

# Taylor Wimpey Non-Framework Terms and Conditions for the Provision of Labour and Materials or Labour Only

## 1. DEFINITIONS

1.1 Unless the context requires otherwise, capitalised words and phrases have the meaning assigned to them as follows or in the body of this Agreement:

**"Affiliate"** means (a) with respect to any entity, any other entity Controlled, directly or indirectly, by the entity, or any other entity that Controls, directly or indirectly, the entity; (b) with respect to any entity any other entity, directly or indirectly, under common Control with the entity; or (c) in the case of the Employer, any joint venture company or consortium involving the Employer or any other Employer entity falling under paragraph (a) or (b) of this definition.

**"Agreement"** means these terms and conditions under which each Works Order is issued to Contractor.

**"Authorised Representative"** means either or both of the Contractor's authorised representative and the Employer's authorised representative, being the individual authorised to bind and sign on behalf of the Contractor or Employer, as applicable.

**"Buildmark Warranty"** means a Buildmark Warranty issued by NHBC (or equivalent warranty issued by an alternative organisation as prescribed by the Employer), such warranty to be compliant with any applicable law.

**"Business Day"** means a day on which banks are open for business in the country in which the Works are being received (other than when they are only open for 24-hour electronic banking).

**"Charges"** means the charges for the Works as set out or calculated in accordance with the relevant Works Order.

**"Confidential Information"** means all information which is imparted or obtained under or in connection with this Agreement (whether before or after the date on which the provision or delivery of the Works commence) in confidence (whether in writing, verbally or by other means and whether directly or indirectly) or is of a confidential nature or which the other Party hereto knows or ought to know is confidential, relating to the business or prospective business, current or projected plans or internal affairs of a Party or any of its Affiliates, all know-how, trade secrets, products, operations, processes, product information and unpublished information, and any other commercial, financial or technical information relating to the business or prospective business of a Party or its respective Affiliates.

**"Contractor"** means the Contractor of the Works as detailed in the Works Order.

**"Contractor Personnel"** means Contractor's employees, workers, approved sub-contractors, agents or such other persons engaged by Contractor to provide the Works.

**"Control"** means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, or otherwise), and **"Controlled"** and **"Controlling"** in the context of "Control" will be construed accordingly.

**"Customer Service Policy"** means the customer service policy the Employer operates for the benefit of its customers as updated from time to time by the Employer.

**"Eligible Contractor Personnel"** means any Contractor Personnel over the age of 18 that provides services to or on behalf of the Employer for at least 2 hours per week for 8 consecutive 1.2 weeks a year. It does not include any Contractor Personnel that are involved in the supply of goods only.

**"Employer"** means Taylor Wimpey UK Limited of Gate House, Turnpike Road, High Wycombe, Buckinghamshire, United Kingdom, HP12 3NR (company number 01392762), or such other of its Affiliates who issues the relevant Works Order under clause 3 of the Agreement.

**"Force Majeure"** means act of God, war, act of terrorism, civil commotion, lightning, earthquake, fire, explosion, flood or pandemic and any other event or circumstance to the extent it is beyond the reasonable control of the relevant Party to the extent that such event or circumstance has materially affected the ability of the Party relying on that event or circumstance to perform its obligations but excluding (a) strikes, lockouts and industrial disputes affecting Contractor or the workforce of its subcontractors; (b) failure to secure a subcontractor or default of a subcontractor; (c) breakdown or failure of plant or machinery; (d) inability to obtain essential supplies or materials.

**"Greater London"** means the thirty two London boroughs as of the date of the Works Order and also the City of London.

**"IPR"** means all copyrights and all rights in patents, databases, designs, trademarks, trade names, domain names, service marks, trade secrets, know-how and other intellectual property rights (registered or unregistered) and all applications for the same and all rights having similar effect anywhere in the world.

**"Law"** means any of the following: (a) any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time; (b) the common law and the law of equity; (c) any binding court order, judgment or decree; (d) any applicable industry code, policy or standard enforceable 2.4 by law; and (e) any applicable legally binding direction, policy, requirement, code, principle, rule or order that is given by a regulator.

**"Living Wage Foundation"** means the Living Wage Foundation (Charity No. 1107264) of Citizens UK Head Office, 136 Cavell Street, London E1 2JA or any such other similar body which becomes responsible for determining the Real Living Wage.

**"London Living Wage"** means the Real Living Wage for Greater London.

**"Loss"** means all losses (including fines, penalties and tax liabilities), demands, liabilities, claims (threatened or actual), proceedings and damages and all related costs, expenses and payments, including those made to third parties (including additional taxes, irrecoverable VAT, legal fees and disbursements and costs of investigation, litigation, settlement, judgment and interest).

**"Maintenance Period"** means 2 years from the date of completion of any dwelling to which the Works relate if no Maintenance Period is specified in the Works Order.

**"NHBC"** means the National House Building Council, or, where an alternative provider is appointed to provide home warranties in respect of any homes that are the subject of the Works, that alternative provider.

**"NHBC Requirements"** means the conditions, requirements, standards, rules and regulations of NHBC including, without limit, those necessary to achieve the issue of a Buildmark Warranty for 2.6 each home to which the Works relate without qualification or limit save as standard and part of the Buildmark Warranty cover.

**"Party"** means the Employer or Contractor and together the Employer and Contractor will be the **"Parties"**.

**"Performance Standards"** means the Trade SLAs and any other quantitative and qualitative performance standards and commitments for the Works set out in the Scope of Works, as applicable, including any service levels and milestone dates (if applicable).

**"Pre-Order Meeting Minutes"** means the minutes recorded during any one or more meetings 2.7 held between Contractor and the Employer prior to commencement of the relevant Works under a Works Order where the details of the Works are discussed and agreed. **"Real Living Wage"** means the hourly real living wage rates or "hourly wage requirements" published by the Living Wage Foundation in *N Cominetti, "Calculating the Real Living Wage for London and the Rest of the UK: 2020-21, Resolution Foundation", November 2020* as determined by family type and 3. geographical region which may be updated and re-published from time to time in a similar 3.1 publication produced by the Living Wage Foundation and which for the avoidance of doubt includes the London Living Wage.

