

Conditions of Contract

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless the context otherwise requires or the Contract of which these Conditions form part specifically provide otherwise, words and phrases defined in the Contract shall have the same meanings in these Conditions and the following words and phrases shall have the meanings stated or referred to below:
- 1.1.1 "All Risks Insurance" means insurance which provides cover against any physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:
- (a) property which is defective due to:
 - (i) wear and tear;
 - (ii) obsolescence; or
 - (iii) deterioration, rust or mildew;
 - (b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective
 - (c) loss or damage caused by or arising from:
 - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government de jure or de facto or public, municipal or local authority,
 - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or
 - (iii) an Excepted Risk;
- 1.1.2 "Anti-Bribery and Corruption Requirements" means all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- 1.1.3 "Best Industry Practice" means all skill, care and diligence to be expected of a qualified and experienced architect (or other professional designer) undertaking the design of works similar in scope, character, scale and complexity to the Works unless any of the Statutory Requirements impose a higher standard in which case that higher standard will apply notwithstanding any provision of the Contract to the contrary;
- 1.1.4 "CDM Regulations" means the Construction (Design and Management) Regulations 2015 (SI 2015/51) and any associated code of practice as amended, extended or re-enacted from time to time.
- 1.1.5 "CDP Works" means, where the Contract Details provides for CDP Works, that part of the Works comprised in the Contractor's Designed Portion;
- 1.1.6 "Collateral Warranties" means any collateral warranties to be given by the Contractor and any sub-contractor and/or any sub-consultant appointed by the Contractor in connection with the Works and the Services and in favour of any person specified in the Contract Details in the draft form(s) referred to in the Minor Works Contract;
- 1.1.7 "Construction Phase Plan" means the plan referred to in regulation 2 of the CDM Regulations, including any updates and revisions.
- 1.1.8 "Contract" means the Minor Works Contract, including the Contract Details and the Schedules to the Minor Works Contract (including these Conditions) and any other documents specified or referred to in them;
- 1.1.9 "Contract Administrator" means the person stated in the Contract Details;
- 1.1.10 "Contract Details" means the Contract Details set out in the Minor Works Contract;
- 1.1.11 "Contract Sum" means the sum to be paid to the Contractor for the execution of the Works and the Services as set out or referred to in the in the Contract Details;
- 1.1.12 "Contractor" means the individual, firm or company stated in the Contract Details;
- 1.1.13 "Contractor's Designed Portion", where applicable, has the meaning set out in the Contract Details;
- 1.1.14 "Contractor's Persons" means all employees, directors and partners of the Contractor and all contractors, consultants and agents of any tier and their respective employees, directors and partners engaged by or on behalf of the Contractor on or in connection with the Works or any part of them and any other person properly on the site in connection therewith;
- 1.1.15 "Date for Practical Completion " means the date by which the Works and the Services are to achieve Practical Completion as such date is stated in the Contract Details;
- 1.1.16 "Deleterious" means any goods, materials, equipment, products or kits that are generally known, accepted, or generally suspected, in the construction and engineering industry at the relevant time as:
- (a) posing a threat to the health and safety of any person;
 - (b) posing a threat to the structural stability, durability, performance or physical integrity of the Works or any part or component of the Works;
 - (c) reducing, or possibly reducing, the normal life expectancy of the Works, any part or component of the Works or any project, structure, machinery or development of which the Works form part;
 - (d) not being in accordance with any relevant British or international (including European) standards, relevant codes of practice, good building practice or or any applicable agrément certificate issued by the British Board of Agrément; or
 - (e) having been supplied or placed on the market in breach of the UK version of Regulation (EU) No. 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018 and the Construction Products Regulations 2013 (SI 2013/1387);

- 1.1.17 "Effective Date" means the date of the Contract;
- 1.1.18 "Excepted Risk" means all and any of ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- 1.1.19 "Force Majeure Event" means any cause affecting, preventing or hindering the performance by a party of its obligations under the Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Contractor, the Contractor's Persons or any other failure in the Contractor's supply chain;
- 1.1.20 "Funder" means a person that has provided, or is to provide, finance in connection with the whole or any part of the Works or the completed Works or the Site;
- 1.1.21 "Insolvent" means
- (a) the making of an administration, bankruptcy or winding-up order against it, appointment of an administrative receiver, receiver or manager of its property, its passing of a resolution for voluntary winding-up without declaration of solvency or any other event referred to in section 113, sub-sections (2) to (5) of the Housing Grants, Construction and Regeneration Act 1996;
 - (b) otherwise entering administration within the meaning of Schedule B1 to the Insolvency Act 1986;
 - (c) entering into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction);
 - (d) (in the case of a partnership) each partner being the subject of an individual arrangement or any other event or proceedings referred to in this condition 1.1.21;
 - (e) (in the case of a company) the coming into force of a moratorium pursuant to Part AI of the Insolvency Act 1986 with respect to it; or
 - (f) (in the case of a company) the making of an order sanctioning a compromise or arrangement pursuant to Part 26A of the Companies Act 2006 with respect to it.
- 1.1.22 "Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- 1.1.23 "Interim Valuation Date" means as stated in the Contract Details;
- 1.1.24 "Joint Names Policy" means a policy of insurance which notes the interest of the Contractor and under which the insurers include a waiver of subrogation rights against any person named as an insured, or recognised as an insured or noted thereunder;
- 1.1.25 "Local or Public Authority" means a body that is a 'contracting authority' as defined by the Procurement Act;
- 1.1.26 "Materials" means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Works and the Services (and completed Works and Services) and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Works and the Services (and completed Works and Services);
- 1.1.27 "Minor Works Contract" means the Minor Works Contract between the University and the Contractor of which these Conditions form part;
- 1.1.28 "Practical Completion" means the date on which the Contract Administrator has certified that in its opinion the Works have reached practical completion and have passed the Tests for Practical Completion and the Practical Completion Deliverables have been met;
- 1.1.29 "Practical Completion Deliverables" means any documents or other matters described as such in the Contract Details;
- 1.1.30 "Procurement Act" means the Procurement Act 2023;
- 1.1.31 "Programme" means the programme contained or referred to in the Contract Details setting out the date(s) by which the Works and the Services are to reach Practical Completion in accordance with condition 9;
- 1.1.32 "Purchaser" means any person with whom the University has entered or may enter into a contract in relation to the purchase of the Site or any part of part of it;
- 1.1.33 "Rectification Period" means the period stated as such in the Contract Details;
- 1.1.34 "Services" means the services (if applicable) described in the Contract Details;
- 1.1.35 "Site" means the location(s) where the Works and the Services are to be carried out and completed as set out in the Contract Details;
- 1.1.36 "Site Materials" means all unfixed materials and goods delivered to and placed on or adjacent to the Works which are intended for incorporation therein.
- 1.1.37 "Site Regulations" means the University's site rules and regulations notified to the Contractor on or before the date of the Contract as may be updated from time to time;
- 1.1.38 "Special Terms" means any special terms and conditions set out or referred to in the Contract Details as applying to the Contract;
- 1.1.39 "Specification" means the specification, drawings and/or work schedules attached and/or referred to in the Contract Details including any requirements referred to in such specification, drawings and/or work schedules;
- 1.1.40 "Specified Contractor Default" means the Contractor:
- (a) without reasonable cause wholly or substantially suspends the carrying out of the Works or the Services; or
 - (b) fails to proceed regularly and diligently with the Works or the Services;
 - (c) fails to comply with condition 20.4; or

