

TERMS AND CONDITIONS FOR THE APPOINTMENT OF A CONSULTANT ('CONDITIONS')

1. APPOINTMENT OF CONSULTANT

- 1.1 References in these Conditions to 'Agreement' shall mean the contract between you and us under which you have agreed to perform the Services in accordance with and subject to the Agreement and these Conditions.
- 1.2 References in these Conditions to '**we**', '**us**', '**our**' or the '**Client**' shall mean **CROUDACE HOMES LIMITED** (company number 00813521) whose registered office is at Croudace House, Caterham, Surrey, CR3 6XQ and references in these Conditions to '**you**', '**your**', '**yours**' or the '**Consultant**' shall mean the consultant identified in the Agreement.
- 1.3 References in these Conditions to 'Site' and 'Project' shall have the meanings as given to them and described in the Agreement.
- 1.4 The Agreement supersedes any previous oral or written agreements or arrangements between you and us in respect of the Services. Your obligations, liabilities and duties under the Agreement shall be deemed to have commenced with effect from the date on which you first began to perform the Services. All sums (if any) paid to you to date in respect of work done in relation to the Project shall be considered payments on account of sums due under the Agreement. You undertake to observe and comply with the terms set out in the Agreement and observe, perform and comply with all of your obligations and duties under the Agreement.
- 1.5 The Agreement is to be read as a whole, but nothing contained in documents containing the Fees and/or Services shall override or modify anything which is contained in the Conditions. In the event of any ambiguity, conflict or discrepancy between any documents containing the Fees and/or Services relating to the Agreement and the Conditions, then the Conditions shall prevail. Any quotations and/or tenders received by us from you in respect of the Services are deemed to have been made subject to the terms of the Agreement. Any terms and conditions of yours are superseded, are of no effect and do not form part of or apply to the Agreement in all circumstances even if included as an appendix, attachment or schedule to the Agreement, unless expressly stated to the contrary in these Conditions.
- 1.6 Where there is any conflict, ambiguity or discrepancy within or between any of the documents forming part of the Agreement or any of the clauses, paragraphs, schedules and/or appendices, we shall instruct you as to which of the discrepant items is to be adopted and you shall (subject always to complying with clause 5.2) comply with such instruction at no cost to us and without any adjustment to the Fees (as defined in clause 4 below).
- 1.7 Where under the Agreement an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.
- 1.8 In these Conditions, unless the context otherwise requires:
- 1.8.1 any words in the singular also mean the plural and vice versa;
- 1.8.2 clause or paragraph headings, notes and footnotes are inserted for convenience only and shall not form part of or affect the construction or interpretation of these Conditions;
- 1.8.3 any reference to a clause or paragraph in these Conditions is a reference to a clause or paragraph of these Conditions;
- 1.8.4 any words or phrase preceding or following the terms: 'including', 'include', 'includes', '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 or following those terms and the use of the words 'other' or 'otherwise' shall not be construed as having a limiting effect;
- 1.8.5 any reference to gender shall include any gender;

- 1.8.6 references to a 'person' shall, where the context so requires, include individuals, bodies corporate, unincorporated associations, trusts, trustees, partnerships, a firm or any entity having legal capacity and all such words are to be construed interchangeably in that manner and any reference to a 'Party' shall be a party to the Agreement;
- 1.8.7 a reference to a statute or statutory provision is a reference to it as amended, extended, consolidated, replaced or re-enacted from time to time;
- 1.8.8 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.8.9 the Agreement shall be binding on, and enure to the benefit of, the Parties to the Agreement and their respective successors and permitted assigns, and references to any Party shall include that Party's successors in title and permitted assigns;
- 1.9 Where one provision of the Agreement imposes upon you a standard, duty or obligation which is more onerous than, or additional to, that imposed by another provision, then the relevant standards, duties or obligations shall, so far as possible, be treated as cumulative, failing which the more onerous standard, duty or obligation shall prevail.
- 1.10 Any amendment or variation to the terms of the Agreement shall be binding only if in writing and agreed by the person authorised by us and specified in the Agreement (the '**Authorised Person**'). We shall be entitled to replace the Authorised Person on giving notice to you that we have appointed a replacement to perform such role. Any consent or approval required to be given by us pursuant to these Conditions must be obtained before the act or event to which it applies is carried out and shall be effective only when the consent or approval is given in writing by the Authorised Person.
- 1.11 You agree to execute and deliver to us such documents and instruments and shall use all reasonable endeavours to procure that any necessary third party shall execute and deliver such documents and instruments and you shall perform such acts and take such further actions as may reasonably be required for the purpose of giving full effect to the Agreement and securing the full benefit of the rights, powers and remedies conferred upon us under the Agreement.
- 1.12 Any typographical, clerical, arithmetical or other error or omission in the Contract shall be subject to correction by the Company without liability on the part of the Company.
- 1.13 Where you comprise two or more persons:
- 1.13.1 any obligations on your part contained or implied in the Agreement are deemed to be joint and several obligations on the part of those persons; and
- 1.13.2 references to you shall include references to each and any of those persons.

2. STANDARD OF CARE

- 2.1 You agree to perform the list of services as set out, attached and/or referred to in the Agreement, together with any services that are reasonably incidental thereto and any varied or additional services performed pursuant to clause 6 below (in these Conditions, the '**Services**'). Any services which are considered to be incidental to your performance of the Services shall be deemed to be included in the Fees.
- 2.2 In performing the Services, you warrant and undertake that you have exercised and shall continue to exercise the reasonable skill, care and diligence to be expected of a suitably qualified and competent professional consultant of the relevant discipline experienced in carrying out services similar to the Services in relation to projects of a similar nature, size, scale, scope and complexity to the Project.
- 2.3 You acknowledge that we may rely on your professional expertise when performing the Services and you acknowledge that we may rely on any certificate or written approval or statement you give in respect of the Project. You acknowledge that we are deemed not to have any intrinsic expert knowledge or skill relating to the Services.
- 2.4 You warrant and undertake that you have exercised and shall continue to exercise the standard of care required by clause 2.2 above, to see that you have not (to the extent that you are required to do so when performing the Services) specified, approved and/or authorised for use any materials, goods, equipment,

plant or products which by their nature or application contravene any applicable laws or statutory requirements, BSI British Standard or Code of Practice current at the date of specification or which, at the time of specification, approval or authorisation for use, are generally accepted or known by members of the construction industry to be deleterious or pose a threat to health and safety or to the structural stability, performance, physical integrity or durability of buildings and/or structures and/or finishes and/or plant and machinery in the particular circumstances in which they are specified, approved and/or authorised for use.

