

**DATED**

**SUB-CONTRACT AGREEMENT  
(Revised 14<sup>th</sup> October 2010)**

**(1) CREST NICHOLSON OPERATIONS Ltd  
(Registered Number 1168311)**

**- and -**

**(2) (     )**

in respect of

at

Contract reference:

Site address:

CF

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THIS AGREEMENT is made on

BETWEEN

(1) Crest Nicholson Operations Limited, Crest House, Pycroft Road, Chertsey, Surrey, KT16 9GN (hereinafter referred to as "Crest") and

(2) whose registered office is situated at, (hereinafter referred to as "the Sub-Contractor")

DEFINITIONS:

"the CDM Regulations" means the current version of the Construction (Design and Management) Regulations"

'the Contract Documents' means this Agreement, the Schedule & the documents embodied into or referred to in the appendices listed in the Schedule;

'the Contract Works' means the works referred to in the Contract Documents;

'the Site' and 'the Contract Price' have the meanings shown in the Schedule and

'working day' means any day of the year other than:-

- (a) any Saturday or Sunday;
- (b) any date between 24 December and the day after the New Year Bank Holiday in the following year (both days inclusive);
- (c) Good Friday and any other statutory bank holiday.

OPERATIVE CLAUSES:

**1.0 Consideration & Contract Documents**

- 1.1 The Sub-Contractor shall execute the Contract Works for the Contract Price upon and subject to the terms of the Contract Documents to Crest's satisfaction and shall complete the same either in whole or in sections as the case may be by the dates set out in the Schedule hereto.
- 1.2 The Sub-Contractor acknowledges that it has examined the Site the access to the Site the nature amount and location of the Contract Works and quality of materials and type of equipment and facilities needed for the Contract Works, has satisfied itself generally as to matters affecting the execution of the same and has allowed for all such matters in the Contract Price.
- 1.3 The Sub-Contractor shall be deemed to have made proper allowance in submitting its estimate or tender to Crest for any defects, extra works or other considerations arising from the nature of the Site and the setting out of the Contract Works and no payment shall be made for any extra work unless the same is carried out upon the written instructions of Crest
- 1.4 The Contract Works shall be carried out and completed by the Sub-Contractor in accordance with the procedures requirements and technical and other applicable standards of the Local Authority, the Planning Authority, the relevant Building Regulations Authority, the National

House-Building Council (and where applicable to the Contract Works the Highway Authority) and any other body or bodies having jurisdiction over the Contract Works.

- 1.5 The Sub-Contractor shall provide, prior to practical completion of the contract works, all information reasonably required by Crest to comply with the CDM Regulations including but not limited to, the completion of the Health and Safety File.
- 1.6 The provisions of this Agreement shall prevail over the provisions contained in any other of the Contract Documents.

## **2.0 Commencement**

- 2.1 The Sub-Contractor shall commence the Contract Works on the agreed date or failing agreement within five working days of receiving notice to that effect from Crest and shall continue with the Contract Works until they are completed.
- 2.2 Crest may provide an indicative construction programme, but Crest shall have the right to direct the Sub-Contractor to construct and complete the Contract Works in any sections or parts, in any order and bring forward or lengthen any periods detailed within the construction programme and the Sub-Contractor shall not be entitled to receive any additional remuneration, compensation or damages as a consequence of any such direction given by Crest.
- 2.3 Crest may suspend the Contract Works on giving the Sub-Contractor no less than 5 working days written notice. The Sub-Contractor shall recommence the Contract Works five working days after receiving notice to do so from Crest. If no notice to recommence the Contract Works is issued by Crest within 12 months of the date of suspension this Contract shall be deemed to have been determined under Clause 23 hereof.
- 2.4 The Sub-Contractor shall comply with all instructions and directions given by Crest in connection with the Contract Works.

## **3.0 Sub-Contractors employees**

- 3.1 The Contract Works shall be supervised at all times by a competent supervisor who shall be on the site at all working hours and shall operate as the Sub-Contractor's representative for the purpose of receiving instructions and directions from Crest. The supervisor shall not be removed or replaced without the prior consent of Crest.
- 3.2 The Sub-Contractor shall at all times employ in respect of the Contract Works a sufficient number of competent personnel with the necessary skills to carry out and complete the Contract Works.
  - 3.2.1 In the event of the Sub-Contractor being delayed in completing the Contract Works due to it failing to employ sufficient personnel or sufficiently skilled personnel Crest may employ and pay other persons or sub-contractors as may be necessary to complete the Contract Works and all costs and expenses in connection with such employment shall be recoverable from the Sub-Contractor by Crest as a debt or may be deducted by Crest from any moneys due to the Sub-Contractor.
- 3.3 Crest shall have the right to require the Sub-Contractor to remove from the Site any of the Sub-Contractor's personnel (but not unreasonably or vexatiously) and the Sub-Contractor shall not allow that person to visit the Site again unless Crest has agreed.

- 3.4 The Sub-Contractor warrants and declares that this Contract does not constitute a contract of employment and nothing herein shall construe or shall be deemed to construe that the Sub-Contractor's employees, workers, sub-contractors or agents are an employee or partner of Crest and Crest shall have no employer's liability in respect of any damage or injury suffered by any of the Sub-Contractors, employees, workers, sub-contractors or agents hereunder or in connection with the Contract Works
- 3.5 It is the responsibility of the Sub-Contractor to ensure that all its personnel or sub-sub-contractors engaged in the Contract Works have the legal right to work in the United Kingdom and that they are registered with the Inland Revenue and such other UK Government Departments as may be applicable for the payment of all appropriate taxes. The Sub-Contractor hereby warrants to Crest that all its personnel or agents have the legal right to work in the United Kingdom and that the Sub-Contractor has sighted and has copies of documentation to prove that right.
- 3.6 It is the responsibility of the Sub-Contractor to ensure that all its personnel receive statutory employment benefits and that current employment legislation is followed at all times.

