



dated

2011

Two Castles Housing Association Limited

and

Dunelm Property Services Limited

New Build and Regeneration Developer Framework Agreement

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Framework Agreement

dated 2011

Parties

- (1) **Two Castles Housing Association Limited** an industrial and provident society with registration number IP17663R whose registered office is at 3 Paternoster Row, Carlisle, Cumbria CA3 8TT (the **Client**); and
- (2) **Dunelm Property Services Limited** (registration number 04031196) whose registered office is at ESH House, Bowburn North Industrial Estate, Bowburn, Durham DH6 5PF (the **Developer**);

each a **Party** and together the **Parties**.

Whereas:

- (A) The Client wishes to establish a framework arrangement with a developer to enable it to procure certain feasibility, planning, design and construction works undertaken as part of an overall development programme; and
- (B) Further to the issue of OJEU Contract Notice reference 2011/S 63-102095 and following a due tender process, the Developer has been selected by the Client to be a member of the framework arrangement; and
- (C) The Developer represents that it has the necessary capabilities, resources, working capital, competent personnel and experience to carry out the relevant feasibility, planning, design and construction required and is willing to do so on the terms and conditions set out in this Agreement; and
- (D) The Client and others who may join this Agreement can call upon this Agreement on an ad hoc basis as required.

Whereby the Parties agree as follows:

1 Definitions and interpretation

1.1 In this Agreement the following terms shall have the following meanings:

Agreement means this New Build and Regeneration Developer Framework Agreement;

Central Office Overheads means the agreed percentage rate of central office overheads as distinct from Site Overheads and Profit and set out in the Framework Proposals and transposed into the Programme Price Framework;

Client's Requirements means the 'Client's Requirements' as defined in the Model Development Agreement;

Companies Act means the Companies Act 2006;

Contract Area means the areas falling within an 80 mile radius of Carlisle and a 100 mile radius of Newcastle upon Tyne within which each and any of the Sites are or are to be located;

Development means any development or part or parts thereof forming part of the Programme;

Development Agreement means each individual contract entered into between the Client (or any Joining Party, where applicable) and the Developer for a Development on substantially the same terms as the Model Development Agreement;

Development Costs means the cost to the Client (or a Joining Party, where applicable) of a Development and thereafter referred to as the "Works Price" in the Development Agreement;

EIR means the Environmental Information Regulations 2004 and any re-enactments and amendments;

EIR Code means the Code of Practice on the Discharge of Public Authorities' Functions under section 16 of the EIR and any re-enactments and amendments;

FOIA means the Freedom of Information Act 2000 and any re-enactments, amendments and relevant regulations;

FOIA Code means the Secretary of State for Constitutional Affairs' Code of Practice on the Discharge of Public Authorities' Functions under section 45 of the FOIA and any re-enactments and amendments;

Framework Brief means the document set out at Schedule 1;

Framework Documents means this Agreement, Framework Brief, Framework Proposals and Programme Price Framework;

Framework Proposals means the Developer's tender proposals submitted in response to the Framework Brief;

HCA means the Homes and Communities Agency or any successor body;

HSE means the Health & Safety Executive or any successor body,

Information means 'information' as defined in section 84 of the FOIA and/or 'environmental information' as defined in section 2 of the EIR;

Insolvency Act means the Insolvency Act 1986;

Intellectual Property Rights means all intellectual property rights (including, without limitation, patents, trade marks, designs, design rights, copyright, inventions, trade secrets, know how and confidential information) and all applications for protection of any of the same;

Joining Agreement means an agreement entered into pursuant to clause 2.4 of this Agreement in the form prescribed at Schedule 3;

Joining Party means any party other than the Client and Developer that has executed and delivered a Joining Agreement for the purpose of being entitled to award Developments to the Developer in the same role as the Client under this Agreement;

Key Personnel means the personnel of the Developer referred to in this Agreement and listed in Schedule 2;

KPIs means the key performance indicators developed and agreed between the Parties as part of the Standard Development Procedure and from time to time to measure the performance of the Developer in relation to the Programme and based upon those submitted by the Developer in the Framework Proposals;

Maximum Consideration means the maximum aggregate value of Developments which a Joining Party can award to the Developer under this Agreement as set out in the relevant Joining Agreement;

Model Development Agreement means the model documents set out or described in Schedule 4;

Open Book means the involvement of all price components including Profit, Central Office Overheads, Site Overheads and the costs of materials, goods, equipment, works and services, with all and any books of account, correspondence, agreements, orders, invoices, receipts and other relevant documents available for inspection;

Programme means the Client's programme (or that of a Joining Party) of planning, detailed design and/or construction, improvement, conversion, completion and commissioning of new build mixed-use housing developments, development of community related facilities, mixed commercial facilities and associated infrastructure works as identified from time to time during the Term of this Agreement;

Programme Price Framework means the Developer's tendered percentage rates in respect of Profit and Central Office Overheads as submitted as part of the Framework Proposals and as set out in the Programme Price Framework;

Profit means the Developer's agreed gain from a Development as distinct from Central Office Overheads and Site Overheads;

Requests for Information has the meaning set out in the FOIA or any apparent request for information under the FOIA, the EIR, the FOIA Code or the EIR Code;

Risk Management means a structured approach to ensure that risks are identified at the inception of a Development, that their potential impacts are allowed for and that where possible, such risks or their impacts are minimised;

Site Overheads means Site specific overheads as distinct from Central Office Overheads and Profit;

Site means a potential site for a Development in the Contract Area, as identified by the Parties or any Joining Party and the Developer and the term **Sites** shall be construed accordingly;

Standard Development Procedure means the procedure to be developed by the Parties at the outset of this Agreement (or between the Developer and any Joining Party upon that Joining Party becoming a party to this Agreement), to be replicated in respect of each Development and as further described at clause 4;

Value Engineering means a structured system for the review of the design, supply and construction process to identify options and scope for improvement, including reduced capital and/or whole life costs, improved buildability and improved functionality;

Value Management means a flexible but structured management approach aimed at achieving a solution that meets the Client's needs whilst achieving best value;

Working Day means any day (other than Saturday or Sunday) upon which clearing banks in the City of London are open to the public for the transaction of business;

1.2 In the interpretation of this Agreement:

- 1.2.1 words importing the singular number only shall include the plural number and vice versa;
- 1.2.2 words importing one gender shall include all other genders;
- 1.2.3 the word "including" shall be deemed to be followed by the words "without limitation";
- 1.2.4 the headings appearing in this Agreement are for reference only and shall not affect its construction;
- 1.2.5 references to any statute include a reference to any statutory amendment, modification replacement or re-enactment thereof for the time being in force and to every instrument or direction, regulation, bye-law, permission, licence, consent, condition, scheme and matter made in pursuance of any statute and any regulation or other legislation of the European Union that is directly applicable in England and Wales and include existing statutes and those that come into effect while this Agreement subsists;
- 1.2.6 where there are two or more persons included in the expressions the Developer or the Client, covenants and obligations expressed to be entered into by the Developer or the Client respectively are deemed to be entered into by such persons jointly and severally;
- 1.2.7 any reference to a clause, schedule or annexure without further designation is a reference to a clause, schedule or annexure of this Agreement;
- 1.2.8 any obligation on a Party not to do any act, matter or thing shall be deemed to include an obligation not to permit or suffer such thing to be done and any obligation on a Party to do any act, matter or thing includes an obligation to procure that it be done;
- 1.2.9 references to any Party shall unless otherwise stated be deemed to include successors in title and assigns of that Party unless the context otherwise requires;
- 1.2.10 where under this Agreement an act is required to be done within a specified period of hours or days after or from a specified time or date, the period shall begin immediately after that time or date as applicable. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales, that day shall be excluded; and

2 Programme and Term

- 2.1 Subject to the terms of this Agreement, the Client and the Developer intend to undertake the Programme at Sites in the Contract Area in accordance with the Framework Documents and in accordance with the Client's aspirations.
- 2.2 Subject to earlier termination pursuant to clause 20, this Agreement shall commence on the date first above written and shall continue for a period of four (4) years (the **Term**). Throughout the Term the Client shall determine whether the Programme shall be shortened, renewed or adjusted as to scope and the basis for future review (and at that time all or any part of the Programme may be awarded to any one or more other parties whether or not the Developer with no consequent liability of the Client to the Developer) and the Term and/or this Agreement shall be adjusted accordingly following confirmation of the Client's decision.
- 2.3 The Client and the Developer shall enter into individual Development Agreements for each Development subject to satisfaction of the pre-conditions set out in clause 11 and the other terms

of this Agreement. The Parties acknowledge that the Client may issue one or more Development Agreements to the Developer which extend beyond expiry of the Term.

- 2.4 Subject to the execution of a Joining Agreement(s) additional parties may, if agreed by the Client and Developer, be entitled to join this Agreement and with effect from the date(s) thereof, each Joining Party shall, subject to clause 2.5 below, be entitled to operate the provisions of their Agreement in the same manner as the Client for the sole and limited purpose of awarding Development Agreement(s) to the Developer provided that the value of such Development Agreement(s) shall not, in aggregate, exceed the Maximum Consideration.
- 2.5 For the avoidance of doubt, a Joining Party shall not be entitled to operate the provisions of clause 20 or any other provision of this Agreement which may adversely affect the Client and/or otherwise assign, novate, grant, dispose or confer to any other party any benefit arising from this Agreement.
- 2.6 In all matters governed by this Agreement, the Client and Developer shall act reasonably and without delay.
- 2.7 For the avoidance of doubt, nothing in this Agreement shall preclude any Party from entering into separate contractual arrangements with any third party.

3 **Framework Documents**

- 3.1 The Framework Documents describe the agreed roles, expertise and proposals of the Parties in respect of this Agreement.
- 3.2 All Framework Documents shall be treated as complementary and it shall be the duty of all Parties to bring to the attention of each other any error, omission or discrepancy of which they become aware (as soon as they become aware) and to put forward proposals to resolve any such error, omission or discrepancy fairly and constructively between the Parties while minimising any adverse effect on the Programme. Any proposal pursuant to this clause 3.2 shall be subject to prior approval by the Client after consultation.

4 **Standard Development Procedure**

- 4.1 At the outset of this Agreement, the Parties shall liaise in order to develop and document a standard procedure for the undertaking of Developments (the **Standard Development Procedure**) having regard to the Client's objectives set out at clause 7. It is the intention of the Parties that such procedure shall then be replicated on each Development in order to reduce and remove inefficiencies and duplications, reduce costs, streamline the development process and reduce risks for both Parties.
- 4.2 The Parties shall include the following matters in respect of the Standard Development Procedure (the following shall not be deemed to be an exhaustive list):
- 4.2.1 the identification of suitable Sites for the Programme;
 - 4.2.2 the procedures, protocols and timetables for implementation of the Standard Development Procedure (including compliance with the Client's management structure, development processes and governance requirements);
 - 4.2.3 the obligations of both the Client and the Developer in respect of the acts to be undertaken by either or each in assessing the feasibility of an identified Site and/or Development and the relevant development and management risk assessments;

- 4.2.4 procedures for securing Site ownership, by which Party and at what stage of the Development;
- 4.2.5 identifying funding arrangements in respect of each Development and applying for funding in respect of the Development Costs, where relevant;
- 4.2.6 determining HCA compliant Development design, the mix of house/flat types and surveying requirements;
- 4.2.7 obtaining planning permission for each Development and establishing a programme for all pre-commencement and mobilisation activities;
- 4.2.8 information, notice and meeting protocol;
- 4.2.9 KPIs;
- 4.2.10 Value Engineering;
- 4.2.11 Value Management; and
- 4.2.12 Risk Management.

4.3 Each Party shall use its best endeavours to:

- 4.3.1 implement and comply with the agreed Standard Development Procedure; and
- 4.3.2 identify appropriate Sites for Developments and shall offer information and assistance about any Site or Development to each other in an open and transparent and co-operative manner, for the benefit of the Programme.

5 **Site identification and development procedure**

- 5.1 Each Development shall be undertaken on a Site to be identified by a Party and ultimately acquired by the Client (if it does not already own the relevant Site) at such stage of the Development as agreed between the Parties.
- 5.2 The procedure for identification of each Site and the development of the agreed requirements for each Development shall be in accordance with the Standard Development Procedure.

6 **Communication and organisation**

- 6.1 The Parties shall work together and individually, in accordance with this Agreement, to achieve a transparent and co-operative exchange of information in all matters relating to the Standard Development Procedure and the Programme.
- 6.2 Except as otherwise agreed in writing, all notices, reports, submissions, decisions, consents, approvals, covenants, valuations, agreements, opinions, instructions and other communications between the Parties shall be in writing by receipted hand delivery or recorded delivery post or fax or (if the Parties have signed an appropriate procedural agreement) email, in each case effective from the date of its delivery to the relevant Party at the address set out below or to such other address as the Parties shall notify to each other:

Client: Rob Brittain or such other officer of the Client as may be notified from time to time at the address first marked in this Agreement

Developer: David Halfacre or such other officer of the Developer as may be notified from time to time at the address first marked in this Agreement

- 6.3 The co-operation referred to in clause 6.1 shall not extend to any matter detrimentally affecting the interests of the Client, the Programme and/or each Development and any such matter shall constitute a breach of this Agreement.
- 6.4 The Parties shall meet regularly in accordance with the Standard Development Procedure or at the request of either Party to review and stimulate the progress of the Programme, the implementation of each Development Agreement and the progress of the Developer against the KPIs.
- 6.5 A meeting of the Parties shall be convened by the Client at the request of any Party and otherwise as required by this Agreement, at not less than five (5) Working Days notice to all Parties stating its agenda. Each such meeting shall be chaired by the Client and shall deal only with the matters listed in its agenda (unless all Parties agree otherwise).
- 6.6 Decisions of the Parties shall be by consensus (namely a process of reasoned discussion leading to unanimous agreement) and all such decisions which may have a substantial effect on the cost, quality or duration of the Programme shall be subject to the Client's prior written approval. The Parties shall comply with any decision made at a meeting of the Parties pursuant to this clause 6. No such decision shall be required prior to, or shall otherwise affect the rights of the Client as regards, the award of any Development Agreement or any other discretion of the Client under this Agreement.
- 6.7 The Developer shall provide a monthly written report to the Client (in a form to be approved in the Standard Development Procedure) as to its progress on each Development including progress against the KPIs, capacity and other relevant business factors, supply chain issues and relationships, problems, potential disputes and proposed solutions. The Developer shall notify the Client as soon as it is aware of any matter adversely affecting or threatening the Programme or any Development or the Developer's performance under this Agreement and any Development Agreement and shall include in such notification proposals for avoiding or remedying such matter. If the Client so requires, it shall convene a meeting of the Parties within five (5) Working Days from the date of any such notification unless all Parties agree an alternative course of action.

7 Objectives

- 7.1 The Parties shall establish, develop and implement their relationship in accordance with the Framework Documents, the Standard Development Procedure, the Model Development Agreement and each Development Agreement with the objective of achieving for the benefit of the Programme, each Development and the mutual benefit of the Parties:
- 7.1.1 successful completion of the Programme and each Development;
 - 7.1.2 maximum synergy between the Client and the Developer;
 - 7.1.3 the promotion of innovative and collaborative ways of working;
 - 7.1.4 measurable continuous improvement by reference to the KPIs;
 - 7.1.5 maximise its contribution to the creation of safe, attractive and popular neighbourhoods;
 - 7.1.6 adopt a sustainable approach to undertake and successfully complete the Programme;

- 7.1.7 developing local employment initiatives and training opportunities to assist in the development of sustainable communities;
- 7.1.8 develop efficient, collaborative and mutually beneficial working relationships with all parties who contribute to the successful implementation of the Programme;
- 7.1.9 reduce capital cost and whole life cost;
- 7.1.10 reduce design, supply and construction time;
- 7.1.11 reduce defects and zero defects;
- 7.1.12 increase predictability and productivity;
- 7.1.13 improve the quality of the homes and service delivery;
- 7.1.14 improve quality; and
- 7.1.15 increase turnover and profit.

8 Health and safety

- 8.1 Without prejudice to similar provisions in any Development Agreement, the Developer shall be liable for and hereby indemnifies the Client from and against all claims, proceedings, liabilities, losses, costs and/or expenses suffered or incurred by the Client where and to the extent that the same arise in connection with any breach or non-compliance by the Developer its employees, agents and/or sub-contractors and/or their employees and agents, of or with any health and safety legislation.

9 Key personnel, labour and training

- 9.1 The Parties shall employ for the purposes of the Programme and each Development individuals with the necessary skills, qualifications and experience to fulfil that Party's role, expertise and responsibilities under this Agreement and each Development Agreement. The removal or replacement of any of the Key Personnel shall be subject to the provisions of clause 9.2.
- 9.2 The Developer shall ensure that its Key Personnel shall be engaged in fulfilling the Developer's obligations under this Agreement, and that each such person has a deputy who is aware of the structure and progress of the relationship and is able to provide continuity should it become necessary for any Key Personnel to be replaced. In such circumstances the Developer shall:
 - 9.2.1 provide details for approval by the Client and of the identity of the proposed replacement; and
 - 9.2.2 use reasonable endeavours to ensure a handover period of at least four (4) weeks during which the approved replacement shall work in parallel with the person being replaced.

10 Quality management

- 10.1 The Developer shall comply with requirements agreed as part of the Standard Development Procedure and as set out in any Development Agreement regarding quality standards including as to the level of defects and the agreed time periods for rectification of defects.

11 **Pre-conditions to award**

- 11.1 The Client intends to award Development Agreements to the Developer, subject to satisfaction of the following pre-conditions:
- 11.1.1 development, documentation and agreement in respect of the Standard Development Procedure;
 - 11.1.2 compliance by the Developer of the Standard Development Procedure so developed, documented and agreed;
 - 11.1.3 availability of funding;
 - 11.1.4 Site ownership and agreement in respect of when such ownership shall transfer to the Client;
 - 11.1.5 (if applicable) issue of Client's Requirements by the Client;
 - 11.1.6 submission by the Developer and agreement by the Client of Developer's Proposals in compliance with the Framework Documents and the relevant Client's Requirements;
 - 11.1.7 submission by the Developer and agreement by the Client of the Development Costs;
 - 11.1.8 satisfactory evidence of achievement by the Developer of all agreed targets for the Programme and any Developments by reference to the KPIs;
 - 11.1.9 satisfactory evidence that the Developer is conducting itself in all respects in a manner consistent with the principles of this Agreement and each Development Agreement and is striving to meet the Client's objectives for this Agreement;
 - 11.1.10 there being no change in the financial circumstances of the Developer which in the opinion of the Client (acting reasonably), may adversely affect the ability of the Developer to undertake the Development in accordance with this Agreement and each Development Agreement;
 - 11.1.11 the Client being satisfied (acting reasonably) with the Developer's policy and performance on health and safety issues on a company wide basis (and not solely in relation to this Agreement or each Development Agreement); and
 - 11.1.12 provision by the Developer of a parent company guarantee in respect of each Development Agreement in compliance with clause 18.2 of this Agreement.
- 11.2 The Client and the Developer shall exercise reasonable skill and care appropriate to their respective roles, responsibilities and expertise to satisfy the pre-conditions described in clause 11.1.
- 11.3 The Client shall consult with the Developer regarding the allocation of Developments in each aspect of the Programme, the targets set against the KPIs and other relevant factors notified to or by the Client, but, notwithstanding anything else contained in this Agreement, the Client reserves the right to propose such allocation as it considers appropriate including awarding work to other developers if, on the basis of the consultations pursuant to this clause 11.3, the Client believes that the Developer does not show the capacity, capability or potential to satisfy all or any of the pre-conditions set out in clause 11.1.

