

1. Definitions

In this document the following words shall have the following meanings:

1.1 'Agreement' means these Terms and Conditions together with the terms of any applicable Order or Contract entered into by the Company;

1.2 'The Company' means Hargreaves Construction Company Limited in respect of all matters relating to construction and for all non-construction related matters it shall mean Hargreaves Management Limited unless another Group company is specifically stated as being the contracting party or it is unambiguously clear from the relevant documentation that the contracting party is another Group company;

1.3 'Contract' and **'Order'** shall mean any contract or order entered into or placed by the Company;

1.4 'Employee Liabilities' means in relation to an employee, any costs and/or liabilities arising out of or in connection with the employment of that employee or the termination of such employment including, without limitation, any contractual entitlements in respect of salary, wages or other emoluments, employer's national insurance contributions, pay-as-you-earn tax deductions, pension contributions or payments, any reimbursement of employee expenses and any settlements, awards, costs or penalties arising in connection with any dispute between that employee (or trade union representing that employee) and his/her employer and/or arising out of or in connection with the termination of employment of that employee;

1.5 'Group' means Hargreaves Property Holdings (2015) Limited and all of its subsidiary companies and all affiliated companies;

1.6 'Intellectual Property Rights' means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;

1.7 'Personnel' means the employees, contractors, agents or otherwise of the Provider that are engaged by the Provider in the performance of the Provider's obligations to the Company;

1.8 'Provider' means the persons or company with whom the Company is transacting business of whatever nature and includes suppliers of goods, materials and services and also main contractors, labour only sub-contractors and supply and fix sub-contractors, hirers of plant and equipment and all other persons or companies with whom the Company Contracts or places Orders;

1.9 'Replacement Provider' means any Provider engaged by the Company to undertake all or part of the Works in whole or part for the Works that may have been the subject of a contract with a previous Provider;

1.10 'TUPE' means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1.11 'Works' means any works of design, installation, construction, supply, delivery, maintenance, repair, provision of services, advice or the like to be undertaken for or supplied or provided to the Company.

2. General

2.1 Clause and Section headings which appear in these Terms of Business do not form part of the Terms of Business and are only included to assist the convenient reading of these terms. So far as they may be appropriate and/or relevant, all clauses throughout these Terms of Business shall apply to all business transacted regardless of under what section heading they may occur and regardless of the order in which the clauses are arranged and the headings under which clauses are shown shall not limit their application.

2.2 These Terms of Business shall apply to all business transacted by the Company unless a director of the Company shall have signed either an Order which contains any variations from these Terms of Business or shall have executed a separately negotiated Contract with the Provider, in which case the terms of that Order or Contract shall take precedence over these Terms of Business except for such of the terms contained herein that are not covered by that Order or Contract.

2.3 If the Provider's Terms of Business are in any way at variance or contradictory to any of the Company's Terms of Business then unless a director of the Company has specifically agreed in writing to accept the Provider's Terms of Business prior to delivery of the goods or services, then execution of the work or delivery by the Provider shall be deemed to imply acceptance of the Company's Terms of Business. If it is agreed that the Provider's Terms of Business shall apply this shall only be in respect of such of the Provider's terms which may be at variance to or additional to the Company's Terms of Business and all other Terms of Business of the Company shall still apply unless it is expressly agreed that any specific items shall not be applicable.

2.4 None of the Company's Terms of Business shall operate to limit the Company's Statutory Rights nor does the Company accept any of the Provider's

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Terms of Business which limit or restrict the Statutory Rights which would otherwise be available to the Company.

2.5 Where it is agreed that the Provider shall supply goods and/or services, the goods and/or services to be supplied, the price payable and any other special terms agreed between the parties shall be set out in the Order. All Orders shall be subject to these Terms and Conditions.

2.6 Where it is agreed that the Provider shall undertake Works, the Works to be undertaken, the price payable and any other special terms agreed between the parties shall be set out in the Contract. All Contracts shall be subject to these Terms and Conditions.

2.7 Works undertaken for the Company shall always be on the basis that, unless the Contract provides to the contrary, the Provider is engaged to work in the capacity of a Main/Principal Contractor and as such, takes full responsibility as provided for under the CDM Regulations including for all Health and Safety issues and which by law can fall on both the Company and the Provider. The Provider is also responsible for the provision of all necessary tools, equipment, safe access, welfare and protection as is necessary to comply with all Statutes and Regulations in respect of the Works and which places responsibility on both the Company and the Provider in relation to the Works.

2.8 When counting the number of days for the purpose of interpreting these Terms of Business, all public and bank holidays shall be ignored and reference to working days shall exclude all weekends as well as public and bank holidays.

2.9 All correspondence relating to the sale, purchase, leasing and licensing of property, the assignment of leases and the grant of any consents which are required under the terms of any transfer, conveyance, lease or licence is Subject to Contract and therefore unless it is clearly stated to the contrary, these Terms of Business (other than this clause) do not apply to any such correspondence or any leases, licences or consents entered into by the Company pursuant to such correspondence.

2.10 Contracts, conveyances, transfers, licences, leases, consents, waivers, notices

and all other documents relating to land and property and any interest therein are only valid if signed by a director or company secretary of the company which owns the relevant interest in the property. Only directors of the Company are authorised to instruct agents to represent the Company in property related matters and under no circumstances is any agent authorised to grant, allow or permit any rights of use, possession or occupation in respect of any property belonging to the Company.

2.11 No person whether or not a Director of the Company is empowered to contractually commit the Company other than in writing and such written commitments may only be made by hard copy on paper and not by fax or by e-mail – but this does not invalidate a scan of a signed hard copy sent by e-mail or fax.

2.12 Orders and Contracts are only valid if signed and given on the Company's official Order form or on the Company's printed notepaper, but this does not invalidate a scan of a signed hard copy sent by e-mail or fax. Orders are only valid up to the lower of either the value and/or time limit specifically stated thereon or otherwise to a value not exceeding £10,000 and a time limit for delivery or completion of not exceeding 6 months from the date of order, unless they are signed by a single Director of the Company in which case they will be valid up to a value of £50,000 and a duration of 12 months from the date of order, above which value and/or duration they must be signed by two directors.

2.13 An Order or correspondence purporting to create an Order or other contractual commitment shall not become binding on the Company unless it fully sets out precisely and without reservation all information necessary relating to exactly what is to be supplied, and which information shall, so far as it is relevant, refer to the make, size, colour, style, specification, quantity, quality, price, delivery address, delivery date and contract duration as well as all other information which the Provider shall have previously notified the Company as being necessary for the Provider to proceed with and fulfil its commitment to the Company. In the event that the Order or correspondence is lacking in any such necessary information it shall constitute a letter of intent to place an Order, for which the Provider shall have no

redress if it is not at a later date converted into a valid Order by the Company subsequently supplying all such further information as shall be necessary.

