

GENERAL TERMS AND CONDITIONS OF SUB-CONTRACT

1. Incorporation and Interpretation

1.1 Unless the following conditions and/or the Sub-Contract Order and Particulars specifically provide otherwise, the following words and phrases shall have the meaning as ascribed to them in Condition 1.1 of the Joint Contracts Tribunal Design and Build Sub-Contract 2016 (2016 Edition) and as if Condition 1.1 of the said Joint Contracts Tribunal contract had been expressly incorporated into these Sub-Contract General Terms and Conditions.

1.2 For the purpose of these conditions, a party is '*Insolvent*' if:

- (a) It suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with its winding up; or
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over it; or
- (e) a floating charge holder over its assets has become entitled to appoint or has appointed, an administrative receiver; or
- (f) a person becomes entitled to appoint a receiver over its assets or a receiver is appointed over its assets; or
- (g) being an individual, it is the subject of a bankruptcy petition or order; or
- (h) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within ten (10) Business Days; or
- (i) any event occurs, or proceeding is taken, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (h) above (inclusive); or
- (j) it suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

2. General

2.1 The Sub-Contract constitutes the entire understanding between the Parties and shall supersede all prior written or oral representations, writings, negotiations or understandings. The information required to be set out in the Numbered Documents shall be deemed incorporated in the Sub-Contract Particulars.

2.2 The Sub-Contractor's obligations shall apply to any part of the Sub-Contract Works whether carried out before on or after the date stated in the Sub-Contract Order.

3. Discrepancies within Documents

3.1 The Sub-Contractor shall examine the Numbered Documents in order to ascertain whether there is any illegality, conflict, discrepancy in, or divergence between any two or more of the Numbered Documents, including a divergence between any parts of them or between any such documents.

3.2 Where the Sub-Contractor notifies the Contractor of any such ambiguity or discrepancy within the Numbered Documents, the Contractor shall instruct the Sub-Contractor as to which of the discrepant items is to be adopted and the Sub-Contractor shall (subject always to compliance with Statutory Requirements) comply with such instruction without any adjustment to the Sub-Contract Sum or relevant programme period set out in the Numbered Documents and without any additional cost to the Contractor.

4. Sub-Contractor's Obligations

4.1 The Sub-Contractor undertakes to provide everything which is necessary for the completion of the Sub-Contract Works in accordance with the Sub-Contract, the Conditions, the Numbered Documents, the Sub-Contract Particulars and Statutory Requirements and to deliver up the Sub-Contract Works to the Contractor, complete in every particular way, to the satisfaction of the Contractor and of the Employer.

4.2 The Sub-Contractor shall design and / or adopt and complete the design (where specified in the Sub-Contract Particulars), adopt, carry out and complete the Sub-Contract Works with reasonable skill, care and diligence as is to be expected of a properly qualified and competent member of the relevant profession experienced in carrying out work such as the Sub-Contract Works in relation to projects of a similar size scope nature and complexity to the Sub-Contract Works and in a good and workmanlike manner using materials and workmanship of a standard set out in the Main

Contract and Sub-Contract and in accordance with all relevant British Standards and codes of practice and all other Statutory Requirements.

