, acting reasonably, given the nature and value of the Works) without unusual or onerous conditions or excesses with reputable insurers carrying on business in the EU with effect from the date of commencement of the Sub Contract Works and for a period expiring no earlier than 12 years from Practical Completion **provided that** such insurance remains available to organisations of equivalent size and type to the Sub Contractor's practice/organisation at commercially reasonable rates and on commercially reasonable terms.
- 7.2 The Sub Contractor undertakes to provide to the Beneficiary on demand from time to time such evidence as the Beneficiary may reasonably require to satisfy himself that the insurance required by clause 7.1 is being maintained.
- 7.3 The Sub Contractor shall inform the Beneficiary if the insurance required by clause 7.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Sub Contractor and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.
- 7.4 The Sub Contractor shall not compromise settle or waive any insurance claim it may have relating to any liability under this warranty without the Beneficiary's prior consent **provided that** nothing in this clause shall prevent the Sub Contractor's insurers from taking over (in the Sub Contractor's name) the defence of any claim made by the Beneficiary under this warranty and (in that capacity) from conducting and settling it as they see fit.

## **8 Assignment**

- 8.1 The Sub Contractor shall not without the consent of the Beneficiary assign its rights under this warranty.
- 8.2 The Beneficiary may (without the consent of the Sub Contractor or the Contractor) assign its rights under this warranty on two other occasions only.
- 8.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 8.2.
- 8.4 The Sub Contractor undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Regeneration shall escape loss resulting from such breach by reason of the disposal of its interest in the Regeneration.

## **9 Notices**

- 9.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if it is delivered to the parties' registered office for the time being.
- 9.2 Notices may be served by:
- 9.2.1 personal delivery; or
  - 9.2.2 pre-paid registered or recorded delivery mail; or
  - 9.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre paid post.
- 9.3 Notices shall be deemed to have been served or received in the case of:
- 9.3.1 personal delivery on the date of delivery;
  - 9.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice is posted;
  - 9.3.3 facsimile transmission sent in accordance with clause 9.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

## **10 Continuing effect**

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

11        **Miscellaneous**

11.1        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 Beneficiary would have against the Sub Contractor in the absence of this warranty.

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

11.2.1       the appointment by the Beneficiary of any person to survey the Regeneration Site or to monitor the carrying out of the Sub Contract Works or to inspect any documents relating to the Regeneration Site and/or the Sub Contract Works on behalf of the Beneficiary or the failure to appoint such a person; or

11.2.2       any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.

12        **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.

13        **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 Wales 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

## Consultant warranty in favour of the Council

dated [ ]

### Parties

(1) [ ] (registration number [ ]) [of] [whose registered office is at] [ ] (the **Consultant**)

OR

[ ] of [ ] and [ ] of [ ] (the **Partners**) carrying on business together in partnership as [ ] [of] [whose principal place of business is at] [ ] (the **Consultant**)

(2) **The Mayor and Burgesses of the London Borough of Barnet** of [North London Business Park, Oakleigh Road South, London, N11 1NP] (the **Beneficiary**)

(3) [ ] (registration number [ ]) [of] [whose registered office is at] [ ] (the **Client**)

### Introduction

- (A) The Client has procured or proposes to procure the carrying out of the Regeneration at the Regeneration Site (as defined below).
- (B) The Consultant has been appointed by the Client to act for the Client in the capacity of [ ] in connection with the Regeneration and to undertake the Services upon the terms and conditions contained in the Appointment (as defined below).
- (C) The Beneficiary has an interest in the Regeneration Site or a part or parts of the Regeneration Site and/or the Regeneration and has entered into the Regeneration Agreement (as defined below) with the Client in respect of the Regeneration Site.
- (D) The Consultant has agreed to enter into this warranty in favour of the Beneficiary.

