** PRIVATE & CONFIDENTIAL**

 ***[GUIDANCE NOTE: THIS DOCUMENT SHOULD BE USED FOR ALL CONSULTANTS UNLESS USE OF THE SHORT FORM FRAMEWORK HAS BEEN APPROVED. IF IN DOUBT, PLEASE CONTACT THE GROUP TECHINCAL DIRECTOR. ]***

CREST NICHOLSON OPERATIONS LIMITED

and

[INSERT NAME OF CONSULTANT]

FRAMEWORK AGREEMENT RELATING TO THE SUPPLY OF
CONSULTANCY SERVICES

***[YOU NEED TO REMOVE ALL [ ]S AND COMPLETE/DELETE THE INFORMATION HIGHLIGHTED YELLOW BEFORE SENDING THIS DOCUMENT TO THE CONSULTANT.]***

**[DRAFT FOR DISCUSSION – March 2021 – Not available for Acceptance]**

This Framework Agreement is dated this day of 202[ ]

**BETWEEN**

1. **CREST NICHOLSON OPERATIONS LIMITED** a company registered in England & Wales with Company No. 01168311 whose registered office is at Crest House, Pyrcroft Road, Chertsey, Surrey KT16 9GN ("**Crest Nicholson**"); and

*[for use where the consultant is a limited company*\*

(2) [FULL COMPANY NAME] **LIMITED** a company incorporated and registered in [England and Wales] [Scotland] with company number [INSERT REGISTERED NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] (the "Consultant").]

*[for use where the consultant is incorporated as a limited liability partnership (LLP)*\*

1. [FULL PRACTICE NAME] **LLP** a limited liability partnership incorporated and registered in [England and Wales] [Scotland] with company number [INSERT REGISTERED NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] (the "Consultant").]

**Note** - YOU CAN CHECK COMPANY AND LLP NAMES, REGISTERED NUMBERS AND REGISTERED OFFICES BY USING THE FREE WEBCHECK SERVICE AVAILABLE AT
<http://www.companieshouse.gov.uk/> **IT IS ESSENTIAL THAT THESE DETAILS ARE CORRECT**

*[for use where the consultant is an unincorporated partnership\**

(2) [FULL PRACTICE NAME] a firm whose principal place of business is at [INSERT MAIN OFFICE ADDRESS] (the "Consultant").]

*[for use where the consultant is a sole trader*\*

1. [FULL CONSULTANT NAME] trading on his own account [as INSERT ANY TRADING NAME] and whose principal place of business is at [INSERT OFFICE ADDRESS] (the "Consultant").]

**WHEREAS**:

1. Crest Nicholson is a leading developer of residential and mixed use properties within the UK.
2. Crest Nicholson wishes to enter into this Framework Agreement with the Consultant pursuant to which Crest Nicholson and/or one or more Group Company and/or any joint venture or limited liability partnership including Crest Nicholson and/or a Group Company as a participant, shareholder or member (as the case may be) from time to time may place and/or let an appointment or series of appointments to the Consultant to provide certain consultancy services which may be required by a Client or Clients in relation to for one or more Sites.
3. When a Client requests services from the Consultant, and the Consultant is able to provide such services, the relevant parties will enter into a Services Order in accordance with this Framework Agreement.
4. A Services Order may be issued by Crest Nicholson or any Group Company and/or any joint venture or limited liability partnership including Crest Nicholson and/or a Group Company as a participant, shareholder or member (as the case may be) from time to time identified in or identifiable under this Framework Agreement.

**NOW IT IS HEREBY AGREED** as follows:

1. Definitions and Interpretation
	1. In this Framework Agreement, the following words and expressions shall (except where the context otherwise requires) have the following meanings:

1.1.1 ‘**Additional Services**’ any services to be provided by the Consultant to the Client additional to the Services set out in Schedule 1 to this Framework Agreement and/or set out in a Services Order as may be instructed by a Client from time to time;

1.1.2 ‘**Additional Services Instruction’** means an instruction to undertake additional services in relation to any Site and/or Sites substantially in the form attached at Schedule 4 of this Framework Agreement in relation to any Site or Sites;

1.1.3 ‘**Associated Persons**’means in relation to the Consultant, any person (including but not limited to Consultant’s Employee’s agents or subsidiaries of the Consultant) who is authorised to perform services for or on behalf of the Consultant;

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

1.1.5‘**Bribery Offence**’means any offence under sections 1, 2, 6 or 7 of the Bribery Act;

### 1.1.6 ‘**Client**’ means such of Crest Nicholson and/or or any Group Company and/or any joint venture or limited liability partnership including Crest Nicholson and/or a Group Company as a participant, shareholder or member (as the case may be) from time to time as places and/or lets a Services Order to the Consultant;

### 1.1.7‘**Commencement Date**’ means 1 May 2021 or if this Framework Agreement is dated after 1 May 2021, the date of this Framework Agreement;

1.1.8 ‘**Consultant's Employees**’any individual who is employed or otherwise engaged by the Consultant or any subcontractor of the Consultant and who provides the whole or any element the Services under any Services Order;

1.1.9 ‘**Group Company**’means any subsidiary or holding company of Crest Nicholson or of another subsidiary or holding company of Crest Nicholson, as subsidiary and holding company are understood within Section 1159 Companies Act 2006, but on the basis that the holding of not less than 25% of the voting rights shall be deemed to satisfy the condition in Section 1159(1)(a);

### 1.1.10‘**Services**’means the services to be provided by the Consultant to the Client set out in Schedule 1 of this Framework Agreement (as may be amended by the relevant Services Order) and any additional services requested by the Client from time to time during the Term;

### 1.1.11‘**Services Order**’ means any specific appointment entered into between any Client and the Consultant substantially in the form attached at Schedule 3 of this Framework Agreement in relation to any Site or Sites;

1.1.12 ‘**Site**’means the site or sites set out in the Services Order at or in relation to which Services are to be performed;

1.1.13 ‘**Term**’ means the period from the Commencement Date up to and including the earlier of 31st July 2025 and the date of termination of this Framework Agreement;

1.1.14 ‘**Terms and Conditions**’ means the terms and conditions set out at Schedule 2 of this Framework Agreement.

* 1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
	2. Clause, schedule and paragraph headings shall not affect the interpretation of this Framework Agreement or any Services Order.
	3. The Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement. Any reference to this Framework Agreement includes the Schedules.
	4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
	5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
	6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
	7. Unless expressly provided otherwise in this Framework Agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
	8. Unless expressly provided otherwise in this Framework Agreement, a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
	9. A reference to **writing** or **written** includes email but does not include fax.
	10. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
	11. A reference to this Framework Agreement or to any other agreement or document is a reference to this Framework Agreement or such other agreement or document, in each case as varied from time to time.
	12. References to clauses and Schedules are to the clauses and Schedules of this Framework Agreement.
	13. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
1. **FRAMEWORK AGREEMENT**
	1. This Framework Agreement comprises:
		1. this Framework Agreement;
		2. the Services;
		3. the Terms and Conditions;
		4. the draft Services Order attached at Schedule 3;
		5. the draft Additional Services Instruction attached at Schedule 4;
		6. the draft form of collateral warranty attached at Schedule 5;
		7. the draft form of letter of reliance attached at Schedule 6;
		8. the draft form of deed of novation attached at Schedule 7; and
		9. the draft sub-consultant warranty attached at Schedule 8.

2.2 In consideration of the payment of £10 (Ten Pounds Sterling) by Crest Nicholson to the Consultant, receipt of which is hereby acknowledged by the Consultant, Crest Nicholson for the benefit of itself and any Group Company and/or any joint venture or limited liability partnership including Crest Nicholson and/or a Group Company as a participant, shareholder or member (as the case may be) from time to time hereby appoints the Consultant and the Consultant accepts such appointment to carry out at any time during the Term such Services as are required by any Services Order issued by any Client pursuant to clause 3 below in accordance with the Terms and Conditions.

**3. SERVICES ORDERS**

3.1 During the Term, any Client may request the Consultant to carry out such Services as that Client shall from time to time require by issue of one or more Services Order in relation to one or more Site.

* 1. Any Services Order sent by a Client to the Consultant will be an offer to procure the Services in accordance with the Terms and Conditions. Unless previously withdrawn by the relevant Client, within seven (7) days of receipt of any Services Order the Consultant shall either:
		1. notify the relevant Client in writing that it is not able to provide the requested Services; or
		2. notify the relevant Client in writing that it accepts the Services Order and execute the Services order as a deed and deliver the same to the Client;

any Services Order not rejected by the Consultant in accordance with clause 3.2.1 will be deemed to have been accepted by the Consultant.

* 1. Upon acceptance or deemed acceptance of a Services Order the Consultant shall execute the Services order as a deed and deliver the same to the Client.
	2. Upon acceptance or deemed acceptance of a Services Order the Consultant shall carry out the Services detailed therein in accordance with the Terms and Conditions and any other special conditions contained in such Services Order.
	3. Any Services Order issued by a Client pursuant to this Framework Agreement and any Additional Services Instruction issued pursuant to the Terms and Conditions incorporate or shall be deemed to incorporate the Terms and Conditions. Any quotation, fee proposal or tender received by any Client or Clients from the Consultant in respect of any Services or Additional Services performed or to be performed by the Consultant pursuant to a Services Order or any Additional Services Instruction shall be of no effect and do not form part or apply to any Services Order, any Additional Services Instruction and/or this Framework Agreement under any circumstances unless expressly incorporated and/or set out in the relevant Services Order or Additional Services Instruction.
	4. This Framework Agreement shall not be an exclusive arrangement between any Client or Clients and the Consultant as to any Services Orders which may be placed and/or let under it nor shall any Client or Clients be bound to offer any Services Order to the Consultant under this Framework Agreement or otherwise in preference to any other consultant or at all. No Client has or Clients have given nor do they give any representation, guarantee or warranty as to any minimum or maximum number of Services Orders that may be placed and/or let to the Consultant nor as to their frequency, regularity or timing throughout the Term. The Consultant shall have no claim at law or otherwise against any Client or Clients any or all of them elect not to place and/or let any Services Order to the Consultant.
	5. Without prejudice and subject to clause 3.6 above, any Services carried out by the Consultant pursuant to this Framework Agreement other than as the result of the issue of a Services Order shall be carried out in accordance with the Terms and Conditions as if a Services Order had been issued.
	6. This Framework Agreement shall be effective from the Commencement Date and shall continue to be effective until the earlier of either termination pursuant to clause 4.1 or the expiry of the Term. Nothing in this Framework Agreement shall affect or reduce the Consultant's obligations or liabilities under any Services Order or Additional Services Instruction.
1. **TERMINATION/EXPIRY OF THE FRAMEWORK AGREEMENT**
	1. Crest Nicholson may terminate this Framework Agreement at any time and for any reason by giving written notice to the Consultant stating that it is terminating this Framework Agreement pursuant to this clause 4.1 and that the Framework Agreement will terminate on the date falling fourteen (14) days after the date of the receipt by the Consultant of the written notice.
	2. Termination or expiry of this Framework Agreement shall not terminate the Consultant’s engagement under any Services Order, which shall remain in full force and effect unless terminated in accordance with the Terms and Conditions.
	3. The termination of any Services Order shall not affect any other Services Order or this Framework Agreement.
	4. Termination or expiry of this Framework Agreement shall be without prejudice to the accrued rights and/or remedies of either party.
2. **LIABILITY AS BETWEEN CLIENTS**

5.1 The Consultant acknowledges and accepts that Crest Nicholson is entering this Framework Agreement for the benefit of itself and any Group Company and/or any joint venture company or limited liability partnership including Crest Nicholson and/or a Group Company as a shareholder or member (as the case may be) from time to time to enable Services Orders to be issued by Client’s from time to time. The Consultant acknowledges and accepts that no party, other than the Client named in the relevant Services Order, for whose benefit Crest Nicholson has entered into this Framework Agreement shall have any liability to the Consultant under or arising from that Services Order and the Consultant’s sole recourse in relation thereto shall be against the Client named in the relevant Services Order.

1. **EXISTING APPOINTMENTS**

6.1 Any instruction or order issued or made by Crest Nicholson to the Consultant prior to the Effective Date will continue in full force and effect upon the relevant contractual terms and/or conditions applicable to the said instruction or order.

