

Bellway Homes Limited

CONSULTANCY SERVICES ORDER
CONDITIONS OF CONTRACT



CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	STANDARD OF CARE	7
3.	THIRD PARTY AGREEMENTS	8
4.	THE CONSULTANT'S FEES	8
5.	PERFORMANCE OF THE SERVICES	11
6.	VARIATIONS TO THE SERVICES	13
7.	INSURANCE	14
8.	ASSIGNMENT/SUB-LETTING	15
9.	THIRD PARTY RIGHTS/COLLATERAL WARRANTIES	16
10.	COPYRIGHT MATERIAL	17
11.	SUSPENSION AND TERMINATION	18
12.	PERSONNEL	19
13.	SEVERANCE	20
14.	CONFIDENTIALITY AND PUBLICITY	20
15.	NOTICES	21
16.	CDM REGULATIONS AND BUILDING REGULATIONS	22
17.	HIGHER RISK BUILDINGS	23
18.	BRIBERY ACT COMPLIANCE	24
19.	MODERN SLAVERY ACT COMPLIANCE	25
20.	DATA PROTECTION	25
21.	AUDIT	28
22.	EMPLOYMENT STATUS	29
23.	REAL LIVING WAGE	31
24.	WAIVER, FORBEARANCE AND VARIATION	31
25.	BELLWAY POLICIES AND PROCEDURES	32
26.	FURTHER ASSURANCES	32
27.	LIMITATION PERIOD	32
28.	SITE WORKS	32
29.	DISPUTE RESOLUTION	33
30.	GOVERNING LAW AND JURISDICTION	33

Conditions of Contract

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions of Contract, unless the context otherwise requires, words or expressions that begin with capital letters which are used but undefined in these Conditions of Contract shall have the same meanings as set out in the Contract. In these Conditions of Contract, 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 **'Associate'** means the term 'associate' is defined in section 131 of the Building Safety Act 2022;
 - 1.1.2 **'Bellway'** means **BELLWAY HOMES LIMITED** (company registration number 670176) whose registered office is at Woolsington House, Woolsington, Newcastle upon Tyne, NE13 8BF;
 - 1.1.3 **'Building Regulations'** means the Building Regulations 2010;
 - 1.1.4 **'Building Regulations Principal Contractor'** means the person notified as acting in such capacity by Bellway to the Consultant for the purposes of Part 2A of the Building Regulations or such replacement as may be notified by Bellway to the Consultant from time to time to perform such role;
 - 1.1.5 **'Building Regulations Principal Designer'** means the person notified as acting in such capacity by Bellway to the Consultant for the purposes of Part 2A of the Building Regulations or such replacement as may be notified by Bellway to the Consultant from time to time to perform such role;
 - 1.1.6 **'Building Safety Laws'** means the Defective Premises Act 1972, the Building Safety Act 2022, the Building Regulations, the Building Act 1984 and any other associated legislation, statutes, statutory instruments, regulations, rules, orders, codes of practice and any guidance issued by a government department, the Building Safety Regulator or the Health & Safety Executive;
 - 1.1.7 **'CDM Regulations'** means the Construction (Design & Management) Regulations 2015;
 - 1.1.8 **'CDM Principal Contractor'** means the person notified as acting in such capacity by Bellway to the Consultant for the purposes of the CDM Regulations or such replacement as may be notified by Bellway to the Consultant from time to time to perform such role;
 - 1.1.9 **'CDM Regulations Principal Designer'** means the person notified as acting in such capacity by Bellway to the Consultant for the purposes of the CDM Regulations or such replacement as may be notified by Bellway to the Consultant from time to time to perform such role;
 - 1.1.10 **'Claim'** means any claim or entitlement which the Consultant has or may have against Bellway under, arising out of or in connection with the Contract (including, without limitation, an extension of time to complete the Services or any additional payment in connection with a variation or any payment whatsoever in excess of or in addition to the Fees or any adjustment upwards to the Fees) and howsoever arising under any circumstances whatsoever (including, without limitation, by reason of a breach of contract, breach of statutory duty or tortious or negligent act or omission on the part of Bellway);
 - 1.1.11 **'Conditions of Contract'** means these conditions of contract, which shall be deemed to be incorporated into each and every Contract;
 - 1.1.12 **'Confidential Information'** means all information (written or oral) or documents (however recorded or preserved) disclosed or made available by or which the Consultant 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 Consultant's obligations and duties in connection with the Contract including but not limited to:

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

BUT not any information that:

- (d) was already lawfully known, or became lawfully known to the Consultant independently; or
- (e) is in or comes into the public domain other than due to wrongful use or disclosure by the relevant Party;

- 1.1.13 **'Consultancy Services Order'** means the COINS generated order form or letter sent by Bellway to the Consultant in respect of the Project, which is intended to include the Order Appendix and other relevant documents;
- 1.1.14 **'Consultancy Services Order Contact Details'** means the contact details for Bellway and the Consultant contained in the Consultancy Services Order or Order Appendix or such other contact details as either Party may notify to the other from time to time in writing;
- 1.1.15 **'Consultant'** means the legal entity with whom the Contract is entered into by Bellway and to whom the Consultancy Services Order is addressed;
- 1.1.16 **'Contract'** means the contract between Bellway and the Consultant comprising these Conditions of Contract and the Consultancy Services Order (and any documents referred to in or attached to the Consultancy Services Order, including the Order Appendix) under which the Consultant has agreed to perform the Services in connection with the Project;
- 1.1.17 **'Contract Particulars'** means the project specific details referred to in, listed in or attached to the Consultancy Services Order or Order Appendix, which apply to the Contract;
- 1.1.18 **'Copyright Material'** means any and all documents, material and information (whether in hard copy, digital or electronic format and whether in existence as at the date of the Contract or yet to be created) including but not limited to reports, drawings, surveys, models, illustrations, data, databases, schedules, programmes, bills of quantities, budgets, photographs, videos, brochures, plans, specifications, minutes or notes of meetings, designs, studies and calculations produced or prepared by the Consultant or on its behalf in connection with the Project or the Site or as part of the Services and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project;
- 1.1.19 **'Fees'** means the fees to be paid by Bellway to the Consultant in accordance with and subject to the terms of the Contract, as referred to, set out in and/or attached to the Consultancy Services Order or Order Appendix;
- 1.1.20 **'Group Company'** means any company which is a subsidiary (whether immediate or otherwise) of Bellway or of which Bellway is a subsidiary or which has the same holding company (whether immediate or otherwise) as Bellway, and any company, partnership

or other entity controlled by or under common control with Bellway, where 'subsidiary' and 'holding company' have the meanings given to them by Section 1159 of the Companies Act 2006 (as may be amended from time to time) and also includes any Associate of Bellway;

1.1.21 '**Insolvent**' means in relation to the Consultant when any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (a) 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, compromise, scheme of arrangement with any of its creditors or otherwise) of the Consultant other than for the sole purpose of a solvent liquidation or reorganisation; or
- (b) a composition, compromise (including pursuant to Part 26A of the Companies Act 2006), assignment or arrangement with any creditor in satisfaction of the Consultant's debts or an order is made sanctioning such a compromise or arrangement (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
- (c) the appointment of a liquidator, provisional liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Consultant or over any of its assets or a person becomes entitled to appoint an administrative receiver or a receiver over all or any of its assets (or had service at court of any notice of intention to appoint any such officer) or a person becomes entitled to appoint an administrative receiver or receiver over all or any of its assets; or
- (d) being an individual, it is the subject of a bankruptcy petition, application or order; or
- (e) enforcement of any security over any of the assets of the Consultant or any analogous procedure or step is taken in any jurisdiction; or
- (f) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Consultant; or
- (g) any financial indebtedness of the Consultant 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
- (h) it 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; or
- (i) any event or arrangement occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in limbs (a) to (h) above (inclusive); or
- (j) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

1.1.22 '**IR35 Contractor**' means an individual who personally performs or is under an obligation personally to perform any element of the Services and is engaged (either by the Consultant or via any other intermediary or intermediaries) through a limited company or partnership which meets the conditions specified in sections 61O or 61P (as applicable) of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA");

- 1.1.23 **'Local Authority'** means a body that is a 'contracting authority' as defined by the Public Contracts Regulations 2015 (as amended from time to time);
- 1.1.24 **'Material Breach'** means any breach by the Consultant of the terms of the Contract where Bellway has served notice on the Consultant that it has seven (7) days in which to rectify the breach and the Consultant fails to do so;
- 1.1.25 **'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;
- 1.1.26 **'Order Appendix'** means the appendix attached to or referred to in the Consultancy Services Order, which is intended to include the project specific information pertaining to the Contract;
- 1.1.27 **'Party'** means either Bellway or the Consultant;
- 1.1.28 **'Project'** means the development by Bellway or on its behalf on or in connection with the Site and comprising the design, construction and completion of various works as described in the Consultancy Services Order or Order Appendix;
- 1.1.29 **'Public Holiday'** means Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday;
- 1.1.30 **'Requisite Consents'** means any and all relevant permissions, consents, approvals, licences, certificates, requirements, fire officer approval, building control and development control authority approvals and permits whether statutory or otherwise consents of any person or any local, public or other competent authority (including but not limited to the planning permission for the Site) and consents of all third parties having an interest or right in or over the Site as may be lawfully required in order to commence, carry out, maintain and complete the Project and use and enjoy the Project and which term includes but is not limited to any modification, variation and/or amendment to any relevant Requisite Consent and any restrictions or conditions attached to any such Requisite Consent;
- 1.1.31 **'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;
- 1.1.32 **'Services'** means the services to be provided by the Consultant under the Contract including those specified in the list of services set out in, referred to in or attached to the Consultancy Services Order and/or Order Appendix;
- 1.1.33 **'Site'** means the location of the intended Project as briefly described in the Consultancy Services Order and/or Order Appendix;
- 1.1.34 **'Statutory Requirements'** means any and all relevant statutes, any instrument, regulation, rule, order or permission made under any statute or legislation and any regulation or bye-law of any person, any Local Authority, regulatory body, statutory undertaker or public or private utility or undertaking that has any jurisdiction with regard to the Project or the Site or with whose systems the same are or will be connected, any decision of any Local Authority or organisation which controls the right to develop the Site, any conditions attached to any notices served under any statute or statutory power and any 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, substitution, replacement, consolidation or re-enactment (whether before or after the date the Contract is entered into) to any relevant Statutory Requirements;
- 1.1.35 **'Third Party Agreement'** means any contract or agreement entered into or to be entered into by Bellway with any Third Party Beneficiary or any other third party in connection with

the carrying out, management, financing, letting, sale or purchase of the Project or the Site or any part of them;

1.1.36 **'Third Party Beneficiary'** means each or any one or more of the following class or classes or 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, to any Group Company or to a purchaser or tenant of all or any part of the Site;
- (d) a management company set up in relation to all or any part of the Site;
- (e) any person or persons 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 or any adjoining land;
- (f) any Group Company;
- (g) any joint venture partner of Bellway or any Group Company in respect of the Project or any part of it;
- (h) any Local Authority; and
- (i) the Warranty Provider,

BUT excluding any purchaser, tenant or funder of one individual residential unit;

1.1.37 **'TECBAR'** means the Technology and Construction Bar Association or any successor organisation;

1.1.38 **'VAT'** means value added tax imposed by the Value Added Tax Act 1994, or any similar tax in addition to or replacing it from time to time;

1.1.39 **'Warranty Provider'** means NHBC or an alternative insurer nominated by Bellway and the identity of which shall be notified by Bellway to the Consultant, which shall be a body or organisation providing defects insurance warranties or guarantees in respect of the relevant parts of the Project and/or the development at the Site; and

1.1.40 **'Working Day'** means any day except for Saturday, Sunday or a Public Holiday.

