

BARWOOD LAND TERMS AND CONDITIONS

1. DEFINITIONS

“**Agreement**” shall mean these terms and conditions and the Letter.

“**Beneficiary**” means any third party that has or is to acquire an interest in the Site or Project (or any part thereof), including but not limited to any landowner, purchaser, tenant, funder or any management company.

“**Consultant**” shall mean the consultant named in the Letter.

“**Consultant’s Personnel**” shall mean those persons (if any) named in the Letter or if not named, those employees, consultants or agents of the Consultant who the Employer has approved to provide the Services.

“**Conflict of Interest**” means any actual or potential conflict of interest arising as a result of the Consultant acting or providing services for the Employer and another party or parties that prejudices or may prejudice any planning application(s) submitted by or on behalf of the Employer (whether in the Employer’s sole name or jointly with another party or parties).

“**Documents**” means the designs, drawings, models, details, plans, calculations, specifications, surveys, reports and other similar or related documents and the designs contained in them, whether in hard copy or in electronic form, which have been or are hereafter prepared, written, originated or made by or on behalf of the Consultant or his sub-consultants for any purpose whatsoever in connection with the Project.

“**Employer**” shall be Barwood Land (“Trading name”) or such other party or parties named as the Employer in the Letter.

“**Fee**” shall mean the fee set out in the Letter.

“**Group Company**” means any subsidiary or holding company or any other subsidiary or holding company, as subsidiary and holding company are understood within section 1159, Companies Act 2006, but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1) (a).

“**Letter**” shall mean the Letter of appointment sent (by email or post) to the Consultant by the Employer appointing the Consultant under these Terms and Conditions.

“**Minimum Sum**” shall mean the minimum level of professional indemnity insurance stipulated in the Letter. If no amount is stipulated in the Letter then the Minimum Sum shall be £5,000,000.

“**Part(y)/(ies)**” shall mean the Employer and the Consultant

“**Prohibited Act**” means:

- (a) offering, giving or agreeing to give to any servant of the Employer any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Employer; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Employer;
- (b) entering into this Agreement or any other contract with the Employer in connection with which commission has been paid or has been agreed to be paid by the Consultant or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Employer; or
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Employer;
- (d) defrauding or attempting to defraud or conspiring to defraud the Employer.

“**Project**” means the investigation and promotion of the Site

“**Services**” means the services as defined in the Letter to the Consultant in respect of the Project.

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"Site" has the same meaning as is set out in the Letter

"Statutory Requirements" means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Project or the performance of any obligations under this Agreement and any regulation or bye-law of any local authority or statutory undertaker or equivalent or relative public body which has any jurisdiction with regard to the Project, any requirements relating thereto which may be stipulated as pre-requisites for the adoption of any services, drains, sewers, pipes, wires, cables or other service transmission media by any such local authority, statutory undertaker or body where the same are to be adopted) and any requirements of the fire officer.

"Third Party Agreements" means any such third party agreements as the Employer has entered into or may enter into and details of which are provided to the Consultant (less any commercially sensitive information)

"Trading Name" means **Barwood Land is the trading name of the following companies for the purposes of these terms and conditions:**

- (i) Barwood Development Securities Limited
- (ii) Barwood Strategic Land II LLP
- (iii) Barwood Land SW MK Ltd
- (iv) Rockspring Barwood Redditch Limited
- (v) Rockspring Barwood Southam Limited
- (vi) Rockspring Barwood Barnstaple Limited
- (vii) Rockspring Barwood Gamston Limited
- (viii) Rockspring Barwood Plymouth Limited
- (ix) Barwood Ventures Limited
- (x) Barwood Ventures Holdings Limited

2. INTERPRETATION

2.1 Unless there is something in the subject or context inconsistent therewith:

- (a) where the expression 'Consultant' includes two or more persons, obligations expressed or implied to be made by or with any of such persons, shall be deemed to be made by or with such persons jointly and severally;
- (b) any reference to a statute shall include any statutory extension, or modification or re-enactment of such statute and any order instrument, plan, regulation, permission or direction made or issued thereunder or deriving validity therefrom;
- (c) the clause and paragraph headings are for convenience only and shall not affect the construction of these terms and conditions;
- (d) any reference to a clause sub-clause paragraph or appendix shall be a reference to the clause sub-clause or paragraph of or appendix to these terms and conditions so numbered or named;
- (e) words importing the singular only shall include the plural and vice versa and words importing one gender shall be treated as including reference to any gender;
- (f) words importing the whole shall be treated as including reference to any part thereof;
- (g) words with capitalised first letters which are used but are not defined in this Agreement shall have the meaning ascribed to such words in the Employer's letter to the Consultant appointing the Consultant in respect of the Project.

3. APPOINTMENT

3.1 The Consultant warrants that it has not committed, or permitted to be committed, and will not commit or permit to be committed any Prohibited Act and that neither the Consultant nor any of its officers, person employed, engaged by or connected to it has committed or permitted to be committed or shall commit or permit to be committed a Prohibited Act.