1. **VARIATION**

7.1 No variation of this Framework Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

1. **ASSIGNMENT**
	1. Neither Crest Nicholson nor the Consultant shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this framework agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
2. Relationship of Parties
	1. Nothing contained in this Framework Agreement shall be construed so as to imply that there is any relationship between any Client and the Consultant of partnership or of principal/agent or of employer/employee. No Client nor the Consultant shall have any right or authority to act on behalf of the other party nor to bind the other party by contract or otherwise, except to the extent as may be expressly permitted by the terms of a Services Order.
3. Bribery & Corruption
	1. Additional capitalised terms in this Clause 10 will have the meanings given to them in the Bribery Act, unless otherwise defined in this Framework Agreement.
	2. The Consultant warrants to Crest Nicholson and to each Client that as at the date of this Framework Agreement and throughout the term of this Agreement that it has not:
		1. committed a Bribery Offence; or
		2. been formally notified that it is subject to an investigation or prosecution that relates to an alleged Bribery Offence.
	3. The Consultant undertakes that, during the Term, neither it nor its Associated Persons will:
		1. engage in any activity, practice or conduct that could constitute a Bribery Offence;
		2. do or permit anything to be done that would cause Crest Nicholson or any Client or any of their respective employees, sub-contractors or agents to contravene any section of the Bribery Act, or otherwise incur any liability relating to the Bribery Act.
	4. The Consultant undertakes that, during the Term, it and its Associated Persons will:
		1. comply with all obligations arising out of the Bribery Act; and
		2. 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>.
	5. The Consultant will notify Crest Nicholson and any Client as may be affected by such breach 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 10.
	6. Any breach of this Clause 10 by the Consultant or any of its Associated Persons (whether with or without the knowledge of the Consultant) shall be a ground for termination of any and all Services Orders then in place under clause 8.2 of the Terms and Conditions.
4. MODERN SLAVERY ACT
	1. In performing its obligations under this Framework Agreement and any Services Order, the Consultant will, and will ensure that any of its employees will, comply with all applicable laws, statutes, and regulations in force relating to modern slavery including, but not limited 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 requirements and principles of the Modern Slavery Act 2015.
	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.
	3. The Consultant warrants that it has not at any time prior to the date of this Framework Agreement:
		1. been convicted of any offence involving slavery; or
		2. been formally notified that it is subject to an investigation or prosecution regarding any offence or alleged offence of, or in connection with, slavery.

11.4 The Consultant will notify Crest Nicholson and any Client as may be affected by such breach immediately if it becomes aware, or has reason to believe that it has breached any of the Consultant's obligations under this Clause 11.

11.5 Any breach of this Clause 11 by the Consultant shall be a ground for termination of any and all Services Orders then in place under clause 8.2 of the Terms and Conditions.

1. Waiver, Forbearance and Variation
	1. The rights which each party has under this Framework Agreement shall not be prejudiced or restricted by any indulgence or forbearance extended to another party. No waiver by either party in respect of a breach shall operate as a waiver in respect of any subsequent breach.
	2. This Framework Agreement shall not be varied or cancelled, unless the variation or cancellation is expressly agreed in writing by a duly authorised signatory of each party.
2. Entire Agreement
	1. Except as set out in any Services Order, this Framework Agreement and all documents referred to herein, constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, agreements negotiations and understandings whether oral or written concerning the subject matter of this Framework Agreement.
3. **THIRD PARTY RIGHTS**
	1. Except as set out in this Framework Agreement, nothing in this Framework Agreement is intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
	2. The obligations and duties imposed on the Consultant and the rights and remedies vested in Crest Nicholson under or in connection with this Framework Agreement shall be enforceable by and shall (in addition) vest in each Client pursuant to the Contracts (Rights of Third Parties) Act 1999.
	3. The rights of Crest Nicholson to terminate or the rights of the parties to vary this Framework Agreement are not subject to the consent of any person.
4. CounterParts
	1. This Framework Agreement may be executed in any number of counterparts each of which when executed and delivered shall constitute an original of this Framework Agreement but all the counterparts shall together constitute the same Framework Agreement. No counterpart shall be effective until each party has executed at least one counterpart.
5. Severance

16.1 If any term or condition of this Framework Agreement is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable by law it shall be severed and deemed to be deleted from this Framework Agreement and the validity and enforceability of the remainder of this Framework Agreement shall not be affected or impaired in any way and shall remain in full force and effect. If any provision of this Framework Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification as may be necessary to make it valid.

1. Service of Notices
	1. Any written notices to be given under this Framework Agreement shall either be delivered personally or sent by pre-paid recorded or special delivery or other ‘signed for’ post to:

In the case of Crest Nicholson: to Crest Nicholson Operations Limited, Crest House, Pyrcroft Road, Chertsey, Surrey KT16 9GN. Marked FAO: the Company Secretary.

In the case of the Consultant: to [ ]

* 1. A communication sent according to clause 17.1 shall be deemed to have been received:
		1. if delivered by hand, at the time of delivery; or
		2. if sent by pre-paid recorded or special delivery or other ‘signed for’ post, at the time of delivery.

If, under the preceding provisions of this clause17.2, a communication would otherwise be deemed to have been received outside normal business hours in the place of receipt, being 9.30 a.m. to 5.30 p.m. on a Working Day, it shall be deemed to have been received at 9.30 a.m. on the next Working Day.

17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

17.4 A notice given under this Framework Agreement is not valid if sent by email.

1. Governing law and jurisdiction
	1. This Framework Agreement shall be governed by and construed in accordance with English law and the courts of England & Wales shall have exclusive jurisdiction (except for the purposes of enforcement of a judgment or order in another jurisdiction) with regard to all matters arising from it.

**IN WITNESS WHEREOF** the parties have executed this Framework Agreement as a deed and delivered it on the date written above.

|  |  |
| --- | --- |
| Executed as a Deed by [INSERT NAME OF ATTORNEY HERE] as attorney for **CREST NICHOLSON OPERATIONS LIMITED** in the presence of:Signature of Attorney:Signature of Witness:Name: Occupation:Address: | Executed as a Deed by **[INSERT NAME OF CONSULTANT]** acting by a [two directors] {applicable to limited companies ONLY] [two members] [applicable to LLPs ONLY] in the presence of a witness:Signature of [Director] [Member]:Name:Signature of [Director] [Member]:Name:[For execution clauses for unincorporated partnerships (not LLPs) or sole traders please refer to the note which accompanies this document] |

1.

**The Services**

***[Use [ ] to insert the description of Services before issue]***

1. Terms and Conditions
2. Definitions and Interpretation

1.1 In this Agreement unless the context otherwise requires:

**"Additional Fees”** the fees payable by the Client to the Consultant in respect of any Additional Services;

**"Agreed Fees"** the fee payable to the Consultant in accordance with these Terms and Conditions and set out in the Services Order;

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

**"Client Personal Data"**the Personal Data relating to the Client’s customers, employees, suppliers, contractors and employees of suppliers and contractors that are processed by the Consultant under this Agreement;

**"CDM Regulations"** the Construction (Design and Management) Regulations 2015 as may be amended, superseded or replaced from time to time during the Term;

**"Confidential Information"** 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 the Services Order, 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;

**"Construction Products Regulations"** the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC);

**"Control"** 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 or members, by contract or otherwise);

**"Data Protection Laws"**all applicable data protection and privacy legislation in force from time to time in the UK including: (i) the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); (ii) the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); (iii) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued from time to time by the Information Commissioner or other relevant regulatory authority and applicable to a Party;

**"Deleterious Materials"** substances, materials, processes or methods of working that are according to the latest UK construction industry guidance known at the time of specification to be:

1. deleterious to or pose a hazard to health and safety; or
2. likely to adversely affect performance or durability of the works or the completed works at the Site in the particular circumstances in which they are used;
3. other substances, materials, processes or methods of working not in accordance with:

#### British or (where applicable) European Standards;

1. the Construction Products Regulations;

#### codes of practice or applicable Agrément Certificates issued by the British Board of Agrément;

#### good building practice; or

1. the recommendations contained in the guide "Good Practice in the Selection of Construction Materials 2011" March 2011 (British Council for Offices) or the BRE Digest;

**"Environmental Laws"** 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"** any event outside the reasonable control of either the Client or the Consultant affecting its ability to perform any of its obligations under the Services Order and/or any Additional Services Instruction 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;

**"Framework Agreement"** the agreement between Crest Nicholson and the Consultant pursuant to which the Services Order is let/placed;

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

**"Intellectual Property"** 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"** the dates upon which the Consultant is to make a Payment Application pursuant to clause 7 as set out in the Services Order and in relation to any Additional Fees, in the relevant Additional Services Instruction;

**"Key Deliverables"** the designs, reports, specifications and other documents and materials to be prepared by or on behalf of the Consultant as part of or in relation to the Services or Additional Services in any form, including without limitation computer programs, data, reports and specifications (including drafts) set out in the Services Order and/or any Additional Services Instruction;

**"Milestones"** the milestones set out in the Services Order and/or any Additional Services Instruction;

**"New Provider"** any third party engaged to supply services following the termination of the Consultant’s appointment under the Services Order that are the same or similar to the Services instructed under the Services Order;

**“Personal Data”** shall be as defined in the Data Protection Laws;

‘**Services**’means the services to be provided by the Consultant to the Client set out in Schedule 1 to the Framework Agreement and/or the Services Order;

**"Services Commencement Date"** the date stated in the Services Order for the commencement of the Services and in relation to any Additional Services, the date stated in the relevant Additional Services Instruction;

**"Scheme of Construction Contracts"** Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended and as may be further amended from time to time;

**“Termination Date”** the date upon which a termination of the Consultant’s appointment pursuant to the Services Order and any Additional Services Instruction becomes effective;

**“Third Party Agreement”** means any agreement between the Client and a third party relating to the Services, any Additional Services and/or the Site of which the Client notifies the Consultant from time to time; and

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

* 1. In these Terms and Conditions, unless the context otherwise requires, the words or expressions that begin with capital letters not otherwise defined in clause 1.1 shall have the meanings as set out in the Framework Agreement.
	2. In these Terms and Conditions, save where the context otherwise requires, “Client” refers to the Client as enters into lets and/or places the Services Order with the Consultant pursuant to the Framework Agreement and these Terms and Conditions shall be construed accordingly.
	3. 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.
	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).
	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.
	6. Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted on or after 11 pm on 31 December 2020.
	7. 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.
	8. All references in these Terms and Conditions to Clauses andSchedules relate to the clauses and schedules within in these Terms and Conditions only, unless otherwise stated.
1. Services prior to Services Order & Additional Services
	1. Notwithstanding the date of the Services Order, the parties agree that any Services and/or any Additional Services (if any) carried out by the Consultant in connection with the subject matter of the Services Order prior to the date thereof are deemed to have been carried out subject to these Terms and Conditions and any and all consideration paid by or on behalf of the Client in respect of such Services shall be deemed to have been paid on account of the Agreed Fees and/or the Additional Fees (as applicable).
	2. The Client and the Consultant recognise that Additional Services may be required beyond those set out in the Services Order. The Client and the Consultant will use the Additional Services Instruction to document any Additional Services and any Additional Fees. Both parties agree that more than one Additional Services Instruction may be entered into (as may be necessary) to document any Additional Services from time to time.
2. Specified Person
	1. Notwithstanding that the Client under any Services Order may not be Crest Nicholson unless specifically stated in the Services Order to the contrary Crest Nicholson shall have full authority to receive and issue applications, consents, instructions, notices (including, but not limited to, any Payment Notice or Pay Less Notice), requests or statements and otherwise act for the Client under any of these Terms and Conditions.
	2. The Client may at any time revoke the whole or any part of Crest Nicholson's authority and the Consultant is entitled to rely on such authority until it receives by notice in writing from the Client of such revocation.
3. The Consultant's Obligations
	1. Subject to clause 2.1, from the relevant Services Commencement Date the Consultant shall provide the Services and Additional Services in accordance with these Terms and Conditions as may be amended in the Services Order and/or any Additional Services Instruction.
	2. The Consultant will provide the Services and/or any Additional Services, including delivering the Key Deliverables by the specified Milestones:
		1. exercising the degree of reasonable skill, care and diligence to be expected of a properly qualified and competent professional consultant experienced in undertaking services of a similar nature to the Services; and
		2. regularly and diligently;
		3. in accordance with any reasonable instructions notified to it by the Client from time to time; and
		4. in accordance with all applicable laws and regulations
	3. Insofar as the Services and/or any Additional Services require the Consultant to specify materials for use in any works at the Site and/or the Consultant does so specify such materials, the Consultant shall exercise the degree of reasonable skill, care and diligence referred to in clause 4.2.1 so as not to specify any Deleterious Materials.
	4. The Consultant, its employees, agents, representatives and sub-contractors will at all times 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 from Crest Nicholson’s website at: <https://www.crestnicholson.com/legal-information/supply-chain>.
	5. 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 for the purposes of Clause 8.
	6. The Consultant will employ or engage an adequate number of suitably qualified, skilled and experienced individuals in order to deliver the Services and any Additional Services.
	7. The Consultant will supply the Client with such information and reports, including any copies, as the Client reasonably requires in relation to the provision of the Services and any Additional Services.
	8. Upon request by the Client, the Consultant will execute and deliver without additional charge to the Client:
		1. up to four (4) collateral warranties substantially in the form attached at Schedule 5 of the Framework Agreement (or in such other form as may be reasonably required by the Client and agreed between the Client and the Consultant); and/or
		2. up to four (4) letters of reliance substantially in the form attached at Schedule 6 of the Framework Agreement (or in such other form as may be reasonably required by the Client and agreed between the Client and the Consultant);

each in favour of any person having and/or acquiring an interest in the Site or Sites or any part or parts thereof (excluding any purchaser, tenant or funder/mortgagee of a single residential unit).

