

SUB-CONTRACT TERMS AND CONDITIONS

(February 2021)

DEFINITIONS:

"All Risks Insurance" means insurance that provides cover for any physical loss or damage to works, to site materials or that occur as part of the Contract Works. It also provides cover for the cost of the removal and disposal of debris, and of any shoring and propping of the Contract Works that result from any physical loss or damage, and for which the insurers have no right of recourse against Crest Nicholson.

"Bribery Act" means the Bribery Act 2010 as amended, superseded or replaced from time to time.

"Build Completion Certificate" means a cover note or certificate issued by the NHBC (or other body selected by Crest Nicholson) confirming that a unit is build-complete for the purposes of a new home warranty and/or meeting the requirements of UK Finance (previously the Council of Mortgage Lenders).

"CDM Regulations" means the Construction (Design and Management) Regulations 2015 as amended, superseded or replaced from time to time.

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

"Contract Documents" means these terms and conditions together with the relevant Purchase Order and any documents attached referred to or listed in the Purchase Order.

"Contract Price" means the contract price set out in the Purchase Order payable by Crest Nicholson in accordance with these terms and conditions.

"Contract Works" means the works described in the Purchase Order and the Contract Documents.

"Copyright Material" means any and all plans, designs, drawings, specifications, models, photographs, calculations, minutes and other documents, materials and computer software or similar prepared, or to be prepared, by the Sub-

Contractor or on its behalf in relation to the Contract Works.

"Crest Nicholson Personal Data" means the Personal Data relating to Crest Nicholson's customers, employees, suppliers, contractors and employees of suppliers or contractors that are Processed by the Sub-Contractor in relation to the Contract Works.

"Crest Nicholson's Representative" means the nominated surveyor described in the Purchaser Order or another appropriate Crest Nicholson employee.

"Data Protection Laws" means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, applicable to the Processing of Personal Data and the interception of communications.

"Development" means the Development described in the Contract Documents and/or Purchase Order.

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

"Finish Date" means the date agreed between Crest Nicholson and the Sub-Contractor for the completion of the Contract Works as may be varied from time to time in accordance with these terms and conditions.

"Fork Lift Truck" means a powered industrial truck used to lift and move materials short distances and includes telescopes.

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

"NHBC" means the National House-Building Council or such other provider of latent defects insurance warranty cover as Crest Nicholson may use from time to time.

"Practical Completion" means a state in which the Contract Works are complete in all respects and free from defects, as determined by Crest

Nicholson (acting reasonably). Without prejudice to the generality of the previous statement, if any deficiency and/or omission from the Contract Works or any section thereof would prevent the issue of a Build Completion Certificate then the section and/or Contract Works in question will not be deemed to have achieved Practical Completion.

“Purchase Order” means an order given to the Sub-Contractor pursuant to Clause 1.2 of these terms and conditions.

“Site” means the construction site as described in the Purchase Order.

“Statutory Requirements” means any and all requirement pursuant to applicable laws, statute, statutory instrument, regulation, rule or order, including any regulation, byelaw or approved code of practice of any local authority or statutory undertaker, which affects the Contract Works, the Site, the performance of any obligations under the Purchase Order.

“Standard Specification” means the standards set by Crest Nicholson for workmanship and materials, to which Sub-Contractors are required to adhere. This includes any processes, guidance, standards and other documents issued by Crest Nicholson, in particular Crest Nicholson manuals relating to build and quality.

“Submission” means the submission provided by the Sub-Contractor to Crest Nicholson that will include a breakdown of its price for carrying out the Contract Works, a priced schedule of activities (if appropriate) and any other information required by Crest Nicholson.

References in these terms and conditions to:

- (a) 'Crest Nicholson' and 'the Sub-Contractor' will extend to their respective successors and assigns;

- (b) references to the neuter will extend to the masculine and/or feminine genders (and vice versa);
- (c) reference to words and numbers imparting the singular will include the plural and vice versa;
- (d) appendices, clauses or schedules are to appendices, clauses or schedules in these terms and conditions and/or the Purchase Order(s);
- (e) including will be constructed to be without limitation;
- (f) any Statutory Requirement will be to the Statutory Requirement as amended or re-enacted (with or without modification) from time to time;
- (g) headings are inserted for convenience only and will not affect the construction of these terms and conditions.
- (h) **“applicable laws”** includes all or any statute, common law, rule, regulation, treaty, directive, direction, decision of the Court, byelaw, code of practice, circular, guidance note, statutory guidance, order, notice, demand or official guideline or permit of any governmental, statutory or regulatory authority, agency or body; and
- (i) **“working day”** means any day of the year other than:
 - (i) any Saturday or Sunday;
 - (ii) any date between 25 December and the day after the New Year Bank Holiday in the following year (both days inclusive);
 - (iii) Good Friday and any other statutory bank holiday.

OPERATIVE CLAUSES:

1. Agreement

- 1.1. Crest Nicholson has accepted the Sub-Contractor's Submission and now wishes to instruct the Sub-Contractor to undertake the Contract Works in accordance with the terms and conditions set out below.
- 1.2. Crest Nicholson will email and/or issue a Purchase Order to the Sub-Contractor. The Purchase Order will be supplemental to and apply in addition to these terms and conditions.
- 1.3. The contractual limitation period relating to the Sub-Contractor's obligations and liabilities in connection with the relevant Contract Works, and under any Purchase Order, will extend to fifteen (15) years after the date of issue of the last Build Completion Certificate in relation to the residential units forming part of the Development. The provisions of the Limitation Act 1980 (and any subsequent amendment or re-enactment) are excluded to the fullest extent permitted by law.

2. Commencement of the Contract Works

- 2.1. The Sub-Contractor agrees to commence, carry out and complete the Contract Works regularly and diligently in the sequence, and on the dates instructed by Crest Nicholson, and follow all reasonable instructions and directions given by Crest Nicholson in connection with the Contract Works.
- 2.2. Crest Nicholson may suspend the Contract Works on giving the Sub-Contractor no less than five (5) working days' written notice. The Sub-Contractor will recommence the Contract Works within five (5) working days after receiving notice to do so from Crest Nicholson unless a longer time period is agreed between the parties.
- 2.3. The Sub-Contractor will regularly and diligently consult with, report to and advise Crest Nicholson and/or Crest Nicholson's Representative and will take instructions on all issues relating to the performance of their duties and obligations in relation to the Contract Works and/or these terms and conditions. The Sub-Contractor will warn Crest Nicholson if it becomes aware (or ought to become aware exercising the standard of care of a prudent contractor experienced in carrying out works similar to the Contract Works) of any inadequacies or deficiencies in the nature, scope or design of the Contract Works.
- 2.4. The Sub-Contractor will not do, or omit to do, anything that might delay or disrupt the regular progress or completion of the Development. Crest Nicholson will be entitled to rely on the Sub-Contractor's skill and judgement in carrying out and completing the Contract Works, and may rely on any certificate, approval, advice, recommendation, statement or comment made by the Sub-Contractor or on its behalf in connection with the Contract Works or Development (whether before or after the date of the Purchase Order).

3. Contract Price

- 3.1. Subject to Clause 16, the price payable for the Contract Works will be as set out in the Contract Documents. It will not be varied by reason of any increase or decrease in the cost of labour, materials, plant or otherwise.
- 3.2. The Sub-Contractor will satisfy itself generally regarding all matters affecting the execution of the Contract Works and allow for all such matters in the Contract Price.
- 3.3. The Sub-Contractor will be deemed to have made proper allowance in submitting its estimate or tender to Crest Nicholson for any and all defects and any extra works arising from the nature and/or layout of the Site. No payment will be made for any extra work unless it was not reasonably contemplated within the Contract Documents, or is otherwise agreed in writing in advance by the parties.