- 2.5 If in the performance of the Services, you become aware that you or any other person has specified or used, or authorised or approved the specification or use by others of any materials, goods, equipment, plant or products referred to in clause 2.4, the Consultant shall notify the Client in writing as soon as reasonably practicable. This clause 2.5 does not create any additional duty for the Consultant to inspect or check the work of others which is not otherwise expressly required by the Agreement.
- 2.6 Without prejudice to any other rights and remedies available to us, you shall be liable for all reasonably foreseeable and legally enforceable losses, costs, damages, expenses, liabilities, claims, proceedings accrued, suffered or incurred in connection with any breach of contract, breach of statutory duty, negligence or default by you or any of your sub-consultants, employees, servants or agents.

3. INSURANCE

- 3.1 You warrant and undertake that you have and shall continue to maintain professional indemnity insurance with a limit of indemnity of not less the amount and of the type specified in the Agreement and, if no amount is specified, you shall have and continue to maintain such insurance with a limit of indemnity of not less than five million pounds (£5,000,000) for any one claim for so long as you are liable under or in connection with the Agreement, subject to such insurance being available in the market at commercially reasonable rates and terms. Payments of any increased or additional premiums required by insurers by reason of your own claims record or other acts, omissions, matters or things peculiar to it shall be deemed to be within your obligations.
- 3.2 As and when you are reasonably requested to do so by us, you shall provide us with a copy of an insurance verification certificate or letter from your insurers or insurance brokers to evidence that such professional indemnity insurance is being maintained and is in force.
- 3.3 You shall as soon as reasonably practicable notify us if the insurance cover you are required to maintain under this clause ceases to be available or in your reasonable opinion is likely to become unavailable in the market at reasonable premium rates and shall specify the reason or reasons why such an insurance cover is unavailable or is likely to cease to be available so that we and you can discuss the means of best protecting our respective positions in the absence of such insurance including but not limited to you taking out such insurance cover as may be obtainable at commercially available rates.
- 3.4 You shall not do or omit anything whereby the insurance policy for the time being in force may become void or voidable. To the extent you recover any sums under any policy of insurance in respect of a liability you have to us in connection with the Agreement, you shall hold such sums on trust for us and pay such sums directly to us without set-off, deduction or withholding.
- 3.5 For the avoidance of doubt, none of the provisions obliging you to maintain insurance are intended in any way whatsoever to operate to limit or exclude your liability.

4. THE FEES

- 4.1 In consideration of the satisfactory performance by you of the Services, we shall pay to you the fees set out in the Agreement (in these Conditions, the '**Fees**'). If you materially fail or neglect to carry out the Services or any part of them, we may defer payment of the Fees until such time as you have duly performed the relevant element of the Services.
- 4.2 If the duration of the Services is intended to be less than forty-five (45) days then you shall be entitled to submit an application for payment and VAT invoice for payment on completion of the Services. If the duration of the Services is intended to be equal to or more than forty-five (45) days, you shall be entitled to payment in instalments in accordance with and subject to the terms of the Agreement and we will pay to you the Fees in instalments as specified in the Agreement as payments on account of the Fees.
- 4.3 Except where the duration of the Services is intended to be less than 45 days, then if no instalments are specified in the Agreement, you may submit interim applications for payment and invoices for a proportion of the Fees agreed between you and us (acting reasonably) or, if not agreed, then calculated by applying

a reasonable assessment of the proportion of the work completed as against the aggregate total of the Fees at intervals of not less than one (1) month, beginning not earlier than one (1) month after you begin performing the Services or one (1) month after the date of the Agreement, whichever is the later.

- 4.4 You shall submit to us an application for payment and invoice (showing the correct amount of VAT due) for each instalment (or interim application for a proportion of the Fees submitted pursuant to clause 4.3) of the Fees (or the total of the Fees, if applicable) together with any supporting documents that are reasonably necessary to check the application for payment and invoice and verify the sum claimed. The invoice and supporting documents (if any) shall specify the sum that you consider to be or have been due on the payment due date in respect of that instalment of the Fees (or proportion in accordance with clause 4.3, or the total of the Fees, if applicable) and the basis upon which that sum is calculated.
- 4.5 Payment shall be due on the twenty-first (21st) day after the date on which we receive each properly prepared and valid application for payment and invoice pursuant to clause 4.4 (in these conditions, the **'Payment Due Date'**).
- 4.6 We shall give notice to you specifying the amount (if any) which we consider to have been due at any Payment Due Date (in these Conditions, the **'Notified Sum'**) and the basis on which that amount was calculated not later than five (5) days after the date on which any payment becomes due from us or would have become due if you had carried out your obligations pursuant to the Agreement and no set off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts.
- 4.7 The final date for payment shall be nine (9) days after the relevant Payment Due Date.
- 4.8 Unless we have served a notice under clause 4.9, we shall pay to you the Notified Sum (or if we have not served a notice under clause 4.6 specifying the Notified Sum, then the sum referred to in the invoice referred to in clause 4.4) on or before the final date for payment of each instalment.
- 4.9 Not later than one (1) day before any final date for payment (in these Conditions, the **'Prescribed Period'**), we may give you notice (in these Conditions, a **'Pay Less Notice'**) that we intend to pay less than the Notified Sum. Any Pay Less Notice shall specify:
- 4.9.1 the sum we consider to be due on the date the notice is served; and
- 4.9.2 the basis on which that sum is calculated.
- 4.10 Notwithstanding any other provision of the Agreement, if you become insolvent after the Prescribed Period, we shall not be required to pay you the Notified Sum.
- 4.11 In relation to the requirements for the giving of payment notices and Pay Less Notices, it is immaterial that the amount then considered to be due may be zero.
- 4.12 If we fail to pay any amount due to you by the final date for payment of that amount, you are entitled to simple interest on the amount due and unpaid as from the final date for payment to the actual date of payment at the rate of 4% above the base rate of the Bank of England. You acknowledge that this rate of interest is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.13 Unless expressly stated otherwise in the Agreement, the Fees include all reasonable expenses including but not limited to printing, photocopying, travelling costs and disbursements, travelling time, telephone charges and all other out of pocket expenses, but exclude VAT. You must promptly provide a properly addressed and valid VAT invoice in respect of any VAT chargeable by you to us under the Agreement.
- 4.14 We may deduct from any payment due under the Agreement the amount of any claims, set-off or counterclaim by us against you under the Agreement or any other contract or agreement we have entered into or will enter into with you (whether before or after the date of the Agreement) after giving you a notice stating our intention to do so. This is in addition to and not in substitution for any other rights of counterclaim, legal and equitable set off or abatement available to us.
- 4.15 For the avoidance of doubt, we shall be entitled to recover from you any overpayments made at any time. All interim payments made to you shall be payments on account only of sums due under the Agreement.