* 1. Any collateral warranties and/or letters of reliance in excess of the numbers required by clause 4.8 as may be required by the Client may be subject to the payment of a reasonable fee by the Client.
	2. Where any warranties and/or letters of reliance been requested by the Client pursuant to clause 4.8 and/or clause 4.9 and such warranties and/or letters of reliance have not been executed and delivered to the Client by the Consultant within 14 days of receipt of the necessary engrossment or engrossments, the Client may, notwithstanding any other provision of these Terms and Conditions, retain, deduct and/or withhold the entirety of any sum as may be or may become due to the Consultant under the relevant Services Order until such time as the said warranties and/or letters of reliance have been satisfactorily executed and delivered to the Client.
	3. Within fourteen days of receiving a written request from the Client, the Consultant shall:
		1. enter into a deed of novation with the Client and any party taking over the Client’s interest in the Site or a party appointed to the design and/or to construct a project on the Site on behalf of the Client in the form attached at Schedule 7 of the Framework Agreement; and
		2. simultaneously with such novation enter into a Collateral Warranty substantially in the form attached at Schedule 5 of the Framework Agreement in favour of the Client.
	4. Where, as part of the Services or Additional Services, the Consultant is required to produce 'final construction’ drawings these must be clear and compatible for use by a CAD/Revit draughtsman without interpretation by an engineer.
	5. Where ‘as-built’ drawings are requested by the Client, the Consultant must provide these. The drawings must be clear and compatible for use by a CAD/Revit draughtsman without interpretation by an engineer.
	6. Any request by the Client for the production of drawings not forming part of the Services or recorded in the Services Order will be instructed as Additional Services in relation to which the Consultant shall be entitled to Additional Fees to be determined on a fair and reasonable basis unless agreed between the Client and the Consultant.
	7. In cases where the Client requests drawings based on site record information, the Consultant will provide these using site record information provided by the Client. The Consultant’s drawings must be clear and compatible for use by a CAD/Revit draughtsman without interpretation by an engineer. The Consultant will not be liable for the accuracy and completeness of the site record information provided by the Client and may rely on it without review.
1. The Consultant's Warranties
	1. The Consultant warrants to the Client on a continuing basis that:
		1. it and the Consultant's Employees will not engage in any activity that conflicts, or may conflict, with its obligations or duties under these Terms and Conditions;
		2. it has full capacity and authority to enter into the Services Order;
		3. it and the Consultant's Employees will comply with all applicable laws relating to the Services and any Additional Services;
		4. 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 the Client does not breach its obligations under the CDM Regulations;
		5. where required to visit and/or perform the Services and/or any Additional Services or any part thereof at a Site, it will observe all health and safety rules and regulations and any other reasonable security requirements that apply at the relevant Site; and
		6. it will not cause or contribute to any breach by the Client of any Third Party Agreement, provided that, where the Client notifies the Consultant of a Third Party Agreement after the date of the Services Order, the Consultant shall within 10 Business Days of receipt of a copy or relevant extracts of the said Third Party Agreement if it considers that compliance with the said Third Party Agreement will require Additional Services and/or a change to the Milestones and/or Key Deliverables.
2. The Client's Obligations
	1. The Client will provide the Consultant and the Consultant's Employees with such information, assistance and access to the relevant Site as the Consultant reasonably requires to comply with its obligations under the Services Order and/or any Additional Services Instruction.
3. Fees and Payment
	1. Provided that the Consultant has properly executed the Services Order and any Additional Services Instruction and returned the same to the Client (which shall be a condition precedent to any sums becoming due to the Consultant thereunder), in consideration of the proper execution by the Consultant of its duties and obligations under, and in accordance with, the Services Order and any Additional Services Instruction, the Client will pay the Consultant the Agreed Fees and any Additional Fees in accordance with this Clause 7.
	2. The Consultant will issue an invoice to the Client in respect of a payment instalment on the relevant Invoice Date with such information as the Client 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 has or will become due to it on the relevant Invoice Date and the basis upon which that sum has been calculated. Each payment instalment will become due for payment on the date on which the Client receives the Payment Application ("**the Due Date for Payment**") and the final date for payment of each payment instalment will be 60 days from the relevant Due Date for Payment ("**the Final Date for Payment**").
	3. Where any payment instalment becomes due to the Consultant under the Services Order or any Additional Services Instruction, the Client 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 to be or have been due to the Consultant on the Due Date for Payment and the basis on which the amount is calculated ("**Payment Notice**").
	4. In respect of each payment instalment, the Client will pay the Consultant by the Final Date for Payment (subject 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 the Client 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 given and the basis upon which that sum has been calculated.
	5. If the Consultant becomes the subject of any of the circumstances described in Clause 8.1(b) between the last day for service of a Pay Less Notice under clause 7.4 and the Final Date for Payment, the Client will not be required to pay the Consultant the Notified Sum or any revised amount identified in a Pay Less Notice served in accordance with Clause 7.4.
	6. Should any sums be due to the Client from the Consultant under, or in connection with, the Services Order and/or any Additional Services Instruction then the Consultant will, subject to any Pay Less Notice served under this Clause, pay the sum requested by the Client ("**Notified Sum**") within 14 days of receiving notice of the same from the Client ("**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 the Client ("**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. In relation to giving notices under this Clause 7 it is immaterial that the amount considered to be due may be zero.
	8. The Client will not be liable for any expenses incurred as a result of the Consultant's performance of its obligations under a Services Order or Additional Services Instruction 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.
	9. All sums payable to the Consultant under the Services Order and any Additional Services Instruction 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.
	10. The Client may set-off any sums, demands, penalties or interest owed to it by the Consultant against any outstanding element of the Agreed Fees and/or any Additional Fees.
	11. Without prejudice to any other right or remedy of the Consultant, if the Client fails to make any payment of the Notified Sum (subject to any Pay Less Notice) on the relevant Final Date for Payment then the Consultant may charge the Client interest on the unpaid amount at the rate of three percent (3%) per annum above the then current base rate of Barclays Bank Plc from the Final Date for Payment until payment of the relevant amount 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.
4. Termination
	1. Either party may terminate the Consultant’s engagement under the Services Order and any Additional Services Instruction immediately on giving the other written notice if:
		1. the other party commits any material or repeated breach of its obligations under these Terms and Conditions or the relevant Services 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
		2. 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, if it applies for or obtains a moratorium under Part A1 of the Insolvency Act 1986 or it otherwise becomes insolvent or suffers any similar process or event, whether in the UK or otherwise.
	2. The Client may terminate the Consultant’s engagement under the Services Order and any Additional Services Instruction immediately on giving the Consultant written notice if:
		1. any of the Consultant's Employees are, in the reasonable opinion of the Client, negligent or incompetent in the performance of the Services;
		2. the Consultant is at any time in breach of its obligations under Clause 10 and/or Clause 11 of the Framework Agreement; or
		3. the Consultant undergoes a change of Control;

upon any termination under this Clause 8.2, the Client shall not be liable to the Consultant for any losses, costs, damages, claims or expenses suffered or incurred by the Consultant arising from or in connection with such termination including, without limitation, any amounts in respect of loss of profit, loss of contract, loss of opportunity.