2.14 The Company reserves the right to vary these Terms of Business from time to time and all business transacted by the Company shall be in accordance with the Company's Terms of Business as may be current at the date on which the contractual relationship is created between the Company and the Provider, except that in the case of an Order for a continuing supply subject to call off's, the Terms of Business in existence at the date of call-off shall apply. An up-to-date copy of the Company's Terms of Business will always be supplied on request to the Company's Head Office and a Provider's ignorance of these Terms of Business shall not in any way limit its obligations to the Company.

2.15 The Company reserves the right to require a Provider to remove from Company premises, any of their Employees found to be harassing Company Employees under The Equality Act 2010.

2.16 The Company and/or Provider shall not be liable for any delay or failure to perform any of its obligations under an Agreement if the delay or failure results from events or circumstances beyond its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, flood or industrial disputes, and the Company and/or Provider shall be entitled to a reasonable extension of its obligations.

2.17 Nothing in an Agreement shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in an Agreement shall be deemed to construe either of the parties as the agent of the other.

2.18 Any Order or Contract made by the Company shall be personal between the Company and the Provider who shall not assign any Order or Contract except with the Company's previous written consent, which the Company shall be entitled to grant or refuse in its absolute discretion. The Provider shall give written notice to the Company of any such authorised assignment and such assignment shall be effective on the date of receipt by the Company of the written notice. If a Provider assigns an Order or Contract without the

Company's prior consent then the Company shall be entitled to rescind such Order or Contract (without any period of notice or payment of compensation) at any time after it becomes aware of the assignment and notwithstanding any acceptance by the Company of service or supply or payment for the same after the time when it becomes aware of the assignment.

2.19 Pursuant to the Contract (Rights of Third Parties) Act 1999 obligations entered into by the Company shall only be enforceable against the Company by the Provider and obligations entered into by the Provider may be enforced directly by the Company against a Third Party (or by the Company but in the name of the Provider) if such enforcement could result in achieving compliance with the obligations entered into by the Provider and excepting to the extent as aforesaid the provisions of the Act shall not apply to or affect in any way the contractual position between the Company and the Provider to the extent that the Act shall apply. The Company and the Provider may at any time by agreement rescind or vary contractual commitments between themselves notwithstanding any loss of enforceability which may be suffered by third parties.

2.20 To the extent that any clauses in these Terms of Business may be held to be unlawful and/or unenforceable or may be limited or varied by Statute this shall only affect the relevant clause and shall not invalidate or limit the application and relevance of all other clauses contained in these Terms of Business.

2.21 No failure by the Company to enforce any of these Terms and Conditions shall constitute a waiver of its rights hereunder.

2.22 Any notice to be given by either party to the other shall be served either by personal service or by post to the address of the other party given in the Order/Contract, and if hand delivered shall be deemed to have been received on the first working day following the date of delivery and if sent by post shall be deemed to have been received when proof of receipt can be shown.

2.23 An Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

3. Price and Payment

3.1 To obtain any payment, including if applicable, Interim and Final payments and releases of Retention, the Provider shall first submit a "Correct" Invoice or Application for Payment, which shall set out in full itemised detail the calculation of the amount which the Provider believes they are entitled to receive as at the date of the request.

3.2 For an invoice or application for payment to be "Correct" it must be received by post or scanned copy by email to remittance@hprop.co.uk addressed to the Company at its Head Office, not to a building site or to any other address nor by handing to a person and the goods or work being charged for must be in accordance with the Company's Order or Contract, shall be of satisfactory quality specification and workmanship, shall comply with all relevant Statutory Requirements, Codes of Practice and industry standards and shall be charged for at the correct price (or if no price has previously been quoted or agreed the charge should be no more than a fair and reasonable amount) and if called upon to do so the Provider must be able to prove to the Company's reasonable satisfaction that the goods and/or works and/or services have been properly ordered, delivered to and accepted by the Company in an undamaged state and that the Provider has sufficiently good title to be able to lawfully sell the goods to the Company.

3.3 An Invoice or Application for Payment will not be 'Correct' if it relates to Works that have been undertaken out of sequence and ahead of the agreed work program.

3.4 Except for Works supplied under a main contract or sub-contract, the Company shall pay for goods and/or services included in a Correct Invoice at the end of the month following the month in which the goods and/or services are supplied or in which the invoice is received (the 'Final Payment Date'), whichever is the later. For Works supplied under a main contract or sub-contract the Company shall pay for such Works when included in a Correct Invoice or Correct Application for Payment, 28 days after receipt of the Correct Invoice or Correct Application for Payment (the "Final Payment Date"). In no circumstances shall the time for payment be of the essence of the Agreement.

3.5 Unless legislation obliges the Company to make interim payments Providers shall only be entitled to receive instalments or interim payments, whether for partial delivery or part fulfilment of an order or the partial supply of services, if such an arrangement has been specifically agreed by the Company and confirmed in the Order.

3.6 Where instalment or interim payments apply, unless alternative payment frequencies have been agreed in writing by the Company, applications for instalment or interim payments, when applicable, may be made no more frequently than once per month and will be paid in accordance with these Terms of Business.

3.7 If a Provider is entitled to instalments or interim payments and if a breakdown of the Contract price has been agreed, then unless it has been specifically agreed that instalment or interim payments will be calculated in any other manner, instalment or interim payments will only be made against the full completion of each item or stage and the agreed price against each item shall form the basis for calculating entitlement to instalments or interim payments.

3.8 If a breakdown of the Contract price has not been agreed for the purpose of making instalment or interim payments then the interim payment shall be the contract price less (the aggregate of both the amount of all previous interim payments and retentions and a realistic estimate of what would be the likely cost of completing the contract works if another Provider were to have to be engaged to complete the work).

3.9 Where an invoice for the supply of goods or services is received or dated in advance of the delivery of the goods or completion of the work or service, the Invoice will not become a Correct Invoice until the day following the date of delivery of all of the goods or the completion of the work or service charged for by the Invoice.

3.10 If materials are delivered and invoiced ahead of the delivery date required by an Order, for the purpose of calculating when payment is due, the delivery will be deemed to have occurred on the date upon which delivery was required.

3.11 Unless previously agreed, partial supply or delivery will not create entitlement

to part payment and the supply will be treated as having been made on the date when the Provider completes delivery or fulfils the entire order.

3.12 When an Invoice or Application for Payment is received which is not Correct it will be treated as having been received by the Company on the date upon which either a Credit Note is received correcting the errors contained in the invoice, an amended Application for Payment is received, or when the Provider produces such information as to reasonably satisfy the Company that it is a Correct Invoice or Application for Payment.

