and the *Contractor* does not, and procures that the Contractor's Personnel do not, (except when necessary for the performance of the Contract) without prior written consent of the *Employer*, use or disclose any such Intellectual Property Rights in the IP Materials.

5.2 Subject to the retention by the *contractor* of the IPR in pre-existing background IP, the *Contractor* assigns to the *Employer*, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials. This assignment takes effect on the date of this Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the *Contractor.* The *Contractor* executes all documentation necessary to execute this assignment.

5.3 The *Contractor* waives or procures a waiver of any moral rights subsisting in copyright produced for the Contract or the performance of the Contract.

5.4 The *Contractor* ensures that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the *Employer* a non-exclusive licence or, if itself a licensee of those rights, grants to the *Employer* an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence is non-exclusive, perpetual, royalty free and irrevocable and includes the right for the *Employer* to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying works to the *Employer.*

5.5 The *Contractor* does not infringe any Intellectual Property Rights of any third party in providing the *works* and the *Contractor*, from the Contract Date until the *Completion Date*, indemnifies and keeps indemnified and holds the *Employer* and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the *Employer* or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where such claim arises from:

- *items or materials based upon designs supplied by the* **Employer** *; or*

- *the use of Data supplied by the* **Employer** *which is not required to be verified by the* **Contractor** *under any provision of the Contract.*

5.6 The *Employer* notifies the *Contractor* in writing of any claim or demand brought against the *Employer* for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the *Contractor*.

5.7 The *Contractor* at its own expense conducts all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the *Contractor*, provided always that the *Contractor*:

- *consults the* **Employer** *on all substantive issues which arise during the conduct of such litigation and negotiations;*

- *takes due and proper account of the interests of the* **Employer** *and*

- *does not settle or compromise any claim without the* **Employer***'s prior written consent (not to be unreasonably withheld or delayed).*

5.8 The *Employer* at the *Contractor's* request affords to the *Contractor* all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the *Employer* or the *Contractor* by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the *Contractor's* obligations under the Contract and the *Contractor* indemnifies the *Employer* for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The *Contractor* is not, however, required to indemnify the *Employer* in relation to any costs and expenses incurred in relation to items or materials based upon designs supplied by the *Employer* or the use of Data supplied by the *Employer* which is not required to be verified by the *Contractor* under any provision of the Contract.

5.9 The *Employer* does not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the *Employer* or the *Contractor* in connection with the performance of its obligations under the Contract.

5.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the *Contractor* is likely to be made, the *Contractor* notifies the *Employer* as soon as reasonably practicable and, at its own expense and subject to the consent of the *Employer* (not to be unreasonably withheld or delayed), uses its best endeavours to:

- ***modify the works without reducing the performance or functionality of the same, or substitute alternative works of equivalent performance and functionality in order to avoid the infringement or the alleged infringement, provided that the provisions herein apply mutatis mutandis to such modified works or to the substitute works or***

- ***procure a licence to use and provide the* works*, which are the subject of the alleged infringement, on terms which are acceptable to the* Employer**

- ***and in the event that the* Contractor *is unable to comply with these requirements within 28 days of receipt of the* Contractor*'s notification the* Employer *may terminate the Contract by notice in writing.***

5.11 The *Contractor* grants to the *Employer* a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) (and where appropriate, worldwide) to use any Intellectual Property Rights that the *Contractor* owned or developed prior to the starting date and which the *Employer* reasonably requires in order to exercise its rights and take the benefit of the Contract including the works provided.

6. Termination or occurrence of event of default under the Contract

6.1 The Sub-contractor agrees that in the event of determination of the *Contractor*'s employment under the Contract, the Sub-contractor will, if so required by notice in writing given by the *Employer* compliant with clause 8.1, accept the instructions of the *Employer* to the exclusion of the *Contractor* upon the terms and conditions of the Sub-contract. The *Contractor* acknowledges that the Sub-contractor shall be entitled to rely on a notice given to the Sub-contractor by the *Employer* under this clause 6 as conclusive evidence for the purposes of this Agreement of the determination of the *Contractor*'s employment under the Contract.

7. Obligations prior to termination of the Sub-contract

- 7.1. The Sub-contractor covenants with the *Employer* that he will not exercise nor seek to exercise any right of determination of his employment under the Sub-contract or of ceasing to perform any of his obligations in relation to the Sub-contract for any reason whatsoever, including any breach on the part of the *Contractor*, without giving to the *Employer* not less than 21 days' notice of his intention to do so and specifying the grounds for the proposed determination or ceasing.

- 7.2. Any period stipulated in the Sub-contract for the exercise by the Sub-contractor of a right of determination shall nevertheless be extended, as far as is necessary, to allow for the period of notice required under the foregoing clause.

