

# Rules

For builders and developers  
registered with NHBC

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Raising Standards. Protecting Homeowners

# Notes about the Rules

The Rules that follow are effective from 1st February 2018 (Effective Date). They amend the rules applying to Builders and Developers that were introduced by NHBC on 1 January 2011. Definitions of words with special meanings in the Rules are set out on this page and page 3. Please read the Rules carefully. If you have any questions about them or your registration with NHBC, please contact NHBC Customer Services on 0344 633 1000 or write to us at NHBC House, Davy Avenue, Knowlhill, Milton Keynes MK5 8FP or email [underwritingteam@nhbc.co.uk](mailto:underwritingteam@nhbc.co.uk). Information is also available on [www.nhbc.co.uk](http://www.nhbc.co.uk).

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# Definitions and Interpretations

## Definitions and Interpretation

### 1) Definitions and Interpretation

Except where the context or the express provisions of the Rules otherwise require:

- a) Builders and Developers to which these Rules apply may be referred to as 'you', 'your' or 'yourself';
- b) references to persons shall include those of either sex and also firms or any other body (whether corporate or unincorporated), trust, state or agency of state (in each case, whether or not having separate legal personality);
- c) words importing the singular number include the plural and vice versa;
- d) references to any legislation include any statutory extension, modification or re-enactment of it and regulations made under it;
- e) headings and sub-headings are for ease of reference only and are not to be taken into consideration in the interpretation or construction of the Rules;
- f) the words 'build' and 'built' include, where relevant, building work by way of conversion and/or renovation and building work undertaken on your behalf;
- g) the expressions 'including', 'in particular' and 'for example' are to be construed as being by the way of illustration or emphasis only and are not to be construed as limiting the generality of any foregoing words;
- h) the following words and expressions shall have the following meanings:

#### Application for NHBC Cover

The return to NHBC of a completed NHBC application form together with payment in full of the fees payable under Rule 13 for the Home(s) you have indicated on the form that you wish to register for NHBC Cover.

#### Arbitrator

Means an Arbitrator or Arbiter.

#### Associate

Any Builder or Developer who at any time is subject to any substantial degree, whether direct or indirect, to the same ownership management influence or Control as you.

#### Bond

An agreement (including but not limited to an agreement pursuant to section 38 of the Highways Act 1980 or section 104 of the Water Industry Act 1991) under which you and/or an Associate of you is obliged to undertake, fund or procure the undertaking or funding of works (including but not limited to the construction of roads, sewers, drains, play areas, verges and/or open spaces) and under or in respect of which NHBC agrees to act as a surety.

#### Builder

Any person, firm, company or other organisation that builds Homes.

#### Building Regulations

Regulations made under the Building Act 1984 or where applicable the Building (Scotland) Act 2003, or any similar legislation applicable to the construction of a Home.

#### Common Parts

In relation to a flat or other dwelling, Common Parts means:

- i. the parts of a building containing or providing support to it;
- ii. any garage, permanent outbuilding, retaining wall, boundary wall, external handrail or balustrade, path, drive, garden area or paved area newly built by the Builder at the date of the Notice of Cover;
- iii. any drainage system serving it;
- iv. any existing garage, permanent outbuilding, retaining wall or boundary wall that was sold to the first Owner under the original contract.

#### Conditions

Additional terms and conditions applicable to you from time to time as imposed by NHBC in addition to the Rules.

#### Consumer Code for Home Builders

The Consumer Code for Home Builders scheme operated by Consumer Code for Home Builders Ltd, including the associated rules for the independent dispute resolution scheme.

#### Control

When referring to a body corporate, means the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person:

- i. by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or
- ii. by virtue of any powers conferred by the Articles of Association, or any other document, regulating that or any other body corporate, and a 'change of control' occurs if a person who controls any body corporate ceases to do so or if another person acquires control of it.

#### Contract

A legally binding agreement (or in Scotland missive) between the first Owner and the Builder, Developer or a third party authorised by NHBC for the purchase, building, renovation or conversion of a Home.

#### Damage

Physical damage to a Home caused by a Defect.

#### Defect

The breach of any NHBC Requirement by the Builder or anyone employed by or acting for the Builder. Failure to follow the guidance supporting an NHBC Requirement does not amount to a Defect if the performance required by the NHBC Requirement is achieved by other means.

#### Developer

Any person, partnership, company or organisation that arranges for the construction of Homes or is concerned in or with such arrangements.

#### Effective Date

Is the date referred to in the Notes about the Rules on page 2.

#### Hazardous Site

A Site or any part of a Site which is in a condition which gives rise to an abnormal risk of damage to or defects in homes which are or may be built on it. It includes (but is not limited to) a Site which in any part:

- i. is subject to landslip;
- ii. is made-up ground;
- iii. is part of a mining area, whether past, current or contemplated;
- iv. is of such a nature that the local authority or an approved inspector has imposed special conditions regarding foundations;
- v. comprises clay soil which has (or has had within the previous five years) trees on or near it;
- vi. is liable to flooding;
- vii. comprises soil with a peat content in the ground;
- viii. is adversely affected by the chemical content of the ground; or
- ix. is affected by landfill gas or radon.

#### Home

The house, bungalow, flat or other premises referred to in a Site Notification or Application for NHBC Cover, together with:

- i. the Common Parts;
- ii. the drainage system for which the Owner is responsible;
- iii. any new electrical fixed wiring and lighting system, heating system, air conditioning, smoke alarms, waste disposal units or water softening equipment in that house, bungalow, flat or other premises;
- iv. any garage, permanent outbuilding, retaining wall, boundary wall, external handrail or balustrade, path, drive, garden area or paved area built, sold or supplied under the Contract.

Home does not include any fence, temporary structure, swimming pool, lift or any electrical, electronic or mechanical equipment (whether built in or not) except items listed in (iii) above and items which are included in the Home in order to comply with the Building Regulations.

#### Management Organisation

Any person or body intended to be responsible for the management, maintenance, repair or renewal of a Sheltered Dwelling or of any communal facilities associated with it or for providing services or facilities to the residents of the Sheltered Dwelling in their capacity as residents, whether or not those services or facilities are related to the care of the residents.

#### NHBC

National House-Building Council is a company limited by guarantee and registered in England and Wales number 320784.

The registered office is NHBC House, Davy Avenue, Knowlhill, Milton Keynes, Buckinghamshire MK5 8FP.

#### NHBC Company

Any company within the NHBC group of companies, including NHBC Building Control Services Limited and NHBC Services Limited.

#### NHBC Cover

The cover provided or to be provided (as the context may require) for a Home by NHBC (or its subsidiaries from time to time) and the Builder under Buildmark, Buildmark Choice, Buildmark Link, Buildmark Solo, Buildmark Connect or any similar product from time to time (as applicable).

#### NHBC Offer Documents

Is defined in Rule 20(a)i)

#### NHBC Offer Notification

Is defined in Rule 20(a)ii)

#### NHBC Requirements

The mandatory requirements in connection with building and associated matters adopted by NHBC and in force either:

- i. in the case of a Home with newly built foundations, when the construction of the foundations is begun; or
- ii. in any other case, when construction, conversion or renovation of the Home is begun by or on behalf of the Builder.

#### NHBC Sheltered Housing Code

The NHBC Sheltered Housing Code adopted by NHBC and in force either:

- i. in the case of a Home with newly built foundations, when the construction of the foundations is begun; or
- ii. in any other case, when construction, conversion or renovation of the Home by or on behalf of the Builder is begun.

The Sheltered Housing Code is not mandatory in Scotland.

#### Notice of Cover

As applicable:

- i. a certificate or notice issued by NHBC stating that a Home appears to have been designed and constructed substantially in accordance with NHBC Requirements; or
- ii. a certificate or notice issued by NHBC following a pre-handover inspection and stating or indicating that NHBC is willing to provide NHBC Cover; or
- iii. a certificate or notice issued by NHBC (but not including any certificate or statement given following repairs to a Home under NHBC Cover) stating that work to a Home appears to have been carried out in a satisfactory manner; or
- iv. a Final Certificate issued under the Building Act 1984 (England and Wales only); or
- v. a Completion Certificate issued under the Building (Scotland) Act 2003.

#### Owner

The prospective first owner of a Home to whom NHBC and a Builder make an offer of NHBC Cover for that Home. After that it means:

- i. the person identified as the owner of the Home on the completed form for acceptance of the NHBC Cover; or
- ii. any later owner, mortgagee in possession or heritable creditor in possession of the Home.

If there is uncertainty as to the identity of the owner of a Home at any time, NHBC may in its sole discretion decide, for the purposes of the NHBC Cover for the Home and the Rules, who the owner is.

#### Product Plot Schedule

The form sent to you by NHBC in response to a Site Notification, in order for you to provide details of all planned plots.

#### Register

The Register of Builders and Developers maintained by NHBC in England and Wales, Scotland, Northern Ireland and the Isle of Man respectively.

#### Registration

The entry of a Builder or Developer on the Register. 'Registered' refers to Builders and Developers whose registration is effective (that is to say it has not been cancelled or suspended).

#### Resolution Service

The dispute resolution service provided by NHBC under NHBC Cover to assist with the resolution of disputes between Owners and Builders or Developers in connection with the obligations of Builders and Developers under NHBC Cover.

#### Rules

Means the terms and conditions set out in this document.

#### Sheltered Dwelling

A dwelling that is purpose built or converted for residence by elderly people and which forms part of a scheme of grouped, self-contained accommodation provided with a package of estate management services.

#### Site

An area of land that is covered by a single detailed planning consent or series of consents relating to continuous development.

#### Site Notification

The supply of details to NHBC (on the form supplied by NHBC) of Homes to be constructed on a Site and of other factors affecting or related to that Site which may be required by NHBC.

#### Structure

The foundations of the house, bungalow, flat or premises and of any garage or permanent outbuilding and the structural load-bearing parts of its floors, walls and roof together with any retaining walls necessary for its stability. Structure includes the foundations and any structural load-bearing parts of any Common Parts.

#### Year

Means a period of 12 consecutive months commencing on 1st April.

# NHBC Rules for builders and developers registered with NHBC

## Registration

### Details of the Register

- 2) Details of the Register may be obtained from NHBC during normal business hours.

