

DIRECT SUPPLY AGREEMENT

Terms and Conditions

1 Definitions and Interpretation

1.1 In this Agreement unless the context otherwise requires:

“Agreed Discount” means the agreed discount for Goods and/or Services as set out in Schedule 2 (Agreed Price List);

“Agreed Prices” will have the meaning given to it in Schedule 1 (Commercial Terms);

“Annual Rebate” will have the meaning given to it in Schedule 1 (Commercial Terms);

“Appointment Basis” will have the meaning given to it in Schedule 1 (Commercial Terms);

“Bribery Act” means the Bribery Act 2010 as amended, superseded or replaced from time to time during the term of this Agreement;

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

“CDM Regulations” means the Construction (Design and Management) Regulations 2015 as amended, superseded or replaced from time to time during the term of this Agreement;

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

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

“Contract” will have the meaning given to it in Schedule 1 (Commercial Terms);

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

“Crest Nicholson Personal Data” means the Personal Data relating to Crest Nicholson’s customers, employees, suppliers, contractors and employees of suppliers or contractors that

are Processed by the Provider under this Agreement;

“Data Protection Laws” means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, applicable to the Processing of Personal Data and the interception of communications under the Agreement;

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

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

“Goods” will have the meaning given to it in Schedule 1 (Commercial Terms);

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

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

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

“Key Performance Indicators” means the key performance indicators to be satisfied by the Provider (if any) as set out in Schedule 3 (Key Performance Indicators / Service Levels).

“Order” will have the meaning given to it in Schedule 1 (Commercial Terms);

- “**Payment Period**” will be the period specified in Schedule 1(Commercial Terms);
- “**Rolling Period**” will have the meaning given to it in Schedule 1(Commercial Terms);
- “**Services**” will have the meaning given to it in Schedule 1 (Commercial Terms);
- “**Service Levels**” means the Service Levels that will apply to the Provider’s provision of the Goods and/or Services to Crest Nicholson as set out in Schedule 3 (Key Performance Indicators / Service Levels);
- “**Specification**” will have the meaning given to it in Schedule 1 (Commercial Terms); and
- “**Supplies**” will have the meaning given to it in Schedule 1 (Commercial Terms).
- 1.2 The headings to clauses are inserted for convenience only and will not affect the interpretation or construction of this Agreement. Words and numbers imparting the singular will include the plural and vice versa. Words imparting a gender include every gender. References to persons include an individual, company, corporation, firm or partnership.
- 1.3 All sums payable hereunder are exclusive of VAT or any other applicable tax or duty. Any applicable tax or VAT will be added, if appropriate, at the rate prevailing at the relevant tax point.
- 1.4 References to any statute or statutory provision will include (i) any subordinate legislation made under it, (ii) any provision that it has modified or re-enacted (whether with or without modification), and (iii) any provision that subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.5 References to applicable laws shall include all or any statute, common law, rule, regulation, treaty, directive, direction, decision of the Court, byelaw, code of practice, circular, guidance note, statutory guidance, order, notice, demand or official guideline or permit of any governmental, statutory or regulatory authority, agency or body.
- 1.6 The words and phrases "other", "including" and "in particular" will not limit the generality of any preceding words, or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 1.7 All references in this Agreement to Clauses and Schedules are to the clauses and schedules to this Agreement only, unless otherwise stated.
- 1.8 In the event of a conflict or ambiguity between Schedule 1 (the Commercial Terms), this Schedule 4 (the Terms and Conditions) and any Order, the following order of precedence will

apply:

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

2 **Commencement**

- 2.1 This Agreement will come into force on the Commencement Date and (subject to the provisions for earlier termination) will remain in force for the Initial Period and may continue in force thereafter in accordance with Clause 2.2.
- 2.2 Three (3) months prior to the end of the Initial Period or any subsequent Rolling Period, the parties will meet to decide whether or not to extend the term of this Agreement. If the parties decide not to extend the term of this Agreement, this Agreement will expire on the last day of the Initial Period or where applicable the last day of the Rolling Period during which the parties’ meeting took place. If the parties decide (and agree in writing) to extend the term of this Agreement, this Agreement will continue in force (subject to the provisions for earlier termination) for the Rolling Period.