1.2 The Contract sets out the terms of the Consultant's appointment by Bellway as a professional consultant to perform the Services and the role and function identified as Consultant Discipline in the Contract Particulars in relation to the Project at the Site. The Consultant warrants and undertakes to observe, perform and comply with the terms set out in these Conditions of Contract and observe and perform all its obligations and duties under or in connection with the Contract. Without prejudice to any other rights, powers and remedies available to Bellway, the Consultant shall be liable for all reasonably foreseeable and legally enforceable losses, costs, damages, expenses, liabilities, claims and proceedings accrued, suffered or incurred in connection with any breach of contract, breach of statutory duty, negligence or default by the Consultant or any of its sub-consultants, employees, servants or agents.

1.3 In these Conditions of Contract, unless the context otherwise requires:

1.3.1 clause or paragraph headings are inserted for convenience only and shall not affect the construction or interpretation of these Conditions of Contract;

1.3.2 references to a paragraph or clause or Schedule are references to a paragraph or clause or Schedule in or to or of these Conditions of Contract;

- 1.3.3 a reference to a statute, statutory instrument or statutory provision is a reference to it as amended, consolidated, replaced, extended, re-enacted or substituted and in force from time to time and including corresponding legislation in any other relevant part of the United Kingdom;
- 1.3.4 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.3.5 any words preceding or following the terms: 'including', 'include', 'includes', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding or following those terms and the use of the words 'other' or 'otherwise' shall not be construed as having a limiting effect;
- 1.3.6 any reference to the singular also means the plural and vice versa;
- 1.3.7 any reference to gender shall include any gender;
- 1.3.8 references to a person or persons shall, where the context so requires, include individuals, bodies corporate, trusts, trustees, unincorporated associations, partnerships, a firm and any other entity having legal capacity and all such words are to be construed interchangeably in that manner;
- 1.3.9 the Contract shall be binding on, and enure to the benefit of, the Parties to the Contract and their respective successors and permitted assigns, and references to any Party shall be a Party to the Contract and shall include that Party's successors and permitted assigns;
- 1.3.10 any obligation on a Party not to do something includes an obligation not to allow that thing to be done;
- 1.3.11 where one provision of the Contract imposes upon the Consultant a standard, duty or obligation which is more onerous than, or additional to, that imposed by another provision, then the relevant standards, duties or obligations shall, so far as possible, be treated as cumulative, failing which the more onerous standard, duty or obligation shall prevail;
- 1.3.12 any reference to an English legal term for any action, remedy, method of judicial proceedings, 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; and
- 1.3.13 the warranties and undertakings contained in these Conditions of Contract shall be without prejudice to any warranties and undertakings implied by common law or statute.
- 1.4 Where a Party comprises two or more persons:
 - 1.4.1 any obligations on the part of that Party contained or implied in the Contract are deemed to be joint and several obligations on the part of those persons; and
 - 1.4.2 references to that Party include references to each and any of those persons.
- 1.5 The Consultant warrants and represents to Bellway that:
 - 1.5.1 the Contract constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms;
 - 1.5.2 the Consultant is not Insolvent or unable to pay its debts as they fall due and does not reasonably expect to become Insolvent or unable to pay its debts as they fall due as a result of entering into and performing its obligations under the Contract;
 - 1.5.3 the Consultant has full power and capacity to own its assets, to carry on its business as it is now being conducted and to enter into and perform its obligations under the Consultant; and

- 1.5.4 all information provided by it or on its behalf to Bellway or any Third Party Beneficiary in connection with the entry into and performance of the Contract, whether before or after the date of the Contract, is (to the best of its knowledge and belief, having made due and careful enquiries) complete, true, accurate and not misleading.
- 1.6 Where, under these Conditions of Contract, an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday, that day shall be excluded.
- 1.7 The Parties agree that for the purposes of signing any Contract, either Party or both Parties, may sign by electronic signature and both parties intend the electronically issued signatures to be considered original signatures and binding for all purposes for the Contract.
- 1.8 Any quotation, fee proposal or tender received by Bellway from the Consultant in respect of any Services performed by the Consultant for Bellway is deemed to have been made subject to the Conditions of Contract. Notwithstanding any other provision of these Conditions of Contract or the Contract, any terms and conditions of the Consultant are superseded, are of no effect and do not form part or apply to the Contract under any circumstances unless expressly acknowledged and agreed in writing by Bellway.
- 1.9 The Contract supersedes and extinguishes any previous oral or written agreements or arrangements between Bellway and the Consultant in respect of the Services and the Project. The Consultant's obligations and duties under the Contract shall be deemed to have commenced with effect from the date on which the Consultant first began to perform the Services. All sums (if any) already paid by Bellway to the Consultant as at the date of the Contract in respect of work done in relation to the Project shall be treated as payments on account of sums due under the Contract.
- 1.10 Any typographical, clerical, arithmetical or other error or omission in the Contract shall be subject to correction by Bellway without liability on the part of Bellway.
- 1.11 The Contract is to be read as a whole, but nothing contained in the Consultancy Services Order or Order Appendix shall override or modify anything which is contained in these Conditions of Contract. Where there is any conflict, ambiguity or discrepancy within or between any of the documents comprising the Contract, the Consultant shall notify Bellway in writing as soon as possible and Bellway shall instruct the Consultant as to which of the conflicting, ambiguous or discrepant items is to be adopted and the Consultant shall comply with such instruction at no cost to Bellway and without any adjustment or addition to the Fees or the programme or timing for carrying out and completing performance of the Services.
- 1.12 Failure or delay by either Party at any time in exercising any right, power or remedy provided under or in connection with the Contract or by law or to enforce any provision of the Contract against the other shall not be construed as a waiver of such entitlement or any other right or remedy and shall not affect the validity of the Contract or any part or parts hereof or the right, power or remedy of the relevant Party to enforce any provision in accordance with its terms, nor shall it preclude or restrict any further exercise of that or any other right or remedy. The rights, powers and/or remedies of either Party may only be waived by formal written waiver which is signed by a duly authorised representative of the Party waiving its rights and which makes express and unequivocal references to the waiver being in accordance with this clause 1.12. The rights which each Party has under the Contract shall not be prejudiced or restricted by any indulgence or forbearance extended to another Party. No waiver by either Party in respect of a breach shall operate as a waiver in respect of any subsequent breach. The rights, powers and remedies provided in the Contract are cumulative and not exclusive of any rights, powers and remedies provided by law.

2. STANDARD OF CARE

- 2.1 The Consultant agrees and undertakes to perform the list of services as referred to, set out in and/or attached to the Consultancy Services Order and/or Order Appendix together with any services that are reasonably incidental thereto and any varied or additional services performed pursuant to clause 6 below (the '**Services**').

- 2.2 In performing the Services, the Consultant warrants and undertakes that it has exercised and shall continue to exercise the reasonable skill, care and diligence to be expected of a suitably qualified, experienced and competent professional consultant of the appropriate discipline(s), as may be specified in the Contract Particulars experienced in carrying out services similar to the Services in relation to projects of a similar nature, size, scale, scope and complexity to the Project.
- 2.3 To the extent that the Consultant is required to do so when performing the Services, the Consultant warrants and undertakes that it has exercised and shall continue to exercise the standard of skill, care and diligence required by clause 2.2 above, not to specify, approve or authorise for use any materials, substances, processes, methods of working, goods, equipment, products, systems or kits which at the time of specification, approval or authorisation for use:
- 2.3.1 by their nature or application contravene or are not in accordance with any relevant Statutory Requirement, British Standard or Code of Practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
 - 2.3.2 are generally accepted, or generally known or suspected, in the construction industry to be deleterious or pose a threat or are harmful to health and safety to any person or to the structural stability, performance, physical integrity or durability of buildings and/or structures and/or finishes and/or plant and machinery in the particular circumstances in which they are specified, approved or authorised for use; or
 - 2.3.3 reduce, or possibly reduce, the normal life expectancy of the Project or any part or component of the Project; or
 - 2.3.4 are identified as deleterious, unsatisfactory or unsuitable or do not comply with or are not in accordance with the guidelines contained in the edition of the publication 'Good Practice in the Selection of Construction Materials' published by the British Council of Offices and the BRE Digest current at the date of specification, approval or authorisation for use.
- 2.4 If in the performance of the Services under the Contract, the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such materials, substances, processes, methods of working, goods, equipment, products, systems or kits, the Consultant shall notify Bellway in writing as soon as reasonably practicable. This clause 2.4 does not create any additional duty for the Consultant to inspect or check the work of others which is not otherwise expressly required by the Contract.
- 2.5 The Consultant acknowledges that Bellway shall be entitled to rely on the Consultant's professional expertise when performing the Services and Bellway may rely on any advice, recommendations, certificate or written approval or statement the Consultant gives in respect of the Project. The Consultant acknowledges that Bellway is deemed not to have any intrinsic expert knowledge or skill relating to the Services.

3. THIRD PARTY AGREEMENTS

- 3.1 The Consultant shall have regard to the obligations and provisions of any and all Third Party Agreements in so far as they relate to and apply to the Services and the Consultant's duties and obligations to be provided under the Contract PROVIDED ALWAYS THAT copies of such documents or agreements or relevant extracts from them (excluding commercially sensitive information) are supplied to the Consultant by Bellway within a reasonable time to enable the Consultant to have regard to them during the performance of the Consultant's Services.
- 3.2 Except where the provisions of the Contract otherwise expressly require, the Consultant shall carry out and complete the Services using the standard of care referred to in clause 2.2 so that no act, omission or default in relation thereof shall cause, constitute or contribute to any breach by Bellway of any of Bellway's duties and obligations under, or result in the diminution of any of Bellway's rights in connection with any and all Third Party Agreements.

4. THE CONSULTANT'S FEES

- 4.1 In consideration of the satisfactory performance by the Consultant of the Consultant's Services, Bellway shall pay to the Consultant the Fees. If the duration of the performance of the Services

is less than 45 days, then the Consultant shall not be entitled to apply for payment of the Fees until completion of the Services. If the duration of the performance of the Services is 45 days or more, then the Consultant shall be entitled to payment of the Fees in instalments in accordance with the terms of this clause 4 as payments on account of the Fees PROVIDED ALWAYS THAT if the Consultant shall materially fail or neglect to carry out a stage of the Services, Bellway may defer payment of the instalment for that stage until such time as the Consultant has duly performed the relevant work stage of the Services.