### Becoming Registered

- 3) You will, on application, be considered for Registration with NHBC if you are a Builder or Developer with the ability and commitment to build or develop homes in accordance with NHBC Requirements.

### Registration and Conditions of Registration

- 4)
  - a) In response to your application for Registration, NHBC may decide:
    - i) to grant your application for Registration unconditionally;
    - ii) to grant your application subject to Conditions;
    - iii) to defer consideration of your application pending further enquiries or the provision of further information;
    - iv) to reject your application.
  - b) NHBC will give you written notice of its decision.

### Conditions of Registration

- 5)
  - a) NHBC may make your Registration subject to Conditions:
    - i) when it deals with your application for Registration;
    - ii) at any time during your Registration.
  - b) NHBC may revoke or amend any Conditions to which your Registration is subject at any time during your Registration.
  - c) Conditions may include the following:
    - i) a limit on the number of plots in respect of which you may submit a Site Notification or an Application for NHBC Cover;
    - ii) a requirement that you pay a further charge to NHBC in respect of any Home for which you have submitted a Site Notification or an Application for NHBC Cover (in addition to any charge or surcharge payable under Rule 14);
    - iii) a requirement to discharge, or to provide NHBC with reasonable security for the discharge of, any obligation or liability to which you or any Associate is or may become subject under the Rules or any Conditions imposed by NHBC under the Rules, under any other applicable rules or under any NHBC Cover;
    - iv) a requirement to indemnify NHBC, or to provide NHBC with reasonable security against any liability which it has incurred or may incur by reason of your acts or omissions or those of any Associate;
    - v) a requirement to reimburse NHBC the whole or a reasonable proportion of any payment which NHBC has made or is liable to make or has agreed to make by reason of the acts or omissions of any other Builder or Developer in relation to:
      - a) any Home in respect of which you submitted a Site Notification or an Application for NHBC Cover;
      - b) any other Home on the same Site as that Home;
      - c) the completion of any works on, serving or connected with that Site in respect of which NHBC has agreed to act as a surety or provide an indemnity or guarantee in favour of a third party.
  - d) If NHBC decides to add, amend or revoke Conditions applicable to your Registration NHBC will give you written notice of that decision and that decision will take effect 21 days after you receive that notice unless you exercise your rights under Rule 31).
  - e) If NHBC requires you to provide it with security, you must provide that security in the form specified by NHBC. NHBC may require you to provide it with security:
    - i) in the form of a bond executed by a bank, insurance company or similar entity approved by NHBC;
    - ii) in the form of enforceable undertakings or guarantees given to NHBC by one or more of your directors or shareholders or by any other third party or third parties specified by NHBC;
    - iii) in any other form it may reasonably specify.

## Subscription

6)

- a) You must pay the annual Registration subscription specified by NHBC for each Year (or part thereof) in which you are Registered.
- b) If your Registration is suspended or cancelled at any time during a Year you will not be entitled to a waiver or refund of any part of the subscription paid or payable under Rule 6)a) for that Year and you will remain liable to pay NHBC any subscription payments that remain unpaid at the date of suspension or cancellation.

## Application of the Rules

7)

- a) The Rules apply from the Effective Date to Builders and Developers Registered on the Effective Date and from the date of application to Builders and Developers that apply for Registration after the Effective Date and they continue to apply until such time as you both cease to be Registered and cease to have any actual or contingent liabilities under or in connection with the Rules, any Conditions, any NHBC Cover and/or any Bonds.
- b) Any Conditions applicable to your Registration will apply to you in addition to the Rules until they are revoked or amended by NHBC.
- c) In the event of any conflict or confusion between a provision in the Rules and any Condition, the Condition shall prevail.

## Cover under NHBC or Other Home Warranty Schemes

8)

This rule is not applicable. NHBC registered builders and developers are free to register with any other providers of new home warranty products and use the new home warranty products of these alternative providers, instead of NHBC's new home warranty.

## Builders and Developers

9)

- a) If you are Registered only as a Developer you must employ a Registered Builder as the main contractor to build any Home for which you submit a Site Notification or an Application for NHBC Cover.
- b) If you are Registered as a Builder, you may also act as a Developer and you must then comply with the Rules as they apply to a Developer.

## Building Standards

10)

- a) You must ensure that every Home for which you submit a Site Notification or an Application for NHBC Cover is designed and built in accordance with the applicable NHBC Requirements.
- b) If NHBC Building Control Services Limited is appointed by you to act as the Approved Inspector (in England and Wales) for any Home, you must comply with the applicable terms and conditions as notified to you by NHBC Building Control Services Limited. Note: for ease of reference a copy of the terms and conditions applicable as at the Effective Date is included in an appendix to the booklet containing these Rules.
- c) If an NHBC Company is appointed by you to act as the Certifier (in Scotland) for any Home you must comply with the applicable terms and conditions as notified to you by the NHBC Company.

## Specialist professional information

11)

- a) In Scotland, NHBC may require you to provide specialist information from consultants of a particular profession. If so, you must advise them of NHBC's involvement and if requested by NHBC ensure that they are bound to NHBC in respect of their duty of care as if they had been instructed by NHBC in the first instance.
- b) NHBC may require you to have the Structure of a Home designed and inspected during construction by an independent professional acceptable to NHBC, in which case you must follow any instructions given by that professional.

# NHBC Rules for builders and developers registered with NHBC

## Registration for NHBC Cover

### Requirement to submit Site Notifications and Applications for NHBC Cover

#### Stage One: Site Notification

12)

- a) You must submit to NHBC a Site Notification for each home built or to be built by you, or on your behalf, to be sold by you to the first owner.
- b) You must submit to NHBC a Site Notification for each home built or to be built by you, or on your behalf, on land owned or to be purchased by the first owner.
- c) You may submit to NHBC a Site Notification for each home built or to be built by you on behalf of a third party authorised by NHBC to be sold by the third party to the first owner.
- d) If you submit a Site Notification under Rules 12)a), b) or c) you must:
  - i) include in the Site Notification particulars of all of the homes built or to be built or sold by you or on your behalf at the relevant Site; and
  - ii) if after submission of the Site Notification any of the notified particulars change, you must promptly notify NHBC of the changes.
- e) Rules 12)a) to c) apply if you acquire a home or Site which is partially built and in such cases you must submit to NHBC a Site Notification together with a location plan for all of the planned homes on the Site before any further substantial building work is carried out to the home and/or Site.
- f) Each Site Notification that you are required to submit must be received by NHBC fully completed at least:
  - i) 8 weeks before work starts on a Hazardous Site or where non-conventional or complex construction methods are to be used;
  - ii) 28 days before work starts in any other case.
- g) Following receipt of a Site Notification, subject to Rule 12)f)i) NHBC will send you a Product Plot Schedule which must be used under Stage Two (Rule 13) below.
- h) Normally, a quotation for NHBC's charges for NHBC Cover and other services will be issued to you based on the information you provide in a Site Notification.
- i) NHBC may accept a Site Notification subject to Conditions or NHBC may reject it. NHBC will give you reasons in writing if a Site Notification is accepted subject to Conditions or is rejected. NHBC may in its absolute discretion give or withhold its authorisation to a third party referred to in a Site Notification made under Rule 12)c).
- j) You may not submit a Site Notification if NHBC instructs you not to do so.

#### Stage Two: Application for NHBC Cover

13)

- a) You must:
  - i) at least 21 days before work starts on a Home; or
  - ii) before you enter into a Contract for a Home;whichever is the earlier, make an Application for NHBC Cover accompanied by payment to NHBC of the charges for NHBC Cover and any other services (including, if you appoint NHBC Building Control Services Limited as the Approved Inspector (in England and Wales) or an NHBC Company as Certifier (in Scotland) the charges for those services) as advised to you by NHBC for each Home for which you have submitted a Site Notification.
- b) NHBC may cancel an Application for NHBC Cover and the NHBC Cover for any Home if:
  - i) construction is not started within one year of the date of the Application for NHBC Cover;
  - ii) in NHBC's opinion NHBC will not be able to issue a Notice of Cover within two years of the date of the Application for NHBC Cover;
  - iii) the Home is sold to a third party (not being the first Owner) other than a company within your group of companies.
- c) NHBC may accept an Application for NHBC Cover subject to Conditions, or without Conditions or NHBC may reject it. NHBC will give you reasons in writing if an Application for NHBC Cover is accepted subject to Conditions or is rejected.
- d) You may not submit an Application for NHBC Cover if NHBC instructs you not to do so.

## Charges for NHBC Cover and services

14)

- a) NHBC may at its sole discretion agree to accept a Site Notification and/or an Application for NHBC Cover submitted after the dates required by Rules 12) and 13) in which case NHBC shall be entitled to:
  - i) charge interest under Rule 54) on the applicable charges for the period starting on the last date upon which the charges should have been paid according to Rule 13) and ending when they are paid; and
  - ii) make a further charge for late submission.
- b) NHBC may re-assess the charges for NHBC Cover for a Home at any time if the actual selling price of the Home is higher than the anticipated selling price upon which NHBC initially calculates the charges for NHBC Cover, and you must pay NHBC the difference between the charges that you have already paid (or become liable to pay) and the re-assessed charges if NHBC asks you to do so.
- c) NHBC may re-assess the charges for NHBC Cover for a Home at any time if after submission of a Site Notification any of the notified particulars change (whether or not you notify the changes to NHBC) or are found to be incorrect, and you must pay NHBC the difference between the charges that you have already paid (or become liable to pay) and the re-assessed charges if NHBC asks you to do so.
- d) The charges payable by you under Rules 13) and 14) will not be waived, returned or refunded under any circumstances (including when NHBC Cover is not provided or is cancelled for any reason).
- e) NHBC may cancel an Application for NHBC Cover or the NHBC Cover for any Home (and on behalf of NHBC Building Control Services Limited any Initial Notice or on behalf of any NHBC Company any Certificate of Design) if the payment of any charges that you are required to pay to NHBC, NHBC Building Control Services Limited or any other NHBC Company is not made in full and at the due time and in particular where arrangements are made for the payment to be made by cheque or direct debit if the cheque or direct debit is dishonoured.

