

1. DEFINITIONS and INTERPRETATION

1.1 In these Conditions the following expressions shall have the following meanings:-

"Appendices"	means appendices attached to the Order and Appendix means any one of them;
"CDM Regulations"	means the Construction (Design & Management) Regulations 2007 and the Code of Practice entitled "Managing Construction for Health and Safety" approved and issued by the Health & Safety Commission in connection with such Regulations;
"Conditions"	means the conditions set out in this document (including any schedule or annexure to it) and (unless the context otherwise requires) includes any supplementary conditions agreed in writing between the Contractor and the Consultant;
"Consultant"	means the person, firm or company who is appointed by the Contractor to undertake the Services;
"Contract"	means the contract entered into or to be entered into between the Contractor and the Employer for the carrying out of the Works;
"Contractor"	means Ian Williams Limited (Company Registration No. 00879464) whose registered office is at Quarry Road, Chipping Sodbury, Bristol BS37 6JL;
"Cost Plan"	means a document showing the estimated cost of all parts of the Works and how it is to be spent;
"Development"	means the development as described in the Form of Enquiry;
"Employer"	means the person identified as the employer in the Form of Enquiry;
"Form of Enquiry"	means the Contractor's form of enquiry sent to the Consultant;
"Form of Tender"	means the form of tender executed by the Consultant;
"Lead Consultant"	means the person identified in the Form of Enquiry;
"Limit of Indemnity"	means the amount set out in the Form of Enquiry being the minimum amount of professional indemnity insurance that the Consultant is obliged to maintain under clause 10.1 of these Conditions;
"Necessary Consents"	all permissions licences and consents granted under the Planning Acts (as amended or replaced from time to time) and all approvals and details pursuant thereto building regulation consents and approvals and all other certificates, agreements, consents and approvals whether statutory or otherwise necessary to authorise and permit the execution of the Works and the Development;
"Order"	means the order issued by the Contractor for the Services including the Conditions, the Appendices and any documents incorporated into this Subcontract by its terms;
"Other Consultants"	means any other consultants engaged by the Contractor in relation to the Works;
"Planning Acts"	means 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 and all other statutes containing provisions relating to town and country planning from time to time in force together with all secondary legislation arising under such statutes;
"Programme"	the programme for the Works including any variation to such programme made by the Contractor from time to time;
"Services"	means the services set out in the form of tender and these include all such other services required by the Contractor which are reasonably incidental thereto (including those pursuant to clause 3.1);
"Statutory Requirements"	any requirements imposed by: <ul style="list-style-type: none"> (a) any act of parliament, statutory instrument, rule or order made under any act of parliament; (b) any proclamation, regulation, rule of court, directions or guidance or bye law or approved code of practice of any local authority, statutory undertaker or of any public or private utility or undertaking or other body which has jurisdiction with regard to the Works and the Development or to whose systems the Works are or will be connected; (c) the terms of any planning permission, building regulation approval or other consent or approval required for the execution of the Works and the Development; (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972; and (e) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales;
"Sub-Contractors"	means any sub-contractors engaged by the Contractor in relation to the Works;
"Supplementary Conditions"	means those additional conditions which shall apply to any particular Order and are appended to such Order;
"Tender Documents"	means the documents issued to the Contractor by the Employer inviting a tender for the carrying out of the Works, including any additions or amendments thereto or where no such documents exist such documents that may be produced to enable the Contractor to comply with its obligations arising under the Contract;
"Works"	means those works defined in the Tender Documents or the Contract, as the case may be.

1.2	In these Conditions unless the context otherwise requires:	1.2.4.3	any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it;
1.2.1	reference to Clauses and Schedules are to Clauses and Schedules of these Conditions unless otherwise stated;	1.2.5	a reference to:
1.2.2	headings in these Conditions are for convenience only and do not affect its interpretation.	1.2.5.1	any party includes its successors in title and permitted assigns;
1.2.3	words importing individuals or persons include firms, companies, corporations, association or partnership, government or state (whether or not having a separate legal personality) and the singular includes the plural and vice versa.	1.2.5.2	"indemnify" and "indemnifying" any person against any circumstance includes indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against him and all loss or damage and all payments, costs or expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance.
1.2.4	a reference to a statute or statutory provision includes: <ul style="list-style-type: none"> 1.2.4.1 any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it; 1.2.4.2 any repealed statute or statutory provision which it re-enacts (with or without modification); and 	1.3	Subject to clause 6 nothing in these Conditions confers or purports to confer any rights on any person who is not a party to it, save for any assignee of these Conditions to whom the same shall be expressly

assigned, and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be of no effect in respect of these Conditions.

1.4 Acceptance of the Order indicates acceptance of these Conditions and of any other express conditions contained in the Order. In the event of any inconsistency or conflict between these Conditions and any such express conditions then such express conditions shall prevail.