**"Reputable Insurance Company"** means any reputable registered insurer authorised to carry on insurance business in the United Kingdom with a minimum Standard & Poor's rating of AAA or equivalent.

**"Scope of Works"** means the requirements, policies, Performance Standards and other specifications determined by the Employer from time to time and/or as set out at a designated URL link identified by the Employer from time to time, which apply to all Works, as supplemented

by the relevant Works Order (if applicable).

**"Self Proving Manner"** means, when referring to the manner of execution of any document or agreement, subscribed in such a manner as will comply with the requirements of sections 3, 7 and 8 and Schedule 2 of the Requirements of Writing (Scotland) Act 1995.

**"Site"** means the site or location of the Works specified in the Pre-Order Meeting Minutes.

**"Site Manager"** means the person appointed by the Employer for each Site (which shall include any notified assistant site manager).

**"Third Party"** means any party funding or providing finance for the project in respect of which a Works Order has been issued and/or any party who is acquiring or has acquired a heritable or long leasehold interest in the whole or each part of the project but subject to a maximum of one party for the whole or each part of the project and excluding individual residential dwelling purchasers and tenants.

**"Trade SLAs"** means the quantitative and qualitative standards applicable to specific types of Works as set out in the Scope of Works, as updated by the Employer from time to time.

**"Variation"** means a written instruction issued by the Employer to Contractor altering, amending, adding to, omitting, substituting or otherwise varying the Works.

**"Works"** means the works to be carried out by Contractor as specified in a Works Order.

**"Works Completion Date"** means the date upon which Contractor must complete the Works in respect of a project as specified in the Pre-Order Meeting Minutes or as otherwise notified to Contractor by the Employer (or such other date as may be agreed or determined pursuant to the Appointment).

**"Works Order"** means an order (or series of orders) issued to Contractor by Employer to carry out certain Works in connection with a project.

**"Works Requirements"** means the contents of all tender document, meeting minutes (including Pre-Order Meeting Minutes) and any other obligations set out in email exchanges between the Employer and Contractor, in each case relating to the relevant Works.

**"Works Start Date"** means the date upon which Contractor is to begin the Works in respect of a project as specified in the Pre-Order Meeting Minutes or as otherwise notified to Contractor by the Employer.

Words importing the singular include the plural and vice versa. Persons include unincorporated associations, partnerships and any entity with legal standing. References to **"include"** or **"including"** are construed as being without limitation. Clause headings are for ease of reference only and do not affect the interpretation or construction of the Agreement. References to a particular Law or provision of Law will be construed as a reference to such Law or provision as amended and in force from time to time and to any Law which replaces, re-enacts or consolidates (with or without modification) any such Law. A reference to any remedy, consequence or right of a Party pursuant to a breach of a provision by the other Party does not limit any other right or remedy of the Party unless it is expressly stated to do so. References to **"any"** means **"any"** or **"all"** as the context requires.

In the event of any conflict or inconsistency between the Works Order and the Agreement, the provisions contained in the Agreement will prevail.

## 2. WORKS ORDERS AND SCOPE OF WORKS

Contractor shall commence the Works on the Works Start Date and shall complete the Works by the Works Completion Date or by such other date as the Employer may agree. Contractor shall proceed regularly and diligently to carry out and complete the Works in accordance with any programme specified by the Employer.

The Employer and/or any Affiliate of the Employer may instruct Contractor to carry out such Works as the Employer or the relevant Employer Affiliate shall from time to time require by issue of a Works Order. Upon the issuing of a Works Order, Contractor shall carry out the Works detailed therein in accordance with the Agreement including any specific requirements or specifications contained in the Works Order. Contractor shall acknowledge receipt of the Works Order by email to the Employer. Any failure by Contractor to acknowledge receipt of the Works Order shall not invalidate the effect of any Works Order issued by the Employer.

Without prejudice and subject to clause 2.1 above, any Works carried out by Contractor at the request of the Employer which are not provided for expressly in a Works Order, shall be carried out by Contractor in accordance with (a) the NHBC Requirements (b) the Works Requirements, Performance Standards and the Scope of Works that are relevant to such Works carried out at the request of the Employer (c) the Employer's supplier code of conduct (d) the Agreement as if a Works Order had been issued; and (e) any Works Order in place at the time that is relative to such Works carried out at the request of the Employer (including the Performance Standards, Scope of Works and Works Requirements relative to such Works Order).

Contractor will: (a) commence, undertake and complete the Works as specified in the Works Order and in accordance with this Agreement, the Work Requirements and the NHBC Requirements and any variations or additions authorised by the Employer in a good, workmanlike and thorough manner to the satisfaction of the Employer; (b) will carry out the Works in accordance with the requirements of all relevant building regulations, special requirements of all relevant Contractors of utilities acting as statutory undertakers, building standards, statutory requirements, codes of practice or equivalent requirements; (c) comply with or assist the Employer, where necessary, with its compliance, with any directive or instruction issued by the NHBC; (d) provide labour and supply all items including tools, plant and equipment necessary for the complete and satisfactory performance of the Works; and (e) supply the Works to the Employer in accordance with the timings set out in the Works Order or as otherwise agreed in writing.

Where Contractor is responsible for the design of the Works or the selection of materials or goods for the Works, such designs, details, materials and goods shall be safe and suitable for the purpose or purposes for which they are required. Contractor shall use all reasonable skill, care and diligence in the preparation of such designs to be expected of an appropriately qualified consultant providing professional services in connection with works of equivalent type, size and complexity to the Works. Contractor shall indemnify the Employer against all claims, demands, proceedings, damages, costs, charges and expenses arising out of or as a consequence of such designs, materials or goods not being safe or suitable.

Contractor will not use in the Works any products, materials, substances, building methods, or combinations of materials, substances and/or building methods which, at the time of use: (a) are generally accepted or generally suspected in the construction industry at the relevant time as: (i) posing a threat to health and safety of any person; or (ii) posing a threat to the structural stability, fire safety, performance or physical integrity of the Works or any project which the Works form part of or any part or component thereof; or (b) do not comply with or are not in accordance with the recommendations of the Guidance "Good Practice in the Selection of Construction Materials 2011" published by the British Council of Offices and the BRE Digest (or any updated versions of the Guidance or Digest).

