

Dated

2024

Thornley Parish Council

and

[INSERT CONTRACTOR ENTITY]

Minor Works Contract in relation to
the construction of a new pump track at Thornley Library, Thornley, Durham DH6 3EL

muckle^{LLP}

Muckle LLP
Time Central
32 Gallowgate
Newcastle upon Tyne
NE1 4BF

Dated

2024

Parties

- (1) **Thornley Parish Council**, a local authority whose address is Thornley Village Centre, High Street, Thornley, Durham DH6 3EL (**Client**); and
- (2) **[insert Contractor entity]** (company number **[insert company number]**) whose registered office is **[insert registered address]** (**Contractor**).

Background

The Client wishes to procure the Works and has agreed with the Contractor that the Contractor will be engaged on the terms set out herein to carry out the Works.

IT IS NOW HEREBY AGREED AS FOLLOWS:

1. This Works Contract consists of:
 - this Works Contract Agreement;
 - the attached Works Contract Conditions; and
 - the Specification.
2. The Contractor shall carry out and complete the Works in accordance with this Works Contract.
3. The Client shall pay the Contractor the Contract Price, or such other sum as becomes payable in accordance with the terms of this Works Contract.

THIS WORKS CONTRACT is executed as a deed and delivered on the date stated at the beginning of it.

EXECUTED as a deed and delivered

.....

By **Thornley Parish Council**

(signature of authorised signatory)

acting by an authorised signatory

.....

(print name)

I confirm that the witness named below was
physically present when I signed this deed

Signature of witness

.....

Name of witness

.....

Address of witness

.....

Occupation of witness

.....

I confirm that I was physically present when
the above signatory signed this deed

EXECUTED as a deed and delivered

by **[INSERT CONTRACTOR ENTITY]**

acting by a director

.....

(signature of director)

Signature of witness

.....

Name of witness

.....

Address of witness

.....

Occupation of witness

.....

I confirm that I was physically present when
the above signatory signed this deed

Works Contract Conditions

1. Section 1 – Contract interpretation and general provisions

1.1 Definitions

In this Works Contract, the following terms have the following meanings:

Agreement	the Works Contract Agreement to which these Works Contract Conditions are attached;
Business Day	any day which is not a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971;
CDM Regulations	the Construction (Design and Management) Regulations 2015 and the related guidance issued by the Health and Safety Executive;
Client	the Party named as such in the Agreement;
Client's Persons	all persons employed, engaged or authorised by the Client, excluding the Contractor and the Contractor's Persons;
Commencement Date	<i>[insert commencement date]</i> ;
Completion	occurs when the Works are complete in all respects to the satisfaction of the Client and free from apparent defects;
Completion Date	<i>[insert completion date]</i> ;
Consents	such approvals and consents as shall from time to time be required for the execution of the Works, including without limitation: <ul style="list-style-type: none">• planning permission, satisfaction of conditions of the planning permission and approval of reserved matters or details pursuant to the planning permission;• building regulations approval;• any consents, permissions, approvals, certificates and licences required by law or by any

	government department, local authority, statutory undertaker or other public authority; and
	<ul style="list-style-type: none"> • such approvals and consents of the insurers with whom the insurance of the Property has been effected;
Contract Price	[insert contract price] (exclusive of VAT);
Contractor	the party named as such in the Agreement;
Contractor's Designed Portion	the part of the Works to be designed by the Contractor;
Contractor's Persons	the Contractor's employees, agents and sub-contractors, and any other person for whom the Contractor is responsible;
Defects Certificate	see clause 2.16(d);
Documents	all drawings, designs, specifications for materials, goods and workmanship, photographs, plans, calculations, specifications, reports and other documents or materials prepared by or on behalf of the Contractor in relation to the Works;
Force Majeure Event	any unpredictable occurrence which is beyond the responsibility and control of either Party, including: <ul style="list-style-type: none"> • drought or natural disaster; • epidemic or pandemic; • terrorist attack, civil war, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; • any law or any action taken by a government or public authority; and • nuclear, chemical or biological contamination or sonic boom,

	but excluding any of the Specified Perils and any circumstances confined wholly or principally to the Parties, the Client's Persons or Contractor's Persons, the site, the Property or the Works;
Group Company	any subsidiary or holding company of a company, or another subsidiary or holding company of such company, as subsidiary and holding company are defined in section 1159 of the Companies Act 2006;
Losses	all liabilities incurred by the Client, all damage, loss and expense suffered or incurred by the Client, all damages awarded against the Client, all claims, demands, actions and proceedings made or brought against the Client and all proper costs, disbursements and expenses incurred by the Client in relation to such claims, demands, actions and proceedings;
Off-Site Materials	materials and goods intended for inclusion in the Works which have not yet been delivered to the site;
Party	either the Client or the Contractor, and " Parties " means both of them;
Principal Contractor	the person appointed to perform the role of principal contractor under the CDM Regulations;
Principal Designer	the person appointed to perform the role of principal designer under the CDM Regulations;
Payment Schedule	the following payment schedule: <ul style="list-style-type: none"> • On completion of 50% of the Works - 40% of the Contract Price; • On completion of the Works - 58% of the Contract Price; and

- **On completion of an independent inspection report following Completion of the Works – 2%.**

Property	Thornley Library, Thornley, Durham DH6 3EL;
Rectification Period	12 months commencing on the date of Completion;
Relevant Event	is defined in clause 3.1(a);
Retention	means 5% of the Contract Price;
Site Materials	all unfixed materials and goods delivered to and placed on the site which are intended for incorporation in the Works;
Specification	<i>[insert details of specification]</i> , as set out in Schedule 1;
Specified Perils	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;
Statutory Requirements	any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Works Contract, any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Works and all other regulatory requirements;
Variation	<p>a change to the Specification which makes necessary the alteration or modification of the design, quality or quantity of the Works, including:</p> <ul style="list-style-type: none"> • the addition, omission or substitution of any work; or • the alteration of the kind or standard of any of the materials or goods to be used in the Works;

or the imposition by the Client of any obligations or restrictions in regard to site access, working space, working hours or the order in work is executed;

Works

design and construction of a new pump track, as more particularly set out in the Specification; and

Works Contract

this contract between the Client and the Contractor comprising:

- the Agreement;
- these Works Contract Conditions; and
- the Specification.

1.2 Interpretation

In this Works Contract, unless the context otherwise requires:

- (a) any reference to the “**site**” is a reference to the location where the Works are being carried out i.e., the Property;
- (b) any term importing gender includes any gender;
- (c) any term importing the singular includes the plural and vice versa;
- (d) a reference to a “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (e) any words following the terms “**including**”, “**include**”, “**in particular**”, “**for example**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition or phrase preceding those terms;
- (f) any reference to a clause is a reference to such clause of these Works Contract Conditions; and
- (g) any reference to a statute or statutory provision includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation made under it.

1.3 Clause headings

Clause headings are for ease of reference only and shall not affect the interpretation of this Works Contract.

1.4 Entire agreement

- (a) This Works Contract constitutes the entire agreement and understanding between the Parties in relation to the Works and supersedes all previous agreements (whether written or oral) between the Parties relating to the Works.
- (b) Each Party acknowledges that, in entering into this Works Contract, it has not relied on, and shall have no right or remedy in respect of, any written or oral statement, representation, misrepresentation, assurance or warranty (whether made negligently or innocently, and whether express or implied) other than as expressly set out in this Works Contract. Nothing in this clause 1.4(b) shall limit or exclude any liability for fraud or for fraudulent misrepresentation.
- (c) Nothing contained in the Specification shall override or modify the Agreement and these Works Contract Conditions.

1.5 **Retrospective effect**

Any works already carried out by the Contractor relating to the Works prior to the date of this Works Contract are to be treated as having been carried out under the terms of this Works Contract. Any payments made by the Client to the Contractor prior to the date of this Works Contract in respect of works carried out relating to the Works shall be deemed to have been paid on account of the Contract Price.

1.6 **Notices and communications**

- (a) Any notice or communication to be given by either Party under this Works Contract shall be in writing and shall be delivered by hand or sent by first class post or email to the following addresses:

Client:

Postal address: Thornley Village Centre, High Street, Thornley, Durham DH6 3EL.

Email address: clerk@thornley-pc.gov.uk.

Contractor:

Postal address: **[insert Contractor's address]**

Email address: **[insert Contractor's employee's email address]**

or such other address as may be specified by the relevant Party by notice in writing to the other Party.

- (b) Notices and communications given in accordance with clause 1.6(a) shall be deemed to have been received:
 - (i) if delivered by hand, on the date and at the time of delivery, as evidenced by a signed delivery receipt;
 - (ii) if sent by email, on the date and at the time of sending; and
 - (iii) if sent by first class post, at 9:00am on the second Business Day after the date of posting.
- (c) This clause 1.6 shall not apply to the service of any proceedings or other documents in any legal action.

1.7 Third party rights

A person who is not a Party to this Works Contract shall not have any rights under this Works Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Works Contract.

1.8 Assignment

- (a) The Client shall be entitled to assign the benefit of this Works Contract without the Contractor's consent:
 - (i) by way of security (including any reassignment on redemption of security);
 - (ii) to any Group Company of the Client; and
 - (iii) to any other person on a maximum of two occasions.
- (b) The Contractor shall not contend that any person to whom the benefit of this Works Contract is assigned is precluded from recovering any loss resulting from any breach of this Works Contract (whenever happening) by reason that such person is an assignee and not a named party to this Works Contract.
- (c) The Contractor shall not be entitled to assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Works Contract.

1.9 No waiver

No failure or delay on the part of either Party to exercise any right or remedy under this Works Contract shall be construed or operate as a waiver, nor shall any single or partial exercise of any right or remedy preclude the further exercise of such right or remedy.

1.10 Severance

If any provision of this Works Contract is held by a court or other competent tribunal to be invalid or unenforceable, it shall be severable and shall be deemed omitted from this Works Contract to the extent necessary to prevent such invalidity or unenforceability, and the remaining provisions shall continue to have full effect.

1.11 Confidentiality

- (a) The Contractor shall not at any time use, or disclose to any person, any information concerning this Works Contract, the Works or any technical or commercial information or information about the finances and business affairs of the Client, except:
 - (i) as may be necessary for the performance of its obligations under this Works Contract;
 - (ii) to the Contractor's professional advisers on a confidential basis;
 - (iii) as Client may allow in writing; and
 - (iv) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (b) The Contractor shall not without the prior written approval of the Client use or authorise the use of any photograph or drawing or other depiction of the Works or any part of the Works for publicity purposes or otherwise for any purpose other than in connection with the performance of the Contractor's obligations under this Works Contract.
- (c) The Contractor shall ensure that all sub-contracts entered into by the Contractor for the purposes of the Works contain the provisions in clauses 1.11(a) and (b) (*mutatis mutandis*) and shall take all reasonable steps to ensure that such provisions are enforced.

1.12 Anti-bribery, anti-corruption and prevention of modern slavery

The Contractor shall observe and comply with all applicable Statutory Requirements relating to anti-bribery, anti-corruption and prevention of modern slavery, including the Bribery Act 2010 and the Modern Slavery Act 2015. The Contractor shall have and maintain in place policies and procedures to ensure compliance with this clause 1.12, including adequate procedures for the purposes of the Bribery Act 2010.

1.13 Approvals

- (a) No approval, review, comment, consent, advice or indication of satisfaction given by or on behalf of the Client, nor any inspection of the Works which the Client may make or have carried out for its benefit or on its behalf at any time, and no omission to inspect, shall operate to negate, reduce, extinguish, exclude, limit or modify the Contractor's obligation to fulfil its duties and obligations under this Works Contract.
- (b) No payment by the Client shall be conclusive evidence that any works, materials, goods or design to which the payment relates are in accordance with this Works Contract.

2. Section 2 – Carrying out the Works

2.1 Contractor's general obligations

- (a) The Contractor shall carry out and complete the Works:
 - (i) in a proper and workmanlike manner and in accordance with this Works Contract, the Consents and the Statutory Requirements;
 - (ii) to the reasonable satisfaction of the Client;
 - (iii) in accordance with good building practice;
 - (iv) in compliance with the local authority's noise control regulations; and
 - (v) taking proper steps to ensure that the carrying out of the Works does not make unsafe the structure of the Property and/or any adjoining property and/or any plant and machinery which serve them or either of them.
- (b) The Contractor shall be responsible for supplying all goods, materials, tools, equipment, plant, craneage, access equipment, site establishment, welfare facilities, equipment storage facilities and labour necessary for the carrying out and completion of the Works.
- (c) The Contractor shall ensure the proper integration, co-ordination and compatibility of the various components and elements that make up and comprise the Works, with one another and with the remainder of the Works.
- (d) The Contractor shall warn and advise the Client of any defects in the design of the Works of which it becomes aware or if any part of the design of the Works requires amendment or alteration so as to achieve or better to achieve the carrying out, completion and functioning of the Works.
- (e) The Contractor shall obtain all Consents necessary for the Works, save to the extent that this Works Contract states otherwise, and supply copies of the same to the Client,

but the Contractor shall not apply for any Consents without first obtaining the Client's written consent.

- (f) The Contractor shall ensure that at all reasonable times there is on the site a competent person in charge.

2.2 Quality of materials, goods and workmanship

- (a) All materials, goods and standards of workmanship for the Works shall be new, of good quality and fit for the purposes for which they will be used, and workmanship shall be of a satisfactory quality.
- (b) The Contractor shall not specify, use or permit to be used in the Works any substance or material which:
 - (i) it knows is deleterious and/or which would not constitute good building practice and/or;
 - (ii) is generally known or suspected to be deleterious; and/or
 - (iii) would not comply with British Standards/Codes of Practice applicable at the time of specification and/or use,including without limitation substances which have been publicised in the Building Research Establishment Digests as being deleterious to health and safety or to the durability of the Works in the particular circumstance in which they are used.
- (c) The Client may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work. The Contractor shall not be entitled to any addition to the Contract Price or to any extension of time arising out of compliance with this clause 2.2(c) if the works, materials or goods are found not to be in accordance with this Works Contract or if the Client had reasonable grounds to suspect that the work, materials or goods might not be in accordance with this Works Contract due to the discovery of similar non-compliance elsewhere in the Works.
- (d) If any work, materials or goods are not in accordance with this Works Contract, the Client may:

- (i) issue instructions in regard to the removal from site or rectification of all or any such work, materials or goods; and/or
- (ii) issue instructions requiring a Variation, but to the extent that such instructions are reasonably necessary, no addition shall be made to the Contract Price and no extension of time shall be given in respect of such Variation.

2.3 Commencement, completion and programme

- (a) On the Commencement Date the Contractor shall be given access to the site for the purposes of carrying out and completing the Works.
- (b) The Contractor shall commence the Works on the Commencement Date and shall regularly and diligently proceed with the carrying out of the Works so that the Works are complete by the intended Completion Date.
- (c) The Contractor shall not commence the carrying out of the Works on site until:
 - (i) the Contractor has obtained all Consents which it is responsible for obtaining pursuant to clause 2.1(e);
 - (ii) the Contractor has complied with any conditions attached to any Consents which are required to be satisfied prior to commencement of the Works; and
 - (iii) the Contractor has taken such precautions as may in the reasonable opinion of the Client be necessary to protect the Property and any adjoining premises from any physical damage during the execution of the Works.

2.4 Access to and use of the site by others

- (a) The Client may, after consulting with the Contractor, use or occupy the site, whether for storage or otherwise, prior to Completion of the Works. The Contractor shall ensure that such use or occupation shall not prejudice any insurance cover relating to the Works.
- (b) The Contractor shall permit the carrying out of work not forming part of this Works Contract by the Client or by third parties engaged by the Client. The Contractor shall cooperate with any such third parties and use reasonable endeavours to ensure that the Contractor does not interfere with or impede their work.

- (c) The Client and any person authorised by it shall at all reasonable times have access to the Works and elsewhere to any work which is being prepared for or is to be included in the Works.

2.5 Health and safety and the CDM Regulations

- (a) The Contractor shall:
 - (i) comply with all Statutory Requirements with regard to health and safety; and
 - (ii) comply with all health and safety requirements and constraints set out in the Specification and any other health and safety policies or procedures notified to it by the Client.
- (b) Each Party shall comply with its obligations under the CDM Regulations.
- (c) The Client shall appoint the Principal Designer and the Principal Contractor (if not the Contractor) and shall notify the Contractor of the identities of any replacement Principal Designer or Principal Contractor who may be appointed.

2.6 Statutory Requirements

- (a) The Contractor shall give all notices required by the Statutory Requirements and pay all fees and charges legally demandable under the Statutory Requirements in connection with the Works. The Contractor shall pass to the Client the originals of all approvals received by the Contractor in connection with the Statutory Requirements.
- (b) If either Party becomes aware of any divergence between the Statutory Requirements and:
 - (i) the Specification;
 - (ii) any drawing, design, information or instruction issued by the Client;
 - (iii) any Documents produced by the Contractor,it shall immediately give notice to the other specifying the divergence.
- (c) The Client shall issue instructions for how the divergence is to be dealt with, in relation to which:
 - (i) if the divergence is between the Statutory Requirements and the Specification as it or they relate to the Contractor's Designed Portion, or between the Statutory Requirements and any Documents produced by the Contractor, the Contractor shall comply with those instructions at no cost to the Client and without any

extension of time being granted, except if there has been a change to the Statutory Requirements after the Base Date which was not foreseen by the Contractor and could not reasonably have been foreseen by a competent contractor at the Base Date, in which case the instructions shall to that extent be treated as a Variation; and

- (ii) in any other case, if and insofar as those instructions require the Works to be varied, they shall be treated as a Variation.

2.7 Contractor's Designed Portion

- (a) The Contractor shall be fully responsible for the entire design of the Contractor's Designed Portion, including:
 - (i) any design work for the Contractor's Designed Portion proposed or carried out by or on behalf of the Client forming part of the Specification;
 - (ii) all design work carried out by the Contractor or any of the Contractor's Persons (including any person employed at the Client's request); and
 - (iii) any further design required to be carried out by the Contractor as a result of a Variation.
- (b) The Contractor has verified all information for the Contractor's Designed Portion contained in the Specification. The Client has no liability to the Contractor for any defect, inadequacy, deficiency or omission in or of any detail, design, drawing or other information provided by the Client or the Contract Administrator in relation to the Contractor's Designed Portion.
- (c) The Contractor warrants that there has been exercised and will be exercised in the design of the Contractor's Designed Portion all the reasonable skill, care and diligence to be expected of a duly qualified and experienced architect or other appropriate professional designer undertaking the design of works similar in scope and character to the Contractor's Designed Portion.
- (d) Prior to Completion of the Works, the Contractor shall provide to the Client a full set of as-built drawings showing the Contractor's Designed Portion as built and such related information as is stated in the Specification or as the Client may reasonably require relating to the operation and maintenance of the Contractor's Designed Portion.

2.8 Submission of designs for approval

- (a) The Contractor shall as and when necessary provide to the Client such Documents as are required to show and describe the Contractor's proposals for the carrying out of the Contractor's Designed Portion. Such information shall be submitted in sufficient time to allow compliance with the procedure in this clause 2.8 prior to the relevant Documents being used in the carrying out of the Works.
- (b) Within 14 days of receipt of any Document, the Client shall confirm whether the Document is approved, approved subject to comments or not approved (and if it is not approved, the Client shall give details of the reasons why).
- (c) Where a Document is approved, the Contractor shall carry out the relevant Works in accordance with it. Where a Document is approved subject to comments, the Contractor shall take such comments into account in carrying out the Works. Where a Document is not approved, the Contractor shall not carry out any work in accordance with it and shall re-submit it for approval in accordance with this clause 2.8.
- (d) Where in relation to a Document which is not approved the Contractor does not give notice in accordance with clause 2.8(c), the Contract Administrator's comments or reasons shall not be treated as giving rise to a Variation.
- (d) Neither compliance with this clause 2.8 nor with any comment or reason of the Contract Administrator shall diminish the Contractor's obligations to ensure that the Documents and the Contractor's Designed Portion are in accordance with this Works Contract.

2.9 Compliance with instructions

- (a) The Contractor shall forthwith comply with all reasonable instructions of the Client.
- (b) If the Contractor does not comply with an instruction within 5 days after receipt of a notice from the Client requiring compliance therewith, the Client may employ and pay other persons to execute any work necessary to give effect to that instruction and may deduct the costs so incurred from the Contract Price or otherwise recover them from the Contractor.
- (c) The Client may issue instructions requiring the suspension or postponement of any work to be executed under this Works Contract.

2.10 **Existing site conditions**

The Contractor shall be deemed to have investigated and satisfied itself in all respects as to the relevant site conditions (including the condition of the existing structures and the presence of any drains, conduits, wires or cables), set up and facilities and shall not be entitled to any extension of time or to reimbursement of any loss and/or expense by reason or in consequence of any unforeseen or latent site conditions or of the existence, non-existence or inadequacy of any facilities which are not expressly referred to in this Works Contract. The Contractor shall not rely and shall not be entitled to rely upon any survey, report, data or other document prepared by or on behalf of the Client regarding any such matter as is referred to in this clause 2.10 and the Client makes no representation and gives no warranty as to the accuracy or completeness of any such survey, report, data or document or any representation, recommendation or statement, whether negligently or otherwise made, therein contained.

2.11 **Sub-contracting**

The Contractor shall not sub-contract the whole or any part of its obligations under this Works Contract without the Client's prior written consent (not to be unreasonably withheld or delayed). The Contractor shall be responsible for the performance of any sub-contracted obligations as if it had performed such obligations itself and shall make good any loss suffered or expense incurred by the Client by reason of any default or failure on the part of any sub-contractor or supplier.

2.12 **Materials and goods**

- (a) Site Materials shall not be removed from storage on the site (except for use in the Works) without the Client's consent, such consent not to be unreasonably withheld or delayed. The Contractor shall remain responsible for any loss or damage to them.
- (b) The Client shall only make payment for Off-Site Materials if they are in accordance with this Works Contract. The Contractor shall be responsible for any loss of or damage to them and for the cost of their storage, handling and insurance until they are delivered to the site. As from such delivery, they shall not be removed from storage on the site, except for use in the Works, without the Client's consent, such consent not to be unreasonably withheld or delayed, and the Contractor shall remain responsible for any loss or damage to them.

2.13 Completion

- (a) The Client shall confirm in writing when Completion has been achieved. The Client may in its discretion also issue a list of minor defects and/or minor items of work which remain to be completed ("**Snagging List**"). The Contractor shall remedy and/or complete all items in the Snagging List within 7 days of the date of Completion (or such longer period as may be agreed). Where all Snagging List items have not been remedied and/or completed within the requisite time period, the Client may employ others to carry out such work and recover the cost of the same from the Contractor as a debt or deduct the cost from the Contract Price.
- (b) If the Contractor fails to complete the Works by the Completion Date the Client shall issue a notice to that effect ("**Non-Completion Notice**"). The Non-Completion Notice shall state that for the period between the Completion Date and the actual date of completion of the Works the Client will be entitled to deduct liquidated damages at a rate of £100 (one hundred pounds) per day from sums due to the Contractor.

2.14 Rectification of defects

- (a) If any defects, shrinkages or other faults appear in the Works within the Rectification Period due to any failure of the Contractor to comply with its obligations under this Works Contract, the Client may, whenever it considers it reasonably necessary during the Rectification Period, issue instructions requiring any such defect, shrinkage or other fault to be made good.
- (b) The Contractor shall, unless the Client otherwise instructs, make good to the reasonable satisfaction of the Client all defects, shrinkages and other faults notified by the Client under clause 2.14(a) within a reasonable time. If the Client does so otherwise instruct, an appropriate deduction shall be made from the Contract Price in respect of the defects, shrinkages or other faults not made good.
- (c) When the Rectification Period has expired and in the Contract Administrator's opinion the Contractor's obligations under this clause 2.14 have been discharged, the Client's architect shall issue a certificate confirming expiry of the Rectification Period and the making good of all defects, shrinkages and other faults notified under clause 2.14(a) (the "**Defects Certificate**").

2.15 **Copyright**

- (a) The Contractor grants the Client a full, royalty free, irrevocable, non-exclusive licence to use, exploit and reproduce the Documents for any purpose connected with the Works, including without limitation the construction, completion, maintenance, reinstatement and repair of the Works. This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Contractor.
- (b) The Contractor shall supply the Client with copies of the Documents on request from time to time (whether before or after practical completion of the Works or the termination of the Contractor's employment under this Works Contract).
- (c) The Contractor warrants that the use of the Documents for purposes relating to the Works will not infringe the rights of any third party.
- (d) The Contractor shall indemnify the Client against all Losses arising out of any claim that the Client's use of the Documents infringes the rights of a third party.
- (e) For the avoidance of doubt, ownership of any intellectual property that has not been prepared by the Contractor shall not transfer to the Contractor due to the Contractor's use of such intellectual property.

2.16 **Nuisance and trespass**

- (a) The Contractor shall at all times prevent any public or private nuisance (including, without limitation, any nuisance caused by noxious fumes or noisy working operations) and other interference with the rights of any adjoining or neighbouring landowner/tenant or occupier or any statutory undertaker arising out of the carrying out of the Works or of any obligation pursuant to clause 2.12 and shall assist the Client in defending any action or proceedings which may be instituted in relation thereto.
- (b) The Contractor shall ensure that there is no trespass on or over any adjoining or neighbouring property or any infringement, disturbance or destruction of any easement or other right arising out of or in the course of or caused by the carrying out of the Works or any obligation pursuant to clause 2.12.
- (c) The Contractor shall be responsible for and shall indemnify the Client from and against any and all Losses resulting from any failure or default by the Contractor in performing

its obligations under clauses 2.14(a) and 2.14(b), provided that the Client will provide the Contractor with full details of any Losses and nothing in this clause 2.14(c) shall restrict or limit the Client's general obligation at law to mitigate any Losses it may suffer or incur as a result of an event that may give rise to a claim under such indemnity.

- (d) For the avoidance of doubt, the Client may issue to the Contractor such instructions as it considers necessary if any injunction is granted or court order is made in consequence of any nuisance or interference but no such instruction shall be construed as a Variation.

3. Section 3 – Change management

3.1 Extension of time

- (a) The following events are Relevant Events which entitle the Contractor to an extension of time, subject to the Contractor's compliance with clauses 3.1(b) to 3.1(e):
 - i. Variations and any matter which under these Works Contract Conditions is to be treated as, or as requiring, a Variation;
 - ii. any impediment, prevention or default, whether by act or omission, by the Client or any of the Client's Persons;
 - iii. loss or damage occasioned by any of the Specified Perils;
 - iv. civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
 - v. the occurrence of a Force Majeure Event.
- (b) If and whenever it becomes reasonably apparent that the progress of the Works is being or is likely to be delayed, the Contractor shall, as soon as possible and in any event not later than 5 days after the delay or likely delay becomes reasonably apparent, give notice to the Client of the material circumstances, including the cause or causes of the delay, and shall identify in the notice any event which is, in the Contractor's opinion, a Relevant Event.
- (c) In respect of each event notified under clause 3.1(a) the Contractor shall, if practicable in such notice or otherwise in writing as soon as possible and in any event not later than 5 days thereafter, give particulars of its expected effects,

including an estimate of any expected delay in the completion of the Works beyond the intended Completion Date.

- (d) The Contractor shall forthwith notify the Client of any material change to the estimated delay or in any other particulars and supply such further information as the Client may at any time reasonably require.
- (e) The Contractor shall constantly use its best endeavours to prevent delay to the Works and to mitigate the effect of any delay to the Works.
- (f) It shall be a condition precedent to the grant of any extension of time that the Contractor complies with clauses 3.1(b) to 3.1(e).
- (g) If on receiving a notice and particulars under clauses 3.1(b) and 3.1(c):
 - (i) any of the events which are said to be a cause of delay is a Relevant Event; and
 - (ii) completion of the Works is likely to be delayed thereby beyond the intended Completion Date,then, unless this Works Contract provides otherwise, the Client shall give an extension of time by fixing such later Completion Date for the Works as it estimates to be fair and reasonable.
- (h) The Contractor shall not be entitled to any extension of time on account of any delay arising by reason of any act, error, omission, negligence, default or breach of contract by the Contractor or the Contractor's Persons.
- (i) No extension of time shall be granted to the extent that any Relevant Event (other than one which is an act of prevention by the Client) operates concurrently with any delay caused by any fault or breach of this Works Contract by the Contractor or any of the Contractor's Persons.

3.2 Variations

- (a) The Client may issue instructions to the Contractor requiring a Variation. No Variation required by the Client shall vitiate this Works Contract.
- (b) The value of all Variations shall be such amount as is agreed by the Client and the Contractor.

4. Section 4 – Payment

4.1 Contract Price

- (a) The Contract Price shall be paid by the Client to the Contractor in accordance with the Payment Schedule, provided that the Contractor must have issued to the Client a valid invoice in respect of each payment.
- (b) Payments shall become due to the Contractor 7 days' after the date of a valid invoice being received by the Client (the '**due date**'). The final date for payment of each interim payment shall be 23 days after the due date.
- (c) Not later than 5 days after each due date, the Client shall give a written notice to the Contractor specifying the sum the Client considers to be or have been due at the payment due date and the basis on which that sum is calculated ("**Payer's Notice**"). If the Client does not issue a Payer's Notice, then provided the Contractor's relevant Payee's Notice complies with clause 4.1(a), the sum specified in the Payee's Notice shall become due instead. The Client shall pay to the Contractor the sum specified in each Payer's Notice, or if applicable each Payee's Notice, on or before the relevant final date for payment.
- (d) If the Client wishes to pay less than the sum set out in any Payee's Notice, the Client shall, not later than 1 day before the final date for payment, issue a notice specifying the sum the Client considers to be due at the date the notice is given and the basis on which that sum is calculated.
- (e) Interest shall be added to any amounts remaining unpaid that were due under this Works Contract as at the final date for payment and shall be calculated at the rate of 3% above the base rate set by the Bank of England from time to time.

4.2 **Adjustment of the Contract Price**

- (a) The Contract Price is fixed and shall not be adjusted or altered in any way other than in accordance with the express provisions of this Works Contract.
- (b) There shall be added to the Contract Price the amount of the valuation of any Variation and any other amount required by the terms of this Works Contract to be added to the Contract Price.
- (c) There shall be deducted from the Contract Price the amount of the valuation of any work omitted as a Variation and any other amount required by the terms of this Works Contract to be deducted from the Contract Price.

4.3 **VAT**

The Client shall pay the Contractor any VAT properly chargeable on any amount payable under this Works Contract. Any amount expressed as payable to the Contractor under this Works Contract is exclusive of VAT unless stated otherwise.

4.4 **Construction Industry Scheme**

If the Client is or at any time becomes a 'contractor' for the purposes of the Construction Industry Scheme (CIS), its obligation to make payment under this Works Contract is subject to the provisions of the CIS.

4.5 **Retention**

- (a) The Client may deduct and retain the Retention from each payment to be made to the Contractor.
- (b) The Retention will be released by the Client to the Contractor in the following amounts at the following stages:
 - (ii) 50% on Completion of the Works; and
 - (ii) 50% on the issuing of the Defects Certificate.
- (c) The Client shall be under no fiduciary obligation with regard to the Retention and under no obligation to set the Retention aside in a separate bank account. The Client shall be entitled to the full beneficial interest in any interest accruing on the Retention. Any right of the Client to deduct or to set off any amount (whether arising under any term of this Works Contract or under any rule of law or of equity) shall be exercisable against the Retention.

5. **Section 5 – Insurance, loss and damage**

5.1 **Contractor's indemnities**

- (a) The Contractor shall be liable for, and shall indemnify the Client against, any and all Losses 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, except to the extent that the same is due to any act or neglect of the Client or any Client's Person.
- (b) The Contractor shall be liable for, and shall indemnify the Client against, any and all Losses in respect of any loss, injury or damage whatsoever to any property real or

personal (including the existing structure of the Property and the contents thereof) 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 to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

- (c) The reference in clause 5.1(b) to property real or personal does not include the Works and/or Site Materials up and to include the date of Completion or, if earlier, the date of termination of the Contractor's employment.

5.2 Contractor's Warranties

- (a) The Contractor warrants to the Client that materials furnished under this Agreement will be of good quality, new and fit for purpose.
- (b) The Contractor further warrants that the Works and the materials will conform to the Client's requirements and will be free from defects.
- (c) Works, materials, or equipment not conforming to these requirements may be considered defective.
- (d) The Contractor also warrants that (i) all goods, products, material and equipment to be supplied by Contractor shall be free of substances prohibited by law.

5.3 Insurance

- (a) The Contractor shall take out a policy of insurance providing "all risks" cover against physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris resulting from such loss or damage, and shall maintain such policy up to and including the date of the Defects Certificate.
- (b) Without prejudice to its obligations to indemnify the Client under clause 5.1, the Contractor shall take out, and maintain until the date of the Defects Certificate, insurance in respect of claims arising out of its liability referred to in clauses 5.1(a) and 5.1(b) which:
 - (i) in respect of claims for personal injury to or the death of any employee of the Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and
 - (ii) for all other claims to which clause 5.1 applies, shall indemnify the Client in like manner to the Contractor and shall have the limit of indemnity of £5,000,000 (five million pounds).

- (c) If there is a Contractor's Designed Portion, the Contractor shall have in place a policy of professional indemnity insurance covering his liabilities under this Appointment with a limit of indemnity of not less than £5,000,000 (five million pounds) for any one claim. Such insurance policy shall be on customary and usual terms and conditions prevailing for the time being in the insurance market. The Contractor shall keep the professional indemnity insurance in force at all times until 12 years after the date of Completion, provided such insurance is available at commercially reasonable rates. Payment of any increased or additional premiums required by insurers by reason of the Contractor's own claims record or other acts, omissions or matters peculiar to the Contractor shall be disregarded in determining whether such insurance is available at commercially reasonable rates.
- (d) As and when reasonably requested to do so by the Client, the Contractor shall provide evidence that the insurance policies required under clauses 4.2(a), (b) and (c) are in place.
- (e) If the Contractor fails to comply with clauses 4.2(a) – (d), the Client may itself insure against any liability or expense which it may incur as a result of such default and the amount paid or payable by the Client in respect of premiums therefor may be deducted from any sums due or to become due to the Contractor under this Works Contract or shall be recoverable from the Contractor as a debt.
- (f) If at any time the professional indemnity insurance required pursuant to clause 4.2(c) is not available at commercially reasonable rates, the Contractor shall immediately inform the Client and shall obtain in respect of that period such reduced cover (if any) as is available and as would be fair and reasonable in the circumstances for the Contractor to obtain.

5.4 Loss or damage

- (a) If during the carrying out of the Works there is any loss or damage to the Works or Site Materials, the Contractor shall forthwith give notice to the Client of its extent, nature and location.
- (b) The occurrence of loss or damage to the Works or Site Materials shall be disregarded in computing any amounts payable to the Contractor under this Works Contract.

- (c) The Contractor shall pay to the Client all monies received under the relevant insurance policy. The Client may retain from the monies paid by the insurers the amount properly incurred by the Client (if any) in respect of professional fees.
- (d) Where loss or damage is to the Works and Site Materials, then after any inspection required by the insurers in respect of a claim under the insurance policy has been completed, the Contractor shall 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. In respect of the restoration, replacement or repair of such loss or damage and the removal and disposal of debris, the Contractor shall not be entitled to any payment other than amounts received under the said policy.
- (e) If there is material loss of or damage to any of the existing structures of the Property, the Client may terminate the Contractor's employment under this Works Contract by giving notice to the Contractor within 28 days of the loss or damage occurring.

6. Section 6 – Termination

6.1 Termination by Client for breach

If the Contractor fails or refuses to comply with any of its obligations under this Works Contract, the Client may give the Contractor notice specifying the default and requiring it to be remedied within 3 days. If the Contractor's default continues after the expiry of the 3 day period, the Client may within 2 days from the date of expiry of the 3 day period terminate the Contractor's employment under this Works Contract by service of a further notice.

6.2 Termination for insolvency

- (a) Either Party may terminate the Contractor's employment under this Works Contract immediately by service of a written notice if the other Party becomes insolvent as defined in sections 113(2) to 113(5) of the Housing Grants, Construction and Regeneration Act 1996 (as amended).
- (b) Notwithstanding any other provision of this Works Contract, if the Contractor's employment is terminated because the Contractor is insolvent as defined in clause 6.3(a), no further sum shall become due to the Contractor under this Works Contract and the Client need not pay any sum that has already become due to the Contractor where

the Contractor becomes insolvent after the last date on which a Pay Less Notice could be given by or on behalf of the Client in respect of that sum.

6.3 Termination for other reasons

If the carrying out of the Works is suspended for a continuous period of more than 7 days due to:

- (a) the occurrence of a Force Majeure Event; or
- (b) loss or damage to the Works occasioned by any risk covered by the insurance policy referred to in clause 6.2(a),

then the Client may, upon or after the expiry of that 7 day period, give notice to the Contractor that the Contractor's employment under this Works Contract is terminated with immediate effect.

6.4 Consequences of termination

- (a) Upon termination of the Contractor's employment under this Works Contract, the Contractor shall leave the site in a safe and orderly manner, removing any plant, tools, equipment, goods and materials belonging to the Contractor and the Contractor's Persons, and deliver up to the Client copies of all Documents.
- (b) Upon termination of the Contractor's employment under this Works Contract the Contractor shall be entitled to be paid a reasonable amount in respect of the total value of work properly executed as at the date of termination, ascertained in accordance with the terms of this Works Contract, together with materials or goods properly ordered for the Works for which the Contractor has then paid or is legally bound to pay (subject to the proviso that such materials and goods shall become the Client's property upon payment for the same being made by the Client) and any other sums due to the Contractor under this Works Contract. The Contractor shall submit an application for payment of the same not later than 3 months after the date of termination and the due date for payment of such application for payment shall be 30 days after the date that the Client receives it. Clauses 4.4(e), (f) and (g) shall apply to the payment of such application for payment.

6.5 Effect of termination

- (a) Termination of the Contractor's employment under this Works Contract shall not determine the operation of any provisions of this Works Contract which remain capable of operation after termination.
- (b) Termination of the Contractor's employment under this Works Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination.
- (c) The provisions of this Section 6 are without prejudice to any other rights and remedies the Parties may possess.

7. Section 7 – Governing law and disputes

This Works Contract shall be governed by English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.

SCHEDULE 1 - SPECIFICATION

[DN: to be inserted]