* 1. If the Client becomes entitled to terminate the Consultant’s engagement pursuant to Clauses 8.1 or 8.2, the Client may, at its discretion, instead decide to terminate any part of the Services Order and/or Additional Services Instruction immediately on giving written notice to the Consultant any the Client shall not be liable to the Consultant for any losses, costs, damages, claims or expenses suffered or incurred by the Consultant arising from or in connection with such termination including, without limitation, any amounts in respect of loss of profit, loss of contract, loss of opportunity.
	2. Upon termination of the Consultant’s engagement under the Services Order and/or any Additional Services Instruction for any reason whatsoever:
		1. the obligations of the parties under the Services Order and/or any Additional Services Instruction (as applicable) will cease save as to the extent expressly provided for in Clause 8.5;
		2. 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 provided that each party may retain a copy as reasonably required by law or for the purpose of legitimate record keeping in the provision of Services and/or Additional Services and kept under the same conditions of security and confidentiality as set out in these Terms and Conditions.
	3. The obligations in the following Clauses will survive any termination of the Services Order for 12 years from the Termination Date: Clauses 4, 5, 7, 9, 10, 11, 12, 15, 18 and 25.
	4. The termination of the Consultant’s engagement under the Services Order and/or any Additional Services Instruction or part thereof will be without prejudice to the rights and remedies of either party thereunder that may have accrued up to the Termination Date.
1. Remedies for Non-Performance
	1. If the Consultant has failed to perform the whole or any part of the Services or Additional Services, the Client will be entitled (without prejudice to any other rights or remedies it may have) to require the Consultant to:
		1. remedy any such breach by re-executing the Services or the relevant parts thereof in accordance with the Services Order within seven (7) days; or
		2. request that the Consultant repay or credit the Client that part of the Agreed Fees and/or Additional Fees already paid by the Client in relation to the relevant part of the Services.
2. Confidential Information
	1. Each party will keep confidential all Confidential Information disclosed or obtained as a result of the relationship of the parties under the Services Order and will neither use nor disclose the Confidential Information, except for the purposes of the proper performance of the Services Order or with the prior written consent of the other party (such consent shall be deemed to have been given in relation to each party’s employees, legal advisers and insurance providers). Where disclosure is made to any of that party's employees and advisors (for whom prior written consent has been given), it will be done subject to obligations equivalent to those set out in these Terms and Conditions. Each party agrees to use all reasonable endeavours to ensure that any such employees and advisors (for whom prior written consent has been given comply with such 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.
	2. The obligations of confidentiality in this Clause 10 will not extend to any information that either party can show:
		1. 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 clause 10;
		2. was in its written records prior to the Services Commencement Date and not subject to any confidentiality obligations;
		3. was independently disclosed to it by a third party entitled to disclose the same; or
		4. is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.
	3. The Consultant will not make any announcement or otherwise publicise the existence of, or disclose to any person, the terms of the Services Order or Additional Services Instruction without the prior written consent of the Client.
3. Intellectual Property Rights
	1. All materials, including any specifications supplied by or on behalf of the Client, and any copies made by or for the Consultant, will be the property of the Client and shall be used only for the purposes of the Services and/or Additional Services, be treated as strictly confidential by the Consultant, and be returned by the Consultant immediately on request to the Client at the Consultant's sole risk and cost provided that the Consultant may retain a copy as reasonably required by law or for the purpose of legitimate record keeping relating to the provision of Services and/or Additional Services and kept under the same conditions of security and confidentiality as set out in clause 10.
	2. The Consultant, as beneficial owner and with full-title guarantee, hereby grants to the Client an unconditional, royalty-free, irrevocable, non-exclusive, non-terminable licence to use and to reproduce 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 the Services Order and/or any Additional Services Instruction for any purpose whatsoever connected with the Site and/or the developed Site or any part thereof including, but without limitation, the design, construction, development, reconstruction, demolition, completion, maintenance, letting, occupation, promotion, management, sale, funding, advertisement, reinstatement, repair, refurbishment, fitting-out, alteration, modification, extension (including any right to reproduce the designs contained therein for any extension), as part of any planning application and use of the developed Site or any part thereof. The licence shall carry the right to grant sub-licences and this licence and such sub-licences shall be transferable to third parties. The Consultant shall not be liable for any use by the Client or any sub-licensee of the Intellectual Property for any purpose other than those listed in this clause 11.2 or for any purpose other than which the Intellectual Property was prepared and provided by the Consultant.
	3. The Consultant agrees (and will promptly undertake at the Client’s request) to do all such acts or deeds, and execute all such documents, as may be required by the Client to put into practice the provisions and intentions of this Clause 11. This will be at the Consultant’s own cost.
	4. At no extra cost to the Client, the Consultant will grant, or procure the grant of, a licence or sub-licence in the same terms as set out in clause 11.2 in respect of any Intellectual Property that the Consultant does not own, which is incorporated or utilised in any work done by the Consultant for the Client under the Services Order and/or any Additional Services Instruction.
	5. The Consultant warrants that the use by the Client, its employees, sub-contractors or agents of the Intellectual Property and/or any materials provided to the Client as part of the Services will not infringe the rights of any third party. The Consultant agrees to indemnify the Client and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Client (or for which the Client may become liable) for any Intellectual Property infringement claim or other claim relating to the Intellectual Property and/or any materials provided to the Client as part of the Services or Additional Services.
	6. The Consultant warrants that all moral rights existing now or in the future under the Copyright, Designs and Patents Act 1988 in relation to the Intellectual Property and/or any materials provided to the Client as part of the Services or Additional Services have been effectively waived. The Consultant shall obtain a corresponding written waiver from any third party referred to in clause 11.5 in favour of the Client.
	7. The Consultant will not without the Client’s prior written approval take or permit to be taken any photographs of the Site and/or any works on the Site for use in any publicity or advertising or publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Site and/or any works on any Site nor impart to any publication, journal or newspaper or any radio or television programme, internet site or social media, blogs, posts or forums any information regarding Crest Nicholson or (where not the Client) the Client, the Services, any Additional Services, the Site and/or any works on the Site.
4. Data Protection
	1. Additional capitalised terms in this Clause 12 will have the meaning given to them in the Data Protection Laws unless otherwise defined in these Terms and Conditions.
	2. The Client will process personal data relating to the Consultant and its employees in accordance with Crest Nicholson’s Privacy Policy, which can be found on Crest Nicholson’s website at: <https://www.crestnicholson.com/legal-information/privacy-policy>.
	3. The Consultant will ensure it complies at all times with Data Protection Laws relating to its Processing of Client Personal Data. The Consultant undertakes to perform its obligations in a manner that does not cause the Client to breach Data Protection Laws relating to its Processing of the Client Personal Data. The Consultant will indemnify the Client, and keep the Client indemnified, against all losses, damages, costs, expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Client arising from any breach of the Consultant’s obligations under this Clause 12.
5. Health and Safety
	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 Services and/or any Additional Services. It is the Consultant's responsibility to ensure its employees, personnel, agents and sub-contractors comply with all relevant Health and Safety Laws.
6. Environmental Law
	1. It is the Consultant’s responsibility to ensure compliance by itself and its employees, personnel, sub-contractors and agents with all relevant Environmental Laws.
7. Insurance
	1. Subject to insurance being available on commercially reasonable rates and terms, the Consultant will maintain in force throughout the term of the Services Order, and for a period of 12 years following the earlier of: (1) termination of the Services Order; and (2) completion of the Client’s works at the Site; the following insurances with reputable insurers at its own cost:
		1. employers' liability insurance for a minimum of £5,000,000 (five million pounds) any one claim;
		2. public liability insurance (including product liability) for a minimum of £5,000,000 (five million pounds) any one claim; and
		3. professional indemnity insurance for a minimum of [£10,000,000 (ten million pounds)] any one claim. ***[THE FOLLOWING LEVELS ARE PROVIDED AS GUIDANCE. BUT THESE SHOULD BE REVIEWED AND REVISED IN LIGHT OF THE RISK AND EXPOSURE CONNECTED WITH EACH SCOPE OF WORK. FOR ANY CONSULTANTS NOT LISTED, CONSULT THE GROUP TECHNICAL DIRECTOR FOR ASSISTANCE.***

***£10M FOR ARCHITECTS, CIVIL ENGINEERS, GROUND INVESTIGATION ENGINEERS, M&E ENGINEERS AND TOWN AND MASTER PLANNERS***

***£5M FOR SAP/CFSM CONSULTANTS, NOISE, FIRE SAFETY AND CDM-C TEMPORARY WORKS ENGINEERS***

***£3M FOR WATER RESOURCES, ENVIRONMENTAL, AND AIR QUALITY CONSULTANTS***

***£1M FOR HISTORIC ENVIRONMENT OR SOCIO-ECONOMIC CONSULTANTS]***

* 1. The Consultant will, on written request by the Client, provide the evidence that the Client requires to assess the Consultant's compliance with its obligations under this Clause 15.
	2. The Consultant hereby warrants and undertakes to the Client that, if and when required in order to maintain such insurances in full force and effect, the Services Order and these Terms and Conditions has been or shall be disclosed to the Consultant’s insurers.
	3. In the event that the Consultant’s professional indemnity insurance includes from time to time any:
		1. sub-limits of indemnity; or
		2. exclusions from policy coverage (for example in relation to pollution and contamination, asbestos, fire safety and cladding); or
		3. a retroactive date which is less than 12 years from the date of the Services Order;

The Consultant shall inform the Client and keep the client informed of any such sub-limits and/or exclusions and/or retroactive date in writing as and when they are applied to the Consultant’s professional indemnity insurance.

15.5 Where any insurance required to be maintained by the Consultant under this clause 15 is or becomes subject to an aggregate level of indemnity, whether in relation to the principal cover or in relation to any sub-limits of indemnity the Consultant shall inform the Client and keep the client informed of the amount and scope of any such aggregate limits and shall, subject always to the terms of the relevant policy of insurance, inform the Client of the amount and nature of any claim which may reduce and/or exhaust any such aggregate level of indemnity available under the relevant insurance.

1. Customer Service
	1. Where applicable, the Consultant will work closely with the Client to ensure that the Client achieves its customer service objectives towards its unit purchasers during the new home warranty initial guarantee period and/or the defect liability period.
2. Force Majeure
	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.
	2. Save as provided in Clause 17.3, Force Majeure will not entitle either party to terminate the Services Order. Neither party will be in breach of the Services 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.
	3. If the Force Majeure continues for longer than one (1) month, the Client may thereafter by giving the Consultant written notice terminate the Services Order and any Additional Services Instruction at any time whilst such Force Majeure continues.
3. TUPE
	1. It is the parties' view that the Transfer Regulations will not apply on, or as a result of, the termination of the Services Order or any Additional Services Instruction. Whether or not the Transfer Regulations apply, the Consultant will indemnify the Client 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 the Services Order or Additional Services pursuant to any Additional Services Instruction, whose employment may transfer to the Client in connection with the termination of the Services Order and any Additional Services Instruction or who claim that their employment or such claims so transfer.
4. Relationship of the Parties
	1. The relationship between the parties will be that of two independent contractors. Nothing contained in the Services Order, any Additional Services Instruction and/or these Terms and Conditions will render the Consultant (nor the Consultant's Employees) an employee, worker, agent or partner of the Client. Neither the Consultant nor the Consultant’s Employees will hold itself out as such.
	2. The Services Order and any Additional Services Instruction constitute a contract for the provision of services and not a contract of employment between the Client and any of the Consultant's Employees. Accordingly the Consultant will be fully responsible for, and will indemnify the Client for:
		1. 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 Additional Services; or any payment or benefit received by an individual in respect of the Services or any Additional Services, where such recovery is not prohibited by law. The Consultant will further indemnify the Client against all reasonable costs, expenses, penalty, fine or interest incurred or payable by the Client in connection with or resulting from any liability, deduction, contribution, assessment or claim other than where the latter arise out of the Client's negligence or wilful default;
		2. 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 the Client arising out of, or in connection with, the provision of the Services and/or any Additional Services.
5. Indemnities
	1. The Consultant will indemnify the Client and its personnel and agents against, and be liable for, any reasonably foreseeable: 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 the Services Order, any Additional Services Instruction and/or the Framework Agreement.
	2. Nothing in this clause shall restrict or limit the Client's general obligation to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under Clause 20.1.
6. Assignment
	1. The Consultant may not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Services Order or any Additional Services Instruction without the Client's prior written consent.
	2. The Consultant shall not subcontract the whole or any part of the Services or any Additional Services without the Client’s prior written consent and it shall be a condition of any such consent that the Consultant shall (if requested by the Client) procure that any subcontractor appointed by the Consultant executes a deed of Collateral Warranty agreement or agreements substantially in the relevant form set out in Schedule 8 of the Framework Agreement in favour of the Client and any of the persons referred to in clause 4 as the Client may require.
	3. No consent given by the Client under clause 21.1 shall in any way relieve the Consultant of any of its obligations under the Services Order or any Additional Services Instruction.
	4. The Client may assign its rights and benefits under the Services Order and any Additional Services Instruction without the consent of the Consultant to:
		1. any other ‘Client’ (as defined in the Framework Agreement);
		2. to any other party not referred to in clause 21.4 (a) subject to a limit on the number of such assignments to two save that any assignment by way of security to a person providing finance to the Client in relation to the Site and any reassignment of such security shall not be counted towards this limit on assignment and any further assignment shall be subject to the consent of the Consultant not to be unreasonably withheld or delayed.
7. Right to Work
	1. The Consultant warrants to the Client that all its personnel or agents have the legal right to be in and to work in the United Kingdom and that the Consultant has seen, and has copies of, appropriate documentation to prove that right.
8. Records and Audit
	1. The Consultant will for a period of at least 12 years from the date of completion of the Services maintain accurate, up-to-date and complete records (in a form suitable for inspection) relating to the performance of its obligations under the Services Order and any Additional Services Instruction.
	2. The Consultant will submit to the Client 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 the Client reasonably requests.
	3. Where the Client makes a request in accordance with Clause 23.2 it will be for the purpose of auditing any information supplied to the Client under these Terms and Conditions, or verifying the Consultant’s compliance with its obligations under the Services Order and any Additional Services Instruction.
9. General
	1. These Terms and Conditions set out the basis upon which the Consultant will provide the Services and any Additional Services to the Client. 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 Services Order, any Additional Services Instruction and/or these Terms and Conditions unless specifically so stated in the Services Order. The Consultant waives any right that it might otherwise have to rely on such terms and conditions.
	2. Subject to Clause 24.3 and Clause 24.4, a person who is not party to the Services Order will not have any rights, whether under the Contracts (Rights for Third Parties) Act 1999 or otherwise, to enforce any term of the Services Order and/or these Terms and Conditions.
	3. Where Crest Nicholson is not a party to the Services Order, Crest Nicholson will have the right to enforce any term of the Services Order and/or any Additional Services Instruction and/or these Terms and Conditions pursuant to the Contracts (Rights of Third Parties) Act 1999 provided always that the parties to the Services Order may vary or terminate the Services Order by agreement between them without requiring the consent of Crest Nicholson and need not comply with Section 2 (1) of the Contracts (Rights of Third Parties) Act 1999.
	4. 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.
	5. If any clause or part of any clause of these Terms and Conditions 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 these Terms and Conditions. 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 these Terms and Conditions will continue to have full force and effect.
	6. Save in the case of any Additional Services Instruction, no purported alteration or variation of the Services Order and/or these Terms and Conditions will be effective unless it is in writing, refers specifically to the Services Order and is duly executed by or on behalf of each of the parties to the Services Order.
	7. The waiver by either party of a breach or default of any of the provisions of the Services Order, any Additional Services Instruction and/or these Terms and Conditions 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 the Services Order, any Additional Services Instruction and/or these Terms and Conditions operate as a waiver of such right, power or privilege.
	8. Any notices sent under these Terms and Conditions must be in writing, save in relation to notices served pursuant to Clause 7 of these Terms and Conditions which may be served by email, notices may be served by personal delivery or by sending the notice by special delivery at:
		1. In the case of the Client: at the address stated in the Services Order; and
		2. In the case of the Consultant: at the address stated in the Services Order;

or, in either case ,any other address the relevant party may notify to the other party for the purpose of serving notices.

