

Form of collateral warranty Contractor to Funder

Date

Contractor

and
Employer

and

Ecology Building Society

Collateral Warranty from the Contractor to a Funder

Ellis House, 7 Belton Road, Silsden, Keighley, West Yorkshire BD20 0EE
Tel: 01535 650 770 **Website:** ecology.co.uk **Email:** mortgages@ecology.co.uk

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. Financial Services Register No. 162090

COLLATERAL WARRANTY ("this Warranty") Date

PARTIES:

<p>(1) Contractor</p> <p>Registered office address</p> <p>Company Number</p> <p><input type="text"/> <input type="text"/></p>	<p>Registered office address</p> <p>("the Contractor")</p>
<p>(2) Employer</p>	<p>Address</p> <p>("the Employer")</p>
<p>(3) ECOLOGY BUILDING SOCIETY (Registered Number 733B) whose registered office is at Ellis House, 7 Belton Road, Silsden, Keighley, West Yorkshire, BD20 0EE ("the Funder")</p>	

INTRODUCTION

<p>(A) The Employer has entered into a building contract dated _____ with the Contractor ("the Building Contract") in connection with the details of works below.</p>	<p>_____</p>
<p>(B) The Contractor is executing this Warranty in favour of the Funder who is providing funding to the Employer under the terms of a finance agreement ("the Finance Agreement").</p>	

THIS DEED WITNESSES as follows:

1. DEFINITIONS

1.1. In this Warranty:

- 1.1.1. expressions defined in the Building Contract shall have the same meanings in this Warranty;
- 1.1.2. references to Clauses are to clauses of this Warranty unless stated otherwise;
- 1.1.3. the headings are not to affect its interpretation;
- 1.1.4. the terms "including", "include" and "in particular" are illustrative only and are not intended to limit words that precede them;
- 1.1.5. references to a "Working Day" shall be to any day that is not a Saturday, Sunday or a public holiday; and
- 1.1.6. references to a party include their permitted successors in title and assignees.

2. STANDARD OF CARE

- 2.1. The Contractor warrants to the Funder that it has and shall comply with the terms of the Building Contract.
- 2.2. The Contractor warrants that in performance of any design required under the Building Contract in carrying out the Works it will exercise all the reasonable skill, care and diligence to be expected of a qualified, experienced and competent contractor undertaking works of a similar scale and character to the Works.
- 2.3. Subject to the level of skill, care and diligence required by clause 2.2, the Contractor further warrants that for the purposes of the Works it has not used or specified and will not use or specify any products or materials which:
 - 2.3.1. do not conform with relevant British or European Standards or Codes of Practice or good building practice; or
 - 2.3.2. are generally known to be deleterious to health and safety and/or the durability of buildings or structures in the particular circumstances in which they are used.

3. LIMITATION OF LIABILITY

- 3.1. In any action or proceedings brought by the Funder under this Warranty the Contractor may rely on any exclusion or limitation of liability that it would have against the Employer under the Building Contract other than any rights of set-off or deduction.
- 3.2. The Contractor's obligations under Clause 2 shall not be released or diminished by any independent enquiry on behalf of the Employer into any matter to which this Warranty relates.

4. FUNDER'S STEP IN RIGHTS

- 4.1. Unless the Funder has served notice under Clause 4.2 or 4.4:
 - 4.1.1. the Funder has no authority to issue directions, instructions or orders under the Building Contract; and
 - 4.1.2. the Funder has no liability to the Contractor for any amount due under the Building Contract in respect of the Works.
- 4.2. The Contractor agrees to accept the instructions of the Funder or the Funder's appointee to the exclusion of the Employer in respect of the Works on the terms of the Building Contract if the Funder serves notice on the Contractor that the Finance Agreement has been terminated. The Employer acknowledges that the Contractor may rely on a Funder's notice to the Contractor under this Clause 4.2 as conclusive evidence for the purposes of this Warranty of the termination of the Finance Agreement.
- 4.3. The Contractor agrees to give the Funder at least 10 (ten) Working Days' written notice (setting out grounds for doing so) before seeking to exercise any right to terminate the Building Contract or treat it as having been repudiated by the Employer.
- 4.4. Where the Contractor has served notice under Clause 4.3 the Contractor's right to terminate the Building Contract or treat it as having been repudiated is to cease if the Funder gives the Contractor notice under this Clause 4.4 (before the Contractor's notice under Clause 4.3 expires) requiring the Contractor to accept the instructions of the Funder or the Funder's appointee to the exclusion of the Employer in respect of the Works.
- 4.5. Any minimum notice period in the Building Contract for the Contractor to terminate it is to be extended to include the notice period under Clause 4.3. The Employer acknowledges that compliance by the Contractor with Clause 4.3 is not to be treated as a waiver of any breach of the Building Contract by the Contractor or otherwise to prevent the Contractor from exercising its rights after the notice under Clause 4.3 has expired unless the right of termination has ceased under Clause 4.4.

