

CONSULTANT TERMS AND CONDITIONS

FOR THE APPOINTMENT OF PROFESSIONALS, CONSULTANTS AND PROVIDERS OF SERVICES Including Architects, Designers, Engineers, Surveyors etc.– To be read along with the Order.

1. DEFINITION & INTERPRETATION

- 1.1. In these Terms and Conditions the expressions Company, Consultant, Contract Sum, Services and Site shall have the meanings given to them in the Order.
- 1.2. Brief means a description of the Company's requirements for the Consultant's Services and the Project.
- 1.3. Business Day means a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
- 1.4. CDM Regulations means the Construction (Design and Management) Regulations 2007 S12007/320 and the related Approved Code of Practice and any revisions together with any guidance/requirements issued from time to time by the Health and Safety Executive.
- 1.5. Company Representative shall mean the person named as such in the Order or a Director of the Company or a person authorised by a Director of the Company to replace the Company Representative.
- 1.6. Consultant means the party identified as the Consultant in the Order and its personal representatives, successors in title and permitted assignees (as the case may be). Where the Consultant is a partnership the term Consultant shall include all the partners at the date of issue of the Order and the obligations of the Consultant under the Contract shall constitute a joint and several obligation by each of the said partners.
- 1.7. Consultant Representative(s) shall mean the person named as such in the Order.
- 1.8. Contract shall mean the contract between the Company and the Consultant and which shall include the Order, the Contract Documents and these Terms and Conditions.
- 1.9. Contract Documents shall mean the details, drawings, specifications or other documents defining or relating to the Services including any contract particulars or the minutes of any pre-contract meetings, the basis for valuations and payments for undertaking the Services which are identified or referred to in the Order, including any additions, omissions, or variations to the same either confirmed or notified to the Consultant in writing, the Cost Plan, the Brief and the Project Programme.
- 1.10. Contract Sum shall mean the price/fee for the Services as stated in the Order.
- 1.11. Co-ordination Drawings means drawings showing the inter-relationship of two or more engineering, architectural or other design services and their relation to the structure and fabric of the Project.
- 1.12. Cost Plan means a plan showing the estimated cost of all parts of the Project and how it is to be spent, as prepared by the Company and as upgraded and/or amended from time to time.
- 1.13. Designer has the same meaning as in the CDM Regulations.
- 1.14. Key Staff means employees or representative of the Consultant who are regarded by the Company to be an important reason that the Order was placed with the Consultant and/or that are proposed be assigned to the Project in the Consultant's tender and/or as specified within the Order.
- 1.15. Order means the order for the Services as sent by the Company to the Consultant and upon which the Consultant commences the supply of the Services in accordance with the Contract.
- 1.16. Professional Team means the team of professional advisors engaged in relation to the Project.
- 1.17. Prohibited Materials means materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as:
 - 1.17.1. posing a threat to the health and safety of any person;
 - 1.17.2. posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
 - 1.17.3. reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project; or
 - 1.17.4. not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agreement.
- 1.18. Project means the project or development being undertaken by the Company as identified in the Order.
- 1.19. Project Programme means the programme for the Project as provided by the Company within the Brief and as upgraded and/or amended from time to time.

- 1.20. Required Standard means all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the Services in regard to a project similar in scope and character to the Project.
- 1.21. Services shall have the meaning given to them in the Order and includes in addition all additional services and services necessary to satisfy the Brief.
- 1.22. Site means the site of the Project.
- 1.23. Third Party Agreement means any agreement between the Company and a third party relating to the Project and of which a copy, or relevant extract has been provided to the Consultant at the date of the Order or which the Company notifies the Consultant in writing after the date of the Order enclosing a copy or relevant extracts.
- 1.24. In this document unless the context otherwise requires:
- 1.24.1. Words denoting the singular number include the plural and vice versa;
 - 1.24.2. References to persons include references to bodies corporate and unincorporated;
 - 1.24.3. References to statutes or statutory instruments include references to any modification, or re-enactment of them from time to time.
 - 1.24.4. All headings and sub-headings appearing in these terms and conditions are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of the Contract.
 - 1.24.5. These terms and conditions apply to the Contract to the exclusion of any other terms and conditions that the Consultant seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
 - 1.24.6. Any offer, tender or quotation from the Consultant for the Services will constitute an invitation for the Company to issue an Order for the Services. A binding Contract shall only come into existence when the Consultant signs and returns a copy of the Order as issued by the Company or otherwise confirms its acceptance of the Order by conduct.
 - 1.24.7. The Contract shall commence on and from the date of the Order provided that if and to the extent that any of Services are or have been performed by the Consultant or if any sums in respect of the Services have been paid prior to the date of the Order the same shall be deemed to have been performed under the Contract or treated as payments on account in respect of the Contract Sum.
- 1.25. In the event of there being any conflict, divergence, ambiguity and/or discrepancy (as the case may be) within or between any part of the Contract, the same shall be resolved by applying the following order of precedence; the Order; these terms and conditions; the Contract Documents; all other documents.
- 1.26. Without prejudice to clause 1.25 above where there is any conflict, discrepancy, ambiguity or divergence within or between any part of the Contract, the Consultant shall inform the Company in writing of its proposed amendment to remove the same and the Company shall make a decision or may accept the Consultant's proposed amendment and the Consultant shall be obliged to comply with the decision or amendment without cost to the Company and the Consultant shall not be entitled to receive and shall not make any claim for an extension of time or for any loss and/or expense arising as a consequence.

2. COMPANY'S OBLIGATIONS

- 2.1. The Company has provided or shall provide to the Consultant information available to the Company that relates to the Project as the Consultant reasonably requires for the performance of the Services and the Consultant shall make all reasonable enquiries in regard to such information which the Company will provide free of charge.
- 2.2. The Company shall give such decisions, instructions and approvals as are necessary within a reasonable timescale to enable the carrying out of the Services and to enable the Consultant to comply with the Project Programme; the Consultant is responsible for the proactive management of any requests for such information, approvals etc. The Consultant is required to give the Company clear details as to any decision required, any options/solutions and its recommendations in as far in advance as possible in order to permit the Company the maximum possible time to respond and so as to avoid any delays to the Project Programme. The Consultant is responsible for ensuring that the subsequent instruction/approval etc. is accurately recorded in writing to the complete satisfaction of the Company.
- 2.3. The Company shall perform its duties and obligations in compliance with the CDM Regulations and in a manner and time such that the Consultant can satisfy its own obligations under the CDM Regulations.
- 2.4. The Company shall issue the Consultant with the pre-construction health & safety information for the Site and the Consultant shall seek an up to date copy prior to visiting Site.
- 2.5. The Consultant's duties or liabilities under the Contract shall not be negated or diminished by, any approval or inspection of the Site, the Project, or of any designs or specifications for the Project, or any testing of any work, goods, materials, plant or equipment, or any omission to approve, inspect or test, by or on behalf of the Client.