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- 3.2 The Parties agree that they have not been induced to enter into this Agreement by any statement, representation, warranty or undertaking that is not set out in this Agreement, and that any pre-contractual representations and warranties, whether made orally or in writing, are of no effect and shall not be relied upon nor used to make any claim in law unless expressly incorporated into this Agreement.
- 3.3 The Consultant is deemed to have inspected and examined the Site and surrounds and information available in connection with the Site and/or Project, to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the execution of the Services and to have satisfied itself as to the nature and extent of the Services. No failure on the part of the Consultant to discover or foresee any such condition, risk, contingency or circumstance, whether the same ought reasonably to have been discovered or foreseen or not, shall entitle the Consultant to any additional fees.
- 3.4 The Employer appoints the Consultant to perform and proceed regularly and diligently to carry out and complete the Services upon the terms and conditions set out in this Agreement and in accordance with the Employer's instructions from time to time and the Consultant accepts the appointment.
- 3.5 The effective date of this Agreement shall be the date upon which the Consultant first commenced performance of the Services or the date of this Agreement, whichever is the earlier.
- 3.6 In accordance with the terms of this Agreement, save in respect of any terms that may be implied by law, this Agreement constitutes the entire agreement and represents the entire understanding between the Parties in relation to the Services and supersedes and replaces any previous agreements between the Parties in relation to the Services (whether written or oral).
- 3.7 It is the responsibility of the Consultant to ensure he is aware of all access requirements and shall be fully responsible for ensuring proper access arrangements are made at all times and that the Consultant complies with all reasonable conditions affecting access.
- 3.8 No additions, amendments or variations to this Agreement shall be binding unless in writing and signed by the duly authorised representatives both of the Employer and the Consultant.
- 3.9 Notwithstanding that the Employer may comprise two legal entities, you shall only take instructions from Barwood Land or any Group Company of Barwood Land.
- 3.10 The Consultant shall perform the Services having regard to the health and safety of persons involved in the investigation, construction, occupation, maintenance, repair, modification or demolition of the Project and shall comply with any codes of practice, guidance notes and recommendations published by the Health and Safety Executive and/or approved by the Health and Safety Commission and any health and safety policies produced by the Employer. The Consultant shall cooperate with the Principal Designer (which term is defined in the Construction (Design and Management) Regulations 2015 (the "Regulations") as required by the Regulations and comply with the Regulations. The Consultant shall perform all the duties of a "designer" as required by the Regulations and shall comply with the Employer's health and safety policy current at the date of this Agreement.

4. SERVICES

- 4.1 The Consultant shall in respect of those elements of the Project for which he is providing or has provided services under this Agreement comply with all planning agreements permissions and conditions and the Statutory Requirements and Third Party Agreements.
- 4.2 The Consultant warrants to the Employer that in the performance of the Services, it has exercised and shall continue to exercise with the reasonable skill, care and diligence to be expected of a properly qualified and competent consultant of the Consultant's discipline who is experienced in carrying out services for a project of similar size, scope, nature, complexity and value to the Project.
- 4.3 Subject to clause 4.2 the Consultant warrants to the Employer that it has performed and will continue to perform its obligations under this Agreement at such times and in such manner so as not to cause the Employer to breach any of its obligations under the Third Party Agreements.
- 4.4 The Employer shall rely upon the Consultant performing the Services and its obligations under this Agreement. No approval, comment, consent, inspection or testing or lack of approval, comment, consent inspection or testing, or the like by or on behalf of the Employer shall limit or discharge the liability or duties of the Consultant to the Employer however that liability arises.
- 4.5 Subject to clause 4.2 the Consultant shall regularly and diligently proceed with all the Services to be provided by it under this Agreement in accordance with the requirements set out in all relevant programmes and timetables prepared for the Project and any revised versions thereof and shall use all reasonable endeavours to prevent any delay or disruption to the progress of the Project and shall not impede any other professional consultants, contractors or suppliers. The Consultant shall notify the Client if its performance of the Services is delayed, or is likely to be delayed, setting out the cause of the delay and its likely duration
- 4.6 In the performance of the Services the Consultant shall have regard to and shall exercise the standard of skill and care referred to in clause 4.2 to adhere to any budget and specific Employer requirements for the Project notified

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by the Employer. The Consultant shall immediately notify the Employer if it becomes apparent to the Consultant that such budget or requirement may be exceeded or fail to be met.