12 Intellectual property and confidentiality

- 12.1 Each Party warrants to the other that no design or document that it prepares and nothing else that it contributes to the Programme, the Standard Development Procedure, each Development, this Agreement, the Framework Documents and any Development Agreement shall infringe any Intellectual Property Rights, and undertakes to indemnify the other Party in respect of any legal liability and related costs arising out of or in connection with any such infringement of any Intellectual Property Rights.
- 12.2 Each Party shall retain Intellectual Property Rights in all designs and other documents it prepares in relation to the Programme and each Development and as beneficial owner grants to the other an irrevocable, non-exclusive, royalty-free licence to copy and use all such designs and documents for any purpose in relation to the completion of the Programme and each Development, in all cases with the right to transfer and sub-license such rights for the same purposes, and shall ensure that such licence shall have the support of such rights from third parties as are necessary to allow the grant of such licence.
- 12.3 Subject to the Intellectual Property Rights described in clause 12.2, ownership in all the existing documents and the physical embodiments of designs relating to the Programme and each Development shall transfer from the Developer to the Client immediately prior to that Party suffering an event as described in clause 20.4 or termination of its appointment under this Agreement and/or any Development Agreement. In such circumstances, the Developer shall hand over all such documents and designs to the Client immediately upon request.
- 12.4 The Parties shall not reveal to any third party (except as expressly agreed or as obliged by law) any information exchanged between them, if and to the extent that it is stated or known by them to be confidential, and shall use such information only for the purposes of the Programme and each Development.

13 Data protection and Freedom of Information

- 13.1 The Parties shall ensure that they shall at all times during the period of this Agreement comply with the provisions and obligations imposed by the Data Protection Act 1998 (**DPA**) and shall indemnify each other and keep each other indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) whatsoever in respect of any breach of this clause 13.1 through to 13.9 inclusive.
- 13.2 Each of the Parties shall ensure that, to the extent that it stores and processes data in connection with this Agreement, it shall comply with the provisions and obligations imposed on it by the DPA. The Client will:
- 13.2.1 act in the capacity of Data Controller (as defined in the DPA) of any Client or third party data accessed and/or processed by the Developer in the performance of the Programme; and
 - 13.2.2 be solely responsible to third parties for such data, including the individuals to whom the data relates.
- 13.3 As Data Processor (as defined in the DPA) the Developer shall at all times in respect of data for which the Client is Data Controller:
- 13.3.1 comply with the seventh principle in schedule 1 of the DPA; and

- 13.3.2 process data only in connection with Programme and any Development and only in accordance with the lawful and reasonable instructions of the Client unless the Developer is of the opinion that to act on such instructions would be unlawful.
- 13.4 The Developer shall also comply fully with all applicable Guidelines and Codes of Practice issued by the Information Commissioner in the UK from time to time.
- 13.5 The Client shall on giving reasonable notice to the Developer be entitled to audit the procedures of the Developer (which shall include the right to enter the Developer's premises and/or view the Developer's systems) for the purposes of ensuring compliance with this clause 13 and to take any reasonable steps to satisfy itself that the Developer is so complying.
- 13.6 In the event that the Developer becomes aware that it, or any of its staff, agents or sub-contractors is processing data in contravention of this clause, the Developer shall promptly give written notice to the Client with full details of such contravention.
- 13.7 The Developer will provide all data in its possession as requested by the Client from time to time in accordance with the timescale specified by the Client on the occasion of an access request. Where the Client requests data for the purpose of complying with a request, including a data subject access request under the DPA, the Developer will retrieve the relevant data and provide a fully copy of such to the Client as soon as is possible but in any event within five (5) Working Days of such a request being made.
- 13.8 The Developer will co-operate and provide reasonable assistance with any proceedings or inquiry by the Client and/or the Information Commissioner or other body authorised by statute which are concerned with the DPA.
- 13.9 The Developer will on termination or expiry of this Agreement and at the request of the Client either return to the Client or destroy the data (and all copies of such data) in the Developer's possession or other as directed by the Client.
- 13.10 The Developer acknowledges that the Client is or may become during the Term subject to the requirements of the FOIA and the EIR and is expected to abide by the FOIA Code and EIR Code. The Developer shall assist and co-operate with the Client (at the Developer's expense) to enable the Client to comply with these information disclosure requirements.
- 13.11 The Developer shall, and shall ensure that there sub-consultants and sub-contractors shall:
- 13.11.1 provide the Client with a copy of all Information in its possession, power or control in the form that the Client requires within five (5) Working Days (or such other period as the Client may specify) of the Client requesting that Information; and
- 13.11.2 provide all necessary assistance as is reasonably requested by the Client to enable the Client to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR,
- and the Developer shall be liable for and hereby indemnifies the Client from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Client where and to the extent that the same arise in connection with any breach of this clause 13.11 by the Developer, its employees, agents and/or sub-consultant and sub-contractors and/or their employees and agents.
- 13.12 If the Developer considers that all or any Information provided to the Client under clause 13.11 is:

- 13.12.1 a "trade secret" in accordance with section 43(1) of FOIA; or
- 13.12.2 is commercially sensitive information, disclosure of which would be likely to prejudice the commercial interests of any party in accordance with section 43(2) of the FOIA; or
- 13.12.3 a duty of confidentiality applies under section 41(1) of the FOIA; or
- 13.12.4 is exempt by the operation of any other provision of FOIA or any exception in the EIR;

the Developer shall ensure that the relevant Information, the claimed exemption or exception and if a qualified exemption, its views on where the public interest lies, is clearly identified to the Client.

13.13 Notwithstanding any such identification as set out in clause 13.12 above, the Client shall be solely responsible for determining at its absolute discretion whether such Information and/or any other information:

- 13.13.1 is exempt from disclosure in accordance with the provisions of the FOIA Code and the FOIA or the EIR Code and the EIR; or
- 13.13.2 is to be disclosed in response to a Request for Information.

13.14 In no event shall the Developer respond directly to any Requests for Information from members of the public.

13.15 The Developer acknowledges that the Client may, acting in accordance with the recommendations set out in the FOIA Code and/or EIR Code, be obliged under the FOIA and/or the EIR to disclose Information:

- 13.15.1 without consulting with the Developer; or
- 13.15.2 following consultation with the Developer and having considered its views.

14 **Sub-contractors**

14.1 The Developer shall implement the procedures set out in this clause 14 and in each Development Agreement to establish sub-contractor relationships on each Development that:

- 14.1.1 are Open Book to the maximum achievable extent;
- 14.1.2 clearly reflect the agreed requirements of the Client, the requirements of the Programme and each Development;
- 14.1.3 secure the best available sub-contractor warranties and/or guarantees and support and maximise the potential for sub-contractor innovation and other contributions to the Programme and each Development;
- 14.1.4 establish and demonstrate best value to the Client and the Programme or Development;
- 14.1.5 establish, where possible, partnering relationships complementary to those described in this Agreement and the Framework Documents and each Development Agreement.

15 **Prices and proposals**

- 15.1 The Developer shall develop financial proposals and prices for each Development on an Open Book basis and in accordance with the Standard Development Procedure, relevant Development Agreement and the objectives set out in clause 7 to establish the most economically advantageous proposal to the Client for each Development and which is consistent with best value and in compliance with this Agreement, the Framework Documents and each Development Agreement.
- 15.2 The Developer's Profit and Central Office Overheads for each Development Agreement shall be fixed at the agreed amounts set out in the Programme Price Framework, subject only to such variations as the Client and the Developer may agree.
- 15.3 All and any prices not agreed in accordance with the Programme Price Framework shall be developed and agreed pursuant to the Standard Development Procedure in the first instance and thereafter, the relevant Development Agreement.
- 15.4 The Client shall be entitled to analyse the Developer's prices and/or proposals at any time and to request reasonable further information from the Developer and its sub-contractors, and it shall be the Developer's responsibility to establish best value for the Client.
- 15.5 If the Client is not satisfied with any aspect of the Developer's prices submitted pursuant to clause 15.4, then it may market test all or any part of such prices against the prices and proposals of third party developers on an Open Book basis.

16 **Incentives**

- 16.1 The Parties shall consider and seek to agree such incentives, additional to any described in the Framework Documents, as may be appropriate to encourage the Developer and all other sub-contractors to maximise their contributions pursuant to each Development Agreement for the benefit of the Programme and each Development.
- 16.2 The Client shall consider any proposals put forward by the Developer for added value incentives beyond those set out in the KPIs. Any such arrangements proposed by the Developer and approved by the Client for each Development shall be set out in the relevant Development Agreement.

17 **Key performance indicators and continuous improvement**

- 17.1 The performance of the Developer shall be kept under regular review by the Client by reference to the agreed targets and KPIs developed as part of the Standard Development Procedure prior to award of successive Development Agreements and the Client shall consider whether the achievement of the targets and KPIs by the Developer shall justify an adjustment in the nature and volume of development work awarded to the Developer under subsequent Development Agreements. Without prejudice to the generality of the foregoing, such adjustment may include terminating all or any part of this Agreement and/or removal from the Programme of all or any volume of work.
- 17.2 The Parties shall (without prejudice to its obligation as set out in clause 17.1 above) review the performance of the Client and the Developer as against the KPIs and shall consider whether the KPI targets have been attained and what benefits should accrue to the individual Party concerned and the Programme as a whole.

- 17.3 The Developer shall provide to the Client such information on an Open Book basis as may be reasonably necessary to demonstrate progress against the KPIs. The Parties shall consider and seek to agree any adjustments to the KPIs necessary to reflect continuous improvement and the demands of the Programme.
- 17.4 The Developer shall in the operation of this Agreement, comply and co-operate with the Client's requirements for flexibility in relation to the requirements of particular services and works comprising the Programme and also as to balancing the capacity of the Developer and other relevant business factors and reflecting performance as monitored pursuant to clause 17.1.
- 17.5 The Client and the Developer agree to co-operate in permitting third parties engaged or to be engaged by the Client to undertake services and works where required pursuant to this Agreement and where otherwise stated in each Development Agreement and to report immediately to the Client where any problem arises.
- 17.6 The Client reserves the right to increase or decrease the scope of the requirements in the Programme where in the Client's opinion and following discussion under this Agreement, such increase or decrease is necessary or desirable as a consequence of or in relation to any under-performance by reference to the other KPIs or other failure by the Developer to discharge its obligations in accordance with this Agreement and the relevant Development Agreement(s). For the avoidance of doubt, if the Client exercises this right and decreases the scope of its requirements then the Client may procure the relevant services and works from another developer or any other third party as the Client may elect.
- 17.7 The Client cannot guarantee that any Development Agreement or any number of Development Agreements will be awarded to the Developer. In the event that the Client does not allocate any work or services or allocates any amount of works or services to the Developer, or terminates all or any part of this Agreement and/or any Development Agreement, the Client shall have no liability whatsoever to the Developer (whether under contract, statute, tort or otherwise) in respect of any consequential or indirect loss or any actual or expected loss of profit, loss of revenue, loss of goodwill or loss of opportunity except by way of agreed adjustments under the provisions of any Development Agreement entered into.

18 **Warranties and guarantees**

- 18.1 The Developer shall obtain and submit to the Client such sub-contractor warranties in favour of the Client as are required under each Development Agreement and any additional direct warranties offered by or available from particular sub-contractors.
- 18.2 Where the Developer is a subsidiary of another company it shall procure that its ultimate holding company (or, in the Client's sole discretion, such other company within the Developer's group of companies as the Client shall require) shall provide a parent company guarantee in favour of the Client in respect of its obligations under each Development Agreement in the form set out in the Development Agreement.

19 **General provisions**

- 19.1 Nothing in this Agreement, the Framework Documents and each Development Agreement shall create, or be construed as creating, a partnership between any of the Parties. None of the Parties shall conduct itself in such a way as to create an impression that such a partnership exists.
- 19.2 This Agreement is personal to the Parties and none of their rights or obligations may be assigned or sub-contracted without the prior written consent of the other Party.

- 19.3 It is acknowledged that, whatever the manner in which the Parties have executed this Agreement, the period of limitations applicable to any claim or claims arising out of or in connection with this Agreement shall be twelve (12) years from the date when the cause of action arose.
- 19.4 In the event of any discrepancy between the terms of this Agreement and the terms of any Development Agreement, the terms of the relevant Development Agreement shall prevail.
- 19.5 Except as otherwise stated in this Agreement, nothing in this Agreement confers or purports to confer any benefit or right to enforce any of its terms on any person who is not a party to it.
- 19.6 The Developer shall not and shall procure that its employees, agents and/or sub-contractors and their employees and agents shall not:
- 19.6.1 offer or give or agree to give to any person employed by or on behalf of the Client or any other public body, any gift or consideration of any kind as an inducement or reward for doing or having done, or not doing any act in relation to the obtaining or execution of this Agreement or any Development Agreement or for showing, or not showing favour or disfavour to any person in relation to this Agreement or any Development Agreement; or
 - 19.6.2 enter into this Agreement or any Development Agreement with the Client in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge, unless, before such contract is entered into, particulars of any such commission and of the terms and conditions of any agreement for the payment thereof are disclosed in writing to the Client; or
 - 19.6.3 otherwise commit any offence pursuant to the Bribery Act 2010.
- 19.7 In relation to any Development and where applicable, the Developer shall, when requested by the Client so to do, provide such information, co-operation and assistance as the Client may require and in sufficient time to enable the Client to fully comply with its obligations under Section 20 and Section 20ZA of the Landlord and Tenant Act 1985 (as amended by Section 151 of the Commonhold and Leasehold Reform Act 2002) in relation to consulting with tenants and recognised tenants associations on the carrying out of works for which contributions from such tenants may be sought.

20 Termination

- 20.1 If at any time any Party shall breach materially the terms of this Agreement and shall, if capable of remedy, not remedy such breach within ten (10) Working Days from the date of notice of such breach by any other Party, the Client shall convene a meeting of the Parties at no more than ten (10) Working Days notice, inviting the Developer to make constructive proposals in seeking to achieve an agreed solution.
- 20.2 In the event that the Developer is in breach and shall not remedy a breach notified under clause 20.1 within ten (10) Working Days of a further notice by the Client, following a meeting of the Parties, the Client may terminate the appointment of the Developer under this Agreement by further notice to the Developer with immediate effect.
- 20.3 In the event that the Client is in breach and shall not remedy a breach notified under clause 20.1 within ten (10) Working Days of a further notice by the Developer, following a meeting of the Parties, the Developer may determine its appointment under this Agreement by further notice in writing to the Client with immediate effect.

- 20.4 In the event that any Party shall become bankrupt, or make a composition or arrangement with its creditors, or make a proposal in respect of its company for a voluntary arrangement for a composition of debts or a scheme of arrangement to be approved (in accordance with the Companies Act or the Insolvency Act), or have any steps taken in or out of court under the Insolvency Act in respect of its company for the appointment of an administrator, or have a petition for a winding up order made, or (except for the purposes of amalgamation or reconstruction) have a resolution for voluntary winding up passed, or have a provisional liquidator, receiver or manager of its business or undertaking duly appointed, or have an administrative receiver as defined in the Insolvency Act appointed, or have possession taken by or on behalf of the holders of any debenture secured by a floating charge, then the appointment of that Party (or, if that Party is the Client, the appointment of the Developer) under this Agreement shall automatically terminate with immediate effect.
- 20.5 In the event that the appointment of the Developer under any Development Agreement is terminated by the Client, then the Client shall be entitled to terminate the appointment of the Developer under this Agreement by notice in writing to the Developer with immediate effect and any loss in relation to the appointment of a replacement Developer, or resulting from any delay to any element of the Programme, shall be recoverable in full from the Developer and may be deducted from any monies otherwise due to the Developer.
- 20.6 Termination of this Agreement shall be without prejudice to any accrued rights and obligations of either Party under this Agreement as at the date of termination.

21 **Problem solving and dispute avoidance and resolution**

- 21.1 As soon as it is aware of any difference or dispute with any one or more of the other Parties arising under or out of or in connection with this Agreement, the relevant Party shall give notice to the other Party.
- 21.2 The Client shall convene a meeting with the Developer at no more than ten (10) Working Days notice, notifying of all available information regarding the difference or dispute and inviting the Developer to make constructive proposals in seeking to achieve an agreed solution to the notified difference or dispute.
- 21.3 If any difference or dispute is not resolved in accordance with clause 21.2, then any Party may refer such dispute to a form of alternative dispute resolution as the Parties involved in such difference or dispute may agree. In the event that the Parties cannot agree on an appropriate form of alternative dispute resolution, either Party may seek the recommendation of the Centre for Effective Dispute Resolution of an appropriate form. A refusal by either Party to participate in alternative dispute resolution, or a withdrawal from any such procedure by either Party, shall not constitute a breach of this Agreement.
- 21.4 The procedures under clauses 21.1, 21.2 and 21.3 are without prejudice to the rights (if any) of any Party involved in a difference or dispute to refer it to adjudication, and any such reference shall be in accordance with the procedure set out in the Development Agreement (if any) or as implied by law.
- 21.5 Any difference or dispute that is not resolved by adjudication may be referred by any Party to the courts.
- 21.6 This Agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the jurisdiction of the courts of England and Wales.

22 **Contracts (Rights of Third Parties) Act 1999**

22.1 Subject to clause 2.4 and unless the right of enforcement is expressly provided, it is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS WHEREOF this Agreement has been executed as a Deed and delivered on the date stated above

EXECUTED AS A DEED by **Two Castles Housing Association Limited** affixing hereto its common seal in the presence of:

Authorised signatory

Authorised signatory

EXECUTED AS A DEED by **Dunelm Property Services Limited** acting by:

Director

Director/Secretary

SCHEDULE 1

Framework Documents

- Development Brief as set out at Schedule 1 Part 1;
- Framework Proposals as set out at Schedule 1 Part 2; and
- Programme Price Framework as set out at Schedule 1 Part 3.

SCHEDULE 1

Part 1

Framework Brief

SCHEDULE 1

Part 2

Framework Proposals

SCHEDULE 1

Part 3

Programme Price Framework

Central Office Overheads	3.85%
Profit	1.85%

SCHEDULE 2

Key Personnel

Name	Position
David Halfacre	Chairman

SCHEDULE 3

Form of Joining Agreement

This Joining Agreement is made as a deed the day of 20[•] between:

- (1) **Two Castles Housing Association Limited** an industrial and provident society with registration number IP17663R whose registered office is at 3 Paternoster Row, Carlisle, Cumbria CA3 8TT (the **Client**); and
- (2) **Dunelm Property Services Limited** (registration number 04031196) whose registered office is at ESH House, Bowburn North Industrial Estate, Bowburn, Durham DH6 5PF (the **Developer**); and
- (3) **[• Joining party's details to be inserted]** (the **Joining Party**).

Whereas:

- (A) The **Client** and the **Developer** have entered into a new build and regeneration developer framework agreement dated [•] day of [•] 2011 (the **Framework Agreement**) and both parties are in agreement that the Joining Party shall be able to benefit in calling off Development Agreements from the Framework Agreement.
- (B) The Joining Party is desirous of calling off Development Agreements from the Framework Agreement and enters into this Joining Agreement on the terms set out below for this purpose.