3. CONSULTANT'S OBLIGATIONS

- 3.1. The Consultant warrants and undertakes that it shall:
- 3.1.1. comply with the Contract, the Brief, good industry practice, British Standards and codes of practice, consents and approvals and (where appropriate) the technical requirements of the relevant local authority building control and/or such other appropriate approval authority relevant to the Services and as deemed acceptable to the Council of Mortgage Lenders and as may be specified in the Contract Documents;
 - 3.1.2. where the Consultant is responsible for design, carry out and fulfil, in all respects, the duties of a Designer; and
 - 3.1.3. not, without the Company's written consent, make any material change to the designs or specifications for the Project after they have been settled or approved;
- 3.2. The Consultant warrants and undertakes that it shall exercise the Required Standard:
- 3.2.1. when performing the Services;
 - 3.2.2. not to specify for use any products or materials in the Project, which are Prohibited Materials at the time of specification or use; and
 - 3.2.3. to comply with (and ensure the completed Project complies with) any (a) Act of Parliament; (b) instrument, rule or order made under any Act of Parliament; (c) regulation or bye-law of any local authority, statutory undertaker or public or private utility or undertaking that has any jurisdiction over the Project or with whose systems or property the Project is or will be connected; (d) to perform the Services according to the timetable set out in the Project Programme or, in the absence of a Project Programme, in sufficient time to facilitate the efficient progress of the Project; (e) to ensure that the Project complies with all planning agreements, permissions and conditions; and (f) not to cause or contribute to any breach by the Company of any Third Party Agreement provided that, where the Client notifies the Consultant of a Third Party Agreement after the date of the Order, the Consultant is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the date of the Order.
- 3.3. The Consultant shall carry out and complete the Services to the satisfaction of the Company and so that:
- 3.3.1. all persons employed in connection with the performance of the Services will be skilled and experienced in their several professions, trades and callings or adequately supervised by the Consultant; and
 - 3.3.2. all aspects of the Services will be supervised by a person/s having sufficient knowledge and experience of such matters for the satisfactory and safe performance of the Services in accordance with the Contract.
- 3.4. The Consultant shall not sub-contract or assign any of its obligations under the Contract without the Company's prior written consent. Where such consent is given the Consultant shall remain directly and wholly responsible for complying with its obligations under the Contract including any undertaken by a sub-contractor.
- 3.5. The Consultant shall if applicable provide all materials, plant, tools and equipment including generators and lighting required for carrying out and completing the Services including as provided for under the Contract Documents.
- 3.6. The Company makes no guarantee of continuity of access to the Site or any part or that the Consultant will be afforded the opportunity to carry out and complete the Services in a continuous and uninterrupted manner. The Company may at its discretion (acting reasonably) amend the timing or programme for the carrying out of the Services to suit the Company's requirements without adjustment to the Contract Sum or incurring any liability to the Consultant for additional costs, losses or expense.
- 3.7. The Consultant shall indemnify the Company against all costs, losses, expenses, damages, claims and demands incurred by the Company as a result of any breach by the Consultant of its obligations under the Contract or as a result of any act, omission, default breach of statutory duty or otherwise on the part of the Consultant.
- 3.8. The Consultant shall in the performance of the Services exercise the Required Standard and to the high standards associated with any previous projects undertaken with the Company.
- 3.9. The Consultant shall in the performance of the Services give the Company 48 hours written notice before entering the Site to repair any damage caused or remove from the Site any waste arising and surplus materials and (on completion or sooner termination) any plant and equipment (where relevant) used by the Consultant and comply with all reasonable requests and instructions issued from time to time by or on behalf of the Company.
- 3.10. The Consultant acknowledges that the Company intends and will continue to rely upon the Services of the Consultant in connection with the Project and/or sale of the site or parts thereof irrespective of any qualifications, expertise or knowledge of the Company, its servants, agents or contractors.
- 3.11. The Consultant shall not be reimbursed for extra work which the Consultant has to undertake or for any re-workings/re-designs required to comply with the Brief and/or the Order to the extent that such is a result of failure to comply or error or omission on the part of the Consultant.