- 4.7 The Consultant shall liaise with other professional consultants and contractors that are appointed or engaged by the Employer in relation to the Project as often as is appropriate for the proper carrying out of the Services in accordance with the terms of this Agreement.
- 4.8 The Consultant shall make no alteration or addition to or omission from the Services without the knowledge and written consent of the Employer except in the case of emergency, where the Consultant shall inform the Employer immediately. The Consultant shall not have any authority whatsoever to act on behalf of the Employer or purport to bind the Employer to third parties unless prior written approval has been obtained from the Employer.
- 4.9 In the performance of its Services the Consultant shall perform the Services in such a manner as not to cause any trespass or actionable nuisance or other unlawful interference and as to cause as little noise, interference, inconvenience or disturbance to the public or to the owners and occupiers of adjoining property as is reasonably practicable and cause as little damage as possible and make good any damage caused at its own expense to the reasonable satisfaction of the Employer and indemnify the Employer against all such damage, losses and claims caused by the Consultant. Where the Services include an intrusive investigation the Consultant shall provide evidence to the Employer that it holds public, third party and employer's liability insurance at levels reasonably required by the Employer having regard to the nature and extent of the investigation proposed.
- 4.10 Where an appropriate British or European Standard Specification applies all materials, plans and equipment used or supplied and all workmanship shall, as a minimum requirement, be in accordance with that standard, without prejudice to any higher standard required by this Agreement.
- 4.11 Any materials and/or plant and/or equipment brought and/or used and/or left on the Site by the Consultant shall be done so at the Consultant's risk. The Employer shall have no liability in respect of any such materials and/or plant and/or equipment.

5. ADDITIONAL SERVICES

- 5.1 The Consultant shall as soon as reasonably practicable advise the Employer in writing of any circumstances which have arisen or which are likely to arise which require or may require the Consultant to perform or the Consultant or Employer to procure the performance of any additional services in connection with the Project not already required to be performed under this Agreement.
- 5.2 The Consultant shall carry out such additional services in connection with the Project as instructed by the Employer in writing including requiring the Consultant to attend planning hearings to give expert evidence and the terms of this Agreement shall apply to such additional services to be provided by the Consultant whether performed before or after the date of this Agreement. As soon as reasonably practicable after receiving an instruction to perform an additional service, the Consultant shall provide the Employer with a written estimate of cost of the additional service and its effect on the programme.
- 5.3 Subject to Clause 5.4, the Employer shall pay the Consultant a fair and reasonable amount for any additional services instructed under Clause 5 hereof not included within the Services to be performed by the Consultant in accordance with this Agreement. The fee for any additional services shall be such sum as is agreed between the Employer and the Consultant before the additional services are carried out or failing such agreement, the Parties shall endeavour to agree a specific lump sum additional fee for performing the additional services. Where such lump sum cannot be agreed by the Parties, the Consultant shall be entitled to be paid for time properly, effectively and efficiently spent in performing the additional services at pre-agreed hourly rates or where no such pre-agreed hourly rates have been agreed, as is fair and reasonable in the circumstances.
- 5.4 The Consultant shall not be entitled to additional remuneration for performing additional services where and to the extent such additional services were necessitated, in whole or in part, by any negligence, omission or default on the part of the Consultant or its employees, sub-consultants or suppliers.

6. PAYMENT

- 6.1 The Consultant shall be paid the Fee as remuneration for the Services as described in the Letter and shall be subject to the terms of the Letter and this Agreement.
- 6.2 The Fee shall be paid in instalments at the times and in the manner set out in the Letter. The Fee shall be the Consultant's entire remuneration under this Agreement for the performance of the Services.
- 6.3 The Consultant shall submit to the Employer a valid VAT invoice for each instalment of the Fee, together with any supporting documents that are reasonably necessary to check the invoice.
- 6.4 If the Employer fails to pay an amount due to the Consultant by the final date for payment, simple interest shall be added to the unpaid amount from the final date for payment until the actual date for payment. This shall be calculated on a daily basis at the annual rate of 3% above the rate set from time to time by the Bank of England's Monetary Policy Committee or any successor to it. The parties acknowledge that the Employer's liability under

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this paragraph 6.4 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

- 6.5 In the event that the provision of the Housing Grants Construction and Regeneration Act 1996 apply to this Agreement, then Clauses 6.2 and 6.3 of these Terms and Conditions shall be replaced by the provisions of Schedule 1 of this Agreement and payment shall be made in accordance with Schedule 1.

7. CONSULTANT'S PERSONNEL

- 7.1 The Consultant shall ensure that only the Consultant's Personnel shall be engaged in the performance of the Services and are present at all meetings at which the Consultant's attendance is required. The Consultant's Personnel have full authority to act on the Consultant's behalf in connection with this Agreement and shall not be replaced by the Consultant without the Employer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 7.2 The Consultant shall at all relevant times engage an adequate number of competent, suitably qualified and experienced personnel to properly perform the Services.
- 7.3 The Employer may require by notice in writing to the Consultant the removal of any personnel engaged in the performance of the Services if, in the Employer's reasonable opinion, his or her performance or conduct is or has been unsatisfactory. The Consultant shall remove and replace promptly the person specified. Any personnel appointed by the Consultant to replace staff removed shall be subject to the written approval of the Employer (such approval not to be unreasonably withheld or delayed) and the Consultant shall ensure that such replacement shall be competent and have the necessary qualifications and experience to perform their role.