- (d) fails to complete the Works the Longstop Date stated in the Contract Details.
- 1.1.41 "Specified Suspension Event" means:
 - (a) the Contract Administrator's instructions under condition 6.4; and/or
 - (b) any impediment, prevention or default, whether by act or omission, by the University, the Contract Administrator or any University's Person excluding any instructions as are referred to in condition 27.1.2 and unless caused by the negligence, breach or default of the Contractor or any Contractor's Person.
- 1.1.42 "Specified University Default" means the University:
 - (a) does not pay by the final date for payment the amount due to the Contractor in accordance with conditions 18.7 to 18.12 and/or any VAT properly chargeable on that amount; or
 - (b) interferes with or obstructs the issue of any certificate due under this Contract; or
 - (c) fails to comply with condition 20.4.
- 1.1.43 "Specified Perils" means fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks.
- 1.1.44 "Statutory Provider" means any person executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by such person upon or in connection with that work.
- 1.1.45 "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 and the Services or performance of any obligations under the Contract and any regulation or bye-law of any person which has any jurisdiction with regard to the Works and the Services or with whose systems the Works are, or are to be, connected and including for the avoidance of doubt any planning permission relating to the Works and the Services;
- 1.1.46 "Tenant" means any person who has entered or may enter into a lease in relation to the Site or any part or parts of it;
- 1.1.47 "Termination Payment" means a payment to which conditions 25.6.5, 28.1.4 and 29 refer;
- 1.1.48 "Tests for Practical Completion" means the Tests for Practical Completion (if any) set out and/or referred to in the Contract Details;
- 1.1.49 "Third-Party Agreement(s)" means any set out in the Contract Details and any other agreements subsequently supplemented by an instruction of the University;
- 1.1.50 "University" means the University of Newcastle upon Tyne (an exempt charity) of Kings Gate, Newcastle upon Tyne NE1 7RU;
- 1.1.51 "University's Persons" means all persons employed, engaged or authorised by the University including the University's Representative but excluding the Contractor, Contractor's Persons, the Contract Administrator and any Statutory Provider;
- 1.1.52 "University's Representative" means as stated in the Contract Details;
- 1.1.53 "VAT" means Value Added Tax chargeable in the UK;
- 1.1.54 "Variation" means an instruction to the Contractor for an addition to, omission from, or other change in the Works or the order or manner in which they are to be carried out including instructions effecting changes in the Specification that necessitate an alteration or modification of the design of the CDP Works;
- 1.1.55 "Works" means all works described in the Contract Details (including, without limitation, any CDP Works and the provision and /or instalment of any plant, equipment, goods and materials) used in such Works) necessary to fulfil the Contract;
- 1.1.56 "Works Commencement Date " means the date set out in the Contract Details;
- 1.1.57 "Works Insurance Policy" means the Joint Names Policy or policies covering the Works and Site Materials to be effected and maintained under condition 14.1.2; and
- 1.1.58 "working day" means a day (other than a Saturday or Sunday, Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday).
- 1.2 In the Contract, unless the context otherwise requires:
 - 1.2.1 a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and will include all subordinate legislation made from time to time under that legislation or legislative provision;
 - 1.2.2 any words following the terms including, include, in particular, for example or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms;
 - 1.2.3 reference to writing or written excludes fax but not email;
 - 1.2.4 the headings, are included for convenience only and shall not affect the interpretation of the Contract;
 - 1.2.5 the singular includes the plural and vice versa; and
 - 1.2.6 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate.
- 1.3 Where under the Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday that day shall be excluded.
- 2. CONTRACT**
 - 2.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - 2.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
 - 2.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the

Contract.

- 2.4 No terms or conditions endorsed upon, delivered with or contained in the Contractor's tender submission or priced document, acknowledgement or acceptance of the Minor Works Contract including the Contract Details and the Schedules will form part of the Contract (unless they are expressly agreed by the University and set out in the Special Terms) and the Contractor expressly waives any right which it otherwise might have to rely on such terms or conditions.
- 2.5 Without prejudice to the change control procedure in Schedule 4 to the Minor Works Contract in relation to Variations, no change to the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives). Where the Contract is executed as a deed, any agreed change to the Contract shall be by deed.

3. CONTRACTOR'S GENERAL OBLIGATIONS

- 3.1 The Contractor shall regularly and diligently carry out and complete the Works and the Services in accordance with the Contract by the Date for Practical Completion or such later date for Practical Completion as is fixed under condition 7.5.
- 3.2 The Contractor shall carry out and complete the Works in a good, proper and workmanlike manner in accordance with the Construction Phase Plan, the Statutory Requirements and the Specification and, so far as not described or stated in the Specification or stated to be a matter for the Contract Administrator's approval, the quality of materials or standards of workmanship shall in the case of the Contractor's Designed Portion of a standard appropriate to it and shall in any other case be of a standard appropriate to the Works, and in each case shall be of satisfactory quality. Notwithstanding any other provision of the Contract, the term approval, when used in the context of any approval to be given by the University or the Contract Administrator, shall have the meaning "acceptance of general principles only", and no such approval, perusal, inspection, issuing of any certificates or documents in relation to Practical Completion or any other term of the Contract or any consent given by or on behalf of the University or the Contract Administrator, nor any inspection of or failure to inspect the Works and the Services, shall diminish or relieve the Contractor from any of his obligations or liabilities under the Contract.
- 3.3 The Contractor will not specify or use anything in the Works which, at the time of specification or use is Deleterious.
- 3.4 The Contractor shall pay any fees or charges (including any rates or taxes) legally demandable under any of the Statutory Requirements. Such fees and charges shall not be reimbursable to the Contractor by the University unless otherwise agreed.
- 3.5 The Contractor shall give all notices required by the Statutory Requirements.
- 3.6 The Contractor shall provide to the University all information that the University reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.
- 3.7 The Contractor shall provide all information which is reasonably required by the University to ensure that the Works and the Services comply with and that the University is able to fulfil its obligations under the Contract.
- 3.8 The Contractor shall perform and assume, as part of its obligations under the Contract, the University's obligations, liabilities and risks contained within the Third-Party Agreement(s) that relate to the carrying out of the Works and the Services and not cause or contribute to any breach by the University of the Third-Party Agreement(s). The Contractor shall ensure that the Contractor's Persons shall so perform and assume such University's obligations, liabilities and shall not so cause or contribute to such breach. University.
- 3.9 The Contractor shall take full responsibility for the adequacy, stability and safety of all its operations and methods necessary for the satisfactory and safe performance of the Works and the Services.
- 3.10 The Contractor shall co-ordinate, interface, integrate and sequence the Works and the Services with the works and activities of any third-party contractors working on or adjacent to the Site so as to minimise any delay, obstruction to or interference with the carrying out of the Works and the Services and the activities of such third parties. In doing so, the Contractor shall (if required but without limitation) prepare joint programmes and method statements, arrange suitable means of access to and egress from the relevant parts of the Site and provide such facilities, security and storage arrangements as may be required to facilitate the proper and expedient undertaking of the Works and the Services and the works and activities of such third-party contractors.
- 3.11 The Contractor shall ensure that at all reasonable times it has on the site a competent person in charge.
- 3.12 The Contractor shall use all reasonable endeavours to ensure that it and the Contractor's Persons employ only such personnel who are careful, competent suitably skilled and experienced. The University may direct the Contractor to, within 3 working days or immediately where there is a threat to health and safety, cease to employ, under any contract, any person employed by the Contractor or the Contractor's Persons who, in the reasonable opinion of the University, misconducts himself or herself or is incompetent or negligent in the performance of their duties or obligations.
- 3.13 The Contractor shall take all reasonable steps to encourage Contractor's Persons to be registered cardholders under the Construction Skills Certification Scheme or qualified under an equivalent recognised qualification scheme.
- 3.14 If stated in the Contract Details as being applicable, on or before the Effective Date (or such other date as the University may require) the Contractor shall procure the execution and delivery of the following security documents;
- 3.14.1 a performance bond for the value specified in the Contract Details, in the form referred to in the Minor Works Contract;
- 3.14.2 a parent company guarantee from the person specified in the Contract Details, in the form referred to in the Minor Works Contract; and
- 3.14.3 advanced payment bond as specified in the Contract Details, in the form referred to in the Minor Works Contract;
- and the provision of these documents shall be a condition precedent to the Contractor's right to receive payment under the Contract and the University may withhold any monies due and owing to the Contractor until such time as these documents have been provided to the satisfaction of the University.
- 3.15 If required under the Contract Details, within 10 working days or a written request to do so, the Contractor shall procure the execution and delivery of Collateral Warranties by the Contractor and by others required under the Contract Details to give Collateral Warranties to the University in favour of any person specified in the Contract Details as the University shall advise. The Contractor acknowledges and agrees that the provision of the Collateral Warranties shall be a condition precedent to the Contractor's right to receive payment under the Contract and that the University may withhold any and all monies otherwise due and owing to the Contractor until such time as the Collateral Warranties are provided.
- 3.16 The Contractor shall prevent any nuisance (including any noisy working operations), inconvenience, disturbance or other interference with the rights of any third parties (including but not limited to neighbour and members of the public) or any statutory undertaker, of which the Contractor is or ought reasonably to have been aware, arising out of the carrying out of the Works and the Services. The Contractor shall assist the University in defending any action or proceedings in relation to any such nuisance, disturbance or interference. The Contractor shall be responsible for and shall indemnify the University 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 this condition.

- 3.17 The Contractor shall ensure that there is no trespass by the Contractor on or over any adjoining or neighbouring property arising out of the Works and the Services and shall take all reasonable safety and other measures to prevent damage or injury to any persons including the occupiers of adjoining or neighbouring property and members of the public. If carrying out the Works and the Services or any obligation pursuant to the Contract would otherwise be an act of trespass, the Contractor shall, at no cost to the University, obtain the prior written agreement of the owners or occupiers of any adjoining or neighbouring property to that act.
- 3.18 In undertaking the Works and the Services, the Contractor is deemed to have inspected and examined the Site and its surroundings and to have sufficient knowledge of the nature and condition of the Site, the condition and/or structural stability and integrity of all buildings, structures on the Site and the physical ground conditions affecting the Site (including the existence of any contamination, pollution, structures, pipes and cables and service installations) and accepts that the risk of encountering any such conditions and/or associated matters during the course of the Works and the Services shall be borne by the Contractor. To the extent that the University has provided the Contractor with any survey, investigation report or other document in relation to the Works and the Services, the Contractor shall not be entitled to rely upon any such document and acknowledges that the University makes no representation nor warranty as to the accuracy or sufficiency of the same and shall rely solely upon its own inspection of the Site, ground conditions, structures, buildings and surrounding areas. The Contractor shall not be entitled to claim any extension of time and/or for any loss and expense in respect of the nature and condition of the Site, physical ground conditions and/or condition, stability and/or integrity (or otherwise) of any buildings and/or structures at or around the Site.

