

Schedule 4 Terms and Conditions

1 Definitions and Interpretation

1.1 In this Agreement unless the context otherwise requires:

"Agreed Fees" will have the meaning given to it in Schedule 1 (Commercial Terms);

"Agreed Order" means any order for the provision of the Services sent by Crest Nicholson to the Consultant and accepted by the Consultant pursuant to Clause 3.2;

"Bribery Act" means the Bribery Act 2010 as amended, superseded or replaced from time to time during the term of this Agreement;

"Business Day" means any day that is not a Saturday, Sunday or public holiday in England;

"CDM Regulations" means the Construction (Design and Management) Regulations 2015 as amended, superseded or replaced from time to time during the term of this Agreement;

"Commencement Date" will have the meaning given to it in Schedule 1 (Commercial Terms);

"Confidential Information" means secret or confidential commercial, financial, marketing, technical or other information know-how; trade secrets and other information in any form or medium; whether disclosed orally or in writing before or after the date of this Agreement, together with any reproductions of such information in any form or medium or any part(s) of this information. The term **"confidential"** means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available;

"Consultant's Employees" means any individual who is employed or otherwise engaged by the Consultant or any subcontractor of the Consultant and who provides the Services to Crest Nicholson under an Agreed Order;

"Control" means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares or power, ability to appoint directors, by contract or otherwise);

"Crest Nicholson Personal Data" means the Personal Data relating to Crest Nicholson's customers, employees, suppliers, contractors

and employees of suppliers and contractors that are Processed by the Consultant under this Agreement;

"Data Protection Laws" means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, applicable to the Processing of personal data and the interception of communications under this Agreement;

"Environmental Laws" means all and any applicable laws in force in any relevant jurisdiction relating to, or concerning, the protection of the environment. It also means all and any of the above that regulate, control or prohibit the generation, use, handling, emission, transportation, storage, treatment or disposal of any substances (including waste and hazardous waste or any noise, vibration, odour, light or radioactivity);

"Force Majeure" means any event outside the reasonable control of either party affecting its ability to perform any of its obligations under this Agreement including an Act of God, fire, flood, lightning, war, revolution, an act of terrorism, riot or civil commotion; but excluding strikes, lock-outs or other industrial action;

"Health and Safety Laws" means all and any applicable laws in force in any relevant jurisdiction relating to human health and safety or the condition of the workplace;

"Initial Period" will have the meaning given to it in Schedule 1 (Commercial Terms);

"Intellectual Property" means any patent, registered design, copyright (including rights in software), design right, database right, moral right, trade mark, service mark, domain name, rights in confidential information and all similar property rights anywhere in the world, whether registered or not, and including any application for registration of the aforementioned;

"Invoice Date" will have the meaning given to it in Schedule 1 (Commercial Terms);

"Key Deliverables" will have the meaning given to it in Schedule 1 (Commercial Terms);

"Milestones" will have the meaning given to it in Schedule 1 (Commercial Terms);

"New Provider" means any third party engaged to supply services following the termination of this

Agreement that are the same or similar to the Services provided under this Agreement;

"Payment Period" will be the period specified in Schedule 1 (Commercial Terms);

"Rolling Period" will have the meaning given to it in Schedule 1(Commercial Terms);

"Services" means the services to be provided by the Consultant to Crest Nicholson as specified in Schedule 1 (Commercial Terms);

"Site" will have the meaning given to it in Schedule 1 (Commercial Terms); and

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, re-enacted or consolidated from time to time.