3 **Order Process**

- 3.1 Crest Nicholson may, from time to time, during the term of this Agreement place Orders for the Goods and/or the Services with the Provider in accordance with this Clause 3.
- 3.2 Any Order for the Goods and/or Services sent by Crest Nicholson to the Provider will be an offer made by Crest Nicholson to purchase the Goods and/or Services in accordance with the provisions of this Agreement. Unless previously withdrawn by Crest Nicholson, Orders will be deemed to be accepted if not rejected by the Provider in writing within seven (7) days of the Order date. Upon acceptance of an Order, a binding contract will come into force between the parties for the provision of the Goods and/or Services to Crest Nicholson by the Provider in accordance the provisions of this Agreement.
- 3.3 Crest Nicholson will be under no obligation to place Orders for the Goods and/or Services, but reserves the right to do so at any time during the term of this Agreement.
- 3.4 All Contracts will be subject to the terms and conditions set out in this Agreement to the exclusion of all other terms and conditions (including any terms or conditions that the Provider, the Provider’s employees [or the Provider’s nominated suppliers] purport to apply) under any quotation, Order acknowledgement or

any other document whatsoever. **[DELETE THE WORDS IN SQUARE BRACKETS IF YOU ARE ENTERING INTO THIS AGREEMENT WITH A SUPPLIER AS OPPOSED TO THE MANUFACTURER.]**

3.5 Crest Nicholson reserves the right to vary or cancel any Order at any time prior to delivery of the relevant Goods and/or Services by giving the Provider at least seven (7) days' written notice.

4 **Delivery**

4.1 Delivery of the Goods and/or Services will take place strictly in accordance with Crest Nicholson's delivery requirements, whether given in the relevant Order or separately. Each delivery of the Goods must be clearly marked in accordance with the Specification and/or the Order.

4.2 The Provider acknowledges that time is of the essence for all deliveries and that any delay in the delivery of the Goods and/or Services may cause Crest Nicholson to incur loss and expense.

4.3 Crest Nicholson will be under no obligation to accept delivery of the Goods and/or Services before the specified delivery time, but reserves the right to do so.

4.4 Crest Nicholson will not be obliged to accept quantities of the Goods that vary from those specified in the Specification or the Order.

4.5 The Goods will be properly packed and secured in such a manner as to reach their destination undamaged and in good condition. Delivery will include the safe transportation of the Goods to the relevant delivery address and the safe unloading, hoisting, distributing and placing in position as required by Crest Nicholson. The Provider accepts full liability for any damage to the Goods occurring prior to completion of their delivery.

4.6 When delivering the Goods, the Provider will ensure that it fully coordinates and co-operates with any other contractors or suppliers working at the delivery address.

4.7 Where, and to the extent that, any facilities, plant, scaffolding or equipment are required to be provided to the Provider in order that it may comply with its delivery obligations, Crest Nicholson will instruct on availability, timing and use. Crest Nicholson will not accept any claims for costs or expenses incurred by the Provider due to non-availability or breakdown of any plant, scaffolding or equipment to be provided.

4.8 The Provider will clear away all rubbish and debris resulting from delivery and leave clean all

areas affected by delivery. Crest Nicholson will not be obliged to return to the Provider any packaging materials for the Goods. Where available, the Provider will provide a take-back scheme for leftover materials, packaging and protection.

4.9 The Provider is deemed to have satisfied themselves regarding the conditions of the delivery address, working spaces, material storage space and means of vehicular access. The Provider will bear its own costs, expenses or loss incurred by reason of any lack of knowledge or foregone.

5 **Acceptance**

5.1 Crest Nicholson will not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery, or after any latent defect has become apparent. For the avoidance of doubt, neither of the following will be deemed to constitute or evidence acceptance or approval of the Goods for the purposes of the Sales of Goods Act 1979 (as amended and updated from time to time), nor be deemed a waiver of Crest Nicholson's rights to cancel or return all or any part of the Goods where they are found to be defective or not in accordance with the Contract, Order and/or Specification.