- 4.2 If it states in the Contract Particulars that this clause is to apply, (or if the Contract Particulars do not specify whether clause 4.2 or clause 4.3 applies and the Consultancy Services Order and/or Order Appendix does not include fee instalments, then clause 4.3 will apply) then the Consultant shall be entitled to submit to Bellway an application for payment or invoice (showing the correct amount of VAT due) for each instalment of the Fees at the times and in the manner stated in the Consultancy Services Order and/or Order Appendix.
- 4.3 If it states in the Contract Particulars that this clause is to apply, (or if the Contract Particulars do not specify whether clause 4.2 or clause 4.3 applies and the Consultancy Services Order and/or Order Appendix does not include fee instalments, then clause 4.3 will apply) then the Consultant shall be entitled to submit interim applications for payment or invoices for a proportion of the Fees agreed between Bellway and the Consultant (acting reasonably) or, if not agreed, then calculated by applying a reasonable assessment of the proportion of the work completed as against the aggregate total of the Fees at intervals of not less than one (1) month, beginning one (1) month after the Consultant begins performing the Services or one (1) month after the date of the Contract, whichever is the later PROVIDED ALWAYS THAT the Consultant shall not be entitled to be paid a proportion of the Fees which exceeds the total amount of Fees allocated to the relevant work stage in the Consultancy Services Order or Order Appendix.
- 4.4 Each application for payment or invoice submitted in accordance with clause 4.2 or clause 4.3 (as applicable) shall be accompanied by any supporting documents that are reasonably necessary to enable Bellway to check the application for payment or invoice and verify the sum claimed. The application for payment or invoice and supporting documents (if any) shall specify the sum that the Consultant considers to be or to have been due on the payment due date in respect of the instalment of the Fee and the basis upon which that sum is calculated.
- 4.5 Payment shall be due on the twenty-first (21st) day of the calendar month after the month during which Bellway receives each relevant and properly prepared and submitted valid application for payment or invoice. The final date for payment of an amount due shall be the end of the calendar month during which the relevant payment becomes due.
- 4.6 Bellway shall notify the Consultant of the sum that Bellway considers to have been due at the payment due date in respect of the payment and the basis upon which that sum is 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 Consultant had carried out its obligations under the Contract and no set off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts. To the extent that for whatever reason Bellway considers that the Consultant has been overpaid during the course of the Services the amount specified in the notice issued by Bellway under this clause 4.6 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 Consultant to Bellway.
- 4.7 Subject to clause 4.13 and unless Bellway has served a Pay Less Notice under clause 4.8, Bellway shall pay to the Consultant the sum referred to in the notice given by Bellway under clause 4.6 (or, if Bellway has not served notice under clause 4.6, the sum referred to in the application for payment or invoice referred to in clause 4.4) (in this clause 4, the '**Notified Sum**') on or before the final date for payment of each application for payment or invoice.
- 4.8 Not later than on the one (1) day before the final date for payment (in this clause 4, the '**Prescribed Period**'), Bellway may give the Consultant notice that it intends to pay less than the Notified sum (in this clause 4, a '**Pay Less Notice**'). Any Pay Less Notice shall specify:
- 4.8.1 the sum that Bellway considers to be due on the date the notice is served; and

- 4.8.2 the basis on which that sum is calculated.
- 4.9 If Bellway fails to pay a sum due to the Consultant by the final date for payment and fails to give a Pay Less Notice under clause 4.8, simple interest shall be added to the unpaid sum from the final date for payment until the actual date of payment. This shall be calculated on a daily basis at the annual rate of five per cent (5%) above the Bank of England Base Rate. The Parties acknowledge that the liability of Bellway under this clause 4.9 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.10 Unless expressly stated otherwise in the Consultancy Services Order or Order Appendix, the Fees are fixed lump sums which include all reasonable expenses, including but not limited to printing and photocopying, travelling costs and disbursements and travelling time, telephone charges and all other out of pocket expenses, but exclude VAT. If HM Revenue and Customs shall determine that VAT is chargeable on any payments to be made or made by Bellway to the Consultant under or in connection with the Contract, then subject to the receipt by Bellway of a valid and properly prepared VAT invoice addressed to Bellway relating to such payments, Bellway shall pay to the Consultant the amount of VAT properly chargeable.
- 4.11 Bellway may deduct from any payment due from time to time under the Contract the amount (whether present or future, liquidated or unliquidated) of any bona fide claims set-off or counterclaim by Bellway against the Consultant under the Contract or any other contract or agreement Bellway has entered into or will enter into with the Consultant (whether before or after the date of the Contract) after giving the Consultant a notice stating its intention to do so. This is in addition to and not in substitution for any other rights of counterclaim, legal and equitable set off or abatement available to Bellway.
- 4.12 Notwithstanding anything to the contrary elsewhere in the Contract if any third party upon whom Bellway is dependant (directly or indirectly) for payment in respect of the Contract is Insolvent, Bellway shall not be obliged to make any further payment to the Consultant of any sum which is due or may become due to the Consultant unless Bellway has received payment in respect thereof from such third party and then only to the extent of such receipt.
- 4.13 Notwithstanding any other provision of the Contract, if the Consultant becomes Insolvent after the Prescribed Period, Bellway shall not be required to pay the Consultant the Notified Sum.
- 4.14 If the Fees or any part of them are to be calculated on the basis of the time spent and hourly rates then:
- 4.14.1 the Consultant shall prior to commencing performance of the relevant services, provide Bellway with an estimate of the Fees or that part of them which is to be charged on the basis of time spent and hourly rates; and
- 4.14.2 the Consultant shall not commence performance of the relevant services until Bellway has agreed to the estimate referred to in clause 4.14.1; and
- 4.14.3 the Consultant shall not be entitled to payment under this clause 4.14 of any amounts claimed which exceed the Consultant's estimate agreed with Bellway, which may be varied from time to time by agreement in writing between Bellway and the Consultant; and
- 4.14.4 the Consultant shall keep adequate records of the time spent and the work done and at the Consultant's own expense shall provide Bellway with copies of such records with all invoices submitted for work performed on the basis of time spent and hourly rates, together with any other documentation in support as reasonably required by Bellway.
- 4.15 For the avoidance of doubt, Bellway shall be entitled to recover from the Consultant any overpayments made at any time. All interim payments made to the Consultant shall be payments on account only of sums due under the Contract. Bellway shall be entitled to reconsider and, if necessary, adjust the amounts stated as due in previous payment notices or Pay Less Notices or in any payment notices or Pay Less Notices given in respect of later applications for payment made by the Consultant.

- 4.16 Notwithstanding any other provision of the Contract, any Claim must be notified by the Consultant in writing and received by Bellway no later than ten (10) Working Days after the event or matter first occurring which gives rise to the Claim. Each Claim shall be properly documented with appropriate references to the contractual provisions on which the Consultant wishes to rely, together with copies of all relevant correspondence and documentation. Compliance with the requirements of this clause shall be a condition precedent to any right on the part of the Consultant 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 Consultant 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 Contract. If the Consultant fails to comply with those requirements, then it irrevocably waives its right, both under the 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.
- 4.17 The Consultant's rights and remedies available to it under the Contract shall be its exclusive and exhaustive rights and remedies available to it in respect of all matters under, arising out of or in connection with the 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. Except as expressly provided for in the Contract, Bellway shall not be obligated or liable to the Consultant in respect of any damages, costs, losses or expenses suffered or incurred by the Consultant that arise out of or in connection with the Contract or the Services. Any other rights and remedies that the Consultant may otherwise have had at law are excluded to the fullest extent permitted by law.

5. PERFORMANCE OF THE SERVICES

- 5.1 In carrying out the Services, the Consultant shall (using the standard of care referred to in clause 2.2):
- 5.1.1 perform the Services regularly and diligently, promptly and efficiently;
 - 5.1.2 observe, perform and comply with any and all requirements described in or to be reasonably inferred from the terms of the Consultancy Services Order and/or Order Appendix;
 - 5.1.3 obtain from Bellway details of its programme, cost plan/budget, brief and construction period relating to the Project and/or the Site (as may be updated from time to time) and have regard to and comply with such programme, cost plan/budget, brief and construction period when providing the Services so as to enable the Project to be carried out at costs which are no greater than the costs set out in the cost plan and/or budget;
 - 5.1.4 obtain details of and then have regard to any legal rights or interests of third parties that may affect the Site insofar as they relate to the Services and shall not infringe any rights, reservations, covenants, restrictions, stipulations or other encumbrances affecting or binding upon the whole or any part of the Site or any neighbouring land;
 - 5.1.5 comply with all Bellway's reasonable instructions and directions in relation to the Services (provided that if, in the performance of the Services, the Consultant has a discretion exercisable as between Bellway and a contractor, the Consultant shall exercise its discretion independently and fairly);
 - 5.1.6 allocate adequate resources to enable the Consultant to comply with its duties and obligations under the Contract;
 - 5.1.7 co-operate and collaborate closely with Bellway, the Building Regulations Principal Designer, the CDM Principal Designer and any other professional consultants, design consultants and sub-contractors appointed by Bellway or its contractors and the Consultant shall co-ordinate and integrate the Services with the services prepared by other professional consultants and sub-contractors such that the Project shall be completed with all reasonable speed and economy and within Bellway's required construction period and project cost plan/budget;
 - 5.1.8 attend such meetings as reasonably required by Bellway upon receipt of prior written notice;

- 5.1.9 keep Bellway fully and properly informed from time to time concerning all aspects of the Project to which the Services relate and shall further provide Bellway from time to time with all such information in connection with the Project as Bellway may reasonably require;
- 5.1.10 not do anything whether by act, omission or statement which causes delay to the completion of the Project or which causes a material increase in the overall construction cost of the Project, unless with Bellway's prior written consent;
- 5.1.11 notify Bellway in writing when it has completed each work stage, confirm when it is ready to commence the next work stage and obtain Bellway's prior written approval before commencing the next work stage;
- 5.1.12 review the Consultant's design at appropriate stages up to and including the point at which all defects notified during the defects liability period after practical completion of the Project have been made good;
- 5.1.13 monitor the construction works and carry out inspections on site at intervals as reasonably required by Bellway;
- 5.1.14 visit the Site and have regard to the form and nature of the Site, its location and existing buildings, structures, services and infrastructure on or around the Site;
- 5.1.15 not make or approve any significant alteration (either in design or cost terms) to any approved or settled design, without the written consent of Bellway;
- 5.1.16 seek whenever possible to assist Bellway to save costs and to design execute, carry out and complete the Project in the most cost-efficient and profitable way consistent with good design practice and with safety;
- 5.1.17 see that the Consultant's completed design complies (where appropriate) with the requirements of the Warranty Provider; and
- 5.1.18 as reasonably required by Bellway, make regular visits to Site and other places where work is being prepared or performed for the Project to determine that the works are being appropriately progressed in accordance with the Consultant's design and shall have regard to the form and nature of the Site, its location and existing buildings, structures, services and infrastructure on or around the Site.
- 5.2 In carrying out the Services, the Consultant additionally agrees that the Consultant shall comply with any and all Statutory Requirements and Requisite Consents, in relation to the Services.
- 5.3 The Consultant warrants and undertakes that at all times during the term of the Contract, it has and shall continue to observe, perform and comply with all applicable laws, statutes, regulations, BSI British standards and relevant codes of practice.
- 5.4 In so far as the Consultant is responsible for any design of the Project, the Consultant shall (using the standard of care referred to in clause 2.2):
 - 5.4.1 see that its design complies with the standards required by Bellway's brief; and
 - 5.4.2 consult regularly with Bellway regarding the progress and development of its Services and their relationship with the Project as a whole and discuss regularly with Bellway's design options and alternatives relating to design and construction of the Project.
- 5.5 In so far as the Consultant is responsible for any design of the Project, the Consultant (using the standard of care referred to in clause 2.2) undertakes to certify prior to the distribution of the construction tender documents to prospective building contractors that:
 - 5.5.1 all design work to be provided as part of the Services has been completed in full;
 - 5.5.2 that all design work to be provided as part of the Services has been co-ordinated and integrated with designs provided by Bellway's other consultants; and

- 5.5.3 that it has taken all reasonable steps to remove any reasonably foreseeable financial risk to Bellway.
- 5.6 In so far as the Consultant (using the standard of care referred to in clause 2.2) is responsible for any design of the Project and, to the extent reasonably required by Bellway or any Third Party Beneficiary, the Consultant undertakes to:
- 5.6.1 monitor and witness the testing, inspection and commissioning of the Project; and
- 5.6.2 certify on or prior to practical completion that the Project or any distinct part or phase of it has been completed in accordance with its design and specification and that the Project has achieved practical completion.
- 5.7 The Consultant's liabilities, obligations and/or duties under the Contract shall not be limited, varied, modified, reduced, diminished, excluded or extinguished or otherwise affected in any way whatsoever by:
- 5.7.1 any power or duty of Bellway or of any professional consultants or any contractors or any other third party who has a substantial interest in the Project or the Site to grant or withhold approval of or object to any matter in connection with the Project or to inspect the Site or the Project or any part of them; or
- 5.7.2 the grant or failure or delay to grant such approval or the making of or failure to make such objection or any such inspection of or failure or delay to inspect the Site; or
- 5.7.3 any review, approval, consent, admission, comment, action, advice, recommendation, notification, acknowledgement, confirmation, decision, direction, instruction or indication of satisfaction given by Bellway or any persons appointed on its behalf or any other third party or any failure or delay or omission to do so; or
- 5.7.4 any enquiry or failure to make such enquiry by or on behalf of Bellway notwithstanding that such enquiry or failure to make such enquiry may give rise to a claim by Bellway against any third party.
- 5.8 Bellway expressly does not warrant and makes no representation as to the accuracy or sufficiency of any information, reports, plans or surveys relating to the Project or the Site, which have been provided or are provided to the Consultant (whether before or after the date of the Contract) by Bellway or on its behalf or by any other third party.
- 5.9 When providing advice on any matter, the Consultant shall review all reasonable available options and advise Bellway on its recommended course of action, together with its reasons for such recommendation. The Consultant shall use reasonable endeavours to procure all necessary local knowledge, services and facilities including but not limited to knowledge of the political environment, the planning environment, local technical standards and other environmental/construction standards/local knowledge which may be applicable to a project of a similar nature, size, scale and complexity as the Project at or near to the Site.