## Testing and inspection

15)

- a) NHBC may inspect and carry out technical investigations of any Home in a manner and at a frequency to be determined by NHBC. For the purposes of such inspections and investigations, you must carry out any work or tests that NHBC may require you to carry out and provide any facilities, documents or information that NHBC may require you to provide. NHBC's inspections and technical investigations are for the purpose of enabling NHBC to decide whether to provide NHBC Cover for a Home. Any information shared with you arising from NHBC's inspections and technical investigations in no way relieves you of your obligations under Rule 10)a) to design and build each Home in accordance with the applicable NHBC Requirements.
- b) You must ensure that NHBC is notified in advance at the appropriate stages of construction of each Home, to enable NHBC's inspections and technical investigations to take place at the appropriate time. You must also notify NHBC as soon as you become aware of any problem concerning any Home that could result in it not being completed in accordance with NHBC Requirements.
- c) If NHBC Building Control Services Limited ('NHBC-BCS') is appointed by you to act as the building control body for any Home, we may carry out inspections and technical investigations on behalf of NHBC-BCS. However, these services will be provided under the separate applicable terms and conditions that apply to them (see Rule 10)b)).

## Hazardous Sites and Non-Conventional Methods of Construction

16)

- a) If a Home is to be built on a Hazardous Site or where non-conventional and/or complex construction methods are to be used:
  - i) you must (within the time limits referred to in Rule 12)f)i)) (8 weeks before work starts) submit with the Site Notification the design details showing how the hazards, non-conventional construction methods and/or complex construction methods are to be dealt with and in particular you must show to NHBC in detail (by submission of drawings, calculations, soil investigations, environmental reports and any other relevant information) how hazards, non-conventional construction methods and/or complex construction methods are to be dealt with so as to enable the building of the Home to be completed in accordance with NHBC Requirements;



# NHBC Rules for builders and developers registered with NHBC

- ii) you must provide NHBC with any information pertaining to the Home and the relevant Site that NHBC may reasonably request from time to time.
- b) NHBC may cancel an Application for NHBC Cover and the NHBC Cover for any Home on the basis of information submitted or not submitted by you or on your behalf under Rule 16)a) if NHBC is not satisfied that building of the Home will be completed in accordance with NHBC Requirements.

## Homes not registered with NHBC

### Evidence of other warranty and insurance cover

- 17) This rule is not applicable.

### Release from the Rules

- 18)
  - a) You may make a written application to NHBC to be released from your obligations under Rules 9) to 16) inclusive in connection with a particular home if:
    - i) that home is to be designed or constructed under the supervision of an architect or building surveyor appointed by the first owner of the home on terms which are the same as or similar to those contained in the appropriate recommendations of the RIBA for the appointment of Architects; or
    - ii) you have entered into or will enter into an agreement with the first owner of the home which limits (and which makes clear to the first owner the limits of) your obligations in respect of the design or construction of the home.
  - b) As a Condition of granting an application made under Rule 18)a) NHBC may require written evidence of the appointment of the architect or qualified building surveyor and/or of the terms of any relevant agreement.
  - c) If an application under Rule 18)a) is granted you must inform the first owner of the home in writing that the Home will not have the benefit of NHBC Cover.
  - d) If an application under Rule 18)a) is not granted by NHBC you must continue to comply with your obligations under the Rules in connection with the relevant home.

## NHBC Cover

### Authority to offer NHBC Cover

- 19) By submitting an Application for NHBC Cover for a Home you irrevocably authorise NHBC to offer to commit you to the Builder's obligations which form part of the NHBC Cover (subject to its terms and conditions) for the Home and to commit you to those obligations.

### Delivery of Documents

- 20)
  - a) After receiving an Application for NHBC Cover accompanied by payment of the relevant charges NHBC will normally, for each of the Homes specified in the Application for NHBC Cover, either:
    - i) send you the documents (including instructions for use, offer of NHBC Cover, acceptance form, terms and conditions of NHBC Cover and any conditions to which the offer is subject) ('NHBC Offer Documents') for the offer of NHBC Cover for each such Home; or



- ii) notify you in writing ('NHBC Offer Notification') that the NHBC Offer Documents for the offer of NHBC Cover for each such Home can be accessed electronically through the NHBC website.
- b) For each Home specified in each Application for NHBC Cover you make, you must, following receipt of the NHBC Offer Documents sent to you as referred to in Rule 20)a)i) or the NHBC Offer Notification sent to you as referred to in Rule 20)a)ii), without delay (and where possible before the first Owner enters into a Contract for the Home), deliver the NHBC Offer Documents or the NHBC Offer Notification (as applicable) directly to the first Owner, or directly to the first Owner's conveyancer if they have appointed one, and not to anyone else unless:
  - i) NHBC instructs you not to;
  - ii) the Application for NHBC Cover and/or the NHBC Cover for the Home referred to in the NHBC Offer Documents or the NHBC Offer Notification is cancelled by NHBC under the Rules (in particular Rule 13)b), 14)e), 16)b) or 43)c));
  - iii) your Registration is suspended or cancelled (in which case Rule 43 will apply); or
  - iv) the Home referred to in the NHBC Offer Documents or the NHBC Offer Notification has been, is being or is to be occupied as a dwelling before being sold (in which case you must inform NHBC of the fact and period of occupation of the Home as a dwelling, however this will not make you the Owner and you will not be entitled to make a claim under any NHBC Cover for the Home).
- c) In any of the circumstances set out in Rules 20)b)i) to 20)b)iii), you must return to NHBC any NHBC Offer Documents and NHBC Offer Notifications sent to you under Rule 20)a) that are within your possession and take any steps that NHBC may reasonably require in order to recover possession and return to NHBC any such NHBC Offer Documents and NHBC Offer Notifications that are not within your possession.
- d) In the circumstances set out in Rule 20)b)iv), you must inform the first Owner, or the first Owner's conveyancer if they have appointed one, of the fact and period of occupation of the Home as a dwelling.

### Separate charges for NHBC Cover

- 21) You must not make a charge to the first Owner for any NHBC Cover or NHBC service unless that charge is included (at cost) in the price payable under the Contract for the Home or NHBC gives you written permission.

### Obligations under NHBC Cover

- 22) You must fulfil your obligations under any NHBC Cover to which you are a party, in full and at the due time.

### Liability of Builders and Developers under NHBC Cover

- 23)
  - a) If you submit a Site Notification and Application for NHBC Cover you will be liable to the Owner of the Home for the Builder's obligations under the resulting NHBC Cover.
  - b) If you are Registered as a Builder and you are involved in the design and/or construction of a Home for which a Developer submits the Site Notification and Application for NHBC Cover, then if the Developer fails to fulfil the Builder's obligations under the NHBC Cover and in connection with those matters of design and construction in which you were involved:
    - i) you will indemnify NHBC on demand in respect of any sums that NHBC is entitled to claim from the Developer under the Rules for that Home; and
    - ii) at NHBC's request and your expense, you must fulfil the Builder's obligations under the NHBC Cover for that Home.
  - c) Nothing in Rule 23)b) or in NHBC's exercise of its rights under that Rule in any way relieves the Developer of its obligations under the Rules or any NHBC Cover in respect of the Home concerned.

### Notices of Cover

- 24)
  - a) Following its inspections and any technical investigations of a Home under Rule 15) NHBC may in its sole discretion (without being obliged to do so) issue a Notice of Cover in respect of the Home.
  - b) The issue of a Notice of Cover for a Home is not a warranty, representation or guarantee to you, the Owner or any other person that construction of the Home was completed fully in accordance with applicable NHBC Requirements and does not in any way relieve you of your obligations under Rule 10)a) to complete the construction of the Home in accordance with applicable NHBC Requirements.

# NHBC Rules for builders and developers registered with NHBC

- c) NHBC may in its sole discretion agree in writing that you need not comply with all of the applicable NHBC Requirements concerning the design and construction of a particular Home, in which case you must obtain the first Owner's written agreement to accept that non-compliance. In such circumstances, NHBC may in its sole discretion issue a Notice of Cover in respect of the Home containing an endorsement excluding the relevant items from cover.

## Withholding a Notice of Cover

- 25) If NHBC withholds the issue of a Notice of Cover in respect of a Home, it will give you written notice of its reasons for doing so.

## Rights when a Notice of Cover is withheld

- 26) If you consider that NHBC is unreasonably withholding a Notice of Cover, you may give NHBC written notice that you want that dispute to be referred to arbitration under Rule 55) by giving written notice to NHBC within 28 days of your receipt of a written notice from NHBC under Rule 25).

## Claims and Work required by NHBC

### Tests, investigations and work required by NHBC

- 27)
  - a)
    - i) NHBC may give you written notice of tests and/or investigations that NHBC requires you to carry out or have carried out in order to investigate any suspected non-compliance with NHBC Requirements.
    - ii) NHBC may give you written notice of work that NHBC requires you to carry out or have carried out in order to remedy any non-compliance with NHBC Requirements.
  - b) Following receipt of a notice under Rule 27)a) you must:
    - i) inform NHBC in writing within seven (7) days of any difficulties that may prevent the completion of the tests, investigations and/or work specified in the notice by the date required and NHBC may (in its absolute discretion) agree to vary that date;
    - ii) at your own expense carry out or have carried out the tests and/or investigations specified in the notice and report the outcome or results to NHBC in writing by the date specified in the notice or by any later date agreed under Rule 27)b)i) or, if no date was specified or agreed, within a reasonable period of time;
    - iii) at your own expense carry out or have carried out any work specified in the notice (together with any additional work necessary in connection with the work specified in the notice) so that the Home complies with the applicable NHBC Requirements by the date specified in the notice or by any later date agreed under Rule 27)b)i) or, if no date was specified or agreed, within a reasonable period of time.
  - c) If you do not complete any tests, investigations and/or work that you are required to carry out or have carried out under Rules 27)a) and 27)b) within the time allowed, NHBC may (in its absolute discretion):
    - i) have appropriate tests, investigations and/or work, carried out; or
    - ii) assess the costs of carrying out such tests, investigations and/or work and pay that sum to the Owner.
  - d) If, in its absolute discretion, NHBC deems it appropriate to do so (for instance because of (i) the history of any dealings between you and the Owner and/or NHBC (ii) NHBC's assessment of any work previously carried out by you (iii) your financial position or (iv) an emergency) NHBC may, instead of or in addition to serving a notice under Rule 27)a):
    - i) arrange itself for tests, investigations and/or work to be carried out; or
    - ii) assess the costs of having such tests, investigations and/or work carried out and pay that sum to the Owner.
  - e) NHBC may serve more than one notice under Rule 27)a) in respect of a Home and where NHBC does so, any earlier notice shall remain in force, except to the extent that any later notice is either expressly stated to supersede an earlier notice or the context requires to any extent that a later notice supersedes an earlier notice.

