

Works Instruction Terms and Conditions

1. Definitions and Interpretations

- 1.1 In this Contract the following words and phrases shall have the meanings stated or referred to below:

"CDM Co-ordinator" is the entity identified as the Principal Designer in the Works Instruction or such other entity that is notified by the Employer to the Contractor or during the course of the Works.

"CDM Regulations" means the Construction (Design and Management) Regulations 2007.

"Certificate of Practical Completion" means the certificate issued by the Inspector following practical completion of the Works

"CIS" means the Construction Industry Scheme.

"Completion Date" means the completion date specified in the Works Instruction or as revised in accordance with these Conditions.

"Completion of the Works" means completion of the Works pursuant to the terms of this Contract and confirmed by the issue of the Certificate of Practical Completion

"Conditions" means paragraphs 1 - 29 of these Conditions.

"Consents" means the planning permissions referred to in the Numbered Documents, building regulations approval, fire officer approval and any other permissions approvals, certificates, and licences that may be necessary pursuant to the Statutory Requirements or otherwise for the carrying out of the Works and/or any wider development and if they are destroyed or damaged the reinstatement of the Works.

"Contract Sum" means the sum stated in the Works Instruction (if any), as the same may be amended in accordance with these Conditions.

"Contractor" has the meaning ascribed to it under the Works Instruction.

"Contractor's Final Certificate" means the final certificate issued by the Contractor in accordance with paragraph 10.6

"Contractor's Persons" means the Contractor's employees, agents or other persons engaged by the Contractor for the purposes of carrying out the Works or any part of them.

"Damage" means any damage to any part of the Site, any wider development or any third party's property and/or any part of the Site or wider development being left in a state that requires the Employer to clean all or part of the Site.

"Defects" means any defects, shrinkages, uncompleted work or other faults that appear due to a failure by the Contractor to comply with its obligations under this Contract.

"Documents" means all documents produced or acquired pursuant to this Contract by the Contractor or the Contractor's Persons.

"Employer" means the party named as the Employer in the Works Instruction or its successors in title or assignees.

"Employer's Safety, Health and Management System" means Employer's general safety, health and management system that is displayed on Site.

"Estimate" as defined in paragraph 6.4 and 6.5 of this Schedule 2

"Final Certificate" means the final certificate issued by the Employer in accordance with paragraph 10.4.

"Final Contract Sum" see paragraph 10.

"First Release Date" see paragraph 12.3.

"Insolvency Act" means the Insolvency Act 1986.

"Insolvent" means insolvent for the purposes of section 113 of the Housing Grants, Construction and Regeneration Act (as amended).

"Inspector" means building control or other professionally qualified person appointed by the Employer

"Interest Rate" means the base rate of the Bank of England at the date an amount due under this Contract becomes overdue.

"Interim Application" means an application by the Contractor to the Employer that shall be accompanied by signed quality control check sheets for the relevant part or parts of the Works included in the application together with any such further information as may be specified in the Numbered Documents and the application shall state the sum that the Contractor considers to be due to him on the payment due date in respect of that interim payment and the basis on which that sum has been calculated.

"Major Defect" see paragraph 15.3.1.

"Nominating Body" means the Royal Institute of Chartered Surveyors.

"Other Contractors" means any other contractors or their sub-contractors employed by the Employer.

"Pay Less Notice" means a notice issued by the payor specifying:

1. the amount it considers to be due to the payee at the date the notice is given (including the deduction of the Retention Percentage); and
2. the basis on which that sum has been calculated.

"Payment Notice" see paragraph 11.6.

"Programme" means the document entitled programme and appended to the Works Instruction (as the same may be updated and given to the Contractor from time to time).

"Rectification Period" means 6 months from the date on which the Works are completed.

"Retention" see paragraph 12.2.

"Schedule of Works" means the schedule prepared by the Contractor to include details of the works, labour, plant and materials and the values of such

"Scheme" means The Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended).

"Site" means the site identified in the Works Instruction.

"Statutory Requirements" means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or the performance of any obligations under this Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Works or whose systems the Works are, or are to be, connected.

"Tender Contract Sum" means the sum (if any) stated in the Works Instruction.

"Third Party Agreements" means any agreement relating to the Works or the Site or any wider development and the Contractor shall be deemed to have full knowledge of the contents of all such agreements.

"Variation" means (but only where and to the extent that the same is required under a written instruction) any addition, omission, substitution, alteration or modification of any performance requirement or of the design, quality or quantity of the Works as shown upon, described by or referred to in the Numbered Documents or in any documents properly prepared by the Contractor and authorised for use by the Employer in accordance with this Contract and includes the addition, omission or substitution of any work, the alteration of the kind or standard of any materials or goods to be used in the Works and the removal from Site of any work, materials or goods, brought thereon by the Contractor for the purposes of the Works, other than any work, materials or goods which are not in accordance with this Contract.

"VAT" means Value Added Tax.

"Working Day" means any day excluding Sunday and bank or other public holiday.

"Works" means the works identified in the Works Instruction.

"Works Instruction" means the terms and conditions set out at the beginning of this Contract for the Works.

- 1.2 This Contract constitutes the entire agreement and understanding of the parties with respect to its subject matter. The Contractor acknowledges that in entering into this Contract it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Contract) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Contract will limit or exclude any liability for fraud.

2. Works Instruction Confirmation and Possession of the Site

- 2.1 Save as expressly stated in clause 7.10 of the Works Instruction, the Works Instruction shall be subject to these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Contractor purports to apply under any quotation, order, acknowledgement or any other document issued by the Contractor).

