

Bellway Homes Limited

Sub-Contract Conditions
(Supply and install or install/fit only)

[INSERT FULL NAME OF SUB-CONTRACTOR]



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1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the context otherwise requires, the words or expressions that begin with capital letters shall have the precise meanings as set out below:

- 1.1.1 '**Appendix**' means the appendix attached to the Sub-Contract Order;
- 1.1.2 '**Attendances**' means the facilities, plant and equipment referred to in the Sub-Contract Order to be provided by Bellway. All other facilities, plant and/or equipment required by the Sub-Contractor are to be provided by the Sub-Contractor;
- 1.1.3 '**Authorised Representative**' means a person authorised by Bellway and stated in the Sub-Contract Order or such other person as Bellway shall notify to the Sub-Contractor in writing to perform such role from time to time;
- 1.1.4 '**Bellway**' means Bellway Homes Limited (company number 670176) whose registered office is at Seaton Burn House, Dudley Lane, Seaton Burn, Newcastle upon Tyne, NE13 6BE together with its legal assignees and/or successors in title;
- 1.1.5 '**Cancellation Payment**' the amount stated in the Sub-Contract Order as being the sum due to the Sub-Contractor upon termination by Bellway of the engagement of the Sub-Contractor pursuant to clause 31.2 of these Conditions or if no amount is stated then the amount shall be five hundred pounds (£500) (inclusive of VAT);
- 1.1.6 '**CDM Regulations**' means the Construction (Design & Management) Regulations 2015 and any approved Code of Practice published by the Health and Safety Executive in relation to such regulations or any subsequent amendment or replacement thereto;
- 1.1.7 '**Claim**' means any claim or entitlement which the Sub-Contractor has or may have against Bellway under, arising out of or in connection with the Sub-Contract (including, without limitation, an extension of time to complete the Sub-Contract Works or a Section or any additional payment in connection with a Variation or any payment whatsoever in addition to or in excess of the Sub-Contract Sum or any upwards adjustment to the Sub-Contract Sum) and howsoever arising under any circumstances whatsoever (including, without limitation, by reason of a breach of contract, breach of statutory duty or tortious act or omission on the part of Bellway);
- 1.1.8 '**Completion**' means a state when the Sub-Contract Works or a Section are complete in all respects save for minor defects the existence completion or rectification of which in the opinion of Bellway would not prevent or unreasonably interfere with the use and occupation of the Project and in addition all Statutory Requirements, Requisite Consents and NHBC requirements have been complied with;
- 1.1.9 '**Conditions**' means these terms and conditions as may be varied by the Special Conditions;
- 1.1.10 '**Consultants**' means any consultants engaged in respect of the Project;
- 1.1.11 '**Copyright Material**' means any and all documents (whether in hard copy, digital or electronic format and whether in existence as at the date of the Sub-Contract or yet to be created) including but not limited to reports, drawings, plans, specifications, minutes and calculations produced or prepared by the Sub-Contractor or on its behalf in connection with the Sub-Contract Works, the Project or the Site or as part of the Sub-Contract Works;
- 1.1.12 '**Defects**' means all and any defects, shrinkages, failures, malfunctions and other faults in the Sub-Contract Works or any part of them which is due to materials or workmanship or design not being in accordance with the Sub-Contract;
- 1.1.13 '**Defects Rectification Policy**' means Bellway's policy current at the date of the Sub-Contract on how Defects are to be rectified, such policy being available on request;

- 1.1.14 '**Group Company**' means any subsidiary or holding company of Bellway or of another subsidiary or holding company of Bellway, as subsidiary and holding company are understood within Section 1159 Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in Section 1159(1)(a);
- 1.1.15 '**Insolvent**' means in relation to the Sub-Contractor when any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration (or the service at court of any notice of intention to appoint an administrator) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Sub-Contractor; or
 - (b) the composition, compromise, assignment or arrangement with any creditor; or
 - (c) the appointment of a liquidator, provisional liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Sub-Contractor or any of its assets; or
 - (d) the enforcement of any security over any assets of the Sub-Contractor or any analogous procedure or step is taken in any jurisdiction; or
 - (e) any expropriation, attachment, sequestration, distress or execution which affects any asset or assets of the Sub-Contractor; or
 - (f) any financial indebtedness of the Sub-Contractor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described); or
 - (g) the Sub-Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 1.1.16 '**Interest Rate**' means the annual rate of five per cent (5%) above the Bank of England Base Rate (from time to time);
- 1.1.17 '**Liquidated Damages**' means the sum if any as is stated in the Sub-Contract Order. If no sum is stated the amount shall be such amount as is equivalent to the loss and/or expense to Bellway caused by the delay as set out in clause 18.4;
- 1.1.18 '**Material Breach**' means any breach of the Sub-Contract by the Sub-Contractor where Bellway has served notice on the Sub-Contractor that it has seven (7) days in which to rectify the breach and the Sub-Contractor fails to do so;
- 1.1.19 '**Mandatory Group Deals**' means any supplier or contractor named in Bellway's preferred list of sub-contractors or suppliers as may be amended or updated from time to time, a copy of which is available for inspection at Bellway's office address or on request;
- 1.1.20 '**NHBC**' means the National Housing Building Council (company limited by guarantee under company number 320784) whose registered office is at NHBC House, Davy Avenue, Knowlhill, Milton Keynes MK5 8FP or an insurer of equivalent or similar standing nominated by Bellway and the identity of which shall be notified by Bellway to the Sub-Contractor;
- 1.1.21 '**Party**' means Bellway and/or the Sub-Contractor;
- 1.1.22 '**Project**' means the development by Bellway or on its behalf on or in connection with the

Site and of which the Sub-Contract Works form a part as described in the Sub-Contract Documents or the Appendix;

- 1.1.23 **'Rectification Period'** means the period which starts on the date of Completion of the Sub-Contract Works and ends twenty-four (24) months thereafter;
- 1.1.24 **'Retention'** means an amount equivalent to such percentage of the gross amount otherwise due (from time to time) to the Sub-Contractor pursuant to the Conditions and as set out in the Sub-Contract Order or if no percentage is set out then the percentage shall be five (5) per cent;
- 1.1.25 **'Requisite Consents'** means any and all relevant permissions, consents, approvals, licences, certificates and permits as may be lawfully required in order to commence, carry out, maintain and complete the Sub-Contract Works and use and enjoy the Project and which term includes but is not limited to any modification, variation or amendment to any relevant Requisite Consent;
- 1.1.26 **'Scheme'** means the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI No 649) as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011;
- 1.1.27 **'Sections'** means any one or more parts into which the Sub-Contract Works are divided as set out and described in the Sub-Contract Order and reference to a Section shall mean to any one Section;
- 1.1.28 **'Site'** means the location of the Project as described in the Sub-Contract Order or the Sub-Contract Documents;
- 1.1.29 **'Special Conditions'** means special conditions (if any) that may amend, modify or supplement these Conditions and which may be specified by Bellway in the Appendix and if none are specified in the Appendix then there shall be no amendments, modifications or supplements to these Conditions incorporated into the Sub-Contract;
- 1.1.30 **'Specification'** means the documents (including any variations, additions or omissions thereto) listed in the Appendix or referred to in the Sub-Contract Order or attached or referred to in any of the Sub-Contract Documents or otherwise brought to the Sub-Contractor's attention, which describe the nature and scope of the Sub-Contract Works;
- 1.1.31 **'Statutory Requirements'** means any and all relevant statutes, any instrument, regulation, rule, order or permission made under any statute, legislation or European Union directive and any regulation or bye-law of any local authority, regulatory body or statutory undertaker which has any jurisdiction with regard to the Project or the Site or with whose systems the same are or will be connected, any conditions attached to any notices served under any statutory or statutory power and any European Union legislation, regulation or directive or any Codes of Practice, guidance notes and recommendations from the United Kingdom Government or any regulatory authority or body relating to the Project and/or the Services and/or the Site and which term includes but is not limited to any modification, amendment or re-enactment (whether before or after the date the Sub-Contract is entered into) to any relevant Statutory Requirements;
- 1.1.32 **'Sub-Contract'** means the contract between Bellway and the Sub-Contractor under which the Sub-Contractor has agreed to carry out and complete the Sub-Contract Works in accordance with and subject to the Sub-Contract Documents;
- 1.1.33 **'Sub-Contract Documents'** means the Sub-Contract Order; the Specification; the Conditions (as may be amended by any Special Conditions); and any documents listed in or referred to in the Sub-Contract Order and/or the Appendix;
- 1.1.34 **'Sub-Contractor'** means the legal entity with whom the Sub-Contract is entered into by Bellway and to whom the Sub-Contract Order is addressed;

- 1.1.35 **'Sub-Contractor's Persons'** means the Sub-Contractor's contractors, consultants, suppliers, servants, agents, partners, workers and employees engaged in connection with the Sub-Contract Works;
- 1.1.36 **'Sub-Contract Period'** means the period or periods as set out in the Sub-Contract Order within which the Sub-Contract Works and/or any Sections are to be completed or if no period is agreed within such period of time as may be reasonably required by Bellway so as not to delay or disrupt the regular progress and timely completion of the Project;
- 1.1.37 **'Sub-Contract Order'** means the order form from Bellway to the Sub-Contractor relating to the Sub-Contract Works and includes the Appendix;
- 1.1.38 **'Sub-Contract Sum'** means the amount indicated in the Sub-Contract Order to be paid to the Sub-Contractor for carrying out and completing the Sub-Contract Works and for the avoidance of doubt is deemed to include everything necessary to carry out the Sub-Contract Works including all travelling time, overtime payments, fare and subsistence allowances howsoever arising. There shall be no change to this sum unless stated in the Sub-Contract Order or as permitted pursuant to these Conditions;
- 1.1.39 **'Sub-Contract Works'** means the Sub-Contract Works to be carried out and completed by the Sub-Contractor as briefly described in the Sub-Contract Order and more particularly in the Sub-Contract Documents (including any variations, additions or omissions thereto and including any design of any part or parts);
- 1.1.40 **'Superior Contracts'** means all contracts or agreements as identified in the Sub-Contract Order between Bellway and any Third Party Beneficiary in relation to the carrying out of the Project at the Site (which shall include but is not limited to any modifications or variations thereto);
- 1.1.41 **'TECBAR'** means the Technology and Construction Bar Association or any successor organisation;
- 1.1.42 **'Third Party Beneficiary'** means any one or more of the following class or classes of person:
- (a) a registered provider or social housing landlord;
 - (b) any person or persons who as a tenant enters or has entered into an agreement for lease or lease in relation to all or any part of the Site;
 - (c) any person or persons who enters or has entered into an agreement to provide finance to Bellway or to a purchaser or tenant of all or any part of the Site;
 - (d) a management company set up in relation to any part of the Site;
 - (e) any person who enters or has entered into an agreement to purchase a freehold or leasehold interest in any part of the Site or any person who owns a freehold or long leasehold interest in all or any part of the Site;
 - (f) any Group Company; and
 - (g) the NHBC
- BUT excluding any purchaser, tenant or funder of one individual residential unit;
- 1.1.43 **'Trade Sub-Contract'** means any contract or agreement between Bellway and any Trade Sub-Contractor (which shall include but is not limited to any modifications or variations thereto);
- 1.1.44 **'Trade Sub-Contractor'** means any legal entity whom Bellway engages (other than the Sub-Contractor) to carry out any part of the Project and shall include but not be limited to a Consultant;

- 1.1.45 **'Variation'** means a variation, modification, omission, addition or other alteration in the nature or scope of the Sub-Contract Works or any Section;
- 1.1.46 **'Valuation Period'** means each calendar month during the course of the Sub-Contract Works with the first such period expiring at the end of the calendar month following the month in which the Sub-Contractor commenced performance of the Sub-Contract Works on Site and the last period ending at Completion of the whole of the Sub-Contract Works; and
- 1.1.47 **'Working Day'** means any day from Monday to Friday (inclusive) which is not a statutory bank holiday and excludes the period from 23 December to 2 January (inclusive) in any year.
- 1.2 Any consent or approval of Bellway required under this Agreement shall be required to be obtained before the act or event to which it applies is carried out or done and shall be effective only when the consent or approval is given in writing and signed by the Authorised Representative.
- 1.3 In these Conditions, unless the context otherwise requires:
- 1.3.1 clause or paragraph headings are inserted for convenience only and shall not affect the construction of these Conditions;
- 1.3.2 references to a paragraph or clause are references to a paragraph or clause of these Conditions;
- 1.3.3 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time or as in force as at the date of the Sub-Contract;
- 1.3.4 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time and/or as at the date of the Sub-Contract under that statute or statutory provision;
- 1.3.5 any words following the terms including, include, includes, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms and the use of the words 'other' or 'otherwise' shall not be construed as having a limiting effect;
- 1.3.6 words in the singular also mean the plural and vice versa;
- 1.3.7 any word or term importing gender shall include any gender;
- 1.3.8 references to persons shall, where the context so requires, include individuals, bodies corporate, unincorporated associations, partnerships, a firm or any entity having legal capacity and all such words are to be construed interchangeably in that manner;
- 1.3.9 a reference to a 'Party' or the parties is a reference to a party or the parties to the Sub-Contract and references to a Party shall include its successors in title and permitted assigns;
- 1.3.10 a reference to writing or written includes email where permitted in these Conditions, but not fax;
- 1.3.11 any obligation on a Party not to do something includes an obligation not to allow that thing to be done; and
- 1.3.12 any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