- 1.2 The headings to clauses are inserted for convenience only and will not affect the interpretation or construction of this Agreement. Words and numbers imparting the singular will include the plural and vice versa. Words imparting a gender include every gender, and references to persons include an individual, company, corporation, firm or partnership.
- 1.3 All sums payable as outlined in Schedule 3 (Fee Calculator) are exclusive of VAT or any other applicable tax. Any applicable tax or VAT will be added if appropriate at the rate prevailing at the relevant tax point.
- 1.4 References to any statute or statutory provision will include (i) any subordinate legislation made under it, (ii) any provision that it has modified or re-enacted (whether with or without modification), and (iii) any provision that subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.5 References to applicable laws will include all or any statute, common law, rule, regulation, treaty, directive, direction, decision of the Court, byelaw, code of practice, circular, guidance note, statutory guidance, order, notice, demand or official guideline or permit of any governmental, statutory or regulatory authority, agency or body.
- 1.6 The words and phrases "other", "including" and "in particular" will not limit the generality of any preceding words, or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 1.7 All references in this Agreement to Clauses and Schedules relate to the clauses and schedules

within this Agreement only, unless otherwise stated.

- 1.8 In the event of a conflict or ambiguity between Schedule 1 (the Commercial Terms), and this Schedule 4 (the Terms and Conditions) and any Agreed Order, the following order of precedence will apply:

- (a) the Agreed Order; then
- (b) Schedule 1 (Commercial Terms); then
- (c) this Schedule 4 (the Terms and Conditions); then
- (d) the other Schedules.

2 Commencement

- 2.1 Notwithstanding the execution of this Agreement, the Commencement Date will be the date specified in Schedule 1 (Commercial Terms). The Consultant's employment under this Agreement and the rights and obligations of the parties included within it, including the performance of any Services performed before or after the date of execution of this Agreement, will for all purposes be deemed to have commenced -- and be enforceable -- on the Commencement Date. Subject to the provisions for earlier termination in Clauses 8 and 15.2, this Agreement will remain in force for the Initial Period and may continue in force thereafter in accordance with Clause 2.2.
- 2.2 One (1) month prior to the end of the Initial Period or any subsequent Rolling Period, the parties will meet to decide whether or not to extend the term of this Agreement. If the parties decide not to extend the term of this Agreement, this Agreement will expire on the last day of the Initial Period or where applicable the last day of the Rolling Period during which the parties' meeting took place. If the parties decide (and agree in writing) to extend the term of this Agreement, this Agreement will continue in force (subject to the provisions for earlier termination) for the Rolling Period.
- 2.3 Any instruction, order or demand issued or made by Crest Nicholson to the Consultant under or in connection with an agreement for services made between the Consultant and Crest Nicholson dated [● insert date of existing panel appointment], will continue in full force and effect but will from the Commencement Date be governed by and subject to the terms of this Agreement and for all intents and purposes the parties agree that all such existing instructions, orders or demands will be treated as if each had been issued by Crest Nicholson under this Agreement.

3 Order Process

- 3.1 Crest Nicholson will from time to time during the term of this Agreement place orders in the form of Schedule 5 for the Services in accordance with this Clause 3.
- 3.2 Any order for the Services sent by Crest Nicholson to the Consultant will be an offer to procure the Services in accordance with the provisions of this Agreement. Unless previously withdrawn by Crest Nicholson, orders will be deemed accepted if not rejected by the Consultant in writing within seven (7) days of their date. Upon the Consultant's acceptance of any order for services sent by Crest Nicholson or upon any deemed acceptance of the same, such Agreed Orders will be deemed part of and will be governed by and subject to the terms of this Agreement and the Consultant will provide the Services detailed in any such Agreed Order(s) in accordance with this Agreement.
- 3.3 Crest Nicholson will be under no obligation to place orders for the Services but reserves the right to do so at any time during the term of this Agreement.

4 The Consultant's Obligations

- 4.1 Upon appointment by Crest Nicholson the Consultant agrees to provide the Services in accordance with the provisions of this Agreement.
- 4.2 The Consultant will, during the term of this Agreement, provide the Services, including delivering the Key Deliverables by the specified Milestones:
- (a) with reasonable skill, care and diligence; and
 - (b) in accordance with any reasonable instructions notified to it by Crest Nicholson from time to time.
- 4.3 At all times during this Agreement, the Consultant, its employees, agents, representatives and sub-contractors will maintain high ethical standards and adhere to, and act in accordance with, Crest Nicholson's Supply Chain Code of Conduct (as amended and updated from time to time). A copy of the latest version will be available during the term of this Agreement from Crest Nicholson's website at: <https://www.crestnicholson.com/legal-information/supply-chain>.
- 4.4 Any breach by the Consultant, its employees, agents, representatives and sub-contractors

(whether with or without the Consultant's knowledge) of the Supply Chain Code of Conduct will be deemed to be a material breach of this Agreement for the purpose of Clause 8.

