

CROUDACE HOMES LIMITED

WORKS CONTRACT CONDITIONS

REV C

APRIL 2024

croudacehomes

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1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the context otherwise requires, the following words or expressions shall have the precise meanings as set out below:

1.1.1 **Associate**

shall have the same meaning as defined in section 131 of the Building Safety Act 2022;

1.1.2 **Attendances**

means any facilities, plant and/or equipment referred to in the Contract Documents (if any) which the Company has expressly stated it will provide for use by the Contractor;

1.1.3 **Authorised Person**

means a person or persons authorised by the Company as stated and named in the Contract Order and/or the Contract Documents, or such other person as the Company may notify to the Contractor that the Company has appointed to perform such role;

1.1.4 **Build Quality Checklist**

means one of the documents issued to the Contractor by the Company as part of the Invitation to Tender and as may be amended from time to time by the Company;

1.1.5 **CDM Regulations**

means the Construction (Design and Management) Regulations 2015 or any replacement, re-enactment, modification or amendment to those regulations;

1.1.6 **CIS**

means Construction Industry Scheme under the Finance Act 2004 or any replacement, re-enactment, modification or amendment to those regulations;

1.1.7 **Company**

means Croudace Homes Limited (company number 813521);

1.1.8 **Completion Date**

means the proposed completion date for the Works or a Section, as set out in the Pre Contract Interview Minutes (or other Contract Documents) as may be revised or adjusted in accordance with these Conditions;

1.1.9 **Commencement Date**

means the date specified in the Contract Documents on which the Contractor must commence performance of the Works or a Section or, if the Company so directs, then any date after the end of the Lead-in Period as may be revised or adjusted in accordance with these Conditions;

1.1.10 **Confidential Information**

means all information (written or oral) or documents (however recorded or preserved) disclosed or made available by or which the Contractor obtains from or receives (directly or indirectly) from the Company or any Group Company or its contractors, sub-contractors, employees, servants, agents or advisors in connection with the Development, the Site and/or the Contract or as a result of the discussions leading up to or the entering into or performance of the Contractor's obligations and duties in connection with the Contract including but not limited to:

- (a) the terms (but not existence) of the Contract;
 - (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Company or any Group Company, and
 - (ii) the operations, processes, product information, know how, designs, trade secrets and/or software of the Company or any Group Company; and
 - (iii) any information or analysis derived from the confidential information;
- but not any information that:
- (i) was already lawfully known, or became lawfully known to the Supplier independently; or
 - (ii) is in or comes into the public domain other than due to wrongful use or disclosure by the relevant party;

1.1.11 Consents

means without limitation any and all permissions, consents, approvals, licences, certificates, requirements, conditions, restrictions, registrations, notices, permits, fire officer approvals, building and development control authority approvals, licences (whether statutory or otherwise), consents of local, public or other competent authority or statutory or regulatory body, and consents of all parties having a right or interest in or over the Site or the Development, as may lawfully be required or necessary in order for the Contractor to commence, carry out, maintain and complete the Works and, if they are destroyed or damaged, the reinstatement of the Works and use and enjoyment of the Development and which term includes any modification, variation or amendment to any such Consents and any restrictions or conditions attached to any such Consents;

1.1.12 Contract

means the contract between the Company and the Contractor under which the Contractor agrees to carry out and complete the Works in accordance with an subject to the Contract Documents;

1.1.13 Contract Documents

means these Contract Conditions, the Special Conditions (if any); the Pre Contract Interview Minutes, the Specification, the Invitation to Tender, the Trade Preamble, the stage payment application schedule and timeline, the trade pricing notes and matrices, the Build Quality Checklist, the Contractor's Quotation and the Contract Order;

1.1.14 Contractor

means the person who has agreed to carry out and complete the Works as stated in the Contract Order;

1.1.15 Contractor's Persons

means the Contractor's contractors, consultants, sub-contractors, suppliers, servants, agents, partners, workers and employees engaged in connection with the Works or a Section;

1.1.16 Contract Order

means the contract order form issued to the Contractor by the Company relating to the

Works in the Company's standard format or otherwise as the Company may adopt;

- 1.1.17 **Contract Price**
means the amount shown in the Contract Order as the total price payable by the Company for the Works (as may be adjusted in accordance with this Conditions) unless agreed otherwise by the Company in writing and subject to clauses 11.2 and 11.3;
- 1.1.18 **Contractor's Quotation**
means the Contractor's quotation for the Works, as more specifically described in the Contract Order;
- 1.1.19 **Data Protection Laws**
means the Data Protection Act 2018, the UK adopted form of the General Data Protection Regulation (UK GDPR) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the Data Protection (Charges and Information) Regulations 2018, together with any other laws applicable to the protection of personal data in force from time to time in England and Wales and any related regulations and guidance (as from time to time amended, extended, re-enacted or consolidated) and all subordinate legislation, regulations and guidance made pursuant to any of them and the terms: "personal data", "process", "controller", "processor", "personal data breach" and "data subject" have the meanings attributed to them in the Data Protection Laws;
- 1.1.20 **Development**
means the works on or in connection with the Site of which the Works or a Section form a part as described in the Contract Documents;
- 1.1.21 **Documents**
means any and all documents, material, data and information (whether in hard copy, digital or electronic format and whether in existence as at the date of the Contract or yet to be created) including but not limited to reports, drawings, models, illustrations, data, databases, schedules, programmes, bills of quantities, budgets, photographs, videos, details, brochures, plans, surveys, minutes or notes of meetings, studies, calculations, designs, specifications and other documents prepared, conceived or developed by the Contractor or on its behalf in connection with the Works or a Section and all updates, amendments, additions and revisions to them and any works, designs or inventions incorporated or referred to in them;
- 1.1.22 **Group Company**
means any direct or indirect holding company or parent undertaking (whether immediate or not) of the Company and any direct or indirect subsidiary or subsidiary undertaking of the Company or any such holding company or parent undertaking (as such terms are defined in the Companies Act 2006);
- 1.1.23 **Health and Safety Policy**
means the Company's health and safety policy, together with its requirements on alcohol and drug testing;
- 1.1.24 **Insolvent**
means, in relation to the Contractor, any one or more of the following:
(a) the Contractor is unable to pay its debts as they fall due; or

- (b) being an individual, the Contractor is the subject of a bankruptcy petition, application or order; or
- (c) the Contractor enters into an assignment, arrangement, compromise or composition with any creditor in satisfaction of the Contractor's debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction) or have suspended any payments or received a moratorium of any indebtedness, winding up, dissolution, administration or re-organisation; or
- (d) without a declaration of solvency, pass a resolution or make a determination to be wound up; or
- (e) have a winding up order or bankruptcy petition or order made against the Contractor; or
- (f) the Contractor has appointed to it or it appoints a liquidator, provisional liquidator, administrator, administrative receiver or a compulsory manager or other similar officer in respect of the Contractor or any of its assets (or had service at court of any notice of intention to appoint any such officer); or
- (g) enforcement of any security over any of the Contractor's assets; or
- (h) any expropriation, attachment, sequestration, distress or execution affects any of the Contractor's assets; or
- (i) any financial indebtedness of the Contractor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described); or
- (j) the Contractor is the subject of any equivalent or analogous arrangement, event or proceedings to those described in (a) – (i) above in any other jurisdiction;
- (k) the Contractor suspending or ceasing, or threatening to suspend or cease, to carry on all or a substantial part of its business;

1.1.25 **Interested Third Party**

means any one or more of the following:

- (a) any Associate of the Company;
- (b) Group Company;
- (c) the Warranty Body;
- (d) any management company set up or to be set up in relation to any part of the Site;
- (e) any person who enters into or has entered into an agreement to provide finance to the Company or to an Associate of the Company or to a Group Company or to a purchaser or owner or tenant of any part of the Site or any investor in the Company or any Associate of the Company or any Group Company;
- (f) any person who owns a freehold or leasehold interest in any part of the Site or any person who enters into or has entered into an agreement to purchase a freehold or leasehold interest in any part of the Site;
- (g) any adjoining or adjacent landowner to the Site;
- (h) any Other Contractor; and
- (i) any additional persons specified in the Contract Documents as being entitled to enforce third party rights;

1.1.26 **Interim Valuation Period**

means each period referred to in the Contract Documents or, if no period is specified, then the Interim Valuation Period shall be calendar monthly (starting on the first day and ending on the last day of each relevant calendar month) with the first such period expiring at the end of the calendar month after the month in which the Contractor commenced performance of the Works or a Section on the Site and the last period

ending at Practical Completion of the whole of the Works;

1.1.27 Interim Valuation Date

means the interim valuation dates specified in the Pre-contract Interview Minutes or Contract Documents or, if no such dates are specified, then the 5th day of each month, the first being the 5th day of the month after the month in which the Contractor commences works;

1.1.28 Invitation to Tender

means the invitation to tender issued by the Company to the Contractor in respect of the Works as referred to in the Contract Order or Pre Contract Interview Minutes;

1.1.29 Lead-in Period

means the number of days agreed and specified in the Contract Documents as being the period of prior notice reasonably required by the Contractor in order to commence performance of the Works or a Section or, if no period or number of days is specified, then the number of days shall be seven (7) days;

1.1.30 NHBC

means the National House-Building Council (a company limited by guarantee under company number 320784) whose registered office is at NHBC House, Davy Avenue, Knowlhill, Milton Keynes MK5 8FP or any successor body;

1.1.31 Other Contractor

means any legal entity engaged (other than the Contractor) to carry out any works, services or supply goods or materials in connection with any part of the Development and shall include but not be limited to a consultant, contractor and/or supplier and all their employees, servants, agents and all those authorised or engaged by them or on their behalf in connection with the Development;

1.1.32 Practical Completion

means a state by which the Works or a Section are complete in all respects and free from apparent defects; and the Contractor has provided all documentation, data and information specified in the Contract Documents required by the Company, all information and documentation so as to allow the Company to satisfy and discharge the requirements for completion that may be required by; the Warranty Body, any Interested Third Party, the local authority, any regulatory body, the Consents and the Statutory Requirements in so far as they relate to the Contract Works or a Section;

1.1.33 Pre Contract Interview Minutes

means the Company's minutes of the meeting held prior to the placing of the Contract Order between the Company and the Contractor and referred to within the Contract Order;

1.1.34 Public Holiday

means Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday;

1.1.35 Rectification Period

means the period commencing on Practical Completion of the Works or a Section and ending twenty-four (24) months thereafter, or such other period as may be stated in the Pre Contract Interview Minutes;

- 1.1.36 **Retention**
means an amount equivalent to such percentage of the total amount included in the gross valuation of the Works or a Section (from time to time) calculated pursuant to these Conditions as is specified in the Contract Order or Pre Contract Interview Minutes or, if no percentage is specified, then the percentage shall be five (5) per cent;
- 1.1.37 **Scheme for Construction Contracts**
means the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended from time to time);
- 1.1.38 **Sections**
means the Sections (if any) into which the Works have been divided as referred to in the Contract Documents;
- 1.1.39 **Site**
means the site where the Works are to be carried out as stated in the Contract Order or Contract Documents;
- 1.1.40 **Special Conditions**
means special conditions (if any) that may amend, modify or supplement these Conditions and which may be specified by the Company in the Contract Order if none are specified then there shall be no amendments, modifications or supplements to these Conditions incorporated into the Contract;
- 1.1.41 **Specification**
means the drawings schedules and specifications for the Works or a Section contained in or identified in the Invitation to Tender or referred to in the Contract Documents or as otherwise provided to the Contractor from time to time;
- 1.1.42 **Statutory Requirements**
means without limitation any and all applicable law, any statute, statutory instrument, rule, permission or order made under any statute or directive and any rule, regulation or bye-law of any public or local authority or regulatory or statutory body or of any statutory undertaker that has any applicability or jurisdiction with regard to the Works and any legislation, regulation or directive or any codes of practice, guidance notes and recommendations from the United Kingdom Government relating to the Development and/or the Works and/or the Site and any permit, authorisation, licence, consent or decision of a relevant authority or organisation thereunder which control the right to develop the Site and the term 'Statutory Requirements' includes but is not limited to any modification, amendment or re-enactment (whether before or after the date the Contract is entered into) to any relevant Statutory Requirements;
- 1.1.43 **Surveyor**
means the person identified as such within the Contract Documents, or any other person notified as such by the Company to the Contractor in writing;
- 1.1.44 **Trade Preamble**
means the trade specific requirements for the Works to be carried out by the Contractor as referred to in the Contract Order or Contract Documents;
- 1.1.45 **Valuation**
means the value of the Works carried out in accordance with the Contract (including but not limited to all Variations performed according to clause 8) as valued by the

Surveyor;

1.1.46 **Variation**

means any variation, modification, omission, revision, addition or other alteration in the nature, scope or duration of the Works or a Section or any part of them;

1.1.47 **VAT**

means value added tax imposed by the Value Added Tax Act 1994, or any similar tax in addition to or replacing it from time to time;

1.1.48 **Warranty Body**

means the NHBC or any other person providing defects insurance warranties or guarantees for residential dwellings as notified to the Contractor;

1.1.49 **Working Day**

means a day other than a Saturday a Sunday or a Public Holiday; and

1.1.50 **Works**

means the permanent and temporary works, design (in so far as the Contractor is responsible for design), construction, completion and commissioning of the works briefly described in the Contract Order and more fully described in the Contract Documents and all works required which ought reasonably to be inferred from the Contract by a competent and diligent contractor experienced in carrying out works of a similar nature to the Works (including any Variations made in accordance with these Conditions).

1.2 References to "Final Payment Notice", "Final Pay Less Notice", "Payment Notice", "Prescribed Period" and "Pay Less Notice" shall have the meanings described in clauses 11 and 13.

1.3 In these Conditions, unless the context otherwise requires:

1.3.1 reference to the singular shall include the plural and vice versa;

1.3.2 clause or paragraph headings, notes and footnotes are inserted for convenience only and shall not form part of or affect the construction or interpretation of these Conditions;

1.3.3 any reference to a clause or paragraph in these Conditions is a reference to a clause or paragraph of these Conditions;

1.3.4 any words or phrase introduced by the terms: "including", "include", "in particular", "for example" or any similar expression shall be construed without limitation, as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding or following those terms and the use of the words "other" or "otherwise" shall not be construed as having a limiting effect;

1.3.5 reference to any gender shall include all other genders;

1.3.6 reference to "person" includes individuals, bodies corporate, unincorporated associations, trusts, trustees, professions, businesses, partnerships or any entity having legal capacity and all such words are to be construed interchangeably in that manner;

1.3.7 reference to a statute or statutory provision is a reference to such statute or provision as modified, amended, extended, consolidated, replaced or re-enacted from time to time;

- 1.3.8 reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision as modified, amended, extended, consolidated or re-enacted from time to time;
- 1.3.9 references to a party or the parties are references to a party or the parties to the Contract and references to a party shall include its successors in title and permitted assigns; and
- 1.3.10 any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- 1.4 Where under the Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day that is a Public Holiday that day shall be excluded.
- 1.5 Where one provision of the Contract imposes upon the Contractor a standard, duty or obligation which is more onerous than, or additional to, that imposed by another provision, then the relevant standards, duties or obligations shall, so far as possible, be treated as cumulative, failing which the standard, duty or obligation which is more onerous on the Contractor shall prevail.
- 1.6 The warranties and undertakings contained in the Contract shall be without prejudice to any warranties implied by common law or statute.
- 1.7 If any term or condition of the Contract is for any reason held to be illegal, invalid, void, ineffective, unreasonable, inoperable or otherwise unenforceable by law, it shall be severed and deemed to be deleted from the Contract and the validity and enforceability of the remainder of the Contract shall not be affected or impaired in any way and shall remain in full force and effect. If any provision of the Contract is so found to be illegal, invalid, void, ineffective, unreasonable, inoperable or otherwise unenforceable but would be valid and enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.
- 1.8 Any consent or approval required to be given by the Company pursuant to these Conditions must be obtained before the act or event to which it applies is carried out and shall be effective only when the consent or approval is given in writing by the Authorised Person.
- 1.9 The Contractor agrees to execute and deliver to the Company such documents and instruments and shall use all reasonable endeavours to procure that any necessary third party shall execute and deliver such documents and instruments and the Contractor shall perform such acts and take such further actions as may reasonably be required for the purpose of giving full effect to the Contract and securing the full benefit of the rights, powers and remedies conferred upon the Company, Any Associate of the Company and any Interested Third Party under the Contract.
- 1.10 Where a Party comprises two or more persons;
- 1.10.1 any obligations on the part of that Party contained or implied in the Contract are deemed to be joint and several obligations on the part of those persons; and
- 1.10.2 references to that Party include references to each and any of those persons.

2. **CONTRACT TERMS AND CONDITIONS**

- 2.1 The Contractor must notify the Company in writing upon receipt of the Contract Order if it does not accept the Contract. If the Company has not received notice within 7 days of the date of the Contract Order or, if the Contractor has commenced the Works on Site, the Contractor shall be deemed to have accepted the Contract.
- 2.2 The Contract represents the entire agreement between the Company and the Contractor and supersedes and extinguishes all and any other previous agreements or arrangements (whether written or oral) that may have existed between them whether expressed to be by way of offer acceptance, counter-offer or otherwise and shall prevail over any other terms and conditions, unless agreed by the Company in writing signed by the Authorised Person.
- 2.3 Notwithstanding the date the Company and the Contractor enter into the Contract, the appointment of the Contractor shall be deemed to have commenced with effect from the date when the Contractor first began to carry out any services or works relating to the Works. To the extent that any such services or works were carried out prior to or otherwise than pursuant to the Contract, the Contractor warrants that it has carried out such services or works using the same standards of skill and care as those applicable under the Contract and acknowledges that any payments made in respect of the same are payments on account of the Contract Price. These Conditions shall apply with retrospective effect to all work, activities and services provided by the Contractor or the Contractor's Persons or on their behalf.
- 2.4 The Contract Documents are to be read as a whole. If any discrepancy, ambiguity or conflict appears within or between any of the Contract Documents, the Contractor shall notify the Company immediately and the Company will instruct the Contractor as to which of the discrepant, ambiguous or conflicting items is to be adopted and the Company shall (subject always to complying with all Statutory Requirements and the Consents) comply with such instruction without any adjustment to the Contract Price or the Completion Date and without any additional cost to the Company. Except as expressly agreed by the Authorised Person, nothing in any documents provided by the Contractor or on its behalf shall override or modify any of the documents provided by the Company.
- 2.5 Any typographical, clerical, arithmetical or other error or omission in the Contract shall be subject to correction by the Company without liability on the part of the Company.
- 2.6 A variation of these Conditions is only effective if it is made in writing and signed by the Authorised Person. Any other purported variation shall be of no effect.
- 2.7 Any quotation and/or tender received from the Contractor in respect of the Works is deemed to have been made subject to and in accordance with these Conditions. Any of the Contractor's terms and conditions of, insofar as they relate to the Works, are excluded and are of no effect in connection with the Contract in all circumstances even if included as part of or listed or referred to in the Contract Documents.

3. **WORKS**

- 3.1 The Contractor agrees to carry out and complete the Works for the Company and in return the Company agrees to pay the Contract Price in accordance with and subject to these Conditions. The Contractor warrants and undertakes to observe, perform and comply with all of its obligations and duties under the Contract.
- 3.2 The Works form part of the Development being carried out on the Site. The Contract does not signify

that the Contractor will be retained to undertake work on the entire Site or that the whole of the Works or any part of them can be executed continuously. The Company gives no guarantee of continuity of work or sequencing of work and may at any time issue an instruction to the Contractor to change any intended programme or sequence of work. The Contractor shall comply with such instruction without any entitlement to additional payment or any adjustment to the Contract Price.

- 3.3 The Contractor may not have exclusive possession of the Site and Other Contractors may occupy the Site during the Works. If and to the extent that the Contractor is required to share possession of or access to the Site during all or part of the performance of its obligations under the Contract, the Contractor undertakes the following:
- 3.3.1 to provide in good time all reasonably required information in respect of the Works and sequencing thereof for the attention of any other persons with whom possession is shared;
 - 3.3.2 to liaise regularly with any Other Contractors and the Company in order to ensure that no activities or operations required to be carried out on the Site will be disrupted, delayed or prolonged; and
 - 3.3.3 not to do or omit to do or cause or permit anything to be done which might disrupt, delay or prolong the activities or works of any Other Contractors or the Company or delay or disrupt the regular progress and completion of the Development.
- 3.4 The Contractor acknowledges that the Site or parts of it and the surrounding area may be occupied throughout the duration of the Works or a Section. The Contractor shall have regard to the rights and interests of those occupiers so as to minimise any disturbance, disruption and/or inconvenience to those occupying the Site and the surrounding area and the Contractor shall take all reasonably practicable steps to reduce any such disturbance, disruption and/or inconvenience.
- 3.5 The Contractor shall be responsible for the accurate setting out of the Works and each Section and the Contractor shall satisfy itself before commencing the Works or a Section and during the carrying out of the Works or a Section as to the position, dimensions, suitability and compatibility of any previous and/or existing work and the ground, sub-surface conditions, physical conditions and condition of existing structures, buildings, utilities or services or the Site which may in any way affect the Works or a Section. The Contractor shall satisfy itself that any existing or previous work to that of the Works or a Section or any part of them has been properly executed and completed before commencing the Works or a Section and the Contractor shall immediately warn the Company in writing if any such existing or previous work is sub-standard, out of position, wrongly dimensioned or the conditions of any existing structures, buildings, utilities, services or the Site are in any other way unsuitable. The Company has no liability to the Contractor if such notification is not given.
- 3.6 The Contractor shall provide in good time so as not to delay or disrupt the Development all reasonable information and documents to the Company that the Company may require in order to set-out and commence any follow-on work after the Works or a Section have been completed or any other work that needs to be co-ordinated and integrated into or with the Works or a Section. The Contractor shall also provide the Company with all necessary early warnings, applications, notices and any other communications in sufficient time and detail to enable the Company to comply with any obligations the Company may have in any agreements with Other Contractors or Interested Third Parties in relation to the provision of early warnings, applications, notices and any other communications.

- 3.7 The Company has entered into or may enter into agreements with Interested Third Parties in respect of the Site and/or the Development. The Contractor shall have regard to and shall observe, perform and comply with all obligations in such agreements in so far as they relate and apply to the Works and shall not do or omit to do anything or cause or permit anything to be done which might cause, constitute or contribute to any breach by the Company of any of its obligations on any agreement with any Interested Third Party or result in the diminution of any rights, powers and remedies of the Company in connection with such agreements. The Contractor shall indemnify, save, defend and hold harmless the Company from and against all liabilities, costs, losses, damages, expenses, claims and proceedings accrued, suffered or incurred by the Company arising from:
- 3.7.1 any breach, non-observance or non-performance by the Contractor or Contractor's Persons of any of its obligations or duties under the Contract; and
 - 3.7.2 any act or omission of the Contractor or the Contractor's Persons which involves the Company in any liability to any Interested Third Party.
- 3.8 The Contractor shall ensure that at all times as part of the Works or a Section provision is made for the support and protection of all existing buildings, structures and services situated in, on, under, through or adjacent to the Site in so far as they may be affected by the Works or a Section. If the Contractor fails to carry out its obligations under this clause, then the Company shall be entitled to engage Other Contractors to carry out such works required and recover all associated costs and expenses from the Contractor as a debt and/or set-off or deduct from any sums due to the Contractor under the Contract or any other contract between the Company and the Contractor. The Contractor shall not by any act, omission or default impede, hinder or block access to and from existing or temporary footpaths or roads being used for access or egress to and from the Site or any part of it.
4. **QUALITY AND STANDARD OF WORK AND MATERIALS**
- 4.1 The Contractor shall commence, carry out and complete the Works:
- 4.1.1 in a good, proper and workmanlike manner;
 - 4.1.2 in accordance with BSI British Standards (in their entirety), codes of practice and good building and industry practice;
 - 4.1.3 in accordance with the Contract Documents, the Statutory Requirements and the Consents;
 - 4.1.4 to the satisfaction of the Company;
 - 4.1.5 in accordance with such instructions and/or directions supplied and/or issued from time to time by the Company;
 - 4.1.6 in compliance with and without infringement of or interference with any interests, rights, reservations, covenants, restrictions, stipulations or other encumbrances binding on or affecting the Site or the surrounding area or adjacent land and obtaining all necessary rights, interests and agreements for commencement, carrying out and completion of the Works;
 - 4.1.7 except as otherwise instructed in writing by the Authorised Person, within the boundaries of the Site;
 - 4.1.8 in accordance with the requirements of the Warranty Body and any statutory

undertakers as are applicable from time to time; and

4.1.9 in accordance with the Build Quality Checklist.

- 4.2 The Contractor shall seek whenever possible to assist the Company to save costs and to design execute, carry out and complete the Development in the most cost-efficient and profitable way consistent with good design practice and with safety. The Contractor shall be responsible for the co-ordination and integration of the Works with any other works to be undertaken by Other Contractors in connection with the Development and the Contractor shall co-operate and collaborate with the Company, Other Contractors and all regulatory, public, statutory and/or local authorities or bodies having an interest in the Works or the Site or any part of it to enable the Company to comply with all Statutory Requirements and Consents.
- 4.3 All materials, goods and workmanship shall be of a high standard, free from defects and in all respects fit for the purposes intended. All materials and goods used or provided by the Contractor are to be new, of sound and satisfactory quality and suitable in all respects for the purposes of the Works and in accordance with the Contract Documents, Statutory Requirements, British Standards and codes of practice and good building practice current at the time of use and any requirements and instructions of the Company issued to the Contractor from time to time. The Contractor shall provide copies of all BBA certificates in respect of goods or materials forming part of the Works. The Contractor must not substitute or replace any materials or goods specified in the Contract Documents without the Company's prior written consent signed by the Authorised Person. If the Company gives its consent, this shall not relieve the Contractor of its other obligations, duties and liabilities. The Contractor acknowledges that any substitution or replacement of materials or goods specified in the Contract Documents may affect recovery of financial rebates from suppliers and the Contractor shall be liable for any losses suffered or incurred by the Company caused by any breach or default of the Contractor.
- 4.4 The Contractor shall correct or immediately replace and/or make good any faulty or sub-standard works at the Company's request. The Contractor must continually snag and quality control check its work throughout the course of the Works.
- 4.5 The Contractor shall not close up or cover up any part of the Works or a Section without giving the Company notice in writing and a reasonable opportunity to inspect, examine, test and/or measure that part of the Works or a Section and to make comments to the Contractor in respect of the completion of the Works or a Section. If the Contractor does not give the Company such reasonable opportunity then, at the Company's request, the Contractor shall uncover the relevant works and make good any such works as necessary, at the Contractor's own expense and at no cost to the Company.
- 4.6 The Company may issue instructions requiring the Contractor to open up for inspection, investigation, examination, testing and/or measuring any work covered up or of any executed work. The Contractor shall be liable for the cost of any such opening up, inspection, testing and/or measuring (including the cost of making good) if the materials, goods or works are not in accordance with the Contract. The Company shall not be liable for any costs associated with any inspection, testing, investigation, measuring or opening up if it was reasonable for the Company to request it having regard to the quality and standard of the works performed to date by the Contractor pursuant to the Contract or any other works performed by the Contractor.
- 4.7 Except where expressly stated to the contrary in the Contract Documents, the Contractor accepts entire and sole responsibility for all the design of the Works and the selection of materials and goods

for use or incorporation into the Works. The Contractor shall be responsible and liable for any mistake, inaccuracy, ambiguity, conflict, error or discrepancy in the design of the Works and the selection of materials and goods for use or incorporation into the Works. The Contractor shall observe and comply with any design submission procedure specified or referred to in the Contract Documents. To the extent that the Contractor is responsible for any design of the Works, the Contractor warrants and undertakes to the Company that it has exercised and shall continue to exercise in the carrying out of the design of the Works the reasonable skill, care and diligence to be expected of a properly qualified and competent designer skilled and experienced in design of works of a similar size, scope, nature, scale, character and complexity as the Works.

- 4.8 All design documents prepared by the Contractor or on its behalf must be submitted to the Company in sufficient time to allow any comments made by the Company to be incorporated into such design documents prior to the design documents being required for procurement and/or execution of the Works. The Contractor shall submit samples of all materials or goods proposed to be used in the Works for the Company's approval prior to their use. Any materials or goods delivered to Site which are inferior in any way to the approved samples shall not be used or incorporated into the Works. The Contractor shall have regard to and incorporate all comments made by the Company or on its behalf in respect of the Contractor's design documents and samples of materials or goods to the extent the design documents and/or samples of materials or goods submitted are not in accordance with the Contract. Any comments made by the Company in that respect shall not be treated as giving rise to a Variation.
- 4.9 The Contractor acknowledges that the Company may rely on any certificate or written approval, statement or comment the Company gives in respect of the Works or a Section (including but not limited to all advice or recommendations made or given prior to entering into the Contract) and that the Company shall rely on the Contractor's skill and judgement in carrying out and completing the Works or a Section. The Contractor agrees that the Company is deemed not to have any intrinsic expert knowledge or skill in relation to the Works or a Section and the Contractor shall warn the Company if the Contractor becomes aware or (acting as a prudent and experienced contractor) ought reasonably to be aware of any inadequacies or discrepancies within or between the nature, scope and/or design of the Works or a Section and/or the Development.
- 4.10 The Contractor shall observe, perform and comply with all decisions, instructions and directions that the Company gives to the Contractor. If the Contractor fails to comply within seven (7) days after receipt (or immediately or within such other reasonable period as the Company may otherwise instruct in the case of emergency or urgency) of such written instruction, the Company shall be entitled to employ or engage others to carry out the instruction, whereupon all extra costs, losses, damages and expenses accrued, suffered or incurred by the Company as a result of the employment or engagement of others to carry out the instruction shall be paid or allowed to the Company by the Contractor as a debt.
- 4.11 The Contractor warrants and undertakes to the Company that it has not and shall not specify or authorise for use, use or allow or permit to be used in the Works any goods, substances or materials generally known in the construction industry to be deleterious to health and safety or to the environment or pose a threat of harm to the structural stability, performance, durability or physical integrity of the Works in the particular circumstances in which the goods, substances or materials are used or which by their nature of application contravene any British Standard or code of practice current at the date of use of such goods, substances or materials. The Contractor shall immediately notify the Company if the Contractor becomes aware of any proposed or actual use in the Works of

any of the materials, substances, goods, equipment, products or kits otherwise than in accordance with this clause.

- 4.12 Ownership of and title to materials or goods to be used in connection with the Works shall pass to the Company (with full title guarantee and free from all encumbrances) once their value has been included in any Payment Notice or, if earlier, on delivery to the Site. The Contractor shall have the use of such materials or goods on licence until they are fully and finally fixed and incorporated into the Works and the Development. The Contractor shall remain responsible and liable for any theft, loss, injury or damage to such materials or goods until they are fully and finally fixed and incorporated into the Works and the Development. The Contractor shall repair, replace, reinstate and/or make good any theft, loss, injury or damage to any part of the Works. The Contractor shall not have any right to exercise any lien over any of such materials or goods.

5. **HEALTH AND SAFETY AND BUILDING SAFETY LAWS**

- 5.1 The Company requires and expects the Contractor to promote the health and safety of itself and its employees and of other persons on the Site. The Contractor in carrying out the work shall at all times comply with all applicable health and safety legislation, the Health and Safety Policy issued by the Company (as may be updated from time to time) and the Principal Contractor's Construction Phase Health and Safety plan issued to the Contractor with the tender and/or the Contract (as may be updated from time to time). Without prejudice to these obligations, the Contractor shall observe and comply with its duties and obligations under the CDM Regulations, Building Regulations 2010, all Statutory Requirements and all directions of the Company, the Principal Contractor and the Principal Designer (as defined in the CDM Regulations and Building Regulations 2010 and as specified in the Contract Documents) on all matters relating to the Works.
- 5.2 The Contractor warrants and represents that it has and shall continue to have for the duration of the Works the qualifications, competence, skills, experience, resources and organisational capability to enable it to comply with all of its obligations under all Statutory Requirements (including but not limited to the Building Regulations 2010 and the CDM Regulations).

6. **THE SITE**

- 6.1 The Contractor has had an opportunity to and shall be deemed to have inspected and examined the form and nature of the Site, its physical and other conditions (including the ground, sub-surface conditions, all existing structures, artificial, man-made and/or natural obstructions, utilities, services, drains, pipes, cables, conduits and the like therein and thereon) of or affecting the Site and its surroundings and all means of access thereto and generally to have obtained for itself all necessary information as to any condition, risk, contingency and any other circumstance influencing or affecting the performance of the Contractor's obligations under the Contract, the commencement, carrying out, regular progress and completion of the Works and the Contract Price. The Contractor must satisfy itself as to the accuracy, adequacy and sufficiency of such information. The Company gives no warranty or representation as to the accuracy, adequacy or sufficiency of such information.
- 6.2 No failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or other circumstance shall entitle the Contractor to any increase to or adjustment of the Contract Price or to any extension of time. The Contractor shall not have or make any claim in contract, tort or by way of innocent or negligent misrepresentation in respect of information provided, or statements made, by or on behalf of the Company in respect of such condition, risk, contingency or

circumstance relating thereto.

- 6.3 The risk of the foreseen and unforeseen condition of the site, the ground, sub-surface conditions, existing structures, artificial, man-made and/or natural obstructions and adverse physical conditions rests entirely with the Contractor.
- 6.4 Where the Works include off-site works or earth-works (including but not limited to the construction of roads, sewers, drainage, pipework and the like, foundations or piling works) the Contractor shall at its own cost clear and dispose safely and in accordance with Statutory Requirements all surplus arisings and waste. The Contractor must not impede, hinder or block access to and from any existing or temporary roads, footpaths or accessways being used to obtain access to or from the Site or any part of it.
- 6.5 The Contractor shall at its own cost clear and dispose of safely all rubbish and waste forming part of the Works or a Section or generated by the carrying out of the Works or a Section in accordance with all relevant Statutory Requirements, Consents and environmental legal requirements. Any mud, debris, general rubbish or other material generated by the Contractor and left on roads or access ways to and from the Site must be cleaned up and removed by the Contractor at its own cost on the Company's request. The Company may remove and dispose of any waste or rubbish created or produced by the Contractor or the Contractor's Persons and claim all costs, losses, damages and expenses of doing so from the Contractor as a debt. Upon leaving the Site, the Contractor shall leave the Works and the surrounding areas in a clean, tidy and satisfactory condition.
- 6.6 If the carrying out of the Works is likely to necessitate any interference with the rights of any adjoining or neighbouring or third party landowners or occupiers, then the Contractor shall at no cost to the Company obtain the prior written agreement of such landowners and/or occupiers and such agreement shall be subject to the prior written approval of the Company before execution. The Contractor shall observe and comply in every respect with any conditions, requirements and/or restrictions contained in any such agreements, approvals or consents at the Sub-Contractor's own cost.

7. COMMENCEMENT AND COMPLETION OF THE WORKS

- 7.1 The Contractor shall proceed with the Works regularly and diligently, promptly and efficiently and in accordance with the Company's directions and/or any programme issued from time to time by the Company. The Contractor shall diligently apply for, obtain and then maintain all Consents necessary to commence, carry out and complete the Works and so as not to delay or disrupt the commencement, regular progress and completion of the Works or a Section. The Contractor shall observe and comply with all Statutory Requirements and all Consents relating to the Works or a Section, the Development and the Site and are deemed to have made all due allowance for such obligations within the Contract Price.
- 7.2 The Contractor must commence the Works or a Section on the Commencement Date and thereafter proceed regularly and diligently to carry out and complete the Works or a Section in accordance with any programme issued by the Company from time to time and by the Completion Date (or such other date agreed or allowed by the Company). The Company shall be entitled to instruct the Contractor to suspend or postpone performance of the Works or a Section or any part of them at any time and for any reason on reasonable notice. Following a period of suspension or postponement, the Contractor shall re-commence performance of the Works or a Section on receipt of an instruction to do so from the Company (allowing for the Lead-in Period).

- 7.3 The Contractor is to accelerate or decelerate as the case may be the carrying out and completion of the Works or a Section at no cost to the Company notwithstanding the programme in order to achieve the Practical Completion of the Works or a Section on or before Completion Date (or such other date agreed or allowed by the Company).
- 7.4 The Contractor acknowledges that the Works or a Section may not be executed continuously and the Contractor is deemed to have allowed in the Contract Price for executing the whole of the Works or a Section in such a manner and sequence as the Company may require including but not limited to working either continuously or in sections or staging the Works or a Section to suit progress of works by Other Contractors or market conditions. The Contract Price is deemed to cover multiple visits to Site as necessary to allow for programme requirements and as required by the Company and all of the Contractor's costs of suspending, postponing and re-commencing performance of the Works or a Section as directed or instructed by the Company.
- 7.5 The Site may be closed for holiday periods whilst the Development (including but not limited to the Contract Works) is in progress. The Contractor shall be deemed to have allowed in its Contract Price for any additional costs due to the phasing of the Contractor's work in progress to suit these requirements and any additional time within which to complete the Works.
- 7.6 Insofar as the Company obliged to provide the Contractor with any information relating to the Works or a Section or the Development, the Contractor shall be responsible for making written requests to the Company in good time for any information it requires from the Company or the Other Contractors so as not to delay or disrupt the regular progress or the timely completion of the Works or a Section or the Development. Failure to make such requests shall preclude the Contractor from being entitled to bring a claim for an extension of time and/or for additional payment and/or any adjustment to the Contract Price.
- 7.7 The Contractor is to notify the Company in writing with details of any delay to completion of the Works or a Section and an estimate of its effect to the completion of the Works or a Section as soon as reasonably practicable after such delay happening or the point at which the Contractor ought reasonably to have become aware of such delay (whichever is the earliest). Subject to these Conditions, the Company shall grant a reasonable extension of time in respect of any delay to completion of the Works or a Section caused directly by any prevention, impediment or default by the Company and/or in respect of any Variations instructed by the Company pursuant to clause 8 PROVIDED ALWAYS that the Contractor has constantly used its best endeavours to prevent and mitigate any delay or further delay to the carrying out or completion of the Works or a Section and provided further that the Contractor shall not become entitled to an extension of time to the extent that the delay, event or circumstance has been caused or contributed to by any error, act, omission, breach of contract, negligence or default by the Contractor or any of the Contractor's Persons.
- 7.8 If the Contractor fails to maintain reasonable progress or comply with an instruction under clause 7 or fails to correct defects, snagging items, shrinkages, faults, incomplete works or other failings in the Works within the notice period provided by the Company, the Company may (without prejudice to any other right of the Company) after giving notice to the Contractor in writing employ its own labour or another contractor or contractors to improve or accelerate the rate of progress of the Works or a Section and/or rectification of defects and/or completion of incomplete works. The Contractor shall pay or allow to the Company all such additional costs and expenses thereby suffered or incurred, which shall be payable by the Contractor to the Company as a debt and/or may be deducted by the Company from any monies due to or which may become due to the Contractor

under the Contract.

- 7.9 If the Contractor fails to carry out the Works or a Section in accordance with the programme or to complete the Works or a Section by the Completion Date or such other date agreed or allowed by the Company, the Contractor shall pay or allow (by way of deduction or otherwise) to the Company any cost, loss, charge, expense or damage accrued, suffered or incurred by the Company or (if stated in the Contract Order or Contract Documents) liquidated ascertained damages at the rate specified in the Contract Order or Contract Documents from the Completion Date or such other date agreed or allowed by the Company pursuant to this clause 7 until Practical Completion of the Works or a Section.
- 7.10 The Contractor shall give the Company not less than 10 Working Days' notice of the date on which the Contractor anticipates that the Works or a Section will achieve Practical Completion. Once the Company has received such notice from the Contractor, it will arrange to inspect the Works or the relevant Section and notify the Contractor of any snagging, incomplete or defective work. When the Works or a Section have achieved Practical Completion, the Company may issue to the Contractor a notice to that effect. In the event there are any snagging, incomplete or defective works outstanding as at the date of such notice, then the Contractor is deemed to have undertaken to complete and/or remedy such outstanding, incomplete or defective works as soon as reasonably practicable and, in any event, not later than 10 Working Days after the date of such notice.
- 7.11 The Contractor shall provide to the Company immediately upon request, all necessary records, test certificates, written statements, supporting documentation and information to demonstrate that the Contractor has complied with all Statutory Requirements and Consents relevant to the Works or a Section and any information (if required and applicable) that may be necessary in order to enable the Company to obtain the warranty and guarantee policies from the Warranty Body (or an equivalent latent defects scheme) in relation to all residential housing units forming part of the Works or a Section insofar as such information relates to the carrying out and completion of the Works or a Section.
- 7.12 The Contractor warrants that, on Practical Completion, the Works or a Section shall comply in all respects with the requirements of the Contract, all Statutory Requirements, all Consents, the requirements of any applicable public or local authority, regulatory or statutory body, any applicable requirements of the Warranty Body, all British Standards (in their entirety) and codes of practice.

8. VARIATIONS

- 8.1 The Company at any time may issue written instructions to the Contractor requiring a Variation to the Works or a Section. No such Variation shall vitiate the Contract.
- 8.2 Not later than 5 Working Days after receipt of such instructions and as a condition precedent to any increase in the Contract Price, the Contractor shall submit details of any addition to the Contract Price required by the Contractor to carry out the Variation. No Variation shall be paid for unless instructed in writing by the Company and in accordance with this clause 8.
- 8.3 The value of such Variation is to be agreed in writing between the Company and the Contractor before being carried out or, subject to compliance by the Contractor with clause 8.2, be settled by the Company in accordance with the rates, prices and values upon which the Contract Price has been calculated or, where such rates, prices and values cannot reasonably be utilised, then at rates, prices and values as are fair and reasonable in the circumstances and the Contract Price shall be adjusted accordingly.

- 8.4 Where such Variation requires the omission of work any reduction in the Contract Price shall include overhead and profits if stated separately to the rates, prices and values upon which the Contract Price has been calculated. In the event a Variation results in any works being omitted from the Works or a Section (including but not limited to work against which there is a provisional sum), the Company shall be entitled to engage another contractor to carry out and complete such omitted work without terminating the Contractor's engagement under the Contract. The Company shall not be liable to the Contractor under any circumstances whatsoever for any costs, losses, damages or expenses suffered or incurred by the Company arising from such omission. The act of giving work to a third party or instructing a third party to carry out or complete such work shall not be treated or construed as a breach of contract by the Company.
- 8.5 Where the Contractor considers that any work to be undertaken by it will constitute a Variation, the Contractor shall notify the Company in writing prior to the execution of such work stating the extent to which any work is considered a Variation and the cost attributed by the Contractor.
- 8.6 The Company will, within 5 Working Days of such notification, authorise or disagree in writing such Variation as the case may be. The Company shall have no liability to the Contractor if written authorisation is not given by an Authorised Person of the Company (or the relevant person so authorised as stated in the Contract Documents) prior to the Contractor carrying out such work or if the Contractor fails to give notice to the Company in accordance with clause 8.2.
- 8.7 Any Variation shall be carried out and completed entirely at the Contractor's own cost and expense (and at no cost to the Company) to the extent that such Variation arises from, is caused by or is necessary due to any act, omission, negligence, breach or default by the Contractor or any of the Contractor's Persons or arises from an event, matter or circumstance for which the Contractor has accepted the risk or responsibility under the Contract.
- 8.8 The net value annexed to the provisional items and also the full amount of the provisional lump sums inserted in any bills of quantities or other documents that form part of the Contract will be deducted from the Contract Price and the value of the work executed under such items shall be valued by measurement bills in detail and priced in the manner provided in clause 8 and the amounts so fixed shall be added to the Contract Price. Any work identified as provisional shall only be carried out following receipt by the Contractor of an instruction in writing from the Authorised Person PROVIDED ALWAYS that notwithstanding any other provision of the Contract, unless the Company specifically states otherwise in writing signed by the Authorised Person, any direction issued by the Company to the Contractor relating to provisional sum items shall not entitle the Contractor to any extension of time to complete the Works or a Section, nor to any additional preliminaries, nor any loss or expense.
9. **SITE PERSONNEL**
- 9.1 The Contractor is responsible for its own labour on the Site. The Contractor shall prior to the Commencement Date, appoint a site supervisor and shall notify the Company of their identity prior to the Commencement Date. The site supervisor shall regularly and diligently check and inspect the quality and standard of the Works or a Section and ensure that the requirements of the Contract are being fulfilled. The site supervisor must be authorised to give and receive instructions on behalf of the Contractor in connection with the Works and to ensure the proper administration, co-ordination and supervision of the Works to the standard required in the Contract Documents.
- 9.2 The Contractor, its servants, agents and employees at all times are to comply with all Statutory

Requirements.

- 9.3 The Company without any liability may require the Contractor to remove any person employed by the Contractor on the Works at any time and with immediate effect.
- 9.4 The Contractor is to be responsible for its own labour and any substitution of that labour and for the provision of (and all contractual and statutory payments due to) all persons necessary to undertake the Works or a Section on the Site under the Contract. Whilst the Contractor must comply with its obligations under the Contract, it is acknowledged that to meet those obligations the Contractor is free to use such labour (subject to clause 9.3) as it may determine and may substitute any person to carry out any part of the Works. Any failure on the part of the Contractor to exercise its rights under this clause 9.4 shall not constitute a waiver of any such rights by the Contractor provided always that the Contractor shall remain liable for the proper performance of the Works and its obligations under the Contract.
- 9.5 The Contractor shall provide adequate supervision of the Works or a Section. The Contractor shall ensure at all times that there are employed by the Contractor or the Contractor's Persons sufficient persons available to undertake the Works or a Section and such persons shall be suitably skilled and trained to undertake the work given to them. The Contractor shall ensure that all employees or persons working under the Contractor's control are eligible to work in the United Kingdom. As and when requested by the Company, such employees or persons as may be from time to time required (including but not limited to the site supervisor) shall attend meetings convened by the Company in connection with the Works or a Section. The Contractor shall ensure that any key personnel listed in the Contract Documents are employed in performing the Works.

10. ATTENDANCE

- 10.1 Except as expressly stated in the Contract Documents, the Contractor is required to supply all labour, materials, facilities, tools, machinery, plant and equipment necessary for the execution and completion of the Works. All materials, facilities, tools, machinery, plant and equipment brought on Site by the Contractor or Contractor's Persons not for incorporation into the Works or the Development shall be at the Contractor's own risk and must be operated, stored, used and transported in accordance with all Statutory Requirements and Consents.
- 10.2 On receipt of a request from the Company to do so, the Contractor must make good any loss, injury or damage caused to the Development or any part of it by the use or misuse by the Contractor of its own goods, materials, plant, machinery and equipment and/or the Attendances. The Contractor shall indemnify, save, defend and hold harmless the Company from and against any and all payment, cost, loss, claim, liability, proceedings, damage and/or expense arising out of or in the course of such use or misuse.
- 10.3 The Contractor at its own expense is to make all provision for transporting, loading, sorting, storage, protection and insurance of its goods, materials, plant, machinery and equipment brought on to the Site and for their subsequent handling on Site. The Company is not liable for theft, loss, injury or damage to the same howsoever arising.
- 10.4 The provision of any Attendances by the Company shall not relieve the Contractor of any obligation or duty to test or inspect such Attendances and the Contractor must satisfy itself that such Attendances are suitable for their intended purpose. No warranty (express or implied) is given by the Company as to the fitness, suitability or condition of such Attendances. Except as expressly described in the Contract, the Company will not provide any facilities, plant, machinery and/or

equipment or other attendances to assist the Contractor to perform its obligations and duties under the Contract. Any use by the Contractor or Contractor's Persons of any Attendances provided by the Company shall be entirely at the Contractor's own risk and the Contractor shall not be entitled to any claim arising from any loss of continuity of any Attendances.

- 10.5 The Company does not accept any responsibility for unloading, checking, storing, placing in a safe position, protection or keeping secure or for the prevention of any loss, damage or theft of the Contractor's goods, materials, plant, machinery and/or equipment. If Contractor's labour is not on the Site or is otherwise unavailable when the Contractor's plant, machinery or equipment or any goods and/or materials for use in the Works arrive, the Company may arrange to unload the plant, machinery, equipment, goods and/or materials upon the basis that the Company shall not be liable for such action. The Contractor shall pay the Company's reasonable costs and charges in connection with such unloading. Any unfixed materials or goods that are delivered to Site for use in connection with the Works and have not yet been incorporated into the Development shall not be removed from storage or the Site without the Company's prior written consent.
- 10.6 Unless stated otherwise in the Contract Documents, the Company shall provide for the use of the Contractor necessary welfare facilities at or adjoining the Site and the Contractor shall ensure that it does not whether by itself or its employees cause any damage to such welfare facilities or do anything which may cause inconvenience to any Other Contractor or the Company. The Contractor shall indemnify, save, defend and hold harmless the Company from and against any and all loss, damage or expense suffered or incurred by the Company as a result of misuse by the Contractor or the Contractor's Persons of the welfare facilities.
- 10.7 Unless stated otherwise in the Contract Documents, the Company will provide a water supply for the carrying out of the Works. The Contractor will be responsible for supplying all temporary lighting, heating, gas, telecommunications, internet connection and power as required for the carrying out and completion of the Works.
11. **PAYMENT**
- 11.1 Subject to clauses 11.2 and 11.3, the Company agrees to pay the Contractor the Contract Price in consideration for the satisfactory carrying out and completion of the Works by interim payments as provided in the Contract Documents and in accordance with the Contract. The Contract Price shall not be adjusted or altered in any way whatsoever other than strictly in accordance with the express provisions of these Conditions.
- 11.2 If the Contract Order states that the Contract Price is to be on a remeasurement (rather than fixed price) basis, then the Contract Price shall represent an approximate value and shall be adjusted subject to the following rules:
- 11.2.1 measurement shall be in accordance with the same principles as those governing the preparation of the Quotation; and
- 11.2.2 the provisions set out in clause 13 in relation to the Final Account shall apply.
- 11.3 If the Contract Order states that the Contract Price is fixed until a certain date, before Practical Completion of the Works, then at least 2 months before that date the parties shall re-examine the rates and assumptions made within the Quotation. If the Company considers that such rates and assumptions have changed, then the Contract Price shall be adjusted in accordance with the procedure set out in the Contract Documents or, if no such procedure is described, then the Surveyor shall determine (acting reasonably) how the Contract Price should be adjusted and such

adjusted figure shall be the new Contract Price provided always that no additional payment shall be made in respect of overheads and profit. Unless otherwise expressly stated in the Contract Order, the Contract Price and the Contractor's prices and rates remain fixed for the duration of the Works and shall not be increased or adjusted for any fluctuations, inflation or any other reason.

- 11.4 Interim payments shall be made to the Contractor in accordance with these Conditions and whichever of stage payments or periodic payments is stated in the Contract Documents to apply. If neither is specified, then monthly periodic payments apply. In relation to each interim payment, the Contractor must make an application for payment in accordance with these Conditions. Each application for payment must be made and served by the Contractor not later than on or before each Interim Valuation Date. The Contractor is only entitled to make one application for payment in respect of each Interim Valuation Period. Any application submitted to the Company after the Interim Valuation Date is not valid, is deemed to be made for the next Interim Valuation Period and therefore deemed to have been an application submitted at the next Interim Valuation Date.
- 11.5 The sum due as an interim payment shall be an amount equal to the gross valuation of the total work forming part of the Works which has been properly completed and any materials and/or goods fully fixed and incorporated into the Works and the Development as at the end of the Interim Valuation Period, less the aggregate of: amounts previously paid to the Contractor under the Contract; any amounts previously deducted in accordance with these Conditions; and the Retention. The gross valuation of the work done shall be a value agreed between the Company and the Contractor or valued and calculated in accordance with the rates and prices in the Contract Documents or, if there are no applicable rates and prices, then as may be fair and reasonable in the circumstances by reference to an appropriate proportion of the Contract Price and by reference to the work properly completed. Unless otherwise expressly stated in the Contract Documents, the Contractor shall only include in each application for payment the value of works carried out in respect of each completed stage.
- 11.6 It is condition precedent to the Contractor's entitlement to payment for any element of work or services undertaken that the Contractor submits an application for payment to the Company not later than 3 months after the end of the relevant Interim Valuation Period which the element of work is undertaken. If no such application for payment is made, the Company shall have no liability to the Contractor for such work or services undertaken.
- 11.7 Each application for payment must include: the name, location and address of the Site; the Contract Order number; the full name and address of the Contractor as stated in the Contract Order; any new address where applicable; the Contractor's VAT registration number; cumulative details of all sums certified for payment and all sums paid to date; the amount the Contractor considers due at the due date and the basis on which that amount has been calculated including the gross value of the work carried out and incorporated by the Contractor since commencement of the Works or the last such application as appropriate; the amount of Retention to be released (if any); such supporting information as is necessary for the Surveyor to ascertain the value of the works properly carried out during the relevant Interim Valuation Period and during any previous Interim Valuation Periods; such supporting information as is necessary to enable the Company to obtain payment from any third party (if applicable); sufficient evidence to satisfy the Surveyor that the Contractor owns good title (free from any encumbrances and charges) to any goods or materials for which a request for payment is included in any application for payment; evidence that the Contractor has paid the Contractor's Persons in respect of any work, goods or materials the value of which has been included in the Contractor's previous applications for payment or any payments previously made to the

Contractor; and such further or other information as may be specified in the Contract Documents or reasonably requested by the Company.

- 11.8 Provided always that the Contractor has submitted to the Company a valid and proper application for payment in accordance with these Conditions, the due date for payment of each payment shall in each case be the date 14 days after the later of: (i) the relevant Interim Valuation Date; and (ii) the date of receipt of the Contractor's valid and properly submitted application for payment. The final date for payment of each interim payment and any amount payable on termination of the Contractor's engagement under the Contract shall be 14 days after its due date.
- 11.9 Not later than 5 days after the due date of each payment ascertained as due under the Contract, the Company will give to the Contractor a payment notice (a "**Payment Notice**") specifying the amount (if any) considered to be or have been due to the Contractor at the due date, calculated in accordance with these Conditions and the basis on which that amount has been calculated. Subject to any Pay Less Notice given under these Conditions, the Company shall pay the amount stated as due in the Payment Notice on or before the final date for payment. If a Payment Notice is not given in accordance with this clause, then the Company shall, subject to any Pay Less Notice given under these Conditions, pay to the Contractor the amount stated as due in the relevant valid and properly submitted application for payment.
- 11.10 In calculating the amount due to the Contractor, the Company may deduct the Retention and (where appropriate) the Construction Industry Training Board Levy as applicable from time to time. The Contractor is entitled to apply in writing to the Company for the release of one half of the Retention following Practical Completion of the Works or a Section, receipt of all handover information and documents and receipt by the Company of the final account to be submitted by the Contractor in accordance with clause 13.1. The Contractor is entitled to apply in writing to the Company for the release of the balance of the Retention once all incomplete works, snagging, defects, shrinkages, faults and other failings notified to the Contractor on or before expiry of the Rectification Period have been made good to the satisfaction of the Company and any handover information and documents not yet provided have been received by the Company. The Company has no fiduciary duties in relation to the Retention and shall not be obliged to set aside the Retention in a separate bank account. Any right of set off, deduction or withholding (whether arising under any term of the Contractor or under any rule of law or equity) shall be exercisable against any monies due or to become due to the Contractor whether or not such monies include or consist of any Retention.
- 11.11 In relation to any payment ascertained as due under the Contract, if the Company intends to pay less than the amount stated as due from the Company in a Payment Notice or an application for payment, then the Company may give notice (a "**Pay Less Notice**") to the Contractor not later than 1 day before the final date for payment (the "**Prescribed Period**"). The Pay Less Notice shall specify the amount the Company considers to be due to the Contractor at the date of the Pay Less Notice and the basis on which that amount has been calculated.
- 11.12 Notwithstanding any other provision of the Contract, if the Contractor becomes Insolvent after the Prescribed Period, the Company shall not be required under any circumstances to pay the Contractor the amount stated as due from the Company in a Payment Notice or an application for payment on or before the relevant final date for payment.
- 11.13 In relation to the requirements for the giving of Payment Notices and Pay Less Notices, it is immaterial that the amount then considered to be due may be zero.
- 11.14 For the avoidance of doubt, the Company shall be entitled to recover from the Contractor any

overpayments made at any time. All interim payments made to the Contractor shall be payments on account only of sums due or sums that may become due under the Contract. The Company shall be entitled to reconsider and, if necessary, adjust the amounts stated as due in previous Payment Notices or Pay Less Notices or in any Payment Notices or Pay Less Notices given in respect of later applications for payment made by the Contractor.

- 11.15 Unless otherwise expressly stated in the Pre-contract Interview Minutes:
- 11.15.1 the Contractor is not entitled to payment for goods or materials delivered to Site until such materials are fully incorporated in the Works or a Section and the Development; and
 - 11.15.2 the Contractor is not entitled to payment for goods or materials being stored off Site.
- 11.16 If the Pre-contract Interview Minutes expressly state the Contractor is entitled to apply for payment of the value of materials or goods stored on site but unfixed or off site, then the Contractor must, as conditions precedent to including the relevant amount in the calculation for the amount due for payment:
- 11.16.1 provide the Surveyor with sufficient evidence which proves that the Contractor owns good title (free from any encumbrances and charges) to such materials or goods and the Contractor has paid the Contractor's Persons in respect of any goods or materials the value of which has been included in the Contractor's previous applications for payment or any payments previously made to the Contractor;
 - 11.16.2 provide the Surveyor with sufficient evidence that the materials or goods are adequately protected from any theft, loss, injury or damage and fully insured; and
 - 11.16.3 in respect of materials off-site, provide the Surveyor with sufficient evidence that the materials or goods are safely and securely stored in premises in England and are set apart and clearly and visibly marked as the property of the Company.
- The Contractor shall be responsible and liable for the cost of storage, handling, transportation and insurance of any materials or goods for incorporation into the Works and shall be liable for any theft, loss, injury or damage to such materials or goods until they are fully and finally fixed and incorporated into the Works.
- 11.17 The Contractor is not entitled to extra or additional payment as a result of standing time, overtime, working unsociable hours or weekends or time lost for reasons beyond the control of the Company including but not limited to plant breakdown, shortage of materials or adverse weather conditions.
- 11.18 The Contractor shall not be entitled to submit an application for payment of any interim payment later than the date of Practical Completion of the Works.
- 11.19 If the Company fails to pay any amount due to the Contractor by the final date for payment of that amount, the Contractor is entitled to simple interest on the amount due and unpaid as from the final date for payment to the actual date of payment at the rate of 4% above the base rate of the Bank of England. The Contractor acknowledges that this rate of interest is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 11.20 The entitlement of the Contractor to payment under the Contract is subject to the provisions of the CIS. For the purposes of CIS, unless otherwise stated in the Contract Documents, the Company's status is, as at the date of the Contract, that of a contractor.

11.21 Unless otherwise stated in the Contract Documents, the Contract Price is exclusive of VAT. If required by any Statutory Requirement, the Company shall be entitled to pay amounts in respect of VAT that would otherwise be paid to the Contractor directly to HMRC and, upon such payment, the Company shall for all purposes be deemed to have fulfilled its obligations in respect of payment of VAT under the Contract. If required by the Company, the Contractor must promptly provide a properly addressed and valid VAT invoice in respect of any VAT chargeable by the Contractor under the Contract.

12. DAYWORK AND OTHER CLAIMS BY THE CONTRACTOR

12.1 The Contractor is to obtain written authorisation from an Authorised Person of the Company before carrying out daywork. Within 5 Working Days of carrying out daywork a statement of all daywork undertaken detailing labour, materials, hours and activities must be submitted to the Company's Site Manager for signature by it to confirm the details recorded on that statement. The Company is not liable to make payment for daywork unless this clause is complied with. Any daywork record sheet is only a record of such work and shall not represent a concession of liability to pay for the works or the stated hours or charges associated with it.

12.2 If works to be carried out on a dayworks basis are expressly authorised by the Authorised Person, then applications for payment for daywork are to be made in accordance with clause 11.

12.3 Notwithstanding any other provision of the Contract, notification to the Company of any claim for additional payment or any adjustment to the Contract Price of any kind whatsoever must be made by the Contractor in writing and received by the Company not later than thirty (30) days after the event on which the Contractor relies as being the cause of the claim first occurs or becomes known to the Contractor, whichever is the earlier. An event will be deemed to have become known to the Contractor if it could have or ought to have become known to a reasonably competent and prudent contractor experienced in performing works of a similar nature, size, scale, scope and complexity as the Works or a Section acting always in its best interests. Each claim shall be properly documented with appropriate references to the contractual provisions on which the Contractor relies, together with copies of all relevant correspondence and documentation. Compliance with the requirements of this clause 12.3 shall be a condition precedent to any right on the Contractor's part to be paid or obligation on the part of the Company to pay any payments in addition to the Contract Price pursuant to or arising out of or in connection with the Contract. If the Contractor fails to comply with those requirements, then the Contractor irrevocably waives its rights, both under the Contract and at common law, in equity and/or pursuant to statute to any such entitlement to any claim under or in connection with the Contract or for breach of contract.

12.4 The rights and remedies available to the Contractor under the Contract shall be its exclusive and exhaustive rights and remedies available to the Contractor in respect of all matters under, arising out of or in connection with the Contract, whether such rights and remedies arise in respect of or in consequence of a breach of contract or breach of statutory duty or a tortious or negligent act or omission which gives rise to a remedy at common law. Except as expressly provided for in the Contract, the Company shall not be obligated or liable to the Contractor in respect of any damages, costs, losses or expenses suffered or incurred by the Contractor that arise out of or in connection with the Contract or the Works or a Section. Any other rights and remedies that the Contractor may otherwise have had at law are excluded to the fullest extent permitted by law.

13. FINAL ACCOUNT

13.1 Not later than 1 month after Practical Completion of the Works, the Contractor shall submit to the Company a final account statement showing the amount of the Contract Price (as may be adjusted) and all additions or omissions which are to be made to that amount under the Contract (and if the

Contract Price is calculated on a remeasurement basis, any adjustments to be made from remeasurement) together with all documents necessary to detail the additions or omissions (and adjustments if relevant) made or as the Company may reasonably require for the purpose of adjusting the Contract Price and showing the total amounts already paid to the Contractor, the final amount due to the Contractor and the basis on which the final amount is calculated. The final payment shall be the difference (if any) between: the Contract Price (as adjusted); and total sum of amounts already paid to the Contractor and shall be expressed as a balance due to the Contractor from the Company or to the Company from the Contractor as the case may be.

- 13.2 If the Contractor fails to submit a final account within 1 month after Practical Completion of the Works, the Company may at any time thereafter prepare and submit to the Contractor a statement in the form described in clause 13.1 showing the final amount due and the basis on which the final amount is calculated.
- 13.3 Not later than 5 days after the due date for payment of the final amount, the Company shall give to the Contractor a payment notice (the "**Final Payment Notice**") specifying the amount (if any) considered to be due or have been due to the Contractor at the due date and the basis on which that amount has been calculated. Subject to any Pay Less Notice given under these Conditions, the Company shall pay to the Contractor or the Contractor shall pay to the Company as the case may be the amount stated as due in the Final Payment Notice on or before the final date for payment. If a Final Payment Notice is not given in accordance with this clause, then the Company shall, subject to any Final Pay Less Notice given under these Conditions, pay to the Contractor the amount stated as due in the Contractor's valid and properly submitted final account statement issued under clause 13.1 or, as the case may be, in the Company's statement under clause 13.2.
- 13.4 The due date for payment of the final amount due is the later of: (i) the expiry of the Rectification Period; or (ii) the date all incomplete works, snagging, defects, shrinkages, faults and other failings in the Works (if any) notified during the Rectification Period have been made good and remedied to the satisfaction of the Company; or (iii) 14 days after the date of submission of a statement under clause 13.1 or 13.2. The final date for payment of the final payment shall be 14 days after its due date.
- 13.5 In relation to the final amount due, if the paying Party intends to pay less than the amount so stated as due in the Final Payment Notice or, in default of such notice, less than the amount so stated as due in the Contractor's valid and properly submitted final account issued under clause 13.1 or, as the case may be, in the Company's statement under clause 13.2, then the Company shall give notice (a "**Final Pay Less Notice**") to the Contractor not later than 1 day before the final date for payment. The Final Pay Less Notice given by either party shall specify the amount it considers to be due to the other party at the date of the Final Pay Less Notice and the basis on which that amount has been calculated.
- 13.6 In relation to the requirements for the giving of the Final Payment Notice and Final Pay Less Notice, it is immaterial that the amount then considered to be due may be zero.
- 13.7 Except to the extent disputed and notified in writing prior to the due date for the final payment, the relevant statement issued under clause 13.1 or 13.2 shall upon the due date become conclusive as to the sum due (if any) to the Contractor and the Contractor shall have no further or other claim in connection with the Contract. For the avoidance of doubt, the calculation and payment of the final amount due and any statement submitted under clause 13.1 or 13.2 shall not under any circumstances whatsoever be construed as evidence that the quality or standard of the design,

materials, goods or workmanship comply with any requirement or term of the Contract and the Company's rights and remedies against the Contractor are fully reserved and remain in full force and effect.

14. DEFECTS

14.1 In accordance with the New Homes Quality Board Code of Practice, it is expected that the Contractor shall have undertaken such training to be certified at the appropriate level and all staff are expected to have sufficient knowledge so as to comply. The Contractor shall comply with the Company's customer care policy contained in the Contract Documents or as amended or updated and notified to the Contractor from time to time as well as the New Homes Quality Board Code of Practice.

14.2 If any emergencies, defects, imperfections or snags, shrinkages, faults or any other failings appear in the Works (whether before or after Practical Completion) due to any failure by the Contractor to comply with its obligations and duties under the Contract, then the Company at its option may require the Contractor to return to Site within the prescribed timeframe (see table below) at an agreed time to carry out remedial work at the Contractor's own cost and/or if the Contractor fails to comply or, in the event of an emergency, the Company may at its complete discretion without notice to the Contractor carry out remedial work itself or instruct another contractor and the Contractor shall pay or allow to the Company any loss, damage, cost or expense accrued, suffered or incurred plus a 20% fee. Such amount shall be recoverable from the Contractor by the Company as a debt on demand and/or as a deduction to the amount due to the Contractor. All defects, imperfections, snags, shrinkages, faults or other failings shall be rectified and made good to the Company's reasonable satisfaction.

CATEGORY	TIMEFRAME	CLASSIFICATION
Emergency	Within 24 hours	Defects, faults or other failings affecting the safety, security or health of any building user or is likely to cause extensive damage to buildings or personal property.
Defect	Within 3 days	Defects, faults or other failings that involve items that are materially affecting the occupation of the dwelling in a major way and may be causing some deterioration in or to the building.
Snags	Within 5 days	Defects, faults or other failings which can be deferred without causing serious inconvenience to the building user or the building.

14.3 After the expiry of the Rectification Period, if any defect, shrinkage, fault or other failing appears thereafter which is due to any design, materials, goods or workmanship not being in accordance with the Contract, then the Company may at its complete discretion without notice to the Contractor carry out remedial work itself or instruct another contractor and the Contractor shall pay or allow to the Company any loss, damage, cost or expense accrued, suffered or incurred, plus a 20% fee. Such amount shall be recoverable from the Contractor by the Company as a debt on demand and/or as a deduction to the amount due to the Contractor from application or retentions held.

- 14.4 The provision for a Rectification Period is without prejudice to the Company's rights or the Contractor's duties, liabilities and responsibilities generally.
- 14.5 The Contractor acknowledges that both prior to and following Practical Completion, tenants and purchasers may be in occupation of whole or part of the Site and the Contractor shall procure that the persons remedying the defects, shrinkages or other faults in the Works or a Section shall do so only by prior appointment with such occupiers and shall have due regard to the comfort and convenience of the occupiers and on a daily basis during any periods of entry, leave the Site clear of all materials and clean and tidy and prevent any material disturbance or interference to the occupiers' right to quiet enjoyment of the property.
- 14.6 In the event the Warranty Body accepts a valid claim under any Warranty Body policy applicable to the completed Works and the Company is required to carry out remedial works to the Works, then the Contractor shall carry out and complete such remedial works to the extent applicable to the Works. If the Warranty Body or the Company decide to carry out remedial works themselves and/or via alternative contractors, the Contractor shall pay on demand (without deduction or set off) all costs, losses, damages and expenses accrued, suffered or incurred by the Warranty Body and/or the Company in connection with doing so. The Contractor shall indemnify, save, defend and hold harmless the Company from and against any costs, losses, damages and expenses suffered or incurred arising from any breach or default under the Warranty Body's rules and/or policies to the extent caused by any act, omission, breach, negligence or default of the Contractor or the Contractor's Persons. The Contractor shall pay for all investigations, tests and other work required by the Warranty Body to the extent applicable to the Works.
- 14.7 The Contractor shall indemnify, save, defend and hold harmless the Company from and against all direct liabilities, costs, expenses, damages and losses and all other professional costs and expenses) suffered or incurred by the Company in respect of any claims made against the Company after the date of the Contract by the Warranty Body and to the extent caused by the Contractor failing to comply with its obligations under the Contract, the rules applicable to the Warranty Body and/or the Statutory Requirements.
15. **DOCUMENTS**
- 15.1 The Contractor grants to the Company, or where it does not own the copyright in the Documents shall procure the grant to the Company of an immediate, irrevocable, royalty-free, non-terminable and non-exclusive licence to copy, use and reproduce the Documents for any and all purposes relating to the Works, the Development and/or the Site and for any other purposes referred to in the Contract Documents. The Contractor must only use the Documents for the purposes and for the benefit of the Development. This licence shall remain in full force and effect notwithstanding the completion of the Contractor's obligations or the termination of the Contractor's engagement under the Contract or any dispute in connection with the Contract.
- 15.2 The Contractor warrants and represents that it has not and shall not produce, specify or employ any Documents in breach of any copyright, patent or other right of any third party.
- 15.3 The benefit of the licences shall be freely assignable to third parties and shall include the right to grant sub-licences on the same terms as are contained in clause 15.1 without the Contractor's consent being required.
- 15.4 The Contractor shall not be liable for any use of the Documents by the Company or its transferee or sub-licensee for any purpose other than that for which the same were prepared and provided by or

on behalf of the Contractor.

- 15.5 If the Company for any reason does not proceed with the development of the Site, the Contractor shall not copy, use, reproduce, offer or disclose to any other person interested in the Site any of the Documents without the prior written consent of the Company.
- 15.6 To the extent that the Contractor does not have ownership of the copyright in the Documents, the Contractor shall notify the Company in writing of the same and procure from the copyright owner a licence with full title guarantee (free from encumbrances) to the Company in respect of the Documents in the same terms as set out in this clause 15.
- 15.7 The Contractor shall upon demand promptly supply the Company with copies of the Documents (in hard copy, CAD format, electronic editable format and such other format as the Company may reasonably require) whenever requested to do so by the Company and the Contractor shall not exercise any lien for any reason which it might otherwise be entitled to exercise over the Documents.
- 15.8 The Contractor hereby waives and agrees not to assert (and shall procure that the Contractor's Persons waive and agree not to assert) any moral rights in the Documents pursuant to the Copyright Designs and Patents Act 1988 or otherwise.
- 15.9 Where required by the Company, the Contractor shall prior to Practical Completion of the Works or a Section provide:
- 15.9.1 as-built drawings/plans, handbooks and/or manuals including if necessary or appropriate to the type of Works or a Section operating and maintenance drawings, manuals and/or handbooks (in duplicate and in the required electronic format) in terms intelligible to lay persons for use by the Company's customers and shall further upon enquiry supply copies of plans and designs and other technical information and/or specifications concerning the Works or a Section including reasonable advice on maintenance problems but without any waiver of the Company's rights or the Contractor's obligations under the Contract;
- 15.9.2 manufacturers' warranties and guarantees in favour of or assignable to the Company (or if so directed by the Company, to another third party)

The Contractor shall not have and it waives all rights to exercise a lien over any such documents referred to in this clause 15.9.

16. TERMINATION

- 16.1 Without prejudice to any other rights, powers and remedies of the Company if, at any time, the Contractor:
- 16.1.1 suspends the Works or a Section or any part without lawful cause or the prior consent of the Company in writing; or
- 16.1.2 fails to proceed with the Works regularly and diligently; or
- 16.1.3 fails to remove, repair or reinstate defective or improper work as directed by the Company within 7 days of receipt of a notice to do so from the Company; or
- 16.1.4 commits any material or persistent breach of contract; or

16.1.5 fails to comply within 7 days' notice from the Company with any reasonable request from or instruction of the Company or its authorised servants or agents as to the manner in which the Works are carried out,

then the Company may, at any time, give written notice to the Contractor stating the default. If the default continues for 7 days after the date of service of the notice, the Company may by a further written notice issued at any time thereafter forthwith terminate the engagement of the Contractor under the Contract.

16.2 Without prejudice to any other rights, powers and remedies of the Company, if the Contractor:

16.2.1 commits any breach of the Company's Health and Safety policy or of the Principal Contractor's Construction Phase Health and Safety Plan or;

16.2.2 fails to comply with or breach of any Statutory Requirements or Consents; or

16.2.3 fails to comply with its obligations under clause 20 or clause 21; or

16.2.4 fails to maintain any of the insurances it is required to maintain under the Contract; or

16.2.5 becomes Insolvent,

then the Company may by written notice issued at any time thereafter forthwith terminate the engagement of the Contractor under the Contract.

16.3 If the engagement of the Contractor is terminated under clauses 16.1 or 16.2 or by reason of any other default of the Contractor, then:

16.3.1 the Contractor shall not remove any materials, goods plant or equipment from the Site unless expressly permitted to do so by the Company and the Company may complete or employ another contractor or contractors to complete the Works or make such other arrangements as the Company considers appropriate to complete the Works and use all materials, goods, plant and equipment delivered to the Site by the Contractor for use in the Works;

16.3.2 to the extent permitted under these Conditions, the Company is not obliged to make any further or other payment to the Contractor under the Contract in respect of any amount that has already become due;

16.3.3 no further or other sum shall become due to the Contractor under the Contract except as expressly set out in this clause 16;

16.3.4 subject to any right of set-off, deduction or withholding, the Company is liable to pay the Contractor only for the total value of any work properly carried out completed to the reasonable satisfaction of the Company as at the date of termination and ascertained in accordance with these Conditions as if the Contractor's engagement had not been terminated less the aggregate of: amounts previously paid to the Contractor under the Contract; and any amounts previously deducted in accordance with these Conditions and the Company shall not be liable to pay the Contractor any further or other sum or sums whatsoever; and

16.3.5 the Company may claim, recover or deduct from or set off against any amount due to the Contractor whether under the Contract or under any other contract between the Company and the Contractor all costs, losses, damages and/or expenses accrued, suffered or incurred by the Company arising from or in connection with such termination and the balance (if any) of such costs, losses, damages and/or expenses being a debt recoverable by the Company from the Contractor.

16.4 Following completion of the Works and the making good of defects in them or, if the Company notifies the Contractor that it has decided not to have the Works carried out and completed, the Company shall within 3 months thereafter issue a final statement to the Contractor setting out:

16.4.1 the total value of any work properly carried out completed to the reasonable satisfaction of the Company as at the date of termination and ascertained in accordance with these Conditions as if the Contractor's engagement had not been terminated;

16.4.2 amounts previously paid to the Contractor under the Contract and any amounts previously deducted in accordance with these Conditions; and

16.4.3 all costs, losses, damages and/or expenses accrued, suffered or incurred by the Company arising from or in connection with such termination,

and if the difference between the total of the amounts stated in 16.4.1 and 16.4.2 exceeds the total of the amounts stated in 16.4.3, then the difference shall become due and payable by the Company to the Contractor or, if that amount is less, then by the Contractor to the Company and the provisions of clauses 11 and 13 shall apply as appropriate.

16.5 The Company may at any time and for any reason whatsoever terminate the engagement of the Contractor under the Contract by giving not less than 7 days' notice to the Contractor. Termination shall take effect on expiry of such 7 day notice period.

16.6 If the engagement of the Contractor is terminated under clause 16.5, then the Contractor shall be entitled to apply for payment for:

16.6.1 the total value of any work properly carried out completed to the reasonable satisfaction of the Company as at the date of termination and as calculated and ascertained in accordance with these Conditions as if the Contractor's engagement had not been terminated; and

16.6.2 a cancellation payment of £1,000 or 5% of the cost of remaining works (whichever is the lesser amount) towards its demobilisation costs

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16.6.3 the aggregate of:

(i) amounts previously paid to the Contractor under the Contract; and

(ii) any amounts previously deducted in accordance with these Conditions carried out under the Contract up until the date of such termination

and if the difference between the total of the amounts stated in 16.6.1 and 16.6.2 exceeds the total of the amounts stated in 16.6.3, then the difference shall become due and payable by the Company to the Contractor or, if that amount is less, then by the Contractor to the Company and the provisions of clauses 11 and 13 shall apply as appropriate.

- 16.7 In the event of termination of the Contractor's engagement under this clause 16 howsoever arising, the Contractor not be entitled to claim for (and the Company shall not be liable to the Contractor for) any further or other cost, loss, damage or expense arising from or in connection with the termination, including (without limitation) loss of profit, loss of contracts, expectation or overhead or any other direct/indirect and/or consequential loss or expense suffered or incurred by the Contractor.
- 16.8 The termination of the Contractor's engagement under the Contract is without prejudice to the rights, obligations and liabilities of either party accrued prior to termination. The Contractor's obligations shall survive termination of its engagement under the Contract or in the event the Contract is brought to an end for any reason, except the obligation to carry out any further or other works after the date of such termination.
- 16.9 If the Company purports to terminate the Contractor's engagement under clause 16.1 and/or 16.2, but no ground for termination under clause 16.1 and/or 16.2 has arisen, or any ground that had arisen had been waived by the Company, then the Company shall be deemed to have decided to terminate and to have terminated the Contractor's engagement under the Contract under clause 16.5.
- 16.10 On termination of the Contractor's engagement under the Contract, if required by the Company, the Contractor shall without charge:
- 16.10.1 Not later than 7 days after receipt of a request to do so, assign to the Company the benefit of any agreement for the supply of materials, plant or products and/or execution of works relating to the Development or the Site and shall execute (and procure that any of its Contractor's Persons execute) without delay all such deeds or documents which may be reasonably required by the Company in order to effect any such assignment;
 - 16.10.2 deliver up copies of all Documents and in such format as the Company requires; and
 - 16.10.3 immediately protect and secure the Works (and any unfixed materials or goods on site not yet incorporated into the Development) and then, not later than seven (7) days after receipt of a request to do so, remove all plant, labour, equipment, goods and materials and other items belonging to the Contractor or the Contractor's Persons from the Site. If the Contractor fails to comply with this clause, the Company shall be entitled to remove and/or dispose of any such items and recover the costs and associated expenses of doing so from the Contractor as a debt or, at the Company's discretion, use the items on the Site or another site and the Contractor shall not be entitled to any additional payment for such use.
17. **INDEMNITY**
- 17.1 The Contractor shall be liable for and shall indemnify, save, defend and hold harmless the Company from and against any and all consequences, payments, losses, actions, proceedings, liabilities, interest, costs, expenses (including but not limited to legal costs and expenses) and damages

(whether direct or indirect or special or consequential) and whether actual, contingent or prospective, of whatsoever nature and howsoever accrued, suffered or incurred by the Company arising out of or in connection with:

- 17.1.1 any personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works;
 - 17.1.2 any theft, loss, injury or damage whatsoever to any property (whether real or personal) including the Site and/or the Works and/or the Development and any third party property in so far as such theft, loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works or caused by the Contractor or the Contractor's Persons;
 - 17.1.3 as a result of any defect, imperfection, shrinkage or other fault or failing in the Works or arising out of or in connection with any breach or default by the Contractor of its obligations under the Contract;
 - 17.1.4 any claims by third parties resulting from, relating to or arising out of any negligence, tortious, statutory or other failure or default or breach of contract by the Contractor;
 - 17.1.5 any negligence, breach of statutory duty, breach of contract or non-performance or non-observance of the terms of the Contract by the Contractor or the Contractor's Persons;
 - 17.1.6 enforcement of the terms of the Contract;
 - 17.1.7 any actual or alleged infringement of any copyright, patent or intellectual property rights of any third party; and
 - 17.1.8 any act, omission or default by the Contractor or the Contractor's Persons which involves the Company in any liability or alleged liability to any third party or causes or contributes to any diminution in the rights or remedies available to the Company under any agreement with any third party.
- 17.2 The indemnities in clause 17.1 shall apply whether or not the Contractor has been negligent or at fault.
- 17.3 The Contractor shall:
- 17.3.1 at all times prevent any actionable danger or statutory, public or private nuisance (including, without limitation, any noisy working operations, fumes, odours or the deposit of any materials or debris on the public highway), trespass, obstruction or other interference with the rights of any member of the public, any third party, any adjoining and/or neighbouring land owners and/or occupiers or of any statutory undertaker arising out of the carrying out of the Works or a Section;
 - 17.3.2 defend or, at the Company's absolute discretion, assist the Company in defending any action or proceedings which may be instituted in relation thereto howsoever such action may arise; and
 - 17.3.3 be responsible for and indemnify, save, defend and hold harmless the Company from and against any and all consequences, payments, losses, actions, proceedings, liabilities, interest, costs, expenses (including but not limited to legal costs and expenses) and damages (whether direct or indirect or special or consequential) and

whether actual, contingent or prospective, of whatsoever nature and howsoever accrued, suffered or incurred by the Company resulting from any failure or default by the Contractor in performing its obligations under this clause 17.3.

18. INSURANCES

18.1 Without prejudice to its liability to indemnify the Company, the Contractor shall take out and maintain insurances in respect of the following in connection with the Contract:

18.1.1 against theft, loss of, injury or damage to property including the Site and any buildings or structures or work thereon upon which the Works are to be carried out and personal injury to or the death of any person (other than any employee of the Contractor) under a Public Liability policy or policies of at least five million pounds (£5,000,000) for any one occurrence, or such other amount as may be stated in the Pre Contract Interview Minutes; and

18.1.2 against personal injury to or the death of any employee of the Contractor under an Employer's Liability policy of at least ten million pounds (£10,000,000) for each and every claim, or such greater amount as may be required by law.

18.2 If expressly stated as being required in the Pre Contract Interview Minutes, the Contractor warrants and represents that it has and shall continue to maintain:

18.2.1 professional indemnity insurance for the amount and level of indemnity set out therein (or, if no amount is specified, then not less than five million pounds (£5,000,000) for any one claim) for the duration of 12 years after Practical Completion of the whole of the Works or, if later, for so long as the Contractor is liable under or in connection with the Contract; and

18.2.2 contract works (contractor's all risks) insurance for the full reinstatement cost of the Works, to be maintained in the joint names of the Contractor and Croudace.

18.3 The insurances to be taken out under the Contract are to be in terms and with an insurance company acceptable to the Company and not subject to any material excess or unusual exclusions.

18.4 The Contractor upon annual renewal of the insurance and on reasonable request by the Company must produce promptly for inspection satisfactory documentary evidence including premium receipts and policy terms that the required insurances are being maintained and are in force.

18.5 If the Contractor fails to effect or maintain any insurance required or to produce evidence to that effect, then the Company may insure on behalf of the Contractor and deduct as a debt the premiums paid from any money payable to the Contractor and/or terminate forthwith the engagement of the Contractor under the Contract and/or withhold any further sums due to the Contractor until such evidence of insurance is provided.

18.6 If any of the insurances referred to in clause 18.1 (or clause 18.2, if relevant) ceases to be available at commercially reasonable rates and terms, the Contractor shall:

18.6.1 immediately give notice to the Company;

18.6.2 take out such lower level of insurance as is available to contractors at commercially reasonable rates and terms; and

18.6.3 give notice to the Company of the level of insurance purchased in accordance with clause 18.6.2.

- 18.7 Any increased or additional premium required by reason of the Contractor's own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to fall within commercially reasonable rates.
- 18.8 To the extent the Contractor recovers any sums under any policy of insurance in respect of a liability it has to the Company in connection with the Contract, the Contractor shall hold such sums on trust for the Company and pay such sums directly to the Company without set-off, deduction or withholding.
- 18.9 For the avoidance of doubt, none of provisions obliging either party to maintain insurance are intended in any way whatsoever to operate to limit or exclude the Contractor's liability.
- 18.10 The Contractor shall not do or omit to do anything or cause or permit or suffer any act or thing to be done that could cause (in respect of any policy of insurance in respect of the Site) and/or the Works:
- 18.10.1 it to become void or voidable or unenforceable or entitle the insurer to refuse any claim (in whole or in part) in respect of any risk or amount for which the policy is expressed to provide indemnity; or
 - 18.10.2 any additional insurance premium to become payable; or
 - 18.10.3 the payment of any insurance moneys to be refused; or
 - 18.10.4 prejudice or vitiate the recovery of any sum under any policy of insurance.
- 18.11 Without prejudice to the generality of the foregoing, the Contractor shall liaise and co-operate with the insurers under the policies arranged by the Company, and such co-operation shall include the provision of copies of such information as such insurers may from time to time request, working with the insurers to assist them with the collation of information for claims and providing the insurers or their representatives with access to inspect work executed or materials, whether on or off the Site.
19. **STATUS**
- 19.1 The relationship of the Contractor to the Company is that of independent contractor and nothing in the Contract shall render the Contractor an employee, worker, agent or partner of the Company and the Contractor shall not hold itself out as such.
- 19.2 The Contractor shall be fully responsible for and shall indemnify the Company for and in respect of the following:
- 19.2.1 any income tax, holiday pay National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Works. The Consultant shall indemnify the Company against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Company in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
 - 19.2.2 any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by any person provided by the Contractor to provide any services required in the performance of the Works.
- 19.3 The indemnity in clause 19.2 does not apply to any income tax or National Insurance contributions

deducted by the Company if: (a) the engagement of the Contractor is an engagement to which Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 applies and (b) the Company makes the deductions from the fees due under clause 11 prior to payment to the Contractor.

19.4 The Company may at its option satisfy the indemnity in clause 19.2 (in whole or in part) by way of deduction from payments due to the Contractor.

20. **SET-OFF**

20.1 The Company may deduct or set-off from any monies (including but not limited to the Retention) due or payable by the Company to the Contractor whether under the Contract or under any other contract entered into between the Company and the Contractor whether before or after the date of the Contract any sums (whether present or future, liquidated or unliquidated) due to or claimed by the Company, any Associate of the Company or any Group Company howsoever arising. This is in addition to and not in substitution for any other rights of counterclaim, legal and equitable set off or abatement available to the Company.

21. **ASSIGNMENT, SUB-LETTING AND THIRD PARTY RIGHTS**

21.1 The Contractor must not assign any part of the benefit of nor sub-let or sub-contract any of its obligations under the Contract without the prior written consent of the Company. In the event the Contractor sub-lets or sub-contracts part or all of the Works or a Section, the Contractor shall remain responsible and liable for all works, products, materials, design and services performed and supplied by the Contractor's Persons as if the Contractor had performed such works, products, materials, design and services itself. Any sub-letting or sub-contracting of part or all of the Works or a Section shall not diminish or relieve the Contractor of any of its obligations, duties and liabilities arising from the Contract.

21.2 The Company is entitled to assign the benefit of the Contract to any Associate of the Company or Group Company or Interested Third Party without the Contractor's consent being required. The Contractor agrees with the Company not to contend or argue that any person to whom the Contract may be assigned shall be precluded or prevented from recovering under the Contract any loss or damage resulting from any breach of the Contract by the Contractor by reason of the fact that such person is an assignee only and not the original Company or because the loss or damage suffered has been suffered by such person only and not by the original Company or that the original Company or any intermediate beneficiary has not suffered the same, any or as much loss or damage as such assignee or because such loss or damage is different to that which would have been suffered by the Company or any assignee.

21.3 Except as expressly set out in the Contract, nothing in the Contract shall confer any right pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not a party to it. Each Interested Third Party may in its own right enforce any term or condition of the Contract. Notwithstanding any other provision of the Contract, it shall not be a defence to a claim by any Interested Third Party that the loss or damage the Interested Third Party has suffered or incurred is different in type or character from the loss or damage that the Company might have suffered or incurred or that the Company could not have suffered or incurred the same, any or as much loss or damage as the Interested Third Party or the Company could not now suffer a loss or damage of the type or character that the Interested Third Party has suffered or incurred.

21.4 In any action or proceedings brought by any Associate of the Company, any Group Company or

Interested Third Party, the Contractor shall not be entitled to rely on:

21.4.1 any set-off with respect to payment of the Contract Price under the Contract; or

21.4.2 any counterclaim which would have been available if such proceedings had been brought by the Company; or

21.4.3 any set-off or counterclaim relating to any matter not connected to the Works or the Site.

21.5 The Company shall be entitled to agree with the Contractor any amendments, variation, waiver or release under or arising from or in respect of the terms of the Contract, and to terminate the Contractor's engagement under the Contract without the consent of any third party being required.

22. **CONDUCT AND BRIBERY ACT COMPLIANCE**

22.1 The Contractor shall

22.1.1 comply with all applicable law, regulations, codes and sanctions relating to antibribery and anti-corruption;

22.1.2 comply with the Company's anti-bribery policy as may be published and updated by the Company from time to time;

22.1.3 have and maintain throughout the time the Contractor is carrying out its obligations under the Contract its own anti-bribery and anti-corruption policies and procedures, including but not limited to adequate procedures to ensure compliance with all applicable law;

22.1.4 ensure that all persons associated with the Contractor or other persons who are performing services or providing works or goods in connection with the Contract comply with this clause 22.

22.2 The Contractor shall take all reasonable steps to prevent the occurrence by the Contractor's Persons of any act of harassment of any third party.

22.3 The Contractor confirms that all of the Contractor's Persons undertaking work at the Company's Site have received equality and diversity training in line with the principles contained within applicable legislation. If required by the Company, the Contractor shall provide evidence that the Contractor's Persons have received such training.

22.4 The Company reserves the right to inform the Contractor of any suspected act of harassment and at its sole discretion require the removal of any individual suspected of any harassment from its Site.

22.5 The Contractor shall indemnify the Company against all costs claims liabilities fines financial penalties or expenses (including legal expenses on an indemnity basis) incurred in connection with or as a result of any claim or demand by any person for which the Company may be held liable as a result of or arising out of or in connection with any breach by the Contractor of its obligations under this clause 2.

23. **MODERN SLAVERY ACT COMPLIANCE**

23.1 In performing its obligations under the Contract pursuant to it, the Contractor shall comply and shall ensure that each of its sub-contractors, employees, servants and agents shall comply with:

23.1.1 the Modern Slavery Act 2015; and

23.1.2 the Company's anti-slavery policy as the Company may update the same from time to time a copy of which is [available for inspection at the Company's registered office at all times during business hours upon request].

23.2 The Contractor shall permit the Company and its third party representatives, on reasonable notice, but without notice in case of any reasonably suspected breach of the Contractor's obligations under this clause and/or the Contract, to have access to and take copies of the Contractor's records and any other information and to meet with the Contractor and any sub-contractors, employees, servants or agents of the Contractor to audit the Contractor's compliance with its obligations under this clause and/or the Contract.

24. **POLICIES AND PROCEDURES**

24.1 The Contractor shall comply with (and procure that the Contractor's Persons comply with) all aspects of the Company's policies and procedures relevant to the Works or a Section, the Development and/or the Site, which are current as at the date of the Contract and as may be updated from time to time, copies of which are available for inspection during business hours at the Company's office address or on request.

24.2 The Company shall be entitled to require the Contractor to remove or replace from any further involvement in the Works or a Section any person who fails to comply with the Company's policies and procedures or any requirement of the Contract.

25. **NON-WAIVER AND APPROVALS**

25.1 The allowance of time or any other delay, indulgence or non-enforcement by the Company in respect of its rights or any matter shall not affect or prejudice or be taken as a waiver of the rights, powers and remedies of the Company.

25.2 No waiver, forbearance, release, admission, acknowledgment, inspection, approval, comment, review, payment or consent or omission to inspect, approve, comment, review or consent by the Company or on its behalf shall in any way whatsoever derogate, reduce, limit, diminish, vary or extinguish the Contractor's duties and obligations in connection with the Contract, nor shall it exclude, reduce, limit, diminish, vary or extinguish the Contractor's responsibility or liability for any breach of its obligations under the Contract. No waiver by either party in respect of a breach shall operate as a waiver in respect of any subsequent breach. No single or partial exercise of such right, power or remedy shall prevent or restrict the further exercise of that right or any other right, power or remedy.

25.3 Notwithstanding any other provision of the Contract, the term "approval" when used in the context of any approval to be given by the Company shall have the meaning of "acceptance of general principles only" and no such approval shall diminish or relieve the Contractor from any of its obligations, duties or liabilities under the Contract.

26. **NOTICES**

26.1 Any notice to be given to the Company under or in connection with the Contract shall be sent to the contact address and the account office address as specified in the Contract Documents or such other contact details as the Company may from time to time notify to the Contractor or, if no such address is current, the Company's registered or principal office.

26.2 Any notice issued or given by the Company to the Contractor may be served by post, personal delivery, email or any other effective means.

- 26.3 Subject to clause 26.4, in the absence of evidence of earlier receipt, a notice is deemed to be received:
- 26.3.1 if delivered personally (including courier), then on delivery;
 - 26.3.2 if sent by post, then two (2) Working Days after posting it; and
 - 26.3.3 if sent by email, then on completion of its transmission provided that receipt shall not be taken to have occurred if the sender receives an automated message indicating that the email has not been delivered to the receiving party.

26.4 In the case of a notice given pursuant to this clause 26 where this occurs:

26.4.1 after five (5) p.m. on a Working Day; and/or

26.4.2 on a day which is not a Working Day

THEN the date of service shall be deemed to be the next Working Day.

27. **PUBLICITY AND CONFIDENTIALITY**

27.1 Except in the proper performance of its obligations under the Contract or as required by law, the Contractor shall not and shall procure that the Contractor's Persons shall not without the prior written approval of the Company publish or disclose to any person (other than its professional advisers for the purposes of obtaining advice in relation to its obligations and liabilities under the Contract) any Confidential Information or other information relating to the Development or the Site.

27.2 The Contractor shall not without the Company's prior written consent take or permit to be taken any photographs or videos of the Site or the Development for use in any publicity or advertising or publish alone or in conjunction with any other person, any articles, photographs or other illustrations in any publication, journal or newspaper or any radio or television programme or internet site in relation to the Development or the Site or any part thereof.

28. **DATA PROTECTION**

28.1 In so far as is necessary to enable the performance by the Contractor of its obligations and duties under the Contract by the Contractor, the Company agrees to share personal data with the Contractor on the basis set out in this clause 28.

28.2 Each party acknowledges that the Company operates as the controller and the Contractor acts as a processor on behalf of the Company in respect of any personal data processed by the Contractor for the purposes of performing its obligations and duties under the Contract.

28.3 The purpose and nature of processing for the Contractor to process the personal data will be to carry out and complete the Works and perform all its obligations and duties under the Contract, including but not limited to allowing the Contractor's employees, servants, agents, consultants, contractors, servants and employees access to the Site and each relevant dwelling for the purpose of rectifying any defects or carrying out any inspections, investigations and/or testing and/or complying with any of the Contractor's obligations under the Contract and to achieve this the Contractor shall process the personal data by recording, communicating, storing, sharing with sub-processors and deleting the personal data. The categories of data subjects to which personal data within the personal data relates will be the Company's, employees, contractors, suppliers, consultants, professional advisers, purchasers, tenants, residents, owners and/or occupiers of or visitors to any dwellings or any other part of the Site and the categories of personal data which will be processed are name, address and contact details, legal negotiations, contract terms, property details, snagging and defects details, business information and any other personal data identified or referred to in the Contract or

provided to the Contractor for the performance of its obligations under the Contract.

- 28.4 The Contractor shall only process the personal data for a maximum period which is equal to the duration of the Contract with the Company and the duration of the Contractor's liability to perform obligations under the Contract.
- 28.5 The Contractor agrees in relation to the personal data to:
- 28.5.1 implement appropriate technical and organisational measures in such a manner that processing of the personal data by it will meet the requirements of the Data Protection Laws and ensures the protection of the rights of data subjects;
 - 28.5.2 only process the personal data for and on behalf of the Company for the purposes of performing its obligations and duties the Contract with the Company and in accordance with any other instructions issued by the Company in writing from time to time unless otherwise required by law or any other regulatory body (in which case the Contractor shall, where permitted, inform the Company of that legal or regulatory requirement before processing);
 - 28.5.3 not appoint any sub-processor without having first obtained the Company's prior written consent and, where such consent is provided, the Contractor shall impose upon each third party sub-processor (and procure each such third party sub-processor's compliance with) terms equivalent to this clause 28 and shall give the Company notice of any changes to its sub-processors so that the Company has the opportunity to object to the change or new appointment;
 - 28.5.4 ensure that persons authorised by it as sub-processors of any of the Data have committed themselves to duties of confidentiality or are under an appropriate statutory duty of confidentiality;
 - 28.5.5 not transfer any personal data outside of the United Kingdom;
 - 28.5.6 take all measures required by Article 32 of UK GDPR in relation to the personal data;
 - 28.5.7 taking into account the nature of the processing, assist the Company by appropriate technical and organisational measures (so far as this is possible) for the fulfilment of the Company's obligation to respond to requests for exercising a data subjects' rights set out in Chapter III of UK GDPR;
 - 28.5.8 assists the Company in ensuring compliance with the obligations under Articles 32 – 36 of UK GDPR taking into account the nature of processing and the personal data;
 - 28.5.9 delete or return all the personal data to the Company after the end of the Purchase Contract and delete existing copies unless required by law or regulatory requirements to retain such personal data;
 - 28.5.10 make available to the Company all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Laws and allow for and contribute to audits, including inspections, conducted by the Company or another auditor appointed by the Company;
 - 28.5.11 notify the Company if in its opinion any instruction from the Company would contravene the Data Protection Laws or any other laws;
 - 28.5.12 ensure that only such of the Contractor's personnel who may be required by the Contractor to assist it in meeting its obligations under the Contract shall have access to the personal data; and

28.5.13 promptly notify and provide full details to the Company of any potential or actual loss of personal data or any personal data breach, take all measures necessary to remedy or address the issue and co-operate with the Company to resolve such issue.

28.6 Where the Company requires assistance from the Contractor in order to respond to requests, queries and/or investigations in respect of the personal data or requires that the Contractor help the Company in reconstructing and/or otherwise safeguarding the personal data or requires that the Contractor assists the Company in complying with Data Protection Laws in relation to the personal data, the Contractor shall provide the Company with such assistance as the Company reasonably requests within any timescales reasonably specified by the Company.

29. **LIMITATION PERIOD**

29.1 Section 5 of the Limitation Act 1980 does not apply to the Contract. The Company and the Contractor agree that they shall not rely upon a defence pleading Section 5 of the Limitation Act 1980 in any action or proceedings under the Contract.

29.2 Notwithstanding the manner in which the Contract has been entered into, the limitation period in respect of the Contractor’s obligations and liabilities under the Contract shall extend to the expiration of twelve (12) years after Practical Completion of the Works. For the avoidance of doubt, any action or proceedings under statute may be brought or commenced within any longer prescribed statutory limitation period.

30. **DISPUTE RESOLUTION**

30.1 The Company or the Contractor at any time may notify the other of its intention to refer a dispute or difference arising under the Contract for adjudication in accordance with The Scheme for Construction Contracts.

30.2 The Contractor shall co-operate and assist the Company in dealing with any dispute that the Company may have with any third party in relation to the Contract or the Development or the Site in so far as it relates to the Works.

31. **GOVERNING LAW AND JURISDICTION**

31.1 The Contract is governed by and construed in accordance with the laws of England and the parties (subject to clause 30.1) agree to submit to the exclusive jurisdiction of the Courts of England (except for the purposes of enforcement of an English court judgment or order in another jurisdiction).

.....

Signed for and on behalf of the Contractor:

.....

Signature

.....

Print name and position