4 CONTRACTOR'S DESIGNED PORTION

- 4.1 In relation to the Contractor's Designed Portion, the Contractor:
- 4.1.1 shall carry out and complete the design for the Contractor's Designed Portion, including, so far as not described or stated in the Specification, the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the CDP Works, in each case exercising Best Industry Practice. and so that design complies with Statutory Requirements;
- 4.1.2 will be fully responsible in all respects for the design of the CDP Works including any design work undertaken by Contractor's Persons;
- 4.1.3 where the Contract Details specify, will be fully responsible in all respects for the designs proposed by or on behalf of the University (whether or not that design was undertaken on or before the Effective Date) and the Contractor shall be responsible for verifying the adequacy of such design;
- 4.1.4 shall comply with regulations 8 to 10 of the CDM Regulations and (where applicable) regulations 11F, 11J (2), 11J (4) and 11K of the Building Regulations 2010 and with the Contract Administrator's directions for the integration of the design of the Contractor's Designed Portion with the design of the Works as a whole;
- 4.1.5 shall as and when necessary without charge provide the Contract Administrator with copies of such drawings or details, specifications of materials, goods and workmanship, and (if requested) related calculations and information, as are reasonably necessary to explain the Contractor's Designed Portion, by such means and in such format, if any, as are specified in the Specification and otherwise, they shall be supplied in the form of not less than two copies; and
- 4.1.6 unless otherwise stated in the Specification, shall allow not less than 7 working days from the date of their receipt for the Contract Administrator's comments on each drawing or other document before commencing the work to which they relate.
- 4.2 Where the Contract Details for this condition 4.2 require, on the date of the Contract the University and the Contractor shall execute a deed of novation in the form in Schedule 10 in respect of such appointment(s) of design consultant(s) that the University has previously entered into with such design consultant(s), copies of which have been provided to the Contractor. The University will arrange for the design consultant(s) to execute each deed of novation.
- 4.3 Where the Contract Details for condition 4.2 require a novation, where applicable the Contractor shall procure the execution and delivery of the Collateral Warranties under the novated appointment(s) of design consultant(s) in accordance with the terms of those appointments.

5 INCONSISTENCIES AND DIVERGENCES

- 5.1 The Contractor shall notify the University of any inconsistency:
- 5.1.1 In the documents prepared by the Contractor for the CDP Works;
- 5.1.2 between such documents and the Specification; and/or
- 5.1.3 between such documents and the Statutory Requirements and of its proposed amendments to correct or remove any inconsistency.
- 5.2 The inconsistency shall be corrected by the Contractor at its own expense after the Contract Administrator has approved the manner in which the Contractor proposes to deal with the inconsistency. The Contractor shall not be entitled to any adjustment of the Contract Sum or any extension of the Date for Practical Completion or such later date for Practical Completion as is fixed under condition 7.5.
- 5.3 Subject to condition 5.4, any inconsistency in the documents and drawings which form the Specification shall be corrected and any such correction which results in an addition, omission or other change shall be treated as a Variation under condition 6.4.
- 5.4 Where the Contract Details specify that the Contractor shall be fully responsible for any designs proposed by or on behalf of the University (whether or not that design was undertaken on or before the Effective Date) under condition 4.1.3, then, if the Contractor becomes aware of any inconsistency and/or inadequacy in the Specification and/or between the Statutory Requirements and the Specification, the Contractor shall notify the University of any corrections required to the Specification and/or the Contractor's Designed Portion. The inconsistency and/or inadequacy shall be corrected by the Contractor at its own expense after the Contract Administrator has approved the manner in which the Contractor proposes to deal with the inconsistency and/or inadequacy. The Contractor shall not be entitled to any adjustment of the Contract Sum or any extension of the Date for Practical Completion or such later date for Practical Completion as is fixed under condition 7.5
- 5.5 If the Contractor becomes aware of any inconsistency between the Statutory Requirements and any instruction from the Contract Administrator, it shall immediately notify the Contract Administrator, specifying the inconsistency.

6 INSTRUCTIONS, VARIATIONS AND PROVISIONAL SUMS

- 6.1 The Contract Administrator shall issue any further information and instructions necessary for the proper carrying out of the Works and the Services and all certificates required by these Conditions.
- 6.2 The Contract Administrator may issue instructions and the Contractor shall forthwith comply with them. If instructions are given orally, they shall not have effect until the Contract Administrator confirms them in writing.

- 6.3 If the Contractor fails to comply within 5 working days after receipt of a notice from the Contract Administrator requiring compliance with any other instruction, the University may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The Contractor shall be liable for all additional costs incurred by the University in connection with such employment and an appropriate deduction may be made from the Contract Sum.
- 6.4 The Contract Administrator may without invalidating the Contract issue written instructions requiring a Variation before any work to carry out the Variation is commenced. The parties shall follow the change control procedure in Schedule 4 to the Minor Works Contract in relation to any proposed Variation.
- 6.5 The Contract Administrator shall issue instructions in regard to the expenditure of any Provisional Sums included in the Contract Details. Failing agreement on price, such instructions shall be valued on a fair and reasonable basis using any relevant prices in the Variation rates referred to in the Contract Details.
- 6.6 As soon as possible and in any event before the Date for Practical Completion (as extended, if at all, under the Contract), the Contractor is encouraged to propose changes to the design of the Works and/or the Specification and/or to the Programme for their execution that may benefit the University, whether in the form of a reduction in the Contract Sum or their associated life cycle costs. The Contractor shall provide details of its proposed changes, together with its assessment of the benefit it believes the University may obtain, expressed in financial terms, and a quotation.
- 6.7 Where the University wishes to implement a change proposed by the Contractor under condition 6.6, the parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the Date for Practical Completion (as extended, if at all, under the Contract). Upon agreement, the change and the amount of any adjustment of the Contract Sum shall be confirmed in a Contract Administrator's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the Date for Practical Completion (as extended, if at all, under the Contract).
- 6.8 Nothing shall prevent the University from utilising other contractors to implement such changes proposed under condition 6.6 after Practical Completion.

7 TIME

- 7.1 The Works may be commenced on the Works Commencement Date.
- 7.2 The Contractor shall make regular and diligent progress to ensure that the Works and the Services reach Practical Completion by the Date for Practical Completion or by such later date for Practical Completion as is fixed under condition 7.5.
- 7.3 If it becomes apparent that the Works will not be completed by the Date for Practical Completion or such later date for Practical Completion as is fixed under condition 7.5, the Contractor shall thereupon notify the Contract Administrator.
- 7.4 Subject to condition 7.10, where the delay occurs by reason of the following:
- 7.4.1 any delay impediment, prevention or default by the University or University's Persons;
 - 7.4.2 suspension of the Work and/or the Services by the University;
 - 7.4.3 any Variation; and/or
 - 7.4.4 a Force Majeure Event

that are not occasioned by any act, omission or default (whether negligence, breach of contract, breach of statutory duty or otherwise) on the part of the Contractor or the Contractor's Persons then the Contractor may give written notice to the Contract Administrator to the effect that it considers itself entitled to a reasonable extension of time for Practical Completion of the Works and the Services.

- 7.5 Where the Contractor gives such notice, the Contract Administrator shall give such extension of time for Practical Completion as may be reasonable and notify the parties accordingly.
- 7.6 If the Works are not completed by the Date for Practical Completion or such later date for Practical Completion as is fixed under condition 7.5, the University may require the Contractor to pay or allow to the University liquidated damages at the rate stated in the Contract Details between such Date for Practical Completion and the date of Practical Completion.
- 7.7 Subject to condition 7.8, the University may deduct the liquidated damages from any sum due to the Contractor under the Contract (provided a notice of that deduction has been given under condition 18.10 or (if applicable) conditions 29.3 or 29.5) or recover those damages from the Contractor as a debt.
- 7.8 If the University intends to deduct any such damages from any sum due to the Contractor under the Contract or thereafter recover such damages as a debt, it shall additionally notify the Contractor of that intention not later than the due date for the final payment under condition 18.18 or (if applicable) the Termination Payment under condition 25.6.4 or 28.1.3.
- 7.9 If the Contractor's employment is terminated under the Contract:
- 7.9.1 where the date of termination occurs prior to the date of Practical Completion, the provisions of conditions 6.4 to 6.6 shall apply in respect of the period between the Date for Practical Completion or as later fixed under condition 6.3 and the date of termination, and the reference to the date of Practical Completion in condition 6.4 shall be deemed to be a reference to the date of termination; and
 - 7.9.2 in respect of the period after the date of termination, subject to condition 6.7.1, the University shall not be empowered to require the payment of or to deduct liquidated damages under conditions 6.4 to 6.5 but the provisions of this condition 6.7.2 shall be without prejudice to and not in substitution of any other rights and remedies of the University.
- 7.10 The Contractor shall not be entitled to any extension of time where:
- 7.10.1 the event or cause of delay is concurrent with another delay the cause of which would not entitle the Contractor to an extension of time for Practical Completion of the Works under these Conditions; and
 - 7.10.2 the Contractor has not given notice under condition 7.4 as soon as possible and in any event no later than the 20th working day following the day on which the Contractor became aware that the Works are likely to be delayed;
 - 7.10.3 the Contractor does not give sufficient detail as to the nature and extent of the delay upon the Works and the Services; and/or
 - 7.10.4 the Contractor does not use its best endeavours to prevent and mitigate any delay to the Works and the Services.