Without prejudice to any other remedies on the part of the Employer under this Agreement, no sums shall be due to Contractor under a Works Order in so far as Contractor has not complied with the NHBC Requirements in any manner whatsoever, and until such time as such non-compliance has been remedied.

### VARIATIONS

The Employer may from time to time issue a Variation but no such Variation shall invalidate any Works Order.

Where Contractor considers that any work to be undertaken by it will constitute a Variation then Contractor (through its Authorised Representative) shall within 21 days of becoming aware of such Variation issue a written notice to the Employer Authorised Representative of all such Variations and the effect upon the programme for the Works prior to the execution of any work that may constitute a Variation. Such work will not constitute a Variation if Contractor fails to issue such written notice within the 21 day period. The Employer shall within 14 days of such notification authorise or disagree with such Variation.

3.3 Subject to clause 3.4, all Variations shall be valued either: (a) on an agreed lump sum basis; or (b) at the then current rates agreed between the Parties for purposes of Contractor tendering to perform Works for the Employer or, where no rates are specified or such rates are not applicable, or broadly equivalent to the Variation works, at such rate that is fair and reasonable in all the circumstances. The value of such Variation shall be added to the charges payable by the Employer for the Works and the value of works (calculated in accordance with this clause 3.4) carried out in respect of such Variation shall be added to the sums due to be paid by the Employer to Contractor in respect of the Works Order under clause 6.2 of this Agreement in respect of the calendar month in which such Variation works are completed. The amount to be paid in respect of any Variation shall be agreed before any such work is carried out or, in default of agreement, shall be fixed by the Employer.

3.4 A Variation will only give rise to an increase in or addition to the charges incurred under this Agreement where such Variation is a material addition or variation to the Works and would result in a net change in Contractor's resources used, or net costs incurred in providing the Works. The Employer shall make a fair and reasonable valuation of each Variation instructed having due regard to the information provided by Contractor in respect of such Variation.

#### 4. SITE

4.1 In accepting the Works Order, Contractor is deemed to have examined the Site to check the nature of the Works and the Site, the access to, risk and condition of the Site, the amount and location of the Works, the quality and quantity of materials and types of equipment and facilities needed for the Works and to have satisfied itself generally as to matters affecting the execution of the same. No failure on the part of Contractor to discover or foresee any nature, extent, risk or condition relating to the Works or the Site will entitle Contractor to any additional payment or time for the carrying out of the Works.

4.2 The Site Manager shall be responsible on Site for the issue of instructions to Contractor. Contractor shall keep upon the Works a competent person in charge and any instructions given to the person in charge by the Site Manager shall be deemed to have been issued to Contractor.

4.3 Contractor will: (a) appoint competent Contractor Personnel to be in charge of the Works, who hold a valid CSCS card relevant to the work being undertaken by that person; and (b) procure that Contractor Personnel attending a Site in connection with this Agreement comply with: (i) any reasonable directions or instructions given to them; and (ii) any applicable security, health and safety or other notices and regulations; and (c) not disrupt any other activities carried out by the Employer. Any instructions given to Contractor Personnel by the Employer will be deemed to have been issued to Contractor.

4.4 During the performance of the Works and on termination or completion thereof Contractor will safely clean up and lawfully remove all debris and waste material for which Contractor is responsible, will ensure the levels of contamination and toxicity on the Site will satisfy the requirements of the Environment Agency and will not cause harm to the health and safety of any person or to the environment, and will keep and leave the Site in a condition satisfactory to the Employer. Contractor will obtain any necessary licences to remove any such debris and waste and will at all times comply with all applicable environmental Laws. Contractor will give notice to the Employer within a reasonable time prior to the removal from and/or delivery to the Site of anything which is toxic, explosive or otherwise hazardous. The notice shall identify the hazard(s) and give full details of the precautions to be taken when using, handling or otherwise coming into contact with such hazard, together with details of the safe manner of use, handling, transport and storage. Contractor shall also ensure that at the time of removal and/or delivery every such thing is suitably packed and is identified on the outside as hazardous.

4.5 Contractor shall, at all times, prevent any public or private nuisance of whatsoever nature or interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Works. Contractor shall ensure that there is no trespass on or over any adjoining or neighbouring property arising out of the Works. If the carrying out of the Works is likely to necessitate any such interference, then Contractor shall, at no cost to the Employer, obtain the prior written agreement of such owners and/or occupiers thereto, and such agreement shall be subject to the approval of the Employer before execution. Contractor shall be responsible for and hereby indemnifies the Employer from and against any and all Loss and/or proceedings whatsoever resulting from any such nuisance or interference, save only where such nuisance or interference is the direct consequence of an instruction of the Employer.

4.6 The Employer: (a) will make available on Site for use by Contractor such supplies of electricity, water and gas as required for the purposes of providing the Works; and (b) may, from time to time under its Health & Safety procedures, supply heavy plant and/or other equipment (including personal protective equipment to comply with Health & Safety obligations or identification requirements on sites where other builders or contractors are present).

#### 5. SUPPLY OF WORKS AND DEFECTS

5.1 If Contractor cannot deliver any part of the Works on time, Contractor shall be liable to the Employer for any Loss or other damage suffered or incurred by the Employer as a result of such delay. Contractor shall at the earliest reasonable opportunity give notice in writing to the Employer of any expected delay in the delivery of the Works. Upon receipt of the notice, the Parties shall meet to discuss in good faith and agree a substitute delivery and remediation plan to resolve the delay in a timely and constructive manner, at the appropriate levels of authority within each Party. Should the Parties be unable to identify or agree an approach within a reasonable period of time to remedy the delay, or should Contractor fail to comply with such agreed remediation plan, or, and regardless of the aforesaid notice, and unless the Employer expressly agrees to the substitute delivery date in writing, Contractor's failure to supply the Works on time, will entitle the Employer, to cancel all or part of the Agreement without liability to the Employer. Contractor must supply the Works at or to the locations specified in the Works Order and if Contractor does not, then Contractor will bear any additional expense in handling and delivering to the correct destination. If reasonable progress in the performance of the Works is not being maintained, the Employer may, on written notice to Contractor, accelerate the progress of the Works by the employment of its own labour and any additional expense incurred by the Employer will be recoverable from Contractor on demand.

