

QUARTZELEC LTD TERMS AND CONDITIONS OF PURCHASE - SERVICES & SUBCONTRACTORS

1. **Definitions**
- Act:** Housing Grants, Construction & Regeneration Act 1996 (as amended)
- CDM Regulations:** The Construction (Design and Management) Regulations 2015
- Commencement Date:** as set out in the Order
- Contractor:** Quartzelec Limited
- Contractor's All Risk Insurance:** means a policy of insurance which covers the Sub-Contractor's liability for the Sub-Contract Works with such limits as set out in the Order
- Contractor's Consultants:** means the consultants referred to in the Order who may be employed by the Contractor
- Contractor's Safety Policy:** any health and safety policy/note/memorandum from time to time in force in the Contractor's business.
- Employer's Consultants:** means the consultants referred to in the Order who may be employed by the Employer
- Employer's Liability Insurance:** means a policy of insurance which covers the Sub-Contractor's liability as an employer with such limits as set out in the Order
- Final Date for Payment:** as set out in the Order or as otherwise stated in clause 13
- First Retention Release-Application Date:** as set out in the Order or will otherwise be on Practical Completion plus 3 months
- Force Majeure Event:** means any circumstance not within a party's reasonable control including but without limitation to acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, any law or any action taken by a government or public authority, or failing to grant a necessary licence or consent, collapse of buildings, fire, explosion or accident and interruption or failure of utility service.
- Free Issue Goods:** all materials (including equipment, components, tooling, patterns, dies, moulds, jigs and fixtures and the like) which have been provided to the Sub Contractor free of charge.
- Goods:** all goods and/or products ordered directly by the Contractor or by the Sub Contractor to be used in connection with the performance by the Sub-Contractor of his obligations under this Sub-Contract.
- Interest Rate:** as defined in Clause 13.32 of these Terms and Conditions.
- Liquidated Damages:** as set out in the Order or otherwise as in the Main Contract
- Main Contract:** as set out in the Order
- Main Contract Completion Date:** as set out in the Main Contract
- Main Contract Choice of Law:** as set out in the Main Contract
- Main Contract Date:** as set out in the Main Contract
- Main Contract Documents:** documents forming part of the Main Contract.
- Main Contract Employer:** as set out in the Main Contract
- Materials:** all materials ordered directly by the Contractor or by the Sub-Contractor [and any Free Issue Goods] to be used in connection with the Sub-Contract Works.
- Order:** The sub-contract order between 1) Quartzelec Limited and 2) the Sub-Contractor
- Payment Due Date:** as set out in the Order or as otherwise stated in clause 13
- Period for Completion:** as set out in the Order.
- Place of Delivery:** shall mean the Site unless otherwise stated in the Order or instructed by the Contractor
- Practical Completion:** as set out in the Main Contract
- Principal Contractor :** as such term is defined within the Construction (Design and Management) Regulations 2015 ("the CDM Regulations") herein known as the Contractor or such other person who is identified to the Sub-Contractor in the Order.
- Principal Contractor's Safety Policy:** the Contractor's terms and conditions from time to time in force.
- Professional Indemnity Insurance:** means a policy of insurance which covers the Sub-Contractor's liability for the provision of services with such limits as set out in the Order
- Public Liability Insurance:** means a policy of insurance which covers the Sub-Contractor's liability for public or other third party loss with such limits as set out as defined in the Order
- Relevant Event** The following are the relevant events:-
- (a) Any variation pursuant to **Clause 7**;
 - (b) Any instruction for the carrying out of any test or investigation of work, materials or goods, unless the inspection or test shows that the work, materials or goods are not in accordance with the Sub-Contract;
 - (c) The deferment or suspension of giving of possession of the Site or any part thereof;
 - (d) Any impediment, prevention or default, whether by act or omission by the Contractor, except to the extent caused or contributed to by any default, whether by act or omission of the Sub-Contractor or any of its authorised agents;
 - (e) Force majeure.
- Second Retention Release Application Date:** as set out in the Order.

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Specification:	the detailed, exact statements of particulars describing the prescribed materials, dimensions and quality of work for the Sub-Contract Works.
Sub-Contract:	means the sub-contract incorporating both the Order, such documents referred to therein and the Terms and Conditions herein.
Sub-Contractor:	as set out in the Order.
Sub-Contractor's Documents:	means the documents supplied by the Sub-Contractor in advance of the formation of the Sub-Contract
Sub-Contract Sum:	as set out in the Order
Sub-Contract Works:	as set out in the Order
Site:	as set out in the Order
Works:	the works to be carried out pursuant to the Main Contract

2. General

- 2.1 All defined terms shall have the meaning assigned to them on the face of the Order or to the extent that they are not expressly defined in the Order then they shall be defined in clause 1 of these Terms and Conditions or shall have the meaning assigned to them in the Main Contract.
- 2.2 The Sub-Contractor will upon and subject to the Terms and Conditions and documents referred to in this Order provide everything which is necessary for the proper and timeous execution and completion of the Sub-Contract Works in accordance with all drawings, specifications, requirements and/or instructions supplied to the Sub-Contractor and will deliver up the Sub-Contract Works to the Contractor complete in every respect to the satisfaction of the Contractor and the Employer.

3. Formation of Contract

- 3.1 The Sub-Contractor's Documents constitute an offer by the Sub-Contractor to enter into the Sub-Contract Works on these Terms and Conditions.
- 3.2 A legally binding contract will only be formed between the Contractor and the Sub-Contractor when either:
- (a) the Contractor has written the details of order on the Order together with a sub-contract order number; or
 - (b) (if earlier) commencement of design, manufacture, delivery, start of invoicing or supply of the goods or services which implies acceptance of the Order by the Sub-Contractor of the Sub-Contract under these Terms and Conditions.
- 3.3 A read receipt or delivery receipt of an email will not amount to written confirmation of the Contractor's acceptance of the Sub-Contractor's Documents.
- 3.4 The Contractor may refuse to accept any Sub-Contractor's Documents provided by the Sub-Contractor and will have no liability to anyone else in such circumstances.
- 3.5 These Terms and Conditions apply to the Contractor to the exclusion of any other terms that the Sub-Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.6 Any failure by the Sub-Contractor to formally execute and return the Order shall have no effect or prejudice on the existence of the Sub-Contract which shall come into effect in accordance with clause 3.2. Payments due under the Order will be made only once the fully executed order has been returned to the Contractor.

4. Main Contract

- 4.1 The Sub-Contractor is deemed to have notice of all of the Main Contract and Main Contract Documents (save for the Contractor's prices therein) and shall comply with any of the same which may in any way be relevant to the Sub-Contract Works (save for those which have been expressly amended in this Sub-Contract) as though the same were fully set out herein and the Contractor was the Employer and the Sub-Contractor was the Contractor.
- 4.2 The Sub-Contractor shall indemnify the Contractor against all claims, demands, proceedings, damages, costs, charges, losses and expenses whatsoever suffered or incurred by the Contractor arising under the Main Contract consequent upon the Sub-Contractor's failure to comply whether in whole or in part with the Main Contract save to the extent that such claims, demands, proceedings, damages, costs, charges, losses and expenses are occasioned by any act of negligence or default of the Contractor.
- 4.3 Notwithstanding anything else in the Sub-Contract the Sub-Contractor shall carry out the Sub-Contract Works so as:
- (a) to enable the Contractor to meet in full its obligations under or in connection with the Main Contract (including without limitation its obligations as to time and completion);
 - (b) not to put the Contractor in breach of either the Main Contract or other sub-contracts; and
 - (c) to enable the Contractor to carry out its obligations under or in connection with the Main Contract in an efficient and economic manner.
- 4.4 In the event of any ambiguity or inconsistency between the Sub-Contract and the conditions in the Main Contract (including in relation to "Relevant Events" as set out in Clause 9.7), or any ambiguity or inconsistency within the Sub-Contract, the Sub-Contractor shall, as soon as it becomes aware of the same, refer it to the Contractor who shall decide in its absolute discretion which terms prevail and the Sub-Contractor shall comply with such decision without entitlement to any additional costs, loss or expense arising therefrom.
- 4.5 Whenever the Contractor is required by the terms of the Main Contract to give any return, account, valuation, estimate, request for payment, drawings, calculations, documentation or notice, the Sub-Contractor shall in relation to the Sub-Contract Works give such documents or information in writing to the Contractor as will enable the Contractor to comply with such terms of the Main Contract and shall do so in sufficient time to enable the Contractor to comply with such terms punctually.
- 4.6 If by reason of any act, omission or breach by the Sub-Contractor of the provisions of this Sub-Contract the Contractor is prevented or delayed (whether wholly or partly) from recovering any sum under the Main Contract, then without prejudice to any other remedy of the Contractor for such act, omission or breach the Contractor may deduct such sum (or in the case of delay interest thereon for the period of delay at the rate from time to time prescribed to be carried by Judgments in the Queen's Bench

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Division of the High Court of Justice) from monies otherwise due to the Sub-Contractor under this Sub-Contract but only to the extent that such prevention or delay is caused by the negligence or breach of the Sub-Contractor.

