

HALSALL STANDARD CONDITIONS OF SUB-CONTRACT

1. Definitions

- 1.1 In these Standard Conditions of Sub-Contract (the “**Conditions**”), the following words and phrases shall have the following meanings:
- 1.1.1 “**Act**” means Part II of the Housing Grants, Construction and Regeneration Act 1996 (as amended by Part VIII of the Local Democracy, Economic Development and Construction Act 2009);
- 1.1.2 “**Act of Prevention**” means any one of the following:
- 1.1.2.1 a breach of the Sub-Contract by the Contractor;
- 1.1.2.2 any other act or omission of the Contractor or any sub-contractor employed by the Contractor for the purposes of the Works (other than the Sub-Contractor), or of the Employer or anyone employed by the Employer (other than the Contractor), for the purposes of the Works;
- 1.1.2.3 the giving of any Suspension Order by the Contractor in accordance with Clause 13, except where given by reason of the Sub-Contractor’s default; and
- 1.1.2.4 the giving of any Variation Order by the Contractor in accordance with Clause 16, except where given by reason of the Sub-Contractor’s default;
- 1.1.3 “**Anticipated Site Commencement Date**” means the date stated on the Order or otherwise communicated in writing to the Sub-Contractor by the Contractor on or before the date of the Order on which the Contractor anticipates being in a position to allow the Sub-Contractor non-exclusive access to and non-exclusive possession of the relevant part(s) of the Site to commence the Sub-Contract Works thereon;
- 1.1.4 “**CDM Regulations**” means the Construction (Design and Management) Regulations 2007;
- 1.1.5 “**Claim**” means any claim or application for an increase in the Sub-Contract Price, for payment of money (including damages), or for an extension of time:
- 1.1.5.1 under, arising out of, or in any way in connection with, the Sub-Contract;
- 1.1.5.2 arising out of, or in any way in connection with, the performance of the Sub-Contractor’s obligations under the Sub-Contract; or
- 1.1.5.3 otherwise at law or in equity including:
- (i) by statute;
- (ii) in tort for negligence or otherwise, including misrepresentation; or
- (iii) for restitution;
- 1.1.6 “**Contract**” means the agreement entered or to be entered into by the Contractor with the Employer pursuant to which the Contractor is or will be required to carry out and complete the Works including but not limited to the Sub-Contract Works;
- 1.1.7 “**Contract Conditions**” means the terms and/or conditions of the Contract pursuant to which the Contractor is or will be bound to carry out and complete the Works;
- 1.1.8 “**Contract Documents**” means the documents which specify the purpose, scope and/or design and/or other technical (including performance) criteria for the Works;
- 1.1.9 “**Contractor**” means the company named on the Order, its successors and permitted assigns;
- 1.1.10 “**Date for Completion**” means the date stated on the Order or otherwise communicated in writing to the Sub-Contractor by the Contractor on or before the date of the Order by which the Sub-Contractor is required to complete the Sub-Contract Works and, where necessary, commission and demonstrate compliance of the Sub-Contract Works with the Specification and otherwise the Sub-Contract, subject to any adjustment in accordance with Clause 12 and the giving of any Suspension Order by the Contractor in accordance with Clause 13;
- 1.1.11 “**Day**” means any calendar day, including Saturdays and Sundays but excluding Public Holidays;
- 1.1.12 “**Defects Liability Period**” means the period of time commencing on completion of the Sub-Contract Works and ending on the expiry of 12 months from the date of practical completion of the Works (as certified by or on behalf of the Employer under the Contract), or ending on the expiry of such other period of time as may be stated on the Order or otherwise communicated in writing to the Sub-Contractor by the Contractor on or before the date of the Order;
- 1.1.13 “**Employer**” means the party with whom the Contractor has entered or intends to enter into an agreement for the carrying out and completion of the Works;

- 1.1.14 **"Equipment"** means the equipment, materials, plant and/or goods which the Sub-Contractor may be required by the Sub-Contract to deliver/supply and/or install or otherwise incorporate into the Works;
- 1.1.15 **"Order"** means the order into which the Conditions are incorporated;
- 1.1.16 **"Payment Schedule"** means the payment schedule appended to the Order or otherwise provided to the Sub-Contractor by the Contractor on or before the date of the Order;
- 1.1.17 **"Public Holiday"** means Christmas Day, Good Friday or any other Day which is a bank holiday under the Banking and Financial Dealings Act 1971;
- 1.1.18 **"Site"** means the place or location stated on the Order;
- 1.1.19 **"Specification"** means the documents which have been provided to the Sub-Contractor by or on behalf of the Contractor or the Employer and which describe the purpose, scope, design and/or any technical or performance criteria of the Works;
- 1.1.20 **"Sub-Contract"** means the agreement between the Contractor and the Sub-Contractor incorporating the Order, the Conditions, the Specification, the Sub-Contract Pricing Document and any written communication referred to in the Conditions which is sent by the Contractor to the Sub-Contractor on or before the date of the Order but excluding any terms and/or conditions of contract referred to in any quotation or written acknowledgement given by the Sub-Contractor;
- 1.1.21 **"Sub-Contract Price"** means the price stated on the Order, including any adjustments made to the same pursuant to the Conditions, for which the Sub-Contractor has agreed to carry out and complete the Sub-Contract Works;
- 1.1.22 **"Sub-Contract Pricing Document"** means the Sub-Contractor's Sub-Contract Price Analysis, or such other similar document, showing how the Sub-Contract Price has been calculated and containing the Sub-Contractor's rates and/or prices;
- 1.1.23 **"Sub-Contract Works"** means the works described on the Order to be carried out and completed by the Sub-Contractor pursuant to the Sub-Contract including but not limited to the installation of the Equipment into the Works;
- 1.1.24 **"Sub-Contractor"** means the company, partnership or individual with whom the Contractor has contracted for the carrying out and completion of the Sub-Contract Works;
- 1.1.25 **"Variation"** means any alteration to the type or extent of the Sub-Contract Works which is an amendment, omission or addition thereto (other than any amendment, omission or addition which is necessary for the Sub-Contract Works to comply with the Specification or otherwise the Sub-Contract), or an instruction in writing requiring any change to the manner in which the Sub-Contract Works are to be carried out and completed;
- 1.1.26 **"Working Day"** means any calendar day except Saturdays, Sundays and Public Holidays; and
- 1.1.27 **"Works"** means the works to be carried out and completed by the Contractor pursuant to the Contract, including but not limited to the Sub-Contract Works.

2. Basis of Sub-Contract

- 2.1 The Sub-Contractor shall not later than 7 Days of its receipt of the Order sign and return the Order to the Contractor to signify its acceptance of the same and the Conditions. Any performance or partial performance by the Sub-Contractor of any of its obligations under the Sub-Contract shall constitute acceptance of the Order and the Conditions.
- 2.2 Unless any other terms and/or conditions are expressly accepted by the Contractor in writing and are appended to or are referred to in the Order they shall be deemed to be excluded from the Sub-Contract.

3. Interpretation

- 3.1 In these Conditions:
- 3.1.1 references to Clauses are references to the Clauses of these Conditions;
- 3.1.2 headings are for convenience only and do not affect interpretation;
- 3.1.3 references herein to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it; and
- 3.1.4 where action is required to be undertaken within a specified period of Days after or from a specified date, the period will begin immediately after that date. Where the period would include a Public Holiday that Day will be excluded.