#### **4.0 Materials, goods & workmanship to conform to description testing and inspection**

- 4.1 All materials, goods and workmanship shall be of the respective kinds and standards described in the Contract Documents.
- 4.2 Crest has entered into trading agreements with suppliers and manufacturers to obtain enhanced quality, service and pricing structure for its business. As a result of these agreements Crest are able to take benefit from financial rebates. No deviation from the Standard Specification is permitted without the express written permission of Crest. Failure to adhere to the Standard Specification may affect the recovery of these rebates for the Crest associated or affiliated companies. Should rebates be lost as a result of the Sub-Contractors unpermitted deviation from the Standard Specification the Sub-Contractor shall be liable for that loss which may not be limited to site specific loss but potentially the Crest associated or affiliated companies.
- 4.3 Proper representative samples of all materials proposed to be used shall be submitted by the Sub-Contractor to Crest for its approval prior to their use and the quality of all such materials used shall not be inferior to that of the approved samples. Any materials delivered to the Site which are considered by Crest to be inferior in any way to the approved samples shall not be used for the Contract Works. The Sub-Contractor must obtain written permission from Crest before using alternative materials to the approved samples.
- 4.4 The Sub-Contractor shall upon request from Crest furnish Crest with such evidence as it may require to prove that materials and goods comply with clause 4.1.
- 4.5 Crest may issue instructions requiring the Sub-Contractor to open up for inspection any part of the Contract Works covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Contract Works) or of any executed work and the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Contract Price unless provided for in the specification comprised in the Contract Documents or unless the inspection or test shows that the work materials or goods are not in accordance with the Contract Documents.
- 4.6 Crest may issue instructions in regard to the removal from the Site of any work materials or goods which are not in accordance with the Contract Documents.

- 4.7 Crest reserves the right to substitute materials and forms of construction for any reason whatsoever. Such substitution of materials and/or forms of construction shall be treated as variations under clause 12.2. and measured and valued accordingly.
- 4.8 The Sub-Contractor is to allow in their prices for any delay or disruption to the regular progress of the Contract Works due to possible delay by Crest in supply of materials, goods or plant to be supplied by them.
- 4.9 As part of its Sustainable Procurement Policy, Crest requires that all materials supplied by its subcontractors have been sourced from suppliers which can demonstrate that as a minimum supply chain labour standards meet current International Labour Organisation conventions. It is the responsibility of the Subcontractor to advise Crest if they require guidance to ensure compliance with this requirement, or if they are concerned as to the compliance of any product sourced.
- 4.10 As part of its Sustainable Timber Procurement Policy, Crest requires that all wood based products and materials containing wood based products supplied by its subcontractors have documentary evidence showing that it has been sourced legally and in accordance with English Law. Crest reserves the right and sub-contractors will co-operate with Crest by allowing and assisting them to carry out supply chain audits to ensure this Policy is complied with, Crest will further require that wood based products supplied by sub-contractors have a chain of custody certification to Forestry Stewardship Council (FSC) or Programme for the Endorsement of Forest Certification ( PEFC) standards.

## **5.0 Plant and Materials**

### **5.1 The Sub-Contractor's equipment :-**

Unless otherwise agreed in the Contract Documents the Sub-Contractor shall at its own expense provide all necessary plant, tools, equipment and materials required to carry out the Contract Works and shall provide and erect all necessary workshops, sheds and other buildings for its personnel at such places on the Site as Crest shall appoint and the Sub-Contractor shall pay all costs in respect of the same.

### **5.2 Liability whilst on Site :-**

The plant, tools, equipment, buildings and other property of the Sub-Contractor, its personnel or agents, shall be at the sole risk of the Sub-Contractor.

### **5.3 Materials for the Contract Works :-**

Title in all materials & goods intended to form part of the Contract Works shall pass to Crest upon delivery to Site, or payment by Crest if earlier. All materials for the Contract Works shall be supplied, stored and fixed at the sole risk of the Sub-Contractor. Any loss or damage to the same shall be the Sub-Contractor's sole liability and the Sub-Contractor hereby agrees to indemnify Crest against any such loss or damage or any claims, costs or proceedings in respect thereof.

## **6.0 Protection of Works**

- 6.1 The Sub-Contractor will at its own expense provide, erect and (after completion of the Contract Works) remove all protection necessary for the safe execution of the Contract Works and shall repair and make good any damage to the Contract Works, the Site and to the works
- 6.2 If the Sub-Contractor fails to carry out its obligations under this clause 6.1 Crest may execute any works required in fulfilment thereof or may employ and pay other persons to do so and all costs and expenses consequent thereon and incidental thereto shall be recoverable by Crest from the Sub-Contractor as a debt or may be deducted from any monies due or to become due to the Sub-Contractor.

## **7.0 Use of Scaffolding**

- 7.1 The Sub-Contractor its personnel and agents shall for the purposes of the Contract Works (but not further or otherwise) be entitled at their own risk (and in common with all other persons authorised by Crest) to use any scaffolding or hoisting facilities belonging to or provided by Crest provided that:-
- 7.1.1 the Sub-Contractor shall first satisfy itself as to the fitness and condition of the scaffolding and its suitability for the purpose for which it is required and the rights granted by this clause shall not be deemed to imply any warranty on Crest's part of the fitness condition sufficiency or suitability of any scaffolding; and
- 7.1.2 Crest shall not (unless expressly otherwise agreed in writing) be under any duty to provide scaffolding or hoisting facilities at any given location or time or at all or to leave it in place for any particular period

## **8.0 Waste Minimisation and Management**

- 8.1. The Sub-Contractor will comply with all waste management measures required under Environmental Protection (Duty of Care)(England & Wales)(Amendment) Regulations as enforced at the time, or any other relevant enactment or regulation in force, where those involved in the handling or transfer of waste have a duty of care to ensure it is dealt with appropriately as set out in the regulations. It shall be the Sub-Contractor's responsibility to ensure compliance by its personnel, sub-contractors and suppliers and agents with all such enactments and regulations.
- 8.2 Where the sub-contractor is handling or transporting hazardous waste (Hazardous Waste England & Wales Regulations, as enforced at the time) or is a registered waste carrier, a copy of the licence must be given to the Crest Site Manager
- 8.3 The Sub-Contractor shall play an appropriate role in helping Crest continually to improve its materials resource efficiency and to minimise the environmental impacts of its waste in line with its Sustainable Development Policy. The Sub-Contractor shall not be permitted to rely on the related plan as evidence of his compliance with applicable requirements.
- 8.4 The Sub-Contractor shall provide all information reasonably required by Crest to comply with the Site Waste Management Plan Regulations 2008, including information required for the development, delivery, monitoring and completion of the Site Waste Management Plan.

- 8.5 The Sub-Contractor shall comply with site rules laid down by Crest, and / or the Waste Contractor, relating to resource efficiency and waste management, including the segregation and monitoring of waste, the use of specific waste containers and waste management areas, and the recovery of costs arising from failure to comply with these provisions.
- 8.6 Where the Sub-Contractor has a responsibility for the design process, materials selection, construction techniques or operational methods, the Sub-Contractor shall undertake the Contract Works with regard to the following:
- 8.6.1 Minimisation of the use of material resources and the production of waste;
- 8.6.2 Maximisation of the re-use, recycling and recovery of construction, demolition and excavation material;
- 8.6.3 Use of reclaimed products and materials, and products and materials with a high recycled content, where feasible.

#### Recycled Content

- 8.7 Where recycled content is specified by Crest, the Sub-Contractor shall provide materials with that specified recycled content. Where the recycled content varies from that specified, the Sub-Contractor shall inform Crest and obtain written approval prior to the use of the material in the contract works
- 8.8 The Sub-Contractor shall (in accordance with the Contract Documents and both during the performance of the Contract and upon termination or completion of the Contract Works) clean up as work progresses and remove from the Site all debris and waste materials for which it is responsible and shall generally keep and leave the Contract Works and the Site in a condition satisfactory to Crest.

#### **9.0 Advertising**

- 9.1 No trade boards or other advertisements shall be erected by the Sub-Contractor on any part of the Site without Crest's prior written permission.

#### **10.0 Other Sub-Contractors**

- 10.1 The Sub-Contractor shall not delay or disrupt the work of other sub-contractors or operatives on the Site. The Sub-Contractor shall be deemed to have included in their price for the likely changes in sequence & need to work around other sub-contractors on the site.
- 10.2 The Sub-Contractor shall not be entitled to receive any additional remuneration compensation or damages in respect of any delay to or disruption of the Sub-Contractor's work under this Contract caused by delays on the part of other sub-contractors or operatives employed on the Site.

#### **11.0 Insurance**

- 11.1 Prior to commencement of the Contract Works the Sub-Contractor shall take out and maintain an insurance policy for contractor's all risks insurance which recognises Crest as a

joint insured for cover no less than the full reinstatement value of the Contract Works including unfixed materials intended for the Contract Works, plus a percentage of at least 12.5% to cover professional fees and shall maintain such policy up to and including completion of the Contract works or determination of the Sub-Contract, whichever is earlier.

- 11.2 The insurance policy referred to in clause 11.1 shall be taken out with insurers approved by Crest and the Sub-Contractor shall send to Crest a copy of the policy and the premium receipt and also any relevant endorsement or endorsements.
- 11.3 The Sub-Contractor shall effect and keep in force during all material times policies of insurance in such sums and with such companies as may be approved by Crest and will in all respects cover adequately the Sub-Contractor's liabilities hereunder or at common law or under any statute or regulation in respect of injury to or death of any person (including but not limited to personnel) or loss of or damage to any property real or personal arising out of or in connection with the execution completion or maintenance of the Contract Works.
- 11.4 The limit of the indemnity granted under the insurance effected in respect of claims for injury to persons or loss of or damage to property shall not be less than the sum stated in the Schedule hereto or if no sum is therein stated then shall not be less than £2,000,000 for each and every claim arising out of one cause in respect of Public Liability Insurance and £5,000,000 for each and every claim arising out of one cause in respect of Employers Liability Insurance.
- 11.5 The Sub-Contractor shall when requested produce for inspection relevant insurance policies and receipts for premiums but any omission by Crest to ascertain the names of the company or companies with whom the Sub-Contractor has effected such policies or to call for the production of such policies or receipts shall not affect in any way the Sub-Contractor's obligations to insure pursuant to this clause 11.0.
- 11.6 If the Sub-Contractor fails to comply with the provisions of this clause 11.0 Crest may (without prejudice to any other rights and remedies) itself effect all necessary insurance and any expenses so incurred shall be paid to Crest by or be otherwise recoverable from the Sub-Contractor as a debt or may be deducted by Crest from any moneys due to the Sub-Contractor.
- 11.7 The following clauses apply to any Contract where the Sub-Contractor has a responsibility to design part of the Contract Works.

#### 11.7.1 Professional Indemnity Insurance

The Sub-Contractor undertakes and warrants that it currently maintains in force professional indemnity insurance without any exclusions material to the activities being undertaken under the Contract Works taken out with reputable insurers carrying on business in the United Kingdom sufficient to cover any liabilities of the Sub-Contractor which may arise out of the services provided by the Sub-Contractor pursuant to this Contract up to a limit in respect of each and every claim of not less than five million pounds (£5m) for each and every claim, provided that such insurance continues to be available in the United Kingdom market upon reasonable terms and at commercially reasonable premium rates the Sub-Contractor shall maintain the same until twelve (12) years after the completion of the Contract Works and the Sub-Contractor shall on request by Crest produce documentary evidence that such insurance is being maintained in accordance with this clause.

11.7.2 The Sub-Contractor shall forthwith notify Crest of any failure or inability to maintain the insurance referred to in clause 11.7.1 and of any circumstances likely to render any such insurance void or voidable.

### 11.7.3 Design Responsibility

Where the Sub-Contractor is responsible for the design & construction of the Contract Works or any part of the Contract Works the Sub-contractor will have the same obligations in respect of any design they carry out or complete as that of any other competent engineer. Any lack of comments by Crest or Crests Consultants relating to drawings, details, documents or information submitted by the Sub-Contractor shall not relieve the Sub-Contractor of any liabilities or obligations under this Agreement unless the comments specifically so state.

### 11.7.4 Warranties

Upon request by Crest, the Sub-Contractor will sign a collateral warranty in favour of any person acquiring an interest in any elements of the Contract Works which have been designed by the Sub-Contractor. Such warranty shall contain no more onerous terms or obligations than the terms and obligations of the Sub-Contractor to Crest under the Contract.

### 11.7.5 Copyright

The Sub-Contractor grants Crest an irrevocable royalty-free licence to use and reproduce all plans designs drawings specifications models photographs calculations and other documents and materials and computer software and similar things ("Copyright Material") relating to the Contract Works the rights in which belong to the Sub-Contractor and all amendments and additions to the Copyright Material which are now or at any time in the future prepared designed drawn or created and all works designs and inventions of the Sub-Contractor incorporated or referred to in them for all purposes relating to the Contract Works including construction completion reconstruction modification extension repair reinstatement refurbishment redevelopment maintenance use letting promotion and advertisement of the Site but the Sub-Contractor shall have no liability to the extent that any Copyright Material is used for any purpose other than that for which it was originally prepared or otherwise authorised to be used pursuant to this clause.

## **12.0 Extent of Contract Works**

### 12.1 Variation Order

12.1.1 Crest shall be at liberty to authorise by instructions in writing the carrying out of any instruction as Crest may deem necessary and no such instruction will vitiate this Contract. If the Sub-Contractor considers that any instruction from Crest constitutes a variation which would increase the Contract Price or affect the Finish Date the Sub-Contractor must notify Crest in writing of the considered cost effect of such instruction and amount of time by which the Finish Date will be delayed or advanced as a result of such instruction before carrying out the instruction. In the event that the Sub-Contractor fails to notify Crest of the cost effect or effect on the Finish Date before carrying out the instruction the instruction shall be deemed to have a nil value and to have no effect on the Finish Date.

12.1.2 Subject to clause 12.2.3 all variations authorised by Crest shall be measured and valued by Crest on the basis of the Sub-Contractor's prices for the execution of any

similar work in the Contract or in the event of no similar work then valued on a fair and reasonable basis and such value shall be added to or deducted from the Contract Price as the case may be. No work shall be valued on a daywork basis.

12.1.3 Crest may request the Sub-Contractor to provide an estimate in respect of any variation in which case, the Sub-Contractor shall provide the estimate ("the Estimate") within 10 working days. Within five (5) working days of the provision of the Estimate by the Sub-Contractor Crest shall notify the Sub-Contractor in writing as to whether or not it wishes the Sub-Contractor to proceed with the variation and if Crest instructs the Sub-Contractor to proceed with the variation the Estimate shall be binding on the parties and conclusive of all monies due and payable to the Sub-Contractor for the undertaking of the variation. The Estimate shall also be binding on the parties as to any advancement or delay to the Finish Date. If Crest does not accept the Estimate but nevertheless instructs the Sub-Contractor to proceed the variation will be valued in accordance with clause 12.2.2.

## 12.2 Alteration in extent of Contract Works

12.2.1 Whenever the extent of the Contract Works and the amount of the Contract Price are shown by the Contract Documents to have been ascertained by reference to a given number of dwelling units and/or types Crest shall be at liberty to serve notice on the Sub-Contractor at any time that the number of dwelling units and/or types be increased or decreased and thereupon the extent of the Contract Works and the amount of the Contract Price shall be likewise increased or decreased as from the date of such notice and the Sub-Contractor shall make no objection to such alteration. The amount of the increase or decrease in the Contract Price shall be calculated by multiplying the number of each of the dwellings units or types to be increased or decreased by the amount shown in the Contract Documents for each of the relevant dwelling types and adding or subtracting the resulting figure to or from the Contract Price.

12.2.2 Crest reserves the right to omit the whole or any part of the Contract Works for any reason whatsoever and to have such whole or any part carried out by Crest's other Sub-Contractors or representatives. In the event of Crest exercising this right the Contract Price shall be reduced by the amount which represents the value of the Contract Works omitted.

## 12.3 No Further Claim

Any alteration in the extent of the Contract Works shall be subject to final adjustment only as provided for in the Contract Documents and the Sub-Contractor shall have no claim against Crest for any other payment or compensation in any respect.

## 13.0 Payment

13.1 13.1.1 Payment to the Sub-Contractor shall be made in instalments following completion of the stages identified in the Contract Documents.

13.1.2 It is a condition precedent that the initial payment to the Sub-Contractor shall only be due once the Contract Documents have been executed by the Sub-Contractor and returned to Crest and all insurances and health and safety documents (as further detailed herein or otherwise required) have been approved by Crest.

- 13.1.3 Once a stage identified in the Contract Documents has been completed and signed off by Crest, the Sub-Contractor shall make an application for payment in accordance with the information to be supplied with each application as set out in the Contract Documents.
- 13.1.4 Payment shall become due for payment to the Sub-Contractor 10 working days after receipt by Crest of the Sub-Contractor's application..
- 13.1.5 The final date for payment shall be 14 working days after the date when payment is due.
- 13.1.6 A 5% retention from each stage payment shall be made.
- 13.1.7 The amount due to the Sub-Contractor shall be the amount Crest's valuation of the Contract Works, less the % retention.
- 13.2 As soon as practicable after completion of the Contract Works,
  - 13.2.1 final measurement, inspection and tests shall be made by Crest and when such inspection and tests prove satisfactory the Contract Works shall be accepted by Crest;
  - 13.2.2 the Sub-Contractor shall prepare a draft Final Account Statement for approval by Crest & signature by both parties whereupon one half of the monies previously deducted as retention shall be certified and paid to the Sub-Contractor.
- 13.3 The balance of the retention monies due to the Sub-Contractor shall be certified and paid to it upon completion of the NHBC initial guarantee period (if applicable), or expiry of the defects liability period stated in the Schedule, once any rectification of defects within the Contract Works have been completed to the satisfaction of Crest whichever shall be the later.
- 13.4 Where the Contract Works are ultimately paid for by a Housing Association or other client of Crest, and such Housing Association or other client becomes insolvent as a result of which Crest does not receive monies in respect of the Contract Works, Crest shall not be obliged to make further payment to the Sub-Contractor unless and until payment is received by Crest in respect of the Contract Works.
- 13.5 No interim payment made by Crest shall relieve the Sub-Contractor from any liability arising out of or in connection with this Agreement. Crest may in any subsequent payment modify the basis upon which that payment is made relative to previous payments.
- 13.6 Right to Suspend Work
  - 13.6.1 If payment has not been made by the final date for payment and no notice to withhold payment has been given, the Sub-Contractor may suspend performance of his obligations under this Sub-Contract, provided that:
    - (i) the Sub-Contractor has given written notice to Crest 28 days prior to the date when performance is to be suspended,
    - (ii) such notice specifies the ground or grounds for suspension,
    - (iii) the right to suspend ends as soon as payment is made.

13.6.2 If the Sub-Contractor validly suspends performance pursuant to clause 13.6.1, an extension of time for completion of the Contract Works shall be granted for the period of suspension. If the suspension is invalid, the Sub-Contractor shall be liable to Crest in respect of any costs or damages, (including damages under Crest's Contract with Third Parties if applicable) incurred by Crest and arising out of the invalid suspension.

13.7 If the regular progress of the Contract Works is materially affected by an act, omission or default of Crest, its personnel or agents, for which the Sub-contractor is not precluded from seeking reimbursement by any clause of this Contract, the Sub-contractor shall make submission to Crest stating the grounds of the claim and detailing likely costs and the anticipated effect on the Finish Date. It shall be a condition precedent to any entitlement to the recovery of any additional payment or to an extension of time that the Sub-Contractor's submission shall be made as soon as it is or should have become apparent to the Sub-Contractor that the regular progress of the Contract Works was likely to be affected.

#### **14.0 Contra Amounts and Set Off**

14.1. Subject to clause 14.3, Crest shall notwithstanding anything contained in this Contract and without prejudice to any other right or remedy vested in it be entitled to deduct from, withhold or set off against any monies due from it to the Sub-Contractor (including any retention moneys) any sum or sums:-

14.1.1 which the Sub-Contractor is liable to pay to Crest under this Contract,

14.1.2 which Crest has paid to a third party, for carrying out remedial work due to defective workmanship or materials supplied by the Sub-Contractor or

14.1.3 in respect of any breach by the Sub-Contractor of its obligations under the Contract.

14.2 Crest shall be entitled to exercise cross rights of set-off and deduction between this Contract and any other contracts subsisting between Crest and any subsidiary, associated or affiliated company of Crest and the Sub-Contractor.

14.3 If Crest intends to withhold monies otherwise due to the Sub-Contractor, pursuant to this or any other clause in the Contract, it shall no later than 3 days before the final date for payment serve notice on the Sub-Contractor setting out the ground(s) for withholding monies and the amount(s) to be withheld in respect of each ground.