- 2.2 The Employer shall permit the Contractor to occupy any part of the Site that is reasonably required for the completion of the Works, provided that such possession is non-exclusive.

3. Numbered Documents and Other Information

- 3.1 The Numbered Documents are to be taken as mutually explanatory of one another. If the Contractor shall find any error, omission, ambiguity or discrepancy in the Numbered Documents or between any such documents, the Contractor shall immediately notify the Employer in writing accordingly (and, at the latest, within twenty-four hours of the Contractor becoming aware of such ambiguity or discrepancy in the Numbered Documents or between any such documents). The Employer shall issue an instruction as to the manner in which any such error, omission, ambiguity or discrepancy shall be resolved. If and in so far as such instruction requires the Works to be varied and subject to paragraph 3.3, it shall be treated as a Variation unless such ambiguity or discrepancy could reasonably have been found or foreseen by the Contractor by the date he commenced the Works.
- 3.2 The Contractor shall take such steps as may be necessary to satisfy itself in adequate time before commencing any part of the Works as to the positions, dimensions and suitability of any previous work which might in any way affect any part of the Works (including without restriction any surface to which the Contractor is to fix or lay his work) and shall immediately advise the Employer in writing if such previous work is out of position, wrongly dimensioned or in any other way unsuitable (and, at the latest, within twenty-four hours of the Contractor becoming aware such previous work being out of position, wrongly dimensioned or in any other way unsuitable). The Employer shall issue an instruction as to the manner in which any such previous work being out of position, wrongly dimensioned or in any other way unsuitable shall be resolved. If and in so far as such instruction requires the Works to be varied and subject to paragraph 3.3, it shall be treated as a Variation unless such previous work being out of position, wrongly dimensioned or in any other way unsuitable could reasonably have been found or foreseen at the date the Contractor commenced the Works.
- 3.3 It shall be a condition precedent to the Contractor's right to claim a Variation under paragraph 3.1 and 3.2 that the Contractor has provided the required notification within the relevant time period under the respective clause. For the avoidance of doubt, if the Contractor has failed to comply with the requirements of paragraphs 3.1 and 3.2, the Contractor shall have no claim or right of action against the Employer in respect of any matter or entitlement arising from paragraphs 3.1 and 3.2.
- 3.4 The Contractor takes responsibility for any levels and setting out the Works. If there are any errors from its own inaccurate setting out, the Contractor shall at its own cost amend such errors. The Employer may instruct the amendment of such errors and an appropriate deduction shall be made to the Final Contract Sum for those errors that are not amended. The Contractor will work to design drawings.

4. Contractor's General Obligations

- 4.1 The Contractor shall carry out, complete and maintain the Works in accordance with this Contract, the Statutory Requirements, the Consents, British Standards, good building practice, the Numbered Documents, any further instructions and to the reasonable satisfaction of the Employer by the Completion Date.
- 4.2 The Contractor shall pass to the Employer all approvals received by the Contractor in connection with clause 4.1 as soon as practicable

- 4.3 All materials and goods to be incorporated into the Works shall be new (or, with the Employer's consent or where specified in the Numbered Documents, recycled or reconstituted), of a satisfactory quality and reasonably suitable for their purposes. The Contractor must provide a representative on Site when materials and goods are delivered to facilitate the Employer's inspection of such materials and goods, and must, after such inspection, ensure that they are properly protected for storage on Site.
- 4.4 Subject to paragraph 3.2 the Contractor is deemed to have had an opportunity to inspect the physical conditions and other conditions of or affecting the Site (including any existing structures, works and services) and shall be deemed to have fully acquainted itself with the same and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the construction/carrying out of the Works and no failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance, whether the same ought reasonably to have been discovered or foreseen or not, shall entitle the Contractor to an addition to the Final Contract Sum or to claim in damages or otherwise any additional sum or to an extension of time.
- 4.5 The Contractor shall not and shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of the Employer regarding any such matter as is referred to in paragraph 4.3 and the Employer makes no representation or warranty as to the accuracy or completeness of any such survey, report or document or any representation or statement, whether negligently or otherwise made, therein contained. The Contractor shall not have or make any claim whether in contract, tort or by way of misrepresentation or otherwise in respect of information provided or statements made by or on behalf of the Employer.
- 4.6 The Contractor shall co-operate fully with the Other Contractors in relation to the programming and carrying out of the Works and the Works of Other Contractors to prevent avoidable delay, disruption and damage to their respective Works.

5. Instructions

- 5.1 The Contractor shall forthwith comply with all instructions issued by the Employer.
- 5.2 If the Contractor does not comply with an instruction within seven days after receipt of a written notice from the Employer requiring compliance therewith, the Employer may engage others to execute any works necessary to give effect to such instruction. All costs, expenses and losses incurred in connection with such engagement shall be recoverable from the Contractor by the Employer as a debt and/or may be deducted from any monies due or to become due to the Contractor under this Contract.

6. Variations

- 6.1 On receipt of an instruction for a Variation the Contractor shall immediately comply with the Employer's instruction. No Variation required by the Employer shall vitiate this Contract.
- 6.2 Any Variation shall be valued by reference to the Numbered Documents and the parties shall seek to agree a value in respect of the Variation and any extension to the Completion Date. If such agreement cannot be reached within three months of the date of the instruction that instructed the Variation, the Employer shall value the Variation and grant any extension to the Completion Date on a fair and reasonable basis and notify the Contractor of the same.
- 6.3 The amount of an agreed or notified valuation pursuant to paragraph 6.2 shall be added or subtracted from the Final Contract Sum.

