

**SUB-CONTRACTING AGREEMENT TERMS AND CONDITIONS**  
These Terms and Conditions shall govern and be incorporated into the sub-contract enclosed with these terms. No other terms and conditions will modify or form any part of these terms and conditions or of the applicable sub-contract unless such variation is agreed in writing and signed by both parties.

**BACKGROUND**

- A. The Main Contractor has entered into an agreement enclosed with these Terms (Main Contract)
- B. The Main Contractor has entered into the Main Contract on the basis that the Sub-contractor will supply the services specified in the Sub-Contract for the benefit of the Customer in accordance with the provisions below.

**AGREEMENT**

**Meanings**

- 1. In this Agreement, the following words are defined:

Agreement	this agreement for the provision of the Services (as defined below) including any schedules;
CDM Regulations	The Construction (Design and Management) Regulations 2007, as they apply to the Main Contract Works and the Site.
Final Release Date	The day after expiry of a period from the Date for Completion of the Main Contract Works equivalent to the Rectification Period for such works plus a further 3 months
Pricing Documents	Any documents(s) in the relevant Schedule of Works or purchase order
Site	The place where the Main Contract Works are to be carried out
Sub-contract Documents	The Sub-contract together with other documents within Schedule 2
Sub-Contract Works	The works described in the Sub-Contract as varied, where applicable, under clauses 24-27
Working Day	any day other than a Saturday, Sunday or public holiday in England.

- 2. In this Agreement, unless the context requires a different interpretation:
  - a. the singular includes the plural and vice versa;
  - b. references to sub-clauses, clauses, schedules or appendices are to sub-clauses, clauses, schedules or appendices of this Agreement;
  - c. a reference to a person includes firms, companies, government entities, trusts and partnerships;
  - d. 'including' is understood to mean 'including without limitation';
  - e. reference to any statutory provision includes any modification or amendment of it;
  - f. the headings and sub-headings do not form part of this Agreement; and
  - g. 'writing' or 'written' will include e-mail unless otherwise stated.

**Sub-contractor's Obligations**

- 3. The Sub-contractor shall carry out and complete the Sub-contract Works in accordance with the Sub-contract Documents with due diligence and in a good and workmanlike manner.
- 4. The Sub-contractor shall provide goods and materials of the standard stated in the Sub-contract Documents or, where no standard is stated, of a satisfactory quality and fit for purpose. Time is of the essence for any dates for delivery of the Services under this Agreement, unless specifically stated otherwise in any schedule.
- 5. The Sub-contractor shall take all reasonable steps to encourage employees and gents of the Sub-contractor and his sub-contractors employed in the execution of the Sub-contract Work to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under the equivalent recognised qualification scheme.
- 6. The Sub-contractor shall provide everything required to carry out and complete the Sub-contract Works except for the attendances set out in the Sub-contract Documents, which the Main Contractor shall provide free of charge to the Sub-contractor.

- 7. The Sub-contractor shall not make any assignment of the benefit of his Sub-contract nor sub-contract any of the Sub-contract Works, without the Main Contractor's written consent.
- 8. The Sub-contractor shall comply with, and give all notices required by, any statute, statutory instrument, rule or order, regulation or bye-law applicable to the Sub-contract Works (including the CDM Regulations). To the extent required by the Sub-contract Documents, the Sub-contractor shall pay any fees and charges payable in respect of the Sub-contract Works.
- 9. The Sub-Contractor shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Premises and that have been communicated to the Sub-contractor.

**Main Contractor's Obligations**

- 10. The Main Contractor shall comply with the CDM regulations, shall provide sufficient access to the Site for the Sub-contractor to perform his obligations under this Sub-Contract and shall in no way hinder or prevent the Sub-contractor, whether by act or omission, from performing such obligations.

**Main Contract**

- 11. The Sub-contractor shall be deemed to know the provisions of the Main Contract insofar as they apply to the Sub-contract Works (other than details of the Main Contractor's pricing). The Main Contractor shall, if so requested by the Sub-contractor, provide to the Sub-contractor a copy of the Main Contract (omitting details of the Main Contractor's pricing).
- 12. The Sub-contractor shall carry out and complete the Sub-contract Works so that no act or omission of the Sub-contractor shall result in any breach of contract by the Main Contractor.
- 13. The Sub-contractor shall perform the obligations and assume the liabilities of the Main Contractor under the Main Contract to the extent that such obligations and liabilities relate to the Sub-contract Works.

**Commencement and Completion**

- 14. The Sub-contractor shall commence the Sub-contract Works on Site as directed and agreed with the Main Contractor or in accordance with the Main Contractor's Programme of Works.
- 15. Subject to Clause 28, the Sub-contractor shall
  - a. proceed with the Sub-contract Works regularly and diligently and reasonably in accordance with the progress of the Main Contract Works; and
  - b. achieve practical completion of the Sub-contract Works within the Period for Completion.
- 16. The Main Contractor shall determine and notify the Sub-contractor in writing of the date when the Sub-contract Works are practically complete.
- 17. The Main Contractor shall notify the Sub-contractor of any defects that appears in the Sub-contract Works during the defects liability period of the Main Contract Works and the Sub-contractor shall, at the Sub-contractor's expense, make good such defects within a reasonable time from notification.
- 18. The Sub-contractor shall ensure that all Snagging/Defects works that have arisen from the Main Contract Works are to be completed within 3 days of practical completion and signed off on the Main Contractors Standard Snagging Sign off Sheet and returned to the Main Contractor.
- 19. The Sub-contractor shall make good all defects that remain outstanding at the end of the defects liability period within 7 days of issue of an End of Defects Period Schedule. If the Sub-contractor fails to do so, the Main Contractor shall organise alternative means of remedying said defects and the cost of same shall be deducted for any retention or other monies owed to the Sub-contractor.

**Main Contractor's Directions**

- 20. The Main Contractor may issue written directions which the Sub-contractor shall forthwith carry out.
- 21. If directions are given orally, they shall, within 2 working days, be confirmed in writing by the Main Contractor.
- 22. Except as provided in clauses 24-27, the Sub-contractor shall not be entitled to any additional payment in respect of the Main Contractor's directions
- 23. If within 7 days of receipt of a written notice from the Main Contractor requiring compliance with a direction, the Sub-contractor does not comply,

then the Main Contractor may employ and pay other persons to carry out the work and all additional costs incurred shall be due to the Main Contractor.

**Variations**

24. The Sub-contractor shall carry out any reasonable variation of the Sub-contract Works that is directed in writing by the Main Contractor ('Variation').
25. Variations shall be valued by the Main Contractor on a fair and reasonable basis with reference, where available and relevant, to rates and prices in the Pricing Documents.
26. The Sub-contractor shall be paid any direct loss and/or expense incurred by the Sub-contractor due to the regular progress of the Sub-contract Works being affected by compliance with any Variation, provided that the Sub-contractor notifies the Contractor of such as soon as is reasonably practicable. The Contractor shall determine the fair and reasonable amount of that direct loss and/or expense.
27. The Sub-contractor shall not make any alteration to the Sub-contract Works, other than pursuant to clause 25.

**Extension of Time**

28. If the Sub-contract is delayed in completing the Sub-contract Works within the period for Completion by the ordering of any Variation of the Sub-contract Works or for other reasons beyond the control of the Sub-contractor, the Sub-contractor shall notify the Main Contractor in writing. The Main Contractor shall make such extension of time (if any) as is reasonable.
29. The Sub-contractor shall constantly use his best endeavours to prevent or minimise any delay in the progress of the whole or any part of the Sub-contract Works.

**Payment – due dates and amounts**

30. The due dates for interim payments to the Sub-contractor shall be a date not later than one month after commencement of the Sub-contract Work on Site and thereafter at intervals one month from that date.
31. The amount of each interim payment due prior to practical completion shall, where the total price of the Sub-contract Works as specified in the Pricing Documents exceeds £1,000, be 97.5% of the work properly carried out by the Sub-contractor, plus the whole of any amounts payable under clause 26 or 44 and less the total amount due in previous payments. The value of work shall be determined in accordance with the rates and prices specified in the Pricing Documents or, where there are no applicable rates or prices, by reference to the total price of the Sub-contract Works.
32. In the case of interim payments that become due on or after the date of practical completion of the Sub-contract Works, the amount due shall, subject to clause 33, be 97.5% of the total price of the Sub-contract Works, plus the whole of any amounts payable under clause 26 or 44 and less the total due in previous payments.
33. Where practical completion of the Sub-contract Works has been achieved, the Main Contractor will not issue a payment notice under clause 36 and the Sub-contractor's final account shall be provided to the Main Contractor within 14 days of the date of practical completion. If the Sub-contractor fails to provide its final account within this period, the Main Contractor will not be obliged to make payment to the Sub-contractor until the final account is provided.
34. The due date for the final payment shall be 2 months after the submission of the final account. The amount due as the final payment shall be the total price of the Sub-contract Works plus all the amounts payable under clause 27 and less the total amount due in previous payments.

**Payment – Final Date and Notices**

35. Subject to clause 38, the final date for each payment shall be 21 days after the due date.
36. Not later than 5 days after each due date the Main Contractor shall give a payment notice to the Sub-contractor, which shall state the sum that he considers to be or have been due to the Sub-contractor at the due date and the basis on which that sum has been calculated and, subject to any notice given under clause 39, the sum to be paid by the Main Contractor shall be the sum specified in the payment notice.
37. If the Main Contractor fails to give a payment notice in accordance with clause 36, the Sub-contractor may at any time after the 5 day period referred to make a payment application to the Contractor stating the sum that he considers to be or have been due at the due date and the basis on which that sum has been calculated. In that event the sum to be paid by the Main Contractor shall, subject to a notice given under clause 39, be the sum stated as due in the Sub-contractor's payment application.

38. Where the Sub-contractor has made a payment application under clause 37 the final date for payment of the sum specified in it shall be regarded as postponed by the same number of days after expiry of the 5 day period that the Sub-contractor's payment application is made.
39. If the Main Contractor intends to pay less than the sum stated as due from him in his payment notice or, where applicable, the Sub-contractor's payment application, he shall not later than 5 days before the final date for payment give the Sub-contractor notice of that intention stating the sum that he considers to be due to the Sub-contractor at the date he gives notice under this clause and the basis on which that sum has been calculated. Where such notice has been given, the sum to be paid on or before the final date for payment shall not be less than the amount as stated in the notice.
40. In relation to the requirements for the giving of notices under clause 36, 37 or 39, it is immaterial that the amount then considered to be due may be zero.

**Suspension**

41. If the Main Contractor fails to pay a sum payable to the Sub-contractor by the final date for payment, then the sub-Contractor may give a written notice of his intention to suspend the performance of his obligations under this Sub-contract. If the Main Contractor's failure to make payment continues for 7 days after the giving of such notice, the Sub-contractor may suspend performance of any or all of those obligations until payment is made in full.
42. Where the Sub-contractor exercises his right of suspension under clause 42, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right.
43. Applications in respect of such costs and expenses shall be made to the Main Contractor and the Sub-contractor shall with his application or on request submit such details of the costs and expenses as are reasonably necessary to enable his entitlement to be ascertained.

**Termination – Breach or Insolvency**

44. Each Party ("the Terminating Party") shall be entitled by written notice to the other Party to terminate the Sub-contractor's employment under this Sub-contract forthwith if the other Party at any time:
  - a. Is in material breach of his obligations under this Sub-contract which he fails to rectify within 7 days of a written warning from the Terminating Party specifying the breach and requiring that it be remedied within that period: or
  - b. Is insolvent
45. In the event of such termination the Sub-Contractor shall immediately leave the Site and the Terminating Party shall be entitled to recover from the other Party the amount of any resultant loss, damage and/or expense incurred by the Terminating Party which he would not have incurred had this Sub-contract been duly performed in full.

**Termination of the Main Contract**

46. If the Main Contractor's engagement under the Main Contract is terminated, the Sub-contractor's engagement under this Sub-contract shall thereupon terminate and the Main Contractor shall immediately notify the Sub-contractor. The Sub-contractor shall immediately leave the site.
47. If the Main Contractor's engagement under the Main Contract is terminated for any reason other than in consequence of any breach of this Sub-contract by the Sub-contractor, the Sub-contractor shall be entitled to be paid the value of the Sub-contract works properly carried out and the reasonable cost of removal from the Site, less sums already paid. Except as provided for in clause 49 the Sub-contractor shall not be entitled to loss of profit.
48. In addition to any sums payable under clause 48, the Sub-contractor shall be entitled to be paid any direct loss and/or damage caused to the Sub-contractor as a result of the termination of the Main Contractor's engagement under the Main Contract that arises because of the Main Contractor's insolvency or the Main Contractor having an administrator or administrative receiver appointed or having a winding-up order or the like made against the Main Contractor or because of the Main Contractor's default (other than in consequence of any breach of this Sub-contract by the Sub-contractor).

**Indemnity**

49. The Sub-contractor shall indemnify and hold harmless the Main Contractor and all its directors, officers, employees, agents, stockholders, affiliates, other Sub-contractors and customers against all losses, actions, allegations, claims, suits, demands, damages, liabilities, obligations, settlements, judgments, costs and expenses incurred or suffered by the Main Contractor howsoever arising, including all claims for liquidated damages against the Main Contractor arising out of any breach of this Sub-contract, including any infringement of any Intellectual Property Rights of another person.

**Confidentiality**

50. Each party will only use Confidential Information to perform its obligations under the Agreement and will not cause or allow the information to be disclosed except:
- where required by law, court order or any governmental or regulatory body;
  - to any of its employees, officers, sub-contractors, representatives or advisers who need to know the information in order to discharge its obligations under the Agreement and agree only to use the information for that purpose and not to cause or allow disclosure of that information;
  - where the information has become generally available to the public (other than as a result of disclosure in breach of the Agreement by the party or any of its employees, officers, sub-contractors, representatives or advisers);
  - where the information was available or known to it on a non-confidential basis before being disclosed under the Agreement; or
  - where the information was developed by or for it independently of the Agreement and is received by persons who are not the disclosing party.

**Data Protection**

51. Each party warrants and represents that it has made, and undertakes that at all times during the term of this Agreement it will maintain, any notification and registration required under the Data Protection Act 1998 (DPA) that relate to the performance of its obligations under this Agreement.
52. Each party undertakes that in the performance of this Agreement it will comply with the DPA, and in particular the Data Protection Principles set out in the DPA, and with any guidance issued from time to time by the Information Commissioner.

**Anti-Bribery**

53. The Sub-contractor and its agents, sub-contractors, consultants or employees shall:
- comply with all applicable laws, regulations, statutes, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Bribery Laws);
  - not commit an offence under sections 1, 2 or 6 of the Bribery Act 2010;
  - comply with any relevant industry code related to Anti-Bribery (Bribery Policies);
  - have, maintain, and enforce throughout the term of this Agreement its own policies and procedures, to ensure compliance with the Bribery Laws and the Bribery Policies; and
  - promptly report to the Main Contractor any request or demand for any undue financial or other advantage of any kind received by the Sub-contractor in connection with the performance of this Agreement.

**Settlement of Disputes**

54. If a dispute or difference arises under this Sub-contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.
55. Either Party may at any time refer any dispute or difference arising under this Sub-contract for adjudication in accordance with the provisions of Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1987 except that the adjudicator nominating body shall be:

Royal Institute of British Architects;  
 The Royal Institution of Chartered Surveyors;  
 Contractors Legal Grp Ltd;

Association of Independent Construction Adjudicators; or  
 Chartered Institute of Arbitrators

56. as selected by the referring Party.  
 Arbitration does not apply.

**General**

57. This Agreement contains the whole agreement between the parties relating to its subject matter and supersedes all prior discussions, arrangements or agreements that might have taken place in relation to the Agreement. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.
58. No party may assign, transfer or sub-contract to any third party the benefit and/or burden of the Agreement without the prior written consent (not to be unreasonably withheld) of the other party.
59. No variation of the Agreement will be valid or binding unless it is recorded and instructed in writing by the Main Contractor.
60. The Contracts (Rights of Third Parties) Act 1999 does not apply to the Agreement and no third party has any right to enforce or rely on any provision of the Agreement.
61. No failure, delay or omission by either party in exercising any right power or remedy provided by law or under this agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that, or any other, right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this agreement shall prevent any future exercise of any other right, power or remedy.
62. A waiver of any term, provision, condition or breach of this agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.
63. A provision which by its intent or terms is meant to survive the termination of the Agreement will do so.
64. If any court or competent authority finds that any provision (or part) of the Agreement is invalid, illegal or unenforceable, that provision or part-provision will, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement will not be affected.
65. Unless specifically provided by the parties, nothing in the Agreement will establish any employment relationship, partnership or joint venture between the parties, or mean that one party becomes the agent of the other party, nor does the Agreement authorise any party to enter into any commitments for or on behalf of the other party.
66. Any notice (other than in legal proceedings) to be delivered under the Agreement must be in writing and delivered by pre-paid first class post to or left by hand delivery at the other party's registered address or place of business, or sent by fax to its main fax number. or sent by email to the business email address of the other party. Notices:
- sent by post will be deemed to have been received, where posted from and to addresses in the United Kingdom, on the second Working Day and, where posted from or to addresses outside the United Kingdom, on the tenth Working Day following the date of posting;
  - delivered by hand will be deemed to have been received at the time the notice is left at the proper address; and
  - sent by email will be deemed to have been received 24 hours after transmission.