- 4.16 Notwithstanding any other provision of the Agreement, any Claim must be notified by you in writing and received by us not later than thirty (30) days after the event or matter first occurring which gives rise to the Claim. Each Claim shall be properly documented with appropriate references to the contractual provisions on which you wish to rely, together with copies of all relevant correspondence and documentation. Compliance with the requirements of this clause shall be a condition precedent to any right on your part to be granted or obligation on our part to grant any extension of time and/or to any right on your part to be paid or obligation on our part to pay any additional payments pursuant to or arising out of or in connection with the Agreement. If you fail to comply with those requirements, then you irrevocably waive your right, both under the Agreement and at common law, in equity and/or pursuant to statute to any such entitlement to any extension of time or to additional payment.
- 4.17 Your rights, powers and remedies available to you under the Agreement shall be your exclusive and exhaustive rights and remedies available to you in respect of all matters under, arising out of or in connection with the Agreement, whether such rights and remedies arise in respect of or in consequence of a breach of contract or breach of statutory duty or a tortious or negligent act or omission which gives rise to a remedy at common law. Except as expressly provided for in the Agreement, we shall not be obligated or liable to you in respect of any damages, costs, losses or expenses suffered or incurred by you that arise out of or in connection with the Agreement or the Services. Any other rights and remedies that you may otherwise have had at law are excluded to the fullest extent permitted by law.

5. PERFORMANCE OF THE SERVICES

- 5.1 In carrying out the Services, you shall (using the standard of care referred to in clause 2.2) perform the Services regularly and diligently, promptly and efficiently and, without prejudice to the foregoing, you shall:
- 5.1.1 perform your duties and obligations under the Agreement regularly and diligently, promptly and efficiently;
 - 5.1.2 obtain from us details of our programme, cost plan and brief relating to the Project and/or the Site (as may be updated from time to time) and have regard to and comply with such programme, cost plan and brief when providing the Services;
 - 5.1.3 obtain details of and then have regard to any legal rights or interests of third parties that may affect the Site insofar as they relate to the Services;
 - 5.1.4 not infringe any rights, reservations, covenants, restrictions, stipulations or other encumbrances affecting or binding upon the whole or any part of the Site or any neighbouring land;
 - 5.1.5 comply with all our reasonable instructions and directions in relation to the Services;
 - 5.1.6 co-operate and collaborate with us and with any other consultants, contractors and any other individuals, organisations and/or statutory, public or regulatory body or authority (the identity of whom is notified to you) in relation to the Project;
 - 5.1.7 co-ordinate and integrate your design with any design prepared by others;
 - 5.1.8 have regard to, observe and comply with the requirements of the latent defects insurance warranty provider;
 - 5.1.9 attend such meetings as reasonably required by us in connection with the Services, the Project and/or the Site upon receipt of prior written notice;
 - 5.1.10 keep us fully and properly informed from time to time concerning all aspects of the Project to which the Services relate and shall further provide us from time to time with all such information in connection with the Project as we may reasonably require;
 - 5.1.11 observe and comply with any requirements and restrictions contained in or referred to in any of the documents comprising the Agreement;
 - 5.1.12 not do anything whether by act, negligent omission or statement which causes delay to the completion of the Project or which causes a material increase in the overall construction cost of the Project, unless with our prior written consent; and

5.1.13 seek whenever possible to assist us to save costs and to design, execute, carry out and complete the Project in the most cost-efficient way consistent with good design practice and with safety.

5.2 In carrying out the Services, you additionally agree that you shall observe and comply with any and all applicable laws, legislation, statutes, regulations, rules, orders, BSI British Standards and codes of practice and any and all consents, permissions, permits and/or approvals relating to the Site and/or the Project.

5.3 We have entered into or may enter into agreements with other third parties in respect of the Site and/or the Project. Provided we give you copies of the relevant agreement (or relevant extracts), you shall observe, perform and comply with all obligations in such agreements in so far as they relate and apply to the Project and/or the Site and you shall not do or omit to do anything or permit anything to be done, which might cause, constitute or contribute to any breach by us of any of our obligations or duties under any agreement with any other third party or result in the diminution of any of our other rights or remedies in connection with such agreements. You shall indemnify, save, defend and hold harmless us from and against all liabilities, costs, losses, damages, expenses, claims and proceedings accrued, suffered or incurred by us arising from:

5.3.1 any breach, non-observance or non-performance by you of any of your obligations or duties under or in connection with the Agreement which puts us in breach of any of the agreements we have entered into or may enter into with other third parties; and

5.3.2 any act, negligent omission or default by you or anyone for whom you are responsible which involves us in any liability to any third party.