5. Specification

- 5.1 The quantity, quality and description of any Goods and/or services shall be as specified in the Order and/or in any Specification provided by the Contractor to the Sub-Contractor or produced by the Sub-Contractor for the Contractor and/or as otherwise agreed in writing between the parties.
- 5.2 The Sub-Contractor shall be responsible for all mistakes, inaccuracies, discrepancies and omissions in all drawings, detail, documents and information provided by it. Without prejudice to any express or implied warranties or conditions, the Sub-Contractor / warrants that the Sub-Contract Works will comply with any performance specification or requirement contained or referred to in the Order.
- 5.3 Any Specification, moulds, dies, Materials and/or equipment together with the copyright, design rights and/or any other intellectual property rights in all Specifications, data and Materials specifically produced and/or used by the Contractor for the Employer in connection with the Sub-Contract, shall be the exclusive property of the Contractor, unless such data or Materials are provided to the Contractor by the Sub-Contractor.
- 5.4 The Sub-Contractor shall check and ensure that any Specification is accurate and adequate for the provision of the Sub-Contract Works and the Contractor shall have no liability for any losses arising from or in connection with any errors in any Specification or details provided by and/or approved by the Contractor or in any delay by the Contractor in providing and/or approving the same.
- 5.5 All information and know-how including drawings, specifications and other data provided by the Contractor in connection with the Sub-Contract shall remain at all times the Contractor's property and may be used by the Sub-Contractor only for the purpose of performing the contract. The Sub-Contractor shall keep the information and know-how confidential and shall return them to the Contractor upon request.
- 5.6 The Sub-Contractor shall indemnify the Contractor (except in respect of designs provided by the Contractor) against all claims arising from infringement of intellectual property rights in relation to the Sub-Contract Works which are the subject of the Sub-Contract.
- 5.7 The Sub-Contractor shall neither quote nor supply parts made with the Contractor's tools or materials, or to the Contractor's patterns, drawings, specifications or designs, to any third party without the Contractor's prior written consent.
- 5.8 Any inventions, patents, copyrights, design rights and other intellectual property rights arising from the execution of the Sub-Contract shall become the property of the Contractor and the Sub-Contractor shall not disclose the same to any third party. The Sub-Contractor shall do all things and execute such documents as may be necessary to assign such property to the Contractor.
- 5.9 To the extent that any Goods are to be manufactured in accordance with a Specification supplied by the Sub-Contractor, the Sub-Contractor shall indemnify the Contractor against all losses (including all legal and other professional costs and expenses) suffered or incurred by the Contractor in connection with any claim made against the Contractor for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Contractor's use of the Specification.
- 5.10 The Sub-Contract Works shall be performed by appropriately qualified and trained personnel with due care and diligence to such high standard of quality as it is reasonable for the Contractor to expect in all the circumstances.
- 5.11 If the Contractor's performance of any of its obligations under the Main Contract is prevented or delayed by any act or omission by the Sub-Contractor or failure by the Sub-Contractor to perform any relevant obligation (**Sub-Contractor Default**):
- (a) The Contractor shall without limiting its other rights or remedies have the right to suspend delivery of the goods and/or performance of the services until the Sub-Contractor remedies the Sub-Contractor Default, and to rely on the Sub-Contractor Default to relieve it from the performance of any of its obligations to the extent the Sub-Contractor Default prevents or delays the Contractor's performance of any of its obligations;
 - (b) The Contractor shall not be liable for any costs or losses sustained or incurred by the Sub-Contractor arising directly or indirectly from the Sub-Contractor's failure or delay to perform any of its obligations as set out in this Clause 5.11; and
 - (c) the Sub-Contractor shall reimburse the Contractor on written demand for any losses sustained or incurred by the Contractor arising directly or indirectly from the Sub-Contractor Default.
- 5.12 The Sub-Contractor shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the services in relation to the Sub-Contract Works under English law, and it shall be the responsibility of the Sub-Contractor to ensure the Specification and the Order provide sufficient details to the Contractor to ensure any Goods and services provided in connection with the Sub-Contract Works are compliant with all applicable regulations and other legal requirements in the country of destination requested by the Contractor.

6. Sub-Contract Works

- 6.1 The Sub-Contractor is deemed to have visited the Site and satisfied itself both as to the nature and content of the Sub-Contract Works and the conditions under which they are to be carried out. No claim for any remedy whatsoever will be allowed which is based upon either lack of knowledge of the condition or efficacy of other works carried out, being carried out or to be carried out on the Site. The Sub-Contractor will ensure that the Sub-Contract Works are in every respect properly and effectively co-ordinated and compatible with the works to be provided under the Main Contract.
- 6.2 Where or to the extent that the Sub-Contract Works and any addition or variation to them include design work or the Sub-Contractor shall have designed any part of the Sub-Contract Works or shall have selected Materials for incorporation therein, the Sub-Contractor shall ensure that such design and such Materials are safe, suitable and fit for their intended purpose or purposes.
- 6.3 No approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the Employer and/or any Employer's Consultants or the Contractor, their agents, advisers or servants shall, nor any enquiry or inspection which the same may make or have carried out for its benefit or on its behalf will, operate to reduce, extinguish, exclude, limit or modify the Sub-Contractor's obligation to fulfil its duties and obligations under this Sub-Contract unless it is in writing, refers to this Sub-Contract and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified and is signed by the Contractor.
- 6.4 The Sub-Contractor shall in order to facilitate the timely and efficient completion of the Sub-Contract Works assist, liaise and co-operate with the Contractor in order to enable the Contractor to:

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- (a) negotiate or communicate with the Employer and/or Employer's Consultants in relation to the execution of the Sub-Contract Works;
 - (b) obtain any necessary permissions or approvals from government or statutory authorities in connection with the Sub-Contract Works;
 - (c) prepare technical data and select materials for the Sub-Contract Works so that the Contractor may report to the Employer and/or Employer's Consultants with regard to the execution of the Works; and
 - (d) co-ordinate with other sub-contractors employed by the Contractor in programming the Sub-Contract Works.
- 6.5 Such information as referred to in Clause 6.4 shall not form part of this Sub-Contract nor shall it in any way be construed as being binding on the Contractor. The Contractor's approval of any such information submitted to it shall not relieve the Sub-Contractor of its responsibility under the Sub-Contract for the sufficiency or accuracy thereof, and the Sub-Contractor hereby acknowledges its responsibilities for reading and checking all documents comprising or referred to in the Sub-Contract and for bringing to the Contractor's attention any ambiguities or inconsistencies therein.
- 6.6 In respect of intellectual property rights the parties agree the following:
- (a) In consideration of the payment of £1 (being included within the Sub-Contract Sum) by the Contractor to the Sub-Contractor (receipt of which is hereby acknowledged), the Sub-Contractor assigns to the Contractor with full title guarantee all the copyright in the drawings, details, plans and other documents of any nature whatsoever and any designs contained in them which have been or are hereafter provided by the Sub-Contractor in the course of performing its obligations under the Sub-Contract (the "Documents") and (by way of present assignment of the future copyright) all such future copyright.
 - (b) The Sub-Contractor agrees to execute such further documents, and take such actions and do such things, as may be reasonably requested by the Contractor to give full effect to the terms of **Clause 6.6(a)** (including assisting the Contractor in the resolution of any question concerning the copyright in the Sub-Contract Works), and to secure the full right, title and interest of the Contractor in the Documents.
 - (c) The Sub-Contractor warrants that the Documents are its original work and that they have not been copied wholly or substantially from any other work or material, and that the exercise by the Contractor of the rights assigned to it will not infringe the rights of any third party.
 - (d) The Sub-Contractor agrees to indemnify and to keep the Contractor indemnified from and against all costs (including the costs of enforcement), expenses, liabilities, injuries, losses (which includes direct, indirect and consequential loss and loss of profit), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Contractor incurs or suffers as a consequence of a direct or indirect breach of any of its warranties in **Clause 6.6(c)** or out of any claims by a third party based on any facts which, if substantiated, would constitute such a breach, and at the request of the Contractor shall provide all reasonable assistance as the Contractor may request to enable the Contractor to resist any action, claim or proceedings brought against the Contractor as a consequence of any such breach.
 - (e) The Sub-Contractor waives all its moral rights arising from the Sub-Contract Works pursuant to section 78 of the Copyright, Designs and Patents Act 1988 or otherwise insofar as it is lawful to do so.
 - (f) The Sub-Contractor is hereby granted an irrevocable, non-exclusive, royalty free licence to copy and use the Documents for the purpose of carrying out the Sub-Contract Works.
- 6.7 The Sub-Contractor shall appoint sufficient and suitably qualified site staff.
- 6.8 The Sub-Contractor shall ensure that all Goods and Materials to be installed in the Sub-Contract Works:
- (a) are ordered in sufficient time to maintain the progress of the Sub-Contract Works; and
 - (b) comply with **Clause 6.2** and the specification and approved drawings; and
 - (c) are checked on arrival and any damage or discrepancies on Free Issue Goods deliveries are reported to the Contractor's site staff immediately; and
 - (d) are unloaded, checked, stored and protected following the check under **clause 6.8(c)**
- 6.9 The Contractor and any properly interested third party authorised by the Contractor shall be entitled to inspect or test the Goods or Materials at any reasonable time with no extra charge to the Contractor.
- 6.10 The Sub-Contractor shall give at least five working days' advance notice in writing of tests, and the Contractor and any properly interested third party authorised by the Contractor shall be entitled to attend the tests. The Sub-Contractor shall provide the Contractor with such test certificates as the Contractor may reasonably require.
- 6.11 Inspection and testing in accordance with this clause shall not relieve the Sub-Contractor of any liability nor imply acceptance of the Goods or Materials.
- 6.12 The Contractor shall advise the Sub-Contractor of any loss or damage in transit within the following time limits:
- (a) Partial loss or damage shall be advised within 7 days of the date of delivery of a consignment or part consignment.
 - (b) Non-delivery of the whole consignment shall be advised within 14 days of Contractor's receipt of notice of despatch.
- 6.13 Goods and Materials shall conform to the requirements of the Sub-Contract and shall be fit for purpose. They shall be made or performed in accordance with good engineering practice and all applicable standards and legislation. Goods and Materials shall be delivered complete with all instructions, warnings and other data necessary for safe and proper operation. Goods or Materials which do not comply with all of the above shall be considered to be defective.
- 6.14 If for any reason the Sub-Contractor is uncertain as to whether the Goods or Materials to be supplied by it will comply with any of the above, it must promptly and before despatch inform the Contractor in writing with full details of the possible noncompliance for consideration. Written acceptance or rejection of the Sub-Contractor's application will then be provided by the Contractor in as timely a manner as possible.
- 6.15 The Sub-Contractor shall give 48 hours written notice to the Contractor prior to delivery of all Goods or Materials to Site or Place of Delivery.
- 6.16 The Contractor may reject the Goods or Materials within sixty days of delivery if they are defective. Rejected Goods shall be collected by the Sub-Contractor promptly at its own cost. Upon rejection of any Goods or Materials, the Contractor shall have the

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right to require the Sub-Contractor to replace them within such time as may be stipulated by the Contractor or terminate the Sub-Contractor's employment without prejudice to its other rights and remedies.