IN CONSIDERATION of the sum of ten pounds (£10.00) payable by the Joining Party to the each of the Client and the Developer (receipt of which the Client and the Developer respectively acknowledge), it is agreed as follows:

- 1 Capitalised terms in this Joining Agreement shall have the same meaning as defined in the Framework Agreement.
- 2 From the date of this Joining Agreement, the Joining Party shall be entitled to award Development Agreements to the Developer up to the aggregate value of the Maximum Consideration.
- 3 The Maximum Consideration is [• value to be determined by the Client for each Joining Party].
- 4 The Joining Party hereby agrees that insofar as permissible by law, the Client shall have no liability whatsoever to the Joining Party in connection with or arising from this Agreement.
- 5 From the date of this Joining Agreement, the Joining Party agrees to indemnify the Client and keep the Client indemnified from and against all and any liability in connection with or arising under this Agreement save where such liability is as a direct consequence of an action(s) by the Client. Such indemnity and liability is limited to this Agreement as opposed to any Development Agreements awarded by the Client and in respect of such Development Agreements the Joining Party shall have or shall not accrue any liabilities whatsoever.
- 6 The Developer shall not accept any Development Agreement(s) from the Joining Party where to do so may have an adverse effect on the Client or its Programme.

IN WITNESS WHEREOF this Agreement has been executed as a Deed and delivered on the date stated above

[• INSERT APPLICABLE EXECUTION PROVISIONS OF THE PARTIES]

SCHEDULE 4

Model Development Agreement



dated 20 [■]

[■ INSERT CLIENT NAME]

and

Dunelm Property Services Limited

[DRAFT] Development Agreement

in relation to the design, construction, completion and defects rectification of [■]

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trowers & hamlins

Development Agreement

dated 20 []

Parties

- (1) [■ INSERT NAME OF CLIENT] (registration number [■]) whose registered office is at [■] (the **Client**); and
- (2) **Dunelm Property Services Limited** (registration number 04031196) whose registered office is at ESH House, Bowburn North Industrial Estate, Bowburn, Durham DH6 5PF (the **Developer**);

each a **Party** and together the **Parties**.

Background

- (A) The Client wishes to have the design, construction, completion and defects rectification of the Works carried out at the Property in accordance with the Client's Requirements.
- (B) The Developer has examined the Client's Requirements and has submitted the Developer's Proposals and Works Price to the Client and subject to the terms and conditions of this Agreement, the Developer is satisfied that the Developer's Proposals and Works Price meet the Client's Requirements.
- (C) In consideration of payment of the Works Price, the Developer has agreed to design, construct, complete and remediate defects in the Works pursuant to the terms and conditions set out in this Agreement *[and the Developer acknowledges and warrants the Oversight Works (as defined below) as if the Oversight Works had been undertaken pursuant to and in accordance with the terms of this Agreement]*.

Agreed terms

1 Definitions and interpretation

- 1.1 In this Agreement the following terms have the following meanings unless inconsistent with the context:

1986 Act means the Insolvency Act 1986;

ACOP means the Approved Code of Practice published by the Health & Safety Executive in relation to the CDM Regulations;

Adjudicator means any individual nominated pursuant to clause 26.2;

Adoptable Works means that part or those parts of the Works (if any) which is or are required to be adopted and maintained at the public expense and any works which are ancillary thereto;

Applications for Interim Payment means an application for payment submitted by the Developer pursuant to and in accordance with clause 19.3;

Base Date means the date identified as such in Schedule 1;

Best Environmental Practice means the best practice generally followed by design and build contractors skilled and experienced in the remediation and redevelopment of contaminated sites and shall be deemed to include (as a minimum) compliance with:

- (a) all statutory requirements made under Environmental Laws;
- (b) all guidance issued by the Department for the Environment, Food and Rural Affairs, the Inter Departmental Committee on the redevelopment of contaminated land, the Building Research Establishment, the Institution of Civil Engineers, British Standards Institution, the Construction Industry and Information Association and like bodies; and
- (c) the Requisite Consents;

CDM Co-ordinator means the Developer unless a different party is named in Schedule 1 as acting in the role of CDM Co-ordinator;

CDM Regulations means the Construction (Design and Management) Regulations 2007;

Certificate of Making Good Defects means a certificate issued by the Client's Representative pursuant to clause 21 confirming that all defects arising during the Defects Liability Period have been made good;

Certificate of Practical Completion means a certificate issued pursuant to clause 20 stating the date when the Works are Practically Complete;

Client's Representative means the person identified as such in Schedule 1;

Client's Requirements means the documents set out at Annex 1;

Client's Variation means a Variation requested by the Client;

Code for Sustainable Homes means the relevant and applicable Code for Sustainable Homes in relation to the Works, as published by the Department of Communities and Local Government;

Completion Date means the date identified as such in Schedule 1 (as may be adjusted from time to time in accordance with this Agreement) or if the Works are to be divided into Phases, the date specified against the last Phase in Schedule 1 (as may be adjusted from time to time in accordance with this Agreement);

Completion Pack means for each Unit all operating instructions, gas certificates, electrical test certificates, meter readings, two sets of keys, the Latent Defects Insurance Documents and associated paperwork and copies of the planning permission and building regulation approval and any other information or documentation as specified in the Client's Requirements as being required for each Unit;

Conditions Precedent means the conditions precedent identified as such in Schedule 1;

Construction Act means Part II of the Housing Grants Construction and Regeneration Act 1996;

Date of Possession means the date identified as such in Schedule 1 upon which the Developer will take possession of and commence the Works pursuant to clause 3 or if the Works are to be divided into Phases, the dates specified against each Phase in Schedule 1;

Defects Liability Period means the period specified in the Client's Requirements or where not so stated, twelve (12) months from the date of Practical Completion of the Works;

Defects List means the schedule annexed to a notice specifying the matters the Client's Representative considers must be carried out by the Developer so that the Works can be certified as Practically Complete;

Defects Notice means a notice of breaches by the Developer of this Agreement issued by the Client or the Client's Representative which may (without limitation) require the removal of any work executed or materials which are not in accordance with this Agreement;

Defects Response Times means the response times as identified as such and set out in Schedule 1;

Delay Event means:

- (a) exceptionally adverse weather conditions;
- (b) loss or damage occasioned by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing or water tanks apparatus or pipes, earthquake, aircraft or other aerial devices or articles dropped from aircraft or other aerial devices, riot, civil commotion, spontaneous combustion, theft or malicious damage;
- (c) the exercise after the date of this Agreement by the United Kingdom government of any statutory power which directly affects the execution of the Works restricting the availability or use of labour which is essential to the proper carrying out of the Works or preventing or delaying the Developer in securing goods or materials or fuel or energy as are essential to the proper carrying out of the Works or which otherwise delays the Works save to the extent that it was reasonably foreseeable to a competent contractor at the Base Date;
- (d) the carrying out by a local authority or a statutory undertaker of work in pursuance of its statutory obligations in relation to the Works or the failure to carry out such work;
- (e) breach by the Client of any of its obligations under this Agreement;
- (f) deferment of the Date of Possession or, where the Works are split into Phases, any Phase Date of Possession provided that the Client is the registered proprietor of the land for that Phase at the date of deferment;
- (g) suspension by the Developer as a result of non-payment by the Client as permitted by statute;

- (h) any impediment, prevention or default, whether by act or omission, of the Client or the Client's Representative, except to the extent caused or contributed to by any default, whether by act or omission, of the Developer or any person acting on behalf of the Developer;
- (i) loss or damage occasioned by any of the Insured Risks other than where caused or contributed to by the negligence or default of the Developer or any person acting on behalf of the Developer;
- (j) civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- (k) instructions of the Client for the opening up for inspection or testing of any work, materials or goods pursuant to a Defects Notice under clause 11 unless the inspection or test shows that the works, materials or goods are not in accordance with this Agreement or unless the opening up for such inspection or test was reasonably required by reason of any similar, equivalent or associated work, materials or goods having been shown by a previous inspection or test not to be in accordance with this Agreement.

Design Freeze Dates means the dates upon which each drawing, specification, detail, level and setting-out dimensions is returned by the Client under the provisions of clause 5.7 and marked "returned with no comment" and so endorsed and signed by the Client's duly authorised representative.

Developer's Proposals means the documents set out at Annex 2;

Developer's Team means the individuals and firms identified as such in Schedule 1 and any additional or replacement contractor or consultant engaged by the Developer upon the Works and approved in writing by the Client (such approval not to be unreasonably withheld or delayed);

Developer's Variation means a Variation requested by the Developer;

Discharge Evidence means written evidence from the Local Planning Authority that the relevant obligations contained in the Planning Documents have been complied with;

Documents means (including without limitation any such items retained on or in any computer software or other electronic medium) all drawings, plans, models, specifications, reports, calculations, charts, diagrams, sketches and other works prepared, conceived or developed by or on behalf of the Developer in connection with the Works whether in existence or to be made or produced and including all amendments additions and all designs ideal concepts and inventions contained in them;

EIR means the Environmental Information Regulations 2004 and any re-enactments and amendments;

EIR Code means the Code of Practice on the Discharge of Public Authorities' Functions under section 16 of the EIR and any re-enactments and amendments;

Environmental Laws means all statutes and codes of practice, circulars, guidance notes and the like concerning the protection of human health and the environment or the conditions of the workplace or the generation, storage, use, treatment or disposal of Hazardous Substances in force at the time of undertaking the Works;

Environmental Report means if any, the document identified as such in Schedule 1;

Estimate means an estimate setting out the cost of a Client's Variation including VAT together with delay or disruption costs, additional fees incurred by the Developer and any consequent change to the Completion Date;

Final Account means the account to be prepared in accordance with clause 19 of this Agreement;

FOIA means the Freedom of Information Act 2000 and any re-enactments, amendments and relevant regulations;

FOIA Code means the Secretary of State for Constitutional Affairs' Code of Practice on the Discharge of Public Authorities' Functions under section 45 of the FOIA and any re-enactments and amendments;

Funder means the person identified as such in Schedule 1 (if any) and being anyone with whom the Client enters into an agreement during the term of this Agreement or with whom the Client has entered into an agreement for the provision of finance and/or re-finance in connection with the Property or the Works;

Hazardous Substance means waste (as defined in the Environmental Protection Act 1990) and any substance whatsoever in any form (whether alone or in combination with any other substance) which is capable of causing harm to man or to any living organism supported by the Environment or of damaging the Environment or public health or welfare or the presence of which would be a breach of any Environmental Law;

Information means 'information' as defined in section 84 of the FOIA and/or 'environmental information' as defined in section 2 of the EIR;

Insolvency Event means in respect of any person which is a body corporate, any of the following events occurs in relation to that person and/or any body corporate which is for the time being a holding company of that person:

- (a) the making of an order or the passing of a resolution for winding-up;
- (b) the appointment of a provisional liquidator;
- (c) being or being likely to become unable to pay or having no reasonable prospect of being able to pay its debts within the meaning given to that expression by section 123 of the 1986 Act;
- (d) the calling of a meeting of creditors or any of them under Part I 1986 Act or the proposal of any voluntary arrangement pursuant to section 1 of the 1986 Act;
- (e) steps are taken in or out of court for the appointment of an administrator to manage the affairs, business and property of the person or

documents are filed with a court of competent jurisdiction for the appointment of an administrator or notice of intention to appoint an administrator being given or by a qualifying floating charge holder (as defined in paragraph 14 schedule B1 1986 Act);

- (f) the appointment of a receiver (including an administrative receiver) of the person or any of its assets;
- (g) being struck off the Register of Companies or being dissolved or ceasing for any reason to retain its corporate existence;
- (h) otherwise ceasing for any reason to remain liable under its covenants contained in this Agreement;
- (i) entry into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction);
- (j) to the extent not covered above, the occurrence of any one or more of the events listed at section 113(2) of the Construction Act or described at section 113(5) of the Construction Act.

Insured Risks means risks in respect of loss or damage by fire, storm, earthquake, tempest, lightning, explosion, riot, civil commotion, malicious damage, impact by vehicles and by aircraft and other aerial devices and articles dropped from them (other than war risks), flood damage and bursting and overflowing of water tanks apparatus or pipes and such other risks against which the Developer may from time to time insure;

LADs means liquidated and ascertained damages in the sum identified as such in Schedule 1;

[Land Agreement means [■] and to which the Developer acknowledges that it has knowledge of its detailed terms;]

Latent Defects Insurance means the building warranty and insurance cover specified in Schedule 1;

Latent Defects Insurance Documents means the policy documentation issued by the Latent Defects Insurance provider in respect of the Latent Defects Insurance;

Local Planning Authority means the relevant authority exercising planning control functions in respect of the Site;

[Long Stop Date means the date if any identified as such in Schedule 1;]

Losses means all liabilities incurred by the Client, all damage and loss suffered by the Client, all damages, compensation and penalties awarded against the Client, all claims, demands, actions and proceedings made or brought against the Client, all fees, costs and expenses incurred by the Client;

Nominator means the President or Vice-President for the time being of the Chartered Institute of Arbitrators;

Notices means unless stated to the contrary all notices, requests, demands, approvals, consents and other communications under this Agreement;

[Oversite Works means the substructure works to each Unit up to one course of brick above damp proof course along with associated infrastructure, roads, sewers, drainage and roadways as further detailed and set out within the Land Agreement;]

Pay Less Notice means a notice given pursuant to the provisions of section 111 of the Construction Act;

Payment Notice means a notice given pursuant to the provisions of section 110A of the Construction Act;

Phase or Phases means the phase or phases into which the Works have been divided as set out in such other documents forming part of the Client's Requirements and/or Schedule 1 to this Agreement;

Phase Completion Date means the date(s) identified as such in Schedule 1 against the relevant Phase;

Planning Documents means collectively:

- (a) the Planning Permission; and
- (b) any planning obligation (whether entered into by agreement or otherwise) in respect of or affecting the Property (whether or not also affecting other property) pursuant to section 106 of the Town and Country Planning Act 1990; and
- (c) an agreement in respect of and affecting the Works (whether or not also affecting other property) pursuant to section 111 of the Local Government Act 1972;

Planning Permission means any planning permission (not being an outline planning permission) and its attached conditions for the Works granted by the Local Planning Authority or the Secretary of State pursuant to the application number identified as such in Schedule 1;

Practically Complete means:

- (a) completion of the Works so that they are fit for beneficial occupation as a residential development subject only to the existence of minor defects and/or minor omissions at the time of inspection which are capable of being made good without materially interfering with the beneficial use and/or enjoyment and/or occupation of any Unit and the Works and would reasonably be included in a schedule of minor snagging items; and
- (b) the Latent Defects Insurance for each Unit has been effected; and
- (c) the documentation referred to in clause 22 has been provided.

Practical Completion means the date the Works are confirmed as being Practically Complete pursuant to clause 20 of this Agreement;

Property means the land/property more particularly identified in Schedule 1 upon which the Works are to be carried out;

Requests for Information has the meaning set out in the FOIA or any apparent request for information under the FOIA, the EIR, the FOIA Code or the EIR Code;

Requisite Consents means:

- (a) all consents, licences, permissions, requirements, whether statutory or otherwise;
- (b) approvals of the development control authority and the building control authority;
- (c) consents required under the Latent Defects Insurance;
- (d) consents of any local or any other competent authority whose consent to the Works is needed;
- (e) consents of all parties having an interest or right in or over the Property who by the lawful exercise of their powers in the absence of such consent could prevent or impede the carrying out of the progress of the Works and/or their use and/or enjoyment;

necessary for the Works;

Retention means a sum equivalent to the percentage of the Works Price as identified as such in Schedule 1;

Scheme means the Scheme for Construction Contracts Regulations 1998;

[Section 106 means an agreement in relation to the Works entered into pursuant to section 106 of the Town and Country Planning Act 1990;]

Unit means the individual residential buildings, dwellings, structures or other properties to be constructed as part or parts of the Works pursuant to this Agreement;

Validation Certificate means written confirmation that all works required pursuant to clause 4.4.1 have been completed;

Variation includes amendments, substitutions or omissions to the Works;

VAT means Value Added Tax or any tax of a similar nature which may be substituted for or levied in addition to it;

Working Days means any day (other than Saturday or Sunday) upon which clearing banks in the City of London are open to the public for the transaction of business;

Works means the carrying out and completion including the design, construction and defects rectification of the works set out in the Client's Requirements and the Developer's Proposals in accordance with the Planning Permission and pursuant to the terms and conditions of this Agreement including any Variation made to those works in accordance with this Agreement; shall further mean that part or parts of the Works to be completed at all of the Phases collectively [*and for the purposes of the Developer's obligations under this Agreement in respect of surveys, quality, workmanship, design, or warranty and responsibility shall be deemed also to include the Oversight Works as if the Oversight Works were undertaken as part of this Agreement*];

Works Price means the sum identified as such in Schedule 1 against the Works as a whole or if the Works are to be divided into Phases, the sum set out in Schedule 1 against each Phase.

1.2 In the interpretation of this Agreement:

- 1.2.1 words importing the singular number only shall include the plural number and vice versa;
- 1.2.2 words importing one gender shall include all other genders;
- 1.2.3 the word "including" shall be deemed to be followed by the words "without limitation";
- 1.2.4 the headings appearing in this Agreement are for reference only and shall not affect its construction;
- 1.2.5 references to any statute include a reference to any statutory amendment, modification replacement or re-enactment thereof for the time being in force and to every instrument or direction, regulation, bye-law, permission, licence, consent, condition, scheme and matter made in pursuance of any statute and any regulation or other legislation of the European Union that is directly applicable in England and Wales and include existing statutes and those that come into effect while this Agreement subsists;
- 1.2.6 where there are two or more persons included in the expressions the Developer or the Client, covenants and obligations expressed to be entered into by the Developer or the Client respectively are deemed to be entered into by such persons jointly and severally;
- 1.2.7 any reference to a clause, schedule or annexure without further designation is a reference to a clause, schedule or annexure of this Agreement;
- 1.2.8 any obligation on a Party not to do any act, matter or thing shall be deemed to include an obligation not to permit or suffer such thing to be done and any obligation on a Party to do any act, matter or thing includes an obligation to procure that it be done;
- 1.2.9 references to any Party shall unless otherwise stated be deemed to include successors in title and assigns of that Party unless the context otherwise requires;

1.2.10 where under this Agreement an act is required to be done within a specified period of hours or days after or from a specified time or date, the period shall begin immediately after that time or date as applicable. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales, that day shall be excluded; and

1.2.11 in the event of any inconsistencies between this Agreement, the Client's Requirements or the Developer's Proposals, the Developer shall immediately bring the same to the attention of the Client's Representative who shall issue instructions in that regard. The terms of this Agreement shall take precedence except insofar as there is an express provision to the contrary in this Agreement.

2 Conditions Precedent

2.1 Notwithstanding any other provision of this Agreement, the rights and obligations of the Parties under this Agreement are conditional and shall only become operative upon satisfaction of the Conditions Precedent save that on service of written notice by the Client such Conditions Precedent may be unilaterally waived by the Client.

3 Commencement

3.1 On the relevant Date of Possession, the Client shall grant and the Developer shall take full possession of the Property required for the Works or where applicable, a Phase, for the purpose of discharging its obligations under this Agreement.