5.2 Contractor accepts that the Employer does not undertake to provide continuity of work and may choose at any time and for any reason to delay or suspend the whole or any part of the Works without liability for any Loss or expense or other damage incurred by Contractor due to such delay or suspension of the works.

5.3 Use by Contractor of any items supplied by the Employer shall be at the sole risk of Contractor. Contractor shall be responsible for any acts, loss or damage whatsoever resulting therefrom and no warranties or other liabilities shall be created or given either expressly or impliedly on the part of the Employer by the reason of such supply. In using its own plant, equipment and materials and the like, Contractor shall be fully responsible for the same and the Employer shall not be responsible for any Loss or damage thereto.

5.4 If supply of the Works (or part thereof) is incomplete or defective, the Employer may accept or reject the Works so supplied and/or cancel or vary the balance of the Agreement. The Works may be subject to inspection, testing and subsequent acceptance by the Employer. If the Works (or any part thereof) are not accepted by the Employer, then the Employer may: (a) require Contractor to promptly replace or re-perform the relevant Works to accord to the Agreement; or (b) arrange to have the Works supplied or performed by a third party (and Contractor will reimburse the Employer for all reasonable costs and expenses incurred); or (c) terminate the Agreement immediately by written notice to Contractor and require Contractor to promptly repay the Employer any monies which the Employer has paid to Contractor.

5.5 Contractor will allow the Employer to regularly inspect the Works. Contractor will notify the Employer when the Works are, in Contractor's reasonable opinion, completed and will provide access to the Works for Employer to inspect the Works. The Works will be considered completed when the Employer issues a statement of completion.

5.6 After the statement of completion is issued by the Employer, Contractor will be liable to make good all defects and other faults in the Works which appear within the Maintenance Period, including replacement materials or goods where necessary. All defects which Contractor is liable to make good, will be made good by Contractor at its own cost and in accordance with the instructions of the Employer. Should Contractor fail to make good any such defects within a

reasonable time after notice from the Employer, the Employer may make other arrangements for the execution of such Works and the cost thereof will be recoverable from Contractor on demand.

Without prejudice to any other remedies on the part of the Employer under this Agreement, no sums shall be due to Contractor under a Works Order in so far as Contractor has not complied with the terms of 2.4 in so far as the NHBC and NHBC Requirements are concerned or where: (a) there has been a material deviation from the NHBC Requirements (a material deviation including (but not being limited to) a situation where a construction quality review inspection by an inspector from NHBC results in a score of less than 4); (b) a "reportable item" (as defined in the NHBC Requirements) is identified in respect of the Works during an NHBC key stage inspection (as defined in the NHBC Requirements); or (c) the Site Manager identifies any non-compliance with specifications which the Works are required to meet under the Agreement, Applicable Law or manufacturers' installation instructions, until such time as such non-compliance, material deviation or reportable item has been remedied and accordingly the completion of the Works shall not be deemed to have been achieved until such time. Contractor hereby indemnifies the Employer in respect of any Loss arising as a consequence of such non-compliance, material deviation or reportable item (including, without limitation, any Loss arising as a consequence of delay or disruption to any project to which the Works relate).

#### PAYMENT

The Charges, unless stated otherwise, is exclusive of any applicable VAT but inclusive of all other taxes, duties, charges, levies, royalties, labour, materials, carriage, insurance, subsistence, administration, overheads, profit or any other costs, expenses or resources required for the supply of the Works. Where a taxable supply is made by Contractor to the Employer, the Parties agree that self-billing is to apply under clause 7.

Within 7 days of the end of each month Contractor will submit a valid tax invoice for Work completed in the previous month, or (if the self-billing arrangement is in operation pursuant to clause 7) an application for payment for the sum due as calculated in accordance with the basis of valuation option set out in the Works Requirements. Where the self-billing arrangement is in operation the Employer may at its option value the work undertaken without an application or request for payment. Each invoice or application for payment (as appropriate) will be accompanied with evidence that such Work has been completed and must specify: (a) the Charges for the Work completed in the previous month and the basis upon which the amount has been calculated; (b) the Site and the Works Order number to which the Work relates and plot numbers applicable to the invoice or application for payment; and (c) any applicable VAT properly chargeable on the Work.

The due date for payment will be as follows: (a) for invoices issued by Contractor, 30 (thirty) days from receipt of an undisputed invoice by the Employer issued in accordance with clause 6.2; and (b) for a self-billing arrangement in accordance with clause 7, 30 days from the measured to date determined by the Employer (which shall be the end of the relevant accounting month unless otherwise specified by the Employer).

The final date for each payment is 7 days after the due date for that payment.

The Employer confirms it is an "end user" for the purposes of The Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019. Accordingly, any supplies provided to the Employer shall be exempt supplies whereby any such VAT due shall be payable by the Employer to Contractor. Should the "end user" exclusion not apply or cease to apply, then the Employer will inform Contractor in writing as soon as reasonably practicable, and the VAT due to HMRC on any relevant supplies and charges for services made by Contractor to the Employer from the date on which the "end user" exclusion ceased to apply, may become payable by the Employer to HMRC.

Payment will not signify approval by the Employer of the whole or any part of the Works executed, nor will any final payment prejudice any claim which the Employer may have against Contractor.

The Employer may withhold or set off from any payment due to Contractor from the Employer an amount equal to the value of the Employer's reasonable assessment of the value of any liabilities of Contractor to the Employer. Where such determination of the quantum of the right to pay less and/or set off results in Contractor owing an amount to the Employer, Contractor shall promptly and within no more than 30 days from receipt of the notice pay such amount to the Employer in its nominated bank account.