1.5 These Conditions override any other conditions in the Consultant's quotations and/or proposals to carry out the Services or which the Consultant may subsequently seek to impose. No conduct by the Contractor shall be deemed to constitute acceptance of any terms put forward by the Consultant. The Contractor is only bound by official written orders that it produces upon its authorised documentation. This incorporates the Form of Enquiry and Form of Tender for the appointment. The Consultant shall use the Contractor's official written Order as acceptance of their offer to perform the Services.

2. PROVISION OF SERVICES

2.1 The Consultant shall carry out the Services in accordance with the terms and conditions set out herein and to the reasonable satisfaction of the Contractor, provided always that the Consultant shall not commence the provision of the Services until requested to do so in writing by the Contractor.

2.2 The Consultant shall assume, comply with and perform all the obligations of the Contractor under the Contract and any other agreements which the Contractor has brought to the attention of the Consultant in relation to the Services and so as not by any action or omission in relation thereto constitute, cause or contribute to any breach by the Contractor of any of its obligations under or in connection with or in relation to the Contract and any collateral warranties provided by the Contractor. Any damage, loss, costs, interest, fees (including professional fees) or expenses incurred by the Contractor as a result of any breach hereof by the Consultant is agreed as being within the contemplation of the parties as a probable result of any such breach.

2.3 The Consultant shall not issue instructions to, nor receive or act upon any instruction from, any third party without the prior written approval of the Contractor, except where an emergency so requires. The Consultant shall following any such emergency promptly inform the Contractor in writing giving full details of such instructions issued, received or acted upon.

2.4 The Consultant will attend such meetings as may reasonably be required by the Contractor in connection with the Works.

2.5 Whenever reasonably requested by the Contractor, the Consultant shall provide written particulars of its arrangements for carrying out Services and of the personnel and other resources which it intends to use in carrying out the Services.

2.6 The Consultant shall at all appropriate times consult and co-operate with any other party engaged by the Contractor in connection with the Works (including any Other Consultant or the Sub-Contractor) to the extent required for the proper performance and carrying out of the Services in accordance herewith or as otherwise shall be required from time to time by the Contractor.

2.7 The Consultant shall retain copies of all documents and drawings arising from the provision of the Services for as long as the Contractor may reasonably require and shall provide access thereto and deliver up such copies as may be reasonably required by the Contractor and such copies shall be provided at the Consultant's expense.

2.8 The Consultant shall be responsible for any discrepancies, inadequacies, errors or omissions (together "deficiency") in the documents, drawings, specifications and information provided by it whether or not the Contractor shall have approved the same. The Consultant shall at its sole expense promptly rectify any such deficiency by amending, replacing or supplementing the deficient document or information as appropriate.

2.9 The Consultant shall not be responsible for any errors, omissions or inadequacies in documents, drawings, information or workmanship prepared, obtained or executed by others (other than the Consultant's own servants agents and sub-consultants) save to the extent that the proper provision of the Services includes or requires the analysis and checking of or advice upon such documents, drawings, information or workmanship. The Consultant shall promptly draw to the attention of the Contractor errors, omissions or inadequacies in such documents, information or workmanship which relate to matters which are, or ought reasonably to be, within the Consultant's expertise.

2.10 The Consultant shall not, without the prior written consent of the Contractor, provide any services to any other party in connection with, or arising out of the Works.

2.11 The Consultant shall be responsible for checking the accuracy and adequacy of the Tender Documents.

2.12 Where no such documents have been produced the Consultant shall be responsible for producing properly detailed documents to allow the Contractor to fulfil its obligations in relation to the Contract.

2.13 The Consultant shall provide the Services in such a manner and time to enable the proper and efficient construction of the Works under the terms of the Contract.

2.14 Where the Consultant has commenced the provision of the Services at the request of the Contractor, the Employer or any other person then such services, insofar as they have been performed, shall be treated as having been performed as Services under the terms of these Conditions. Any

previous agreement relating to the Services or services generally shall be superseded by the terms of these Conditions.

2.15 The Consultant shall not be excused from its obligations under the Order by any force majeure event or other causes outside its control.

3. ADDITIONAL SERVICES

3.1 The Consultant shall carry out any instruction issued by the Contractor which is an alteration or modification or addition to, or omission from, the Services, or the manner and timing of the performance of the Services.

3.2 Where the Contractor instructs an alteration or modification or addition to or omission from the Services otherwise than in writing, the Consultant shall confirm such instruction in writing within 7 days from the date of the Contractor's instruction and shall provide the Contractor with such information as the Contractor reasonably requests to enable it to determine, in its opinion, the fair and reasonable addition or deduction to be made to the Fee as a consequence of such instruction.

3.3 The Consultant shall be paid in accordance with the rates in the form of tender or where no such rates are specified a fair and reasonable fee for additional services instructed or confirmed in writing provided that:

3.3.1 the necessity for providing any such services results from the Consultant's default;

3.3.2 the Consultant has given written notice to the Contractor before commencing the additional services that the Consultant requires an additional fee.

4. CONSULTANT'S OBLIGATIONS

4.1 The Consultant shall comply with all directions and/or instructions of the Contractor given to the Consultant in connection with these Conditions.