8. DEEDS OF WARRANTY

- 8.1 The Consultant shall within 10 days of a request to do and at the Consultants expense so execute as a deed either a letter of reliance in the forms contained in Appendix 1, mutatis mutandis, or a warranty in the form contained in Appendix 2 or in such other form as reasonably required by the Employer and approved by the Consultant such approval not to be unreasonably withheld or delayed, in favour of any Beneficiary and deliver the same to the Employer duly executed with modifications (if any) as the Employer shall propose and the Consultant shall approve, such approval not to be unreasonably withheld or delayed. The Consultant shall provide at its own expense up to 5 such letters of reliance/warranties in respect of the Services.
- 8.2 Without prejudice to any other rights or remedies which the Employer may have if the Consultant fails to deliver such deeds within the period set out in Clause 8.1 above the Employer, on written notice to the Consultant, may withhold payments due to the Consultant until such time as all such deeds are delivered to the Employer.

9. ASSIGNMENT AND SUB-CONTRACTING

- 9.1 The Employer shall be entitled to assign all or any of the benefit of this Agreement and the rights and remedies available to it:
- (a) by way of security or by way of re-assignment on redemption; and
 - (b) by absolute assignment to any Group Company of the Employer and where the Employer comprises more than one legal entity, any Group Company of each separate legal entity.
- 9.2 Save for the provisions of Clause 9.1 this Agreement the Employer may assign this Agreement by absolute legal assignment twice only without the consent of the Consultant being required.
- 9.3 The Consultant shall not contend that any person to whom the benefit of this Agreement is assigned under clause 9 may not recover any sum under this Agreement because that person is an assignee and not a named party to this Agreement.
- 9.4 This Agreement is personal to the Consultant and the Consultant shall not assign, charge or transfer any right or obligation under this Agreement to any other person.
- 9.5 The Consultant may not sub-contract any of the Services without the prior written consent of the Employer (both as to the principle of sub-contracting and the identity of the proposed sub-contractor). No sub-contracting and no consent to sub-contract shall operate to exclude or limit the obligations and liabilities of the Consultant under this Agreement and the Consultant shall be and shall remain fully responsible in respect of all Services performed by sub-contractors as if they had been performed by the Consultant under this Agreement. The appointment of any sub-contractor shall be on terms and conditions approved by the Employer and the Consultant shall not determine or vary the terms of appointment of any sub-consultant without the express consent of the Client.

10. COPYRIGHT AND CONFIDENTIALITY

- 10.1 Copyright and property in the Documents prepared or to be prepared by or on behalf of the Consultant or his sub-consultants shall remain vested in the Consultant or his sub-consultants, as the case may be. The Consultant hereby grants with full title guarantee to the Employer an irrevocable, royalty-free, non-exclusive, non-terminable

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licence to copy and use the Documents prepared or to be prepared by or on behalf of the Consultant or his sub-consultants and to reproduce the designs contained in them for any purpose whatsoever relating to the Project including, but without limitation the execution, completion, maintenance, letting, advertisement, reinstatement and repair of the Project. Such licence shall enable the Employer to copy and use the Documents for the extension of the Project. Such licences shall be capable of sub-licence and transfer by the Employer without consent. The Consultant hereby undertakes to procure from his sub-consultants the grant of the necessary licences in favour of the Employer to give effect to this Clause 10.1. The Consultant shall not be liable for any use of any of the Documents for any purpose other than that for which the Documents were prepared or provided by the Consultant.

- 10.2 The Consultant hereby undertakes that it will not assert against the Employer or any sub-licensee of the Employer any right which the Consultant may have to be identified as author of any the Documents and the Consultant hereby waives any moral rights it has in the Documents (and if any of the Documents are prepared by any employee, agent or sub-consultant of the Consultant, the Consultant shall obtain a waiver and release of any moral rights in the Documents from such employee) and consents to acts or omissions of the Employer which would without such waiver constitute a breach or infringement of such moral rights.
- 10.3 The Consultant shall be liable for and shall indemnify the Employer against any and all legally enforceable and reasonably mitigated claims, proceedings, losses, liabilities, damage, costs and/or expenses the Employer may suffer or incur in the event:-
- (a) that the rights granted by the Consultant pursuant to this clause are at any time determined by a court of law or advised by leading counsel to be invalid, ineffective or impaired in any way; and/or
 - (b) in the event of any claim or proceedings by any third party (whether upheld or not) that the exercise of the rights granted by the Consultant pursuant to this clause infringe the rights of such third party.
- 10.4 The Consultant shall ensure the back-up and storage in safe custody of the Documents in accordance with good industry practice.
- 10.5 The Consultant shall supply copies of any Documents to the Employer within 7 days of any reasonable request by the Employer and the Employer shall pay the Consultant's reasonable copying charges for such copies.
- 10.6 The Consultant shall not disclose (save where required in the proper course of his duties to the Consultant's professional advisers or as may be required by law, to a court of competent jurisdiction or any governmental or regulatory authority) or otherwise make use of any confidential information which the Consultant has or may come into possession of relating to this Project and this restriction shall continue to apply without limitation in point of time unless and until such information comes properly into the public domain through no fault of the Consultant.