If either Party fails to pay any sum due under this Agreement, such Party will be liable for simple interest on the overdue amount at the rate of 2% over the Official Bank Rate of the Bank of Scotland, from the due date until payment is made. This clause 6.8 is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

If Contractor fails to submit an invoice, or submits an invoice which otherwise does not meet the requirements contemplated in clause 6.2, before 31 December of the relevant calendar year in which Works were provided to the Employer, Contractor shall not be entitled to raise an invoice or be paid for the Charges due under that invoice after 31 December of the relevant calendar year, save where Works are provided to the Employer in November and/or December of that calendar year in which case Contractor may submit a late invoice for such Works, in accordance with the requirements of clause 6.2 by no later than 1 March of the subsequent calendar year.

If the Employer issues on behalf of Contractor a self-billed remittance and Contractor raises no objection in respect of the amounts reflected on the self-billed invoice within 6 months of receipt of invoice, Contractor shall not be entitled to claim any amount in excess of that which is reflected on the invoice.

#### SELF-BILLING ARRANGEMENTS

Unless the Works Order provides to the contrary, the Parties agree that self-billing in accordance with this clause 7 will apply to all charges incurred under this Agreement and each Works Order. Contractor agrees and authorises the Employer to prepare and issue on behalf of Contractor self-billed invoices in respect of the Works. The Parties agree that where self-billing applies, the Parties accept that this clause 7 shall constitute a formal self-billing agreement in respect of such Works and agree to the following terms: (a) Contractor will not issue any tax invoices or otherwise operate an authenticated receipt procedure in respect of the Works, or any part thereof, and hereby acknowledges that the Employer shall be under no obligation to remit payment on any such tax invoice issued by Contractor; (b) Contractor will upon request furnish all information reasonably required by the Employer as to its status for VAT purposes and its VAT registration number (if applicable) and will further notify the Employer as to any subsequent changes thereto; (c) the Employer will complete self-billed invoices showing Contractor's name, address and VAT registration number, together with all other details which constitute a full VAT invoice; (d) the Parties agree to make a new self-billing agreement in the event that either Party's VAT registration number changes; and (e) Contractor will issue applications for payment that state that they are not tax invoices.

On an annual basis in each year Contractor shall confirm that it continues to accept self-billing arrangements by signing and returning to the Employer an annual self-billing renewal agreement sent to it by the Employer.

In relation to any Works Orders that specify that self-billing arrangements do not apply, all tax invoices will be issued by Contractor to the Employer in accordance with clause 6.2 above.

#### RETENTION

A retention will be deducted at the rate of 2.5% or such other amount as may be stated on the Works Order from the gross amount of any payment proposed to be made to Contractor. Half of any retention will be released upon the Employer certifying satisfactory completion of the Works. When the Employer considers (in its absolute discretion acting reasonably) that the Works have achieved satisfactory completion, the Employer shall issue a certificate to that effect. The balance of the retention will be released 24 months later on written application from Contractor and subject to Contractor complying with the terms of clause 8.2 below, provided that any defects, shrinkages or other faults in the Works notified to Contractor have been made remedied in accordance with clause 8.2 below.

Should there be any defects, shrinkages or faults within the Works identified by the Employer and notified to Contractor, the Employer may elect to (a) instruct Contractor to make good any such defects, shrinkages or other faults upon notice from the Employer and in accordance with the Customer Service Policy; or (b) instruct others to carry out such remedial work and deduct any

reasonable monies, expenditure or expenses from the contract sum (including the retention) or require Contractor to reimburse the Employer for the cost of the remedial work on request.

## 9. REAL LIVING WAGE

- 9.1 Contractor shall pay Contractor Personnel at an hourly rate not less than the applicable Real Living Wage for each Eligible Contractor Personnel. Where the Eligible Contractor Personnel are based in Greater London Contractor shall pay the London Living Wage. For the avoidance of doubt, the Real Living Wage and/or London Living Wage is only payable for the hours that an Eligible Contractor Personnel provides services to or on behalf of the Employer and it shall not become the Eligible Contractor Personnel's standard or default rate of pay.
- 9.2 Contractor shall apply any increase in the applicable Real Living Wage for all Eligible Contractor Personnel no later than 1 April following the annual increase announcement.
- 9.3 Contractor shall provide documentation to the Employer upon request to prove compliance in relation to payment of at least the Real Living Wage.

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 Unless stated otherwise in the Works Order, all IPR in the Works arising in connection with the Agreement and any media upon which such rights are contained (including any preparatory material and any media used to store such material) will be Employer's property and Contractor will assign the same to the Employer with full title guarantee. To the extent possible, Contractor hereby assigns such rights to the Employer with full title guarantee and, where relevant, by way of a present assignment of future rights.
- 10.2 In respect of any IPR that is expressed in the Works Order as not assigned to the Employer, Contractor hereby grants to the Employer a royalty-free, irrevocable, perpetual and non-exclusive, unlimited (including the right to transfer/sublicence in whole or in part) licence to use such Works for any purpose whatsoever.
- 10.3 Contractor hereby agrees promptly and without charge to procure the execution, completion and/or delivery of any formal consents or agreements (including waivers of moral rights) reasonably required by the Employer to formalise or enforce the assignment of rights granted herein or otherwise for the full enjoyment by the Employer of such rights.

## 11. TITLE

- 11.1 The title in any goods, materials or products to be supplied by Contractor for use in connection with the Works shall pass to the Employer on the earlier of (a) delivery to the Site; or (b) payment for the goods, materials or products (or the inclusion of their value in a payment in respect of the Works) by (or on behalf of) the Employer. The passing of title shall not prejudice the Employer's right to reject such goods, materials or products or any other rights of the Employer in this Agreement.
- 11.2 Where title in any such goods, materials or products passes to the Employer before delivery to the Site, Contractor shall ensure (at no cost to the Employer) that such goods, materials or products: (a) shall be clearly identified and marked by Contractor as being the property of the Employer as may be required by the Employer; (b) are stored separately from any other goods, materials or products of any third party so that they remain readily identifiable as the Employer's property; and (c) are at all times maintained in satisfactory condition.
- 11.3 Where title in any goods, materials or products passes to the Employer in accordance with clause 11.2, the Contractor shall if the Employer so requires execute in a Self Proving Manner and deliver to the Employer any contract of sale, agreement or instrument required to facilitate any such transfer of title.
- 11.4 Notwithstanding that title may have transferred to the Employer, risk in respect of any such goods, materials or products shall remain with Contractor until the Employer certifies satisfactory completion of the Works.