- 4.5 The Consultant will employ or engage an adequate number of suitably qualified, skilled and experienced individuals in order to deliver the Services in accordance with this Agreement.
- 4.6 The Consultant will supply Crest Nicholson with such information and reports, including any copies, as Crest Nicholson reasonably requires in relation to the provision of the Services.
- 4.7 Upon request by Crest Nicholson, the Consultant will sign up to two (2) collateral warranties in favour of any person acquiring an interest in a Site (excluding any purchaser, tenant or funder of a single residential unit) that has been designed by the Consultant free of charge, and any additional collateral warranties that are required by Crest Nicholson subject to the payment of a reasonable fee by Crest Nicholson. Such warranties will be in a form reasonably required by Crest Nicholson and agreed by the parties. Where such warranties have not been provided by the Consultant within 14 days of receipt of the necessary engrossment or engrossments, Crest Nicholson may, notwithstanding any other provisions of this Agreement, withhold any payment due and/or payable under this Agreement until such time as the warranties have been satisfactorily executed and delivered to Crest Nicholson.
- 4.8 Where, as part of the Services, the Consultant is required to produce 'final construction drawings these must be clear and compatible for use by a CAD draughtsman without interpretation by an engineer.
- 4.9 Where 'as-built' drawings are requested by Crest Nicholson, the Consultant must provide these. The drawings must be clear and compatible for use by a CAD draughtsman without interpretation by an engineer. Any additional fees for producing such drawings will be agreed by both parties prior to the Commencement Date.
- 4.10 In cases where Crest Nicholson request drawings based on site record information, the Consultant will provide these using site record information provided by Crest Nicholson. The drawings must be clear and compatible for use by a CAD draughtsman without interpretation by an engineer. The Consultant will not be liable for the accuracy and completeness of the site record information provided by Crest Nicholson and may rely on it without review.

5 The Consultant's Warranties

- 5.1 The Consultant warrants to Crest Nicholson on a continuing basis that:
- (a) it and the Consultant's Employees will not engage in any activity that conflicts, or may conflict, with its obligations or duties under this Agreement;
 - (b) it has full capacity and authority to enter into this Agreement;
 - (c) it and the Consultant's Employees will comply with all applicable laws relating to this Agreement and the Services to be performed under it; and
 - (d) it is fully aware of the provisions of the CDM Regulations and that it possesses the requisite degree of competence and level of resources to meet (and will meet) the duties and obligations imposed on it, including, but not limited to, any obligations to co-operate with others. It will, at all times, use reasonable endeavours to ensure that Crest Nicholson does not breach its obligations under the CDM Regulations.

6 Crest Nicholson's Obligations

- 6.1 Crest Nicholson will provide the Consultant and the Consultant's Employees with such information, assistance and access to the Site as the Consultant reasonably requires to comply with its obligations under this Agreement.

7 Fees and Payment

- 7.1 In consideration of the proper execution by the Consultant of its duties and obligations under, and in accordance with, this Agreement, Crest Nicholson will pay the Consultant the Agreed Fees in accordance with this Clause 7.
- 7.2 The Agreed Fees be reviewed and, if agreed by the parties in writing, revised prior to the start of each Rolling Period.
- 7.3 The Consultant will issue an invoice to Crest Nicholson in respect of a payment instalment on the relevant Invoice Date with such information as Crest Nicholson may reasonably require, including a purchase order number, Site name and confirmation of the Milestone to which the invoice relates, time sheets and details of progress made (a "**Payment Application**"). Each Payment Application must state the sum that the Consultant considers will become due to it and the basis upon which that sum has been

calculated. Each payment instalment will become due for payment on the date on which Crest Nicholson received the Payment Application ("**the Due Date for Payment**") and the final date for payment of each payment instalment will be the last day of the relevant Payment Period ("**the Final Date for Payment**").