4. Sub-Contractor's Employees

- 4.1. The Sub-Contractor will appoint a competent supervisor who will operate as the Sub-Contractor's representative for the purpose of receiving instructions and directions from Crest Nicholson.
- 4.2. The Sub-Contractor will, at all times, employ a sufficient number of competent personnel with the necessary skills to carry out and complete the Contract Works.

- 4.3. Crest Nicholson will have the right to require the Sub-Contractor to remove from the Site any of the Sub-Contractor's personnel (but not unreasonably or vexatiously) and the Sub-Contractor will not allow that person to visit the Site again unless Crest Nicholson has agreed.
- 4.4. The Sub-Contractor warrants and declares that the Sub-Contractor's engagement under the Purchase Order does not constitute a contract of employment. Nothing within the Purchase Order or these terms and conditions will construe, or will be deemed to construe, that the Sub-Contractor's employees, workers, sub-contractors or agents are an employee or partner of Crest Nicholson. Crest Nicholson will have no employer's liability for any damage or injury suffered by any of the Sub-Contractor's employees, workers, sub-contractors or agents in connection with the Contract Works.
- 4.5. The Sub-Contractor warrants to Crest Nicholson that all its personnel, sub-contractors or agents have the legal right to work in the United Kingdom and that the Sub-Contractor has seen, and has copies of, appropriate documentation to prove that right.

5. Goods, Workmanship, Testing and Inspection

- 5.1. All materials, goods and workmanship will meet the requirements and standards described in the Contract Documents. The Sub-Contractor will carry out and complete the Contract Works in a proper and workmanlike manner and in accordance with Statutory Requirements; any consents, permits, licences and approvals from any statutory or other authority, the procedures, requirements, and technical and other applicable standards of the relevant building regulations authority; the NHBC (and where applicable the Highway Authority) and any other body or bodies having jurisdiction over the Contract Works and will ensure that the Contract Works are satisfactory in all respect for the purposes intended.
- 5.2. Prior to Practical Completion, the Sub-Contractor will provide all information reasonably required by Crest Nicholson to comply with the CDM Regulations and all Statutory Requirements.
- 5.3. No deviation from the Standard Specification is permitted without Crest Nicholson's express written permission. The Sub-Contractor will be liable for any loss suffered by Crest Nicholson as a result of its unpermitted deviation from the Standard Specification.
- 5.4. Upon request, proper representative samples of all materials proposed to be used will be submitted by the Sub-Contractor to Crest Nicholson for its approval prior to their use. The quality of all such materials used on Site will not be inferior to that of the approved samples. The Sub-Contractor must obtain written permission from Crest Nicholson before using alternative materials to the approved samples.
- 5.5. The Sub-Contractor will allow Crest Nicholson access to the Contract Works at all times and open up for inspection any part of the Contract Works covered up; or to arrange for, or carry out, any test of any materials or goods (whether or not already incorporated in the Contract Works).
- 5.6. Crest Nicholson's Representative may issue instructions regarding the removal of any work materials or goods from the Site that do not meet the requirements set out in the Contract Documents.
- 5.7. Crest Nicholson reserves the right to substitute materials and forms of construction for any reason whatsoever. Such substitution of materials and/or forms of construction will be treated as variations under Clause 16 and measured and valued accordingly.
- 5.8. If applicable, the Sub-Contractor is to allow in its Contract Price for any delay or disruption to the regular progress of the Contract Works due to possible delay by Crest Nicholson in the supply of materials, goods or plant equipment to be supplied by them.
- 5.9. The Sub-Contractor will maintain and keep in effect throughout the Framework Term all professional registrations, qualifications, memberships or certifications, including, but not limited to, those pertaining to gas, electrical, health and safety, and sustainable timber procurement as they have in effect at the date of the Purchase Order. The Sub-Contractor will provide all reasonable evidence of compliance with this Clause 5.9 as Crest Nicholson may require from time to time.
- 5.10. The Sub-Contractor will not specify for use, or permit to be used in the Contract Works, any goods or materials generally known in the construction industry to be deleterious to health and safety and/or to the environment and/or to the durability or integrity of the Contract Works in the particular circumstances in which they are used, or which by their nature or application

contravene any British or EU Standard or Code of Practice current at the date of use or, if later, incorporation into the Development.

6. Plant and Materials

- 6.1. Unless otherwise agreed in the Contract Documents the Sub-Contractor will, at its own expense, provide all necessary plant, tools, equipment and materials required to carry out the Contract Works. The Sub-Contractor will also (unless agreed otherwise) provide and erect all necessary workshops, sheds and other buildings for its personnel at its own cost at locations on Site chosen by Crest Nicholson.
- 6.2. The Sub-Contractor's (including its personnel or agents) plant, tools, equipment, buildings and other property will be at the sole risk of the Sub-Contractor.
- 6.3. Title in all materials and goods intended to form part of the Contract Works will pass to Crest Nicholson upon incorporation into the Contract Works, or payment by Crest Nicholson, if earlier.
- 6.4. All materials for the Contract Works will be supplied, stored and fixed at the sole risk of the Sub-Contractor (and its personnel and agents). The Sub-Contractor remains responsible for all materials supplied, stored and fixed pursuant to this Clause 6.4 until Practical Completion. Any loss, theft or damage will be the Sub-Contractor's sole liability.
- 6.5. Where Crest Nicholson provides hired-in plant of any description, it is to be used solely for its correct and proper purpose.
- 6.6. Where Crest Nicholson provides one or more Fork Lift Trucks on Site the scope of their operation does not cover raising, lowering, and lifting materials into their final position to assist in erecting or dismantling of any temporary works or lifting equipment (e.g. cranes, hoists, mast climbers etc.).
- 6.7. It is the Sub-Contractor's responsibility to ensure that any lifting operation is planned correctly, the load is secured on the appropriate carriage, the Sub-Contractor's risk assessment and/or method statement clearly details the use of third party lifting equipment, and the driver of a Fork Lift Truck is, at all times, appropriately qualified to drive.

7. Protection of Contract Works

- 7.1. The Sub-Contractor will, at its own expense, provide and erect (and where applicable, remove after Practical Completion) all protection necessary for the safe execution of the Contract Works and will repair and make good any damage to the Site and the Contract Works. In doing so the Sub-Contractor will abide by any protection requirements specified by Crest Nicholson.
- 7.2. If the Sub-Contractor fails to carry out its obligations under Clause 7.1 Crest Nicholson may execute any works required, or may employ and pay other persons to do so. All costs and/or expenses incurred will be recoverable from the Sub-Contractor as a debt or may be deducted from any monies due to the Sub-Contractor.

8. Use of Scaffolding

- 8.1. At their own risk, the Sub-Contractor, its personnel and agents will be entitled to use any scaffolding or hoisting facilities belonging to, or provided by, Crest Nicholson for the purposes of the Contract Works (but not further or otherwise), provided that:
 - 8.1.1. the Sub-Contractor will first satisfy itself as to the fitness and condition of the scaffolding and its suitability for the purpose for which it is required; and
 - 8.1.2. the Sub-Contractor accepts that the rights granted by this clause will not be deemed to imply any warranty on Crest Nicholson's part of the sufficiency or suitability of the fitness and condition of any scaffolding.