(a) inspection or testing by Crest Nicholson, whether before or after delivery of the Goods;

(b) the signing of any delivery note or other document acknowledging physical receipt of any Goods

5.2 The Provider will keep Crest Nicholson promptly informed of any matter that, as supplier of the Goods, it is, or reasonably should be, aware relating to the availability, storage, transportation, handling, assembly or use of the Goods by Crest Nicholson (including legislation or advice from responsible, professional or legal bodies in respect of raw materials used in the manufacture of the Goods) and the actions it has taken, or proposes to take, and those that Crest Nicholson should take in relation to such matters.

6 **Title and Risk**

6.1 The Goods will be at the risk of the Provider until they are delivered in accordance with Clause 4 when (without prejudice to any right of rejection that Crest Nicholson may have under the Contract or by law) the title to, and risk in, the Goods will pass to Crest Nicholson. If Crest Nicholson pays for the Goods prior to delivery, the title to the Goods will pass to Crest Nicholson when payment is made.

7 **Provision of the Services**

7.1 If the Contract is for, or includes Services to be performed by the Provider, the Provider undertakes, represents and warrants to Crest Nicholson that the Services:

- (a) will be performed with reasonable skill, care and diligence, in a timely manner and in accordance with good industry practice;
- (b) are in accordance with all applicable laws and regulations;
- (c) are in accordance with any instructions notified to it by Crest Nicholson from time to time; and
- (d) are in accordance with the provisions of this Agreement.

7.2 The Provider will, and will procure that its nominated suppliers, employ or engage an adequate number of suitably qualified, skilled and experienced individuals in order to deliver the Services in accordance with this Agreement. Time of performance of the Services will be of the essence.

7.3 Upon request by Crest Nicholson, the Provider will sign a collateral warranty in favour of any person acquiring an interest in the Goods or Services that have been designed by the Provider. Such warranty will be in a form reasonably required by Crest Nicholson. Where such warranties have not been provided by the Provider within 14 days of receipt of the necessary engrossment or engrossments, Crest Nicholson may, notwithstanding any other provisions of this Agreement, withhold any payment due and/or payable under this Agreement until such time as the warranties have been satisfactorily executed and delivered to Crest Nicholson.

7.4 If the Provider has failed to perform the Services, Crest Nicholson will be entitled (without prejudice to any other rights or remedies it may have) at its discretion to require the Provider to:

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

8 **The Provider's Warranties**

8.1 The Provider warrants to Crest Nicholson on a continuing basis that:

- (a) the Goods will be accompanied with

accurate, complete and comprehensible instructions for treatment, assembly, use and storage;

- (b) the Goods will conform to the Specification and with any Crest Nicholson instructions, and will otherwise meet the requirements of the Order and the Contract;
- (c) the Goods will be: of satisfactory quality, free from defects in materials and workmanship, free from design and other inherent defects, and fit for their intended purposes (whether such purpose is implied or expressly stated in the Specification, Order or Contract);
- (d) the Goods will comply with all applicable laws and regulations, including any applicable British Quality Standards;
- (e) it will deliver the Goods and/or perform the Services at the site within the lead time. Unless otherwise agreed in writing by Crest Nicholson, the Goods will be delivered by the Provider in secure and suitable packaging at the Provider's expense and risk as to damage in transit;
- (f) its nominated suppliers and their respective employees will not engage in any activity that conflicts, or may conflict, with its obligations or duties under this Agreement;
- (g) it has full capacity and authority to enter into this Agreement; and
- (h) 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 cooperate with others. It will, at all times, use reasonable endeavours to ensure that Crest Nicholson does not breach its obligations under the CDM Regulations.

8.2 Where there is any breach of the warranties in Clauses 7.1 or 8.1; or if any obligation, warranty or requirement imposed by, given or stated in the Contract is not complied with, or the Goods (or any instalment of the Goods) are delivered damaged or not delivered at the specified time; Crest Nicholson will be entitled, at its sole discretion, without liability to the Provider (arising out of such action) and without prejudice to any other right or remedy, to take one or more of the following actions:

- (a) cancel the Contract and treat the Contract as having never been entered into;