11. INDEMNITY INSURANCE

- 11.1 The Consultant warrants and undertakes to the Employer that he has maintained at all times since he commenced the Services professional indemnity insurance cover with a reputable insurer of no less than the Minimum Sum in respect of each and every claim but subject to a separate annual aggregate limit of indemnity in respect of claims arising out of pollution contamination or asbestos that may be made against the Consultant in relation to defects or insufficiency of his Services.
- 11.2 The Consultant undertakes to the Employer to maintain such insurance as detailed in Clause 11.1 above for a period from the commencement of the Services and ending 12 years from completion of the Services provided that such insurance is generally available in the United Kingdom insurance market on commercially reasonable rates. Such insurance shall be maintained with reputable insurers lawfully carrying on insurance business in the UK, on customary terms and conditions prevailing for the time being in the insurance market and on terms that do not require the Consultant to discharge any liability before being entitled to recover from the insurers and would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.
- 11.3 Any increase or additional premium required by insurers by reason of the Consultants own claims record or other acts or omissions particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 11.4 The Consultant shall ensure that any sub-consultants engaged in relation to any such design of the Project shall carry appropriate insurance cover.
- 11.5 The Consultant undertakes to the Employer:
- (a) upon written request from the Employer to provide the Employer with documentary evidence that such insurance has been renewed and remains in force;
 - (b) to immediately inform the Employer if such insurance ceases to be available and to fully cooperate with the Employer with any measure required including obtaining single project indemnity cover and without limitation completing any proposal for insurance and associated documents and to obtain in respect of that period such reduced cover (if any) as is available to the Consultant on reasonable rates.

12. TERMINATION AND SUSPENSION

- 12.1 The Employer shall be entitled by fourteen days' notice in writing to the Consultant at any time to terminate the Consultant's engagement made under this Agreement.

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- 12.2 Upon such termination the Consultant shall cause to be delivered to the Employer all documents and information in the Consultant's control or possession and relating to the Project at the date of termination which are necessary for the Employer to continue the Project.
- 12.3 The Employer shall pay to the Consultant any reasonable and necessary costs due under the terms of this Agreement prior to the date of such termination.
- 12.4 In addition, provided that the termination of the appointment under this Agreement was not due to any breach by the Consultant of the terms of this Agreement, the Employer shall in addition pay to the Consultant a fair and reasonable abortive fee in respect of work in hand but not completed assuming that such work was necessary and required by the Employer for the satisfactory outcome of the Project.
- 12.5 If the Consultant's engagement under this agreement is terminated by the Employer in circumstances where the Consultant is in breach of this Agreement or becomes insolvent, bankrupt, goes into liquidation, has a receiving order made against it, compounds with its creditors, or carries on a business under a receiver, trustee or manager for the benefit of his creditors, then the Employer shall not be obliged to make any further payment to the Consultant until the Employer's losses consequent upon such termination have been fully determined.
- 12.6 Upon any termination of the appointment howsoever arising the Employer shall not be liable, save as is exclusively set out herein, to the Consultant for any loss of profit, loss of contracts or other costs, losses and/or expenses arising out of or in connection with such termination.
- 12.7 The provisions of this Agreement shall continue to bind both parties notwithstanding such termination and in particular the provisions relating to conflicts of interest.
- 12.8 The Employer may suspend all or part of the Services immediately by written notice. If a suspension lasts more than 6 months, the Consultant may make a written request for the Services to be resumed and if no instructions to resume the Services are given within 28 days of the Consultant's request, the Consultant's employment shall then terminate, and clauses 12.1 to 12.7 shall apply to such termination.

13. NOTICES

- 13.1 Any notice to be given by the Parties hereunder shall be deemed to be duly given if it is delivered by hand or sent by special or recorded delivery to the other party at its registered office or such other address as the party to be served shall have previously notified in writing and in the case of any such notices the same if sent by special delivery shall subject to proof of the contrary be deemed to have been received forty eight hours after being posted (excluding Saturday Sunday and public holidays) and if delivered by hand shall be deemed to have been received at the time of delivery.
- 13.2 Copies of all notices required by this Agreement to be given either to the Beneficiary or the Employer shall be sent simultaneously to the other party to this Agreement by the party giving the notice.
- 13.3 A written notice includes a notice by email. A notice or other communication received on a non-working day or after business hours in the place of receipt shall be deemed to be given or made on the next following working day in that place.

14. JOINDER

- 14.1 If a dispute under or arising in relation to this Agreement (the 'Dispute') raises issues which are substantially the same as or connected with issues raised in a dispute under any Employer's third party agreement ('Related Dispute') and an adjudicator is to be appointed the Adjudicator appointed to determine a dispute, shall if possible, on application from the Employer order the consolidation of the Dispute with any such Related Disputes.
- 14.2 In the event of such an order being made, the Dispute and Related Dispute(s) shall be determined together by the adjudicator originally appointed to determine the Dispute in accordance with the Agreement.
- 14.3 If it is not possible to consolidate the Dispute and the Related Dispute in the way described above the Employer and the Consultant shall endeavour to use the same adjudicator to determine the Dispute and the Related Dispute.