### Agreed terms

#### 1 Interpretation and definitions

1.1 In this warranty the following terms have the following meanings unless inconsistent with the context:

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

**Demolition** means the demolition of buildings and structures necessary to facilitate the Regeneration and any ancillary works and activities;

**Detailed Planning Permission** means any planning permission granted by the Planning Authority which will enable the Regeneration to be constructed including the resolution of all reserved matters relating to the same to the approval of the Planning Authority;

**Documents** means all drawings plans models specifications schedules reports calculations and other works (including without limitation any such items retained on or in any computer software or other electronic medium) which have been or will be prepared by or on behalf of the Consultant in the course of carrying out of the Services whether in existence or to be made or produced and including all amendments and additions to them;

**[Funder Collateral Warranty]** shall have the meaning given to it in the Appointment;

**Funder Required Period** means the period (if any) during which the Consultant is not permitted to exercise or seek to exercise any right to terminate the Appointment pursuant to the [Funder Collateral Warranty];

**Moral Rights** means moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988;

**Outline Planning Permission** means any planning permission granted by the Planning Authority which will enable the Regeneration to be constructed subject to the resolution and/or determination of any reserved planning matters;

**Planning Permission** means the Outline Planning Permission(s) and/or the Detailed Planning Permission(s) (as the case may be);

**Practical Completion** means the date of practical completion of the whole of the works being carried out pursuant to the Building Contract;

**Regeneration** means the proposed regeneration of the Regeneration Site by the demolition of the existing buildings and structures and the phased construction thereon of housing, car parking, roads and community facilities with all ancillary features and facilities in accordance with the Planning Permission and the provisions of the Regeneration Agreement;

**Regeneration Agreement** means the agreement dated [ ] between the Beneficiary and the Client for the delivery of the Regeneration;

**Regeneration Site** means the Dollis Valley estate as is the subject of the Regeneration pursuant to the Regeneration Agreement;

**RIBA Work Stages** means the work stages set out in the "Outline Plan of Work 2007" published by the Royal Institute of British Architects;

**[RP Collateral Warranty]** shall have the meaning given to it in the Appointment;

**RP Required Period** means the period (if any) during which the Consultant is not permitted to exercise or seek to exercise any right to terminate the Appointment pursuant to the [RP Collateral Warranty];

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

**Working Day** means a day on which clearing banks in the City of London are (or would be but for strike lock-out or other stoppage affecting particular banks or banks generally) open during banking hours and **Working Days** shall be interpreted accordingly.

- 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 Consideration**

In consideration of the payment of £10.00 (ten pounds) by the Beneficiary to the Consultant (receipt of which the Consultant hereby acknowledges) the Consultant covenants with the Beneficiary as set out in this warranty.

## **3 Duty of care**

The Consultant warrants and undertakes to the Beneficiary that:

- 3.1 it has performed and shall continue to perform all of its duties and obligations under or arising out of the Appointment; and
- 3.2 it has exercised and shall continue to exercise in the performance of the Services all the reasonable skill and care to be expected of a properly qualified and competent consultant of the relevant discipline experienced in the provision of professional services for projects of a similar size scope value character and complexity to the Regeneration; and
- 3.3 it shall owe a duty of care to the Beneficiary in respect of all matters which lie within the scope of the Consultant's professional responsibilities in relation to the Regeneration **provided that** the Consultant shall owe no greater duty of care to the Beneficiary under this warranty than it would have done if, in lieu of this warranty, the Beneficiary had been named as client instead of the Client in the Appointment; and
- 3.4 the Beneficiary shall be deemed to have relied upon the Consultant's professional skill and judgement in respect of all matters which lie within the scope of the Consultant's professional responsibilities in relation to the Regeneration.

## **4 Prohibited materials**

- 4.1 Without prejudice to the generality of clause 3 the Consultant warrants that it has exercised and shall continue to exercise the standard of skill and care required by clause 3.2 to ensure that it has not and shall not specify authorise cause or allow to be used in the Regeneration any products or materials which:



- 4.1.1 do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate); and/or
  - 4.1.2 are generally known to members of the Consultant's profession to be deleterious in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures; and/or
  - 4.1.3 do not comply with the guidance set out in the publication by Ove Arup and Partners entitled "Good Practice in the Selection of Construction Materials"; and/or
  - 4.1.4 are specifically prohibited under the Appointment.
- 4.2 The Consultant shall as soon as reasonably practicable notify the Beneficiary if it becomes aware of any proposed or actual specification and/or use in the Regeneration of any materials which do not comply with clause 4.1.
- 5 **Step-in**
- 5.1 The Consultant covenants with the Beneficiary that if any event of default shall occur under the Appointment at any time the Consultant shall, if so required by notice in writing given by the Beneficiary mutatis mutandis in accordance with clauses 5.4.1 to 5.4.3 inclusive, accept the instructions of the Beneficiary or its appointee to the exclusion of the Client upon the terms and conditions of the Appointment and the Client acknowledges that the Consultant shall be entitled to rely on the notice given to the Consultant by the Beneficiary as conclusive evidence for the purpose of this warranty that these circumstances have occurred permitting the Beneficiary to give such notice.
- 5.2 The Consultant hereby covenants that it shall not exercise nor seek to exercise any right to terminate or treat as terminated the Appointment and/or its employment or discontinue or suspend the performance of any of its obligations under the Appointment without first giving to the Beneficiary prior written notice specifying the Consultant's ground for terminating or treating as terminated the Appointment and/or its employment and/or discontinuing or suspending its performance under the Appointment. If the grounds are that fees which are due have not been paid by the final payment date and no effective notice to withhold payment has been given the Consultant shall give 5 Working Days' notice otherwise the Consultant shall give 15 Working Days' notice provided that any such notice period shall be deemed (regardless of when the written notice is served on the Beneficiary) not to start until the expiry of any Funder Required Period and/or any RP Required Period.
- 5.3 Compliance by the Consultant with the provisions of clause 5.2 shall not be treated as a waiver of any breach on the part of the Client giving rise to the right of determination nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice unless the right of determination discontinuance or suspension shall have ceased pursuant to the provision of clause 5.4.
- 5.4 Within the relevant notice period referred to in clause 5.2 the Beneficiary or its appointee may give written notice to the Consultant:

- 5.4.1 acknowledging that it assumes all the obligations of the Client under the Appointment;
  - 5.4.2 requiring the Consultant to continue with the performance of its duties and obligations under the Appointment;
  - 5.4.3 undertaking unconditionally to the Consultant to pay to the Consultant within 15 Working Days after the date of the notice under this clause 5.4 any sums which have become properly due and payable to the Consultant under the Appointment but which are at the date of such notice unpaid and in the case of a notice from an appointee of the Beneficiary the Beneficiary shall guarantee all payments due to the Consultant from the appointee.
- 5.5 In the event of the Beneficiary or their appointee giving notice to the Consultant in accordance with clause 5.4 the Appointment shall continue in full force and effect and in all respects as if the Appointment had been made between the Consultant and the Beneficiary or its appointee (as applicable) to the exclusion of the Client (but without prejudice to any rights of recovery as between the Consultant and the Client) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.
- 5.6 The Client confirms its agreement to the terms and conditions of this warranty and its concurrence with the arrangements made and contemplated by this warranty.

## 6 Copyright and moral rights

- 6.1 The Consultant hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Regeneration and/or the property comprising the Regeneration and/or any structures to be demolished or erected on the Regeneration Site including but without limitation the development of the design of the Regeneration throughout and up to the end of each and every RIBA Work Stage, the obtaining of Planning Permission in respect of the Regeneration, Demolition; and the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Regeneration and/or the property comprising the Regeneration and/or any structures to be demolished or erected on the Regeneration Site **provided always** that the Consultant shall not be liable for any such use by the Beneficiary of the Documents for any purpose other than that for which the same were prepared and provided by the Consultant.
- 6.2 The licence referred to in clause 6.1 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding:
- 6.2.1 any termination of the Appointment and/or the Consultant's employment under the Appointment; and/or
  - 6.2.2 whether or not the Client and the Beneficiary enter into the Regeneration Agreement; and/or
  - 6.2.3 any termination of the Regeneration Agreement; and/or
  - 6.2.4 whether or not the Consultant's obligations under the Appointment extend to services beyond RIBA Work Stages D and E; and/or