4.2 In performing the Services, the Consultant shall:

4.2.1 provide to the Contractor all advice, consents, designs, comments, directions, approvals, instructions, other information, documentation and certificates required by the Contractor promptly and in good time so as not to delay or disrupt the progress of the Works.

4.2.2 comply with the Statutory Requirements and the Necessary Consents.

4.3 The Consultant shall keep the Contractor informed on all matters of interest to a prudent client in relation to any aspect of the Works and/or the Services.

4.4 Where the Consultant is the lead consultant, the Consultant shall liaise and co-operate fully with the Other Consultants or Sub-Contractors and will act as the lead consultant and will be responsible for managing, reviewing, checking for quality, co ordinating and integrating all design services and the production of design information with the Other Consultants or the Sub-Contractors or otherwise in connection with the Works. The Consultant shall monitor the progress of the Other Consultants or the Sub-Contractors made against the Programme and keep the Contractor fully informed of such progress. The Consultant shall ensure that the Works are carried out and completed in a co-ordinated, timely, efficient and cost effective manner and in accordance with the Contractor's budget and the Programme.

4.5 Where the Consultant is not the lead consultant, the Consultant shall liaise and co operate with the Other Consultants or Sub-Contractors in relation to any aspect of the Works. Without limiting the foregoing, the Consultant acknowledges the role of [insert details] as the Lead Consultant for the Works, who shall be responsible for directing, managing, reviewing, checking for quality and co ordinating all design services, including the production of programmes and for the integration and co-ordination of design of the Works, and agrees to assist and comply with the directions of the Lead Consultant in that respect. The Consultant shall keep the Lead Consultant updated on progress made in carrying out the Services and generally insofar as the Services may affect the services being carried out or to be carried out by the Other Consultants or the Sub-Contractors.

4.6 Where the Consultant is not the lead consultant, the Consultant shall, under the direction of the Lead Consultant, co operate and assist the Lead Consultant to manage, co ordinate and integrate the Consultant's designs into the overall design for the Works and where directed by the Lead Consultant the Consultant shall, as part of the Services, undertake work as may be necessary to see that such management, co ordination and integration is completed.

4.7 The Consultant shall:

4.7.1 produce all relevant documents for incorporation into the construction phase plan and health and safety file for the Works in at least two hard copies and in computer generated or such other formats as the Contractor may reasonably require;

4.7.2 supply upon the Contractor's request at least 2 (two) sets of as built drawings, together with at least 2 (two) copies of all operation and maintenance manuals, or such other copies as may be required by the Contractor and such copies shall be provided at the Consultant's expense.

4.8 The Consultant shall liaise and co-operate with any other party engaged or to be engaged by the Contractor in connection with any part of the Works (including any sub-contractors and the suppliers).