- 6.4 At the Employer's absolute discretion the Employer may request that the Contractor submits an estimate of the value of the Variation (which shall show the basis on which the Estimate has been calculated) ("the Estimate") together with any required extension of time within 2 Working Days of the Employer's request. If the Contractor prepares such an Estimate, it shall not be entitled to any extension of time and/or addition to the Final Contract Sum in respect of the production of the Estimate.
- 6.5 On receipt of the Estimate, the Employer may:
- 6.5.1 agree the Estimate and instruct the Variation on the basis of the agreed instruction; or
 - 6.5.2 reject the Estimate and still instruct the variation. In such circumstances, the Variation shall be valued in accordance with paragraph 6.3; or
 - 6.5.3 reject the Estimate and not instruct the Variation.

7. Attendances

- 7.1 The Contractor shall be responsible for and shall supply at its own costs all attendances that are required as part of the Works that are not specified in the Works Instruction.
- 7.2 The Contractor acknowledges the Employer's commitment to reducing the amount of waste produced on its sites and the Contractor agrees to co-operate with the Employer to endeavour to reduce the amount of waste produced by the Contractor as part of the Works.
- 7.3 The Contractor shall attend site meetings convened by the Employer upon reasonable notice and at reasonable intervals and the Employer and any third party (and their respective representatives) shall be permitted to attend such meetings.

8. Equipment

- 8.1 The Contractor shall be responsible for the safe keeping of all property including without limitation plant, equipment, tools, unfixed materials, documents or personal property belonging to itself, its employees agents and sub-contractors and shall indemnify the Employer against any expense damage liability loss claim or proceedings of whatsoever nature arising out of loss or damage to such items.
- 8.3 The Contractor shall be responsible for ensuring at its own cost that all personnel engaged in carrying out the Works are supplied with and wear any safety gear and protective clothing appropriate to the performance of the Works. In performance of this obligation the Contractor shall comply with all codes of practice, guidance notes, British Standards and relevant statutory provisions.

9. Basis of the Contract Sum

- 9.1 Where the Works Instruction states the Contract Sum is a fixed price, the Contract Sum shall not be adjusted or altered in any way other than in accordance with the provisions of this Contract.
- 9.2 Where the Works are subject to remeasurement the Tender Contract Sum will be stated on the Works Instruction (calculated by reference to the quantities specified in the Numbered Documents and the relevant rates set out in the Numbered Documents).

10. Final Contract Sum and the Final Certificate

- 10.1 The Contract Sum or the Tender Contract Sum shall only be varied:
- 10.1.1 where remeasurement by applies, applying the appropriate rates set out in the Numbered Documents to the quantity of work validly executed in accordance with the Numbered Documents and any instructions;
 - 10.1.2 by any amounts in respect of Variations;
 - 10.1.3 by the value of any work that is omitted from the Contract;
 - 10.1.4 by any amounts that are required to be added or deducted from the Contract Sum or Tender Contract Sum in accordance with these Conditions
- 10.2 Not later than 3 months after the Completion of the Works, the Contractor shall provide to the Employer all documents necessary for calculating the Final Contract Sum.
- 10.3 The Employer shall issue the Final Certificate to the Contractor on the later of the date three months after:
- 10.3.1 the provision of the documents to be provided under paragraph 10.2; or
 - 10.3.2 the completion of the rectification of all Defects in the Works.
- 10.4 The Final Certificate shall state the sum due to the Contractor or to the Employer, as the case may be, and the basis on which that sum has been calculated.
- 10.5 The due date for the final payment shall be the date of issue of the Final Certificate or, if the Final Certificate is not issued on the date specified in paragraph 10.3, the date of receipt by the Employer of the Contractor's Final Certificate under paragraph 10.6.
- 10.6 Where the Employer does not issue the Final Certificate on the date specified in paragraph 10.3, the Contractor may serve on the Employer the Contractor's Final Certificate which shall comply with the requirements of the Final Certificate.
- 10.7 Subject to any Pay Less Notice, the final date for payment of the Final Contract Sum shall be 28 days (or such other period specified in the Works Instruction) from its due date.
- 10.8 Where the party whom is obliged to make the final payment intends to pay less than the amount stated as due in the Final Certificate or the Contractor's Final Certificate, it shall give the other party a Pay Less Notice no later than 1 Working Day before the final date for payment.

10.9

10.9.1 The Final Certificate or the Contractor's Final Certificate shall be binding on the parties in respect of the Contractor's entitlements to any sums due under this Contract, save where either party challenges through legal proceedings or adjudication all or part of the Final Certificate or the Contractor's Final Certificate within 28 days (or such other period specified in the Works Instruction) of the issue of the Final Certificate or the Contractor's Final Certificate. In such circumstances the parts of the Final Certificate or the Contractor's Final Certificate (if any) that are not disputed will become binding whereas the remaining parts will become binding in accordance with paragraph 10.9.2.

10.9.2 Where any part of the Final Certificate or the Contractor's Final Certificate is disputed through legal proceedings or adjudication within the period specified by paragraph 10.9.1, such parts shall become binding on:

- (a) the conclusion of any proceedings, subject to the terms and effects of the conclusion of such proceedings;
- (b) where after proceedings are commenced no further step is taken in those proceedings during any twelve month period commencing from or after the issue of the Final Certificate or the Contractor's Final Certificate, the parts of the Final Certificate or the Contractor's Final Certificate that were subject to the proceedings shall become binding on the parties on the expiry of that 12 month period.

10.9.3 Where any part of the Final Certificate or the Contractor's Final Certificate is disputed through adjudication and an adjudicator gives his decision on a date after the date of submission of the Final Certificate or the Contractor's Final Certificate either party may have such dispute or difference decided by legal proceedings provided that such party commences legal proceedings within 28 days of the date on which the adjudicator gives his decision.