9. Health and Safety

- 9.1. At all times, the Sub-Contractor will comply with all relevant Health and Safety Laws, including the provisions of the Health and Safety at Work Act 1974 and the current CDM Regulations insofar as they relate to the Contract Works. It will be the Sub-Contractor's responsibility to ensure its employees, personnel, agents and sub-contractors comply with all relevant Health and Safety Laws.
- 9.2. The Sub-Contractor will provide Crest Nicholson with the following information (as appropriate) before commencement of the Contract Works:

- 9.2.1. Copies of its job or activity-specific risk assessments and method statements;
 - 9.2.2. Copies of its work equipment test and inspection certificates; and
 - 9.2.3. Evidence of competence for all personnel it intends to carry out the Contract Works.
- 9.3. When required by Crest Nicholson, the Sub-Contractor will provide complete sets of 'final construction drawings' for each Development, as well as a list of suppliers and contractors for all components; manufacturers' brochures, guarantees and warranties; operating instructions for all moving items and mechanical and electrical installations; maintenance recommendations for all components; list of all designers and consultants; all approvals, permissions and consents from any statutory or other authority; and all notices, contracts and agreements and other documents relating to, or affecting the ownership, maintenance or operation of the Development. The information must cover all aspects of the installation and maintenance requirements that the occupier of the finished building might reasonably require, including any information or documentation that the NHBC or other building control approved inspector may require in order to issue the building control completion certificate and defects warranty cover.
- 9.4. Prior to the commencement of the Contract Works, it is the Sub-Contractor's responsibility to advise Crest Nicholson of any of its employees, personnel, agents or sub-contractors working on site who have a disability, and to ensure that the Sub-Contractor's own health and safety policy and site specific risk assessments include for the welfare of such individuals.

10. Environmental Protection

- 10.1. It will be the Sub-Contractor's responsibility to ensure itself and its employees, personnel, sub-contractors and agents comply with all relevant Environmental Laws.
- 10.2. The Sub-Contractor will provide copies of all relevant licences and permits required under relevant Environmental Laws to the Crest Nicholson Representative and will ensure that all such licences and permits are obtained and maintained in full force and effect.
- 10.3. The Sub-Contractor will provide all information and data reasonably required by Crest Nicholson for its environmental and waste data reporting requirements.

11. Insurance

- 11.1. Throughout the Framework Term, the Sub-Contractor will have in effect and maintain a policy of All Risks Insurance that recognises Crest Nicholson as a joint insured and is for cover of no less than the full reinstatement value of all Contract Works and any other works or activities for which the Sub-Contractor is responsible on all Crest Nicholson sites. This will include unfixed materials intended for the Contract Works, plus a percentage of at least 12.5% to cover professional fees.
- 11.2. Throughout the Framework Term, the Sub-Contractor will effect and keep in force all insurance policies for sums and with reputable companies that will, in all respects, cover adequately the Sub-Contractor's liabilities in connection with injury to or the death of any person, or loss or damage to any property (real or personal) arising from, or in connection with the execution, completion and/or maintenance of the Contract Works.
- 11.3. The limit of the indemnity granted under the insurance effected for claims of injury to persons, or loss or damage to property will be no less than the sum stated in the Purchase Order. If no sum is stated, then the sum will be no less than £5,000,000 for each and every claim for Public Liability Insurance, and £5,000,000 for each and every claim for Employer's Liability Insurance.
- 11.4. The Sub-Contractor will send a copy of the relevant insurance policies and any relevant endorsement or endorsements to Crest Nicholson with their Submission.
- 11.5. If the Sub-Contractor fails to comply with the provisions of this Clause 11, Crest Nicholson may (without prejudice to any other rights and remedies) itself effect all necessary insurance. Any expenses incurred will be paid by the Sub-Contractor to Crest Nicholson, or be otherwise recoverable from the Sub-Contractor as either a debt or a deductible from any moneys due to the Sub-Contractor by Crest Nicholson.

12. Design and Collateral Warranties

- 12.1. The following clauses only apply where the Sub-Contractor has a responsibility to design all or part of the Contract Works.

- 12.1.1. **Professional Indemnity Insurance:** The Sub-Contractor undertakes and warrants that it currently maintains in force Professional Indemnity Insurance without any exclusions material to the activities being undertaken under the Contract Works. The Professional Indemnity Insurance is to be taken out with reputable insurers authorised to carry on insurance business in the United Kingdom with a level of indemnity of no less than five million pounds (£5,000,000) for each and every claim. Provided that the insurance continues to be available in the United Kingdom insurance market upon reasonable terms and at commercially reasonable premium rates, the Sub-Contractor will maintain the Professional Indemnity Insurance until 15 years after the completion of the Contract Works. On request from Crest Nicholson, the Sub-Contractor will produce documentary evidence that such insurance is being maintained in accordance with this Clause 12.1.1.
- 12.1.2. The Sub-Contractor will immediately notify Crest Nicholson of any failure or inability to maintain the insurance referred to in Clause 12.1.1 and of any circumstances likely to render any such insurance void or voidable.
- 12.1.3. **Design Responsibility:** Where the Sub-Contractor is responsible for any of the design of any part of the Contract Works, in respect of such design it will use reasonable skill, care and diligence and will have the same obligations and liabilities as that of an engineer or, where relevant, other appropriate professional designer holding itself out as competent to take on design of a similar size, scale and complexity to the Contract Works. Any lack of comments by Crest Nicholson or its consultants relating to drawings, details, documents or information submitted by the Sub-Contractor will not relieve the Sub-Contractor of any liabilities or obligations in relation to the Contract Works, unless the comments specifically so state.
- 12.2. Upon request by Crest Nicholson, the Sub-Contractor will sign a collateral warranty in favour of any person acquiring an interest in any elements of the Contract Works that have been designed by the Sub-Contractor. Such warranty will be in a form reasonably required by Crest Nicholson. Crest Nicholson may, notwithstanding any other provisions of these terms and conditions, withhold any payment due and/or payable in relation to the Contract Works until such time as the warranty has been satisfactorily executed and delivered to Crest Nicholson.

13. Failure to Complete

- 13.1. If the Sub-Contractor fails to achieve Practical Completion of the Contract Works within the period specified by the Finish Date, or as instructed in writing between the parties, or any extended period agreed by Crest Nicholson, the Sub-Contractor will pay Crest Nicholson any loss or damage caused by the Sub-Contractor's failure. Crest Nicholson will give reasonable notice to the Sub-Contractor of the loss or damage and any costs. Where the Contract Documents include details of liquidated damages for which Crest Nicholson may be liable under a contract with a third party, the Sub-Contractor confirms that it has received notice of the potential loss that Crest Nicholson may incur, and that it is reasonably foreseeable and within its contemplation at the time of issue of the Purchase Order.
- 13.2. If Practical Completion of the Contract Works is delayed beyond the period specified in Clause 13.1 and such delay has been caused by any act or default of Crest Nicholson, then— except to the extent such delay was caused or contributed to by any error, negligence or default of the Sub-Contractor or any of its sub-contractors, employees or agents— the Sub-Contractor may submit an application for an extension of time. Within a reasonable time thereafter Crest Nicholson will grant the Sub-Contractor an extension of time as may be fair and reasonable in the circumstances provided, always, that the Sub-Contractor constantly uses its best endeavours to prevent any delay or disruption to the carrying out and completion of the Contract Works.
- 13.3. In the event of the Sub-Contractor being delayed in carrying out or completing the Contract Works due to it failing to employ sufficient personnel or sufficiently skilled personnel, Crest Nicholson may employ and pay other persons or sub-contractors as may be necessary to complete the Contract Works. All costs and expenses in connection with such employment by Crest Nicholson will be recoverable from the Sub-Contractor as a debt, or may be deducted by Crest Nicholson from any moneys due to the Sub-Contractor. Where reasonably practical, Crest Nicholson will give the Sub-Contractor seven (7) days' notice prior to employing and paying other persons or sub-contractors to complete the Contract Works.
- 13.4. The Sub-Contractor's liability for any delay or disruption will include, but not be limited to, liability for any damages or consequential losses for which Crest Nicholson itself may be liable.