2. THE CONDITIONS

- 2.1 Any quotation and/or tender received by Bellway from the Sub-Contractor in respect of the Sub-Contract Works is deemed to have been made subject to the Conditions. Any terms and conditions of the Sub-Contractor are superseded are of no effect and do not form part of or apply to the Sub-Contract in any circumstances even if included as part of the Sub-Contract Documents unless and to the extent incorporated as Special Conditions.
- 2.2 The Sub-Contractor shall (if requested) sign a copy of these Conditions for deposit with Bellway by way of acknowledgement that these Conditions shall govern all present and future contractual relations between Bellway and the Sub-Contractor until further notice in writing is given by an authorised signatory of Bellway to the Sub-Contractor.
- 2.3 Without prejudice to and whether or not the Sub-Contractor has complied with clause 2.2, the Sub-Contractor shall be deemed to have read and accepted these Conditions in full for all present and future contract relations between Bellway and the Sub-Contractor until further notice is given by an authorised signatory of Bellway to the Sub-Contractor.
- 2.4 The terms and conditions of the Sub-Contract may only be amended or varied where such variation is in writing and signed in pen and ink on hard copy by the Authorised Representative. Any other purported variation shall be of no effect.
- 2.5 Notwithstanding the date Bellway and the Sub-Contractor enter into the Sub-Contract, any goods supplied or works performed (including but not limited to enabling, design, demolition, temporary or other preliminary or permanent works) by or on behalf of the Sub-Contractor prior to the date of the Sub-Contract in anticipation of Bellway entering into the Sub-Contract with the Sub-Contractor (including but not limited to any work carried out pursuant to any letters of intent) shall be treated as forming part of the Sub-Contract Works and shall be subject to the terms of the Sub-Contract and the Sub-Contractor assumes full responsibility for the same. Any monies already paid as at the date of the Sub-Contract by Bellway to the Sub-Contractor in connection with the Sub-Contract Works shall be treated as payments on account of the Sub-Contract Sum.

3. SUB-CONTRACT DOCUMENTS

- 3.1 Where there is any conflict, ambiguity or discrepancy within or between any of the Sub-Contract Documents, Bellway shall instruct the Sub-Contractor as to which of the discrepant items is to be adopted and the Sub-Contractor shall (subject always to complying with all Statutory Requirements and the Requisite Consents) comply with such instruction at no cost to Bellway and without any adjustment to the Sub-Contract Sum or the Sub-Contract Period and without any entitlement to a Claim.

4. OBLIGATIONS OF SUB-CONTRACTOR

- 4.1 The Sub-Contractor shall for the Sub-Contract Sum carry out and complete the Sub-Contract Works commencing the Sub-Contract Works upon receiving notice to do so and completing them within the Sub-Contract Period working regularly and diligently in accordance with Bellway's directions and/or any programme issued by Bellway.
- 4.2 The Sub-Contractor shall co-operate closely with Bellway and all Consultants and Trade Contractors and the Sub-Contractor is responsible for the co-ordination and integration of the Sub-Contract Works including but not limited to the design and carrying out thereof with the Project and any other works to be undertaken by Bellway and/or the Consultants and/or the Trade Sub-Contractors. The Sub-Contractor shall carry out the Sub-Contract Works in such order as shall be compatible with and so as not to delay or disrupt or conflict with the Project, the planned and/or actual progress of the Project and the planned and/or actual progress of works being carried out by Trade Sub-Contractors.
- 4.3 The Sub-Contractor shall not hinder or prevent the progress of works being undertaken by others and shall advise Bellway as to the suitability and compatibility of any existing work or the existing condition of the Site or the Project for the Sub-Contract Works in good time so as not to delay or disrupt the regular progress or the timely completion of the Project.
- 4.4 The Sub-Contractor acknowledges that the Sub-Contract Works may not be executed

continuously and that the Site may be closed as a consequence of the national construction industry holidays agreement. The Sub-Contractor is deemed to have allowed for such in the Sub-Contract Sum and its programme and for executing the Sub-Contract Works in such a manner and sequence as Bellway may require including but not limited to working either continuously or in sections or staging the Sub-Contract Works to suit progress of works by Trade Sub-Contractors and in any order and bring forward or lengthen any periods detailed within the construction programme at Bellway's discretion at at the Sub-Contractor's cost. The Sub-Contract Sum is deemed to cover multiple visits to Site as necessary.

- 4.5 All work carried out by the Sub-Contractor in connection with the Sub-Contract Works must be carried out in a good and workmanlike manner and to Bellway's satisfaction. All workmanship and materials shall be of a high standard, free from Defects and fit for their purpose when incorporated into the Sub-Contract Works. All design will be undertaken using the reasonable skill, care and diligence of a specialist contractor experienced in designing works similar in nature, scope, size, scale and complexity to the Sub-Contract Works.
- 4.6 The Sub-Contract Works shall be carried out and completed in accordance with good building and industry practice, all Statutory Requirements, Requisite Consents, NHBC requirements, British and EU standards and the Sub-Contract Documents relating to the Sub-Contract Works and/or the Project and/or the Site. The Sub-Contractor must continually snag and quality control check its work throughout the course of the Sub-Contract Works.
- 4.7 In addition, the Sub-Contractor shall follow the recommendations of any Code of Practice relating to the Sub-Contract Works unless otherwise stipulated in writing by Bellway signed by the Authorised Representative.
- 4.8 The Sub-Contractor warrants that the Sub-Contract Works shall fit within the boundaries of the Site.
- 4.9 The Sub-Contractor shall report all accidents involving the Sub-Contractor's employees within one hour of the incident. The Sub-Contractor shall issue COSHH data sheets prior to commencement of the Sub-Contract Works and provide all necessary information to allow Bellway to prepare the Health and Safety File under the CDM Regulations. The Sub-Contractor shall comply with all Bellway's Site requirements.
- 4.10 The Sub-Contractor acknowledges that Bellway may rely on any certificate or written approval or comment the Sub-Contractor gives in respect of the Sub-Contract Works (including but not limited to all advice or recommendations made or given prior to entering into the Sub-Contract) and that when performing its obligations under any Superior Contract Bellway will rely on the Sub-Contractor's skill and judgement in carrying out and completing the Sub-Contract Works. The Sub-Contractor agrees that Bellway is deemed not to have any intrinsic expert knowledge or skill in relation to the Sub-Contract Works and the Sub-Contractor shall warn Bellway if it becomes aware or ought reasonably to be aware of any inadequacies or discrepancies within or between the nature, scope and design of the Sub-Contract Works and/or the Project.
- 4.11 If requested to do so by the Authorised Representative, the Sub-Contractor shall provide a method statement describing how the Sub-Contractor intends to carry out and complete the Sub-Contract Works in accordance with the terms of the Sub-Contract and shall update it as and when reasonably required from time to time. Bellway does not give any warranty or guarantee that the Sub-Contractor will be able to carry out the Sub-Contract Works in accordance with the method statement.
- 4.12 The Sub-Contractor is deemed to have made due allowance for all its obligations and duties under the Sub-Contract within the Sub-Contract Sum and the Sub-Contract Period. The Sub-Contractor acknowledges that failure by the Sub-Contractor to comply with its obligations and duties pursuant to the Sub-Contract may cause delay and/or disruption to the Project and/or any part of it and /or may cause Bellway to suffer or incur costs, losses, damages and/or expense.

5. MATERIALS

- 5.1 The Sub-Contractor shall not specify for use or permit to be used in the Sub-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 Project 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 of such goods or materials.

5.2 Without prejudice to the generality of the foregoing, the Sub-Contract Works shall comply with the requirements set out or referred to in

5.2.1 The guidance note "Good Practice in Selection of Construction Materials 2011" sponsored by the British Council for Offices or as amended or updated from time to time; and

5.2.2 The Construction Products Regulations 2013 (SI 2013/1387) and/or Article 3 and Annex I of the EU Construction Products Regulation (305/2011/EU) as may be amended, modified, supplemented or updated from time to time; and

5.2.3 The Mandatory Group Deals.

5.3 Where required by Bellway, materials shall also comply with Bellway's Corporate Social Responsibility Policy and Environmental Guidelines current as at the date of the Sub-Contract (copies of which are available for inspection during business hours at Bellway's office or address or on request).

6. THIRD PARTY AGREEMENTS

6.1 Copies of any Superior Contracts and Trade Sub-Contracts (excluding financially and commercially sensitive information) are available for inspection by the Sub-Contractor at Bellway's offices and the Sub-Contractor is deemed to be aware and shall have full knowledge of the provisions contained in all Superior Contracts and Trade Sub-Contracts.

6.2 The Sub-Contractor shall assume, observe, perform and comply with and be bound by all the obligations and liabilities of Bellway under all Superior Contracts in so far as they relate to and are applicable to the Sub-Contract Works or any part of them and shall relieve Bellway of all liability in respect thereof.

6.3 The Sub-Contractor shall not by any act, omission or default cause, constitute or contribute to any breach by Bellway of its obligations and duties or lead to a diminution in Bellway's rights under any Superior Contracts or any Trade Sub-Contracts and shall indemnify, save, defend and hold harmless Bellway from and against any and all losses, costs, damages and expenses Bellway suffers or incurs or may become liable for arising from any breach or non-compliance by the Sub-Contractor of its obligations and duties under this clause.

6.4 In addition, the Sub-Contractor shall take full account of any interests or rights enjoyed by any third party in or over the Site (including without limitation any easements and rights of way air or light) and any restrictions or other encumbrances affecting the Site and ensure that no infringement is caused by it in the carrying out or completion of the Sub-Contract Works or a Section.

7. SITE SUPERVISOR

7.1 The Sub-Contractor shall prior to commencement of the Sub-Contract Works appoint a suitably qualified, competent and experienced site supervisor to act as a representative of the Sub-Contractor on the Site and in charge of the Sub-Contract Works and notify Bellway thereof. The site supervisor must regularly and diligently check and inspect the quality and standard of the Sub-Contract Works and ensure that the Sub-Contractor complies with the requirements of the Sub-Contract. The site supervisor must also ensure that all work is fully snagged prior to Completion of the Sub-Contract Works or any part of them.

7.2 As and when requested to do so by Bellway the site supervisor and such other of the Sub-Contractor's Persons as may from time to time be necessary shall attend site meetings in connection with the Sub-Contract Works and the Project.

7.3 Failure by the site supervisor or an appropriate alternative person to attend such meetings shall be a breach of contract by the Sub-Contractor in respect of which the Sub-Contractor shall pay or allow Bellway liquidated and ascertained damages for each such breach the sum of one hundred pounds (£100).

7.4 In the event that in the opinion of Bellway the Sub Contractor has failed or is failing to provide adequate site supervision Bellway shall be entitled to provide its own site supervision and the Sub Contractor shall pay or allow to Bellway the cost so accrued, suffered or incurred by Bellway.

8. SITE ACCESS AND CONDITIONS

8.1 Bellway will allow the Sub-Contractor such non-exclusive access to the Site as is necessary to allow the Sub-Contractor to carry out and complete the Sub-Contract Works.

8.2 Unless the Authorised Representative otherwise instructs in writing, the Sub-Contractor shall be responsible for the proper and accurate setting out of the Sub-Contract Works and shall satisfy itself before commencing the Sub-Contract Works and during the carrying out of the Sub-Contract Works as to the position, dimensions and suitability of any previous and/or existing work and the ground, sub-surface conditions and existing structures or services which may in any way affect the Sub-Contract Works. The Sub-Contractor shall satisfy itself that any existing and/or previous work to that of the Sub-Contract Works or any part of them has been properly executed and completed before commencing the Sub-Contract Works and shall immediately warn Bellway in writing where any such previous or existing work is out of position, wrongly dimensioned or the conditions of the Site are in any other way unsuitable. If no such written notice is given by the Sub-Contractor it shall have no claim whatsoever in respect of the state, condition, compatibility (with the Sub-Contract Works) or suitability of any existing and/or previous work.

8.3 If Bellway has provided the Sub-Contractor with any documents or information relating to the condition of the Site, the ground, sub-surface conditions, existing structures and services and/or the Project and/or the Sub-Contract Works then, whilst Bellway does not warrant and makes no representation as to the accuracy or sufficiency of any such documents or information or any recommendations or conclusions contained in them, the Sub-Contractor shall not do or omit to do anything which might place Bellway in breach of any obligations it might have in respect of or arising out of such documents and/or information. The risk of the condition of the Site, the ground, sub-surface conditions, existing structures and buildings, adverse physical conditions and artificial and natural obstructions rests entirely with the Sub-Contractor. The Sub-Contractor shall not be entitled to make any Claim in connection with such risk nor shall the Sub-Contractor be released from any of the risks accepted or obligations undertaken by him under the Sub-Contract on the ground that he did not or could not reasonably have foreseen any matter which might affect or have affected the carrying out of the Sub-Contract Works.