- 7.4 Where any payment from Crest Nicholson becomes due to the Consultant under this Agreement, Crest Nicholson will, no later than five (5) days after the Due Date for Payment, give notice to the Consultant specifying: the amount (if any) of the payment instalment it considers became due to the Consultant on the Due Date for Payment; what the payment relates to; and the basis on which the amount is calculated ("**Payment Notice**").
- 7.5 In respect of each payment instalment, Crest Nicholson will pay the Consultant by the Final Date for Payment (subject always to any Pay Less Notice), the sum detailed in the Payment Notice or where a Payment Notice is not served, the sum stated in the Payment Application ("**Notified Sum**"). If Crest Nicholson intends to pay less than the Notified Sum it will, no later than two (2) days before the Final Date for Payment give notice to the Consultant ("**Pay Less Notice**") of the sum that it considers is due to the Consultant (on the date such Pay Less Notice is served) and the basis upon which the sum has been calculated.
- 7.6 If the Consultant becomes the subject of any of the circumstances described in Clause 8.1(b) after the two (2) day period set out in Clause 7.5, Crest Nicholson will not be required to pay the Consultant the sum detailed in the invoice provided in accordance with Clause 7.3 or any revised amount identified as payable to the Consultant in accordance with Clause 7.5.
- 7.7 Should any sums be due to Crest Nicholson from the Consultant under, or in connection with, this Agreement then the Consultant will, subject to any Pay Less Notice served under this Clause, pay the sum requested by Crest Nicholson ("**Notified Sum**") within 14 days of receiving notice of the same from Crest Nicholson ("**Final Date for Payment**"). If the Consultant intends to pay less than the Notified Sum then it will, no later than two (2) days before the Final Date for Payment, give notice to Crest Nicholson ("**Pay Less Notice**") of the sum that the Consultant considers to be due on the date such Pay Less Notice is served and the basis upon which the sum has been calculated.
- 7.8 In relation to giving notices under this Clause 7 it is immaterial that the amount considered to be due may be zero.

- 7.9 A Payment Notice or Pay Less Notice from Crest Nicholson under this Clause 7 may be given by any person whom it authorises to do so. The Consultant will be notified of this.
- 7.10 Crest Nicholson will not be liable for any expenses incurred as a result of the Consultant's performance of its obligations under this Agreement unless such expenses have been approved in advance and in writing, and the relevant receipts have been provided. All approved and agreed expenses must be invoiced separately.
- 7.11 Crest Nicholson may set-off against any outstanding fees, demands, penalties or interest owed to it by the Consultant against the Agreed Fees.
- 7.12 Without prejudice to any other right or remedy of the Consultant, if Crest Nicholson fails to make any payment of the Notified Sum under this Agreement on the relevant Final Date for Payment then the Consultant may charge Crest Nicholson interest on the unpaid amount at the rate of three percent (3%) per annum above the then current base rate of Barclays Bank from the Final Date for Payment until payment of the Notified Sum is received in full by the Consultant. The parties agree that this provision constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (interest) Act 1998.

8 Termination

- 8.1 Either party may terminate this Agreement or the relevant Agreed Order immediately on giving the other written notice if:
- (a) the other party commits any material or repeated breach of its obligations under this Agreement or the relevant Agreed Order, and which in the case of a breach capable of being remedied, is not remedied within 20 days of a written request to remedy the same; or
- (b) the other party becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up; is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; if it convenes any meeting of its creditors or makes an arrangement or compromise with its creditors; or otherwise becomes insolvent or suffers any similar process or event, whether in the UK or otherwise.

- 8.2 Crest Nicholson may terminate this Agreement or the relevant Agreed Order immediately on giving the Consultant written notice if:

- (a) any of the Consultant's Employees are, in the reasonable opinion of Crest Nicholson, negligent or incompetent in the performance of the Services; or
- (b) the Consultant undergoes a change of Control.