<p>4.9 The Consultant shall not without the prior written consent of the Contractor:</p> <p>4.9.1 make or permit any change in the designs and specifications for the Works or any part of it, after they have been settled or approved by the Contractor;</p> <p>4.9.2 enter into any contractual or other commitment on behalf of the Client whether pursuant to a letter of intent or otherwise; or</p> <p>4.9.3 permit any holding or subsidiary or associate company of the Consultant or of the Other Consultants or the Sub-Contractors to appear on any bid list for the Contract or any Sub-Contract.</p> <p>4.10 The Consultant will liaise with the Contractor in control of costs for the Works and shall in conjunction with the Other Consultants or the Sub-Contractors provide such information to the Contractor to enable him to prepare and maintain accurate cost estimates at all times. The Consultant will cooperate with the Contractor to ensure cost estimates approved by the Contractor are not exceeded without the Contractor's prior written consent having been given.</p> <p>4.11 The Consultant shall keep the Contractor and the Other Consultants or the Sub-Contractors fully informed on a day-to-day basis of all changes in design and specification made or authorised by the Consultant within the scope of the Services. The Consultant shall notify the Client in writing of any matter arising out of the performance of the Services which the Consultant reasonably believes may adversely affect the interest of the Contractor in the Works.</p> <p>4.12 The Consultant shall carry out the Services regularly and diligently in accordance with the Programme. Subject to the Consultant promptly making known to the Contractor any reasonable objections to such dates, the Consultant shall so provide all drawings, details, specifications, information and services as not to cause any dates to be exceeded. If required, the Consultant shall provide to the Contractor, in the form approved by the Contractor, a programme of the Services showing particular key dates by which documents, drawings or approvals are required from the Contractor.</p> <p>4.13 The Consultant shall use its best endeavours at all times to minimise any delay or increased cost in the Works.</p> <p>4.14 If the Consultant is prevented or delayed in the performance of the Services, he shall promptly notify the Contractor giving:</p> <p>4.14.1 the specific reason for the delay or prevention;</p> <p>4.14.2 the likely effect on progress of the Works and Programme; and</p> <p>4.14.3 such actions as it believes are required to remedy the delay or problem;</p> <p>and shall use his best endeavours to resume and expedite the Services as soon as practicable save that those times as shown by the Programme and shall be extended to take into account delay caused by the Consultant not receiving in due time instructions from the Contractor which the Contractor is obliged to provide or give for which the Consultant has specifically applied in writing provided that such application was made on a date which having regard to the dates in the Programme was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same or any default by the Contractor or any person for whom the Contractor is responsible (but only to the extent that such delay is not in any way consequent upon or necessitated or contributed to by any negligence, omission, default, breach of these Conditions or breach of statutory duty of the Consultant, his employees or agents).</p> <p>4.15 The Consultant shall inform the Contractor if it knows or has reasonable cause to believe that the cost of the Works or the period for its construction is likely to be varied. Otherwise, subject to the standard of skill and care set out in clause 5.1 the Consultant shall ensure that the Works or any part of it is designed so that such element can be constructed within the allowances for it contained in the Cost Plan.</p> <p>5. DUTY OF SKILL AND CARE</p> <p>5.1 The Consultant warrants that he has exercised and will continue to exercise in the performance of its duties all the professional skill, care and diligence reasonably to be expected of a properly qualified, experienced and competent professional consultant who has held himself out to be experienced and competent in undertaking services the like of those hereby undertaken by the Consultant in relation to projects of a similar nature, scale, scope, complexity and value to the Development.</p> <p>5.2 Without derogation from Clause 5.1 the Consultant warrants and undertakes to the Contractor that it has not and shall not use or specify for use or authorise or permit to be used in the Works or any part or parts thereof nor shall it cause to be used or suffer the use of any substances or materials:</p> <p>5.2.1 known or suspected to be in themselves or as a result of the manner of their use a hazard to health;</p> <p>5.2.2 which at the time the Works had been carried out are within the building industry generally known or accepted as or reasonably suspected of:</p> <p>5.2.2.1 being deleterious in themselves;</p> <p>5.2.2.2 becoming deleterious when used in a particular situation or in</p>	<p>5.3 For the purposes of Clause 5.2 "deleterious" materials or substances are those whose durability is lower than specified or lower than might reasonably be expected of a substance or material specified or used for the purpose in which it is used or specified in the Works, or one which reduces or might reduce the durability of substances or materials to which they are applied or fixed, or reduce the durability of the structures into which they are incorporated or which reduce or might reduce the durability of the Works or part of the Works.</p> <p>5.4 Without derogation from Clause 5.1 the Consultant warrants that he has used and will use all reasonable skill care and diligence to see that his designs are in accordance with the Statutory Requirements and the Necessary Consents and in all respects in compliance with the Contract.</p> <p>5.5 The Consultant shall comply with his statutory duties under the CDM Regulations and, without derogation from Clause 5.1, the Consultant warrants that it is competent and has sufficient resources to act as a "designer" for the purposes of the CDM Regulations and in particular, but without limitation, that it:</p> <p>5.5.1 has the necessary knowledge and ability to fulfil the responsibilities set out in regulations 11 and 18 of the CDM Regulations,</p> <p>5.5.2 has, and will make available, adequate resources including a sufficient number of people to be employed, internally or from other sources, with the necessary experience and qualifications to prepare any "design" in relation to the Works.