10.10 If the Employer fails to pay a sum or any part of it due to the Contractor by the relevant final date for payment under paragraphs 10.7 and 11.7 the Employer shall pay the Contractor simple interest at the Interest Rate for the period between the relevant final date for payment and the date on which the amount due is paid to the Contractor.

10.11 The parties agree that paragraph 10.10 constitutes a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

11. Interim Payments

11.1 The Contractor shall be entitled to interim payments and shall submit Interim Applications on the Friday of each week in accordance with the following provisions of this paragraph 11.

- 11.2 Notwithstanding any other provisions of this Contract it shall be a condition precedent to the payment of any sums by the Employer due to the Contractor under this Contract that the Contractor shall issue to the Employer:
- 11.2.1 the validly executed Works Instruction; and
 - 11.2.2 the Contractor's unique taxpayer reference or any other details that the Employer requires for the purposes of the CIS; and
 - 11.2.3 a VAT invoice showing the net amount of the amount specified as due in the relevant Payment Notice or, where such Payment Notice has not been issued, the Interim Application together with the amount of VAT calculated by the Contractor as being due under the terms of the VAT Regulations current at that time; or
 - 11.2.4 where the Contractor is not VAT registered pursuant to the VAT Regulations, an invoice showing the net amount of the amount specified as due in the relevant Payment Notice or, where such Payment Notice has not been issued, the Interim Application.
 - 11.2.5 The Schedule of Works as approved by the Employer in writing
- 11.3 The amount to be included in any Interim Application shall be as shown on the Schedule of Works which shall be updated at the time an Interim Application is submitted and subject to the deduction of the Retention Percentage but including:
- 11.3.1 where remeasurement applies, any agreed additions or deductions to the Tender Contract Sum;
 - 11.3.2 the costs of any goods and materials incorporated into the Works; and
 - 11.3.3 any agreed amounts in respect of any Variations,
- less the amounts previously paid to the Contractor in respect of the Works.
- 11.4 The Contractor shall not be entitled to any payments in respect of goods and/or materials until such goods and/or materials are fully incorporated into the Works and protected from any wear and/or damage. Risk of loss of or damage to such goods and materials shall remain with the Contractor until they are paid for by the Employer but title in such goods and materials shall pass to the Employer upon delivery to Site.
- 11.5 Interim Applications shall be made in accordance with the details set out in the Works Instruction. A further Interim Application can be made on the First Release Date in respect of the first half of the Retention. The due date in each case shall be the date of receipt by the Employer of the Interim Application ("Due Date")
- 11.6 The Employer shall not later than five Working Days after the Due Date issue a notice in respect of the relevant Interim Application ("Payment Notice") that shall set out the amount that the Employer considers to be due to the Contractor on the relevant Due Date and the basis upon which it has been calculated ("Notified Sum"). Where the Employer fails to serve a Payment Notice in accordance with this paragraph the amount of the interim payment to be paid by the Employer shall, subject to a Pay Less Notice, be the amount specified as due in the Interim Application ("Specified Sum").
- 11.7 Subject to any Pay Less Notice, the final date for payment shall be the later of (a) 7 Working Days (or such other period specified in the Works Instruction) from the Due Date; and (b) 14 Working Days (or such other period specified in the Works Instruction) from the date of receipt by the Employer of an invoice (showing any VAT properly chargeable) for the Notified Sum.
- 11.8 If the Employer intends to pay less than the ("Notified Sum") he shall not later than 1 day before the final date for payment give the Contractor a Pay Less Notice. When a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the Pay Less Notice.

- 11.9 The Employer is entitled to exercise any right under this Contract or at common law or in equity of withholding and/or deduction from monies due or to become due to the Contractor.
- 11.10 Whenever under this Contract any sum of money shall be recoverable from or payable by the Contractor such sum may be deducted from the amount of any sum or sums then due or which any time thereafter may become due to the Contractor under this Contract whether before or after the date of this Contract or may be recovered as a debt.
- 11.11 Where a notice is to be given by the Employer under paragraph 11 it may be given by any person who the Employer notifies the Contractor as being authorised to do so.

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13. Health and Safety

- 13.1 The Contractor carry out the Works to the highest possible safety standards and in strict compliance with all of the Statutory Requirements relating to health and safety.
- 13.2 The Contractor shall:
- 13.2.1 comply with the Construction Phase Plan (if any);
 - 13.2.2 comply with the Employer's Safety, Health and Management System;
 - 13.2.3 comply with any site rules;
 - 13.2.4 if the Works require any lifting or manoeuvring of any heavy material, supply a lifting plan for agreement and approval by the Employer prior to commencing the Works and comply with that plan; and
 - 13.2.5 provide such details, information and documents as required by the CDM Co-ordinator and/or Principal Contractor.
- 13.3 The Contractor shall immediately notify the Employer of any accident, incident, near miss or dangerous occurrence and shall undertake a detailed investigation into such event.
- 13.4 Following the completion of the investigation under paragraph 13.3, the Contractor shall produce a report detailing the event and the causes and contributing factors of that event together with the conclusions of the report and any steps or recommendations to be minimise the risk of such event reoccurring. The Contractor shall supply the Employer with a copy of the report within a reasonable time after the production of the report.
- 13.5 Where the Employer investigates any accident, incident, near miss or dangerous occurrence, the Contractor shall provide the Employer with its full co-operation and will provide such information as reasonably required by the Employer. The Contractor shall also ensure that any Contractor's Persons shall be available for interview, provided that the Employer has given the Contractor reasonable notice of its wish to interview a Contractor's Person.