## 12. INDEMNITIES AND LIABILITY

- 12.1 Contractor hereby indemnifies and holds the Employer, Employer's Affiliates, any successor Contractor and their respective officers, directors, employees, Contractors, successors and assignees, harmless against and from any Loss awarded against or incurred or paid by the Employer as a result of or in connection with: (a) any claim that any of the Works (and/or the Employer's receipt and use of the same) infringe the IPR of any other person; (b) any negligence or breach of duty on the part of Contractor or Contractor Personnel (including any breach of the Employer's Health & Safety procedures); (c) any claim or threatened claim that an employment or other relationship exists between the Employer and Contractor Personnel; and/or (d) any claim: (i) under Law; (ii) fines or other penalty imposed by a court of competent jurisdiction or by a regulatory authority on an Employer Affiliate to the extent caused by Contractor's failure to perform its obligations; or (iii) by Contractor Personnel or any other person in respect of personal injury or death or in respect of loss or theft of or damage to any property arising out of or in the course of Contractor's employment in connection with the execution of the Works, unless caused solely by the negligent act or omission of the Employer; and/or (e) any claim arising out of, or in connection with, any acts of fraud or theft by Contractor (including by the Contractor Personnel) in the course of performing its obligations under this Agreement and providing the Works; (f) any claims arising out of a breach by Contractor (or the Contractor Personnel) of its obligations under clauses 4.4, 4.5 or 13.
- 12.2 The Employer's entire liability to Contractor pursuant to this Agreement, will be the Charges as set out in the relevant Works Order together with any interest due pursuant to clause 6.8. This clause does not in any way limit the Employer's liability for: (a) death or personal injury caused by the Employer's negligence; (b) fraud; or (c) any other liability that cannot be limited or excluded by Law.

## 13. WARRANTIES

Contractor represents, warrants and undertakes that: (a) it has the right, power and authority to enter into and to carry out its obligations under this Agreement; (b) the Works correspond strictly with any and all of the Employer's requirements or specifications (oral or in writing) supplied to or by the Employer, or agreed with Contractor, by or on the Employer's behalf; (c) all Works that are services will be performed by appropriately experienced, qualified and trained Contractor Personnel who will act with due care and diligence, in accordance with best industry practice; (d) it will at all times maintain insurance with a Reputable Insurance Company sufficient to meet any potential liability under the Agreement, including as set out in clause 14; (e) the Works will be of satisfactory quality, free of defects and errors and fit for their purpose; (f) the Works (and Contractor in its provision thereof) comply with: (i) all policies and standards made available to Contractor by the Employer from time to time, including the Employer's Customer Service Policy and the Employer's supplier code of conduct and any other policies published on the Employer's website, as may be updated from time to time; (ii) all applicable Laws, including in relation to the protection of human rights, anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking (including the Modern Slavery Act 2015), together with any and all ethics, anti-bribery and anti-corruption laws and policies; (iii) the provisions of the Health and Safety at Work etc Act 1974, the Control of Substances Hazardous to Health Regulations 2002, the Management of Health and Safety at Work Regulations 1999, the CDM Regulations and any subsequent legislation replacing or amending the same; (iv) the NHBC Requirements and all relevant building regulations, special requirements of all relevant Contractors of utilities acting as statutory undertakers, building standards, statutory requirements, codes of practice or equivalent requirements and (v) and assist the Employer, where necessary, with its compliance, with any directive or instruction issued by the NHBC; (g) it will provide to the Employer and the relevant warranty provider as soon as reasonably practicable any information, documents, drawings and data required for the purposes of achieving the relevant Buildmark Warranty and in this regard will be fully conversant with the most up to date standards and requirements of the warranty providers for the Buildmark Warranty and will comply with such standards and requirements; (h) the Works (and the Employer's use and enjoyment of the Works) will not infringe any third party's IPR; and (i) from the point at which personal data is provided and/or made available to Contractor, Contractor will be, for purposes of all applicable Laws which relate to the processing of personal data and privacy (including the European Union General Data Protection Regulation 2016/679), a data controller of that personal data and will comply with its obligations under such Laws.

Contractor will provide the Employer with such assistance and information as is requested by the Employer to assess Contractor's compliance with this clause 13.

## 14. INSURANCE

Contractor must have for the level of cover required in the Works Order and for the Maintenance Period with a Reputable Insurance Company: (a) appropriate and adequate public liability insurance, where such insurance shall be jointly in the names of Contractor and the Employer if so requested by the Employer, and employee liability insurance cover; (b) if Contractor is responsible for the design of all or any part of the Works, professional indemnity insurance; and (c) all risks insurance against loss or theft of or damage to the Works to their full reinstatement value, unfixed materials and goods delivered to, placed on or adjacent to the Site and/or whilst in transit and for use in connection therewith and such insurance shall also extend to insurance of Contractor's site huts, plant and equipment, and shall be taken out in the joint names of Contractor and the Employer if so requested by the Employer. A copy of the insurance certificates must be produced by Contractor to the Employer before the first payment is made under this Agreement.

## 15. TERMINATION

Without prejudice to any of the Employer's other rights or remedies, the Employer may, by written notice to Contractor, immediately terminate this Agreement (in whole or in part) without liability to Contractor, if Contractor: (a) fails to start the Works by the commencement date in the Works Order (if any); (b) fails to complete the Works by the completion date in the Works Order (if any); (c) will for any reason become unable to perform the terms of this Agreement; (d) has appointed an administrator, administrative receiver or has a winding up order or bankruptcy order made against it or enters into an arrangement, compromise or composition in satisfaction of Contractor's debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction) or without declaration of solvency, Contractor passes a resolution or makes a determination that Contractor be wound up or (in the case of partnership) each partner is the subject of an individual arrangement or any other event or proceedings set out in this clause, or if Contractor takes or suffers any similar action in consequence of debt or insolvency under the laws of the United Kingdom or any equivalent of the foregoing in any other jurisdiction; (e) breaches any provisions of 13 (f) (ii), (iii), or (h) or (f) has committed any other breach of its obligations under this Agreement if Contractor has not remedied its default within 7 days of receipt of written notice from the Employer to do so.