15. DISPUTES AND ADJUDICATION

- 15.1 Without prejudice to Clause 15.3, if any disputes or differences arise between the Parties under this Agreement the managing director, senior partner or other representative of the Parties shall, within 10 days of a written request from either Party to the other addressed to the other managing director or senior partner as the case may be, meet in an effort to resolve the dispute in good faith.
- 15.2 If the dispute is not resolved as a result of such meeting, either Party may (at such meeting or within 14 days from its conclusion) propose to the other by notice in writing that structured negotiations be entered into with the assistance of a neutral advisor or mediator.
- 15.3 Where and to the extent adjudication applies to this Agreement any dispute or difference arising out of this Agreement may be referred to adjudication by either party at any time. The adjudication procedures and the Agreement for the appointment of an adjudicator shall be as set out in the Scheme for Construction Contracts (England) Regulations 2011.

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16. THIRD PARTY RIGHTS

Except as expressly set out in clause 8, the Contracts (Rights of Third Parties) Act 1999 ('the Act') shall not apply to this Agreement. None of the provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Act on any party who is not a party to this Agreement.

17. WAIVER

If the Employer does not enforce strict compliance by the Consultant with the terms of this Agreement, this shall not constitute a waiver by the Employer of any of its rights or of the obligations or liabilities of the Consultant under this Agreement.

18. LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and the Parties irrevocably agree to submit to the jurisdiction of the Courts of England.

19. LIMITATION PERIOD

No proceedings shall be commenced against the Consultant under this Agreement more than 12 years after completion of the Services or termination of this Agreement whichever is the later. The Parties agree that the Limitations Act 1980 shall not apply to this Agreement.

20. SEVERABILITY

If any term or condition of this Agreement is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Agreement and the validity and enforceability of the remainder of this Agreement shall not be affected or impaired thereby.

21. WAIVER

Waiver by the Employer of any breach or default of any of the provisions of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed a waiver of any subsequent breach. The rights of the Employer shall not be prejudiced or restricted by any time, indulgence or forbearance extended to the Consultant

22. CONFLICTS OF INTEREST

22.1 The Consultant warrants and confirms to the Employer that no Conflict of Interest exists as at the date of this Agreement.

22.2 The Consultant agrees that during the term of this Agreement it will continually monitor its business and activities to ascertain whether or not a Conflict of Interest exists.

22.3 In the event that a Conflict of Interest exists, the Consultant shall notify the Employer as soon as possible after the Consultant becomes aware of the existence of the same.

22.4 Notwithstanding the provisions of Clause 12.1 above, if a Conflict of Interest exists both the Employer and the Consultant shall be entitled to immediately terminate this Agreement by giving notice to the other party. For the avoidance of doubt, if this Agreement is terminated pursuant to this clause 22.4, the provisions of clauses 12.2-12.6 shall apply to such termination.

23. LIMITATION OF LIABILITY

Unless otherwise agreed in writing, the Consultant's liability under or in connection with this Agreement whether in contract, tort, negligence, breach of statutory duty or otherwise (other than in respect of personal injury and/or death and/or fraud and/or fraudulent misrepresentation) shall be limited to and shall not exceed £5,000,000 (five million pounds) any one claim.

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SCHEDULE 1

PAYMENT

1. The Consultant shall submit to the Employer a valid VAT invoice for each instalment of the Fee, together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that the Consultant considers will become due on the payment due date in respect of the instalment of the Fee, and the basis on which that sum is calculated.
2. Payment shall be due on the date the Employer receives each invoice.
3. Not later than five days after payment becomes due, the Employer shall notify the Consultant of the sum that the Employer considers to have been due at the payment due date in respect of the payment (notwithstanding that the sum the Employer considers to have been due may amount to zero) and the basis on which that sum is calculated.
4. The final date for payment shall be 28 days after the date on which payment becomes due.
5. If the Employer fails to provide a notice in accordance with the provisions of paragraph 3 and the Consultant fails to submit an invoice in accordance with the provisions of paragraph 1, the Consultant may give the Employer a notice ('**Default Notice**') confirming the amount the Consultant considers to have been due when the Consultant submitted the invoice pursuant to paragraph 1 and the basis on which that amount is calculated.
6. Where the Consultant gives the Employer a Default Notice, the final date for payment as prescribed at paragraph 4 shall be postponed by the same number of days as the number of days after the date referred to in paragraph 3 that the Default Notice was given.
7. Subject to the Employer serving a notice under paragraph 8, the Employer shall pay the Consultant the sum referred to in:
 - (a) the Employer's notice under paragraph 3; or,
 - (b) if the Employer has not served notice under paragraph 3, the sum referred to in the invoice referred to in paragraph 1; or
 - (c) if the Consultant has not submitted an invoice in accordance with the provisions of paragraph 1, the sum referred to in the Consultant's Default Notice referred to in paragraph 5 ('**Notified Sum**')on or before the final date for payment of each invoice.
8. Not less than five days before the final date for payment ('**Prescribed Period**'), the Employer may give the Consultant notice that it intends to pay less than the Notified Sum ('**Pay Less Notice**'). Any Pay Less Notice shall specify:
 - (a) the sum that the Employer considers to be due on the date the notice is served (notwithstanding that the sum the Employer considers to have been due may amount to zero); and
 - (b) the basis on which that sum is calculated.
9. Notwithstanding paragraph 7 and paragraph 8 and without prejudice to Clause 12 of the Agreement, if the Consultant becomes insolvent as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996, as amended, after the Prescribed Period, the Employer shall not be required to pay the Notified Sum on or before the final date for payment.
10. Any reference to paragraph in this schedule shall be a reference to the paragraphs contained within this Schedule.