- 3.12. Where the Consultant fails to comply with the Brief or its obligations under the Contract or fails to alter any documents or drawings in accordance with the instructions of the Company, the Consultant accepts that the Company shall be entitled to set off all the costs, losses, expenses and damages incurred by the Company or to be incurred by the Company including the time for Company employees having to mitigate the same and or required to check the work of the Consultant due to the loss of confidence in the Consultant's ability and to claim payment for any outstanding amounts as if a debt payable on demand.
- 3.13. The Consultant shall use the Required Standard to provide the Services so that they adhere to or improve upon the Cost Plan. Where the Consultant has not been given the Cost Plan then the Consultant should use best endeavours to provide the Services so that they are cost effective and deliver maximum financial benefit to the Company in connection with their delivery of the Project.
- 3.14. All reports prepared by the Consultant will be issued jointly in the name of the Company and the Project funder/s.
- 3.15. The Consultant shall make no material alteration or addition to or omission from the Services without the knowledge and written consent of the Company except in the case of emergency, where the Consultant shall inform the Company without delay. Where the alteration, addition or omission will either be to the material financial disadvantage of the Company or damage the reputation of the Company or give the Consultant a material benefit, then the written consent needs to be signed by a director of the Company to be valid.
- 3.16. The Consultant shall inform the Company in writing to the Company's qualified representative on it becoming apparent that the Services and/or any part to this Contract and/or any information or approvals need to be varied. The Company shall confirm in writing any agreement reached and until such time the Consultant will comply with the Contract unless it will prejudice the overall success of the Project in any way. In those circumstances the Consultant will have a duty to mitigate any losses whether they are financial or otherwise.
- 3.17. As appropriate the Consultant undertakes to the Company that it will perform the duties and undertake the responsibilities as a Designer pursuant to the CDM Regulations or any regulation by-law or decision of the local authority or of any statutory undertaking public body or company which has any jurisdiction with regard to the Project or with whose systems the same are or will be connected. The Consultant will adhere to applicable Health and Safety regulations and/or stipulations whether laid down by the Company or by the Health and Safety Executive and see that all employees, sub-contractors and the like are fully conversant with the possible dangers and the proper procedures for operation on a construction site.
- 3.18. The Consultant shall obtain the pre-construction health & safety information for the Site from the Company prior to any Site visits and ensure that all personnel of the Consultant visiting the Site are suitably inducted and qualified and use appropriate personal. The Consultant shall undertake the Services having regard to the Site which may contain empty and dilapidated buildings in varying states of disrepair and have the potential risks associated with the same as well as those associated with a construction site.
- 3.19. The Consultant shall perform its duties so that the Project will comply insofar as is reasonably possible with all planning agreements, permissions and conditions relating to the Project.
- 3.20. The Consultant is responsible for visiting and obtaining a detailed knowledge of the Site and the buildings within the Site as necessary to ensure an understanding of the Project sufficient to deliver the requirements of the Brief.
- 3.21. The Consultant warrants that it has used and will use the Required Standard to see that the design of all elements of the Project for which it is responsible complies with any statutory and regulatory provisions relevant to the planning and development of land and buildings, such as but not limited to the Building Regulations, The Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Local Government Act 2003 and the Planning and Compulsory Purchase Act 2004 and all other statute and regulatory provisions from time to time in force relating to the control of the use or development of land including any which vary or replace the same and all other applicable statutory and regulatory requirements.
- 3.22. The Consultant will maintain a drawing and document register in a format approved by the Company that identifies the latest information to be provided to the Company or others so as to ensure that all relevant parties are aware of the latest information.
- 3.23. All drawings, reports and other documents produced by the Consultant in performing the Services or acquired by the Consultant and being relevant to the Project or any approvals gained by the Consultant in relation to the Project e.g. local authority applications, consents and refusals, and other studies, reports etc. for the Project, are to be submitted to the Company in hard copy and electronic formats as the Project progresses. Electronic files should be supplied on CD in readily available and useable applications such as MS Word, MS Excel or AutoCAD so that the Company always has the most relevant and up to date information in such circumstances. For drawings both PDF files and AutoCAD drawings are to be issued, with the file name including the drawing number, revision, brief description etc. in the Company's standard format. AutoCAD drawings are to be stored in such a way that documents can be edited and updated by the Company

during subsequent works phases. Payment of invoices will be withheld unless the Company has an electronic copy of the latest drawings and documents relevant to the payment request and in accordance with the terms of this clause.

- 3.24. Any drawings, reports and documents are to be appropriately titled and have a unique alpha-numeric identification system which allows for revisions to be recognised and alternative schemes produced for the same site to be easily differentiated. All revisions are to be noted and for drawings, scales inserted for size drawing (e.g. 1:50 @ A3). All drawings are to contain a graphic scale bar, and general arrangement plans to include a North point. The Company's plot and accommodation template schedules are to be completed and regularly maintained by the Consultant unless another member of the Professional Team is allocated the role. These will include alpha-numeric plot identification, location, areas, use type, parking allocation etc. and the same numbering system will be used by all consultants throughout the Project.
- 3.25. The Consultant will ensure that its drawings and reports produced for the Project as part of the Services are to include a detailed section which clearly details key statistics or facts and explains or schedules how its work complies with the relevant recognised guidelines of the relevant judging authority: e.g. for an architect in regard to planning work this will be expected to include the areas, volumes, imperial and metric ft and m gross internal areas for each proposed unit and separately for all common, communal, storage and other areas (all types); net sales area (residential); net internal areas (commercial); gross external area (footprint) for each building, existing and proposed; gross internal areas for all existing buildings; area of soft and hard landscape, existing and proposed; gross volume of existing and proposed buildings, density as measured in accordance with the latest planning guidance, vehicle parking spaces, bicycle spaces and how his/her design complies with the brief and the relevant authority's adopted design guidelines etc. All measurements must be in accordance with the latest RICS Code of measuring practice and must not contravene the Property Misdescription Act.
- 3.26. The Consultant is to exercise the Required Standard:
- 3.26.1. not to specify for use in the Project any Prohibited Materials and
- 3.26.2. ensure that Prohibited Materials are not used in the construction of the Project insofar as to do so is within the scope of the Services and/or the Consultant's professional responsibilities pursuant to the Contract.
- 3.27. The Consultant shall notify the Company as soon as practicable if any materials that the Consultant has specified for the Project become identified as Prohibited Materials before the ordering of the materials.

4. THE SITE

- 4.1. The Consultant shall be deemed to have visited the Site and to be fully satisfied with all local conditions, means of access, feasibility of deliveries, unloading, storage, the location of all services and drainage, the existing features, appearances and styles of the existing premises forming the Site (if any) and all other matters which may affect the carrying out of the Services. The Consultant shall not be entitled to any adjustment of the Contract Sum including (but not limited to) any costs, losses or expenses incurred by reason of such matters.
- 4.2. Within the scope of the Services, the Consultant shall at all times keep the Site clean and tidy and shall clear away all rubbish and waste and return all surplus usable material to a suitable store or compound in accordance with the instructions of the Company. Without prejudice to any other rights or remedies it may have the Company reserves the right to charge the Consultant for any undue wastage of the Company's materials and goods and/or any costs incurred by the Company as a result of any breach by the Consultant of this clause.
- 4.3. Access to the Site shall not be exclusive and the Consultant shall liaise and co-operate with the Company and other Companies to ensure that the Services are co-ordinated and integrated with works undertaken by others.
- 4.4. Where the Consultant is carrying out Services on the Site at any time in the absence of the Company's Representative, the Consultant shall make appropriate arrangements with the Company for the Consultant's arrival and departure from the Site and establish suitable emergency procedures before commencing any Services.
- 4.5. Where the Consultant is working alone on Site, the Consultant shall ensure that on leaving the Site it is left in a secure and safe condition.
- 4.6. Working hours on Site shall be between the hours and on the days identified in the Contract Documents or such other times as may be required by any relevant authority or as may be varied by the Company.

5. MATERIALS, GOODS OR EQUIPMENT

Where materials, goods or equipment are supplied by the Consultant in connection with the Services or otherwise, then the Company's standard terms and conditions for the supply of goods shall apply in all cases and those provisions shall be deemed to have been incorporated as part of this clause. In the event of any conflict between those separate terms and conditions and these Terms and Conditions, the latter shall prevail.