3.2 Save as provided for in this Agreement or as otherwise agreed between the Parties from time to time the Developer shall have exclusive possession of the Property (as licensee) or if applicable that part of the Property relating to a Phase for the purposes of the Works.

3.3 The Developer shall procure the commencement of the Works as soon as reasonably practicable after the Date of Possession and shall notify the Client of the commencement of the Works within five (5) Working Days of the same.

3.4 This Agreement shall not operate or be deemed to operate as the demise of the Property or any part thereof and without prejudice to clause 3.2 the Developer shall not have or be entitled to any estate, right, interest or title in the Property or any individual Unit.

3.5 The Client may defer giving possession of the Property or any part or Phase thereof for a period not exceeding 12 weeks from the relevant Date of Possession.

4 The Works

4.1 The Developer shall:

4.1.1 regularly and diligently carry out the Works; and

4.1.2 ensure that the Works are Practically Complete by the Completion Date and, if applicable, in any event by the Long Stop Date; and

- 4.1.3 in carrying out the Works, use all the reasonable skill, care and diligence expected of a competent and professional building contractor experienced in carrying out work of a similar size, scope and complexity to the Works.
- 4.2 In carrying out the design of the Works, the Developer warrants that it has and shall continue shall use all the reasonable skill, care and diligence expected of an architect or, as the case may be, other appropriate profession designer, holding himself out as competent and being experienced in designing and carrying out work of a similar size, scope and complexity to the Works and the Developer shall design and carry out and complete the Works:
- 4.2.1 in a good and workmanlike manner, fit for their intended purpose and in accordance with good building practice;
- 4.2.2 with good quality new and suitable materials and plant;
- 4.2.3 in accordance with:
- (a) the Planning Permission and all Requisite Consents;
 - (b) the Client's Requirements;
 - (c) all relevant statutory requirements, relevant codes of practice and British Standards;
 - (d) all requirements of the local authority, Latent Defects Insurance provider, the HCA Design and Quality Standards and the Housing Quality Indicators (HQIs) provided by the Developer and submitted to the HCA prior to the date of this Agreement;
 - (e) the requirements of the Code for Sustainable Homes means to the level set out in Schedule 1;
 - (f) the terms of this Agreement.
- 4.3 The Developer shall comply with:
- 4.3.1 the terms and recommendations set out in the Environmental Report; and
- 4.3.2 Best Environmental Practice and carry out the Works in accordance with the Environmental Laws.
- 4.4 The Developer shall:
- 4.4.1 remediate or, as necessary, remove all or any contamination in accordance with the requirements of the appropriate authority; and
- 4.4.2 give the Client, within ten (10) Working Days of completion of the Works (or each Phase) under clause 4.4.1, a Validation Certificate in respect of the remediation works.
- 4.5 The Developer shall ensure that no materials generally regarded in the construction industry as deleterious to health and safety have been or will be issued or incorporated

into or specified or used in the Works and shall ensure that the good practice set out in the "Good practice in the selection of construction materials" published by the British Property Federation and the British Council of Offices is and has been complied with.

5 **Design obligations**

- 5.1 The Developer shall complete the design of the Works and (if so required by the Client) effect Variations pursuant to clause 10 all in accordance with the provisions of this clause 5.
- 5.2 The Developer shall prepare and shall submit to the Client three (3) copies of all drawings, specifications, details, level, setting-out dimensions and other Documents which are either:
- 5.2.1 reasonably necessary from time to time to explain and amplify the Client's Requirements, the Developer's Proposals and any Variations to them; or
 - 5.2.2 reasonably necessary to enable the Developer to execute and complete the design and construction of the Works and any Variations to them; or
 - 5.2.3 stated in the Client's Requirements to be prepared by the Developer.
- 5.3 The Developer shall provide such drawings and details to the Client in good time before they are required for implementation on-site and on a date which will enable the Client and Developer to comply with all the provisions of this clause 5 without delaying the progress of the Works.
- 5.4 The Developer shall provide within his programme for the Works for sufficient time to enable subsequent design details and drawings to be submitted to the Client for comment in the event that initial design details and drawings and relevant design information are not to the satisfaction of the Client.
- 5.5 The Client shall within ten (10) Working Days of the date of receipt of any such drawings, specifications, details, levels and setting-out dimensions submitted or re-submitted by the Developer, return one (1) copy of each of these documents to the Developer, together with his written comments (if any) provided that the Client shall not comment unreasonably or adversely on any such drawings, specifications, details, levels and setting-out dimensions which comply with the Planning Documents or Requisite Consents and with the standards of workmanship and materials specified there or in the Client's Requirements and Developer's Proposals, or to be reasonably inferred from them.
- 5.6 If the Client returns the drawings, specifications, details, levels and setting-out dimensions in accordance with clause 5.5, together with his comments, the Developer shall immediately take account of such comments in drawings, specifications, details, levels and setting-out dimensions and shall resubmit them to the Client for his comments in accordance with the provisions of clauses 5.2 to 5.4 inclusive. The Client shall return them to the Developer in accordance with clause 5.5 so long as where the Developer is of the opinion that any such comments are likely to adversely affect the design of the Works he shall not take account of them, but shall give notice of objection to the Client who shall forthwith instruct the Developer either to disregard or to take account of the comments to which the Developer shall comply with such instructions.

- 5.7 The work shown on all drawings, specifications, detail, level and setting-out dimensions shall, subject to clause 5.10 upon their respective Design Freeze Dates become part of the design of the Works. The Developer shall be responsible for the sufficiency of the work shown on all drawings, specifications, detail, level and setting-out dimensions prepared by him (including those in relation to which account has been taken of any comments of the Developer) and for ensuring that they are in accordance with the Client's Requirements and in compliance with the Planning Documents and Requisite Consents.
- 5.8 The Developer shall be entitled within 7 days of receipt of any comment to notify the Client in writing that he considers compliance with the comment would give rise to a Client Variation. Such notification shall be accompanied by a statement setting out the Developer's reasons. Upon receipt of such notification, the Client shall within 7 days either confirm or withdraw the comment and where the comment is confirmed as being a Client Variation such written confirmation shall satisfy and be an express statement pursuant to clause 5.11 below.
- 5.9 Where the Developer shall find any errors in or require any alteration or modifications to any drawings, specifications, details, levels and setting-out dimensions after their respective Design Freeze Dates, he shall, notwithstanding that the errors have become part of the design of the Works, resubmit in accordance with clauses 5.2 to 5.4 inclusive any such drawings, specifications, details, levels and setting-out dimensions together with his corrections of the errors so found or his proposed alterations or modifications.
- 5.10 The Developer shall attend such meetings as the Client may reasonably require to discuss any comments raised under the provisions of clause 5.5.
- 5.11 No comments by the Client where in writing or otherwise shall, unless expressly stated, be deemed to be an instruction requiring a Variation under clause 10 of the Developer, nor shall any comment relieve the Developer of its obligations or liabilities for the design of any part of the Works as set out in this or any other clause.
- 5.12 No comment or lack of comment upon the Developer's drawings, calculations, notes and the like by the Client shall impose liability for defective design upon the Client nor shall it in any way reduce or cancel the Developer's responsibility for the proper design of the Works.

6 **Risks and liabilities**

- 6.1 Subject to the terms of this Agreement, the Developer shall also be under an obligation to carry out, deemed to have full knowledge of and to have made due allowance for the following matters within the Works Price:
- 6.1.1 to do all works and things required by all statutes and compliance with the lawful requirements of all statutory authorities affecting the Works including, but not limited to, all the requirements of any water, gas, drainage, electricity and telecommunications authorities and any and all planning and/or Section 106 reserved matters, conditions and/or requirements;
- 6.1.2 keep appointed at all times a CDM Co-ordinator pursuant to clause 12.2.1;
- 6.1.3 be deemed to have satisfied itself as to:

- (a) any restriction in terms of access to and from the Property and any obligation under this Agreement to facilitate any right of access of the Client and/or the Client's tenants, residents or any other person authorised by the Client to and from the Property and within the Property to and from any completed Phase or Specified Unit (as defined at clause 20.8);
- (b) all and any conditions relating to party wall awards insofar as any such conditions relate to the Works and will accept liability for and will pay all and any costs arising out of or in connection with any party wall works and/or awards from time to time including all fees of all party wall surveyors incurred;
- (c) the feasibility of unloading and storage of materials;
- (d) all local conditions and difficulties at the Property including, the location of all existing services and drainage and any other factors which may affect the carrying out of the Works or any part or parts thereof;
- (e) the state and condition of the soil and rock strata on the Property; and
- (f) any and all requirements for inter alia off-site site huts, scaffolding, oversail licences and any permissions, consents, licences and/or similar necessary to effect such requirements from third parties.

6.1.4 to procure from the date of this Agreement in respect of each and every part of the Works which is intended for occupation as a residential dwelling and the common parts relating thereto the Latent Defects Insurance in favour of the Client. The Developer shall issue to the Client the Latent Defects Insurance Documents within seven (7) days of a request for the same or within such other time as set out in the Client's Requirements. If the Developer defaults in taking out or maintaining the Latent Defects Insurance as required by this clause 6.1.4, the Client may himself take out and maintain the Latent Defects Insurance and the amount paid or payable by him in respect of any premiums or associated costs may be deducted by him from any sums due or to become due to the Developer under this Agreement or shall be recoverable from the Developer as a debt;

6.1.5 to comply with all requirements of the Latent Defects Insurance provider and other regulatory bodies, which shall include without limitation, any requirements by any regulatory authority in terms of compliance with Environmental Laws;

6.1.6 to use his best endeavours to procure that all Adoptable Works are adopted by or vested in the relevant authority as maintainable at public expense including, but without limitation, the negotiation of and submission to the Client for execution of adoption agreements with the relevant authority (the Developer leading all negotiations in that regard), the carrying out of the Adoptable Works in accordance with the terms of such adoption agreements and compliance with the requirements of the relevant authority in relation to the rectification of defects in the Adoptable Works (and which shall be maintained by the Developer during the Defects Liability Period to the satisfaction of the adopting authority in accordance with the relevant adoption agreement) and the provision

of a surety or sureties in respect of all such adoption agreements and all costs in connection therewith;

6.1.7 be liable for and shall indemnify the Client against any expense, liability, loss, claim or proceedings whatsoever incurred by the Client arising from the Adoptable Works and any adoption agreements and sureties provided in connection therewith, save to the extent that the same is due to any act or neglect of the Client save that the Developer shall not be liable for the costs of the Client or its legal advisers incurred in the approval and execution of such adoption agreements and notwithstanding any other provision of this Agreement, no matter arising from any of the matters noted above and whether arising directly or indirectly as a result of such matters nor any instructions which the Client may issue (acting reasonably) consequent upon the discovery of any such matter shall give rise to any adjustment to the Works Price or to any extension of time or to any entitlement on the part of the Developer to loss and expense and/or to any entitlement on the part of the Developer to determine its employment under this Agreement.

6.2 No matter arising from any of the matters noted above shall give rise to any adjustment to the Works Price or to any extension of time or to any entitlement on the part of the Developer to loss and expense.

6.3 The Developer shall pay when due all fees and charges payable by law and pursuant to any Requisite Consents including, for the avoidance of doubt, any commuted sum payments and all statutes and any enforceable codes of practice of the applicable local authority and other authorities/regulators having authority in respect of the execution and completion of the Works.

6.4 The Developer shall use all reasonable endeavours to minimise nuisance to any adjoining owners to the Property commensurate with the carrying out of development works at and adjacent to the Property.

6.5 Risk in terms of programme and cost of any amendment and/or change to statutory requirements after the Base Date affecting the Works or any part or parts thereof shall be at the risk of the Developer and for the avoidance of doubt shall not be treated as if it/they were a Delay Event.

7 **Liquidated and ascertained damages**

7.1 If the Developer fails:

7.1.1 to procure Practical Completion of the Works by the Completion Date (as may be adjusted from time to time); and/or

7.1.2 to procure Practical Completion of a Phase by the applicable Phase Completion Date (as may be adjusted from time to time);

the Client shall serve notice on the Developer:

(a) requiring the Developer to pay (subject to clause 20.8.2) LADs for the period between the Completion Date and/or Phase Completion Date; and/or

- (b) advising that he will withhold or deduct (subject to clause 20.8.2) LADs from sums that may otherwise become or have become due to the Developer pursuant to the terms of this Agreement.

7.2 Where the Client serves notice on the Developer pursuant to clause 7.1.2(a), such sums shall be recoverable by the Client from the Developer as a debt.

8 Extensions of time

8.1 If it becomes apparent that the Works or a Phase will not be completed by the relevant Completion Date as a result of a Delay Event then **provided that** the Developer could not reasonably have been expected to foresee the delay at the date of this Agreement and **provided that** the delay does not result from any negligent act or omission of the Developer, its agents, employees, sub-consultants, sub-contractors or the Developer's Team or their respective agents, employees, sub-consultants, sub-contractors or any failure of the Developer to comply with his obligations under this Agreement, the Developer may apply to the Client's Representative for a postponement of the relevant Completion Date (or Phase Completion Date, as applicable).

8.2 The application under clause 8.1 must be made within five (5) Working Days after the cause of delay has arisen, and must include full particulars of the postponement of the Completion Date or Phase Completion Date to which the Developer considers himself entitled.

8.3 Upon receipt of such particulars the Client's Representative shall consider all the circumstances known to him at that time and may allow an extension of time to which he considers the Developer is entitled for the completion of the Works or Phase. If the Client's Representative allows such an extension of time, there shall be a corresponding postponement of the Completion Date or relevant Phase Completion Date.

8.4 If the Developer makes an application for a postponement of the Completion Date or a Phase Completion Date but the Client's Representative considers that the Developer is not entitled thereto, the Client's Representative shall so inform the Developer and the Completion Date and/or relevant Phase Completion Date shall remain unchanged.

8.5 *[Notwithstanding any other provision of this Agreement the Developer **hereby waives** any entitlement to an extension of time and/or additions to the Work Price and/or suspension and/or termination of this Agreement (which would otherwise be due or entitled) in respect of delay by the Client failing to grant possession or access to the Property or any Phase relating to any period whereby the Client is not the registered proprietor of the land constituting the relevant Phase.]*

9 Developer's Variation

9.1 Subject to clause 9.2 and clause 9.3, the Developer shall not make a Developer's Variation without the Client's prior written approval (such approval not to be unreasonably withheld or delayed) **provided that** the Client shall not be deemed to have unreasonably withheld approval if it does not approve a Developer's Variation which:

9.1.1 adversely affects the market value of the Property or any Unit;

9.1.2 increases the long term maintenance costs of the Property or any Unit;

9.1.3 causes the Property or any Unit to fall below applicable Homes and Community Agency Design & Quality Standards and/or minimum space standards; and/or

9.1.4 means the Property or any Unit does not achieve the Clients required level of the Code for Sustainable Homes.

9.2 The Developer shall not be under any obligation to seek the Client's approval to any Variations that:

9.2.1 are immaterial, insubstantial or of routine nature and do not lower the quality of the Works; or

9.2.2 are a substitution of materials if the replacements are of no lesser standard than those originally specified;

but shall be under an obligation to notify the Client of the same (such notification not to be unreasonably withheld or delayed) and **provided always that** the Developer acknowledges that it shall be under an obligation to seek the Client's approval to a Variation as described in this clause 9.2 where such Variation would result in any respect to an increase in the Works Price. Where such Variation would result in a cost saving, the value of such cost saving shall be deducted from the Works Price.

9.3 Where the Developer puts forward a Developer's Variation to the Client and the Client gives its approval, the terms of clauses 10.1 and 10.3 to 10.6 inclusive shall apply to the Developer's Variation and shall where the context permits be construed to reflect the position that it is a Developer's Variation rather than a Client's Variation.

10 **Client's Variation**

10.1 Subject to clause 10.2, within fifteen (15) Working Days or such other time as may be agreed in writing between the Parties of receipt of a request for a Client's Variation, the Developer shall give to the Client an Estimate.

10.2 Should a Client's Variation result in or be likely to result in (in the Developer's reasonable opinion):

10.2.1 delay to the completion of the Works or any part or parts of the Works; and/or

10.2.2 delay to the sale of the whole or any part or parts of any Unit comprised in the Works; and/or

10.2.3 require any amendment and/or variation to or new application for any Requisite Consent;

the Developer shall have the right to decline, by notice in writing, to undertake any such Client's Variation and the provision of clause 10.1 and clauses 10.3 to 10.5 inclusive shall not apply to such Client's Variation. Any dispute or difference between the parties as to whether the Developer is acting reasonably in the circumstances shall be dealt with in accordance with clause 26.

10.3 Within ten (10) Working Days of receipt of any Estimate the Client may require that the Developer attend a meeting to discuss the calculation of any effects on cost and time.

10.4 If the Client wishes to proceed with a Client's Variation it shall issue written confirmation of the same to the Developer and the Developer shall undertake the confirmed Client's Variation in accordance with the provision of this Agreement.

10.5 If a Client's Variation is implemented the cost of the Client's Variation shall be either as:

- (a) specified in the Estimate; or
- (b) agreed between the Client and the Developer; or
- (c) settled by the resolution of the dispute about the Estimate;

and such costs shall be added to the Works Price and payment made by the Client in accordance with this Agreement. Any savings resulting from any Client's Variations shall be deducted from the Works Price.

10.6 The Completion Date for the Works (and/or the relevant Phase Completion Date, as applicable) shall be adjusted as set out in the Estimate or such other period of time as may have been agreed between the Parties or as determined pursuant to clause 26.

11 **The Client's Representative**

11.1 The Developer shall do everything to enable the Client's Representative to discharge its obligations in respect of the Works including (without limitation):

- 11.1.1 giving the Client's Representative no fewer than three (3) Working Days notice of all relevant meetings of the Developer's Team (including site meetings);
- 11.1.2 supplying copies of any agenda prepared prior to and any minutes produced following such meetings when circulated to the Developer's Team;
- 11.1.3 permitting the Client's Representative to attend (suitably attired having regard to health and safety requirements) and participate at all meetings; and
- 11.1.4 paying due regard to the representations of the Client's Representative, consistent with the terms of this Agreement.

11.2 If the Client's Representative considers that the Works or any Phase have been and/or continue to be carried out in breach of this Agreement, it may at any time before the Works or any Phase are certified as Practically Complete serve on the Developer a Defects Notice.

11.3 The Developer shall have due regard to any Defects Notice and within ten (10) Working Days after service of the same (time being of the essence) the Developer or its authorised representative shall remove and/or replace any defective work and/or materials or make good any defects or otherwise takes such steps as may be appropriate in relation to the breach referred to in the Defects Notice.

11.4 The Client and the Client's Representative and any person authorised by them may enter the Property upon reasonable notice to the Developer to inspect progress of the Works, the materials used and test materials and workmanship **provided that** the Client and the Client's Representative:

11.4.1 shall not obstruct progress of the Works and shall:

- (a) not give instructions or make representations directly to the Developer's Team;
- (b) comply with the health and safety requirements and site rules.

11.5 The Developer shall inform the Client's Representative before covering up any part of the Works that the Client's Representative has informed the Developer that he wishes to inspect. If the Developer fails to do so, he shall be required to uncover such part of the Works for inspection and reinstate the same at his own cost. For the avoidance of doubt, the Developer shall not be entitled to an extension of time or claim for loss and expense, or adjustment of the Works Price due to a failure to comply with this clause 11.5.

12 **Health and safety**

12.1 The Developer shall comply with all current health, safety and environmental legislation in existence at the time of carrying out the Works.