3.13 Where the Provider's quotation includes a discount for prompt payment, the Company shall be entitled to deduct such discount if payment is made in accordance with these Terms of Business.

3.14 In respect of supply and fix contracts, payment will not be made for goods or materials which are unfixed.

3.15 The Company shall not be obliged to pay VAT to any Provider before the Company is supplied with a VAT invoice.

3.16 The price and any taxes and expenses for the works or goods and/or services shall be as specified in the Order.

3.17 The Company shall not be responsible for any expenses, charges or price other than those set out in the Order (other than for approved variations or extras).

3.18 Goods delivered and services provided or to be provided by a Provider against Orders resulting from estimates and/or quotations which are subject to price variation shall be charged at the price estimated and/or quoted immediately prior to the call-off for delivery. Providers not prepared to supply goods at previously estimated and/or quoted prices must obtain written acceptance of an alternative price with the Company prior to delivery.

3.19 When goods are being supplied, work undertaken or service provided for a quoted or estimated price and the Provider becomes aware of or could be reasonably be expected to have become aware of, any circumstances which might give rise to the need for a price adjustment or additional payment, the Provider shall immediately notify the Company in writing giving details

and reasons for the price adjustment or additional payment and the Company may at its absolute discretion agree to any such price adjustment or additional payment which shall become effective upon the issue of a written notice by the Company and shall be in substitution for any price previously quoted, estimated or otherwise agreed. Where the Company does not issue any such written notice the quoted or estimated price shall remain unaltered. The Company will not accept claims for additional payment or price variation after the supply of the goods, delivery of the material, execution of the work or provision of the service even if such supply goes beyond what was originally requested.

3.20 When goods, materials and services are supplied without the Provider having previously quoted or estimated a price, then the Company shall only be responsible for paying a fair price for the goods, materials or service and such price shall not be in excess of the price at which comparable goods, materials and services can normally be purchased from other suppliers.

3.21 In the event of the Company not paying by the Final Payment Date, and subject to the Late Payment of Commercial Debts (Interest) Act 1998 being applicable to the Order, then the Company will pay interest to the Provider at a simple interest rate of 2% over Barclays Bank Base Rate from the Final Payment Date until the date upon which payment is actually made.

3.22 If an Invoice from a Provider in respect of Works provided under an Order is not correct or for any other reason is not acceptable to the Company, or if for any other reason the Company is entitled to withhold money from the Provider or make any deduction from payments to the Provider, then the Company shall give to the Provider notice of its intention to withhold payment and such a notice can be given by the Company to a Provider at any time up to one day prior to the Final Payment Date and may take the form of information contained within a Remittance Advice accompanying a payment to the Supplier provided the Remittance Advice is dated prior to the Final Payment Date relating to the invoice in question and shall identify the amount to be withheld and the reasons for withholding payment.

3.23 If an Invoice or Application for Payment from a Provider in respect of Works provided under a Contract is not correct or for any other reason is not acceptable to the Company, or if for any other reason the Company is entitled to withhold money from the Provider or make any deduction from payments to the Provider, then the Company shall give to the Provider notice of its intention to withhold payment. Such a notice will normally be given by the Company to a Contractor up to seven days prior to the Final Payment Date and will take the form of a Payless Notice and shall identify the amount to be withheld and the reasons for withholding payment.

3.24 If payment of an Invoice or an Application for Payment either in part or in full is made prior to the Final Payment Date and prior to the giving of notice to withhold payment, this shall not prejudice the Company's right to subsequently (but prior to the Final Payment Date) serve a notice establishing its right to withhold payment in which case the Company shall be entitled to make a deduction from any subsequent payments which may become due to the Provider.

3.25 When a Contract involves repeated work on separate buildings (such as on a housing estate or on any other site where more than one building is being constructed) each plot or building is a separate contract and these Terms of Business shall apply separately to each such separate contract.

3.26 If a Provider is undertaking Works for the Company on one site or building but involving different tasks which by their nature are totally separate and not dependant upon one another, then (including for the purpose of deciding whether or not the supplier is entitled to interim payments) each such task is a separate contract and these Terms of Business shall apply separately to each such separate contract.

3.27 Unless the Contract sets out different retention percentages and periods for retention, the Company shall be entitled to hold as a retention against all payments for supply and fix and labour only contracts 5% of the gross value claimed in any invoice or payment application and which shall reduce to 2.5% of the gross value claimed when the whole of the Works have been completed in accordance with the Contract and these Terms of Business.

3.28 Payment will only be made for variations to an agreed contract price or for Works additional to the contract if the Company has first issued a written order or instructions for such variation or additional work and which order or instruction either states the amount to be paid for the variation or additional work or sets out the basis upon which the payment will be calculated. Unless alternative arrangements are specifically agreed in writing such amounts will be included in the final payment for the contract which shall be on the date which is the Final Payment Date in accordance with these Terms of Business.

3.29 The Company's right to claim against a Provider, including in contract and by Statute, in relation to Works or a supply which has been the subject of payment in part or full shall not be prejudiced either because of partial or full payment or because a notice to withhold has not been served.

3.30 The Company shall be entitled to set off against its indebtedness and payment to a Provider any amount by which, at the date when the Company would otherwise be due to make payment to the Provider, the Company or any of the other companies within the Group may be entitled to receive payment from the Provider.

3.31 Where the Construction Industry Subcontractors Scheme Regulations apply, notwithstanding whatever alternative arrangements may be proposed or have been agreed to by one or other of the parties, payment will not be released to the Provider other than in compliance with the aforesaid Regulations.

3.32 Requests for the release of retentions shall be made after the end of the relevant defects liability period identified in condition 15 of these Terms of Business whereupon the Company shall within fifteen working days make an inspection of the Works and notify the Provider of any defects or incomplete works which are found.

3.33 When the Provider has rectified all defects and incomplete work it shall notify the Company and the defect rectification works shall be deemed to have been completed to the Company's satisfaction unless the Company shall notify the Provider of its dissatisfaction within 10 working days.

When the defect rectification works are either confirmed or deemed to be complete the Provider may submit an invoice for the retention amount and which invoice will then be due for payment in accordance with these Terms of Business.

3.34 The Company shall be entitled to deduct from any retention money which it holds, or any other monies due to the Provider, all costs which it may have incurred in defect rectification or the completion of incomplete works and any other monies which the Company shall be entitled to receive from the Provider. If the costs to the Company of defect rectification or completion of the work exceeds the amount of the retention which it holds then the Company shall be entitled to either require immediate payment of such shortfall from the Provider or set off such amount from any other monies which may become payable by the Company to the Provider under any other contracts which may exist or come into existence in the future between the Company and the Provider.