- 7.3. The Sub-contractor, by complying with the provisions of this clause, shall not be treated as waiving any breach on the part of the Contractor giving rise to the right of determination nor shall he cease to be entitled to exercise his rights after the expiration of the notice, unless the right of determination shall have ceased under the provisions of clause 8.

8. Obligations of the Sub-contractor to the *Employer*

- 8.1. The right of the Sub-contractor to determine the Sub-contract shall cease within the period of 21 days referred to above, if the *Employer* shall give notice to the Sub-contractor:

  - ***requiring him to continue his obligations under the Sub-contract; and***

  - ***acknowledging that the* Employer *is assuming all the obligations of the* Contractor *under the Sub-contract; and***

  - ***undertaking to the Sub-contractor to discharge all payments which may subsequently become due to the Sub-contractor under the terms of the Sub-contract.***

- 8.2. Upon compliance by the *Employer* with the requirements of clause 8.1 the Sub-contract shall continue in full force and effect as if the right of determination on the part of the Sub-contractor had not

arisen and in all respects as if the Sub-contract had been entered into between the Sub-contractor and the *Employer* to the exclusion of the *Contractor*.

- 8.3. Notwithstanding that as between the *Contractor* and the Sub-contractor the Sub-contractor's right of determination of the Sub-contract may not have arisen, the provisions of clause 8.2 shall nevertheless apply if the *Employer* gives notice to the Sub-contractor and the *Contractor* to that effect and the *Employer* complies with the requirements on his part under clause 8.1.

- 8.4. The Sub-contractor shall not be concerned or required to enquire whether and shall be bound to assume that as between the *Contractor* and the *Employer* the circumstances have occurred permitting the *Employer* to give notice under clause 8.3.

- 8.5. The Sub-contractor, acting in accordance with the provisions of this clause 8, shall not by so doing incur any liability to the *Contractor*.

9. Professional indemnity insurance

- 9.1. The Sub-contractor shall maintain professional indemnity insurance covering (without limitation) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market and with reputable insurers lawfully carrying on such insurance business in the United Kingdom with a limit of indemnity of not less than *(amount)* million pounds (£...) for any one occurrence or series of occurrences arising out of any one event for a period expiring no earlier than 6 years after the expiry or earlier termination of the Sub-contract, provided always that such insurance is available at commercially reasonable rates in the insurance market at large.

- 9.2. Any increased or additional premium required by insurers by reason of the Sub-contractor's own claims record or other acts, omissions, matters or things particular to the Sub-contractor shall be deemed to be within commercially reasonable rates.

- 9.3. The Sub-contractor shall immediately inform the *Employer* if such insurance ceases to be available at commercially reasonable rates in the insurance market at large in order that the Sub-contractor and the *Employer* can discuss means of best protecting the respective positions of the *Employer* and the Sub-contractor in respect of the *works* in the absence of such insurance.

- 9.4. The Sub-contractor shall fully co-operate with any measures reasonably required by the *Employer*, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the Sub-contractor in respect of the net cost of such insurance to the Sub-contractor above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates.

- 9.5. As and when it is reasonably requested to do so by the *Employer* the Sub-contractor shall produce for inspection documentary evidence (including, if required by the *Employer,* the original of the relevant insurance documents) that its professional indemnity insurance is being maintained.

- 9.6. In the event of any dispute arising in relation to the issue of whether insurance has ceased to be available in the insurance market at large at commercially reasonable rates, either party may refer such dispute to a person to be agreed upon between them ('the Expert') or failing such agreement within 3 days of the dispute arising to be selected at the instance of either party by the President for the time being of The Royal Institution of Chartered Surveyors. Such Expert shall act as an expert and not as an arbitrator. He shall endeavour to reach his decision within 28 days of referral and his decision shall be final and binding on the parties hereto. The Expert's fees and the Parties' legal costs shall be borne by the Parties equally or in such other proportions as the Expert shall direct.

10. Assignment

10.1. The Sub-contractor agrees that the benefit of this Agreement may be assigned by the Employer *on two occasions only without the consent of the Sub-contractor being required. Further assignments may be made with the consent of the Sub-contractor (such consent not to be unreasonably withheld or delayed).*

10.2. The Sub-contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Agreement (whatever the date of such breach) by reason only that that person is an assignee and not the original employer under this Agreement or by reason that the original employer or any intermediate employer escaped any loss resulting from such breach by reason of the disposal of any interest in the site or that the original employer or any intermediate employer has not suffered any or as much loss.

11. Notices

11.1 Any notice to be given by the Sub-contractor hereunder shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the *Employer* or to the principal business address of the *Employer* for the time being, and any notice to be given by the *Employer* hereunder shall be deemed to be duly given if it is addressed to the Sub-contractor and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Sub-contractor or to the principal business address of the Sub-contractor for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received 48 hours after being posted.