**Governing law and jurisdiction**

67. This Agreement will be governed by and interpreted according to English law. All disputes and claims arising under the Agreement (including non-contractual disputes or claims) will be subject to the exclusive jurisdiction of the English court

**SUB-CONTRACTING AGREEMENT INCLUDING DESIGN**

**These Terms and Conditions shall govern and be incorporated into the sub-contract enclosed with these Terms. No other terms and conditions will modify or form any part of these terms and conditions or of the applicable sub-contract unless such variation is agreed in writing and signed by both parties.**

**Parties**

- (1) Concorde BGW, a company incorporated in England and Wales with registered number 02538645 whose registered office is at Palmer Street, Hyde Park, Doncaster, South Yorkshire DN4 5DD, United Kingdom.

**(Main Contractor)**

- (2) The entity referred to in the Purchase Order or Sub-Contract as the Sub-Contractor

**(Sub-Contractor)**

**BACKGROUND**

- A. The Main Contractor has entered into an agreement attached **(Main Contract)**
- B. The Main Contractor has entered into the Main Contract on the basis that the Sub-Contractor will supply the Sub-Contract Works specified in the Sub-Contract (the Sub-Contract Particulars), for the benefit of the Employer on a 'back-to-back' basis with the Main Contractor, and in accordance with the provisions below.
- C. The Main Contractor has provided documents (included in the Sub-Contract Particulars) showing and describing and otherwise stating the requirements of the Main Contractor for the design and construction of the Sub-Contractor's Designed Works
- D. The Sub-Contractor, in response to the Main Contractor's request, has supplied to the Main Contractor:
- a. Documents showing and describing the proposals of the Sub-Contractor for the design and construction of the Sub-Contractor's Designed Works; and
  - b. An analysis of the Sub-Contractor's Designed Works included in the Sub-Contract sum.
- E. The Main Contractor has examined the Sub-Contractor's proposals and, Subject to the Sub Contract Conditions, is satisfied that they appear to meet the Main Contractor's requirements.

**PROGRAMME**

- A. the Programme and Schedule of works shall be as set out in the document(s) Programme and Schedule of Works attached to these Terms and Conditions.

**Definitions**

- 1.1** Unless the word of context requires otherwise or this Sub-Contract specifically provides otherwise, the following words or phrases, where they appear in capitalised form in the Sub-Contract Agreement shall have the meanings stated or referred to below:

Acceleration Quotation	A quotation by the Sub-Contractor for an acceleration in the carrying out of the whole or part of the Sub-Contract Works
Activity Schedule	The Sub-Contractor's priced schedule of activities provided to the Main Contractor
Adjudicator	An individual appointed under clause 8.2 as the Adjudicator
Adjustment basis	See Clauses 4.1 and 4.3
Approximate Quantity	A quantity in any of the Bills of Quantities included in the Sub-

	Contract Particulars that is there, or by the nature of the bill, identified as an approximate quantity.
Arbitrator	An individual appointed under clause 8.3 as an arbitrator
Bills of Quantities	Any bills of quantities supplied by the Contractor and included in the Sub-Contract Particulars
CDM Co-ordinator	Any person named as such or any successor appointed by the Employer.
CDM Regulations	The Construction (Design and Management) Regulations 2007
Completion Date	The Date for Completion of the Main Contract Works or of a section as stated in the Main Contract Particulars or such other date as is fixed under the Main Contract.
Conditions	The clauses set out in this Contract together with any schedules, as modified by any Schedule of Modifications included in the Sub-Contract Particulars
Construction Industry Scheme (or CIS)	The current scheme under the Finance Act 2004
Construction Phase Plan	Where the project is notifiable under the CDM Regulations, those parts of the construction phase plan for the Main Contract applicable to the Sub-Contract Works and annexed to these Conditions, together with any updates and revisions or it by the Main Contractor notified to the Sub-Contractor before or during the process of the Sub-Contract Works
Default Payment Notice	See clause 4.12.6
Employer	The person named as Employer in the Main Contract
Employer's Persons	all persons employed, engaged or authorised by the Employer excluding the Main Contractor, Main Contractor's persons, the Sub-Contractor, Sub-Contractor's persons and any statutory undertaker but including any third party referred to in the Main Contract.
Interest Rate	4% per annum above the official dealing rate of the Bank of England current at the date that a payment due under this Sub-Contract becomes due
Listed Items	The items (if any) listed as such in the Sub-Contract Particulars for which the Main Contractor will pay the Sub-Contractor before delivery to the site and as referred to in clause 4.14
Main Contract	See attached
Main Contract Base Date	The date stated as such in the Main Contract
Main Contract Conditions	The conditions of the Main Contract
Main Contractor	Concorde BGW
Main Contractor's Design Submission procedure	See clause 2.6.2
Main Contract Particulars	The Contract Particulars for the Main Contract
Main Contractor's Persons	Concorde BGW's employees and agents and all other persons employed or engaged on or in connection with the Main Contract Works or any part of them or any other person properly on the Site in connection therewith, excluding the Employer, Employer's persons, the Sub-Contractor, Sub-

	Contractor's persons and any statutory undertaker
Main Contractor's Requirements	The documents relating to the Sub-Contractor's Designed Works and included in the Sub-Contract Particulars
Main Contract Works	The Main Contract Works as briefly described in the Sub-Contract Particulars
Parties	The Main Contractor and the Sub-Contractor together
Party	Either the Contractor or the Sub-Contractor
Provisional Sum	Includes a sum provided for work that the Main Contractor may decide not to have carried out or which cannot be accurately specified in the Sub-Contract Particulars
Public Holiday	Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday
SCD Documents	The Main Contractor's Requirements, the Sub-Contractor's Proposals, the Sub-Contractor's Designed Works Analysis and further documents referred to at clause 2.6.1.1
Scheme	Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998
Section	One of the Sections into which (where applicable) the Main Contract Works have been divided.
Site Materials	All unfixed materials and goods delivered to and placed on or adjacent to the Main Contract Works which are intended for incorporation therein.
Statutory Undertaker	Any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations.
Sub-Contract	This agreement including Schedules and annexed documents
Sub-Contract Base Date	The date specified as such in the Sub-Contract Particulars
Sub-Contract Particulars	The particulars of the Sub-Contract and there described as such, together with any Supplemental Particulars annexed thereto, including any entries made by the Parties.
Sub-Contract Works	The works referred to in the Sub-Contract Particulars to be executed as part of the Main Contract, including any changes made to such works in accordance with this Sub-Contract
Sub-Contractor	The person named as Sub-Contractor in this agreement
Sub-Contractor's Design Documents	The drawings, details and specifications of materials, goods and workmanship and other related documents prepared by or for the Sub-Contractor in relation to the Sub-Contractor's Designed Works annexed to this agreement
Sub-Contractor's Designed Works	The works noted in the Sub-Contract Particulars, the design and construction of which is the Sub-Contractor responsibility
Sub-Contractor's persons	The Sub-Contractor's employees and agents and all other persons employed or engaged on or in connection with the Sub-Contract Works or any part of them or any other person properly on the site in connection therewith, excluding the Employer, Employer's persons and any Statutory Undertaker

VAT	Value Added Tax
Working Day	any day other than a Saturday, Sunday or public holiday in England.

### Interpretation

- 1.2** Unless otherwise stated, a reference in this Sub-Contract to a clause or Schedule is to that clause in or Schedule to this agreement and, unless the context requires otherwise, a reference in a Schedule to a paragraph is to that paragraph of that Schedule.
- 1.3** The Sub-Contract is to be read as a whole, provided that:
- 1.3.1** If there is any inconsistency between the Sub-Contract and the Main Contract Conditions, the Sub-Contract shall prevail;
- 1.3.2** nothing in any descriptive Schedule or similar document, issued in connection with and for use in carrying out the Sub-Contract Works shall impose any obligation beyond those imposed by the Sub-Contract; and
- 1.3.3** nothing in the Sub-Contract shall be construed as imposing any liability on the Sub-Contractor in respect of any act, omission or default in the part of the Employer, the Employer's Persons, the Main Contractor or the Main Contractor's Persons.
- 1.4** In this Sub-Contract, unless the context requires otherwise:
- 1.4.1** the headings and Sub-headings do not form part of this Agreement;
- 1.4.2** the singular includes the plural and vice versa;
- 1.4.3** a gender includes any other gender;
- 1.4.4** a reference to a person includes firms, companies, government entities, trusts and partnerships;
- 1.4.5** a reference to a statute, statutory instrument or other Subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it with or without modification and including corresponding legislation in any other relevant part of the United Kingdom.
- 1.5** Where under this Sub-Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday, that day shall be excluded.
- 1.6** Notwithstanding any other provision of this Sub-Contract, nothing in the Sub-Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.
- 1.7** Any notice (other than in legal proceedings) to be delivered under the Agreement must be in writing and delivered by pre-paid first class post to or left by hand delivery at the other party's registered address or place of business, or sent by email to the business email address of the other party. Notices:
- 1.7.1** sent by post will be deemed to have been received, where posted from and to addresses in the United Kingdom, on the second Working Day and, where posted from or to addresses outside the United Kingdom, on the tenth Working Day following the date of posting;
- 1.7.2** delivered by hand will be deemed to have been received at the time the notice is left at the proper address; and
- 1.7.3** sent by email will be deemed to have been received 24 hours after transmission.
- 1.8**
- 1.8.1** Except as provided in clauses 1.8.2 and 1.8.3 (and save in respect of fraud), the Final Payment Notice under clause 4.12.2 shall have effect in any proceedings under or arising out of or in connection with this Sub-Contract (whether by adjudication, arbitration or legal proceedings) as:

- 1.8.1.1 Conclusive evidence that where and to the extent that any of the particular qualities of any materials or goods or any particular standard of an item of workmanship was described expressly in the Sub-Contract or in any instruction issued by the Employer under the Main Contract that affects the Sub-Contract Works, the particular quality or standard was to the reasonable satisfaction of the Employer, but the Final Payment Notice shall not be conclusive evidence that they or any other materials or goods or workmanship comply with any other requirement of this Sub-Contract
- 1.8.1.2 Conclusive evidence that any necessary effect has been given to all the terms of this Sub-Contract which require that an amount is to be taken into account in the calculation of the Final Sub-Contract Sum, save where there has been any accidental inclusion or exclusion of any work, materials, goods or figure in any computation or any arithmetical error in any computation, in which event the Final Payment Notice shall have effect as conclusive evidence as to all other computations;
- 1.8.1.3 Conclusive evidence that all and only such extensions of time, if any, as are due under clause 2.18 have been given;
- 1.8.1.4 Conclusive evidence that the reimbursement of direct loss and/or expense, if any, to the Sub-Contractor pursuant to clause 4.16.1 is in final settlement of all and any claims which the Sub-Contractor has or may have arising out of the occurrence of any Relevant Sub-Contract matters, whether such claim be for breach of Contract, duty of care, statutory duty or otherwise; and
- 1.8.1.5 Conclusive evidence that the reimbursement of direct loss and/ or expense, if any, to the Main Contractor pursuant to clause 4.21 is in final settlement of all and any claim which the Main Contractor has or may have arising out of any of the matters referred to in clause 4.21 whether such claim be for breach of Contract, duty of care, statutory duty or otherwise.
- 1.8.2 If adjudication, arbitration or other proceedings are commenced:
- 1.8.2.1 By either Party prior to or within 10 days of receipt of the Final Payment Notice; or
- 1.8.2.2 By the Employer at any time within the periods referred to in the Main Contract where such proceedings relate in whole or in part to the Sub-Contract Works or other matters connected with this Sub-Contract and the Sub-Contractor is either a party to those proceedings or (if not a party to them) is notified of them within 14 days of their commencement; or
- 1.8.2.3 by the Main Contractor in relation to the Subject matter of any proceedings by the employer within clause 1.8.2.2 if the Employer's proceedings are commenced after the Final Payment Notice, provide that the Sub-Contractor (if not then a party to the Employer's proceedings) has been notified in accordance with that clause and the Main Contractor commences his proceedings within 28 days of the commencement of the Employer's proceedings
- the Final Payment notice shall not have the effects specified in clause 1.8.1 in relation to the Subject matter of those proceedings pending their conclusion. Upon such conclusion, the effect of the Final Payment Notice shall be Subject to the term of any decision, award or judgment in, or settlement of, such proceedings.
- 1.8.3 In the case of a dispute or difference on which an Adjudicator gives his decision on a date after the date of the Final Payment Notice, if either Party wishes to have that dispute or difference determined by arbitration or legal proceedings, that Party may commence arbitration or legal proceedings within 28 days of the date on which the Adjudicator gives his decision.
- 1.8.4 If the Final Payment Notice is not given in accordance with clause 4.12.2, reference in this clause 1.8 to that notice and its effects shall be read and construed as references to any Default Payment Notice given under clause 4.12.6.
- 1.9 This Sub-Contract shall be governed by and construed in accordance with the law of England and Wales.
- 2 **CARRYING OUT THE SUB-CONTRACT WORKS**
- Sub-Contractor's Obligations**
- General Obligations**
- 2.1
- 2.1.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works in a proper and workmanlike manner, in compliance with the Sub-Contract Particulars, the Construction Phase Plan and other statutory requirements and in conformity with directions given in accordance with clause 3.4 and all other reasonable requirements of the Main Contractor (so far as they apply) regulating the carrying out of the Main Contract Works, and shall, in relation to the Sub-Contract works, give all notices required by the Statutory Requirements
- 2.1.2 The Sub-Contractor's obligation to the Main Contractor to comply with the Statutory Requirements under clause 2.1.1 shall not apply to the extent that the relevant part or parts of the Main Contractor's Requirements state specifically that the Main Contractor's Requirements comply with the Statutory Requirements.
- 2.1.3 The Sub-Contractor shall pass to the Main Contractor all approvals received by the Sub-Contractor in connection with the Statutory Requirements.
- Sub-Contractor's Designed Works**
- 2.2 The Sub-Contractor shall:
- 2.2.1 In accordance with the documents supplied by the Main Contractor, complete the design for the Sub-Contractor's designed Works and any further design which the Sub-Contract is required to carry out as a result of a Variation, including the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the Sub-Contractor's Designed Works, as far as not described or stated in the Contractor's Requirements or the Sub-Contractor's proposals
- 2.2.2 Comply with the Main Contractor's directions for the integration of the design of the Sub-Contractor's designed Works with the design of the Main Contract Works as a whole, Subject to the provisions of clause 3.5.1.13
- 2.2.3 In complying with clause 2.2, comply with regulations 11,12 and 18 of the CDM Regulations.
- Time of commencement and completion**
- 2.3 The Sub-Contract Works shall be carried out and completed in accordance with the programme details stated above and reasonably in accordance with the progress of the Main Contract Works or each relevant section of them, Subject as respects construction but not design work, to receipt by the Sub-Contractor of notice to commence work in accordance with those particulars and Subject to clause 2.16 to 2.19.
- Materials, goods and workmanship**
- 2.4
- 2.4.1 All materials and goods for the Sub-Contract Works, excluding the Sub-Contractor's Designed Works shall, so far as possible, be of the type and standard described in the Sub-Contract Particulars. Materials and goods for the Sub-Contractor's Designed Works shall, so far as possible, be of the type and standard described in the Contractor's Requirements or, if not specifically described there, as described in the Sub-Contractor's proposals or documents referred to in clause 2.6.1.

The Sub-contractor shall not Substitute any materials or goods so described without the Main Contractor's consent, which shall not be unreasonably delayed or withheld but shall not relieve the Sub-Contractor of his other obligations.

- 2.4.2 Workmanship for the Sub-Contract works, excluding the Sub-Contractor's Designed Works shall be of the standard described in the Sub-Contract Particulars. Workmanship for the Sub-Contractor's Designed Works shall be of the standards described in the Main Contractor's requirements or if not specifically described there, as described in the Sub-Contractors' proposals.
- 2.4.3 The Sub-Contractor shall, before carrying out the relevant work and/or ordering the relevant goods or materials, provide the Main Contractor with such samples of the standard of workmanship or the quality of goods which the Sub-Contractor intends to provide as are specifically referred to in the Main Contractor's Requirements or in the Sub-Contractor's proposals.
- 2.4.4 If the quality of materials and goods or standards of workmanship are not described in the Main Contractor's Requirements or the Sub-Contractor's proposals, they shall be of a standard appropriate to the Sub-Contract Works.
- 2.4.5 The Sub-Contractor shall, upon the request of the Main Contractor, provide him with reasonable proof that the materials and goods used comply with this clause 2.4.
- 2.4.6 The Sub-Contractor shall take all reasonable steps to encourage the Sub-Contractor's Persons to be registered cardholders under the Construction Skills Certification Scheme or qualified under and equivalent recognised qualification scheme.