6. VARIATIONS TO THE SERVICES

- 6.1 The Consultant shall not provide any services (other than as described in and revised, modified, varied or supplemented by the Consultancy Services Order and/or Order Appendix together with any services that are reasonably incidental thereto and any varied or additional services performed pursuant to clause 6.2 below) unless the Consultant has first:
- 6.1.1 informed or discussed with Bellway the reasons why such other services are necessary; and
- 6.1.2 provided an estimate for any increase in the Consultant's Fees for the performance of such other services; and
- 6.1.3 obtained, as a condition precedent to the Consultant's entitlement to claim additional payment for providing any additional services, Bellway's prior written approval to the

amount of any estimated increase in the Consultant's Fees, such approval to be in the form of a COINS generated Consultancy Services Order Variation form.

- 6.2 Bellway may at any time by notice in writing to the Consultant vary the Services which the Consultant is to provide for any reason. Such variation must only be in the form of a COINS generated Consultancy Services Order Variation form. The variation may be by addition to, omission from, or alteration to the Services and will not prevent Bellway from being entitled to arrange for part or all of the Services to be performed by a third party. In the event of such a variation the Consultant's Fees will be adjusted by addition or reduction as Bellway agree with the Consultant or failing agreement in such a way Bellway considers is fair and reasonable (having regard to, where appropriate, any rates and prices in the Contract) and PROVIDED ALWAYS THAT if Bellway omits the whole or any part of the Consultant's Services for any reason (including but not limited to engaging a third party to perform the whole or any part of the Consultant's Services), the Consultant will not under any circumstances whatsoever be entitled to claim any costs, losses, damages or expenses from Bellway arising from such omission and such omission shall not under any circumstances be considered a breach of contract by Bellway.
- 6.3 In the event Bellway omits any part of the Services due to any breach, negligence or default by the Consultant, Bellway shall be entitled to claim and/or deduct from any amounts otherwise due to the Consultant all additional costs, losses, damages and expenses accrued, suffered or incurred by Bellway in connection with making alternative arrangements to perform the relevant services omitted from the Services (and whether by engaging alternative external consultants or allocating internal staff resources).
- 6.4 The Consultant shall not be entitled to be paid or reimbursed for any extra or varied work or services which the Consultant has to undertake or perform which has been caused by or is arising from any error, omission, negligence, breach or default by the Consultant or anyone for whom the Consultant is responsible. All such work or services shall be performed by the Consultant at its own cost and at no cost to Bellway.

7. INSURANCE

- 7.1 The Consultant warrants that it has in force a policy of professional indemnity insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) for each and every claim and unlimited in the aggregate in any one period of insurance or, if a higher amount is specified in relation to this clause 7.1 in the Contract Particulars, then such higher amount. The Consultant agrees and undertakes to maintain the insurance required under this clause for as long as the Consultant is liable under or in connection with the Contract with a reputable insurer or underwriter carrying on business in England, without any unusual exclusions, limitations and/or excesses and provided such insurance is generally available in the market at commercially reasonable rates and on reasonable terms.
- 7.2 If it states in the Order Appendix that this clause 7.2 applies, then the Consultant warrants that it has in force a policy of public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) for any one occurrence or series of occurrences arising out of one event or, if a higher amount is specified in relation to this clause 7.2 in the Contract Particulars, then such higher amount. The Consultant agrees and undertakes to maintain the insurance required under this clause for as long as the Consultant is liable under or in connection with the Contract with a reputable insurer or underwriter carrying on business in England, without any unusual exclusions, limitations and/or excesses and provided such insurance is generally available in the market at commercially reasonable rates and on reasonable terms.
- 7.3 For the avoidance of doubt payments of any increased or additional premiums required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to it will be deemed to be within the Consultant's obligations.
- 7.4 Not later than five (5) Working Days' after receiving a request to do so, the Consultant agrees to provide Bellway with documentary evidence that the policies of insurance required to be maintained by the Consultant under this clause 7 are being maintained and are in force, and the premiums for the current period of insurance have been paid. For the purposes of this provision, documentary evidence shall include a copy of a letter from its insurance brokers or an insurance verification certificate provided the Consultant also provides a complete copy of the insurance

policy schedule referring to the amount of the excess and/or deductible, any exclusions or limitations and any sub-limits or aggregate limits of cover applicable to the Consultant's insurance policy. The Consultant shall promptly notify Bellway of the proposed terms of any future renewal of the insurance it is required to maintain under clause 7.1 and/or clause 7.2, and any amendment, supplement, extension, termination, avoidance or cancellation of any of the insurance made or, to its knowledge, threatened or pending.

- 7.5 The Consultant shall immediately inform Bellway if the insurance that the Consultant is obliged to maintain pursuant to this clause 7 ceases to be maintained in order that Bellway and the Consultant can discuss means of best protecting the respective positions of Bellway and the Consultant in respect of the Project in the absence of such insurance.
- 7.6 The Consultant shall comply with the terms of its insurance policies maintained pursuant to this clause 7. The Consultant shall not do, omit to do or permit anything to be done which may make void or voidable or unenforceable any of the insurance or entitle the insurer to refuse any claim (in whole or in part) in respect of any risk or amount for which the policy is expressed to provide indemnity and the Consultant shall ensure that all other things necessary are done so as to keep its policy of insurance in force.
- 7.7 For the avoidance of doubt, the Consultant's obligations to maintain insurance are not intended to operate to limit, vary, reduce or exclude the Consultant's liability under or in connection with the Contract in any way whatsoever.

8. ASSIGNMENT/SUB-LETTING

- 8.1 The Consultant must not sub-let all or any part of the Services or assign or charge all or any part of the Consultant's Fees or any rights or benefits to the Consultant under the Contract without Bellway's prior written consent (such consent not to be unreasonably withheld or delayed) and, for the avoidance of doubt, no factoring of any debt to a third party will be permitted under any circumstances.
- 8.2 Notwithstanding whether or not Bellway permits the Consultant to sub-let any part or all of the Consultant's Services, the Consultant shall remain responsible and liable for all services and duties it sub-lets to a third party as if the Consultant had performed those services itself. Any sub-letting of part or all of the Services, whether or not Bellway has given its consent, shall not in any way relieve the Consultant from or reduce any of its obligations, duties and liabilities arising from or in connection with the Contract.
- 8.3 Bellway may assign the benefit of or any of its rights under the Contract without the Consultant's consent being required:
 - 8.3.1 on two occasions to any person with an interest in the Project and/or the Site or any part of them; and
 - 8.3.2 without counting towards the number of assignments under clause 8.3.1:
 - (a) by way of security to a person providing finance in connection with the Project or the Site or any part of them (and any reassignment on redemption of security); or
 - (b) to and from subsidiary or other associated companies within the same group of companies as Bellway so long as that assignee company remains within the same group of companies as Bellway or any other entity, which is directly or indirectly through tiered entities, controlled by, under common control with, or in control of, Bellway.

No further or other assignment is permitted without the Consultant's prior written consent, such consent not to be unreasonably withheld or delayed.

- 8.4 The Consultant shall not be entitled to contend and agrees not to contend or argue that any person to whom the benefit of the Contract is assigned in accordance with this clause is precluded or prevented from recovering under the Contract any loss or damage suffered or incurred by such assignee resulting from any breach of the Contract (whenever happening), by reason of the fact that such person is an assignee only and not a named Party under the Contract or by reason of

the fact that Bellway or any intermediate assignee or Party escaped any loss or damage by reason of the fact off 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 or incurred the same, any or as much loss or damage as such assignee or because such loss or damage is different to that which would have been suffered or incurred by Bellway or any assignee.

9. THIRD PARTY RIGHTS/COLLATERAL WARRANTIES

- 9.1 Except as set out in this clause 9, nothing in the Contract shall confer any right pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not a Party to it. The obligations and duties imposed on the Consultant and the rights, powers and remedies vested in Bellway under or in connection with the Contract shall be enforceable by and shall (in addition) vest in each Third Party Beneficiary pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 9.2 Notwithstanding any other provision of the Contract, it shall not be a defence to a claim by any Third Party Beneficiary that the loss or damage the Third Party Beneficiary has suffered or incurred is different in type or character from the loss or damage that Bellway might have suffered or incurred or that Bellway could not have suffered or incurred the same, any or as much loss or damage as the Third Party Beneficiary or Bellway could not now suffer or incur a loss or damage of the type or character that the Third Party Beneficiary has suffered or incurred.
- 9.3 In any action or proceedings brought by any Third Party Beneficiary, the Consultant shall not be entitled to rely on:
- 9.3.1 any set-off with respect to the Consultant's remuneration under the Contract; or
 - 9.3.2 any counterclaim which would have been available if such proceedings had been brought by Bellway; or
 - 9.3.3 any set-off or counterclaim relating to any matter not connected to the Project or the Contract.
- 9.4 Bellway and the Consultant shall be entitled to agree any amendment, variation, settlement, waiver or release under or arising from or in respect of the terms of the Contract, and to terminate the Consultant's engagement under the Contract or rescind or otherwise bring the Contract to an end without the consent of any Third Party Beneficiary being required (except and to the extent required from a Third Party Beneficiary under the step-in provisions of any collateral warranty executed by the Consultant relating to the Project and the Services).
- 9.5 Not later than fourteen (14) days after receipt of a request to do so, the Consultant shall in each case (without requiring any further or additional fee) execute and deliver to Bellway a deed or deeds of collateral warranty in a form referred to in or attached to the Consultancy Services Order or in such other form as reasonably required by Bellway in favour of any Third Party Beneficiary or any other third party or third parties nominated by Bellway.
- 9.6 The Consultant warrants and undertakes to Bellway that it shall not do or omit to do or allow or permit anything to be done which might adversely affect the rights and remedies afforded to a beneficiary under any collateral warranty provided by the Consultant in favour of any Third Party Beneficiary.
- 9.7 Not later than fourteen (14) days after receipt of a request to do so, the Consultant shall in each case (without requiring any further or additional fee) execute and deliver to Bellway a deed or deeds of novation in a form referred to in or attached to the Consultancy Services Order or in such other form as reasonably required by Bellway pursuant to which the Contract will be novated to a third party or third parties nominated by Bellway.
- 9.8 The Consultant shall not be entitled to contend that any Third Party Beneficiary is precluded from recovering under the Contract any loss incurred or damage suffered by it resulting from any breach of the Contract (whenever happening), by reason of the fact that such person is not a named party under the Contract or by reason of the fact that Bellway or any assignee escaped any loss or damage by reason of the fact of the disposal of any interest in the Project (or any part of the Project) or that Bellway or any assignee has not suffered the same, any or as much loss or damage as such Third Party Beneficiary or has suffered a different loss or damage to Bellway.