8.4 Bellway may so as to assist the Sub-Contractor issue an instruction effecting a Variation to the Sub-Contract Works in the event the Sub-Contractor encounters adverse conditions or naturally occurring or artificial obstructions during the course of executing the Sub-Contract Works but the Sub-Contractor shall not by reason of such instruction be entitled to make any Claim.

8.5 The Sub-Contractor shall at all times prevent any public or private nuisance (including but not limited to any such nuisance caused by noxious fumes, noisy working operations or the deposit of any materials or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant, licensee or occupier or any statutory undertaker arising out of the carrying out the Sub-Contract Works where such nuisance or interference is an avoidable consequence of the carrying out of the Sub-Contract Works or of any obligation to rectify Defects and shall defend or, at Bellway's option, assist Bellway in defending any action or proceedings which may be instituted in relation thereto howsoever such action may arise.

8.6 The Sub-Contractor must not do or omit to do anything which might impede, hinder or block access to and from existing or temporary roads being used for access or egress to and from the Site or any part of it.

9. FACILITIES AND HANDLING

- 9.1 Bellway shall make available to the Sub-Contractor the Attendances. The Sub-Contractor shall have non-exclusive use of such Attendances with Bellway and other Trade Contractors and the Attendances may only be used and must be treated in accordance with Bellway's directions and instructions. The Attendances will be provided at such times and at such locations as may be directed by Bellway or as set out in the Sub-Contract Order. The provision of such Attendances by Bellway shall not relieve the Sub-Contractor of any obligation or duty to test or inspect such Attendances and the Sub-Contractor must satisfy itself that such Attendances are suitable for their intended purpose. No warranty (express or implied) is given by Bellway as to the fitness, suitability or condition of such Attendances. Except as expressly set out in the Sub-Contract Order, Bellway shall not provide any other facilities, plant or equipment or other attendances to assist the Sub-Contractor to perform its obligations and duties under the Sub-Contract.
- 9.2 Any use by the Sub-Contractor of any Attendances shall be at the Sub-Contractor's own risk and the Sub-Contractor shall not be entitled to any Claim arising from any loss of continuity of any Attendances.
- 9.3 Bellway does not accept any responsibility for unloading, checking, placing in a safe position or keeping secure or the prevention of any loss damage or theft of or to the Sub-Contractor's materials, equipment or plant.
- 9.4 If the Sub-Contractor's labour is not on Site or is otherwise unavailable when such materials or plant arrive Bellway may arrange to unload the Sub-Contractor's materials plant and equipment upon the understanding that Bellway shall not be liable for such action. The Sub-Contractor shall pay Bellway's reasonable costs and charges for services thus rendered.
- 9.5 Subject to clause 9.1, the Sub-Contractor is to furnish and supply all necessary labour, materials, goods, equipment and plant including but not limited to all scaffolding, ladders, hoists, temporary Sub-Contract Works and tools, commissioning, testing, off-loading and distribution, items of attendance, supervision and to do all that is necessary to ensure the satisfactory performance and completion of the Sub-Contract Works or a Section in accordance with the terms of the Sub-Contract (whether express or implied) and the Sub-Contractor is deemed to have allowed for all such risks, responsibilities and liabilities within the Sub-Contract Sum and when calculating the Sub-Contract Period.
- 9.6 If Bellway has cause to believe in its reasonable opinion that any plant, goods or equipment to be used or being used by the Sub-Contractor is unsafe or unfit for use, Bellway may instruct the Sub-Contractor to take all such steps as may be necessary in order to render such plant, goods or equipment safe and fit for use. The Sub-Contractor shall not have any entitlement to any Claim arising from Bellway properly acting in accordance with this clause.

10. RUBBISH/HEALTH & SAFETY AT WORK

- 10.1 The Sub-Contractor shall clean down all its own work and attend upon and make good all damage to its Sub-Contract Works until Completion.
- 10.2 The Sub-Contractor shall ensure that the requirements of Bellway's Health and Safety Policies and Site Standards Policies (copies of which are available upon request) are fully complied with in so far as it is within the Sub-Contractor's responsibility to so comply.
- 10.3 The Sub-Contractor shall place all the waste it generates from the Site in the relevant and appropriate skip (having regard to the type and category of waste) supplied by Bellway on Site or, if required to do so by the Authorised Representative, the Sub-Contractor will at its own cost clear and dispose of safely all waste forming part of the Sub-Contract Works or generated by the carrying out of the Sub-Contract Works in accordance with all relevant Statutory Requirements and Requisite Consents. Any mud, debris or other material generated by the Sub-Contractor and left on roads or access ways to and from or on the Site must be cleaned up and removed by the Sub-Contractor at its own cost on request from Bellway. If the Sub-Contractor fails to comply with this clause, Bellway shall be entitled to clean and tidy the Site or any roads or other working areas at the Sub-Contractor's cost.

11. INDEMNITIES

- 11.1 The Sub-Contractor shall be liable for and indemnify, save, defend and hold harmless Bellway from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of reputation and all interest, penalties and legal and other reasonable professional fees, costs and expenses) accrued, suffered or incurred by Bellway arising out of or in connection with:
- 11.1.1 breach of contract, breach of statutory duty, negligent performance or non-performance or non-observance of the terms of the Sub-Contract by the Sub-Contractor or any of the Sub-Contractor's Persons;
 - 11.1.2 the enforcement of the Sub-Contract;
 - 11.1.3 any claim made against Bellway for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Copyright Material;
 - 11.1.4 any claim made against Bellway by a third party arising out of or in connection with the carrying out of the Sub-Contract Works, to the extent that such claim arises out of any breach of contract, breach of statutory duty, negligent performance, tortious liability or failure or delay in performance of the Sub-Contract by the Sub-Contractor or any of the Sub-Contractor's Persons;
 - 11.1.5 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 Works, except to the extent that the same is due to any negligence of Bellway;
 - 11.1.6 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 Sub-Contract Works; and
 - 11.1.7 any loss, injury or damage to any property (real or personal) arising out of or in connection with the carrying out of the Sub-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 the Sub-Contractor's Persons. This liability and indemnity excludes loss or damage to the Sub-Contract Works to the extent insured by Bellway.

12. INSURANCE

- 12.1 Without prejudice to its liability to indemnify Bellway under clause 11 the Sub-Contractor shall maintain such insurance policies as are necessary to cover its liability in connection with the Sub-Contract including but not limited to policies of Employer's Liability, Public Liability (including but not limited to Product Liability) and unless confirmed otherwise in writing by Bellway Contractor's All Risks each with a limit of cover of not less than the amount stated in the Sub-Contract Order or if no limit of cover is specified then the Sub-Contractor shall maintain cover in each case other than All Risks insurance with a limit of indemnity of five million pounds (£5,000,000) for each and every claim in any one period of insurance. The limit of cover for the All Risks insurance shall be sufficient to cover the entire replacement of the Sub-Contract Works together with any professional fees and expenses.
- 12.2 In so far as the Sub-Contractor is responsible for design of the Sub-Contract Works the Sub-Contractor shall take out and/or maintain a policy of professional indemnity insurance with a limit of indemnity of not less than the amount stated in the Sub-Contract Order or if no limit of indemnity is specified then the Sub-Contractor shall maintain cover of not less than five million pounds (£5,000,000) for each and every claim in any one period of insurance (or in the case of claims for pollution or contamination with not less than such limit of indemnity in the aggregate for any and all claims notified in any one year of insurance). The Sub-Contractor agrees to maintain such insurance at all times until twelve (12) years after the date of Completion provided such insurance is available generally on commercially reasonable rates and terms having regard (inter alia) to premiums required and policy terms obtainable.
- 12.3 Not later than five (5) Working Days' after receiving a request to do so, the Sub-Contractor agrees to provide Bellway with evidence (such as a copy of a letter from its insurance brokers or an

insurance verification certificate) that such policy of insurance is being maintained and is in force and the premium for the current period of insurance has been paid.

- 12.4 Where the Sub-Contractor is unable to effect insurance policies on generally commercially reasonable terms it shall promptly notify Bellway and shall obtain in respect of such period such reduced level of insurance as is available and as it would be fair and reasonable in the circumstances for the Sub-Contractor to obtain.

13. COPYRIGHT

- 13.1 Copyright in any Copyright Material shall remain vested in the Sub-Contractor, but the Sub-Contractor hereby grants to Bellway and Bellway's successors in title and permitted assigns an irrevocable, royalty-free, non-exclusive licence to copy, use and reproduce the Copyright Material for any and all purposes relating to the Project and such other purposes as may be reasonably foreseeable except that Bellway shall not be entitled to reproduce any designs contained in the Copyright Material for the purposes of an extension to the Project. This licence shall include the right to grant sub-licences in the terms of this licence and shall be transferable to third parties without the Sub-Contractor's consent. This licence shall remain in full force and effect notwithstanding the completion of the Sub-Contractor's obligations or the termination of the Sub-Contractor's engagement under the Sub-Contract or any dispute in connection with the Sub-Contract.
- 13.2 To the extent that the Sub-Contractor does not have ownership of the copyright in the Copyright Material the Sub-Contractor shall procure from the copyright owner a licence with full title guarantee to Bellway in respect of the Copyright Material in the same terms as set out in this clause 13.
- 13.3 The Sub-Contractor shall not be liable for any use by Bellway or Bellway's appointees of any of the Copyright Material for any purpose other than that for which the Copyright Material was prepared and provided by the Sub-Contractor or as may be reasonably foreseeable.
- 13.4 The Sub-Contractor must not copy, use or reproduce any of the Copyright Material (or permit any third party to copy, use or reproduce the Copyright Material) in connection with the Site or any part of it (or any adjacent site) except as expressly authorised by Bellway and provided that such Copyright Material is only used for the benefit of the Project. The Sub-Contractor will not grant to any third party the right to copy, use or reproduce any of the Copyright Material except as expressly provided for under the Sub-Contract or under any collateral warranty it is obliged to enter into or third party rights it gives pursuant to clause 29 of the Conditions.
- 13.5 The Sub-Contractor agrees that it has not and will not produce, specify or employ any Copyright Material in breach of any copyright, patent or other right of any third party and the Sub-Contractor agrees to indemnify Bellway from and against any and all claims, demands, costs, losses and expenses which Bellway suffers or incurs in connection with such breach.
- 13.6 The Sub-Contractor will at any time provide to Bellway (on Bellway's request) copies (in hard copy, CAD format, electronic format and such other format as Bellway may reasonably require) of the Copyright Material and any other information, correspondence and documentation the Sub-Contractor has prepared in connection with the Project and the Sub-Contractor agrees not to exercise any lien for any reason which the Sub-Contractor might otherwise be entitled to exercise over the Copyright Material.
- 13.7 The Sub-Contractor hereby waives and agrees not to assert any moral rights in the Copyright Material granted pursuant to the Copyright Designs and Patents Act 1988.

14. OWNERSHIP AND RISK

- 14.1 The ownership of materials or goods to be used in or in connection with the Sub-Contract Works shall pass to Bellway upon payment by Bellway therefor or, if earlier, upon delivery of the said materials or goods to the Site whether or not payment has been made and whether fixed or unfixed. The Sub-Contractor shall have the use of such materials or goods on licence until they are fully and finally fixed. Such materials and goods remain at the Sub-Contractor's risk and

responsibility until they are incorporated into the Project. The Sub-Contractor shall not have any right to exercise a lien over any of such materials or goods.

14.2 Where ownership has passed upon payment in accordance with clause 14.1 but the materials or goods have not been delivered to site, the Sub-Contractor shall:

14.2.1 store the materials or goods separately from all other materials or goods held by the Sub-Contractor so that they remain readily identifiable as Bellway's property;

14.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the goods or materials;

14.2.3 maintain the goods and materials in satisfactory condition and keep them insured against all risks for their full replacement costs from the date of payment;

14.2.4 notify Bellway immediately if the Sub-Contractor becomes Insolvent;

14.2.5 give Bellway such information relating to and/or access to inspect the goods and materials as Bellway may require from time to time; and

14.2.6 at Bellway's request execute a vesting deed and procure that the relevant Sub-Contractor's Persons enter into and execute a vesting deed in a form reasonably required by Bellway transferring ownership of the relevant materials or goods to Bellway.

14.3 All plant, equipment, materials and goods not for incorporation in the Sub-Contract Works brought on to Site by the Sub-Contractor shall be at the sole risk of the Sub-Contractor and the Sub-Contractor shall ensure that all such plant, equipment, materials and goods fully comply with and are operated, stored, used and transported in accordance with all Statutory Requirements and Requisite Consents.

14.4 Upon delivery of equipment, materials and goods to the Site the Sub-Contractor must provide details of such equipment, materials and goods delivered in the format set out in the Sub-Contract Order or if not set out in the Sub-Contract Order, then as reasonably required by Bellway.