6. DESIGN

- 6.1. Where the Contract Documents identify that the Consultant is responsible for any element of the design or specification for the Project (in these Terms and Conditions "design" shall include any specification services):
- 6.1.1. the Consultant accepts full responsibility for undertaking the design and ensuring that such design will be undertaken to the Required Standard and to comply with and satisfy all the requirements of the Contract and the Consultant acknowledges and agrees that the Company has relied on and is relying exclusively upon the Consultant in relation to all aspects of such design;
 - 6.1.2. any reference to the design shall include any design which the Consultant has caused or shall cause to be prepared and/or issued by others;
 - 6.1.3. the Consultant shall be wholly responsible for any error, inaccuracy, discrepancy or inconsistency (a) within the design of the Project (or any part thereof) and/or (b) between any provision in the Contract Documents, good industry practice and any applicable guidance, relevant legislation and consents, such as planning consents;
 - 6.1.4. the Consultant shall take all reasonable steps to co-ordinate (and to the fullest extent reasonably possible) to integrate the design and execution of the part of the Project to which the Services relate with the design and execution of the wider Project and (subject always to co-ordinating with the Company) the Consultant shall liaise, consult and cooperate with other parties who have a design responsibility in relation to the Project;
 - 6.1.5. the Consultant shall review any design produced by the Company or any third parties engaged in regard to the design of the Project which interfaces with the Services (provided that the Company shall have provided such design to the Consultant) and the Consultant shall be responsible for identifying any error, inaccuracy, discrepancy or inconsistency within such other design(s) and between such other design(s) and the Consultant's design for the Services; and
 - 6.1.6. the Consultant shall notify the Company upon it discovering any error, inaccuracy, conflict, omission, discrepancy, ambiguity or inconsistency within the design relating to the Services (or any part thereof) and/or within the design(s) of any other part or element of the Project that the Consultant becomes aware of, in which event the Company shall give an instruction to the Consultant in order to deal with the same provided that no such instruction shall entitle the Consultant to any extension of time or to any loss and/or expense.
- 6.2. Where the Consultant is responsible for developing, submitting and finalising the design of the Project it shall do so in accordance with the Contract Documents (including any employer's requirements or relevant extracts) and the other applicable provisions of this Contract. Further, the Consultant will specify as part of any design proposals potential value engineering options for consideration by the Company.
- 6.3. The Consultant will as part of its design provide any necessary design risk assessments and account for and/or incorporate advice or comments raised by the CDM Co-ordinator.
- 6.4. The Consultant will undertake its design, ensuring that the Services will be delivered within the agreed values including aesthetically, budgetary and functionally so as to be able to be cost effectively delivered on Site to the Project Programme.
- 6.5. No approval, comment, suggestion, review, revision or otherwise by the Company or any other party in connection with the Consultant's design submitted in relation to the Project shall in any way relieve or affect the responsibility of the Consultant for that design.

7. TIME

- 7.1. The Company will supply the Consultant with either a date, or a series of dates, or a Project Programme by which the Services need to be accurate and completed to the Required Standard, in accordance with the Contract and the requirements of the Company.
- 7.2. Where the Services are to be delivered over a period in excess of 4 weeks the Consultant will supply the Company with a detailed programme scheduling the tasks necessary to complete the Services which should be in sufficient detail to allow the Company to monitor the Consultant's progress. The Consultant's Services programme should reflect and not conflict with the Project Programme. Where there is any such conflict the Consultant shall bring that immediately to the Company Representative's attention and seek written approval from the Company that the conflict is acceptable or otherwise and in the latter case, the Services programme shall be suitably revised. Until approval has been given the Consultant shall provide the Services in accordance with the Contract. Once written approval has been confirmed by the Company the Services programme shall become the programme for the carrying out of the Services.
- 7.3. The Company's decision, acting reasonably given the Company's requirements and the expectations of the Brief and the Order, will be binding on all parties as to the Services programme.
- 7.4. The Consultant shall use best endeavours to adhere to the said Services programme.
- 7.5. The Consultant shall commence the Services either on the date specified in the Contract Documents or on the expiry of the period of notice identified in the Contract Documents whichever is applicable.

- 7.5.1. Completion of the Services shall be achieved in accordance with the Project Programme (including stages of completion) or any amended or revised programme which the Company may from time to time notify in writing to the Consultant.
- 7.5.2. Time for achieving completion of the Services shall be of the essence.
- 7.5.3. If at any time as a result of an event it becomes apparent to the Consultant that the progress of the Services is being delayed or that any dates for completion of stages as identified in the Project Programme may not be achieved the Consultant shall within 7 days of any such event give notice to the Company in writing of the probable cause and duration of such delay along with a proposed programme that seeks to mitigate any delay.
- 7.5.4. Following service of a notice by the Consultant pursuant to clause 7.5.3 the Consultant shall promptly supply to the Company any further information relating to the delay which is requested by the Company.
- 7.5.5. The Consultant shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to clause 7.5.3.
- 7.5.6. The Consultant acknowledges that a breach by it of its obligations under the Contract (including but not limited to achieving completion of tasks so as to achieve the Project Programme) could result in the Company suffering or incurring losses or expense and/or owing liabilities to third parties regardless of whether the particular breach by the Consultant causes delay to the completion of the Project. The Consultant shall be liable to the Company for such losses or expenses and/or liabilities which may be deducted from any monies due or to become due to the Consultant or may be recoverable from the Consultant as a debt.
- 7.5.7. Losses, expenses and/or liabilities in clause 7.5.6 could include those relating to any delay in the completion of the sale or disposal of any property forming part of the Project.
- 7.5.8. At any time the Company shall be entitled to instruct the Consultant, by notice, to accelerate the performance and completion of the Services (at no additional cost to the Company) in order to ensure (a) that completion of tasks is achieved in accordance with the Project Programme and (b) that the Services achieve completion in accordance with the Project Programme in which event the Consultant shall (at its own expense) forthwith comply with such notice and provide the Company with the Consultant's proposed amendments to the Project Programme (including any relevant critical paths and any supporting documentation) demonstrating how such acceleration shall be achieved.
- 7.5.9. In the event of non-performance by the Consultant the Company reserves the right to supplement the Consultant's labour and/or material for the best interests of the Project at the Consultant's expense. The Consultant shall be liable to the Company for such expense which may be deducted from any monies due or to become due to the Consultant or may be recoverable from the Consultant as a debt.