12.2 For the purposes of the CDM Regulations the Developer and the Client agree that the Developer shall act as the "client" and the "principal contractor" in respect of the Works and that the Developer shall perform in all respects the duties of a "client" and shall perform in all respect the duties of "principal contractor" pursuant to and as described in the CDM Regulations and (without limitation) shall:

12.2.1 keep appointed at all times a CDM Co-ordinator;

12.2.2 provide to the CDM Co-ordinator as soon as reasonably practicable but in any event before the commencement of the work to which the information relates, all information relevant to the CDM Co-ordinator's functions concerning the state and condition of the Property;

12.2.3 ensure that the Works shall not commence until the CDM Co-ordinator has been appointed and a health and safety plan complied in accordance with the CDM Regulations has been prepared; and

12.2.4 provide to the Client two copies of the completed health and safety file (including one in electronic format) which complies in all respect with the CDM Regulations;

12.3 The Developer warrants that it has the competence and has allocated and will allocate adequate resources to fulfil its obligations as the "client" for the works in compliance with the CDM Regulations and that all information provided by the Developer regarding such competence and resources and its record in health and safety is accurate and complete and that it has fulfilled and will continue to fulfil the said obligations.

12.4 The Developer (or such other party as may be stated in Schedule 1) shall act as the CDM Co-ordinator and the Client shall provide to the CDM Co-ordinator such information as it may reasonably require at any time.

12.5 The Developer shall comply with all the duties of a principal contractor as set out in the CDM Regulations and in particular shall ensure that the Health & Safety Plan has the

features required by Regulation 15(4) of the CDM Regulations. Any amendment to the Health & Safety Plan shall be notified to the Client's Representative.

12.6 The Developer shall make a declaration in accordance with Regulation 8 of the CDM Regulations to the Health and Safety Executive.

12.7 In undertaking the Works the Developer shall ensure that all care and attention is taken to comply with any occupational health and safety and environmental plan applicable to the Works and any health and safety requirements as may be reasonably necessary having due regard to the activities and works on other contractors.

13 **Development information**

13.1 The Developer shall, upon the Client's request, supply at its own expense one copy:

13.1.1 of all surveys and reports relevant to the Property or the Works;

13.1.2 of any relevant correspondence with the relevant statutory service or regulatory authority in respect of the Property and the Works requirements and (so far as it is available) evidence of compliance with the requirements of the relevant statutory service authority.

13.2 The Developer shall:

13.2.1 promptly notify the Client of the grant of any Requisite Consent and give the Client a copy within ten (10) Working Days of receipt of the same;

13.2.2 keep the Client and the Client's Representative regularly informed as to the progress of the Works; and

13.2.3 without prejudice to the generality of clause 13.2.2 supply the Client's Representative with copies of all relevant drawings, specifications and other documents circulated amongst the Developer's Team.

14 **Appointment of the Developer's Team and collateral warranties**

14.1 The Developer shall appoint a Developer's Team for the Works and (where the Developer is not itself undertaking any part of the Developer's Team requirements) shall supply certified copies of the completed terms of engagement to the Client at the Developer's cost within five (5) Working Days of completion of the same together with a copy broker's letter confirming the insurance details of the relevant member of the Developer's Team.

14.2 The Developer shall ensure that any terms of engagement of the Developer's Team satisfy the relevant requirements set out in Schedule 2 and the Developer confirms that it has taken all reasonable steps to be reasonably satisfied that each member of the Developer's Team is suitable and competent having regard to the respective responsibilities of each member of the Developer's Team in relation to the building contract, the Development and the CDM Regulations.

14.3 The Developer shall not vary the terms of engagement of any member of the Developer's Team without the prior written approval of the Client.

- 14.4 The Developer shall use best endeavours to procure that each member of the Developer's Team performs and observes the terms of its engagement. The Developer shall not vary, waive or release any member of the Developer's Team's engagement without the Client's consent (such consent not to be unreasonably withheld or delayed).
- 14.5 The Developer shall not do or omit to do anything that would entitle any member of the Developer's Team to regard its employment as terminated. The Developer shall notify the Client if it believes any member of the Developer's Team may be intending to rescind its terms of engagement.
- 14.6 The Developer shall not terminate the employment of any member of the Developer's Team or treat it as repudiated without notifying the Client first and discussing the appointment of suitable alternative.
- 14.7 If the appointment of a substitute consultant or contractor is required, then the appointment shall be subject to the prior approval of the Client (such approval not to be unreasonably withheld or delayed) although the Client shall not be deemed to be unreasonably withholding and/or delaying such consent if any consultant or contractor shall not agree to be appointed on substantially the same terms as the original consultant or contractor.
- 14.8 Any approval by the Client of a consultant or contractor shall not in any way derogate from the obligations of the Developer pursuant to this Agreement.
- 14.9 The Developer shall procure that:
- 14.9.1 each and every member of the Developer's Team; and
 - 14.9.2 any other party with design responsibility in respect of the Works; and
 - 14.9.3 any contractor or consultant involved with the remediation of the Property to the extent that such works do not form part of the Works;

shall execute as a deed and deliver to the Client within ten (10) Working Days from the date of this Agreement or the relevant appointment (whichever shall be the later) a deed or deeds of collateral warranty in the form annexed in Appendix 1, Appendix 2, Appendix 3 or Appendix 4 as appropriate in favour of the Client and any Funder and any other party who has or will acquire an interest in the Works.

15 **Performance Bond and Parent Company Guarantee**

- 15.1 If stated to apply in Schedule 1, the Developer shall submit to the Client:
- 15.1.1 a performance bond to be issued in favour of the Client by a bank or insurance company acceptable to the Client duly registered and trading in the United Kingdom and to be executed in the form of a deed and in the form set out in Appendix 5 in an amount equivalent to ten percent (10%) of the Works Price or such other sum set out in Appendix 5; and
 - 15.1.2 if the Developer is a subsidiary of another company, a parent company guarantee in the form set out in Appendix 6 hereto to be executed as a deed by

the Developer's ultimate holding company or such other parent company of the Developer as the Client may accept.

16 Indemnity

16.1 The Developer (which in this clause 16 includes its employees, agents, servants, assigns, contractors, sub-contractors, consultants and/or suppliers) shall be liable for and indemnify and keep indemnified the Client, its agents, servants and employees and assigns for Losses arising out of or in connection with the Works and caused by:

16.1.1 the personal injury or death of any person arising out of or in the course of or caused by the carrying out of the Works;

16.1.2 damage to any real or personal property arising out of or in the course of or by reason of the carrying out of the Works due to its negligence, breach of statutory duty, omission or default of the Developer;

16.1.3 the Developer permitting or suffering to be done anything which might be or become an actionable danger or nuisance to any adjoining owner, occupier or member of the public;

16.1.4 any breach by the Developer of any of its obligations under this Agreement; or

16.1.5 the failure by the Developer to comply with its obligations under statute.

16.2 The Developer shall further pay for and indemnify the Client and keep the Client indemnified against:

16.2.1 any claims that may be made by any relevant authority against the Client for contributions, levies and taxes (including any penalties or fines) relating to services or works carried out by the Developer in relation to the Works; and

16.2.2 any liabilities arising out of the failure by the Developer to pay any fees and charges which it is liable to pay incidental upon the Works, legally recoverable from it under any statute, statutory instrument, rule or order or any regulation or bye-law applicable to the Works.

17 Insurance

17.1 Without prejudice to its obligation to indemnify the Client under clause 16 the Developer shall take out and maintain from the Date of Possession until the issue of the Certificate of Making Good Defects, insurance in respect of claims arising out of its liability referred to in clauses 16.1.1 and 16.1.2 which:

17.1.1 in the case of claims for personal injury, death of any employee of the Developer arising out of or in the course of their employment shall comply with all relevant legislation; and

17.1.2 in all other cases shall indemnify the Client against all consequential liabilities;

in an amount not less than that stated in Schedule 1 with reference to this clause 17.1 for any one claim or series of claims arising out of one event.

17.2 The Developer shall:

17.2.1 take out and maintain until Practical Completion:

- (a) insurance for the Works against the Insured Risks in the joint names of both the Client and the Developer for no less than the full reinstatement value of the Works (plus professional fees, if any) and in the name of such other third party as the Client may require in writing and who has an insurable interest in the Works; and
- (b) in the Developer's own name all risks insurance on plant, tools, equipment and other things for use in connection with the Works including hired and/or owned property;

17.2.2 indemnify the Client against costs and expenses properly incurred by the Client in effecting any insurance in default of the Developer insuring or continuing to insure the Property or the Works;

17.2.3 maintain in full force and effect throughout the period of performance of the Works and for a period of 12 years from Practical Completion professional indemnity insurance in an amount of not less than the amount specified in Schedule 1 with reference to this clause 17.2.3 for any one occurrence or series of occurrences arising out of any one event **provided always** that such type of insurance is available to professional persons acting in the capacity of the Developer at commercially reasonable rates.

17.3 In the event of any loss or damage to the Works once any necessary inspections have taken place the Developer shall procure that their reinstatement or replacement is carried out diligently and with all reasonable speed. The Developer shall apply the proceeds of the insurance towards the reinstatement and make good any deficiencies out of its own funds.

17.4 In respect of the insurances referred to in this clause 17 the Developer shall:

17.4.1 place such insurance with reputable insurers based in the UK;

17.4.2 immediately inform the Client if such insurance ceases to be available at commercially reasonable rates in order that the Developer and the Client can discuss the means of best protecting the respective positions of the Developer and the Client in respect of the Works in the absence of such insurance;

17.4.3 promptly pay all premiums;

17.4.4 supply to the Client upon the Client's reasonable request with a copy of any relevant insurance policies or full details of the policies; and

17.4.5 as and when required to do so, provide documentary evidence of renewal of the insurance and/or any endorsement to these insurances and/or written confirmation from the Developer's insurers or brokers that each annual premium has been paid.

17.5 If the Developer fails to procure or maintain (or reasonably prove to the Client that the Developer is maintaining) any of the insurance policies required in relation to the Works in this clause 17, the Client may procure such policy(ies) and the amount payable or paid in relation to the premium(s) or any associated costs shall be deducted by the Client from any sums due or to become due from the Client to the Developer under this Agreement or will be recoverable by the Client from the Developer as a debt.

18 **Copyright**

18.1 The Developer grants to the Client an irrevocable royalty-free non-exclusive licence to use and reproduce the Documents for any purpose connected with the Works and/or the Property and/or any Unit including, the execution, completion, maintenance, letting, management, sale, advertisement, alteration, extension, reinstatement and repair of the Works or any part of the Works **provided that** the licence shall not include a licence to reproduce the design contained in the Documents for any extension of the Works. Such licence shall carry the right to grant sub licences and shall be transferrable to third parties. The Developer shall not be liable for any use of the Documents for the purposes other than for which they were prepared and provided by the Developer.

19 **Payment**

19.1 **The Works Price**

19.1.1 The Works Price shall, save for those matters referred to in clause 19.2.1, be deemed to be inclusive payment for the Works and all costs, expenses and overheads of every kind incurred by, or on behalf of the Developer, in connection with this Agreement.

19.1.2 The Retention will be deducted by the Client from any payment of the Works Price due to the Developer pursuant to any Payment Notice (subject to any related Pay Less Notice).

19.1.3 Half of the Retention, if due, will be released to the Developer on Practical Completion of the Works subject to the making by the Developer of an Interim Application for Payment pursuant to clause 19.3.2(b) or thereafter.

19.1.4 The balance of the Retention, if due, will form part of the calculation for the Final Account as set out at 19.4 below.

19.2 **Additions to and deductions from the Works Price**

19.2.1 The Works Price shall only be adjusted:

(a) in the event of a Variation in accordance with the provisions of clauses 9 or 10 of this Agreement (in which event the Works Price shall be increased or decreased pursuant to the terms of clauses 9 or 10 as applicable); or

(b) pursuant to the provisions of clause 19.6.

19.3 **Payment Mechanism**

- 19.3.1 The Works Price shall be paid in accordance with the provisions of this clause 19.3;
- 19.3.2 The Developer shall make Applications for Interim Payment to the Client's Representative no more frequently than:
- (a) monthly following the Date of Possession and up to the date of Practical Completion of the Works;
 - (b) no later than ten (10) Working Days after the date of Practical Completion of the Works;
 - (c) after Practical Completion, no earlier than at two monthly intervals and as and when further amounts are due to the Developer up to the later of the date of expiry of:
 - i the Defects Liability Period in respect of the Works; and
 - ii the date of the Certificate of Making Good Defects in respect of the Works;
- stating the sum that the Developer considers to be due to him and the basis on which that sum has been calculated, accompanied by such details as may be stated in the Client's Requirements and such further information as the Client's Representative may reasonably require and notified from time to time.
- 19.3.3 Subject to clause 19.3.9, the due date of an Application for Interim Payment shall be the later of:
- (a) the date of the Application for Interim Payment; and
 - (b) the date of receipt by the Client's Representative of the Application for Interim Payment in respect of the intervals referred to above.
- 19.3.4 Not later than five (5) days after the Due Date as determined in accordance with clause 19.3.2 above, the Client (or, if so authorised by the Client, the Client's Representative) shall issue a Payment Notice to the Developer and subject to any Pay Less Notice given in accordance with clause 19.3.5 below, the amount to be paid by the Client to Developer on or before the final date for payment shall be the sum stated as due in the Payment Notice (the **Notified Sum**). The final date for payment of the relevant Notified Sum shall be the later of:
- i twenty-six (26) days from the Due Date; or
 - ii twenty-one (21) days of receipt by the Client of a VAT invoice from the Developer in respect of the Notified Sum.
- 19.3.5 Not later than five (5) calendar days before the final date for payment of any amount due to the Developer under this Agreement, the Client (or, if so authorised by the Client, the Client's Representative) may give notice of an intention to pay less than the Notified Sum by serving a Pay Less Notice which shall specify the sum considered by the Client to be due on the date that the Pay Less Notice is served and the basis for the calculation.

- 19.3.6 Neither the issue by the Client (or the Client's Representative (as appropriate)) of a Payment Notice nor payment of any Notified Sum (or Notified Sum less any sum specified in a Pay Less Notice) shall prejudice or adversely affect the right of either the Developer or the Client to contend that the Works completed to the date of the relevant Payment Notice have not been properly valued and that any amount has been improperly paid or not. In making any evaluation, the Client's Representative shall be entitled to reconsider and if necessary adjust the assessments made by him in arriving at any previous Payment Notice and amend the same in any subsequent Payment Notice.
- 19.3.7 Neither the issue by the Client (or the Client's Representative (as appropriate)) of a Payment Notice nor payment of any Notified Sum (or Notified Sum less any sum specified in a Pay Less Notice) pursuant thereto shall constitute or imply or be evidence of the Client's approval or acceptance of any design, work, materials or equipment forming part of the Works or shall relieve the Developer of any of his obligations hereunder.
- 19.3.8 It is immaterial that any amount considered to be due for payment pursuant to a Payment Notice or a Pay Less Notice may be 'nil'.
- 19.3.9 Notwithstanding any other provision of this Agreement, no payment of any kind shall fall due or be made to the Developer unless and until the Developer has submitted to the Client a performance bond (if requested in Schedule 1) and a parent company guarantee (if requested in Schedule 1) and all and any executed and delivered collateral warranties in accordance with clause 14.9 (save that where one or more executed or delivered collateral warranties are outstanding no payment shall fall due or be made to the Developer in respect of work undertaken by any party from which any collateral warranty or warranties are outstanding to the Client until such collateral warranty or collateral warranties are provided) and documentary evidence satisfactory to the Client of the insurance policies referred to in clause 17 (as applicable).

19.4 **The Final Account**

19.4.1 Within three (3) months of Practical Completion of the Works, or where the Works have been divided into Phases, Practical Completion of the last Phase, the Developer shall submit to the Client's Representative its Final Account for agreement by the Client and the Developer.

19.4.2 The Final Account shall set out:

- (a) the Works Price together with such adjustments required to the Works Price in accordance with clause 19.2; and
- (b) the amounts previously paid by the Client to the Developer;

and the difference (if any) between the two sums (the **Final Account Sum**) shall be (as applicable) a balance due to the Developer from the Client or to the Client from the Developer as the case may be. The Final Account shall state the basis upon which the Final Account Sum has been calculated including details of any adjustments referred to at clause 19.4.2(a).

- 19.4.3 If the Developer fails to submit its Final Account within the three (3) month period referred to in clause 19.4.1, the Client may on the expiry of that period, in so far as he is able to do so having regard to the information in his possession, prepare and issue a Final Account to the Developer in the form required by clause 19.4.2.
- 19.4.4 Save to the extent that prior to the due date calculated pursuant to clause 19.4.5 below, the Client (or the Client via the Client's Representative) gives notice to the Developer disputing anything in the Final Account submitted by the Developer pursuant to clause 19.4.1 above, or, the Developer gives notice to the Client disputing anything in the Final Account submitted by the Client pursuant to clause 19.4.3 above, the relevant Final Account Sum (adjusted by any sums paid by the Client to the Developer during the period from Practical Completion to the date calculated in accordance with clause 19.4.5) shall upon the date calculated in accordance with clause 19.4.5 become conclusive as to the sum due pursuant to 19.4.2.
- 19.4.5 The due date for payment of the Final Account Sum shall be the date falling twenty eight (28) days after the later of:
- (a) the expiry of the Defects Liability Period; or
 - (b) the date of the Certificate of Making Good Defects.
- 19.4.6 The final date for payment of the Final Account Sum shall be the later of:
- (a) twenty-eight (28) days from the due date; or
 - (b) twenty-eight (28) days of receipt by the paying party of a VAT invoice from the other whichever shall be the later.
- 19.4.7 Not later than five (5) days after the due date for payment as determined in accordance with clause 19.4.4, the Party who is to pay the Final Account Sum (the **Payer**) shall give a Payment Notice to the other Party (the **Payee**) stating the amount that the Payer considers to be or have been due to the Payee at the due date and the basis on which that sum is calculated and that sum shall, subject to issue of a Pay Less Notice in respect of the same, be the sum payable by the Payer to the Payee on or before the final date for payment pursuant to clause 19.4.6.
- 19.4.8 Not later than five (5) Working Days before the final date for payment of the Final Account Sum, the paying Party may give to the other notice of an intention to pay less than the sum specified in the Payment Notice by serving a Pay Less Notice which shall specify the sum considered by that Party to be due on the date that the Pay Less Notice is served and the basis for the calculation.

19.5 **Payment for Goods and/or Materials**

- 19.5.1 Payment for materials and goods are included in the Works Price and will be payable in accordance with the provisions of clause 19 subject to such goods/materials being incorporated within the Works.

19.5.2 Ownership of all materials and goods intended for the Works shall pass to the Client when they are incorporated into the Works or when the Developer receives payment for them pursuant to clause 19 whichever shall be the earlier. Responsibility for protection and insurance of the materials and goods will remain with the Developer until Practical Completion.

19.6 **Suspension**

19.6.1 Without affecting the Developer's other rights and remedies, if the Client fails to pay to the Developer any sum payable in accordance with this Agreement by the relevant final date for payment and the failure continues for seven (7) calendar days after the Developer has given notice to the Client of his intention to suspend the performance of any or all of his obligations under this Agreement (and stating the ground or grounds on which it is intended to suspend such performance), the Developer may suspend such performance of any or all of his obligations so notified until payment is made in full by the Client.