14.5 The Sub-Contractor shall do everything necessary and everything required of it by Bellway to protect the Sub-Contract Works or a Section against any damage or theft or loss from whatever cause arising prior to Completion and shall make good all damage or loss however caused prior to Completion (or occupation of the relevant part of the Project, if earlier) and shall ensure that when carrying out such making good that it prevents any damage or loss to other existing work, buildings or structures on or around the Site and that provision is made for the support and protection of all existing structures and services situated in, on, under, around or adjacent to the Site in so far as they may be affected by the Sub-Contract Works.

14.6 The Sub-Contractor shall take all necessary steps to ensure that the carrying out of the Sub-Contract Works (or the remedying of any Defects) does not interfere with, damage or destroy (in whole or in part) any existing buildings, structures or services on, under or around the Site.

15. DRAWINGS/INFORMATION

15.1 Where required by Bellway the Sub-Contractor shall prior to Completion of the Sub-Contract Works or a Section provide as-built drawings/plans handbooks or manuals including if necessary or appropriate to the type of Sub-Contract Works operating manuals or handbooks (in duplicate and in the required electronic format) in terms intelligible to laymen for use by third party customers of Bellway and will further upon request supply copies of plans and designs and other technical information and specifications concerning the Sub-Contract Works including reasonable advice on maintenance problems but without waiver of Bellway's rights or the Sub-Contractor's obligations under the Sub-Contract.

15.2 Where the Sub-Contract Works involve compliance with any statutory or regulatory regime the Sub-Contractor shall supply any relevant or necessary certificate, written statement and supporting documents no later than five (5) days prior to Completion or immediately upon a request by Bellway whichever is the earlier or in compliance with any timescale required by

statute.

- 15.3 The Sub-Contractor will obtain and supply to Bellway manufacturers' guarantees in favour of or assignable to Bellway and all manuals, drawings and other information in respect of all items of plant and equipment and other proprietary products which comprise the Sub-Contract Works as may be reasonably requested by Bellway and which are necessary or desirable in connection with the operation and/or maintenance of the Sub-Contract Works.
- 15.4 Insofar as Bellway is obliged to provide the Sub-Contractor with any information relating to the Sub-Contract Works or the Project, the Sub-Contractor shall be responsible for making written requests to Bellway in good time for any information required by it of others and/or from Bellway so as not to delay or disrupt the regular progress or the timely completion of the Project. Failure to make such requests will preclude the Sub-Contractor from being entitled to bring a Claim to the extent that it is likely that had the Sub-Contractor requested information in accordance with this clause the circumstances giving rise to the Claim would not have occurred.
- 15.5 The Sub-Contractor shall provide Bellway with all necessary early warnings, applications, notices and any other communications in sufficient time and detail to enable Bellway to comply with any obligations it may have under any Superior Contract in relation to the provision of early warnings, applications, notices and any other communications.
- 15.6 The Sub-Contractor shall provide in good time so as not to delay or disrupt the Project all reasonable information to Bellway relating to the Sub-Contract Works that Bellway may require in order to set-out and commence any follow-on work after the Sub-Contract Works or any part of them have been completed or any other work that needs to be co-ordinated and integrated into or with the Sub-Contract Works.
- 15.7 The Sub-Contractor shall provide to Bellway immediately upon request, all necessary records to demonstrate that the Sub-Contractor has complied with all Statutory Requirements relevant to the Sub-Contract Works and any information that may be necessary in order to enable Bellway to obtain NHBC guarantee policies in relation to all residential housing units forming part of the Project insofar as such information relates to the carrying out and completion of the Sub-Contract Works or a Section.
- 15.8 If the Sub-Contract Works include the construction of sewers or drains or adoptable works, the Sub-Contractor must carry out and provide to Bellway a CCTV survey of all sewers and drains forming part of the Sub-Contract Works and as built drawings identifying the precise location and levels of all sewers, drains and manholes. The Sub-Contractor is deemed to have allowed for the cost of such survey and drawings within the Sub-Contract Sum.

16. COMPLETION

- 16.1 When the Sub-Contractor believes that the Sub-Contract Works or a Section thereof have achieved Completion and has completed its own inspection and testing procedure (at no cost to Bellway) the Sub-Contractor shall issue to the Authorised Representative a notice stating that such completion, inspection and testing has been undertaken in accordance with the requirements of the Sub-Contract. On Completion, the Sub-Contractor warrants that the Sub-Contract Works will comply with all the requirements of the Sub-Contract, all Statutory Requirements, Requisite Consents and all relevant requirements of the NHBC.
- 16.2 In the event the Sub-Contractor fails to comply with clause 16.1, if and in so far as Bellway has to undertake inspection or testing procedure, the cost to Bellway of such additional inspections and tests will be recoverable from the Sub-Contractor as a debt.
- 16.3 The Authorised Representative may inform the Sub-Contractor when in his/her reasonable opinion the Sub-Contract Works or a Section have achieved Completion. Such opinion shall not be binding on either Party to the Sub-Contract.
- 16.4 Unless expressly agreed otherwise in writing by the Authorised Representative, the Sub-Contractor shall be responsible for (and shall make due allowance in the Sub-Contract Sum for all associated costs and expenses) maintenance of the Sub-Contract Works for the duration of

the Rectification Period.

17. DEFECTS

- 17.1 During the Rectification Period any Defects whatsoever shall be rectified to Bellway's satisfaction promptly and entirely by the Sub-Contractor in accordance with the Defects Rectification Policy at the Sub-Contractor's cost and without prejudice to any other liability under the Sub-Contract. This provision for a Rectification Period is without prejudice to Bellway's rights or the Sub-Contractor's duties liabilities and responsibilities generally.
- 17.2 Without Prejudice to the terms of the Defects Rectification Policy Bellway may elect that in respect of Defects which in Bellway's reasonable opinion will individually cost less than two thousand pounds (£2000) each to rectify Bellway may itself remedy the Defect(s) in which case the cost of so doing will be paid or allowed by the Sub-Contractor to Bellway as a debt.
- 17.3 Without Prejudice to the terms of this clause, Bellway may elect not to have any or certain Defects rectified but instead to deduct from any sums otherwise due to the Sub-Contractor or claim from the Sub-Contractor as a debt a sum which Bellway reasonably considers to be what would otherwise have been the cost of rectifying the Defect.
- 17.4 The Sub-Contractor shall comply with Bellway's Defects Rectification Policy (a copy of which is available for inspection during business hours at Bellway's offices or on request).

18. DELAY AND EXTENSIONS OF TIME

- 18.1 If in the reasonable opinion of Bellway reasonable progress in the performance of the Sub-Contract Works or a Section is not being maintained by the Sub-Contractor Bellway may, upon written notice to the Sub-Contractor and without prejudice to its right of termination pursuant to clause 31, engage others to supplement the Sub-Contractor's labour on Site. The Sub-Contractor shall indemnify, save, defend and hold harmless Bellway in respect of any additional costs, consequences, claims, losses, expenses, damages, liabilities or proceedings accrued, suffered or incurred by Bellway as a consequence.
- 18.2 If the Completion is delayed and such delay has been caused by:
- 18.2.1 any impediment, prevention or default (whether by act or omission) by Bellway (except to the extent that it was caused or contributed to by any default, whether by act or omission, of the Sub-Contractor); and/or
- 18.2.2 any Variation properly instructed by Bellway and performed in accordance with the Sub-Contract

THEN, the Sub-Contractor shall submit a Claim in respect thereof to Bellway in accordance with clause 19 and Bellway shall within a reasonable time thereafter make in writing to the Sub-Contractor such extension or extensions (if any) to the Sub-Contract Period as may be fair and reasonable in all the circumstances and PROVIDED ALWAYS that the Sub-Contractor has constantly used its best endeavours to prevent any delay or further delay to the carrying out or completion of the Sub-Contract Works or a Section and provided further that the Sub-Contractor shall not become entitled to an extension of time to the extent that the delay event or circumstance has been caused or contributed to by any error, omission, negligence or default of the Sub-Contractor or anyone for whom it is responsible.

- 18.3 Bellway will reimburse any reasonably foreseeable and fully mitigated costs and losses that the Sub-Contractor has incurred or suffered as a direct consequence of a breach of Bellway's obligations under the Sub-Contract PROVIDED ALWAYS that the Sub-Contractor shall submit a Claim in respect thereof in accordance with clause 19.
- 18.4 If the Sub-Contractor fails to achieve Completion within the Sub-Contract Period or by a date set in the Sub-Contract Order for a Section to be completed he shall pay or allow to Bellway Liquidated Damages or a sum equivalent to any and all costs, losses, damages, expenses accrued, suffered or incurred by Bellway and caused by such failure and such sum may be

deducted from amounts otherwise due to the Sub-Contractor and/or Bellway may claim such costs, losses, damages and expenses from the Sub-Contractor as a debt. The Sub-Contractor hereby acknowledges that the Liquidated Damages are reasonably foreseeable and within the reasonable contemplation of the parties at the time the Sub-Contract is entered into (including but not limited to liquidated damages that Bellway may be liable to pay or may otherwise incur arising out of, attributable to or in connection with the Sub-Contractor's failure to achieve Completion within the Sub-Contract Period or by the date set for completion of a Section).

- 18.5 Where it appears (in the reasonable opinion of the Authorised Representative) that the Sub-Contractor will not achieve Completion within the Sub-Contract Period or the rate of progress of the Sub-Contract Works or a Section is at any time too slow Bellway may instruct the Sub-Contractor to accelerate or expedite the carrying out and completion of the Sub-Contract Works or a Section by (without limitation) using additional or substitute plant, equipment and/or labour in order that the Sub-Contract Works will be completed within the Sub-Contract Period and the Sub-Contractor shall comply with such instruction. The Sub-Contractor shall only be entitled to claim any additional payment or adjustment to the Sub-Contract Sum if and to the extent that such acceleration is not due to the Sub-Contractor's breach of the Sub-Contract and the Sub-Contract Sum shall be adjusted only by an amount equal to the Sub-Contractor's costs properly and necessarily incurred by the Sub-Contractor in respect of such acceleration.

19. SUB-CONTRACTOR CLAIMS

- 19.1 Notwithstanding any other provision of the Sub-Contract, any Claim must be notified by the Sub-Contractor in writing and received by Bellway not later than ten (10) Working Days after the event first occurring which gives rise to the Claim.
- 19.2 Each Claim shall be properly documented with appropriate references to the contractual provisions on which the Sub-Contractor relies, together with copies of all relevant correspondence and documentation. Compliance with the requirements of clauses 19.1 and 19.2 shall be a CONDITION PRECEDENT to any right on the part of the Sub-Contractor to be granted or obligation on the part of Bellway to grant any extension of time and/or to any right on the part of the Sub-Contractor to be paid or obligation on the part of Bellway to pay any additional payments pursuant to or arising out of or in connection with the Sub-Contract. If the Sub-Contractor fails to comply with these requirements, then it irrevocably waives its right, both under the Sub-Contract and at common law, in equity and/or pursuant to statute to any such entitlement to any extension of time or to additional payment.
- 19.3 The Sub-Contractor's rights to make a Claim shall be its exclusive and exhaustive right and remedy available to it in respect of all matters under, arising out of or in connection with the Sub-Contract, whether such rights and remedies arise in respect of or in consequence of a breach of contract or breach of statutory duty or a tortious or negligent act or omission which gives rise to a remedy at common law. Any other rights and remedies that the Sub-Contractor may otherwise have had at law are excluded to the fullest extent permitted by law.
- 19.4 Provided the Sub-Contractor submits a Claim in accordance with clause 19.1 and 19.2, it will be reviewed by Bellway within a reasonable time after having received the information referred to in clause 19.2 and Bellway will then notify the Sub-Contractor of its decision.

20. INSTRUCTIONS

- 20.1 The Sub-Contractor shall comply with all decisions, instructions and directions given to it by Bellway. If the Sub-Contractor shall fail to comply within seven (7) days of receipt of such written instruction then Bellway may issue a written notice of failure to the Sub-Contractor. Failure by the Sub-Contractor to comply with that written notice within a further seven (7) days will enable Bellway to employ others to carry out the instruction whereupon all extra costs and losses and all damages accrued, suffered or incurred by Bellway as a result of the employment of others to carry out the instruction shall be paid or allowed to Bellway by the Sub-Contractor as a debt.
- 20.2 The Sub-Contractor acknowledges and agrees that Bellway may, from time to time, during the carrying out of the Sub-Contract Works, issue programmes to the Sub-Contractor relating to the carrying out of the Sub-Contract Works and the issue of any such programme to the Sub-

Contractor shall not of itself constitute grounds giving rise to a Claim and/or to a Variation pursuant to the Sub-Contract.