- 4.3 The Sub-Contractor warrants that it will use the standard of skill and care set out in condition 4.2 in the selection of goods and materials in the satisfaction of the specification of the Sub-Contract Works and any performance specification or requirement included in or referred to in the Sub-Contract and/or applicable to the Sub-Contract Works. The Sub-Contractor shall indemnify the Contractor against any costs, damages, loss or expense arising or incurred as a result of a breach of conditions 4.2 and 4.3.
- 4.4 No approval, expressed or implied, by the Contractor or the Employer's representatives referred to in the Main Contract shall in any way relieve the Sub-Contractor of its responsibility for complying with the performance of this Sub-Contract.
- 4.5 Any defects, settlement or other faults in the Sub-Contract Works will be notified to the Sub-Contractor in writing. Such defects, settlement or faults notified to the Sub-Contractor before the expiry of the Defects Liability Period stated in the Main Contract must be rectified by the Sub-Contractor at his own cost, within the period specified in the notice and to the satisfaction of the Contractor as a condition precedent to payment, failing which, the Contractor reserves the right to employ others to remedy the said defects, settlement or other faults and deduct the cost of the same any losses and/or extra costs and expenses incurred by the Contractor from sums due to the Sub-Contractor under the Sub-Contract.
- 4.6 The Sub-Contractor shall at its own cost, provide everything necessary to complete the Sub-Contract Works, with the exception of attendances to be provided by the Contractor (if any) as stated in the Numbered Documents.
- 4.7 The Sub-Contractor shall properly clear up and leave the Sub-Contract Works and all areas made available for the purposes of executing those works, clean and tidy to the satisfaction of the Contractor at the conclusion of each day's work and at completion of the Sub-Contract Works shall remove all debris and / or surplus materials and plant from the vicinity of the Sub-Contract Works immediately upon the request of the Contractor.
- 4.8 The Sub-Contract shall indemnify and hold harmless the Contractor against any liability which the Contractor may incur to the Main Contractor or any person whatsoever and against any damages (whether liquidated or unliquidated including the Liquidated Damages) claims, demands, costs and/or expenses sustained, incurred or payable by the Contractor to the extent that the same arises by reason of any breach of the Sub-Contractor's obligations under this Sub-Contract or any tortious act or omission on the Sub-Contractor's part

(and/or any third party to whom the Sub-Contractor has subcontracted the performance of the Sub-Contractor's obligations or part thereof) in the performance of the Sub-Contractor's obligations under and in connection with the Sub-Contract.

5. Design Responsibilities

- 5.1 Where the Sub-Contract Particulars specify that the Sub-Contractor has designed the Sub-Contract Works or any part of the Sub-Contract Works or has carried out any other designs in relation to in or in connection with the Sub-Contract Works (including any further design required as a result of a variation required by or agreed with the Contractor) the Sub-Contractor shall indemnify the Contractor and keep it indemnified against any losses, damages, costs, expenses, proceedings or otherwise which relate to or arise out of such design.

6. Competent Person

- 6.1 The Sub-Contractor shall employ a competent person, with sufficient skill, knowledge, qualifications and experience to enable him to carry out his role, to supervise the execution of the Sub-Contract Works through its duration. So long as such a person remains in the Sub-Contractor's employ, he shall not be changed or removed from the site without the prior written authority of the Contractor.

7. Main Contract

- 7.1 The Sub-Contractor is deemed to have full knowledge of the provisions of the Main Contract and warrants that it has been afforded all reasonable opportunity to view and inspect the terms of the Main Contract (and shall be deemed to have made such inspection) including any schedules, appendices or annexes or other documents referred to or incorporated therein.
- 7.2 Save where the provisions of the Sub-Contract otherwise require, the Sub-Contractor shall assume all the obligations and responsibilities of the Contractor under the Main Contract in relation to the Sub-Contract Works and the Sub-Contractor further warrants not to do or omit to do anything which will or may place the Contractor in breach of its obligations under the Main Contract and / or other contracts made in connection with the Main Contract Works and / or to incur additional losses, costs, expenses and liabilities.

8. Information and Co-operation

- 8.1 Any instructions, drawings, levels or other information which is required to be provided to the Sub-Contractor by the Contractor or the Employer shall be provided in due time upon written request by the Sub-Contractor provided always that such request for information is not an unreasonable distance from, nor unreasonably close to, the date on which it is necessary for the Sub-Contractor to

receive the same. The Sub-Contractor shall be responsible for making the written request in good time for any information required by it of others. The Sub-Contractor cannot rely (by way of defence to any claim or counterclaim made by the Contractor) on any failure by the Sub-Contractor to make such a request.

8.2 The Sub-Contractor shall be responsible for providing any information required from him upon written request, and without charge, to the Contractor including any copies of such drawings, details, specifications, levels, setting out dimensions, samples and other information which are required to enable the Sub-Contract Works.