- 6.17 Upon request by the Contractor the Sub-Contractor shall at its own expense promptly, or in any case within 10 working days, repair or replace any Goods or Materials which are discovered to be defective within 36 months of delivery or 24 months of putting into commercial use, whichever shall occur first. Repairs and replacements shall themselves be subject to the foregoing obligations from the date of delivery, re-installation or passing of tests (if any) whichever is appropriate after repair or replacement.
- 6.18 If the Sub-Contractor fails to remedy any defect as above provided, the Sub-Contractor shall return any money paid by the Contractor in respect of the defective items and the Contractor shall be entitled to terminate the Sub-Contractor's employment without prejudice to its other rights and remedies.
- Free-issue Goods and Tooling***
- 6.19 Where tooling (including patterns, dies, moulds, jigs and fixtures and the like) is manufactured or acquired by the Sub-Contractor specially for the purpose of the Sub-Contract, title to it shall pass to the Contractor upon its creation or acquisition. The Sub-Contractor shall deliver up such tooling to the Contractor on demand.
- 6.20 Where the Contractor for the purpose of the Sub-Contract issues Free Issue Goods to the Sub-Contractor, such Free Issue Goods shall be and remain the property of the Contractor, the Sub-Contractor shall maintain all such Free Issue Goods in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Sub-Contractor shall use such Free Issue Goods solely in connection with the Sub-Contract. Any surplus materials shall be disposed of at the Contractor's discretion. Damage to or waste of such arising from act, omission or breach by the Sub-Contractor shall be made good at the Sub-Contractor's expense. Without prejudice to any other rights of the Contractor, the Sub-Contractor shall deliver up such, whether further processed by the Sub-Contractor or not, to the Contractor on demand.
- 6.21 If any of the Goods or Materials to be supplied under the Sub-Contract contain any hazardous substances or require any special precautions to be taken to ensure safety in handling, transport, storage or use, the Sub-Contractor shall prior to their delivery furnish to the Contractor written details of the nature of those substances and the precautions to be taken and shall ensure that before despatch appropriate instructions and warnings are clearly and prominently marked on the Goods or Materials or securely attached to them and on any containers into which they are packed.
- 6.22 In particular (but without limitation) the Sub-Contractor shall provide to the Contractor in writing all such data, instructions and warnings as are required to comply with applicable legislation relating to health and safety and shall indemnify the Contractor against any and all liabilities, claims and expenses which may arise as a result of the Sub-Contractor's failure to do so.
- 6.23 The Sub-Contractor shall ensure that the Sub-Contract Works and any Materials on Site are adequately protected until the Main Contract Completion Date.
- 6.24 The Sub-Contract and the subject matter thereof shall be treated as confidential between the Contractor and Sub-Contractor and shall not be disclosed by the Sub-Contractor or any Sub-Contractor or assignee of the Sub-Contractor or to any third party or used by the Sub-Contractor or any Sub-Contractor or assignee of the Sub-Contractor for advertisement display or publication without the Contractor's prior consent in writing.
- 7. Variations**
- 7.1 The Contractor may, without invalidating the Sub-Contract, instruct a variation to the Sub-Contract Works.
- 7.2 The Sub-Contractor shall accept any such variation requested by the Contractor. The Sub-Contract Sum shall be adjusted to reflect the variation having regard to the rates and prices used in the Sub-Contract or, where these are not relevant, to what is fair and reasonable.
- 7.3 Neither party shall be bound by any variation to the Sub-Contract unless and until it is confirmed by an official order amendment issued by the Contractor.
- 8. Commencement of Sub-Contract Works**
- 8.1 Two weeks before the Commencement Date of the Sub-Contract Works, or at such other time as the Contractor may specify, the Sub-Contractor shall supply to the Contractor the following information:
- (a) the order in which the Sub-Contractor intends to proceed with the Sub-Contract Works and the activities included therein;
 - (b) the earliest starting date for each activity;
 - (c) a list of activities which will be critical to progress;
 - (d) the method by which the Sub-Contractor intends to carry out the Sub-Contract Works in the form of method statements;
 - (e) a risk assessment and COSHH assessments and safety data sheets in respect of the Sub-Contract Works;
 - (f) a list of any drawings which the Sub-Contractor intends or is required to provide;
 - (g) a copy of the Sub-Contractor's safety policy and the name of the appointed safety officer; and
 - (h) any forms requested in order to add the Supplier / Sub-Contractor to the Contractor's finance system;
- 8.2 The information referred to in Clause 8.1 shall not form part of the Sub-Contract nor shall it in any way be construed as being binding on the Contractor. The Contractor's approval of any such information submitted to it shall not relieve the Sub-Contractor of its responsibility under the Sub-Contract for the sufficiency or accuracy thereof.
- 8.3 The Sub-Contractor shall commence the Sub-Contract Works on or as soon as reasonably possible after the Commencement Date of the Sub-Contract Works or following the Contractor's instructions to commence the Sub-Contract Works and shall thereafter proceed with the same without delay.
- 8.4 The Sub-Contract Works shall be carried out and completed within the Period for Completion and are in any event (but without prejudice to the Period for Completion) to be carried out diligently and in such manner, order and time as the Contractor may direct in accordance with the Main Contract programme and at all times having regard to the progress of the Works and so as to ensure completion of the Works or any part thereof by the date or dates for completion of the Works under the Main Contract.

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- 8.5 The Contractor may at its discretion issue an instruction to advance or delay the Commencement Date of the Sub-Contract Works if it is expedient so to do and the Sub-Contractor shall not be entitled to any increase in the Sub-Contract Sum or any other loss and expense as a result.
- 8.6 Any instructions, drawings, levels or other information relating to the Sub-Contract Works or the Works under the Main Contract which are requested from the Sub-Contractor must be provided in due time so as not to cause any disruption or delay to the Works under the Main Contract.
- 8.7 The Sub-Contractor must ensure that the Sub-Contract Works undertaken cause the minimum of disturbance or disruption to the Contractor or to any other sub-contractor of the Contractor or to others.
- 8.8 All surplus materials/waste arising from the Sub-Contract Works shall be cleared from the Site by the Sub-Contractor regularly during the course of the Sub-Contract Works and in any event at the request of the Contractor and immediately on completion of the Sub-Contract Works. In the event of the Sub-Contractor failing to meet or comply with this condition, the Contractor may undertake to dispose of such materials/waste and set off the cost of carrying out such work against sums which would otherwise be due to the Sub-Contractor.
- 8.9 In so far as the Sub-Contractor is in breach of the obligations under this clause, and in addition to the entitlement to terminate employment under these Terms and Conditions, the Contractor will be entitled upon written notice to the Sub-Contractor to complete such element of Sub-Contract Works that remain outstanding and to claim any costs of undertaking such Sub-Contract Works from the Sub-Contractor.
9. **Delay and Loss & Expense**
- 9.1 The provisions of this **Clause 9** shall be conditional upon the Sub-Contractor using constantly its best endeavours to prevent delay in the progress of the Sub-Contract Works or any part thereof, however caused, and to preventing any such delay resulting in the completion of the Sub-Contract Works being delayed or further delayed, beyond the Period for Completion.
- 9.2 The Sub-Contractor shall furnish such programmes of manufacture and delivery as the Contractor may reasonably require. If the Sub-Contract includes the carrying out of tests on the Goods or Materials after their receipt by the Contractor, then delivery shall not be deemed complete until such tests have been passed to the unconditional satisfaction of the Contractor.
- 9.3 Failure by the Sub-Contractor so to notify any likely delay shall entitle the Contractor to terminate without liability all or part of the employment and/or to compensation for any losses resulting from the failure and delay. If any delay so notified does or is likely to exceed 30 days, the Contractor shall be entitled to terminate without liability all or part of the Sub-Contractor's employment and/or (unless the delay is due to Force Majeure) to compensation for any resulting losses.
- 9.4 If, and whenever it becomes reasonably apparent that the commencement, progress or completion of the Sub-Contract Works, or any part thereof, is being or is likely to be delayed, the Sub-Contractor shall forthwith give written notice to the Contractor of the material circumstances, including the cause or causes of the delay and shall identify in such notice any matter which in its opinion is a Relevant Event.
- 9.5 In respect of each and every matter which is a Relevant Event and identified in the notice given by the Sub-Contractor pursuant to **Clause 9.4**, the Sub-Contractor shall in writing as soon as possible after such notice, give particulars of the expected effects thereof and estimate the extent, if any, of the expected delay to the Period for Completion and any anticipated effect which such delay may have on the Works, beyond the Period for Completion or any previously extended Period for Completion which results from such delay.
- 9.6 If, on receipt of any notice, particulars and estimate under **Clauses 9.4** and **9.5**, the Contractor properly considers that any of the causes of the delay is an act, omission or default of the Contractor, or is the occurrence of a Relevant Event; and the completion of the Sub-Contract Works is likely to be delayed thereby beyond the Period for Completion, or any revision thereto, then the Contractor shall in writing in its absolute discretion, give an extension of time to the Sub-Contractor by fixing such revision to the Period for Completion as the Contractor considers to be reasonable. This **Clause 9.6** is without prejudice to the Contractor's right at any time at its own discretion to extend the Period for Completion where it considers that its own act, omission or default has caused or is likely to cause delay to the progress of the Sub-Contract Works.
- 9.7 It shall be a condition precedent to the granting of any extension of time to the Sub-Contractor upon application by the Sub-Contractor, that the Sub-Contractor shall have given written notice to the Contractor in accordance with **Clause 9.4**.
- 9.8 If the Sub-Contractor fails to complete or deliver the Sub-Contract Works within the Period for Completion, or any revision thereto, the Contractor shall notify the Sub-Contractor in writing, setting out the amount of delay and the Liquidated Damages, if any, to which the Contractor shall be entitled to receive from the Sub-Contractor by way of deduction or allowance.
- 9.9 Upon receipt of the notice given by the Contractor under **Clause 9.8**, the Sub-Contractor shall pay or allow to the Contractor the Liquidated Damages.
- 9.10 In the event that the regular progress of the Sub-Contract Works is materially affected by any of the Relevant Events, the Sub-Contractor shall make a written application to the Contractor and may be entitled to an amount of direct loss and/or expense from the Contractor provided that:-
- (a) The Sub-Contractor's application shall be made as soon as it has become, or ought reasonably to have become apparent to him that the regular progress of the Sub-Contract Works, or any part thereof, has been or is likely to be affected;
 - (b) The Sub-Contractor shall submit to the Contractor all information in support of its application as is required by the Contractor, to show that the regular progress of the Sub-Contract Works, or any part thereof, has been or is likely to be affected;
 - (c) The Sub-Contractor shall establish a clear causal connection between the Relevant Event and the direct loss and/or expense which the Sub-Contractor claims to have incurred.
10. **Insurance**
- 10.1 The Sub-Contractor shall have and maintain with a reputable insurer adequate "Employer's Liability", "Public Liability", "Contractor's All Risks" and (where appropriate) "Professional Indemnity" insurance in relation to all such risks arising out of or in relation to this Contract for such amounts and on such terms as may be detailed in the Order (and notwithstanding the amounts detailed in this Order, for such minimum amounts as may be required of the Contractor pursuant to the Main Contract). Such insurance shall include the Contractor and the Sub-Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or recognised as an insured thereunder.