- 13.6 The Employer shall not be liable for any injury to the Contractor's Persons sustained on Site.

14. Programme and Working Hours

- 14.1 In progressing the Works to completion the Contractor shall programme the Works in accordance with the Programme and any other related requirements included in or inferred from the Numbered Documents so as not to delay the progress of the Works or the wider works on Site.
- 14.2 The Employer may amend or vary the Programme and any other related requirements included in or inferred from the Numbered Documents at its sole discretion and, upon the provision to the Contractor of an amended or varied Programme and any other related requirements, the Contractor shall reprogramme its Works so that it can comply with its obligations under paragraph 14.1.
- 14.3 If the start and Completion Dates are not set out in the Works Instruction the Employer must notify the same to the Contractor no later than 20 Working Days before the date for commencement on Site. Any objection the Contractor has to such dates must be notified to the Employer within 5 Working Days of being notified of such dates in which event the Employer (acting reasonably) shall fix revised start and Completion Dates. Any amendments or variations by the Employer under this paragraph shall (save to the extent caused by the Contractor's default or in respect of amendments or variations made within 10 Working Days of commencement on Site) shall be treated as a Variation.
- 14.4 Subject to paragraph 14.4 the Site shall be open on the days and at the times specified in the Works Instruction.
- 14.5 The Site may be closed pursuant to any national construction industry holidays agreement whilst the Works are proceeding and the Contractor shall have been deemed to have allowed for such a closure in its Contract Sum or Tender Contract Sum. The Contractor will not be entitled to any additional sum or extension of the Completion Date by reason of a closure pursuant to this paragraph 15.4.
- 14.6 The Employer may at its sole discretion issue an instruction:
- 14.6.1 requiring the Contractor to accelerate or decelerate the Works; and/or
 - 14.6.2 to omit any part of the Works; and/or
 - 14.6.3 to suspend the Works or any part thereof.
- 14.7 An instruction issued:
- 14.7.1 under paragraph 14.6.1 and 14.6.3 shall (save to the extent caused by the Contractor's default) be treated as a Variation; and
 - 14.7.2 under paragraph 14.6.2 shall not entitle the Contractor to any addition to the Final Contract Sum and/or to an extension to the Completion Date and/or any loss of profit, loss of contract or other costs, fees, loss and/or expenses arising out of or in connection with such instruction.
- 14.8 The Contractor acknowledges that the Employer and/or any persons authorised or engaged by the Employer may use or occupy the Works at any time for any reason and the Contractor shall have been deemed to have allowed for this in its Contract Sum or Tender Contract Sum. The Contractor will not be entitled to any additional sum or extension of the

Completion Date by reason of any party's use or occupation of the Works pursuant to this paragraph 14.8.

- 14.9 The Contractor shall ensure that as it completes its Works it adequately protects such completed parts of the Works from any wear and/or damage. If the Contractor fails to adequately protect its works, such wear and/or damage resulting from the Contractor's failure shall be deemed to be a Defect and paragraph 15 shall apply.
- 14.10 If it becomes apparent that the Works will not be completed by the Completion Date (or any later date fixed in accordance with the provisions of this paragraph 14.10) for reasons owing to the Employer's breach of this Contract or an act of prevention by the Employer (or a breach of this Contract or act of prevention for which the Employer is responsible), then:
- 14.10.1 the Contractor shall thereupon notify the Employer in writing within twenty-four hours of becoming aware of any such reason. The notification shall include the cause or causes of the delay and the current predicted length of the delay; and
- 14.10.2 (subject to paragraphs 14.10 and 14.11) the Employer shall make such extension of time for completion as may be reasonable and the Completion Date shall be amended accordingly.
- 14.11 The Contractor shall at all times use its best endeavours to prevent and/or reduce any delays to the progress of the Works.
- 14.12 Notwithstanding any other provision of this Contract the Contractor shall not be entitled to any extension of time for the completion of the Works on account of any circumstances arising by reason of any error, omission, negligence or default of the Contractor, the Contractor's Persons or any supplier, or any of their respective employees or agents.
- 14.13 Compliance by the Contractor with paragraphs 14.9 and 14.10 shall be a condition precedent to the Contractor receiving any relief (including any extension of time for completion of the Works) to which he would otherwise have been entitled but for the said failure to comply
- 14.14 In respect of any notice given under paragraph 14.10.1 the Contractor shall forthwith supply such further information as the Employer may at any time reasonably require.

15. Completion and Defects

- 15.1 It shall be a condition precedent to the Works being complete that the Contractor provides to the Employer all of the documents specified in the Works Instruction. The Inspector shall on Completion of the Works, subject to this paragraph, issue the Certificate of Practical Completion.
- 15.2 If the Works are not completed by the Completion Date the Contractor shall pay and/or allow the Employer liquidated damages at the rate stated in the Works Instruction between such Completion Date and the date of actual Completion of the Works. The Employer may either deduct the liquidated damages from any monies due to the Contractor under this Contract and/or recover them as a debt.
- 15.3 If at any time during the progress of the Works or within the Rectification Period any Defects appear the Employer may instruct the Contractor in writing to (at the Contractor's own cost) remedy or cause to be remedied such Defects within the time periods specified in the Numbered Documents or such reasonable period stated in the instruction.