8. VARIATIONS

- 8.1. The Company may issue to the Consultant such instructions as it sees fit to vary the quantity or quality of the Services (including any design) or any other matter which may affect the carrying out of the Services.
 - 8.1.1. Any instructions issued by the Company Representative to the Consultant may be given verbally or in writing. The Consultant shall comply with any such instruction from the Company immediately upon receipt of such instruction.
 - 8.1.2. No instructions issued by the Company or subsequently sanctioned by it shall vitiate the Contract.
 - 8.1.3. Where the Consultant believes there is a financial impact arising from the instruction against the Contract Sum, the Consultant is to notify the Company of that prior to commencing the relevant Services.
 - 8.1.4. When the financial impact of the instruction is evaluated, this may also result in a reduction in the Contract Sum. The Company reserves the right to make adjustments to the Contract Sum accordingly.
 - 8.1.5. The Company and the Consultant will agree in writing an appropriate adjustment to the Contract Sum resulting from the impact of an instruction by the Company at any time prior to compliance with such instruction and any payment due to the Consultant shall be made in accordance with the Contract.
 - 8.1.6. Where on occasions an immediate response is required from the Consultant and there is no opportunity to agree on the impact of an instruction in advance of the Services being carried out, in these instances the Consultant is to obtain a instruction from the Company to proceed without advance agreement of a price and to supply the following information; (a) signed day work sheets with authenticated hours worked, agreed by the Company Representative to be actual hours worked (b) description of works undertaken; (c) description and quantities of materials used including copies of any relevant invoices; and (d) description of plant utilised and periods for these including copies of any relevant invoices.
 - 8.1.7. The instruction and day work sheets will be considered to be a record of time and resources spent carrying out the specified works and the value of these will be assessed against the Contract Sum by the Company. The

Consultant is to submit its day works claim along with its claim for payment for the relevant month by the end of that month.

- 8.1.8. The Company reserves the right not to pay for variations or day works if not accompanied by the relevant written instructions and information.
- 8.1.9. Where the Company and the Consultant have not agreed or cannot agree an appropriate adjustment to the Contract Sum it shall be adjusted as follows; (a) where any additional, substituted or omitted work is of a similar nature or character to any parts of the Services it shall be valued by reference to an appropriate Contract Documents (if any); (b) alternatively such work shall be valued at fair rates and prices as determined by the Company; and any payment due to the Consultant shall be made in accordance with the Contract.

9. PAYMENT

- 9.1. The Contract Sum shall be assessed on the basis identified in the Order for the carrying out and completion of the Services and together with any proper adjustments:
 - 9.1.1. The Consultant shall submit its invoice/valuation for payment in accordance with the dates for submission set out in the payment schedule identified in the Contract Documents, which invoice/valuation shall be an application for payment of the amount which the Consultant considers itself to be entitled to be paid in respect of the Services undertaken by it in the period up to and including the invoice/valuation date and which must be accompanied by such supporting documents and other information as may be necessary to evidence its correctness. If the Consultant submits its invoice/valuation later than in accordance with the dates specified in the payment schedule the Company reserves the right to defer payment until the subsequent month.
 - 9.1.2. The amounts that the Consultant shall be entitled to shall be assessed in accordance with these Terms and Conditions and the Contract Documents.
 - 9.1.3. The due date for payment of each payment (Due Date for Payment) shall be the date identified in the payment schedule for the approval of payment assessment of each invoice/valuation by the Company's Director, alternatively in the absence of such a date the Due Date for Payment shall be the date which is 25 days after the last day of the end of the previous calendar month.
 - 9.1.4. The final date for payment (Final Date for Payment) shall be the date which is identified in the payment schedule as the date by when payment should be received by the Consultant, alternatively in the absence of such a date the Final Date for Payment shall be the date which is 14 days after the Due Date for Payment of the relevant payment.
 - 9.1.5. Not later than the date occurring 5 days after the Due Date for Payment of a payment, the Company shall issue to the Consultant a notice specifying the amount (if any) that the Company considers to be or to have been due at the Due Date for Payment and the basis on which that amount is calculated (Payment Notice). If it has not already done so then the Consultant shall on receipt of a Payment Notice give the Company an invoice valid for VAT purposes in the amount stated as due in the Payment Notice.
 - 9.1.6. Not later than the date occurring 2 days before the Final Date for Payment of each Payment (Prescribed Period), the Company may give notice to the Consultant that it intends to pay less than the sum identified in the relevant Payment Notice (Pay Less Notice) which notice shall specify the amount that the Company considers to be due on the date the Pay Less Notice is served and the basis on which that amount is calculated.
 - 9.1.7. Unless the Company has served a Pay Less Notice, the Company shall pay the Consultant the sum referred to in the Payment Notice (or, if the Company has not served a Payment Notice, the sum referred to in the Consultant's invoice/valuation) on or before the Final Date for Payment.
 - 9.1.8. All payments shall be on account, shall be subject to adjustment and review following completion of the Services and shall not signify any approval by the Company of the Services.
 - 9.1.9. If the Consultant becomes insolvent within the meaning set out in clause 17 after the Prescribed Period, the Company shall not be required to pay the Consultant the notified sum on or before the final date for payment.
- 9.2. The Contract Sum shall unless otherwise specified in the Order include value added tax and all costs, disbursements, expenses and overheads of every kind incurred by the Consultant in connection with the Services.
- 9.3. In the event that certain disbursements and out of pocket expenses have been authorised in the Order to be charged any applications for payment of the same will only be paid once the Company has received and verified to the Company's reasonable satisfaction the original (not a copy) VAT receipt to cover the expenses incurred with third parties or in the case of drawing copies, mileage or the like incurred in-house by the Consultant such substantiated records to justify the amount claimed that the Company should reasonably request. No payments will be made for first class travel, food, or any other items deemed by the Company to be an unnecessary cost or extravagance.
- 9.4. The invoice/valuation for payment must be laid out so that it allows for easy reconciliation with the Order. It must clearly highlight the amounts that relate to the original Order and separate those amounts that relate to subsequent Orders or

instructions for any variation to the Services agreed with the Company. It may be accompanied by a breakdown of the basis upon which the amount claimed is calculated and but should include such other information the Company may reasonably require to allow for a prompt and efficient payment to be effected.