</p> <p>5.6 Without derogation from Clause 5.1 the Consultant acknowledges that the Contractor may rely exclusively upon the exercise of the Consultant's skill care and diligence under these Conditions.</p> <p>6. PAYMENT</p> <p>6.1 In consideration of the proper and timely provision and completion of the Services the Contractor shall make payments to the Consultant of the amounts and in the manner set out in the Form of Tender and Form Enquiry All amounts are exclusive of VAT which, where applicable shall be added to such amounts at the appropriate rate from time to time.</p> <p>6.2 Upon the Order provides otherwise, on an agreed date of each month, the Consultant shall submit to the Contractor a monthly application for payment in respect of services rendered in the previous month quoting the contract title, the Order number, details of the Services provided for the period to which the invoice relates and shall state the basis on which the amount applied for is calculated and shall be supplemented by such other information as may be necessary to allow the Contractor to verify the Consultant's application for payment to his satisfaction. The Consultant shall not be entitled to submit more than one application for payment in any one month and any further invoice which is submitted shall not be valid.</p> <p>6.3 The Contractor shall ascertain and confirm to the Consultant within 15 (fifteen) days from the date of receipt of the Consultant's application for payment the amount due to the Consultant in accordance with these Conditions. The Consultant shall within fifteen (15) days from the date of receipt of the Contractor's ascertainment issue to the Contractor a valid value added tax (VAT) invoice of the amount ascertained.</p> <p>6.4 Payments will become due to the Consultant seven (7) days (or such other period as agreed between the parties) after receipt by the Contractor of the Consultant's VAT invoice.</p> <p>6.5 Unless otherwise agreed in writing by the Contractor the amounts stated in the Form of Enquiry and Form of Tender shall be the Consultant's sole remuneration for the provision of the Services and the Consultant shall be responsible for the payments of all costs, taxes, expenses and disbursements in connection with the provision of the Services.</p> <p>6.6 The final date for payment (as such expression is used in Section 110 (1) (b) of the Housing, Grants, Construction and Regeneration Act 1996) shall be forty (40) days (or such other period as agreed between the parties) from the date when the payment became due to the Consultant pursuant to Clause 7.4.</p> <p>6.7 At any time up to 1 (one) day before the final date for payment (as such expression is used in Section 110 (1) (b) of the Housing, Grants, Construction and Regeneration Act 1996) the Contractor shall be entitled if he has not already done so give notice to the Consultant stating that it intends to withhold payment against the sum otherwise payable to the Consultant pursuant to Clause 7.1. To be effective the notice must specify:-</p> <p>6.7.1 the amount proposed to be withheld and the ground for withholding payment; or</p> <p>6.7.2 if there is more than one ground each ground and the amount attributable to it.</p>	<p>combination with other substances or materials and with passage of time or through poor workmanship during construction or without a higher level of maintenance than that which would normally be expected in a building or Works of the type under construction; or</p> <p>being damaged by or causing damage to the structure on which they are incorporated or to which they are affixed;</p>
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6.8	The Contractor may deduct and retain 3% of all payments under these Conditions until date of notice of completion of making good of defects in the Works issued at the end of the defects liability period in accordance with the Contract.	9.4	The Consultant warrants that it has disclosed to its insurers the terms of these Conditions and that it will disclose them to any other insurers with whom it may from time to time maintain such insurance.
6.9	The Contractor's interest in the retention shall not be fiduciary, either as trustee for the Consultant or any other person or in any other capacity; the relationship of the Contractor and the Consultant with regard to the retention shall solely be that of debtor and unsecured creditor, subject to these Conditions and the Contractor shall have no obligation to invest the retention or any part thereof.	9.5	The Consultant shall not compromise, settle or waive any claim which it may have under such insurance in respect of any professional liability which it may incur under these Conditions without the prior written consent of the Contractor provided that nothing in this clause shall preclude the Consultant's insurers from taking over (in the name of the Consultant) the defence of any claim made by the Contractor under these Conditions and (in that capacity) from conducting and settling it as they see fit.
6.10	The Contractor shall have no obligation to segregate the retention or any part of it in a separate banking account or in any other manner and shall be entitled to the full beneficial interest in the retention and every part of it (including, without limitation, interest thereon and income arising therefrom) unless and until the retention is paid to the Consultant pursuant to these Conditions.	10.	TERMINATION
6.11	The Consultant shall comply with all tax legislation (including any subordinate legislation, rules, codes of practice). If the Consultant fails to comply with its obligations under this clause 7.12, no payment shall become due under the Order until such breach is rectified. All payments due under the Order shall be subject to all tax legislation as amended from time to time.	10.1	The Contractor shall notify the Consultant in writing, if it considers that the Consultant is not discharging its obligations in accordance with these Conditions. In the event that the Consultant has not taken all reasonable steps following receipt of such notice properly to correct the matter within 15 (fifteen) working days of the date of receipt by the Consultant of such notice the Contractor may at any time after such 15 (fifteen) working day period give notice in writing to the Consultant:-
6.12	If the Contractor defaults in the payment when due of any sum payable under these Conditions (whether pursuant to a court order or otherwise) the liability of the Contractor in default shall be increased to include interest on such sum from the date when such payment was due until the date of actual payment at a rate of 1% above the base rate from time to time of Barclays Bank PLC.	10.1.1	terminating the Deed forthwith; and/or