* 1. Every notice will be deemed to have been served:
		1. if delivered personally when left at the address referred to in clause 24.8;
		2. if sent by special delivery two (2) Business Days after despatch of the notice or, if earlier upon actual delivery; and
		3. if sent by email on completion of its transmission.
	2. In the case of a notice given pursuant to this clause 24 where this occurs:
		1. after five (5) p.m. on a Business Day; and/or
		2. on a day which is not a Business Day;

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

1. Limitation
	1. The provisions of Section 5 of the Limitation Act 1980 do not apply to the Services Order and neither the Client nor the Consultant will rely upon a defence pleading Section 5 of the Limitation Act 1980 in any proceedings commenced under the Services Order nor will they contend in any proceedings or otherwise that the Services Order is subject to a limitation period of 6 years.
	2. Further to clause 25.1, the Services Order however signed take effect as a deed. For the avoidance of doubt the time for bringing proceedings in respect of the Services Order is extended to 12 years from the earlier of: (1) termination of the Services Order; and (2) completion of the Client’s works at the Site.
2. Governing Law / Dispute Resolution
	1. Any dispute or difference arising under, or in connection with, the Services Order and/or these Terms and Conditions 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:
		1. 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
		2. the adjudicator will be appointed by the President or the Vice-President of the Royal Institute of Chartered Surveyors.
	2. The Services Order and/or these Terms and Conditions and any claim or dispute arising out of, or in connection with, them (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 26.1, the exclusive jurisdiction of the courts of England & Wales.
3. Template Services Order

This Services Order is dated the day of 20[ ]

|  |  |
| --- | --- |
| **[CREST NICHOLSON OPERATIONS LIMITED**Address: Crest House, Pyrcroft Road, Chertsey, Surrey, KT16 9GNCompany No: 01168311]*[for use where the Client IS NOT CNO AND is a limited company*\*[FULL COMPANY NAME] **LIMITED** a company incorporated and registered in [England and Wales] [Scotland] with company number [INSERT REGISTERED NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS]*[for use where the Client IS NOT CNO AND is incorporated as a limited liability partnership (LLP)*\*[FULL CLIENT NAME] **LLP** a limited liability partnership incorporated and registered in [England and Wales] with company number [INSERT REGISTERED NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS](the "**Client**")**[DRAFTING NOTE: THE SERVICES ORDER MUST BE ISSUED IN THE NAME OF THE ACTUAL CLIENT FOR THE SERVICES. THIS WILL EITHER BE CNO, A JV OR LLP. USUALLY THIS WILL BE THE PARTY THAT EITHER OWNS OR IS INTENDING TO PURCHASE THE SITE – IF IN DOUBT CHECK WITH CNO CoSec TEAM]**  | *[for use where the consultant is a limited company*\*[FULL COMPANY NAME] **LIMITED** a company incorporated and registered in [England and Wales] [Scotland] with company number [INSERT REGISTERED NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] (the "Consultant").]*[for use where the consultant is incorporated as a limited liability partnership (LLP)*\*[FULL PRACTICE NAME] **LLP** a limited liability partnership incorporated and registered in [England and Wales] [Scotland] with company number [INSERT REGISTERED NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] (the "Consultant").]**Note** - YOU CAN CHECK COMPANY AND LLP NAMES, REGISTERED NUMBERS AND REGISTERED OFFICES BY USING THE FREE WEBCHECK SERVICE AVAILABLE AT<http://www.companieshouse.gov.uk/> **IT IS ESSENTIAL THAT THESE DETAILS ARE CORRECT***[for use where the consultant is an unincorporated partnership\** [FULL PRACTICE NAME] a firm whose principal place of business is at [INSERT MAIN OFFICE ADDRESS] (the "Consultant").]*[for use where the consultant is a sole trader*\*[FULL CONSULTANT NAME] trading on his own account [as INSERT ANY TRADING NAME] and whose principal place of business is at [INSERT OFFICE ADDRESS] (the "Consultant").] |

1. The Client is a developer of residential [and mixed use] properties within the UK.
2. Pursuant to an Agreement dated [ ] 202[ ] between [the Client] [Crest Nicholson Operations Limited] and the Consultant (the “**Framework Agreement**”) the Client wishes to appoint the Consultant to provide certain consultancy services in relation to one or more Sites.
3. This Front Sheet and the attached Appendix (together the "**Services Order**") incorporate the Terms and Conditions attached at Schedule 2 of the Framework Agreement and all Services to be undertaken by the Consultant hereunder are to be carried out in accordance with the requirements of this Services Order and the said Terms and Conditions.
4. Notwithstanding any errors in the method of execution of this Services Order or that it may be signed underhand, it is intended by the Client and the Consultant to be treated as a deed as set out in the Terms and Conditions.
5. All words, terms and phrases used in the Terms and Conditions will have the same meaning where used in this Services Order save as expressly stated.
6. This Services Order will not vary the Terms and Conditions save to the extent expressly required and stated in the Special Conditions set out in the Appendix (if any).

**This Services Order is executed as a deed and is delivered and takes effect at the date written above.**

|  |  |
| --- | --- |
| [Executed as a Deed by [INSERT NAME OF ATTORNEY HERE] as attorney for **CREST NICHOLSON OPERATIONS LIMITED** in the presence of:Signature of Attorney:Signature of Witness:Name: Occupation:Address:][Where CNO is not the instruction client please consult with CNO CoSec team for the correct execution block] | Executed as a Deed by **[INSERT NAME OF CONSULTANT]** acting by a [director[ [applicable to limited companies ONLY] [member] [applicable to LLPs ONLY] in the presence of a witness:Signature of [Director] [Member]:Name:Signature of Witness:Name:Occupation:Address: [For execution blocks for unincorporated partnerships (not LLPs) or sole traders please consult with CNO CoSec Team] |

Appendix

SERVICES ORDER TERMS

|  |  |
| --- | --- |
| **PURCHASE ORDER NUMBER** | ***ITO BE PROVIDED BY CREST NICHOLSON ON RECEIPT OF THIS ORDER SIGNED BY THE CONSULTANT*** |
| **SERVICES** | **As set out in Schedule 1 of the Framework Agreement.*****[INSERT DETAILS OF ANY CHANGES TO THE STANDARD SERVICE DESCRIPTION AS SET OUT IN SCHEDULE 1 OF THE FRAMEWORK AGREEMENT HERE.]*** |
| **SERVICES COMMENCEMENT DATE** | ***[INSERT THE DATE THAT THE SERVICES ARE REQUIRED TO COMMENCE]*** |
| **AGREED FEES** | ***[£, ] [INSERT DETAILS OF THE TOTAL AGREED]******[25% - MILESTONE 1******30% - MILESTONE 2******35% - MILESTONE 3******10% - MILESTONE 4] [INCLUDE FOR ARCHITECTS AND M&E ENGINEERS]******[OR]******[60% - MILESTONE 1******10% - MILESTONE 2******10% - MILESTONE 3******20% - MILESTONE 4]*** ***[INCLUDE FOR STRUCTURAL ENGINEERS]******[OR]******[70% - MILESTONE 1******0% - MILESTONE 2******10% - MILESTONE 3******20% - MILESTONE 4]*** ***[INCLUDE FOR CIVIL ENGINEERS]******[OR]******[50% - MILESTONE 1******30% - MILESTONE 2******10% - MILESTONE 3******10% - MILESTONE 4]*** ***[INCLUDE FOR SAP/CODE ASSESSORS]*** |
| **INVOICE DATE** | ***[INSERT BASIS AND TIMING OF INVOICING]***  |
| **KEY DELIVERIES AND MILESTONES** | ***[INSERT DETAILS OF ANY SPECIFIC DELIVERABLES HERE E.G. DELIVERY OF A CONCEPT DRAWING AND MILESTONES (DATES BY WHICH THE DELIVERABLES WILL BE ACHIEVED) E.G. WITHIN TWO WEEKS OF THE COMMENCEMENT DATE. NOTE THAT THE MILESTONES ACT AS THE PAYMENT TRIGGERS.]******[MILESTONE 1 – GROUNDWORKS PACKAGE ISSUED*** ***MILESTONE 2 – SUPERSTRUCTURE PACKAGE ISSUED*** ***MILESTONE 3 – COMPLETE PACKAGE ISSUED*** ***MILESTONE 4 – NHBC CONDITIONS CLEARED] [INCLUDE FOR ARCHITECTS, CIVIL ENGINEERS, STRUCTURAL ENGINEERS, M&E ENGINEERS]******OR******[MILESTONE 1 – GROUNDWORKS PACKAGE ISSUED*** ***MILESTONE 2 – COMPLETE PACKAGE ISSUED*** ***MILESTONE 3 – NHBC CONDITIONS CLEARED*** ***MILESTONE 4 –FINAL EPC ISSUED] [INCLUDE FOR SAP/CODE ASSESSORS]*** |
| **SITE** | ***[INSERT DETAILS OF THE SITE IN RELATION TO WHICH THE SERVICES ARE TO BE PROVIDED]***  |
| **SPECIAL CONDITIONS** | ***[INSERT DETAILS OF ANY OTHER SPECIAL CONDITIONS IF APPLICABLE E.G. ANY AGREED KPIS OR OVERARCHING PROJECT GOALS]*** |

**Schedule 4**

**Template Additional Service Instruction**

This Additional Service Instruction is dated the day of 20[ ]

|  |  |
| --- | --- |
| **[CREST NICHOLSON OPERATIONS LIMITED**Address: Crest House, Pyrcroft Road, Chertsey, Surrey, KT16 9GNCompany No: 01168311]*[for use where the Client IS NOT CNO AND is a limited company*\*[FULL COMPANY NAME] **LIMITED** a company incorporated and registered in [England and Wales] [Scotland] with company number [INSERT REGISTERED NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS]*[for use where the Client IS NOT CNO AND is incorporated as a limited liability partnership (LLP)*\*[FULL CLIENT NAME] **LLP** a limited liability partnership incorporated and registered in [England and Wales] with company number [INSERT REGISTERED NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS](the "**Client**")**[DRAFTING NOTE: THE ADDITIONAL SERVICES INSTRUCTION MUST BE ISSUED IN THE NAME OF THE CLIENT NAMED IN THE UNDERLYING SERVICES ORDER. IF IN DOUBT CHECK WITH CNO CoSec or Legal TEAM]**  | *[for use where the consultant is a limited company*\*[FULL COMPANY NAME] **LIMITED** a company incorporated and registered in [England and Wales] [Scotland] with company number [INSERT REGISTERED NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] (the "Consultant").]*[for use where the consultant is incorporated as a limited liability partnership (LLP)*\*[FULL PRACTICE NAME] **LLP** a limited liability partnership incorporated and registered in [England and Wales] [Scotland] with company number [INSERT REGISTERED NUMBER] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] (the "Consultant").]**Note** - YOU CAN CHECK COMPANY AND LLP NAMES, REGISTERED NUMBERS AND REGISTERED OFFICES BY USING THE FREE WEBCHECK SERVICE AVAILABLE AT<http://www.companieshouse.gov.uk/> **IT IS ESSENTIAL THAT THESE DETAILS ARE CORRECT***[for use where the consultant is an unincorporated partnership\** [FULL PRACTICE NAME] a firm whose principal place of business is at [INSERT MAIN OFFICE ADDRESS] (the "Consultant").]*[for use where the consultant is a sole trader*\*[FULL CONSULTANT NAME] trading on his own account [as INSERT ANY TRADING NAME] and whose principal place of business is at [INSERT OFFICE ADDRESS] (the "Consultant").]**[DRAFTING NOTE: THE ADDITIONAL SERVICES INSTRUCTION MUST BE ADDRESSED IN THE NAME OF THE CONSULTANT NAMED IN THE UNDERLYING SERVICES ORDER. IF IN DOUBT CHECK WITH CNO CoSec or LegalTEAM]** |

1. Pursuant to an Agreement dated [ ] 202[ ] between [the Client] [Crest Nicholson Operations Limited] and the Consultant (the “**Services Order**”) the Client appointed the Consultant to provide certain consultancy services in relation to one or more Sites.
2. The Client now wishes to instruct the Consultant to undertake certain additional services.
3. This Front Sheet and the attached Appendix (together the "**Additional** **Services Instruction**") are supplemental to the Services Order and incorporate the Terms and Conditions attached at Schedule 2 of the Framework Agreement and all Additional Services to be undertaken by the Consultant hereunder are to be carried out in accordance with the requirements of this Additional Services Instruction and the said Terms and Conditions.
4. Notwithstanding any errors in the method of execution of this Additional Services Instruction or that it may be signed underhand, it is intended by the Client and the Consultant to be treated as a deed as set out in the Terms and Conditions.
5. All words, terms and phrases used in the Terms and Conditions will have the same meaning where used in this Additional Services Instruction save as expressly stated.
6. This Additional Services Instruction will not vary the Terms and Conditions save to the extent expressly required and stated in the Special Conditions set out in the Appendix (if any).