Notwithstanding the provisions of clause 15.1, the Employer will be entitled to terminate this Agreement at any time by serving 14 days written notice on Contractor. On termination pursuant to this clause 15.2, Contractor will be entitled to a fair and reasonable proportion of the Charges which is commensurate with the Works performed by Contractor in accordance with this Agreement up to the date of termination (less any amount previously paid to Contractor) but to no other payment of any description. Such payment will be subject to the delivery to the Employer of all materials, drawings, reports or other documentation procured or prepared by Contractor or on Contractor's behalf in the performance of the Works.

## 16. CONSEQUENCES OF TERMINATION

Upon termination of the Agreement under clause 15, Contractor shall prepare an account setting out the total value of work properly executed and materials and goods properly brought to the Site for the purpose of the Works at the date of termination.

After taking into account amounts previously paid to Contractor under this Agreement the Employer shall pay to Contractor the full amount properly due in respect of the account calculated in accordance with clause 16.1 within 30 days of the later of its submission by Contractor, the completion of the Works or the making good of any defects therein whether such completion and making good of defects is by Contractor or a third party.

Upon termination of the Agreement Contractor shall immediately leave the Site and no further sum shall become due to Contractor other than any amount that may become due under clause 16.1 after deduction of any sums the Employer is entitled to recover from Contractor under clause 16.2.

The Employer may recover from Contractor the additional costs of completing the Works, any expenses properly incurred by the Employer and any direct loss and/or damage caused to the Employer, as a result of such termination.

The provisions of this clause 16 are without prejudice to any other rights and remedies that the Employer may possess under this Agreement or at Law.

## 17. ADVERTISEMENTS/CONFIDENTIALITY

Except where freely and legitimately available to the public prior to disclosure, the Employer and Contractor (each being a "Receiving Party" in relation to the Confidential Information of the other Party) must not use or disclose to any third Party any Confidential Information of the other Party (the "Disclosing Party") for any purpose other than as strictly necessary to supply and receive the Works without the express prior written consent of the Disclosing Party. All rights in the Confidential Information remain the property of the Disclosing Party. The Receiving Party must keep the Confidential Information of the Disclosing Party confidential and secure and, on demand, either destroy it (with certification by one of its officers) or return it to the Disclosing Party. Contractor must not: (a) denigrate the Employer in any way whatsoever; or (b) without the Employer's prior written consent, advertise or publicise in any way the fact that Employer is Contractor's customer. For the avoidance of doubt, the Employer may make Contractor's Confidential Information available to its Affiliates, officers, directors, employees, professional advisors, other service providers, contractors and auditors.

Advertisements and/or other sign boards will not be displayed at the Site by Contractor without the Employer's written authority and as directed by the Employer.

Contractor shall not, without the prior written approval of the Employer, such approval not to be unreasonably withheld, impart to any publication, journal or newspaper or radio or television programme any information regarding the Works, or take or permit to be taken any photographs of the Works for use in any publicity or advertising or publish alone or in conjunction with any other person, any articles, photographs or other illustrations relating to the Works or any part thereof.

## 18. DISPUTES AND ADJUDICATION

Any dispute, controversy or claim arising out of or in relation to the Agreement, will be settled between the Authorised Representatives of the Parties. Should the relevant Authorised Representatives fail to settle any such dispute controversy or claim within 28 days of the matter being referred to them, then such dispute controversy or claim will be referred to the managing director in the case of Contractor and in the case of the Employer the managing director or equivalent of the relevant business unit of the Employer who will resolve the dispute within 28 days of the dispute being referred to them.

If the dispute is not resolved in accordance with the provisions and provided for in clause 18.1 above, the Parties will in good faith seek to resolve the dispute by mediation under the auspices of CEDR Solve, International Dispute Resolution Service, St Pauls, London, EC4M 7BQ before resorting to litigation under clause 18.4. If the dispute is not resolved by mediation within 30 days, or if one of the Parties will not participate in the mediation, the dispute may be referred to the courts under clause 18.4 forthwith.

Notwithstanding the terms of clauses 18.1 and 18.2 above, where Part II of the Housing Grants, Construction and Regeneration Act 1996 applies, either Party may refer any dispute or difference arising under this Appointment to adjudication at any time. The adjudication procedures and the agreement for the appointment of an adjudicator shall be as set out in the Model Adjudication Procedures published by the Construction Industry Council current at the date of reference. The nominating body shall be the Royal Institute of Chartered Surveyors or any successor organisation.

Subject to clause 18.3, where the Agreement is made and executed in Scotland any dispute or difference shall be tried by the Court of Session or by the appropriate Sheriff.

## 19. FORCE MAJEURE

Any event will only be considered a Force Majeure event if it is not attributable to the neglect, default, wilful act or other failure to take reasonable precautions of the affected Party, any Affiliate

of the affected Party or their agents, employees or contractors (including, in the case of 20.16 Contractor, the Contractor Personnel). No variation of this Agreement shall be valid unless in writing and signed by the Authorised Representatives of the Parties.

19.2 Neither Party will be liable to the other for any failure to fulfil obligations pursuant to the Agreement where such failure is caused by a Force Majeure event provided that it has complied with this clause 19.2. The affected Party shall as soon as reasonably practicable after the start of the Force Majeure event, notify the other Party in writing of the Force Majeure event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure event on its ability to perform any of its obligations under the Agreement. Any obligations upon the other Party that are related to or connected with the obligations the affected Party would otherwise have been obliged to fulfil but for the operation of this clause shall be suspended until such time as the affected Party can fulfil the affected obligations. A delivery date or completion date that is delayed by reason of a Force Majeure event will be automatically extended for a reasonable period. The Parties will in any event use reasonable endeavours to avoid or mitigate the effect of a Force Majeure event so as to recommence performance of their obligations as soon as reasonably possible.