7.	INTELLECTUAL PROPERTY RIGHTS	10.1.2	of its intention to employ and pay other persons to undertake any work in respect of such failure; and/or
7.1	The Contractor shall have a royalty-free irrevocable licence for the copyright and other intellectual property and design rights in all drawings, models, plans, elevations, sections, perspectives, design reports, specifications, bills of quantities, calculations and other works, information and documents (including those in computer generated form) produced or to be produced by or on behalf of the Consultant pursuant to the Services ("the Documents") for all purposes in connection with the Works or its operation or use. The Consultant shall not be liable for the consequences of any use of the Documents for any purpose other than those for which the Consultant produced them.	10.1.3	its intention to substitute or add to the Consultant's staff personnel employed by the Contractor or any other firm of consultants to supervise and/or perform the duties and the obligations of the Consultant under these Conditions.
7.2	The licence referred to in clause 8.1 shall carry the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of these Conditions.	10.2	All costs incurred by the Contractor arising from the exercise of its rights under Clause 11.1 shall be borne by the Consultant and the Contractor shall have the right to deduct such costs from any monies due or which may become due to the Consultant pursuant to these Conditions or recover the same as a debt from the Consultant.
7.3	The Consultant agrees and undertakes that it hereby irrevocably waives any rights it may have pursuant to Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patent Act 1988 in relation to the Documents and upon reasonable request from the Contractor at any time shall obtain a written waiver from the Consultant's employees or sub-consultants of any rights that they may have in respect of the same.	10.3	The rights and remedies contained in Clause 11.1 shall in any event be without prejudice to or derogation from any other rights and remedies available to the Contractor in respect of such breach whether under these Conditions or otherwise.
7.4	The Consultant shall supply to the Contractor on request (after as well as before the termination of the Consultant's services under these Conditions) copies of the Documents.	10.4	The Contractor may, in its absolute discretion, terminate the Consultant's engagement under these Conditions or any part of the Consultant's performance of the Services under these Conditions for any reason whatsoever, immediately following 7 (seven) days written notice to the Consultant. The Consultant acknowledges that the Order shall terminate immediately if the Contract is terminated for any reason.
7.5	If the provision of the Services by the Consultant leads to or would lead to the infringement of any patent, copyright, design or other proprietary right or any other intellectual property right of any third party the Consultant shall indemnify the Contractor against all resulting costs, claims, demands, actions or damages.	10.5	Upon termination under Clause 11.1, 11.4 and 11.7:
8.	CONFIDENTIALITY	10.5.1	the Consultant shall proceed in an orderly manner and with all reasonable speed and economy to take such steps as are necessary to terminate the Services or any part of it;
8.1	Save as may be necessary for the performance of the Consultant's services under these Conditions, or as the Contractor may allow in writing, the Consultant shall treat as confidential all information relating to these Conditions and to the Works, and shall take all reasonable steps to see that the Consultant's employees, agents and/or sub-consultants do likewise.	10.5.2	the Consultant shall, deliver to the Contractor all documents drawings and information relating to the Services (or relevant part thereof) and other items of any kind whatsoever relating to the Works in the Consultant's control, custody or possession;
9.	INSURANCE	10.5.3	the Contractor shall have no liability to the Consultant (whether by reason of any negligence by Contractor or any of its employees or agents, any non-fraudulent misrepresentation, any breach of contract, breach of statutory duty, or otherwise) for any:
9.1	The Consultant shall maintain professional indemnity insurance with reputable UK insurers with the Limit of Indemnity for each and every claim from the date of these Conditions until 12 years after practical completion (as defined in the Contract) of the Works, provided such insurance continues to be available to the Consultant at a commercially reasonable premium on terms not less favourable than those in force at the date of these Conditions. Any increase in premium arising as a result of the Consultant's claims record or any act or omission for which he is responsible shall be deemed to be within commercially reasonable terms. The Consultant shall when reasonably requested by the Contractor produce satisfactory evidence that the insurance required under these Conditions is being maintained.	10.5.3.1	loss of profits; or
9.2	The Consultant shall advise the Contractor immediately of any refusal by its insurers to maintain or renew such cover. In these circumstances the Consultant shall use its reasonable endeavours to effect and maintain professional indemnity insurance in a form and amount reasonably acceptable to the Contractor to the extent that the same can be effected on reasonable commercial terms.	10.5.3.2	damage to reputation; or
9.3	Should the Consultant fail to comply with the provisions of this clause, the Consultant shall pay the Contractor on demand any money the Contractor reasonably expends to effect insurance against any potential liability, risk or amount with respect to which such default shall have occurred.	10.5.3.3	loss of anticipated revenues or savings; or
		10.5.3.4	loss of business opportunities; or
		10.5.3.5	loss of contracts; or
		10.5.3.6	loss of goodwill; or
		10.5.3.7	loss or corruption of any data; or
		10.5.3.8	claim, action or demand made against Consultant by any third party; or
		10.5.3.9	indirect loss, damage, cost, expense, claim or other liability whatsoever;
			which arises out of or in connection with termination.
		10.6	Subject to Clause 11.5, in the event of a notice being given pursuant to Clause 11.4, the Consultant shall be entitled to be paid pro rata for the value of work satisfactorily carried out up to the date of the notice.
		10.7	The Contractor shall be entitled to terminate these Conditions immediately in the event that the Consultant commits an event of insolvency or if the Consultant, in the opinion of the Employer, is deemed to be an unsuitable person for the provision of the Services or if the Contractor is otherwise required to replace the Consultant following an instruction from the