- 4.6. A notice given by the Funder under Clause 4.2 or Clause 4.4 must:
- 4.6.1. specify the Clause under which it is given;
 - 4.6.2. require the Contractor to continue to provide the Works under the Building Contract;
 - 4.6.3. acknowledge that the Funder assumes all the Employer's obligations under the Building Contract; and
 - 4.6.4. undertake to pay all sums due to the Contractor under the Building Contract.
- 4.7. If the Funder gives notice to the Contractor under Clause 4.2 or 4.4, the Building Contract is to continue as if it had been made between the Funder and the Contractor to the exclusion of the Employer (but without prejudice to any rights of recovery between the Employer and the Funder or between the Employer and the Contractor). This applies irrespective of any dispute or doubt as to the validity of such rights of determination or discontinuance. The Contractor consents to any assignment of the benefit of the Building Contract under this Clause irrespective of the terms of the Building Contract.

5. INTELLECTUAL PROPERTY

- 5.1. Intellectual property rights in all drawings, plans, details, materials and designs ("Documents") shall remain vested in the Contractor. The Contractor grants to the Funder an irrevocable, royalty-free, non-exclusive licence to copy, use and reproduce the Documents for any purpose related to the Works including the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Works or extension of it together with the right for the Funder to authorise others to do so.
- 5.2. The licence given by this Clause 5 shall continue after the termination (for any reason) of this Warranty.
- 5.3. The Contractor will indemnify the Funder from and against all claims, proceedings, damages, costs and expenses suffered or incurred because of a claim that any use of the Documents in accordance with this Clause 5 infringes the intellectual property rights of any third party.
- 5.4. Clause 5.3 is without prejudice to the Funder's right to seek an indemnity and/or a contribution from any party who may have contributed to any losses sustained.
- 5.5. The Contractor shall not be liable for any use, misuse or variation by the Funder or any person authorised by the Funder of any Documents for any purpose other than that for which they were prepared by the Contractor.

6. INSURANCE

- 6.1. The Contractor warrants that it has and will maintain professional indemnity insurance of at least £500,000 (half a million pounds) for each and every claim or series of claims arising from the same originating cause, source or event throughout the Works and for 12 (twelve) years from the date of practical completion of the Works as certified in accordance with the Building Contract ("Practical Completion") provided such insurance is available in the market at commercially reasonable rates.
- 6.2. The Contractor must immediately notify the Funder in writing if the insurance required by this Clause ceases to be available at commercially reasonable rates or subsequent to the date of this warranty any restrictions are attached to this policy or an aggregate limit applies to any matters other than those specified in the Building Contract so that the Funder and Contractor can discuss the best way to protect their respective positions in respect of the Works in the absence of the insurance.
- 6.3. As and when it is reasonably requested to do so by the Funder, the Contractor will produce for inspection documentary evidence (which may be by broker's certificate) that the professional indemnity insurance required by Clause 6.1 is being maintained.

7. ASSIGNMENTS

- 7.1. The benefit of this Warranty may be assigned twice by way of absolute legal assignment without the consent of the Contractor, once by the Funder and once by the Funder's assignee.
- 7.2. An assignment shall not be effective against the Contractor until the Funder has given the Contractor written notice of the assignment.
- 7.3. No further or other assignments of this Warranty shall be permitted without the consent of the Contractor which will not be unreasonably withheld or delayed.

8. THIRD PARTY RIGHTS

Nothing in this Warranty confers or purports to confer on any third party any benefit or right to enforce any term of this Warranty pursuant to the Contracts (Rights of Third Parties) Act 1999.

9. NOTICES

Notices under this Warranty will be duly served if they are served in accordance with the following table:

Method of Service	Date of Service	Proof of Service
Personal delivery to the registered office or principal business address of the party to be served.	Date of delivery if before 16.00 on a Working Day otherwise 10.00 on the next working day.	Proof of delivery.
First class letter addressed to the registered office or principal business address of the party to be served.	48 hours after posting if that is a Working Day otherwise 10.00 on the next Working Day thereafter.	Proof of posting unless returned through the Post Office undelivered service within 15 Working Days of posting.
Facsimile sent to the facsimile number of the registered office or principal business address of the party to be served.	Date of transmission if before 16.00 on a Working Day otherwise 10.00 on the next Working Day thereafter.	Transmission report showing a successful transmission to the correct number plus proof of posting of a hard copy.

10. LIMITATION

No action or proceedings for breach of this Warranty shall be commenced against the Contractor after the expiry of 12 years from the date of Practical Completion of the Works.

11. GOVERNING LAW AND ENFORCEMENT

- 11.1. This Warranty shall be governed by and construed in accordance with the law of England.
- 11.2. The Parties agree to submit to the exclusive jurisdiction of the courts of England.

IN WITNESS of the above each of the parties has executed and delivered this document as a deed on the above date.

EXECUTED AND DELIVERED AS A DEED by THE CONTRACTOR	
Director name	Director signature
Director/Company Secretary name	Director/Company Secretary signature
EXECUTED AND DELIVERED AS A DEED by THE EMPLOYER	
Employer name	Employer signature
Employer address	
EXECUTED AND DELIVERED AS A DEED by affixing the common seal of ECOLOGY BUILDING SOCIETY	
in the presence of Director	Director signature
Director/Company Secretary name	Director/Company Secretary signature