3.35 When a Contract is entered into which states the number of days within which Works are to be completed then for the purpose of ascertaining when a Provider is entitled to payment or interim payments the count shall commence from the time when the Provider first fixes materials or commences actual work. Such actions as merely delivering materials, establishing site facilities or setting out will not count as having commenced the Contract.

3.36 No payment by the Company shall of itself be conclusive evidence that any design, works, materials or goods to which it relates are in accordance with these terms or any contract between the parties.

4. Quality of Works

4.1 Unless the Company shall specifically specify to the contrary, all design, workmanship and materials supplied are to be fit for their intended purpose and are to be in accordance with or higher than the highest of the standards laid down by the Building Regulations and all relevant Statutory Requirements, Codes of Practice, the National Building Specification (NBS), manufacturers recommendations that may

be appropriate, the National House-Building Council Requirements and the Company's Specification for the work and shall accord to generally accepted good practice. In the event of discrepancy between the aforesaid and the Plans and Specification issued for the job or if the Plans and Specification and aforesaid Regulations do not clearly indicate the method of construction or finish required the Provider shall put forward his proposals for dealing with the discrepancy whereupon the Company shall issue an instruction either agreeing with the Provider's proposal or specifying its own proposals for dealing with the discrepancy and any additional cost incurred by the Provider in dealing with the discrepancy and complying with any instruction issued by the Company shall be met by the Provider. In the event of there being discrepancy as aforesaid and the Provider failing to seek prior instructions then the Provider's obligation shall be to undertake such work and supply such materials in accordance with the highest of the various standards referred to.

4.2 Whatever goods or services the Provider may be supplying, the Company shall be entitled to assume that the Provider has specialist expert knowledge of design and specification and workmanship relating to their product and/or the service they are providing and the Provider shall be responsible for the exercise of all reasonable skill and care which should be expected of a competent Provider in respect of the goods and services they are supplying and the performance of its contractual obligations to the Company and such design for which the Provider may be responsible and, to the extent that it may be left to the Provider's discretion, the specification and selection of materials and the means of execution of the works and acceptance by the Company of any designs and specifications and work produced by such a Provider shall not relieve the Provider from being responsible for the adequacy and suitability and proper performance of its product or completed work nor shall a Provider be relieved of such responsibility as a result of working to any designs or specifications produced by the Company unless the Provider has advised the Company in writing that it cannot accept responsibility for work if executed to the Company's design and specification together with an explanation as to why it

cannot accept such responsibility and detailing what amendments to the Company's design and specification are considered to be necessary in order that the Provider can accept responsibility and in such circumstances the Provider shall not be entitled to any additional payment for any necessary variation to the design and specification of the work if the Company has already accepted a quotation by the Provider to execute work in accordance with the Company's design and specification.

5. Delivery/Collection

5.1 Delivery of goods shall be made to such location as the Company shall direct. Carriage shall be paid for by the party stipulated in the Order. Any time agreed between the parties for such delivery shall be of the essence and the Company shall be entitled to cancel without notice the whole or any part of an Agreement if this Clause is not complied with by the Provider. If, notwithstanding the Provider's failure the Company allows the Provider to continue with its contractual obligation, then the Company shall be entitled to withhold payment of such amount as represents the Company's losses or additional costs incurred due to the delay.

5.2 Where the Company cancels the whole or part of an Agreement in accordance with Clause 5.1:

5.2.1 all sums payable by the Company in relation to the whole or part of an Agreement cancelled shall cease to become payable, unless the Company agrees to pay for what it has accepted;

5.2.2 all sums paid by the Company in relation to the whole or part of an Agreement cancelled and where goods have been returned, shall be repaid by the Provider immediately;

5.2.3 the Company shall be entitled to recover damages from the Provider for any loss caused as a result of the Provider's failure to deliver the goods and/or as a result of the cancellation of the whole or part of an Agreement.

5.3 Acceptance by the Company of goods, work or services which fall outside value and or time limits necessary for an Order to be valid shall not obligate the Company to pay for such goods, work or

services and any such acceptance shall not operate to validate what otherwise constitutes an invalid Order and the Company shall be under no obligation to take any further supplies or deliveries in respect of the invalid Order. Any goods or services accepted by the Company as a result of an invalid Order shall be subject to these Terms of Business.

5.4 When an Agreement is for the supply only of materials to the Company, then unless specifically agreed in writing by the Company at the time of placing the Order, the Company will not accept any charges for pallets or other forms of packaging and if Providers include pallets with their delivery then, provided that at, or before the time of delivery the Company is asked in writing to do so, reasonable care will be taken of the pallets or packaging and the Company will notify the Provider when they are ready for collection. If the Company has agreed to accept deliveries on returnable pallets and if the Provider delays in collecting pallets which it has been notified are available for collection then the Company does not accept any responsibility for theft or loss or damage of such pallets or packing whilst they remain on the Company's property and if, due to delay in the Provider collecting the pallets the Company has difficulty in working around the pallets, or finds it necessary to move the pallets, or deems it necessary or appropriate to deliver the pallets to the Provider then the Provider shall be liable to the Company for any cost incurred by the Company.

5.5 When equipment is held by the Company on hire, the Company's responsibility for such equipment shall cease as from the time when the Provider collects the equipment from the Company's site or, if the Provider is responsible for collection, after such time has elapsed following notice of termination of hire as is reasonable for the Provider to be able to make collection. In the event of prolonged delay by the Provider in collecting equipment following termination of hire, the Company shall not be responsible for loss or damage which may occur to the Provider's property which remains on the Company's property for the duration of the unnecessary delay and the Company reserves the right to contra charge the Provider for such costs or additional costs as the Company may incur in either moving the equipment or working around it.

6. Unloading, Handling, Care, Protection and Security of Work and Materials

6.1 Labour only and Supply and Fix Contractors shall be responsible for unloading all their own materials being delivered for the performance of its contract and all materials supplied by the Company for the Provider's use unless the Provider's Contract expressly relieves the Provider from responsibility for unloading such materials. Unless the Company shall specifically instruct to the contrary, all materials are to be unloaded in the area allocated by the Company for storage and the Provider shall then be responsible for taking from the storage area such materials as are necessary for the performance of a day's work. At the end of a day all unfixed materials are to be returned to store and failure to observe this Condition will result in the Provider being held responsible for any subsequent losses which may occur. All materials are to be suitably stacked and properly protected against the weather at all times.

6.2 When the Company is responsible for providing materials for use by the Provider, then the Provider shall give sufficient advance notice of the required delivery date for the materials in order for them to be ordered and delivered in time to enable work to proceed to programme.

6.3 Any responsibility accepted by the Company for unloading materials on behalf of the Provider shall not relieve the Provider of any of the other responsibilities imposed by these Terms of Business. Unloading by the Company shall not obligate the Company to check delivery of goods for correct quantity or quality and the consequences of any deficiencies shall rest with the Provider.