<p>Employer. For the purposes of this Clause 11.7 an event of insolvency shall include bankruptcy, insolvency, the appointment of a liquidator, receiver, manager or administrator of the Consultant. In such circumstances the Contractor shall not be bound to make any further payment to the Consultant until after completion of the Works and the Contractor's losses consequent upon such termination have been fully determined. The Contractor shall then assess the amount of costs, losses and expenses incurred by it as a result of such abandonment or termination and the amount of such costs losses and expenses shall be a debt payable by the Consultant forthwith upon a demand for the same by the Contractor save that if such costs losses and expenses are less than the Consultant would have been entitled to pursuant to Clause 11.6 but for the abandonment or termination arising from its default, the balance shall be a debt payable by the Contractor to the Consultant.</p>	<p>that the same result from any negligence or breach of the terms hereof on the part of the Consultant, its servants, agents and/or sub-consultants.</p>
<p>10.8 The provisions of Clauses 2.6, 2.7, 2.8, 2.9, 5, 6, 7, 8, 9, 10, 11.3, 11.4, 11.5, 11.6, 13, 14 and 16 shall survive the termination of these Conditions. Termination of these Conditions, for whatever reason, shall not prejudice or affect the accrued rights or claims and liabilities of either the Contractor or the Consultant.</p>	<p>13.3 Without prejudice to any other obligation of the Consultant under these Conditions the Consultant shall give to the Contractor warranties and undertakings in the same terms as the warranties and undertakings, respectively given or to be given by the Contractor to the Employer and indemnify the Contractor in the same terms as any indemnity given by the Contractor to the Employer as though the same were specifically set out in these Conditions as obligations, indemnities, warranties, undertakings, duties, risks, responsibilities and liabilities of the Consultant to the Contractor.</p>
<p>11. SUSPENSION</p>	<p>14. PERSONNEL</p>
<p>11.1 The Contractor may by written notice at any time require the Consultant to suspend the performance of any or all of the Services. The Consultant shall take necessary steps to ensure a safe conclusion of the suspended Services and shall be paid for those Services undertaken up to the date of suspension on the basis set out in Clause 11.6.</p>	<p>14.1 The Contractor has authorised the persons stated in to act on its behalf in connection with these Conditions and the persons so stated and any further or other persons notified in writing to the Consultant from time to time shall have full authority to act on behalf of the Contractor for all purposes in connection with these Conditions.</p>
<p>11.2 The Consultant shall resume the performance of any suspended Services as soon as reasonably practicable if instructed by the Contractor. In such event, any payment made under Clause 12.1 shall rank as payment on account towards payments due to the Consultant under these Conditions.</p>	<p>14.2 The Consultant has authorised the persons stated as competent and suitably qualified to act on its behalf in the performance of the Services and the persons so stated or any replacements approved by the Contractor pursuant to Clause 15.3 from time to time shall have full authority to act on behalf of the Consultant for all purposes in connection with these Conditions and shall devote such time and attention to the Services throughout as is necessary for the proper and complete fulfilment of all the Services.</p>
<p>11.3 If a suspension lasts more than twelve (12) months the Contractor may terminate the Consultant's employment under these Conditions forthwith or the Consultant may make a written request to the Contractor for his services to be resumed, and if no instructions to resume are given within 28 (twenty eight) days after the Consultant's request, his employment under these Conditions shall then terminate.</p>	<p>14.3 The Consultant shall not remove any of the persons referred to in Clause 15.2 for so long as such persons remain engaged by the Consultant without the prior written approval of the Contractor (such approval not to be unreasonably withheld or delayed) and if such approval is given the Consultant shall if in the Contractor's reasonable opinion such replacement is necessary or appropriate replace such person with a competent and suitably qualified person.</p>
<p>11.4 The Contractor shall have no liability to the Consultant (whether by reason of any negligence by Contractor or any of its employees or agents, any non-fraudulent misrepresentation, any breach of contract, breach of statutory duty, or otherwise) for any:</p>	<p>14.4 The Contractor may request the removal of any person engaged in the performance of the Services if in the Contractor's reasonable opinion his performance or conduct is or has been unsatisfactory and the Consultant shall promptly remove such person and shall if in the Contractor's reasonable opinion such replacement is necessary or appropriate replace such person with a competent and suitably qualified person who shall have been previously approved in writing by the Contractor (such approval not to be unreasonably withheld or delayed).</p>
<p>11.4.1 loss of profits; or</p>	<p>14.5 The Consultant agrees that it will maintain at the site office where the Works are being carried out no less than 2 (two) qualified designers who shall be subject to the supervision of the person referred to in Clause 15.2.</p>
<p>11.4.2 damage to reputation; or</p>	<p>15. NON-WAIVER</p>
<p>11.4.3 loss of anticipated revenues or savings; or</p>	<p>15.1 None of the following shall modify release diminish or in any other way affect any of the liabilities and/or obligations and/or warranties of the Consultant whether arising by virtue of these Conditions and/or at law or otherwise and none of the following shall be deemed to waiver of any of its rights or remedies as to any prior or subsequent breach resultant upon negligent act omission or error by the Consultant in those respects:-</p>
<p>11.4.4 loss of business opportunities; or</p>	<p>15.1.1 failure or delay by the Contractor to insist upon strict performance of any terms or conditions of these Conditions; or</p>
<p>11.4.5 loss of contracts; or</p>	<p>15.1.2 failure or delay by the Contractor to exercise any rights or remedies whether under these Conditions and/or at law or otherwise; or</p>
<p>11.4.6 loss of goodwill; or</p>	<p>15.1.3 the acceptance by the Contractor of the Services; or</p>
<p>11.4.7 loss or corruption of any data; or</p>	<p>15.1.4 any review or appraisal of or failure to review or appraise the Services by the Contractor; or</p>
<p>11.4.8 claim, action or demand made against Consultant by any third party; or</p>	<p>15.1.5 any approval of or failure to approve any matter in connection with the Works or of any documents or information provided by the Consultant by the Contractor and/or any third party; or</p>
<p>11.4.9 indirect loss, damage, cost, expense, claim or other liability whatsoever;</p>	<p>15.1.6 any inspection of or enquiry into any relevant matter which may made or carried out by or for the Contractor or failure or omission to carry out such inspection or enquiry by the Contractor or by any independent firm company or party whosoever appointed by the Contractor; or</p>
<p>which arises out of or in connection with suspension under this Clause 12.</p>	<p>15.1.7 any payment by the Contractor to the Consultant in respect of the performance by the Consultant of the Services; or</p>
<p>12. ASSIGNMENT AND SUB-CONTRACTING</p>	<p>15.1.8 any sanction, consent, comment, direction or instruction or failure to issue any sanction, consent, comment, direction or instruction by the Contractor</p>
<p>12.1 The Contractor may assign these Conditions to any person without the consent of the Consultant.</p>	<p>15.1.9 execution of these Conditions by the Contractor.</p>
<p>12.2 The Contractor shall be entitled to charge these Conditions and/or to assign it by way of security to any mortgagee without the Consultant's consent.</p>	<p>16. HEALTH & SAFETY</p>
<p>12.3 The Consultant shall not assign these Conditions or sub-let all or any part of the Services without the prior written consent of the Contractor (both as to the principle of sub-contracting and the identity of the proposed sub-consultant).</p>	<p>16.1 Notwithstanding the provisions of Clause 5.4, the Consultant shall comply with:</p>
<p>12.4 Any consent to assignment or sub-letting given by the Contractor shall not be deemed to indicate any approval of the competence of any sub-consultant or in any way derogate from or lessen the Consultant's obligations hereunder. For the purposes of these Conditions all Services or any part thereof so sub-contracted or assigned shall be deemed to have been undertaken by the Consultant pursuant to the terms of these Conditions.</p>	<p>16.1.1 the Contractor's health and safety policy (as amended from time to time). The Consultant confirms that it has</p>
<p>13. LIABILITIES AND INDEMNITIES</p>	
<p>13.1 The Consultant shall indemnify the Contractor against any loss of or damage to the Contractor's property or that of the Contractor's and the Consultant's personnel and against any liability for sickness, injury or death of the Contractor's and the Consultant's personnel arising out of these Conditions and against all costs, claims, demands, actions and damages in connection therewith except to the extent that such loss, damage, sickness injury or death is due to the negligence or breach of its obligations hereunder by the Contractor or its servants or agents.</p>	
<p>13.2 The Consultant shall indemnify the Contractor against any costs, claims, demands, actions or damages brought or claimed by or on behalf of third parties (including the employees of the Contractor) in respect of any loss of or damage to property or personal injury, sickness or death to the extent</p>	