- (b) reject the relevant Goods (in whole or in part) and any Goods already delivered that cannot be effectively and commercially used by reason of the non-delivery of any other Goods;
 - (c) refuse to accept any subsequent delivery of the Goods;
 - (d) recover from the Provider any costs reasonably incurred by Crest Nicholson in obtaining substitute Goods or Services from another supplier;
 - (e) require the Provider at its sole cost to replace or repair the Goods, or carry out such work as is necessary within 14 days so that the Goods conform to the Contract, Order and/or Specification;
 - (f) require the Supplier to promptly deliver sufficient Goods to comply with the quantity required and/or to carry out such further services to ensure the Services have been performed;
 - (g) require the Provider at its sole cost to re-execute the Services in accordance with the Contract, Order or Specification within 14 days;
 - (h) treat the Contract as discharged by the Provider's breach and:
 - (i) delay payment of the Agreed Price for the Goods and Services until the requirements of the Contract, Order and any Specification are entirely fulfilled,
 - (ii) refuse to make payment of the Agreed Price of the Goods or Services; or
 - (iii) require the repayment of any part of the Agreed Price of the Goods or Services that Crest Nicholson has paid, whether or not Crest Nicholson has previously required the Provider to: repair the Goods, supply any replacement Goods or re-execute the Services; and/or
- 8.3 If Crest Nicholson claims that an Order has not been fulfilled or has been incorrectly fulfilled, the Provider will be deemed to accept the validity of the claim unless it serves written notice on said claim, stating the reasons for its dispute within seven (7) days of the date of said claim.
- 8.4 If Crest Nicholson exercises any right under this Clause 8, it may, at its absolute discretion, require the Provider to collect the relevant Goods forthwith or return the Goods to the Provider at the Provider's sole cost.
- 8.5 Crest Nicholson's rights under this Clause 8 are in addition to any statutory remedies available to Crest Nicholson.
- 9 Crest Nicholson's Obligations**
- 9.1 Crest Nicholson will provide the Provider with such information, assistance and access to the delivery address as the Provider reasonably requires to comply with its obligations under this Agreement.
- 10 Fees and Payment**
- 10.1 Crest Nicholson will pay the Provider the Agreed Prices as stated in Schedule 2 (Agreed Price List) and as confirmed in the relevant Order in accordance with this Clause 10. The Agreed Price will be inclusive of all packaging, packing, labelling, insurance, delivery and installation costs incurred by the Provider in relation to the Goods and their delivery, unless otherwise specified in the Order.
- 10.2 Subject to Clause 10.3, the Agreed Prices will be reviewed and, if agreed by the parties in writing, revised prior to the start of each Rolling Period. In the event of a failure by the parties to agree the Agreed Prices, they will continue to apply without amendment.
- 10.3 The Agreed Prices will not exceed the prices charged by the Provider to any other customer purchasing the same or similar goods and/or services in the same or smaller quantities, and Crest Nicholson will be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Provider.
- 10.4 The Provider may only issue an invoice to Crest Nicholson on or after either the delivery of the Goods or the completion of the Services or the latter of each where both Goods and Services are provided. Invoices submitted early will be deemed to be received on the latter of: the date of delivery of the Goods or the completion of the Services. Invoices will be in such form as Crest Nicholson specifies and will be sent with such information as Crest Nicholson may reasonably require, including the purchase order number and product specific certifications numbers (e.g. Forest Stewardship Council chain of custody number)
- 10.5 Subject to Clause 10.8, on receipt of the Provider's invoice, Crest Nicholson will pay the Agreed Prices within the Payment Period.
- 10.6 Payment of the Agreed Prices will be made by BACS transfer to the account nominated in writing by the Provider, or by such other payment

method agreed in writing by the parties.

- 10.7 Crest Nicholson may set-off any amounts owed to it by the Provider, including any outstanding fees, demands or interest against the Agreed Prices.
- 10.8 If Crest Nicholson has a bona fide dispute regarding the whole or any part of any invoice issued by the Provider for the Goods or Services, it will notify the Provider of the nature of the dispute in writing no later than one (1) week before the end of the Payment Period, and giving all relevant details, including the amount to be withheld and the grounds for withholding payment. Crest Nicholson will be entitled to withhold payment of the amount in dispute until the dispute is resolved in accordance with Clause 30.1.
- 10.9 Without prejudice to any other right or remedy of the Provider, if Crest Nicholson fails to make any payment of any sums under this Agreement on the due date for payment then the Provider may charge Crest Nicholson, and Crest Nicholson will pay the Provider on demand, interest on the unpaid amount at the rate of three percent (3%) per annum above the then current base rate of [Barclays Bank] [amend as appropriate]. Interest will be due from the due date for payment until payment is received in full by the Provider.