- 6.2.5 whether or not Planning Permission is granted for the Regeneration.
- 6.3 The Consultant warrants that the use of the Documents for the purposes of the Regeneration and/or pursuant to the licence granted pursuant to clause 6.1 shall not infringe the rights of any third party.
- 6.4 The Consultant waives absolutely all Moral Rights the Consultant may have in the Documents and/or the Regeneration and where it is not the author shall procure a waiver from the author of any Moral Rights the author may have in respect of the Documents and/or the Regeneration.
- 6.5 When requested to do so by the Beneficiary the Consultant shall provide to the Beneficiary copies of the Documents subject to the Beneficiary paying the Consultant's reasonable copying charges in connection with complying with such request.
- 7 Insurance**
- 7.1 The Consultant shall effect and maintain professional indemnity insurance in the sum of five million pounds (£ 5,000,000) for each and every claim (or such other amount as may be agreed by the Beneficiary, acting reasonably, given the nature and value of the Services) without unusual or onerous conditions or excesses with reputable insurers carrying on business in the EU with effect from the date of commencement of the Services and for a period expiring no earlier than twelve (12) years from Practical Completion (or in the event that Practical Completion is not achieved, the date the Consultant completes its Services) **provided that** such insurance remains available to organisations of equivalent size and type to the Consultant's practice/organisation at commercially reasonable rates and on commercially reasonable terms.
- 7.2 The Consultant undertakes to provide to the Beneficiary on demand from time to time such evidence as the Beneficiary may reasonably require to satisfy himself that the insurance required by clause 7.1 is being maintained.
- 7.3 The Consultant shall inform the Beneficiary if the insurance required by clause 7.1 is not maintained or renewed or for any reason becomes void or unenforceable or ceases to be available at commercially reasonable rates and terms and shall agree with the Beneficiary the best means of protecting the Consultant and the Beneficiary's respective interests and carry out such actions as shall be necessary to implement any agreed actions.
- 7.4 The Consultant shall not compromise settle or waive any insurance claim it may have relating to any liability under this warranty without the Beneficiary's prior consent **provided that** nothing in this clause shall prevent the Consultant's insurers from taking over (in the Consultant's name) the defence of any claim made by the Beneficiary under this warranty and (in that capacity) from conducting and settling it as they see fit.
- 8 Assignment**
- 8.1 The Consultant shall not without the consent of the Beneficiary assign its rights under this warranty.
- 8.2 The Beneficiary may (without the consent of the Consultant and the Client) assign its rights under this warranty on two other occasions only.

8.3 In this warranty references to the Beneficiary shall include where the context admits its permitted assignees but not so as to permit more than two assignments under clause 8.2.

8.4 The Consultant undertakes with the Beneficiary not to contend that any person to whom this warranty may be assigned will be precluded from recovering under this warranty any loss resulting from any breach of this warranty either by reason that the person is an assignee and not the original party to this warranty or by reason that the Beneficiary named in this warranty or any intermediate owner of the Beneficiary's interest in the Regeneration shall escape loss resulting from such breach by reason of the disposal of its interest in the Regeneration.

## 9 Notices

9.1 Any notice to be given under this warranty shall be in writing and shall be deemed to be duly given if delivered in the case of a corporation to the parties' registered office for the time being or in any other case to the parties' principal place of business for the time being.

9.2 Notices may be served by:

9.2.1 personal delivery; or

9.2.2 pre-paid registered or recorded delivery mail; or

9.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre paid post.

9.3 Notices shall be deemed to have been served or received in the case of:

9.3.1 personal delivery on the date of delivery;

9.3.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice is posted;

9.3.3 facsimile transmission sent in accordance with clause 9.2.3 on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

## 10 Continuing effect

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

## 11 [Partnership

11.1 Where the context so requires the term **Consultant** shall be deemed to include any additional partner or partners who may be admitted into the partnership of the Consultant during the currency of this warranty.

11.2 The Consultant acknowledges that being a partnership the rights obligations and liabilities of the Partners under this warranty as joint and several.

- 11.3 The warranty and the liabilities of the Consultant, the Client and the Beneficiary in this warranty shall not automatically terminate upon the death, retirement or resignation of any one or more of the Partners or upon the admission of an additional partner or partners to the Consultant.]

12 **Miscellaneous**

- 12.1 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 Beneficiary would have against the Consultant in the absence of this warranty.

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

12.2.1 the appointment by the Beneficiary of any person to monitor the carrying out of the Regeneration or to inspect any documents relating to the Regeneration Site and/or the Regeneration on behalf of the Beneficiary or the failure to appoint such a person; or

12.2.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary.

13 **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.

14 **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 Wales 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