8 TESTS FOR PRACTICAL COMPLETION

- 8.1 Where applicable as stated in the Contract Details, tests which are required as a pre-condition of Practical Completion shall be carried out in the presence of the University and the Contract Administrator in accordance with the Contract.
- 8.2 If any part of the Works and the Services fail to pass the tests, such failure shall be notified by the University to the Contractor and the Contractor shall rectify the failure. Upon rectification, the Contractor shall notify the University in writing and shall give the University reasonable notice of when the tests shall be repeated by the Contractor. The repeat tests shall be carried out in the presence of the University, the Contract Administrator and the Contractor. This process shall be repeated until the tests are passed to the satisfaction of the University and the Contract Administrator in accordance with the Contract.
- 8.3 Within 3 working days after testing and any repeat testing, the Contractor shall provide to the University one copy of a written schedule of the tests carried out and their results.

9 PRACTICAL COMPLETION

- 9.1 The Contract Administrator shall certify the date when in its opinion the Works have reached Practical Completion, any tests referred to in condition 8.1 have been passed and the Contractor has complied sufficiently with conditions 4.1.5 and 20.4 in respect of the supply of documents and information.

10 RECTIFICATION PERIOD

- 10.1 If any defects, shrinkages or other faults in the Works appear within the Rectification Period due to materials, goods or workmanship not in accordance with the Contract or any failure of the Contractor to comply with its obligations in respect of the CDP Works, the Contract Administrator shall not later than 14 days after the expiry of the Rectification Period notify the Contractor and the Contractor shall make good such defects, shrinkages or other faults entirely at its own cost within 10 working days or such longer period as the Contract Administrator agrees unless the Contract Administrator with the University's consent instructs otherwise. If the Contract Administrator instructs otherwise, an appropriate deduction may be made from the Contract Sum.
- 10.2 If the Contractor shall fail to rectify the defects, shrinkages and faults in accordance with condition 10.1, the University may take such steps as may in all the circumstances be reasonable to make good such defects, shrinkages and faults and the University shall be entitled to charge the Contractor for the cost of making them good and any resulting losses and/or deduct such costs and losses from any sums due to the Contractor. The provisions of this condition 10.2 are without prejudice to any other rights or remedies of the University. Such action shall not relieve the Contractor of its continuing obligations under the Contract.
- 10.3 The Contract Administrator shall, when in its opinion the Contractor's obligations under condition 10.2 have been discharged, forthwith issue a certificate specifying the date they were discharged.

11 SITE ACCESS

- 11.1 The University shall afford access to so much of the Site as is necessary for the performance of the Works and the Services, but such access may not be exclusive to the Contractor and the Contractor shall, as directed by the University, allow others to work on the Site and afford them all reasonable facilities to do so and co-operate with them.
- 11.2 The Contractor agrees to give access to the Works and the Services to the University and any third parties authorised by the University at all reasonable times for purposes of inspecting the Works and the Services provided that reasonable notice has been given to the Contractor.

12 SITE REGULATIONS

- 12.1 The Contractor shall comply with the Site Regulations.
- 12.2 The Contract Administrator may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the site of any person employed thereon.
- 12.3 Without limiting the Contractor's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of the Contract, the Contractor shall:
- 12.3.1 establish and maintain a culture and working environment in which health and safety is of paramount concern;
 - 12.3.2 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
 - 12.3.3 ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
 - 12.3.4 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and
 - 12.3.5 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.
- 12.4 The Contractor shall be responsible for receiving and off-loading all deliveries to the Site relating to the Works and the Services.
- 12.5 The Contractor shall use all reasonable endeavours to prevent damage to any highway or bridge on the routes to the Site by any traffic of the Contractor or any sub-contractor.
- 12.6 In carrying out the Works and the Services the Contractor shall ensure that:
- 12.6.1 the Site is secured at all times so as to prevent unauthorised entry so far as is possible; and
 - 12.6.2 no signs or advertisements are displayed on or around the Site without the University's consent;
 - 12.6.3 the Site is kept tidy and clear of rubbish and no goods or materials are deposited or stored on or around the Site (save to the extent that they are required within a reasonable time for the carrying out of the Works and the Services);
 - 12.6.4 no soil, gravel or other minerals are removed from the Site except to the extent necessary for the carrying out of the Works and the Services;
 - 12.6.5 unless the Contract Details provide otherwise, suitable arrangements are made with the relevant authorities for the supply of water, electricity and other utilities to enable the carrying out of the Works and the Services; and
 - 12.6.6 on Practical Completion the Site is left in a clean and tidy condition, with all unused materials and plant, equipment and temporary structures having been removed.
- 12.7 In carrying out the Works and the Services the Contractor shall comply with any agreement with a third party relating to the Site and of which a copy, or relevant extract, has been provided to the Contractor before the date of the Contract.

13 SUB-CONTRACTING

- 13.1 The Contractor shall not without the University's consent subcontract the whole or any part of the Works or the Services. In no case shall any such consent or any sub-contracting in any way affect the Contractor's obligations under any other provision of the Contract and the Contractor shall be responsible for the performance of any sub-contracted obligations as if it had performed such obligations itself.

- 13.2 As a condition precedent to the University providing its consent to the sub-contracting of all or any part of the Services or the CDP Works, the Contractor shall first obtain the University's consent to the Contractor's proposed form of sub-contract.
- 13.3 The Contractor shall ensure that any sub-contract(s) entered into by the Contractor contain(s) such provisions that comply with the Contract in so far as relevant to the sub-contracted Works and Services, and without limitation:
- 13.3.1 the sub-contractor's employment under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor's employment under the Contract; and
 - 13.3.2 (without limiting either party's statutory and/or regulatory duties) each party to the sub-contract shall in relation to the Works and any Services and the Site comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations.
- 13.4 Within 5 working days of receipt of a request from the University, the Contractor shall provide the University with signed versions of any and all sub-contracts entered into by the Contractor in connection with the Contract.

14 INSURANCE AND INDEMNITIES

- 14.1 Where the University is the freehold owner of the Site, the University shall effect and maintain:
- 14.1.1 a Joint Names Policy in respect of the existing structures together with the contents of them owned by it or for which it is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils; and
 - 14.1.2 a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Details to cover professional fees)
- and shall maintain such Joint Names Policies up to and including the date of Practical Completion or, if earlier, the date of termination of the Contractor's employment.
- 14.2 If during the carrying out of the Works any loss or damage affecting any executed work or Site Materials is occasioned by any of the risks covered by the Works Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any existing structure or its contents, the Contractor shall forthwith notify the Contract Administrator.
- 14.3 Where loss or damage affecting executed work or Site Materials is occasioned by any risk covered by the Works Insurance Policy, the Contractor, after any inspection required by the insurers under that policy, shall and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris and proceed with the carrying out and completion of the Works.
- 14.4 The occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Contractor under the Contract. Reinstatement work in relation to loss or damage to executed work or Site Materials shall be treated as a variation under condition 6.4. The Contractor, for itself and its sub-contractors, shall authorise the insurers to pay to the University all monies from the Works Insurance Policy, and from any policies covering existing structures or their contents that are effected by the University.
- 14.5 If there is material loss of or damage to any existing structure, the University shall be under no obligation to reinstate that structure, and the University may terminate the Contractor's employment under the Contract under condition 27.2.
- 14.6 The Contractor shall take out and maintain (with reputable insurers lawfully carrying on business in the UK or the EU) all insurances required by law and as required in the Contract Details and the Contractor shall procure that any consultants and any sub-contractors with a design liability that the contractor or Contractor's Persons appoint take out and maintain (with reputable insurers lawfully carrying on business in the UK or the EU) professional indemnity insurance or product liability insurance (as appropriate) as required in the Contract Details.
- 14.7 Each party shall within 10 working days of a request of the other party supply such documentary evidence as the other party may reasonably require that the policy or cover that each is required to take out has been effected and remains in force.
- 14.8 The Contractor shall be liable for, and shall indemnify the University against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or death of any person arising out of or in the course of or caused by the carrying out of the Works and the Services, except to the extent that the same is due to any act or neglect of the University or any University's Person.
- 14.9 The Contractor shall be liable for, and shall indemnify the University against:
- 14.9.1 any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal (other than loss, injury or damage to the Works and/or Site Materials) in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and is due to any negligence, breach of contract, breach of statutory duty, omission or default of the Contractor or any Contractor's Person;
 - 14.9.2 the excess on the Joint Names Policies referred to in condition 14.1 and on any other insurance policies relating to the Works and the Services that the University procures and of which the University provides details to the Contractor; and
 - 14.9.3 any expense, liability, loss, claim or proceedings in respect of negligent performance or breach of any obligation of the Contractor in relation to the Contract.
- 14.10 The Contractor shall comply with the Joint Names Policies referred to in condition 14.1 and any other insurance policies relating to the Works and the Services that the University procures provided that the University provides details of the terms of those policies to the Contractor.