6. VARIATIONS

6.1 We may at any time by notice in writing to you vary the Services which you are to provide for any reason. The variation may be by addition to, omission from, or alteration to the Services and will not prevent us from being entitled to arrange for part or all of the Services to be performed by a third party. No variations shall be paid for unless instructed in writing by the Authorised Person. In the event of such a variation, the Fees will be adjusted by addition or reduction as we agree with you or failing agreement in such a way as is fair and reasonable having regard to any applicable rates and prices in the Agreement PROVIDED ALWAYS THAT if we omit the whole or any part of the Services for any reason (including but not limited to engaging a third party to perform the whole or any part of the Services), you will not under any circumstances be entitled to claim any costs, losses or expenses from us arising from such omission. Any omission of part or all of the Services shall not be treated as a breach of contract by us.

6.2 In the event we omit any part of the Services due to any breach or default by you, we shall be entitled to claim and/or deduct from any amounts otherwise due to you all additional costs, losses and expenses accrued, suffered or incurred by us in connection with making alternative arrangements to perform the relevant services omitted from the Services (and whether by engaging alternative external consultants or allocating internal staff resources).

6.3 You shall not be paid or reimbursed for any extra work which you have to undertake arising from any error, omission, breach or default by you or anyone for whom you are responsible.

6.4 You accept that the nature of the services to be provided are such as may require a degree of abortive work, reworking, renegotiation and repetition, the extent of which cannot be accurately forecast. You agree that no such abortive work, reworking, renegotiation or repetition shall entitle you to any additional fee whether due to our instructions (subject always to you complying with clause 5.2) or to other circumstances brought about by us or otherwise, providing it is deemed to be reasonable in terms of scope and extent given the nature of this Project.

7. THIRD PARTY RIGHTS / RELIANCE LETTERS / COLLATERAL WARRANTIES

7.1 Except as expressly set out in the Agreement, nothing in the Agreement shall confer any right pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not a party to it. With effect from the date of the Agreement, the obligations and duties imposed on you and the rights and remedies vested in us under or in connection with the Agreement shall be enforceable by and shall (in addition) vest in any affiliate, associate, associated entity or company and/or group company of ours and/or any person or persons providing finance in respect of the Project or the Site or any part of them and/or any purchaser, owner or tenant having or acquiring a freehold or long leasehold interest in the whole or any part of the Site pursuant to the Contracts (Rights of Third Parties) Act 1999. Notwithstanding any other provision of

the Contract, it shall not be a defence to a claim by any third party that the loss or damage the third party has suffered or incurred is different in type or character from the loss or damage that we might have suffered or incurred or that we could not have suffered or incurred the same, any or as much loss or damage as the third party or we could not now suffer a loss or damage of the type or character that the third party has suffered or incurred.

- 7.2 In any action or proceedings brought by any third party, you shall not be entitled to rely on:
- 7.2.1 any set-off with respect to payment of the Fees under the Agreement; or
 - 7.2.2 any counterclaim which would have been available if such proceedings had been brought by us; or
 - 7.2.3 any set-off or counterclaim relating to any matter not connected to the Project or the Site.
- 7.3 We and you shall be entitled to agree any amendment, variation, waiver or release under or arising from or in respect of the Agreement, and (in accordance with the terms of the Agreement) to terminate your engagement under the Agreement or otherwise bring the Agreement to an end without the consent of any third party being required.
- 7.4 Not later than twenty-eight (28) days after receipt of details of relevant particulars, you shall without requiring any further fee execute as a deed and deliver to us a deed of collateral warranty in the form attached to the Agreement, mutatis mutandis, in favour of any third party or parties who have or will have an interest in the Project or the Site or any part of it and (in addition) any other third party or third parties nominated by us or such other form as may be reasonably required by us.
- 7.5 Not later than twenty-eight (28) days after receipt of details of relevant particulars, you shall without requiring any further fee execute as a deed and deliver to us a letter or letters of reliance in the form attached to the Agreement, mutatis mutandis, in favour of any third party or parties who have or will have an interest in the Project or the Site or any part of it and (in addition) any other third party or third parties nominated by us.

8. COPYRIGHT MATERIAL

- 8.1 Copyright in any material, information, surveys, documents, designs, calculations, plans, drawings, reports or specification prepared by you or on your behalf in connection with the Project or the Site (in these Conditions, '**Copyright Material**') shall remain vested in you, but you hereby grant to us and our successors in title and permitted assigns, with immediate effect, an irrevocable, non-terminable, royalty-free, non-exclusive licence to copy, use, adapt, modify and reproduce the Copyright Material for any and all purposes relating to the Project and/or the Site and for any other purposes referred to in the Agreement except that it shall not include the right to reproduce the designs contained in any Copyright Material for the purposes of any extension to the Project. You must only use the Copyright Material for the purposes and for the benefit of the Project. This licence shall include the right to grant sub-licences in the terms of this licence and shall be transferable to third parties without your consent. This licence shall remain in full force and effect notwithstanding the completion of your obligations or the termination of your engagement under the Agreement or any dispute in connection with the Agreement.
- 8.2 You shall not be liable for any use by us or our appointees of any of the Copyright Material for any purpose other than that for which the Copyright Material was prepared and provided by you.
- 8.3 You warrant and undertake that you have not and shall not produce, specify or employ any Copyright Material in breach of any copyright, patent or other intellectual property right of any third party.
- 8.4 If, for any reason, we do not proceed with the Project, you shall not copy, use, reproduce, offer or disclose to any other person interested in the Site any of the Copyright Material without our prior written consent.
- 8.5 To the extent that you do not have ownership of the copyright in the Copyright Material, you shall notify us in writing of the same and procure from the copyright owner a licence with full title guarantee (free from encumbrances) to us in respect of the Copyright Material in the same terms as set out in clause 8.1.
- 8.6 You will at any time provide to us on our request copies (in hard copy, CAD, BIM format, electronic format and (in addition) such other format as we may reasonably require) of the Copyright Material and any other information, correspondence and documentation you have prepared in connection with the Project and

you agree not to exercise any lien for any reason which you might otherwise be entitled to exercise over the Copyright Material.