10. COPYRIGHT MATERIAL

- 10.1 If it states in the Contract Particulars that this clause is to apply, (or if the Contract Particulars do not specify whether clause 10.1 or clause 10.2 apply, then clause 10.1 will apply) then copyright in any Copyright Material shall remain vested in the Consultant, but the Consultant hereby grants to Bellway and Bellway's successors in title and permitted assigns, with immediate effect, an irrevocable, perpetual, non-terminable, royalty-free, non-exclusive licence to copy, use, adapt, modify and reproduce the Copyright Material for any and all purposes relating to the Project, the completed development and the relevant Site, 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 Consultant's consent. This licence shall remain in full force and effect notwithstanding the completion of the Consultant's obligations or the termination of the Consultant's engagement under the Contract or any dispute in connection with the Contract.
- 10.2 If it states in the Contract Particulars that this clause is to apply, then any and all intellectual property rights that the Consultant has in the Copyright Material shall be transferred to Bellway at the time it is created. Following such transfer, Bellway hereby grants to the Consultant a licence to copy and use the Copyright Material and to reproduce the designs contained within them for any purpose relating to the performance of the Services under the Contract.
- 10.3 To the extent that the Consultant does not have ownership of the copyright or any intellectual property rights in the Copyright Material, the Consultant 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 clause 10.1.
- 10.4 The Consultant 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/or provided by the Consultant or such other purpose as may be reasonably foreseeable.
- 10.5 The Consultant 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 Consultant shall 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 Contract or under any collateral warranty or letter of reliance it is obliged to enter into or third party rights it gives pursuant to clause 9 of the Conditions of Contract.
- 10.6 The Consultant agrees that the Consultant has not and shall not produce, specify or employ any Copyright Material in breach of any copyright, patent or other intellectual property right of any third party and the Consultant 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.
- 10.7 The Consultant shall at any time and at its own cost provide to Bellway (from time to time and on Bellway's request) with copies (in hard copy, CAD format, any electronic format and such other editable format as Bellway may reasonably require) of the Copyright Material and any other information, correspondence and documentation the Consultant has prepared in connection with the Project and the Consultant agrees not to exercise any lien for any reason which the Consultant might otherwise be entitled to exercise over the Copyright Material.
- 10.8 The Consultant hereby waives and agrees not to assert any moral rights in the Copyright Material granted pursuant to the Copyright, Designs and Patents Act 1988 or otherwise. The Consultant shall procure for Bellway a waiver corresponding to that in this clause from any consultant or sub-contractor employed by the Consultant who is an author (as referred to in the Copyright, Designs and Patents Act 1988) of any part of the Copyright Documents and/or of the Services in respect of them.
- 10.9 Notwithstanding any other provision of these Conditions of Contract or the Contract, ownership of all the Copyright Material prepared by or on behalf of the Consultant in connection with the

Services and/or the Project and/or the Site shall transfer automatically and immediately to Bellway (free from any charges and encumbrances, and without the need to execute any further agreement to document such transfer) in the event the Consultant becomes Insolvent and the Consultant shall forthwith upon request deliver all or any Copyright Material (in any editable format as may be reasonably requested by Bellway) to Bellway (save for the ownership of any Copyright Material which was owned by the Consultant prior to the commencement of the Services and which were not created by or on behalf of the Consultant in connection with the Project or the Site).

11. SUSPENSION AND TERMINATION

- 11.1 Bellway may instruct the Consultant to suspend performance of the Consultant's Services at any time and for any reason on giving the Consultant not less than seven (7) days' prior written notice. On suspension under this clause 11.1, the Consultant shall be entitled to payment of any instalment of the Fees due and owing at the time of suspension and a fair and reasonable proportion of the next following instalment of the Fees commensurate with the Services which have been provided prior to suspension. On resumption of the suspended Services, any previous payments shall be regarded as payments on account towards the Fees.
- 11.2 Notwithstanding anything to the contrary in the Contract and without prejudice to the Client's rights, powers and remedies under or in connection with this Agreement, Bellway may terminate the Consultant's engagement under the Contract at any time and for any reason by giving to the Consultant not less than seven (7) days' prior written notice. On expiry of seven (7) days after the date of receipt by the Consultant of such notice, the Consultant's engagement under the Contract will terminate automatically. In addition and, without prejudice to the foregoing, Bellway may terminate the Consultant's engagement under the Contract if the regular progress of the Services is affected by any force majeure event for a period of not less than three (3) months by giving to the Consultant not less than seven (7) days' prior written notice. Unless otherwise notified by Bellway, on the expiry of seven (7) days after the date of receipt by the Consultant of such notice, the Consultant's engagement under the Contract shall terminate automatically. Upon termination of the Consultant's engagement under clause 11.2, Bellway shall pay to the Consultant:
- 11.2.1 any instalments of the Fees which have become due to the Consultant prior to the date of such termination and which remain unpaid; and
- 11.2.2 a fair and reasonable proportion of the next following instalment of the Fees commensurate with the Services which the Consultant has performed up to the date of such termination
- 11.3 Subject always to the provisions of clause 11.6, the due date for payments to the Consultant on termination under clause 11.2 shall be the later of: (i) the date of termination; and (ii) the date of receipt by Bellway of the Consultant's relevant and properly prepared application for payment or VAT invoice showing the correct amount of VAT due. The final date for payment shall be the end of the calendar month after the month during which the relevant payment becomes due.
- 11.4 On termination under clause 11.2, Bellway shall not be liable to the Consultant for any losses, costs, damages, claims or expenses suffered or incurred by the Consultant arising from or in connection with such termination under clause 11.2 (and, without prejudice to the foregoing, Bellway shall not be liable to pay the Consultant any amounts in respect of loss of profit, loss of contract, loss of opportunity).
- 11.5 Without prejudice to Bellway's rights, powers and remedies under or in connection with the Contract, if any one or more of the following occurs then Bellway may give written notice to the Consultant to terminate the Consultant's engagement under the Contract and such termination shall take effect from the date and time of receipt by the Consultant of such notice:
- 11.5.1 Material Breach by the Consultant of the terms of the Contract; or
- 11.5.2 any wilful misconduct or gross negligence, material misrepresentation or fraud (whether before or after the date of the Contract); or
- 11.5.3 failure to comply with or breach of any Statutory Requirements; or

- 11.5.4 a breach by the Consultant of the terms of any of clauses 18, 19; or 20; or
- 11.5.5 the Consultant is or is likely to become (in Bellway's reasonable opinion) Insolvent.
- 11.6 Bellway shall not be liable to the Consultant for any losses, costs, damages, claims or expenses suffered or incurred by the Consultant arising from or in connection with such termination under clause 11.5 (and shall not be liable to pay any loss of profit, loss of contract, loss of opportunity) and Bellway shall not be obliged to make any further or other payment to the Consultant in such circumstances and no further sums shall become due to the Consultant until completion of the Project or if Bellway decides that it does not intend to complete the Project, whichever is the earlier. Bellway need not pay any sum that has already become due wither insofar as Bellway has given or gives a Pay Less Notice in accordance with the terms of the Contract or if the Consultant, after the last date on which a Pay Less Notice could have been given by Bellway in respect of that sum, has become Insolvent.
- 11.7 On termination under clause 11.5, the Consultant 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.
- 11.8 If the Consultant becomes aware that any event has occurred, or circumstances exist, which may entitle Bellway to terminate the Consultant's engagement under the Contract, then the Consultant shall immediately notify Bellway in writing.
- 11.9 If Bellway purports to terminate the Consultant's engagement under clause 11.5, but no ground for termination under clause 11.5 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 Consultant's engagement under the Contract under clause 11.2.
- 11.10 Upon termination or suspension of the Consultant's engagement under this clause 11, the Consultant shall if required by Bellway, deliver to Bellway copies of the Copyright Material (whether in the course of preparation or completed) and will immediately take all necessary steps to end in an orderly manner the provision by it of the Services and provided always that the Consultant shall be entitled to retain a copy for itself for record purposes.
- 11.11 Notwithstanding any termination or suspension of the Consultant's engagement under the Contract for any reason whatsoever, the provisions of the Contract shall continue to bind the Parties insofar as and for as long as may be necessary to give effect to their respective rights and obligations under the Contract.
- 11.12 The Consultant's obligations and liabilities shall survive termination of the Consultant's engagement under the Contract or in the event the Contract is brought to an end for any reason, except for the obligation to continue to perform the Services after the date of such termination. Termination of the Consultant's engagement under or in connection with the Contract shall not prejudice or adversely affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including but not limited to the right to claim damages in respect of any breach of the Contract, which existed at or before the date of termination.
- 11.13 Irrespective of the grounds of termination, the Consultant's engagement under the Contract may, at any time, be reinstated if and on such terms as the Parties agree. The terms of such reinstatement shall be recorded in writing and must be signed by Bellway.
12. **PERSONNEL**
- 12.1 The Consultant shall ensure that the key personnel named in the Contract Particulars are employed in performing the Services, devote sufficient time and attention fulfilling their respective roles and, except in the event of termination of employment, illness or incapacity, the Consultant shall not remove or replace such personnel without Bellway's prior consent, such consent not to be unreasonably withheld or delayed.
- 12.2 If at any time before completion of the Services, Bellway (acting reasonably) asks the Consultant to remove or replace any of the Consultant's personnel performing any part of the Services because in Bellway's reasonable opinion such personnel are not competent or suitable for the

Project, then the Consultant shall promptly replace such personnel with such person or persons as are acceptable to Bellway (acting reasonably).

13. SEVERANCE

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

14. CONFIDENTIALITY AND PUBLICITY

- 14.1 The Consultant 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 Consultant's obligations and duties under the Contract. Except as expressly permitted under clause 14.2, the Consultant must not disclose any such Confidential Information to any third party without Bellway's prior written consent.
- 14.2 The Consultant shall be entitled to disclose Confidential Information:
- 14.2.1 as may be required and necessary for the proper performance of its obligations and duties under the Contract; or
 - 14.2.2 in order to seek professional advice from its accountants, auditors, insurers, insurance brokers or solicitors in relation to its rights and obligations under the Contract and on terms which preserve confidentiality; or
 - 14.2.3 to any securities exchange, the London Stock Exchange plc, the Financial Conduct Authority, the Prudential Regulation Authority or Panel on Takeovers and Mergers (and any successor body of any of them), whether or not the requirement for information has the force of law; or
 - 14.2.4 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 Contract provided that, to the extent it is legally permitted to do so, the Consultant gives Bellway as much advanced written notice of such required disclosure as is reasonably practicable in the given circumstances; or
 - 14.2.5 which is or becomes generally available to the public (other than as a result of its disclosure by the Consultant or anyone for whom it is responsible in breach of these Conditions of Contract); or
 - 14.2.6 as far as necessary to implement and enforce any of the terms of the Contract or pursue any rights and remedies available under the Contract.
- 14.3 The Consultant shall apply the same security measures and degree of care to the Confidential Information as the Consultant applies to its own confidential information, which the Consultant warrants as providing adequate protection from unauthorised disclosure, copying or use.
- 14.4 The Consultant shall take all practicable steps to see that the Consultant's employees, sub-contractors, servants, agents, advisers and sub-consultants are bound by similar confidentiality obligations and publicity restrictions as stated in this clause 14.
- 14.5 Following receipt of a request to do so from Bellway, the Consultant shall promptly:
- 14.5.1 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;

14.5.2 erase all or specified classes, categories or parts of the Confidential Information from its computer systems; and

14.5.3 certify in writing to Bellway that it has complied with the requirements of this clause.