15 RISK AND TITLE

- 15.1 Title in any materials or goods provided as part of the Works and the Services shall pass to the University on the earlier of:
- 15.1.1 delivery of those materials or goods to or adjacent to the Site; and
 - 15.1.2 payment by the University to the Contractor in respect of those materials or goods.
- 15.2 Site Materials shall not be removed from storage on the Site (except for use in the Works) without the University's consent. The Contractor shall remain responsible for any loss or damage to them until Practical Completion.

16 INTELLECTUAL PROPERTY RIGHTS AND MATERIALS

- 16.1 Where Materials have been created by the Contractor and/or Contractor's Persons specifically for the University in the provision of the Works and the Services:
- 16.1.1 any Intellectual Property Rights which come into existence as a result of the provision of the Works and the Services by the Contractor and Contractor's Persons, including the Materials, will be the property of the University;
 - 16.1.2 the University and its licensors will retain ownership of all Intellectual Property Rights in any all documents, information, items and materials in any form (whether owned by the University or a third party), which are provided by the University to the Contractor in connection with the Works and Services;

- 16.1.3 the Contractor assigns to the University free from all charges and other encumbrances all right, title and interest in and to all Intellectual Property Rights subsisting in or relating to the Materials, together with all rights of action arising or accrued in relation to those Intellectual Property Rights, including the right to take proceedings and to seek and recover damages, the right to obtain delivery-up of all infringing copies and all other remedies for past infringement; and
- 16.1.4 at the request and expense of the University, the Contractor will and will procure that Contractor Persons will:
- (a) do all things necessary or desirable to enable the University or its nominee to confirm absolute title to and ownership of and to obtain the benefit of the invention, development, discovery, improvement, process, design or copyright work (as the case may be) and to secure patent or other appropriate forms of protection for it throughout the world; and
 - (b) provide to the University all such assistance as the University may require in relation to the resolution of any questions concerning patent, copyright or other intellectual property proprietary rights assigned by virtue of this condition 16.1, and decisions as to the procuring of a patent or other appropriate protection and exploitation will be in the sole discretion of the University.
- 16.2 Where the Materials are generic, off the shelf have not been created specially for the University by the Contractor and (where relevant) Contractor's Persons:
- 16.2.1 the Contractor and (where relevant) Contractor's Persons will retain ownership of all Intellectual Property Rights in Materials provided in connection with the Works and the Services by the Contractor and (where relevant) Contractor's Persons;
- 16.2.2 the Contractor grants the University, or will procure the direct grant to the University of, a fully paid-up, worldwide, non-exclusive, perpetual, irrevocable, royalty-free licence to copy, modify and use such Intellectual Property Rights and Materials for all purposes connected with the Works and the Services including but not limited to the design, funding, marketing, reinstatement, sale, letting, repair, maintenance of the Works any and all Intellectual Property Rights and the Materials developed by the Contractor and the Contractor's Persons in relation to the Works and the Services in any form or media; and
- 16.2.3 the University shall be entitled to grant sub-licences to third parties on terms that are consistent with the Contractor's licence. The University shall be entitled to copy and use any and all Intellectual Property Rights and the Materials developed by the Contractor and the Contractor's Persons in relation to the Works and the Services in connection with any extension of the Works, but not to reproduce designs in any such extension.
- 16.3 The University and its licensors (if applicable) will retain ownership of all Intellectual Property Rights in Materials provided by the University and such Materials and grants the Contractor a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify such Intellectual Property Rights and Materials for the purpose of providing the Works and the Services to the University in accordance with the Contract.
- 16.4 The Contractor hereby waives and will procure that any relevant Contractor's Persons and other third party will waive (to the extent that such rights may be waived) all moral rights which now or in the future may subsist anywhere in the world in the Intellectual Property Rights in Materials provided by the Contractor's Persons or any other relevant third party in connection with the Works and the Services.
- 16.5 The Contractor warrants that neither the Intellectual Property Rights in Materials provided in connection with the Works and the Services by the Contractor and (where relevant) Contractor's Persons nor the Materials nor the provision of the Works and the Services will infringe any third-party Intellectual Property Rights.
- 16.6 If any third party claims that the possession and/or use of the Intellectual Property Rights in Materials provided in connection with the Works and the Services by the Contractor and (where relevant) Contractor's Persons and/or of such Materials and/or the provision of the Works and the Services, materials or other items (or any part of them) to the University (**Indemnified Items**) infringes the Intellectual Property Rights of that third party (**IPR Claim**), the Contractor shall Indemnify the University and/or others entitled to use and/or modify the Intellectual Property Rights and Materials in full against liabilities, costs, expenses, damages and losses suffered or incurred by the University and such others in connection with that IPR Claim.
- 16.7 If there is an IPR Claim:
- 16.7.1 the University will as soon as reasonably practicable notify the Contractor of the IPR Claim, provided that the giving of such notice will not be a condition precedent to the liability of the Contractor under condition 16.6;
- 16.7.2 the Contractor will at its own cost and expense control the defence of the IPR Claim and any related proceedings or settlement negotiations, except that the University will be entitled to take any action which it deems necessary if the Contractor fails to take action, or (in the University's reasonable opinion) delays taking action, in defending or settling any such IPR Claim and such failure or delay may, in the reasonable opinion of the University, prejudice the interests of the University; and
- 16.7.3 at the cost and expense of the Contractor, the University will take all reasonable steps to co-operate with the Contractor in the defence or settlement of such IPR Claim.
- 16.8 If the University is (or reasonably believes it is likely to be) subject to any IPR Claim the University may by written notice require the Contractor to promptly (and at the Contractor's cost and expense) either:
- 16.8.1 obtain for the University and/or others entitled to use and/or modify the Intellectual Property Rights and Materials the right to continue possessing, using and receiving the Indemnified Items in the manner permitted under the Contract free from any liability for such infringement or likely infringement; or
- 16.8.2 modify, substitute or replace the relevant Indemnified Item so as to avoid the infringement or alleged infringement, without prejudice to any representations, warranties and indemnities in the Contract and without adversely affecting or limiting in any respect the performance, scope or functionality of the infringing items or any other Indemnified Item or any part of them.

17 CONTRACT SUM

- 17.1 The Contract Sum shall be as stated in the Contract Details and, unless otherwise so stated, shall be inclusive of all taxes, fees, duties and charges that may be imposed or levied in connection with the Works and the Services (excluding VAT).
- 17.2 Save as expressly provided for under the Contract, no increase in the Contract Sum may be made without the prior written approval of the University.

18 PAYMENT AND TERMS OF PAYMENT

- 18.1 During the period up to the due date for the final payment fixed under condition 18.18, the due dates for interim payments to the Contractor shall in each case be the date 7 days after the relevant Interim Valuation Date.
- 18.2 The Contract Administrator shall not later than 5 days after each due date issue an interim certificate, stating the sum that it considers to be or have been due to the Contractor at the due date, calculated in accordance with condition 18.4, and the basis on which that sum has been calculated,