- 9.5. No payments will be made unless the Company has received current copies of the Consultant's professional indemnity insurance and public liability insurance certificates, VAT registration details, and signed copies of any requests for collateral warranties or letters of reliance in the form requested.
- 9.6. No claim for payment shall be valid unless supported by an official Order signed by the Company. Invoices must be rendered separately for each Site. The Company's Order number and/or reference must clearly be quoted in all correspondence, including invoices.

10. CONSULTANT'S RIGHT TO SUSPEND

- 10.1. Where the amount of any payment to be made by the Company on or before the Final Date for Payment is not paid in full by the Final Date for Payment, the Consultant shall have the right to suspend performance of any or all of his obligations under the Contract by giving not less than 7 days notice to the Company stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when the Company makes payment in full of the amount of the payment to be made. The Consultant shall be entitled to a reasonable amount in respect of the costs and expenses reasonably incurred by it as a result of the exercise of such right.

11. SET-OFF

- 11.1. The Company shall be entitled to deduct from or set-off against any payments otherwise due to the Consultant under the Contract or any other agreement between the Company and the Consultant the amount of any costs, losses, expenses or damages as the Company shall reasonably determine as being the amount actually incurred or a fair and reasonable estimate of the amount likely to be incurred and to which the Company is entitled by reason of any breach by the Consultant of the Contract.
- 11.2. Such right of deduction or set-off shall be in addition to all common law right of set-off or deduction and any other rights, remedies, actions, claims or demands which the Company may have against the Consultant and shall not affect the Company's right to recover any further sums due to it under the Contract or generally.

12. STATUTORY OBLIGATIONS

- 12.1. The Consultant shall at it's own expense comply with and give all notices or obtain all consents required by any statute, statutory regulations, orders or the like required in connection with the Services and shall provide all relevant details to the Company.
- 12.2. The Contract Sum shall include the cost of obtaining and/or complying with all appropriate regulations and consents and the Consultant shall indemnify the Company against all costs, losses and expenses it may incur as a result of any breach by the Consultant of such regulations and consents.

13. INSURANCE

- 13.1. The Consultant shall take out and maintain professional indemnity insurance for not less than £5 million (or such other sum as may be specified in the Contract Documents) for any one claim, or series of claims, arising out of one originating event, for a period beginning on the date of commencement of the Services or the date of the Contract, whichever is earlier and ending 12 years after the date of completion of the Services provided that such insurance is available at commercially reasonable rates and terms. The Consultant shall immediately inform the Company if such insurance ceases to be available at commercially reasonable rates and shall discuss with the Company the means of best protecting their respective positions in the absence of such insurance. The Consultant shall maintain that professional indemnity insurance:
 - 13.1.1. with reputable insurers lawfully carrying on insurance business in the EU;
 - 13.1.2. on customary and usual terms and conditions prevailing for the time being in the insurance market;
 - 13.1.3. and on terms that do not require the Consultant to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.
- 13.2. The Consultant shall take out and maintain public liability insurance with reputable insurers for not less than £5 million (or such other sum as may be specified in the Contract Documents) for any one claim, or series of claims, arising out of one originating event.
- 13.3. The Consultant shall take out and maintain employers' liability insurance with reputable insurers for not less than £10 million (or such other sum as may be specified in the Contract Documents) for any one claim, or series of claims, arising out of one originating event.

- 13.4. When required to do so, the Consultant shall provide such evidence as the Company may reasonably require that the insurances referred to in this clause are being maintained. notwithstanding any other provision of the Contract. Where the Consultant has failed to provide such evidence then the Company shall be entitled to withhold any payment of the Contract Sum pending delivery of the evidence required.
- 13.5. Should the Consultant fail to comply with the insurance requirements set out in this clause the Consultant shall pay to the Company on demand any amounts reasonably expended by the Company to effect insurance against any risk or amount with respect to which such default shall have occurred.
- 13.6. If the Consultant ceases to be available as aforesaid and the Consultant is unable to renew its insurance as required the Consultant will notify the Company as soon as possible and will obtain such reduced insurance as is available and as would be fair and reasonable in the circumstances for it to obtain.

14. SUSPENSION AND DETERMINATION

- 14.1. The Company may suspend the carrying out and completion of the whole or any part of the Services by giving to the Consultant not less than 7 days notice in writing in advance of the date for suspension.
- 14.1.1. The Company's notice shall specify which part or parts of the Services are to be suspended and the date or dates on which, or the circumstances in which, the same are to be suspended.
- 14.1.2. Upon receipt of the Company's notice the Consultant shall take all reasonable steps to comply with any directions or instructions given by the Company with regard to the withdrawal by the Consultant of its labour, tools, plant and materials from the Site and shall co-operate with the Company as regards any steps considered necessary by either party to ensure the continued safety and security of the Services and the Site.
- 14.1.3. The Company shall not be liable for any loss, claim, demand, damages or expense whatsoever and howsoever suffered or incurred by the Consultant by reason of the Company serving a notice in accordance with this clause.
- 14.1.4. The Company may, at any time following the service of a notice in accordance with the provisions of this clause give a further notice to the Consultant requiring the Consultant to resume the carrying out and completion of the whole or any part of the previously suspended Services.
- 14.1.5. Any notice given by the Company pursuant to clause 14.1.4 shall be in writing, shall specify the part or parts of the previously suspended Services to be resumed and the date or dates on which such part or parts of the Services are to be commenced provided that the Consultant shall not be required to commence on a date earlier than 7 days from the date of the Company's notice.
- 14.1.6. Upon receipt of the Company's notice given in accordance with the provisions of clause 14.1.4 the Consultant shall use its best endeavours to resume performance of its obligations under the Contract on the date or dates stated in the Company's notice.
- 14.1.7. The Company shall not be liable for any loss, claim, demand, damages or expense whatsoever and howsoever suffered or incurred by the Consultant by reason of the Company giving a notice in accordance with clause 14.1.4.
- 14.1.8. Upon resumption of the previously suspended Services the provisions of the Contract including those relating to payment of any further sums due, will apply to the Services as resumed save that the Consultant shall be entitled to an extension of time for completion of the whole or relevant part of the Services so resumed equal to the period of suspension.
- 14.1.9. If the Company shall not have served a further notice requiring resumption of any previously suspended Services within a period of 6 months from the date on which the same were suspended, then either party may give notice in writing to the other that, unless the whole or any part of the Services are resumed upon the Company giving a 7 day notice in accordance with the provisions of clause 14.1.4 the employment of the Consultant under this Sub Contract will be determined. In default of the Company giving a notice under clause 14.1.4 within 7 days of the date of any notice given by either party to the other pursuant to the provisions of this clause 14.1.9, the Consultant's employment under this Contract will be automatically determined on expiry of the aforesaid 7 day notice period, without any requirement for any further notice to be given by either party.
- 14.2. Upon any such suspension (or determination) the Consultant shall forthwith deliver up to the Company one copy of all documents and drawings prepared by the Consultant whether in the course of preparation or completed together with the originals and all copies of all drawings negatives and documents relating to the Project in accordance with clause 3.23.
- #### **15. EFFECT OF SUSPENSION**
- 15.1. On any suspension of the Services in accordance with the provisions of clause 14 any other provisions of the Contract which require any payment by the Company shall cease to apply.