- 15.4 Notwithstanding the provisions of paragraph 15.3
- 15.4.1 where the Employer states in any instruction given under paragraph 15.3 that, in his opinion, any such Defect is likely to cause unreasonable inconvenience and/or risk to any person lawfully in occupation of or using the whole or any part of the Works or that such defect, shrinkage or other fault is likely directly or indirectly to cause any further damage thereto the Contractor shall comply with the Employer's instruction forthwith and in any event within 24 hours from its receipt
 - 15.4.2 save when complying with paragraph 15.4.1 the Contractor shall give not less than 48 hours written notice to any owner or occupant of the Works or part thereof before attending to remedy any defect or complete any item of incomplete work
 - 15.4.3 when attending to remedy any defect or complete any item of incomplete work the Contractor shall at all times use reasonable endeavours to minimise any disruption or inconvenience to any owner or occupant of the Works or part thereof including (but not limited to) taking into account all reasonable requirements of such parties.
- 15.5 The Contractor acknowledges that in respect of any Major Defect the Employer may procure the carrying out of the relevant remedial works by an alternative contractor if it is reasonable to do so and the Contractor shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from the appointment of an alternative contractor. For the purposes of this paragraph, a failure by the Contractor to answer and provide a satisfactory response to the first telephone call from the Employer regarding the Major Defect shall constitute a reasonable reason for the Employer to instruct an alternative contractor to remedy a Major Defect under this paragraph.
- 15.6 Where the Contractor fails to remedy any Defect in accordance with the time periods specified in this Contract, the Employer may at any time carry out or procure the carrying out of the relevant remedial works by an alternative contractor and the Contractor shall indemnify the Employer from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations under paragraph 15.
- 15.7 The Employer may at its absolute discretion instruct the Contractor not to remedy a Defect. Where the Employer issues such an instruction, an appropriate deduction shall be made from the Final Contract Sum in respect of the Defect that is not made good.

16. Insurance

- 16.1 Without prejudice to the Contractor's other obligations under this Contract or otherwise at law, the Contractor shall indemnify and hold harmless the Employer, its employees, agents and sub-contractors against any and all liabilities, costs, expenses, losses, claims or proceedings of whatsoever nature (including but not limited to those in relation to any claim or proceedings brought in contract or tort and also including but not limited to any damage to the Employer's property, or that of the Employer's employees, agents or sub-contractors or any third parties and any death of or injury to the Employer, its employees or agents and sub-contractors and any third parties) save to the extent that such liability cost expense loss and claim or proceedings arises out of any negligence of the Employer, its employees, agents, sub-contractors or sub-consultants in the course of or in connection with the performance of the Works.

- 16.2 Without prejudice to the Contractor's other obligations under this Contract or otherwise at law and without prejudice to the Contractor's liability to indemnify the Employer referred to at paragraph 16.1 above, the Contractor shall take out and maintain and shall cause its sub-contractors and sub-consultants to take out and maintain contractors all risks insurance policy in respect of the Contractor's obligations (including, but not limited to, insurance in respect of death or personal injury or damage to property, real or personal caused by the Contractor or its sub-contractors, sub-consultants or any of their employees servants or agents) and any other of the Employer's reasonable requirements as set out in the Numbered Documents in the joint name of the Contractor and the Employer. This obligation shall be irrespective of the physical location in which the Works or part thereof are or are to be performed.
- 16.3 The Contractor shall take out and maintain the insurances specified in the Works Instruction at the level and, if applicable, basis and for the period specified in the Works Instruction. Where alternative and/or additional insurances, levels and/or bases are specified in the Works Instruction, the Contractor shall take out and maintain such amended insurance policies.

17. [Intentionally blank]

18. Copyright and Confidentiality

- 18.1 The copyright in the Documents shall remain vested in the Contractor but the Contractor shall hereby grant (to the extent that the Contractor is legally able to so do (and where it is not legally able to do so, the Contractor will use all reasonable endeavours to procure the grant)) to the Employer and its duly appointed agents an irrevocable, non-exclusive and royalty free licence to copy and use the Documents and reproduce the designs and information contained in them for any purpose relating to the Site and/or any wider development, its development and use but the Contractor shall not be liable for any use other than that for which the Documents were originally prepared. Such licence shall be capable of sub-licence and assignment.
- 18.2 Without prejudice to any obligation under the Numbered Documents to provide copies of the Documents the Contractor agrees to supply to the Employer on request (but subject to reimbursement of the Contractor's reasonable photocopying charges) additional copies of the Documents and such other information in relation to the Site and/or wider development as it can reasonably supply.
- 18.3 Save to the extent otherwise stated in this Contract the parties shall keep this Contract and its commercial terms confidential and no party will reveal any information, except as may be required by law, the regulations of the Stock Exchange or other regulatory requirements (including those of HM Customs and Revenue and HM Land Registry) or for the proper performance of its obligations or the proper exercise of its rights or to professional advisors properly engaged in connection with this Contract.
- 18.4 The parties agree that there shall be no press releases or comments to the press in connection with any term of this Contract and or in relation to the Works and/or Site and/or any wider development or in either case the contents thereof without the prior written approval of the Employer
- 18.5 The Contractor shall not be entitled to erect or display any branded signs or notices without the prior written consent of the Employer.
- 18.6 The obligations in this paragraph 18 shall continue to apply after the completion of the Works or termination of thisContract without limitation

19. Third Party Agreements

- 19.1 The Contractor shall have regard to any obligations owed by the Employer under any Third Party Agreements. The Contractor believes that the requirements thereof and the obligations therein in respect of the carrying out and completion of the Works are reasonable and attainable and shall carry out and complete the Works, and its obligations under the Contract in such a manner as not to constitute, cause or contribute to any breach by the Employer of any such obligations.