- including the amount of each adjustment.
- 18.3 Subject to condition 18.9, the final date for payment of each interim payment shall be 23 days from its due date.
- 18.4 The amount of each interim payment to be certified under condition 18.2 shall be the applicable percentage, as stated in the Contract Details, of the total value of:
- 18.4.1 work properly executed, adjusted where relevant for any amounts ascertained or agreed under conditions 6.4, 6.5 or 18.16; and
- 18.4.2 materials and goods reasonably and properly brought on to the site for the purpose of the Works that are adequately protected against weather and other casualties
- in both cases calculated as at the Interim Valuation Date, less the total of sums stated as due to the Contractor in previous interim certificates, any sums paid in respect of any payment notice given by the Contractor after the issue of the latest interim certificate and, if applicable, any deduction under conditions 10.1 and/or 6.3.
- 18.5 In relation to any interim payment the Contractor may not later than its Interim Valuation Date or, in the case of the final payment, may at any time prior to issue of the final certificate make an application to the Contract Administrator, stating the sum that the Contractor considers to be due to it at the relevant due date, as fixed in accordance with conditions 18.1 or 18.18, and the basis on which that sum has been calculated.
- 18.6 If a certificate is not issued in accordance with conditions 18.2 or 18.19, then:
- 18.6.1 where the Contractor has made an application for that payment in accordance with condition 18.5, that application is for the purposes of these Conditions a payment notice; or
- 18.6.2 where the Contractor has not made such an application, it may at any time after the 5-day period referred to in conditions 18.2 or 18.19 give a payment notice to the Contract Administrator, stating the sum that the Contractor considers to have become due to it under conditions 18.4 or 18.19 at the relevant due date and the basis on which that sum has been calculated.
- 18.7 Subject to any notice given by the paying party under condition 18.10, the paying party shall pay the sum stated as due in the relevant certificate on or before the final date for payment under conditions 18.3 or 18.20.
- 18.8 If that relevant certificate is not issued in accordance with conditions 18.2 or 18.19 but a Contractor's payment notice has been or is then given, the University shall, subject to any notice subsequently given by it under condition 18.10, pay the Contractor the sum stated as due in the Contractor's payment notice.
- 18.9 Where the Contractor gives a payment notice under condition 18.6.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5-day period referred to in condition 18.6.2 that the Contractor's payment notice is given.
- 18.10 Where:
- 18.10.1 the University intends to pay less than the sum stated as due from it in a certificate or, where applicable, the Contractor's payment notice; or
- 18.10.2 if the final certificate shows a balance due to the University, the Contractor intends to pay less than the sum stated as due,
- the party by which the payment is stated to be payable shall not later than 5 days before the final date for payment give the other party notice of that intention ("**pay less notice**"), stating the sum (if any) that it considers to be due to the other party at the date the pay less notice is given and the basis on which that sum has been calculated. Where 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 in it as due
- 18.11 A pay less notice to be given by the University under condition 18.10 may be given on its behalf by the Contract Administrator or by any other person which the University notifies the Contractor as being authorised to do so.
- 18.12 In relation to the requirements for the issue of certificates and the giving of notices under condition 18, it is immaterial that the amount then considered to be due may be zero.
- 18.13 If either party fails to pay a sum, or any part of it, due to the other party under the Contract by the final date for payment (including a Termination Payment), it shall, in addition to any unpaid amount that should properly have been paid, pay the other party simple interest on that amount at the interest rate specified in the Contract Details for the period from the final date for payment until payment is made. The parties agree that the payment of simple interest at the interest rate specified in the Contract Details is a 'substantial remedy' for purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 18.14 Any such unpaid amount and any interest under condition 18.13 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Contractor's rights to suspend performance under condition 18.16 or terminate its employment under conditions 26 or 27.
- 18.15 If the University fails to pay a sum payable to the Contractor in accordance with its obligations in this condition 18 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Contractor has given notice to the University, with a copy to the Contract Administrator, of its intention to suspend performance of its obligations under this Contract and the grounds for such suspension, the Contractor, without affecting its other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.
- 18.16 Where the Contractor exercises its right of suspension under condition 18.15, it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of exercising the right.
- 18.17 Applications in respect of any such costs and expenses shall be made to the Contract Administrator and the Contractor shall with its application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question. When ascertained or agreed, the amount shall be included in the next interim certificate.
- 18.18 Following Practical Completion, the Contractor shall within the period stated in the Contract Details supply to the Contract Administrator all documentation reasonably required for computation of the final payment. The due date for the final payment shall be 7 days after either the date of receipt of the documentation or, if later, the date specified in the certificate under condition 10.3.
- 18.19 Not later than 5 days after that due date the Contract Administrator shall issue a final certificate which shall state:
- 18.19.1 the Contract Sum, as adjusted for the amounts referred to in condition 18.4.1 and any deductions made under conditions 10.1 or 6.3;
- 18.19.2 the sum of amounts stated as due in interim certificates plus any amount paid in respect of any Contractor's payment notice in accordance with condition 18.8 that is not reflected in a subsequent certificate,

and (without affecting the rights of the Contractor in respect of any interim payment not paid in full by the University by its final date for payment) the final payment shall be the difference (if any) between the two sums, which shall be shown in the certificate as a balance due to the Contractor from the University or vice versa. The certificate shall state the basis on which that amount has been calculated, including the amount of each adjustment.

- 18.20 Subject to condition 18.9, the final date for payment of the final payment shall be 23 days from its due date.
- 18.21 Subject to conditions 6.4, 6.5 and 18.16, no account shall be taken in any payment to the Contractor under the Contract of any change in the cost to the Contractor of the labour, materials, plant and other resources employed in carrying out the Works.
- 18.22 If the Contract Details states that the University is a 'contractor' for the purposes of the Construction Industry Scheme or if the University at any time up to the payment of the final certificate under condition 18.19 becomes a 'contractor' for the purposes of the Construction Industry Scheme, its obligation to make any payment under the Contract is subject to the provisions of the Construction Industry Scheme.
- 18.23 The University's interest in the applicable percentage of the total value not included in the amounts under conditions 18.4.1 and 18.4.2 shall be
- 18.23.1 without fiduciary obligation to the Contractor or any third party;
 - 18.23.2 without obligation to set aside any amount representing that percentage in a separate bank account; and
 - 18.23.3 a full beneficial interest, including a full beneficial interest in any interest accruing on that percentage without obligation to account to the Contractor for any such interest.

19 CONFIDENTIALITY

- 19.1 Each party will, subject to conditions 19.2 and 19.3:
- 19.1.1 keep secret, safe and secure all information concerning the business, affairs, operations, customers, the University's students, processes, budgets, pricing policies (where applicable), pricing and charges, product information (where applicable), strategies, developments, trade secrets, know-how, personnel and suppliers of the other party, together with all information derived by each party from any such information and any other information clearly designated by the other party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential;
 - 19.1.2 not to use or disclose such information except for the purposes of exercising its rights or carrying out its obligations under or in connection with the Contract; and
 - 19.1.3 not disclose the existence and terms of the Contract.
- 19.2 The provisions of condition 19.1 shall not apply to the information referred to in condition 19.1 to the extent that it is or was:
- 19.2.1 already in the possession of a party free of any duty of confidentiality on the date of its disclosure;
 - 19.2.2 in the public domain other than as a result of a breach of condition 19.1; or
 - 19.2.3 required to be disclosed by regulatory or legal requirement.
- 19.3 Notwithstanding condition 19.1, the Contractor acknowledges and agrees that the University is committed to meeting its responsibilities under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and to external auditors, where the University may need to disclose information about the subject matter of the Contract and the Contract Sum and other charges under the Contract.
- 19.4 The Contractor shall assist and cooperate with the University (at no expense to the University) to enable the University to comply with the University's responsibilities under condition 19.3.

20 HEALTH AND SAFETY

- 20.1 The Contractor shall at all times whilst on the University's premises or on the Site comply with and procure that the Contractor's Persons comply with all Statutory Requirements relating to health and safety and with all security and health and safety regulations and rules from time to time in force on those premises or the Site as notified in writing to the Contractor.
- 20.2 Without prejudice to the generality of condition 20.1, the Contractor shall at all times comply with and discharge:
- 20.2.1 where the Contract Details provide for the Contractor to carry out such roles, its duties and obligations of Principal Contractor and Principal Designer under the CDM Regulations and under the Building Regulations 2010;
 - 20.2.2 its duties and obligations as a contractor under the CDM Regulations and the Building Regulations 2010; and
 - 20.2.3 where the Contract Details provides for the Services, its duties and obligations as a designer under the CDM Regulations and the Building Regulations 2010.
- 20.3 The Contractor warrants and represents to the University that it has, and the Contractor's Persons have and each will continue to have throughout the course of the Works and the Rectification Period the competence, skills, knowledge, experience, behaviours and organisational capability as required by the CDM Regulations and the Building Regulations 2010.
- 20.4 Without limiting the Contractor's statutory and regulatory duties and responsibilities, the Contractor undertakes to the University that in relation to the Works and the Site it will duly comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations 2010, and in particular but without limitation: the Contractor in addition to any obligations under condition 4.1.4 shall comply with:
- 20.4.1 regulations 8 and 15 of the CDM Regulations and, where it is the Principal Contractor for the purposes of the CDM Regulations, with regulations 12 to 14 of those regulations; and
 - 20.4.2 regulations 11F, 11J and 11L of the Building Regulations 2010 and, where it is the Principal Contractor for the purposes of the Building Regulations 2010, with regulation 11N of those regulations.
- 20.5 Where the Contractor is not the Principal Designer and the Principal Contractor for the purposes of the CDM Regulations and as applicable Part 2A of the Building Regulations 2010, the University shall appoint such Principal Designer and such Principal Contractor.
- 20.6 The University shall notify the Contractor of such appointments and any replacements.

21 COMPLIANCE WITH UNIVERSITY'S POLICIES AND OTHER REQUIREMENTS

- 21.1 The Contractor shall comply with any policies of the University referred to in the Contract Details when providing the Works and the Services.
- 21.2 Without limiting the Contractor's other obligations under the Contract, the Contractor shall:

- 21.2.1 comply with the Modern Slavery Act 2015 and the Equalities Act 2010; and
- 21.2.2 ensure that the relevant right to work checks in line with the Immigration, Asylum and Nationality Act 2006 and section 240 of the Immigration Act 1971 are carried out.