- 15.1.1. Not later than 3 months after the whole or any part of the Services have been suspended the Company shall prepare an account (Suspension Account) setting out in respect of any part or parts of the Services so suspended (a) the total value of work properly executed at the date of any such suspension as aforesaid; and (b) the cost of materials or goods properly ordered for the whole or any part of the Services so suspended for which the Consultant then has paid or is legally bound to pay.
- 15.1.2. After taking into account amounts previously paid to the Consultant pursuant to the Contract the Company shall pay to the Consultant the amount properly due as set out in the Suspension Account. The due date for payment of any amount properly due as aforesaid shall be 35 days following submission of the Suspension Account to the Consultant and its final date for payment shall be 7 days thereafter. Payment by the Company for any goods and materials shall be subject to such materials and goods thereupon becoming the property of the Company.

16. DETERMINATION

- 16.1. If the Consultant shall make default in any of the following respects:-
 - 16.1.1. wholly or substantially suspends the carrying out of the Services without reasonable cause; or
 - 16.1.2. fails to proceed regularly and diligently with all or any part of the Services; or
 - 16.1.3. fails to undertake the Services with the required standards of quality, professionalism and workmanship; or
 - 16.1.4. sub-contracts the whole or any part of the Services without the Company's prior written approval and consent; or
 - 16.1.5. fails to comply with an instruction requiring the correction of Services or removal of work, materials or goods which are not in accordance with the Contract ; or
 - 16.1.6. fails to comply with any programme or any amendments or revisions to such programme or any instructions or requests from the Company; or
 - 16.1.7. fails to proceed with the rectification of any defects, errors or omissions within the Services with reasonable diligence; or
 - 16.1.8. fails to provide and maintain sufficient or adequate labour on the Project to comply with any programme or to remedy any delay in respect of all or any part of the programme; or
 - 16.1.9. causes or fails to prevent any loss or damage to all or any part of the Project as a result of any act, omission or default on the part of the Consultant; or
 - 16.1.10. fails to comply with any duties or obligations in respect of health and safety legislation; or
 - 16.1.11. commits a material breach of any of its obligations or duties contained within the Contract the Company may issue written notice to the Consultant specifying the default.
- 16.2. If the Consultant has not taken reasonable steps to remedy such default within 48 hours of receipt of such notice the Company may at any time within the next 28 days issue a further notice determining the Consultant's employment under the Contract and such determination shall be effective upon issue by the Company of the second notice.

17. INSOLVENCY

- 17.1. If the Consultant enters into an arrangement, compromise, composition in satisfaction of its debts, without a declaration of insolvency passes a resolution or makes a determination to be wound up, has a winding up order or bankruptcy or made against it, has appointed an administrator or administrative receiver, (in the case of a partnership) each partner is the subject of an individual arrangement or any other even or proceeding referred to in this clause, the Company may at any time thereafter by written notice determine the Consultant's employment under the Contract , such determination to be effective upon receipt of such notice.

18. EFFECT OF DETERMINATION

- 18.1. Upon suspension or determination of the Contract:
 - 18.1.1. the Consultant shall (unless instructed otherwise by the Company) remove from the Site all its plant, tools, goods and materials not intended for incorporation into the Project provided that property in any such items shall not have passed to the Company;
 - 18.1.2. notwithstanding anything contained in the Contract, the Consultant shall not be entitled to receive any further payments until the Company has completed the remainder of the Services and has agreed the total cost of carrying out of any such works with an alternative consultant;
 - 18.1.3. the Company shall be entitled to set-off and/or recover from the Consultant all costs, losses, damages and expenses incurred by the Company by reason of the determination including the costs incurred in completing the remainder of the Services; and

18.1.4. within 3 months of completing any remaining Services and agreeing the total cost of such works with an alternative consultant the Company may, or upon receipt of a written request from the Consultant shall, provide an account to the Consultant identifying any balance owing to either the Company or the Consultant. Such balance shall be treated as if an application for payment under these terms and conditions.

18.2. These rights and remedies shall be in addition to any other rights, remedies, actions, claims or demands which the Company may have against the Consultant and shall not affect the Company's right to recover any further sums due to it under the Contract or generally.

19. DISPUTES

19.1. Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation.

19.2. Notwithstanding any other provision of these terms and conditions either party may refer a dispute arising under the Contract to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this clause.

19.3. The adjudicator shall be nominated at the request of either party by The Royal Institution of Chartered Surveyors.

20. WARRANTY AGREEMENTS, PERFORMANCE BONDS, PARENT COMPANY GUARANTEES ETC

20.1. The Consultant shall upon request from the Company or where it is stated in the Contract Documents that collateral warranty agreements, duty of care deeds, letters of reliance or other similar agreements are required the Consultant shall within 14 days of receipt of the Company's written request:-

20.1.1. complete and enter into and complete any such agreements etc in the form(s) contained in the Contract Documents (or such other similar form(s) as the Company may reasonably require), in favour of any third party with an interest or prospective interest in the Project; and

20.1.2. pending delivery of any such agreements etc, the Company may withhold payment of any sum otherwise due to the Consultant under the Contract.

20.2. Where it is stated in the Contract Documents that the Consultant shall enter into a performance bond, provide a parent company guarantee or other form of guarantee arrangement then the Consultant shall do so within 14 days of receipt of the Company's request, including to enter into and complete any such agreement the form of which is provided for in the Contract Documents (or such other form as the Company shall reasonably require). Subject to the delivery and completion of the same, the Company shall be entitled to withhold payment of any sum otherwise due under the Contract.

21. NOTICES

21.1. All notices under or in connection with the Contract must be in writing and sent to the addresses of the receiving party stated in the Order. The Company may give notice to the Consultant at either the e-mail or postal address provided by the Consultant. Notice will be deemed received and properly served 24 hours after an e-mail is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that the e-mail was sent to the specified e-mail address of the addressee.