8.7 You hereby waive and agree not to assert any moral rights in the Copyright Material pursuant to the Copyright Designs and Patents Act 1988 or otherwise.

8.8 Notwithstanding any other provision of these Conditions or the Agreement, the ownership of all the Copyright Material prepared by you or on your behalf in connection with the Services and/or the Project and/or the Site shall pass automatically and immediately to us (with full title guarantee and free from encumbrances) in the event you become insolvent and you shall forthwith upon request deliver all or any such documents to us (save for the ownership of any Copyright Material which was owned by you prior to the commencement of the Services and which were not created by you or on your behalf in connection with the Project or the Site).

9. SUSPENSION AND TERMINATION

9.1 We may instruct you to suspend performance of the Services at any time and for any reason on reasonable notice.

9.2 Without prejudice to our other rights and remedies available to us under or in connection with the Agreement, we may terminate your engagement under the Agreement at any time and for any reason by giving to you seven (7) days' prior written notice. On expiry of such notice period, your engagement under the Agreement will terminate automatically.

9.3 Upon termination of your engagement under the Agreement pursuant to clause 9.2, you shall be entitled to apply for payment in accordance with clause 4 and we will pay (subject to any right of set-off or counterclaim):

9.3.1 any instalments of the Fees and other sums which have become due to you prior to the date of such termination and which remain unpaid; and

9.3.2 a fair and reasonable proportion of the next following instalment of the Fees commensurate with the Services which you have performed up to the date of such termination.

9.4 Without prejudice to our other rights and remedies available to us in connection with the Agreement, we may also terminate your engagement with immediate effect on written notice if you commit any breach of the terms of the Agreement or in the event of your insolvency.

9.5 If we terminate your engagement under the Agreement pursuant to clause 9.4:

9.5.1 we shall not be obliged to make any further payment to you until completion of the Project or until we decide that we do not intend to complete the Project, whichever is the earlier; and

9.5.2 you shall be liable to us for all costs, losses, damages, claims and expenses which we suffer or incur arising from or in connection with such termination.

9.6 We shall not be liable to you for any losses, costs, damages, claims or expenses suffered or incurred by you arising from or in connection with termination of your engagement under the Agreement under any circumstances (and, without limitation, we shall not be liable to pay any amounts in respect of loss of profit, loss of contract, loss of opportunity).

9.7 Upon termination or suspension of your engagement under this clause 9, you shall if required by us, deliver to us copies of the Copyright Material (whether in the course of preparation or completed) in such format as we require and you will immediately take all necessary steps to end in an orderly manner the provision (by you) of the Services.

9.8 If we purport to terminate your engagement under clause 9.4, but no ground for termination under clause 9.4 has arisen, or any ground that had arisen had been waived by us, then we shall be deemed to have decided to terminate and to have terminated your engagement under the Agreement under clause 9.2.

9.9 Notwithstanding any termination or suspension of your engagement under the Agreement, the provisions of the Agreement shall continue to bind both parties insofar as and for as long as may be necessary to give effect to their respective rights and obligations under the Agreement. Termination of your

engagement under the Agreement shall not prejudice or adversely affect any of our accrued rights and remedies.

10. ASSIGNMENT / SUB-LETTING

- 10.1 You cannot sub-let all or any part of the Services or assign or charge all or any part of the Fees or any of your rights or benefits under the Agreement without our prior written consent (such consent not to be unreasonably withheld or delayed).
- 10.2 Notwithstanding whether or not any part or all of the Services may be sub-let, you shall remain responsible and liable for all services and duties carried out in respect of the Services. Any sub-letting of part or all of the Services, whether or not we have given our consent, shall not in any way relieve you from or reduce any of your obligations, duties and liabilities arising from or in connection with the Agreement.
- 10.3 We may assign the benefit of or any of our rights under the Agreement to any person by way of absolute legal assignment on two (2) occasions.
- 10.4 You shall not be entitled to contend that any person to whom the benefit of the Agreement is assigned in accordance with this clause is precluded from recovering under the Agreement any loss incurred by such assignee resulting from any breach of the Agreement (whenever happening), by reason of the fact that such person is an assignee and not a named party under the Agreement or by reason that we or any intermediate assignee or party escaped any loss or damage by reason of the disposal of any interest in the Project or any part of them or that we or any intermediate beneficiary has not suffered or incurred the same, any or as much loss or damage as such assignee or because such loss or damage is different that which would have been suffered or incurred by us or any other assignee.

11. POLICIES AND PROCEDURES

- 11.1 You shall comply with (and procure that your employees, servants and agents comply with) all aspects of our policies and procedures relevant to the Services, which are current as at the date of the Agreement and as may be updated from time to time (copies of which have been provided and are available for inspection during business hours at our office address or on request).
- 11.2 For the avoidance of doubt, you acknowledge that we have a duty to prevent sexual harassment of our staff (including, but not limited to, employees, workers, and temporary staff) and do not tolerate such behaviour. You agree that compliance with our policies and your obligations under clause 5 of this agreement both include compliance with our Dignity at Work (Bullying & Harassment) Policy (as may be updated from time to time) and any other steps which are reasonable for you to take in relation to our staff or the conduct of you or any of your sub-consultants, employees, servants or agents. You agree that
- 11.2.1 you shall promptly notify our Group HR Director of any incident of sexual harassment which is connected to the workplace and involves any of our staff, and will take such reasonable steps as we require and
- 11.2.2 you shall promptly investigate any complaints of sexual harassment by your staff and take appropriate disciplinary action where warranted, notifying the Company of the outcome of any such investigation and action taken in a timely manner.