The provisions of this clause 14 shall continue to apply to any such documents and materials retained by the Consultant for the duration of its obligations, duties and liabilities in connection with the Contract.

14.6 The Consultant shall not without Bellway's prior written consent:

14.6.1 take or permit to be taken any photographs of the Project or the Site or any part of them for use in publicity or advertising; or

14.6.2 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 Services or Project or the Site or any part of them or the subject matter of the Contract; or

14.6.3 provide to any publication, journal or newspaper or any radio or television programme or internet site or social media any information in relation to the Services 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.

14.7 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 Consultant shall ensure that it does not and shall procure that its sub-consultants, suppliers, workers, employees, servants and agents 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 Consultant 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. The Consultant shall immediately notify and provide full particulars to Bellway if it becomes aware or has reason to suspect that such circumstances have arisen as referred to in this clause and shall set out to Bellway the steps the Consultant shall take to mitigate the adverse effect of any such circumstances.

15. **NOTICES**

15.1 Any notice to be given under or in connection with the Contract shall be in writing and sent to the relevant Party's Contact Details or if no such address or contact details are then current, the recipient's last known registered office address or such other contact details as either Party may notify in writing to the other Party from time to time. Bellway may serve a notice in connection with the Contract by any effective means, including but not limited to by email. In the case of notices to be given to Bellway, all notices may only be sent by personal delivery or post (except that applications for payment and invoices are to be sent by email unless otherwise expressly stated in the Contract).

15.2 In the case of adjudication and/or court proceedings only, copies of all notices must (in addition) be sent to:

Address: Bellway Homes Limited, Woolsington House, Woolsington, Newcastle upon Tyne NE13 8BF or, if no such address is then current, the recipient's last known registered office address.

FAO: Group Legal Director

AND

Address: DAC Beachcroft LLP, Bank House, East Pilgrim Street, Newcastle upon Tyne NE1 6QF or, if no such address is then current, the recipient's last known principal office in Newcastle upon Tyne.

FAO: Bellway Homes Construction Contact Partner (James Harrison)

15.3 In the absence of evidence of earlier receipt, a notice is deemed to be received:

15.3.1 if delivered personally (including by courier) then on delivery;

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

15.3.3 if sent by Royal Mail special delivery, then one (1) Working Day after posting it; and

15.3.4 if sent by email, then on completion of its transmission provided that receipt will not be deemed to have occurred if the sender receives an automated message indicating that the email has not been delivered to the receiving Party.

16. CDM REGULATIONS AND BUILDING REGULATIONS

16.1 The Consultant warrants, represents and undertakes that it has complied with and shall continue to comply with its statutory duties under the Statutory Requirements (including but not limited to the CDM Regulations, Building Regulations and Building Safety Laws) in relation to the Project and shall procure compliance by each of its employees, consultants, servants and agents with such Statutory Requirements (including but not limited to the CDM Regulations, Building Regulations and Building Safety Laws). The Consultant shall not do anything or allow or permit anything to be done which will result in, or is likely to result in, Bellway being in breach of any Statutory Requirements (including but not limited to the CDM Regulations, Building Regulations and Building Safety Laws).

16.2 The Consultant shall at all times comply with all reasonable directions given by the CDM Principal Contractor, Building Regulations Principal Contractor, the CDM Principal Designer and Building Regulations Principal Designer at no cost to Bellway.

16.3 The Consultant warrants, represents and undertakes that:

16.3.1 adequate resources have been allocated by the Consultant or, as appropriate, shall be allocated by the Consultant to enable the Consultant to comply with its statutory duties under the Statutory Requirements (including but not limited to the CDM Regulations, Building Regulations and Building Safety Laws); and

16.3.2 the Consultant (and its employees, sub-consultants, servants and agents) has and shall continue to have the competence, qualifications, skills, knowledge, expertise, experience, behaviours, organisational capability and capacity to enable it to comply with all of its obligations and duties under the Statutory Requirements (including but not limited to the CDM Regulations, Building Regulations and Building Safety Laws) and including as required by the CDM Regulations to prepare any design (as defined in the CDM Regulations) which it has prepared or shall prepare as part of the Services. The Consultant shall include in each contract appointing any sub-consultant a warranty equivalent to that set out in this clause.

16.4 The Consultant shall:

16.4.1 provide information relating to health and safety as may reasonably be required from time to time by Bellway and/or any third party involved in the Project;

16.4.2 at all times liaise, co-operate and co-operate with the Registered Building Inspector, any members of the design team, contractors, the CDM Regulations Principal Designer and Building Regulations Principal Designer, and any other consultants or persons involved in the Project to enable Bellway and all other third parties involved in the Project to comply with their statutory duties under the Statutory Requirements (including but not limited to

the CDM Regulations, Building Regulations and Building Safety Laws) and comply with all Requisite Consents;

- 16.4.3 promptly and without charge provide information and documents in connection with the Services and/or the Project to Bellway as Bellway and/or any Third Party Beneficiary may from time to time reasonably require in order to comply with and discharge any of its or their obligations and/or duties under the Statutory Requirements (including but not limited to the CDM Regulations, Building Regulations and Building Safety Laws);
- 16.4.4 provide such information as the CDM Regulations Principal Designer may require to enable the Principal Designer to compile the health and safety file for the Project pursuant to the CDM Regulations;
- 16.4.5 provide such information as the Building Regulations Principal Designer and/or Bellway may require to enable the Building Regulations Principal Designer and/or Bellway to comply with their duties and obligations under the Statutory Requirements (including but not limited to the CDM Regulations, Building Regulations and Building Safety Laws).
- 16.5 The Consultant shall provide, if requested by Bellway in writing, such details, evidence and information as Bellway may reasonably require to satisfy itself that the Consultant is complying with its statutory duties under the Statutory Requirements (including but not limited to the CDM Regulations, Building Regulations and Building Safety Laws; and the Consultant's obligations and duties and warranties given under this clause 16.
- 16.6 The Consultant shall notify Bellway as soon as reasonably practicable when there is any change in the organisational status or performance or professional accreditation of any individual performing works or services in relation to the Services and/or the Project that affects or could reasonably affect the Consultant's ability to meet the requirements of this clause 16.
- 16.7 In the event that Bellway considers that any of the Consultant's employees, sub-consultants, services or agents does not meet the requirements of this clause 16, then the Consultant shall, following Bellway's request, replace or procure a prompt replacement of such person.

17. HIGHER RISK BUILDINGS

- 17.1 The provisions of this clause 17 shall automatically apply in the event that the Project involves one or more Higher Risk Buildings.
- 17.2 For the purposes of this clause, the following terms shall have the following meanings:
 - 17.2.1 **'Accountable Person'** means as that term is defined in the Building Safety Act 2022;
 - 17.2.2 **'Building Safety Regulator'** means the regulatory body established by the government of the United Kingdom from time to time pursuant to the Building Safety Act 2022 who carries out regulatory functions under the Building Safety Act 2022 and other associated legislation;
 - 17.2.3 **'Golden Thread Facility'** means the electronic facility to be created and maintained for the purpose of holding the Golden Thread Information in accordance with the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023;
 - 17.2.4 **'Golden Thread Information'** means as that term is defined in regulation 31 of The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023;
 - 17.2.5 **'Higher Risk Building'** means a building which qualifies as a 'higher-risk building' for the purposes of section 65 of the Building Safety Act 2022 and Regulation 8 of the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023; and
 - 17.2.6 **'Principal Accountable Person'** means as that term is defined in the Building Safety Act 2022;
- 17.3 Unless otherwise expressly agreed in writing, as part of the Services (and at its own cost), the Consultant shall at all times:

- 17.3.1 provide Bellway or anyone nominated by Bellway with such reasonable assistance as may be required in submitting any application to the Building Safety Regulator in respect of any approvals required for the Project and in obtaining such approvals and/or responding to any queries or questions from the Building Safety Regulator;
- 17.3.2 observe, perform and comply with any and all lawful instructions, decisions and directions given by the Building Safety Regulator and/or any regulatory body;
- 17.3.3 utilise any information exchange facility prescribed by Bellway (or anyone nominated by Bellway) or the Building Safety Regulator for the exchange of relevant information and/or documents (including the Golden Thread Facility) which is required to satisfy any matters or obligations owed under the Statutory Requirements. The Consultant acknowledges and agrees that information and/or documents relating to the Services and/or the Project may be provided to and retained by the Building Safety Regulator and made available on a public register;
- 17.3.4 assist Bellway or anyone nominated by Bellway in creating and maintaining on behalf of Bellway all documents, materials, data and information required by the Building Safety Regulator and/or Accountable Person and/or the Principal Accountable Person as may be required in accordance with the Statutory Requirements (including the Golden Thread Information) and provide Bellway with copies promptly on request;
- 17.3.5 liaise, co-operate and collaborate with the Building Safety Regulator in relation to any matter connected with the Services and/or the Project;
- 17.3.6 provide Bellway or anyone nominated by Bellway with reasonable assistance in compliance with Bellway's obligations under The Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 and shall not, through any act or omission, do (and shall procure that none of its employees, sub-consultants, servants and agents do) anything which may put Bellway in breach of or delay or prevent compliance with such obligations; and
- 17.3.7 promptly and without charge provide (and ensure that each of its employees, sub-consultants, servants and agents shall provide) to the Accountable Person and/or the Principal Accountable Person on request copies of any information and/or documents that the Consultant and its employees, consultants, servants and agents are required to provide to the Accountable Person and/or the Principal Accountable Person by the Building Safety Laws. In the event that Bellway is obliged to provide any information and/or documents to the Accountable Person and/or the Principal Accountable Person by the Building Safety Laws but such information and/or documents are in the Consultant's possession (or in the possession of any of its employees, consultants, servants and agents), then the Consultant shall promptly provide such information and/or documents to Bellway.

18. **BRIBERY ACT COMPLIANCE**

18.1 In this clause 18:

- 18.1.1 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 **Bribery Act Guidance**'); and
- 18.1.2 an associated person of the Consultant includes any contractual counterparty or sub-contractor of the Consultant.

18.2 The Consultant warrants, represents and undertakes that it shall and shall procure that any associated person or other person performing services or works in connection with the Contract shall:

- 18.2.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption practices including the Bribery Act and the Bribery Act Guidance (together 'the **Bribery Act Requirements**'); and

- 18.2.2 comply with Bellway's Anti-Bribery Policy current as at the date of the Contract and as may be updated from time to time (copies of which are available for inspection on request or can be found on Bellway's website: <https://www.bellwayplc.co.uk/investor-centre/governance/commercial> .
- 18.3 The Consultant warrants, represents and undertakes that it shall not engage in, and shall procure that any associated person or other person performing services or works in connection with any 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.
- 18.4 The Consultant warrants, represents and undertakes that it shall:
- 18.4.1 throughout the term of the Contract have in place and maintain its own policy and procedures including adequate procedures to ensure compliance with the Bribery Act Requirements, Bellway's Anti-Bribery Policy, and clause 18.3 above and shall enforce them whenever appropriate;
 - 18.4.2 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 Contract;
 - 18.4.3 at Bellway's request certify to Bellway in writing, signed by the Consultant or its duly authorised officer, compliance with this clause by the Consultant and by all associated persons of it performing services in connection with the Contract;
 - 18.4.4 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 Consultant and the Consultant warrants and undertakes that no officer, employee or direct or indirect owner of it is a foreign public official as at the date of the Contract; and
 - 18.4.5 be directly liable to Bellway in the event of any breach of this clause 18 by an associated person of it and shall fully indemnify Bellway for any costs, losses, damages or expenses consequent upon such breach howsoever arising.
19. **MODERN SLAVERY ACT COMPLIANCE**
- 19.1 In performing its obligations under the Contract, the Consultant warrants, represents and undertakes that the Consultant shall comply and shall ensure that each of its sub-consultants, employees, servants and agents shall comply with:
- 19.1.1 the Modern Slavery Act 2015; and
 - 19.1.2 Bellway's Anti-Slavery Policy current as at the date of the Contract and as may be updated from time to time (copies of which are available for inspection on request or can be found on Bellway's website: <https://www.bellwayplc.co.uk/investor-centre/governance/commercial>
- 19.2 The Consultant shall permit Bellway and its third party representatives, on reasonable notice, but without notice in case of any reasonably suspected breach of the Consultant's obligations under this clause 19, to have access to and take copies of the Consultant's records and any other information and to meet with the Consultant and any sub-consultants, employees, servants or agents of the Consultant to audit the Consultant's compliance with its obligations under this clause 19.
20. **DATA PROTECTION**
- 20.1 In this clause 20, the following terms shall have the following meanings:
- 20.1.1 **'Data Protection Laws':** means all data protection and privacy legislation, regulations and guidance applicable from time to time including, without limitation:
 - (a) the 'UK GDPR' as defined in section 3(10) Data Protection Act 2018 ('DPA');

- (b) the DPA;
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and
- (d) any applicable guidance or codes of practice issued by a Data Protection Regulator

all as amended, updated or re-enacted from time to time;

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

20.1.3 **'Data Protection Regulator'**: means the Information Commissioner's Office or any successor body from time to time.