22 LIMITATION ON LIABILITY

- 22.1 Except where expressly provided otherwise, references to liability in this condition 22 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), statutory duty, misrepresentation, restitution or otherwise.
- 22.2 Neither party may benefit from the limitations and exclusions set out in this condition 22 in respect of any liability arising from its deliberate default.
- 22.3 Nothing in the Contract will limit the Contractor's liability under or in connection with conditions 16, 14.9.1 and 14.9.2. Any such liability will not be taken into account in assessing whether the Contractor's financial cap in condition 22.5 has been reached.
- 22.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
 - 22.4.1 death or personal injury caused by negligence;
 - 22.4.2 fraud or fraudulent misrepresentation; and
 - 22.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) and any other liability which cannot be limited or excluded by all Statutory Requirements from time to time in force.
- 22.5 Subject to condition 22.2, condition 22.3 and condition 22.4, the Contractor's total liability to the University for all other loss or damage arising under or in connection with the Contract will not exceed the Contractor's Liability Cap for any one event or series of connected events.
- 22.6 Subject to condition 22.2 and condition 22.4, the University's total aggregate liability to the Contractor for loss or damage howsoever arising under or in connection with the Contract (including by negligence) shall not exceed the amount of the Contract Sum actually paid to the Contractor at the time at which the liability arose.
- 22.7 The caps on the parties' liabilities will not be reduced by:
 - 22.7.1 payment of an uncapped liability; or
 - 22.7.2 amounts awarded by a court or adjudicator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 22.8 Subject to condition 22.9, neither party shall commence any legal action against the other under the Contract after the period of years set out in the Contract Details from Practical Completion.
- 22.9 The University may commence an action or proceedings against the Supplier:
 - 22.9.1 in accordance with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978; and/or
 - 22.9.2 for a breach of this agreement that arises from a failure to comply with sections 1 or 2A of the Defective Premises Act 1972 and/or section 38 of the Building Act 1984 and/or that gives rise to a failure to comply with that legislation in relation to the Works and/or the Services or any part thereof, provided that any such action or proceedings are subject to the limitation periods that would apply if they were commenced under that legislation and/or the Civil Liability (Contribution) Act 1978 and is not subject to any shorter limitation period applicable to a claim for breach of contract under the Limitation Act 1980 nor any shorter limitation period specified under condition 22.8.

23 FORCE MAJEURE

- 23.1 Subject to the remaining provisions of this condition 23, neither party shall in any circumstances be liable to the other for any delay or non-performance of its obligations under the Contract to the extent that such delay or non-performance is due to a Force Majeure Event.
- 23.2 In the event that either party is delayed or prevented from or hindered in performing its obligations under the Contract by a Force Majeure Event, such party shall:
 - 23.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause of the delay or prevention and its estimated duration;
 - 23.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Contract; and
 - 23.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 23.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 23.4 The Contractor cannot claim relief if the Force Majeure Event is one where a reasonable contractor should have foreseen and provided for the cause in question.
- 23.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Contract. Where the Contractor is the affected party, it shall take or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 23.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under the Contract. Following such notification, the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 23.7 If the period of delay or non-performance due to a Force Majeure Event continues for 30 days, the party not affected may terminate the Contract by giving 30 days' written notice to the other party.

24 SUSPENSION

- 24.1 The University may (without prejudice to any rights or remedies the University may have) suspend (in whole or in part) the Works and/or the Services by giving the Contractor written notice and may subsequently notify the Contractor that the Contractor shall (wholly or partially) resume the carrying out of the Works and the Services.

- 24.2 Subject to condition 24.3, within 20 working days of notice of suspension, the University shall pay to the Contractor any payments that have become due by the date of suspension plus a fair and reasonable proportion of the value of the Works and the Services that have been carried out since the last payment was due and the date of suspension.
- 24.3 If the suspension results from an act, omission or default (whether negligence, breach of contract, breach of statutory duty or otherwise) on the part of the Contractor, the University shall have no liability to pay the Contractor any amounts under condition 24.2, until the University has established its costs and losses arising out of and in connection with such suspension. On establishing such costs and losses, the University's only liability is to pay to the Contractor within 20 working days of the notice of suspension, the amounts under condition 24.2 LESS such costs and losses. If such costs and losses exceed any amounts under condition 24.2, the Contractor shall pay the University such excess within 20 working days of being notified of the University's costs and losses.
- 25 TERMINATION BY UNIVERSITY AND CONSEQUENCE OF TERMINATION**
- 25.1 If, before Practical Completion of the Works, a Specified Contractor Default occurs, the University may give to the Contractor a notice specifying the type of Specified Contractor Default.
- 25.2 If the Specified Contractor Default continues for 5 working days from receipt of the notice under condition 25.1, the University may on, or within 10 days from, the expiry of that 5 working day period by a further notice to the Contractor terminate the Contractor's employment under the Contract.
- 25.3 If the Contractor is Insolvent, the University may at any time by notice to the Contractor terminate the Contractor's employment under the Contract.
- 25.4 As from the date the Contractor becomes Insolvent, whether or not the University has given such notice of termination:
- 25.4.1 conditions 25.6.2 to 25.6.5 shall apply as if such notice had been given;
- 25.4.2 the Contractor's obligations to carry out and complete the Works and the Services shall be suspended; and
- 25.4.3 the University may take reasonable measures to ensure that the Site, the Works and Site Materials are adequately protected and that such Site Materials are retained on the Site and the Contractor shall allow and shall not hinder or delay the taking of those measures.
- 25.5 The University shall be entitled by notice to the Contractor to terminate the Contractor's employment under the Contract if the Contractor or any person employed by it or acting on its behalf shall have committed an offence under the Bribery Act 2010.
- 25.6 If the Contractor's employment is terminated under conditions 25.2 or 25.3 or 25.5:
- 25.6.1 the University may employ and pay other persons to carry out and complete the Works and the Services, or may do so itself, and the University and such other persons may enter upon and take possession of the Site and the Works and (subject to obtaining any necessary third-party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;
- 25.6.2 no further sum shall become due to the Contractor under the Contract other than any amount that may become due to it under condition 25.6.5 and the University need not pay any sum that has already become due either:
- (a) insofar as the University has given or gives a pay less notice under condition 18.10; or
- (b) if the Contractor, after the last date upon which such notice could have been given by the University in respect of that sum, has become Insolvent within the meaning of condition 1.1.21 (a) or (b);
- 25.6.3 following Practical Completion of the Works and completion of the making good of defects in them (or of instructions otherwise, as referred to in condition 10.1), the University shall forthwith notify the Contractor of such completion and completion of the making good of defects shall be deemed for the purposes of this condition 25.6 to have taken place on the date so notified;
- 25.6.4 the due date for the payment calculated under condition 25.6.5 shall be 2 months after the completion of the making good of defects as referred to in condition 25.6.3; and
- 25.6.5 the amount due on termination under this condition 25 shall be calculated in accordance with the following amounts:
- (a) the amount of expenses properly incurred by the University, including those incurred pursuant to condition 25.6.1 and, where applicable, condition 25.4.3, and of any direct loss and/or damage caused to the University and for which the Contractor is liable, whether arising as a result of the termination or otherwise;
- (b) the amount of payments made to the Contractor; and
- (c) the total amount which would have been payable for the Works and the Services in accordance with the Contract,
- and if the sum of the amounts referred to in conditions 25.6.5(a) and 25.6.5 (b) exceeds the amount referred to in condition 25.6.5(c), the difference shall be an amount payable by the Contractor to the University or, if that sum is less, by the University to the Contractor

26 TERMINATION BY CONTRACTOR

- 26.1 If a Specified University Default occurs, the Contractor may give to the University a notice specifying the type of Specified University Default.
- 26.2 If before Practical Completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works and the Services is suspended for a continuous period of one month or more by reason of a Specified Suspension Event then the Contractor may give to the University a notice specifying the type of Specified Suspension Event.
- 26.3 If a Specified University Default or a Specified Suspension Event continues for 7 days from the receipt of notice under condition 26.1 or 26.2, the Contractor may on, or within 10 working days from, the expiry of that 7-day period by a further notice to the University terminate the Contractor's employment under the Contract.
- 26.4 If the University is Insolvent, the Contractor may by notice to the University terminate the Contractor's employment under the Contract and as from the date the University becomes Insolvent, the Contractor's obligations to carry out and complete the Works and the Services shall be suspended.

27 OTHER TERMINATION

- 27.1 If, before Practical Completion of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works and/or the Services is suspended for the relevant continuous period of one month or more by reason of one or more of the following events:
- 27.1.1 Force Majeure;
- 27.1.2 the Contract Administrator's instructions under condition 6.4 issued as a result of the negligence or default of any Statutory Provider;
- 27.1.3 loss or damage to the Works occasioned by any risk covered by the Works Insurance Policy or by an Excepted Risk;

- 27.1.4 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat; or
- 27.1.5 the exercise by the United Kingdom Government or any of the devolved administrations, or any Local or Public Authority or any equivalent authority governed by public law in any of the devolved administrations of any statutory power (except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person) which affects the execution of the Works and/or the Services,

then either party, subject to condition 27.3, may upon the expiry of that relevant period of suspension give notice to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, it may terminate the Contractor's employment under the Contract. Failing such cessation within that 7-day period, it may then by further notice terminate that employment.

- 27.2 If there is material loss of or damage to any existing structure, the University shall be under no obligation to reinstate that structure, and the University may terminate the Contractor's employment under the Contract by notice given to the Contractor within 20 working days of the occurrence of that loss or damage.
- 27.3 The Contractor shall not be entitled to give notice under condition 27.1 in respect of the matter referred to in condition 27.1.3 where the loss or damage to the Works was caused by the negligence or default of the Contractor or any Contractor's Person.