- 8.3 If Crest Nicholson becomes entitled to terminate this Agreement pursuant to Clauses 8.1 or 8.2, Crest Nicholson may, at its discretion, instead decide to terminate any part of this Agreement or all or any number of Agreed Orders with the Consultant in accordance with this Agreement immediately on giving written notice to the Consultant.

- 8.4 Upon termination of this Agreement for any reason whatsoever:

- (a) the relationship of the parties will cease save as to the extent expressly provided for in Clause 8.5;
- (b) each party will immediately return to the other party (or if the other party so requests, destroy) all of the other party's Confidential Information in its possession up to the Termination Date and will certify that it has done so. The other party will make no further use of the Confidential Information.

- 8.5 The obligations in the following Clauses will survive any termination of the Agreement for 12 years from the date of termination: Clauses 4, 5, 7, 9, 10, 11, 12, 15, 18 and 27.

- 8.6 The termination of this Agreement will be without prejudice to the rights and remedies of either party that may have accrued up to the Termination Date.

9 Remedies for Non-Performance

- 9.1 If the Consultant has failed to perform the Services, Crest Nicholson will be entitled (without prejudice to any other rights or remedies it may have) to require the Consultant to:

- (a) remedy any such breach by re-executing the Services in accordance with the Agreement within seven (7) days; or
- (b) request that the Consultant repay or credit Crest Nicholson that part of the Agreed Fees already paid by Crest Nicholson in relation to the relevant part of the Services.

10 Confidential Information

10.1 Each party will keep confidential all Confidential Information disclosed or obtained as a result of the relationship of the parties under this Agreement and will neither use nor disclose the Confidential Information, except for the purposes of the proper performance of this Agreement or with the prior written consent of the other party. Where disclosure is made to any of that party's employees and advisors, it will be done subject to obligations equivalent to those set out in this Agreement. Each party agrees to use all reasonable endeavours to ensure that any such employees and advisors comply with the obligations. Each party will continue to be responsible to the other party regarding any disclosure or use of such Confidential Information by a person to whom disclosure is made.

10.2 The obligations of confidentiality in this Clause 10 will not extend to any information that either party can show:

- (a) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement;
- (b) was in its written records prior to the Commencement Date and not subject to any confidentiality obligations;
- (c) was independently disclosed to it by a third party entitled to disclose the same; or
- (d) is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

10.3 The Consultant will not make any announcement or otherwise publicise the existence of, or disclose to any person, the terms of this Agreement without the prior written consent of Crest Nicholson.

11 Intellectual Property Rights

11.1 All materials, including any specifications supplied by Crest Nicholson, and any copies made by or for the Consultant, will: be the property of Crest Nicholson, be used only for the purposes of this Agreement, be treated as strictly confidential by the Consultant, and be returned by the Consultant immediately on request to Crest Nicholson at the Consultant's sole risk and cost.

11.2 Any and all Intellectual Property created or acquired in the course of, or as a result of, any

work carried out by the Consultant under, or in pursuit of, this Agreement, will, from the date of its creation or acquisition by the Consultant (or otherwise promptly upon request by Crest Nicholson) belong exclusively, throughout the world, to Crest Nicholson.

11.3 The Consultant agrees (and will promptly undertake at Crest Nicholson's request) to do all such acts or deeds, and execute all such documents, as may be required by Crest Nicholson to put into practice the provisions and intentions of this Clause 11. This will be at the Consultant's own cost.

11.4 At no extra cost to Crest Nicholson, the Consultant will grant, or procure the grant of, an adequate licence or sub-licence for any Intellectual Property that the Consultant does not own, which is incorporated or utilised in any work done by the Consultant for Crest Nicholson under this Agreement. The licence or sub-licence must be sufficient to ensure Crest Nicholson is able to make full use of such work and to repair, update or maintain the work in which such results are incorporated.

11.5 The Consultant warrants that the use by Crest Nicholson, its employees, sub-contractors or agents of the materials provided as part of the Services will not infringe the rights of any third party. The Consultant agrees to indemnify Crest Nicholson and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by Crest Nicholson (or for which Crest Nicholson may become liable) for any Intellectual Property infringement claim or other claim relating to the materials supplied by the Consultant to Crest Nicholson during the course of providing the Services.