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In addition the policy shall include a waiver by the relevant insurers of any right of subrogation which they may have against the Contractor.

- 10.2 The Sub-Contractor shall produce on demand the policies of such insurance, and such insurance shall continue notwithstanding any termination of employment pursuant to **Clause 19** insofar as equipment, materials and property of the Sub-Contractor are used on the Site thereafter.
- 10.3 Without prejudice to any other remedy the Contractor may have where the Sub-Contractor fails to comply with any of his obligations under **Clause 10.1** the Contractor shall not be obliged to make any payment otherwise due to the Sub-Contractor under the Sub-Contract until such time as the Sub-Contractor produces the policies of such insurance required by **Clause 10.1**.
- 10.4 In the event that the Sub-Contractor shall fail to effect or maintain such insurances as are required under the Main Contract the Contractor shall be at liberty to top up the insurance on behalf of the Sub-Contractor and to deduct the premium so paid from any monies due to the Sub-Contractor or to recover the premium from the Sub-Contractor as a debt.
- 10.5 In the event that the Sub-Contractor should make a claim against the Contractor, which claim is an insured risk under an insurance policy of the Contractor then in the event that the Contractor is liable in respect of any such claim the extent of the Contractor's liability will be limited to the amount recovered by the Contractor from its insurers. The Contractor will have no obligation to make payment to the Sub-Contractor in respect of any such claim unless and until the Contractor has received payment from its insurers.
- 10.6 Unless otherwise indicated on the face of the Order, the Sub-Contractor will maintain, with reputable insurers carrying on business in the European Union, from the date hereof until twelve years after the date of practical completion under the Main Contract, professional indemnity insurance in the amount of £5,000,000 (five million) or such sum as is set out on the face of the Order for any one occurrence or series of occurrences arising out of any one event in relation to the Sub-Contract Works. Should the insurance contain any aggregate cap then a minimum of 2 automatic reinstatements shall be included. Provided further that payment of any increased or additional premiums required by insurers by reason of the Sub-Contractor's own claims record or other acts omissions matters or things peculiar to the Sub-Contractor will be deemed to be within the Sub-Contractor obligation. The Sub-Contractor will notify the Contractor in writing from time to time of any change in its professional indemnity insurance arrangements and, within 7 days of the Contractor's reasonable request at any time, the Sub-Contractor will produce for inspection documentary evidence as to its compliance with this clause and that payment has been made in respect of the last preceding premium payable thereunder.
11. **Legislation and Health and Safety**
- 11.1 The Sub-Contractor shall comply with the requirements of the Principal Contractor on matters affecting the safe conduct of the Sub-Contract Works on the Site and with the Principal Contractor's Safety Policy, a copy of which is available for inspection and shall also comply with all statutes, statutory instruments, bye-laws, approved codes of practice and regulations affecting the Sub-Contract Works and the carrying out thereof including but not limited to the Health and Safety at Work (etc) Act 1974 and the CDM Regulations or amendments thereof.
- 11.2 The Sub-Contractor (including its agents and employees) shall be required to wear personal protective equipment (**PPE**) including but not limited to safety helmet, protective footwear, high visibility clothing, appropriate hearing protection, protective gloves and glasses whilst on Site. Should any of the Sub-Contractor's agents or employees arrive on Site without the same, the Contractor will if reasonably practicable provide the same at the Sub-Contractor's cost. All PPE worn on Site shall have the Sub-Contractor's branding, where this is not possible the Sub-Contractor shall give notice to the Contractor whereby the Contractor, at its sole discretion, shall provide PPE with the Contractor's branding to the Sub-Contractor of which any additional costs shall be borne by the Sub-Contractor.
- 11.3 10 working days prior to commencing operations on Site the Sub-Contractor shall provide the Contractor with a detailed completed return of the Contractor's form PF035.1 Sub-Contractor's Prequalification Questionnaire, in compliance with the CDM Regulations.
- 11.4 Within 2 weeks of completion of the Sub-Contract Works pursuant to **Clause 8.4** the Sub-Contractor shall provide such information and documentation regarding the operation and maintenance of the Sub-Contract Works as the Contractor reasonably requires in order that the Contractor can produce an operation and maintenance manual in respect of the Sub-Contract Works for inclusion in the health and safety file. For the avoidance of doubt no final payment pursuant to **Clause 13.15** shall become due unless and until the Sub-Contractor complies with its obligation under this **Clause 11.4**.
12. **Risk and Title**
- 12.1 The risk in all Goods and Materials to be incorporated in the Sub-Contract Works and in all plant, tools and equipment for use in connection with the Sub-Contract Works, including but not limited to the risk in any and all liabilities to third parties and employees and damage and loss howsoever caused shall remain with the Sub-Contractor which shall at its own cost, maintain insurance of its Goods and Materials until the Main Contract Completion Date. Risk in compliant Goods or Materials delivered for incorporation into the works by others and in accordance with the Sub-Contract shall pass to the Contractor on delivery.
- 12.2 Title to the Goods and Materials shall pass to the Contractor on delivery or if earlier upon payment to the Sub-Contractor of not less than 51% of the Sub-Contract Sum applicable to those Goods or Materials.
- 12.3 Goods belonging to or provided by the Contractor which are in the Sub-Contractor's custody for any purposes shall be clearly marked and recorded by the Sub-Contractor as belonging to the Contractor and shall be at the Sub-Contractor's risk.
- 12.4 Notwithstanding **Clauses 12.1, 12.2 and 12.3** hereof, all Goods, Materials and temporary works shall become the property of the Contractor as and when the Goods, Materials and temporary works or any part thereof are first identified, inspected and appropriated by the Contractor for the Sub-Contract Works and in any event upon delivery to the Site or otherwise delivered and whether payment therefor has at that time been made by the Contractor in whole or in part or not at all.
- 12.5 The property in any plant tools and equipment for use in connection with the Sub-Contract Works shall pass from the Sub-Contractor immediately upon delivery to Site and shall re-pass from the Contractor to the Sub-Contractor upon completion of the whole of the Sub-Contract Works. Notwithstanding this the Sub-Contractor shall at all times remain responsible for maintaining in good working order and fully insuring such plant tools and equipment, and the Sub-Contractor shall remain responsible for any costs associated with the hire, purchase, or hire-purchase of the same.
- 12.6 The Sub-Contractor shall not remove from the Site any plant tools, equipment, Materials, temporary works or things provided by the Sub-Contractor in connection with the Sub-Contract Works prior to the completion of the Works.