19.6.2 Where the Developer exercises his right of suspension pursuant to clause 19.6.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of such right.

19.6.3 Any claim for reasonable costs pursuant to clause 19.6.2 shall be made by way of the Interim Application for Payment for the period in which such costs are incurred and the Developer shall submit with that Interim Application for Payment such details as the Client may require in order to ascertain the Developer's entitlement.

19.7 **Set off**

19.7.1 The Client shall be entitled but not obliged at any time or times, subject to the Client's compliance with clause 19.3.4 and/or clause 19.3.5 and/or clause 19.4.7 and/or clause 19.4.8, to set off any liability of the Developer to the Client against any liability of the Client to the Developer (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency of its denomination). Any exercise by the Client of its rights under this clause 19.7.1 shall be without prejudice to any other rights or remedies available to the Client under this Agreement or otherwise.

20 **Completion of the Works**

20.1 The Developer shall:

20.1.1 give eight (8) weeks notice to the Client and the Client's Representative of the date that the Developer believes that the Works or any individual Phase shall be Practically Complete; and

20.1.2 agree a date for inspection of the Works or any individual Phase by the Client's Representative.

20.2 The Client's Representative shall:

- 20.2.1 attend the Property on the agreed date and inspect the Works or the relevant Phase; and
- 20.2.2 within three (3) Working Days of inspection:
- (a) if it is satisfied that the Works or the relevant Phase is/are Practically Complete, issue the Certificate of Practical Completion in respect of the Works or the relevant Phase; or
 - (b) if it is not satisfied that the Works or the relevant Phase is/are Practically Complete give notice to the Developer (with a copy to the Client) giving its reasons for serving the notice and annexing a Defects List.
- 20.3 On receipt of a notice issued pursuant to clause 20.2.2(b) the Developer shall without delay proceed to remedy and/or rectify any work specified in the notice.
- 20.4 The procedures set out above shall apply as often as is necessary until the Client's Representative is satisfied that the Works or the relevant Phase is/are Practically Complete and issues the Certificate of Practical Completion in respect of the Works or the relevant Phase save that the period of notice set out in clause 20.1.1 shall be reduced to five (5) Working Days.
- 20.5 The Developer shall ensure that by Practical Completion of the relevant Phase and unconditionally at Practical Completion of the Works, the Property or that part of the Property comprising the relevant Phase is/are left in a good and clean condition cleared of all plant, temporary structures, equipment and unused building materials to the reasonable satisfaction of the Client.
- 20.6 The Developer shall procure that the certificate(s) evidencing compliance with the requirements of the Code for Sustainable Homes Level are delivered to the Client Representative within the period set out in Schedule 1 with reference to this clause 20.6 from the date of Practical Completion of each Phase and in respect of the last Phase, from the date of Practical Completion of the Works
- 20.7 Upon the issue of a Certificate of Practical Completion given pursuant to clause 20.2.2(a) or 20.4, but save in respect of any right of access that may be required by the Developer or the Developer's Team to fulfil its obligations in respect of the rectification of defects subject always to the terms of this Agreement, the Developer's right of access (which in this clause 20.7 includes the rights of the Developer's employees, agents, servants, assigns, contractors, sub-contractors, consultants and/or suppliers) and possession granted by the Client under clause 3.2 to that part of the Property which forms part of any or all of the relevant Phase shall be deemed to be revoked and the Developer acknowledges that it shall have no right to possession of or access to that Phase or the Works save as provided for in this Agreement or implied by way of the laws of England and Wales. The Client and/or any of the Client's residents, tenants or other persons who may be authorised by the Client to do so shall be entitled to all necessary rights of access to the relevant Phase including ingress and egress to and from the Property and the Developer shall do all things reasonably necessary to make such right effective.
- 20.8 If at any time or times before Practical Completion of the Works the Client wishes to take possession of any Unit or Units (the "**Specified Units**") and the consent of the Developer (which shall not be unreasonably delayed or withheld) has been obtained, then

notwithstanding anything expressed or implied elsewhere in this Agreement, the Client may take possession thereof.

- 20.8.1 The Client shall thereupon issue to the Developer a written statement identifying the Specified Units taken into possession and giving the date when the Client took possession and for the purposes of this clause 20 but subject always to the provisions of clauses 11.2 and 11.3, Practical Completion of the Specified Units only shall be deemed to have occurred on the date of the written statement.
- 20.8.2 As from the date upon which the Client took possession of the Specified Units, the rate of LADs shall reduce proportionately in respect of the value that the Specified Units bear to the Works Price.
- 20.8.3 The Client and/or any of the Client's residents, tenants or other persons who may be authorised by the Client shall be entitled to all necessary rights of access to the Specified Units and the Developer shall do all things reasonably necessary to make such right effective.
- 20.8.4 Save in respect of access that may be required by the Developer or the Developer's Team to fulfil its obligations in respect of the rectification of defects subject always to the terms of this Agreement, upon the issue of a notice pursuant to clause 20.8.1 the Developer's (which in this clause 20.8.4 includes its employees, agents, servants, assigns, contractors, sub-contractors, consultants and/or suppliers) right of access and possession granted by the Client under clause 3.2 to that part of the Property which forms part of any or all of the Specified Units shall be deemed to be revoked and the Developer acknowledges that it shall have no right to possession or access of such Specified Units save as provided for in this Agreement or implied by way of the laws of England and Wales.

21 **Defects in the Works post Practical Completion**

- 21.1 The Client or the Client's Representative may at any time during the Defects Liability Period serve a Defects Notice on the Developer of any defects and/or omissions to the Works.
- 21.2 The Developer shall make good to the reasonable satisfaction of the Client's Representative all defects and/or omissions of which it is notified under clause 21.1 within the relevant Defects Response Time or in the event of there being no specified Defects Response Time for such category of defects within a reasonable time and in any event before the end of the Defects Liability Period.
- 21.3 On or immediately before the expiry of the Defects Liability Period, the Client's Representative shall:
 - 21.3.1 inspect the Works;
 - 21.3.2 establish any further defects or faults which are attributable to the Developer's failure to comply with this Agreement; and
 - 21.3.3 notify the Developer of any defects and faults that must be attended to.

- 21.4 The Developer shall within the relevant Defects Response Time or in the event of there being no specified Defects Response Time for such category of defects within a reasonable time of any notification pursuant to clause 21.3 make good the defects and faults at no cost to the Client.
- 21.5 When in the opinion of the Client's Representative the defects or faults he required to be made good have been made good he shall issue the Certificate of Making Good Defects.
- 21.6 The Client shall procure, at reasonable times, an appointment or appointments for the Developer to access and remedy any defects referred to in a notice served pursuant to clauses 21.1 and/or 21.2. Where access is not available at the first appointment the Client shall arrange a second appointment for the Developer to access and remedy such defects.
- 21.7 In rectifying defects the Developer shall procure:
- 21.7.1 the minimum amount of interference and disruption as is reasonably possible to the use and/or occupation of the relevant Unit and/or part of the Property;
 - 21.7.2 compliance with any reasonable directions and security precautions as long as such shall not prevent the carrying out of the rectification works and/or inspection;
 - 21.7.3 accompaniment of its contractors, if the Client so requires, by the Client's Representative;
 - 21.7.4 the making good, as soon as reasonable practical, of any loss, damage or injury caused to any Unit or part of the Property and/or occupiers and/or visitors.
- 21.8 If the Developer does not comply with clause the provisions of this clause 21 then:
- 21.8.1 the Client may instruct others to rectify the defects;
 - 21.8.2 the Developer shall reimburse the Client the full costs of such rectification; and/or
 - 21.8.3 the Client shall be entitled to deduct the cost of the rectification works from the Retention and shall also be entitled to recover from the Developer any costs in excess of the Retention as a debt.

22 **Documentation**

- 22.1 On the date of Practical Completion the Developer shall at its own expense supply to the Client for each Unit:
- 22.1.1 the Completion Pack;
 - 22.1.2 two complete sets of as built drawings;
 - 22.1.3 two complete sets of copies of test certificates and commissioning reports full maintenance and operation manuals for the mechanical and electrical installation (if any) and any other plant and equipment installed at the Works;

- 22.1.4 two copies of the Health and Safety File maintained in relation to the Works pursuant to the CDM Regulations including one in an electronic format;
- 22.1.5 copies of all manufacturers and other guarantees or warranties which are available or should properly be available in respect of the Works;
- 22.1.6 building regulation certificates from the local authority;
- 22.1.7 copies of all Requisite Consents (to the extent not already provided pursuant to clause 9.2.1);
- 22.1.8 written confirmation that no materials generally regarded in the construction industry as deleterious to health and safety have been issued or incorporated into the Works and that good practice set out in the publication "Good Practice in the Selection of Construction Materials" prepared by Ove Arup and Partners has been complied with;
- 22.1.9 copies of all reports including the Environmental Report (to the extent not already provided);
- 22.1.10 the Latent Defects Insurance Documents and associated paperwork and copies of the planning permission and building regulation approval, written final certification of assessment of having achieved the Client's required level of the Code for Sustainable Homes;
- 22.1.11 any further information or documentation as set out in the Client's Requirements.

23 **Contracts (Rights of Third Parties) Act 1999**

- 23.1 Unless the right of enforcement is expressly provided, it is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 23.2 The parties may, by agreement, rescind or vary this Agreement without the consent of any third party to whom the right of enforcement of any of its terms has been expressly provided.

24 **Determination**

- 24.1 If the Developer:
 - 24.1.1 suffers an Insolvency Event; or
 - 24.1.2 fails to proceed regularly and diligently with the carrying out of the Works; or
 - 24.1.3 fails to rectify any breach of its obligations in this Agreement which is capable of remedy within fourteen (14) days (or such other reasonable period specified by the Client) after receipt of written notice from the Client specifying the breach; or
 - 24.1.4 unlawfully suspends execution of all or any of his obligations under this Agreement; or

- 24.1.5 any person employed by the Developer or acting on his behalf, in relation to this Agreement or any other, shall have committed an offence under the Bribery Act 2010; or
- 24.1.6 refuses or neglects to comply with any reasonable and proper written notice from the Client's Representative requiring it to remove defective works or improper materials and/or goods and by such refusal or neglect the Works are materially affected;

then the Client may in respect of clauses 24.1.2 to 24.1.6 by notice in writing to the Developer require the Developer to remedy such failure within ten (10) Working Days of the notice and if the Developer fails to remedy such failure within this time, the Developer's employment under this Agreement shall determine upon receipt by the Developer of a further written notice from the Client.

- 24.2 In respect of clause 24.1.1, the Client may determine the Developer's employment under this Agreement by notice in writing to the Developer and the Developer's employment shall determine forthwith on receipt by the Developer of such notice.
- 24.3 *[If the Works do not achieve Practical Completion by the Long Stop Date then the Client may, by notice in writing to the Developer, determine the Developer's employment under this Agreement with immediate effect.]*
- 24.4 Any determination of the Developer's employment under this Agreement shall be without prejudice to any right of action or other remedy of either Party in respect of any antecedent breach by the other of any of the provisions of this Agreement.
- 24.5 In the event of the Developer's employment being determined, the provisions of this clause 24.5 shall apply and:
- 24.5.1 subject to clause 24.5.7 no further sum shall become due to the Developer under this Agreement;
- 24.5.2 the Client need not pay any sum that has already become due to the Developer:
- (a) insofar as the Client has given or gives a notice in accordance with clause 19.3.5; or
- (b) if the Developer suffers an Insolvency Event after the date on which the notice in relation to that sum is due in accordance with clause 19.3.5;
- 24.5.3 the Client may employ others to carry out and complete the Works and to make good any defects of any kind and in doing so may take possession of the Property and the Works and may use all temporary buildings, plant, tools, equipment and materials of the Developer for those purposes;
- 24.5.4 the Developer shall when required to do so in writing by the Client, remove or procure the removal from the Works of any temporary buildings, plant, tools, equipment, goods and materials which belong to the Developer or any party on behalf of the Developer. However, the Developer hereby agrees that it shall not

remove any item from the Property without having been provided with written instruction by the Client;

24.5.5 the Developer shall provide the Client with all documentation reasonably required by the Client;

24.5.6 within a reasonable time of the Client effecting completion of the Works and making good any defects, the Client shall provide the Developer with a statement setting out:

(a) the amount of expense and/or loss and/or damage properly caused or to be caused to the Client and for which the Developer is liable, whether arising from the termination, or not;

(b) the sum of payments already made by the Client to the Developer;

(c) the total amount which would have been paid to the Developer if its employment had not been determined.

24.5.7 If the sum of the amounts at clauses 24.5.6(a) and 24.5.6(b) above exceed the total amount at 24.5.6(c) then the difference shall within fourteen (14) days of the date of the statement shall be paid by the Developer to the Client as a debt, or if that sum is less, by the Client to the Developer.

25 **Alienation**

25.1 The Developer shall not assign or otherwise deal, share or part with the benefit of its interest in this Agreement without the consent of the Client.

26 **Disputes**

26.1 Without prejudice to clause 26.2 or 26.3, if any dispute or difference shall arise between the Client and the Developer at any time out of or in connection with this Agreement and/or the Works, without prejudice to the rights of the Client or the Developer under the remainder of this clause, the Party who believes that a dispute has arisen shall give written Notice to the other Party, including all available details, as soon as it is aware of such dispute. The Parties shall meet and shall through discussions, correspondence and further meetings endeavour to resolve such dispute by negotiation during a period of up to twenty (20) Working Days from the date of the written notice provided that any such discussions, correspondence and further meetings shall not prejudice either Party's right at anytime to refer the dispute or difference to adjudication in accordance with clause 26.2 or 26.3.

26.2 If any dispute or difference shall arise between the Parties at any time under, out of or in connection with this Agreement and/or the Works then either Party may refer any such dispute or difference to adjudication and the provisions of the Scheme shall apply to the same save that the Parties agree the adjudicator shall have the power to allocate his fees and expenses as between the Parties.

26.3 If at the time of any dispute or difference arising under out of or in connection with this Agreement and/or the Works the Parties agree not to refer any such dispute or difference

to adjudication, then such dispute shall be subject to the jurisdiction of the Courts of England and Wales.

27 **Notices**

27.1 Any notice to be given under this Agreement shall be in writing and shall be deemed to be duly given if it is served in accordance with this clause 27.

27.2 Notices served pursuant to clause 24 shall be served by personal delivery or pre-paid registered or recorded delivery to:

27.2.1 in the case of the Developer, the address first stated in this Agreement or where different, the address of the Developer as set out in Schedule 1 or any other address that the Developer may notify to the Client for the service of such notices.

27.2.2 in the case of the Client, the address first stated in this Agreement or where different, any other address that the Client may notify to the Developer for the service of such notices.

27.3 It shall not be valid service under this Agreement for notices to be sent by email.

27.4 Notices and communications shall be deemed to have been served or received in the case of:

27.4.1 personal delivery on the date of delivery;

27.4.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice of communication is posted.

27.5 A copy of any notice given to either the Developer or the Client pursuant to clause 24 shall also be sent to the Client's Solicitor or the Developer's Solicitor as applicable. For the purpose of this clause the recipient's solicitor shall be deemed to be the solicitor named in this Agreement as acting for the recipient or such other firm notified in writing to the other party as the recipient's solicitor for the purposes of this Agreement.

28 **Value Added Tax**

28.1 All references to payments made in this Agreement are references to such payments inclusive of any VAT chargeable in respect of the supply of goods or services for which the payment is or is deemed to be consideration. Where any supply is made or deemed to be made pursuant to this Agreement the recipient of such supply shall pay to the supplier any VAT chargeable in respect of it.

28.2 Where any payment is required to be made pursuant to this Agreement to reimburse the payee for any expenditure such payment is to include an amount equal to any VAT comprised in that expenditure which is not recoverable by the payee as input tax under section 25 Value Added Tax Act 1994.

29 **Construction Industry Scheme**

29.1 If the Client is stated to be in Schedule 1 or if at any time prior to the payment by the Client of any sums due to the Developer under the Final Account becomes a 'contractor' for the

purposes of the Construction Industry Scheme, the Client's obligation to make any payment under this Agreement to the Developer shall be subject to the provisions of the Construction Industry Scheme.

30 **Severability**

30.1 If any provision of this Agreement is declared to be invalid or unenforceable it shall not affect the validity or enforceability of the remaining provisions of this Agreement.

31 **Limitations**

31.1 Save in respect of all and any payment obligations it is acknowledged that the period of limitations to any claim or claims arising out of or in connection with this Agreement shall be the earlier of twelve (12) years from the date of Practical Completion or twelve (12) years from the date of determination pursuant to the provisions of clause 24.

32 **Governing law**

32.1 This agreement shall be governed and construed and enforced with the laws of England.

33 **Freedom of Information**

33.1 The Developer acknowledges that the Client is or may be subject to the requirements of the FOIA and the EIR and is expected to abide by the FOIA Code and EIR Code. The Developer shall assist and co-operate with the Client (at the Developer's expense) to enable the Client to comply with these information disclosure requirements.

33.2 The Developer shall, and shall ensure that the Developer's Team and the sub-consultants / sub-contractors of both shall:

33.2.1 provide the Client with a copy of all Information in its possession, power or control in the form that the Client requires within five (5) Working Days (or such other period as the Client may specify) of the Client requesting that Information; and

33.2.2 provide all necessary assistance as is reasonably requested by the Client to enable the Client to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR,

and the Developer shall be liable for and hereby indemnifies the Client from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Client where and to the extent that the same arise in connection with any breach of this clause 33.2 by the Developer, the Developer's Team, their employees, agents and/or sub-consultants / sub-contractors and/or their employees and agents.

33.3 If the Developer considers that all or any Information provided to the Client under clause 33.2 is a "trade secret" in accordance with section 43(1) of FOIA or is commercial sensitive information disclosure of which would be likely to prejudice the commercial interests of any party in accordance with section 43(2) of the FOIA, or a duty of confidentiality applies under section 41(1) of the FOIA, or is exempt by the operation of any other provision of FOIA or any exception in the EIR, the Developer shall ensure that the relevant Information, the claimed exemption or exception and if a qualified exemption,

its views on where the public interest lies, is clearly identified to the Client. Notwithstanding any such identification, the Client shall be solely responsible for determining at its absolute discretion whether such Information and/or any other information:

33.3.1 is exempt from disclosure in accordance with the provisions of the FOIA Code and the FOIA or the EIR Code and the EIR; or

33.3.2 is to be disclosed in response to a Request for Information.

33.4 In no event shall the Developer respond directly to any requests for information from members of the public.

33.5 The Developer acknowledges that the Client may, acting in accordance with the recommendations set out in the FOIA Code and/or EIR Code, be obliged under the FOIA and/or the EIR to disclose Information:

33.5.1 without consulting with the Developer; or

33.5.2 following consultation with the Developer and having considered its views.

34 **Counterpart**

34.1 This Agreement may be executed by each Party as a separate counterpart and each counterpart shall when executed and delivered constitute an original but both counterparts together shall constitute one and the same instrument. No counterpart shall be effective until each party has executed at least one counterpart.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it

[■ INSERT EXECUTION PROVISIONS AS APPROPRIATE]

Schedule 1
Agreement Particulars

Base Date is the day prior to the date marked on the face of this Agreement

Clause 15.1.1 A performance bond **is / is not** * required (* delete as applicable)

Clause 15.1.2 A parent company guarantee **is / is not** * required (* delete as applicable)

Clause 20.6 Within ten (10) Working Days from each Phase Completion Date and in respect of the last Phase, from the date of Practical Completion of the Works.

