

Sub-Consultant Collateral Warranty

THIS AGREEMENT is made on the day of

BETWEEN:

- 1 **[SUB-CONSULTANT NAME]**, a company established under [insert] law with company registration number insert company registration number and its registered address at insert registered address (for the purposes of this Agreement referred to as the **"Sub-Consultant"**) which expression includes its successors and permitted assigns) of the one part,
- 2 [Consultant] a company established under [insert] law with company registration number insert company registration number and its registered address at insert registered address (for the purposes of this Agreement referred to as the **"Consultant"**) which expression includes its successors and permitted assigns) of the one part, and
- 3 **Dublin Port Company**, having its offices at [address] (for the purposes of this Agreement referred to as the **"Client"** which expression includes its successors and permitted assigns and anybody to whom its functions are transferred under Applicable Law) of the other part,

WHEREAS:

(A) In this Agreement:

- (a) the **"Appointment"** means the sub-consultancy agreement dated [] made between the Consultant and the Sub-Consultant;
- (b) other capitalised terms shall have the meanings attributed to them in the Appointment save where indicated otherwise.

(B) By the Appointment the Consultant has appointed the Sub-Consultant to provide certain professional services [insert description of the services] (the **"Services"**).

NOW IT IS HEREBY AGREED as follows:

1. The Sub-Consultant hereby:
 - 1.1 warrants to and undertakes with the Client that it has exercised and will continue to exercise all reasonable skill, care and diligence in the performance of its obligations and duties pursuant to the Appointment and has not broken and shall not break any express or implied term of the Appointment.
 - 1.2 binds itself to the Client in all respects as if the Client had appointed the Sub-Consultant to act prior to the commencement of any work by the Sub-Consultant to the extent that the Client shall be entitled to enforce all remedies against the Sub-Consultant by virtue of any breach by the Sub-Consultant of its obligations pursuant to the Appointment.
 - 1.3 warrants to and undertakes with the Client that the Sub-Consultant shall take out and maintain:
 - 1.3.1 professional indemnity insurance for [] years after the date the service is provided under a Consultant's Contract with a limit of indemnity of not less than €[] for each and every claim or series of claims (subject to reasonable adjustment of cover for any exceptional increases in insurance market rates) arising out of the same originating cause with a maximum excess of €[] or such other amount as is acceptable to the Client;
 - 1.3.2 public liability insurance for bodily injury to, disease or death of any person (other than an employee of the Sub-Consultant) or loss of or damage to property resulting from a negligent act or omission of the Sub-Consultant with a limit of indemnity of not less than

- €[] for each and every claim or series of claims arising from the same occurrence with a maximum excess of €[] until completion of the Services or earlier termination of the Appointment.
- 1.3.3 employer's liability insurance for bodily injury to, disease or death of employees of the Sub-Consultant arising out of or in the course of their employment in connection with the Consultant's Contract with a limit of indemnity of not less than €[] for each and every claim or series of claims arising from the same occurrence with a maximum excess of €[] until completion of the Services or earlier termination of the Appointment.
- 1.4 The insurance required under Clause 1.3 shall be written by reputable and well-established insurers approved by the Client (whose approval shall not be unreasonably withheld or delayed).
- 1.5 As and when reasonably requested by the Client, the Sub-Consultant shall produce for inspection documentary evidence that the insurance required by Clause 1.3 has been taken out and is being maintained as so required.
- 1.6 If the Sub-Consultant shall at any time fail to take out or maintain the insurance required under Clause 1.3, the Client may take out and maintain such insurance in the Sub-Consultant's name, and the Sub-Consultant shall pay to the Client the amount of all costs and expenses properly incurred by the Client in so doing. The Sub-Consultant shall notify the Client immediately on becoming aware of the cancellation or non-renewal or material reduction in the scope of cover provided by the insurances as set out above in Clause 1.3.
- 1.7 Any public liability insurance policy shall include an indemnity to principals clause specifically indemnifying the Client. The policy shall not include terms or conditions to the effect that the Sub-Consultant must discharge any liability before being able to recover from the insurers.
- 1.8 The Sub-Consultant shall be liable to pay the full amount of any deductibles or excess amounts payable under the policies of insurance referred to above in the event of a claim under any of the policies.
2. The copyright in any documents produced by the Sub-Consultant in connection with any Services (the "Documents") shall remain vested in the Sub-Consultant but the Client shall have a perpetual non-exclusive irrevocable and assignable royalty free licence to reproduce, copy and use the Documents for all purposes connected with the Services and to future related Services.
- 2.1 The Client shall be entitled (at its own cost) to full and proper copies of the Documents in the possession or control of the Sub-Consultant and the Sub-Consultant will not claim copyright or a lien in respect of them against the Client.
- 2.2 The licence granted to the Client under this Collateral Agreement shall include a right for the Client to grant sub-licences.
3. The Sub-Consultant hereby undertakes and warrants to the Client that it has not and will not specify for use materials or substances which are not in accordance with current European Standards and Codes of Practice insofar as they may be applicable or any materials or substances known to be deleterious to health or safety or the durability or suitability of any such project in the particular circumstances in which the same is used.
4. The benefit of this Collateral Agreement and/or any of the present or future rights interests and benefits of the Client hereunder may be assigned on six occasions without the consent of the Sub-Consultant. The Client shall give the Sub-Consultant prompt notice of any such assignment provided always that the giving of such notice shall not be a precondition to the effectiveness of any assignment.
5. Any notice provided for in accordance with this Collateral Agreement shall be deemed to be duly given if delivered by hand or sent by registered post to the party named therein at the