14. Practical Completion and Defects

- 14.1. Crest Nicholson's Representative will issue a written statement or other indication in writing (which could take the form of the Sub-Contractor's own form or sign-off sheet) to the Sub-Contractor on the date when, in his or her opinion, the Contract Works have achieved Practical Completion. Where, in the opinion of Crest Nicholson, some of the Contract Works have not reached Practical Completion, Crest Nicholson may still confirm the Contract Works are complete, but will provide a schedule that will include any defects, shrinkages or other faults in the Contract Works.
- 14.2. When requested by Crest Nicholson at any time during the defect liability period (and/or the new home warranty initial guarantee period), the Sub-Contractor will return to Site to remedy any defects in the Contract Works that are due to defective materials or workmanship. Any such remedial works will be at the sole expense of the Sub-Contractor and will be remedied within a reasonable period. Crest Nicholson will charge a reasonable fee to cover its administration costs associated with arranging for the Sub-Contractor to attend to defects.
- 14.3. Crest Nicholson may, at its sole discretion (but acting reasonably), use a third party to remedy any defects instead of requesting the Sub-Contractor to remedy them. In this case, Crest Nicholson will deduct the cost incurred in employing a third party from any monies due to the Sub-Contractor in relation to the Contract Works (subject to giving notice in accordance with Clause 18) and/or be entitled to recover the cost from the Sub-Contractor as a debt. Subject to Clause 15.4 Crest Nicholson will give the Sub-Contractor seven (7) days' notice to remedy the defect(s) before proceeding with the third party, except in the case of emergencies in which case such notice may be reduced to 24 hours.
- 14.4. Crest Nicholson may use a third party (for example an out of hours customer service provider) to procure the remedying of any defects, in which case, the Sub-Contractor will return to Site when requested to do so by the third party as if it were Crest Nicholson.
- 14.5. In the event that a defect or fault notified by Crest Nicholson is not directly attributable to the Sub-Contractor's workmanship or materials, and the Sub-Contractor considers the required remedial work to be a chargeable service, the Sub-Contractor must provide a written quotation to Crest Nicholson for that remedial work. No remedial work should take place without prior written instruction (or a Purchase Order, if applicable) from Crest Nicholson.

15. Customer Service and After Sales Care

- 15.1. For each Development, the Sub-Contractor agrees to work closely with Crest Nicholson to ensure that Crest Nicholson achieves its customer service objectives during the defect liability period and/or new home warranty initial guarantee period.
- 15.2. The Sub-Contractor agrees that when remedying any defects in the Contract Works, it will ensure that all its staff, sub-contractors and operatives are aware of and abide by the rules set out in Schedule 1 (Customer Service Standards).
- 15.3. The Sub-Contractor will supply Crest Nicholson with the contact details for the Sub-Contractor's office that will manage all defects, including name, job title, telephone (fixed line and mobile) and e-mail address, as well as contact details for any out of hours and emergency issues. The Sub-Contractor must immediately advise Crest Nicholson if any of these details change.
- 15.4. If the Sub-Contractor fails to attend to remedy defects or repeatedly fails to adhere to the rules set out in Schedule 1, the seven (7) days' notice to remedy the defect(s) in Clause 14.3 will not apply.
- 15.5. If the Sub-Contractor fails to attend to remedy defects where a specific time and date has been agreed with Crest Nicholson's customer(s), Crest Nicholson will charge a £50 non-attendance fee that will be recoverable from the Sub-Contractor as a debt, or may be deducted by Crest Nicholson from any moneys due to the Sub-Contractor.

16. Variations

- 16.1. Crest Nicholson is free to authorise additional or new instructions in writing as it deems necessary. If the Sub-Contractor considers that any instruction from Crest Nicholson constitutes a variation that would increase the Contract Price or affect the Finish Date the Sub-Contractor must notify Crest Nicholson in writing of the cost implications and amount of time by which the Finish Date will be delayed or advanced as a result before carrying out the instruction. In the

event that the Sub-Contractor fails to notify Crest Nicholson of such cost effects or impact, the instruction will be deemed to have a nil value and no effect on the Finish Date.

- 16.2. Subject to Clause 16.3 all variations authorised by Crest Nicholson will be measured and valued by agreement or, in the absence of agreement, on the basis of the Sub-Contractor's rates and prices for the execution of any similar work. In the event of no similar work, rates or prices then the variation will be valued on a fair and reasonable basis and such value will be added to or deducted from the Contract Price as the case may be.
- 16.3. Crest Nicholson may request the Sub-Contractor provides an estimate for any variation. In this case, the Sub-Contractor will provide the estimate ("**Estimate**") within 10 working days. Within five (5) working days of receiving the Estimate from the Sub-Contractor Crest Nicholson may notify the Sub-Contractor in writing as to whether or not it wishes the Sub-Contractor to proceed with the variation. If Crest Nicholson instructs the Sub-Contractor to proceed with the variation, the Estimate will be binding on the parties and conclusive of all monies due and payable to the Sub-Contractor for the undertaking of the variation. The Estimate will also be binding on the parties as to any advancement or delay to the Finish Date. If Crest Nicholson does not accept the Estimate, but nevertheless instructs the Sub-Contractor to proceed, the variation will be valued in accordance with Clause 16.2.
- 16.4. Whenever the Contract Works and the Contract Price have been ascertained by reference to a given number of dwelling units and/or types Crest Nicholson will be at liberty to serve notice on the Sub-Contractor that the number of dwelling units and/or types will be increased or decreased and thereupon the Contract Works and the amount of the Contract Price will be likewise increased or decreased as from the date of such notice. Crest Nicholson will not be liable to the Sub-Contractor for any costs, losses, damages or expenses arising from a decrease in the Contract Price.
- 16.5. The net value annexed to the provisional items, as well as the full amount of the provisional lump sums inserted in any bills of quantities or other documents that form part of a Purchase Order, will be deducted from the Contract Price. The value of the work executed under such items will be valued in accordance with this Clause 16 and the amounts so fixed will be added to the Contract Price. Any work identified as provisional will only be carried out following receipt by the Sub-Contractor of an instruction in writing from Crest Nicholson.

17. Payment

- 17.1. Payment to the Sub-Contractor will be made in instalments following completion of the stages or on the specified date(s) identified in the Contract Documents. The Sub-Contractor will make applications for stage or interim payments and payments assessed and paid by Crest Nicholson as follows:
 - 17.1.1. Once a stage identified in the Contract Documents has been completed and signed off by Crest Nicholson or on the specified date, the Sub-Contractor will make an application for payment in accordance with the information set out in the Contract Documents. It is a pre-condition to Crest Nicholson's liability to pay any part of the Contract Price that the Sub-Contractor submit a valid application for each payment instalment that sets out what the application relates to and how the amount of the application has been calculated in accordance with these and conditions.
 - 17.1.2. The due date for payment will be 14 days after receipt of the Sub-Contractor's valid application by Crest Nicholson. No later than five (5) days after the due date, Crest Nicholson will give a notice (a "**Payment Notice**") that will identify the sum that it considers to be, or have been, due at the due date and the basis on which that sum has been calculated. Subject to any Pay Less Notice given in accordance with Clause 17.1.5, the sum paid to the Sub-Contractor will be the sum set out in the Payment Notice.
 - 17.1.3. If Crest Nicholson fails to give the Payment Notice referred to in Clause 17.1.2 then (subject to any Pay Less Notice given in accordance with Clause 17.1.5), the sum to be paid to the Sub-Contractor will be the sum set out in the application for payment given by the Sub-Contractor in accordance with Clause 17.1.1.
 - 17.1.4. The final date for payment will be 20 days after the date when payment is due.
 - 17.1.5. If Crest Nicholson intends to pay less than the sum stated as due to the Sub-Contractor in the Payment Notice or the Sub-Contractor's application for payment, then it will give