Clause 27 The address of the Developer for the service of notices in respect of this clause shall be:

Address: [■]

Facsimile number: [■]

Marked for the attention of: [■].

Client's Representative means [■] of [■] or such other person appointed by the Client from time to time and notified to the Developer

Code for Sustainable Homes means level [■]

Completion Date of the Works is [■] as may be extended from time to time strictly in accordance with the terms of this Agreement and the Phase Completion Dates are;

Phase Completion Date for Phase 1 is [■] as extended/confirmed from time to time strictly in accordance with the terms of this Agreement;

Phase Completion Date for Phase 2 is [■] as extended/confirmed from time to time strictly in accordance with the terms of this Agreement;

Phase Completion Date for Phase 3 is [■] as extended/confirmed from time to time strictly in accordance with the terms of this Agreement;

Conditions Precedent are as follows:

- (a) *[The Land Agreement becomes unconditional and a transfer is effected from [■] on terms acceptable to the Client;]*
- (b) Provision by the Developer to the Client of documentary evidence to the Client's satisfaction that the Latent Defects Insurance has been effected in relation to the Works.
- (c) The Client having received confirmation to its satisfaction of funding being secured and received.
- (d) Provision by the Developer of evidence that Planning Permission has been obtained on terms satisfactory to the Client.

Date of Possession in respect of each Phase is as follows:

Date of Possession for Phase 1 is [■] subject to satisfaction of the Conditions Precedent;

Date of Possession for Phase 2 is [■] subject to satisfaction of the Conditions Precedent;

Date of Possession for Phase 3 is [■] subject to satisfaction of the Conditions Precedent;

Defects Response Times are as follows:

Emergency defects to be made good within twenty four (24 hours)

Urgent defects to be made good within three (3) days

Routine defects to be inspected, a schedule of works to be agreed to rectify them and to be made good within twenty eight (28) days or such other time period as may from time to time be agreed by the Parties.

Developer's Team is:

Architect : [■]

Structural Engineer : [■]

Mechanical and Electrical Engineer : [■]

Piling contractor : [■]

Mechanical and Electrical contractor : [■]

Timber frame designer : [■]

Timber frame manufacturer : [■]

Environmental Report means the report dated [■]

Funder is [■]

Grant means funding from the Homes and Communities Agency to the Developer in the sum of [■] pounds (£[■])

Insurance

Clause 17.1 – cover in the sum of [■] pounds (£[■])

Clause 17.2.3 – cover in the sum of [■] pounds (£[■])

LADs shall be a maximum of [■] pounds (£[■]) per week or part thereof irrespective as to which Phase this shall be calculated by reference to and for clarity the LADs for each Phase shall not in any circumstances be aggregated but shall be:

LADs for Phase 1 are [■] pounds (£[■]) per week or part thereof;

LADs for Phase 2 are [■] pounds (£[■]) per week or part thereof;

LADs for Phase 3 are [■] pounds (£[■]) per week or part thereof;

Latent Defects Insurance means [■] or such other policy of equal cover as may be agreed by the Client from time to time.

Long Stop Date is [■];

Planning Permission application number(s) is [■];

Phase 1 means the scope of works required to be undertaken in relation to [■] to the section(s) shaded [■] in the plan set out at [■];

Phase 2 means the scope of works required to be undertaken in relation to [■] to the section(s) shaded [■] in the plan set out at [■];

Phase 3 means the scope of works required to be undertaken in relation to [■] to the section(s) shaded [■] in the plan set out at [■];

Property means [■];

Retention shall be [■]% of the Works Price;

Works Price is the sum of [■] pounds (£[■]) or as varied in accordance with the terms of the Agreement.

Schedule 2

Minimum requirements for building contracts/sub-contracts and appointments

Minimum requirements for any building contracts relating to the Works:

- 1 An obligation on the contractor to carry out the works in a good and workmanlike manner using good quality materials and in accordance with the requirements of the latent defects insurer, the Requisite Consents and the Client's Requirements.
- 2 If the contractor is carrying out any design a project specific duty of care clause in relation to the design elements only.
- 3 An obligation not to specify, authorise, allow to be used materials other than in accordance with this Agreement.
- 4 Confirmation that the contractor will comply with any third party agreements including this Agreement and will not do anything to put the Developer in breach of such agreements.
- 5 An obligation to:
 - 5.1 subject to agreement with the Client to a contrary amount (with the Client acting reasonably) maintain public liability and employer's liability insurance for the duration of the building contract;
 - 5.2 maintain professional indemnity insurance of not less than the same amount to be maintained by the Developer under this Agreement for each and every claim from the commencement of the services and for a period of 12 years from Practical Completion of the Works;
 - 5.3 provide documentary evidence that the insurances referred to above are being maintained.
- 6 A right to instruct additional works subject to payment of an additional sum if required.
- 7 An obligation to keep the Developer fully informed of progress of the services and any potential delays.
- 8 An obligation to execute as a deed collateral warranties in favour of the Client and in favour of any third party acquiring an interest in the Works and any Funder in the form set out in Appendices 3 and 4 (as appropriate).
- 9 A prohibition on sub contracting the Works or any part or parts of the Works without the provision of a collateral warranty in the form set out in Appendices 3 and 4 (as appropriate) in favour of the Client, any Funder and any third party acquiring an interest in the Works.
- 10 A 12 month defects liability period from completion of the Works and a contractual obligation to comply with the Defects Response Times.
- 11 Date for completion of the works which is consistent with completion of the Works on or earlier than the Completion Date.

- 12 The right to call for liquidated and ascertained damages in the event that the date for completion of the Works is not achieved.
- 13 Extension of time provisions.
- 14 A right for the Developer to be able to open up and test the Works.
- 15 A list of all the documentation to be handed over on practical completion consistent with the requirements of this Agreement.
- 16 No net contribution clauses, caps or limitations on the contractor's liability.

Minimum requirements for any appointments relating to the Works:

- 1 A project specific duty of care clause linked to the discipline of the consultant appointed.
- 2 An obligation not to specify, authorise, allow to be used materials other than in accordance with the provisions of this Agreement.
- 3 An obligation to execute as a deed collateral warranties in favour of the Client and in favour of any third party acquiring an interest in the Works and any Funder in the form set out in Appendices 3 and 4 (as appropriate).
- 4 A prohibition on sub contracting the services or any part or parts of the services without the provision of a collateral warranty in the form set out in Appendices 3 and 4 (as appropriate) in favour of the Buyer, any Funder and any third party acquiring an interest in the Works.
- 5 Confirmation that the consultant in question will comply with any third party agreements including this Agreement and will not do anything to put the Developer in breach of such agreements.
- 6 An obligation to:
 - 6.1 maintain public liability and employer's liability insurance for the duration of the services;
 - 6.2 maintain professional indemnity insurance of not less the same amount to be maintained by the Developer under this Agreement for each and every claim from the commencement of the services and for a period of 12 years from practical completion of the Works;
 - 6.3 provide documentary evidence that the insurances referred to above are being maintained.
- 7 A right to require additional services subject to payment of an additional fee if required.
- 8 An obligation to keep the Developer fully informed of progress of the services and any potential delays.
- 9 No net contribution clauses, caps or limitations on the consultants liability.

Appendix 1

Developer/Third Party Collateral Warranty

Dated 20[]

Parties

- 1 [] (company number []) whose registered office is at [] (the **Beneficiary**),
- 2 [] (registration number []) whose registered office is at [] (the **Developer**); and
- 3 [] (registration number []) whose registered office is at [] (the **Client**).

Background

The Beneficiary has entered into a [] agreement (the **Agreement**) with the Client in relation to the Property as hereinafter defined and the completed Works thereon as hereinafter defined, and

The Developer carries on business as a building developer and has been appointed as such by the Client under a contract dated [] 20[] (the **Building Contract**) for the carrying out of the Works

Now in consideration of the sum of one pound (£1.00) receipt of which the Developer hereby acknowledges this deed witnesseth as follows:

Definitions

- 1 In this Deed the following words and expressions shall where the context so admits be deemed to have the following meanings:

Practical Completion means the date of practical completion of the whole of the Works pursuant to the Building Contract

the Property means the land at []

the Works means the works of [] to be carried out on the Property pursuant to the Building Contract including any variations thereto.

- 2 The Developer hereby warrants to the Beneficiary in relation to the Works that the Developer has exercised and will continue to exercise all reasonable skill, care and diligence in the performance of its duties under the Building Contract and will comply in all respects with the terms of the Building Contract.

- 3.1 The Developer hereby further warrants to the Beneficiary in relation to the Works that the Developer will maintain in full force and effect throughout the period of performance of the Works and for a period of (twelve) 12 years from Practical Completion a policy of professional indemnity insurance in an amount of not less than [the amount stated as appropriate in the Building Contract] million pounds (£[]) for any one occurrence or series of occurrences arising out of any one event provided always that such type of

insurance is available to professional persons acting in the capacity of the Developer at commercially reasonable rates and terms.

- 3.2 The Developer undertakes to provide to the Beneficiary within seven (7) days from the date hereof written evidence of the policy of professional indemnity insurance referred to in clause 3.1 above and further undertakes to provide to the Beneficiary copies of each annual renewal notice in respect of such policy and written confirmation from the Developer's insurers or brokers that each annual premium has been paid or is being paid, within seven (7) days of each renewal date of such policy throughout the period referred to in clause 3.1 above.
- 4 Without prejudice to the generality of clause 2, the Developer further warrants to the Beneficiary that it has exercised and will continue to exercise reasonable skill and care to ensure that no materials generally regarded in the construction industry as deleterious to health and safety have been or will be specified or used by the Developer in the Works and shall ensure that good practice set out in the "Good practice in the selection of construction materials" published by the British Property Federation and the British Council of Offices is and has been complied with.
- 5 The Developer with full title guarantee hereby grants to the Beneficiary an irrevocable royalty- free non-exclusive licence to use or license (as the case may be) and reproduce all drawings, specifications and other documents and information of any kind which have been or are to be written, originated or made by or for the Developer pursuant to the Building Contract, for any purpose relating to the Works including without limitation the execution, completion, promotion, sale, letting, management, maintenance, repair, refurbishment, alteration or extension of the Works or any part thereof but so that the Developer shall not be liable for any such drawings, specifications and other documents if and to the extent that the same are used for any purpose other than that for which the same were prepared as if when ascertaining such purpose and use the Beneficiary had been named jointly with the Client in the Building Contract. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties
- 6 The Developer agrees to provide the Beneficiary upon the Beneficiary 's request with such documents and information as the Beneficiary may reasonably require to demonstrate the Developer's compliance with the terms of the Building Contract.
- 7 The Beneficiary may upon written notice to the Developer assign charge and/or transfer the benefit of this Deed or any part or parts thereof to two further parties without the consent of the Developer being required. No further assignments shall be permitted.
- 8 The Client confirms its agreement to the terms and conditions hereof and its concurrence with the arrangements made and contemplated hereby.
- 9 It is acknowledged that whatever the manner in which the parties have executed this Deed the period of limitations applicable to any claim or claims arising out of or in connection with this Deed shall be twelve (12) years from Practical Completion.
- 10 Any notice to be served under the terms of this Deed shall be in writing and if despatched by registered post or recorded delivery to another party at its aforementioned address shall be deemed to have been received by such party forty-eight hours after being posted.

11 Notwithstanding any other provision of this Deed nothing in this Deed confers or purports to confer any right to enforce any of its terms on any person who is not a party to it save for permitted assigns pursuant to clause 7.

In witness whereof the parties hereto have executed this document as a deed the day and year first above written

Appendix 2

Developer/Funder Collateral Warranty

Dated 20[]

Parties

- 1 [] (company number []) whose registered office is at [] (**the Funder**) and
- 2 [] (registration number []) whose registered office is at [] (**the Developer**); and
- 3 [] (registration number []) whose registered office is at [] (**the Client**).

Background

The Funder has entered into a [] agreement (**the Agreement**) with [] (**the Client**) in relation to the Property as hereinafter defined and the completed Works thereon as hereinafter defined, and

The Developer carries on business as a building developer and has been appointed as such by the Client under a contract dated [] 20[] (**the Building Contract**) for the carrying out of the Works

Now in consideration of the sum of one pound (£1.00) receipt of which the Developer hereby acknowledges this deed witnesseth as follows:

Definitions

- 1 In this Deed the following words and expressions shall where the context so admits be deemed to have the following meanings:

Practical Completion means the date of practical completion of the whole of the works pursuant to the Building Contract

the Property means the land at []

the Works means the works of [] to be carried out on the Property pursuant to the Building Contract including any variations thereto.

- 2 The Developer hereby warrants to the Funder in relation to the Works that the Developer has exercised and will continue to exercise all reasonable skill, care and diligence in the performance of its duties under the Building Contract and will comply in all respects with the terms of the Building Contract.
- 3.1 The Developer hereby further warrants to the Funder in relation to the Works that the Developer will maintain in full force and effect throughout the period of performance of the Works and for a period of (twelve) 12 years from Practical Completion a policy of professional indemnity insurance in an amount of not less than [the amount stated as appropriate in the Building Contract] million pounds (£[]) for any one occurrence

or series of occurrences arising out of any one event provided always that such type of insurance is available to professional persons acting in the capacity of the Developer at commercially reasonable rates and terms.

- 3.2 The Developer undertakes to provide to the Funder within seven (7) days from the date hereof written evidence of the policy of professional indemnity insurance referred to in clause 3.1 above and further undertakes to provide to the Client copies of each annual renewal notice in respect of such policy and written confirmation from the Developer's insurers or brokers that each annual premium has been paid, within twenty-one (21) days of each renewal date of such policy throughout the period referred to in clause 3.1 above.
- 3.3 Without prejudice to the generality of clause 2, the Developer further warrants to the Funder that it has exercised and will continue to exercise reasonable skill and care to ensure that no materials generally regarded in the construction industry as deleterious to health and safety have been or will be specified or used by the Developer in the Works and shall ensure that the good practice set out in the "Good practice in the selection of construction materials" published by the British Property Federation and the British Council of Offices is and has been complied with.
- 4 The Developer hereby covenants with the Funder that if an event of default shall occur under the Agreement at any time the Developer will if so required by notice in writing given by the Funder in accordance with clause 9 accept the instructions given by the Funder or its appointee to the exclusion of the Client in respect of the Works upon the terms and conditions of the Building Contract and the Client acknowledges that the Developer shall be entitled to rely on a notice given to the Developer by the Funder under clause 9 as conclusive evidence for the purposes of this Deed of an event of default having occurred under the Agreement.
- 5 The Developer hereby covenants with the Funder that it will not exercise nor seek to exercise any right or alleged right of determination of the Building Contract or the employment of the Developer thereunder or any right or alleged right to discontinue the performance of any of its obligations in relation to the Works by reason of breach or default on the part of the Client or otherwise without giving to the Funder not less than 28 days prior notice of its intention to do so specifying the grounds for such proposed determination or discontinuance.
- 6 For the avoidance of doubt the parties hereto agree that any period stipulated in the Building Contract for the exercise by the Developer of a right of determination shall nevertheless be extended as may be necessary to take account of the period of notice required under clause 6 and compliance by the Developer with the provisions of clause 6 shall not be treated as a waiver of any breach on the part of the Client giving rise to the right of determination nor otherwise prevent the Developer from exercising its rights after the expiration of the notice unless the right of determination shall have ceased pursuant to the provisions of clause 8.
- 7 Following the service of the Developer's notice pursuant to clause 6 the said rights of determination or discontinuance on the part of the Developer shall cease if the Funder shall give notice to the Developer in accordance with clause 9 prior to the expiration of the period of the Developer's notice specified in clause 6.
- 8 Notice given by the Funder under clause 5 or clause 8 shall:

- 8.1 specify the clause under which such notice is given, and
- 8.2 require the Developer to continue its obligations under the Building Contract in relation to the Works, and
- 8.3 acknowledge that the Funder assumes all the obligations of the Client under the Building Contract, and
- 8.4 undertake unconditionally to the Developer to discharge all payments which may subsequently become due to the Developer under the terms of the Building Contract, and
- 8.5 undertake unconditionally to the Developer to pay to the Developer any sums which have become due and payable to the Developer under the Building Contract but which are at the date of such notice are unpaid provided that in respect of all sums payable to the Developer where Value Added Tax is due payment will be made following receipt from the Developer of a valid Value Added Tax invoice addressed to the Funder as the person to whom the supply was made.
- 9 In the event of the Funder giving notice to the Developer in accordance with this warranty the Building Contract shall continue in full force and effect in all respects as if the Building Contract had been made between the Developer and the Funder to the exclusion of the Client (but without prejudice to any rights of recovery as between the Funder and the Client) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.
- 10 The Developer with full title guarantee hereby grants to the Funder an irrevocable royalty-free non-exclusive licence to use and reproduce all drawings, specifications and other documents and information of any kind which have been or are to be written, originated or made by or for the Developer pursuant to the Building Contract, for any purpose relating to the Works including without limitation the execution, completion, promotion, sale, letting, management, maintenance, repair, refurbishment, alteration or extension of the Works or any part thereof but so that the Developer shall not be liable for any such drawings, specifications and other documents if and to the extent that the same are used for any purpose other than that for which the same were prepared as if when ascertaining such purpose and use the Funder had been named jointly with the Client in the Building Contract. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- 11 The Funder may upon written notice to the Developer assign, charge and/or transfer the benefit of this Deed or any part or parts thereof to two further parties without the consent of the Developer being required. No further assignments shall be permitted.
- 12 The Client confirms its agreement to the terms and conditions hereof and its concurrence with the arrangements made and contemplated hereby.
- 13 It is acknowledged that whatever the manner in which the parties have executed this Deed the period of limitations applicable to any claim or claims arising out of or in connection with this Deed shall be twelve (12) years from Practical Completion.
- 14 Any notice to be served under the terms of this Deed shall be in writing and if despatched by registered post or recorded delivery to the other party at its aforementioned address shall be deemed to have been received by such party forty-eight hours after being posted.

15 Notwithstanding any other provision of this Deed nothing in this Deed confers or purports to confer any right to enforce any of its terms or any person who is not a party to it save for permitted assigns pursuant to clause 11.

In witness whereof the Developer has executed this document as a deed the day and year first above written

Appendix 3

Sub-Contractor or Sub-Consultant/Client

Collateral Warranty

Dated 20[]

Parties

- 1 [] (registration number []) whose registered office is at [] (the **Client**), and
- 2 [] (company number []) whose registered office is at [] (the **Covenantor**).

Background

The Client has entered or will enter into a building contract (the **Building Contract**) with [] (registration number []) whose registered office is at [] (the **Developer**) for the carrying out of the Works at the Property, and

The Covenantor carries on business as a firm of [] and has been appointed to provide [] in that capacity by the Developer under a contract dated [] 20[] (the **Sub-Contract**) in connection with the Works. A copy of the Sub-Contract is attached at Annex 1.

Now in consideration of the sum of one pound (£1.00) receipt of which the Covenantor hereby acknowledges this deed witnesseth as follows:

Definitions

- 1 In this Deed the following words and expressions shall where the context so admits be deemed to have the following meanings:

Practical Completion means the date of practical completion of the whole of the Works pursuant to the Building Contract

the Property means the land at []

the Works means the works of [] to be carried out on the Property pursuant to the Building Contract including any variations thereto.