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**APPENDIX
Form of Reliance Letter**

BARWOOD LAND TERMS AND CONDITIONS

LETTER OF RELIANCE

IT IS AGREED as follows:-

1. Interpretation

1.1 In this Deed unless the context otherwise requires:-

“Beneficiary” means [.....].

“Client” means [.....].

“Consultant” means [.....].

“Project” means [.....].

“Report” means [.....].

“Site” means the [.....].

1.2 References to the Consultant and the Beneficiary shall be deemed to include their successors in title and assigns.

2. Acknowledgement and Agreement

2.1 The Consultant has been engaged by the Client to carry out certain services in relation to the Project and in performing those services, the Consultant has prepared the Report. As requested by the Client and the Beneficiary and in consideration of the sum of £1 (one pound) now paid by the Beneficiary to the Consultant the sufficiency of which is hereby acknowledged the Consultant agrees to allow the Beneficiary to use copy and rely upon the Report.

2.2 The Consultant warrants in preparing the Report it has exercised all the reasonable skill care and diligence as is to be expected of a properly qualified and competent consultant experienced in carrying out services of a similar size, scope and complexity to that undertaken in the Report.

2.3 The Consultant hereby acknowledges that it owes the Beneficiary a duty of care.

2.4 The Consultant agrees to allow the Beneficiary the use and reliance upon the Report in all respects as if the Report had been prepared for and on behalf of and addressed to the Beneficiary for its originally intended purpose.

2.5 The Consultant warrants and undertakes to the Beneficiary that it has in place and will at all times maintain, with a reputable insurance company carrying on business in the United Kingdom on customary terms and conditions prevailing for the time being in the insurance market from the date hereof and for a period expiring no earlier than twelve (12) years from the date of the Report and notwithstanding the termination for any reason of the Consultant's engagement under its appointment, professional indemnity insurance for an amount of at least £5,000,000 for any one occurrence provided such insurance is available in the UK commercially reasonable rates (and in the event such insurance is not available the Consultant will take out and maintain such insurance at the next highest limit available at commercially reasonable rates). Further, when reasonably requested, the Consultant will provide documentary evidence to the Beneficiary that the insurance required under this reliance agreement is being maintained..

2.6 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to use and reproduce for any purpose relating to the Site all documents, reports, drawings, calculations and specifications (and the designs contained in them) which have been or will be prepared by the Consultant or on its behalf in connection with the Report[s], and the Consultant agrees to supply to the Beneficiary on request copies of such materials (subject to reimbursement of the Consultant's reasonable copying charges).

2.7 The Consultant shall within 14 days of the Beneficiary's request so to do execute as a deed (and deliver the same duly executed to the Beneficiary) a letter of reliance in the same form as this Deed (or in similar or varied terms as the parties thereto may agree) in favour of i) any party providing finance in connection with the purchase and/or development of the Site or any part, and ii) any registered provider having an interest in the Site or any part.

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2.8 The Consultant shall owe no greater obligations to the Beneficiary under this Letter of Reliance than the Consultant would have owed if the Beneficiary had been named as a joint-employer with the Client under the Appointment. The Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitations in this Agreement and to raise the equivalent rights in defence of liability as it would have against the Client under the Agreement.

2.9 The Beneficiary may not commence any legal action against the Consultant under this Agreement after twelve years from the date of the [last of the] Report[s]].

3. **Assignment**

3.1 The Beneficiary may assign the benefit of this Deed without the consent of the Consultant on two occasions only and the Beneficiary shall notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of this Assignment. An assignment to and from a company within the same group of companies as the Beneficiary shall not count towards the limit two assignments specified above.

3.2 Any assignee under Clause 3.1 above will be bound by the terms of this Deed.

4. **Jurisdiction**

The construction and performance of this Agreement shall be governed by and construed in accordance with the laws of England. The parties agree to submit to the exclusive jurisdiction of the courts of England.