6.4 The Provider is responsible for all necessary temporary protection of its part completed work and unfixed materials and additionally for the provision of all protection as may be expressly specified by the Company and it shall remove and dispose of all such protection on completion of the Provider's work unless the Company requires the protection to remain pending the progress and completion of other work by other Providers in which case the

Company will then be responsible for the removal and disposal of the relevant protection.

7. Title

7.1 The Provider warrants that it has good title to all goods supplied to the Company and that such title as it may have in the goods will transfer to the Company pursuant to Clause 7.2.

7.2 Title in the goods will pass to the Company when the goods are unconditionally appropriated (by either party or by or with the consent of either party) to an Agreement, or on delivery to the Company, whichever happens first.

7.3 Where the Provider's Terms of Business state that ownership shall remain with the Provider until payment, the Provider shall remain responsible for any loss of the goods or materials prior to ownership passing to the Company, but otherwise and notwithstanding any stipulations by the Provider to the contrary the ownership shall pass to the Company as from the time of acceptance of delivery.

7.4 When a Provider either delivers goods or materials which do not accord with the Company's Order, or if they are subsequently rejected as being unacceptable for any reason then the Provider shall be deemed to become the owner and therefore become responsible for such goods and materials as may be wrong as from the time of being notified of rejection and any loss or damage which occurs either whilst the Provider remains owner or after the Provider is deemed to have become the owner shall be the Provider's loss and without any responsibility falling upon the Company.

7.5 If the Company shall agree at its discretion to make a payment before delivery of the goods or materials it shall not be required to make any such payment before the goods or materials are in the possession of the Provider who shall prove to the Company's satisfaction that the said goods and materials are the absolute property of the Provider, are clearly and permanently marked with the Company's name as becoming the property of the Company and either possess unique identification marks or other unique characteristics which are sufficiently clearly

described and specified on the Provider's invoice as to make their identification easily possible and without any ambiguity. When the aforementioned conditions are satisfied and payment is made then the materials shall immediately become the absolute property of the Company and without the Provider having, or at any time in the future becoming entitled to claim a lien over the goods or materials, but the responsibility for and risk of any loss or damage to the goods or materials, shall remain with the Provider until the goods or materials are properly delivered.

8. Risk

8.1 All goods shall remain at the Provider's risk until such time as they are delivered to the Company and are found to be in accordance with the requirements of an Agreement. It shall be the duty of the Provider at all times to maintain a contract of insurance over the goods.

9. Inspection of Goods

9.1 Where upon delivery goods are found to be damaged, the Company shall notify the Provider and the Company may reject the damaged goods, in which case the Provider shall collect the damaged goods from the Company at the Provider's expense and during the period between delivery of the goods to the Company and collection by the Provider, the Company shall not be liable for any loss or further damage caused to the damaged goods and all sums payable by the Company in relation to the damaged goods shall cease to become payable. All sums paid by the Company in relation to the damaged goods shall be repaid by the Provider immediately and the Company shall be entitled to claim damages from the Provider for any losses caused to the Company as a result of the goods being damaged.

9.2 Where there are shortages in the quantity of goods delivered the Company shall notify the Provider and all sums payable by the Company in relation to the shortfall shall cease to be payable and all sums paid by the Company in relation to the missing goods shall be repaid by the Provider immediately. The Company shall be entitled to claim damages from the Provider for any losses caused to the Company as a result of the shortages.

9.3 If requested, the Provider shall immediately replace damaged goods or supply goods to make up the shortfall or the Company shall be entitled to cancel the whole or any unexecuted part of the order and the rights referred to in Clause 5.2 shall apply.

9.4 Where goods supplied are in excess to what the Company has ordered the Company may require the Provider to collect the excess goods from the Company at the Provider's expense and during the period between delivery of the goods and collection by the Provider, the Company shall not be liable for any loss or damage caused to the excess goods. No sum shall be due to the Provider for the excess goods.

9.5 If the Company notifies the Provider that it accepts the excess goods, the price payable for the excess goods will be at the same rate as applied to the goods ordered.

9.6 The Provider shall remain responsible for all goods in transit and shall repair or replace free of charge all goods damaged or lost in transit.

9.7 The Company's signature on any delivery note is evidence of the number of packages received only and shall not infer acceptance that the goods are in a good condition or of the correct quality.

10. Provider's Obligations

10.1 The Provider shall perform all provision of services with all due skill and care, in a good and workmanlike manner and otherwise in line with best practice within its industry ("Best Industry Practice") and the Provider's Personnel shall possess the qualifications, professional competence and experience to carry out such services in accordance with Best Industry Practice.

10.2 In performing its services the Provider shall have full capacity and authority to enter into an Agreement and that it shall have or will obtain prior to the commencement of the services, any necessary licences, consents and permits required of it for the performance of the services and it shall not in any way infringe or violate any Intellectual Property Rights, trade secrets or rights in proprietary information, nor any contractual, employment or property rights, duties of non-disclosure or other rights of any third parties.

10.3 The Provider shall provide the Company with such progress reports, evidence or other information concerning the services as may be requested by the Company from time to time.

10.4 The Provider is required to carry out and complete Works under a Contract in a proper and diligent and workmanlike manner taking into account the requirements of the development as a whole, the progress of any Works undertaken by other trades, the requirements of the programme for the project and these Terms of Business. When work is being undertaken by employees of the Provider, it shall be the Provider's responsibility to ensure that suitable on-site supervision is provided at all times and its employees shall be instructed as to the work required. Unless previously agreed to the contrary, the Provider shall itself be on the site at all times, but in the event of it being agreed to waive this requirement, then the Provider shall nominate an Employee to be present on the site and take charge of the work and to be answerable to the Company. If, because of the Provider's absence from the site, or because of a change in the Provider's nominated responsible representative it becomes necessary for the work to be altered or for the Company to repeat instructions previously issued then the Company shall be entitled to recover from the Provider such costs and expenses which would not otherwise have arisen.

10.5 Unless agreed in writing by the Company and before the Provider starts work, if the Contractor starts Works before a relevant preceding trade has properly completed its work to the appropriate stage and cleared away all rubbish and surplus material, the Provider shall not be entitled to any additional payment or extension of time in compensation for the additional cost of executing its work to a proper standard and it shall be the Provider's responsibility for clearing away such rubbish and surplus material as shall have been left by the preceding trade. Furthermore the Provider shall be liable to the Company for any additional costs which the Company suffers as a result of the Provider starting work before the preceding trade has completed its work and the Provider shall not be entitled to claim the non-completion of the previous trades work as justification for any

of its own work being below standard. The Provider shall leave the work area totally clear of all rubbish and surplus materials on completion of its work and notwithstanding that any rubbish or surplus material may have been left by an earlier trade.