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- 12.7 Where it is provided by the Main Contract that the property in any plant, temporary works, materials or things whatsoever shall in certain events vest in the Employer or re-vest in the Contractor, then insofar as such plant, temporary works, materials or things are to be provided by the Sub-Contractor in connection with the Sub-Contract Works, the property therein shall pass from the Sub-Contractor to the Contractor immediately before it is due to vest in the Employer in pursuance of the Main Contract and shall re-pass from the Employer to the Contractor under the Main Contract, and from the Contractor to the Sub-Contractor immediately thereafter.
- 12.8 The Contractor and/or any of the Employer's Consultants shall be entitled to have tests made or carried out of anything for incorporation into the Sub-Contract Works or which has already been incorporated into the Sub-Contract Works. For this purpose the Sub-Contractor shall provide all facilities that the Contractor may require. All costs and expenses arising in relation to such tests shall be borne by the Sub-Contractor.
- 12.9 All things for incorporation into the Sub-Contract Works should be stored in accordance with the manufacturer's written specifications or instructions. In the case of any differences or conflict between the requirements of manufacturer's specification or instructions and the Sub-Contract, the Sub-Contractor shall notify the Contractor accordingly and seek instruction in regard thereto.
- 12.10 Upon (and if appropriate before) delivery of all or any part of things for incorporation into the Sub-Contract Works, the Sub-Contractor shall furnish to the Contractor all written information necessary for the proper handling, use, operation, processing and/or storage of the goods and for the avoidance of any risk of damage, or injury to persons property including but not limited to the things for incorporation themselves.
13. **Payment**
Applications for Payment
- 13.1 Where the Contractor has issued no variation in scope, specification, quantity or delivery the prices stated in the Order are fixed and firm for the duration of the Sub-Contract.
- 13.2 Unless otherwise stated in the Order, the Sub-Contract Sum shall be inclusive of the costs of delivery C.I.P. (as defined in Incoterms 2010) to the delivery address stated on the face of the Order.
- 13.3 For the purpose of this **Clause 13** only, an Application for Payment means:
- (a) the date the Contractor receives an application for payment for a proportion of the Sub-Contract Sum accompanied by all supporting details reasonably required by the Contractor to enable the Contractor to assess and value the application; or
 - (b) in the event that the Sub-Contractor fails to provide the supporting details referred to in **Clause 13.3(a)** above, the date on which such supporting details are received by the Contractor, provided always that;
 - (c) such Application for Payment must have been received by the Contractor no later than the date for Sub-Contractor Application for Payment (or the final day of the relevant calendar month as the case may be) as set out in the Order.
- 13.4 Unless otherwise agreed, the Sub-Contractor shall submit to the Contractor written Applications for Payment in accordance with the Application and Payment Date Schedule in the Order and each Application for Payment shall be made by e-mail and sent simultaneously by registered post to the contact specified in the Order. Each Application for Payment shall clearly refer to the Sub-Contract Order Number and Site referred to in the Order.
- 13.5 In the absence of a completed Application for Payment and Payment Date Schedule in the Order the Sub-Contractor shall be entitled to make Applications for Payment on the final working day of each calendar month. In respect of all written Applications for Payment the Sub-Contractor shall be entitled to apply for such amount as is fair and reasonable having regard to the amount of work performed and goods supplied. The Payment Due Date and Final Date for each interim payment shall be as set out in the Order, but otherwise the Payment Due Date will be the date of the Application for Payment and the Final Date for Payment shall be sixty days plus ten from the end of month in which the Application for Payment is received.
- 13.6 The Contractor shall notify the Sub-Contractor within 5 days of the Payment Due Date of the amount of the payment to be made and the basis of calculation of such payment, less any Retention. Such notification shall comprise "the Payment Notice" and the amount specified therein shall be "the Notified Sum". Where an Application for Payment is made later than the Payment Due Date as set out in the Order (or the final day of the relevant calendar month as the case may be) it shall be regarded as an Application for Payment in respect of the next interim payment.
- 13.7 The Sub-Contractor shall not be entitled to make more than one Application for Payment in each calendar month. Notwithstanding any other provision of this Contract, nothing in this Contract permits or requires the Sub-Contractor to give any notification to the Contractor pursuant to Section 110(B)(4) of the Act.
- Retentions*
- 13.8 For the avoidance of doubt, the Contractor shall be entitled to deduct and retain the Retention at the percentage stated in the Order or otherwise 10%, until the First Retention Release Application Date as stated in the Order (or, if later, the date on which the Sub-Contract Works reach Practical Completion) whereupon the Sub-Contractor shall make an Application for Payment.
- 13.9 The Payment Due Date and the Final Date for Payment of the same shall be calculated as stated on the face of the Order (or as otherwise stated in this **Clause 13** and, subject to **clause 13.10**, the Contractor shall release the proportion of Retention so stated within the Order or if not stated it shall be half of the amount retained.
- 13.10 Upon the Second Retention Release Application Date as stated in the Order (as such Date shall be extended in accordance with this **Clause 13.10**), the Sub-Contractor shall make an Application for Payment in respect of any outstanding Retention, and the Payment Due Date and the Final Date for Payment shall be calculated as stated on the face of the Order or as otherwise stated in this **Clause 13**. The Contractor shall release the remainder of the Retention so stated within the Order by the Final Date for Payment.
- 13.11 The Second Retention Release Application Date shall be extended until such time as the Sub-Contractor has discharged its obligations under and in accordance with **Clause 16.2**.
- Employer Insolvency*
- 13.12 Where the Employer or any other third person (payment by whom under the Main Contract (directly or indirectly) is a condition of payment thereunder) becomes insolvent as referred to by Section 113(2), (3), (4) or (5) of the Act, then notwithstanding any other

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provision of this Contract, the Contractor shall not be obliged to make any further payment to the Sub-Contractor of any amount which is due or may become due to the Sub-Contractor or payable or may become payable to the Sub-Contractor pursuant to this Sub-Contract or any award or decision made in favour of the Sub-Contractor against the Contractor unless the Contractor has received payment in its bank account from the Employer or such third person as it expects to receive payment in respect of the Sub-Contract Works and then will only be liable to the Sub-Contractor to the extent of such receipt of funds from the Employer.

Payments on account

- 13.13 Payments are on account only and shall not be held to signify approval by the Contractor and/or the Employer and/or any of the Employer's Consultants of the whole or any part of the Sub-Contract Works executed neither shall any final payment prejudice any claim whatsoever which the Contractor may have in respect of or arising out of or in connection with the Sub-Contract Works.

Pay Less Notice

- 13.14 Without prejudice to the Contractor's common law rights, the Contractor may not withhold payment of the Notified Sum or any part thereof after the Final Date for Payment for interim payments or the final date for the final payment (as the case may be) unless the Contractor has given to the Sub-Contractor notice of the intention to pay less than the Notified Sum ("the Pay Less Notice") no later than 2 days before the Final Date for interim payments or the final date for the final payment (as the case may be) specifying:

- (a) the amount which the Contractor considers to be due on the date the Pay Less Notice is served; and
- (b) the basis on which that sum is calculated.

Final Payment

- 13.15 Without prejudice to the right of the Contractor to do so earlier at its absolute discretion on the later of;
- (a) 3 months after the Sub-Contractor has finally performed his obligations under the Sub-Contract and Practical Completion has been achieved, or;
 - (b) 1 month from the submission by the Sub-Contractor of a valid statement of final account,
- the Contractor shall determine the amount finally due under the Sub-Contract from the Contractor to the Sub-Contractor or from the Sub-Contractor to the Contractor as the case may be, after giving credit for sums due under the Sub-Contract and amounts previously paid.

- 13.16 The Contractor shall notify the Sub-Contractor in writing by way of the "Final Account Statement" within one calendar month of the periods referred to in **Clauses 13.15(a) and 13.15(b)** (or at any time prior to the expiry of one or both of the periods referred to in **Clauses 13.15(a) and 13.15(b)** as the Contractor may at its absolute discretion choose) of the amounts so determined.

- 13.17 Such Final Account Statement shall specify the sum that the Contractor considers to be or to have been due at the Payment Due Date and the basis on which that sum is calculated. For the purposes of this **Clause 13** such Final Account Statement shall comprise the "Payment Notice" in respect of the final payment and the amount specified as due therein shall be the "Notified Sum".

- 13.18 The date which is one calendar month from the relevant date referred to in **Clauses 13.8 and 13.10** shall be the Payment Due Date of the final instalment (save that where the Contractor has issued the Final Account Statement prior to the expiry of one or both of the periods referred to in **Clauses 13.8 and 13.10** the date which is one calendar month from the date on which the Sub-Contractor finally performs its obligations under the Sub-Contract shall be the payment due date of the final instalment). The final date for payment thereof shall be 60 days from the Payment Due Date.

- 13.19 The issue of the Final Account Statement pursuant to **Clause 13.16** shall, for all purposes, be conclusive evidence that all extensions of time, if any, as are due under the Sub-Contract have been given and conclusive evidence that the reimbursement of any direct loss and/or expense, if any, to the Sub-Contractor pursuant to the Order is in final settlement of all or any claims which the Sub-Contractor has, or may have, arising out of the occurrence of any of the matters referred to under the Sub-Contract, whether such claim be for breach of contract, duty of care, statutory duty or otherwise. The Sub-Contractor hereby acknowledges and agrees that upon the expiry of 28 days after the issue of the Final Account Statement pursuant to **Clause 13.16** the amount finally due under the Sub-Contract shall, unless the Sub-Contractor has by then commenced an adjudication or an arbitration challenging such determination, be conclusive, final and binding upon the Sub-Contractor in respect of all sums whatsoever to which the Sub-Contractor may be entitled under or in connection with the Sub-Contract.

- 13.20 Further, and in addition to the Contractor's other express rights under the Sub-Contract and common law rights of set-off, the Contractor shall be entitled to deduct from the final instalment the following sums in the event of the following corresponding events:

- (a) a sum equivalent to the cost or estimated cost of remedying any defects not made good as at the payment due date of the final instalment; and
- (b) a sum (estimated or otherwise) equivalent to all monies due under the final instalment in the event that the Sub-Contractor fails to deliver to the Contractor a declaration of an authorised signatory on behalf of the Sub-Contractor certifying that the final instalment payment is in full and final settlement of the Sub-Contractor's costs, expenses, claims and counterclaims whatsoever, howsoever and wherever arising.

- 13.21 If the Contractor fails to pay the Final Payment, or any part of it, by the final date for its payment, he shall, in addition to any unpaid amount 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.

Value Added Tax (VAT)

- 13.22 Unless otherwise specifically stated the price for the supply of goods or services or any consideration payable pursuant to the Order excludes value added tax levied by the Value Added Tax Act 1994 and all legislation additional or supplemental thereto but is inclusive of all other taxes and duties of whatsoever kind.

- 13.23 All documents required from the Sub-Contractor for VAT purposes must be provided to the Contractor upon demand at any time (and for the avoidance of doubt) a failure by the Contractor to request such documents previously shall not be regarded as a waiver of any of the Contractor's rights under **Clause 13** and if they are not so provided then any payment otherwise due from the Contractor at the Contractor's sole discretion may be withheld.

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- 13.24 The Contractor shall be entitled to deduct from payments to be made to the Sub-Contractor under the Sub-Contract any taxes, national insurance contributions and similar charges if the Sub-Contractor fails to provide the Contractor with proper certification of exemption from such deductions.
- 13.25 The obligation of the Contractor to make any payment under this Sub-Contract is subject to the provisions of the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) (**Construction Industry Scheme**).
Construction Industry Scheme
- 13.26 The Contractor shall make any deductions from any payments due to the Sub-Contractor as required by Chapter 3, Part 3 Finance Act 2004 and the Construction Industry Scheme.
- 13.27 The Sub-Contractor hereby agrees with the Contractor that it shall at all times comply with the Construction Industry Scheme.
- 13.28 All documents and any other information requested by the Contractor from the Sub-Contractor for the purposes of the Construction Industry Scheme must be provided to the Contractor upon demand and if such documents and other information are not so provided then any payment due from the Contractor may at the Contractor's sole discretion be withheld and/or subjected to the highest rate of tax deduction at source as permitted under the Construction Industry Scheme.
- 13.29 Without prejudice to the generality of the foregoing in each Application for Payment the Sub-Contractor shall clearly state the amount of such Application applicable to the value of materials and where the Sub-Contractor fails to do so the relevant payment may at the Contractor's sole discretion be withheld and/or subjected to the highest rate of tax deduction at source as permitted under the Construction Industry Scheme.
- 13.30 The Sub-Contractor hereby agrees to indemnify the Contractor for any costs and expenses, loss, interest or penalties the Contractor may suffer or incur as a result of or in connection with the documents and any other information provided by the Sub-Contractor to the Contractor pursuant to **Clause 13.28** or otherwise in connection with the Construction Industry Scheme.
Conditionality
- 13.31 Unless the Contractor otherwise agrees in writing and notwithstanding anything to the contrary elsewhere in the Sub-Contract:
- (a) no part of the Sub-Contract Works will be deemed to have reached Practical Completion; and
 - (b) no payment will be made to the Sub-Contractor;
until
 - (c) the Sub-Contractor has signed and returned the Order along with all correctly executed warranties required; and
 - (d) proof of the existence and maintenance of all requisite Sub-Contractor insurance policies have been provided to the satisfaction of the Contractor.
- Interest*
- 13.32 If any sum payable pursuant to the Sub-Contract or otherwise in connection with the Sub-Contract by the Sub-Contractor to the Contractor, or by the Contractor to the Sub-Contractor, is not paid by the Final Date for Payment then, without prejudice to the Contractor's and the Sub-Contractor's other rights under this Sub-Contract or otherwise, that sum will bear interest from the Final Date for Payment until payment is made in full, both before and after any judgment, at the Bank of England base rate from time to time. In the event that either party is liable to the other for damages, interest at the said rate shall be payable from the date of accrual of the respective party's cause of action. The parties agree that this **clause 13.35** is a substantial remedy for late payment of any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.
Sub-Contractor's Insolvency
- 13.33 Notwithstanding any other clause in this Sub-Contract the Contractor shall not be required to make any payment to the Sub-Contractor in circumstances where the Sub-Contractor becomes insolvent within the meaning of Section 113(2), (3), (4) or (5) of the Act, save in accordance with any applicable requirement in the Act. Further, and if the Act applies, the Contractor shall not be required to make any payment to the Sub-Contractor if such insolvency occurs after the date which is 2 days before the final date for any such payment. The Sub-Contractor's obligations will be immediately suspended.
- 13.34 Should the Contractor believe Clause 10.6 will not be complied with, it shall have the right to damages at 1% of the Sub-Contract Sum per year of anticipated failure to maintain a complaint insurance policy.
Right of Set Off
- 13.35 Contractor may at any time, without notice to Sub-Contractor, set off any liability of Sub-Contractor to Contractor against any liability of Contractor to Sub-Contractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement.
- 14. Instructions**
- 14.1 Subject to **Clause 14.2** the Contractor may at any time issue written instructions to the Sub-Contractor which may include the following:
- (a) any variation to the Sub-Contract Works including any addition or omission (whether or not any omitted Sub-Contract Works are to be carried out by others);
 - (b) carrying out any test or investigation;
 - (c) the suspension of the Sub-Contract Works or any part thereof;
 - (d) any change in the intended sequence of the Sub-Contract Works;
 - (e) the removal and/or re-execution and/or acceptance of any work or materials not in accordance with the Sub-Contract;
 - (f) the exclusion from the site of any persons employed thereon; and
 - (g) acceleration or delay of the Sub-Contract Works.
- 14.2 The Sub-Contractor will subject to **Clause 14.1** forthwith comply with such instructions. Failing agreement on any consequent variation of the Sub-Contract Sum and/or the instalments by which it will be paid and/or the payment due dates, the Sub-Contract Sum, the instalments and the payment due dates will be as is fair and reasonable in the circumstances but based where possible on the rates (if any) and existing payment arrangements set out in the Order.

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- 14.3 If the Sub-Contractor considers that an instruction by the Contractor under **Clause 14.1** would require an increase in the Sub-Contract Sum then prior to complying with the instruction (save in the case of emergency instructions which require immediate action, for the avoidance of doubt, an instruction to accelerate or delay the Sub-Contract Works is not an emergency instruction) the Sub-Contractor will so notify the Contractor and within five working days of the instruction the Sub-Contractor will provide to the Contractor a written estimate of the increase in the Sub-Contract Sum, which shall be subject to agreement by the Contractor in accordance with the terms of the Contract
- 14.4 Following notification by the Sub-Contractor the Contractor may either withdraw the instruction or instruct the Sub-Contractor to comply with it either before or after attempting to agree the amount of the increase. No additional payment will become due and payable in respect of varied works if the Sub-Contractor has not complied with the requirements of **Clause 14.2 and 14.3**. Where additions cannot be valued by reference to the Sub-Contract, the Sub-Contractor shall be paid such reasonable amounts as ascertained by the Contractor and in which event, the Sub-Contractor shall submit fully costed record sheets for varied Sub-Contract Works on a weekly basis clearly identifying the Sub-Contract Works carried out and detailing the individual resource time expended.
- 14.5 The Contractor shall not be liable to the Sub-Contractor in respect of or in relation to any disruption or delay caused to the Sub-Contractor or to the Sub-Contract Works arising from or in connection with the late receipt by the Sub-Contractor of any instructions, drawings, levels or any other information unless the Sub-Contractor has made an application to the Contractor for such instructions, drawings, levels or other information at a date which is not unreasonably distant from nor unreasonably close to the date on which it is necessary for the Sub-Contractor to receive the same.
15. **Dayworks/Fluctuations**
- 15.1 No daywork will be permitted except where, in the opinion of the Contractor, it would be unfair to value such work at other than daywork rates and such work must be of an incidental nature. Where the Sub-Contractor considers it has a claim for daywork, due notice must be given to and approved by the Contractor in writing prior to the execution thereof in order to facilitate checking the time and materials expended thereon and all daywork sheets shall be rendered to the Contractor by noon on the day following that on which the relevant work was carried out. The signature of the Contractor's representative on any daywork sheet shall be an acknowledgement only that work has been done and shall not bind the Contractor to pay for the work specified or at all. Failure by the Sub-Contractor to comply with this clause will disentitle the Sub-Contractor from any right to claim daywork charges.
- 15.2 Unless otherwise indicated in the Order, the Sub-Contract Sum will be deemed to allow for all price fluctuations and no adjustment shall be made to the Sub-Contract Sum in the event of such fluctuations or increases in the cost of labour or materials.
- 15.3 No claims for overtime/unsocialable working hours/acceleration costs will be paid under any circumstances unless first agreed in writing by the Contractor prior to incurring the relevant cost.
16. **Sub-Contract Defects Liability Period**
- 16.1 Completion of the Sub-Contract Works is dependent upon an inspection by the Contractor or any other person nominated by the Contractor. Partial completion of the Sub-Contract Works must be agreed in writing with the Contractor.
- 16.2 The Contractor will notify the Sub-Contractor in writing of any defect, imperfection, shrinkage or damage in the Sub-Contract Works which requires rectification. The Sub-Contractor will then make good at its own expense, and at a time to be decided by the Contractor, such defect, imperfection, shrinkage or damage to the Sub-Contract Works notified by the Contractor prior to the expiry of the Main Contract Works Rectification Period.
- 16.3 The Sub-Contractor shall commence any required rectification works within seven days of the Contractor's instructions issued pursuant to Clause 16.2 unless a shorter period is required under the Main Contract and shall complete the same within a reasonable period at the Sub-Contractor's own cost.
- 16.4 In the event of the Sub-Contractor failing to comply with the first notice issued by the Contractor pursuant to **Clause 16.2** and **Clause 16.3** the Contractor may undertake to carry out the rectification to the Sub-Contract Works, and may at its discretion set-off the costs of carrying out such works against sums which would otherwise become due to the Sub-Contractor.
- 16.5 Where the Sub-Contractor has failed to comply with the first notice issued by the Contractor pursuant to **Clause 16.2** and **Clause 16.3**, the Sub-Contractor shall not, at the Contractor's discretion, be notified of any further defect, imperfection, shrinkage or damage to the Sub-Contract Works, and the Contractor may undertake to carry out the rectification to the Sub-Contract Works, and may at its discretion set-off the costs of carrying out such works against sums which would otherwise become due to the Sub-Contractor.
17. **Assignment**
- 17.1 The Sub-Contractor shall not sub-let or assign in whole or part of the benefit of this Sub-Contract nor shall he sub-let the whole or any part of the Sub-Contract Works or otherwise assign responsibility for receipt of any payment hereunder without written consent first being obtained from the Contractor and such consent if given shall not relieve the Sub-Contractor from any liability under the Sub-Contract.
18. **Suspension**
- 18.1 The Contractor and Sub-Contractor agree that, in the event of service of a notice pursuant to s. 112 of the Act, at least 7 days' notice of suspension is to be given unless a longer period is required by the main contract, and that any notice so served must comply with the provisions of **Clause 32**. Failure to comply with this requirement will invalidate any notice purported to be given.
- 18.2 If delivery and/or performance of the Sub-Contract Works is postponed at the Sub-Contractor's request the Sub-Contractor shall indemnify and keep indemnified the Contractor in full against any and all losses (including increased administration and legal costs on a full indemnity basis as well as any storage costs and associated insurance costs) suffered and/or incurred by the Contractor as a result and shall also pay for the Sub-Contract Works in relation to the Works as if delivery and/or performance had not been postponed.
19. **Termination**
- 19.1 The Contractor may terminate the Sub-Contractor's employment under this Sub-Contract forthwith upon notice in writing to the Sub-Contractor to this effect. Following such termination the Sub-Contractor shall be entitled in accordance with **Clause 13** above to be paid for the Sub-Contract Works performed or delivered up to the date of such termination provided that the Sub-

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Contractor has first released to the Contractor all original and copy documents, drawings and papers of whatsoever nature relating to or in connection with the project.

- 19.2 The Contractor may terminate the Sub-Contract if any corresponding contract between the Contractor and a third party is terminated. In such event, and provided that the Sub-Contractor is in compliance with its obligations under the Sub-Contract, the Contractor shall compensate the Sub-Contractor for costs reasonably and properly incurred until then in performing the Sub-Contract which would otherwise represent an irrecoverable loss to the Sub-Contractor, subject to the Sub-Contractor taking all reasonable steps to minimise its losses and subject to reasonable proof being provided. Compensation shall not in any event exceed the contract price.
- 19.3 Subject always to the Sub-Contractor's rights to suspend work in certain circumstances pursuant to the Act, and notwithstanding **Clause 19.1** above the Contractor may without prejudice to any other of its rights or remedies summarily determine the Sub-Contractor's employment under this Contract in respect of the whole or any portion of the Sub-Contract Works if the Sub-Contractor:
- (a) suspends the Sub-Contract Works or any part thereof or fails to proceed diligently with the Sub-Contract Works to the reasonable satisfaction of the Contractor;
 - (b) fails forthwith upon notice from the Contractor to commence work to remedy any defective workmanship and/or materials or incomplete work or fails to proceed with such remedial work with due diligence or to complete such remedial work to the satisfaction of the Contractor or the Employer or the Employer's Consultants within such period as the Contractor may specify in the said notice or if none is so specified within a reasonable time;
 - (c) fails to complete and deliver up the whole or any portion of the Sub-Contract Works by the time or times specified or by such amended time or times as may be allowed by the Contractor;
 - (d) fails to fulfil an obligation under **Clause 10**;
 - (e) fails to comply with an instruction under **Clause 14**;
 - (f) makes any arrangements with its creditors, has a receiving order made against it or commits an act of bankruptcy or, being a limited company, goes into liquidation or has a Receiver or Administrator appointed or fails to pay his debts as they fall due;
 - (g) fails to comply with any of the obligations on the part of the Sub-Contractor herein contained or if the Main Contract is determined by the Employer as a consequence (whether in whole or in part) of any breach of this Order by the Sub-Contractor;
 - (h) any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010 or the Modern Slavery Act 2015; or
 - (i) in accordance with Clause XII of the QE-PUR-SCC (Nov 16) as may be amended from time to time.
- 19.4 Upon determination under the foregoing clause the Sub-Contractor shall not be entitled to compensation and therefore shall not remove any of its equipment, materials or property from the Site and notwithstanding anything contained in these conditions, shall become entitled to no further payment until completion of the Sub-Contract Works by the Contractor or by others whereupon (subject to **Clause 19.5**) the Sub-Contractor shall become entitled to payment for Sub-Contract Works executed by the Sub-Contractor and subject always to the right of the Contractor to set off all losses, expense and damages suffered or which may be suffered by the Contractor by reason of such determination and subject further to any other right of set off which the Contractor may have.
- 19.5 Without prejudice to the remaining provisions of the Sub-Contract upon determination under **Clause 19.3(f)** the Contractor shall be entitled at its absolute discretion to withhold an amount equivalent to a maximum of 25% of the Sub-Contract Sum from any sums otherwise due to the Sub-Contractor pursuant to the Sub-Contract until 3 years after the date of the relevant event of insolvency as a retention against any contingent liabilities of the Sub-Contractor that may arise under the Sub-Contract.
- 19.6 For the purposes of completion of the Sub-Contract Works, where the Sub-Contract is terminated for the Sub-Contractor's breach, the Contractor shall have the free use of the Sub-Contractor's equipment materials and property on the site without responsibility to the Sub-Contractor for fair wear and tear thereof and of any materials or fabricated work lying at the Sub-Contractors works or workshop which have been bought or fabricated for the purpose of the Sub-Contract.
20. **Collateral Warranties**
- 20.1 If stated on the Order the Sub-Contractor shall, prior to the Commencement Date of the Sub-Contract Works or at such time and with such person as the Contractor may stipulate, enter into an agreement with the Employer or other interested party substantially in the form of the Sub-Contractor form of warranty annexed to the Order or (where no such form is annexed) in such form of Sub-Contractor warranty as the Contractor is obliged to procure pursuant to the Main Contract.
- 20.2 The Sub-Contractor shall within 14 days of being requested by the Contractor to execute a collateral warranty deliver to the Contractor or as he may direct.
- 20.3 If the Sub-Contractor no later than 14 days after receipt of the collateral warranty reasonably requests any amendment to the warranty, he shall execute and deliver the warranty within 14 days of being notified of the decision.
- 20.4 The Contractor shall not be obliged to make any payment under this Sub-Contract if the Sub-Contractor has not complied with this clause 20.
21. **Indemnity**
- 21.1 The Sub-Contractor shall indemnify and save from harm the Contractor against and from all claims, causes of action, costs, damages, losses and expenses whatsoever in respect of:
- (a) personal injury or death of any person or injury to any property (including the Works) real or personal arising out of or in the course of or in relation to or by reason of the execution of the Sub-Contract Works by the Sub-Contractor including any design undertaken by the Sub-Contractor (and including but not restricted to the use of any plant equipment or facilities whether in connection with such execution or otherwise); and
 - (b) any negligence or breach of duty on the part of the Sub-Contractor, its sub-contractors, its or their servants or agents; and
 - (c) any breach or non-performance or non-observance by the Sub-Contractor, its sub-contractors, its or their servants or agents of the provisions of the Sub-Contract;

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save to the extent that such claims, causes of action, costs, damages, losses and/or expenses are occasioned by any act or negligence or default of the Contractor

- 21.2 Where an insurance claim arises due to the personal injury or death of any servant or agent of the Sub-Contractor in any of the circumstances specified in **Clauses 21.1(a) to 21.1(c)** or otherwise or an insurance claim arises as a result of any of the circumstances specified in **Clauses 21.1(a) to 21.1(c)** the Sub-Contractor shall upon the Contractor's request take over the management of any such claim

22. Limitation of Liability

- 22.1 The Contractor shall not be liable to the Sub-Contractor for

- (a) loss of profits;
- (b) loss of use and/or production;
- (c) loss of revenues and/or anticipated savings

unless stated otherwise in the Order or expressly allowed in these Terms and Conditions.

- 22.2 The Sub-Contractor shall indemnify the Contractor against any and all claims in respect of or consequent to pollution or release of substances capable of causing harm to living organisms or interference with ecological systems arising from the materials or services except in respect of personal injury or death, whether or not resulting from the negligence of any person.

23. Adjudication

- 23.1 In the event of any dispute or difference under the Sub-Contract arising at any time between the Contractor and the Sub-Contractor such dispute or difference may in the first place be referred to adjudication. A notice of adjudication must be served by the referring party giving full details of the issue to be so referred. A notice of adjudication served by the Sub-Contractor must be served in accordance with the provisions of **Clause 32** and the adjudicator as well as the parties shall have regard to and ensure compliance with such provisions.

- 23.2 The parties are free to agree on the adjudicator to be appointed but in default of such agreement a party shall seek the appointment of an adjudicator and the referral of the dispute to him from an adjudicator nominating body of the Contractor's choice within seven days of issue or receipt of the notice of adjudication. The adjudicator shall be allowed to decide in his final decision who should eventually pay his fees and expenses or any apportionment thereof.

- 23.3 The adjudicator shall have power to decide any matter raised by a party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him regardless of whether or not that party has previously raised such matter. Notwithstanding the above no court or other tribunal shall have any jurisdiction to sever different parts of an adjudicator's decision or decisions for the purpose of enforcement thereof.

- 23.4 The adjudicator's decision shall be reached within 28 days of referral to him of the dispute, or such longer period as the parties may agree after such referral. The adjudicator may, with the consent of the referring party, extend that 28 day period by up to 14 days. The adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. In reaching his decision, the adjudicator shall without prejudice to the generality of his powers, be entitled to adjust the date or dates for completion stated in the Order and/or award such damage loss and/or expense to the Contractor or to the Sub-Contractor as shall, in his opinion, be fair and reasonable in respect of the dispute or difference referred to him and the Sub-Contract Sum shall be adjusted accordingly. The adjudicator shall have power to request either party to provide him with such oral or written statements, documents or information as the adjudicator may determine but not so as to delay the giving of the written notice of his decision under this clause.

- 23.5 The adjudicator's decision under **Clause 23.3** shall be binding and immediately enforceable by either of the parties until the Main Contract's Completion Date and shall forthwith be given effect to by the Contractor and the Sub-Contractor and the Sub-Contractor shall proceed with the Sub-Contract Works with all due diligence whether or not either party gives notice to the other as provided in **Clause 23.6**. Such reference to the adjudicator shall not relieve either party from any liability for the due and punctual performance of such party's obligations under the Sub-Contract.

- 23.6 If the adjudicator fails to give his decision or if he shall be unable to or refuses to act, all disputes or differences under **Clause 23.1** shall be referred to and settled by a person to be agreed between the parties or, failing agreement within a reasonable time after either party has given to the other a written request to concur in the appointment of an adjudicator, a person to be appointed from an appropriate adjudicator nominating body of the Contractor's choice.

- 23.7 If the adjudicator appointed under the Sub-Contract refuses or neglects to give a decision or if, upon receipt of the adjudicator's notice of his decision under **Clause 23.3** either party is dissatisfied with the same such party shall give notice to the other reserving his right to issue arbitration proceedings in respect of the matter. If no such notice has been given by either party to the other as aforesaid within 28 days of such refusal or neglect by an adjudicator to give a decision or receipt of such decision from the adjudicator, such decision shall be final and binding upon the parties.

- 23.8 All disputes or differences in respect of which a decision (if any) of the adjudicator has not become final and binding under **Clause 23.6** shall be determined by arbitration providing that no such proceedings shall be issued until after the Main Contract's Completion Date.

- 23.9 The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the adjudicator shall similarly not be liable.

- 23.10 The adjudicator shall be permitted to correct his decision so as to remove a clerical or typographical error arising by accident or omission.

- 23.11 If the dispute to be referred to adjudication under **Clause 23.1** raises issues which are substantially the same as or connected with issues raised in a related dispute or difference between the Contractor and the Employer under the Main Contract or between the Contractor and other parties connected with the Works ("the Related Dispute") and if the Related Dispute has already been or is at any time referred for determination the parties hereto agree that if either so requires the dispute under the Sub-Contract shall, so far as possible, be referred to the same dispute resolution procedure as applies to the Related Dispute.

- 23.12 Notwithstanding **Clause 23.11**, where the dispute to be referred to adjudication under **Clause 23.1** raises issues which are substantially the same as or connected with issues raised in a Related Dispute and if the Related Dispute has already been or is at any time referred for determination, then at the complete discretion of the Contractor the Contractor may upon written notice to the Sub-Contractor:

- (a) submit the dispute under the Sub-Contract to the adjudicator appointed in respect of the Related Dispute; and

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(b) instruct the Sub-Contractor to provide any information the Contractor may require in respect of the Related Dispute; and the adjudicator of the Related Dispute will then settle the two disputes together and references in the Main Contract or any other relevant document for the purposes of the Related Dispute shall be interpreted as including the Sub-Contractor.

24. Arbitration

24.1 Any arbitration under this Clause 24 shall be conducted in accordance with the JCT 2011 edition of the Construction Industry Model Arbitration Rules (CIMAR) unless the parties have by joint notice agreed to use another set of rules other than those under this **Clause 24**.

24.2 Save where the Main Contract dispute resolution procedure is through the Courts or save as is required for the enforcement through the Courts of any adjudicator's decision given under **Clause 24**, all disputes or differences between the parties under or in connection with this Sub-Contract shall, subject to **Clause 24**, be referred to arbitration in accordance with this **Clause 24**, and the parties agree that no such arbitration shall be commenced by either party prior to completion of the Sub-Contract Works.

24.3 Following completion of the Sub-Contract Works, any disputes or differences not finally resolved by adjudication shall, subject to **Clause 24.5**, be referred to the arbitration and final decision of a single arbitrator to be agreed on between the parties or, in default of agreement, to be appointed at the request of the Contractor by the President of such body as the Contractor may, in its absolute discretion, decide.

24.4 If the dispute or difference to be referred to arbitration under the Sub-Contract raises issues which are substantially the same as or connected with issues raised in any related dispute between the Contractor and the Employer under the Main Contract, the Contractor and the Sub-Contractor hereby agree that the dispute or difference under the Sub-Contract shall be referred to the arbitrator appointed to determine the related dispute; and such arbitrator shall have power to make such directions and all necessary awards in the same way as if the procedure of the High Court as to joining one or more defendants or joining co-defendants or third parties was available to the parties and to him.

24.5 In any such arbitration as provided for herein any decision, opinion, certificate or award of the Employer or Employer's Consultants or arbitrator appointed under or pursuant to the Main Contract which is final and binding on the Contractor under the terms of the Main Contract shall also be final and binding between the Contractor and the Sub-Contractor.

24.6 The parties hereby agree pursuant to section 45(2)(a) and section 69(2)(a) of the Arbitration Act 1996 that either Party may apply to the courts to determine any question of law arising in the course of arbitration process; and appeal to the courts on any question of law arising out of an award made under the arbitration agreement.

24.7 The provisions of the Arbitration Act 1996 shall apply to this Sub-Contract.

24.8 If any third party makes any claim against the Contractor arising from the performance of the Sub-Contract by the Sub-Contractor, or in respect of goods or services supplied under it, the Sub-Contractor shall at its own expense on request by the Contractor join the Contractor in defending the claim. The decision of any court or arbitration tribunal deciding upon the claim shall, so far as is relevant, be admitted as conclusive in any consequent claim made by the Contractor against the Sub-Contractor under the Sub-Contract.

25. Confidentiality

Neither party shall use and/or disclose any confidential information which is acquired by it about the other party's business and/or given by one party to the other party and/or generated by one party using the other party's confidential information except in the proper performance of the Sub-Contract.

26. Anti-Bribery

26.1 The Sub-Contractor shall:

- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and will enforce them where appropriate;
- (d) promptly report to the 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 the Sub-Contract;
- (e) within 3 months of the date of this agreement, and annually thereafter, certify to the Contractor in writing signed by an officer of the Sub-Contractor, compliance with this **Clause 26** by the Sub-Contractor and all persons associated with it under this **Clause 26**. The Sub-Contractor shall provide such supporting evidence of compliance as the Contractor may reasonably request.

26.2 The Sub-Contractor shall ensure that any person associated with the Sub-Contractor who is performing services or providing goods in connection with the Sub-Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Sub-Contractor in this Clause 26 (**Relevant Terms**). The Sub-Contractor shall be responsible for the observance and performance by such persons of the terms under the Sub-Contract, and shall be directly liable to the Contractor for any breach by such persons of any of the terms under the Sub-Contract.

26.3 Breach of this **Clause 26** shall be deemed a material breach.

26.4 For the purpose of this **Clause 26**, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 26 a person associated with the Sub-Contractor includes but is not limited to any subcontractor of the Sub-Contractor.

27. Strikes

If the Main Contract Works are affected by a strike which prevents the preparation, manufacture or transportation of any of the goods or materials required for the Main Contract Works neither the Contractor nor the Sub-Contractor shall be entitled to make a claim against one another for any loss arising from any strike action and the Contractor and Sub-Contractor shall work together and take all reasonable measures to ensure the site remains open.

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28. **Prevail Clause**
The terms and conditions of the Sub-Contract shall prevail over any other terms and conditions which are inconsistent with them which the Sub-Contractor seeks (whether before or after the date hereof) to impose upon the Contractor, irrespective of any provision therein purporting to exclude or supersede all or any of these terms and conditions and shall further prevail (to the extent to which they are inconsistent) over any other terms and conditions which are said to apply to the Sub-Contract.
29. **Entire Agreement**
- 29.1 The Sub-Contract constitutes the entire agreement between the Parties and supersedes any previous agreement between the Parties relating to its subject matter.
- 29.2 The Parties agree that they have not entered into the Sub-Contract in reliance on any promise, assurance, representation, warranty, details and/or specification (whether in writing or not) that is not expressly set out in the Sub-Contract. Nothing in the Sub-Contract shall exclude liability for any fraudulent statement and/or act made prior to the date of the Sub-Contract.
- 29.3 Each of the Parties acknowledges and agrees that the only remedy available to it for breach of the Sub-Contract shall be for breach of contract under the terms of the Sub-Contract and it shall have no right of action against any other party in respect of any promise, assurance, representation, warranty, details and/or specification (whether in writing or not) that is not expressly set out in the Sub-Contract.
30. **Force Majeure**
Neither party shall be liable for any delay or failure to perform its obligations under the Sub-Contract (save in respect of payment of monies payable for the goods and/or services in relation to the Sub-Contract Works) as a result of a Force Majeure Event lasting more than 7 calendar days and any other similar events. If the Force Majeure Event causing the delay or failure continues in excess of 4 months the Sub-Contract may be terminated by either party after that period and while the case of the non-performance still exists by not less than 30 days' notice in writing to the other Party, in which event the provisions of Clause 20 shall apply.
31. **Law**
- 31.1 The Sub-Contract shall be governed by and construed in accordance with English Law unless the Main Contract is governed by the law of another jurisdiction in which case the Sub-Contract shall be governed by and construed in accordance with that law. The "contra proferentem" rule of construction will not apply to the Sub-Contract, both parties having had the opportunity to take legal advice on it.
- 31.2 Nothing in the Sub-Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Sub-Contract.
- 31.3 No failure or delay by the Contractor to exercise any right, power, or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.
- 31.4 To the extent that any provision of any Act of Parliament, Regulation or other statutory provision referred to in the Sub-Contract is from time to time amended by Parliament the relevant provision shall be treated for the purposes of the Sub-Contract as, and shall be effective as, so amended.
- 31.5 No variation to the Sub-Contract shall be binding unless agreed in writing by an authorised representative of the Contractor.
- 31.6 No waiver by either party of any breach of the Sub-Contract by the other party shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 31.7 Any invalidity, illegality or unenforceability of any or any part of a provision of the Sub-Contract shall not affect the validity, legality or enforceability of the remaining provisions of the Sub-Contract. The Sub-Contractor must inform the Contractor and the Contractor will advise of any amendments.
- 31.8 None of the terms and conditions of the Sub-Contract shall be enforceable by any person who is not a party to it. This shall not apply to any company within the same group of companies as the Contractor who the Contractor consents to being able to enforce the Sub-Contract in addition to the Contractor. The rights of any third party to enforce the Sub-Contract may be varied and/or extinguished by agreement between the Parties without the consent of any third party.
- 31.9 The United Nations Convention on the International Sale of Goods shall not apply to this Contract. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms 2010) shall apply but where they conflict with the Sub-Contract, the Sub-Contract shall prevail. Any variation to this clause, must be agreed explicitly by both Parties in writing prior to the commencement of Sub-Contract Works.
- 31.10 The adjudication provisions of Part II of the Act shall apply to the Sub-Contract.
- 31.11 Subject to 31.1, this Sub-Contract shall be construed as an English contract governed by the laws of England (except its conflict of laws rules) and disputes under it shall be subject to the non-exclusive jurisdiction of the English courts.
32. **Notices**
- 32.1 All notices required to be given by the Sub-Contractor pursuant to the Sub-Contract shall be given in writing and sent by registered post to the registered office of the Contractor marked for the attention of the Commercial Director (with a further copy being sent simultaneously by registered post to the contact specified in the Order) and shall only be effective if received by the Contractor by no later than 4pm on the date of receipt of such notice is required and if it clearly refers to the Sub-Contract Order Number and Site stated within the Order.
- 32.2 All notices received by the Contractor after 4pm on the date of receipt shall for the purposes of the Sub-Contract be deemed to have been served on the next working day following receipt thereof.