- full knowledge of the terms of the Contractor's health and safety policy (as amended from time to time).
- 16.1.2 the requirements of the CDM Regulations in that the Consultant is deemed to be competent in terms of health & safety and will allocate sufficient resources to prepare a design that will comply with all Health and Safety statutory provisions.
- 16.2 Where no specific legislative requirements exist, the Consultant shall comply with guidance provided by the relevant British Standard, HSE Compliance Notes and Codes of Practice or industry standards as a minimum standard of safety.
- 16.3 The Consultant will be required to provide for an assessment of the Consultant's competence, allocation of resources and knowledge of the CDM Regulations.
- 16.4 The Consultant's design must seek to reduce risk to a minimum by utilising the following:-
- 16.4.1 ensuring a safe specification/choice of material to eliminate hazards;
- 16.4.2 consider build ability to eliminate associated hazards where possible including:-
- 16.4.2.1 Debris;
- 16.4.2.2 Collapse;
- 16.4.2.3 Noise and Vibration;
- 16.4.2.4 Falling objects;
- 16.4.2.5 Manual handling;
- 16.4.2.6 Hazardous substances;
- 16.4.3 maintenance procedures can be carried out in safety.
- 16.5 The Consultant shall prepare risk assessments giving proper consideration to eliminating or reducing potential Health and Safety hazards ensuring risks are designed out wherever practicable.
- 16.6 The Consultant shall ensure that health and safety issues are developed throughout the design process and fully co-operate with the CDM Co-ordinator and provide such information that is relevant for the preparation of Construction phase plans.
- 16.7 When visiting a project the Consultant adheres strictly to the Contractor's project specific safety plan and must wear suitable personnel protective equipment as deemed appropriate.
17. NOTICES
- 17.1 Any notice required to be given by either party shall be in writing and service shall be effected by one of the following methods:
- 17.1.1 personally (when service shall be effected on delivery);
or
- 17.1.2 by first class pre-paid post (when service shall be effected on the second business day following posting).
- 17.2 Addresses for service shall be the registered offices of the parties to these Conditions or if there is none then the last known address of the party to be served.
18. LAW AND DISPUTES
- 18.1 Either party shall be entitled to refer any dispute or difference arising under the Order to adjudication in accordance with the rules set out in the Scheme for Construction Contracts (England & Wales) Regulations 1998.
- 18.2 The Order shall be governed by English law, and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.