11.6 The Consultant will not be liable for any use by Crest Nicholson of the created Intellectual Property for any purposes other than that for which the same was created in accordance with this Agreement.

12 Data Protection

12.1 Additional capitalised terms in this Clause 12 will have the meaning given to them in the Data Protection Laws unless otherwise defined in this Agreement.

12.2 Crest Nicholson will process personal data relating to the Consultant and its employees in accordance with its Privacy Policy, which can be found on Crest Nicholson's website at: <https://www.crestnicholson.com/legal-information/privacy-policy>.

12.3 The Consultant will ensure it complies at all times with Data Protection Laws relating to its Processing of Crest Nicholson Personal Data. The Consultant undertakes to perform its obligations under this Agreement in a manner that does not cause Crest Nicholson to breach Data Protection Laws relating to its Processing of the Crest Nicholson Personal Data. The Consultant will indemnify Crest Nicholson, and keep Crest Nicholson indemnified, against all losses, damages, costs, expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by Crest Nicholson arising from any breach of the Consultant's obligations under this Clause 12.

13 Health and Safety

13.1 At all times, the Consultant will comply with all relevant Health and Safety Laws, including the provisions of the Health and Safety at Work Act 1974 and the current CDM Regulations insofar as they relate to the Agreement. It will be the Consultant's responsibility to ensure its employees, personnel, agents and sub-contractors comply with all relevant Health and Safety Laws.

14 Environmental Law

14.1 It will be the Consultant's responsibility to ensure compliance by itself and its employees, personnel, sub-contractors and agents with all relevant Environmental Laws.

15 Insurance

15.1 Subject to insurance being available on commercially reasonable rates and terms, the Consultant will maintain in force throughout the term of this Agreement, and for a period of 12 years following termination or expiry of this Agreement, the following insurances with reputable insurers at its own cost:

- (a) employers' liability insurance for a minimum of £5,000,000 (five million pounds) per claim;
- (b) public liability insurance (including product liability) for a minimum of £5,000,000 (five million pounds) for each occurrence; and
- (c) professional indemnity insurance for a minimum of [£XX] for each occurrence.

15.2 From time to time during the term of this Agreement, the Consultant will, on written request by Crest Nicholson, provide the evidence that Crest Nicholson requires to assess the

Consultant's compliance with its obligations under this Clause 1515.

16 Customer Service

16.1 Where applicable, the Consultant will work closely with Crest Nicholson to ensure that Crest Nicholson achieves its customer service objectives towards its unit purchasers during the new home warranty initial guarantee period and/or the defect liability period.

17 Force Majeure

17.1 If either party is affected by Force Majeure it will immediately notify the other party in writing of the matters constituting the Force Majeure. It will also keep the other party fully informed of any relevant change of circumstances whilst such Force Majeure continues.

17.2 Save as provided in Clause 17.3, Force Majeure will not entitle either party to terminate this Agreement or any Agreed Order. Neither party will be in breach of this Agreement or any Agreed Order, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations due to Force Majeure.

17.3 If the Force Majeure continues for longer than one (1) month, Crest Nicholson may terminate this Agreement at any time whilst such Force Majeure continues. Termination will be given by written notice in writing to the Consultant to terminate this Agreement or the relevant Agreed Order.

18 TUPE

18.1 It is the parties' view that the Transfer Regulations will not apply on, or as a result of, the termination of this Agreement or on or as a result of the termination of any Agreed Order. Whether or not the Transfer Regulations apply, the Consultant will indemnify Crest Nicholson and any New Provider against all and any costs, claims, demands, expenses (including legal and other professional expenses) losses, damages, compensation and other liabilities that it may suffer in relation to the employment or termination of employment of any person (including the Consultant's Employees) employed or engaged in providing the Services or services similar to the Services pursuant to an Agreed Order, whose employment may transfer to Crest Nicholson in connection with the termination of this Agreement or the termination of an Agreed Order or who claim that their employment or such claims so transfer.