20.2 The Parties acknowledge that for the purposes of the Contract, Bellway is the controller and the Consultant is the processor. The details of the processing carried out by the Consultant on Bellway's behalf are set out below:

Purposes of Processing	to permit or enable the Consultant to commence, carry out or complete the Services or perform any obligations or duties it has in connection with the Contract.
Duration of Processing	until the date which is four (4) years after completion of the Services or such longer duration as may be specified in the Contract.
Nature of Processing	processing in relation to the Services or the Project or the Site or the performance of the Consultant's duties or obligations in connection with the Contract.
Description of data	name, contact details, identity information, legal negotiations, contract terms, property details, snagging details, property defects, financial information, business information, information relating to disputes or claims, actual or proposed settlement terms and any other data identified or referred to in the Contract or provided to the Consultant for the performance of its obligations under the Contract.
Special categories of data	it is not envisaged that special categories of data will be routinely processed. However, by exception, the processing may include special category data where strictly necessary (for example, details of a disability in order to enable appropriate adjustments to proposed Project.
Categories of Data Subjects	Bellway's employees and those of any other contractor, sub-contractors or any other third party connected to the carrying out or completion, testing, inspection or approval of the Project. Bellway's customers or residents or occupiers of the Site or Project or any part of it. Any other individuals who are relevant to the Services to be provided by the Consultant, including accountants, surveyors, valuers, estate agents, other professional advisors, experts, sub-contractors, household members of Bellway's customers and any other relevant individuals.

- 20.3 Each Party shall comply with its obligations under Data Protection Laws.
- 20.4 Without prejudice to the generality of clause 20.3, the Consultant shall :
- 20.4.1 only process personal data for and on behalf of Bellway for the purposes set out in clause 20.2 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 Consultant shall, where permitted, notify Bellway of that legal or regulatory requirement in writing before processing). Without limitation to the generality of the foregoing, the Consultant shall not market its own services directly to data subjects or share personal data with a third parties for the purpose of marketing services (whether in exchange for payment or other benefit);
 - 20.4.2 notify Bellway promptly if in its opinion any instruction from Bellway would contravene Data Protection Laws;
 - 20.4.3 not do or omit to do anything which will place Bellway in breach of any Data Protection Laws;
 - 20.4.4 ensure that only such of the Consultant's employees, consultants, servants and agents who may be required by the Consultant to assist it in meeting its obligations and duties under the Contract have access to the personal data;
 - 20.4.5 ensure that persons authorised by it to process personal data have committed themselves to duties of confidentiality or are under an appropriate statutory duty of confidentiality;
 - 20.4.6 implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data in such a manner as meets the requirements of Data Protection Laws;
 - 20.4.7 not transfer or allow the transfer of the personal data outside the United Kingdom;
 - 20.4.8 at Bellway's choice, delete or return all personal data to Bellway on expiry of the Duration of Processing and delete existing copies unless required by law or regulatory requirements to retain such personal data;
 - 20.4.9 maintain complete and accurate records and information to demonstrate its compliance with the obligations set out in this clause 20 and make available to Bellway all information necessary to demonstrate compliance 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 Consultant's premises on reasonable notice and provide all reasonable assistance to Bellway to enable it (or its designated auditors) to audit the Consultant's compliance with this clause 20 and the Data Protection Laws;
 - 20.4.10 notify and provide full details to Bellway of any potential or actual personal data breach within 48 hours and take all measures necessary to remedy or address the issue and co-operate with Bellway to resolve such issue; and
 - 20.4.11 not appoint a sub-processor unless:
 - (i) prior written authorisation has been provided by Bellway; and
 - (ii) a written contract has been entered into with the sub-processor which contains terms which are no less onerous than those terms set out in the Contract.
- 20.5 In the event that the Consultant appoints a sub-processor in accordance with this clause 20, it shall remain responsible and fully liable for the acts and omissions of that sub-processor as if such acts and omissions were its own.

- 20.6 Where Bellway requires assistance from the Consultant in order to respond to requests, queries and/or investigations in respect of the personal data or requires the Consultant to help Bellway in reconstructing and/or otherwise safeguarding the personal data or requires that the Consultant assists Bellway in complying with Data Protection Laws in relation the Contract, the Consultant shall (at its cost) provide Bellway with such assistance as Bellway reasonably requests within any timescales reasonably specified by Bellway.
- 20.7 The Consultant 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:
- 20.7.1 any breach by the Consultant of this clause 20;
- 20.7.2 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 Contract by the Consultant; and/or
- 20.7.3 where the Consultant, through its acts or omissions, is itself in breach of, or causes Bellway, to be in breach of the Data Protection Laws.

21. **AUDIT**

- 21.1 Throughout the duration of the Contract and for so long as the Consultant is liable under or in connection with the Contract, the Consultant shall keep and maintain the full and accurate records (together with such supporting or underlying documents and materials) of the performance of the Consultant's obligations and duties under the Contract (including but not limited to all the Services provided under it), all time spent by its personnel in performing the Services, all expenditure, disbursements and expenses reimbursed by Bellway and all payments made by Bellway. The Consultant shall at any time on reasonable notice permit Bellway and its authorised representatives such access to audit, inspect and take copies of those records and related materials as may be required by Bellway in connection with the Contract. In addition, Bellway shall be entitled from time to time to conduct an audit of the Consultant's operations, facilities and working conditions and its quality assurance / quality control, records management, performance standards, environmental, ethical and health and safety procedures and systems to ensure that the Consultant has the appropriate facilities, procedures, systems and personnel appropriate for the Consultant to carry out and complete the Services and comply with its obligations and duties under the Contract.
- 21.2 The Consultant shall take all practicable steps to ensure that the Consultant's sub-consultants, employees, servants and agents are bound by similar obligations in their respective contracts as stated in this clause 21.
- 21.3 If any inspection or audit by Bellway pursuant to this clause 21 discovers substantive findings related to fraud, misrepresentation, non-compliance or non-performance, the Consultant shall reimburse Bellway all of Bellway's costs, losses and expenses accrued, suffered or incurred arising from or associated with such inspection or audit.
- 21.4 On receipt of a reasonable request to do so, the Consultant shall promptly provide to Bellway all documentary evidence and information necessary to demonstrate the Consultant's observance and compliance with all of its obligations and duties under or in connection with the Contract.
- 21.5 The Consultant shall notify Bellway in writing as soon as reasonably practicable of any actual, anticipated or suspected breach of or default under the terms of the Contract by the Consultant or any of its employees, consultants, servants and/or agents and the steps proposed to be taken and/or having been taken to remedy such breach or default.

22. **EMPLOYMENT STATUS**

- 22.1 For the avoidance of doubt, nothing in the Contract or in any Contract to which these Conditions of Contract apply shall be construed as at any time establishing the Consultant or any servant, agent or employee of the Consultant as the servant, agent or employee of Bellway.
- 22.2 For the avoidance of doubt nothing in the Contract shall be construed at any time as making the Consultant or any servant, agent or employee of the Consultant 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).
- 22.3 Nothing in the Contract shall be deemed to constitute either Party as the agent of the other Party or authorise any Party to:
- 22.3.1 incur any expense on behalf of the other Party;
- 22.3.2 enter into any engagement or make any representation on behalf of the other Party;
- 22.3.3 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.
- 22.4 The Consultant shall ensure that any eligible employees or other persons engaged to work by the Consultant in connection with the Services are paid at a rate equal to or exceeding the National Minimum Wage in force from time to time during the performance of the Services.
- 22.5 The Consultant warrants that all the employees, servants and agents of the Consultant working in the United Kingdom have permission to live lawfully in the United Kingdom and to lawfully carry out the work in question in the United Kingdom at all times. The Consultant shall comply (and procure that all its employees, sub-consultants, servants and agents comply), in all respects with their obligations under the Immigration, Asylum and Nationality Act 2006. At all times, the Consultant shall keep up to date, adequate and suitable records in relation to its employees, servants and agents as required by law and in compliance and in accordance with this clause. The Consultant shall provide Bellway with such information as Bellway may from time to time reasonably require in order to verify such compliance.
- 22.6 The Consultant shall immediately notify Bellway if it or any of its employees, servants or agents are subject to any penalties or enforcement activity under the Immigration, Asylum and Nationality Act 2006 and/or any enforcement activity and/or compliance or closure notices under the Immigration Act 2016. Any of the Consultant’s employees, servants or agents in respect of whom the penalty or enforcement activity relates shall be immediately removed from the Services and/or the Project.
- 22.7 The Consultant shall indemnify, save, defend and hold harmless Bellway and keep it so indemnified at all times from and against any and all loss, liability, cost or expense incurred by Bellway or any Group Company in connection with:
- 22.7.1 any assessment, determination or demand made by any relevant tax authority in respect of any income tax, Apprenticeship Levy, construction industry training levy, employer’s and/or employee’s national insurance contributions and any interest, penalty or fine in connection therewith in each case arising out of or in connection with any of the Services;
- 22.7.2 any employment related claim or any claim based on worker status brought by the Consultant or any of its employees, servants or agents or any IR35 Contractor arising out of or in connection with the provision of the Services;
- 22.7.3 any claim by or on behalf of the Consultant or any person who is or was any of its employees, servants or agents under the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
- 22.7.4 any liability under Sections 15-25 of the Immigration, Asylum and Nationality Act 2006 and/or the Immigration Act 2016 which shall include but not be limited to any liability for any penalties or losses arising from suspension or cessation in part or whole of the Services or the Project and/or any part of it.