**Compliance with Main Contract and indemnity**

**2.5**

- 2.5.1 Insofar as the Main Contractor's obligations under the Main Contract relate and apply to the Sub-Contract Works or any part of them, the Sub-Contractor shall observe, perform and comply with those obligations and shall indemnify and hold harmless the Contractor against and from:
- 2.5.1.1 Any breach, non-observance or non-performance by the Sub-Contractor or his employees or agents of any of the provisions of the Main Contract; and
- 2.5.1.2 Any act or omission of the Sub-Contractor or his employees or agents which involves the Main Contractor in any liability to the Employer under the provisions of the Main Contract.
- 2.5.2 Subject to the exceptions contained in clauses 6.4 and 6.71, the Sub-Contractor shall indemnify and hold harmless the Main Contractor against and from any claim, damage, loss or expense due to, or resulting from, any negligence or breach of duty on the part of the Sub-Contractor, his employees or agents (including any misuse by him or them or scaffolding or other property belonging to, or provided by, the Main Contractor).

**Supply of Documents, Setting out etc.**

**Sub-Contractor's Designed Works Information**

**2.6**

- 2.6.1 In relation to the Sub-Contractor's Designed Works, the Sub-Contractor, in addition to complying with regulations 11,12 and 18 of the CDM Regulations, shall, unless otherwise stated in the Main Contractor's Requirements or agreed under clause 1.7.2 and without further charge, provide the Main Contractor with 3 copies of:
- 2.6.1.1 Such Sub-Contractor's Design Documents and (if requested) calculations as are reasonably necessary to explain or amplify the Sub-Contractor's proposals; and
- 2.6.1.2 All levels and setting out dimensions which the Sub-Contractor prepares or uses for the purposes of carrying out and completing the Sub-Contractor's Designed Works.

- 2.6.2 The Sub-Contractor's Design Documents and other information referred to in clause 2.6.1.1 shall be provided to the Main Contractor as and when necessary from time to time to enable to Main Contractor, in respect of the Sub-Contractor's Designed Works, to observe and perform his obligations under the Main Contract Conditions or as otherwise stated in the Sub-Contract Particulars, and the Sub-Contractor shall not commence any work to which such a document relates before that procedure has been complied with.

**Further drawings, details and directions**

**2.7**

- 2.7.1 The Main Contractor shall, from time to time, without charge to the Sub-Contractor provide him with such further drawing or details as are reasonably necessary to explain and amplify documents furnished by the Main Contractor and issue such directions (including those for or in regard to the expenditure of Provisional Sums) as are necessary to enable the Sub-Contractor to carry out and complete the Sub-Contract Works in accordance with this Sub-Contract.
- 2.7.2 Subject to clause 2.7.1 the Sub-Contractor shall provide the Main Contractor with working/setting out drawings and other information necessary for the Main Contractor to make appropriate preparations and to enable the Sub-Contractor to carry out and complete the Sub-contact Works in accordance with this Sub-Contract.
- 2.7.3 The further drawing, details, information and directions referred to in clause 2.7.1 and 2.7.2 shall be provided or given at the time that it is reasonably necessary for the recipient Party to receive them, having regard to the progress of the Sub-Contract Works and the Main Contract Works

**Errors, discrepancies and Divergences**

**Preparation of Bills of Quantities and Main Contractor's Requirements**

**2.8**

- 2.8.1 Unless in respect of any specified item or items it is otherwise specifically stated in any Bills of Quantities, such bills are to have been prepared in accordance with the Standard Method of Measurement and, unless so stated, any addendum bills issued for the purposes of obtaining a Variation Quotation shall be prepared on the same basis.
- 2.8.2 Subject to clause 2.12, the Sub-Contractor shall not be responsible for the contents of the Main Contractor's Requirements or for verifying the adequacy of any design contained within them.

**Bill of Quantities, Main Contractor's Requirements and Sub-Contractor's Designed Works Analysis – errors and inadequacy**

**2.9**

- 2.9.1 If in any Bills of Quantities, or any such addendum bill referred to in clause 2.8, there is any unstated departure from the method of preparation referred to in that clause or any error in description or in quantity or any omission of items (including any error in or omission of information in any item which is the Subject of a Provisional Sum for defined work), the departure, error or omission shall not vitiate this Sub-Contract but shall be corrected and, where the description of a Provisional Sum for defined work does not provide the information required by the Standard Method of Measurement, the description shall be corrected so that it does provide that information.
- 2.9.2 If an inadequacy is found in any design in the Main Contractor's Requirements to which clause 2.8.2 applies then if, or to the extent that, that inadequacy is not dealt with in the Sub-Contractor's Proposals, the Main Contractor's Requirements shall be altered or modified accordingly.
- 2.9.3 Subject to clause 2.12, any correction, alteration or modification under clause 2.9.1 or 2.9.2 shall be treated as a Variation.
- 2.9.4 Any error in description or in quantity in the Sub-Contractor's Proposals or in the Sub-Contractor's Designed Works Analysis or any error consisting of an omission of items from them shall be corrected, but there shall be no addition in calculating the

Final Sub-Contract Sum in respect of that correction or in respect of any direction requiring a Variation of the Sub-Contract Works not comprised in the Sub-Contractor's Designed Works that is necessitated by such error or its correction.

**Notice of Discrepancies etc.**

- 2.10** If the Sub-Contractor becomes aware of any such departure, error, omission or inadequacy as is referred to in clause 2.9 or any other discrepancy or divergence in or between any of the following documents, namely:
- 2.10.1 The Sub-Contract Particulars;
  - 2.10.2 The Main Contract;
  - 2.10.3 Any direction issued by the Main Contractor under this Sub-Contract; and
  - 2.10.4 The documents referred to in clause 2.6.1

He shall immediately give notice with appropriate detailed to the Main Contractor, who shall issue directions in that regard.

**Discrepancies**

- 2.11**
- 2.11.1 Where the discrepancy or divergence to be notified under clause 2.10 is within the Sub-Contractor's Proposals and/or other documents referred to in clause 2.6.1.1, the Sub-Contractor shall send with his notice, or as soon thereafter as is reasonably practicable, a statement setting out his proposed amendments to remove it. The Main Contractor shall not be obliged to issue directions until he has received that statement but, when issued, the Sub-Contractor shall comply with those directions and, to the extent that they relate to the removal of that discrepancy or divergence, they shall not be taken into account in the calculation of the Final Sub-Contract Sum.
  - 2.11.2 Where the discrepancy is within the Main Contractor's Requirements (including any Variation of them issued under clause 3.4), the Sub-Contractor's Proposals shall prevail (Subject to compliance with Statutory Requirements), without being taken into account in the calculation of the Final Sub-Contract Sum. Where the Sub-Contractors' Proposals do not deal with such a discrepancy, the Sub-contractor shall notify the Main Contractor of his proposed amendment to deal with it and the Main Contractor shall either agree the proposed amendment or decide how the discrepancy shall be dealt with; that agreement or decisions shall be notified to the Sub-Contractor and treated as a variation.
- 2.12**
- 2.12.1 If the Sub-Contractor or Main Contractor becomes aware of any divergence between the Statutory Requirements and any of the documents referred to in clause 2.10, he shall immediately give the other notice specifying the divergence and, where it is between the Statutory Requirements and the Sub-Contractor's Proposals or the Main Contractor's Requirements, the Sub-Contractor shall notify the Main Contractor of his proposed amendment for removing it

**Sub-Contractor's Designed Works**

**Design liabilities and limitations**

- 2.13**
- 2.13.1 Insofar as the design of the Sub-Contractor's Designed Works is comprised in the Sub-Contractor's Proposals and in what the Sub-Contractor is to complete in accordance with the Main Contractor's Requirements and this agreement (including any further design work carried out by the Sub-Contractor as a result of a Variation), the Sub-Contractor shall in respect of any inadequacy in such design have the like liability to the Main Contractor, whether under statute or otherwise, as would an architect or, as the case may be, other appropriate professional designer holding himself out as competent to take on work for such design who, acting independently under a separate Contract with the Main Contractor, has supplied such design for or in connection with works to be carried out and completed by a building Contractor who is not a supplier of design.
  - 2.13.2 Where and to the extent that the Sub-Contract involves the Sub-Contractor in taking on work for or in connection with the

provision of a dwelling or dwellings, the reference in clause 2.13.1 to the Sub-Contractor's liability includes liability under the Defective Premises Act 1972.

- 2.13.3 Where under the Main Contract Conditions there is a limit of liability of the Main Contractor to the Employer in respect of the Main Contractor's Designed Works, any liability of the Sub-Contractor in respect of the Sub-Contractor's designed works, whether by way of indemnity, contribution or otherwise, shall be Subject to a limit of the same type and amount and any right to a proportional contribution from the Sub-Contractor in respect of the liabilities that are limited shall not apply in respect of any amount above that limit.
- 2.13.4 The Main Contractor shall give notice to the Sub-Contractor specifying anything which appears to him to be an inadequacy in the Sub-Contractor's Design Documents but no such notice (nor any failure to give notice) shall relieve the Sub-Contractor of his obligations in connection with such designs.

**Errors and failures – other consequences**

- 2.14** No extension of time shall be given, and clauses 4.16.1 and 7.8.1 shall not have effect where, or to the extent that, the cause of the progress of the Sub-contact Works have been delayed, affected or suspended is:
- 2.14.1 An error, divergence, omissions or discrepancy in the Sub-Contractor's proposals or in anything provided under clause 2.6.1, or any failure of the Sub-Contractor, in completing the Sub-Contractor's Design Documents, to comply with regulation 11,12 and 18 of the CDM Regulations; or
  - 2.14.2 Failure by the Sub-Contractor to provide in due time any necessary Sub-contractor's Design Documents or related calculations either:
    - 2.14.2.1 As required by clause 2.6.2
    - 2.14.2.2 In response to any application from the Main Contractor specifying the relevant documents or information and date by which it is reasonably necessary for them to be received, having regard to the progress of the Sub-Contract Works.

**Unfixed Materials and Goods**

- 2.15**
- 2.15.1 Site materials shall not be removed from storage on or adjacent to the Main Contract Works except for use on the Main Contract Works and with the Main Contractor's consent, which shall not be unreasonably delayed or withheld.
  - 2.15.2 Where, in accordance with the Main Contract Conditions, the value of any Site Materials has been included in any Interim Payment under which the amount properly due to the Main Contractor has been paid to him by the Employer, they shall, upon such payment, become the Employer's property and the Sub-Contractor shall not deny that they have become the Employer's property.
  - 2.15.3 If the Main Contractor pays the Sub-Contractor for any Site Materials before their value is included in any Interim Payment under the Main Contract, they shall upon such payment become the Main Contractor's property.
  - 2.15.4 Nothing in clause 2.15 shall operate so as to affect any vesting in the Contractor of property in any Listed Item required under the Main Contract Conditions.

**Adjustment of Period for Completion**

**Related definitions and interpretation**

- 2.16** In clauses 2.17 to 2.19 and, so far as relevant, in the other clauses of this Sub-Contract:
- 2.16.1 Any reference to delay or extension of time includes any further delay or further extension of time;
  - 2.16.2 'Pre-agreed Adjustment' means the fixing of a revised period or periods for completion of the Sub-Contract Works or for such works in a Section by the acceptance of a Variation Quotation or an Acceleration Quotation;

2.16.3 'Relevant Sub-Contract Omission' means the omission of any work or obligation through a direction for a Variation under clause 3.4 or in regard to a Provisional Sum for defined work in any Bills of Quantities.

notice to the Sub-Contractor, giving the details referred to in clause 2.18.3:

**Notice by Sub-Contractor of delay to progress**

**2.17**

2.17.1 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Sub-Contract Works or such works in a Section is being, or is likely to be, delayed, the Sub-Contractor shall forthwith give notice to the Main Contractor of the material circumstances, including insofar as the Sub-Contractor is able, the cause or causes of the delay and shall identify in the notice any event which, in his opinion, is a Relevant Sub-Contract Event.

2.18.5.1 Extend the relevant period or periods previously fixed if he properly considers that is fair and reasonable, having regard to any Relevant Sub-Contract Event, whether in reviewing a previous decision or otherwise and whether or not the Relevant Sub-Contract Event has been specifically notified by the Sub-Contractor under clause 2.17.1; or

2.17.2 In respect of each event identified in the notice, the Sub-Contractor shall, if practicable, in such notice or otherwise in writing as soon as possible thereafter give particulars of it expected effects including an estimate of any expected delay in the completion of the Sub-Contract Works or such works in any Section beyond the relevant period or periods for completion stated in the Sub-Contract Particulars or any previously revised period or periods.

2.18.5.2 Subject to clauses 2.18.6.3 and 2.18.6.4, shorten the relevant period or periods previously fixed if he properly considers that is fair and reasonable, having regard to any Relevant Sub-Contract Omissions issued after the last occasion on which a new period for completion was fixed for the Sub-Contract Works or for works in the relevant section; or

2.17.3 The Sub-Contractor shall forthwith notify the Main Contractor of any material change in the estimated delay or in any other particulars and supply such further information as the Main Contractor may at any time reasonably require.

2.18.5.3 Confirm the period or periods previously fixed.

**Fixing period for completion**

**2.18**

2.18.1 If on receiving a notice and particulars under clause 2.17 the Main Contractor properly considers that:

2.18.6 Provided always that:

2.18.1.1 Any of the events which are stated to be a cause of delay is a Relevant Sub-Contract Event; and

2.18.6.1 The Sub-Contractor shall constantly use his best endeavours to prevent delay in the progress of the Sub-Contract Works or of such works in any section, however caused, and to prevent their completion being delayed or further delayed beyond the relevant period for completion.

2.18.1.2 Completion of the Sub-Contract Works or such works in a Section is likely to be delayed thereby beyond the period or periods stated in the Sub-Contract Particulars or any revised period or periods,

2.18.6.2 In the event of any delay the Sub-Contractor shall do all that may reasonably be required to the satisfaction of the Main Contractor to proceed with the Sub-Contract Works;

Then, save where this agreement expressly provides otherwise, the Main Contractor shall give an extension of time by fixing such revised period or periods for completion as he then estimates to be fair and reasonable.

2.18.6.3 No decision of the Main Contractor under clause 2.18.4 or 2.18.5 shall fix a shorter period or periods for completion of the Sub-Contract Works or of such works in any section than that stated in the Sub-Contract Particulars;

2.18.2 whether or not an extension is given, the Main Contractor shall notify the Sub-Contractor of his decision in respect of any notice under clause 2.17 as soon as is reasonable practicable and in any event within 16 weeks of receipt of the required particulars. Where the period from receipt to the expiry date of the relevant period for completion is less than 16 weeks, he shall endeavour to do so prior to that expiry date.

2.18.6.4 No decision under clause 2.18.4 or 2.18.5 shall alter the length of any Pre-agreed Adjustment except in the case of a Variation Quotation where the relevant Variation is itself the Subject of a Relevant Sub-Contract Omission.

2.18.3 That Main Contractor shall, in his decision, state:

**Relevant Sub-Contract Events**

**2.19** The following are the Relevant Sub-Contract Events referred to in clauses 2.17 and 2.18:

2.18.3.1 The extension of time that he has attributed to each Relevant Sub-Contract Event

2.19.1 Variations and any other matters or directions which, under this agreement, are to be treated as, or requiring, a variation;

2.18.3.2 In the cause of a decision under clause 2.18.4 or 2.18.5, the reduction in time that he has attributed to each Relevant Sub-Contract Event.

2.19.2 Main Contractor's Directions, including those which pass on the Employer's instructions:

2.18.4 After the first extension of time in respect of the period or periods for completion of the Sub-Contract Works or such works in a Section, either under clause 2.18.1 or by a Pre-agreed Adjustment, but Subject to clauses 2.18.6.3 and 2.18.6.4, the Main Contractor may, by notice to the Sub-Contractor, giving the details referred to in clause 2.18.3, fix a period or periods for completion of such works shorter than previously fixed if he properly considers that is fair and reasonable, having regard to any Relevant Sub-Contract Omissions for which directions have been issued after that last occasion on which a new period for completion was fixed for the Sub-Contract Works or for that Section.

2.19.2.1 Given in order to comply with instructions under any clauses (excluding an instruction for expenditure of a Provisional Sum for defined work) of the Main Contract Conditions;

2.18.5 After the expiry of the period or periods for completion of the Sub-Contract Works or such works in a Section, if this occurs before the date of their practical completion, the Main Contractor may, and not later than the expiry of 16 weeks after the date of their practical completion shall in each case, by

2.19.2.2 For the opening up for inspection or testing of any of the work, materials or goods under the terms of the Main Contract Conditions (including making good), unless the inspection or test shows that the work, materials or goods comprised in the Sub-Contract works are not in accordance with the Sub-Contract

2.19.2.3 For the opening up for inspection or testing of any of the work, materials or goods under clause 3.10 (including making good), unless the inspection or test shows that the work, materials or goods comprised in the Sub-Contract works are not in accordance with the Sub-Contract.

2.19.3 Deferment of the giving of possession of the site or any Section under the Main Contract Conditions;

- 2.19.4 Where there are Bills of Quantities, the execution of work for which an Approximate Quantity included in those bills is not a reasonably accurate forecast of the quantity of work required;
- 2.19.5 Suspension by the Sub-Contractor under clause 4.11 of the performance of any or all of his obligations under this Sub-Contract;
- 2.19.6 Suspension by the Main Contractor of the performance of any or all of his obligations under the Main Contract;
- 2.19.7 Any impediment, prevention or default, whether by act or omission, by the Employer or any of the Employer's Persons, except to the extent caused or contributed to by any default, whether by act or omission, of the Sub-Contractor or of any of the Sub-Contractor's employees;
- 2.19.8 Any impediment, prevention or default, whether by act or omission, by the Main Contractor or any of the Contractor's Persons, except to the extent caused or contributed to by any default, whether by act or omission, of the Sub-Contractor or of any of the Sub-Contractor's employees;
- 2.19.9 The carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations in relation to the Main Contract Works, or the failure to carry out such work;
- 2.19.10 Exceptionally adverse weather conditions;
- 2.19.11 Loss or damage occasioned by any of the specified perils
- 2.19.12 Civil commotion or the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such an event or threat;
- 2.19.13 Strike, lock-out or local combination of workmen affecting any of the trades employed upon the Main Contract Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Main Contract Works or any persons engaged in the preparation of the Contractor's design for the main Contract works.
- 2.19.14 The exercise after the Main Contract Base Date by the United Kingdom Government of any statutory power which directly affects the execution of the Main Contract Works;
- 2.19.15 Delay in receipt of any necessary permission or approval of any statutory body which the Sub-Contractor has taken all practical steps to avoid or reduce;
- 2.19.16 Force majeure

**Practical Completion and Lateness**

**Date of Practical Completion**

**2.20**

- 2.20.1 The Sub-Contractor shall notify the Main Contractor of the date when in his opinion the Sub-Contract Works as a whole or such work in a Section are practically complete and he has complied sufficiently with clauses 2.24 and 3.20.4 in respect of that completed work. Unless the Main Contractor dissents by notice, giving reasons, within 14 days of receipt of the Sub-Contractor's notice, practical completion of such work shall be deemed for all purposes of this Sub-Contract to have taken place on the date so notified
- 2.20.2 If the Main Contractor so dissents then, as soon as he is satisfied that such work is complete and that there has been such compliance, he shall as soon as practicable notify the Sub-Contractor and practical completion of such work shall be deemed for all purposes of the Sub-Contract to have taken place on the date notified by the Main Contractor or on such other date as is either agreed or determined in accordance with the dispute resolution procedures of this Sub-Contract. The date shall in any event be no later than the date of practical completion of the Main Contract Works or relevant section of part under the Main Contract. Any agreed date shall be confirmed by the Main Contractor to the Sub-Contractor.

**Failure of the Sub-Contractor to complete on time**

- 2.21 If the Sub-Contractor fails to complete the Sub-Contract Works or such works in any section within the relevant period or periods for completion, and if the Main Contractor gives notice to that effect to the Sub-Contractor within a reasonable time of the expiry of the period or periods, the Sub-Contractor shall pay or allow to the Main Contractor the amount of any direct loss and/or expense suffered or incurred by the Main Contractor and caused by that failure.

**Defects**

**Sub-Contractor's liability**

**2.22**

- 2.22.1 The Sub-Contractor shall make good at his own cost and in accordance with any direction of the Main Contractor all defects, shrinkages and other faults in the Sub-Contract works or in any part of them due to materials, goods or workmanship not in accordance with this Sub-Contract or any failure of the Sub-Contractor to comply with his obligations in respect of the Sub-Contractor's Designed Works.
- 2.22.2 All snagging/defect works that have arisen from the Main Contract Works shall be completed within 3 days of practical completion and must be noted on the Main Contractor's Standard Snagging Sign off Sheet and returned to the Main Contractor.
- 2.22.3 The Sub-Contractor shall make good all defects that remain outstanding at the end of the defects liability period within 7 days of issue of an End of Defects Period Schedule. If the Sub-Contractor fails to do so, the Main Contractor shall organise alternative means of remedying said defects and the cost of same shall be deducted for any Retention or other monies owed to the Sub-Contractor and further the Sub-Contractor shall pay or allow to the Main Contractor the amount of any direct loss and/or expense suffered or incurred by the Main Contractor and caused by that failure.
- 2.22.4 Where the Sub-Contractor considers that any such making good under clause 2.22.1 to 2.22.3 has been achieved, he shall notify the Main Contractor and, as soon as the Main Contractor is reasonably satisfied that that has been achieved, he shall notify the Sub-Contractor. Making good shall be deemed to have taken place on the date notified by the Main Contractor or on such other date as is either agreed or determined in accordance with the dispute resolution procedures of this Sub-Contract. The date shall in any event not be later than the date of issue of the relevant Notice of Completion of Making Good under the main Contract. Any agreed date shall be confirmed by the Main Contractor to the Sub-Contractor.

**Deductions under the Main Contract Conditions**

**2.23**

Where an appropriate deduction is made under the Main Contract Conditions, then, to the extent that such deduction is properly attributable to inaccurate setting out by the Sub-Contractor or to defects or other faults in the Sub-Contract Works, the deduction, or the appropriate proportion of it, shall be borne by the Sub-Contractor and shall be either taken into account in the calculation of the Final Sub-Contract Sum or be recoverable by the Main Contractor from the Sub-Contractor as a debt.

**Sub-Contractor's Design Documents**

**As-built drawings**

**2.24**

Before practical completion of the Sub-Contract Works or such works in the relevant Section, the Sub-Contractor shall without further charge to the Main Contractor supply for the retention and use of the Main Contractor such Sub-Contractors' design Documents and related information as may be specified in the Sub-Contract Particulars or as the Main Contractor shall reasonably require, showing or describing the Sub-Contractor's Designed Works as built and, without affecting the Sub-Contractor's obligations under clause 3.20.4, concerning the maintenance and operation of those Works, including any instalments forming part of them.

**Copyright and use**

**2.25**

- 2.25.1 Subject to any rights in any designs, drawings and other documents supplied to the Sub-Contractor for the purposes of this Sub-Contract by the Main Contractor, the copyright in all

Sub-Contractor's design Documents shall remain vested in the Sub-Contractor.

terms equivalent to those of clauses 4.10.6 and 4.12.7 of this Sub-Contract.

2.25.2 Subject to all sums due and payable under this Sub-Contract to the Sub-Contractor having been paid, the Main Contractor shall have an irrevocable, royalty-free, non-exclusive license, with the full right to Sub-license the Employer, to copy and use the Sub-Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the Main Contract Works including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Main Contract Works but shall not include a license to reproduce the designs contained in them for any extension of the Main Contract Works.

2.25.3 The Sub-Contractor shall not be liable for any use by the Main Contractor or the Employer of any of the Sub-Contractor's Design Documents for any purpose other than that for which they were prepared.

**Collateral Warranties**

2.26 Where the Main Contract Particulars and/or other Sub-Contract document provides for the giving by the Sub-Contractor of collateral warranties to a purchaser, tenant or funder, or to the Employer:

2.26.1 The Sub-Contractor shall, within 14 days from receipt of such a notice from the Main Contractor that identifies the beneficiary and requires execution of such a collateral warranty, execute and deliver the warranty to the Main Contractor or as he may direct. If the Sub-Contractor no later than 7 days after such receipt reasonably requests any amendment to such warranty, he shall execute and deliver the warranty (with any approved amendment) within 7 days of being notified of the Employer's decision on that request;

2.26.2 Where the Main Contract is executed as a deed, each such warranty shall be executed as a deed; where the Main Contract is executed under hand, each such warranty may be executed under hand.

**3 CONTROL OF SUB-CONTRACT WORKS**

**Assignment and Sub-Contracting**

**Non-assignment**

3.1 The Sub-Contractor may not assign, transfer or Sub-Contract to any third party the benefit and/or burden of this Sub-Contract without the prior written consent (not to be unreasonably withheld) of the Main Contractor.

3.2 Where consent is given, the Sub-Contractor shall remain wholly responsible for carrying out and completing the Sub-Contract Works in all respects in accordance with this Sub-Contract, notwithstanding any Sub-Contracting or assignment and the Main Contractor's consent shall not in any way affect the obligations of the Sub-Contractor under clause 2.13.1 or any other provision of this Sub-Contract.

**Conditions of Sub-Contracting**

3.3 It shall be a condition of any Sub-Sub Contract that:

3.3.1 The Sub-Sub Contractor's engagement under the Sub-Sub Contract shall terminate immediately upon the termination (for any reason) of the Sub-Contractor's engagement under this Sub-Contract.

3.3.2 The Sub-Sub Contract shall provide that

3.3.2.1 Each party undertakes to the other in relation to the Main Contract works and the site duly to comply with the CDM Regulations;

3.3.2.2 If by the final date for its payment in the Sub-Sub Contract, the Sub-Contractor fails to pay a sum, or any part of it, due to the Sub-Sub Contractor, the Sub-Contractor shall, in addition to any unpaid amount that should properly have been paid, pay simple interest on that amount at the Interest Rate for the period from the final date for payment until such payment is made, such payment of interest to be on and Subject to

**Main Contractor's Directions**

**Power to issue directions**

3.4 The Main Contractor may issue any reasonable direction to the Sub-Contractor in regard to the Sub-Contract Works (including the ordering of any Variation). Any instruction of the Employer under the Main Contract that affects the Sub-Contract Works and is issued by the Main Contractor to the Sub-Contractor shall be deemed to be a direction of the Main Contractor. No Variation directed by the Main Contractor or subsequently sanctioned by him shall vitiate this Sub-Contract.

**Compliance with directions**

**3.5**

3.5.1 The Sub-Contractor shall forthwith comply with all directions issued to him under clause 3.4, save that:

3.5.1.1 Where such a direction requires a Variation of the type referred to in clause 5.1.2 the Sub-Contractor need not comply to the extent that he notifies a reasonable objection to it to the Main Contractor;

3.5.1.2 Where a direction for a Variation is given which pursuant to clause 5.3.1 required the Sub-Contractor to provide a Variation Quotation, the Variation shall not be carried out until the Main Contractor has in relation to it issued either written acceptance or a further directions under clause 5.3.2;

3.5.1.3 If, in the Sub-Contractor's opinion, compliance with any directions of the Main Contractor injuriously affects the efficacy of the design of any of the Sub-Contractor's designed Works (including the obligation of the Sub-Contractor to comply with regulations 11,12 and 18 of the CDM Regulations) he shall within 5 days of receipt of the direction give notice to the Main Contractor specifying the injurious effect, and the direction shall not take effect unless confirmed by the Main Contractor.

3.5.2 If an instruction from the Employer under the Main Contract Conditions is issued as direction to the Sub-Contractor, the Sub-Contractor shall provide such information to the Main Contractor as shall in relation to the Sub-Contract Works or any intended Change therein enable to Main Contractor to comply with that instruction.

**Non-compliance with directions**

3.6 Subject to clause 3.5, if within 7 days after receipt of a notice from the Main Contractor requiring compliance with a directions the Sub-Contractor does not comply, the Main Contractor may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to that directions. The Sub-Contractor shall be liable for all additional costs incurred by the Main Contractor in connection with such employment and an appropriate deduction shall either be taken into account in the calculation of the Final Sub-Contract Sum to be recoverable by the Main Contractor from the Sub-Contractor as a debt.

**Directions other than in writing**

3.7 Where the Main Contractor gives a direction to the Sub-Contractor or his authorised representative otherwise than in writing, it shall be of no immediate effect but the Sub-Contractor shall confirm it in writing to the Main Contractor within 7 days and, if he does not dissent by notice to the Sub-Contractor within 7 days of receipt of the Sub-Contractor's confirmation, it shall take effect as from the expiration of the latter 7 day period. Provided always that:

3.7.1 If within 7 days of giving a direction otherwise than in writing the Main Contractor confirms it in writing, the Sub-Contractor shall not be obliged to confirm it and it shall take effect as from the Main Contractor's confirmation; and

3.7.2 If neither the Main Contractor nor the Sub-Contractor confirms such a direction in the manner and time stated but the Sub-Contractor nevertheless complies with it, the Main Contractor may at any time prior to the Final Payment under this Sub-Contract confirm it with retrospective effect.

**Person in charge**

3.8 The Sub-Contractor shall ensure that at all times during the execution of the Sub-Contract Works he has on the site a competent person-in-charge and any directions given to that person by the Main Contractor shall be deemed to have been issued to the Sub-Contractor.

**Access for Contractor and Employer**

3.9 The Main Contractor, Employer and any person authorised by either of them shall at all reasonable times have access to any work which is being prepared for or is to be utilised in the Sub-Contract Works but Subject to such reasonable restrictions as are necessary to protect any proprietary rights.

**Opening up and remedial measures**

**Directions to open up and test**

3.10 Without limiting his powers under clause 3.4, the Main Contractor may issue directions requiring the Sub-Contractor to open up for inspection any work covered up or to arrange for or to carry out any test of any materials or goods (whether or not already incorporated into the Sub-Contract Works) or of any executed work. The cost of such opening up or testing (including the cost of making good) shall be taken into account in the calculation of the Final Contract Sum unless the requirement for opening up or testing is included in the Sub-Contract Particulars or unless the inspection or test shows that the materials, goods or work are not in accordance with them.

**Work not in accordance with the Sub-Contract**

3.11 If any work, materials or goods are not in accordance with this Sub-Contract ('non-compliant work'), the Main Contractor, in addition to his other powers, may:

3.11.1 Issue directions requiring the removal from the site or rectification of any or all of the non-compliant work;

3.11.2 Issue such directions requiring a Variation as are reasonably necessary as a consequence of any direction under 3.11.1 (to the extent that such directions are necessary, no adjustment shall be taken into account in the calculation of the Final Sub-Contract Sum and no extension of time shall be given); and/or

3.11.3 Having due regard to the Sub-Contract Code of Practice, issue such directions under clause 3.10 as are reasonable in all the circumstances to establish to the reasonable satisfaction of the Main Contractor the likelihood, or extent, or any further similar, non-compliance. Whatever the results of the opening up, no adjustment shall be taken into account in the calculation of the Final Contract Sum, but clauses 2.18 and 2.19.2.3 shall apply unless the inspection or test shows that the work, materials or goods are non-compliant.

Provided that where no-compliant work is the Subject of an instruction by the Employer under the Main Contract Conditions, the Contractor, shall so notify the Sub-Contractor.

**Instructions and Deductions under the Main Contract**

**3.12**

3.12.1 Where the employer consults with the Main Contractor and such consultation relates, in whole or in part, to the Sub-Contract Works or any part of them, the Main Contractor shall immediately consult with the Sub-Contractor;

3.12.2 Where the Employer allows all or any non-compliant work to remain, the Main Contractor shall notify the Sub-Contractor and (where applicable) an appropriate deduction shall be taken into account in the calculation of the Final Contract Sum or the amount of such deduction shall be recoverable from the Sub-Contractor as a debt.

3.12.3 The Sub-Contractor shall comply with any directions of the Main Contractor requiring a Variation to the extent that are the reasonably necessary consequence of the Employer allowing all or any non-compliant work to remain. No adjustment shall be made in the calculation of the Final Contract Sum and no extension of time shall be given.

**Workmanship not in accordance with Sub-Contract**

**3.13**

3.13.1 Where there is any failure to comply with clause 2.1 in regard to the carrying out of work in a proper and workmanlike manner and/or in accordance with the Construction Phase Plan, the Main Contractor, in addition to his other powers, may, after consultation with the Sub-Contractor, issue such directions (whether requiring a Variation or otherwise) as are in consequence reasonably necessary. No adjustment shall be made in the calculation of the Final Contract Sum and no extension of time shall be given

3.13.2 Where failure to comply as referred to in clause 3.13.1 is the Subject of an instruction issued by the Employer under the Main Contract Conditions, the Main Contractor shall, in issuing the relevant direction, so notify the Sub-Contractor.

**Effect of non-compliant work by others**

**3.14**

3.14.1 Where compliance by the Contractor or by any other Sub-Contractor with any instruction of the Employer under the Main Contract Conditions or compliance by any other Sub-Contractor with any direction of the Contractor under clauses 3.11, 3.12 or 3.13 necessitates work properly executed under this Sub-Contract being taken down, re-executed, re-fixed or re-supplied, the Sub-Contractor shall comply with directions to as to take down, re-execute, re-fix or re-supply if those directions are issued before the date of practical completion of the Sub-Contract Works or of such works in the relevant Section.

3.14.2 The Sub-Contractor shall be paid on the basis of a fair valuation for any taking down, re-executing, re-fixing or re-supply under clause 3.14.1 and carried out by the Sub-Contractor; the amount of the valuation shall be taken into account in calculating the Final Sub-Contract sum.

**Indemnity by Sub-Contractor**

3.15 The Sub-Contractor shall indemnify the Main Contractor in respect of any liability, and reimburse the Main Contractor for any costs which the Main Contractor has incurred:

3.15.1 As a direct result of compliance by the Sub-Contractor with clauses 3.11, 3.12 and/or 3.13; or

3.15.2 As a result of the operation of clause 3.14 (or any equivalent provision) in any other Sub-Contract let by the Main Contractor in relation to the Main Contract Works (including any liability for direct loss and/or expense and/or as a result of any extension of time) in consequence of non-compliant work or workmanship by the Sub-Contractor.

**Attendance and Site Conduct**

**Attendance**

**3.16**

3.16.1 The Contractor shall provide, free of charge to the Sub-Contractor the following:

3.16.1.1 Provision and erection of all necessary scaffolding or other access/work equipment for all work at height except where such provision is necessary solely and exclusively for the purpose of carrying out the Sub-Contract Works;

3.16.1.2 Space for temporary site accommodation/containers;

3.16.1.3 Single phase supply of electricity at 240v for temporary site accommodation;

3.16.1.4 Single phase electricity at 110v for tools and temporary lighting;

- 3.16.1.5 Water supplied at points identified for temporary site accommodation;
- 3.16.1.6 Use of mess rooms;
- 3.16.1.7 Use of sanitary accommodation;
- 3.16.1.8 Reasonably non-exclusive use of hoisting facilities of deemed necessary

All other items of attendance must be provided by the Sub-Contractor

- 3.16.2 The Main Contractor and the Sub-Contractor shall, for the purposes of the Main Contract Works (but not otherwise) be entitled to use any scaffolding erected by the Main Contractor of the Sub-Contractor while it remains erected. Such use is on the express condition that no warranty or liability shall be created or implied under this Sub-Contract as to the fitness, conditions or suitability of such scaffolding.
- 3.16.3 The Main Contractor and the Sub-Contractor shall not, and shall ensure that Main Contractor's persons and Sub-Contractor's persons, do not wrongfully use or interfere with the plant, scaffolding, temporary works, appliances or other property belonging to, or provided by, others or infringer any Statutory Requirements.

**Temporary Buildings**

- 3.17 Subject to clause 3.16, the Sub-Contractor shall at his own expense, provide, maintain and remove all necessary workshops, shed and other temporary buildings for the Sub-Contractor's persons at or from such a site as the Main Contractor may direct.

**Site clearance**

- 3.18 The Sub Contractor shall:
  - 3.18.1 Clear away all rubbish resulting from his carrying out of the Sub-Contract Works in such as manner as the Main Contractor shall direct, so as to keep access to the Sub-Contract Works clear at all times
  - 3.18.2 Upon practical completion of the Sub-Contract works or such works in each Section, clear up and leave those works clean and tidy to the reasonable satisfaction of the Main Contractor.

**Health and Safety and CDM Requirements**

**Health and safety**

- 3.19 The Sub-Contractor shall, at no cost to the Main Contractor, comply with:
  - 3.19.1 All health and safety legislation relevant to the Sub-Contract Works and the manner in which they are being carried out;
  - 3.19.2 All reasonable directions of the Main Contractor to the extent necessary for compliance with such legislation as affected the Sub-Contract Works
  - 3.19.3 Within the time reasonably required, any written request by the Main Contractor for information reasonable necessary to demonstrate compliance with this clause.

**CDM Regulations**

- 3.20 Each party undertakes to the other to comply with the CDM Regulations. Without limitation, where the project includes works that are notifiable under CDM Regulations:
  - 3.20.1 If the Employer notifies the Main Contractor of a new appointee as the CDM co-ordinator, the Contractor shall immediately notify the Sub-Contractor;
  - 3.20.2 The Main Contractor shall ensure that the Sub-Contractor is supplied with any updated or revision of the Construction Phase Plan;
  - 3.20.3 The Sub-Contractor shall, at no cost to the Employer or Main Contractor, comply with all reasonable requirements relating to compliance with the CDM Regulations, no extension of time shall be given for such compliance

**Suspension of Main Contract by Main Contractor**

**Notification by Main Contractor**

- 3.21 If the Main Contractor gives written notice to the Employer of his intention to suspend the performance of any or all of his obligation under the main Contract, he shall copy that notice to the Sub-Contractor; and if he then suspends those obligations, he shall notify the Sub-Contractor.

**Directions following suspension**

**3.22**

- 3.22.1 Upon such suspension the Main Contractor may direct the Sub-Contractor to cease the carrying out of the Sub-Contract Works and shall issue such directions as may be necessary following such cessation;
- 3.22.2 If the Main Contractor resumes performance of his obligations under the Main Contract, the Main Contractor shall, if he has directed the Sub-Contractor to cease carrying out the Sub-Contract works, direct the Sub-Contractor to recommence them and may issue further directions in regard to such commencement.

**Other Provisions**

**Strikes**

- 3.23 If the Main Contract Works are affected by a strike, lock-out or local combination of workmen affecting any of the trades employed upon them or any of the trades engaged in the preparation. Manufacture or transportation of any of the goods or materials required for the Main Contract Works;
  - 3.23.1 Neither the Main Contractor nor the Sub-Contractor shall be entitled to make any claim upon the other for loss and/or expense resulting from such action;
  - 3.23.2 The Main Contractor shall take all reasonably practicable steps to keep the site open and available for the use of the sub-Contractor;
  - 3.23.3 The Sub-Contractor shall take all reasonably practicable steps to continue with the Sub-Contract works.

Nothing in this clause shall affect any other right of the Main Contractor or the Sub-Contractor under this Sub-Contract if such action occurs.

**Benefits under the Main Contract**

- 3.24 At the request of the Sub-Contractor, the Main Contractor shall, so far as he lawfully may, obtain for him any rights or benefits of the provision of the Main Contract to the extent that they are applicable to the Sub-Contract works and not inconsistent with the express terms of this Sub-Contract but not further or otherwise. Any action taken by the Main Contractor in this regard shall be at the expense of the Sub-contractor and Subject to such indemnity and security as the Main Contractor may require.

**Statements and Notices under the Main Contract**

- 3.25 The Main Contractor shall forthwith notify the Sub-Contractor of the date of the following under the Main Contract:
  - 3.25.1 The fixing or confirmation of the Completion Date for the Main Contract Works or any Section;
  - 3.25.2 Any notice issued under the Main Contract Conditions;
  - 3.25.3 The Practical Completion Statement or each section Completion Statement;
  - 3.25.4 Each Notice of Completion of Making Good;
  - 3.25.5 The Final Statement, or if applicable, the Employer's Final Statement

4	PAYMENT	4.3.3.2	The amount of the Valuation of any Variation, including the Valuation of other work as referred to in clause 5.11 by excluding any omission;
	<b>Sub-Contract Sum and Sub-Contract Tender Sum</b>		
	<b>Adjustment basis</b>	4.3.3.3	The amount of the Valuation of work executed by, or the amount of any disbursements by, the Sub-Contractor in accordance with the Main Contractor's directions as to the expenditure of Provisional Sums included in the Sub-Contract Particulars and of all work described as provisional in the Sub-Contract Particulars and, where there are Bills of Quantities, of all work for which an Approximate Quantity is included in those bills or in the Main Contractor's Requirements;
4.1	Where the adjustment Basis applies:		
4.1.1	The quality and quantity of the work included in the Sub-Contract Sum is that set out in the Bills of Quantities and SCD Documents or, where there are no Bills of Quantities, that included in the Sub-Contract Particulars taken together but, where quantities are contained in the Sub-Contract Particulars provided by the Main Contractor, the quantity of work shall to that extent be that set out in those quantities;	4.3.3.4	Any amounts ascertained under clause 4.16.1
4.1.2	The Sub-Contract Sum shall not be adjusted or altered in any way other than in accordance with the express provision of this agreement and, Subject to clause 2.9, any error in the computation of the Sub-Contract Sum is accepted by the Parties;	4.3.3.5	Any valuation under clause 3.14.1
4.1.3	The Final Sub-Contract Sum shall be calculated in accordance with clause 4.3	4.3.3.6	any amounts payable under clause 4.11.2
	<b>Remeasurement Basis</b>	4.3.3.7	any other amount required by this Sub-Contract to be added in the calculation of the Final Contract Sum.
4.2	Where the Remeasurement Basis applies s:		
4.2.1	The quality and quantity of the work included in the Sub-Contract Sum is that set out in the Bills of Quantities and SCD Documents or, where there are no Bills of Quantities, that included in the Sub-Contract Particulars taken together but, where quantities are contained in the Sub-Contract Particulars provided by the Main Contractor, the quantity of work shall to that extent be that set out in those quantities; and		
4.2.2	The Sub-Contract Works shall be Subject to complete Remeasurement and the Final Contract Sum shall be calculated in accordance with clause 4.4.		
	<b>Final Sub-Contract Sum – Adjustment Basis</b>		
4.3			
4.3.1	On the Adjustment Basis the Final Sub-Contract Sum shall be the Sub-Contract Sum adjusted by the amount stated by the Main Contractor in his acceptance of any Variation Quotation or Acceleration Quotation, by the amount of any Variations thereto as valued under clause 5.3.3 and as set out in clauses 4.3.2 and 4.3.3		
4.3.2	There shall be deducted from the Sub-Contract Sum:		
4.3.2.1	All Provisional Sums and the value of all work described as provisional included in the Sub-Contract Particulars and, where there are Bills of Quantities, the value of all work for which and Approximate Quantity is included in those bills of in the Contractor's requirements;		
4.3.2.2	The amount of each Variation under clauses 5.6.2 and 5.10.3 of items omitted in accordance with a Variation, together with the amount included in the Sub-Contract particulars for any other work as referred to in clause 5.11		
4.3.2.3	Any amounts deductible under clause 2.23, 3.6, 3.12.2, 4.21 or 6.14.4		
4.3.2.4	Any other amount required by this Sub-Contract to be deducted in the calculation of the Final Sub-Contract Sum.		
4.3.3	There shall be added to the Sub-Contract Sum:		
4.3.3.1	Any amounts payable by the Main Contractor to the Sub-Contractor as a result of payments made or costs incurred by the Sub-Contractor under the Main Contract Conditions as referred to in clause 2.5 of this agreement;		
			<b>Final Sub-Contract Sum – Remeasurement Basis</b>
		4.4	on the Remeasurement Basis the Final Sub-contract Sum shall be the amount of the Valuation under clause 5.2.2 adjusted by:
		4.4.1.1	Any amounts payable by the Main Contractor to the Sub-Contractor as a result of payments made or costs incurred by the Sub-Contractor under the Main Contract Conditions as referred to in clause 2.5 of this agreement;
		4.4.1.2	The amounts stated by the Main Contractor in his acceptance of any Variation Quotation or Acceleration Quotation, Subject to any Variations to that quotation, as valued under clause 5.3.3;
		4.4.1.3	Any amounts ascertained under clause 4.16.1
		4.4.1.4	Any valuation under clause 3.14.1
		4.4.1.5	any amounts payable under clause 4.11.2
		4.4.1.6	Any amounts deductible under clause 2.23, 3.6, 3.12.2, 4.21 or 6.14.4
		4.4.1.7	any other amount required by this Sub-Contract to be added in the calculation of the Final Contract Sum.
			<b>Taking adjustments into account</b>
		4.5	where this agreement provides that an amount is to be taken into account in the calculation of the Final Sub-Contract Sum then, as soon as the amount is ascertained in whole or in part, the ascertained amount shall be taken into account in the next interim payment
			<b>Calculation of the Final Sub-Contract Sum</b>
		4.6	
		4.6.1	Not later than 14 days after practical completion of the Sub-Contract works, the Sub-Contractor shall send to the Main Contractor all documents necessary for calculating the Final Sub-Contract Sum.
		4.6.2	Not later than 6 months after receipt of the documents in clause 4.6.1, the Main Contractor shall prepare and send to the Sub-Contractor a statement of the calculation of the Final Sub-Contract Sum
		4.6.3	If the Main Contractor does not receive the documents referred to in clause 4.6.1 within 14 days of the practical completion of the Sub-Contract Works, the Main Contractor shall prepare a statement of all adjustments to the Final Sub-Contract Sum to which clause 4.6.4 refers as the Main Contractor can make on the information in his possession and the Contractor shall send a copy of such statement to the Sub-Contractor

4.6.4 If nothing in the statement sent by the Contractor to the Sub-Contractor pursuant to clause 4.6.2 or 4.6.3 is disputed in writing by the Sub-Contractor, giving grounds for so disputing within one month of the Submission of the statement to the Sub-Contractor, the Final Sub-Contract Sum shall be deemed to have taken into account all adjustments required by this agreement.

**Payments and Notices**

**VAT**

**4.7**

4.7.1 The Sub-Contract Sum or Sub-Contract Tender Sum and the Final Sub-Contract Sum are exclusive of VAT and in relation to any payment to the Sub-Contractor under this Sub-Contract, the Main Contractor shall in addition pay the amount of VAT properly chargeable in respect of it.

4.7.2 To the extent that after the Sub-Contract Base Date the supply of goods and services to the Main Contractor becomes exempt from VAT there shall be paid to the Sub-Contractor and amount equal to the amount of input tax on the supply to the Sub-Contractor of goods and services which contribute to the Sub-Contract Works but which as a consequence of that exemption the Sub-Contractor cannot recover.

**Construction Industry Scheme**

4.8 The obligation of the Contractor to make any payment to the Sub-Contractor in Subject to the provisions of the CIS.

**Interim payments – due dates and amounts due**

**4.9**

4.9.1 Unless the Sub-Contract Particulars state that clause 4.9.2 applies, the due dates for interim payments are as follows:

4.9.1.1 The first due date shall be the date specified in the Sub-Contract Particulars; if no date is specified there, it shall, unless otherwise agreed in writing be the date one month after the last day of the month of commencement of the Sub-Contract Works on site;

4.9.1.2 During the period up to and including the month following practical completion of the Main Contract Works, the due date shall be the same date in each month as that for the first payment and thereafter the same date at intervals of 2 months unless otherwise agreed;

4.9.1.3 The last due date shall be the date of the last to occur of the events referred to in clause 4.12.1.1 to 4.12.1.3

Where the first due date is a date that does not recur in a Subsequent month, the due date for the Subsequent month shall be the last day of it.

4.9.2 Where the Sub-Contract Particulars state that clause 4.9.2 applies, the due date for an interim payment shall be the date that would apply under clause 4.9.1 or, if later, the date of receipt by the Main Contractor of an application by the Sub-Contractor stating the sum that the Sub-Contractor considers will become, or to have been, due to him in accordance with clause 4.9.4 at the due date and the basis on which that sum has been calculated ('a Payment Application').

4.9.3 Where clause 4.9.2 does not apply, the Sub-Contractor may make a Payment Application to the Main Contractor either:

4.9.3.1 At any time not later than 7 days prior to the due date for the relevant payment; or

4.9.3.2 At any time after the 5 day period referred to in clause 4.10.2, if the Main Contractor fails to give a Payment Notice in accordance with that clause and the Sub-Contractor has not in relation to that payment made a prior application under clause 4.9.3.1

4.9.4 Subject to any agreement between the Sub-Contract and the Main Contractor as to stage payments, the amount of each interim payment to the Sub-Contract shall be the Gross Valuation under clause 4.13 less:

4.9.4.1 Any amount which may be deducted and retained as Retention by the Main Contractor in respect of the Sub-Contract Works in accordance with clause 4.15; and

4.9.4.2 The sums previously due as interim payments under this Sub-Contract.

**Interim payments – final date and notices**

**4.10**

4.10.1 Subject to clause 4.10.4, the final date for payment of an interim payment shall be 21 days after the due date as fixed in accordance with clause 4.9.1 or 4.9.2.

4.10.2 Not later than 5 days after the due date the Main Contractor shall give a notice to the Sub-Contractor which shall specify the sum that he considers to have been due at the due date and the basis on which that sum has been calculated (a 'Payment Notice') and, Subject to any Pay Less Notice given under clause 4.10.5, the sum to be paid by the Main Contractor shall be the sum specified in the Payment Notice.

4.10.3 If the Main Contractor fails to give a Payment Notice in accordance with clause 4.10.2, the sum to be paid by the Main Contractor shall, Subject to any Pay Less Notice given under clause 4.10.5 be the sum specified in the Payment Application.

4.10.4 Where a Payment Application is made under clause 4.9.3.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 4.10.2 that the Payment Application is made.

4.10.5 If the Main Contractor intends to pay less than the sum stated as due from him in the Payment Notice or Payment Application, as the case may be, he shall not later than 5 days before the final date for payment give the Sub-Contractor notice of that intention in accordance with clause 4.10.8 (a 'Pay Less Notice'). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.

4.10.6 If the Main Contractor fails to pay a sum or part of it, due to the Sub-Contractor under this agreement by the final date for payment, the Main Contractor shall, in addition to any unpaid amounts that should properly have been paid, pay the Sub-Contractor simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made. Interest under this clause 4.10.6 shall be a debt due to the Sub-Contractor from the Main Contractor

4.10.7 Acceptance of a payment of interest under clause 4.10.6 shall no in any circumstances be construed as a waiver of the Sub-Contractor's rights to proper payment of the principle amount due, to suspend performance under clause 4.11 or to terminate his engagement under section 7.

**4.10.8 A Pay less Notice**

4.10.8.1 (where it is to be given by the Main Contractor) shall specify both the sum that he considers to be due to the Sub-Contractor at the date that the notice is given and the basis on which the sum has been calculated:

4.10.8.2 (where it is to be given by the Sub-contractor under clause 4.12.4) shall specify both the sum that the Sub-Contractor considers to be due to the Main Contractor at that date and the basis on which the sum has been calculated.

4.10.9 In relation to the requirements for the giving of notices under clause 4.10 or 4.12, it is immaterial that the amount then considered to be due may be zero.

**Sub-Contractor's right of suspension**

**4.11**

- 4.11.1 Without affecting the Sub-Contractor's other rights and remedies, if the Main Contractor fails to pay the Sub-Contractor the sum payable in accordance with clause 4.10 (together with any VAT) by the final date for payment, the Sub-Contractor may give notice to the Main Contractor of his intention to suspend the performance of his obligations under the Sub-Contract and the ground or grounds on which it is intended to suspend performance. If the Main Contractor's failure to pay continues for 7 days after the giving of said notice, the Sub-Contractor may suspend performance of his obligations until payment is made in full.
- 4.11.2 Where the Sub-Contractor exercises his right of suspension under clause 4.11.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right
- 4.11.3 Applications in respect of any such costs and expenses shall be made to the Contractor and the Sub-Contractor shall with his application or on request Submit such details of the costs and expenses as are reasonable necessary to allow his entitled to be ascertained.

#### **Final Payment**

- 4.12 The due date for the Final Payment shall be 2 months after whichever of the following occurs last:
- 4.12.1.1 The Retention Release Date:
- 4.12.1.2 Where applicable, any later due date for Retention release under clause 4.15.2.3; or
- 4.12.1.3 The date of issue of the Main Contractor's statement under clause 4.6.2 or 4.6.3 or, in default, the last date for issue of that statement.
- 4.12.2 Not later than 5 days after the due date, the Main Contractor shall send the Final Payment Notice to the Sub-Contractor. The Final Payment Notice shall show the Final Sub-Contract Sum, calculated in accordance with whichever of clause 4.3 or 4.4 applies, less the total amount previously due as interim payments under this Sub-Contract and the Final Payment shall be the difference (if any) between the two sums. The difference shall be shown in the Final Payment Notice as a balance due from the Main Contractor to the Sub-Contractor or from the Sub-Contractor to the Main Contractor as the case may be, and the Final Payment Notice shall state that basis on which it has been calculated.
- 4.12.3 Subject to clause 4.12.6, the final date for payment of the Final Payment (if any) shall be 28 days from its due date.
- 4.12.4 If the Party by whom the Final payment is stated to be payable ("the payer") intends to pay less than the stated balance, he shall not later than 5 days before the final date for payment give the other party a Pay Less Notice in accordance with clause 4.10.8.
- 4.12.5 Where a Pay less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.
- 4.12.6 If the Final Payment Notice is not issued in accordance with clause 4.12.2:
- 4.12.6.1 The Sub-Contractor may have the Main Contract (a 'Default Payment Notice') stating that the Sub-Contractor considers to be the amount of the Final Payment due to him under this Sub-Contract and the basis in which the sum has been calculated and, Subject to any Pay Less Notice given under clause 4.12.6.3 the Final Payment shall be that amount.
- 4.12.6.2 If the Sub-Contractor gives a Default Payment Notice, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days after expiry of the 5 day period referred to in clause 4.12.2 that the Default Payment Notice is give;
- 4.12.6.3 Following the Default Payment Notice the Main Contractor may not later than 5 days before the final date for payment give a Pay Less Notice in

accordance with clause 4.10.8 and, if he gives such notice, the provisions of clause 4.12.5 shall apply.

- 4.12.7 If the payer fails to pay the Final Payment, or any part of it, by the final date for its payment, he shall pay any unpaid amount that should properly have been paid.
- 4.12.8 Acceptance of a payment under clause 4.12 shall not in any circumstances be construed as a waiver of any right to proper payment of the principle amount due.
- 4.12.9 The Final Payment and any interest under this clause 4.12 shall be a debt due from the payer to the other party.

#### **Gross Valuation**

##### **Ascertainment**

- 4.13 The Gross Valuation shall be the total of the amounts referred to in clause 4.13.1 to 4.13.7 less the total of the amounts referred to at clause 4.13.8 applied up to an including a date not more than 7 days before the date that an interim payment under clause 4.9.1 becomes or would becomes due.
- 4.13.1 The total value of the Sub-Contract Works on site properly executed by the Sub-Contractor (including work so executed to which clause 5.2 refers, work so executed for which a Variation Quotation has been accepted by the Contractor and any variations thereto to which clause 5.3.3 applies), together, where applicable, with any adjustment of that total or for an accepted Acceleration Quotation, but excluding any amounts referred to in clause 4.13.7, where a priced Activity Schedule is included in the Sub-Contract Particulars, the value to be included in respect of the Sub-Contract work in each activity to which it relates shall be a proportion of the price stated for the Sub-Contract work in that activity equal to the proportion of the Sub-Contract work in that activity that has been properly executed;
- 4.13.2 The total value of the Sub-Contract Site Materials, provided that their value shall only be included if they are adequately protected against weather and other casualties and they are not on the Main Contract Works prematurely;
- 4.13.3 The total value of any Listed Items, provided that the conditions set out in clause 4.14 have been fulfilled;
- 4.13.4 Any amounts to be included in interim payments in accordance with clause 4.5 as a result of payments made or costs incurred by the Sub-Contractor under the Main Contract Conditions, as referred to in clause 2.5;
- 4.13.5 Any amounts ascertained under clause 4.16.1
- 4.13.6 Any amounts payable under clause 4.11.2
- 4.13.7 Any amounts in respect of any restoration, placement or repair of loss or damage and removal and disposal of debris which under clause 6.7.4 are treated as a Variation
- 4.13.8 Any amounts deductible under clause 2.23, 3.6, 3.12.2 or 4.21.

##### **Listed Items**

- 4.14 The conditions referred to in clause 4.13.3 are:
- 4.14.1 The Listed Items are in accordance with this Sub-Contract;
- 4.14.2 The Sub-Contractor has provided the Main Contractor with reasonable proof that:
- 4.14.2.1 The property in the Listed Items vests in the Sub-Contractor
- 4.14.2.2 The Listed Items are insured against loss or damage for their full value under a policy of insurance protecting the interests of the Employer, the Main Contractor and the Sub-Contractor in respect of the Specified Perils during the period commencing with the transfer of property in the Listed Items to the Sub-Contractor until they are delivered to, or adjacent to, the Main Contract Works;

4.14.3 At the premises where the Listed Items have been manufactured or assembled or are stored, there is in relation to those items clear identification of:

4.14.3.1 The Main Contractor and the Employer as persons to whose order they are held; and

4.14.3.2 Their destination as the Main Contract Works

And the items either are set apart or have been clearly and visibly marked, individually or in sets, by letters or figures or by reference to a pre-determined code; and

4.14.4 If the Sub-Contract Particulars state that such a bond is required, the Sub-Contractor has provided a bond in favour of the Main Contractor or the Employer as the Main Contractor directs, from a surety approved by the Main Contractor in the amount specified in the Sub-Contract Particulars.

recoverable by the Sub-Contractor from the Main Contractor as a debt provide always that the Sub-Contractor shall:

4.16.1.1 Make his application as soon as it has become, or should reasonably have become apparent to him that the regular progress has been, or is likely to be affected;

4.16.1.2 In support of his application Submit to the Main Contractor upon request such information as is reasonably necessary to show that regular progress has been or is likely to be affected; and

4.16.1.3 Submit to the Main Contractor such detail of the loss and/or expense as the Contractor reasonably requests to enable that direct loss and/or expense to be ascertained and agreed.

## **Retention**

### **Rules Governing Retention**

#### **4.15**

4.15.1 Subject to clause 4.15.2, the Retention which may be deducted and retained by the Main Contractor shall be calculated as follows:

4.15.1.1 Where the Sub-Contract works or such works in a section have not reached practical completion, as defined in clause 2.20, the Retention which the Main Contractor may deduct and retain as referred to in clause 4.9.4.1 shall be 2.5%.

4.15.2 Retention shall be Subject to the following further rules:

4.15.2.1 If the total Retention would be less than any Minimum retention Amount specified in the Sub-Contract Particulars, no Retention shall be deducted.

4.15.2.2 Subject to practical completion of the Sub-Contract Works as a whole having been achieved and there being no defects, shrinkages or other faults of the types referred to in clause 2.22.1 apparent at the Retention Release Date ('apparent defects') any balance of Retention shall be included in the next interim payment due. If those pre-conditions are not satisfied, the balance shall be included in the payment next following such completion and the making good of any apparent defects. If not already notified to the Sub-Contractor, any apparent defects shall be listed and notified to him within 14 days after the Retention release Date

4.15.3 The Retention Release Date shall be the date specified in the Sub-Contract Particulars or, if no date is specified, the day after expiry of a period from the date from completion of the Main Contract Works (or last section of them) equivalent to the Rectification Period for such works or section plus a further of either 6 or 12 months as stipulated in the Sub-Contract Particulars.

4.15.4

## **Loss and Expense**

### **Matters affecting Regular Progress**

#### **4.16**

4.16.1 If in the execution of this Sub-Contract, the Sub-Contractor incurs or is likely to incur direct loss and/or expense for which he would not be reimbursed by payment under any other provision in this agreement because the regular progress of the Sub-Contract Works or if any part of them has been, or is likely to be, materially affected by any of the Relevant Sub-Contract Matters, the Sub-Contractor may make an application to the Main Contractor. If the Sub-Contractor makes such an application, save there this agreement provides, that they shall not be taken into account in the calculation of the Final Sub-Contract sum or otherwise exclude the operation of this clause, any amounts agreed by the Parties of the direct loss and/or expense thereby caused to the Sub-Contractor shall be taken into account in the calculation of the Final Sub-Contract Sum or shall be

### **Relevant Sub-Contract Matters**

4.17 The following are relevant Sub-Contract matters referred to in clause 4.16:

4.17.1 Variations (excluding those for which a Variation Quotation has been accepted by the Main Contractor but including any other matters or directions which under this agreement are to be treated as, or requiring, a Variation);

4.17.2 Main Contractor's directions, including those which pass on Employer's instructions:

4.17.2.1 For the expenditure or Provisional Sums included in the Contractor's Requirements or any Bills of Quantities, excluding direction for expenditure of a Provisional Sum for defined work;

4.17.2.2 For the opening up for inspection or testing or any work, materials or goods under the Main Contract Conditions (including making good) unless the inspection or test show that the work, materials or goods were not in accordance with this Sub-Contract

4.17.2.3 For the opening up for inspection or testing or any work, materials or goods under clause 3.10 (including making good) unless the inspection or test show that the work, materials or goods were not in accordance with this Sub-Contract;

4.17.2.4 In relation to any discrepancy in or divergence between any of the Sub-Contract Particulars or any discrepancy in or divergence between any of those documents and the Contract Documents under the Main Contract;

4.17.2.5 For the postponement of any work to be executed under this Sub-Contract.

4.17.3 Compliance with the Main Contract Conditions and related directions;

4.17.4 Suspension by the Main Contractor under the Main Contract Conditions of the performance of any or all of his obligations under the Main Contract;

4.17.5 Where there are Bills of Quantities, the execution of the work for which and Approximate Quantity included in those bills is not a reasonably accurate forecast of the quantity of work required.

4.17.6 Delay in receipt of any permission or approval for the purposes of development control requirements necessary for the Sub-Contract Works to be carried out or proceed, which delay the Sub-Contractor has taken all practicable steps to avoid or reduce;

4.17.7 Any impediment, prevention or default, where act or omission, by the Employer or any of the Employer's Persons, except to the extent caused or contributed to by an default, whether by act or omission, of the Sub-Contractor or any of the Sub-Contractor's persons;

4.17.8 Any impediment, prevention or default, where act or omission, by the Main Contractor or any of the Main Contractor's

Persons, except to the extent caused or contributed to by an default, whether by act or omission, of the Sub-Contractor or any of the Sub-Contractor's persons;

**Main Contractor's reimbursement**

**4.18**

- 4.18.1 If the regular progress of the Main Contract Works or any part of them is materially affected by an act, omission or default on the Part of the Sub-Contractor or any of the Sub-Contractor's Persons, the Main Contractor shall, within a reasonable time of such material effect becoming apparent notify the Sub-Contractor giving reasonable particulars of the effects or likely effects in the regular progress and shall give such details of the resultant loss and/or expense as the Sub-Contract reasonably requests
- 4.18.2 Any amount agreed by the Parties as due in respect of any loss and/or expense thereby caused to the Main Contractor may be deducted from any sums due to become due to the Sub-Contractor or shall be recoverable from the Sub-Contractor as a debt

5.2.1.2 All work which under this agreement is to be treated as a Variation;

5.2.1.3 All work executed by the Sub-Contractor in accordance with the Main Contractor's direction as to the expenditure of Provisional Sums included in the Sub-Contract Particulars; and

5.2.1.4 All work executed by the Sub-Contractor for which and Approximate Quantity has been included in any Bills of Quantities or in the Main Contractor's Requirements; or

5.2.2 Where the Remeasurement Basis applies, all work executed by the Sub-Contractor in accordance with the Sub-Contract Particulars and the Main Contractor's directions, including any directions requiring a Variation or in regard to the expenditure of any provisional Sum included in the Sub-Contract Particulars. Such valuation insofar as it relates to the Sub-Contractor's Designed Works shall be in accordance with clause 5.10 and reference in clause 5.6 and 5.7 to the Sub-Contract Particulars shall exclude the Sub-Contractor's Designed Works Analysis.

**Reservation of right and remedies of Main Contractor and Sub-Contractor**

4.19 The provisions of clauses 4.16 to 4.18 are without prejudice to any other rights or remedies which the Main Contractor or Sub-Contractor may possess

**Variation Quotation**

**5.3**

5.3.1 If the Main Contractor in his directions states that the Sub-Contractor is to provide a Variation Quotation, the Sub-Contractor shall, Subject to receipt of sufficient information provide a quotation unless within 4 days of receipt of that direction (or such longer period as is either stated in the direction or agreed between the Parties) he notifies the Main Contractor that he disagrees with the application of the procedure to that direction.

5.3.2 If the Sub-Contractor notifies his agreement within that period, he shall not be obliged to provide a quotation and the works shall not be carried out unless and until the Main Contractor give a further direction that the work is to be carried out and is to be valued by a Valuation.

5.3.3 Where a Variation Quotation has been accepted by the Main Contractor then if the Main Contractor Subsequently issues a direction requiring a Variation of that work, the Main Contractor shall make a valuation of that Variation on a fair and reasonable basis having regard to the content of that quotation and shall include in that valuation the direct loss and/or expense, if any, incurred by the Sub-Contractor because the regular process if the Sub-Contract Works or any part of them is materially affected by compliance with that direction.

**5 VALUATION OF WORK AND VARIATIONS**

**General**

**Definition of Variations**

5.1 The term 'Variation' means:

5.1.1 The alteration or modification of the design, the quality or (except where the Remeasurement basis applies) the quantity of the Sub-Contract Works including:

- 5.1.1.1 The addition, omission or Substitution or any work;
- 5.1.1.2 The alteration of the kind or standard of any of the materials or goods to be used in the Sub-Contract Works;
- 5.1.1.3 The removal from the site of any work executed or Sub-Contracted Site Materials other than work, materials or goods which are not in accordance with the Sub-Contract;

5.1.2 The imposition in an instruction of the Employer issued under the Main Contract (or a directions of the Main Contractor passing on that instruction) of any obligations or restrictions in regard to matters set out in clause 5.1.2 or the addition to or alteration or mission of any such obligation or restriction so imposed by the Sub-Contract Particulars an it's annexes in regard to:

- 5.1.2.1 Access to the site or use of any specific parts of the site;
- 5.1.2.2 Limitations of working space;
- 5.1.2.3 Limitations of working hours; or
- 5.1.2.4 The execution or completion of the work in a specific order

**Sub-Contractor's right to be present at measurement**

5.4 Where it is necessary to measure work for the purpose of a Valuation the Main Contractor shall give the Sub-Contractor an opportunity to be present at the time of such measurement and to take such notes that measurement as the Sub-Contractor shall require.

**Giving effect to valuations, agreements etc.**

5.5 Effect shall be given, in calculation of the Final Sub-Contract Sum, to each agreement by the Parties under clause 5.2.1, each Valuation and each Variation Quotation accepted by the Main Contractor.

**Valuation of Work**

5.2 Unless otherwise agreed by the Main Contractor and the Sub-Contractor or unless a Variation Quotation has been accepted by the Main Contractor, a valuation ('Valuation') shall be made by the Main Contractor of the items referred to in either clause 5.2.1 or 5.2.2 in accordance with clauses 5.6 to 5.12 ('the Valuation Rules'), namely:

5.2.1 Where the Adjustment Basis applies:

- 5.2.1.1 All Variations, including any confirmed under clause 3.7 but excluding any to which clause 5.3.3 applies;

**The Valuation Rules**

**Measurable Work – Adjustment basis**

**5.6**

5.6.1 To the extent that a Valuation related to the execution of additional or Substituted work which can properly be valued by measurement or to the execution of work for which and Approximate Quantity is included in any Bills of Quantities or in the Main Contractor’s Requirements and Subject to clause 5.10 in the case of the Sub-Contractor’s Designed Works, such work shall be measured and shall be valued in accordance with the rules in this clause 5.6 and in clauses 5.8, 5.11 and 5.12;

5.6.1.1 Where the additional or Substituted work is of a similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in any Bills of Quantities and/or other Sub-Contract Particulars, the rates and prices for the work so set out shall determine the valuation;

5.6.1.2 Where the additional or Substituted work is of a similar character to work set out in any Bills of Quantities and/or other Sub-Contract Particulars but is not executed under similar conditions thereto and/or significantly changes its quantity, the rates and prices for the work so set out shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in conditions and/or quantity;

5.6.1.3 Where the additional or Substituted work is not of similar character to work set out in Bills of Quantities and/or other Sub-Contract Particulars, the work shall be valued at fair rates and prices;

5.6.1.4 Where the Approximate Quantity is a reasonably accurate forecast of the quantity of work required, the rate or price for that Approximate Quantity shall determine the valuation;

5.6.1.5 Where the Approximate Quantity is not a reasonable accurate forecast of the quantity of work required, the rate or price for that Approximate Quantity shall be the basis for determining the valuation and the Valuation shall include a for allowance for such difference in quantity.

Provided that clauses 5.6.1.4 and 5.6.1.5 shall apply only to the extent that the work has not been altered or modified other than in quantity

5.6.2 To the extent that a Valuation relates to the omission of work set out in any Bills of Quantities and/or other Sub-Contract Particulars and Subject to clause 5.10 in the case of the Sub-Contractor’s Designed Works, the rates and prices for such work therein set out shall determine the valuation of the work omitted.

**Measurable Work – Remeasurement Basis**

5.7 To the extent that a Valuation related to the execution of additional or Substituted work which can properly be valued by measurement and Subject to clause 5.10 in the case of the Sub-Contractor’s Designed Works, such work shall be measured and shall be valued in accordance with the rules in this clause 5.6 and in clauses 5.8, 5.11 and 5.12;

5.7.1 Where the additional or Substituted work is of a similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in any Bills of Quantities and/or other Sub-Contract Particulars, the rates and prices for the work so set out shall determine the valuation;

5.7.2 Where the additional or Substituted work is of a similar character to work set out in any Bills of Quantities and/or other Sub-Contract Particulars but is not executed under similar conditions thereto and/or significantly changes its quantity, the rates and prices for the work so set out shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in conditions and/or quantity;

5.7.3 Where the additional or Substituted work is not of similar character to work set out in Bills of Quantities and/or other Sub-Contract Particulars, the work shall be valued at fair rates and prices;

**General Rules**

5.8 In any valuation of work under clauses 5.65 and 5.7:

5.8.1 Where there are Bills of Quantities, measurement shall be in accordance with the same principles as those governing the preparation of those bills as referred to in clause 2.8;

5.8.2 Allowance shall be made for any percentage or lump sum adjustment in any Bills of Quantities or other Sub-Contract Particulars;

5.8.3 Where the Adjustment Basis applies, an allowance, where appropriate shall be made for any addition to or reduction of preliminary items of the type referred to in the Standard Method of Measurement, provided that no such allowance shall be made in respect of compliance with a Main Contractor’s direction for the expenditure of a provisional Sum for defined work; and

5.8.4 Where the Remeasurement Basis applies, any amount priced in the preliminaries section of any Bills of Quantities shall be adjusted, where appropriate, to take into account any Variations of any Main Contractor’s directions for the expenditure of Provisional sums for undefined work include in the Sub-Contract Particulars.

**Daywork**

5.9 Where the execution of work cannot be valued in accordance with clause 5.6, 5.7 or 5.10 as applicable, the Valuation shall be based on the Schedule of Daywork rates, if any, included in the Sub-Contract Particulars but if not included, it shall comprise

5.9.1 The prime cost of such work together with Percentage Additions to each section of the prime cost at the rates set out in the Sub-Contract particulars or, if the apply in respect of labour, at the All-Inclusive Rates stated therein; or

5.9.2 Where the work is within the province of any specialist trade and the RICS and the appropriate body representing the employers in that trade have agreed and issues a definition of prime cost of Daywork, the prime costs of such work calculated in accordance with that definition current at the Sub-Contract Base Date together with Percentage Additions to each section of the prime cost at the rates set out in the Sub-Contract particulars or, if the apply in respect of labour, at the All-Inclusive Rates stated therein

Provided that in any case vouchers specifying the time spent daily upon the work, the workmen’s names, the plant and materials employed shall be delivered for verification to the Main Contractor no later than 5 Business Days after the work has been executed.

**Sub-Contractor’s Designed Works - Valuation**

5.10 Valuations relating to the Sub-Contractor’s Designed Works shall be made under this clause 5.10.

5.10.1 Allowance shall be made in such Valuations for work involved in preparation of the relevant design work.

5.10.2 The Valuation of additional or Substituted work (Adjustment Basis) or executed work (Remeasurement Basis) shall be consistent with the values of work of a similar character set out in the Sub-Contract Designed Works Analysis, making sue allowance for any change in the conditions under which work is carried out and/or any significant change in the quantity or work so set out. Where there is no work of a similar character set out in the Sub-Contract Designed Works Analysis, a fair valuation shall be made.

5.10.3 The valuation of the omission of work set out in the Sub-Contractor’s Designed Works Analysis shall be in accordance with the values therein for such work.

5.10.4 Clauses 5.8.2, 5.8.3, 5.8.4, 5.9 and 5.11 shall apply for far as is relevant.

**Change of Conditions for other work**

- 5.11** If, as a result of:
- 5.11.1 Compliance with any direction requiring a Variation (except a Variation for which a Variation Quotation has been accepted or where a Variation is on to which clause 5.3.3 applies) or (where the Remeasurement Basis applies) any direction as a result of which work included in the Sub-Contract Particulars is not executed;
- 5.11.2 Compliance with any directions as to the expenditure of a Provisional Sum for undefined work;
- 5.11.3 Compliance with any directions as to the expenditure of a Provisional sum for defined work, to the extent that the direction for that work differs from the description given for such work in any Bills of Quantities, to the extent that the quantity is more or less than the quantity ascribed to that work in those bills,

There is a Substantial change in the conditions under which any other work is executed (including the Sub-Contractor's Designed Works), then such other work shall be treated as if it had been the Subject of a direction of the Main Contractor requiring a Variation and shall be valued on the basis of the rates and prices for the work set out in any Bills of Quantities and/or other Sub-Contract Particulars together with fair allowance for the difference on conditions

**Additional Provisions**

- 5.12**
- 5.12.1 To the extent that a Valuation does not relate to the execution of work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Variation cannot reasonably be effected in the Valuation by the application of clauses 5.6 to 5.11, a fair valuation shall be made.
- 5.12.2 No allowance shall be made under the Valuation rules for any effect upon the regular progress of the Sub-Contract Works or any part of them for any other direct loss and/or expense for which the Sub-Contractor would be reimbursed by payment under any other provision in this agreement.

**6 INJURY, DAMAGE AND INSURANCE**

**Definitions**

- 6.1** In this section 6 and so far as relevant, in the other clauses of this agreement, the following phrases shall have the meanings given below:

Excepted Risks: the risks comprise:

(a) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar as it is included in the Terrorism Cover from time to time required to be taken out and Maintained under the Main Contract).

(b) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds

(c) Any act of terrorism that is not within in the Terrorism Cover from time to time required to be taken out and

Maintained under the Main Contract

Joint Names Policy: a policy of insurance which includes the Employer and the Main Contractor as composite insured and under which the insurers have no right of recourse against any person named as insured or, recognised as an insured thereunder.

Specified Perils fire, lightning, explosion, storm, tempest flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft or other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks.

Terminal Date (a) the date of practical completion of the Sub-Contract Works or, in respect of a Section, of such work in the Section, as determined in accordance with clause 2.20; or

(b) the date of termination of the Sub-Contractor's engagement under this Sub-Contract, howsoever arising;

Whichever occurs first.

Terrorism Cover: insurance provided under a Joint Names Policy under the Main Contract Conditions against loss or damage to work executed and Site Materials or to an existing structure and/or its contents caused by or resulting from terrorism.

**Injury to Persons and Property**

**Liability of Sub-Contractor – personal injury or death**

- 6.2** The Sub-Contractor shall be liable for, and shall indemnify the Main Contractor against, any expense, liability, loss, claim or proceedings whatsoever in respect of any personal injury to or death of any person arising out of or in the course of or caused by the carrying out of Sub-Contract Works, except to the extent that the same is due to any act of neglect, breach of statutory duty, omission or default of the Main Contractor, of any of the Main Contractor's persons, of the Employer, or any of the Employer's persons or any Statutory Undertaker.

**Liability of the Sub-Contractor – injury or damage to property**

**6.3** The Sub-Contractor shall be liable for, and shall indemnify the Main Contractor against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property, real or personal, in so far as such loss, injury or damage arises out of, or in the course of, or by reason of, the carrying out of the Sub-Contract Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default on the part of the Sub-Contractor or any of the Sub-Contractor's Persons. This liability an indemnity is Subject to clause 6.4.

**Injury or damage to property – Main Contract Works and Site Materials excluded**

**6.4** The liability and indemnity referred to in clause 6.3 and the indemnity referred to in clause 2.5.2 shall not include any liability or indemnity in respect of loss or damage to the Main Contract Works and/or to the Site Materials by any of the Specified Perils, whether or not caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or of any of the Sub-Contractor's Persons, for the periods up to and including the relevant Terminal Date.

**Insurance against personal injury and property damage**

**6.5**

**6.5.1** Without prejudice to this obligation to indemnify the Main Contractor under clauses 6.2 and 6.3, the Sub-Contractor shall take out and maintain insurance in respect of claim arising out of his liability referred to in clauses 6.2 and 6.3 as modified by clause 6.4. The obligation of the Sub-Contractor to take out and maintain insurance in respect of his liability for any loss or damage to property as stated in clause 6.3 shall not extend to loss or damage to the Sub-Contract Works, or Sub-Contract Site Materials by Specified Perils up to and including the Terminal Date, but:

**6.5.1.1** The insurance in respect of claims for personal injury to or death of any employee of the Sub-Contractor arising out of an in the course of such person's employment shall comply with all relevant legislation;

**6.5.1.2** For all other claims to which clause 6.5.1 applies, the insurance cover shall indemnify the Main Contractor in like manner to the Sub-Contractor (but inly to the extent that the Sub-Contractor may be liable to indemnify the Main Contractor under the terms of this Sub-Contract) and shall be in a sum not less than that stated in the Sub-Contract Particulars for any one occurrence or series of occurrences arising out of one event.

**6.5.2** Notwithstanding clauses 6.2, 6.3 and 6.5.1, the Sub-Contractor shall not be liable either to indemnify the Main Contractor or to insure against any personal injury to or death of any person or to any damage, loss or injury to the Main Contract Works, Site Materials, work executed, the site or any other property, caused by the effect of an excepted risk.

**6.5.3** As and when reasonably required to do so by the Main Contractor, the Sub-Contractor shall send to the Main Contractor documentary evidence that the insurances required by clause 6.5.1 have been taken out and are being maintained, and at any time the Main Contractor may (but shall not unreasonably or vexatiously) require the Sub-Contractor to produce the relevant policy or policies and related premium receipts.

**6.5.4** If the Sub-Contractor defaults in taking out or in maintaining insurance in accordance with clause 6.5.1, the Main Contractor may insure himself against any liability or expense which he may incur as a result of such default and the amount paid or payable by him in respect of premiums therefore may be deducted from any sums due or to become due to the Sub-Contractor under this Sub-contract or shall be recoverable from the Sub-Contractor as a debt.

**Insurance – Loss or Damage to Work and Site Materials**

**Specified Perils cover under Joint Names All Risks Policies**

**6.6**

**6.6.1** The Main Contractor shall, prior to the commencement of the Sub-Contract Works, ensure that the Joint Named Policy that applies to the Main Contract is issued or endorsed in terms that, in respect of loss or damage by the Specified Perils to the Main Contract Works or relevant Section, work executed and Site Materials insured thereunder, either the Sub-Contractor is recognised as an insured under that Policy or that the insurers waive any right of Subrogation which they may have against the Sub-Contractor and that this recognition or waiver shall continue in respect of the Sub-Contract Works up to and including the Terminal Date.

**6.6.2** As and when reasonably required to do so by the Sub-Contractor, the Contractor shall produce documentary evidence of compliance with the provisions of clause 6.6.1 and, at any time the Sub-Contractor may (but shall not unreasonably or vexatiously) require the Sub-Contractor to produce the relevant policy or policies and related premium receipts

**6.6.3** If the Main Contractor defaults in compliance with clause 6.6, the Sub-Contractor may insure himself against any liability or expense which he may incur as a result of such default and the amount paid or payable by him in respect of premiums therefor shall be taken into account in the calculation of the Final Sub-Contract Sum or shall be recoverable from the Sub-Contractor as a debt.

**Sub-Contractor's responsibility – damage to Sub-Contract Works etc.**

**6.7**

**6.7.1** The Sub-Contractor shall, Subject to clause 6.7.2, be responsible for the cost of restoration of Sub-Contract Works and replacement or repair of any of the Sub-Contract Site Materials that are lost or damaged on or before the Terminal Date and the removal and disposal of any resultant debris in accordance with clause 6.7.3 except to the extent that the loss or damage to the Sub-Contract Works or Sub-Contract Site Material sui due to:

**6.7.1.1** Any of the Specified Perils (whether or not caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any of the Sub-Contractor's Persons), any Excepted Risk or any act of terrorism; or

**6.7.1.2** Any negligence, breach of statutory duty, omission or default of the Main Contractor or of any of the Main Contractor's Persons or of the Employer or of any of the Employer's Persons or of any Statutory Undertaker.

The exceptions set out in clause 6.7.1.1 apply whether or not the Employer or Main Contractor as Joint Insured makes a claim under the Joint Names Policy covering the Main Contract Works and Site Materials and irrespective of any excess under that Policy.

**6.7.2** Where during the progress of the Sub-Contract Works Sub-Contract materials or goods have been fully, finally and properly incorporated into the Main Contract Works before the Terminal Date, then, in respect of loss or damage to any of the Sub-Contract Works so incorporated that I caused by the occurrence of a peril other than Specified Peril, the Sub-Contractor shall only be responsible for the cost of restoration of such work lost or damaged and the removal and disposal of any debris in accordance with clause 6.7.3 to the extent that such loss or damage is caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any of the cub-Contractor's Persons.

**6.7.3** If before the Terminal Date any loss or damage is occasioned to the Sub-Contract Works o Sub-Contract Site Materials, whether by any of the Specified Perils or otherwise, then, upon its occurrence or later discovery, the Sub-Contractor shall forthwith give notice to the Main Contractor of its extent, nature and location. The Sub-Contractor shall in accordance with any directions of the Main Contractor and with due

- diligence restore lost or damage Sub-Contract works, replace or repair and lost or damaged Sub-Contract Site Materials, remove and dispose of any debris and proceed with the carrying out of the Sub-Contract Works.
- 6.7.4 Where under clause 6.7.1 or 6.7.2 the Sub-Contractor is not responsible for the costs of compliance with clause 6.73, such compliance shall be treated as a Variation. The occurrence of loss of damage affecting the Sub-Contract Works occasioned by and of the Specified Perils shall be disregarded in computing any amounts payable to the Sub-Contractor under this Sub-Contract.
- 6.7.5 The Sub-Contractor shall not object to the payment to the Employer by the insurers under the Joint Names Policy of any of the relevant insurance monies.
- 6.7.6 The Sub-Contractor shall be responsible for loss or damage to the Sub-Contract Works occurring after the terminal Date, except to the extent of any loss or damage caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any of the Sub-Contractor's Persons.
- 6.7.7 Nothing in clause 6.7 shall in any way modify the Sub-Contractor's obligations in regard to defects in the Sub-Contract Works as set out in clause 2.22
- 6.7.8 For the purpose of clause 6.7.2 only, materials and goods forming part of the Sub-Contract Works shall be deemed to have been fully, finally and properly incorporated in to the Main Contract Works when in each case they have been fully completed by the Sub-Contractor to the extent indicated or referred to in the Sub-Contract Particulars.

**Damage to Sub-Contractor's plant etc.**

- 6.8 In the case or loss of or damage to temporary works, plant, tools, equipment or any other property belonging to or provided by the Sub-Contractor or the Sub-Contractor's Persons or to any materials or goods of the Sub-Contractor which are not Sub-Contract Site Materials, the Main Contractor shall be responsible only to the extent that such loss or damage is due to any negligence, breach of statutory duty, omission or default of the Main Contractor or any of the Main Contractor's persons.

**Sub-Contractor's Designed Works Professional Indemnity Insurance**

**Obligation to insure**

- 6.9 Where there are Sub-Contractor's Designed Works, the Sub-Contractor shall:
- 6.9.1 Forthwith after this Sub-Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy that shall last to 12 years after the date that Practical Completion is certified under the Main Contract in an amount of not less than £2 million or otherwise specified in the Sub-Contract Particulars in respect of any breach of Contract, breach of statutory duty, negligence, omission or other default on the Sub-Contractor's part in respect of any of its obligations arising out of this Agreement.
- 6.9.2 The Sub-Contractor's insurers shall produce documentary evidence that such insurance is being maintained from time to time upon the Main Contractor's request. If the Sub-Contractor fails to take out and maintain such insurance (and for the purposes of this clause the Main Contractor shall be entitled to assume the same where the Sub-Contractor has failed to produce the requisite documentary evidence of insurance) the Main Contractor shall be entitled to take out insurance against the risk arising from the same and the premium paid and other costs resulting from the same shall may be deducted from any monies due or becoming due to the Sub-Contractor or be recoverable from the Sub-Contractor as a debt.

**Increased cost and non-availability**

- 6.10 If the insurance referred to in clause 6.9 ceases to be available at commercially reasonable rates, the Sub-Contractor shall immediately give notice to the Main Contractor so that the Sub-Contractor and the Main Contractor can discuss the means of best protecting their respective positions in the absence of such insurance.

**7 TERMINATION**

- 7.1 For the purposes of this agreement, a Party is insolvent if the Party:
- 7.1.1 is dissolved, ceases to conduct Substantially all of its business or becomes unable to pay its debts as they fall due;
- 7.1.2 is a company over any of whose assets or property a receiver is appointed;
- 7.1.3 makes any voluntary arrangement with its creditors or (if a company) becomes Subject to an administration order (within the meaning of the Insolvency Act 1986);
- 7.1.4 (if an individual or firm) has a bankruptcy order made against it or (if a company) goes into liquidation;
- 7.1.5 undergoes a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010); or
- 7.1.6 (if an individual) dies or as a result of illness or incapacity becomes incapable of managing his or her own affairs.

**Notices Under section 7**

- 7.2
- 7.2.1 Notices of termination of the Sub-Contractor's engagement shall not be given unreasonably or vexatiously.
- 7.2.2 Such termination shall take affect on receipt of the relevant notice.
- 7.2.3 Each notice referred to in this section shall be given in accordance with clause 1.7

**Other rights, reinstatement**

- 7.3
- 7.3.1 The provisions of clauses 7.4 to 7.8, 7.10 and 7.11 are without prejudice to any other rights and remedies which the Main Contractor or the Sub-Contractor may possess.
- 7.3.2 Irrespective of the grounds of termination, the Sub-Contractor's employment may at any time be reinstated if an on such terms as the Parties agree.#

**Termination by Contractor**

**Default by Sub-Contractor**

- 7.4
- 7.4.1 If, before practical completion of the Sub-Contract Works, the Sub-Contractor
- 7.4.1.1 Without reasonable cause wholly or unreasonably suspends the carrying out of the Sub-Contract Works; or
- 7.4.1.2 Fails to proceed regularly and diligently with the performance of his obligations under this Sub-Contract; or
- 7.4.1.3 Refuses or neglects to comply with a direction from the Main Contractor requiring him to remove any work, materials or goods not in accordance with the Sub-Contract and by such refusal or neglect the Main Contract Works are materially affected; or
- 7.4.1.4 Fails to comply with clause 3.1 or 3.2; or
- 7.4.1.5 Fails to comply with clause 3.20

The Main Contractor may give a notice to the Sub-Contractor specifying the default or defaults (the 'specified default or defaults')

- 7.4.2 If the Sub-Contractor continues a specified default for 10 days from receipt of the notice under clause 7.4.1, the Main Contractor may on, or within 21 days from, the expiry of that 10 days period by a further notice to the Sub-Contractor,

<p>terminate the Sub-Contractor's engagement under this Sub-Contract.</p> <p>7.4.3 If the Main Contractor does not give the further notice referred to in clause 7.4.2 (whether as a result of the ending of any specified default or otherwise) but the Sub-Contractor repeats a specified default (whether previously repeated or not) then, upon or within a reasonable time after such repetition, the Main Contractor may by notice of the Sub-Contract, terminate the Sub-Contractor's engagement.</p> <p><b>Insolvency of the Sub-Contractor</b></p> <p><b>7.5</b></p> <p>7.5.1 If the Sub-Contractor is insolvent, the Main Contractor may at any time by notice to the Sub-Contractor terminate the Sub-Contractor's engagement.</p> <p>7.5.2 The Sub-Contractor shall immediately notify the Main Contractor if he makes any proposal, gives notice of any meeting or becomes the Subject of any proceedings or appointment relating to any of the matter in clause 7.1,</p> <p>7.5.3 As from the date that the Sub-Contractor becomes Insolvent, whether or not the Main Contractor has given such notice of termination:</p> <p style="padding-left: 20px;">7.5.3.1 The Sub-Contractor's obligations under these Sub-Contract Particulars and this agreement shall be suspended; and</p> <p style="padding-left: 20px;">7.5.3.2 The Main Contractor may take reasonable measures to ensure that the Sub-Contract Works and Sub-Contract Site Materials are adequately protected and that such Sub-Contract Site Materials are retained on site; the Sub-Contractor shall allow and shall not hinder or delay the taking of these measures.</p> <p><b>Corruption</b></p> <p><b>7.6</b> The Main Contractor shall be entitled by notice to the Sub-Contractor to terminate that Sub-Contractor's employment under this Sub-Contract or any other Contract with the Main Contractor if, in relation to this or any other Contract, the Sub-Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or, where the Employer is a Local Authority, shall have given any fee or reward the receipt of which is an offence under section (2) of section 117 of the Local Government Act 1972.</p> <p><b>Consequences of termination under clauses 7.4 to 7.6</b></p> <p><b>7.7</b> If the Sub-Contractor's employment is terminated under clauses 7.4, 7.5 or 7.6:</p> <p>7.7.1 The Main Contractor may employ and pay other persons to carry out and complete the Sub-Contract Works and to make good any defects of the kind referred to in clause 2.22.1 and he and they may enter upon and take possession of the Sub-Contract Works and (Subject to obtaining any necessary third party consents) may use all the Sub-Contractor's temporary buildings, plans, tools equipment and Sub-Contract Site Materials for those purposes;</p> <p>7.7.2 The Sub-Contractor shall:</p> <p style="padding-left: 20px;">7.7.2.1 When required in writing by the Main Contractor to do so (but not before), remove or procure the removal from the site of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Sub-Contractor or the Sub-Contractor's Persons;</p> <p style="padding-left: 20px;">7.7.2.2 Without charge provide the Main Contractor with copies of all the Sub-Contractor's design Documents then prepared, whether or not previously provided;</p> <p style="padding-left: 20px;">7.7.2.3 If so required by the Main Contractor within 14 days of the date of termination, assign (so far as assignable and so far as he may lawfully be required to do so) to the Main Contractor, without charge, the benefit of any agreement for the supply of materials or goods and/or for the</p>	<p>execution of any work for the purposes of this Sub-Contract.</p> <p>7.7.3 No further sum shall become due to the Sub-Contractor under this Sub-Contract other than any amount that may become due to him under clause 7.7.4 and the Main Contractor need not pay any sum that had already become due either:</p> <p style="padding-left: 20px;">7.7.3.1 Insofar as the Main Contractor has given or gives a Pay Less Notice under clause 4.10.5; or</p> <p style="padding-left: 20px;">7.7.3.2 If the Sub-Contractor, after the last date upon which such notice could have been given by the Contractor in respect of that sum, has become Insolvent within the meaning of clauses 7.1.1 to 7.1.6</p> <p>7.7.4 Upon completion of the Sub-Contract Works and the making good of defects of the kind referred to in clause 2.22.1 or earlier termination of the Main Contractor's engagement, however arising, the Sub-Contractor may apply to the Main Contractor and the Main Contractor shall pay to the Sub-Contractor the value of any work executed or goods or material supplied by the Sub-Contractor to the extent not included in previous payments. Without prejudice to his other rights the Main Contractor may deduct therefrom the amount of any direct loss and/or damage caused to the Main Contractor as a result of the termination and any other amounts payable to the Main Contractor under this Sub-Contract. To the extent that the amounts due to the Main Contractor exceed the amounts due to the Sub-Contractor the balance shall be recoverable from the Sub-Contractor as a debt.</p> <p><b><u>Termination by the Sub-Contractor etc.</u></b></p> <p><b>Default by Main Contractor</b></p> <p><b>7.8</b></p> <p>7.8.1 If the Main Contractor:</p> <p style="padding-left: 20px;">7.8.1.1 Without reasonable cause wholly or unreasonably suspends the carrying out of the Main Contract Works; or</p> <p style="padding-left: 20px;">7.8.1.2 Without reasonable cause fails to proceed with the Main Contract Works so that the reasonable progress of the Sub-Contract Works is seriously affected; or</p> <p style="padding-left: 20px;">7.8.1.3 Fails to make payment in accordance with this Sub-Contract; or</p> <p style="padding-left: 20px;">7.8.1.4 Fails to comply with the CDM Regulation,</p> <p>The Sub-Contractor may give to the Main Contractor a notice specifying the default or defaults (the 'specified default or defaults)</p> <p>7.8.2 If the specified default continues for 10 days from receipt of the notice under clause 7.8.1, the Sub-Contractor may, on, or within 21 days from, the expiry of that 10 days period by a further notice to the Main Contractor, terminate the Sub-Contractor's engagement under this Sub-Contract.</p> <p>7.8.3 If the Sub-Contractor does not give the further notice referred to in clause 7.8.2 but the Main Contractor repeats a specified default (whether previously repeated or not) then, upon or within a reasonable time after such repetition, the Sub-Contractor may by notice to the Main Contractor, terminate the Sub-Contractor's engagement.</p> <p><b>Termination under the Main Contract</b></p> <p><b>7.9</b> If the Main Contractor's employment under the Main Contract is terminated, the Sub-Contractor's engagement under this Sub-Contract shall thereupon terminate and the Main Contractor shall immediately notify the Sub-Contractor.</p> <p><b>Insolvency of the Main Contractor</b></p> <p><b>7.10</b></p> <p>7.10.1 If the Main Contractor is Insolvent or makes any proposal, gives notice of any meeting or becomes the Subject of any proceedings relating to any of the matters set out in clause 7.1.1</p>
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to 7.1.6, the Main Contractor shall immediately notify the Sub-Contractor.

7.10.2 If the Main Contractor is insolvent:

7.10.2.1 The Sub-Contractor shall be entitled by notice to the Main Contractor to terminate the Sub-Contractor's engagement under this Sub-Contract but, unless the Sub-Contractor shall have given notice of a specified default or defaults under clause 7.8.1 prior to being notified that the Main Contractor is Insolvent, the Sub-Contractor shall not exercise that right under clause 7.8.1 or this clause 7.10.2.1 prior to the expiry of a period of 3 weeks (or such further period as the Parties Mya agree) from the date upon which the Contractor became Insolvent;

7.10.2.2 Pending such termination of the Sub-Contractor's engagement (whether under clause 7.8, 7.9 or 7.12) or the date for commencement of any continuation agreed between the Parties, the Sub-Contractor' obligations under the Sub-Contract shall be suspended; and

7.10.2.3 Such suspension of the Sub-Contractor's obligations for the purposes of clauses 2.19 and 4.20 be deemed to be a default of the Main Contractor.

**Consequences of termination under clauses 7.8 to 7.10**

7.11 If the Sub-Contractor's engagement is terminated under clause 7.8, 7.9 or 7.10:

7.11.1 No further sums shall become due to the Sub-Contractor otherwise than in accordance with this clause 7.11;

7.11.2 The Sub-Contractor shall:

7.11.2.1 With all reasonable dispatch remove or procure the removal from the site of any temporary buildings, plant, tools and equipment belonging to the Sub-Contractor and Sub-Contractor's Persons and, Subject to the provisions of clause 7.11.5 all goods and materials (including Sub-contact Site Materials); and

7.11.2.2 Without charge to the Main Contractor copies of any as built drawings referred to in clause 2.24 then prepared.

7.11.3 The Sub-Contractor shall with reasonable dispatch prepare and Submit to the Main Contractor an account setting out the amounts referred to in clauses 7.11.3.1 to 7.11.3.4 and, if applicable, 7.11.3.5, namely:

7.11.3.1 The total value of the work properly executed at that date of termination of the Sub-Contractor's engagement, ascertained in accordance with this agreement as if the engagement had not been terminated, together with any other amounts due to the Sub-Contractor under these conditions;

7.11.3.2 Any sums ascertained in respect of direct loss and/or expense under clause 4.19.1 (whether ascertained before or after the date of termination)

7.11.3.3 The reasonable cost of removal under clause 7.11.2;

7.11.3.4 The cost of materials or goods (including Sub-Contract Site Materials) properly ordered for the Sub-Contract Works for which the Sub-Contractor then has paid or is legally bound to pay; and

7.11.3.5 And direct loss and/or damage caused to the Sub-Contractor by the termination

7.11.4 After taking into account amounts previously paid to the Sub-Contractor under this Sub-Contract, the Main Contractor shall pay to the Sub-Contractor the amount properly due in respect of the account within 28 days of its Submission by the Sub-

Contractor to the Contractor, without deduction of any retention Payment by the Main Contractor for any such materials and goods as are referred to in clause 7.11.3.4 shall be Subject to such material and good thereupon becoming the Main Contractor's property.

**8 SETTLEMENT OF DISPUTES**

**Mediation**

8.1 If a dispute or difference arises under this Sub-Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.

**Adjudication**

8.2 If a dispute or difference arises under this Sub-Contract which either Party wishes to refer to adjudication, the Scheme shall apply, Subject to the following:

8.2.1 For the purposes of the Scheme, the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Sub-Contract Particulars;

8.2.2 Where the dispute or difference is or includes a dispute or difference relating to clause 3.11.3 and as to whether a direction issued thereunder is reasonable in all the circumstances:

8.2.2.1 The adjudicator to decide such a dispute shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the direction or issue in dispute;

8.2.2.2 If the Adjudicator does not have the appropriate expertise or experience, the adjudicator shall appoint and independent expert with such expertise and experience to advise and report in writing in whether or not the direction under clause 3.11.3 is reasonable in all the circumstances.

**Arbitration**

**Conduct of Arbitration**

8.3 Any arbitration shall be conducted in accordance with the Construction Industry Mode Arbitration Rules

**Notice of reference to Arbitration**

**8.4**

8.4.1 Where either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1, identifying the dispute and requiring the other party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with rule 2.3 by the person named in the Sub-Contract Particulars.

8.4.2 Where two or more arbitral proceedings in respect of the Main Contract Works or the Sub-Contract Works fall under separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.

8.4.3 After an Arbitrator has been appointed, either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute to be decided in the arbitral proceedings and Rule 3.3 shall apply.

**Powers of Arbitrator**

8.5 Subject to clause 1.8, the Arbitrator shall, without prejudice of the generality of his powers, have the power to rectify this Sub-Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may, in his opinion, be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the Subject or, included in any payment

and to open up, review and revise any account, opinion, decision, requirement or notice and to determine all matters in dispute which shall be Submitted to him in the same manner as if no such account, opinion, decision, requirement or notice had been given.

**Effect of award**

**8.6** Subject to clause 8.7 the award of the Arbitrator shall be final and binding on the Parties.

**Appeal – questions of law**

**8.7** The Parties hereby agree pursuant to Section 45(2)(a) and 69(2)(a) of the Arbitration Act 1996 that either Party may (upon notice to the other Party and the Arbitrator):

8.7.1 Apply to the Courts to determine any question of law arising in the course of the reference; and

8.7.2 Appeal to the Courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.

**Arbitration Act 1996**

**8.8** The provisions of the Arbitration Act 1996 shall apply to any arbitration under this Sub-Contract wherever the same, or any part of it, shall be conducted.