

GROUND DEVELOPMENTS LIMITED

TERMS AND CONDITIONS

Version 1

THE CONTRACTOR'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF clause 7 and clause 9.

1. INTERPRETATION

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.5.

CDM Regulations: The Construction (Design and Management) Regulations 2015 (as may be amended or revised from time to time).

Contract: the contract between the GDL and the Contractor for the Works in accordance with the Tender Response and these Conditions.

Contract Sum: the amount stated in the Tender Response or such other sum as may become payable under the Contract

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010 and the expression **change of Control** shall be construed accordingly.

Contractor: the person or firm who purchases the Works from the GDL and who is so named in the Tender Response.

Contractor Default: has the meaning set out in clause 3.2.

GDL: Ground Developments Limited registered in Scotland with GDL number SC258485 and whose registered office is at Unit 1, Burnhouse Industrial Estate, Whitburn, Bathgate, Scotland, EH47 0LQ.

GDL Materials: has the meaning set out in clause 3.1(g).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Rectification Period: the period stated as such period in the Tender Response in relation to the Works.

Site: the site address as described in the Tender Response.

Specification: the description or specification of the Works as described in the Tender Response, which may be further set out in documents which are appended to the Tender Response or Tender.

Tender a tender for the Works which has been or will be submitted to the Contractor.

Tender Response the response to the Tender submitted to the Contractor by GDL.

Works: the works set out in the Tender Response.

1.2 **Interpretation:**

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** includes email.

2. **BASIS OF CONTRACT**

- 2.1 The Tender Response constitutes an offer by the GDL to provide the Works as therein specified in accordance with these Conditions.
- 2.2 The Tender Response shall be deemed to be accepted when either the Contractor has signed and returned a copy of the Tender Response, or the Contractor gives an instruction or authorisation (in any form) to GDL to proceed with the whole or a part of the Works.
- 2.3 Subject to the Tender Response specifying otherwise, the date that GDL commence any part of the Works shall be the date the Contract commences (“the Commencement Date”).
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 GDL shall supply the Works to the Contractor in accordance with the Specification subject always to any qualifications to the Specification which are set out and contained in the Tender Response.
- 2.6 For the avoidance of doubt where any inconsistency or discrepancy is found between the Tender and/or the Specification and the Tender Response, then GDL will notify

the Contractor of the same and in this event the Tender Response prevails and the provisions of clause 4 apply to any Additional Work required in order to remedy or correct any inconsistency or discrepancy.

- 2.7 GDL shall use reasonable endeavours to meet any performance dates specified in the Tender Response, but any such dates shall be estimates only and time shall not be of the essence for carrying out of the Works.
- 2.8 GDL shall have the right to make any changes to the Works (without the consent of the Contractor) which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Works.
- 2.9 GDL warrants to the Contractor that the Works will be carried out in a proper and workmanlike manner, in accordance with relevant statutory requirements and using reasonable care and skill. For the avoidance of doubt GDL give no warranty that the Works will be fit for their intended purpose.
- 2.10 Where the Works include design services or design work then GDL shall use reasonable skill and care in the carrying out of the design and in the selection of goods or materials for incorporation therein.
- 2.11 GDL shall have and maintain insurance in relation to the Works as set out in the Tender Response.
- 2.12 GDL shall comply with the CDM Regulations.
- 2.13 Before commencement of the Works, the Contractor shall notify the Works to the Health and Safety Executive in accordance with the CDM Regulations and shall give the GDL a copy of the notification and any acknowledgement from the Health and Safety Executive.
- 2.14 The Contractor shall prepare the Construction Phase Plan.
- 2.15 The Contractor shall not authorise or instruction GDL to carry out the whole or any part of the Works unless and until:
 - (a) the Construction Phase Plan is prepared;
 - (b) the Site welfare facilities required by Schedule 2 to the CDM Regulations are in place; and
 - (c) the Health and Safety File is prepared and is maintained correctly and is available for inspection in accordance with the CDM Regulations.