21. VARIATIONS & DAYWORKS

- 21.1 Bellway may require a Variation without vitiating the Sub-Contract.
- 21.2 No Variation shall be carried out by the Sub-Contractor or paid for by Bellway unless the subject of an instruction in writing by the relevant Bellway authorised person (as set out in the Appendix) requiring such Variation or, if not set out in the Appendix, then by the Authorised Representative.
- 21.3 Variations shall be valued by agreement between Bellway and the Sub-Contractor or, if they fail to agree, in accordance with the rates and prices in the Sub-Contract Documents or (if no applicable rates and prices exist) such prices as shall be fair and reasonable in the circumstances.
- 21.4 Unless first agreed in principle in advance and in writing by the Authorised Representative no claims for overtime unsociable working hours and/or acceleration or deceleration costs will be considered.
- 21.5 Any dayworks applications submitted by the Sub-Contractor for signature must be submitted on a work record sheet. The work record sheet must be signed by the Authorised Representative and such sheet is only a record of such work and shall not represent a concession of liability to pay for the work or the charges thereon. Dayworks claims shall be completely disregarded if submitted more than ten (10) Working Days from the occurrence of such work or if submitted on anything other than a works record sheet signed by anyone other than the Authorised Representative.
- 21.6 In the event a Variation results in any works being omitted from the Sub-Contract Works (including but not limited to work against which there is a provisional sum), Bellway shall deduct an appropriate sum from the Sub-Contract Sum in accordance with clause 21.3 and shall be entitled to engage another contractor to carry out and complete such omitted work without terminating the Sub-Contractor's engagement under the Sub-Contract. Bellway shall not be liable to the Sub-Contractor for any costs, losses, damages or expenses accrued, suffered or incurred by the Sub-Contractor arising from such omission. The act of giving work to a third party or instructing a third party to carry out or complete such work shall not be treated or construed as a breach of contract by Bellway.

22. PROVISIONAL SUMS

- 22.1 The net value annexed to the provisional items and also the full amount of the provisional lump sums inserted in any bills of quantities or other documents that form part of the Sub-Contract will be deducted from the Sub-Contract Sum and the value of the work executed under such items shall be valued in accordance with clause 21.3 and the amounts so fixed shall be added to the Sub-Contract Sum. Any work identified as provisional shall only be carried out following receipt by the Sub-Contractor of an instruction in writing from Bellway PROVIDED ALWAYS that notwithstanding any other provision of the Sub-Contract, unless Bellway specifically states otherwise in writing signed by the Authorised Representative, any direction issued by Bellway to the Sub-Contractor relating to provisional sum items shall not entitle the Sub-Contractor to any Claim for an extension of time in which to achieve Completion.

23. PAYMENT

- 23.1 Bellway will pay to the Sub-Contractor the Sub-Contract Sum or such other sum or sums as shall become payable pursuant to the Conditions at the times and in the manner specified in the Conditions.
- 23.2 The Sub-Contractor shall apply in writing for an interim payment on account of the Sub-Contract Sum in respect of that element of the Sub-Contract Works properly carried out during any Valuation Period. The value of the work done shall be calculated in accordance with the rates and

prices (if any) specified in the Sub-Contract or if there are no such rates and prices then as may be fair and reasonable in the circumstances. Unless otherwise agreed in writing by the Authorised Representative, the Sub-Contractor shall not be entitled to include in any application for payment the value of any goods or materials on or off Site unless such goods and materials have been fully fixed and incorporated into the Project.

- 23.3 In the event that it is stated in the Sub-Contract Order that the Sub-Contract Works are to be carried out and paid for in Stages as identified in the Appendix (or, if not in the Appendix, then in the Sub-Contract Documents) then instead of the provisions of clause 23.2 applying the Sub-Contractor shall apply in writing for an interim payment on account of the Sub-Contract Sum in respect of the Stage of the Sub-Contract Works completed during any Valuation Period.
- 23.4 Any application for payment must be received by Bellway no earlier than the end of the Valuation Period and no later than seven (7) days after the end of the Valuation Period in which the work was carried out and/or completed. Only one application for payment may be made in any one calendar month. If the Sub-Contractor fails to comply with the terms of this clause it shall apply for payment following the end of the next Valuation Period and, in the meantime, no payment will be due for the Valuation Period in respect of which the Sub-Contractor failed to make an application.
- 23.5 Each such application for payment shall include an invoice together with such supporting information as is necessary to enable Bellway to ascertain the interim value of the Sub-Contract Works properly carried out during the relevant Valuation Period and to obtain payment from any third party and sufficient evidence to satisfy Bellway that the Sub-Contractor owns good title to any materials or goods for which a request for payment is included in any application for payment together with evidence (if requested by Bellway) that the Sub-Contractor has paid its suppliers and sub-contractors in respect of any work, goods or materials the value of which has been included in the Sub-Contractor's previous applications for payment or any payments previously made to the Sub-Contractor. The invoice and supporting information shall specify the sum that the Sub-Contractor considers will become due on the payment due date in respect of the payment and the basis upon which that sum is calculated.
- 23.6 The due date for payment of any amount due to the Sub-Contractor pursuant to this clause shall be the twenty-first (21st) day of the month (or the nearest Working Day thereafter) in which Bellway receives the relevant and valid application for payment.

24. RETENTION

- 24.1 Prior to Completion and the provision by the Sub-Contractor of all information and documents specified in clause 15 reasonably required by Bellway, Bellway may withhold the Retention from each amount otherwise due to the Sub-Contractor. The Sub-Contractor shall be entitled to apply for the release of half of the Retention once the Sub-Contract Works have achieved Completion and the Sub-Contractor has provided Bellway with all the documents and information required by clause 15.
- 24.2 After Completion, but prior to all Defects notified during the Rectification Period having been rectified, Bellway may withhold half the Retention from each amount otherwise due to the Sub-Contractor. The Sub-Contractor shall be entitled to apply for the release of the balance of the Retention not yet released (subject to Bellway's right of set-off, deduction or withholding) once all of the following events have occurred:
- 24.2.1 the Sub-Contract Works have achieved Completion;
- 24.2.2 the Sub-Contractor has provided Bellway with all the documents and information required by clause 15; and
- 24.2.3 all Defects notified during the Rectification Period have been rectified.
- 24.3 Without prejudice to clauses 24.1 and 24.2, Bellway may retain the relevant part of the Retention until the Sub-Contractor applies for it in writing in such form as Bellway reasonably requires (and such application shall include a valid VAT invoice).

- 24.4 Bellway shall not be under any fiduciary obligation with regard to the Retention and shall not be under any obligation to set aside in a separate account any amount representing the Retention. The position of the Sub-Contractor in relation to the Retention shall be of a normal unsecured creditor.
- 24.5 If, six (6) years after the date of Completion or, if earlier, six (6) years after the date of termination of the Sub-Contractor's engagement under the Sub-Contract, the Sub-Contractor has not applied in writing for the release of the Retention or any part of it pursuant to clause 24, then the Sub-Contractor waives any and all entitlement to the Retention not yet released and the Sub-Contract Sum shall be reduced by an amount equating to the amount of Retention not yet released.
- 24.6 No action or proceedings under or in connection with the Sub-Contract whether in contract or in tort or delict or in negligence or for breach of statutory duty or otherwise may be issued, commenced or served by the Sub-Contractor against Bellway after the expiry of six (6) years after the date of Completion or, if earlier, six (6) years after the date of termination of the Sub-Contractor's engagement under the Sub-Contract. Nothing in this clause shall affect or reduce the nature, extent or duration of the Sub-Contractor's liability to Bellway relating to Defects.

25. FINAL ACCOUNT

- 25.1 Not later than one (1) month after Completion or, if earlier, one (1) month after termination of the Sub-Contractor's engagement under the Sub-Contract, the Sub-Contractor shall submit its final account (the '**Final Account Application**') to Bellway together with all appropriate supporting documentation to justify any change or adjustment to the Sub-Contract Sum (if applicable). To the extent not already provided, the Sub-Contractor must supply to Bellway all information and documents required under clause 15. The Sub-Contractor's Final Account Application shall clearly set out the Sub-Contract Sum and any adjustments in respect of and arising out of carrying out and completing the Sub-Contract Works together with the sum of all amounts previously paid by Bellway. The Final Account Application shall specify the amount the Sub-Contractor considers shall be finally due under or in connection with the Sub-Contract and the basis upon which that sum is calculated.
- 25.2 Bellway shall consider the information and documentation provided by the Sub-Contractor under clause 25.1 and, whether or not the Sub-Contractor has provided its Final Account Application to Bellway, Bellway may at any time after Completion calculate and present to the Sub-Contractor the final account (the '**Final Account**') notifying the Sub-Contractor of the sum that Bellway considers is due and the basis upon which that sum is calculated. The difference if any between the adjusted Sub-Contract Sum and the sum of the amounts previously paid shall be expressed as a balance due (the '**Final Amount Due**') to the Sub-Contractor from Bellway or to Bellway from the Sub-Contractor as the case may be.
- 25.3 Payment of the Final Amount Due shall become due on the date Bellway receives the Sub-Contractor's Final Account Application (or the nearest Working Day thereafter) or the date Bellway issued the Final Account to the Sub-Contractor (or the nearest Working Day thereafter), whichever is the earlier.
- 25.4 The computation and payment of the Final Amount Due in accordance with clause 25.2 shall not be conclusive evidence that the design, materials, goods or workmanship carried out by the Sub-Contractor comply with the requirements or terms of the Sub-Contract.
- 25.5 The Sub-Contractor hereby acknowledges that any of the following shall be conclusive evidence (except in the event of fraud) as to all sums due or to become due to the Sub-Contractor in connection with the Sub-Contract:
- 25.5.1 the signing of the Final Account by an authorised signatory of the Sub-Contractor; or
- 25.5.2 if the Sub-Contractor fails to notify Bellway in writing that it disputes (giving grounds) the Final Account or Bellway's Pay Less Notice within two (2) months after the due date for payment of the Final Amount Due, then the amount stated in the Final Account or Bellway's Pay Less Notice shall be final

AND the Sub-Contractor shall have no further or other claim in connection with the Sub-Contract.

25.6 For the avoidance of doubt, the agreement, settlement or signing by Bellway of the Final Account shall not relieve, reduce or limit the Sub-Contractor of its obligations under clause 15 of the Sub-Contract.

26. FINAL DATES FOR PAYMENT

26.1 Bellway shall give notice to the Sub-Contractor specifying the amount (if any) which Bellway considers to have been due at any payment due date and the basis on which that amount was calculated not later than five (5) days after the date on which any payment becomes due from Bellway or would have become due if the Sub-Contractor had carried out its obligations pursuant to the Conditions and no set off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts.

26.2 To the extent that for whatever reason Bellway considers that the Sub-Contractor has been overpaid during the course of the Sub-Contract Works the amount to be specified in the notice issued by Bellway under clause 26.1 may be adjusted to take into account such overpayment and for the avoidance of doubt the amount so specified can be a negative sum which negative amount shall be a debt due from the Sub-Contractor to Bellway.

26.3 The final date for payment of any amount due to the Sub-Contractor under clause 23 shall be thirty (30) days after the date of receipt of the Sub-Contractor's application for payment. The final date for payment of the Final Amount Due shall be thirty (30) days after the due date as provided for in clause 25.3.

26.4 Subject to clause 26.7 and unless Bellway has served a notice under clause 26.5, Bellway shall pay to the Sub-Contractor the sum referred to in the notice given by Bellway under clause 26.1 (or, if Bellway has not served notice under clause 26.1, the sum referred to in the application for payment referred to in clauses 23.2 or 23.3 or 25.1 whichever applies) (in this clause 26, the 'Notified Sum') on or before the final date for payment of each application for payment.

26.5 Not later than on the third day before any final date for payment (the '**Prescribed Period**'), Bellway may give the Sub-Contractor notice (a '**Pay Less Notice**') that it intends to pay less than the Notified Sum. Any Pay Less Notice shall specify:

26.5.1 the sum that Bellway considers to be due on the date the notice is served; and

26.5.2 the basis on which that sum is calculated.

26.6 If Bellway 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 26.5, simple interest at the Interest Rate shall be added to the unpaid sum from the final date for payment until the actual date of payment. The Parties acknowledge that the liability of Bellway under this clause 26.6 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

26.7 Bellway may deduct from any payment due under the Sub-Contract the amount of any bona fide claims set-off or counterclaim by Bellway against the Sub-Contractor under the Sub-Contract or any other contract or agreement Bellway has entered into with the Sub-Contractor (whether before or after the date of the Sub-Contract) after giving the Sub-Contractor a notice stating its intention to do so.

26.8 Notwithstanding any other provision of the Sub-Contract, if the Sub-Contractor becomes Insolvent after the Prescribed Period, Bellway shall not be required to pay the Sub-Contractor the Notified Sum on or before the final date for payment.

26.9 For the avoidance of doubt, Bellway shall be entitled to recover from the Sub-Contractor any overpayments made at any time. All interim payments made to the Sub-Contractor shall be payments on account only of sums due under the Sub-Contract.

27. THE PROMPT PAYMENT CODE

27.1 Bellway hereby confirms to the Sub-Contractor that it is a signatory to the Prompt Payment Code ("PPC") (as published by the Institute of Credit Management from time to time).

27.2 Bellway and the Sub-Contractor agree that the Sub-Contract (and all pre-contract discussions and negotiations) comply with the provisions and spirit of the PPC and the Sub-Contractor shall as far as is reasonably practicable in the event where they themselves are not a signatory to the PPC ensure that when engaging any sub-contractor, supplier or sub-consultant they shall also comply with the provisions and spirit of the PPC so as to develop a culture of best and prompt payment practice.