**This Additional Services Instruction** **is executed as a deed and is delivered and takes effect at the date written above.**

|  |  |
| --- | --- |
| [Executed as a Deed by [INSERT NAME OF ATTORNEY HERE] as attorney for **CREST NICHOLSON OPERATIONS LIMITED** in the presence of:Signature of Attorney:Signature of Witness:Name: Occupation:Address:][Where CNO is not the instruction client please consult with CNO CoSec team for the correct execution block] | Executed as a Deed by **[INSERT NAME OF CONSULTANT]** acting by a [director[ [applicable to limited companies ONLY] [member] [applicable to LLPs ONLY] in the presence of a witness:Signature of [Director] [Member]:Name:Signature of Witness:Name:Occupation:Address: [For execution blocks for unincorporated partnerships (not LLPs) or sole traders please see the note which accompanies this document] |

Appendix

ADDITIONAL SERVICES INSTRUCTION TERMS

|  |  |
| --- | --- |
| **PURCHASE ORDER NUMBER** | ***TO BE PROVIDED BY CREST NICHOLSON ON RECEIPT OF THIS ORDER SIGNED BY THE CONSULTANT*** |
| **SERVICES** |  ***[INSERT DETAILS OF ANY CHANGES TO THE SERVICE DESCRIPTION AS SET OUT IN THE SERVICES ORDER HERE.]*** |
| **SERVICES COMMENCEMENT DATE** | ***[INSERT THE DATE THAT THE ADDITIONAL SERVICES ARE REQUIRED TO COMMENCE]*** |
| **AGREED FEES** | ***[£, ] [INSERT DETAILS OF THE TOTAL AGREED]******[25% - MILESTONE 1******30% - MILESTONE 2******35% - MILESTONE 3******10% - MILESTONE 4] [INCLUDE FOR ARCHITECTS AND M&E ENGINEERS]******[OR]******[60% - MILESTONE 1******10% - MILESTONE 2******10% - MILESTONE 3******20% - MILESTONE 4]*** ***[INCLUDE FOR STRUCTURAL ENGINEERS]******[OR]******[70% - MILESTONE 1******0% - MILESTONE 2******10% - MILESTONE 3******20% - MILESTONE 4]*** ***[INCLUDE FOR CIVIL ENGINEERS]******[OR]******[50% - MILESTONE 1******30% - MILESTONE 2******10% - MILESTONE 3******10% - MILESTONE 4]*** ***[INCLUDE FOR SAP/CODE ASSESSORS]*** |
| **INVOICE DATE** | ***[INSERT BASIS AND TIMING OF INVOICING]***  |
| **KEY DELIVERIES AND MILESTONES** | ***[INSERT DETAILS OF ANY SPECIFIC DELIVERABLES HERE E.G. DELIVERY OF A CONCEPT DRAWING AND MILESTONES (DATES BY WHICH THE DELIVERABLES WILL BE ACHIEVED) E.G. WITHIN TWO WEEKS OF THE COMMENCEMENT DATE. NOTE THAT THE MILESTONES ACT AS THE PAYMENT TRIGGERS.]******[MILESTONE 1 – GROUNDWORKS PACKAGE ISSUED*** ***MILESTONE 2 – SUPERSTRUCTURE PACKAGE ISSUED*** ***MILESTONE 3 – COMPLETE PACKAGE ISSUED*** ***MILESTONE 4 – NHBC CONDITIONS CLEARED] [INCLUDE FOR ARCHITECTS, CIVIL ENGINEERS, STRUCTURAL ENGINEERS, M&E ENGINEERS]******OR******[MILESTONE 1 – GROUNDWORKS PACKAGE ISSUED*** ***MILESTONE 2 – COMPLETE PACKAGE ISSUED*** ***MILESTONE 3 – NHBC CONDITIONS CLEARED*** ***MILESTONE 4 –FINAL EPC ISSUED] [INCLUDE FOR SAP/CODE ASSESSORS]*** |
| **SITE** | ***[INSERT DETAILS OF THE SITE IN RELATION TO WHICH THE ADDITIONAL SERVICES ARE TO BE PROVIDED]*** |
| **SPECIAL CONDITIONS** | ***[INSERT DETAILS OF ANY OTHER SPECIAL CONDITIONS IF APPLICABLE E.G. ANY AGREED KPIS OR OVERARCHING PROJECT GOALS]*** |

SCHEDULE 5
TEMPLATE COLLATERAL WARRANTY

**Dated 202**

**collateral warranty**

relating to a development at [ ]

between

|  |
| --- |
| (1) **[CONSULTANT]** |
| [(2) **[BENEFICIARY]**] |
| [and |
| (3) **[THE CLIENT NAMED IN THE SERVICES ORDER]]** |

**THIS DEED** is dated [DATE]

Parties

1. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Consultant); and
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Beneficiary)[.] [and
3. [**CREST NICHOLSON OPERATIONS LIMITED** incorporated and registered in England and Wales with company number 1168311 whose registered office is at Crest House, Pyrcroft Road, Chertsey, Surrey KT16 9GN] (Client).

Background

1. Pursuant to a framework agreement between [[**CREST NICHOLSON OPERATIONS LIMITED** incorporated and registered in England and Wales with company number 1168311 whose registered office is at Crest House, Pyrcroft Road, Chertsey, Surrey KT16 9GN (the “**Client**”)] [the Client,] dated [ INSERT DATE FOR FRAMEWORK AGREEMENT] 2021 the Client has engaged the Consultant to perform the Services in relation to the Project.
2. The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the Project.
3. The Client requires the Consultant to enter into a collateral warranty in favour of the Beneficiary.

**AGREED TERMS**

1. **INTERPRETATION**

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

**Business Day**: a day other than a Saturday, Sunday or public holiday in England.

**CDM Regulations**: the Construction (Design and Management) Regulations 2015 (SI 2015/51).

**Construction Products Regulations**: the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

**Deleterious:** substances, materials, processes or methods of working that are according to the latest UK construction industry guidance known at the time of specification to be:

1. deleterious to or pose a hazard to health and safety; or
2. likely to adversely affect performance or durability of the works or the completed works at the Site in the particular circumstances in which they are used;
3. other substances, materials, processes or methods of working not in accordance with:

#### British or (where applicable) European Standards;

1. the Construction Products Regulations;

#### codes of practice or applicable Agrément Certificates issued by the British Board of Agrément;

#### good building practice; or

1. the recommendations contained in the guide "Good Practice in the Selection of Construction Materials 2011" March 2011 (British Council for Offices) or the BRE Digest;

**Material**: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD/Revit materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

**Permitted Uses**: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Project.

**Professional Appointment**: an agreement in writing dated [DATE] between the Consultant and [the Client OR [ORIGINAL CLIENT]].

**Project**: [DESCRIPTION OF PROJECT].

**Required Standard**: all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services on works similar in scope and character to the Project.

**Services**: the services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.4 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation under that statute or statutory provision.

1.6 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2**. COMPLY WITH PROFESSIONAL APPOINTMENT**

2.1 The Consultant warrants to the Beneficiary that:

(a) it has complied, and shall continue to comply, with its obligations under the Professional Appointment.

(b) it has exercised and shall continue to exercise the Required Standard:

(i) when performing the Services;

(ii) insofar as the Services require the Consultant to specify materials for use in any works at the Site and/or the Consultant does so specify such materials, not to specify for use anything in the Project, which is known at the time of specification to be Deleterious.

2.2 In proceedings for breach of clause 2, the Consultant may:

(a) rely on any limit of liability or other term of the Professional Appointment; and

(b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Professional Appointment.

2.3 The Consultant's duties or liabilities under this agreement shall not be negated or diminished by:

(a) any approval or inspection of:

(i) the Project; or

(ii) any designs or specifications for the Project; or

(b) any testing of any work, goods, materials, plant or equipment; or

(c) any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Client.

2.4 This agreement shall not negate or diminish any other duty or liability otherwise owed to the Beneficiary by the Consultant.

**3. [STEP-IN RIGHTS: CONSULTANT MAY NOT TERMINATE OR DISCONTINUE**

3.1 Subject to clause 3.5, the Consultant shall not exercise, or seek to exercise, any right to:

(a) terminate its employment under the Professional Appointment; or

(b) discontinue performance of the Services,

for any reason (including any breach on the part of the Client) without giving the Beneficiary at least ten Business Days' written notice of its intention to do so. Any notice from the Consultant shall specify the grounds for the Consultant's proposed termination or discontinuance.

3.2 The Consultant's right to terminate its employment under the Professional Appointment, or to discontinue performance of the Services, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Consultant, copied to the Client:

(a) requiring the Consultant not to terminate its employment or not to discontinue performance of the Services under the Professional Appointment;

(b) acknowledging that the Beneficiary (or its nominee) will assume all the Client's obligations under the Professional Appointment; and

(c) undertaking that the Beneficiary or its nominee will pay to the Consultant:

(i) any sums due and payable to the Consultant under the Professional Appointment in future; and

(ii) any sums then due and payable to the Consultant under the Professional Appointment that are unpaid.

3.3 If the Beneficiary (or its nominee) serves notice on the Consultant under clause 3.3, then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (to the exclusion of the Client).

3.4 In complying with clause 3, the Consultant

(a) does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client; and

(b) may exercise its right to terminate its employment under the Professional Appointment, or discontinue performance of the Services, after the expiry of the notice period referred to in clause 3.1, unless the Consultant's right to terminate or discontinue has ceased under clause 3.2.

3.5 If:

(a) the Consultant enters into another agreement with a third party or grants third party rights to a third party concerning the Project at the request of the Client; and

(b) that agreement or those third party rights include similar step-in rights to those in clause 3 or clause 4,

then, on that third party's (or that third party's nominee's) exercise of those step-in rights:

(c) the Consultant shall no longer be bound by clause 3.1 and clause 3.2; and

(d) the Beneficiary may no longer exercise its rights under clause 3 or clause 4.]

**4. [STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN**

4.1 Subject to clause 3.5 and without affecting clause 3.1, if the Beneficiary serves a notice on the Consultant, copied to the Client, that:

(a) confirms that the Beneficiary wishes to step-in to the Professional Appointment; and

(b) complies with the requirements for a Beneficiary's notice under clause 3.2,

then, from the date of service of the notice, the Professional Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (or its nominee), to the exclusion of the Client.

4.2 In complying with clause 4 the Consultant does not waive any breach of the Professional Appointment or default under the Professional Appointment by the Client.]

**5. [STEP-IN RIGHTS: CONSULTANT'S POSITION**

5.1 The Consultant shall not incur any liability to the Client by acting in accordance with clause 3 or clause 4.]

**6. [STEP-IN RIGHTS: BENEFICIARY'S GUARANTEE**

6.1 If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Consultant, as guarantor, for the payment of any sums due and payable from time to time to the Consultant from the Beneficiary's nominee.]

**7. COPYRIGHT**

7.1 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project, including any of the Permitted Uses.

7.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

7.3 This licence carries the right to grant sub-licences.

7.4 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

7.5 The Beneficiary may request copies of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copies, the Consultant shall provide the copies to the Beneficiary.

**8. PROFESSIONAL INDEMNITY INSURANCE**

8.1 The Consultant shall, provided that such insurance is available at commercially reasonable rates and terms, maintain professional indemnity insurance for an amount of no less than [£[ ],000,000 TO BE DETERMINED BASED ON WHAT WAS IN ORIGINAL APPOINTMENT DOCUMENT FOR THE SERVICES] [for each and every claim] [for any one claim] [for any occurrence or series of occurrences arising out of each and every event] [for any one claim and in all] [in the annual aggregate] [in the annual aggregate with X [automatic] reinstatements] [(but in the aggregate in relation to pollution and contamination)] for a period beginning on the date of this agreement and ending 12 years from the earlier of: (1) termination of the Professional Appointment; and (2) completion of the Client’s works in relation to the Project. The Consultant shall maintain that professional indemnity insurance:

(a) with reputable insurers lawfully carrying on insurance business in the UK; and

(b) on customary and usual terms and conditions prevailing for the time being in the insurance market.