- f) If NHBC exercises its rights under Rules 27)c) or d) NHBC will notify you in writing and following service of such a notice you must not undertake the tests, investigations and/or work referred to in the notice yourself, nor arrange for any other person to undertake them.
- g) If NHBC exercises its rights under Rules 27)c) or d) NHBC will be entitled to require you to stop work on the Home concerned (as specified in the notice, along with particulars of the work that must be stopped) and following service of that notice:
  - i) you must stop work on the Home as required under the notice; except that
  - ii) you must take all steps necessary to ensure that the Home is secure and watertight.
- h) Where tests, investigations and/or work are required to be carried out to a Home under Rule 27) you must at your expense:
  - i) allow or obtain access to the premises referred to in the notice for you, NHBC and/or any contractors for the purpose of allowing tests, investigations and/or work to be done;
  - ii) arrange for any damage to the Home resulting from the carrying out of tests, investigations and/or work to be repaired and for the affected parts of the Home to be re-decorated and left in a clean and tidy condition;
  - iii) arrange for the removal and storage of the Owner's possessions, and/or for the provision of suitable alternative accommodation for the Owner and/or anyone else who normally lives in the Home with the Owner's permission.

Alternatively, in the case of Rules 27)h)ii) and 27)h)iii) NHBC may either make any of the above tests, investigations, work and/or arrangements at your expense or, in its absolute discretion, assess the cost of making any of the above tests, investigations, work and/or arrangements and pay that sum to the Owner.
- i) If NHBC exercises its rights under Rule 27) you must immediately on demand (and without deduction or set off) indemnify NHBC in respect of all costs and expenses incurred by NHBC in connection with doing so. Such costs and expenses may include administration costs, the cost of settlement of claims under NHBC Cover and the costs and disbursements incurred in obtaining professional advice and assistance.
- j) NHBC may apply Rule 27) at any time in connection with any Home and any obligation or liability that you have under the relevant NHBC Cover and/or the Rules and which you have not discharged in full and at the due time.
- k) If you dispute any action taken by NHBC under Rule 27) that dispute may be referred to arbitration subject to and in accordance with Rule 55). If a dispute is referred to arbitration:
  - i) NHBC shall continue to be entitled to carry out or make a payment in respect of any tests, investigations and/or work specified in a notice served under Rule 27); and
  - ii) the Arbitrator will not have the power to order you to carry out any tests, investigations and/or work.

## Claims and Resolution

### Investigation of claims and complaints by NHBC

28)

- a) If an Owner makes any claim or complaint to NHBC in respect of a Home, NHBC may undertake its own tests and/or investigations and may require that you attend and/or assist NHBC with those tests and/or investigations (whether or not you are obliged to respond to the claim or complaint under the NHBC Cover for the Home).
- b) If NHBC requires you to attend and/or assist under Rule 28)a), NHBC will notify you in writing (setting out particulars of the Home and the date and time of the planned tests and/or investigations) and following service of that notice:
  - i) you must at your own expense make a representative available to attend and/or assist NHBC with those tests and/or investigations;
  - ii) you must allow or procure access to the relevant premises for NHBC and its contractors for the purpose of allowing NHBC or its contractors to carry out the tests and/or investigations.

# NHBC Rules for builders and developers registered with NHBC

- c) Following tests and/or investigations carried out under Rule 28)a) NHBC will:
  - i) notify you in writing of the outcome of the tests and/or investigations;
  - ii) notify you of the costs and expenses incurred by NHBC in connection with the tests and/or investigations. Such costs and expenses may include administration costs and the costs and disbursements incurred in obtaining professional advice and assistance.
- d) Following receipt of a notice under Rule 28)c)ii) you must immediately pay to NHBC (without deduction or set off) an amount equal to the amount of the costs stated in the notice, unless:
  - i) the outcome of all of the tests and/or investigations is that there has been no failure by you to comply with your obligations under the relevant NHBC Cover and Rules in connection with the matters tested and/or investigated; or
  - ii) with NHBC's written agreement (in its absolute discretion) within a reasonable time at your own expense you carry out all of the work that NHBC would otherwise have to pay for or carry out under the relevant NHBC Cover in connection with the claim or complaint.
- e) NHBC may apply Rules 28)a) to 28)d) at any time in connection with NHBC's response to any claim or complaint made in connection with NHBC Cover for a Home built or sold by you or on your behalf.

## Resolution Service

- f) If an Owner makes a claim or complaint to NHBC under or in connection with NHBC Cover and NHBC decides to provide the Resolution Service then:
  - i) Rules 27) and 28) will apply in respect of any tests, investigations and/or work which NHBC requires you to carry out or arrange and/or which NHBC carries out or arranges;
  - ii) NHBC may charge you a fee for providing the Resolution Service.
- g) NHBC may apply Rule 28)f) at any time in connection with NHBC's response to any claim or complaint made in connection with NHBC Cover for a Home built or sold by you or on your behalf.

## Recovery of Costs

- h) In addition to NHBC's other rights under the Rules, if NHBC incurs any costs:
  - i) under any NHBC Cover as a result of or in connection with your fraud;
  - ii) under any NHBC Cover as a result of or in connection with your insolvency;
  - iii) under any NHBC Cover as a result of or in connection with any Arbitration Award, Court Judgment or Court Order with which you fail to comply;
  - iv) under any NHBC Cover as a result of or in connection with your failure to meet your obligations under that NHBC Cover;
  - v) as a result of or in connection with your failure to meet your obligations under the Rules; (in each case whether or not notice of the relevant facts or matters was given by an Owner) NHBC may notify you in writing of the costs incurred (including administration costs, the cost of settlement of claims under NHBC Cover and the costs and disbursements incurred in obtaining professional advice and assistance) and you must immediately pay to NHBC (without deduction or set off) an amount equal to the amount of the costs stated in the notice.

## Settlement of Claims

- i) NHBC may settle claims and complaints made under NHBC Cover by any method that NHBC in its absolute discretion considers appropriate (including by way of making a payment to the Owner, arranging for tests, investigations and/or work to be carried out, or arranging to purchase the relevant Home) and your liability under these Rules will be unaffected by the choice of method.

## Common Parts

- j) If a claim is made under NHBC Cover by two or more Owners in connection with any Common Parts (the use or enjoyment of which is shared by them) then in respect of such Common Parts NHBC may proceed against you as if all of the relevant Owners who share the use or enjoyment of those Common Parts and who are also entitled to claim under NHBC Cover in connection with those Common Parts, had made claims under their NHBC Cover.

## Powers of NHBC

### Bonds and Sureties

29)

- a) NHBC may at your request and in its absolute discretion agree to act as surety in respect of a Bond in which case you must pay NHBC's charges and disbursements for that service as advised to you by NHBC from time to time.
- b) NHBC may impose Conditions in connection with its agreement to act as surety in respect of a Bond, including Conditions requiring you to:
  - i) procure an agreement from (at NHBC's option) any of your Associates, any parent company, any of your directors, or any of your partners, on terms such that they agree to indemnify NHBC against all costs (including legal costs and disbursements) that may be incurred by NHBC in connection with the Bond if NHBC becomes liable under the Bond (including any liability to make a payment or to undertake works);
  - ii) deposit with NHBC a sum not exceeding the maximum amount that NHBC could be liable for if NHBC becomes liable under the Bond (including any liability to make a payment or to undertake works).
- c) NHBC may impose Conditions under Rule 29)b) as a Condition of its agreement to act as surety in respect of a Bond.
- d) NHBC may impose Conditions under Rule 29)b) after having agreed to act as surety in respect of a Bond if at any time before NHBC's actual and/or contingent liabilities under the Bond are released or extinguished:
  - i) you are in breach of any of your obligations under the Bond;
  - ii) your Registration is suspended or cancelled under Rule 30) or under Rule 41);
  - iii) you are subject (in the case of a company) to a change of Control or (in the case of partnership) to a change (by a partner joining or leaving the partnership) in the composition of the partnership or dissolution of the partnership.
- e) A deposit made under Rule 29)b) will be returned to you once NHBC's actual and/or contingent liabilities under the Bond have been released or extinguished, less any sum that you are obliged to pay to NHBC under Rule 29)f) in connection with the Bond.
- f) You must reimburse to NHBC on demand (without deduction or set off) any costs that are incurred by NHBC in connection with a Bond if NHBC became liable under the Bond (including any liability to make a payment or to undertake works) and this obligation will not be discharged by the making of a deposit under Rule 29)b).

### Powers of NHBC on specified events

30)

- a) NHBC may decide:
  - i) to amend the Conditions of your Registration or to impose further Conditions of your Registration;
  - ii) that you must comply with the Rules, and any Conditions of your Registration and/or any other conditions specified by NHBC;
  - iii) that you must pay compensation to an Owner or to NHBC;
  - iv) to suspend your Registration whilst:
    - a) it investigates and/or takes action in respect of any of the matters listed in Rule 30)b); or
    - b) a review takes place under Rule 31); or
    - c) an appeal is heard under Rules 32) to 38);
  - v) to cancel your Registration;
  - vi) to take any other action it thinks fit.