You acknowledge that any incident of sexual harassment may form grounds for termination of this agreement.

12 UK LIVING WAGE COMPLIANCE

- 12.1 You acknowledge that we are accredited by the Living Wage Foundation and agree the following in relation to all Relevant Staff:
- 12.1.1 You will ensure that you pay no less than the UK Living Wage or the London Living Wage (as applicable to each individual) in connection with all and any work carried out pursuant to the Agreement or in the delivery of the Project.
- 12.1.2 You will stay up to date with Living Wage announcements by the Living Wage Foundation and will (i) within six months of the official announcement date of any increased UK Living Wage or London Living Wage, implement such increases, and (ii) notify all Relevant Staff of the date of such implementation by no later than one month after the date of the relevant official announcement.

- 12.2 You shall provide reasonable assistance and cooperation to us in maintaining accreditation by the Living Wage Foundation. The parties therefore agree:
- 12.2.1 You shall not bring us into disrepute in connection with the implementation of either the UK Living Wage or the London Living Wage.
 - 12.2.2 You will include appropriate clauses regarding payment of the UK Living Wage or the London Living Wage in all contractual arrangements with Relevant Staff.
 - 12.2.3 You shall keep adequate records to demonstrate compliance with clause 12.1 above and shall make those records available to us and/or the Living Wage Foundation upon our request.
 - 12.2.4 In the event that either we or the Living Wage Foundation are not satisfied with your records, or have reasonable grounds to doubt your implementation of the Living Wage, we shall be entitled to require you to provide additional reasonable evidence of compliance with clause 12.1 above.
 - 12.2.5 In the event that the Living Wage Foundation requests access to any Relevant Staff and/or any relevant trade union, you will take such steps as are reasonable and necessary to permit and facilitate such meetings or communications.
 - 12.2.6 You will procure that all and any sub-contractor engaged in relation to the performance of this Agreement or the Project will comply and behave consistently with your above obligations in relation to the payment of the UK Living Wage and the London Living Wage, record keeping, and access to staff and trade unions.
 - 12.2.7 A material or persistent breach of any of your agreed obligations relating to the Living Wage may be treated as a qualifying breach of the Agreement for the purposes of the termination provisions in this agreement.
 - 12.2.8 You shall indemnify, save, defend and hold us harmless from and against all liabilities, awards, costs, losses, damages, expenses, claims and proceedings accrued, suffered or incurred arising from any claim by any Relevant Staff in relation to the Living Wage, including any claim for unlawful deductions from wages.

12.3 For the purposes of these clauses, the following words or expressions shall have the precise meanings set out below:

Living Wage Foundation

means the Centre for Civil Society Limited, a wholly owned subsidiary of Citizens UK Charity, operating as the Living Wage Foundation and all or any successors or assignees of the same.

London Living Wage

means an amount not less than the London Living Wage announced from time to time by the Living Wage Foundation and which is payable to Relevant Staff whose work is based in the City of London or within the boundaries of any of the London Boroughs.

Relevant Staff

means any individual aged eighteen or over who is not an apprentice and who is engaged by [you] [the Contractor/Supplier] in relation to the performance of this agreement and carries out such work or activities for a minimum of two hours a week for a consecutive period of eight weeks or more.

UK Living Wage

means an amount not less than the UK Living Wage announced from time to time by the Living Wage Foundation and which is payable to Relevant Staff whose work is based outside of both the City of London and the boundaries of all the London Boroughs.

13. BRIBERY ACT COMPLIANCE

13.1 You shall and shall procure that any of your sub-consultants, employees, associated persons or other persons performing services in connection with the Agreement shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption practices including the Bribery Act and the Guidance (together 'the **Bribery Act Requirements**') and comply with our Anti-bribery Policy ('the **Bribery Act Policy**') as we may update the same from time to time, a copy of which is available for inspection at our registered office at all times during working hours upon request and on our website.

13.2 You shall have and maintain in place throughout the term of the Agreement your own policy and procedures including adequate procedures (in accordance with the six principles set out in the Bribery Act 2012 Government guidance dated 11 February 2012 as subsequently updated or replaced) to ensure compliance with the Bribery Act Requirements and the Bribery Act Policy and shall enforce them whenever appropriate and shall be directly liable to us in the event of any breach of this clause 13 by you or any associated person and you shall indemnify us for any costs, losses, damages or expenses consequent upon such breach howsoever arising.

14. MODERN SLAVERY ACT COMPLIANCE

14.1 In performing your obligations under the Agreement, you shall comply and shall ensure that each of your sub-consultants, employees, servants and agents shall comply with:

14.1.1 the Modern Slavery Act 2015; and

14.1.2 Our Anti-Slavery Policy as we may update the same from time to time, a copy of which is available for inspection at our registered office at all times during working hours upon request and on our website.

14.2 You shall permit us and our third party representatives, on reasonable notice, but without notice in case of any reasonably suspected breach of your obligations under the Agreement, to have access to and take copies of your records and any other information and to meet with the any of your sub-consultants, employees, servants or agents to audit your compliance with your obligations under the Agreement.