8.2 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project without that insurance.

8.3 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force.

**9. LIABILITY PERIOD**

9.1 No legal action may commence under this agreement after 12 years from the earlier of: (1) termination of the Professional Appointment; and (2) completion of the Client’s works in relation to the Project.

**10. ASSIGNMENT**

10.1 The Beneficiary may assign the benefit of this agreement on two occasions to any person without the consent of the Consultant:

(i) by way of security (including any reassignment on redemption of security); or

(ii) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary.

10.2 The Beneficiary shall notify the Consultant and the Client of any assignment.

10.3 The Consultant shall not contend that any person to whom the benefit of this agreement is assigned under clause 10.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

**11. NOTICES**

11.1 Any notice provided for in accordance with this agreement shall be deemed to be duly given if it is delivered by hand at, or sent be special delivery post to the party named therein at, the address of such party shown in this agreement, and if sent by special delivery post shall be deemed to have been received not later than two working days after the same shall have been posted.

**12. THIRD PARTY RIGHTS**

12.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**13. GOVERNING LAW AND JURISDICTION**

13.1 This agreement shall be governed by and construed in accordance with the law of England and the part submit to the jurisdiction of the courts of England and Wales.

[EXECUTION BLOCKS TO BE ADDED ON ENGROSSMENT]

**SCHEDULE 6
TEMPLATE LETTER OF RELIANCE**

***[Address of Beneficiary]***

*[date]*

Dear Sirs

**[ ] ("the [Property][Development]")**

We confirm that we have been appointed by **[** **]** ("**the** **Client**”) to prepare

**[**details of reports including reference numbers**]**

("**the Reports**") in relation to the ***[Property][Development]***, in connection with the proposed redevelopment of the Property.

We understand that you intend to ***[provide finance for the Development][purchase the Property]*** and should you do so, in consideration of the payment of TEN POUNDS (£10.00) (receipt of which is hereby acknowledged) we unequivocally undertake and confirm the following:-

1. We warrant and undertake that in preparing the Reports we have exercised the level of skill and care which may reasonably be expected of a properly qualified and competent consultant experienced in preparing reports of similar scope and complexity to the Reports, and we agree that we owe a duty of care to you in respect of such matters and in using the Reports you may rely upon our professional skill and care with the same effect as if the Reports were originally addressed directly to you and your permitted assigns
2. You may use the Reports for all purposes in relation to your interest in the ***[Property][Development]***.
3. We hereby grant you an irrevocable, royalty free non-exclusive licence to use and reproduce the Reports and any designs, calculations, specifications or drawings contained therein. Such licence shall include the right to grant sub-licences in the terms of this licence without our consent. Such licence shall be transferable to third parties without our consent and you, and your successors in title assigns and appointees, hereby acknowledge that we shall not be liable for any use of the Reports for any purpose other than that for which the same were prepared. Upon your request we will give you or persons authorised by you access to the Reports and will provide copies on payment of our reasonable copying charges.
4. The rights benefits and entitlements conferred on you by this letter may, in respect of the Property, be assigned twice only without our consent, and thereafter with our consent, such consent not to be unreasonably withheld or delayed. We will not contend that any person to whom the benefits and entitlements conferred on you by this letter is assigned may not recover any sum under letter because that person is an assignee and not the named address of this letter.
5. We currently maintain in force professional indemnity insurance without any unusual excesses or exclusions taken out with reputable insurers carrying on business in the United Kingdom sufficient to cover our liabilities which may arise out of the Reports to a limit of not less than £**[** **]**,000,000 [for each and every claim] [for any one claim] [for any occurrence or series of occurrences arising out of each and every event] [for any one claim and in all] [in the annual aggregate] [in the annual aggregate with X [automatic] reinstatements] [(but in the aggregate in relation to pollution and contamination)] and we confirm that we shall maintain such insurance for a period of 12 years after the date of the Reports provided such insurance is available on commercially reasonable rates and terms. For the avoidance of doubt payments of any increased or additional premiums required by insurers by reason of our own claims record or other acts, omissions, matters or things peculiar to us will be deemed to be within the our obligations. If for any period such insurance is not available on commercially reasonable rates and terms we shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for us to obtain
6. As and when we are requested to do so by you, we shall provide you with a copy of a letter from our insurance brokers as evidence that our professional indemnity insurance is being maintained and is in force.
7. You hereby agree that no proceedings shall be commenced against us under the terms of this letter more than 12 years after the date of the Reports.
8. This letter shall be governed and construed in accordance with English law and the English courts shall have exclusive jurisdiction with regard to all matters arising from it.

[EXECUTION BLOCK TO BE ADDED ON ENGROSSMENT]

SCHEDULE 7
TEMPLATE DEED OF NOVATION

**DEED OF NOVATION**

relating to a development at [ ]

between

|  |
| --- |
| **[NEW CO]** |
| **[NAME OF CONSULTANT]**] |
| and |
| **[NAME OF CLIENT IN SERVICES ORDER]** |

**City of London Law Society**

**Standard Form Novation Agreement**

**THIS AGREEMENT** is made the               day of                                20[ ]

**BETWEEN**:-

1. [ ] whose registered office is at [ ] (“the NewCo”);

2.[*Insert details of Client named in relevant Services Order*] whose registered office is at [ ] (“the Client”); and

3.[*Insert details of Consultant*] whose registered office is at [ ] (“the Consultant”).

**WHEREAS**:-

(A) Pursuant to a Framework Agreement between the Client and the Consultant, the Client has appointed the Consultant to provide consultant services (“the Services”) by an agreement dated [*Insert date from Services Order*] (“the Appointment”).

(B) The Client has appointed the Newco under a contract (“the Contract”) to [design and construct certain works as therein described (“the Works”)] / [*the Client is disposing of its interest in the Project*] [ *insert description as necessary*] and has requested that and the Consultant has agreed to enter into a novation of the Appointment in the form of this Deed.

(c) The Client, Consultant and Newco have agreed that from the date of this Agreement the Newco shall assume the obligations of the Client and that the Consultant shall perform its obligations under the Appointment in favour of the Newco and that the Client and the Consultant shall each release the other from any obligations owed by the other to them under the Appointment.

**NOW IT IS HEREBY AGREED** as follows:-

* 1. Novation
		1. The Client hereby releases and discharges the Consultant from any and all obligations and liabilities owed to the Client under the Appointment.
		2. The Consultant undertakes to perform the Appointment and to be bound by its terms in every way as if the Newco were, and had been from the inception, a party to the Appointment in lieu of the Client.
		3. The Consultant hereby releases and discharges the Client from any and all obligations and liabilities owed to the Consultant under the Appointment and accepts the liability of the Newco under the Appointment in lieu of the liability of the Client.
		4. Without prejudice to Clause 1.2, the Consultant warrants to the Newco that it shall be liable for any loss or damage suffered or incurred by the Newco arising out of any negligent act, default or breach by the Consultant in the performance of its obligations under the Appointment prior to the date of this Agreement. Subject to any limitation of liability in the Appointment, the Consultant shall be liable for such loss or damage notwithstanding that such loss or damage would not have been suffered or incurred by the Client (or suffered or incurred to the same extent by the Client).
		5. The Consultant acknowledges that all fees and expenses properly due to the Consultant under the Appointment up to the date of this Agreement have been paid by the Client.
		6. The Newco undertakes to perform the Appointment and to be bound by its terms in every way as if the Newco were, and had been from the inception, a party to the Appointment in lieu of the Client.
	2. Proper Law and Jurisdiction

This Agreement and the rights and obligations of the parties hereto shall be governed and construed according to English Law.  Any dispute shall be subject to the jurisdiction of the English Courts.

* 1. Contracts (Rights of Third Parties) Act 1999

Notwithstanding any other provision in this Agreement, nothing in this Agreement is intended to confer on any person any right to enforce any of the provisions of this Agreement which such person would not have had, but for the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a Deed the day and year first before written.

[EXECUTION PROVISIONS TO BE ADDED]

**SCHEDULE 8**

**TEMPLATE SUB-CONSULTANT WARRANTY**

**TO CLIENT**

**Dated 20[ ]**

**collateral warranty**

relating to a development at [ ]

between

|  |
| --- |
| (1) **[SUB-CONSULTANT]**and |
| [(2) **[CONSULTANT]**] |
| and |
| (3) **[THE CLIENT NAMED IN THE SERVICES ORDER]** |

**THIS DEED** is dated [DATE]

Parties

1. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Sub-**Consultant); and
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Consultant); and
3. [**CREST NICHOLSON OPERATIONS LIMITED** incorporated and registered in England and Wales with company number 1168311 whose registered office is at Crest House, Pyrcroft Road, Chertsey, Surrey KT16 9GN] (Beneficiary).

Background

1. Pursuant to a framework agreement between [[**CREST NICHOLSON OPERATIONS LIMITED** incorporated and registered in England and Wales with company number 1168311 whose registered office is at Crest House, Pyrcroft Road, Chertsey, Surrey KT16 9GN] [the Beneficiary,] dated [INSERT DATE FOR FRAMEWORK AGREEMENT] 2021 the Client has engaged the Consultant to perform services in relation to the Project.
2. By and agreement between the Consultant and the Sub-Consultant dated [ ]202[ ] (**Sub-Contract**) the Consultant has appointed the Sub-Consultant to perform the Services.
3. It is a condition of the Professional Appointment that the Sub-Consultant enters into a collateral warranty in favour of the Beneficiary.

**AGREED TERMS**

1. **INTERPRETATION**

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

**Business Day**: a day other than a Saturday, Sunday or public holiday in England.

**CDM Regulations**: the Construction (Design and Management) Regulations 2015 (SI 2015/51).

**Construction Products Regulations**: the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

**Deleterious:** substances, materials, processes or methods of working that are according to the latest UK construction industry guidance known at the time of specification to be:

1. deleterious to or pose a hazard to health and safety; or
2. likely to adversely affect performance or durability of the works or the completed works at the Site in the particular circumstances in which they are used;
3. other substances, materials, processes or methods of working not in accordance with:

#### British or (where applicable) European Standards;

1. the Construction Products Regulations;

#### codes of practice or applicable Agrément Certificates issued by the British Board of Agrément;

#### good building practice; or

1. the recommendations contained in the guide "Good Practice in the Selection of Construction Materials 2011" March 2011 (British Council for Offices) or the BRE Digest;

**Material**: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD/Revit materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

**Permitted Uses**: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Project.

**Professional Appointment**: an agreement in writing dated [DATE] between the Consultant and [the Client OR [ORIGINAL CLIENT]].

**Project**: [DESCRIPTION OF PROJECT].

**Required Standard**: all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Sub-Consultant's profession undertaking the Services on works similar in scope and character to the Project.

**Services**: the services referred to in the Sub-Contract, performed by or on behalf of the Sub-Consultant under the Sub-Contract.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.4 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation under that statute or statutory provision.

1.6 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2**. COMPLY WITH SUB-CONTRACT**

2.1 The Sub-Consultant warrants to the Beneficiary that:

(a) it has complied, and shall continue to comply, with its obligations under the Sub-Contract.

(b) it has exercised and shall continue to exercise the Required Standard:

(i) when performing the Services;

(ii) insofar as the Services require the Sub-Consultant to specify materials for use in ant works at the Site and/or the Sub-Consultant does so specify such materials, not to specify for use anything in the Project, which is known at the time of specification to be Deleterious.

2.2 In proceedings for breach of clause 2, the Sub-Consultant may:

(a) rely on any limit of liability or other term of the Sub-Contract; and

(b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Consultant, under the Sub-Contract.

2.3 The Sub-Consultant's duties or liabilities under this agreement shall not be negated or diminished by:

(a) any approval or inspection of:

(i) the Project; or

(ii) any designs or specifications for the Project; or

(b) any testing of any work, goods, materials, plant or equipment; or

(c) any omission to approve, inspect or test,

by or on behalf of the Beneficiary.