- the Sub-Contractor a notice to that effect (a “**Pay Less Notice**”) no later than two (2) days before the final date for payment, in accordance with Clause 17.1.6.
- 17.1.6. A Pay Less Notice will set out the sum that Crest Nicholson considers to be due to the Sub-Contractor on the date that the notice is given and the basis on which that sum has been calculated.
- 17.2. Unless an alternative system is specifically agreed in the Purchase Order, then the following retention provisions apply:
- 17.2.1. A five per cent (5%) retention from each stage or interim payment will be made (the “**Retention**”), which will be taken into account when calculating the sums due to the Sub-Contractor in accordance with this Clause 17.
- 17.2.2. On Practical Completion, and provided the Sub-Contractor has provided all documentation and information required under Clause 9.3 and completed all outstanding items of work under Clause 14.1, the Sub-Contractor may apply for release of half of the Retention.
- 17.2.3. Once all patent defects (that appear or become apparent in the Contract Works, and are notified to the Sub-Contractor during the defect liability period) have been remedied and completed to the satisfaction of Crest Nicholson, then the Sub-Contractor may apply for the release of the balance of Retention, subject, always, to having complied with Clause 17.2.2 and subject to Crest Nicholson's right of set-off.
- 17.2.4. The application process under Clause 17.1 will apply to any applications made by the Sub-Contractor for the release of the Retention or any part of it. Crest Nicholson will not be under any fiduciary obligation with regard to the Retention, or any part of it, and will not be under any obligation to set aside in a separate account any amount representing the Retention.
- 17.3. As soon as practicable after Practical Completion:
- 17.3.1. The Sub-Contractor will prepare a draft final account statement for approval by Crest Nicholson and signature by both parties. The Sub-Contractor will also supply Crest Nicholson with any supporting documents or evidence that Crest Nicholson deems to be reasonably required.
- 17.3.2. Receipt by Crest Nicholson of the draft final account statement will be treated as a stage (as defined in Clause 17.1.1) entitling the Sub-Contractor to make an application for payment for one half of the monies previously deducted as Retention. The provisions of Clause 17.1 will apply to such a stage payment.
- 17.3.3. If the Sub-Contractor does not submit the draft final account statement within two (2) months of Practical Completion, or where the Contract Works have been determined under Clause 23, Crest Nicholson may, on or after the expiry of that period, give the Sub-Contractor notice that unless the statement is submitted within two (2) weeks from the date of the notice Crest Nicholson may, itself, issue a draft final account statement in lieu of that from the Sub-Contractor.
- 17.3.4. Unless the Sub-Contractor submits its draft final account statement prior to Crest Nicholson issuing the notice (as outlined in 17.3.3), Crest Nicholson may, at any time after the two (2) week notice period, issue a final account statement to the Sub-Contractor insofar as Crest Nicholson is reasonably able to do so.
- 17.3.5. The due date for payment will be one (1) month from the date of submitting the draft final account statement to the Sub-Contractor. The final date for payment will be 28 days from the due date. No later than five (5) days after the due date, and notwithstanding any dispute regarding the relevant statement, the party from which the final payment is due will give a Payment Notice to the other in accordance with Clause 17.1.2. Subject to any Pay Less Notice served in accordance with Clause 17.3.6, the payment to be made on, or before the final date for payment, will be the sum stated in the Payment Notice.
- 17.3.6. If the payer intends to pay less than the sum stated in the Payment Notice, or in such notice, less than the amount stated in the relevant statement, they will give the other party a Pay Less Notice (in accordance with Clause 17.1.6) no later than two (2) days before the final date for payment.

- 17.4. No interim payment made by Crest Nicholson will relieve the Sub-Contractor from any liability arising from, or in connection with the Purchase Order and/or the Contract Works. Crest Nicholson may, in any subsequent payment, modify the basis upon which that payment is made relative to previous payments. Crest Nicholson has the right to recover any overpayments made to the Sub-Contractor at any time.
- 17.5. If Crest Nicholson fails to pay a sum due to the Sub-Contractor by the final date for payment and fails to give a Pay Less Notice under Clause 17.1.6, simple interest will be added to the unpaid sum from the final date for payment until the actual date of payment. This will be calculated on a daily basis at the annual rate of five per cent (5%) above the Bank of England Base Rate.
- 17.6. Right to Suspend Work
- 17.6.1. If payment has not been made by the final date for payment and no Pay Less Notice has been given, the Sub-Contractor may suspend performance of any or all of its obligations provided that:
- 17.6.1.1. the Sub-Contractor has given written notice to Crest Nicholson 15 days prior to the date when performance is to be suspended;
- 17.6.1.2. such notice specifies the ground or grounds for suspension; and
- 17.6.1.3. the right to suspend ends as soon as payment is made.
- 17.6.2. If the Sub-Contractor validly suspends performance pursuant to Clause 17.6.1.1, an extension of time for completion of the Contract Works will be granted for the period of suspension. If the suspension is invalid, the Sub-Contractor will be liable for any costs or damages arising from the invalid suspension, (including damages under Crest Nicholson's contract with third parties if applicable) incurred by Crest Nicholson.

18. Contra Amounts and Set Off

- 18.1. Crest Nicholson will be entitled to deduct from, withhold or set off against any monies due to the Sub-Contractor (including any retention moneys) any amounts:
- 18.1.1. which the Sub-Contractor is liable to pay to Crest Nicholson under these terms and conditions or any other agreement between the Sub-Contractor and Crest Nicholson (whether entered into before or after the date of the Purchase Order);
- 18.1.2. which Crest Nicholson has paid to a third party for carrying out remedial work due to defective workmanship or materials supplied by the Sub-Contractor; or
- 18.1.3. in respect of any breach by the Sub-Contractor of its obligations under the Contract Documents or any other agreement between the Sub-Contractor and Crest Nicholson.

19. Value Added Tax

- 19.1. The Sub-Contractor will be entitled to claim from Crest Nicholson as an addition to the Contract Price the amount of Value Added Tax properly chargeable on the goods and services supplied by the Sub-Contractor.
- 19.2. The Sub-Contractor will reasonably co-operate with Crest Nicholson, and do all that Crest Nicholson may reasonably request, regarding the provision of documents and information relating to the payment of Value Added Tax in order to comply with the provisions of the Value Added Tax Regulations 1995 (as amended, superseded and replaced from time to time).
- 19.3. If required by any Statutory Requirement, Crest Nicholson shall be entitled to pay amounts in respect of VAT that would otherwise be paid to the Sub-Contractor directly to HRMC and, upon such payment, Crest Nicholson shall for all purposes be deemed to have fulfilled its obligations in respect of payment of Value Added Tax under the Purchase Order.

20. Taxation of Sub-Contractor

- 20.1. Within this Clause 20 the Regulations will mean The Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 number 2622 and any amendment thereto.
- 20.2. Within five (5) working days of the date of the Purchase Order the Sub-Contractor will provide Crest Nicholson with Relevant Tax details. Relevant Tax details being a Unique Taxpayer Reference (UTR).

- 20.3. In the event that a Sub-Contractor does not produce a UTR number in accordance with Clause 20.2 or if Crest Nicholson is unable to match the tax status with HMRC (and notwithstanding Clause 17), Crest Nicholson will withhold payment to the Sub-Contractor or deduct tax at a higher rate until such time as either the Sub-Contractor provides Crest Nicholson with the Relevant Tax details or HMRC informs Crest Nicholson in writing to apply a new rate of tax.
- 20.4. The Sub-Contractor will immediately inform Crest Nicholson in writing of any changes to their tax payment status.

21. Indemnities

- 21.1. The Sub-Contractor will indemnify and hold harmless Crest Nicholson from, and against, all damages, losses, costs, expenses, interest and claims (whether for actual or consequential loss) that Crest Nicholson may accrue, suffer or incur, which arise out of:
- 21.1.1. any act or omission of the Sub-Contractor, its sub-contractors, personnel or agents that exposes Crest Nicholson or its personnel or agents to any liability or alleged liability;
 - 21.1.2. any breach of contract, negligence, non-performance, or breach of duty on the part of the Sub-Contractor, its sub-contractors, personnel or agents caused by, arising out of, or in connection with the execution of the Contract Works;
 - 21.1.3. personal injury to, or the death of, any person arising out of, or in the course of, or caused by the carrying out of the Contract Works, except to the extent that the same is due to Crest Nicholson's negligence;
 - 21.1.4. any loss, injury or damage to property (real or personal) arising out of, or in connection with, the carrying out of the Contract Works; and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Sub-Contractor or anyone for whom it is responsible. This liability and indemnity excludes loss or damage to the Contract Works to the extent insured by Crest Nicholson; and
 - 21.1.5. any nuisance, obstruction, trespass or interference with the rights of any third party (including rights of way, light, air or water) that are an avoidable consequence of the carrying out of the Contract Works.