- 2.16 If it becomes apparent that the Works will not be completed by the Completion Date stated in the Tender Response (or any later date fixed in accordance with these Conditions) then GDL shall notify the Contractor. Where that delay occurs for reasons beyond the control of GDL then, the Contractor shall agree to give such an extension of time for completion of the Works as is reasonable. The extension of time shall be recorded in writing and the Tender Response shall be deemed to be varied in this respect.
- 2.17 GDL shall confirm when the Works have reached practical completion by way of a written notice to the Contractor.
- 2.18 Provided that the Contractor is not in default by reason of any event set out under clause 8.2 then GDL agrees that it will enter into a collateral warranty (subject always to clause 2.19 and the collateral warranty being in such form as the parties agree acting reasonably and which is approved by the insurers and/or legal advisers for GDL) in favour of such parties as the Contractor reasonably requires and provided always that an administration fee of £1,500 plus VAT per collateral warranty will be charged to the Contractor by GDL and such fee will be treated as an "Additional Work" cost under clause 4 of these Conditions.
- 2.19 The Contractor agrees that it is reasonable for GDL to require that the terms of any collateral warranty requested under clause 2.18 shall include a provision which extinguishes and terminates that collateral warranty and its effect in its entirety in the event that the Contractor becomes insolvent and/or becomes subject to an event under clause 8.2(b).

3. CONTRACTOR'S OBLIGATIONS

- 3.1 The Contractor shall:
- (a) check that the terms of the Tender Response are complete and accurate;
 - (b) co-operate with GDL in all matters relating to the Works;
 - (c) provide GDL, its employees, agents, consultants and subcontractors, with access to the Contractor's premises, office accommodation and other facilities as reasonably required by GDL to carry out the Works;
 - (d) provide GDL with such information and materials as GDL may reasonably require in order to carry out the Works, and ensure that such information is accurate in all material respects;
 - (e) shall provide unobstructed access to the Site;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Works are to start and provide copies to GDL;

- (g) keep and maintain all materials, plant, equipment, documents and other property of GDL (“GDL Materials”) at the Contractor’s premises in safe custody at the Contractor’s own risk, maintain the GDL Materials in good condition and clearly marked as GDLs until returned to GDL, and not dispose of or use the GDL Materials other than in accordance with GDL’s written instructions or authorisation;
- (h) comply with any additional obligations as set out and/or contained in the Specification; and
- (i) be responsible for the discharge of any planning conditions relevant to the Works;
- (j) be fully responsible for the physical and other conditions (including the sub-surface and ground conditions) and all other conditions affecting the site of the Works.

3.2 If GDL’s performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Contractor or failure by the Contractor to perform any relevant obligation under this clause 3 or at all (“Contractor Default”):

- (a) GDL shall without limiting its other rights or remedies have the right to suspend any or all of its obligations under the Contract until the Contractor remedies the Contractor Default, and to rely on the Contractor Default to relieve it from the performance of any or all of its obligations to the extent the Contractor Default prevents or delays GDL’s performance of any of its obligations;
- (b) GDL shall not be liable for any costs or losses sustained or incurred by the Contractor arising directly or indirectly from GDL’s failure or delay to perform any of its obligations as set out in this clause 3.2; and
- (c) the Contractor shall reimburse and indemnify GDL on written demand for any costs or losses sustained or incurred by GDL arising directly or indirectly from the Contractor Default.

4. CHARGES AND PAYMENT

4.1 Unless otherwise agreed by GDL in writing and subject to this clause 4, the price for the Works shall be the Contract Sum together with any VAT and delivery costs (“the Price”). The Price is also subject to GDL’s right to elect to dis-apply any main contractor discount which may be referred to in the Tender Response at any time and the Price will be re-calculated accordingly.

4.2 The Price, and the cost of any ‘Additional Work’ (as defined in clause 4.4) and Variation provided for in clause 11, is based on the costs of materials, labour, sub-contracts, transport, taxes and duties and all other relevant costs at the date of the Tender Response and on the work being done in normal working hours.

- 4.3 GDL reserves the right to vary the Price, and the cost of any Additional Work provided for in clause 4.4 or Variation provided for in clause 11, prior to the completion of the Works, to take account of any deviation (howsoever arising) in these costs or the imposition of any new taxes or duties between the Tender Response date and the completion date
- 4.4 Additional Work is the following:
- (a) work required as a result of any matter that GDL did not know existed at the date of the Tender Response and the GDL could not reasonably have foreseen (including unforeseen ground conditions); and
 - (b) work and/or costs as a result of the Contractor providing inadequate or inaccurate instructions, information or drawings to GDL or as a result of the Contractor failing to comply with any of the terms of the Contract; and
 - (c) any work required to be carried out by GDL due to an inconsistency or discrepancy between the Tender and/or Specification and the Tender Response under clause 2.6;
 - (d) administration fees for the provision of collateral warranty under clause 2.18.
- 4.5 Where Additional Work is required GDL shall not be liable for any delay in performance.
- 4.6 Where Additional Work is required GDL has the right to terminate the Contract where it reasonably decides that it is unable to provide the Additional Work.
- 4.7 The Contractor acknowledges that any Additional Work required will form part of the Contract and will not be treated as a separate contract for works.
- 4.8 GDL shall invoice the Contractor monthly in arrears. The payment mechanism is as follows:
- (a) The due date is 7 days after receipt of the GDL invoice by the Contractor.
 - (b) The final for payment is 14 days from the due date ("Final Date").
 - (c) No later than 5 days after:-
 - (i) the due date or,
 - (ii) the date the payment would have fallen due if all obligations under the Contract had been carried out and no set-off or abatement was permitted by reference to any sum claimed to be due under one or more other contracts,

- (iii) the Contractor shall give a notice (Payment Notice) to GDL which specifies the sum that the Contractor considers to be due at the due date and the basis on which that sum is calculated.
 - (d) If the Contractor fails to provide a Payment Notice then the amount due shall be the amount in GDL's invoice.
 - (e) The Contractor may not pay less than the sum due unless it has given the GGL a notice no later than 5 days prior to the Final Date for payment specifying its intention to pay less and the basis on which that amount is calculated.
- 4.9 The Contractor shall pay each invoice submitted by the GDL:
- (a) on or before the Final Date for payment; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the GDL
 - (c) in accordance with the payment mechanism in these Conditions and the Tender Response.
- 4.10 Time for payment shall be of the essence of the Contract.
- 4.11 Where any taxable supply for VAT purposes is made under the Contract by GDL to the Contractor, the Contractor shall, on receipt of a valid VAT invoice from GDL, pay to GDL such amounts in respect of VAT as are chargeable on the Works at the same time as payment is due for the Works.
- 4.12 If the Contractor fails to make any payment due to GDL under the Contract by the final date for payment then the Contractor shall pay interest on the overdue amount at the rate of 5% per cent per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the final date for payment until actual payment of the overdue amount. The Contractor shall pay the interest together with the overdue amount.
- 4.13 The Contractor shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). GDL may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Contractor against any amount payable by GDL to the Contractor.
- 4.14 Following practical completion of the Works GDL shall supply to the Contractor all documentation reasonably required for the computation of the final account payment and the due date for the final account payment shall be 21 days after the Contractor's receipt of the documentation. Not later than 5 days after the due date, the Contractor

shall issue a final certificate certifying the sum due to GDL and the basis on which that sum has been calculated.

- 4.15 The final date for payment of the final account payment under clause 4.14 shall be 9 days after the due date.
- 4.16 If the Contractor intends to pay less than the amount stated in the final certificate under clause 4.14 then no later than 2 days before the final date for payment under clause 4.15 he shall give GDL a notice of that intention stating the sum the Contractor considers to be due to GDL and the basis on which that sum has been calculated. Where such a pay less notice is given the final payment to be made on or before the final date for payment shall not be less than the amount stated as due in the pay less notice.
- 4.17 If the final certificate is not issued in accordance with clause 4.14 then:
- (a) GDL may give a payment notice to the Contractor stating the amount GDL considers to be the final payment due to it under these Conditions and the basis on which that sum is calculated and subject to any pay less notice under clause 4.17(b) then the final payment to GDL shall be that amount;
 - (b) If the Contractor intends to pay less than the sum specified in GDL's notice under clause 4.14(a) then it shall not later than 2 days before the final date for payment give GDL notice of that intention in accordance with clause 4.16 and the payment to be made on or before the final date for payment shall not be less than the amount stated as due in GDL's notice.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 All Intellectual Property Rights in or arising out of or in connection with the Works shall be owned by GDL.
- 5.2 GDL hereby grants a full, free and irrevocable licence to the Contractor to use or reproduce all designs, information, drawings, plans, models, notes, specifications, calculations, documents and other written or recorded material connected with the Works which GDL has created.

6. DEFECTS

- 6.1 If any defects, shrinkages or other faults in the Works appear within the Rectification Period due to any failure of GDL to comply with its obligations under this Contract:
- (a) such defects, shrinkages and other faults shall be specified by the Contractor in a schedule of defects which the Contractor shall deliver to the GDL as an instruction not later than 14 days after the expiry of the Rectification Period; and

- (b) prior to the issue of that schedule, the Contractor may whenever it considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this clause 6.1(b) shall be issued after delivery of that schedule or more than 14 days after the expiry of the relevant Rectification Period.

6.2 Within a reasonable time after receipt of a schedule or instructions received in accordance with clause 6.1, the defects, shrinkages and other faults shall be made good by GDL unless the Contractor shall otherwise instruct. For the avoidance of doubt, if the Contractor instructs otherwise, no deduction will be made from the Contract Sum in respect of the defects, shrinkages or other faults not made good.

6.3 When the defects, shrinkages or other faults in the Works which under clause 6.1 the Contractor has required to be made good have been made good, GDL shall issue a notice to that effect (a 'Notice of Completion of Making Good'). Completion of that making good shall for the purpose of this Contract be deemed to have taken place on the date stated in that notice.

7. LIMITATION OF LIABILITY: THE CONTRACTOR'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

7.1 Nothing in the Contract shall limit or exclude GDL's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, GDL shall not be liable to the Contractor, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits, loss of fees, loss of chance or other similar losses;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of damage to goodwill;
- (g) any indirect or consequential loss; and
- (h) any costs, expenses, disbursements or losses

7.3 Subject to clause 7.1 and 7.2, GDL's total liability to the Contractor, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the Contract Sum.

7.4 This clause 7 shall survive termination of the Contract.

8. TERMINATION

8.1 Without limiting its other rights or remedies, GDL may terminate the Contract by giving the Contractor not less than seven Business Days' written notice.

8.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by Order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases, or threatens to cease, to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3 Without limiting its other rights or remedies, GDL may terminate the Contract with immediate effect by giving written notice to the Contractor if:

- (a) the Contractor fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified to make such payment; or
- (b) there is a change of Control of the Contractor.

8.4 Without limiting its other rights or remedies, GDL may suspend any or all of its obligation under the Contract or any other contract between the Contractor and GDL if the Contractor becomes subject to any of the events listed in clause 8.2(b) to clause 8.2(d) or GDL reasonably believes that the Contractor is about to become subject to

any of them, or if the Contractor fails to pay any amount due under this Contract on the final date for payment.

9. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Contractor shall immediately pay to GDL:
 - (i) all of GDL's outstanding unpaid valuations and interest and, in respect of the Works carried out but for which no invoice has been submitted, then GDL shall submit a valuation, which shall be payable by the Contractor immediately on receipt; and
 - (ii) any other damages, costs, expenses or losses (including but not limited to loss of profit and/or upfront costs and/or overheads) which GDL reasonably incurs or has suffered as a result of the termination.
- (b) the Contractor shall return all of the GDL Materials and (where practicable) any materials which have not been fully paid for. If the Contractor fails to do so, then GDL may enter the Contractor's premises and take possession of them. Until they have been returned, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

10. SUB-CONTRACTING

- 10.1 GDL may sub-contract the whole or any part of the Contract without the Contractor's consent but GDL shall remain responsible for carrying out and completing the Works in all respects notwithstanding such sub-contracting.

11. VARIATION TO THE WORKS

- 11.1 The Contractor may without invalidating this Contract issue written or verbal instructions requiring an addition to, omission from, or another change in the Works or the order or manner in which they are carried out (a "Variation").
- 11.2 The Contractor and GDL shall endeavour to agree a price prior to GDL carrying out the Variation instruction. Where GDL has stated or given a price for any part of the Works which forms a Variation instruction ("Variation Price") then if the parties have

not agreed an alternative price to the Variation Price within 14 days of the Contractor's receipt of the Variation Price, then the Variation Price is deemed to have been agreed.

- 11.3 For the avoidance of doubt, it shall be reasonable for the Variation Price (other price agreed under clause 11.2) to include any direct loss and/or expense incurred by GDL due to the regular progress of the Works being affected by compliance with the Variation instruction.

12. GENERAL

- 12.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

12.2 Assignment and other dealings.

- (a) GDL may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Contractor shall not, without the prior written consent of GDL, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

12.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Contractors, clients or suppliers of the other party, except as permitted by clause 12.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its legal advisors or insurance providers;
 - (ii) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
 - (iii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12.4 **Entire agreement.**

- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

12.7 **Severance.** If any provision or part-provision of the Contract 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 the Contract.

12.8 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.9 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.

12.10 **Governing law.** Where the Site of the Works is in England or Wales then clause 12.10(a) shall apply and where the Site of the Works is in Scotland then clause 12.10(b) shall apply:

- (a) The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- (b) The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

12.11 **Adjudication:**

12.11.1 In the event of a dispute under the Contract either party may refer the dispute to adjudication. Subject where applicable to clause 12.11.2. the dispute shall in the first instance be referred to adjudication in accordance with the TeCSA Adjudication Rules ("Rules") Version 3.2.1.

12.11.2 Where the Site of the Works is in Scotland then rule 35 of the Rules shall not apply and the Rules shall be construed in accordance with the law of Scotland.

12.12 **Jurisdiction.** Where the Site of the Works is in England or Wales then clause 12.12(a) shall apply and where the Site of the Works is in Scotland then clause 12.12(b) shall apply:

- (a) Subject to clause 12.11(a), each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- (b) Subject to clause 12.11(b), each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.