10.6 If the Provider has not completed all of its Works to the appropriate stage and in the allotted time the Company shall be entitled to allow the following trades to proceed with their work and the Company shall be entitled to decide whether to allow the Provider to complete its Works notwithstanding that it may be more expensive or difficult for the Provider, and/or to use other Providers to complete the incomplete work and/or terminate the Contract. The Company shall be entitled to claim from the Provider in respect of any additional costs or losses which it may suffer in consequence of the Provider's default and if the Contract is determined in these circumstances the Contractor shall have no claim against the Company in respect of the loss of the Contract or any losses of any other nature.

10.7 In the event of the Provider's Works not being completed to a satisfactory standard the Company shall be entitled to reimbursement of all additional costs which it may incur as a result of either rectifying the defective work or compensating the following trades for the additional cost of executing their work.

10.8 The Provider shall be responsible for and indemnify the Company against the cost to the Company of making good any damage which may be caused and all other consequential expenses, costs and/or losses suffered by the Company as a result of any damage the Provider (including any of its employees, invitees etc.,) causes to its own Works and Work completed and/or in progress by other trades and any damage caused to any unfixed materials, plant and site facilities.

10.9 Throughout the progress of its Works the Provider shall at all times work in a tidy and orderly manner, shall clear the work area of all rubbish and surplus or excess material at the end of each day and be responsible for the disposal at its own expense of all waste and surplus material which it generates except to the extent that

the Company shall have specifically accepted responsibility for waste disposal in which case the Provider shall place all waste materials in the refuse disposal bins provided by the Company. On completion of its Works, or any stage of its Works the Provider shall leave the work area totally clean and tidy and clear of any unfixed materials.

10.10 The Company accepts no responsibility for pallets and packaging where the Provider is engaged on a Supply and Fix Sub-Contract and the site shall at all times be kept clear of all surplus and/or redundant pallets and packaging which shall be removed from the site at the Provider's expense.

10.11 Materials shall not be scrapped, wasted or put out for disposal unless they are unusable. Materials which may not be required for any particular stage of the job, either because of being surplus or of incorrect size or below quality shall be neatly stacked and saved if such materials may be suitable for use, either elsewhere on the job or if they could be used by the Company on other sites.

10.12 The Provider shall be fully responsible for all materials that may be issued to it by the Company and the risk of any loss or damage to such materials shall remain with the Provider until such time as the materials have been incorporated into the completed work.

10.13 The Provider when working on a Supply & Fix contract is fully responsible to the Company for all materials delivered to the Provider or provided by the Company for use by the Provider. Notwithstanding any insurance which the Company may have, the Provider remains responsible to the Company for the Provider's work and materials until the time when the contract is fully completed and formally accepted by the Company. Prior to formal acceptance by the Company, the Provider remains responsible to the Company for all Supply and Fix work and all unfixed materials, tools or plant either brought onto the job by the Provider or supplied by the Company to the Provider.

11. Health and Safety

11.1 Unless the Company shall have agreed that the Provider can work to its own Health & Safety Policy then it shall work in accordance with the Company's Health & Safety Policy.

11.2 The Provider is required to be aware of and to observe all the current Health and Safety requirements relating to the work in hand and shall at all times work in accordance with current safety standards and shall only use such tools and equipment as are acceptable in accordance with current Safety Regulations and shall at all times provide its operatives on site with such protective clothing as is required and/or appropriate and ensure its proper use.

11.3 The Provider shall not use any scaffold or other equipment which does not comply with current Safety Regulations; any scaffold or other access equipment erected or adapted by the Provider shall be in accordance with current Safety Regulations and the Provider shall not alter or interfere with any scaffold or access erected by or provided for any other contractor unless specifically authorised by the Company.

11.4 The Provider shall execute all work in the safest possible manner and shall not do anything, or omit to do anything, which may as a result be dangerous or unsafe for other contractors.

11.5 Any source of danger, which becomes apparent to the Provider shall immediately be notified to the Company.

11.6 The Provider shall be responsible for and shall ensure that all its employees, operatives and others who come onto the site as a result of the Provider's Contract with the Company are fully briefed as to all relevant Health and Safety requirements and all other Provider's responsibilities as are contained in these Terms of Business and the Company's Contract with the Provider in so far as they are appropriate in order to at all times achieve compliance with the Provider's responsibilities to the Company.

11.7 The Provider should never attempt to use any tools or equipment without being in possession of such special training or licence or permit as shall be necessary to use such tools or equipment and if a

Provider is unsure as to whether or not tools or equipment necessitate special training or licences or permits then it should assume that such requirements do apply and should not use such tools or equipment unless and until it is convinced that such requirements do not apply.

11.8 The Provider should never attempt to use any tools or equipment which it either knows or might reasonably be expected to suspect may be defective or dangerous or unsuitable for the job in hand.

11.9 For the purpose of the CDM Regulations, unless an alternative party is specified in separate contract documentation the Company is both the 'Client' and the 'Planning Supervisor' and the Provider is the 'Principal Contractor' unless the Company has a full presence on site in which event it will be the 'Principal Contractor'. All Provider's with design responsibility must comply with all the designers responsibilities under the CDM Regulations and contribute as necessary to the Health and Safety File, the production of which is the responsibility of the 'Principal Contractor' and which shall contain as built drawings, design criteria, construction methods, details and materials, maintenance procedures, operating and maintenance manuals and details of the location and nature of all utilities, services, emergency and fire fighting systems.

12. Management, Program and Timescale

12.1 In the event of the Provider becoming aware of any circumstances which will delay, or may possibly lead to any delay in the completion date of its work or the delivery date for goods or materials or services, then the Company shall be notified at the earliest possible opportunity.

12.2 In respect of completion dates, either referred to in correspondence, or stated in the Contract, time shall be of the essence. If, notwithstanding the Provider's failure the Company allows the Provider to continue with its contractual obligation, then the Company shall be entitled to withhold payment of such amount as represents the Company's losses or additional costs incurred due to the delay.

12.3 When working to an agreed programme which runs over a period of time and if it is necessary for the Provider's Work to integrate with other works either physically or by sequence of work then the Provider shall maintain a presence on the site for the whole of the programme period, allow other Providers to work around it as and when necessary, co-operate in organising it's work sequence so as to be able to smoothly integrate with the work and progress of other trades and a Provider shall not be entitled to charge for delay or for return visits if they become necessary as a result of a Provider's Work progressing ahead of its agreed programme and therefore failing to achieve smooth integration with the progress of work by other Providers and the delivery of materials.

12.4 Regular co-ordination and programme review meetings may be held on site and the Provider is to attend all such meetings at which the Company may require its attendance.

12.5 Work shall not be undertaken outside normal working hours or at weekends and Public Holidays except by prior permission of the Company.

12.6 Providers shall notify the Company at the time of entering into a Contract, of any holidays which may be planned during the period between the date of the Contract and the specified completion date and which may have an effect on the progress of the work or delivery of materials. The earliest possible notice should be given in respect of holiday dates, and arrangements shall be made by the Provider to ensure that absence on holiday will not delay the Company's work programme. If the Provider is unable to work, whether through sickness or for any other reasons, the Company should be notified by telephone at the earliest possible opportunity. In the event of the work programme falling behind due to the Provider's failure to comply with these provisions, then the Provider shall be responsible for any financial consequences which result.

12.7 The Provider must use its best endeavours to regain lost time in the event of the Work falling behind programme.

13. Site Facilities and Services

13.1 The Provider shall be responsible for providing at its own expense all protective clothing and equipment, toilet, mess and other facilities required by Statute for the health, protection, welfare, safety and safe working of itself and its operatives except only for such as the Company may specifically undertake to provide.

13.2 When using mess, toilet and other facilities provided by the Company, the Provider shall treat such facilities with respect and shall not cause any damage, nor unnecessarily dirty such facilities. The Provider shall only use such facilities as are specifically provided for its use.

13.3 Mess facilities are not allowed to be established within working areas.

13.4 Toilet and sanitary facilities within the Works shall not be used by Providers.

13.5 Unless the Company specifically agrees to provide water, electricity and other services for use by the Provider then the Provider shall be responsible for making its own arrangements for the availability of such services. When the Company agrees to provide water it will have satisfied its obligation if water is available from a tap either on or near the site and the Company shall not be responsible for the supply of any hose pipes which may be required by a Provider. An agreement by the Company to make electricity available will be satisfied by provision of a 240 volt, 13 amp, single phase switched socket on or close to the site. Any extension leads and transformers that may be required by the Provider either for its own convenience or to comply with health and safety standards shall be provided by the Provider at its own expense.

14. Plant Tools and Equipment

14.1 The Provider shall be responsible for providing at its own expense all tools and equipment necessary for the proper execution of the works excepting only for such items as the Company shall have specifically agreed to provide.

14.2 The Provider shall accept responsibility for the safe-keeping, proper use, and subsequent return in

good and complete condition of all tools and equipment which may be issued to it by the Company or which may be hired by the Company or by the Provider on the Company's behalf and the Provider shall be responsible for all costs of repair or replacement which result from loss or misuse.

15. Completion and Defects Rectification

15.1 For Work to be accepted as satisfactorily completed (comprising either the whole contract or just a part of a larger contract and/or project) it must not only comply with all of these Terms of Business but shall also have been executed strictly in accordance with the requirements of the Contract and the plans and specification relating to the Work. If, by virtue of its appearance or as a result of any deviation from any of the contractual obligations of the Provider there is a likelihood that it may suffer a reduction in its acceptability and/or value as perceived by fair and reasonable minded potential occupiers, owners, purchasers, investors and lenders and their professional advisers then work will not be accepted as satisfactorily completed until such adverse characteristics are overcome.

15.2 Practical Completion means when the Provider's works are completed with the exception only of the existence of any incomplete items of a minor nature and defects which are of such nature as not to prevent an occupier of the building from taking occupation and making full use of the property for its intended use and subject to the incomplete items and/or defects individually and collectively being of such nature as to be capable of being completed and/or rectified within one month and without such works causing material inconvenience to the full use and occupation of the property.

15.3 In addition to all such liabilities as the Provider may have to the Company under Statute, Common Law or otherwise where any defects, shrinkage, or other faults or failure to meet any required specification appear within the defect liability periods specified below and are due to the materials or workmanship comprised within the work or services supplied by the Provider or due to weather conditions before

completion of such work or services, or attributable to any other reasons with the exception only of normal wear and tear, then the Provider shall be responsible for all costs and expenses incurred in making good any such defects as aforesaid.

15.4 For the purposes of this Clause 15 in the case of any works or services in connection with a building, the defects liability period shall run from the occupation of the building for whichever is the longer of either twelve months or the period of any initial warranty period under any applicable NHBC scheme or the like. In the case of any heating, air conditioning and other similar service installations the defect liability period shall run for a period of twelve months or if longer until the natural ending of one years complete cycle of operation from either the date of occupation of the building or when the system is fully complete, balanced and left operative and any necessary testing and commissioning of the Provider's work has been completed, whichever shall be the later. In the case of any works forming part of any work to be adopted either by a highway authority or other appropriate body they shall be treated as complete when the adoption authority commences the maintenance period and the defects liability period shall run from that date and shall expire on the date on which the adoption authority accept the work as being maintainable at the public expense. PROVIDED THAT where any defects are concealed from inspection the defects liability period and the Provider's responsibility shall, if longer, be extended to a period of twelve months from the time when such defects become apparent.

15.5 In the event that defect remediation work as aforesaid shall be necessary the Company may at its absolute discretion decide whether to require the Provider to undertake any appropriate remedial work at its own expense or alternatively the Company may make its own arrangements for the execution of any appropriate remedial work in which case, the Provider shall indemnify the Company against all costs and expenses incurred in carrying out or arranging to carry out such remedial works, payment for which shall be made by the Provider to the Company immediately following completion of the remedial works.

15.6 All goods and materials supplied under an Agreement shall be free from any defects, patent or latent, in material and workmanship, shall conform to applicable specifications and drawings and, to the extent that detailed designs were not provided to the Company, shall be free from design defects and in every respect suitable for the purposes intended by the Company, as to which the Provider has been made aware and the approval by the Company of any designs provided by the Provider shall not relieve the Provider of its obligations under any provision contained in this Clause and the Provider shall be responsible for all consequences resulting from non-compliance with this responsibility.

15.7 Where the Provider is in breach of or fails to comply with the provisions of this Clause in respect of the supply of goods, the Company without thereby waiving any rights or remedies otherwise provided by law and/or elsewhere in these Terms of Business, may require the Provider to repair and/or replace the defective goods at the Provider's risk and expense or repay to the Company the price or part of the price relating to the defect. The items so repaired or replaced shall be subject to these Terms and Conditions, including level of warranty, in the same manner as those originally delivered under these Terms of Business and if the Provider refuses or fails promptly to repair or replace items when requested under this provision, the Company may itself, or through an agent or sub-contractor, or otherwise, repair or replace any item itself and shall be entitled to reimbursement from the Provider for any costs or expenses incurred.

16. Insurance

16.1 During the term of an Agreement the Provider shall, at its own expense, maintain such insurances as required by any applicable law and as appropriate in respect of its obligations in its Agreement with the Company. Such insurances shall be with an established company of proven substance and shall include but not be limited to loss or damage to the Works, loss or damage to equipment or plant and materials, employers liability and third party liability with the indemnity limit for each and every claim being not less than what is set in the Agreement and with cover being provided

until the completion of the Agreement and the Company shall be entitled to receive a copy of the policy of insurance and shall also be entitled to require its interest to be noted on the policy.

17. Professional Services

17.1 When the Company has sought professional advice from a particular person ('the adviser') in a firm providing a professional service, the Company will not, except by prior agreement, accept in substitution, the service of any other person in that firm. If for any reason the professional adviser becomes unable or unwilling to continue to provide the service originally required, or if the Company agrees to accept the service of another person in that firm, then the Company shall not be obliged to pay any fees and expenses that arise from another person in the firm in the course of that person becoming fully acquainted with the case and the Company shall also be entitled to deduct from the firm's fees or claim against the firm in respect of all additional costs and expenses which the Company may suffer in consequence.

17.2 When professional services have been supplied in respect of a contentious and/or a litigious matter and the Company is claiming, or is contemplating claiming its costs from the other party, the professional advisers service to the Company shall only be completed when the professional adviser has supplied all such information in respect of its services provided and fees charged as may be necessary for the Company to conclude its claim for costs against the other party and until such time the Company shall be entitled to withhold such amount of the professional advisers fees as the Company may consider to be appropriate in the circumstances.

18. Status and Liabilities

18.1 It is expressly understood that neither the Provider nor their Personnel have the authority to act as agent for the Company or to contract on the Company's behalf.

18.2 The Personnel shall at no time be deemed to be employed or otherwise engaged by the Company. All Employee

Liabilities relating to the employment of any of the Personnel are to be borne by the Provider.

18.3 The Provider shall indemnify the Company and/or any Replacement Provider against any Employee Liabilities transferred to, imposed upon or reasonably incurred by the Company or any Replacement Provider, in each case to the extent arising out of or in connection with the employment of any relevant Personnel up to (and excluding) the termination or expiry of the Provider's obligations to the Company.

18.4 The Provider shall, and shall procure that the Personnel shall, comply with all applicable statutes, rules and regulations in providing the services, including all immigration and employment requirements imposed by any applicable jurisdiction, and the Provider shall indemnify and hold harmless the Company from damages arising out of any failure to do so.

18.5 If any of the Personnel shall at any time claim to have become an employee of, or have rights against, the Company and/or any Replacement Provider by virtue of TUPE, the Provider will indemnify the Company and/or any Replacement Provider against any Employee Liabilities reasonably incurred by the Company and/or any Replacement Provider, to the extent arising out of or in connection with the termination by the Company and/or any Replacement Provider of the contract of employment of such person.

18.6 The provisions of this Clause 18 shall survive (and shall continue in full force and effect) following termination, fulfilment or expiry of any Agreement between the Company and the Provider.

19. Termination

19.1 The Company may, and without becoming liable to pay any compensation, terminate an Agreement with immediate effect by providing written notice to the Provider if:

19.1.1 the Provider or their Personnel commit any material or persistent breach of this Agreement and in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the Company to do so;

19.1.2 the Provider commits a material breach of the Agreement which cannot be remedied under any circumstances; or

19.1.3 the Provider fails to or refuses after written warning to procure that their Personnel provide the services properly required of them in accordance with an Agreement;

19.1.4 the Provider passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

19.1.5 the Provider ceases to carry on its business or substantially the whole of its business; or

19.1.6 the Provider is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

20. Dispute Resolution

20.1 If a dispute arises out of an Agreement then the parties to the Agreement shall firstly attempt to resolve the dispute through negotiations between senior executives of the parties, who have authority to settle the same.

20.2 If a dispute cannot be settled through negotiation then the parties agree to try to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure.

20.3 In the case of mediation the parties shall attempt to agree upon the nomination of a mediator upon receipt by either of them, of a written notice to concur in such nomination. Should the parties fail to agree within fourteen days upon the nomination of a mediator either party upon giving written notice, may apply to the President or the Vice President, for the time being, of the Professional body most relevant to the matter under dispute, for the nomination of a mediator.

20.4 The costs of engaging the mediator and their costs and disbursements in connection with their duties shall be shared between the parties to the dispute in such proportions as the mediator shall determine or in the absence of such determination then equally between the parties.

20.5 If the dispute cannot be resolved by mediation, or either party will not participate in the mediation, then either party may, upon giving written notice to the other, propose the nomination of an arbitrator and if within twenty eight days of the written notice they have not agreed on the nomination of an arbitrator, either party may apply to the President or the Vice President for the time being of the Chartered Institute of Arbitrators, for the nomination of a single arbitrator. The seat of the arbitration shall be England and Wales.

20.6 The costs of engaging the arbitrator and their costs and disbursements in connection with their duties shall be shared between the parties to the dispute in such proportions as the arbitrator shall determine or in the absence of such determination then equally between the parties.

21. Indemnity

21.1 The Provider shall reimburse the Company on an indemnity basis for all losses or extra expenses which may be incurred by the Company as a result of the Provider's failure to observe any of its contractual commitments to the Company including those contained in these Terms of Business as set out herein including also and on an indemnity basis all legal costs and other expenses which the Company may incur in and in contemplation of enforcing its rights and remedies and the Company's claim shall not be limited to the value of the goods or services, but shall represent the full extent of the Company's costs, expenses and losses and the Company shall be entitled to set off claims on one contract against payments due under any other contract which may exist or come into existence either between the Company and the Provider or between the Provider and any other companies within the Group.

22. Intellectual Property Rights

22.1 All Intellectual Property Rights produced from or arising as a result of the performance of an Agreement shall, so far as not already vested, become the absolute property of the Company, and the Provider shall do all that is reasonably necessary to ensure that such rights vest in

the Company by the execution of appropriate instruments or the making of agreements with third parties.

22.2 Following payment by the Company for any work or services involving preparation of any design work or other work for which the Provider could claim the ownership of copyright, the Company shall become the owner of the design work and the owner of the copyright of such designs and shall be entitled to use such designs without restriction either in their original form or in such amended form as the Company shall choose and whenever requested by the Company, the Provider shall provide additional copies of all such design work as shall have been paid for by the Company subject only to the Company being required to pay the Provider no more than shall represent the cost of reproduction.

22.3 Clause 23.1 is also applicable to this Section.

23. Document/Record Retention

23.1 When design and/or other information is in the Provider's possession which in law would not be seen to be held in an agency capacity such records as the law would consider to belong to the Company should be passed to the Company either immediately on request by the Company or otherwise on completion of the Provider's contractual obligations to the Company. When such records are records which in law would not be seen to be held in an agency capacity the Company nevertheless requires the right of either storing the records on behalf of the Provider or agreeing a basis upon which the Provider would continue to store those records beyond the time when the Provider might otherwise destroy them.