28. ASSIGNMENT/SUB-LETTING

28.1 The Sub-Contractor shall not:

28.1.1 assign the Sub-Contract or any part of it or rights or obligations under it without the prior written consent of the Authorised Representative.

28.1.2 sub-let the Sub-Contract Works or any part of them or its rights or obligations under the Sub-Contract to any sub-contractors or suppliers that are not listed in the Mandatory Group Deals (a copy of which is available upon request) without the prior written consent of the Authorised Representative, such consent not to be unreasonably withheld or delayed.

28.2 Notwithstanding whether or not Bellway permits the Sub-Contractor to sub-let any part or all of the Sub-Contract Works, the Sub-Contractor will remain responsible and liable for all the design, works, obligations and duties it sub-lets to a third party as if the Sub-Contractor had performed such design, works, obligations and duties itself. Any sub-letting of part or all of the Sub-Contract Works, whether or not Bellway has given its consent, shall not in any way relieve the Sub-Contractor from or reduce any of its obligations, duties and liabilities arising from or in connection with the Sub-Contract.

28.3 Bellway may assign the benefit of or any of its rights under the Sub-Contract to any person by way of absolute legal assignment on not more than two (2) occasions, provided that any assignment (whether by legal assignment, equitable assignment, charge or otherwise and including re-assignments) to and from any Group Company or any third party providing finance in connection with the Project or the Site or any part of it will not count towards the number of assignments permitted without consent under this clause 28.3. No further or other assignment is permitted without the Sub-Contractor's prior written consent, such consent not to be unreasonably withheld or delayed.

28.4 The Sub-Contractor shall not be entitled to contend that any person to whom the benefit of the Sub-Contract is assigned in accordance with this clause is precluded from recovering under the Sub-Contract any loss incurred by such assignee resulting from any breach of the Sub-Contract (whenever happening), by reason that such person is an assignee and not a named party under the Sub-Contract or by reason that Bellway or any intermediate assignee or party escaped any loss by reason of the disposal of any interest in the Site or the Project or any part of them or that Bellway or any intermediate beneficiary has not suffered any or as much loss as such assignee.

29. THIRD PARTY RIGHTS/COLLATERAL WARRANTIES

29.1 The Sub-Contractor shall execute and deliver to Bellway no later than fourteen (14) days after the date of receipt of a request from Bellway to do so a deed or deeds of collateral warranty in the form described in or attached or referred to in the Sub-Contract Order or in such other terms reasonably required by Bellway in favour of any one or more Third Party Beneficiary.

29.2 If the Sub-Contractor fails to execute and deliver any such deed or deeds pursuant to clause 29.1 above within fourteen (14) days after the date of receipt of Bellway's request to do so, then an amount equivalent to ten per cent (10%) of the Sub-Contract Sum may be withheld from the Sub-Contractor by Bellway until such time as the deed or deeds of collateral warranty are executed and delivered to Bellway.

- 29.3 The obligations and duties imposed on the Sub-Contractor and the rights and remedies vested in Bellway in connection with the Sub-Contract shall be enforceable by and shall (in addition) vest in any Third Party Beneficiary pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 29.4 In any proceedings brought by any Third Party Beneficiary, the Sub-Contractor shall not be entitled to rely on:
- 29.4.1 any set-off with respect to its remuneration under the Sub-Contract;
 - 29.4.2 any counterclaim which would have been available to the Sub-Contractor if such proceedings had been brought by Bellway; or
 - 29.4.3 any set-off or counterclaim relating to any matter not connected to the Sub-Contract Works.
- 29.5 Subject always (and if applicable) to the parties complying with the termination and variation provisions of these Conditions, Bellway and the Sub-Contractor shall be entitled to agree any amendment, variation, waiver or release under or arising from or in respect of the Sub-Contract, and to terminate the Sub-Contractor's engagement under the Sub-Contract or otherwise bring the Sub-Contract to an end without the consent of any Third Party Beneficiary being required.

30. PARENT COMPANY GUARANTEE, BOND, CREDIT REFERENCES

- 30.1 The Sub-Contractor shall deliver to Bellway no later than fourteen (14) days after the date of receipt of a request from Bellway to do so a guarantee of the Sub-Contractor's duties and obligations under the Sub-Contract in the form described in or attached to the Sub-Contract Order or in terms reasonably required by Bellway executed as a deed and delivered by the Sub-Contractor's ultimate parent company. Up to an amount equivalent to ten per cent (10%) of the Sub-Contract Sum may be withheld from the Sub-Contractor by Bellway until such time as the guarantee is executed and delivered to Bellway.
- 30.2 The Sub-Contractor shall deliver to Bellway no later than fourteen (14) days after the date of receipt of a request from Bellway to do so a performance bond in the form described in or attached to the Sub-Contract Order or in terms reasonably required by Bellway executed as a deed and delivered by a bondsman, the identity of which is also subject to Bellway's prior written consent. Up to an amount equivalent to ten per cent (10%) of the Sub-Contract Sum may be withheld from the Sub-Contractor by Bellway until such time as the bond is executed and delivered to Bellway.
- 30.3 The Sub-Contractor shall deliver to Bellway no later than fourteen (14) days after the date of receipt of a request from Bellway to do so a credit reference from a reputable credit agency or a bank and a copy of the Sub-Contractor's latest management accounts.

31. TERMINATION

- 31.1 Bellway may instruct the Sub-Contractor to suspend performance of the Sub-Contract Works at any time and for any reason on reasonable notice.
- 31.2 Bellway may terminate the Sub-Contractor's engagement under the Sub-Contract at any time and for any reason by giving to the Sub-Contractor not less than seven (7) days' prior written notice. Unless otherwise notified by Bellway on the expiry of such notice period the Sub-Contractor's engagement under the Sub-Contract will terminate automatically.
- 31.3 Without prejudice to Bellway's rights under clause 31.2, if any one or more of the following occurs then Bellway may give written notice to the Sub-Contractor to terminate the Sub-Contractor's engagement under the Sub-Contract and such termination shall take effect from the date of receipt by the Sub-Contractor of such notice:
- 31.3.1 any Material Breach by the Sub-Contractor of the terms of the Sub-Contract; or
 - 31.3.2 a breach by the Sub-Contractor of the terms of any of clauses 38, 39; or 40; or
 - 31.3.3 the Sub-Contractor fails to proceed regularly and diligently with the Sub-Contract Works

or in accordance with Bellway's direction; or

- 31.3.4 the Sub-Contractor refuses or fails to repair, replace or reinstate any defective work, plant, materials or equipment; or
 - 31.3.5 the Sub-Contractor fails to comply with any Statutory Requirements or Requisite Consents; or
 - 31.3.6 any act or threat of violence or dishonesty or criminal damage by the Sub-Contractor or the Sub-Contractor's Persons relating to the Sub-Contract Works or Project or Site; or
 - 31.3.7 the Sub-Contractor is or is likely to become (in Bellway's reasonable opinion) Insolvent.
- 31.4 Upon termination of the Sub-Contractor's engagement under the Sub-Contract Bellway shall (save as set out in clause 31.5) pay to the Sub-Contractor:
- 31.4.1 any instalments of the Sub-Contract Sum and other sums which have become due to the Sub-Contractor prior to the date of such termination and which remain unpaid;
 - 31.4.2 a fair and reasonable proportion of the next following instalment of the Sub-Contract Sum commensurate with the Sub-Contract Works which the Sub-Contractor has performed up to the date of such termination; and
 - 31.4.3 (save where termination is under clause 31.3) the Cancellation Payment.
- 31.5 Bellway shall 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 clauses 31.2 or 31.3 (and shall not be liable to pay compensation for any loss of profit, loss of contract or loss of opportunity) and where termination was under clause 31.3 Bellway shall not be obliged to make any further payment to the Sub-Contractor in such circumstances until completion of the Project or Bellway decides that it does not intend to complete the Project, whichever is the earlier. On termination under clause 31.3, the Sub-Contractor shall be liable to Bellway for all costs, losses, damages, claims and expenses which Bellway accrues, suffers or incurs arising from or in connection with such termination.
- 31.6 The due date for payments to the Sub-Contractor on termination under clause 31.2 shall be the later of the date of termination and the date of receipt by Bellway of the Sub-Contractor's relevant and properly prepared VAT invoice showing the correct amount of VAT due. The final date for payment shall be thirty (30) days after the due date.
- 31.7 The due date for payments to the Sub-Contractor on termination under clause 31.3 shall be thirty (30) days after completion of the Project or Bellway notifies the Sub-Contractor that it has decided that it does not intend to complete the Project, whichever is the earlier. The final date for payment shall be thirty (30) days after the due date.
- 31.8 If Bellway purports to terminate the Sub-Contractor's engagement under clause 31.3, but no ground for termination under clause 31.3 has arisen, or any ground that had arisen had been waived by Bellway, then Bellway shall be deemed to have decided to terminate and to have terminated the Sub-Contractor's engagement under the Sub-Contract under clause 31.2 with the termination having taken effect seven (7) days after the giving of the notice under clause 31.3.

32. CONSEQUENCES OF TERMINATION

- 32.1 Termination of the Sub-Contractor's engagement under the Sub-Contract shall not affect the accrued rights and remedies available to either Party as at the date of such termination. The Sub-Contractor's obligations shall survive termination of the Sub-Contractor's engagement under the Sub-Contract or in the event the Sub-Contract is brought to an end for any reason except for the obligation to carry out any further works after the date of such termination.
- 32.2 On termination of the Sub-Contractor's engagement under the Sub-Contract for the purposes of completion of the Sub-Contract Works, Bellway shall have the unrestricted use of the Sub-Contractor's materials, plant and equipment on Site without responsibility to the Sub-Contractor

for fair wear and tear and subject to re-imbursing the Sub-Contractor's actual costs arising from the use of such materials, plant or equipment, use any of the materials, plant, equipment or fabricated work on Site or at the Sub-Contractor's premises which have been bought or fabricated for the purpose of the Sub-Contract. In addition or alternatively, Bellway shall be entitled to take possession of the Sub-Contractor's plant and equipment and sell part or all of it to satisfy and discharge any amounts owed by or claimed from the Sub-Contractor.

32.3 If required by Bellway, the Sub-Contractor shall:

32.3.1 assign to Bellway without charge the benefit of any agreement for the supply of materials, plant or products and shall execute (and procure that any of its suppliers or sub-contractors execute) without delay all such deeds or documents which may reasonably be required by Bellway in order to effect any such assignment; and

32.3.2 immediately remove all plant, labour, equipment, materials, goods and other items for which the Sub-Contractor (including the Sub-Contractor's Persons) is responsible from the Site. If the Sub-Contractor fails to comply with this clause, Bellway shall be entitled to store, transport and/or dispose of any such items and recover the cost and associated expenses of doing so from the Sub-Contractor as a debt or, at its discretion, use the items on another site and the Sub-Contractor shall not be entitled to any additional payment for such use.

33. EMPLOYMENT STATUS

33.1 For the avoidance of doubt, nothing in the Sub-Contract or in any Sub-Contract to which the Sub-Contract applies shall be construed as at any time establishing the Sub-Contractor or any servant, agent or employee of the Sub-Contractor as the servant agent or employee of Bellway.

33.2 For the avoidance of doubt nothing in the Sub-Contract shall be construed at any time as making the Sub-Contractor or any servant, agent or employee of the Sub-Contractor a "worker" for or of Bellway as defined in Regulation 2 (1) of the Working Time Regulations 1998 (as may be amended, modified or re-enacted from time to time).

33.3 Nothing in the Sub-Contract or in any sub-contract between Bellway and the Sub-Contractor shall be deemed to constitute either Party as the agent of the other Party or authorise any Party to:

33.3.1 incur any expense on behalf of the other Party;

33.3.2 enter into any engagement or make any representation on behalf of the other Party;

33.3.3 pledge the credit of or otherwise bind the other Party to a third party or the other Party in any way whatsoever without in each case the other Party's prior written consent.

33.4 The Sub-Contractor shall ensure that any eligible employees or other persons engaged to work by the Sub-Contractor in connection with the Sub-Contract Works are paid at a rate equal to or exceeding the National Minimum Wage in force from time to time during the term of the Sub-Contract Works.

33.5 The Sub-Contractor warrants that all the Sub-Contractor's Persons have eligibility to live and work in the United Kingdom. The Sub-Contractor shall comply (and procure that all the Sub-Contractor's Persons comply), in all respects with their obligations under the Immigration, Asylum and Nationality Act 2006 in respect of each of the Sub-Contractor's Persons. At all times, the Sub-Contractor shall keep up to date, adequate and suitable records in relation to the Sub-Contractor's Persons as required by law and in compliance and in accordance with this clause. The Sub-Contractor shall provide Bellway with such information as Bellway may from time to time reasonably require in order to verify such compliance.

33.6 The Sub-Contractor shall immediately notify Bellway if it or any of the Sub-Contractor's Persons is subject to any penalties or enforcement activity under the Immigration, Asylum and Nationality Act 2006 in respect of any of the Sub-Contractor's Persons and/or any enforcement activity and/or compliance or closure notices under the Immigration Act 2016. Any of the Sub-Contractor's

Persons in respect of whom the penalty or enforcement activity relates shall be immediately removed from the Site, Sub-Contract Works and/or the Project.