10.10 [In order to encourage Crest Nicholson to place orders for the Goods and/or Services, the Provider has agreed to pay Crest Nicholson an Annual Rebate in accordance with Clauses 10.11 to 10.13.

10.11 Within [two (2) weeks] of the end of each year during the term of this Agreement, the Provider will send a report to Crest Nicholson that sets out:

(a) the Annual Spend; and

(b) the resulting Annual Rebate;

for the relevant year, and such other supporting information as Crest Nicholson may reasonably require to verify the same.

10.12 Crest Nicholson may issue an invoice at any time after its receipt of the report issued pursuant to Clause 10.11 above.

10.13 The Provider will pay the Annual Rebate within the Payment Period.]

[IF THE MANUFACTURER/SUPPLIER HAS AGREED TO PAY CREST A REBATE, YOU SHOULD AMEND THESE CLAUSES TO REFLECT THE COMMERCIAL DEAL. IF THE MANUFACTURER/SUPPLIER HAS NOT AGREED TO PAY CREST A REBATE, YOU SHOULD DELETE THESE CLAUSES 10.10 – 10.13.]

11 Product Recall

11.1 The Provider will immediately notify Crest Nicholson in writing, providing all relevant details, if it discovers that there is:

(a) any defect in the Goods that have been delivered to Crest Nicholson at any time; or

(b) any error or omission in the instructions for the use and/or assembly of the Goods;

(whether or not any such defect, error or omission represents a breach of the warranty in Clause 8.1 or any other Clause).

11.2 Crest Nicholson may, at its discretion, and at the Provider's own cost:

(a) recall any Goods (or any other products into which the Goods have been incorporated) already sold by Crest Nicholson to its customers. The Provider will undertake a refund, credit or replacement in each case at Crest Nicholson's option;

(b) issue any notification, whether in writing or otherwise, to its customers about the manner of use or operation of any Goods (or any other products into which the Goods have been incorporated) already sold by Crest Nicholson to its customers;

Crest Nicholson may do so in each case on the basis of the identification of any defect in the relevant Goods, or any error or omission in the instructions for their use or assembly (whether or not that defect, error or omission represents a breach of the warranty in Clause 8.1 or any other Clause) by Crest Nicholson, its customers or any third party.

12 Termination

12.1 Either party may terminate this Agreement immediately on giving the other written notice if:

(a) the other party commits any material or repeated breach of its obligations under this Agreement, and which (in the case of a breach capable of being remedied) is not remedied within 20 days of a written request to remedy the same; or

(b) the other party becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up; is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; if it convenes any meeting of its creditors, or makes an arrangement or compromise with its creditors; or otherwise becomes insolvent or suffers any similar process or event, whether in

the UK or otherwise.

12.2 Crest Nicholson may terminate this Agreement immediately on giving the Provider written notice if:

(a) any of the Provider's employees, [nominated suppliers or nominated supplier's employees] are — in the reasonable opinion of Crest Nicholson — negligent or incompetent in the performance of the Services; or **[DELETE THE WORDS IN SQUARE BRACKETS IF YOU ARE ENTERING INTO THIS AGREEMENT WITH A SUPPLIER AS OPPOSED TO THE MANUFACTURER.]**

(b) the Provider undergoes a change of Control.

12.3 If Crest Nicholson becomes entitled to terminate this Agreement, it may, at its discretion, instead decide to terminate any part, or all, of this Agreement; or any number of Orders and/or Contracts immediately on giving written notice to the Provider.

12.4 Upon termination or expiry of this Agreement for any reason whatsoever:

(a) the relationship of the parties will cease save as to the extent expressly provided for in Clause 12.5; and

(b) the Provider will immediately return to Crest Nicholson (or if Crest Nicholson so requests, destroy) all of Crest Nicholson's Confidential Information in its possession up to the Termination Date and , certify that it has done so. The Provider will make no further use of such Confidential Information.