address of such party shown in this Collateral Agreement or such other address as such party may by notice in writing nominate for the purpose of service and if sent by registered post or delivered by hand shall be deemed to have been received when delivered.

6. The Sub-Consultant will, if so required by notice in writing given by the Client, accept the instruction of the Client or the Client's nominee to the exclusion of the Consultant in respect of the carrying out and completion of any Services upon the terms and conditions of the Appointment (whereupon all the rights and obligations of the Consultant under the Appointment shall thereafter be performed and exercisable by the Client or its nominee). The Sub-Consultant shall not be in breach of the Appointment by complying with the obligations imposed on it by this Clause.
7. The Sub-Consultant will not without first giving the Client not less than twenty one (21) days prior notice in writing exercise any right it may have to determine its employment under the Appointment or to treat the same as having been repudiated by the Consultant or to discontinue or suspend the performance of any duties to be performed by the Sub-Consultant pursuant thereto. The Sub-Consultant right to determine its employment under the Appointment, to treat the same as having been repudiated or to suspend or to discontinue performance shall cease if within twenty one days of receipt of such notice the Client shall give notice in writing to the Sub-Consultant requiring the Sub-Consultant to accept the instruction of the Client or its nominee to the exclusion of the Consultant in respect of the carrying out and completion of the Services upon the terms and conditions of the Appointment (whereupon all the rights and obligations of the "Consultant" under the Appointment shall thereafter be performed and exercisable by the Client or its nominee).
8. This Agreement shall be governed by, and construed in accordance with, the laws of Ireland and the parties, subject to Clause 9, irrevocably submit to the jurisdiction of the Irish Courts.
9. **Dispute Resolution**
 - 9.1 Any dispute or difference of any kind whatsoever which arises or occurs between the parties to this Collateral Agreement or their respective assigns in relation to anything or matter arising under, out of, or in connection with this Collateral Agreement shall, in the first instance, be referred to a Mediator to be appointed by agreement between the parties and, in the absence of agreement within five (5) working-days of the receipt by one Party of a written notice to concur in the appointment of a Mediator, by the Chairman of the Chartered Institute of Arbitrators Irish Branch.
 - 9.2 In the event that the dispute or difference is not resolved within fifteen (15) working-days of the appointment of the Mediator, the dispute or difference shall be referred to an Arbitrator to be agreed between the parties and, in default of agreement within ten (10) working-days of the receipt by one Party of a written notice to concur in the appointment of an Arbitrator, by the Chairman of the Chartered Institute of Arbitrators Irish Branch, such arbitration to be governed by the Arbitration Act 2010 as amended or replaced and shall be conducted in accordance with the Model Law as defined in the Arbitration Act 2010. The Arbitrator shall have no connection with the Mediator or Mediation Proceedings unless both parties have otherwise consented in writing.

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IN WITNESS WHEREOF the parties have affixed their Seals the day and date first hereinbefore written.

SIGNED, SEALED AND DELIVERED by **(SUB-CONSULTANT)**

in the presence of:

Director

Person duly authorised

in the presence of:

Witness to Signature

Witness' address

Witness' occupation

SIGNED for and on behalf of the Consultant by:

A duly authorised representative

in the presence of:

Witness to Signature

Witness' address

Witness' occupation

SIGNED for and on behalf of **Dublin Port Company** by:

A duly authorised representative

in the presence of:

Witness to Signature

Witness' address

Witness' occupation