22. Assignment & Sub-Letting

- 22.1. The Sub-Contractor will not assign or transfer any right or obligation under the Purchase Order to any person without the prior written consent of Crest Nicholson.
- 22.2. Crest Nicholson will be entitled to assign its entire rights and obligations in the Purchase Order at any time.
- 22.3. The Sub-Contractor will not sub-contract, delegate or allow any other person to perform any of its obligations under the Purchase Order without the prior written consent of Crest Nicholson. No such consent given by Crest Nicholson will relieve the Sub-Contractor from its responsibility for the proper performance of those obligations.

23. Determination of Contract Works

- 23.1. Crest Nicholson may terminate the Sub-Contractor's engagement in relation to the Contract Works at any time and for any reason by giving to the Sub-Contractor no less than seven (7) days' prior written notice.
- 23.2. If the Sub-Contractor commits any breach or default, Crest Nicholson may, by written notice to the Sub-Contractor, determine the performance by the Sub-Contractor of its obligations under the Purchase Order and may expel the Sub-Contractor from the Site and may take over the materials and plant provided by, or on behalf of, the Sub-Contractor that are on the Site, or are being used in connection with the Contract Works.
- 23.3. The provisions of Clause 23.1 will apply whenever the Sub-Contractor:
- 23.3.1. abandons the Contract Works;
 - 23.3.2. fails to commence the Contract Works;
 - 23.3.3. other than in circumstances allowed under these terms and conditions, suspends the carrying out of the Contract Works before they are completed;

- 23.3.4. fails (after previous written warning from Crest Nicholson) to proceed with the Contract Works with such speed and in such sequence as (in Crest Nicholson's opinion) will be necessary to avoid impeding other trades or causing delay to completion;
- 23.3.5. fails to complete the Contract Works or any section of them within the required time;
- 23.3.6. at any time fails to carry out the Contract Works to Crest Nicholson's satisfaction;
- 23.3.7. refuses or neglects to remove or replace defective work or improper materials after written directions from Crest Nicholson to do so;
- 23.3.8. has an order made for its winding up, or a petition is presented or a meeting is convened for the purpose of considering a resolution for its winding up, or any such resolution is passed; or commits an act of insolvency or bankruptcy or enters into any deed of arrangement or composition with its creditors; or goes into liquidation or administration or causes, permits or suffers a provisional liquidator, administrator, receiver (including an administrative receiver) or manager to be appointed or if any step is taken (whether in or out of court) for the appointment of a liquidator, administrator or receiver; or if any execution, distress or other processes levied on the whole or part of its property or obtained against it or if the Sub-Contractor is struck off the Register of Companies or ceases to exist or carry on its business; or
- 23.3.9. commits any other material breach of a term or terms of these terms and conditions.
- 23.4. In the event of the Contract Works being destroyed by any occurrence against which Crest Nicholson has insured, it will have the right to determine the Purchase Order. In the event of such determination, the Sub-Contractor will be paid the value of the Work carried out to the date of the occurrence and for materials supplied to the Site that are the property of Crest Nicholson, but no further or other payment will be made to the Sub-Contractor, nor will the Sub-Contractor be entitled to any damages or compensation or loss of profits whatsoever.

24. Consequences of Determination

- 24.1. The Sub-Contractor will provide Crest Nicholson with two (2) copies of (and Crest Nicholson may retain) all such drawings, documents, details or descriptions the Sub-Contractor has prepared, or previously provided, as well as any drawings and information relating to the Contract Works completed before the determination of the Sub-Contractor's appointment.
- 24.2. If requested, the Sub-Contractor must assign to Crest Nicholson within 14 days of the date of determination, without payment, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of the Contract Works.
- 24.3. Upon any termination or suspension by Crest Nicholson the Sub-Contractor will:
 - 24.3.1. immediately take steps to cease the provision of the Contract Works in an orderly manner and with all speed and economy; and
 - 24.3.2. allow or pay Crest Nicholson the amount of any loss or damage caused to Crest Nicholson by reasons of the determination of the Purchase Order.
- 24.4. Upon determination of the Sub-Contractor's engagement under the Purchase Order, Crest Nicholson will (except as set out in Clause 24.5) pay to the Sub-Contractor:
 - 24.4.1. any instalments of the Contract Price and other sums that have become due to the Sub-Contractor prior to the date of such determination and that remain unpaid;
 - 24.4.2. a fair and reasonable proportion of the next following instalment of the Contract Price commensurate with the Contract Works that the Sub-Contractor has performed up to the date of such determination; and
 - 24.4.3. a fair and reasonable sum towards the cost of demobilisation from Site and removal of all plant and equipment.
- 24.5. Crest Nicholson will not be liable to the Sub-Contractor for any losses, costs, damages, claims or expenses accrued, suffered or incurred by the Sub-Contractor arising from, or in connection with, such termination under Clause 23.1 (and will not be liable to pay compensation for any loss of profit, loss of contract or loss of opportunity). Where determination was under Clause 23.2, Crest Nicholson will not be obliged to make any further payment to the Sub-Contractor until completion of the Contract Works or Crest Nicholson decides that it does not intend to complete the Development, whichever is the earlier. On determination under Clause 23.2, the Sub-

Contractor will be liable to Crest Nicholson for all costs, losses, damages, claims and expenses that Crest Nicholson accrues, suffers or incurs arising from, or in connection with, such termination.

25. No Waiver

- 25.1. No waiver, forbearance, release, inspection, approval, comment, review, consent or omission to inspect, approve, comment, review or consent by Crest Nicholson or its employees, servants, sub-contractors or agents will, in any way, derogate or reduce the Sub-Contractor's duties and obligations in connection with the Contract Works.

26. All Laws and Regulations

- 26.1. At all times, the Sub-Contractor, its personnel and agents will observe, perform and comply with all Acts of Parliament and other statutory provisions, regulations, byelaws, rules and approved codes of practice so far as they are applicable to the Contract Works.
- 26.2. The Sub-Contractor will notify Crest Nicholson immediately if it becomes aware, or has reason to believe that it or any of its personnel and agents, has breached any obligations under this Clause 26.

27. Supply Chain Code of Conduct

- 27.1. The Sub-Contractor, its employees, agents, representatives, and sub-contractors will at all times while carrying out its obligations in relation to the Contract Works maintain high ethical standards and adhere to, and act in accordance with, Crest Nicholson's Supply Chain Code of Conduct, (as amended and updated from time to time). A copy of the latest version is available at <https://www.crestnicholson.com/legal-information/supply-chain>.
- 27.2. Any breach by the Sub-Contractor, its employees, agents, representatives, or sub-contractors (whether with or without the Sub-Contractor's knowledge) of the Code of Conduct will be deemed to be a material breach of these terms and conditions for the purpose of Clause 23.

28. Bribery

- 28.1. Additional capitalised terms in this clause will have the meanings given to them in the Bribery Act, unless otherwise defined in these terms and conditions.
- 28.2. The Sub-Contractor warrants that it has not at any time prior to the date of the Purchase Order:
 - 28.2.1. committed a Bribery Offence; or
 - 28.2.2. been formally notified that it is subject to an investigation or prosecution that relates to an alleged Bribery Offence.
- 28.3. For so long as the Sub-Contractor has any obligations in relation to the Contract Works, neither the Sub-Contractor nor its Associated Persons will:
 - 28.3.1. engage in any activity, practice or conduct that could constitute a Bribery Offence; or
 - 28.3.2. do or permit anything to be done that would cause Crest Nicholson or any of Crest Nicholson's employees, sub-contractors or agents to contravene any section of the Bribery Act, or otherwise incur any liability relating to the Bribery Act.
- 28.4. The Sub-Contractor undertakes that, for so long as the Sub-Contractor has any obligations in relation to the Contract Works, it and any Associated Persons will:
 - 28.4.1. comply with all obligations arising out of the Bribery Act; and
 - 28.4.2. comply with Crest Nicholson's Anti-Bribery and Corruption Policy as amended, superseded and replaced from time to time. A copy of the latest version is available at: <http://www.crestnicholson.com/legal-information/supply-chain>.
- 28.5. The Sub-Contractor will notify Crest Nicholson immediately if it becomes aware, or has reason to believe that it has, or any of its Associated Persons have, breached any of the obligations under this Clause 28.