# NHBC Rules for builders and developers registered with NHBC

- b) NHBC may make any of those decisions if:
  - i) you fail to comply with any of the Rules;
  - ii) you fail to comply with a Condition of your Registration;
  - iii) you conduct yourself in a manner likely (in NHBC's opinion) to bring NHBC into disrepute;
  - iv) you cease trading or resolve to do so;
  - v) you fail to discharge your debts in full and at the due time;
  - vi) the Registration of your Associate has been cancelled;
  - vii) you fail to pay your annual subscription under Rule 6);
  - viii) you do not answer a recorded delivery letter from NHBC within 28 days of posting;
  - ix) any cheque or similar document issued by you is dishonoured or payment is refused;
  - x) NHBC at its sole discretion considers it appropriate to do so;
  - xi) you do not comply with the terms of any code of conduct that NHBC requires you to comply with under Rule 47)d).
- c) During any period in which your Registration is suspended or cancelled, you must not:
  - i) submit to NHBC any Site Notification or Application for NHBC Cover;
  - ii) deliver, or undertake to deliver any NHBC Offer Documents or NHBC Offer Notifications in respect of any Home without NHBC's written permission to do so;
  - iii) indicate to any person by any means that you are Registered as a Builder or Developer, unless in the case of suspension you also indicate that you are currently suspended.
- d) NHBC will give you written notice before making a decision under this Rule 30).

## Reviews and appeals

### Right to review decisions of NHBC

31)

- a) If you receive:
  - i) notice from NHBC under Rule 4) of a decision on your application for Registration; or
  - ii) notice from NHBC under Rule 5) of a decision to impose additional Conditions or to amend your Conditions of Registration; or
  - iii) an instruction from NHBC under Rule 12) not to submit a Site Notification; or
  - iv) an instruction from NHBC under Rule 13) not to submit an Application for NHBC Cover; or
  - v) an instruction from NHBC under Rule 20) not to deliver NHBC Offer Documents or NHBC Offer Notifications; or
  - vi) an instruction from NHBC under Rule 27)g) to stop work; or
  - vii) notice under Rule 30)d);you have the rights set out in Rule 31)b).
- b) You have the right to make written representations provided that those representations reach NHBC no more than 21 days after you receive the relevant notice or instruction. If the applicable law (under Rule 58)) is the law of Scotland, you also have the right to request and attend a hearing and make representations at that hearing.
- c) Following receipt of representations and/or a hearing under Rule 31)b) NHBC will give you written notice of its decision.

### Appeals against a review decision (other than when the law of Scotland applies)

32)

- a) You have a right to appeal against any decision notified under Rule 31)c). You must give NHBC written notice of such an appeal within 14 days after you receive notice of that decision.
- b) At the same time as you give notice of your appeal you must deposit £500 with NHBC as security for its initial costs of the appeal.

## The Appeal Committee

33)

- a) You may request that the hearing of your appeal be held before either:
  - i) the Chief Executive of NHBC; or
  - ii) an Appeal Committee;  
provided that the Chief Executive may decline to hear your appeal in which case it will be heard by an Appeal Committee.
- b) An Appeal Committee will consist of an independent Chairman nominated by the Chartered Institute of Arbitrators and either:
  - i) two members nominated by the Board of NHBC; or
  - ii) if your registered office or principal place of business is in Northern Ireland, two members of NHBC's Northern Ireland Committee nominated by its Chairman and who have not been involved in your application for Registration.
- c) When hearing your appeal the Chief Executive or the Appeal Committee will act as a private tribunal and not as an Arbitrator.

## Directions

34)

- a) The Chief Executive or the Appeal Committee will give directions for the conduct of an appeal and may require you to provide security for NHBC's costs. If you fail to comply with those directions, your appeal may be dismissed without a hearing.
- b) A date will be fixed for the hearing of the appeal at which you may call evidence and make representations.
- c) At least 28 days before the hearing date you must deliver to NHBC a detailed written statement of all the facts and matters you wish to have taken into account at that hearing. If you do not do so, the hearing may be adjourned or your appeal may be dismissed without a hearing.

## The decision

35)

- a) The Chief Executive or the Appeal Committee may decide:
  - i) to confirm, vary or reverse a decision made under Rule 30); and
  - ii) to make whatever order it considers appropriate with regard to the determination and payment of costs (taking into account any payment made under Rules 32)b) or 34)a)).
- b) The Chief Executive or Appeal Committee will send you written notice of the decision.

## Appeals in Scotland

### Appeals against a review decision (when the law of Scotland applies)

- 36) If the applicable law (under Rule 58)) is the law of Scotland, you have a right to appeal against any decision notified under Rule 31)c) but Rules 36) to 37) shall apply instead of Rules 32) to 35) and you must give NHBC written notice of your appeal within 21 days after you receive notice of the decision. You must at the same time deposit £500 (or such other sum as the Appeal Tribunal shall from time to time determine) with the Appeal Tribunal as security for its initial costs of the appeal.
- 37) The Chairman of the Appeal Tribunal will be nominated by the President of the Law Society of Scotland. The other members will be nominated:
  - a) one by the President of the Scottish Building Employers Federation; and
  - b) one jointly by the President of the Royal Institute of British Architects and the President or Vice President of the Royal Institution of Chartered Surveyors.



# NHBC Rules for builders and developers registered with NHBC

38)

- a) The Appeal Tribunal:
  - i) will give directions for the conduct of the appeal and shall commence the hearing of the appeal within a period of not more than three months from the date of its receipt of NHBC's application to the Chairman to convene the Tribunal;
  - ii) may confirm, vary or reverse NHBC's decision;
  - iii) may, if it is satisfied that any failure to give notice of appeal within the time allowed by the Rules arose from some sound and substantial reason, extend the time in which notice may be given;
  - iv) may make any order, including any order concerning the determination and payment of costs, taking into account any payment made under Rule 36), that it thinks fit;
  - v) will give you written notice of its decision.

## Effect of instructions etc.

### Effect of instructions and decisions etc.

39)

- a) Unless otherwise stated any decision, instruction or requirement of NHBC takes effect immediately it is notified to you in writing by NHBC and continues in force unless and until it is satisfied, withdrawn or superseded by any subsequent decision, instruction or requirement of NHBC.
- b) Any decision of NHBC under Rules 30) or 31) take effect 21 days after you receive written notice of it and will remain in force unless and until any contrary order or decision is made by an Appeal Committee, Appeal Tribunal or the Chief Executive under Rules 32) to 38).
- c) An order or decision of the Appeal Committee, Appeal Tribunal or Chief Executive takes effect immediately it is notified to you in writing.

40)

- a) You must comply with any instruction, requirement, decision or order of NHBC or the Appeal Committee, Appeal Tribunal or Chief Executive (as the case may be) which has taken effect.
- b) NHBC may publish or make public comment about any decision or instruction that is made or given under or in connection with the Rules; it may do so even if an appeal against that decision or instruction is pending.

## Cancellation of Registration

### Voluntary and automatic cancellation of Registration

41)

- a) NHBC will cancel your Registration on your written request unless, prior to receipt of your request, either:
  - i) NHBC has given you notice under Rule 30) in respect of one or more of the matters set out below; or
  - ii) NHBC was considering giving you notice under Rule 30) in respect of any such matter(s) and does so within 14 days of receiving your written request.
- b) NHBC may only refuse your request if it has given you notice under Rule 30) (or is considering giving you such notice) in respect of a decision relating to one of the following matters:
  - i) Rule 30)b)i) but only where this relates to a failure by you to comply with Rules 10), 15), 22), 23), 27), 28) or 29);
  - ii) Rule 30)b)v); or
  - iii) Rule 30)b)ix).
- c) NHBC will have the right to continue to refuse to accept your request for cancellation of your Registration until any action under Rule 30), review under Rule 31) or Appeal under Rules 32) to 38) is concluded or withdrawn. The result of the action, review or appeal will take precedence over your request.
- d) Your Registration will be cancelled automatically if:
  - i) a bankruptcy order is made against you;
  - ii) you are a company and go into liquidation or are dissolved (other than for the purposes of solvent reconstruction);
  - iii) an administrator, a receiver or an administrative receiver is appointed to your business;
  - iv) a mortgagee or heritable creditor sells, or appoints a receiver over, any of your land (whether or not you have made a Site Notification in respect of that land);
  - v) you enter into a Voluntary Arrangement with your creditors.
- e) The date of cancellation of your Registration will be the date of the relevant order, appointment or arrangement.

### No indication of Registration after cancellation

42)

- a) If your Registration is cancelled, subject to Rule 43), you must:
  - i) immediately cease to use the NHBC logo and other NHBC trade marks and immediately cease to use and where necessary (in order to cease to use) remove, obliterate or destroy any signs, notices, literature or other material the use of which may represent to others or lead others to infer that you are Registered;
  - ii) immediately return to NHBC all NHBC Offer Documents and NHBC Offer Notifications and NHBC promotional material within your possession or control.

### After cancellation of Registration

43)

- a) Subject to Rule 43)b), after the cancellation of your Registration you must immediately return or arrange for the return to NHBC of all NHBC Offer Documents and NHBC Offer Notifications in respect of which you made the Application for NHBC Cover and which have not (prior to cancellation) been delivered to the relevant first Owner.
- b) You may within 28 days of the cancellation of your Registration apply to NHBC for consent to deliver NHBC Offer Documents and NHBC Offer Notifications (in respect of which you made the Application for NHBC Cover) to the relevant first Owner and pending NHBC's decision you may retain (but not deliver unless permitted under Rule 43) d)) those NHBC Offer Documents and NHBC Offer Notifications.
- c) If you do not within 28 days of the cancellation of your Registration apply to NHBC for consent to deliver NHBC Offer Documents and NHBC Offer Notifications (in respect of which you made the Application for NHBC Cover) to the relevant first Owner, or you apply and NHBC refuses you permission to deliver them, then NHBC may cancel the relevant Application for NHBC Cover.
- d) If your Registration is cancelled at your own request NHBC will normally consent to you delivering NHBC Offer Documents and NHBC Offer Notifications provided:
  - i) you can satisfy NHBC that you intend to continue in business as a Builder or Developer and will be able to comply with your obligations in respect of the Home under the Rules and under the NHBC Cover; and
  - ii) you provide NHBC with security in a form satisfactory to NHBC for the discharge of those obligations in such form as NHBC reasonably requires. In this connection you must produce to NHBC any evidence which it may reasonably request including (but not limited to) your audited accounts, statements from your accountants and bankers and trade and other references.
- e) If your Registration is cancelled otherwise than at your own request, NHBC will have absolute discretion as to whether or not to grant your application for consent to deliver NHBC Offer Documents and NHBC Offer Notifications.
- f) Even after your Registration is cancelled:
  - i) you must continue to comply with these Rules in respect of any Home built or sold by you or on your behalf;
  - ii) you must discharge any actual or contingent liability which you have incurred to an Owner or to NHBC; and
  - iii) you must pay to NHBC any sum payable under these Rules whether it became or becomes due before or after cancellation.