15. ECONOMIC CRIME AND CORPORATE TRANSPARENCY ACT COMPLIANCE: FAILURE TO PREVENT FRAUD

15.1 The Consultant shall during the term of this agreement:

- (a) not engage in any activity, practice or conduct which would constitute fraud, including but not limited to a specified fraud offence under section 199(6) of the Economic Crime and Corporate Transparency Act 2023;
- (b) comply with the Client's Anti-fraud Policy and appendices attached thereto as updated from time to time which are available on the Client's website. The Consultant shall provide supporting evidence of compliance as the Client may reasonably request;
- (c) notify the Client as soon as reasonable practicable using the applicable reporting mechanism in the Client's Anti-fraud Policy if it becomes aware of any suspected or actual breach of clause 15.1(a), or has reason to believe that it has received a request or demand to commit a fraud offence within the meaning of section 199(6) of the Economic Crime and Corporate Transparency Act 2023, in connection with the performance of this agreement;
- (d) establish, maintain and enforce its own reasonable procedures to prevent the commission of fraud and to ensure compliance with clause 15.1(a) and clause 15.1(b) by the Consultant and any employee, agent, subcontractor, or other person who performs services on behalf of the Client pursuant to this Agreement. Reasonable procedures are defined in accordance with Chapter 3 of the *Guidance for the offence of failure to prevent fraud* as published by the UK Government in November 2024, any subsequent versions of this Guidance, or subsequent other statutory materials addressing the definition of reasonable procedures within the meaning of section 199(6) of the Economic Crime and Corporate Transparency Act 2023;
- (e) if requested, co-operate with and provide all necessary assistance to the Client in order to enable the Client to investigate and/or monitor compliance with clause 15, including but not limited to that which is reasonably required to provide information to a relevant department or agency to report or investigate a suspected fraud offence;

15.1 The Consultant shall ensure that any of its agents, consultants, suppliers, contractors, subcontractors or other persons engaged in performance of the Consultant's obligations under this agreement do so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Client in this clause 15.

15.2 The Client reserves its rights to treat any breach of clause 15 as a breach of a material clause, and to subsequently require the Consultant to take immediate steps in order to remedy the breach in its entirety and/or to terminate the contract under clause 9.4 with effect from a date of the Client's choosing. The Consultant shall be directly liable to us in the event of any breach of this clause 15 by you or any associated person and you shall indemnify the Client for any costs, losses, damages or expenses consequent upon such breach howsoever arising.

16. COMPLIANCE PROVISION

16.1 You warrant and undertake that you have and shall continue to have the competence, skills, experience and organisational capability to enable you to comply with all of your obligations under all statutory requirements.

17. WAIVER / APPROVALS

17.1 Failure or delay by either Party at any time in exercising any right, power or remedy provided under or in connection with the Agreement or by law or to enforce any provision of the Agreement against the other shall not be construed as a waiver of such entitlement or any other right or remedy and shall not affect the validity of the Agreement or any part or parts hereof or the right, power or remedy of the relevant Party to enforce any provision in accordance with its terms, nor shall it preclude or restrict any further exercise of that or any other right or remedy. The rights, powers and/or remedies of either Party may only be waived by formal written waiver which is signed by a duly authorised representative of the Party waiving its rights and which makes express and unequivocal references to the waiver being in accordance with this clause. The rights which each Party has under the 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. Our rights, powers and remedies provided in the Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

17.2 Your liabilities, obligations and/or duties under the Agreement shall not be excluded, varied, reduced, limited or otherwise affected by:

17.2.1 any power or duty of ours or of any professional consultants or any contractors or any other third party who have a substantial interest in the Project or the Site to grant or withhold approval of or object to any matter in connection with the Project or to inspect the Site; or

17.2.2 the grant or failure to grant such approval or the making of or failure to make such objection or any such inspection of or failure to inspect the Site; or

17.2.3 any comments, decisions, instructions, consents, advice or indications of satisfaction given by us or any persons appointed on our behalf or any other third party; or

17.2.4 any enquiry or failure to make such enquiry by or on behalf of us notwithstanding that such enquiry or failure to make such enquiry may give rise to a claim by us against any third party.

18. NOTICES

18.1 Any notice to be given to us by you under or in connection with these Conditions or the Agreement shall be sent to the address stated in the Agreement and the account office address or such other contact details as the recipient may from time to time notify to the sender or, if no such address is current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.

18.2 Any notice issued or given by us to you may be served by post, personal delivery, email or any other effective means.

- 18.3 In the absence of evidence of earlier receipt, a notice is deemed to be received:
- 18.3.1 if delivered personally (including courier), then on delivery;
 - 18.3.2 if sent by post, then two (2) Working Days after posting it; and
 - 18.3.3 if sent by email, then on completion of its transmission provided that receipt will not be taken to have occurred if the sender receives an automated message indicating that the email has not been delivered to the receiving Party.

19. DATA PROTECTION

- 19.1 In this clause 19, the following additional defined terms apply:
- 19.1.1 **'Data Protection Laws'** means the Data Protection Act 2018, the UK adopted form of the General Data Protection Regulation (UK GDPR) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 together with any other laws applicable to the protection of personal data in force from time to time in England and Wales and any related regulations and guidance (as from time to time amended, extended, re-enacted or consolidated) and all subordinate legislation, regulations and guidance made pursuant to any of them;
 - 19.1.2 the terms: 'personal data', 'process', 'controller', 'processor', 'personal data breach' and 'data subject' have the meanings attributed to them in the Data Protection Laws;
 - 19.1.3 We and you both acknowledge that we operate as the controller and you act as a processor on our behalf in respect of any personal data processed by you for the purposes of performing your obligations under the Agreement (**'Relevant Personal Data'**).
- 19.2 The purpose and nature of processing for you to process the Relevant Personal Data will be perform the Services and perform all of your obligations and duties under the Agreement, including but not limited to allowing your employees, servants, agents, consultants, contractors, servants and employees access to the Site and each relevant dwelling in connection with the rectification of any defects or carrying out any inspections, investigations and/or testing and/or complying with any of your obligations under the Agreement and to achieve this you shall process the Relevant Personal Data by recording, communicating, storing, sharing with sub-processors and deleting the Relevant Personal Data. The categories of data subjects to which personal data within the Relevant Personal Data relates will be our employees, contractors, suppliers, consultants, professional advisors, purchasers, tenants, residents, owners and/or occupiers of or visitors to any dwellings or any other part of the Site and the categories of personal data which will be processed are name, address and contact details, legal negotiations, contract terms, property details, snagging and defects details, business information and any other data identified or referred to in the Agreement or provided to you for the performance of your obligations under the Agreement.
- 19.3 You shall only process the Relevant Personal Data for a maximum period which is equal to the duration of the Agreement with us and the duration of your liability to perform obligations under the Agreement.
- 19.4 You agree in relation to the Relevant Personal Data to:
- 19.4.1 implement appropriate technical and organisational measures in such a manner that processing of the personal data by you will meet the requirements of the Data Protection Laws and ensures the protection of the rights of data subjects;
 - 19.4.2 only process the personal data for and on behalf of us and the purposes of performing the Services and in accordance with any other instructions issued by us in writing from time to time unless otherwise required by law or any other regulatory body (in which case you shall, where permitted, inform us of that legal or regulatory requirement before processing);
 - 19.4.3 not appoint any sub-processor without having first obtained our prior written consent and, where such consent is provided, you shall impose upon each third party sub-processor (and procure each such third party sub-processor's compliance with) terms equivalent to this clause 17 and shall give us notice of any changes to its sub-processors so that we have the opportunity to object to the change or new appointment;

- 19.4.4 ensure that persons authorised by you as sub-processors of any the Relevant Personal Data have committed themselves to duties of confidentiality or are under an appropriate statutory duty of confidentiality;
 - 19.4.5 not transfer any Relevant Personal Data outside of the United Kingdom;
 - 19.4.6 take all measures required by Article 32 of UK GDPR in relation to the Relevant Personal Data;
 - 19.4.7 taking into account the nature of the processing, assist us by appropriate technical and organisational measures (so far as this is possible) for the fulfilment of our obligation to respond to requests for exercising a data subjects' rights set out in Chapter III of UK GDPR;
 - 19.4.8 assist us in ensuring compliance with the obligations under Articles 32 – 36 of UK GDPR taking into account the nature of processing and the Relevant Personal Data;
 - 19.4.9 delete or return all the personal Relevant Personal Data to us after the end of the Agreement and delete existing copies unless required by law or regulatory requirements to retain such personal Relevant Personal Data;
 - 19.4.10 make available to us all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Laws and allow for and contribute to audits, including inspections, conducted by us or another auditor appointed by us;
 - 19.4.11 notify us if in your opinion any instruction from us would contravene the Data Protection Laws or any other laws;
 - 19.4.12 ensure that only such of your personnel who may be required by you to assist you in meeting your obligations under the Agreement shall have access to the Relevant Personal Data; and
 - 19.4.13 promptly notify and provide full details to us of any potential or actual loss of Relevant Personal Data or any personal data breach, take all measures necessary to remedy or address the issue and co-operate with us to resolve such issue.
- 19.5 Where we require assistance from you in order to respond to requests, queries and/or investigations in respect of the Relevant Personal Data or require that you help us in reconstructing and/or otherwise safeguarding the Relevant Personal Data or require that you assist us in complying with Data Protection Laws in relation to the Relevant Personal Data, you shall provide us with such assistance as we reasonably request within any timescales reasonably specified by us.

20. PUBLICITY AND CONFIDENTIALITY

- 20.1 Except in the proper performance of your obligations and duties under the Agreement or as required by law, you shall not and shall procure that your sub-consultants, employees, servants and agents shall not without our prior written approval publish or disclose to any person (other than your professional advisers for the purposes of obtaining advice in relation to your obligations and liabilities under the Agreement) any confidential information or other information relating to the Project or the Site.
- 20.2 You shall not without our prior written consent take or permit to be taken any photographs or videos of the Site or the Project for use in any publicity or advertising or publish alone or in conjunction with any other person, any articles, photographs or other illustrations in any publication, journal or newspaper or any radio or television programme or internet site in relation to the Project or the Site or any part thereof.

21. SEVERANCE

- 21.1 If any term or condition of these Conditions is for any reason held to be wholly or partly illegal, invalid, void, ineffective, unreasonable, inoperable or otherwise unenforceable by law it shall be severed and deemed to be deleted from the Agreement and the validity and enforceability of the remainder of the Agreement shall not be affected or impaired in any way and shall remain in full force and effect. If any provision of the Agreement is so found to be illegal, invalid, void, ineffective, unreasonable, inoperable or otherwise 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 and enforceable.

22. KEY PERSONNEL

- 22.1 You shall at all relevant times engage competent and suitably qualified, competent and experienced personnel in the performance of the Services.
- 22.2 You shall ensure that the key personnel named in the Agreement (or if no such persons are named in the Agreement, then such personnel as we agree are acceptable) are employed in performing the Services on a full time basis and you shall not remove or replace such personnel without our prior consent, not to be unreasonably withheld or delayed. You shall procure that such key personnel:
- 22.2.1 assume the personal direction and control of the Services; and
- 22.2.2 maintain or procure direct and (if appropriate) regular contact with us on all matters pertaining to your responsibilities under the Agreement.
- 22.3 If at any time before completion of the Services, we (acting reasonably) ask you to remove or replace any of your personnel performing any part of the Services because in our reasonable opinion such personnel are not competent, appropriately qualified, skilled, experienced and suitable for the Project, then you shall promptly replace such personnel with such person or persons as are acceptable to us (acting reasonably).

23. LIMITATION PERIOD

- 23.1 The statutory contractual period of limitation in respect of your liability for breach under the Agreement pursuant to the Limitation Act 1980 (as may be amended from time to time) shall not apply and the contractual period of limitation in respect of your obligations and liabilities for breach under the Agreement shall extend to the later of: (i) the expiration of twelve (12) years after the date of practical completion of the Project; (ii) the expiration of twelve (12) years after the date you complete the performance of the Services. For the avoidance of doubt, any action or proceedings under any statute may be brought or commenced within any longer prescribed statutory limitation period.

24. GOVERNING LAW AND JURISDICTION

- 24.1 The Agreement shall be governed and construed in accordance with English law and, subject to either Party's right to refer a dispute or difference under the Agreement to adjudication at any time, the English courts shall have exclusive jurisdiction (except for the purposes of enforcement of an English court judgment or order in another jurisdiction) with regard to all matters arising from it.
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