29. Modern Slavery

- 29.1. For so long as the Sub-Contractor has any obligations in relation to the Contract Works, the Sub-Contractor will, and will ensure that any of its employees will, comply with all applicable laws, statutes, and regulations in force relating to the Modern Slavery Act 2015. The Sub-

Contractor represents, warrants and undertakes that it conducts its business in a manner that is consistent with the principles of the Modern Slavery Act 2015.

- 29.2. The Sub-Contractor will take reasonable steps to ensure that there is no modern slavery in any part of its own business or supply chain.
- 29.3. The Sub-Contractor warrants that it has not at any time prior to the date of the Purchase Order:
 - 29.3.1. been convicted of any offence involving slavery; or
 - 29.3.2. been notified that it is subject to an investigation or prosecution regarding any offence or alleged offence of, or in connection with, slavery.

30. Data Protection

- 30.1. Additional capitalised terms in this clause will have the meaning given to them in the Data Protection Laws, unless otherwise defined in these terms and conditions.
- 30.2. Crest Nicholson will process data relating to the Sub-Contractor and its employees in accordance with its Supply Chain Privacy Policy, which can be found at: <http://www.crestnicholson.com/legal-information/supply-chain>.
- 30.3. The Sub-Contractor will ensure it complies at all times with Data Protection Laws relating to its Processing of Crest Nicholson Personal Data. The Sub-Contractor undertakes to perform these obligations in a manner that does not cause Crest Nicholson to breach Data Protection Laws relating to its Processing of the Crest Nicholson Personal Data. The Sub-Contractor will indemnify Crest Nicholson, and keep Crest Nicholson indemnified, against all losses, damages, costs, expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by Crest Nicholson arising from any breach of the Sub-Contractor obligations under this Clause 30.

31. Confidentiality

- 31.1. Each party will keep secret and confidential all Confidential Information disclosed or obtained as a result of the relationship of the parties in relation to the Contract Works and will neither use nor disclose the Confidential Information, except for the purposes of the proper performance of their obligations in relation to the Contract Works or with the prior written consent of the other party.
- 31.2. Each party will immediately return to the other party (or if the other party so requests, destroy) all of the other party's Confidential Information in its possession up to the termination of the Sub-Contractor's engagement in respect of the Contract Works and will certify that it has done so. The other party will make no further use of the Confidential Information.

32. Intellectual Property Rights

- 32.1. All materials, including any specifications supplied by Crest Nicholson, and any copies made by, or for, the Sub-Contractor, will be the property of Crest Nicholson, and will: only be used for the purposes of the Contract Works; be treated as strictly confidential by the Sub-Contractor; and be returned by the Sub-Contractor immediately on request to Crest Nicholson at the Sub-Contractor's sole risk and cost.
- 32.2. The Sub-Contractor hereby grants (and to the extent it does not own, it will procure the copyright owner grants) to Crest Nicholson an irrevocable, non-exclusive and royalty-free licence to use and reproduce the Copyright Material relating to the Contract for all purposes relating to the Contract Works or Site, including but not limited to the construction, completion, reconstruction, modification, repair, reinstatement, refurbishment, redevelopment, maintenance, use, letting, promotion, marketing and advertisement of the Site or any part of it. All amendments and additions to the Copyright Material that are now, or at any time in the future, prepared, designed, drawn, or created by the Sub-Contractor will be included. Such licence will include the right to grant sub-licences transferable to third parties without the Sub-Contractor's consent being required.
- 32.3. The Sub-Contractor agrees (and will promptly undertake at Crest Nicholson's request) to do all such acts or deeds, and execute all such documents, as may be required by Crest Nicholson to put into practice the provisions and intentions of this Clause 32. This will be at the Sub-Contractor's own cost.
- 32.4. The Sub-Contractor will not be liable for any use by Crest Nicholson of the Copyright Material for any purposes other than that for which the same was created.

33. Records and Audit

- 33.1. The Sub-Contractor will, for a period of at least 15 years from the date issue of the last Build Completion Certificate in relation to the residential units forming part of the Development, maintain accurate, up-to-date and complete records in a form suitable for inspection relating to the performance of its obligations in relation to the Contract Works.
- 33.2. The Sub-Contractor will provide to Crest Nicholson within 14 days of a request, such other information, records, monthly management accounts or documents (redacted for any sensitive commercial information) in its possession or control that Crest Nicholson may reasonably request.
- 33.3. In each case that Crest Nicholson makes a request in accordance with Clause 33.2, it will be for the purpose of auditing any information supplied to Crest Nicholson by the Sub-Contractor, or verifying the Sub-Contractor's compliance with its obligations.

34. Notices

- 34.1. Any notice served pursuant to these terms and conditions will be deemed sufficiently served if it is sent by first class post or delivered by hand and addressed to, or left at the address of, the party specified in the Purchase Order. Any notice sent by post will be deemed delivered within two (2) business days. Any notice of legal action or proceedings served by the Sub-Contractor will be copied to: Crest Nicholson PLC, 500 Dashwood Lang Road, Bourne Business Park, Addlestone, Surrey KT15 2HJ; marked for the attention of the Company Secretary.

35. Disputes

- 35.1. If any dispute or difference arises under, or in connection with the Contract Works either party may refer it to adjudication and Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as may be modified, amended or re-enacted from time to time) (the "**Scheme**") will apply, subject to the nominating body for the appointment of an adjudicator being the Technology and Construction Bar Association (TECBAR) for the purposes of the Scheme.

36. Exclusion of Terms

- 36.1. Unless specifically identified in the Contract Documents or other written order or acceptance document from Crest Nicholson, any terms or conditions that may be endorsed or annexed to, contained in, or embodied in the Submission or other offer document will not form part of the Purchase Order nor otherwise apply to the Contract Works.

37. Partial Invalidity

- 37.1. If, at any time, any provision of these terms and conditions is or becomes illegal, invalid or unenforceable under any law of any relevant jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

38. The Contracts (Rights of Third Parties) Act 1999

- 38.1. Nothing in the Purchase Order or these terms and conditions apart from Clause 38.2 confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.
- 38.2. Any third party that is referred to in Clause 14.4 will be entitled to enforce the terms of Clause 14 on the Sub-Contractor.

39. Liaison and Cooperation

- 39.1. In the event that any inspection is made of the Contract Works for the purpose of determining whether they comply with the Building Regulations, the requirements of the NHBC and/or any other statutory or qualitative requirements, the Sub-Contractor will provide all reasonable co-operation and will not be entitled to any addition to the Contract Price or any extension to the Finish Date by reason of such co-operation.

40. Governing Law and Jurisdiction

- 40.1. The agreement between Crest Nicholson and the Sub-Contractor will be governed and construed in accordance with English Law and the parties submit to the jurisdiction of the courts of England & Wales.

SCHEDULE 1:

CUSTOMER SERVICE STANDARDS

All defects are screened by Crest Nicholson Customer Services, who will notify you in writing as and when they occur during the new home warranty initial guarantee period. Customer Services will provide you with a description of the incident, the plot number and address, together with full contact details for access. This is known as a "Work Instruction / Notice of Defect".