19.3 Upon the occurrence of a Force Majeure event affecting Contractor, the Employer will have the right to: (a) engage an alternative contractor to provide deliverables in place of the affected Works for the duration of the Force Majeure event and for a temporary period thereafter, during, and in respect of, which period the Employer shall have no liability to pay the Charges or perform any of its other obligations under this Agreement relating to the Works affected by the Force Majeure event; and/or (b) terminate the Agreement, Works Order and/or affected Works, in whole or in part.

19.4 Where the provision of the Works or part thereof is prevented or affected by a Force Majeure event, the Employer's obligation to pay the Charges will be reduced accordingly until Contractor resumes full provision of that part of the Works in accordance with the terms of this Agreement.

## 20. GENERAL

20.1 Contractor may not assign or transfer to any other person any of Contractor's rights or sub-contract any of Contractor's obligations under this Agreement unless previously agreed by the Employer in writing. The Employer's approval of a sub-contractor will not relieve Contractor of any liability under the Agreement and Contractor is and will remain responsible for all acts and omissions of Contractor's sub-contractors as if they were Contractor's acts and omissions. The Employer may at any time assign the benefit of this Agreement.

20.2 Contractor acknowledges and agrees that the Works are provided for the benefit of the Employer and its Affiliates and not solely for the Employer and all references to "Employer" in respect of receiving a benefit under this Agreement will be read and construed to include the Employer's Affiliates, including any indemnity in favour of the Employer.

20.3 Each of the Employer Affiliates will be third party beneficiaries under this Agreement in respect of every term of this Agreement. Such third party beneficiaries will be entitled to enforce the relevant terms of this Agreement pursuant to the Contracts (Third Party Rights) (Scotland) Act 2017, save that such third beneficiaries do not have the right to terminate this Agreement. Save for the Employer's Affiliates, nothing in this Agreement will confer upon any third Party any right or benefit, whether under the Contracts (Third Party Rights) (Scotland) Act 2017 or otherwise.

20.4 No action or proceedings under or in respect of this Agreement and/or any Works Order whether in contract or in delict, negligence or for breach of statutory duty or otherwise shall be commenced after the expiry of 15 (fifteen) years from the date of satisfactory completion or abandonment of the Works under the Works Order.

20.5 Contractor shall, when requested to do so by the Employer, provide a collateral warranty in connection with the Works, executed in a Self Proving Manner and in the form directed by the Employer, in favour of each Third Party as is notified to Contractor by the Employer. Where Contractor has appointed a consultant to carry out any design in respect of the Works, Contractor shall procure that such consultant also provides a collateral warranty in the form requested by the Employer in connection with the Works in favour of the Employer, executed in a Self Proving Manner.

20.6 No waiver of any breach of the Agreement will be considered as a waiver of any subsequent breach of the same or any other provision, and any such waiver will be specific and in writing. Rights and remedies stated under the Agreement are cumulative and without prejudice to any other rights and remedies available to a Party hereunder or at Law.

20.7 If any provision of the Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, then the validity of the other provisions of the Agreement shall not be affected.

20.8 The Agreement shall form the entire agreement between the Parties relating to the Works and, without affecting any of the Employer's remedies (or Contractor's liability) for any misrepresentation by Contractor, the Agreement replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral and prevails over any inconsistent terms or conditions contained or referred to in Contractor's quotation or the Works Order or correspondence or elsewhere or implied by trade custom, practice or course of dealing.

20.9 The provisions of the Agreement which expressly or by implication are intended to survive termination will do so and will continue to be binding without limit in time.

20.10 Nothing in the Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

20.11 Unless otherwise agreed by the Parties, any notice given under or pursuant to this Agreement must be marked for the attention of the Party's legal department and sent by hand or recorded post to the registered address of such Party or the email address specified by a Party for service of notices. A notice will be deemed to have been served: (a) if delivered by hand, at the time of delivery; (b) if posted, two Business Days after posting, provided that, if service occurs after 6.00 p.m. or if it is not a Business Day, deemed service will be at 9.00 a.m. on the next Business Day; and (c) if sent by electronic transmission, when the transmission is complete.

20.12 Subject to the Employer providing reasonable notice to Contractor, and such notice may be immediate where the Employer, acting reasonably, determines the circumstances to be an emergency, the Employer and/or its Authorised Representative will have the right to conduct audit(s) once in each calendar year, in order to inspect the books, records, timesheets and any other relevant facilities of Contractor (including taking copies of any such books, records and timesheets that the Employer may reasonably require) in order to verify the pricing/costs incurred by Contractor and Contractor's compliance with this Agreement, any Works Order, and any applicable Law.

20.13 Contractor shall when requested to do so by the Employer provide evidence that it is registered with HMRC under the Construction Industry Scheme under the Finance Act 2004 ("CIS"). Contractor will be responsible for complying with the requirement contained or referred to under the CIS.

20.14 Neither Contractor nor Contractor Personnel or shareholders, directly or indirectly, in private or public sector dealings, offer, give or agree to offer or give, receive or requests to receive, any payment, gift or other advantage (whether or not by payments under this Agreement) which: (a) violate any anti-corruption laws or regulations applicable to Contractor and/or the Employer; or (b) which a reasonable person would consider to be unethical or illegal. Without prejudice to clause 15, if the Employer suspects a breach of this clause 20.14, then the Employer may terminate the Agreement (in whole or in part) immediately upon notice to Contractor. Contractor will provide the Employer with such assistance and information as is requested by the Employer to assess Contractor's compliance with this clause 20.14.

20.15 Notwithstanding the right to adjudication contained in clause 18 hereof, this Agreement will be construed in accordance with the laws of Scotland and be in all respects subject to the exclusive jurisdiction of the Scottish courts. The Agreement and Works Order however signed takes effect as a deed. For the avoidance of doubt the time for bringing proceedings in respect of the Agreement and/or any Works Order is extended to 15 years from the date of satisfactory completion or abandonment of the Works under the Works Order.