12.5 The obligations in the following clauses will survive any termination or expiry of the Agreement for six (6) years from the date of termination: Clauses 7, 8, 10, 11, 12, 13, 14, 15 and 30. For the avoidance of doubt, the Annual Rebate will continue to be due for Goods and/or Services supplied after the Agreement has been terminated or has expired where the Order was placed prior to termination or expiry; or if the design process was commenced, but an Order was not placed prior to termination or expiry.

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

12.7 [If Crest Nicholson becomes entitled to terminate this Agreement, it may, at its discretion, instead decide to vary the Appointment Basis and to treat the Provider's appointment as a non-exclusive appointment immediately on giving written notice

to the Provider.] **[ONLY INCLUDE IN EXCLUSIVE AGREEMENTS]**

13 Confidential Information

13.1 Each party will keep secret and confidential all Confidential Information disclosed or obtained as a result of the relationship of the parties under this Agreement and will neither use nor disclose the Confidential Information, except for the purposes of the proper performance of this Agreement or with the prior written consent of the other party.

14 Intellectual Property Rights

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

14.2 Any and all Intellectual Property created or acquired in the course of, or as a result of, any work carried out by the Provider under or in pursuance of this Agreement, will, from the date of its creation or acquisition by the Provider (or otherwise promptly upon request by Crest Nicholson) belong exclusively, throughout the world, to Crest Nicholson.

14.3 The Provider agrees (and will promptly undertake at Crest Nicholson's request) to do all such acts or deeds, and execute all such documents as may be required by Crest Nicholson to put into practice the provisions and intentions of this Clause 14.

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

14.5 The Provider warrants that the use by Crest Nicholson, its employees, sub-contractors or agents of the materials provided as part of the Provider's provision of the Goods and/or Services under this Agreement will not infringe the rights of any third party. The Provider agrees to indemnify Crest Nicholson, and keep it indemnified at all times, against all or any costs, claims, damages or expenses incurred by Crest Nicholson (or for which Crest Nicholson may become liable) for any intellectual property