4. The Sub-Contractor's Obligations

- 4.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works fully in accordance with the requirements of the Order, the Conditions, the Specification and any reasonable instructions or directions issued by the Contractor. The Sub-Contractor shall also comply with the Contract Conditions and the Contract Documents insofar as they relate to the carrying out and completion of the Sub-Contract Works and the performance of any other obligations of the Sub-Contractor under the Sub-Contract.
- 4.2 The Sub-Contractor has had a reasonable opportunity to inspect the Contract Conditions and the Contract Documents (except the prices of the Contractor contained therein), insofar as they relate to the Sub-Contract Works and the performance of any other obligations of the Sub-Contractor under the Sub-Contract.
- 4.3 The Sub-Contractor acknowledges that it is aware of the obligations, risks and liabilities of the Contractor under the Contract. Save where expressly provided otherwise in the Sub-Contract, the Sub-Contractor shall at all times:
- 4.3.1 observe and comply with all the Contract obligations on the Contractor insofar as they are relevant to the Sub-Contract Works and/or the performance of the Sub-Contractor's obligations under the Sub-Contract; and
- 4.3.2 not do or omit to do anything which may prejudice or lead to the diminution or loss of any rights, entitlements or other benefits of the Contractor arising under the Contract nor cause contribute or otherwise give rise to any breach by the Contractor of any of its obligations, warranties, indemnities, duties, risks, responsibilities and/or undertakings under or otherwise arising in connection with the Contract insofar as the same relate to or affect the Sub-Contract Works (including the existence of, and the remedying of, any defects or faults therein), or any other matter which is the responsibility of the Sub-Contractor under the Sub-Contract.
- 4.4 The Sub-Contractor agrees that it will perform its obligations under the Sub-Contract in a way so as to enable the Contractor to discharge its obligations under the Contract and acknowledges that if the Sub-Contractor is in breach of Clause 4.3.1 and/or Clause 4.3.2, or in breach of any other provision of the Conditions, such breach may result in the Contractor committing a breach of the Contract and/or other contracts made by the Contractor in connection with the Works and may occasion further damages, loss and/or expense to the Contractor in connection with the Works.
- 4.5 The Contractor and the Sub-Contractor hereby acknowledge that any such damages, loss and expense are hereby agreed to be within their contemplation as being probable results of any such breach by the Sub-Contractor and the Sub-Contractor shall indemnify the Contractor against any and all results of any such breach.
- 4.6 If the Sub-Contractor fails to comply with any reasonable instruction or direction given by the Contractor, the Contractor may serve a written default notice on the Sub-Contractor. Should the instruction not be complied with within a further 7 Days, the Contractor may then employ and pay others to comply with the instruction or direction. The Contractor may then charge the Sub-Contractor any additional cost it incurs as a result or deduct such cost from sums otherwise due or which may become due to the Sub-Contractor under the Sub-Contract.

5. Priority of Documents

- 5.1 In the event of any conflict between the Order, the Conditions, the Specification, the Sub-Contract Pricing Document, the Contract Conditions and the Contract Documents, the order of priority of documents shall be as follows:
- 5.1.1 the Order;
- 5.1.2 the Conditions;
- 5.1.3 the Specification;
- 5.1.4 the Contract Conditions and the Contract Documents; and
- 5.1.5 the Sub-Contract Pricing Document.

6. Design of the Sub-Contract Works and Quality, Quantity and Performance of the Equipment

- 6.1 It is a condition of the Sub-Contract that the Equipment delivered to the Site by or on behalf of the Sub-Contractor, or made available by the Sub-Contractor for collection from its premises by or on behalf of the Contractor, and installed or otherwise incorporated into the Works by the Sub-Contractor, shall:
- 6.1.1 correspond as to description, quality and condition(s) with the particulars stated or referred to in the Specification;
- 6.1.2 conform with any sample, pattern, drawing or design of the Sub-Contractor which is approved in writing by the Contractor, or with any sample, pattern, drawing or design supplied to the Sub-Contractor by or on behalf of the Contractor or the Employer;
- 6.1.3 be of sound materials and workmanship;
- 6.1.4 comply with the Specification and meet any standard or comply with any other technical (including performance) requirement(s) stated or referred to in the Specification, contained in any document referred to in the Specification or otherwise communicated to the Sub-Contractor;

- 6.1.5 be fit for any purpose expressly or impliedly made known to the Sub-Contractor or otherwise for their ordinary purpose;
 - 6.1.6 comply with the relevant requirements of common law and any statute, statutory rule or order or other regulation having the force of law which may be in operation on the date of incorporation of the Equipment into the Works. In particular, but without prejudice to the generality of the foregoing, the Sub-Contractor undertakes to comply in every respect with the requirements of the Health and Safety at Work Act 1974 and with any regulation made thereunder;
 - 6.1.7 be to the satisfaction of the Contractor and the Employer; and
 - 6.1.8 where applicable, be at least equal to the quality or standard of any appropriate British Standard or European Directive current at the date of the Order.
- 6.2 Where the Sub-Contractor is obliged by the Sub-Contract to design the whole or any part of the Sub-Contract Works, the following provisions shall apply:
- 6.2.1 the Sub-Contractor shall carry out and complete the design using all the reasonable skill, care and diligence of an appropriately qualified designer experienced in designing works similar in size, scope and complexity as the Sub-Contract Works;
 - 6.2.2 the Sub-Contractor shall be deemed to have made reasonable allowance in the Sub-Contract Price for the co-ordination of all parts comprising its design and for the co-ordination of its design(s) with the design(s) prepared by or on behalf of the Contractor or the Employer which interfaces with the Sub-Contractor's design(s);
 - 6.2.3 the Sub-Contractor confirms that the Sub-Contract Price is fully inclusive of all design costs including the provision of such drawings, specifications and other design documents as the Contractor may from time to time request;
 - 6.2.4 any approval or acceptance by the Contractor of any drawing, calculation, sample or builder's work detail prepared by or on behalf of the Sub-Contractor shall not relieve the Sub-Contractor from any responsibility or liability for its design;
 - 6.2.5 where the Sub-Contractor has used or intends to use and/or has incorporated or intends to incorporate any design documentation and/or information provided by or on behalf of the Contractor or the Employer, the Sub-Contractor shall assume full responsibility for such design as if the Sub-Contractor had prepared the same. For the avoidance of doubt, this Clause 6.2.5 shall be without prejudice to Clause 16 and the Sub-Contractor's entitlement (if any) in respect of any Variation Order given by the Contractor thereunder;
 - 6.2.6 copyright in any design produced by or on behalf of the Sub-Contractor shall remain vested in the Sub-Contractor but the Sub-Contractor shall grant to the Employer and the Contractor a royalty free, irrevocable, non-exclusive licence to use and to reproduce all documents, drawings and other works produced in relation to the Sub-Contract Works, for any purpose whatsoever connected with the Works and such licence shall continue notwithstanding any determination of the Sub-Contractor's employment under the Sub-Contract. Such licences shall be transferrable to third parties and shall carry the right to grant sub-licences; and
 - 6.2.7 the Sub-Contractor shall indemnify and hold harmless the Employer and the Contractor from and against all losses in relation to any claims made or brought by any person for or on account of infringement by any person of any intellectual property rights in respect of which the Sub-Contractor is obliged to grant a licence or allow the granting of sub-licences hereunder.

7. Commencement, Progress and Completion

- 7.1 The Contractor shall by the Anticipated Site Commencement Date give the Sub-Contractor non-exclusive access to and such non-exclusive possession of the Site or parts of the Site as necessary to enable the Sub-Contractor to carry out and complete the Sub-Contract Works in accordance with the Sub-Contract. The Contractor may amend the Anticipated Site Commencement Date (by giving the Sub-Contractor no less than 5 Days prior notice in writing), whether by bringing forward or deferring the Anticipated Site Commencement Date, and such amendment shall be binding on the Sub-Contractor (without any liability whatsoever to the Sub-Contractor).
- 7.2 The Sub-Contractor shall, after it has commenced the Sub-Contract Works, proceed regularly and diligently with the same and in a good and workmanlike manner so that all the Sub-Contract Works are completed by no later than the Date for Completion (subject to any adjustment of the Date for Completion in accordance with Clause 12 and the giving of any Suspension Order by the Contractor in accordance with Clause 13).
- 7.3 Subject to Clause 8, the Sub-Contractor shall take all reasonable precautions to protect the Sub-Contract Works from any loss of or damage to the same and protect the Equipment from the date of its delivery to the Site until all the Works have been completed.
- 7.4 Notwithstanding any trade custom to the contrary, the Sub-Contract Price shall not be increased in respect of the number of visits that the Sub-Contractor's operatives are required to make to the Site in order to carry out and complete the Sub-Contract Works.

- 7.5 The Sub-Contractor shall ensure that where the Sub-Contract Works are to integrate with the Works, or with the work of any other supplier employed by the Contractor in connection with the Works, the Sub-Contract Works shall be fully co-ordinated with such other work.
- 7.6 The Employer or the Contractor may use any part of the Works, including any part of the Sub-Contract Works, even though the whole of the Works has not reached practical completion. Such use does not affect the Sub-Contractor's obligations under the Sub-Contract and, for the avoidance of doubt, shall not be nor shall such use be deemed to be, confirmation by the Employer or by the Contractor that that part of the Works has achieved practical completion.
- 7.7 The certification by or on behalf of the Employer that the Works have achieved practical completion shall not be deemed to be approval by the Contractor of the Sub-Contractor's performance of its obligations under the Sub-Contract.
- 7.8 If, having regard to the Date for Completion and in the reasonable opinion of the Contractor, the Sub-Contractor fails at any time to regularly and diligently progress the Sub-Contract Works, the Contractor may, after first giving 7 Days' prior notice in writing to the Sub-Contractor, employ its own labour and/or another sub-contractor to improve the progress of the Sub-Contract Works. The Sub-Contractor shall pay or allow to the Contractor all additional costs and expenses incurred as a consequence and the Contractor shall also have the right to omit part(s) of the Sub-Contract Works (and may either carry out and complete that omitted part or those omitted parts itself or employ another sub-contractor to do so), without any liability whatsoever to the Sub-Contractor.
- 7.9 The Sub-Contractor shall at all times observe, perform and strictly comply with all statutory and other obligations (including, and without limiting the generality of the foregoing, those relating to noise, control of pollution, waste management, health, safety and welfare). The Sub-Contractor shall indemnify the Contractor against any breach of such statutory or other obligations by the Sub-Contractor, its servants or agents.
- 7.10 Without prejudice to the generality of the foregoing, the Sub-Contractor shall observe and comply with its obligations (if any) under the CDM Regulations.
- 7.11 The Sub-Contractor shall comply with the requirements contained in the Contractor's policies with regard to Health & Safety, Quality Assurance and list of responsibilities for sub-contractors whilst engaged in activities associated with the Sub-Contract. The Sub-Contractor shall provide details of its appointed on-site supervisor prior to commencing the Sub-Contract Works on the Site.
- 7.12 Where the Sub-Contractor has 5 or more employees, it shall provide a copy of its Health & Safety Policy to the Contractor prior to commencing the Sub-Contract Works on the Site. The Sub-Contractor's operatives shall wear safety helmets and protective footwear whilst on the Site together with any other personal protective equipment (PPE) deemed necessary to carry out the activities associated with the Sub-Contract Works.

8. Vesting of Equipment and Risk

- 8.1 The Equipment shall become the property of the Contractor after the Contractor has accepted it at the Site. Where by agreement between the Contractor and the Sub-Contractor the Equipment is paid for by the Contractor prior to its delivery to the Site, the title in such Equipment shall pass to the Contractor upon payment being made for the same.
- 8.2 The Sub-Contractor shall bear the risk of and indemnify and keep the Contractor indemnified against:
- 8.2.1 before all the Sub-Contract Works are completed, any loss of or damage to (i) any parts of the Equipment which have been installed or otherwise incorporated into the Works or (ii) any parts of the Equipment (whether on or off the Site) that are intended for installation or incorporation into the Works but have not yet not been installed or otherwise incorporated (unless, in either case, such loss or damage is caused by any act, default, neglect or omission of the Contractor (or by any sub-contractor employed by the Contractor, other than the Sub-Contractor), or of the Employer (or by anyone employed by the Employer other than the Contractor); and
- 8.2.2 after all the Sub-Contract Works are completed, any loss of or damage to the Equipment resulting from any cause or operation that occurred prior to completion of all the Sub-Contract Works or from the making good by the Sub-Contractor of any defect in the Sub-Contract Works in accordance with Clause 17 during the Defects Liability Period or from any act or omission of the Sub-Contractor (or others under the Sub-Contractor's control) prior to the expiry of the Defects Liability Period.

9. Inspection and Testing

- 9.1 The Equipment shall be new unless the Contractor has otherwise agreed in writing.
- 9.2 The Contractor or his nominee shall have access to any premises at any reasonable time before delivery (or collection) to inspect and test the Equipment and shall also have the right to inspect and test the Equipment before acceptance at the Site (or prior to its collection from the Sub-Contractor's premises).
- 9.3 Such tests shall include any inspection as the Contractor may reasonably think fit and shall not be limited to quality assurance testing controls and inspections. Notwithstanding any inspection or test made by the Contractor, the Sub-Contractor shall, where appropriate, inspect and test the Equipment at its own expense before it is delivered to the Site (or collected from the Sub-Contractor's premises). The Sub-Contractor shall give at least 7 Days' notice to the Contractor of its intention to carry out such inspection or test and the Contractor or its nominee shall be entitled to attend.

10. Sub-Contractor's Default

- 10.1 Where all or any part of a batch of Equipment fails to comply with the Specification or with any requirement contained in any document referred to therein or elsewhere in the Sub-Contract relating to quality, quantity, materials, workmanship and/or design, the Contractor may, acting reasonably, reject either all of the batch of Equipment or part of such batch of Equipment.
- 10.2 At the Contractor's option, any Equipment which is rejected shall be either replaced by the Sub-Contractor within 7 Days (or within such other reasonable period) or the Contractor may cancel, without liability to the Sub-Contractor, the Sub-Contract relating to such rejected Equipment and shall be entitled to a full refund of the price relating to such rejected Equipment if the Contractor has paid for them.
- 10.3 Rejected Equipment may, at the Contractor's option, be made available for collection by the Sub-Contractor and shall be collected within 14 Days (or within such other reasonable period) of the Sub-Contractor being notified of its rejection and if not collected within 14 Days (or within such other reasonable period), shall be sold by the Contractor for the price attainable by the Contractor and credit shall be given by the Sub-Contractor for the amount the Contractor receives for the rejected Equipment. The cost of any storage by the Contractor and/or collection of the rejected Equipment shall be borne by the Sub-Contractor.
- 10.4 In lieu of exercising its right to reject all or part of the batch of Equipment under Clause 10.1, the Contractor may require the Sub-Contractor (within 7 Days of receiving a notice in writing from the Contractor or within such other reasonable period as the Contractor may stipulate in its written notice), to remedy the non-compliance of the Equipment or alternatively, to replace that part or those parts of the Equipment which causes the Equipment as a whole to be so non-compliant.
- 10.5 If, within 7 Days (or within such other reasonable period as the Contractor may stipulate under Clause 10.4) of receiving the Contractor's notice, the Sub-Contractor fails to remedy the non-compliance or replace that part or those parts of the Equipment in question within 7 Days (or within such other reasonable period as may be stipulated in the Contractor's Clause 10.4 notice), the Sub-Contractor fails to take reasonable steps to commence such remedial works as may be necessary or fails to take reasonable steps to replace that part or those parts of the Equipment in question, the Contractor may on expiry of whatever period is stipulated in its Clause 10.4 notice, employ its own labour and/or another supplier to perform such remedial works as may be required, or replace that part or those parts of the Equipment in question, and shall be entitled to recover from the Sub-Contractor as a debt (or set-off from any sum which may be due or which may become due to the Sub-Contractor), all costs it suffers as a consequence.

11. Damages for Delay

- 11.1 If the Sub-Contractor does not complete the Sub-Contract Works by the Date for Completion, the Sub-Contractor shall indemnify the Contractor against all damages, loss, cost and expense (including liquidated damages under the Contract), incurred by the Contractor, or which the Contractor reasonably believes it will incur, as a consequence.

12. Extension of Time

- 12.1 If the Sub-Contractor is, or is likely to be, delayed:
- 12.1.1 prior to the Date for Completion by an Act of Prevention in a manner which the Sub-Contractor believes will prevent it from completing the Sub-Contract Works by the Date for Completion; or
- 12.1.2 after the Date for Completion by an Act of Prevention in a manner that the Sub-Contractor believes will delay it in completing the Sub-Contract Works,
- the Sub-Contractor may apply for an extension of time.
- 12.2 For the avoidance of doubt, any instruction (whether or not issued as a Variation Order under Clause 16) that is issued by the Contractor in relation to a provisional sum shall not entitle the Sub-Contractor to an extension of time.
- 12.3 Where any cause whatsoever will or is likely to delay the Sub-Contractor in completing the Sub-Contract Works, the Sub-Contractor must as soon as reasonably possible and in any event within 5 Working Days after becoming aware or after the Sub-Contractor ought reasonably to have become aware of such cause alert the Contractor in writing of the delay or potential delay. The Sub-Contractor's written notice to the Contractor under this Clause 12.3 shall set out insofar as is reasonably practicable:
- 12.3.1 details of the delay or potential delay including its cause;
- 12.3.2 how the delay or potential delay will affect the ability of the Sub-Contractor to complete the Sub-Contract Works;
- 12.3.3 the measures which are available and which the Sub-Contractor proposes to implement to overcome the delay or potential delay; and
- 12.3.4 the measures which have, in fact, been implemented and are currently being implemented by the Sub-Contractor to overcome the delay or potential delay

- 12.4 Where the Sub-Contractor wishes to apply for an extension of time then, within 7 Days of giving written notice in accordance with Clause 12.3, the Sub-Contractor shall (so far as it is reasonably able to do so) submit a written application to the Contractor for an extension of time which:
- 12.4.1 gives detailed particulars of the delay and the occurrence causing the delay or potential delay; and
 - 12.4.2 states the number of Days' extension of time being applied for together with the basis of calculating that period, including evidence that it will be delayed in completing the Sub-Contract Works in the manner set out in Clause 12.5.3.
- 12.5 It is a condition precedent to the Sub-Contractor's entitlement to an extension of time that:
- 12.5.1 the Sub-Contractor shall have given the written notice required by Clause 12.3 and submitted the written application required by Clause 12.4 when required by those Clauses;
 - 12.5.2 the cause of the delay was beyond the reasonable control of the Sub-Contractor; and
 - 12.5.3 the Sub-Contractor must actually have been, or be likely to be, delayed:
 - 12.5.3.1 prior to the Date for Completion by an Act of Prevention in a manner that will prevent it from completing the Sub-Contract Works by the Date for Completion, unless the Date for Completion is extended; or
 - 12.5.3.2 after the Date for Completion by an Act of Prevention in a manner that will delay it in completing the Sub-Contract Works
- 12.6 Subject to Clauses 12.7 and 12.8, if the condition precedent in Clause 12.5 has been satisfied the Date for Completion will be extended by a reasonable period determined by the Contractor and notified to the Sub-Contractor in writing within 35 Days of the Sub-Contractor's written application under Clause 12.4 or, where applicable, within 7 Days of any decision being made by or on behalf of the Employer as to the Contractor's entitlement (if any) to an extension of time under the Contract for the corresponding delay caused to the Works, whichever is later. If the Sub-Contractor fails to dispute in writing the extension of time notified to it by the Sub-Contractor within 10 Days of its receipt of the Contractor's notification under this Clause 12.6, the Sub-Contractor shall be deemed to have accepted the extension so notified by the Contractor.
- 12.7 Except where and/or to the extent that the Contractor is responsible for the delay by reason of any act, omission or default on its part, or for which the Contractor is otherwise responsible, the Sub-Contractor shall not be entitled to:
- 12.7.1 an extension of time in respect of any delay to the completion of the Sub-Contract Works in circumstances where the reason for the delay does not constitute a ground for an extension of time under the Contract for any corresponding delay caused to the Works; or
 - 12.7.2 an extension of time in respect of the delay caused to the completion of the Sub-Contract Works which is greater than the extension of time awarded to the Contractor under the Contract for the corresponding delay caused to the Works except where and to the extent that the Contractor is not entitled to an extension of time under the Contract by reason of the Contractor's failure to comply with any provision of the Contract Conditions relating to extensions of time (except where that failure arises from any failure of the Sub-Contractor to comply with the conditions precedent in this Clause 12).
- 12.8 The Contractor shall be entitled to reduce any extension of time it would otherwise have granted to the Sub-Contractor under Clause 12.6 to the extent that the Sub-Contractor:
- 12.8.1 caused or contributed to the delay; and/or
 - 12.8.2 is in concurrent delay; and/or
 - 12.8.3 failed to take all reasonable steps necessary both to preclude the cause of the delay and/or to avoid or minimise the consequences of the delay.
- 12.9 The Contractor may instruct the Sub-Contractor to accelerate the progress of the Sub-Contract Works so as to achieve completion of the same prior to the Date for Completion or prior to the date on which the Sub-Contract Works would otherwise have been completed but for the acceleration. If the requirement to accelerate does not result from a default by the Sub-Contractor then it shall be considered a Variation and valued accordingly.

13. Suspension

- 13.1 The Contractor may instruct the Sub-Contractor to suspend and then re-commence the Sub-Contract Works which instruction shall be final and binding on the Sub-Contractor (a "**Suspension Order**"). If the suspension arises as a result of:
- 13.1.1 the Sub-Contractor's non-performance of any of its obligations under the Sub-Contract;
 - 13.1.2 the need to protect or keep safe any person or property; or
 - 13.1.3 the need to comply with an order of a court,

the Sub-Contractor shall have no right to be paid any costs, expenses or damages arising from the suspension.

- 13.2 If the suspension under Clause 13.1 arises from a cause other than one set out in Clauses 13.1.1 to 13.1.3, the Suspension Order shall entitle the Sub-Contractor to be paid by the Contractor the reasonable extra costs properly incurred by the Sub-Contractor as a result of the suspension. The Sub-Contractor must take all steps possible to mitigate its extra costs. This will be the Sub-Contractor's only entitlement to payment of money arising from a Suspension Order.
- 13.3 The Sub-Contractor shall not be entitled to an extension of time under Clause 12.5 if the suspension arises from any failure by the Sub-Contractor to perform any of its obligations under the Sub-Contract.

14. Sub-Contract Price and Payment

- 14.1 The Sub-Contract Price is that stated on the Order. The Sub-Contractor shall be entitled to monthly interim payments under the Sub-Contract (except where it is recorded in writing that the duration of the Sub-Contract Works is less than 45 Days, in which case the due date for payment of the Sub-Contract Price shall be 7 Days following completion of the Sub-Contract Works, the final date for payment shall be 45 Days thereafter and the provisions of Clause 14.2 and Clauses 14.7 to 14.15 shall apply save that references made therein to interim payment shall be construed as payment of the Sub-Contract Price).
- 14.2 It shall be a condition precedent to any interim payment becoming due to the Sub-Contractor that the Sub-Contractor shall have delivered to the Contractor the Order duly completed and signed by an authorised signatory of the Sub-Contractor in accordance with Clause 2.1 together with such information and other documents as the Sub-Contractor may be required to provide to the Contractor (including, without limitation, any collateral warranty in favour of the Employer and/or any third party who has an interest in the Works or the Site).
- 14.3 The due date (the "**Due Date for Payment**") of each interim payment is set out in the Payment Schedule. If a Payment Schedule is not provided to the Sub-Contractor by the Contractor or if such Schedule is provided but no dates are inserted therein, the Due Date for Payment of the first interim payment shall be the final Working Day of the month following the month in which the Sub-Contractor commences the Sub-Contract Works (or such other date as the parties may agree). Further interim payments shall be made by the Contractor to the Sub-Contractor and the Due Dates for Payment of each shall be the same in each subsequent month as the date on which the first interim payment became due unless in any subsequent month that date falls on a Saturday, Sunday or Public Holiday or does not occur or recur in which case the interim payment for that month shall be due on the nearest Working Day thereafter.
- 14.4 As a condition precedent to any interim payment becoming due to the Sub-Contractor, the Sub-Contractor shall submit to the Contractor not later than 7 Days before the date stated in the Payment Schedule (the "**Sub-Contract Valuation Date**") an application for payment ("**Application**") giving full and proper details of the sum that the Sub-Contractor believes will fall due to the Sub-Contractor at the relevant Due Date for Payment and setting out the basis on which that sum has been calculated. The Sub-Contractor shall include in its Application the value of work properly executed by the Sub-Contractor and the value of Equipment on the Site at the date on which the Sub-Contractor submits the Application in accordance with this Clause 14.4 together with a forecast of the value of the work that the Sub-Contractor believes it will have properly executed and the value of Equipment the Sub-Contractor believes will be on Site at the Sub-Contract Valuation Date.
- 14.5 For the purposes of Section 110(1)(b) of the Act, the **Final Date for Payment** of any interim payment that becomes due to the Sub-Contractor under the Sub-Contract shall be 45 Days after its Due Date for Payment.
- 14.6 The amount due to the Sub-Contractor in respect of an interim payment shall be calculated as the total of the following amounts:
- 14.6.1 the value of work, assessed by reference to any rates or prices in the Sub-Contract Pricing Document;
 - 14.6.2 the value of any Equipment on the Site at the Sub-Contract Valuation Date;
 - 14.6.3 the value of any Equipment other than those referred to in Clause 14.6.2 which the Contractor in its absolute discretion agrees should be included in the calculation of the amount due to the Sub-Contractor; and
 - 14.6.4 any other amounts which the Sub-Contract requires to be added to the Sub-Contract Price,
- Less
- 14.6.5 any amount retained by the Contractor under Clause 14A.1;
 - 14.6.6 any other amounts which the Sub-Contract requires to be deducted from the Sub-Contract Price; and
 - 14.6.7 the sum of amounts previously due as interim payments to the Sub-Contractor under the Sub-Contract
- 14.7 Not later than 5 Days after the Due Date for Payment, the Contractor shall give a notice in writing to the Sub-Contractor (a "**Payment Notice**") specifying the sum that the Contractor considers to be or to have been due to the Sub-Contractor at the Due Date for Payment in respect of the relevant interim payment and the basis on which that sum has been calculated (even if that sum is zero). Subject to any pay less notice which the Contractor may give the Sub-Contractor in accordance with Clause 14.9, the amount of the interim payment to be made by the Contractor on or before the Final Date for Payment shall be the sum stated as due in the Contractor's Payment Notice.

- 14.8 If the Contractor does not give a Payment Notice in accordance with Clause 14.7, the amount of the interim payment to be made by the Contractor shall, subject to any pay less notice which the Contractor may give the Sub-Contractor in accordance with Clause 14.9, be the sum stated as due in the Sub-Contractor's Application (provided the Application fully and clearly stated the basis on which the sum included therein had been calculated by the Sub-Contractor). For the avoidance of doubt, the Sub-Contractor shall not be entitled to give a Payment Notice if its own pursuant to Section 110B(2) of the Act.
- 14.9 If the Contractor intends to pay less than the sum it has stated in its Payment Notice to be due to the Sub-Contractor or, if the Contractor fails to give the Sub-Contractor a Payment Notice, in the Sub-Contractor's Application (as the case may be), the Contractor shall not later than 1 Day before the Final Date for Payment give the Sub-Contractor notice of that intention which shall specify both the sum that the Contractor considers to be due to the Sub-Contractor at the date the Contractor gives the Sub-Contractor that notice and the basis on which the Contractor has calculated that sum (even if that sum is zero) (a "**Pay Less Notice**"). If the Contractor gives the Sub-Contractor a Pay Less Notice, the amount which the Contractor shall pay the Sub-Contractor on or before the Final Date for Payment shall not be less than the amount the Contractor has stated in its Pay Less Notice to be due to the Sub-Contractor.
- 14.10 If the Contractor fails to pay any sum, or any part of it, due to the Sub-Contractor by the final date for its payment (together with any VAT properly chargeable in respect of such payment), and the failure continues for 14 Days after the Sub-Contractor has given the Contractor notice of its intention to suspend the performance of its remaining obligations under the Sub-Contract, the Sub-Contractor may suspend performance of any or all of its obligations under the Sub-Contract until the Contractor has made payment in full. If the Sub-Contractor exercises its right of suspension under this Clause 14.10, it will be entitled to a reasonable amount in respect of costs and expenses which the Sub-Contractor incurs as a result of its exercise of that right. The Sub-Contractor shall with its application for such costs and expenses, or on request, submit such details of such costs and expenses as are reasonably necessary to enable its entitlement to the same to be ascertained.
- 14.11 If the Employer, or any other person on whom the Employer depends for making payment in connection with the Contract, shall become insolvent, the Contractor shall not be obliged to make any further payment to the Sub-Contractor of any sum which is due or may become due to the Sub-Contractor unless and until the Contractor has received payment in respect thereof from the Employer and then only to the extent of such receipt. The term "insolvent" shall have the meaning given to it by Section 113 of the Act and/or shall have the same meaning which is given to that term by the Contract.
- 14.12 The Contractor shall have the right to take into account when it determines the amount to be stated as due in any Payment Notice or Pay Less Notice it gives the Sub-Contractor any sum which, at the date of payment falling due (in the case of any Payment Notice) or at the date on which the Contractor gives the Sub-Contractor the Pay Less Notice, is due and owing from the Sub-Contractor to the Contractor under the Sub-Contract or under any other contract between the Contractor and the Sub-Contractor.
- 14.13 Notwithstanding any other provision of the Sub-Contract, if the Sub-Contractor becomes insolvent (which term shall have the meaning given to it by Section 113 of the Act) then no further sum shall become due to the Sub-Contractor under the Sub-Contract or otherwise. In such circumstances, the Contractor need not pay any sum that has already become due to the Sub-Contractor where the Contractor has given or gives a Pay Less Notice in accordance with Clause 14.9, or where the Sub-Contractor becomes insolvent after the last date on which a Pay Less Notice could be given by the Contractor in respect of that sum (and notwithstanding that the Contractor did not give the Sub-Contractor such notice).
- 14.14 The making of any interim payment by the Contractor to the Sub-Contractor shall not constitute or be deemed to constitute acceptance on the part of the Contractor that the Sub-Contract Works comply with the Specification or are otherwise in accordance with the Sub-Contract.
- 14.15 If the Contractor fails to make payment to the Sub-Contractor in accordance with Clause 14.5 and also fails to give the Sub-Contractor a Pay Less Notice in respect of the sum not paid in accordance with Clause 14.9, the Contractor shall pay to the Sub-Contractor, in addition to the principal amount not paid, simple interest thereon for the period from the final date for payment to the date payment is made. The rate of interest shall be 2% over the Base Rate of the Bank of England current at the date of the Contractor's default. The Sub-Contractor acknowledges that such rate is a substantial remedy for late payment (as defined in the Late Payment of Commercial Debts (Interest) Act 1998 (the "**1998 Act**")). If the rate of interest stipulated in this Clause 14.15 is held not to be a substantial remedy within the meaning of Section 9 of the 1998 Act, there shall be substituted for the rate stipulated herein such higher rate of interest as is necessary to ensure that it is a substantial remedy for the purposes of the 1998 Act.

14A. Retention

- 14A.1 Where the Sub-Contract Works have not been completed, the Contractor shall be entitled to deduct and retain retention at the rate of 5% (or at such other rate as may be communicated in writing to the Sub-Contractor by the Contractor on or before the date of the Order) (the "**Rate of Retention**") of the total amount due to the Sub-Contractor in accordance with Clause 14.6 in relation to any interim payment due to the Sub-Contractor. Where the Sub-Contract Works have been completed, commissioned and otherwise demonstrated to comply with the Specification and the Sub-Contract, the Contractor shall be entitled to retain retention at half the Rate of Retention of the total amount due to the Sub-Contractor

in accordance with Clause 14.6 in relation to all the Sub-Contract Works completed. The due date for payment of the first half of the retention shall be 3 months after the Sub-Contract Works are completed, commissioned and otherwise demonstrated to comply with the Specification or the Sub-Contract and, subject to any pay less notice which the Contractor may give the Sub-Contractor in accordance with Clause 14.9, the final date for payment of the same shall be 30 Days thereafter.

14A.2 Subject to there being no defects in the Sub-Contract Works on the date of expiry of the Defects Liability Period, the due date for payment of the second half of the retention shall be 30 Days thereafter and, subject to any pay less notice which the Contractor may give the Sub-Contractor in accordance with Clause 14.9, the final date for payment of the same shall be 30 Days thereafter.

14A.3 If there are any defects in the Sub-Contract Works on the date of expiry of the Defects Liability Period, such defects shall be stated in a list which the Contractor shall give the Sub-Contractor. The due date for payment of the second half of the retention shall be 30 Days after the correction of all such defects by the Sub-Contractor and, subject to any pay less notice which the Contractor may give the Sub-Contractor in accordance with Clause 14.9, the final date for payment of the same shall be 30 Days thereafter.

15. Attendances

15.1 The Contractor may at its absolute discretion from time to time permit the Sub-Contractor to use standing scaffolding ladders, mechanical and non-mechanical plant (referred to in the remainder of this Clause as “Attendances”) for itself and its workmen and agents at its own risk. No warranty or liability on the part of the Contractor is created or implied as to the availability, condition, durability of fitness of the Attendances.

15.2 The Sub-Contractor shall make good any damage caused to the Works and to any other works by the use of the Attendances and shall indemnify the Contractor against all liability, costs, losses, claims, expenses or proceedings arising out of or in the course of such use.

16. Variations

16.1 The Contractor may, without invalidating the Sub-Contract, order a Variation in the form of an addition to or omission from or other change to or from the Sub-Contract Works by a written document titled “Variation Order”.

16.2 The Contractor shall not be obliged to make payment to the Sub-Contractor for carrying out any Variation which requires the Sub-Contractor to carry out additional or different work and/or to supply/deliver and/or install or otherwise incorporate additional or different Equipment into the Works, unless the Contractor has issued a Variation Order.

16.3 If any Variation Order issued by the Contractor omits any part(s) of the Sub-Contract Works to be carried out by the Sub-Contractor under the Sub-Contract, the Contractor may thereafter procure the carrying out of such works either itself or by engaging an alternative supplier and, for the avoidance of doubt, the Sub-Contractor shall not be entitled to make any Claim in respect of any such omission including for any loss of profit or loss of opportunity.

16.4 Where any Variation Order omits any part(s) of the Sub-Contract Works, the Contractor shall be entitled to adjust the Date for Completion by bringing forward the Date for Completion by an appropriate amount of time commensurate with the scale of the omission.

16.5 A Variation Order may be issued by the Contractor in respect of the Sub-Contract Works:

16.5.1 any time prior to the completion of the Sub-Contract Works; and

16.5.2 after all the Sub-Contract Works have been completed, provided that, for the avoidance of doubt, the Sub-Contractor shall be required to comply with such Variation Order in accordance with the time specified therein and not by the Date for Completion.

16.6 Subject to Clause 12.4.2 and Clause 17.1, the Sub-Contract Price shall be adjusted for all Variations carried out by the Sub-Contractor by:

16.6.1 an amount determined by using any rates or prices contained in the Sub-Contract Pricing Document which may be applicable to the Variation; or

16.6.2 a reasonable amount to be agreed between the Parties or, in default of such agreement, determined by the Contractor on a fair and reasonable basis.

16.7 The rates and prices contained in the Sub-Contract Pricing Document are deemed to include all labour, materials, overheads and profit required to perform any work the subject of the Variation Order and to comply with the Sub-Contractor's obligations under the Sub-Contract.

16.8 For the avoidance of doubt, any adjustment to the Sub-Contract Price in respect of any Variation Order issued by the Contractor in relation to a provisional sum shall only be determined in accordance with Clause 16.6.1.

16.9 Where the Contractor so requests the Sub-Contractor shall, within such time as the Contractor may specify (acting reasonably), and in any event so as not to delay or disrupt the carrying out and completion of the Sub-Contract Works, provide the Contractor with all information regarding the proposed Variation. Such information shall be as the Contractor

may reasonably require and shall include, if so requested, a firm price of the increase in, or reduction of, the Sub-Contract Price together with details of any affect on the Sub-Contractor's ability to complete the Sub-Contract Works by the Date for Completion.

- 16.10 No Variation in respect of the Sub-Contract Works shall be carried out on a Daywork basis unless the Sub-Contractor has obtained the Contractor's written consent before the Sub-Contractor undertakes the same. Dayworks will only be paid for by the Contractor where the Sub-Contractor submits Daywork sheets signed by the Contractor's authorised Site personnel. The signature of the Contractor's authorised Site personnel shall be evidence that Dayworks have been carried out but shall not constitute and shall not be deemed to constitute acceptance that the hours claimed in respect thereof are reasonable or that the Sub-Contractor is entitled to payment therefor.

17. Defects Liability

- 17.1 If at any time prior to the expiry of the Defects Liability Period the Contractor decides that any work done by the Sub-Contractor or any Equipment supplied/delivered by the Sub-Contractor (whether installed by the Sub-Contractor or not) is defective or not in accordance with the Sub-Contract or does not comply with the Specification or otherwise fulfil the requirements of the Sub-Contract (a "**Defect**"), the Sub-Contractor shall as soon as reasonably practicable of receiving a notice in writing from the Contractor to do so, make good the Defect at its own cost. The Contractor shall have the right to assign to the Employer the benefit of this warranty.
- 17.2 The Sub-Contractor shall indemnify the Contractor against the cost of any work done by the Contractor, or of any damage which the Sub-Contractor is liable to rectify, resulting from any Defect and against all other costs, losses, expenses and liabilities incurred by the Contractor as a result of any Defect. If the Sub-Contractor does not fulfil its obligations under Clause 17.1 within a reasonable time of the Contractor giving the Sub-Contractor notice so to do, the Contractor may carry out such obligations but without prejudice to any other right of the Contractor arising from the Defect so remedied.
- 17.3 For the purpose of determining the date of expiry of the Defects Liability Period, the Contractor shall notify the Sub-Contractor as soon as reasonably practicable of the date of practical completion of the Works.
- 17.4 The Sub-Contractor and the Contractor agree that the Order shall be treated as if it had been executed as a deed (whether executed by the Sub-Contractor or not), and the Sub-Contractor agrees that it shall remain liable to the Contractor in respect of any Defect which arises in the Sub-Contract Works after the expiry of the Defects Liability Period up to a maximum of 12 years from practical completion of the Works.

18. Final Claim

- 18.1 Within 28 Days of the Contractor notifying the Sub-Contractor in writing that practical completion of the Works has been achieved, the Sub-Contractor must give the Contractor a final Claim (the "**Final Claim**"). The Final Claim must include all amounts which the Sub-Contractor requests from the Contractor under the Sub-Contract or otherwise in respect of any fact, matter or thing arising out of or in connection with the Sub-Contract or the Sub-Contract Works which occurred prior to the date of practical completion of the Works.
- 18.2 The Due Date of any payment due to the Sub-Contractor in respect of its Final Claim under this Clause 18 shall be 45 Days of the expiry of the Defects Liability Period or the date of release of the second half of the retention in accordance with Clause 14A.3, whichever is later. The Contractor shall give a Payment Notice to the Sub-Contractor not later than 5 Days of the Due Date specifying the amount which the Contractor considers to be or to have been due to the Sub-Contractor at the Due Date and how that amount has been calculated and the Final Date for Payment shall be 45 Days after the Due Date.
- 18.3 After the date for submitting the Final Claim has passed, the Sub-Contractor releases (and, for the avoidance of doubt, shall be deemed to have released) the Contractor from any Claim in respect of any fact, matter or thing arising out of or in connection with the Sub-Contract or the Sub-Contract Works which occurred prior to the date of practical completion of the Works except where:

18.3.1 it has given the Contractor a Final Claim within the time required; and

18.3.2 the Claim is included in the Final Claim.

The Final Claim is in addition to the other notices that the Sub-Contractor must give to the Contractor under the Sub-Contract in order to preserve its entitlements thereunder.

19. Assignment and Sub-letting

- 19.1 The Sub-Contractor shall not assign the Sub-Contract. The Sub-Contractor may sub-let any of its obligations under the Sub-Contract if the Contractor so agrees in writing (such consent not to be unreasonably withheld or delayed) and shall supply such copies of its sub-subcontract(s) as the Contractor may require.
- 19.2 The Contractor's agreement to the sub-letting of any of the Sub-Contractor's obligations under the Sub-Contract shall not relieve the Sub-Contractor of any of its obligations under the Sub-Contract.

20. Indemnity and Insurance

- 20.1 The Sub-Contractor shall indemnify the Contractor against any loss, damage, liability, cost or claim suffered by or brought against the Contractor arising from the carrying out of the Sub-Contract Works under the Sub-Contract whether in respect of injuries to or death of any person including employees of the Sub-Contractor or of loss of or damage to any property or in the performance by the Sub-Contractor of its obligations under the Sub-Contract or resulting from any Defect in the Sub-Contract Works provided that such loss, damage, liability, cost or claim does not arise from any negligence on the part of the Contractor, its employees, servants or agents.
- 20.2 The Sub-Contractor shall at all times during the performance of its obligations under the Sub-Contract maintain adequate policies of insurance in respect of damage to or loss of (whether in whole or in part) the Sub-Contract Works whilst the property thereof rests with the Sub-Contractor, any injury or death of any person (including employees of the Sub-Contractor and the Contractor), and loss of or damage arising from the performance of the Sub-Contractor's obligations under the Sub-Contract for the minimum amounts notified to the Sub-Contractor by the Contractor on an each and every claim basis. The Sub-Contractor shall produce to the Contractor when requested to do so the relevant policies of insurance and the receipts for current premiums.
- 20.3 The Sub-Contractor confirms that it has in place professional indemnity insurance and/or product liability insurance in relation to the Sub-Contract Works and/or the Equipment for the minimum amount(s) stipulated by the Contractor on an each and every claim basis and that such insurance shall be maintained for a period of 12 years from practical completion of the Works.

21. Determination of Sub-Contractor's Employment

- 21.1 The Contractor may at will, and for any reason whatsoever, determine the employment of the Sub-Contractor under the Sub-Contract by giving the Sub-Contractor not less than 14 Days' prior written notice of its intention to do so.
- 21.2 In the event that the employment of the Sub-Contractor under the Sub-Contract is determined under Clause 21.1, the Contractor shall be liable to the Sub-Contractor for all sums that may be due or may accrue due in respect of the Sub-Contract Works up to the expiry of that 14 Day period. The Contractor shall have no further liability to the Sub-Contractor whether for loss of profit or for any other loss the Sub-Contractor may incur as a result of the determination.
- 21.2A The Contractor may determine the employment of the Sub-Contractor under Clause 21.1 where the sole reason for doing so is to give the Sub-Contract Works not completed by the Sub-Contractor to another sub-contractor to carry out and complete, in which case the Contractor shall, in addition to any sum(s) referred to in Clause 21.2, be liable for the Sub-Contractor's reasonable and ascertained loss of profit resulting from such determination.
- 21.3 The Contractor may by notice in writing sent by special post or recorded delivery forthwith determine the employment of the Sub-Contractor under the Sub-Contract without any liability to the Sub-Contractor if the Sub-Contractor:
- 21.3.1 without reasonable cause suspends the carrying out of the Sub-Contract Works before the Date for Completion and fails to resume the carrying out of the Sub-Contract Works within 7 Days of receiving a written request to do so from the Contractor;
 - 21.3.2 fails to progress the Sub-Contract Works regularly and diligently having regard to the Date for Completion and such failure continues for a period of 7 Days of receiving a written notice of such failure from the Contractor;
 - 21.3.3 refuses to or persistently neglects after receiving written notice from the Contractor to remove defective work or improper Equipment as a result of which the Works are materially affected;
 - 21.3.4 supplies or delivers to the Site Equipment that fails to satisfy any of the conditions of the Sub-Contract relating to specification, quality, quantity and workmanship and/or design (in these circumstances, the Contractor shall be entitled to reject the Equipment supplied or delivered to the Site by or on behalf of the Sub-Contractor);
 - 21.3.5 breaches or fails to materially comply with the CDM Regulations, any applicable Health & Safety Legislation or with the Contractor's Health & Safety Rules;
 - 21.3.6 becomes insolvent which term shall have the meaning given to it by Section 113 of the Act; or
 - 21.3.7 in relation to the Sub-Contract or any other contract between the Contractor and the Sub-Contractor, commits an act of fraud or an offence under the Bribery Act 2010.
- 21.4 In the event of the Sub-Contractor's employment being determined in accordance with Clause 21.3, no further sum shall become due to the Sub-Contractor under the Sub-Contract other than any amount that may become due to the Sub-Contractor in accordance with Clause 21.6 and the Contractor need not pay any sum that has already become due either:
- 21.4.1 insofar as the Contractor has given a pay less notice in the form and with the details required by Clause 14.9; or
 - 21.4.2 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 that term given by Section 113 of the Act or where the Sub-Contractor enters into an arrangement, compromise or composition in satisfaction of its debts

(excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction), and notwithstanding that the Contractor did not give such notice.

21.5 In the event of the Sub-Contractor's employment being determined in accordance with Clause 21.3, the Contractor may employ another sub-contractor to complete the Sub-Contract Works the Sub-Contractor had not completed at the date of determination of its employment under the Sub-Contract and recover from the Sub-Contractor all additional costs and/or damages incurred by the Contractor as a consequence of such employment and the determination. The Contractor may also take possession of all Equipment, the Sub-Contractor's equipment and other things whatsoever brought onto the Site by or on behalf of the Sub-Contractor and may use them for the purpose of completing the Sub-Contract Works and maintaining them until practical completion of the Works. The Contractor may, if it thinks fit, sell any of them and apply the proceeds in or towards the satisfaction of monies otherwise due to the Contractor, if any.

21.6 The due date of any further payment due to the Sub-Contractor (or of any payment which is ascertained by the Contractor to be due from the Sub-Contractor to the Contractor), will be 3 months from completion of the Sub-Contract Works by the Contractor or by another sub-contractor on the Contractor's behalf and the final date for payment of any sum which is due from the Contractor to the Sub-Contractor, or of any sum which is due from the Sub-Contractor to the Contractor, shall be 28 Days thereafter.

22. Dispute Resolution

22.1 If at any time a dispute or difference shall arise between the parties under the Sub-Contract relating to the Sub-Contract Works or the Sub-Contract, either party shall have the right to give the other written notice of its intention to refer that dispute or difference to adjudication. An application is to be made to the Royal Institution of Chartered Surveyors for the appointment of an adjudicator and the adjudication shall be conducted in accordance with the Statutory Scheme for Construction Contracts (England and Wales) Regulations 1998.

23. Asylum and Immigration Act 1996

23.1 The Sub-Contractor shall indemnify the Contractor against any expense, liability, loss, claim or proceedings whatsoever incurred or made against the Contractor arising from any failure by the Sub-Contractor to comply with the Asylum and Immigration Act 1996 or with any further Asylum and Immigration Rules or Regulations which may be issued and/or enforced by the Home Office from time to time.

24. Confidentiality

24.1 The Sub-Contractor shall not disclose any information provided to it by the Contractor to any third person save for the purposes of making a declaration to its insurers or obtaining legal or other professional advice on the terms of the Sub-Contract, including the Conditions. The Sub-Contractor shall not for the purposes of publication take nor permit to be taken any visual records nor make any other publication in connection with the Works unless written permission has first been obtained from the Contractor.

25. Third Party Rights

25.1 Any person who is not a party to the Sub-Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Sub-Contract provided always that this shall not affect any right or remedy of such person which exists or is available apart from that Act.

26. Entire Agreement

26.1 Unless expressly provided otherwise herein, the Sub-Contract constitutes the entire agreement between the parties in connection with the subject matter hereof and supersedes all prior representations, communications, negotiations, arrangements, understandings and agreements (whether oral, written or by electronic transfer) concerning the same.

27. Severability

27.1 If for any reason any of the Conditions shall be held to be invalid, unlawful or unenforceable to any extent, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of the remaining Conditions nor affect the validity, legality or enforceability of the remaining part of the Condition in question.

28. Effective Date

28.1 Subject to Clause 28.2, the Sub-Contract shall take effect (hereinafter referred to as the "**Effective Date**"), on the date on which the Contractor issues the Order to the Sub-Contractor.

28.2 If the Sub-Contractor has carried out any of its obligations under the Sub-Contract prior to the Effective Date (as defined in Clause 28.1), the same shall be deemed to have been carried out pursuant to and subject to the Sub-Contract.

29. Amendments

29.1 No amendment to or modification of the Order or of the Conditions shall be valid or binding on either party unless it is made in writing, refers expressly to this Clause 29.1 and is executed by the parties concerned or by their duly authorised representatives.

30. Jurisdiction

30.1 The construction, validity and performance of the parties' respective obligations under the Sub-Contract shall be governed by and construed in accordance with English law and, subject to any right each of the parties has to refer a dispute or difference arising under the Sub-Contract to adjudication, the parties hereby submit to the exclusive jurisdiction of the courts of England.

Payment Schedule: **[SAMPLE ONLY]**

Interim Payment No.	Sub-Contract Valuation Date	Sub-Contract Due Date for Payment
1		
2		
3		
4		
5		
6		
7		

In the event that the Sub-Contract Works are not complete by the final Sub-Contract Valuation Date stated in the above Payment Schedule:

- (a) subsequent interim payments shall thereafter be due on the final Working Day of each subsequent month up to and including the month following completion of the Sub-Contract Works;
- (b) the Sub-Contractor shall submit an Application to the Contractor not later than 7 Days before the due date for payment of each and every one of the interim payments referred to in (a) above; and
- (c) the final date for payment of each interim payment referred to in (a) above shall be either the date of expiry of the period between each "Sub-Contract Due Date" and each "Final Date for Payment" stated in the above Payment Schedule or 45 Days after its due date for payment, whichever is greater.