2.4 This agreement shall not negate or diminish any other duty or liability otherwise owed to the Beneficiary by the Sub-Consultant.

**3. STEP-IN RIGHTS: CONSULTANT MAY NOT TERMINATE OR DISCONTINUE**

3.1 Subject to clause 3.5, the Sub-Consultant shall not exercise, or seek to exercise, any right to:

(a) terminate its employment under the Sub-Contract; or

(b) discontinue performance of the Services,

for any reason (including any breach on the part of the Consultant) without giving the Beneficiary at least ten Business Days' written notice of its intention to do so. Any notice from the Sub-Consultant shall specify the grounds for the Sub-Consultant’s proposed termination or discontinuance.

3.2 The Sub-Consultant's right to terminate its employment under the Sub-Contract, or to discontinue performance of the Services, shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Sub-Consultant, copied to the Consultant:

(a) requiring the Sub-Consultant not to terminate its employment or not to discontinue performance of the Services under the Sub-Contract;

(b) acknowledging that the Beneficiary (or its nominee) will assume all the Consultant’s obligations under the Sub-Contract; and

(c) undertaking that the Beneficiary or its nominee will pay to the Sub-Consultant:

(i) any sums due and payable to the Sub-Consultant under the Sub-Contract in future; and

(ii) any sums then due and payable to the Sub-Consultant under the Sub-Contract that are unpaid.

3.3 If the Beneficiary (or its nominee) serves notice on the Consultant under clause 3.3, then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Consultant and the Beneficiary (to the exclusion of the Consultant).

3.4 In complying with clause 3, the Sub-Consultant

(a) does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Consultant; and

(b) may exercise its right to terminate its employment under the Sub-Contract, or discontinue performance of the Services, after the expiry of the notice period referred to in clause 3.1, unless the Sub-Consultant's right to terminate or discontinue has ceased under clause 3.2.

**4. STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN**

4.1 Subject to clause 3.5 and without affecting clause 3.1, if the Beneficiary serves a notice on the Sub-Consultant, copied to the Consultant, that:

(a) confirms that the Beneficiary wishes to step-in to the Sub-Contract; and

(b) complies with the requirements for a Beneficiary's notice under clause 3.2,

then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Consultant and the Beneficiary (or its nominee), to the exclusion of the Consultant.

4.2 In complying with clause 4 the Sub-Consultant does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Consultant.

**5. STEP-IN RIGHTS: CONSULTANT'S POSITION**

5.1 The Sub-Consultant shall not incur any liability to the Consultant by acting in accordance with clause 3 or clause 4.

**6. STEP-IN RIGHTS: BENEFICIARY'S GUARANTEE**

6.1 If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Sub-Consultant, as guarantor, for the payment of any sums due and payable from time to time to the Sub-Consultant from the Beneficiary's nominee.

**7. COPYRIGHT**

7.1 The Sub-Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Sub-Consultant for any purpose relating to the Project, including any of the Permitted Uses.

7.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

7.3 This licence carries the right to grant sub-licences.

7.4 The Sub-Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

7.5 The Beneficiary may request copies of some or all of the Material from the Sub-Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copies, the Sub-Consultant shall provide the copies to the Beneficiary.

**8. PROFESSIONAL INDEMNITY INSURANCE**

8.1 The Sub-Sub-Consultant shall, provided that such insurance is available at commercially reasonable rates and terms, maintain professional indemnity insurance for an amount of no less than [£[ ],000,000 TO BE DETERMINED BASED ON WHAT WAS IN ORIGINAL APPOINTMENT DOCUMENT FOR THE SERVICES] [for each and every claim] [for any one claim] [for any occurrence or series of occurrences arising out of each and every event] [for any one claim and in all] [in the annual aggregate] [in the annual aggregate with X [automatic] reinstatements] [(but in the aggregate in relation to pollution and contamination)] for a period beginning on the date of this agreement and ending 12 years from the earlier of: (1) termination of the Sub-Contract; and (2) completion of the Client’s works in relation to the Project. The Sub-Consultant shall maintain that professional indemnity insurance:

(a) with reputable insurers lawfully carrying on insurance business in the UK; and

(b) on customary and usual terms and conditions prevailing for the time being in the insurance market.

8.2 The Sub-Consultant shall immediately inform the Beneficiary if the Sub-Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Sub-Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Sub-Consultant regarding the Project without that insurance.

8.3 Whenever the Beneficiary reasonably requests, the Sub-Consultant shall send the Beneficiary evidence that the Sub-Consultant's professional indemnity insurance is in force.

**9. LIABILITY PERIOD**

9.1 No legal action may commence under this agreement after 12 years from the earlier of: (1) termination of the Sub-Contract; and (2) completion of the Beneficiary’s works in relation to the Project.

**10. ASSIGNMENT**

10.1 The Beneficiary may assign the benefit of this agreement on two occasions to any person without the consent of the Sub-Consultant:

(i) by way of security (including any reassignment on redemption of security); or

(ii) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary.

10.2 The Beneficiary shall notify the Sub-Consultant and the Client of any assignment.

10.3 The Sub-Consultant shall not contend that any person to whom the benefit of this agreement is assigned under clause 10.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

**11. NOTICES**

11.1 Any notice provided for in accordance with this agreement shall be deemed to be duly given if it is delivered by hand at, or sent be special delivery post to the party named therein at, the address of such party shown in this agreement, and if sent by special delivery post shall be deemed to have been received not later than two working days after the same shall have been posted.

**12. THIRD PARTY RIGHTS**

12.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**13. GOVERNING LAW AND JURISDICTION**

13.1 This agreement shall be governed by and construed in accordance with the law of England and the part submit to the jurisdiction of the courts of England and Wales.

[EXECUTION BLOCKS TO BE ADDED ON ENGROSSMENT]

**TEMPLATE SUB-CONSULTANT WARRANTY TO**

**OTHER BENEFICIARY**

**Dated 202**

**collateral warranty**

relating to a development at [ ]

between

|  |
| --- |
| (1) **[SUB-CONSULTANT]** |
| (2) **[BENEFICIARY]**] |

**THIS DEED** is dated [DATE]

Parties

1. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Sub-**Consultant); and
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Beneficiary).

Background

1. Pursuant to a framework agreement between **CREST NICHOLSON OPERATIONS LIMITED** incorporated and registered in England and Wales with company number 1168311 whose registered office is at Crest House, Pyrcroft Road, Chertsey, Surrey KT16 9GN [(the “**Client**”)] dated [ INSERT DATE FOR FRAMEWORK AGREEMENT] 2021, [[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the “**Client**”)] by the Professional Appointment the Client has engaged [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Consultant) to perform services in relation to the Project.
2. By and agreement between the Consultant and the Sub-Consultant dated [ ]202[ ] (**Sub-Contract**) the Consultant has appointed the Sub-Consultant to perform the Services.
3. The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the Project.
4. It is a condition of the Professional Appointment that the Sub-Consultant enters into a collateral warranty in favour of the Beneficiary.

**AGREED TERMS**

1. **INTERPRETATION**

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

**Business Day**: a day other than a Saturday, Sunday or public holiday in England.

**CDM Regulations**: the Construction (Design and Management) Regulations 2015 (SI 2015/51).

**Construction Products Regulations**: the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

**Deleterious:** substances, materials, processes or methods of working that are according to the latest UK construction industry guidance known at the time of specification to be:

1. deleterious to or pose a hazard to health and safety; or
2. likely to adversely affect performance or durability of the works or the completed works at the Site in the particular circumstances in which they are used;
3. other substances, materials, processes or methods of working not in accordance with:

#### British or (where applicable) European Standards;

1. the Construction Products Regulations;

#### codes of practice or applicable Agrément Certificates issued by the British Board of Agrément;

#### good building practice; or

1. the recommendations contained in the guide "Good Practice in the Selection of Construction Materials 2011" March 2011 (British Council for Offices) or the BRE Digest;

**Material**: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD/Revit materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

**Permitted Uses**: the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Project.

**Professional Appointment**: an agreement in writing dated [DATE] between the Consultant and [the Client OR [ORIGINAL CLIENT]].

**Project**: [DESCRIPTION OF PROJECT].

**Required Standard**: all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Sub-Consultant's profession undertaking the Services on works similar in scope and character to the Project.

**Services**: the services referred to in the Sub-Contract.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.4 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation under that statute or statutory provision.

1.6 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2**. COMPLY WITH PROFESSIONAL APPOINTMENT**

2.1 The Sub-Consultant warrants to the Beneficiary that:

(a) it has complied, and shall continue to comply, with its obligations under the Sub-Contract.

(b) it has exercised and shall continue to exercise the Required Standard:

(i) when performing the Services;

(ii) insofar as the Services require the Sub-Consultant to specify materials for use in ant works at the Site and/or the Sub-Consultant does so specify such materials, not to specify for use anything in the Project, which is known at the time of specification to be Deleterious.

2.2 In proceedings for breach of clause 2, the Sub-Consultant may:

(a) rely on any limit of liability or other term of the Sub-Contract; and

(b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Consultant, under the Sub-Contract.

2.3 The Sub-Consultant's duties or liabilities under this agreement shall not be negated or diminished by:

(a) any approval or inspection of:

(i) the Project; or

(ii) any designs or specifications for the Project; or

(b) any testing of any work, goods, materials, plant or equipment; or

(c) any omission to approve, inspect or test,

by or on behalf of the Beneficiary.

2.4 This agreement shall not negate or diminish any other duty or liability otherwise owed to the Beneficiary by the Sub-Consultant.

**3. COPYRIGHT**

3.1 The Sub-Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Sub-Consultant for any purpose relating to the Project, including any of the Permitted Uses.

3.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

3.3 This licence carries the right to grant sub-licences.

3.4 The Sub-Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

3.5 The Beneficiary may request copies of some or all of the Material from the Sub-Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copies, the Consultant shall provide the copies to the Beneficiary.

**4. PROFESSIONAL INDEMNITY INSURANCE**

4.1 The Sub-Consultant shall, provided that such insurance is available at commercially reasonable rates and terms, maintain professional indemnity insurance for an amount of no less than [£[ ],000,000 TO BE DETERMINED BASED ON WHAT WAS IN ORIGINAL APPOINTMENT DOCUMENT FOR THE SERVICES] [for each and every claim] [for any one claim] [for any occurrence or series of occurrences arising out of each and every event] [for any one claim and in all] [in the annual aggregate] [in the annual aggregate with X [automatic] reinstatements] (but in the aggregate in relation to pollution and contamination)] for a period beginning on the date of this agreement and ending 12 years from the earlier of: (1) termination of the Professional Appointment; and (2) completion of the Client’s works in relation to the Project. The Consultant shall maintain that professional indemnity insurance:

(a) with reputable insurers lawfully carrying on insurance business in the UK; and

(b) on customary and usual terms and conditions prevailing for the time being in the insurance market.

4.2 The Sub-Consultant shall immediately inform the Beneficiary if the Sub-Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Sub-Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Sub-Consultant regarding the Project without that insurance.

4.3 Whenever the Beneficiary reasonably requests, the Sub-Consultant shall send the Beneficiary evidence that the Sub-Consultant's professional indemnity insurance is in force.

**5. LIABILITY PERIOD**

5.1 No legal action may commence under this agreement after 12 years from the earlier of: (1) termination of the Sub-Contract; and (2) completion of the Client’s works in relation to the Project.

**6. ASSIGNMENT**

6.1 The Beneficiary may assign the benefit of this agreement on two occasions to any person without the consent of the Sub-Consultant:

(i) by way of security (including any reassignment on redemption of security); or

(ii) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary.

6.2 The Beneficiary shall notify the Sub-Consultant and the Client of any assignment.

6.3 The Sub-Consultant shall not contend that any person to whom the benefit of this agreement is assigned under clause 6.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

**7. NOTICES**

7.1 Any notice provided for in accordance with this agreement shall be deemed to be duly given if it is delivered by hand at, or sent be special delivery post to the party named therein at, the address of such party shown in this agreement, and if sent by special delivery post shall be deemed to have been received not later than two working days after the same shall have been posted.

**8. THIRD PARTY RIGHTS**

8.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

**9. GOVERNING LAW AND JURISDICTION**

9.1 This agreement shall be governed by and construed in accordance with the law of England and the part submit to the jurisdiction of the courts of England and Wales.

[EXECUTION BLOCKS TO BE ADDED ON ENGROSSMENT]