# NHBC Rules for builders and developers registered with NHBC

## Release from continuing obligations

- 44) If your Registration is cancelled, you may ask NHBC to release you from any of your continuing obligations under the Rules or to undertake any of your obligations under or in connection with any NHBC Cover. If NHBC is prepared to grant that release or to undertake those obligations it will notify you of the amount of any payment it requires in exchange. You may then accept or reject that offer. If you accept or reject that offer, NHBC will not be liable in respect of any matter that has already been notified to you or to NHBC.
- 45) If your Registration is cancelled and you cease to carry on business as a Builder or Developer (either before or after cancellation) NHBC may require you to make a payment to it in exchange for its undertaking some or all of your obligations under any NHBC Cover and/or the Rules. If NHBC exercises its rights under this Rule 45) NHBC will notify you in writing of the amount payable and you must immediately pay that amount to NHBC (without deduction or set off).

## Reinstatement of Registration

### Application for reinstatement of Registration - Procedure and Conditions

- 46)
- a) If you have previously been Registered with NHBC you may at any time apply to have your Registration reinstated. You must make that application in writing. NHBC will give you written notice of its decision on your application.
  - b) If your Registration was cancelled at your own request NHBC will reinstate your Registration on terms which are no less favourable than they would have been if your Registration had not been cancelled unless:
    - i) NHBC would have been entitled to make your Registration subject to new or varied Conditions under Rule 5) or to take action under Rule 30);
    - ii) you fail to comply with any request by NHBC to provide, or to authorise any third party to provide any information and/or documents requested by NHBC; or
    - iii) information comes to the attention of NHBC which indicates that any charges payable by you under Rule 14) should be higher than they would have been if your Registration had not been cancelled.In those circumstances, NHBC will not be obliged to reinstate your registration but if it does so it may make your registration subject to appropriate Conditions.
  - c) If your Registration is reinstated you must pay:
    - i) NHBC's reasonable administrative expenses in connection with your application;
    - ii) the annual subscription under Rule 6)a) for the whole of the year in which you are reinstated; and
    - iii) all other amounts due from you to NHBC or to an Owner under or in connection with these Rules and/or any earlier NHBC Rules for Builders and Developers Registered with NHBC or under or in connection with or in respect of any NHBC Cover.
  - d) If your Registration was cancelled otherwise than at your own request or NHBC refuses to reinstate your Registration under Rule 46)b) NHBC may:
    - i) accept your application either unconditionally or subject to appropriate Conditions;
    - ii) defer consideration of your application pending further inquiries or the provision of further information;
    - iii) require you to make a fresh application for Registration as if you had not previously been Registered;
    - iv) reject your application.

## Consumer Code for Home Builders

### Consumer Code for Home Builders

47)

- a) You must ensure that the first Owner of any Sheltered Dwelling built or to be built or sold by you in England or Wales is provided with a Purchaser's Information Pack that contains the information specified in the NHBC Sheltered Housing Code. This must at the latest be provided when that Owner reserves the Dwelling and they must in any event be given sufficient time properly to consider the information that the Pack contains before the enter into a Contract.
- b) You must ensure that the Management Organisation of any Sheltered Dwelling built or to be built or sold by you in England or Wales enters into a Management Agreement as required by the NHBC Sheltered Housing Code.
- c) If you sell a Sheltered Dwelling in England or Wales to anyone who is acting in the course of a business you must ensure that they covenant:
  - i) that a Purchaser's Information Pack will be provided to the first Owner of that Dwelling as required by Rule 47)a);
  - ii) that the Management Organisation of that Dwelling will enter into a Management Agreement as required by Rule 47)b); and
  - iii) that covenants such as those at Rule 47)c)i) and Rule 47)c)ii will be obtained on any further such sale or transfer.
- d) You must comply with the requirements of the Consumer Code for Home Builders, in respect of each Home referred to in a Site Notification or Application for NHBC Cover you submit to NHBC.

## Obligations under these and earlier Rules

### Effect of earlier rules

- 48) In addition to your obligations under these Rules you will continue to comply with and be bound by any earlier NHBC Rules for Builders and Developers Registered with NHBC in respect of which any obligation or requirement has arisen on or before the Effective Date for these Rules. Any dispute about that obligation or requirement will be subject to these Rules.
- 49) You must not deny liability under or in connection with any NHBC Cover on the grounds that:
  - a) NHBC was not authorised to offer that NHBC Cover on your behalf; or
  - b) successive Owners (including any mortgagee or heritable creditor in possession) are not a party to the NHBC Cover.

## Communications and information

### Address for communications

50)

- a) NHBC will send all communications under the Rules to your address as it appears on the Register.
- b) You must send any reply to a communication from NHBC to the address given on that communication.
- c) Any communication sent by First Class Post or recorded delivery to the appropriate address will be treated as having been received/served not later than the second working day after posting and if sent by second class, the third working day after posting.

# NHBC Rules for builders and developers registered with NHBC

## Information to be supplied to NHBC

51)

- a) You must give NHBC written notice of any proposed change of address before that change takes effect. NHBC will be entitled to rely on any communication as if it were delivered in accordance with Rule 50)c) regardless of its return, destruction or onward transmission.
- b) You must immediately give NHBC written notice if:
  - i) you are a sole trader or a partnership and anyone acquires a financial interest in your business then you must give details of the acquisition, the interest acquired, and the name and address of the person or organisation which has acquired the interest;
  - ii) you are a partnership, and there is any change (for example due to death, retirement or a new partner joining) in the composition of the partnership then you must give details of the change, and the name and address of any new partner;
  - iii) you are a company, and there is any change in the membership of the board of directors then you must give details of the change, and the name and address of any new director;
  - iv) you are a company, and anyone becomes the registered or beneficial owner of more than 10% of the company's shares then you must give details of the name and address of the new owner(s) of the shares;
  - v) you become unable to meet your debts as they fall due;
  - vi) you intend or decide to cease trading, to petition for your own bankruptcy, to go into members' or creditors' voluntary liquidation, to apply for the appointment of an administrator, to enter into a Voluntary Arrangement or to make any arrangement or composition with your creditors;
  - vii) you cease trading, become bankrupt, go into liquidation, enter into a Voluntary Arrangement or make an arrangement or composition with your creditors;
  - viii) an administrator, a receiver or an administrative receiver is appointed in relation to your business;
  - ix) a mortgagee or heritable creditor sells, or appoints a receiver over, any of your land (whether the subject of a Site Notification or not);
  - x) you dispose of or propose to dispose of any land in respect of which NHBC has entered into a Bond (or any other surety indemnity or guarantee in favour of a third party relating to completion of any works by you or on your behalf).
- c) You must immediately upon request give written notice to NHBC of the name and address of the First Owner of any Home built or to be built or sold by you or on your behalf.

52)

- a) If required by NHBC you must:
  - i) produce to NHBC any published or unpublished accounts, cash flow forecasts, bank reports, building and development programmes and any other documents which NHBC may reasonably require to enable it to determine your continuing ability to comply with the Rules and/or to meet your obligations under any NHBC Cover;
  - ii) supply particulars of any claims made to you or to any third party in respect of a Home built or sold by you and or not that Home was built or sold with the benefit of NHBC Cover;
  - iii) authorise any third party to disclose to NHBC full details of any such claims.
- b) NHBC will treat as confidential any information and documents supplied to it by you or on your behalf: except for
  - i) any information and/or documents that become publicly available, other than as a result of the breach by NHBC of this Rule 52)b);
  - ii) any information and/or documents that NHBC has created or received (from any source) the disclosure of which, in NHBC's opinion, is required by any law (including any order of a Court of competent jurisdiction), any parliamentary obligation, or the rules of any stock exchange or governmental or regulatory authority having the force of law; which NHBC may disclose to the appropriate person or their authorised representatives.

53)

If NHBC Building Control Services Limited is acting as an Approved Inspector under the Building Act 1984 in respect of any Home built or sold by you or on your behalf you must inform NHBC as soon as that Home is sold or occupied by any person as a residence.

## Contractual Matters

### Sums payable

54)

- a) Any amount payable by you to NHBC or to an Owner under or in connection with the Rules must be paid by you to NHBC on demand with interest payable from the date of NHBC's demand at 5% above the Bank of England base rate of interest from time to time, with interest accruing on a daily basis.
- b) NHBC may without notice to you combine, consolidate or merge all or any of your liabilities to NHBC and may set off or transfer any sums from time to time owed to you by NHBC in or towards the satisfaction of any of those liabilities.
- c) Where Value Added Tax, Insurance Premium Tax or any other sales, use, property or other transactional tax or levy is payable in connection with any payment due under the Rules you shall also pay such Value Added Tax, Insurance Premium Tax and other tax or levy at the rate and in the manner from time to time required by the proper authorities.

### Disputes under Rules 26 and 27

55)

- a) In the event of a dispute under Rules 26) or 27) you may apply to the Chartered Institute of Arbitrators in London ('Chartered Institute') for the appointment of an Arbitrator.
- b) If you wish to apply for an Arbitrator to be appointed, you must first notify NHBC in writing and then NHBC will arrange for the Chartered Institute to provide you with an application form. Within 21 days of receiving the application form from the Chartered Institute you must complete and return the form (together with any charge specified in it) to the Chartered Institute and provide a copy to NHBC.
- c) NHBC shall be entitled to proceed as if no dispute has arisen in respect of any matter which you are entitled to refer to Arbitration under this Rule 55) until such time as the matter is referred to Arbitration under this Rule 55) by the return of the completed application form in accordance with Rule 55)b).
- d) If you fail to complete and return an application form to the Chartered Institute within 21 days of receiving it:
  - i) your application for the appointment of an Arbitrator shall be regarded as abandoned; and
  - ii) NHBC shall be entitled to proceed as if no dispute had arisen.