19 Relationship of the Parties

19.1 The relationship between the parties will be that of two independent contractors. Nothing contained in this Agreement will render the Consultant (nor the Consultant's Employees) an employee, worker, agent or partner of Crest Nicholson. Neither the Consultant nor the Consultant's Employees will hold itself out as such.

19.2 This Agreement constitutes a contract for the provision of services and not a contract of employment between Crest Nicholson and any of the Consultant's Employees. Accordingly the Consultant will be fully responsible for, and will indemnify Crest Nicholson for:

- (a) any income tax, national insurance, social security contributions and any other liability, deduction, contribution, assessment or claim arising from, or made in connection with, either: the performance of the Services; or any payment or benefit received by an individual in respect of the Services, where such recovery is not prohibited by law. The Consultant will further indemnify Crest Nicholson against all reasonable costs, expenses, penalty, fine or interest incurred or payable by Crest Nicholson in connection with or resulting from any liability, deduction, contribution, assessment or claim other than where the latter arise out of Crest Nicholson's negligence or wilful default;
- (b) any liability arising from any employment-related claim or any claim based on employee or worker status (including reasonable costs and expenses) brought by any of the Consultant's Employees against Crest Nicholson arising out of, or in connection with, the provision of the Services.

20 Indemnities

20.1 The Consultant will indemnify Crest Nicholson and its personnel and agents against, and be liable for, any: claims (whether for actual or consequential loss), demands, proceedings, damages, costs, loss, charges or liabilities arising from or incurred in connection with any breach of the Consultant's obligations under this Agreement.

21 Assignment

21.1 Subject to Clause 21.2, neither party may assign, delegate, sub-contract, transfer, charge or

otherwise dispose of all or any of its rights and responsibilities under this Agreement without the other party's prior written consent. Such written consent is not to be unreasonably withheld or delayed.

21.2 Crest Nicholson may assign its rights and benefits under this Agreement without the consent of the Consultant to any of its own holding companies or subsidiaries (within the meaning of section 1159 of the Companies Act 2006) and any other company in which Crest Nicholson (or any such holding company or subsidiary) holds more than 25% of the issued equity share capital (as defined by section 548 of the Companies Act 2006) and, for the purpose of this Clause 21.2, Clause 1.4 does not apply.

22 Bribery

22.1 Additional capitalised terms in this Clause 22 will have the meanings given to them in the Bribery Act, unless otherwise defined in this Agreement.

22.2 The Consultant warrants that it has not at any time prior to the date of this Agreement:

- (a) committed a Bribery Offence; or
- (b) been formally notified that it is subject to an investigation or prosecution that relates to an alleged Bribery Offence.

22.3 The Consultant undertakes that, during the term of this Agreement, neither it nor its Associated Persons will:

- (a) engage in any activity, practice or conduct that could constitute a Bribery Offence;
- (b) do or permit anything to be done that would cause Crest Nicholson or any of Crest Nicholson's employees, sub-contractors or agents to contravene any section of the Bribery Act, or otherwise incur any liability relating to the Bribery Act.

22.4 The Consultant undertakes that, during the term of this Agreement, it and its Associated Persons will:

- (a) comply with all obligations arising out of the Bribery Act; and
- (b) comply with Crest Nicholson's Anti-Bribery and Corruption Policy as amended, superseded and replaced from time to time. A copy of the latest version will be available during the term of this Agreement on Crest Nicholson's website at: <http://www.crestnicholson.com/legal-information/supply-chain>