- infringement claim or other claim relating to the materials supplied by the Provider to Crest Nicholson during the course of providing the Goods and/or Services.
- 14.6 The Provider will not be liable for any use by Crest Nicholson of the created Intellectual Property for any purposes other than that for which the same was created in accordance with this Agreement.
- 15 Data Protection**
- 15.1 Additional capitalised terms in this Clause will have the meaning given to them in the Data Protection Laws unless otherwise defined in this Agreement.
- 15.2 Crest Nicholson will process data relating to the Provider and its employees in accordance with its Privacy Policy, which can be found on Crest Nicholson's website at: <http://www.crestnicholson.com/legal-information/privacy-policy>
- 15.3 The Provider will ensure it complies at all times with Data Protection Laws relating to its Processing of Crest Nicholson Personal Data. The Provider undertakes to perform its obligations under this Agreement in a manner that does not cause Crest Nicholson to breach Data Protection Laws relating to its Processing of the Crest Nicholson Personal Data. The Provider will indemnify Crest Nicholson, and keep Crest Nicholson indemnified, against all losses, damages, costs, expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by Crest Nicholson arising from any breach of the Provider obligations under this Clause 15.
- 16 Health and Safety**
- 16.1 At all times, the Provider will comply with all relevant Health and Safety Laws, including the provisions of the Health and Safety at Work Act 1974 and the current Construction (Design and Management) Regulations insofar as they relate to the Agreement. It will be the Provider's responsibility to ensure its employees, personnel, agents and sub-contractors comply with all relevant Health and Safety Laws.
- 17 Environmental Law**
- 17.1 It will be the Provider's responsibility to ensure its own compliance and that of its employees, personnel, sub-contractors and agents with all relevant Environmental Laws.
- 18 Insurance**
- 18.1 The Provider will maintain in force throughout the term of this Agreement, and for a period of 12 years following termination or expiry of this Agreement, the following insurances with reputable insurers at its own cost:
- (a) employers' liability insurance for a minimum of £5,000,000 (five million pounds) per claim;
 - (b) public liability insurance (including product liability) for a minimum of £5,000,000 (five million pounds) for each occurrence;
 - (c) professional indemnity insurance for a minimum of £10,000,000 (ten million pounds) for each occurrence; and
 - (d) such other insurances as are appropriate given its obligations under this Agreement, or as are required by law or contract.
- 18.2 From time to time during the term of this Agreement, the Provider will, on written request by Crest Nicholson, provide the evidence that Crest Nicholson reasonably requires to assess the Provider's compliance with its obligations under this Clause 18.
- 19 Customer Service**
- 19.1 The Provider agrees to work closely with Crest Nicholson to ensure that Crest Nicholson achieves its customer service objectives towards its unit purchasers during the new home warranty initial guarantee period and/or the defect liability period.
- 19.2 Where applicable, the Provider agrees that when remedying any defects under this Agreement, it will ensure that all its staff, sub-contractors and operatives are aware of, and abide by, the Customer Service Principles. These principles are outlined in the Crest Nicholson Supply Chain Code of Conduct, which will be available during the term of this Agreement from Crest Nicholson's website at: www.crestnicholson.com/legal-information/supply-chain
- 20 Force Majeure**
- 20.1 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.
- 20.2 Save as provided in Clause 20.3, Force Majeure will not entitle either party to terminate this Agreement. Neither party will be in breach of this Agreement, 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.
- 20.3 If the Force Majeure continues for longer than one (1) week, Crest Nicholson may terminate this Agreement at any time whilst such Force Majeure continues. Termination will be given by written notice.
- 21 **Relationship of the Parties**
- 21.1 The relationship between the parties will be that of two independent contractors. Nothing contained in this Agreement will render the Provider (nor the Provider's employees) an employee, worker, agent or partner of Crest Nicholson. Neither the Provider nor the Provider's employees will hold itself out as such.
- 22 **Indemnities**
- 22.1 The Provider will indemnify Crest Nicholson and its personnel and agents against, and be liable for, any: claims (whether for actual or consequential loss), demands, proceedings, damages, costs, loss, charges or liabilities arising from or incurred in connection with any breach of the Provider's obligations under this Agreement.
- 23 **Assignment**
- 23.1 Subject to Clause 23.2, the Provider may not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement without Crest Nicholson's prior written consent.
- 23.2 The Provider may, on giving written notice to Crest Nicholson, appoint a nominated supplier to deliver the Goods and/or perform the Services in accordance with this Agreement. This appointment of nominated suppliers will not relieve the Provider from any liability or obligation under this Agreement. The Provider will be responsible for the acts, omissions, defaults or negligence of its nominated suppliers as fully as if they were acts, omissions, defaults or negligence of itself.
- 24 **Code of Conduct**
- 24.1 At all times, the Provider, its employees, agents, representatives, sub-contractors and suppliers will maintain high ethical standards and adhere to, and act in accordance with, Crest Nicholson's Supply Chain Code of Conduct (as amended and updated from time to time). A copy of the latest version will be available during the term of this Agreement from Crest Nicholson's website at: <https://www.crestnicholson.com/legal-information/supply-chain>.
- 24.2 Any breach by the Provider, its employees, agents, representatives, sub-contractors and suppliers (whether with or without the Provider's knowledge) of the Supply Chain Code of Conduct will be deemed to be a material breach of this Agreement for the purpose of Clause 12.
- 25 **Bribery**
- 25.1 Additional capitalised terms in this clause will have the meanings given to them in the Bribery Act, unless otherwise defined in this Agreement.
- 25.2 The Provider warrants that it has not at any time prior to the date of this Agreement:
- (a) committed a Bribery Offence; or
 - (b) been formally notified that it is subject to an investigation or prosecution that relates to an alleged Bribery Offence.
- 25.3 The Provider undertakes that, during the term of this Agreement, neither it nor its Associated Persons will:
- (a) engage in any activity, practice or conduct that could constitute a Bribery Offence; or
 - (b) do or permit anything to be done that would cause Crest Nicholson or any of Crest Nicholson's employees, sub-contractors or agents to contravene any section of the Bribery Act, or otherwise incur any liability relating to the Bribery Act.
- 25.4 The Provider undertakes that, during the term of this Agreement, it and any Associated Persons will:
- (a) comply with all obligations arising out of the Bribery Act; and
 - (b) comply with Crest Nicholson's Anti-Bribery and Corruption Policy as amended, superseded and replaced from time to time. A copy of the latest version will be available during the term of this Agreement on Crest Nicholson's website at: <https://www.crestnicholson.com/investor-relations/corporate-governance/values-and-behaviour>
- 25.5 The Provider will notify Crest Nicholson immediately if it becomes aware, or has reason to believe that it has, or any of its Associated Persons have, breached any of the Provider's obligations under this Clause 25.
- 26 **Right to Work**
- 26.1 The Provider warrants to Crest Nicholson that all its personnel or agents have the legal right to work in the United Kingdom and that the Provider has seen, and has copies of, appropriate documentation to prove that right.

27 **Modern Slavery Act**

- 27.1 In performing its obligations under this Agreement, the Provider will, and will ensure that any of its employees will, comply with all applicable laws, statutes, and regulations in force relating to the Modern Slavery Act 2015. The Provider represents, warrants and undertakes that it conducts its business in a manner that is consistent with the principles of the Modern Slavery Act 2015.
- 27.2 The Provider will take reasonable steps to ensure that there is no modern slavery in any part of its own business or supply chain.
- 27.3 The Provider warrants that it has not any time prior to the date of this Agreement:
- (a) been convicted of any offence involving slavery; or
 - (b) been formally notified that it is subject to an investigation or prosecution regarding any offence or alleged offence of, or in connection with, slavery.

28 **Records and Audit**

- 28.1 The Provider will for a period of at least 12 years from the date of this Agreement maintain accurate, up-to-date and complete records (in a form suitable for inspection) relating to the performance of its obligations under this Agreement.
- 28.2 The Provider will submit to Crest Nicholson within 14 days of a request, such information, records, monthly management accounts or documents (redacted for any sensitive commercial information) in its possession or control that Crest Nicholson reasonably requests.
- 28.3 In each case that Crest Nicholson makes a request in accordance with Clause 28.2 it will be for the purpose of auditing any information supplied to Crest Nicholson under this Agreement, or verifying the Provider's compliance with its obligations under this Agreement.

29 **General**

- 29.1 Any person who is not party to this Agreement will not have any rights whether under the Contracts (Rights for Third Parties) Act 1999 or otherwise to enforce any term of this Agreement.
- 29.2 If any clause or part of any clause of this Agreement is found by any court or administrative body of competent jurisdiction to be void or unenforceable for any reason, that clause or that part of any clause will be deemed to be deleted from this Agreement. The parties may agree to substitute that clause with a new clause, which will, as far as possible, retain the

original intention of the parties. In such an event the remaining provisions of this Agreement will continue to have full force and effect.

- 29.3 No purported alteration or variation of this Agreement will be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the parties to this Agreement.
- 29.4 The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party will not be construed as a waiver of any later breach of the same or other provisions, nor will any delay or omission on the part of either party to exercise or enforce any right, power or privilege that it has, or may have, under this Agreement operate as a waiver of such right, power or privilege.
- 29.5 Any notices sent under this Agreement must be in writing. The notices may be served by personal delivery or by sending the notice by special delivery at the address given in the front sheet (or any other address the relevant party may give for the purpose of serving notices under this Agreement). Every notice will be deemed to have been served upon delivery if served by hand. If delivered by special delivery, it will be at the expiration of two (2) Business Days after despatch of the notice.

30 **Governing Law/Dispute Resolution**

- 30.1 Any dispute or difference arising under, or in connection with, this Agreement may be referred to adjudication in accordance with Section 108, sub-sections 1 to 4 of the Housing Grants Construction and Regeneration Act 1996 and the Scheme for Construction Contracts subject to the following provisions:
- (a) a party referring a dispute to an adjudication must give notice to the other requiring a dispute or difference to be referred to an adjudicator. 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. Failure to comply with these requirements will deny the adjudicator jurisdiction; and
 - (b) the adjudicator will be approved by Crest Nicholson. If not approved within five (5) days, the adjudicator will be appointed by the President or the Vice-President of the Royal Institute of Chartered Surveyors.
- 30.2 This Agreement and any claim or dispute arising out of, or in connection with, it (whether contractual or non-contractual in nature, such as claims in tort from breach of statute or regulation or otherwise) will be governed by and interpreted

exclusively in accordance with English Law and the exclusive jurisdiction of the English Courts (where both parties' right to refer such claim or dispute to adjudication in Clause 30.1.