### Legal proceedings involving an Owner

56)

- a) If at any time arbitration or legal proceedings are commenced between you and an Owner in respect of a Home in relation to which any NHBC Cover is in force:
  - i) you must notify NHBC in writing and thereafter provide NHBC with all information and documents that NHBC reasonably requests in connection with those proceedings;
  - ii) you must, if NHBC requests, make any reasonable application and take any reasonable steps specified by NHBC to enable it to take part in those proceedings. NHBC will reimburse you for your reasonable costs of that application or step.
- b) If a dispute arises between you and an Owner out of your obligations under NHBC Cover and the Owner wishes to have that dispute determined by arbitration you must give your written consent to the appointment of an Arbitrator in whatever form is required and as soon as you are notified of that requirement. You must pay any fee required by the Arbitrator or the appointing body as soon as it is requested.

# NHBC Rules for builders and developers registered with NHBC

## Changes to the Rules

57)

- a) NHBC may amend the Rules after giving notice to you, including a copy of the amended Rules.
- b) Amended Rules will take effect from the commencement date referred to in the amended Rules and you will be bound by and must comply with those amendments from that date.

## General contract provisions

58)

- a) If your registered office address (or if not a company or limited partnership, your principal place of business) is in England, Wales, Scotland or Northern Ireland, the Rules shall be governed by and construed in accordance with the laws applicable in the country in which your registered office or principal place of business is situated.
- b) If your registered office address (or if not a company or limited partnership, your principal place of business) is not in England, Wales, Scotland or Northern Ireland, the Rules shall be governed by and construed in accordance with the laws applicable in England.
- c) Your obligations under the Rules (as varied by any Conditions) may only be varied or waived with the written consent of NHBC.
- d) The failure or delay by NHBC at any time to enforce its rights under the Rules (as varied or supplemented by any Conditions) shall not be construed as a waiver of such rights and shall not affect their validity or the right of NHBC to enforce the Rules (as varied or supplemented by any Conditions).
- e) The Rules (as varied or supplemented by any Conditions) are intended to be for the sole benefit of you and NHBC and even if they refer to third parties they are not intended to confer benefits upon such third parties which are enforceable by them, except where the Rules refer to any NHBC Company, in which case the reference is made with the intention of creating rights enforceable by the NHBC Company referred to.
- f) If any of the Rules (as varied or supplemented by any Conditions) is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted and the validity and enforceability of the remainder of the Rules (as varied by any Conditions) shall not be affected or impaired thereby.





# Appendix - Terms and conditions of NHBC Building Control Services Limited

## Terms and conditions of NHBC Building Control Services Limited for the provision of the services of an 'Approved Inspector' under the Building Act 1984, in England or Wales.

### Part 1 - Introduction

1. Parts 1-3 contain the terms and conditions applicable when NHBC Building Control Services Limited ('NHBC') provides the services of an 'Approved Inspector' under the Building Act 1984, in England or Wales.
2. National House-Building Council is a company limited by guarantee and registered in England and Wales number 320784. The registered office is NHBC House, Davy Avenue, Knowlhill, Milton Keynes, Buckinghamshire MK5 8FP.
3. NHBC is a wholly owned subsidiary of the National House-Building Council.
4. NHBC is licensed by the Construction Industry Council to act as an Approved Inspector in England and Wales.
5. The terms and conditions set out in this document apply to each Initial Notice served by NHBC on or after 1st January 2011. In each case when, at the request of a Client, NHBC serves an Initial Notice, that shall bring in to force with effect from the date of the Initial Notice a separate contract between NHBC and the Client for the provision by NHBC of the services of an Approved Inspector for the Building Work to which the Initial Notice refers ('Contract') and that Contract shall be on the terms and conditions set out in this document.
6. If the Client is registered with the National House-Building Council as builder or developer, the terms and conditions set out in this document shall not affect the Client's obligations under the NHBC Rules for Builders and Developers Registered with NHBC, nor under any new home warranty policies applicable to homes built or sold by the Client.
7. Throughout this document, certain capitalised words and expressions are used. They have the meanings set out in Part 3 of this document.
8. Any reference in this document to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision as from time to time amended, modified, extended or re-enacted whether before or after the date any Contract comes into force and to all statutory instruments, orders and regulations for the time being made pursuant to it or deriving validity from it and (so far as may be applicable) any past statutory provisions (as from time to time amended, modified, extended or re-enacted) which such provision has directly or indirectly replaced.
9. Except insofar as the context otherwise requires, words denoting the singular shall include the plural and vice versa, words denoting any one gender shall include all genders, and words denoting persons shall include bodies corporate, unincorporated associations, partnerships and individuals.
10. Headings to clauses are included for ease of reference only and shall have no effect on the interpretation or construction of this document.

## Part 2 - Applicable Terms and Conditions

### 1. Provision of services

#### Appointment

- 1.1 Following the service of an Initial Notice by NHBC at the request of a Client, NHBC shall provide the Services for the relevant Building Work, subject to the terms and conditions set out in this document.
- 1.2 NHBC shall provide the Services with reasonable skill, care and diligence in accordance with the Building Act 1984 Part II and regulations made thereunder (including the Building (Approved Inspectors etc.) Regulations 2010, as amended) and with due regard to the Construction Industry Council's Code of Conduct for Approved Inspectors (as amended, modified, extended or re-issued from time to time).
- 1.3 NHBC shall prepare and provide to the Client an Inspection Notification Framework document, that sets out in outline how and when NHBC proposes to provide the Services; provided that in appropriate cases NHBC may use a generic Inspection Notification Framework document prepared for the Client generally and not specifically prepared or provided in respect of any particular Building Work.
- 1.4 When preparing the Inspection Notification Framework document and thereafter when providing the Services NHBC shall use reasonable endeavours to pay due regard to the scheduled programme of works for the Building Work, as advised to NHBC by the Client from time to time.
- 1.5 NHBC shall give a Final Certificate to the Local Authority for each part of the Building Work for which NHBC is satisfied (having regard to its duties as referred to in clause 1.1) that it is appropriate for it to do so.
- 1.6 NHBC may at any time by notice in writing inform the Client that in respect of the whole or any part of any Building Work NHBC is not satisfied (having regard to its duties as referred to in clauses 1.1 and 1.2) that it is appropriate for it to issue a Final Certificate (in which case clause 6.3 shall apply).

#### Client information and assistance

- 1.7 The Client shall promptly provide such information and assistance as NHBC reasonably requires from time to time in order to facilitate the timely provision of the Services, including and without the need for NHBC to request the same:
  - 1.7.1 the design documents for the Building Work, as relevant to matters pertaining to compliance with the Building Regulations;
  - 1.7.2 the scheduled programme of works for the Building Work;  
in each case promptly providing any modified or re-issued versions of the information or documents if any are created from time to time.
- 1.8 The Client shall (having due regard to the scheduled programme of works for the Building Work and the Inspection Notification Framework document) inform NHBC as soon as reasonably possible in advance and in any event not less than one clear working day in advance when inspection visits are required for the Building Work.

#### Design, permits and approvals

- 1.9 NHBC hereby informs the Client that NHBC is not responsible for the design, specification or management of construction work for the Building Work and the Services do not include the provision by NHBC of advice on or management of any aspect of the construction work for the Building Work.
- 1.10 NHBC hereby informs the Client that NHBC is not responsible for obtaining and/or implementing and/or providing any permits, licences or approvals required in connection with the Building Work, except for those that NHBC is obliged to obtain, implement and/or provide in its capacity as Approved Inspector.

#### Compliance with Building Regulations

- 1.11 NHBC hereby informs the Client that the Client is entirely responsible for ensuring that the Building Work meets the requirements of the Building Act 1984 and the Building Regulations and the Client acknowledges that the Services do not include NHBC advising the Client on how to meet those requirements.
- 1.12 NHBC hereby informs the Client that the issue of a Final Certificate is not a representation, warranty or certificate that each and every aspect of the Building Work meets the requirements of the Building Act 1984 and the Building Regulations.

# Terms and conditions of NHBC Building Control Services Limited

## Access and Health and Safety

- 1.13 The Client shall arrange for NHBC's personnel to have access to the Building Work at all reasonable times as necessary for NHBC to provide the Services.
- 1.14 NHBC shall ensure that its personnel comply with the Client's reasonable instructions in relation to their conduct when visiting the site of the Building Work.
- 1.15 The Client shall ensure that Health and Safety Requirements are complied with at the site of the Building Work.
- 1.16 Without prejudice to clauses 1.14 and 1.15, NHBC reserves the right to decline to carry out or complete an inspection visit for the Building Work when in NHBC's reasonable opinion to do so would put at risk the health and/or safety of the NHBC employee assigned to carry out the inspection.

## 2. Documentation

- 2.1 The copyright in all documents prepared by NHBC in connection with the provision of the Services shall belong to NHBC.
- 2.2 NHBC shall maintain accurate and reasonably detailed records of all work done by NHBC in the provision of the Services for a period of fifteen (15) years from the date of the applicable Final Certificate.

## 3. Fees and expenses

- 3.1 NHBC shall charge for the provision of the Services in accordance with the scale of charges most recently notified to the Client from time to time (or if not so notified, in accordance with its most recently published rates of charge published from time to time) and in all cases such rates of charge shall be quoted in UK pounds sterling, exclusive of UK Valued Added Tax but inclusive of the cost of disbursements.
- 3.2 NHBC reserves the right to charge reasonable additional fees, where additional site inspection and/or perusal of documents and/or attendance at meetings in excess of what is anticipated by the Inspection Notification Framework document are:
  - 3.2.1 requested by the Client;
  - 3.2.2 necessitated by a change in the scheduled programme of works for the Building Work;
  - 3.2.3 necessitated by a change to the design of the Building Work;
  - 3.2.4 necessitated by the Client's Default;
  - 3.2.5 necessitated by an event of Force Majeure.
- 3.3 The Client shall pay NHBC's invoices within thirty (30) days of the date of the invoice.
- 3.4 If any sum payable by the Client is not paid on the due date it shall be paid with interest on the overdue amount calculated at the rate of 5% above the Bank of England's base lending rate for the whole period from the date upon which the sum ought to have been paid until the date of payment (whether before or after any judgement).
- 3.5 If a Contract is terminated, howsoever arising, the Client shall pay NHBC any instalments of the charges due up to the date of termination and a fair and reasonable proportion of the next instalment of the charges based on the amount of the Services provided prior to termination.