- 22.8 The Consultant shall not provide to Bellway or otherwise utilise in the provision of any Services any individual who could reasonably be considered to be an IR35 Contractor, unless the Consultant notifies Bellway not less than fourteen (14) days in advance of the date on which the IR35 Contractor is to commence performance of any part of the Services of its intention for the IR35 Contractor to perform any part of the Services (or, where the IR35 Contractor is already utilised in the provision of Services as at the date of the Contract, notifies Bellway that this is the case) (the "**Prior Notification**") and Bellway has given its consent in writing that the IR35 Contractor be engaged to perform part of the Services (the "**Acceptance**").
- 22.9 The Consultant shall in the case of an individual who is to commence provision of any part of the Services and who could reasonably be considered to be an IR35 Contractor, provide to Bellway within seven (7) days of request by Bellway such information and assistance as Bellway may reasonably specify in order to produce a statement in accordance with the requirements of section 61NA ITEPA (the "**Status Determination Statement**"). The Consultant also agrees to provide reasonable assistance to Bellway in order to manage any appeal which the IR35 Contractor may lodge against a Status Determination Statement conclusion it reaches.
- 22.10 If the Status Determination Statement issued by Bellway to the Consultant provides that the IR35 Contractor is deemed to be an employee of Bellway (or office holder) for tax purposes, the Consultant shall make such deductions of income tax and National Insurance contributions from any payment to the IR35 Contractor, and shall make such payment of employer National Insurance contributions and Apprenticeship Levy in respect of such payment, as is required by law, and shall upon written request by Bellway provide such details of the sums so deducted and/or paid as Bellway may reasonably require within a period of seven (7) days of request. In the event the IR35 Contractor performs any of the Services via a third party intermediary other than the Consultant, the Consultant shall procure that such entity shall comply with any obligations to make such deductions or contributions as is required law from any payment to the IR35 Contractor. The Consultant shall notify Bellway as soon as reasonably possible of any information of which the Consultant becomes aware which is likely to be relevant to the ongoing applicability of the Status Determination Statement.
- 22.11 The Parties do not expect the commencement, termination or expiry in whole or part of the Contract, any contract between Bellway and the Consultant, the Services, or any other activities carried out by the Consultant on behalf of Bellway or any Group Company to give rise to a 'relevant transfer' under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE'). Accordingly, the Parties agree as follows:
- 22.11.1 In the event that any person (an 'Undisclosed Employee') asserts or establishes that their contract of employment (or a liability in connection with it) has transferred under TUPE from an Original Employer to a New Employer in connection with the commencement, termination or expiry in whole or part of the Contract, any other contract between Bellway and the Consultant, the Services, or any other activities carried out by the Consultant on behalf of Bellway or any Group Company, then once the Consultant becomes aware of the assertion they shall notify Bellway of it in writing within fourteen (14) days of becoming aware of the assertion.
- 22.11.2 The Consultant shall procure that the Original Employer shall within fourteen (14) days of the notification referred to in clause 22.11.1 offer employment to the Undisclosed Employee on identical terms as applied to them immediately before the alleged transfer (or take such steps as may be required for them to effectively withdraw their claim), but if by the end of that fourteen (14) day period: (i) the Original Employer does not make the offer; (ii) the offer is made but not accepted; or (iii) the claim is not effectively withdrawn to Bellway's reasonable satisfaction; then the New Employer shall be entitled to terminate the person's employment; and
- 22.11.3 If: (i) the New Employer terminates the Undisclosed Employee's employment within thirty five (35) days of the above notification; or (ii) the Undisclosed Employee's claim does not relate to the transfer of their contract of employment but to the transfer of a liability in connection with it or its termination; then the Consultant shall indemnify, save, defend and hold harmless Bellway and keep it so indemnified at all times from and against all liabilities (including, without limitation, legal, other professional fees and management time) suffered or incurred by Bellway and/or any New Employer in relation to the

Undisclosed Employee's employment and its termination, including without limitation, any claims for failure to inform and consult under TUPE, any claims for unfair dismissal and all costs associated with the employment of the individual up to and including the date that their employment terminates (and if the Undisclosed Employee asserts that a liability in connection with their employment or its termination has transferred to a New Employer, all liabilities incurred in connection with the settlement and withdrawal of that claim.)

22.11.4 For the purpose of clause 22.11:

- (a) 'New Employer' means Bellway, a Group Company, or a replacement consultant that is engaged to carry out services that replace, in whole or part, services carried out by the Consultant on behalf of Bellway or a Group Company; and
- (b) 'Original Employer' means the Consultant, other member of the Consultant's group of companies, or any other entity which employed the Undisclosed Employee immediately before the alleged transfer of their employment (or of a liability in connection with it).

23. REAL LIVING WAGE

- 23.1 Subject to clause 23.2, the Consultant warrants and undertakes that it shall with effect from the date of the Contract ensure that each of the Consultant's consultants, employees, servants and agents who is aged 18 or over is paid at a rate that is at least equal to the Real Living Wage.
- 23.2 If an increase in the Real Living Wage is announced by the Living Wage Foundation, the Consultant shall, with effect from a date that is no more than six (6) months after the date of the announcement, ensure that each of the Consultant's consultants, employees, servants and agents who is aged 18 or over is paid at a rate that is at least equal to the increased Real Living Wage.
- 23.3 The Consultant shall notify Bellway in writing of the date and amount of any increase to be made to the pay of any of the Consultant's consultants, employees, servants and agents in accordance with clause 23.
- 23.4 For the purpose of this clause 23, 'Real Living Wage' in respect of any of the Consultant's consultants, employees, servants and agents means the real living wage published by the Living Wage Foundation that applies to the location where that person resides and, for the avoidance of doubt, means the London Living Wage for individuals who live in a London borough.

24. WAIVER, FORBEARANCE AND VARIATION

- 24.1 Any agreement by Bellway to waive any obligation or liability of the Consultant will only be effective if it is in writing, refers expressly to the Contract and this provision and is signed in pen and ink by an authorised signatory of Bellway. Failure to exercise, or any delay in exercising any right, power or remedy by Bellway provided under the Contract or by law at any time shall not constitute or be construed as a waiver of such entitlement or any other right, power or remedy and shall not affect the validity of these Conditions of Contract or the Contract or any part or parts thereof or the right, power or remedy of the relevant Party to enforce any provision in accordance with these Conditions of Contract, nor shall it preclude or restrict any further exercise of that or any other right, power or remedy. The rights which each Party has under these Conditions of Contract and/or the Contract shall not be prejudiced or restricted by any indulgence or forbearance extended to either Party. No waiver by either Party in respect of a breach shall, under any circumstances whatsoever, operate as a waiver in respect of any subsequent breach.
- 24.2 These Conditions of Contract may only be amended or varied where such variation is in writing and signed by an authorised signatory of Bellway. Any other purported variation shall be of no effect. No variation shall vitiate the Contract.
- 24.3 No allowance of time, indulgence, non-enforcement, waiver, forbearance, release, inspection, admission, acknowledgement, approval, comment, recommendation, instruction, decision, direction, review, consent or indication of satisfaction or any failure or delay or omission to inspect, acknowledge, approve, comment, recommend, instruct, decide, direct, review or consent by Bellway or its employees, servants, sub-contractors or agents or any statutory or regulatory body

shall operate in any way whatsoever to affect, derogate, limit, vary, modify, reduce, exclude or extinguish the Consultant's duties, liabilities, responsibilities and/or obligations in connection with the Contract. Notwithstanding any other provision of the 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 Consultant from any of its duties, liabilities, responsibilities and/or obligations under the Contract.

24.4 The single or partial exercise of any right, power or remedy provided by law or under or in connection with the Contract will not preclude any other or further exercise of it or the exercise of any other right, power or remedy.

24.5 Bellway's rights, powers and remedies provided in these Conditions of Contract are cumulative and not exclusive of any rights, powers and remedies provided by law. The provisions in these Conditions of Contract are without prejudice to and not in substitution of any other rights, powers and remedies of Bellway.

25. BELLWAY POLICIES AND PROCEDURES

25.1 The Consultant shall comply with (and procure that its employees, servants and agents comply with) all aspects of Bellway's policies and procedures relevant to the Services and current as at the date of the Contract and as may be updated from time to time (copies of which are available for inspection on request or can be found on Bellway's website: <https://www.bellwayplc.co.uk/investor-centre/governance/commercial>)

25.2 Bellway shall be entitled to require the Consultant to remove from any further involvement in the Services any person who fails to comply with Bellway's policies and procedures or any requirement of the Contract and the Consultant shall promptly comply with such request.

26. FURTHER ASSURANCES

26.1 The Consultant agrees to execute and deliver such documents and instruments, shall perform such acts and take such further actions as Bellway may, from time to time, reasonably require for the purpose of giving full effect to the Contract and securing the full benefit of the rights, powers and remedies conferred upon Bellway under or in connection with the Contract.

27. LIMITATION PERIOD

27.1 Notwithstanding the manner in which the Contract has been entered into, the statutory contractual limitation period in respect of the Consultant's obligations and liabilities for breach under the Contract shall extend to the later of: (i) the expiration of twelve (12) years after the date of practical completion of the Project; or (ii) twelve (12) years from the date the Consultant completes the performance of the Consultant's Services; and (iii) such other period as may be prescribed by law or statute. For the avoidance of doubt, any action or proceedings under statute may be brought or commenced against the Consultant within any prescribed statutory limitation period and nothing in the Contract excludes or limits any right or remedy which Bellway or any Third Party Beneficiary has or may have under the Building Act 1984 or the Defective Premises Act 1972.

27.2 For the avoidance of doubt, the provisions of the Limitation Act 1980 (and any subsequent amendment, extension or re-enactment) relating to claims in contract are excluded and do not apply to claims, actions or proceedings by Bellway against the Consultant for breach under the Contract. The Consultant agrees that it shall not rely upon a defence under the Limitation Act 1980 (and any subsequent amendment, extension or re-enactment) in any action or proceedings brought by Bellway for breach under the Contract.

28. SITE WORKS

28.1 The Consultant shall be liable for and shall indemnify, save, defend and hold harmless Bellway from and against all liabilities, claims, proceedings, interest, costs, expenses (including but not limited to legal costs and expenses), damages and losses whatsoever (including but not limited to any direct, indirect or consequential losses, loss of reputation and all interest, financing costs, penalties and legal and other reasonable professional fees, costs and expenses), whether actual, contingent or prospective and howsoever accrued, suffered or incurred by Bellway in respect of death of or injury whatsoever to any person and/or any theft, loss, injury and/or damage

whatsoever to any property (whether real or personal), which may arise from or in connection with the performance of the Consultant's obligations and duties under the Contract or arising out of or in the course of or caused by the design, carrying out and/or completion of the Services.

28.2 In carrying out the Services, the Consultant shall use all reasonable endeavours:

28.2.1 not to cause any avoidable nuisance to any owners, occupiers or residents of any existing properties on the Site or to any adjoining landowners or neighbours at the Site or to any other person; and

28.2.2 not to interfere with the quiet enjoyment of or rights of any owners, occupiers or residents of any existing properties on the Site or to any adjoining landowners or neighbours at the Site or to any other person; and

28.2.3 to ensure that, if carrying out Services in an existing building or structure, it shall not obstruct or otherwise interfere with any fire escape.

28.3 The Consultant shall provide to Bellway, on request, any information, materials, notices, declarations and documents reasonably required by Bellway to enable Bellway to comply with (or to demonstrate the Consultant's compliance with) its obligations under the Contract and under any applicable laws, Statutory Requirements and Requisite Consents.

29. **DISPUTE RESOLUTION**

29.1 The Consultant shall co-operate and assist Bellway in dealing with any dispute that Bellway may have with any third party in relation to the Services and/or the Project.

29.2 Without prejudice to Bellway's or the Consultant's right to commence or continue with court proceedings, any dispute or difference arising as between the Consultant and Bellway under the Contract may (subject to the appointment of an Adjudicator in accordance with clause 29.3) 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.

29.3 The referring Party shall apply to TECBAR for the appointment of an Adjudicator.

29.4 If the dispute or difference to be referred to adjudication under the 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 Consultant hereby agree that the dispute or difference under the Contract shall be referred to the adjudicator appointed to determine the related dispute.

30. **GOVERNING LAW AND JURISDICTION**

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

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

**I HEREBY CONFIRM THAT I WAS PHYSICALLY
PRESENT TO WITNESS THE ABOVE-NAMED
DIRECTOR EXECUTE THESE CONDITIONS**

Witness Signature

Witness Name

Witness Address:

.....

.....

Witness Occupation:

DATE: