

General Terms and Conditions for Sub-Contract Works

1 Definitions

In these Conditions the following definitions apply:

- 1.1 “Beneficiary” means the Employer, any Owner, any Funder, any Purchaser, any Tenant, any management company and any other person in whose favour the Contractor is required under the Main Contract to procure a collateral warranty from the Sub-Contractor.
- 1.2 “Bills of Quantities” means the fully priced bills of quantities referred to in the Sub-Contract Order.
- 1.3 “Business Day” means a day other than Saturday, Sunday and public holidays.
- 1.4 “CDM Regulations” means the Construction (Design and Management) Regulations 2015.
- 1.5 “Commencement Date” means the date specified in the Sub-Contract Order or, if no date is specified, the date instructed by the Contractor.
- 1.6 “Conditions” means the general terms and conditions set out in this document.
- 1.7 “Contractor” means Modus Partnerships Limited (Company number: 11959131).
- 1.8 “Date for Completion” means the date for completion of the Sub-Contract Works or a Section (as appropriate) specified in the Sub-Contract Order or if no date is specified in the Sub-Contract Order the date that is a reasonable period of time after the Commencement Date taking account of the nature of the Sub-Contract Works (as may be varied pursuant to clause 8);
- 1.9 “Deleterious Materials” means materials or substances not in conformity with any relevant British or European Standards or Codes of Practice or which are generally known to be deleterious to health and safety or to the durability of buildings in the particular circumstances in which they are used having regard to the guidance note “Good Practice in Selection of Construction Materials 2011” sponsored by the British Council for Offices or which are not in conformity with the Main Contract.
- 1.10 “Employer” means the employer of the Contractor under the Main Contract.
- 1.11 “Funder” means a person who provides funding or finance in relation to the Works or any part of them or who provides funding or finance to any person acquiring an interest in the Works or any part of them.
- 1.12 “Insolvent”: an entity is insolvent if:
 - 1.12.1 it becomes bankrupt;
 - 1.12.2 it suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due;
 - 1.12.3 it (a) negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts or (c) makes an application to court for protection from its creditors generally;
 - 1.12.4 it passes a resolution for winding-up or for the appointment of an administrator, or a step is taken to appoint a liquidator or administrator in relation to the entity, or a step is taken to obtain a winding-up order in relation to the entity;
 - 1.12.5 a step is taken to appoint a receiver or administrative receiver in relation to the entity or any of its assets;
 - 1.12.6 any creditor of the entity attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of its assets, and such attachment or process is not discharged within 14 days; or
 - 1.12.7 it takes or suffers any action similar to any of the above in any jurisdiction.
- 1.13 “Main Contract” means the contract between the Employer and the Contractor for the carrying out and completion of the Works.
- 1.14 “Owner” means any person who holds a freehold or long leasehold interest in the Site or any part of it.
- 1.15 “Programme” means the programme for the Works including any variation made to such programme from time to time.
- 1.16 “Project Manager” means the individual specified in the Sub-Contract Order who is the Contractor’s project manager for the Sub-Contract Works.
- 1.17 “Purchaser” means a person who purchases or otherwise acquires the freehold or a long leasehold interest in the Works or any part of them.
- 1.18 “Rectification Period” means the rectification period stated in the Sub-Contract Order, or if none is stated therein, the longer of the rectification period for the Works stipulated in the Main Contract and the period of 12 months commencing on the date of practical completion of the Sub-Contract Works or (where applicable) each Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order.
- 1.19 “Relevant Sub-Contract Event” means (i) an event entitling the Contractor to an extension of time for completion of the Works or (if appropriate) any section thereof pursuant to the Main Contract or (ii) any act, instruction, default or omission of the Contractor that causes the commencement, progress or completion of the Sub-Contract Works or a Section to be delayed.
- 1.20 “Retention Percentage” means the relevant percentages specified in the Sub-Contract Order or, where no percentages are so specified, five per cent (5%) up to the date of practical completion of the Sub-Contract Works or (where applicable), up to the date of practical completion of each Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order, and then two and a half per cent (2.5%) after the date of practical completion of the Sub-Contract Works or (where applicable) after the date of practical completion of each Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order, until the issue of the Notice of

Completion of Making Good in respect of the Sub-Contract Works or (where applicable) in respect of each Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order.

- 1.21 “Schedule of Hourly Charges” means the schedule of hourly charges referred to in the Sub-Contract Order (if any).
- 1.22 “Schedule of Rates” means the schedule of rates referred to in the Sub-Contract Order (if any).
- 1.23 “Section” means (where applicable) the Sections into which the Sub-Contract Works have been divided as described in the Sub-Contract Order.
- 1.24 “Site” means the site described in the Sub-Contract Order.
- 1.25 “Statutory Requirements” means any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Sub-Contract Works or performance of any obligations under the Sub-Contract and any regulation or bye-law of any local authority or Statutory Undertaker which has any jurisdiction with regard to the Sub-Contract Works or with whose systems they are, or are to be, connected.
- 1.26 “Statutory Undertaker” means any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work.
- 1.27 “Sub-Contract” means the Sub-Contract Order, these Conditions, the Sub-Contract Documents and any documents incorporated into the Sub-Contract by its terms.
- 1.28 “Sub-Contract Documents” means the sub-contract documents listed in the Sub-Contract Order.
- 1.29 “Sub-Contract Order” means the order issued by the Contractor to the Sub-Contractor for the Sub-Contract Works.
- 1.30 “Sub-Contract Sum” means the sub-contract sum stated in the Sub-Contract Order (if any).
- 1.31 “Sub-Contract Works” means the sub-contract works briefly described in the Sub-Contract Order and as more particularly shown, described or referred to in the Sub-Contract Documents, including any changes made to those works in accordance with the Sub-Contract.
- 1.32 “Sub-Contractor” means the person carrying out the Sub-Contract Works and named in the Sub-Contract Order.
- 1.33 “Tenant” means a person who has or acquires a leasehold interest in the Works or any part of them other than a Purchaser.
- 1.34 “Works” means the works described in and to be carried out by the Contractor under the Main Contract.

2 Interpretation

- 2.1 In the Sub-Contract and these Conditions, unless the context otherwise requires:
 - 2.1.1 clause headings are included for convenience only and do not affect the interpretation of the Sub-Contract;
 - 2.1.2 the singular includes the plural and vice versa;
 - 2.1.3 each gender includes the others;
 - 2.1.4 a reference to a ‘person’ includes any individual, partnership, company and any other body corporate;
 - 2.1.5 general words are not limited by example; and
 - 2.1.6 references to any legislation will be construed as a reference to that legislation as amended, re-enacted, extended or substituted from time to time.

3 Sub-Contract and Conditions

- 3.1 These Conditions apply to, govern and form part of the Sub-Contract and they supersede any previously issued terms and conditions. No terms and conditions endorsed on, contained in, delivered with, or referred to in the Sub-Contractor’s quotation, sales conditions, acknowledgement of order, pre-contract correspondence or any other document will form part of the Sub-Contract except to the extent that the Contractor expressly agrees in writing. No variation of these Conditions or of the Sub-Contract Order, including the introduction of any additional terms and conditions, shall be effective unless expressly agreed in writing and signed by a duly authorised signatory on behalf of the Contractor. Acceptance of the Sub-Contract Order and these Conditions by the Sub-Contractor will take place when they are expressly accepted or by any other conduct of the Sub-Contractor which the Contractor reasonably considers is consistent with acceptance of the Sub-Contract Order and Conditions, including but not limited to the commencement of the Sub-Contract Works or any part of them.
- 3.2 The Sub-Contractor is deemed to have satisfied itself prior to entering into the Sub-Contract that no ambiguity, conflict, discrepancy, contradiction or divergence exists in or between any of the documents comprising the Sub-Contract.
- 3.3 In the event that the Sub-Contractor, after entering into the Sub-Contract, discovers such an ambiguity, conflict, discrepancy, contradiction or divergence, it shall immediately notify the Contractor in writing and the Contractor shall be entitled, in its absolute discretion, to issue any necessary instruction or clarification and the Sub-Contractor shall comply with any such instruction without any adjustment to the Sub-Contract Sum, the Bills of Quantities, the Schedule of Rates or the Schedule of Hourly Charges (whichever is/are applicable) or any Date for Completion and the Sub-Contractor shall not be entitled to any other additional payment under the Sub-Contract.

4 Sub-Contract Works

- 4.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works:
- 4.1.1 in a good, proper and workmanlike manner;
- 4.1.2 in accordance and compliance with the Sub-Contract, the Sub-Contract Documents, the Main Contract (so far as it is relevant to the Sub-Contract Works), the Programme, the Contractor's construction phase plan and the instructions of the Contractor;
- 4.1.3 in compliance with the CDM Regulations and all Statutory Requirements; and
- 4.1.4 to the satisfaction of the Contractor, the Employer (and its representative under the Main Contract).

5 Sub-Contractor's obligations

- 5.1 The Sub-Contractor shall:
- 5.1.1 provide everything required to carry out and complete the Sub-Contract Works save for the attendances identified in the Sub-Contract Order as to be provided by the Contractor which the Contractor shall provide free of charge to the Sub-Contractor;
- 5.1.2 co-operate and co-ordinate with and not impede the Contractor, its servants, agents or other sub-contractors or the Employer's servants, agents or sub-contractors, who may be working on or adjacent to the Site at the same time as the Sub-Contractor is executing the Sub-Contract Works;
- 5.1.3 comply with and give all notices required by any statute, statutory instrument, rule, order, regulation, bye-law and pay all fees and charges payable in respect of the Sub-Contract Works; and
- 5.1.4 forthwith comply with directions and instructions given by the Contractor and if the Sub-Contractor fails to do so, the Contractor may itself carry out the directed or instructed work or employ and pay other contractors or persons to do so and all associated costs may be deducted from any sums due or to become due to the Sub-Contractor or shall otherwise be recoverable from the Sub-Contractor as a debt. Except as provided for in clauses 8 and 14, the Sub-Contractor shall not be entitled to any extension of time or additional payment in respect of the Contractor's directions and instructions.

6 Previous work of others

- 6.1 The Sub-Contractor is deemed to have satisfied itself prior to entering into the Sub-Contract as to the position, dimensions and suitability of any previous work performed by others that might in any way affect the Sub-Contract Works.
- 6.2 In the event that the Sub-Contractor, after entering into the Sub-Contract, discovers that any previous work performed by others is out of position, incorrectly dimensioned or unsuitable, it shall immediately notify the Contractor in writing and the Contractor shall be entitled, in its absolute discretion, to issue any necessary instruction and the Sub-Contractor shall comply with any such instruction without any adjustment to the Sub-Contract Sum, the Bills of Quantities, the Schedule of Rates or the Schedule of Hourly Charges (whichever is/are applicable) or any Date for Completion and the Sub-Contractor shall not be entitled to any other additional payment under the Sub-Contract.

7 Payment

- 7.1 Unless stated to the contrary in the Sub-Contract Order, payment under the Sub-Contract is to be on a fixed price, lump sum basis and the Contractor shall pay the Sub-Contractor, in the manner and at the times specified in these Conditions, the Sub-Contract Sum or such other sum as shall become payable under the Sub-Contract. Where the Sub-Contract Order provides that payment under the Sub-Contract is to be on a measurement/daywork basis, the Contractor shall pay the Sub-Contractor, in the manner and at the times specified in these Conditions, amounts calculated by reference (where possible) to the Bills of Quantities, the Schedule of Rates and/or the Schedule of Hourly Charges.
- 7.2 The Sub-Contract Sum, the Bills of Quantities, the Schedule of Rates and the Schedule of Hourly Charges (whichever is/are applicable) shall not be adjusted in any way whatsoever otherwise than in accordance with the express provisions of the Sub-Contract.
- 7.3 The Sub-Contract Sum is inclusive of, and the Sub-Contractor is deemed to have included for, all works (whether permanent or temporary), materials, plant, equipment and expenditure that are necessary to complete the Sub-Contract Works as described in or to be inferred from the Sub-Contract Documents.
- 7.4 The Sub-Contract Sum, the Bills of Quantities, the Schedule of Rates and the Schedule of Hourly Charges are inclusive of, and the Sub-Contractor is deemed to have included for, all overheads and profit.
- 7.5 The Sub-Contractor shall make applications for interim payments:
- 7.5.1 where the Sub-Contract Order provides that stage payments are to apply, on or after completion of each stage specified in the Sub-Contract Order and the due date for payment of each application shall be the later of the date of completion of the stage and the date of receipt by the Contractor of the application for interim payment;
- 7.5.2 where the Sub-Contract Order provides that periodic payments are to apply, on or within five Business Days after each date specified in the Sub-Contract Order and the due date for payment of each application shall be the later of the specified date and the date of receipt by the Contractor of the application for interim payment;
- 7.5.3 where the Sub-Contract Order provides for neither stage nor periodic payments, on or before the 7th (seventh) day of each month ("Monthly Date") and the due date for payment of each application shall be the Monthly Date.
- 7.6 The amount of each interim payment prior to the expiry of the Rectification Period in respect of the Sub-Contract Works or (where applicable) in respect of

each Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order, shall be:

- 7.6.1 where the Sub-Contract Order indicates that stage payments are to apply, the amount specified in the Sub-Contract Order for each stage (less the Retention Percentage), plus any amounts payable under clause 14 (less the Retention Percentage), plus any other amounts payable under the terms of the Sub-Contract, less any amounts deductible under the terms of the Sub-Contract, less the total amount due in previous payments;
- 7.6.2 where the Sub-Contract Order indicates that periodic payments are to apply, the value of work properly carried out by the Sub-Contractor and materials properly incorporated into the Sub-Contract Works (less the Retention Percentage), plus any other amounts payable under clause 14 (less the Retention Percentage), plus any other amounts payable under the terms of the Sub-Contract, less any amounts deductible under the terms of the Sub-Contract, less the total amount due in previous payments; and
- 7.6.3 where the Sub-Contract Order specifies neither stage nor periodic payments, the value of work properly carried out by the Sub-Contractor and materials properly incorporated into the Sub-Contract Works (less the Retention Percentage), plus any amounts payable under clause 14 (less the Retention Percentage), plus any other amounts payable under terms of the Sub-Contract, less any amounts deductible under the terms of the Sub-Contract, less the total amount due in previous payments.
- 7.7 Where the Sub-Contract Order provides that payment under the Sub-Contract is to be on a measurement/daywork basis or the Contractor instructs the Sub-Contractor in writing to carry out works on a measurement/daywork basis, such works shall be valued by the Contractor on a fair and reasonable basis with reference, where possible, to the Bills of Quantities, the Schedule of Rates and the Schedule of Hourly Charges. Daywork sheets must be completed by the Sub-Contractor and submitted to the Contractor's site manager for approval of the hours claimed, however the charges set out in such daywork sheets shall still require the approval of the Contractor's Production Director or Production Manager.
- 7.8 Where it is necessary for the Contractor to measure work, the Contractor shall give the Sub-Contractor an opportunity to be present at the time of such measurement.
- 7.9 The final date for payment of an interim payment shall be 30 days from its due date.
- 7.10 The Contractor shall, not later than five (5) days after each due date, give a written notice to the Sub-Contractor stating the sum that the Contractor considers to be or to have been due to the Sub-Contractor at the due date and the basis on which that sum has been calculated ("Payment Notice"). Subject to any Pay Less Notice given by the Contractor under clause 7.12, the amount of the interim payment to be made by the Contractor shall be the sum stated in the Payment Notice.
- 7.11 If the Contractor does not give a Payment Notice, the amount of the interim payment to be made by the Contractor shall, subject to any Pay Less Notice given under clause 7.12, be the sum stated as due in the Sub-Contractor's application for interim payment.
- 7.12 If the Contractor intends to pay less than the sum stated as due in the Payment Notice or the Sub-Contractor's application for interim payment (as the case may be), it shall, not later than one (1) day before the final date for payment, give the Sub-Contractor notice of that intention setting out the sum that it considers to be due to the Sub-Contractor or to the Contractor (as the case may be) at the date the notice is given and the basis on which that sum has been calculated ("Pay Less Notice"). Where the Contractor gives a Pay Less Notice, the payment to be made by the Contractor or the Sub-Contractor (as the case may be) shall be not less than the amount stated as due in the Pay Less Notice.
- 7.13 The Sub-Contractor shall make an application for final payment ("Final Application") on or after the issue of the Notice of Completion of Making Good in respect of the Sub-Contract Works or (where applicable) in respect of each Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order. If the Sub-Contractor fails to make an application for final payment within one month of the issue of the Notice of Completion of Making Good, the Contractor may issue a final statement to the Sub-Contractor ("Final Statement").
- 7.14 The amount of the final payment (which, for the avoidance of doubt, may be a sum due to the Contractor from the Sub-Contractor) shall be:
- 7.14.1 where the Sub-Contract Order provides that payment under the Sub-Contract is to be on a fixed price, lump sum basis, the Sub-Contract Sum plus any other amounts payable under the terms of the Sub-Contract, less any amounts deductible under the terms of the Sub-Contract, less the total of amounts already paid by the Contractor to the Sub-Contractor under the Sub-Contract; or
- 7.14.2 where the Sub-Contract Order provides that payment under the Sub-Contract is to be on a measurement/daywork basis, the total amount due to the Sub-Contractor for work properly carried out by the Sub-Contractor and materials properly incorporated into the Sub-Contract Works, plus any other amounts payable under the terms of the Sub-Contract, less any amounts deductible under the terms of the Sub-Contract, less the total of amounts already paid by the Contractor to the Sub-Contractor under the Sub-Contract.

- 7.15 The due date for payment of the final payment shall be one month after the date of submission of the Sub-Contractor's Final Application or the Contractor's Final Statement (as appropriate).
- 7.16 The final date for payment of the final payment shall be 28 days from its due date.
- 7.17 Not later than five (5) days after the due date, the party by whom the Final Application or the Final Statement (as the case may be) shows the final payment as payable ("Payer") shall give a Payment Notice to the other party ("Payee") stating the sum that the Payer considers to be or to have been due at the due date and the basis on which that sum has been calculated. Subject to any Pay Less Notice given by the Payer under clause 7.18, the final payment to be made shall be the sum stated in the Payment Notice, or if no such notice is given, the balance stated in the Final Application or the Final Statement (as the case may be).
- 7.18 If the Payer intends to pay less than the sum stated in the Payment Notice given under clause 7.17 or, in the absence of such a notice, less than the amount stated in the Final Application or the Final Statement (as the case may be), it shall, not later than one (1) day before the final date for payment, give the other party a Pay Less Notice setting out the sum that it considers to be due at the date the notice is given and the basis on which that sum has been calculated. Where a Pay Less Notice is given, the final payment to be made shall be not less than the amount stated as due in the Pay Less Notice.
- 7.19 If either party fails to pay to the other, any amount due under the Sub-Contract by the final date for its payment, the party in default shall pay to the other party, in addition to the amount not properly paid, simple interest thereon for the period until such payment is made at the rate per annum of 2% over the base rate of the Bank of England prevailing at the time of the said failure to pay.
- 7.20 The Sub-Contractor's applications for payment shall be in writing and be accompanied by such other detail and supporting evidence as the Contractor shall require.
- 7.21 Notwithstanding anything to the contrary elsewhere in the Sub-Contract, if the Employer or any such person as is responsible for discharging payment to the Contractor under the Main Contract, as the case may be, is Insolvent, the Contractor shall not be obliged to make any further payment to the Sub-Contractor of any amount that is due or may become due to the Sub-Contractor unless the Contractor has first received payment in respect thereof from the Employer or such other person, as the case may be and then only to the extent of such receipt.
- 7.22 Unless stated otherwise in the Sub-Contract Order, the Sub-Contract Works are 20% rated.
- 8 Commencement, progress and completion of the Sub-Contract Works**
- 8.1 The Sub-Contractor shall:
- 8.1.1 commence the Sub-Contract Works on the Commencement Date;
- 8.1.2 proceed with the Sub-Contract Works regularly and diligently, in accordance with the progress of the Works and so as not to cause delay and/or disruption to the Works or any part of them;
- 8.1.3 carry out the Sub-Contract Works during normal site working hours and to suit the Programme; and
- 8.1.4 achieve practical completion of the Sub-Contract Works (or, if relevant, each Section) by the relevant Date for Completion.
- 8.2 If and whenever it becomes reasonably apparent to the Sub-Contractor that the commencement, progress or completion of the Sub-Contract Works or a Section is being or is likely to be delayed, the Sub-Contractor shall (as a condition precedent to an entitlement to an extension of time pursuant to clause 8.4) immediately give written notice to the Contractor setting out:
- 8.2.1 the material circumstances;
- 8.2.2 the cause(s) of the delay;
- 8.2.3 in respect of each cause, an estimate of any expected delay in the completion of the Sub-Contract Works or a Section beyond the relevant Date for Completion; and
- 8.2.4 any cause(s) that the Sub-Contractor considers to be a Relevant Sub-Contract Event.
- 8.3 In the event that there is any change in the particulars provided in a notice issued by the Sub-Contractor pursuant to clause 8.2, the Sub-Contractor shall (as a condition precedent to an entitlement to an extension of time pursuant to clause 8.4) immediately give an updated written notice to the Contractor.
- 8.4 Provided that the Sub-Contractor gives a compliant notice pursuant to clause 8.2 and, if appropriate, pursuant to clause 8.3 and the Contractor considers that any of the stated causes are a Relevant Sub-Contract Event and as a result, completion of the Sub-Contract Works or a Section has been or is likely to be delayed beyond the relevant Date for Completion, the relevant Date for Completion may be extended by such period as is reasonable in the Contractor's opinion (such opinion to be final and conclusive). For the avoidance of doubt, any delay caused by the Sub-Contractor, its servants, agents or suppliers shall not entitle the Sub-Contractor to an extension of time.
- 8.5 In the event that the Contractor issues an instruction for the omission of any part of the Sub-Contract Works, the relevant Date for Completion may be changed to such earlier date as is reasonable in the Contractor's opinion (such opinion to be final and conclusive) taking account of the work omitted.
- 8.6 The Sub-Contractor shall constantly use its best endeavours to prevent delay in the progress of the Sub-Contract Works or a Section however caused and to prevent their completion being delayed or further delayed beyond the relevant Date for Completion.
- 8.7 In the event of any delay, the Sub-Contractor shall do all that may be required to the satisfaction of the Contractor to proceed with the Sub-Contract Works, to minimise the delay and to mitigate the effects of the delay.
- 8.8 The Contractor shall determine and notify the Sub-Contractor in writing of the date on which the Sub-Contract Works or a Section (as appropriate) are/is practically complete.
- 8.9 If the Sub-Contractor fails to achieve practical completion of the Sub-Contract Works (or, if relevant, a Section) by the relevant Date for Completion, the Sub-Contractor shall pay or allow to the Contractor the amount of any loss, expense or damage suffered, incurred or estimated by the Contractor as likely to be suffered or incurred as a result of that failure (including but not limited to any liquidated damages incurred by the Contractor pursuant to the Main Contract).
- 8.10 The Sub-Contractor shall carry out the Sub-Contract Works in such order and at such times and in such manner as the Contractor shall direct and or require, and the Sub-Contractor shall comply with any revision to the Programme issued by the Contractor as and when directed.
- 8.11 The Contractor does not guarantee continuity of working and reserves the right to phase, omit or suspend all or part of the Sub-Contract Works. The Contractor shall have no liability to the Sub-Contractor for any loss of profits or other losses, expenses, damages or claims arising out of any exercise of the Contractor's rights to phase, omit or suspend all or part of the Sub-Contract Works.
- 8.12 If, for any reason that does not entitle the Sub-Contractor to an extension of time pursuant to clause 8.4, the rate of progress of the Sub-Contract Works or any Section is such that, in the opinion of the Contractor (such opinion to be final and conclusive), completion of the Sub-Contract Works or a Section is unlikely to be achieved by the relevant Date for Completion, the Contractor may notify the Sub-Contractor in writing that the Contractor requires the Sub-Contractor to take such steps as are necessary (and approved by the Contractor) to expedite the progress of the Sub-Contract Works or the Section in order to ensure that they are practically complete by the relevant Date for Completion ("Acceleration Notice"). If the Sub-Contractor fails to comply with the Acceleration Notice within three Business Days of its service, the Contractor shall be entitled to employ other contractors or persons to take such steps (or the Contractor may do so itself) as the Contractor deems appropriate and any costs, expenditure, loss or damage that are incurred or suffered as a result may be deducted from any sums due or to become due to the Sub-Contractor or shall otherwise be recoverable from the Sub-Contractor as a debt. For the avoidance of doubt, the steps taken by the Sub-Contractor in order to comply with an Acceleration Notice shall not entitle the Sub-Contractor to any extension of time or addition to the Sub-Contract Sum or adjustment to the Bills of Quantities, the Schedule of Rates or the Schedule of Hourly Charges (whichever is/are applicable).
- 9 Main Contract**
- 9.1 The Sub-Contractor:
- 9.1.1 acknowledges that it has had an opportunity to inspect and shall be deemed to have full knowledge of the provisions of the Main Contract (other than details of the Contractor's rates and prices and other commercially sensitive information) and any documentation referred to therein, insofar as they relate or apply, directly or indirectly, to the Sub-Contract Works;
- 9.1.2 shall perform the obligations of the Contractor under the Main Contract to the extent that such obligations relate, directly or indirectly, to the Sub-Contract Works;
- 9.1.3 shall carry out and complete the Sub-Contract Works so that no act or omission of the Sub-Contractor shall result in any breach of the Main Contract by the Contractor; and
- 9.1.4 shall serve upon the Contractor such notices within such timescales as are required in order to ensure that the Contractor is able to comply with its obligations under the Main Contract.
- 9.2 If there is any conflict or discrepancy between the provisions of the Sub-Contract and the provisions of the Main Contract, the provisions of the Sub-Contract shall prevail.
- 10 Design**
- 10.1 To the extent that the Sub-Contract Works (including any variation thereto) include a requirement for the Sub-Contractor to carry out design, the Sub-Contractor shall:
- 10.1.1 in carrying out such design, exercise all the reasonable skill, care and diligence to be expected of a competent and qualified architect or, as the case may be, other appropriate professional designer experienced in carrying out and completing the design for works of a similar nature, value, complexity and timescale to the Sub-Contract Works;
- 10.1.2 be fully responsible for such design, including any variation thereto, and any designs upon which the Sub-Contractor relies (whether or not prepared by or on behalf of the Employer or the Contractor); and
- 10.1.3 ensure that the Sub-Contractor's design coordinates and integrates with the design of the Works as a whole.
- 11 Materials, goods and workmanship**
- 11.1 The Sub-Contractor shall:
- 11.1.1 carry out and complete the Sub-Contract Works using materials and goods of the kind, quality and standard specified in the Sub-Contract Documents and the Main Contract save that where they are not so specified, the Sub-Contractor shall use materials and goods that are new, of good quality, sound, free from any latent or inherent defects, comply with the relevant British Standard or codes of practice or such

- other industry standard as may be applicable and so that the Sub-Contract Works, when complete, are fit for their intended purpose;
- 11.1.2 not substitute any materials or goods specified in the Sub-Contract Documents without the Contractor's prior written consent and in any event, any such consent shall neither relieve the Sub-Contractor of its obligations under the Sub-Contract nor entitle the Sub-Contractor to an increase in the Sub-Contract Sum or any rates or prices set out in the Bills of Quantities, Schedule of Rates or Schedule of Hourly Charges (whichever is/are applicable), an extension of time or any other claim;
- 11.1.3 not specify for use, use, cause or knowingly permit any Deleterious Materials to be used in the Sub-Contract Works;
- 11.1.4 not deliver materials to Site prematurely and shall be responsible for the storage and protection of all materials.
- 11.2 Title to all materials, goods, plant and equipment procured by the Sub-Contractor for the purposes of or to be incorporated in the Sub-Contract Works shall pass to the Contractor immediately upon delivery to the Site or when they are included in an interim payment (whichever is the earlier), however the Sub-Contractor shall remain responsible for any loss or damage caused to such materials, goods, plant and equipment, and risk in them shall not pass to the Contractor, until the Contractor has given notice pursuant to clause 8.8. If any such materials, goods, plant and equipment are stored away from the Site after title in them has passed to the Contractor, the Sub-Contractor shall:
- 11.2.1 hold them as bailee for the Contractor;
- 11.2.2 ensure that they are stored separately from all other materials, goods, plant and equipment in the Sub-Contractor's possession;
- 11.2.3 insure them with a reputable insurer against all risks for an amount at least equal to their value with the Contractor's interest noted on the policy; and
- 11.2.4 ensure that they are clearly identifiable as belonging to the Contractor, and the Sub-Contractor irrevocably licenses the Contractor, its officers, employees and agents, to enter any premises of the Sub-Contractor (including with vehicles), in order to satisfy itself that the Sub-Contractor is complying with its obligations in clause 11.2 and to recover any materials, goods, plant and equipment to which title has passed to the Contractor.
- 11.3 Unfixed materials, goods, plant and equipment delivered to the Site and intended for incorporation in the Sub-Contract Works shall not be removed without the Contractor's written consent, whether or not the materials or goods have been included in an interim payment.
- 12 Defects and maintenance**
- 12.1 If at any time up to the end of the Rectification Period in respect of the Sub-Contract Works or (where applicable) in respect of each Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order, the Contractor notifies the Sub-Contractor of any defect, shrinkage or other fault in the Sub-Contract Works, the Sub-Contractor shall, at the Sub-Contractor's expense, forthwith make good such defect, shrinkage or other fault within such timescale and in such manner as the Contractor may require to the complete satisfaction of the Contractor and/or the Employer.
- 12.2 In complying with clause 12.1, the Sub-Contractor shall not disrupt the Contractor, the Employer or their servants, agents, sub-contractors or customers or any occupier(s) of the Site and shall minimise any damage and shall make good any damage so caused.
- 12.3 In the event that the Sub-Contractor shall be in breach of clause 12.1 or clause 12.2, the Contractor may itself or may instruct other contractors or persons to make good any defect, shrinkage, fault or damage and any costs, expenditure, loss or damage that are incurred or suffered as a result may be deducted from any sums due or to become due to the Sub-Contractor or shall otherwise be recoverable from the Sub-Contractor as a debt.
- 12.4 When the defects, shrinkages and other faults in the Sub-Contract Works or (where applicable) in each Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order, which the Contractor has required to be made good have been made good to the Contractor's satisfaction, the Contractor shall issue a notice to that effect ("Notice of Completion of Making Good").
- 13 Indemnities and insurance**
- 13.1 The Sub-Contractor shall be liable for and shall indemnify the Contractor against any claim, cause of action, liability, cost, loss, expense or proceedings whatsoever in respect of:
- 13.1.1 any personal injury to or death of any person arising out of or in the course of or caused by the carrying out of the Sub-Contract Works;
- 13.1.2 any loss, injury or damage whatsoever to any property whether real or personal arising out of or in the course of or caused by the carrying out of the Sub-Contract Works;
- 13.1.3 any personal injury to or death of any person in the employment of, engaged by or under the control of the Sub-Contractor;
- 13.1.4 any negligence or breach of duty on the part of the Sub-Contractor or its servants, agents or sub-contractors;
- 13.1.5 any breach, non-performance or non-observance by the Sub-Contractor or its servants, agents or sub-contractors, of the provisions of the Main Contract insofar as they relate or apply to the Sub-Contract Works;
- 13.1.6 any act, omission, default or neglect of the Sub-Contractor or its servants, agents or sub-contractors that causes the Contractor to incur any liability under the Main Contract;
- 13.1.7 any trespass to any property adjoining the Site or any public or private nuisance or any other interference with the rights of any owner, tenant or occupier of any property adjoining the Site or any Statutory Undertaker or other contractor engaged in connection with the Works, caused by or arising out of the carrying out of the Sub-Contract Works or any other obligation of the Sub-Contractor under the Sub-Contract to the extent that such trespass, nuisance or interference is due to any act, omission, default or neglect of the Sub-Contractor or its servants, agents or sub-contractors;
- 13.1.8 a failure by the Sub-Contractor to pass to the Contractor complete and unencumbered title in any materials, goods, plant or equipment;
- 13.1.9 any loss of or damage whatsoever to plant or equipment hired or provided by the Contractor arising from the Sub-Contractor's use of such plant or equipment.
- 13.1.10 Without prejudice to its obligation to indemnify the Contractor under clause 13.1, the Sub-Contractor shall take out and maintain the following insurances which cover shall indemnify the Contractor in like manner to the Sub-Contractor:
- 13.2.1 insurance against the liability referred to in clauses 13.1.1 and 13.1.2 which shall be maintained until the expiry of the Rectification Period in respect of the Sub-Contract Works or (where applicable) in respect of the final Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order, for a sum no less than £5,000,000.00 (five million pounds) or such other greater amount as may be stated in the Sub-Contract Order ("Public Liability Insurance");
- 13.2.2 insurance against the liability referred to in clause 13.1.3 which shall be maintained until the expiry of the Rectification Period in respect of the Sub-Contract Works or (where applicable) in respect of the final Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order, for a sum no less than £5,000,000.00 (five million pounds) or such other greater amount as may be stated in the Sub-Contract Order or such greater amount as may be required by law ("Employer's Liability Insurance");
- 13.2.3 all risks insurance in the joint names of the Contractor and the Sub-Contractor in respect of the Sub-Contract Works which shall be maintained until the expiry of the Rectification Period in respect of the Sub-Contract Works or (where applicable) in respect of the final Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order, for a sum no less than the full reinstatement value of the Sub-Contract Works; and
- 13.2.4 to the extent that the Sub-Contract Works (including any variation thereto) include a requirement for the Sub-Contractor to carry out design, professional indemnity insurance which shall be maintained until the date that is twelve (12) years after the expiry of the Rectification Period in respect of the Sub-Contract Works or (where applicable) in respect of the final Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order, for a sum no less than £5,000,000.00 (five million pounds) or such other greater amount as may be stated in the Sub-Contract Order, for any one occurrence or series of occurrences arising out of one event ("Professional Indemnity Insurance").
- 13.3 All insurances to be maintained by the Sub-Contractor under clause 13.2 shall:
- 13.3.1 be with insurers of good repute licensed to carry out business in the United Kingdom;
- 13.3.2 not be subject to any unusual conditions or excesses and in particular shall not include any condition that might adversely affect the Contractor's right to proceed directly against the Sub-Contractor's insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930; and
- 13.3.3 comply with all relevant legislation.
- 13.4 As and when it is requested to do so by the Contractor, the Sub-Contractor shall produce for inspection satisfactory documentary evidence that the insurances to be maintained by the Sub-Contractor under clause 13.2 are being properly maintained and the Contractor may require the Sub-Contractor to produce the relevant policy or policies and the related premium receipts.
- 13.5 The Sub-Contractor shall notify the Contractor immediately if any of the insurances to be maintained by the Sub-Contractor under clause 13.2 cease to be available at commercially reasonable premium rates or if, for any other reason, the Sub-Contractor is unable to continue to maintain any of the insurances so that the Contractor and Sub-Contractor may discuss how best to protect their respective interests which may involve the Contractor requiring Sub-Contractor to complete proposals for insurance and associated documents, maintain insurance for such reduced amount as is available at commercially reasonable premium rates and/or maintain insurance at rates above commercially reasonable rates, if the Contractor reimburses the Sub-Contractor for the net cost of that insurance above commercially reasonable rates. Any increased or additional premium required by insurers because of the Sub-Contractor's claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable premium rates.

- 13.6 In the event that the Sub-Contractor fails to take out or maintain the insurances to be maintained by the Sub-Contractor under clause 13.2, the Contractor may itself take out and maintain such insurance and the amount paid or payable by the Contractor in respect of premiums for such insurance may be deducted from any sums due or to become due to the Sub-Contractor or shall otherwise be recoverable from the Sub-Contractor as a debt.
- 13.7 No claims may be commenced against the Sub-Contractor after the expiry of twelve (12) years from the end of the Rectification Period in respect of the Sub-Contract Works or (where applicable) in respect of the final Section into which the Sub-Contract Works have been divided as described in the Sub-Contract Order, and any provisions of the Limitation Act 1980 (including any amendment or re-enactment of the same) which would otherwise allow a shorter period of liability are hereby excluded.
- 14 Variations**
- 14.1 The Sub-Contractor shall carry out any variation of the Sub-Contract Works ("Variation") that is instructed by the Contractor.
- 14.2 In the event that:
- 14.2.1 the Contractor issues an instruction requiring the Sub-Contractor to carry out a Variation; or
- 14.2.2 the Sub-Contractor considers that a Variation will be required, whether by virtue of an instruction from the Contractor or otherwise,
- the Sub-Contractor shall, within three (3) days of the Contractor's instruction or it becoming apparent to the Sub-Contractor that it considers that a Variation will be required (as the case may be) and in any event, before carrying out the Variation, provide the Contractor's surveying department with a quotation containing the information set out in clause 14.3 ("Variation Quote").
- 14.3 A Variation Quote, provision of which is a condition precedent to the Sub-Contractor's entitlement to any increase in the Sub-Contract Sum, any other additional payment and any extension of time, shall set out the Sub-Contractor's assessment of:
- 14.3.1 the total cost, loss and expense that will be associated with the Variation;
- 14.3.2 the effect of the Variation on the Programme; and
- 14.3.3 any expected delay in the completion of the Sub-Contract Works or a Section beyond the relevant Date for Completion.
- 14.4 Following receipt of a Variation Quote, the Contractor and the Sub-Contractor shall use reasonable endeavours to agree the various elements of the Variation Quote and if agreement is reached and the Contractor confirms the instruction in writing, the Sub-Contractor shall forthwith proceed to execute the Variation. If agreement cannot be reached, the Contractor may nevertheless issue an instruction requiring the Sub-Contractor to execute the Variation in which case, the provisions of clause 14.5 shall apply, or the Contractor may instruct the Sub-Contractor not to proceed with the Variation.
- 14.5 In the event that the Contractor and the Sub-Contractor cannot agree a Variation Quote but the Variation is nevertheless instructed by the Contractor and executed by the Sub-Contractor:
- 14.5.1 the Variation shall be valued by the Contractor on a fair and reasonable basis with reference, where possible, to the Sub-Contract Sum (where the Sub-Contract Order provides that payment under the Sub-Contract is to be on a fixed price, lump sum basis) or the Bills of Quantities, the Schedule of Rates and the Schedule of Hourly Charges (where the Sub-Contract Order provides that payment under the Sub-Contract is to be on a measurement/daywork basis); and
- 14.5.2 the Date for Completion of the Sub-Contract Works or a Section (as the case may be) may be extended by such period as is reasonable in the Contractor's opinion (such opinion to be final and conclusive).
- 14.6 In the event that the Sub-Contractor does not comply with its obligations pursuant to this clause 14, the Contractor may itself or may instruct other contractors or persons to execute the Variation and any associated costs and expenses (to the extent that they exceed the amount that would have been payable to the Sub-Contractor in respect of the Variation) may be deducted from any sums due or to become due to the Sub-Contractor or shall otherwise be recoverable from the Sub-Contractor as a debt.
- 15 Assignment and sub-letting**
- 15.1 The Sub-Contractor shall not, without the Contractor's prior written consent, assign, mortgage, charge, novate, sub-contract, delegate, transfer, declare a trust over, hold on trust for another or deal in any manner with all or any of its rights and obligations under the Sub-Contract. If the Contractor consents to any sub-contracting by the Sub-Contractor, the Sub-Contractor shall remain responsible for all the acts and omissions of its sub-contractors as if they were its own.
- 15.2 The Contractor may at any time assign, mortgage, charge, novate, sub-contract, delegate, transfer, declare a trust over, hold on trust for another or deal in any manner with all or any of its rights and obligations under the Sub-Contract without the consent of the Sub-Contractor.
- 16 Sub-Contractor's status, employees and agents**
- 16.1 For the avoidance of doubt, nothing in the Sub-Contract will render the Sub-Contractor (or any agent or other person engaged by the Sub-Contractor in any capacity) an officer, employee, worker or partner of the Contractor and neither the Sub-Contractor nor any agent or any other person engaged by the Sub-Contractor in any capacity may hold themselves out as such.
- 16.2 The Sub-Contractor will be responsible for the payment of income tax, national insurance and any other statutory deductions for all its employees.
- 16.3 The Sub-Contractor shall, at the Contractor's request, cease to employ in relation to the Sub-Contract Works, any of its employees to whom the Contractor may object and shall replace any such employee with another to whom the Contractor does not object.
- 16.4 The Sub-Contractor shall ensure that its employees and agents hold the correct Construction Skills Certification Scheme card ("CSCS Card"). The Contractor shall be permitted to refuse entry to the Site of any of the Sub-Contractor's employees and/or agents who do not have, in their possession, their CSCS Card or who do not comply with the Contractor's signing in requirements.
- 17 Termination**
- 17.1 The Contractor may, at any time and without prejudice to any other of its rights and remedies, terminate the Sub-Contractor's engagement under the Sub-Contract:
- 17.1.1 by giving fourteen (14) days' written notice to the Sub-Contractor;
- 17.1.2 forthwith by written notice if the Sub-Contractor commits a material breach, or series of breaches resulting in a material breach, of the Sub-Contract and such breach is irremediable or, if capable of remedy, the Sub-Contractor fails to remedy such breach within seven (7) days of a written notice from the Contractor requiring it to do so;
- 17.1.3 forthwith if the Sub-Contractor is Insolvent or if there is a material change in the management, ownership or control of the Sub-Contractor or if the Sub-Contractor suspends trading, ceases to carry on business, or threatens to do either or if the Sub-Contractor (being an individual) dies or ceases to be capable of managing his own affairs;
- 17.1.4 and/or under any other contract with the Contractor, with immediate effect by giving written notice to the Sub-Contractor if the Sub-Contractor or any of its suppliers, sub-contractors or other participants in its supply chains commits a breach of the Modern Slavery Act 2015; or
- 17.1.5 and/or under any other contract with the Contractor, with immediate effect by giving written notice to the Sub-Contractor if, in relation to the Sub-Contract or any other contract between the Sub-Contractor and the Contractor, the Sub-Contractor or any person employed by him or acting on his behalf or associated with him shall have committed an offence under the Bribery Act 2010. For the purpose of this clause 17.1.5, whether a person is associated with another person shall be determined in accordance with section 8 of the Bribery Act 2010 and a person associated with the Sub-Contractor includes, but is not limited to, any sub-contractor or supplier of the Sub-Contractor.
- 17.2 If the Contractor's engagement under the Main Contract is terminated, the Sub-Contractor's engagement under the Sub-Contract shall automatically thereupon terminate and the Contractor shall use reasonable endeavours to notify the Sub-Contractor in writing within 30 days thereafter.
- 17.3 In the event of termination pursuant to clause 17.1 or clause 17.2:
- 17.3.1 the Sub-Contractor shall immediately protect the Sub-Contract Works and leave the Site;
- 17.3.2 the Sub-Contractor shall immediately deliver to the Contractor, without charge, three copies of the Copyright Materials; and
- 17.3.3 the Sub-Contractor shall not be entitled to any compensation and the Contractor shall have no liability to the Sub-Contractor for any loss of profits or other losses, expenses, damages or claims arising out of the termination.
- 17.4 In the event of termination pursuant to clause 17.1.1 or clause 17.2:
- 17.4.1 the Sub-Contractor shall, without impeding or disrupting the Contractor, its servants or agents or other sub-contractors or the Employer's servants or agents or sub-contractors, remove its equipment, plant, tools and unfixed materials from the Site; and
- 17.4.2 the Sub-Contractor shall make a Final Application following termination. If the Sub-Contractor fails to make a Final Application within one month of termination (in the case of termination pursuant to clause 17.1.1) or within one month of the Contractor's written notice (in the case of termination pursuant to clause 17.2), the Contractor may issue a Final Statement to the Sub-Contractor.
- 17.5 In the event of termination pursuant to clause 17.1.2, clause 17.1.3, clause 17.1.4 or clause 17.1.5:
- 17.5.1 the Sub-Contractor shall not, unless directed to do so by the Contractor, remove any of its equipment, plant, tools or materials from the Site until practical completion of the Sub-Contract Works;
- 17.5.2 the Contractor shall have the free use of the Sub-Contractor's equipment, plant and tools on the Site without responsibility to the Sub-Contractor for fair wear and tear thereof and shall be entitled to use any materials at the Site for the purposes of completing the Sub-Contract Works;
- 17.5.3 the Sub-Contractor shall not be entitled to any further payment until practical completion of the Sub-Contract Works has occurred;
- 17.5.4 the Contractor shall be entitled to recover from the Sub-Contractor any losses, expenses, costs or damages that the Contractor suffers as a result of the termination and the Contractor shall be entitled to deduct such losses, expenses, costs or damages from any sums otherwise due to the Sub-Contractor under the Sub-Contract;
- 17.5.5 the Contractor shall use reasonable endeavours to notify the Sub-Contractor in writing, within 30 days of the date of practical completion of the Sub-Contract Works, that practical completion has been achieved; and
- 17.5.6 the Sub-Contractor shall make a Final Application on or after receipt of the Contractor's notice under clause 17.5.5. If the Sub-Contractor fails

- to make a Final Application within one month of the Contractor's notice under clause 17.5.5, the Contractor may issue a Final Statement to the Sub-Contractor.
- 17.6 The amount of the final payment pursuant to clause 17.4.2 or 17.5.6 (which, for the avoidance of doubt, may be a sum due to the Contractor from the Sub-Contractor) shall be such proportion of the Sub-Contract Sum as fairly and reasonably reflects the proportion of the Sub-Contract Works carried out by the Sub-Contractor in accordance with the Sub-Contract at the date of termination (where the Sub-Contract Order provides that payment under the Sub-Contract is to be on a fixed price, lump sum basis) or the total amount due to the Sub-Contractor for work properly carried out by the Sub-Contractor and materials properly incorporated into the Sub-Contract Works (where the Sub-Contract Order provides that payment under the Sub-Contract is to be on a measurement/daywork basis), plus any other amounts payable under the terms of the Sub-Contract, less any amounts deductible under the terms of the Sub-Contract, less the total of amounts already paid by the Contractor to the Sub-Contractor under the Sub-Contract.
- 17.7 An application made by the Sub-Contractor pursuant to clause 17.4.2 or a final statement issued by the Contractor pursuant to clause 17.5.6 shall be treated in all respects as if it were a Final Application or a Final Statement issued pursuant to clause 7.13 and the procedures set out in clauses 7.15 to 7.20 shall apply (*mutatis mutandis*).
- 17.8 The Contractor shall have no liability to the Sub-Contractor for any loss of profits, damage to reputation, loss of anticipated revenues, loss of contract, loss of business opportunity, loss of goodwill or any other loss, damage, cost, expense, claim or liability whatsoever arising out of or in connection with any termination under this clause 17.
- 17.9 Termination or expiry of the Sub-Contract shall not affect the Contractor's rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Sub-Contract which existed at or before the date of termination or expiry.
- 17.10 Any provision of the Sub-Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Sub-Contract shall remain in full force and effect.
- 18 Suspension**
- 18.1 The Contractor may, by giving seven (7) days' written notice, require the Sub-Contractor forthwith to suspend performance of the whole or any part of the Sub-Contract Works.
- 18.2 In the event that the Contractor exercises its right under clause 18.1, the Contractor shall be entitled to require the Sub-Contractor to remobilise and resume the Sub-Contract Works on two (2) Business Days' written notice.
- 18.3 In the event that a suspension lasts for more than six (6) months, either party may terminate the Sub-Contractor's engagement under the Sub-Contract by giving seven (7) days' written notice to the other party and clauses 17.3, 17.4, 17.6 and 17.7 shall apply (*mutatis mutandis*).
- 18.4 If the Contractor fails to pay to the Sub-Contractor a sum properly payable under clause 7 by the final date for payment, the Sub-Contractor may give written notice of its intention to suspend the performance of the Sub-Contract Works. If the Contractor's failure to make payment continues for a further seven (7) days after the Sub-Contractor has given its written notice, the Sub-Contractor may suspend performance of the Sub-Contract Works in whole or in part until payment is made in full whereupon the Sub-Contractor shall remobilise and resume the Sub-Contract Works within two (2) Business Days.
- 18.5 The Contractor shall have no liability to the Sub-Contractor for any loss of profits, damage to reputation, loss of anticipated revenues, loss of contract, loss of business opportunity, loss of goodwill or any other loss, damage, cost, expense, claim or liability whatsoever arising out of or in connection with any suspension or termination under this clause 18.
- 19 Disputes**
- 19.1 Either party may, at any time, refer any dispute or difference arising under the Sub-Contract to adjudication in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 except that the adjudicator nominating body shall be the Association of Independent Construction Adjudicators.
- 19.2 Where it is stated in the Sub-Contract Order that this clause 19.2 (i.e. arbitration) applies, then, subject to clause 19.1, any dispute or difference between the parties arising out of or in connection with the Sub-Contract, except in connection with the enforcement of any decision of an adjudicator, shall be referred to arbitration in which case:
- 19.2.1 a party wishing to refer a dispute or difference to arbitration shall serve on the other party a notice of arbitration to that effect ("Arbitration Notice");
- 19.2.2 the date on which the Arbitration Notice is served shall be regarded as the date on which the arbitral proceedings are commenced;
- 19.2.3 the arbitrator shall be an individual agreed by the parties within 14 days of the date of service of the Arbitration Notice or, in the absence of agreement within that period, appointed by the same individual as identified in the Main Contract or where not so identified, by the President or a Vice-President of the Chartered Institute of Arbitrators; and
- 19.2.4 the arbitration shall be conducted in accordance with arbitration rules applicable to the Main Contract or, if no rules are stipulated in the Main Contract, in accordance with the Construction Industry Model Arbitration Rules (CIMAR).
- 19.3 Subject to clauses 19.1 and 19.2, the English courts shall have jurisdiction over any dispute or difference between the parties arising out of or in connection with the Sub-Contract.
- 20 Health and safety**
- 20.1 In good time prior to commencement of the Sub-Contract Works, the Sub-Contractor shall provide to the Contractor all required risk assessments and method statements and the Sub-Contractor's proposed health and safety and environmental measures complying with all applicable requirements and Statutory Regulations. The Sub-Contractor shall forthwith, upon request by the Contractor, incorporate any and all amendments required to be made to such documentation in order to ensure compliance with the requirements of the Main Contract.
- 20.2 The Sub-Contractor shall:
- 20.2.1 observe and comply with all applicable health, safety and environmental legislation;
- 20.2.2 comply with the Contractor's construction phase plan;
- 20.2.3 attend any health and safety training or briefing sessions organised by the Contractor or the Employer from time to time;
- 20.2.4 provide a safe system of work including all appropriate personal protection equipment and health, safety and welfare facilities; and
- 20.2.5 participate in any health and safety inspections and audits that are carried out from time to time by the Employer or the Contractor.
- 20.3 The Sub-Contractor shall be liable for and shall indemnify the Contractor against any claim, cause of action, liability, cost, loss, expense or proceedings whatsoever arising out of the Sub-Contractor's breach of its obligations under this clause 20, including but not limited to any fines imposed upon the Contractor by the Health & Safety Executive.
- 21 Collateral warranties**
- 21.1 The Sub-Contractor shall, within 7 days of a written request by the Contractor from time to time, execute and deliver to the Contractor, a deed of collateral warranty in favour of each and every Beneficiary in such form as the Contractor may require.
- 21.2 In the event that the Sub-Contractor fails to execute and deliver a deed of collateral warranty in breach of clause 21.1, the Contractor shall be entitled to deduct and withhold from any sums due (or to become due) to the Sub-Contractor, 5% of the Sub-Contract Sum or £10,000.00 (whichever is greater) per deed of collateral warranty that remains unexecuted and undelivered until such time as the Sub-Contractor remedies such failure.
- 22 Test certificates, manuals and drawings**
- 22.1 At least one month prior to practical completion of the Sub-Contract Works (or, if relevant, each Section), the Sub-Contractor shall supply to the Contractor:
- 22.1.1 any test certificates applicable to the Sub-Contract Works and the Sub-Contractor shall request the Contractor to confirm the name and address to be registered to the certificates; and
- 22.1.2 a clean, original equipment manual for each piece of apparatus/installation for each new dwelling/building together with 'as built' drawings.
- 23 Site**
- 23.1 The Sub-Contractor shall be deemed to have inspected, examined and fully acquainted itself with the physical and other conditions (including the sub-surface conditions) of or affecting the Site and its surroundings and all existing structures thereon and the available means of access thereto and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the design and construction of the Sub-Contract Works or the Sub-Contract Sum or any rates or prices set out in the Bills of Quantities, Schedule of Rates or Schedule of Hourly Charges (whichever is/are applicable).
- 23.2 The Sub-Contractor acknowledges, and any Date for Completion shall be deemed to have accounted for, the fact that the Sub-Contractor shall not have uninterrupted access to or exclusive possession of the Site and that the Site may be closed for holiday periods, public holidays or otherwise during the course of the Sub-Contract Works.
- 23.3 The Sub-Contractor shall not unreasonably impede any other contractors or sub-contractors employed in relation to the Works.
- 23.4 The Sub-Contractor shall, at its own cost, keep the Site clean, tidy and free from waste, rubbish and arisings.
- 23.5 In the event that the Sub-Contractor shall be in breach of clause 23.4, the Contractor may itself or may instruct other contractors or persons to make good such breach and any costs, expenditure, loss or damage that are incurred or suffered as a result may be deducted from any sums due or to become due to the Sub-Contractor or shall otherwise be recoverable from the Sub-Contractor as a debt.
- 23.6 The Contractor shall have no liability to the Sub-Contractor for the loss of or damage to any of the Sub-Contractor's plant, equipment or tools and any such plant, equipment and tools are brought to site at the Sub-Contractor's own risk.
- 24 Attendances**
- 24.1 Save for the attendances identified in the Sub-Contract Order as to be provided by the Contractor which the Contractor shall provide free of charge to the Sub-Contractor, the Sub-Contractor shall provide and the Sub-Contract Sum or the rates or prices set out in the Bills of Quantities, Schedule of Rates or Schedule of Hourly Charges (whichever is/are applicable) is/are deemed to be inclusive of such amenities, facilities, equipment and services as the Sub-Contractor shall require in order to carry out and complete the Sub-Contract Works.

- 24.2 If the Contractor permits the Sub-Contractor to use amenities, facilities, equipment and services, the Sub-Contractor shall, at its own risk and in common with others engaged on the Site, have free and reasonable use of such amenities, facilities, equipment and services, however the Contractor's permission shall not imply any warranty as to their fitness, condition or suitability for purpose.
- 25 Confidentiality**
- 25.1 Save as may be necessary in the performance of its duties under the Sub-Contract, the Sub-Contractor shall not, without the prior written consent of the Contractor, disclose to any person or otherwise use the Sub-Contract Documents or any of the documents or information (including cost information) referred to in the Sub-Contract or any photographs of the Sub-Contract Works or the Works or any other confidential information including cost information relating to the Sub-Contract Works, the Works, the Contractor or the Employer.
- 25.2 The Sub-Contractor shall neither, without the prior written approval of the Contractor, divulge to any third party nor (except for the purposes of the Sub-Contract Works) make use of any confidential information relating to the Contractor, the Employer, the Sub-Contract Works, the Works or otherwise (including, without limitation, information relating to methods and techniques of construction proposed by the Contractor or the Employer, any financial information relating to the Sub-Contract Works or the Works and the contents of any drawings, details, documents or other information prepared by or on behalf of the Contractor or the Employer) or release to any third party any information relating to the Sub-Contract Works or the Works or take or authorise the taking of any photographs of the Sub-Contract Works or the Works or publish or authorise the publication of any articles, photographs or other illustrations of the Sub-Contract Works or the Works.
- 26 Copyright**
- 26.1 The copyright in all documents and information prepared by or on behalf of the Sub-Contractor in relation to the Sub-Contract Works including, without limitation, all drawings, plans, specifications, calculations and other information and documents ("Copyright Materials") shall remain vested in the Sub-Contractor but the Sub-Contractor grants to the Contractor a non-exclusive, irrevocable and royalty-free licence to use and reproduce the Copyright Materials for all purposes relating to the Works including (without limitation) the design, construction, testing, commissioning, snagging, repair, alteration, extension, reinstatement, refurbishment, operation, management, letting, sale or promotion of the Works.
- 26.2 Such licence shall permit the copying and use of the Copyright Materials for an extension to the Works but shall not include a licence to reproduce the designs contained in them for any such extension.
- 26.3 The Sub-Contractor shall not be liable for any use by the Contractor of any of the Copyright Materials for any purpose other than that for which the same were prepared by the Sub-Contractor or as otherwise reasonably required. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.
- 26.4 The Sub-Contractor shall supply to the Contractor upon request, copies of the Copyright Materials.
- 27 Modern Slavery Act**
- 27.1 In performing its obligations under the Sub-Contract, the Sub-Contractor shall and shall ensure that each of its suppliers, sub-contractors and other participants in its supply chains shall comply with the Modern Slavery Act 2015 (or any replacement or revised legislation).
- 27.2 The Sub-Contractor represents and warrants that neither the Sub-Contractor nor any of its officers, employees or other persons associated with it:
- 27.2.1 has been convicted of any offence involving slavery and human trafficking; and
- 27.2.2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 27.3 The Sub-Contractor shall implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 27.4 The Sub-Contractor shall notify the Contractor as soon as it becomes aware of:
- 27.4.1 any breach, or potential breach, of the Modern Slavery Act 2015; or
- 27.4.2 any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Sub-Contract.
- 27.5 The Sub-Contractor represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Modern Slavery Act 2015. The Sub-Contractor shall indemnify the Contractor against any losses, liabilities, damages, costs (including, but not limited to legal fees) and expenses incurred by, or awarded against, the Contractor as a result of any breach of the Modern Slavery Act 2015.
- 28 Set-off**
- 28.1 Any amount that the Sub-Contractor owes to the Contractor under the Sub-Contract or otherwise, whether now or at any time in the future, whether it is liquidated or not and whether it is actual or contingent, may be set off from any amount due to the Sub-Contractor from the Contractor under the Sub-Contract or otherwise. Any exercise by the Contractor of its rights under this clause 27 will not prejudice any other right or remedy available to it, whether under the Sub-Contract or otherwise.
- 29 Severability**
- 29.1 If any provision or part-provision of the Sub-Contract is found by a court, tribunal or other administrative body of competent jurisdiction to be unenforceable, illegal or invalid for any reason, it shall be deemed deleted, but that shall not affect the validity, legality and enforceability of the rest of the Sub-Contract. If any provision or part-provision of the Sub-Contract is deemed deleted under this clause 29.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 30 Notices**
- 30.1 Notices under the Sub-Contract will be in writing and sent to the postal and/or email addresses set out in the Sub-Contract Order and in the case of notices to be given to the Contractor, they shall be marked for the attention of Simon Preston. Notices may be given, and will be deemed received:
- 30.1.1 by pre-paid first-class post or other next working day delivery service: on the second Business Day after posting;
- 30.1.2 by hand: on signature of a delivery receipt; and
- 30.1.3 by e-mail: on receipt of a delivery or read receipt mail from the correct address.
- 30.2 This clause 30 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 31 Waiver**
- 31.1 No delay, act, failure or omission by the Contractor in exercising any right or remedy or in inspecting, reviewing, appraising, enquiring into, commenting upon, approving or making payment in respect of the Sub-Contract Works shall be deemed to be a waiver of any of the Contractor's rights or remedies nor shall it modify, release, diminish or in any other way affect any of the Sub-Contractor's obligations or liabilities whether arising under the Sub-Contract, at common law or otherwise.
- 32 Cumulative remedies**
- 32.1 The rights and remedies provided in the Sub-Contract for the Contractor only are cumulative and not exclusive of any rights and remedies provided by law.
- 33 Rights of third parties**
- 33.1 Unless it expressly states otherwise, the Sub-Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Sub-Contract.
- 34 No partnership or agency**
- 34.1 Nothing in the Sub-Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 35 Entire agreement**
- 35.1 The parties agree that the Sub-Contract constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Sub-Contractor acknowledges that it has not entered into the Sub-Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Sub-Contract.
- 36 Succession**
- 36.1 The Sub-Contract will bind and benefit each party's permitted assigns, successors and personal representatives.
- 37 Governing law**
- 37.1 The Sub-Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.