22. PERSONNEL

22.1. The Consultant Representative(s) (if any) specified in the Order or such other person(s) or replacement appointed by the Consultant shall direct and control the overall performance of the Services and have full authority to act on behalf of the Consultant for all purposes in connection with the carrying out of the Services and shall consult and co-operate with the Company Representative(s) (if any) specified in the Order or such other person or replacement appointed by the Company. Such replacement will be communicated in writing.

22.2. The Company shall have the right after consultation with the Consultant to require the removal of any person engaged in the performance of the Services if, in the Company's reasonable opinion, that person's performance or conduct is or has been unsatisfactory and the Consultant shall promptly remove such person and replace him or her with another person approved by the Company.

22.3. The Consultant shall specify the staff involved within the Project and agrees to retain the involvement of these personnel. Key Staff shall not be replaced as long as they are in the employ of the Consultant or unless specifically agreed with or directed by the Company. The Company shall be notified in writing if any change is necessary to the Key Staff and a suitable replacement agreed with the Company in advance (such consent not to be unreasonably withheld). The Consultant is to make such adjustments to the fees payable as deemed reasonable by the Company in abortive downtime

23. COMMUNICATION & CO-OPERATION

- 23.1. Without limitation to the Consultant's other reporting duties under the Contract, the Consultant will produce written reports on the progress of all aspects of the Project on a monthly basis.
- 23.2. The Consultant shall attend design team meetings and project or progress meetings whenever reasonably necessary
- 23.3. The Consultant shall within its specialism co-ordinate and negotiate its designs and/or advice within the overall designs and objectives of the Project and shall liaise and communicate by all means necessary as part of its Services to perform this role.
- 23.4. The Consultant shall fully consider and respond to all comments and suggestions of the other members of the Professional Team and/or Company with regard to any matters of design or specification of any such member and shall give due account to such comments and suggestions.
- 23.5. The Consultant shall cooperate with the lead consultant of the Professional Team. Where there is any conflict with the requests of the lead consultant and the Brief and/or Order the Consultant should communicate the same to the lead consultant and if this is not satisfactorily resolved so that no conflict exists then to the Company Representative.

24. COPYRIGHT & CONFIDENTIALITY

- 24.1. The Consultant hereby grants to the Company an irrevocable exclusive royalty-free licence to copy and use all drawings, details, plans, schedules, reports, calculations and other documents and information (in any format) prepared by or on behalf of the Consultant ("the Services Documentation") and to reproduce the contents of it in whole or in part for any purpose relating to development and/or sale of the Site or parts thereof or in connection with any other development undertaken by the Company and such licence shall carry the right to grant sub-licences and shall be transferable in whole or in part to third parties all subject to the Consultant being given authorship on any publication.
- 24.2. Subject to payment for the Services in accordance with the Contract the Consultant warrants the accuracy of all of the Services Documentation and that the Consultant is (unless otherwise disclosed in writing) exclusively entitled to the copyright in the Services Documentation.
- 24.3. The ownership of the Services Documentation prepared or in the course of preparation by or on behalf of the Consultant in connection with the Services shall pass automatically to the Company on termination of the appointment of the Consultant whereupon the Consultant shall forthwith deliver all and any such Services Documentation to the Company.
- 24.4. The Consultant shall use the Services Documentation only for the purposes of the Contract and shall keep all matters concerning the Contract and Services confidential provided that the Consultant may disclose this Contract to its insurers and its legal financial and insurance advisers.
- 24.5. The Consultant shall not without the prior written approval of the Company take or authorise the taking of any photographs of the Project for use in any publicity or advertising or publish alone or in conjunction with any other person any artistic or literary material (including but not limited to articles, photographs or other illustrations) relating to the Project or any part thereof nor shall he impart to any publication, journal or newspaper or any radio or television programme any information or opinion regarding the Project.
- 24.6. The Consultant hereby warrants and undertakes that any drawings and other documents and all other products of the Services shall be original in him and shall not infringe the copyright, design right, moral rights or any other rights of any third party.
- 24.7. The Consultant hereby irrevocably waives any rights it may have pursuant to Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patents Act 1988 in relation to all such drawings and other documents provided in connection with the Project.

25. MISCELLANEOUS

- 25.1. The Contract is not intended to confer a benefit on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, and no third party shall have any right to enforce any of the provisions of the Contract.
- 25.2. The Contract is subject to English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 25.3. It is acknowledged by the parties that irrespective of the manner in which the Contract has been executed the period of limitation applicable to any claim or claims arising out of or in connection with the Contract shall be twelve (12) years from the date when the cause of action arose.
- 25.4. The Company shall be entitled to charge this Contract and/or assign it by way of security to any person having or acquiring a charge over the Project or any part thereof without the Consultant's consent.
- 25.5. No act, omission, approval, consent, request, instruction, suggestion, requirement, delay or forbearance by or on behalf of the Company or reliance thereon by the Consultant shall absolve or relieve the Consultant from its responsibilities,

duties or obligations under the Contract or operate as a waiver in whole or in part of any right power or privilege the Company may have under or in respect of the Contract.

26. TUPE

- 26.1. Although neither the Company nor the Consultant expects the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to apply on termination of the Contract, the Consultant will promptly comply with any obligations imposed by TUPE as modified or re enacted from time to time relating to the provision of information and consultation. At any time upon request the Consultant will give to the Company full and accurate information in writing relating to any person engaged in providing the Services ('Service Personnel') and any claims and liability which may transfer to the Company or any successor supplier under TUPE.
- 26.2. The Consultant will indemnify the Company against all damages, liabilities (including any liability to taxation) claims, costs and expenses including fines, penalties, legal and other professional fees and expenses which the Company may incur on account of or arising from: (a) any claim from any of the Services Personnel in respect of any fact or matter to the extent that such claim concerns or arises from employment on or before the date the Contract terminates; (b) any claim by any such personnel in respect of which the Company incurs or is alleged to incur responsibility or liability as a result of the operation of TUPE; (c) any claim or allegation arising from or connected with any failure by the Consultant to comply with its obligations under Regulations 13 or 14 of TUPE; (d) any redundancies or termination of employment by the Company or any successor supplier of any Service Personnel subsequent to their transfer to the Company or any successor consultant by way of operation of TUPE.

Date: 1st December 2014 Rev A