- 33.7 The Sub-Contractor shall indemnify, save, defend and hold harmless Bellway and keep it so indemnified at all times from and against liability for:
- 33.7.1 any income tax, national insurance contributions (including secondary contributions to the extent permitted by law (including any interest, penalties or gross-up thereon)) arising in respect of the Sub-Contractor's Persons for which Bellway is called upon to account to the relevant taxing authority;
 - 33.7.2 any liability for any employment related claim or any claim based on worker status brought by the Sub-Contractor or the Sub-Contractor's Persons arising out of or in connection with the provision of the Sub-Contract Works;
 - 33.7.3 any claims that may arise under or pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
 - 33.7.4 any liability under Sections 15-25 of the Immigration, Asylum and Nationality Act 2006 and the Immigration Act 2016 which shall include but not be limited to any liability for any penalties, losses arising from cessation of Sub-Contract Works or Project and/or closure of the Site or any part of it, legal costs and claims arising; and
 - 33.7.5 unpaid wages, national insurance contributions, graduated or auto-enrolment pension contributions, pay as you earn, holiday pay, construction industry training levy, travelling expenses and all the payments required by law for the proper execution of the Sub-Contract Works.

34. SEVERANCE

- 34.1 If any term or condition of the Conditions is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable by law it shall be severed and deemed to be deleted from the Conditions and the validity and enforceability of the remainder of the Conditions shall not be affected or impaired in any way and shall remain in full force and effect. If any provision of the Conditions is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply as if with such modification as may be necessary to make it valid.

35. CONFIDENTIALITY AND PUBLICITY

- 35.1 In this clause, '**Confidential Information**' means all information (written or oral) or documents (however recorded or preserved) disclosed or made available by or which the Sub-Contractor obtains from or receives (directly or indirectly) from Bellway or its contractors, consultants, employees, servants, agents or advisers in connection with the Project or the Site or any part of them or as a result of the discussions leading up to or the entering into or performance of the Sub-Contractor's obligations and duties in connection with the Sub-Contract including but not limited to:

- 35.1.1 the existence and terms of the Sub-Contract;
- 35.1.2 any information that would be regarded as confidential by a reasonable business person relating to:
 - (a) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of Bellway or of any Group Company, and
 - (b) the operations, processes, product information, know-how, designs, trade secrets or software of Bellway; and

- 35.1.3 any information or analysis derived from the Confidential Information,

BUT not any information that:

- 35.1.4 was already lawfully known, or became lawfully known to the Sub-Contractor independently; or
 - 35.1.5 is in or comes into the public domain other than due to wrongful use or disclosure by the relevant Party.
- 35.2 The Sub-Contractor shall treat as confidential any and all Confidential Information and must not copy, use, reproduce or exploit the Confidential Information in any way whatsoever except as may be required and necessary for the proper performance of the Sub-Contractor's obligations and duties under the Sub-Contract. Except as expressly permitted under clause 35.3, the Sub-Contractor must not disclose any such Confidential Information to any third party without Bellway's prior written consent.
- 35.3 The Sub-Contractor shall be entitled to disclose Confidential Information:
- 35.3.1 as may be required and necessary for the proper performance of its obligations and duties under the Sub-Contract; or
 - 35.3.2 in order to seek professional advice from its accountants, auditors, insurers, insurance brokers or solicitors in relation to its rights and obligations under the Sub-Contract; or
 - 35.3.3 as may be required by law, by any governmental or other regulatory authority or any award or order of any competent tribunal having jurisdiction under the Sub-Contract provided that, to the extent it is legally permitted to do so, the Sub-Contractor gives Bellway as much advanced written notice of such required disclosure as is reasonably practicable in the given circumstances; or
 - 35.3.4 is or becomes generally available to the public (other than as a result of its disclosure by the Sub-Contractor or any of the Sub-Contractor's Persons in breach of these Conditions).
- 35.4 The Sub-Contractor will apply the same security measures and degree of care to the Confidential Information as the Sub-Contractor applies to its own confidential information, which the Sub-Contractor warrants as providing adequate protection from unauthorised disclosure, copying or use.
- 35.5 The Sub-Contractor will take all practicable steps to see that the Sub-Contractor's Persons are bound by similar confidentiality obligations and publicity restrictions as stated in this clause 35.
- 35.6 Following receipt of a request to do so from Bellway, the Sub-Contractor shall promptly:
- 35.6.1 destroy or return to Bellway any or all documents and materials (in hard and/or electronic format, together with any copies) containing, reflecting, incorporating, or based on the Confidential Information;
 - 35.6.2 erase all or specified classes, categories or parts of the Confidential Information from its computer systems; and
 - 35.6.3 certify in writing to Bellway that it has complied with the requirements of this clause.
- The provisions of this clause 35 shall continue to apply to any such documents and materials retained by the Sub-Contractor for the duration of its obligations, duties and liabilities in connection with the Sub-Contract.
- 35.7 The Sub-Contractor shall not without Bellway's prior written consent:
- 35.7.1 take or permit to be taken any photographs of the Sub-Contract Works, Project or the Site or any part of them for use in publicity or advertising; or
 - 35.7.2 publish alone or in conjunction with any other person or permit to be published by any other person any articles, photographs, videos or other illustrations relating to the Sub-Contract Works or Project or the Site or any part of them or the subject matter of the Sub-

Contract; or

- 35.7.3 provide or permit to be provided to any publication, journal or newspaper or any radio or television programme or internet site or social media any information in relation to the Sub-Contract Works or Site or Project or any part thereof or copy, use or reproduce any Bellway logo or images or associated assets, such as uniform or signage.
- 35.8 Bellway may monitor all references to Bellway that are in the public domain, including but not limited to any reference to Bellway in any social media, blogs, forums, on Twitter, Linked-in and Facebook posts. The Sub-Contractor shall ensure that it does not and shall procure that the Sub-Contractor's Persons do not make (whether direct or indirect and whether alone or in conjunction with anyone else) any adverse or negative comments, observations or remarks (including, but not limited to, anything which could bring Bellway, its business or personnel into disrepute or damage reputation or in any way defame or disparage Bellway, its customers, employees, suppliers or other stakeholders or which could constitute discrimination, bullying, harassment or victimisation of Bellway's employees or other third parties) about Bellway or any element of its business or personnel in any social media. The Sub-Contractor shall indemnify, save, defend and hold harmless Bellway in full from and against all liabilities, losses (whether direct or indirect and including loss of profits, loss of contracts and loss of opportunities), damages (including special and consequential damages), costs and expenses (including legal expenses) awarded against or incurred or paid or suffered by Bellway as a result of or in connection with a breach of this clause.

36. NOTICES

- 36.1 Any notice to be given under or in connection with the Sub-Contract shall be in writing and sent to the relevant Party's registered office address or other such address or contact details as referred to in the Sub-Contract Order. Any notice not given or sent in accordance with this clause shall be of no effect. Bellway may serve a notice in connection with the Sub-Contract by any effective means, including but not limited to by email. In the case of notices to be given to Bellway, all notices must be marked for the attention of the Authorised Representative and may only be sent by personal delivery or post. In the case of adjudication and/or court proceedings only, copies of all notices must (in addition) be sent to:

Address: Bellway Homes Limited, Seaton Burn House, Dudley Lane, Seaton Burn
Newcastle upon Tyne NE13 6BE

FAO: Group General Counsel and Company Secretary

AND

Address: DAC Beachcroft LLP, Wellbar Central, 36 Gallowgate, Newcastle upon Tyne,
NE1 4TD

FAO: Bellway Construction Contact Partner

- 36.2 Subject to clause 36.3, in the absence of evidence of earlier receipt a notice is deemed to be received:

36.2.1 if delivered personally when left at the registered office address or other address referred to in the Sub-Contract Order;

36.2.2 if sent by post two (2) Working Days after posting it; and

36.2.3 if sent by email on completion of its transmission.

- 36.3 In the case of a notice given pursuant to this clause 36 where this occurs:

36.3.1 after five (5) p.m. on a Working Day; and/or

36.3.2 on a day which is not a Working Day

THEN the date of service shall be deemed to be the next Working Day.

37. CDM REGULATIONS

- 37.1 The Sub-Contractor undertakes that it has complied with and will continue to comply with its statutory duties under the CDM Regulations in relation to the Project.
- 37.2 The Sub-Contractor warrants that:
- 37.2.1 adequate resources have been allocated by the Sub-Contractor or, as appropriate, will be allocated by the Sub-Contractor to enable the Sub-Contractor to comply with its statutory duties under the CDM Regulations; and
 - 37.2.2 the Sub-Contractor has and shall continue to have the competence required by the CDM Regulations to prepare any design (as defined in the CDM Regulations) which it has prepared or will prepare as part of the Sub-Contract Works.
- 37.3 The Sub-Contractor shall:
- 37.3.1 provide information relating to health and safety as may reasonably be required by any third party involved in the Project;
 - 37.3.2 liaise and co-operate with any design team, contractors, consultants, and any other Trade Contractors or persons involved in the Project to enable all parties to comply with their statutory duties under the CDM Regulations; and
 - 37.3.3 provide such information as the Principal Designer (the identity of whom shall be confirmed by Bellway to the Sub-Contractor) may require to enable the Principal Designer to compile the health and safety file for the Project pursuant to the CDM Regulations.
- 37.4 The Sub-Contractor shall provide, if requested by Bellway in writing, such details and information as Bellway may reasonably require to satisfy itself that the Sub-Contractor is complying with its statutory duties under the CDM Regulations and the warranties given in this clause 37.

38. BRIBERY ACT COMPLIANCE

- 38.1 In this clause 38:
- 38.1.1 the expressions 'adequate procedures', 'foreign public official', 'associated person(s)' and 'performing services' shall bear the meanings assigned to them in the Bribery Act 2010 ('the Bribery Act') and, as the case may be, any Guidance for the time being issued under section 9 of the Bribery Act ('the Guidance'); and
 - 38.1.2 an associated person of the Sub-Contractor includes any contractual counterparty or sub-contractor of the Sub-Contractor.
- 38.2 The Sub-Contractor shall and shall procure that any associated person or other person performing services in connection with the Sub-Contract shall:
- 38.2.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption practices including the Bribery Act and the Guidance (together 'the Requirements'); and
 - 38.2.2 comply with Bellway's Anti-bribery Policy as Bellway may update the same from time to time a copy of which is available for inspection at Bellway's registered office at all times upon request.
- 38.3 The Sub-Contractor shall not engage in, and shall procure that any associated person or other person performing services in connection with the Sub-Contract shall not engage in, any activity practice or conduct which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act if such activity practice or conduct had been carried out in the United Kingdom.
- 38.4 The Sub-Contractor shall:

- 38.4.1 throughout the term of the Sub-Contract, have in place and maintain its own policy and procedures including adequate procedures to ensure compliance with the Requirements, the Policy, and clause 38.3 above and shall enforce them whenever appropriate;
 - 38.4.2 promptly report to Bellway any request or demand for any financial or other advantage of any kind offered promised or given to it in connection with the performance of the Sub-Contract;
 - 38.4.3 at Bellway's request certify to Bellway in writing signed by it or its duly authorised officer compliance with this clause by it and by all associated persons of it performing services in connection with the Sub-Contract;
 - 38.4.4 forthwith notify Bellway in writing in the event that a foreign public official becomes an officer or employee of it or acquires a direct or indirect interest in the Sub-Contractor and the Sub-Contractor warrants that no officer, employee or direct or indirect owner of it is a foreign public official as at the date of the Sub-Contract; and
 - 38.4.5 be directly liable to Bellway in the event of any breach of this clause 38 by an associated person of it and shall fully indemnify, save, defend and hold harmless Bellway for any costs, losses, damages or expenses consequent upon such breach howsoever arising.
- 38.5 Without prejudice to any other rights Bellway may have under or in connection with the Sub-Contract, breach of this clause 38 by the Sub-Contractor shall entitle Bellway at its option to terminate the Sub-Contract forthwith with immediate effect. On termination in accordance with this clause 38, the Sub-Contractor shall be liable to Bellway for all costs, losses, damages, claims and expenses which Bellway suffers or incurs arising from or in connection with such termination.

39. MODERN SLAVERY ACT COMPLIANCE

- 39.1 In performing its obligations under the Sub-Contract, the Sub-Contractor shall comply and shall ensure that each of its employees, sub-contractors, suppliers, servants and agents shall comply with:
- 39.1.1 The Modern Slavery Act 2015; and
 - 39.1.2 Bellway's Anti-Slavery Policy as Bellway may update from time to time a copy of which is available for inspection upon request at Bellway's registered office at all time during working hours.
- 39.2 Bellway may terminate the Sub-Contractor's engagement under the Sub-Contract with immediate effect by giving written notice to the Sub-Contractor if the Sub-Contractor commits a breach of Bellway's Anti-Slavery Policy or breach of this clause 39.
- 39.3 The Sub-Contractor shall permit Bellway and its third party representatives, on reasonable notice, but without notice in case of any reasonably suspected breach of the Sub-Contractor's obligations under this clause 39, to have access to and take copies of the Sub-Contractor's records and any other information (or those of the Sub-Contractor's Persons) and to meet with the Sub-Contractor or Sub-Contractor's Persons to audit the Sub-Contractor's compliance with its obligations under this clause 39.