22.5	The Consultant will notify Crest Nicholson immediately if it becomes aware, or has reason to believe that it has, or any of its Associated Persons have, breached any of the Consultant's obligations under this Clause 22.		Agreement, or verifying the Consultant's compliance with its obligations under this Agreement.
23	<u>Right to Work</u>	26	<u>General</u>
23.1	The Consultant warrants to Crest Nicholson that all its personnel or agents have the legal right to work in the United Kingdom and that the Consultant has seen, and has copies of, appropriate documentation to prove that right.	26.1	This Agreement sets out the terms and conditions upon which the Consultant will provide the Services to Crest Nicholson. No other terms or conditions endorsed, delivered, or contained in any acknowledgement, specification, or other document provided by the Consultant will form part of the Agreement. The Consultant waives any right that it might otherwise have to rely on such terms and conditions.
24	<u>Modern Slavery Act</u>	26.2	Subject to Clause 26.3, a person who is not party to this Agreement will not have any rights, whether under the Contracts (Rights for Third Parties) Act 1999 or otherwise, to enforce any term of this Agreement.
24.1	In performing its obligations under this Agreement, the Consultant will, and will ensure that any of its employees will, comply with all applicable laws, statutes, and regulations in force relating to the Modern Slavery Act 2015. The Consultant represents, warrants and undertakes that it conducts its business in a manner that is consistent with the principles of the Modern Slavery Act 2015.	26.3	Any New Provider will have the right to enforce Clause 18.1 pursuant to Section 1 of the Contracts (Rights of Third Parties) Act 1999 provided always that the parties to this Agreement may vary or terminate this Agreement by agreement between them without requiring the consent of any New Provider and need not comply with Section 2 (1) of the Contracts (Rights of Third Parties) Act 1999.
24.2	The Consultant will take reasonable steps to ensure that there is no modern slavery in any part of its own business or supply chain.	26.4	If any clause or part of any clause of this Agreement is found to be void or unenforceable for any reason by any court or administrative body of competent jurisdiction, that clause or that part of any clause will be deemed to be deleted from this Agreement. The parties may agree to substitute that clause with a new clause, which will, as far as possible, retain the original intention of the parties. In such an event the remaining provisions of this Agreement will continue to have full force and effect.
24.3	The Consultant warrants that it has not at any time prior to the date of this Agreement:		
	(a) been convicted of any offence involving slavery; or		
	(b) been formally notified that it is subject to an investigation or prosecution regarding any offence or alleged offence of, or in connection with, slavery.		
25	<u>Records and Audit</u>	26.5	No purported alteration or variation of this Agreement will be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the parties to this Agreement.
25.1	The Consultant will for a period of at least 12 years from the date of this Agreement maintain accurate, up-to-date and complete records (in a form suitable for inspection) relating to the performance of its obligations under this agreement.	26.6	The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party will not be construed as a waiver of any later breach of the same or other provisions, nor will any delay or omission on the part of either party to exercise or enforce any right, power or privilege that it has, or may have, under this Agreement operate as a waiver of such right, power or privilege.
25.2	The Consultant will submit to Crest Nicholson within 14 days of a request, such information, records, monthly management accounts or documents (redacted for any sensitive commercial information) in its possession or control that Crest Nicholson reasonably requests.	26.7	Any notices sent under this Agreement must be in writing. The notices may be served by personal delivery or by sending the notice by special
25.3	In each case that Crest Nicholson makes a request in accordance with Clause 25.2 it will be for the purpose of auditing any information supplied to Crest Nicholson under this		

delivery at the address given on the front sheet (or any other address the relevant party may give for the purpose of serving notices under this Agreement). Every notice will be deemed to have been served upon delivery if served by hand. If delivered by special delivery, it will be at the expiration of two (2) Business Days after despatch of the notice.

27 Governing Law / Dispute Resolution

27.1 Any dispute or difference arising under, or in connection with, this Agreement 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:

- (a) a party referring a dispute to an adjudication must give notice to the other party. Such notice will give a full description of the matters in dispute and include all evidence the referring party wishes to rely on and state the nature of the redress sought; and
- (b) the adjudicator will be appointed by the President or the Vice-President of the Royal Institute of Chartered Surveyors.

27.2 This Agreement and any claim or dispute arising out of, or in connection with, it (whether contractual or non-contractual in nature, such as claims in tort from breach of statute or regulation or otherwise) will be governed by, and interpreted exclusively, in accordance with English Law and, subject to both parties right to refer such claim or dispute to adjudication in Clause 27.1, the exclusive jurisdiction of the English Courts.