Upon receipt of the Work Instruction, the Sub-Contractor must contact the customer within 24 hours to arrange a date to commence the rectification of the defects. This work should normally be undertaken during normal working hours. Under no circumstances should the Sub-Contractor or its representatives arrive at the property without an appointment. Please notify Customer Services if any problems arise when arranging access.

The Sub-Contractor and its representatives must adhere to the following standards when rectifying defects to the Contract Works:

Working in Occupied Properties

The Sub-Contractor is responsible for ensuring that work in occupied properties is carried out with a minimum inconvenience to occupants.

The Sub-Contractor's representatives must:

1. Attend occupied properties in a respectful, courteous and presentable manner, including arriving promptly at the pre-arranged time and presenting their identity card;
2. Contact Crest Nicholson immediately if there is any doubt or ambiguity about the nature or the extent of the work to be undertaken. The representative must not leave the property until receiving specific direction from Crest Nicholson;
3. Explain the work being carried out to the occupier;
4. Ask the homeowner/occupier's permission to take photographs where appropriate; (claims for any work carried out that are not part of the defect should be supported with photographic evidence);
5. Carry out the work professionally;
6. Provide necessary protection for the work area (see below) and a digital camera for recording the issue(s);
7. Provide all necessary materials to complete the works. If materials need to be ordered, notify both the homeowner/occupier and Crest Nicholson of the expected delivery time;
8. Clear up as necessary at the end of each day, and clear up fully after works are completed.

The Sub-Contractor's representatives must not:

1. Use the facilities at the property without permission from the homeowner/occupier;
2. Smoke anywhere on the customer's property, even outdoors;
3. Wear outdoor footwear in the home (clean slippers or overshoe protectors may be worn);
4. Use radio, Walkman, I-Pods etc.;
5. Criticise work carried out by others;
6. Reveal confidential information;
7. Leave waste and un-used materials in the property, or anywhere else on the Site/Development.

If Crest Nicholson is required to hire cleaners to properly clean a property after your remedial works are completed, the cost of the cleaners will be recoverable from you as a debt or may be deducted from any moneys due to you.

Protection of Properties

Properties must be fully protected while all works are undertaken. This protection must include, but is not be limited to:

- Dust sheets on the floor from the exterior door to the place(s) of work in the property;
- Safe removal of items from the areas of work;
- Protective clean dust sheets placed over all items that are not removed;
- Plastic placed under dust sheets to cover electrical goods and soft furnishings.

Crest Nicholson reserve the right to employ others to carry out any works due to associated damage as a result of the reported defect. This right is outlined in Clause 14.3.

In the event that any damage is caused by the representative while works are being undertaken, this must be communicated immediately to Crest Nicholson Customer Services.

Response Times

Instructions to carry out work will be issued by Crest Nicholson in writing through a Work Instruction, except in cases of emergency where verbal instruction will be given and confirmed in writing at a later date.

Priority 1 – Emergency Immediate Response – Resolve within 24 hours

Emergency repairs are those required to avoid immediate danger to the health and safety of occupants, or to the integrity and safety of the buildings.

Emergency repairs include (this is not an exhaustive list):

- Complete failure of heating and/or hot water;
- Complete or partial failure of electrics;
- Water leaks that cannot be contained (including those from roofs);
- Risks to security, windows, doors etc.;
- Gas leaks;
- Blocked drains and blockages to toilets where there is only one toilet in the property;
- Any other issue that Crest Nicholson determines will seriously impact upon the occupant's ability to function within their home.

Out of hours calls may be received from Crest Nicholson, our external provider or direct from a Housing Association/Registered Provider. You are expected to attend to all emergencies passed to you through these third parties. For specialist trades, central heating, plumbing and electrical issues, we require that you provide 24-hour emergency cover for your trade responsibilities.

Priority 2 – Urgent Repairs – Within 3 working days

Urgent repairs are those required to avoid discomfort and inconvenience to the occupants, but do not affect health and safety. Urgent repairs include (in so far as not within Priority 1):

- Failure of toilets and drains (or blockages) where there is at least one toilet in working order;
- Leaking gutters;
- Leaking roof;
- Electrical faults;
- Faulty heating system;
- Re-fixing loose fixtures and the like.

Sub-Contractors must contact the customer within 24 hours of receiving a Work Instruction from Crest Nicholson to arrange a date for the works to be carried out.

Priority 3 – Non-Urgent Repairs – 10 working days (in so far as not within Priority 2)

Non-Urgent Repairs are less urgent repairs that can wait a short time before being dealt with, such as minor problems with toilets, baths, sinks, doors or windows sticking, plaster repairs, brickwork, etc. This includes, but is not limited to:

- Easing of windows;
- Faulty fitted kitchen units;
- Faulty internal doors/ironmongery;
- Flooring surfaces;
- Fencing;
- Paths and driveways.

Sub-Contractors must contact the customer within 24 hours of receiving a Work Instruction from Crest Nicholson to arrange a date for the works to be carried out.

Priority 2 and 3 – Additional Requirements

Work will be carried out at a date agreed with the customer and be completed in line with the above timescales, unless associated materials have to be ordered or the customer agrees to a longer time frame.

Crest Nicholson Customer Services must be updated with all relevant information, including: confirming appointment times, material delays and the date works have been executed.

Failure to comply with these requirements will result in an alternative contractor being appointed, as prescribed in Clause 14.3 of your Agreement.

Communication

Crest Nicholson Customer Services should be fully informed as soon as possible whenever an agreed time or activity needs to be amended, such as for late or non-attendance. The Sub-Contractor will be charged a £50 non-refundable fee for non-attendance, as outlined in Clause 15.5.

All appointments must be confirmed and communicated to Crest Nicholson Customer Services.

Completed work must be confirmed and signed by the customer. In the event that the customer is unavailable, then this confirmation and signature must be made by a Crest Nicholson representative.

You are also required to send Crest Nicholson a routine update of all open issues on a weekly basis.

Once the works have been successfully completed, the Sub-Contractor must notify Crest Nicholson within 24 hours. A completion form will be sent to you as part of the Work Instruction, which should be completed, signed and emailed to Crest Nicholson Customer Services.

As outlined in Clause 15.3, should any of the Sub-Contractor's day-to-day or out-of-hours contact information change at any time, Crest Nicholson must be informed immediately.

Non-Compliance and Contra-Charges

Crest Nicholson reserves the right to charge a reasonable fee to cover its costs associated with the administration of any repair or remedial works arising as a result of the Sub-Contractors defective work.

Crest Nicholson will charge the Sub-Contractor for a failure to attend a property to carry out remedial works once the date and time has been agreed with the customer. The fee for non-attendance is £50 as outlined in Clause 15.5.

Crest Nicholson will charge the Sub-Contractor the cost of hiring a cleaner when a property is left untidy after remedial works by the Sub-Contractor are completed.

Any costs or charges will be recovered from the Sub-Contractor as a debt or may be deducted by Crest Nicholson from any moneys due to the Sub-Contractor (including making a reduction to any retention held).

Crest Nicholson will periodically check that the Sub-Contractor is complying with the provisions of this Schedule. Repeated non-compliance will result in another contractor being used without further notice to the Sub-Contractor as stated in Clause 15.4.

Health & Safety

Sub-Contractors will comply with current Health & Safety legislation, ensuring appropriate risk assessments are in place, i.e. Lone Working, Working in Occupied Properties, etc. Where requested, the Sub-Contractor will provide for Crest Nicholson's risk assessment and method statements for exceptional risks identified.

Quality Control

Sub-Contractors will have a system for checking that remedial work to defects is carried out properly, and for taking steps to improve sub-standard performance.

Crest Nicholson will provide certain quality control documents/process that must be adhered to.

Material and Spare Parts

Sub-Contractors will supply replacement materials, unless previously agreed in writing that they will be supplied by Crest Nicholson. The materials must be provided within appropriate timescale as agreed and notified to Crest Nicholson.

Crest Nicholson reserve the right to source material from alternative sources and contra-charge accordingly.