20. Contractor's Environmental Obligations

- 20.1 The Contractor agrees that it shall at all times ensure that it complies and that all those for whom it is responsible comply in all respects with any applicable Statutory Requirements relating to environmental standards, environmental laws, or regulations when performing any obligations under this Contract. The Contractor shall neither create, produce, allow, exacerbate or permit any pollution, contamination and/or hazardous substance in on under over or around the Site or any wider development to which the Works relate to: nor introduce the same in on under over or around the Site or any wider development to which the Works relate to, nor introduce or allow to be created pathways nor exacerbate any pathways existing prior to the date of this Contract relating to such pollution, contamination and/or hazardous substance in on under over or around the Site or any wider development to which the Works relate to. The Contractor shall further ensure that the Contractor by way of action or inaction does not allow any such pollution, contamination and/or hazardous substance that is in on under over or around the Site or any wider development to which the Works relate to to escape leach or be released from the Site.
- 20.2 The Contractor shall on demand keep the Employer fully and effectively indemnified against all claims actions demands losses costs liabilities damages or expenses whatsoever incurred or sustained by the Employer as a consequence of or in connection with any breach non performance or non observance of the provisions on the part of the Contractor contained or implied in this paragraph 20.

21. Intentionally blank

21.1

22. Termination

- 22.1 The Employer may terminate this Contract at any time on 30 Working Days' notice in writing to the Contractor.
- 22.2 If the Contractor is or becomes Insolvent:
- 22.2.1 the Contractor shall forthwith so notify the Employer within 24 hours of the Contractor becoming Insolvent.;
 - 22.2.2 either Party may at any time by notice to the other Party, terminate the Contractor's employment under this Contract;
 - 22.2.3 as from the date of termination under paragraph 22.2:
 - (a) paragraph 22.5 and 22.6 shall apply; and
 - (b) the other provisions of this Contract which require any further payment to the Contractor or any release of retention shall cease to apply; and
 - (c) the Employer may take measures to ensure that the Site and the Works are adequately protected; and
 - (d) the Contractor shall allow and shall not hinder or delay the taking of those measures.

- 22.3 If the Employer considers that the Contractor:
- 22.3.1 has in breach of this Contract suspended all or part of the carrying out of the Works;
 - 22.3.2 is failing to proceed regularly and diligently in carrying out the Works;
 - 22.3.3 has failed to comply with the Employer's instructions; or
 - 22.3.4 is in default of any of its obligations under this Contract,
- the Employer may give notice to the Contractor in writing of the alleged default.
- 22.4 If the Contractor has not within 5 Working Days after receipt of the Employer's notice under paragraph 22.3:
- 22.4.1 rectified such specified default or breach to the Employer's satisfaction; or
 - 22.4.2 if such default cannot be rectified within the said period established to the Employer's satisfaction that such default will be rectified promptly after the expiration of such period,
- then the Employer may terminate this Contract forthwith by written notice to the Contractor.
- 22.5 Upon termination of the Contractor's employment under paragraphs 22.1, 22.2 and 22.4:
- 22.5.1 the Employer may without prejudice to its other rights complete the Works and make good any Defects itself or arrange for a third party to complete the Works and make good any Defects and (subject to obtaining any relevant party's consent, excluding the Contractor) may use any of the Contractor's facilities, plant, tools, equipment and materials for those purposes;
 - 22.5.2 the Contractor shall:
 - (a) promptly take all steps to bring the Works to an end in an orderly manner and arrange for its personnel to vacate the Site once the Works are brought to an end;
 - (b) remove on the Employer's written request (but not before such a request is given) all of the Contractor's facilities, plant, tools, equipment, materials and property;
 - (c) not be entitled to payment of any sums under this Contract that are due or will become due, save for any sums due under paragraph 22.6 .
- 22.6 Following twenty-four months from the date of termination under paragraphs 22.1, 22.2 or 22.4 the Employer shall prepare an account showing:
- 22.6.1 the total amount which would have been payable for the Works in accordance with this Contract; and
 - 22.6.2 where the termination was under paragraphs 22.2 and 22.4, the total costs, losses, damages and expenses incurred by the Employer (including those incurred under paragraph 22.5.1) and for which the Contractor is liable under this Contract provided that if the Employer procures the completion of the outstanding Works for less than the Employer would have had to pay the Contractor to complete the outstanding Works, then for the purposes of this paragraph the Employer shall be deemed to have paid the same amount to procure the completion of the outstanding Works under this clause as the Employer would have had to pay the Contractor to complete the outstanding Works under this Contract); and
 - 22.6.3 the amount of any payments previously paid to the Contractor by the Employer,
- If the sum of the amounts stated under paragraphs 22.6.2 and 22.6.3 exceed the amount stated under paragraph 22.6.1 the difference shall be a debt payable by the Contractor to the Employer or, except for termination under paragraph 22.2, if the sum is less, by the Employer to the Contractor.

22.7 Where the account shows a balance due to the Contractor, the balance shall be payable in accordance with payment schedule as if the account were the Payment Application that was served on the Employer on the first Working Day of the month following the date of the account.

22.8 Where the account prepared under paragraph 22.6 shows a balance due to the Employer, the amount due shall be a debt payable by the Contractor to the Employer and the Contractor shall pay such amount to the Employer on receipt of a demand by the Employer.

23. Bribery and Corruption

23.1 The Contractor undertakes and warrants to the Employer without qualification or limitation:

23.1.1 that at the date of this Contract the Contractor for itself (and on behalf of the Contractor's Persons (to the extent the Contractor could, did and/or ought to have been able to ascertain the same)) it has not committed and/or permitted an offence under the Prevention of Corruption Acts 1889 to 1916 and/or the Bribery Act 2010 and/or committed one of the common law offences of bribery and/or embracery; and

23.1.2 that after the date of this Contract the Contractor itself (and on behalf of the Contractor's Persons) that they will not commit and/or permit an offence under the Bribery Act 2010.