40. DATA PROTECTION

- 40.1 In this clause 40, the following terms shall have the following meanings:
- 40.1.1 **'Data'**: all data which is processed by the Sub-Contractor or provided to the Sub-Contractor for processing or which may be made (directly or indirectly) available to the Sub-Contractor as part of or relating to the Sub-Contract Works or in connection with the Sub-Contract;
 - 40.1.2 **'Data Protection Laws'**: means the General Data Protection Regulation (GDPR), and the Data Protection Act 2018, and the Privacy and Electronic Communications (EC Directive) Regulations 2003 together with any other laws applicable to the protection of

personal data in force from time to time in England and Wales and any related regulations and guidance (as from time to time amended, extended, re-enacted or consolidated) and all subordinate legislation, regulations and guidance made pursuant to any of them;

40.1.3 'data controller, data processor', 'data subject', 'personal data', 'personal data breach', 'processing' (and 'process' and 'processed' shall be construed accordingly) shall have the meaning set out in the Data Protection Laws; and

40.1.4 **'Data Protection Regulator'**: means the Information Commissioner's Office, the Article 29 Working Party and the European Data Protection Board, and in each case any successor body from time to time.

40.2 The parties acknowledge that for the purposes of the Sub-Contract, Bellway is the data controller and the Sub-Contractor is the data processor. The details of the processing carried out by the Sub-Contractor on Bellway's behalf are set out below:

Purposes of Processing	to permit or enable the Sub-Contractor to commence, carry out or complete the Sub-Contract Works or perform any obligations or duties it has in connection with the Sub-Contract.
Duration of Processing	until the date which is four (4) years after completion of the Sub-Contract Works or such longer duration as may be specified in the Sub-Contract.
Nature of Processing	processing in relation to the Sub-Contract Works or the Project or the Site or the performance of the Sub-Contractor's duties or obligations in connection with the Sub-Contract.
Description of data	name, phone number, postal address, email address, job title/position and any other data identified or referred to in the Sub-Contract or provided to the Sub-Contractor for the performance of its obligations under the Sub-Contract.
Special categories of data	any special categories of data identified or referred to in the Sub-Contract.
Categories of Data Subjects	Bellway's employees and those of any other contractor, subcontractors or any other party connected to the carrying out or completion, testing, inspection or approval of the Sub-Contract Works or any part of the Project and any of Bellway's customer or residents or occupiers of the Site or Project or any part of it.

40.3 Bellway consents and gives general authority to the Sub-Contractor to:

40.3.1 appoint sub-processors in relation to the performance of the Sub-Contract; and

40.3.2 use sub-processors who are based outside of the European Economic Area on condition that the Sub-Contractor puts in place measures to ensure adequacy of the protection of the personal data within the Data in accordance with Data Protection Laws.

40.4 The Sub-Contractor agrees in relation to the Data to:

- 40.4.1 implement appropriate technical and organisational measures in such a manner as meets the requirements of the Data Protection Laws and ensures the protection of the rights of data subjects;
- 40.4.2 only process personal data in accordance with the relevant principles under the Data Protection Laws;
- 40.4.3 only process the personal data for and on behalf of Bellway for the purposes of performing the Contract with Bellway and in accordance with any other instructions issued by Bellway in writing from time to time unless otherwise required by law or any other regulatory body (in which case the Sub-Contractor shall, where permitted, notify Bellway of that legal or regulatory requirement in writing before processing);
- 40.4.4 impose upon each third party sub-processor (and procure each such third party sub-processor's compliance with) the terms of this clause 40 as if the processing being carried out by the sub-processor was being carried out by the Sub-Contractor and to give Bellway notice of any changes to its sub-processors so that Bellway has the opportunity to object to the change;
- 40.4.5 ensure that persons authorised by it to process the personal data within the Data have committed themselves to duties of confidentiality or are under an appropriate statutory duty of confidentiality;
- 40.4.6 take all measures required by and to comply with Article 32 of GDPR;
- 40.4.7 only transfer or allow the transfer of the personal data outside the European Economic Area where adequate protections for the personal data within the Data exist as required by Data Protection Laws;
- 40.4.8 taking into account the nature of the processing, assist Bellway by appropriate technical and organisational measures (so far as this is possible) for the fulfilment of Bellway's obligation to respond to requests for exercising a data subjects rights set out in Chapter III of GDPR;
- 40.4.9 assist Bellway in ensuring compliance with the obligations under Articles 32 – 36 of GDPR taking into account the nature of processing and the information available to the Sub-Contractor;
- 40.4.10 at Bellway's choice, delete or return all the personal data within the Data to Bellway on completion of the Sub-Contract Works and rectification of all defects and delete existing copies unless required by law or regulatory requirements to retain such personal data;
- 40.4.11 maintain complete and accurate records and information to demonstrate its compliance with the obligations set out in this clause 40 and make available to Bellway all information necessary to demonstrate compliance with the obligations laid down in Article 28 GDPR and allow for and contribute to audits, including inspections, conducted by Bellway or another auditor appointed by Bellway including but not limited to giving Bellway (or its designated auditors) access to the Sub-Contractor's premises on reasonable notice and provide all reasonable assistance to Bellway to enable it (or its designated auditors) to audit the Sub-Contractor's compliance with this clause 40 and the Data Protection Laws;
- 40.4.12 notify Bellway immediately if in its opinion any instruction from Bellway would contravene the Data Protection Laws or any other Statutory Requirements;
- 40.4.13 ensure that only such of the Sub-Contractor's Persons who may be required by the Sub-Contractor to assist it in meeting its obligations under the Sub-Contract shall have access to the personal data; and
- 40.4.14 promptly notify (and in any event within 24 hours) and provide full details to Bellway of any potential or actual loss of personal data, take all measures necessary to remedy or address the breach or potential breach and co-operate with Bellway to resolve such issue.

- 40.5 Where Bellway requires assistance from the Sub-Contractor in order to respond to requests, queries and/or investigations in respect of the personal data within the Data or requires the Sub-Contractor to help Bellway in reconstructing and/or otherwise safeguarding the personal data within the Data or requires that the Sub-Contractor assists Bellway in complying with Data Protection Laws, the Sub-Contractor shall (at its cost) provide Bellway with such assistance as Bellway reasonably requests within any timescales reasonably specified by Bellway.
- 40.6 Each Party shall:
- 40.6.1 comply with all Data Protection Laws;
 - 40.6.2 co-operate with any regulatory authority for data processing; and
 - 40.6.3 not do or omit to do anything which will place the other Party in breach of any Data Protection Laws.
- 40.7 The Sub-Contractor shall indemnify, save, defend and hold Bellway harmless from and against any and all losses, damages, claims, costs and expenses (including, without limitation, reasonable legal expenses) suffered or incurred by or awarded against Bellway as a result of or in connection with:
- 40.7.1 any breach by the Sub-Contractor of this clause 40;
 - 40.7.2 any penalties or fines levied by a Data Protection Regulator, the costs of any investigative, corrective or compensatory action required by a Data Protection Regulator or of defending any investigation, allegation or claim made by a Data Protection Regulator, (in each case) where those fines, costs or claims have arisen as a result of a breach of the Sub-Contract by the Sub-Contractor; and/or
 - 40.7.3 where the Sub-Contractor, through its acts or omissions, is itself in breach of, or causes Bellway, to be in breach of the Data Protection Laws.

41. AUDIT

- 41.1 Throughout the duration of the Sub-Contract and until fifteen (15) years after the completion of the Sub-Contract Works under the Sub-Contract, the Sub-Contractor shall keep and maintain full and accurate records (together with such supporting or underlying documents and materials) of the performance of the Sub-Contractor's obligations and duties under the Sub-Contract (including but not limited to all or any part of the Sub-Contract Works), all expenditure, disbursements and expenses reimbursed by Bellway and all payments made by Bellway. The Sub-Contractor shall at any time on reasonable notice permit Bellway and its authorised representatives such access to audit, inspect and take copies of those records as may be required by Bellway in connection with the Sub-Contract. In addition, Bellway shall be entitled from time to time to conduct an audit of the Sub-Contractor's operations, facilities and working conditions and its quality, environmental, ethical and health and safety procedures and systems to ensure that the Sub-Contractor has the appropriate facilities, procedures, systems and personnel appropriate for the Sub-Contractor to carry out and complete the Sub-Contract Works and comply with its obligations and duties under the Sub-Contract.
- 41.2 The Sub-Contractor will take all practicable steps to ensure that the Sub-Contractor's Persons are bound by similar obligations in their respective contracts as stated in this clause 41.
- 41.3 If any inspection or audit by Bellway pursuant to this clause 41 discovers substantive findings related to fraud, misrepresentation, or non-performance, the Sub-Contractor shall reimburse Bellway all of Bellway's costs, losses and expenses accrued, suffered or incurred arising from or associated with such inspection or audit.

42. WAIVER

- 42.1 Any agreement by Bellway to waive any obligation or liability of the Sub-Contractor will only be effective if in writing, refers to the Sub-Contract and this clause and is signed in pen and ink by the Authorised Representative. Failure to exercise, or any delay in exercising any right or remedy

by Bellway provided under the Sub-Contract or by law shall not constitute a waiver by Bellway of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy by Bellway.

- 42.2 Except as expressly set out in clause 42.1, no waiver, forbearance, release, inspection, approval, comment, review or consent or omission to inspect, approve, comment, review or consent by Bellway or its employees, servants, sub-contractors or agents shall in any way derogate, limit or reduce the Sub-Contractor's duties and obligations in connection with the Sub-Contract. Notwithstanding any other provision of the Sub-Contract, the term "approval" when used in the context of any approval to be given by Bellway shall have the meaning "acceptance of general principles only" and no such approval shall diminish or relieve the Sub-Contractor from any of its obligations or responsibilities under the Sub-Contract.

43. BELLWAY POLICIES AND PROCEDURES

- 43.1 The Sub-Contractor shall comply with (and procure that its employees, servants and agents comply with) all aspects of Bellway's policies and procedures relevant to the Sub-Contract Works and/or the Site, which are current as at the date of the Sub-Contract and as may be updated from time to time, copies of which are available for inspection during business hours at Bellway's office or address or on request or can be found on Bellway's website <https://www.bellwayplc.co.uk/supply-chain-information>.

44. FURTHER ASSURANCES

- 44.1 The Sub-Contractor agrees to execute and deliver such documents and instruments and take such further actions as Bellway may, from time to time, reasonably request in order to effectuate the purposes and to carry out the terms of the Sub-Contract.

45. LIMITATION PERIOD

- 45.1 Notwithstanding the manner in which the Sub-Contract has been entered into, the statutory contractual limitation period in respect of the Sub-Contractor's obligations and liabilities under the Sub-Contract shall extend to the expiration of twelve (12) years after the date of completion of the Project. For the avoidance of doubt, the provisions of the Limitation Act 1980 (and any subsequent amendment or re-enactment) relating to claims in contract are excluded and do not apply to claims, actions or proceedings by Bellway against the Sub-Contractor.

46. DISPUTE RESOLUTION

- 46.1 The Sub-Contractor will co-operate and assist Bellway in dealing with any dispute that Bellway may have with any third party in relation to the Sub-Contract Works or the Project.
- 46.2 Without prejudice to Bellway's or the Sub-Contractor's right to commence or continue with court proceedings, any dispute or difference arising as between the Sub-Contractor and Bellway under the Sub-Contract may (subject to the appointment of an Adjudicator in accordance with clause 46.3) be referred by either Party to adjudication in accordance with the Scheme except that the adjudicator may decide only on the basis of the parties' legal rights and that the adjudicator may not decide on his own substantive jurisdiction.
- 46.3 The referring Party shall choose the Adjudicator from the Bellway Panel of Adjudicators current as at the date of the Sub-Contract (a copy of which is available from Bellway on request). Where none of the adjudicators indicates their willingness to act within two (2) Working Days after the date of such notice then the referring Party may apply to TECBAR for the appointment of an Adjudicator.
- 46.4 If the dispute or difference to be referred to adjudication under the Sub-Contract raises issues which are substantially the same as or connected with issues raised in a related dispute under another contract to which Bellway is a Party which has already been referred for determination to an adjudicator, Bellway and the Sub-Contractor hereby agree that the dispute or difference under

the Sub-Contract shall be referred to the adjudicator appointed to determine the related dispute.

47. GOVERNING LAW AND JURISDICTION

47.1 The Sub-Contract shall be governed and construed in accordance with English law and the English courts shall have exclusive jurisdiction (except for the purposes of enforcement of an English court judgment or order in another jurisdiction) with regard to all matters arising from it.

EXECUTED as a **DEED** and delivered (but not until)
the date hereof) by **[INSERT FULL NAME OF]**
SUB-CONTRACTOR] acting by a director, in the) **Director**
presence of:)

Witness Signature

Witness Name

Witness Address:

.....

.....

Witness Occupation:

DATE: