TERMS AND CONDITIONS

Ref: N-IM-DC-TCS

1. Application

1.1 These terms and conditions shall be deemed to be incorporated in any contract, agreement or Quotation between the Contractor and the Client and shall be in substitution for any other terms and conditions introduced before or after the date of the Quotation (unless expressly identified and agreed to in writing by the Contractor). Furthermore, any action undertaken by the Client in pursuit of their obligations under the Contract will be deemed an explicit agreement to the terms of the Contract and cannot be rescinded, altered or amended in any way without mutual agreement by the Parties.

2. Definitions and Interpretation

2.1 The Client, the Commencement Date, the Completion Date, the Contract Documents, the Contractor, the Contract Price, the Contract Works, the Payment Dates and the Site have the meanings shown in the Quotation.

2.2 In these terms and conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Certificate of Practical Completion"	means a written notice from the Client confirming that the works are deemed to have reached Practical Completion;
"Consents"	means any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by or from any governmental or other authority, landlords, funders, adjoining landowners or any other person in relation to the Contract Works or otherwise required to enable delivery of the Contract Works;
"Contract"	means the Quotation, these terms and conditions and the documents embodied into or referred to in the Quotation;
"Due Date"	has the meaning given in clause 5.1;
"Insolvent"	has the meaning given to it in s113 of the Housing Grants, Construction and Regeneration Act 1996;
"Parties"	means the parties to the Contract, namely the Contractor and the Client;
"Practical Completion"	means the date of completion of the Contract Works determined in accordance with clause 10.1.1 and 10.1.2; and
"Quotation"	means the completed quotation/acknowledgement of order to which these terms and conditions are attached or referred to;
"Statutory Requirements"	means the notices required by any statute, any statutory instrument, rule or order or any regulation or bylaw applicable to the Contract Works.

2.3 Unless the context otherwise requires, each reference in these terms and conditions to:

2.3.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or other similar means;

2.3.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time; and

2.3.3 a clause or paragraph is a reference to a clause of these terms and conditions.

2.4 The headings used in these terms and conditions are for convenience only and shall have no effect upon the interpretation of these terms and conditions.

2.5 Words imparting the singular number shall include the plural and vice versa.

2.6 References to any gender shall include the other gender.

3. The Contract Works

3.1 The Contractor shall carry out the Contract Works in a good and workmanlike manner and complete the Contract Works in accordance with the Contract using materials and workmanship herein specified or otherwise of a good and suitable standard and which are not generally regarded as deleterious.

3.2 The Contractor may appoint sub-contractors to perform any or all of the Contract Works, but shall be liable for the acts and defaults of all such sub-contractors as if they were its own acts and defaults, and shall not be relieved of any obligation hereunder by reason of the use or appointment of sub-contractors.

3.3 The Contractor shall use all reasonable endeavours to complete its obligations under these terms and conditions at the times required by the Contract, but time will not be of the essence in the performance of these obligations.

3.4 The Client shall be responsible for obtaining all Consents, and warrants that all Consents required for the Contract Works to proceed have been obtained and not withdrawn.

3.5 The Client shall be responsible for providing the Contractor with all facilities that it requires to complete the Contract Works, including but not

limited to electricity, water and washroom/toilet.

3.6 If the Quotation states that the Contractor is to be responsible for the design of all or part of the Contract Works, the Contractor will exercise the reasonable skill and care of a designer when carrying out the relevant portion of the Contract Works.

3.7 The Contractor agrees to return to the Site for a period of 3 months from Practical Completion for the purpose of attending to any genuine defects in the Contract Works which have been notified to the Contractor prior to expiry of that 3 months, and for which the Contractor is responsible. The Contractor may wait until the end of the 3 month period before returning to attend to all genuine defects notified and shall rectify such defects in such time is reasonable given the circumstances and availability of materials and personnel.

4. Contract Price

4.1 The Client agrees to pay the Contract Price in consideration of the Contractor carrying out the Contract Works at the times and in the manner specified in the Contract.

4.2 All sums payable by either Party pursuant to these terms and conditions are exclusive of any value added or other tax (except corporation tax) or other taxes on profit, for which that Party shall be additionally liable.

5. Payment

5.1 Up to Practical Completion (subject to the sole discretion of the Contractor thereafter unless otherwise stated in these terms), the Contractor shall be entitled to interim payments. Unless otherwise agreed between the Parties, the due dates for such interim payments shall be the Payment Dates (each being a Due Date).

5.2 The Contractor shall submit an invoice for payment on or before each Due Date identifying the amount due up to the relevant Due Date.

5.3 Within 5 days of each Due Date the Client shall give a payment notice in writing to the Contractor specifying the amount of the interim payment to be made and about the basis on which such amount is calculated.

5.4 Subject to any alternative payment terms as may be set out on the Quotation, the final date for payment shall be 14 days after the Due Date.

5.5 If any sum payable under the Contract is not paid by the final date for payment then, without prejudice to the Contractor's other rights under the Contract, that sum shall bear interest from the final date for payment until payment is made in full, both before and after any judgment, at 5 per cent per annum in excess of the rate set from time to time by the Bank of England's monetary policy committee or any successor of it.

5.6 Should the Client fail to pay any invoice by the final date for payment the Contractor may following notice in writing suspend all or part or the Contract Works. Upon the ending of a suspension the Client shall pay the Contractor's reasonable costs of the suspension and shall grant the Contractor an extension of time for the period of the suspension.

6. Variation and Amendments

6.1 The Contractor will be entitled to an addition to the Contract Sum and extension to the Completion Date in the event that the Contract Works are varied in any way, including, but not limited to where:

6.1.1 the Client varies any details of the Contract or issues an instruction (whether verbal or written) changing the Contract Works;

6.1.2 the Client impedes or prevents the execution of the Contract Works in any way, allows third parties to access the Site (without the Contractor's prior approval) or defers giving possession or prevents access to the Site;

6.1.3 the progress of the Contract Works are affected by the carrying out of work, or failure to carry out work, by a statutory undertaker in relation to the Site or Contract Works;

6.1.4 there is an inconsistency or ambiguity between the Contract Documents;

6.1.5 the Contractor encounters adverse weather conditions;

6.1.6 the Contractor encounters unforeseen Site conditions, ground conditions or obstructions that were not allowed for in the Contract Price; and/or

6.1.7 any other circumstances arise that are beyond the reasonable control of the Contractor.

6.2 Any amendments to the Contract Works as a result of events listed at clause 6.1 shall be valued by the Contractor on the basis of the Contractor's rates and prices plus reasonable direct and/or indirect loss and/or expense incurred by the Contractor and an estimate of the required adjustment to the Completion Date. The Contractor shall issue an invoice to the Client for any additional costs. The Contractor shall not be required to carry out and complete any addition to the Contract Works until such time as the relevant time and price adjustment have been agreed but any failure to agree the adjustment will not affect the Contractor's ability to recover an additional amount of money from the Client.

7. Termination

7.1 The Contractor may terminate its employment under the Contract at any time on 7 (seven) days' written notice.

7.2 The Contractor may terminate its employment under the Contract immediately if the Client has become or threatens to become Insolvent.

7.3 If the Client is in breach of its obligations under the Contract, the Contractor may give to the Client written notice specifying the default or defaults. If such default continues for 10 days following receipt of the notice, the Contractor may on further notice terminate its employment under the Contract.

7.4 If the Contractor does not comply with its health and safety responsibilities the Client may give to the Contractor written notice specifying the default or defaults. If such default continues for 10 days following receipt of the notice, the Client may on further notice terminate the Contractor's employment under the Contract.

7.5 In the event of termination under this clause 7, the Client shall pay to the Contractor the value of the Contract Works executed (including but not limited to any design fees), based upon the Contractor's rates and prices, materials on or off the Site or in manufacture and the cost of removal of its plant, tools and equipment by the Contractor. In addition, the Client shall pay to the Contractor any booking fees or cancellation costs incurred for any materials, plant or services that have been ordered. Where any goods and materials have been paid for by the Client, the Client shall be entitled to collect these within 2 weeks following termination after which point the Contractor is authorised to dispose of them.

7.6 In the event of termination under clauses 7.2 and 7.3 the Client shall also pay the Contractor its direct loss and expense and loss of profit.

7.7 All payments made under this clause 7 shall be made in accordance with clause 5 hereof following an application for payment by the Contractor.

8. **Assignment**

8.1 The Contractor may assign, transfer, charge or sub-contract any or all of its rights and obligations under the Contract without the consent of the Client.

8.2 The Client shall not assign, transfer, charge, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the Contractor.

9. **Liability and Indemnity – THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

9.1 The Contractor's liability under or in connection with the Contract shall be limited to the lesser of £250,000 or five times the Contract Price. This limit shall apply however that liability arises, including, without limitation, a liability arising by breach of contract, arising by tort (including, without limitation, the tort of negligence) or arising by breach of statutory duty. Provided that this clause shall not exclude or limit the Contractor's liability for:

9.1.1 death or personal injury caused by the Contractor's negligence; or

9.1.2 fraud or fraudulent misrepresentation.

9.2 Subject to clause 9.1 the Contractor shall not be liable to the client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

9.2.1 loss of profits;

9.2.2 loss of sales or business;

9.2.3 loss of agreements or contracts;

9.2.4 loss of anticipated savings;

9.2.5 loss of or damage to goodwill;

9.2.6 any indirect, special or consequential losses.

9.3 The Client shall indemnify the Contractor against all damages, costs, claims and expenses suffered by the Contractor arising from loss or damage to any equipment (including that of third parties) caused by the Client, or his agents or employees.

9.4 The Contractor shall not be liable to the Client or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of the Contractor's obligations if the delay or failure was due to any cause beyond the Contractor's reasonable control.

9.5 Where the Contractor is a sub-contractor of the Client, the Contractor shall not be liable to the Client for any obligations or liabilities whatsoever arising out of the main contract that are not specifically set out in the Contract.

10. **Programme**

10.1 The Contractor shall use its reasonable endeavours to take possession of the Site on the Commencement Date and complete the Contract Works to the point where the Client can assume occupation of the Site and the Contract Works by the Completion Date, as such date may be adjusted under the Contract. The Client shall be regarded as being able to assume occupation of the Site and the Contract Works following the issue by the Client of the Certificate of Practical Completion, which shall be issued when:

10.1.1 the Contract Works are completed in accordance with the Contract, save for small items of work which do not affect the compliance of the Contract Works with the Statutory Requirements or affect the intended use of the Contract Works and the Site, as such items are agreed in writing between the Client and the Contractor (both acting reasonably) and set forth on a list of snagging items; and

10.1.2 applicable authorities have, if necessary, approved the Contract Works.

10.2 Practical Completion shall be regarded as having been achieved when the Certificate of Practical Completion is issued by the Client or the Client takes possession of the Site or the requirements of clauses 10.1.1 and 10.1.2 have been satisfied whichever is earlier.

11. **Extension of Contract Period**

If it becomes apparent that the Contract Works will not be completed by the Completion Date (or any later date fixed under this clause from time to time) for reasons beyond the control of the Contractor, including (without limitation) compliance with any instruction of the Client which is not due to the default of the Contractor, then the Contractor shall notify the Client in writing confirming that the Completion Date has been amended. The Client shall also make an allowance for the Contractor's direct loss and expense occasioned by the extension of time and such sum shall be added to the Contract Price.

12. **Risk and Insurance**

12.1 The Client will be responsible for maintaining adequate insurance in respect of the Contract Works and, where appropriate, the existing structures at the Site.

12.2 The Contractor will be responsible for insuring loss or damage caused to any materials on the Site. Where the value of any materials has been included within an invoice issued by the Contractor and the Client has not paid the amount due to the Contractor, the Client will be responsible for insuring the materials but will not own the materials until the Contractor has received payment, in full, for them.

12.3 If the Contractor is responsible for the design of all or part of the Contract Works the Contractor will maintain professional indemnity insurance in the sum of £250,000 in the aggregate including defence costs for a period of 6 years from the date of Practical Completion provided that such insurance is available at commercially reasonable rates and terms.

12.4 The Contractor will not be responsible for the security of the Site which will be entirely the responsibility of the Client.

13. **Advance Payment**

If specified within the Quotation as a special condition and an advance payment is to be made, it shall be paid to the Contractor on the date and reimbursed to the Client on the terms stated in the Quotation.

14. **Dispute Resolution**

If any dispute or difference concerning the Contract Works shall arise between the Client and the Contractor, such dispute or difference may be referred to adjudication to be conducted in accordance with the Scheme for Construction Contracts Regulations (England and Wales) 1998 (as amended). For the purposes of such adjudication the Parties agree that the nominating body for appointment of the adjudicator shall be the President or Vice President of the Royal Institute of Chartered Surveyors.

15. **Force Majeure**

Neither the Client nor the Contractor shall be liable for any failure or delay in performing their obligations under these terms and conditions where such failure or delay results from any cause that is beyond the reasonable control of the Parties. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action, any pandemic and/or epidemic (and any mutation or subsequent wave of the same).

16. **Waiver**

No failure or delay by a Party to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. **Severance**

If any provision or part-provision of these terms and conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these terms and conditions.

18. **Copyright**

All copyright and any other intellectual property rights (if any) which may subsist in the products or documents produced by the Contractor in relation to the Contract Works ("Materials") remain vested in the Contractor but, subject to the Contractor having been paid all sums due and payable under this Contract, the Client shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Materials for any purpose relating to the Contract Works. Such licence shall not include a right to reproduce the Materials for any extension of the Contract Works and the Contractor shall not be liable for any use of the Materials for any purpose other than that for which they were prepared.

19. **Notices**

19.1 Any notice or other communication to be given or made under the Contract shall be in writing and shall be delivered by hand, post or email to the Contractor or the Client at the address set out in the Quotation or at such other address or number as the relevant Party may specify from time to time by notice in writing to the other.

19.2 Notices shall be deemed to have been received:

19.2.1 in the case of delivery by hand, when delivered;

19.2.2 in the case of pre-paid post, two days after the date of posting; and

19.2.3 in the case of email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 19.2.3, business hours means 9.00am to 5.00pm Monday to Friday inclusive, but excluding any day recognised as a public holiday in England.

20. **Law and Jurisdiction**

20.1 The governing law of the Contract shall be the laws of England and Wales.

20.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

21. **Entire Agreement**

The Contract is the entire agreement between the Client and Contractor and supersedes and extinguishes all previous agreements, promises, assurances, representations and understandings between us, whether written or oral, relating to its subject matter.

Nothing in the Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.