## 4. Insurance

- 4.1 NHBC shall maintain in force professional indemnity insurance and public liability insurance in accordance with its statutory obligations under the Building Act 1984.
- 4.2 On the Client's written request, NHBC shall provide evidence that these insurances are being properly maintained.
- 4.3 Where the Building Work includes the building of residential dwellings for sale or letting the Client shall ensure that each residential dwelling unit built is covered by NHBC's Buildmark new home warranty and insurance cover or by a similar designated warranty and insurance cover.

## 5. Assignment and subcontracting

- 5.1 NHBC shall not assign any Contract and shall not subcontract any part of the Services without the Client's prior approval, which shall not be unreasonably withheld or delayed.
- 5.2 The Client shall not assign the benefit of any Contract without NHBC's prior written approval, which shall not be unreasonably withheld or delayed.

## 6. Termination

- 6.1 Either party may at any time by notice in writing terminate a Contract if the other party commits a material Default and:
  - 6.1.1 the material Default is capable of remedy and the party in Default shall have failed to remedy the material Default within twenty one (21) days of receipt of a written notice specifying the material breach and requiring its remedy;
  - 6.1.2 the material Default is not capable of remedy.
- 6.2 Either party may at any time by notice in writing terminate a Contract as from the date of service of such notice if the other party passes a resolution, or the Court makes an order that the other party or its parent company be wound up, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the other party or the parent company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding up order, or the other party or its parent company is unable to pay its debts in excess of ten thousand pounds (£10,000.00) within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.
- 6.3 If NHBC serves a notice under clause 1.6, or a Contract is terminated, howsoever arising, NHBC shall notify the relevant Local Authority in writing (with a copy to the Client) to cancel the relevant Initial Notice in which case NHBC shall cease to be responsible for building control for the Building Work referred to in the Initial Notice from the date of notification of the Local Authority.
- 6.4 The termination of a Contract shall not prejudice any rights, duties or obligations of either party that are expressed as or are intended to be continuing after termination or which remain to be performed or discharged (as the case may be) after termination.

## 7. Limitation and mitigation

- 7.1 Neither party excludes or limits liability to the other party for death or personal injury caused by negligence, or for liability arising as a result of fraud.
- 7.2 Subject always to clause 7.1, NHBC's aggregate liability to the Client for any Default shall be limited in accordance with clauses 7.3 to 7.5.
- 7.3 Without prejudice to any other exclusion or limitation of liability, for each Contract the aggregate liability of NHBC for any loss and/or damage in respect of any Default shall be limited to that proportion as it would be just and equitable for NHBC to pay having regard to the extent of its responsibility for the loss and/or damage and on the assumptions that:
  - 7.3.1 all other parties (including consultants, advisors, contractors, subcontractors and project managers) engaged in connection with the Building Work have provided contractual undertakings on terms no less onerous than those in the Contract in respect of their obligations in connection with the Building Work;
  - 7.3.2 there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions agreed between the Client and any other party referred to in this clause and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Client for the loss and damage;
  - 7.3.3 all the parties referred to in this clause have paid to the Client such proportion of the loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.
- 7.4 Subject always to clause 7.1, in no event shall either party be liable to the other for any one or more of the following that are sustained or incurred by the other in consequence of a Default; loss of profit, loss of business, loss of revenue, loss or impairment of good will, loss of opportunity, loss of anticipated savings, indirect loss or damage, and/or consequential loss or damage.



# Terms and conditions of NHBC Building Control Services Limited

7.5 Without prejudice to any other exclusion or limitation of liability, for each Contract the total aggregate liability of NHBC for all loss and/or damage in respect of all Defaults occurring in connection with the same Contract shall in no event exceed the lesser of:

7.5.1 ten times the amount of the fees payable for the Services under the Contract; or

7.5.2 ten million pounds sterling (£10,000,000.00).

7.6 The client shall refer only to NHBC (and not to individuals engaged by NHBC, including personnel and directors) for redress if the Client considers that there has been any breach of a Contract and the Client agrees not to pursue any claims in contract, tort (including negligence) or for breach of statutory duty against any individuals working for NHBC in carrying out its obligations under a Contract at any time and the Client acknowledges that such individuals are entitled to enforce this term of a Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

7.7 The Client shall use its best endeavours to mitigate any and all losses, costs and expenses incurred as a result of any Default.

## 8. Disputes and complaints

If the Client is not satisfied with NHBC's performance of the Services, without prejudice to its other rights and remedies, the Client is entitled to request that NHBC investigate the matter in accordance with NHBC's complaints handling procedure, details of which can be obtained on request or from [www.nhbc.co.uk](http://www.nhbc.co.uk).

## 9. Rights of third parties

Except as provided in clause 7.6, third parties have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce the terms of any Contract, but this does not affect any right or remedy of a third party which exists or is available otherwise than under that Act.

## 10. Force majeure

Neither party shall be in default of or liable for breach or delay in performance of its obligations under a Contract or be liable to make payment to the other or otherwise liable for any losses or damages whatsoever arising out of the prevention, hindrance or delay of the performance of any of its obligations to the extent that the performance of such is prevented or hindered by the occurrence of any event of Force Majeure.

## 11. Confidentiality

11.1 The parties shall keep confidential all Confidential Information and use all reasonable endeavours to prevent their respective personnel, agents and contractors from making any disclosure to any person of any Confidential Information; save that the foregoing obligation shall not apply to:

11.1.1 any matter which the receiving party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause 11;

11.1.2 any disclosure by the receiving party which is required by any law (including any order of a court of competent jurisdiction), any Parliamentary obligation, or the rules of any stock exchange or governmental or regulatory authority having the force of law;

11.1.3 any disclosure by the receiving party of information that is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.

## 12. Notices

Unless otherwise agreed, any notice or request required or permitted to be given under or in connection with a Contract shall be given in the English language in writing by prepaid registered or first-class mail, or facsimile to the recipient at its address as set out in the relevant Initial Notice or to such other address or addressee as may have therefore been furnished in writing by the recipient to the sending party in accordance with this clause.

## 13. Law and jurisdiction

13.1 Each Contract shall be governed by and construed in accordance with the laws of England and Wales.

13.2 In the event of litigation arising out of or in connection with a Contract the Courts of England and Wales shall have exclusive jurisdiction to settle any Claim, difference or Dispute (including set-offs and counterclaims) arising out of or in relation to it.

#### **14. Waiver**

The failure of either party at any time to enforce any provisions of a Contract shall in no way affect its right to require complete performance by either party of all its obligations under a Contract, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any past or subsequent breach of any provision or to be a waiver of the provision itself.

#### **15. Set off**

NHBC may without notice to the Client combine, consolidate or merge all or any of the liabilities of the Client to NHBC and may set off or transfer any sums from time to time owed by the Client to NHBC in or towards the satisfaction of any of those liabilities.



# Terms and conditions of NHBC Building Control Services Limited

## Part 3 Defined words and expressions

### Approved Inspector

Shall have the meaning given to the expression 'Approved Inspector' in the Building Act 1984 and the regulations made pursuant to that Act, including the Building (Approved Inspectors etc.) Regulations 2010 (as amended);

### Associate

Any person, firm or company who at any time is subject to any substantial degree, whether direct or indirect, to the same ownership management influence or control as you;

### Building Regulations

Means the Building Regulations 2010 (as amended);

### Building Work

Means the building work referred to in an Initial Notice;

### Client

Means the person, firm or company that has requested that NHBC act as Approved Inspector and referred to as the 'person intending to carry out the works' in an Initial Notice;

### Confidential Information

Means (i) all information designated as such by either party in writing; and (ii) all other information which relates to the business, affairs, products, Building Work, trade secrets, know how, personnel, customers, suppliers or affiliates (including in the case of NHBC, the National House-Building Council and its subsidiaries) of either party; and (iii) information which may reasonably be regarded as the confidential information of the disclosing party or its affiliates; and (iv) data, including data, databases, reports and analyses prepared by or on behalf of NHBC;

### Contract

Is defined in Part 1, paragraph 5, under the heading 'Introduction';

### Default

Means any breach of the obligations of either Party under a Contract or any default, act, omission, negligence or statement of either Party in relation to the subject matter of a Contract and in respect of which the Party is liable to the other Party;

### Final Certificate

Shall have the meaning given to the expression 'Final Certificate', in the Building Act 1984 and the regulations made pursuant to that Act, including the Building (Approved Inspectors etc.) Regulations 2010 (as amended);

### Force Majeure

Means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) emergency governmental regulations, fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquakes, any disaster, war, civil war or armed conflict, acts or threats of terrorism, nuclear, chemical or biological contamination, pressure waves caused by aircraft, riot or civil commotion, failure in whole or in part by a statutory undertaker, utility company, local authority or other like body to carry out works or provide services, any accidental loss or damage to the parties' premises, or any road servicing those premises, any failure or shortage of power, fuel or transport, any blockade or embargo; provided that any such event is beyond the reasonable control of the party claiming relief and does not arise from any act, omission, negligence or wilful default of that party;

### **Health and Safety Requirements**

Means each and every one of the Client's legal duties applicable to the health and/or safety of persons visiting the site of the Building Work, which are applicable on the date or dates on which NHBC personnel are visiting the site of the Building Work;

### **Initial Notice**

Shall have the meaning given to the expression 'Initial Notice', in the Building Act 1984 and the regulations made pursuant to that Act, including the Building (Approved Inspectors etc.) Regulations 2010 (as amended);

### **NHBC Company**

Any company within the same group of companies as National House-Building Council, including NHBC Building Control Services Limited and NHBC Services Limited;

### **Party or Parties**

Means the Client and/or NHBC;

### **Services**

Means the provision by NHBC of the services of an Approved Inspector.

NHBC is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

This leaflet has been printed on material which is produced from well-managed forests and is fully recyclable and biodegradable, ECF (elemental chlorine free) and is made to ISO 14001 Environmental Certification.



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