- 2 The Covenantor hereby warrants to the Client in relation to the Works that the Covenantor has exercised and will continue to exercise all reasonable skill, care and diligence which may be expected of a professional person acting in the capacity of the Covenantor in relation to the Works and within the scope of the Sub-Contract and will comply in all respects with the terms of the Sub-Contract.
- 3.1 The Covenantor hereby further warrants to the Client in relation to the Works that the Covenantor will maintain in full force and effect throughout the period of performance of the Works and for a period of twelve (12) years from Practical Completion a policy of professional indemnity/product liability insurance in an amount of not less than [] the

amount stated as appropriate in the Building Contract] pounds (£[■]) for any one occurrence or series of occurrences arising out of any one event provided always that such type of insurance is available to professional persons acting in the capacity of the Covenantor at commercially reasonable rates and terms.

- 3.2 The Covenantor undertakes to provide to the Client within twenty-one (21) days from the date hereof written evidence of the policy of professional indemnity/product liability insurance referred to in clause 3.1 above and further undertakes to provide to the Client copies of each annual renewal notice in respect of such policy and written confirmation from the Covenantor's insurers or brokers that each annual premium has been paid, within twenty-one (21) days of each renewal date of such policy throughout the period referred to in clause 3.1 above.
- 4 Without prejudice to the generality of clause 2, the Covenantor further warrants to the Client that it has exercised and will continue to exercise reasonable skill and care to ensure that no materials generally regarded in the construction industry as deleterious to health and safety have been or will be specified or used by the Covenantor in the Works and shall ensure that the good practice set out in the "Good practice in the selection of construction materials" published by the British Property Federation and the British Council of Offices is and has been complied with.
- 5 The Covenantor with full-title guarantee hereby grants to the Client an irrevocable royalty-free non-exclusive licence to use and reproduce all drawings, specifications and other documents and information of any kind which have been or are to be written, originated or made by or for the Covenantor pursuant to the Sub-Contract, for any purpose relating to the Works including without limitation the execution, completion, promotion, sale, letting, management, maintenance, repair, refurbishment, alteration or extension of the Works or any part thereof but so that the Covenantor shall not be liable for any such drawings, specifications and other documents if and to the extent that the same are used for any purpose other than that for which the same were prepared as if when ascertaining such purpose and use the Client had been named jointly with the Developer in the Sub-Contract. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- 6 The Client may upon written notice to the Covenantor assign, charge and/or transfer the benefit of this Deed or any part or parts thereof to two further parties without the consent of the Covenantor being required. No further assignments shall be permitted.
- 7 It is acknowledged that whatever the manner in which the parties have executed this Deed the period of limitations applicable to any claim or claims arising out of or in connection with this Deed shall be twelve (12) years from Practical Completion.
- 8 Any notice to be served under the terms of this Deed shall be in writing and if despatched by registered post or recorded delivery to the other party at its aforementioned address shall be deemed to have been received by such party forty-eight hours after being posted.
- 9 Notwithstanding any other provision of this Deed nothing in this Deed confers or purports to confer any right to enforce any of its terms or any person who is not a party to it save for permitted assigns pursuant to clause 6.

In witness whereof the Covenantor has executed this document as a deed the day and year first above written

[Annex 1 The Sub-Contract]

Appendix 4

Sub-Contractor or Sub-Consultant/Third Party

Collateral Warranty

Dated 20[]

Parties

- 1 [] (company number []) whose registered office is at []
(the **Beneficiary**), and
- 2 [] (company number []) whose registered office is at []
(the **Covenantor**).

Background

The Beneficiary has entered into an agreement with [] (the **Client**) in connection with the Works at the Property (as hereinafter respectively defined), and

The Client has entered into a building contract dated [] 20[] (the **Building Contract**) with [] (company number []) of [] (the **Developer**) for the carrying out of the Works at the Property and

The Covenantor carries on business as a firm of [] and has been appointed to provide [] in that capacity by the Developer under a contract dated [] 20[] (the **Sub-Contract**) in connection with the Works. A copy of the Sub-Contract is attached at Annex 1.

Now in consideration of the sum of one pound (£1.00) receipt of which the Covenantor hereby acknowledges this deed witnesseth as follows:

Definitions

- 1 In this Deed the following words and expressions shall where the context so admits be deemed to have the following meanings:

Practical Completion means the date of practical completion of the whole of the Works pursuant to the Building Contract.

the Property means the land at []

the Works means the works of [] to be carried out on the Property pursuant to the Building Contract including any variations thereto.

- 2 The Covenantor hereby warrants to the Beneficiary in relation to the Works that the Covenantor has exercised and will continue to exercise all reasonable skill, care and diligence which may reasonably be expected of a professional person acting in the capacity of the Covenantor in relation to the Works and within the scope of the Sub-Contract and will comply in all respects with the terms of the Sub-Contract.

- 3.1 The Covenantor hereby further warrants to the Beneficiary in relation to the Works that the Covenantor will maintain in full force and effect throughout the period of performance of

the Works and for a period of twelve (12) years from Practical Completion a policy of professional indemnity insurance in an amount of not less than [■ the amount stated as appropriate in the Building Contract] million pounds (£[■]) for any one occurrence or series of occurrences arising out of any one event provided always that such type of insurance is available to professional persons acting in the capacity of the Covenantor at commercially reasonable rates.

- 3.2 The Covenantor undertakes to provide to the Beneficiary within seven (7) days from the date hereof written evidence of the policy of professional indemnity insurance referred to in clause 3.1 above and further undertakes to provide to the Beneficiary copies of each annual renewal notice in respect of such policy and written confirmation from the Covenantor's insurers or brokers that each annual premium has been paid, within seven (7) days of each renewal date of such policy throughout the period referred to in clause 3.1 above.
- 4 Without prejudice to the generality of clause 2, the Covenantor further warrants to the Beneficiary that it has exercised and will continue to exercise reasonable skill and care to ensure that no materials generally regarded in the construction industry as deleterious to health and safety have been or will be specified or used by the Covenantor in the Works and shall ensure that the good practice set out in the "Good practice in the selection of construction materials" published by the British Property Federation and the British Council of Offices is and has been complied with.
- 5 The Covenantor with full title guarantee hereby grants to the Beneficiary an irrevocable royalty-free non-exclusive licence to use and reproduce all drawings, specifications and other documents and information of any kind which have been or are to be written, originated or made by or for the Covenantor pursuant to the Sub-Contract, for any purpose relating to the Works including without limitation the execution, completion, promotion, sale, letting, management, maintenance, repair, refurbishment, alteration or extension of the Works or any part thereof but so that the Covenantor shall not be liable for any such drawings, specifications and other documents if and to the extent that the same are used for any purpose other than that for which the same were prepared as if when ascertaining such purpose and use if the Beneficiary had been named jointly with the Developer in the Sub-Contract. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- 6 The Beneficiary may upon written notice to the Covenantor assign, charge and/or transfer the benefit of this Deed or any part or parts thereof to two further parties without the consent of the Covenantor being required provided. No further assignments shall be permitted.
- 7 It is acknowledged that whatever the manner in which the parties have executed this Deed the period of limitations applicable to any claim or claims arising out of or in connection with this Deed shall be twelve (12) years from Practical Completion.
- 8 Any notice to be served under the terms of this Deed shall be in writing and if despatched by registered post or recorded delivery to the other party at its aforementioned address shall be deemed to have been received by such party forty-eight hours after being posted.
- 9 Notwithstanding any other provision of this Deed nothing in this Deed confers or purports to confer any right to enforce any of its terms or any person who is not a party to it save for permitted assigns pursuant to clause 6.

In witness whereof the Covenantor has executed this document as a deed the day and year first above written

[**Annex 1** The Sub-Contract]

Appendix 5

Form of Performance Bond

Dated 20[■]

Parties

- 1 [■] (company number [■]) whose registered office is at [■]
(the **Surety**)
- 2 [■] (registration number [■]) whose registered office is at [■]
(the **Developer**); and
- 3 [■] (registration number [■]) whose registered office is at [■]
(the **Client**).

Background

The Client and the Developer have entered into a contract dated the [■] day of [■] 20[■] [■] (the **Contract**) for the carrying out of works of [■] at [■] (the **Works**)

Now in consideration of the payment of one pound (£1) by the Client to the Surety and the Developer (receipt of which the Surety and the Contractor hereby acknowledge) it is hereby agreed as follows:

Definitions

- 1 In this Bond the following words and expressions shall save where the context otherwise requires be deemed to have the following meanings:

the Sum means the sum of [■] pounds (£[■])

the Expiry Date means the date of Practical Completion in respect of the whole of the Works under the Contract

Net Damages means the gross damages sustained by the Client by reason of an Event of Default less any entitlement to payment of a liquidated sum which has accrued to the Developer on or before the date on which such gross damages have been ascertained and established in accordance with clause 4.

Event of Default means any breach by the Developer of any of the terms of the Contract or the determination of the employment of the Developer under the Contract by reason of the insolvency of the Developer or corruption by the Developer

- 2 If an Event of Default shall occur, the Surety and the Developer jointly and severally undertake as principal obligors subject to clause 5 to pay to the Client a sum equivalent to the Net Damages sustained by the Client by reason thereof as soon as the amount of such Net Damages has been ascertained and established pursuant to clause 4.
- 3 If an Event of Default shall occur, the Client may at any time before the Expiry Date give notice in writing to the Developer and the Surety specifying the nature of the Event of Default and making a claim under the terms of this Bond, notwithstanding that the Net

Damages sustained by the Client by reason thereof shall not yet have been ascertained and established.

- 4 The gross damages sustained by the Client by reason of an Event of Default (which where applicable shall include the fees of a quantity surveyor appointed in accordance with clause 4.3) shall be ascertained and established by:
 - 4.1 a statement signed by the Client certifying the nature of the Event of Default and the damages sustained by the Client by reason thereof and countersigned by the Developer acknowledging the default or
 - 4.2 the terms of a judgment of a Court of competent jurisdiction or an award of an arbitrator or decision of an adjudicator duly appointed in accordance with the terms of the Contract or
 - 4.3 subject to the Client submitting to the Surety evidence of the appointment of a trustee in bankruptcy or a liquidator or an administrative receiver or an LPA Receiver or an administrator of the assets or undertaking of the Developer, the written determination of a quantity surveyor who shall be agreed between the Client and the Surety or in default of agreement within 28 days of the Client submitting such evidence shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors and who shall act as expert and not as arbitrator.
- 5 The maximum aggregate liability of the Surety under this Bond shall not exceed the Sum.
- 6 The occurrence of any one or more of the following shall not in any way release the Surety from its obligations hereunder:
 - 6.1 any alteration to the nature or extent of the Works or otherwise to the terms of the Contract,
 - 6.2 any allowance of time, forbearance, indulgence or other concession granted to the Developer under the Contract or any other compromise or settlement of any dispute between the Client and the Developer (but so that the Client shall not pursue against the Surety a remedy contrary to the terms of any such compromise or settlement insofar as the Developer shall have complied with such terms).
- 7 The Surety's obligation and liability under this Bond shall continue notwithstanding any disclaimer of the Contract by a liquidator or administrator appointed to the Developer and the Contract shall for the purposes of this Bond be deemed to continue notwithstanding any such disclaimer.
- 8 The Surety shall be released and discharged from its obligations under this Bond on the Expiry Date save in respect of any claims notified to the Surety under clause 3 prior to such date.
- 9 This Bond is governed by English law and in the event of any dispute or difference arising out of or in connection with this Bond the parties hereto hereby submit to the non-exclusive jurisdiction of the Courts of England and Wales.

In witness whereof the Developer and the Surety have executed this bond as a deed and delivered the same on the day and year first above written

Appendix 6

Form of Parent Company Guarantee

Dated 20[]]

Parties:

- 1 [] (company number []) of/whose registered office is at []
(the **Guarantor**)
- 2 [] (registration number []) whose registered office is at []
(the **Beneficiary** which expression shall include its successors and assigns).

Operative clauses

- A The Beneficiary is undertaking [] (the **Project**).
- B The Beneficiary has entered into a building contract agreement dated [] with []
(company number []) of/whose registered office is at [] (the
Developer) for the provision of design and construction works as and when required
pursuant to building contract (the **Building Contract**), and
- C The Guarantor has agreed to guarantee the due performance of the Developer's
obligations under the Building Contract in the manner hereinafter appearing.

Now in consideration of the payment of one pound (£1.00) by the Beneficiary to the Guarantor
(receipt of which the Guarantor hereby acknowledges) the Guarantor hereby covenants with the
Beneficiary as follows:

- 1 In this Deed, words and expressions shall have the same meanings as in the Building
Contract except where otherwise defined.
- 2 The Guarantor will in all respects irrevocably and unconditionally guarantee the due and
proper performance of the Building Contract and the due observance and punctual
performance of all the obligations, duties, undertakings, covenants and conditions by or on
the part of the Developer contained therein and to be observed and performed by it, which
guarantee shall extend to include any variation or addition to the Building Contract.
- 3 In the event of the Developer failing to carry out, observe or perform all or any of the said
obligations, duties, undertakings, covenants and conditions under the Building Contract
(unless relieved from the performance of any part of the Building Contract by statute or by
the decision of a court or tribunal of competent jurisdiction) then the Guarantor,
notwithstanding any objection that may be raised by the Developer or the Guarantor, will,
subject to clause 4 of this Guarantee:
- 3.1 be liable for and shall indemnify the Beneficiary against all losses, damages, costs and
expenses whatsoever which the Beneficiary may incur by reason or in consequence of
any such failure to carry out observe or perform on the part of the Developer under the
Building Contract or in consequence of such termination or
- 3.2 instruct a subsidiary of the Guarantor to carry out, observe and perform the obligations,
duties, undertaking covenants and conditions under the Building Contract (unless relieved

from the performance of any part of the Building Contract by statute or by the decision of a court or tribunal of competent jurisdiction) in substitution for the Developer.

- 4 The Beneficiary will not be bound first to make demand on or enforce any rights against the Developer or any other guarantor or other person before enforcing this Guarantee, provided that the Guarantor shall have no greater liability under this Guarantee than it would have had if the Guarantor had been named as jointly and severally liable along with the Developer under the Building Contract.
- 5 The Guarantor shall not be discharged or released from this Guarantee by the occurrence of any one or more of the following:
 - 5.1 any alteration to the nature or extent of any amendment to or variation, express or implied, waiver or release of the terms of the Building Contract,
 - 5.2 any allowance of time, forbearance, indulgence or other concession granted to the Developer under the Building Contract or any other compromise or settlement of any dispute between the Beneficiary and the Developer (but so that the Beneficiary shall not pursue against the Guarantor a remedy contrary to the terms of any such compromise or settlement insofar as the Developer shall have complied with such terms),
 - 5.3 the liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity, amalgamation, reconstruction or any change in the name, composition, status, function, ownership or control of the Developer or the Guarantor,
 - 5.4 any provision of the Building Contract being or becoming illegal, invalid, void, voidable or unenforceable for any reason whatsoever,
 - 5.5 the suspension or termination of the Building Contract or of the employment of the Developer under the Building Contract for any reason whatsoever,
 - 5.6 any failure to take or to realise (or fully to take or to realise), or any release, discharge, exchange or substitution of, any security, guarantee or indemnity in respect of the Building Contract,
 - 5.7 any other act, omission, matter or thing which but for this provision might operate to discharge, release, impair or otherwise exonerate the Guarantor from this Guarantee.
- 6 This Guarantee is a continuing guarantee and accordingly shall remain in operation until all obligations, duties, undertakings, covenants, conditions and warranties now or hereafter to be carried out or performed by the Developer under the Building Contract shall have been satisfied or performed in full. Where in the reasonable opinion of the Beneficiary the Developer has failed to carry out, observe or perform all or any of the obligations, duties, undertakings, covenants and conditions on the part of the Developer contained in the Building Contract and the Developer has failed to rectify such failure within a reasonable time of being apprised by the Beneficiary of such failure this Guarantee may be enforced without first having recourse to any such security and without taking any other steps or proceedings against the Developer. For the avoidance of doubt, it is hereby agreed and declared that the Beneficiary may make more than one (1) demand under this Guarantee.

- 7 As between the Guarantor and the Beneficiary, the Guarantor shall remain liable under this Guarantee as if it were the sole principal obligor and not merely a guarantor.
- 8 Insofar as any sums are payable (contingently or otherwise) by the Developer to the Beneficiary under the terms of the Building Contract then the Guarantor shall not exercise any right of set-off or counterclaim against the Developer or any other person or prove in competition with the Beneficiary in respect of any payment by the Guarantor hereunder and in case the Guarantor receives any sums from the Developer or any other person in respect of any payment of the Guarantor hereunder the Guarantor shall hold such monies in trust for the Beneficiary so long as any sums are payable (contingently or otherwise) under this Guarantee.
- 9 The Guarantor will not, without the prior written consent of the Beneficiary, hold any security from the Developer or any other person in respect of the Guarantor's liability hereunder or in respect of any liability or other obligations of the Developer to the Guarantor. The Guarantor will hold any security held by it in breach of this provision in trust for the Beneficiary.
- 10 This Guarantee is in addition to and not in substitution for any present and future guarantee lien or other security held by the Beneficiary. The Beneficiary's rights under this Guarantee are in addition to and not exclusive of those provided by law.
- 11 If any provision of this Guarantee is held by any competent authority to be invalid unlawful or unenforceable in whole or in part, the validity lawfulness and enforceability of the other provisions of this Guarantee and the remainder of the provision in question shall not be affected thereby.
- 12 The Beneficiary shall not be entitled to assign this Guarantee or the benefit of it other than to a party to whom it has simultaneously assigned the benefit of the Building Contract in accordance with the terms of the Building Contract.
- 13 The parties hereby confirm that nothing in this Guarantee shall confer on any person any right to enforce any term of this Guarantee which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
- 14 This Guarantee shall be governed by and construed in accordance with the laws of England and only the courts of England and Wales shall have jurisdiction hereunder. Nothing in this clause shall affect the ability of the Beneficiary to enforce any judgement against the Guarantor in any jurisdiction.
- 15 Any notice or demand to be given or served under this Deed shall be in writing and shall be deemed to have been given or served if either delivered personally, sent by special delivery post or sent by facsimile transmission. The addresses or numbers for service shall be those stated at the head of this Deed or such other address or number for service as the party to be served may have previously notified in writing to the other parties. A notice shall be deemed to be served as follows:
- 15.1 if personally delivered at the time of the delivery,
- 15.2 if posted, at the expiration of forty-eight (48) hours after posting and

- 15.3 if sent by facsimile transmission, two hours after transmission if served on a business day prior to 3pm or in any case on the next following business day.
- 16 The Guarantor's obligation and liability under this Guarantee shall continue notwithstanding any disclaimer of the Building Contract by the liquidator or administrator appointed to the Developer and the Building Contract shall for the purposes of this Guarantee be deemed to continue notwithstanding any such disclaimer.
- 17 It is acknowledged that whatever the manner in which the parties have executed this Deed the period of limitations applicable to any claim or claims arising out of or in connection with this Deed shall be twelve (12) years from the date when the cause of action arose.

In witness whereof this document has been executed by the Guarantor as a Deed and delivered on the date stated above.

Annex 1
Client's Requirements

Annex 2
Developer's Proposals