23.2 The Contractor shall be responsible for and shall indemnify the Employer from and against any and all expenses, liabilities, fines, losses, claims and proceedings resulting from any failure or default by the Contractor in performing its obligations and/or breaching any undertaking or warranty under paragraph 23.1.

24. Assignment

24.1 The Employer may, without the consent of the Contractor, assign, charge or otherwise transfer the benefit of all or any of the Contractor's obligations under this Contract and/or any benefit arising under or out of this Contract.

24.2 The Contractor shall not, without the prior written consent of the Employer, assign, charge or otherwise transfer the benefit of all or any of the Employer's obligations under this Contract and/or any benefit arising under or out of this Contract.

25. Third Parties

25.1 The Contractor agrees that pursuant to the Contracts (Rights of Third Parties) Act 1999 that:

25.1.1 any Group Company; and/or

25.1.2 any third party specified by the Employer,

shall be entitled to enforce for its benefit any of the provisions of this Contract.

25.2 Where a Group Company or a third party brings a claim against the Contractor pursuant to paragraph 25.1, the Contractor shall not be entitled to raise a defence of contributory negligence, set off or counter claim against the Group Company or third party in respect of such claim.

- 25.3 No rights of the Employer and the Contractor:
- 25.3.1 to terminate the Contractor's employment under this Contract;
 - 25.3.2 to agree to rescind, amend or otherwise vary or waive any of the terms of such contract; or
 - 25.3.3 to settle any dispute under or in relation to the Contract,
- shall be subject to the consent of any Group Company or any other party.
- 25.4 Save as set out in paragraph 25.1, it is not intended that any third party should have the right to enforce any term of the Contract pursuant to the Contract (Rights of Third Parties) Act 1999.

26. Bond and Parent Company Guarantee

- 26.1 If the Works Instruction states that this paragraph is to apply then upon the execution of this Contract the Contractor shall immediately furnish to the Employer a performance bond in the terms of the draft set out in the Numbered Documents (or such other terms as the Employer shall require or approve) executed as a deed and delivered by a bank or insurance company previously approved by the Employer. Notwithstanding any other provisions of this Contract and in addition to any other right or remedy of the Employer, compliance with this paragraph 26.1 shall be a condition precedent to the Contractor's entitlement to payments under this Contract.
- 26.2 If the Works Instruction Terms and Conditions state that this paragraph is to apply then the execution of this Contract the Contractor shall immediately furnish to the Employer an ultimate parent company guarantee in terms of the draft set out in the Numbered Documents (or such other terms as the Employer shall require or approve) executed as a deed and delivered by the Contractor's ultimate parent company. Notwithstanding any other provisions of this Contract and in addition to any other right or remedy of the Employer, compliance with this paragraph 26.2 shall be a condition precedent to the Contractor's entitlement to payments under this Contract.

27. Adjudication

- 27.1 Where any dispute or difference arises under this Contract, either party may refer the dispute to adjudication.
- 27.2 The provisions of Part I of the schedule to the Scheme shall apply to any adjudication brought under this Contract.
- 27.3 The body responsible for nominating a person to act as an adjudicator shall be the Nominating Body.

28. Law

- 28.1 Subject to the rights of either party to refer a dispute to adjudication, any and all disputes and claims between the parties (and their successors in title and assigns) (including any dispute in respect of which the decision, if any, of an adjudicator has not become final and binding) as to the construction, interpretation, validity and/or application of this Contract and/or things of whatsoever nature arising out of or in connection herewith shall be governed by English Law and the jurisdiction of the English Courts and shall be/ and are hereby referred to the English Courts (except for the purposes of enforcement proceedings in respect of any Judgement or award of the English Courts in another jurisdiction).

29. Notices

- 29.1 Subject to paragraphs 29.2 and 29.3 any notice provided for in this Contract shall be duly given if delivered in accordance with paragraph 29.2 or by hand or sent by pre-paid first class registered post to the party named therein at the address of such party shown in the Works Instruction or such other address as such party may specify from time to time by written notice to the other party and if sent by pre-paid first class registered post shall be deemed to have been received on the second Working Day after the date of posting.
- 29.2 Any notice provided for in this Contract shall be duly given on the date of issue if delivered by email or facsimile prior to 16.00 Hrs on a Working Day provided that a copy of such notice is delivered by hand or sent by pre-paid first class special delivery post to the party named therein at the address of such party shown in the Works Instruction or at such other address as such party may specify from time to time by written notice to the other party.
- 29.3 The following communications shall be deemed to have no effect if made by electronic mail transmission:
- 29.3.1 any notification of a wish to terminate this Contract or any of the Contractor's employment under it;
 - 29.3.2 any notification by the Contractor of its intention to suspend performance of any or all of its obligations under this Contract;
 - 29.3.3 any invoking by either party of the procedures applicable under this Contract to the resolution of disputes or differences; and
 - 29.3.4 any agreement between the parties amending the provisions of this Contract.
- Notwithstanding any other provision of this Contract no instruction/notice shall be binding on the Employer or the Contractor or have any effect under this Contract or otherwise unless the same has been issued in writing and signed on behalf of the Employer or the Contractor (as applicable) save in the case of an emergency in the case of an instruction.
- 29.4 Notice:
If you are a consumer and the Consumer Contracts Regulations apply, you have the right to cancel the contract within 14 days from the date on which our Quotation is accepted and signed by you. Notice of cancellation must be given in writing to us at our above address. If you request in writing for any services to be performed before the 14 day period expires, we are entitled to be paid for those services.