28 CONSEQUENCE OF TERMINATION UNDER CONDITIONS 26 AND 27

- 28.1 If the Contractor's employment is terminated under either of conditions 26 or 27:
- 28.1.1 no further sums shall become due to the Contractor otherwise than in accordance with this condition 28;
- 28.1.2 the Contractor shall not later than 1 month after the date of termination provide the University with all documents necessary for calculating the amounts referred to in condition 28.1.4. Not later than 3 months after receipt of those documents, the University shall prepare and send to the Contractor an account which shall set out the amounts referred to in condition 28.1.4;
- 28.1.3 the due date for the payment calculated under condition 28.1.4 shall be the last date for issue of the University's account under condition 28.1.4; and
- 28.1.4 the amount due on termination from the University to the Contractor or (if a negative amount) from the Contractor to the University shall be the aggregate of:
- (a) the total value of work properly executed at the date of termination of the Contractor's employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Contractor under these Conditions;
 - (b) the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay;
 - (c) (only where the Contractor's employment is terminated either under condition 26.3 or 26.4, or under condition 27.1.3 if the loss or damage to the Works was caused by the negligence or default of the University or any University's Person) any direct loss and/or damage caused to the Contractor by the termination,

less amounts previously paid to the Contractor under the Contract, but without deduction of any retention. Payment by the University for any such materials and goods as are referred to in condition 28.1.4 (b) shall be subject to those materials and goods thereupon becoming the property of the University.

29 TERMINATION PAYMENT

- 29.1 Subject to condition 29.5, the final date for payment of the Termination Payment shall be 14 days from its due date, as fixed in accordance with condition 25.6.4 or 28.1.3.
- 29.2 Not later than 5 days after the relevant due date the University shall give a termination payment notice to the Contractor in accordance with condition 35, which shall state the sum that it considers to be or have been due at the due date, calculated in accordance with condition 25.6.5 or 28.1.4, and the Termination Payment shall be the difference or amount referred to in condition 25.6.5 or 28.1.4, which shall be shown in the termination payment notice as a balance due to the Contractor from the University or vice versa. Such notice shall state the basis on which that amount has been calculated.
- 29.3 If the party by which the Termination Payment is stated to be payable ("payer") intends to pay less than the stated balance, it shall not later than 5 days before the final date for payment give the other party a pay less notice which shall state the sum (if any) that it considers to be due to the other party at the date the pay less notice is given and the basis on which that sum has been calculated and where given by the University, the provisions of condition 18.11 shall correspondingly apply.
- 29.4 Where a pay less notice is given under condition 29.3, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
- 29.5 If a termination payment notice is not given by the University in accordance with condition 29.2:
- 29.5.1 the Contractor may at any time after the 5 day period referred to in condition 29.2 give a termination payment notice to the University, stating the sum that the Contractor considers to have become due under clause condition 26.6.5 or 28.1.4, at the due date and the basis on which that sum has been calculated and, subject to any pay less notice given under condition 29.5.3, the Termination Payment shall be the sum stated as due in the Contractor's termination payment notice;
- 29.5.2 if the Contractor gives a termination payment notice under condition 29.5.1, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days after expiry of the 5-day period referred to in condition 29.2 that the Contractor's termination payment notice is given; and
- 29.5.3 following the Contractor's termination payment notice the University may not later than 5 days before the final date for payment give a pay less notice in accordance with condition 29.3 and, if it gives such notice, the provisions of condition 29.4 shall correspondingly apply.
- 29.6 In relation to the requirements in this condition 29 for the giving of termination payment notices by the University, and pay less notices, it is immaterial that the amount then considered to be due may be zero.

30 TERMINATION MISCELLANEOUS PROVISIONS

- 30.1 Notice of termination of the Contractor's employment under the Contract shall take effect on receipt of the relevant notice of termination.
- 30.2 All notices referred to in conditions 25 to 28 shall be addressed to and delivered to the persons specified against this condition in the Contract Details against condition 30.2 and shall be by hand or sent by Signed For 1st class or Special Delivery Guaranteed post (or any method of posting

as has replaced either method and is then current) and, where sent by post in that manner, shall be deemed to have been received on the second working day after the date of posting.

- 30.3 Irrespective of the grounds of termination, the Contractor's employment may at any time be reinstated if and on such terms as the Parties agree.
- 30.4 Subject to any express terms in the Contract to the contrary, any termination of the Contractor's employment under the Contract is without prejudice to any other rights or remedies a party may be entitled to under the Contract or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 30.5 On termination of the Contract for any reason, the Contractor shall immediately deliver to the University all works, materials, goods, data, information and documentation relating to the Works and the Services and return to the University all the University's materials, goods, data, information and documentation. If the Contractor fails to do so, then the University may enter the Contractor's premises and take possession of them. Until they have been returned or delivered, the Contractor shall be solely responsible for their safe keeping (including insurance and maintenance) and will not use them for any purpose not connected with the Contract.
- 30.6 Conditions 1, 2, 14, 19, 20.2, 20.4, 21.3 (where applicable), 22, 25 to 32 (inclusive) and 34 shall survive termination of the Contract.

31 NO PARTNERSHIP, JOINT VENTURE, AGENCY OR, EMPLOYMENT

- 31.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of the other party.
- 31.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 31.3 The parties agree that the Contractor is an independent contractor and not an employee or partner of the University.
- 31.4 The parties agree that no contractual relationship is created between the University and any of the Contractor's Persons.

32 ENFORCEMENT OF CONTRACT

- 32.1 The Contractor shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 32.2 The University may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under the Contract, provided that it gives prior written notice of such dealing to the Contractor.
- 32.3 The University and the Contractor do not intend any term of the Contract to create any rights or benefits for any other party other than the University and the Contractor to or to be enforceable by any other person pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 32.4 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law will prevent or restrict the further exercise of that or any other right or remedy.
- 32.5 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of the Contract is deemed deleted under this condition the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 32.6 The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

33 ANTI-BRIBERY AND CORRUPTION

- 33.1 The Contractor shall:
- 33.1.1 comply with the Anti-Bribery and Corruption Requirements;
- 33.1.2 have and shall maintain in place until the issue of the certificate referred to in condition 10.3 its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Anti-Bribery and Corruption Requirements and will enforce them where appropriate; and
- 33.1.3 promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of the Contract.
- 33.2 The Contractor shall impose on Contractor's Persons equivalent obligations to those imposed on the Contractor in this condition 33 and shall be responsible for the observance and performance by them of such obligations.

34 DISPUTES, GOVERNING LAW AND JURISDICTION

- 34.1 Subject always to conditions 34.2 and 34.3, if a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then each party will follow, and procure that their representatives set out against this condition the Contract Details follow, the procedure set out in this condition 34.1:
- 34.1.1 Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars in the form attached in Schedule 7 (**Dispute Notice**). Once the Dispute Notice has been served in relation to the Dispute, the Dispute will be referred to each party's First Point of Escalation set out against this condition in the Contract Details. Those representatives will meet at the earliest convenient time and in any event within 5 working days of the date of service of the Dispute Notice and will attempt in good faith to resolve the Dispute.
- 34.1.2 If the Dispute has not been resolved within 5 working days of the date of service of the relevant Dispute Notice, each party will refer the Dispute to their Second Point of Escalation set out against this condition in the Contract Details. Those representatives will meet at the earliest convenient time and in any event within 10 working days of the date of service of the Dispute Notice and will attempt in good faith to resolve the Dispute.
- 34.1.3 Subject always to condition 34.2 and to the right of either party to refer a dispute or difference referred to in condition 34.3, the procedure set out in conditions 34.1.1 and 34.1.2 will be followed prior to the commencement of any proceedings by either party in relation to the Dispute. However, if the Dispute is not resolved within 20 working days of the date of service of the relevant Dispute Notice, either party may commence proceedings in accordance with condition 34.5 or, if both parties agree in writing to do so, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Either party may withdraw from mediation at any time.

- 34.2 Nothing in this condition 34 will prevent or delay either party from:
- 34.2.1 seeking orders for specific performance, interim or final injunctive relief;
 - 34.2.2 exercising any rights it has to terminate under the Contract; or
 - 34.2.3 commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.
- 34.3 Any dispute or difference arising under or in respect of the Contract may be referred at any time to adjudication, in which case Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 shall apply except that for the purposes of such Scheme the Nominating Body shall be that stated against this condition in the Contract Details.
- 34.4 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, will be governed by, and construed in accordance with, the law of England and Wales.
- 34.5 Subject to condition 34.3, each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

35 NOTICES

- 35.1 Except for and subject to condition 30.2, any notice to be given by either party to the other under or in connection with the Contract will be in writing and will be
- 35.1.1 for the attention of the person and at the postal or email address set out against conditions 34.1 or 35.1 (as appropriate) in the Contract Details or such other postal or email address as may have been notified in writing for these purposes; and
 - 35.1.2 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email to the address set out against conditions 34.1 or 35.1 (as appropriate) in the Contract Details.
- This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 35.2 Any notice or communication referred to in condition 35.1 shall be deemed to have been received:
- 35.2.1 if delivered by hand, at the time the notice is left at the postal address referred to in condition 35.1;
 - 35.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
 - 35.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours (9.00am to 5.00pm on a working day) resume in the place of receipt.

36 COUNTERPARTS

- 36.1 The Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 36.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.