5. **Third parties**

Nothing in this reliance agreement confers or purports to confer on any third party any benefit or any right to enforce any terms of this Reliance Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

Executed as a Deed by)
CONSULTANT)
acting by)

Director

Director/Secretary

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Appendix 2

Form of Collateral Warranty

BARWOOD LAND TERMS AND CONDITIONS

Deed of Collateral Warranty

THIS DEED is made the day of 202[*]

BETWEEN

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the "**Consultant**");
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the "**Beneficiary**");

WITNESSETH

The Consultant has been engaged by [NAME OF BARWOOD LAND ENTITY] (the "**Client**") to perform the Services in relation to the Project under an appointment (the "**Appointment**").

The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the Project.

The Consultant has agreed to enter into this agreement with the Beneficiary, for the benefit of the Beneficiary.

OPERATIVE PROVISIONS

1 Interpretation

The following definitions and rules of interpretation apply in this agreement.

- 1.1 In this agreement, unless otherwise defined or a contrary intention appears, words shall have the meanings ascribed to them in the Appointment.
- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 If any provision of this agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part, shall to that extent be deemed not to form part of this agreement but the illegality, validity and enforceability of the remainder of the agreement shall not be affected.

2 Comply with Appointment

- 2.1 The Consultant warrants and undertakes to the Beneficiary that it has complied, and shall continue to comply, with its obligations under the Appointment in accordance with all its terms and conditions and warrants and undertakes that it has exercised and shall continue to exercise the reasonable skill, care and diligence required by the appointment in the performance of his duties under the Appointment.
- 2.2 In the event of breach of this warranty the Consultant's obligations shall not be released, diminished or in any other way affected by any independent enquiry into any relevant matter which may be made or carried out by or on behalf of the Beneficiary nor by any act or omission of any party carrying out such enquiry whether or not such act or omission might give rise to an independent liability of such party to the Beneficiary.

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2.3 The Consultant shall be entitled in any action or proceedings by the Beneficiary to raise equivalent rights in defence of liability (except for any rights of set-off or deduction) as it would have had against the Client under the Appointment.

2.4 Notwithstanding any other provision of this agreement, the Consultant agrees that it shall not contend in defence of any proceedings under this agreement or otherwise that its liability to the Beneficiary is reduced or extinguished on the basis that the Client has suffered no loss or a different loss to that of the Beneficiary.

3 No instructions to Consultant by Beneficiary

The Beneficiary may not give instructions to the Consultant under this agreement.

4 Copyright and Confidentiality

4.1 The copyright in the Documents shall remain vested in the Consultant but the Consultant hereby grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Documents prepared by, or on behalf of, the Consultant for any purpose relating to the Project, including, but without limitation, the design, execution, completion, maintenance, letting, advertisement, extension, reinstatement and repair of the Project. This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.

4.2 The Consultant shall not be liable for any loss resulting from the use of the Documents for any purpose which would have been beyond the reasonable contemplation of the parties at the time at which it was prepared.

4.3 Save as may be necessary for the proper performance of the Services under or in connection with the Appointment and as stated in the Appointment, the Consultant may not during the Appointment or following its termination disclose to any third party or make use of any information of any kind whatsoever relating to the Project or the Beneficiary.

5 Professional indemnity insurance

5.1 The Consultant shall maintain professional indemnity insurance in the amount stated in and in accordance with the requirements of the Appointment.

5.2 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates. Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is being maintained.

6 Liability period

The Beneficiary may not commence any legal action against the Consultant under this agreement after 12 years from the date of practical completion of the Consultant's Services.

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7 Assignment

The Beneficiary may assign to any person, without the consent of the Consultant, the benefit of all or any of the Consultant's obligations under this agreement and/or any other benefit arising under or out of this agreement. The Consultant may not assign, charge or transfer any right or obligation under this agreement to any other person.

8 Notices

Any notice to be given by the Consultant shall be deemed to be duly given if it is delivered by hand or sent by recorded delivery to the Beneficiary at its registered office and any notice to be given by the Beneficiary shall be deemed duly given if it is addressed to the managing director/senior partner and delivered by hand at or sent by recorded delivery to the above-mentioned address of the Consultant or other business address of the Consultant for the time being and, in the case of any such notices sent by recorded delivery, the same shall be deemed to have been received 48 hours after being posted.

9 Third party rights

Except as expressly provided in clause 7, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

10 Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

11 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof this agreement has been duly executed as a deed and is delivered and takes effect on the day and year first above written.

Executed as a deed by [NAME OF
CONSULTANT] acting by [NAME OF
FIRST DIRECTOR], a director and [NAME
OF SECOND DIRECTOR OR
SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director

.....
[SIGNATURE OF SECOND DIRECTOR
OR SECRETARY]
[Director **OR** Secretary]

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OR

Executed as a deed by [NAME OF
CONSULTANT] acting by [NAME OF
DIRECTOR], a director, in the presence of:

.....

[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION]
OF WITNESS]

.....
[SIGNATURE OF DIRECTOR]
Director

Executed as a deed by [NAME OF
BENEFICIARY] acting by [NAME OF
FIRST DIRECTOR], a director and [NAME
OF SECOND DIRECTOR OR
SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director

.....
[SIGNATURE OF SECOND DIRECTOR
OR SECRETARY]
[Director **OR** Secretary]