#### **15.0 Value Added Tax**

15.1 The Sub-Contractor shall be entitled to claim from Crest as an addition to the Contract Price the amount of value added tax properly chargeable on the goods and services supplied by the Sub-Contractor in executing the Contract Works.

15.2 The Sub-Contractor shall co-operate with Crest and do all that Crest may reasonably request in respect of the provision of documents and information relating to the payment of value added tax in order to comply with the provisions of the Value Added Tax Regulations 1995 as amended.

## **16.0 Taxation of Sub-Contractor**

Within this clause the Regulations shall mean The Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 number 2622 and any amendment thereto

### **16.1 Provision of Evidence of Tax certificate**

Within 5 working days of the date of this Contract the Sub-Contractor shall:-

16.1.1 provide Crest with the Relevant Tax details. Relevant Tax details being ;-  
A Unique Taxpayer Reference (UTR).

16.1.2 if Crest is not provided this information by the Sub-Contractor in accordance with clause 16.1.1, Crest will not be able to verify the tax status of the Sub-Contractor with HMRC in accordance with the Regulations.

16.1.3 In the event that a Sub-Contractor does not produce a UTR number in accordance with clause 16.1.1 or if Crest is unable to match the tax status with HMRC in accordance with clause 16.1.2 and notwithstanding clause 13, Crest will withhold payment to the Sub-Contractor or deduct tax at a higher rate until such time as either the Sub-Contractor provides Crest with the Relevant Tax details or HMRC informs Crest in writing to apply a new rate of tax..

### **16.2 Changes to payment status**

The Sub-Contractor shall immediately inform Crest in writing of any changes to their tax payment status.

### **16.3 Recording Payments**

16.3.1 Crest shall in accordance with all the relevant Regulations provide details of any payments made to the Sub-Contractor promptly to the Inland Revenue in compliance with its obligations under such Regulations.

16.3.2 Crest shall issue to the Sub-Contractor a detailed statement of all payments made to the Sub-Contractor in accordance with the Regulation

## **17.0 Indemnities**

The Sub-Contractor shall effectively indemnify Crest and its personnel and agents against claims for actual or consequential costs for:-

17.1 any act or omission of the Sub-Contractor its personnel or agents which exposes Crest or its personnel or agents to any liability or alleged liability.

17.2 any claim demand proceedings damage cost charge or expense due to or resulting from any breach of contract or negligence or breach of duty on the part of the Sub-Contractor its personnel or agents caused by or arising out of or in connection with the execution of the Contract Works (including but not limited to any wrongful or improper use by it or them of the scaffolding referred to in clause 7.0 or other property belonging to or provided by Crest whether or not such use has been authorised by Crest).

- 17.3 any loss or damage resulting from any claim under any statute in force for the time being or at common law or otherwise by any personnel of the Sub-Contractor in respect of personal injury arising out of or in the course of his employment in connection with the execution of the Contract Works.

## **18.0 Health and Safety**

- 18.1. The sub-contractor shall ensure that all health, safety and welfare measures required under or by virtue of provisions of Health and Safety at Work Act 1974, the current CDM Regulations and any other relevant enactment or regulation and the working rules of any industry for the time being in force are complied with so far as they relate to the Contract Works and it shall be the sub-contractor's responsibility to ensure compliance by its personnel and agents with all such enactments and regulations.

- 18.2 The sub-contractor shall provide Crest with the following information before commencement of the Contract Works;

18.2.1 Copies of its job or activity specific risk assessments

18.2.2 Copies of its job or activity specific risk method statements

18.2.3 Copies of its work equipment test and inspection certificates

18.2.4 Evidence of competence for all personnel it intends to carry out the contract works

- 18.3 The sub-contractor shall comply with Crest's Health and Safety Procedures.

- 18.4 When required by Crest, complete sets of 'as constructed drawings' are to be provided by the sub-contractor together with a list of suppliers and contractors for all components, manufacturers brochures, operating instructions for all moving items and mechanical and electrical installations, maintenance recommendations for all components, list of all designers and consultants, all approvals, permissions and consents from any statutory or other authority and all notices, contracts and agreements and other documents relating to or affecting the ownership, maintenance or operation of the development. The manuals are to cover all aspects of the installation and maintenance requirements such that the occupier of the finished building might reasonably require.

- 18.5 The responsibility for completing the F2508 report and notifying the Health and Safety Executive (HSE) of an incident involving the Sub-contractor, its personnel or subcontractors to the HSE in accordance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 lies with:-

18.5.1 Crest – if the sub-contractor is “self employed” and working on a sub-contract basis for the Sub-contractor appointed by Crest.

18.5.2 The Sub-contractor if the sub-contractor is “directly employed” by the Sub-contractor. Crest are to be given a copy of the F2508 immediately the report has been notified to the HSE.

- 18.6 The sub-contractor must ensure that all non English speaking personnel they supply are provided with the relevant health and safety information in the appropriate language.

The sub-contractor must ensure that an adequate number of competent site based interpreters, at supervisory level, are maintained. Crest will only accept a minimum of one interpreter to

every six non English speaking personnel where they all work in close proximity to each other or to other sub-contractors and a minimum of one interpreter to every one non English speaking personnel where they work in isolated areas.

- 18.7 It is the sub-contractors responsibility to advise Crest, prior to the commencement of the contract works, of any employees or sub-contractors working on site who have a disability and to ensure that the sub-contractors own Health & Safety Policy and site specific Risk Assessments include for the welfare of such individuals.

## **19.0 Other Laws and Regulations**

- 19.1 The Sub-Contractor, its personnel and agents shall observe perform and comply at all times with all Acts of Parliament and other statutory provisions regulations bye-laws rules and approved codes of practice so far as they are applicable to the Contract Works.

## **20.0 Assignment & Sub-Letting**

- 20.1 The Sub-Contractor shall not assign or transfer any right or obligation under this Contract to any person without the prior written consent of Crest
- 20.2 Crest shall be entitled to assign its entire rights and obligations in this Contract at any time prior to Practical Completion but shall give the Sub-Contractor written notice of the assignment within 20 working days
- 20.3 The Sub-Contractor shall not sub-contract or delegate or allow any other person to perform any of its obligations hereunder without the prior written consent of Crest. No such consent given by Crest shall relieve the Sub-Contractor from its responsibility for the proper performance of those obligations

## **21.0 Failure to Complete in Specified Time**

- 21.1 If the Sub-Contractor fails to complete the Contract Works or any section thereof within the period specified in the Schedule or as instructed in writing between the parties or any extended period agreed by Crest taking into account matters beyond the Sub-Contractor's control which have delayed the Contract Works, the Sub-Contractor shall pay Crest any loss or damage suffered or incurred by Crest and caused by the failure of the Sub-Contractor as aforesaid of which loss or damage Crest shall at the earliest opportunity give reasonable notice to the Sub-Contractor that the same is being or has been suffered or incurred.
- 21.2 The liability of the Sub-Contractor for any delay or disruption shall include but not be limited to liability for any damages or consequential losses for which Crest itself may be liable.

## **22.0 Defects**

- 22.1 The Sub-Contractor shall return to Site when requested to do so by Crest at any time during the NHBC initial guarantee period or the defect liability period to remedy any defects in the Contract Works which are due to defective materials or workmanship any such works shall be at the sole expense of the Sub-Contractor.

- 22.2 Crest may, at its sole discretion, use a third party to remedy any defects instead of requesting the Sub-Contractor to remedy them, in which case, Crest shall deduct the cost incurred in employing such third party from any monies due or to become due to the Sub-Contractor under this Contract (subject to giving notice in accordance with clause 14) or be entitled to recover the cost from the Sub-Contractor as a debt.

### **23.0 Determination of Contract by Crest**

- 23.1.1 If the Sub-Contractor shall make any default then (and without prejudice to any other rights or remedies which Crest may enjoy) Crest may by written notice to the Sub-Contractor forthwith determine the performance by the Sub-Contractor of its obligations under this Contract and may expel the Sub-Contractor from the Contract Works and the Site with the following consequences:-
- 23.1.2 Crest may take over the materials and plant provided by or on behalf of the Sub-Contractor which are upon the Contract Works or otherwise on the Site or are being used in connection therewith and Crest may use the same to complete the Contract Works;
- 23.1.3 The Sub-Contractor shall provide Crest with 2 copies of, & Crest may retain, all such drawings, details or descriptions as the Sub-Contractor has prepared or previously provided & drawings & information relating to the Works completed before the determination of the Sub-Contractor's employment.
- 23.1.4 If requested the Sub-Contractor must assign to Crest within 14 days of the date of determination, without payment, the benefit of any agreement for the supply of materials or goods &/or for the execution of any work for the purposes of this Contract
- 23.1.5 Upon any termination or suspension by Crest the Sub-Contractor shall;
- 23.1.5.1 immediately take steps to cease the provision of the Contract Works in an orderly manner and with all speed and economy and shall cause to be delivered to the Crest all drawings and other documents and materials (whether in the course of preparation or completed) which are in its possession in connection with the Contract Works; and
- 23.1.5.2 allow or pay Crest the amount of any loss or damage caused to Crest by reasons of the determination of the Contract; and
- 23.1.6. until after completion of the Contract Works Crest shall not be bound to make any further payments to the Sub-Contractor. Within a reasonable time after the Contract Works are completed Crest shall prepare an account setting out the following :
- 23.1.6.1 the amount of expenses incurred by Crest in completing the contract works & the amount of any loss & damage caused to Crest by reason of the determination.
- 23.1.6.2 the amount of any payment made to the Sub-Contractor.

- 23.1.6.3 the total amount which would have been payable for the works on due completion in accordance with the Contract.
- 23.1.7 If the sum of the amount stated under clauses 23.1.6.1 & 23.1.6.2 exceeds the amount stated under clause 23.1.6.3 the difference shall be a debt payable by the Sub-Contractor to Crest; or
- 23.1.8 If the sum of the amount stated under clauses 23.1.6.1 & 23.1.6.2 is less than the amount stated under clause 23.1.6.3 the difference shall be a debt payable by Crest to the Sub-Contractor.
- 23.2 The provisions of clause 23.1 shall apply whenever the Sub-Contractor:-
- 23.2.1 abandons the Contract Works; or
- 23.2.2 fails to commence the works in accordance with clause 2.0; or
- 23.2.3 other than in circumstances allowed under this Contract, suspends the carrying out of the Contract Works before they are completed; or
- 23.2.4 fails (after previous written warning from Crest) to proceed with the Contract Works with such speed and in such sequence as in Crest's opinion shall be necessary to avoid impeding other trades or causing delay to completion; or
- 23.2.5 fails to complete the Contract Works or any section of them within the required time; or
- 23.2.6 at any time fails to carry out the Contract Works to Crest's satisfaction; or
- 23.2.7 refuses or neglects to remove or replace defective work or improper materials after written directions from Crest to do so; or
- 23.2.8 commits an act of insolvency or bankruptcy or enters into any deed of arrangement or composition with its creditors or goes into liquidation or suffers a provisional liquidator receiver or manager to be appointed or if any execution is levied on its property or obtained against it; or
- 23.2.9 commits any other breach of a term or terms of this Contract
- 23.3 In the event of the Contract Works being destroyed by any occurrence against which Crest has insured Crest shall have the right to determine this Contract. In the event of such determination the Sub-Contractor shall be paid the value of the Work carried out to the date of the occurrence and, if Crest require, for materials supplied to the Site which are the property of Crest but no further or other payment shall be made to the Sub-Contractor nor shall the Sub-Contractor be entitled to any damages or compensation or loss of profits whatsoever.

## **24.0 Notices**

- 24.1 Any notice served pursuant to this Contract shall be sufficiently served if it is sent by first class post, facsimile or delivered by hand and addressed to or left at the address of the party specified in the Contract. Any notice sent by post shall be deemed delivered two business

days next following. Notice sent by facsimile shall be deemed delivered at the time of transmission unless outside the normal business hours of the recipient in which case delivery is deemed to be 10.00 a.m. on the business day next following. Any notice served by the Sub-Contractor shall in addition be copied to Crest Nicholson PLC, Crest House, Pycroft Road, Chertsey, Surrey, KT16 9GN, marked for the attention of the Group Commercial Executive.

## **25.0 Adjudication**

- 25.1 Any dispute or difference arising under or in connection with the Subcontract may be referred to adjudication in accordance with Section 108, sub-sections 1 to 4 of the Housing Grants Construction and Regeneration Act 1996 and the Scheme for Construction Contracts subject to the following provisions:
- 25.2 A party referring a dispute to adjudication must give notice to the other requiring a dispute or difference to be referred to an adjudicator. Such notice shall give a full description of the matters in dispute, and include all the evidence the Referring party wishes to rely on and state the nature of redress sought..Failure to comply with these requirements will deny the adjudicator jurisdiction .
- 25.3 The Adjudicator shall be approved by the Company or, if not approved within 5 days, shall be an adjudicator appointed by the President or Vice-President for the time being of the Royal Institution of Chartered Surveyors.
- 25.4 The fees of the Adjudicator and any costs incurred by the Company shall be paid by the subcontractor in any event.

## **26.0 Arbitration**

- 26.1 In the event of any dispute or difference between the parties arising out of or in connection with this Contract such dispute or difference shall be referred to the arbitration of a single arbitrator appointed by the President or Vice-President for the time being of the Royal Institution of Chartered Surveyors and the award of such arbitrator shall be final and binding on the parties hereto. No reference to an arbitrator shall be made until after completion or abandonment of the Contract Works or determination of this Contract.
- 26.2 The Sub-Contractor shall notify Crest immediately upon receipt of a notice to adjudicate, notice to refer a dispute to an arbitrator or notification of any other form of proceedings from a third party which creates, or might in the future create a potential liability for Crest.

## **27.0 Exclusion of Terms**

- 27.1 Any terms or conditions which may be endorsed or annexed to or otherwise contained in or embodied in the Sub-Contractor's quotation or other offer document shall not form part of this Contract nor otherwise apply to the Contract Works unless specifically identified in the Contract Documents or other written order or acceptance document from Crest.
- 27.2 No addition or amendment to the Contact Documents shall be valid unless in writing and signed by a Director of Crest.

## **28.0 Interpretation**

- 28.1 Unless otherwise stated references to clauses and Schedules and Appendices are references to operative clauses of and Schedules and Appendices to this Contract.
- 28.2 References to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Contract).
- 28.3 Headings are inserted for convenience only and shall not affect the construction of this Contract.
- 28.4 Throughout this Contract and unless the context requires otherwise:-
- 28.4.1 references to 'Crest' and 'the Sub-Contractor' shall extend to their respective successors and assigns;
  - 28.4.2 references to the neuter shall extend to the masculine and/or feminine genders (and vice versa);
  - 28.4.3 reference to the singular number shall extend to the plural number (and vice versa); and
  - 28.4.4 all warranties representations indemnities covenants agreements and obligations given entered into by to or with more than one legal entity are given or entered into by to or with them jointly and severally.

## **29.0 The Contracts (Rights of Third Parties) Act 1999**

- 29.1 Notwithstanding any other provision of this contract nothing in this contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

SCHEDULE

Site :  
Contract Works  
comprise :  
Contract Price :  
Stage Payments : Monthly (unless stated otherwise)  
Programme  
Requirements – : All as site managers programme  
Commencement &  
Finish dates  
Liquidated damages  
applicable to Crest’s :  
head contract.  
NHBC Initial  
Guarantee period or  
defects liability : 2 Years  
period  
Number & content of  
Appendices :

This Agreement has been entered into between the parties as a deed on the date stated at the beginning.

**EXECUTED** as a **DEED** by *Insert name of attorney*  
**AS ATTORNEY FOR**  
*Crest Nicholson Operations Ltd*

in the presence of:-  
**Witness:**

**Name:**  
**Address:**  
**Occupation:**

**EXECUTED** as a **DEED** for *Insert name of company*  
Acting by two directors or a director and a  
Secretary

Director