12. Net contribution

12.1 In the event of any breach of this Agreement, the Sub-contractor's liability pursuant to this Agreement shall be limited to that proportion of the *Employer*'s loss by reason of the breach which it would be just and equitable to require the Sub-contractor to pay having regard to the

extent of the Sub-contractor's liability for the same and on the basis that ***(list the contractors)*** ('the Contractors') and the Sub-contractor and ***(list the other Sub-contractors)*** ('the other Sub-contractors') shall be deemed to have provided contractual undertakings on terms no less onerous than this Agreement to the *Employer* in respect of performance of their works and/or obligations and shall be deemed to have paid to the *Employer* such proportion which it would be just and equitable for them to pay having regard to the extent of their responsibility.

13. Limitation

13.1 No action or proceedings under or in respect of this *Agreement* shall be brought against the Sub-contractor after:

- the expiry of 6 years from the date of practical completion of the *works*; or;
- where such date does not occur, or the Sub-contractor performed works in relation to the *works* later than such date, the expiry of 6 years from the date the Sub-contractor last performed works in relation to the *works*.

14. Law and Jurisdiction

- 14.1 Any contractual or non-contractual obligations arising from or connected with this Agreement shall be governed by English law and this Agreement shall be construed in accordance with English law.
- 14.2. In relation to any legal action or proceedings arising out of or in connection with this Agreement (whether arising out of or in connection with contractual or non-contractual obligations) ("Proceedings"), each of the Parties irrevocably submits to the exclusive jurisdiction of the English Courts and waives any objection to Proceedings in such Courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

15. The *Contractor*

15.1 The *Contractor* has agreed to be a party to this Agreement for the

purpose of clause 6 and for acknowledging that the Sub-contractor shall not be in breach of the Sub-contract by complying with the obligations imposed on it by this Agreement.

16. Contracts (Rights of Third Parties) Act 1999

16.1 No person who is not a party to this Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

IN WITNESS whereof this document has been executed in duplicate on the date first stated above, as follows:

SIGNED for and on behalf of **Party 1**, (the "Sub-contractor")

Authorised Signatory .....

Name .....

Position .....

SIGNED for and on behalf of **Secretary of State for Justice**

Authorised Signatory .....

Name .....

Position .....

SIGNED for and on behalf of **Party 3**, (the "*Contractor*")

Authorised Signatory .....

Name .....

Position .....

Appendix 2: Training and Apprenticeships

SPECIAL CONDITIONS: TRAINING AND APPRENTICESHIPS

[Clauses to be used selectively and appropriately depending on the organisation of the Contractor. Where the statutory Apprentice scheme is not suitable, the term "Trainee" may be used instead.]

1. Definitions and Interpretations

"Apprentice" means a worker who is party to an apprenticeship agreement as defined in section 32 of the Apprenticeships, Skills, Children and Learning Act 2009.

["Trainee" means a worker who is employed by the Contractor under a contract of employment which provides for a scheme to allow the worker to obtain a National Vocational Qualification [or enter here industry-wide recognised qualification] through paid study away from the workplace, and to obtain the competencies listed in the Annex to this schedule by working under the direction of experienced workers.]

2. General Conditions

2.1. The Contractor shall take reasonable steps to employ Apprentices [Trainees], and report to the *Employer* the numbers of Apprentices [Trainees] employed and wider skills training provided, during the delivery of this Contract.

2.2. The Contractor shall take reasonable steps to ensure [insert % up to 5% or1 in 20] of the employees, or that a similar specified proportion of hours worked in delivering the Contract, (which may include support staff and sub contractors) are to be delivered by an employee on an Apprentice [Trainee] programme.

2.3. The Contractor is required to make available to its employees working on the Contract, information about the Government's Apprenticeship programme available at www.apprenticeships.org.uk, and wider skills opportunities provided by local authorities.

2.4. The Contractor shall provide any appropriate further skills training opportunities for employees delivering the Contract.

2.5. The Contractor shall provide a written report detailing the following measures in the [monthly] contract management reporting and be prepared to discuss Apprentices [Trainees] at contract management meetings:

2. 5.1 The number of people during the reporting period employed on theContract, including support staff and subcontractors;

2.5.2 The number of Apprentices [Trainees] and number of new Apprentices [Trainees] directly initiated through the procurement process;

2.5.3 The percentage of all employees which are Apprentices [Trainees];

2.5.4 Explanation from the contractor as to why the Contractor has not achieved the specified percentage target of Apprentices [Trainees];

2.5.5 Actions being taken to increase the number of Apprentices [Trainees];

2.5.6 Other training and skills development being undertaken by employees in relation to the Contract, including:

- work experience placements for 14 to 16 year olds
- work experience and work trial placements for other ages.
- student sandwich and gap year placements
- graduate placements
- vocational training
- skills training
- on-site training provision and facilities.

3. Annex [for Trainee only]

On completion of the training scheme the Trainee will be able to:

[competencies]