8.3 The Sub-Contractor must ensure that where its Sub-Contract Works integrate or overlap with that of others, full co-operation and co-ordination is maintained during the execution of the Sub-Contract Works with that of others and the Sub-Contractor shall be liable to the Contractor for any additional costs incurred where the Contractor has failed to comply with this condition 8.3.

9. Required Insurances

9.1 The Sub-Contractor shall effect on or before the commencement of the Sub-Contract Works the Required Insurances as set out in the Sub-Contract Particulars:

- (a) for the period expiring 12 years from the date of practical completion of the Main Contract Works a professional indemnity and/or a product liability insurance policy in the amount not less than that stated in the Sub-Contract Particulars for any one occurrence or series of occurrences arising out of any one event;
- (b) for the period expiring on the issue of the certificate or statement of making good defects under the Main Contract a policy of customary Contractor's All Risk Insurance in the names of the Sub-Contractor the Contractor the Employer insuring against loss or damages to the Sub-Contract Works and materials on site for incorporation into or for use in connection with the Sub-Contract Works for their full reinstatement value save to the extent that the Contractor the Employer or any other person that takes out and maintains a relevant contractor's all risk insurance policy is contractually obliged to insure the Sub-Contract Works and such materials;
- (c) employer's liability insurance in accordance with Statutory Requirements in respect of the Sub-Contractor's legal liability to pay compensation arising from death, injury or disease sustained by the Sub-Contractor's employees arising out of or in the course of or by reason of the employees' employment and such insurance shall include an indemnity to principals clause;

(d) general public insurance insuring against any property damage or personal injury or death arising out of or by reason of the performance of the Sub-Contract by the Sub-Contractor in the amount not less than that stated in the Sub-Contract Particulars or if not specified then in the amount of not less than £5,000,000 for any claims or series of claims arising out of any one accident or event and such insurance shall include an indemnity to principals clause;

9.2 The Sub-Contractor shall produce such documentary evidence as requested by the Contractor to prove that the Required Insurances are properly effected and maintained.

9.3 If the Sub-Contractor fails to take out or maintain at any time any of the Required Insurances then the Contractor shall be entitled to take out such insurances himself and recover the cost of the same plus 10% on demand from the Sub-Contractor to deduct the same from any sums otherwise due to the Sub-Contractor pursuant to the Sub-Contract.

9.4 The Sub-Contractor will immediately notify the Contractor if any of the Insurances are terminated, if any special restrictions are added or are subject to / have been renewed.

9.5 The Sub-Contractor agrees that any insurance policy taken out by the Contractor in respect of the Main Contract Works does not extend to cover the liability of the Sub-Contractor and shall in no way operate to relieve or diminish the Sub-Contractor's liability in respect of such works.

10. Collateral Warranties and other security

10.1 The Sub-Contractor shall within 7 days of the date of the Contractor's written request, enter into a deed or deeds of warranty and / or other such form of security bond or guarantee in respect of the Sub-Contract Works with any such persons as the Contractor shall require and, in such form, and / or for such amount as the Contractor may require.

11. Goods and Materials

11.1 Title in goods and materials for incorporation in the Sub-Contract Works shall pass from the Sub-Contractor to the Contractor with full title guarantee upon the earlier of:

- (a) delivery to the Site; or
- (b) when the same is paid for in whole or in part by the Contractor,

unless such earlier times are required to comply with the Main Contract.

11.2 The goods and materials that have passed to the Contractor shall not be moved without the prior written consent of the Contractor save for the

purpose of delivery to the Site or in the case of emergency.

- 11.3 Without prejudice to any other remedy to which it may be entitled to, the Contractor may at any time reject the goods and materials in whole or in part, whether or not the same have been delivered to the Site and accepted by the Contractor, which do not conform strictly with the Sub-Contract, the Numbered Documents, the Statutory Requirements or the Conditions.

12. Site Conditions

- 12.1 The Sub-Contractor shall be deemed to have inspected and examined and have full knowledge of the Site of the Sub-Contract Works and its surroundings and is satisfied as to the site conditions and all other aspects affecting the design and carrying out of the Works and in general to have obtained for himself all necessary information as to the risks, contingencies and all other circumstances influencing or affecting the Sub-Contract Works.
- 12.2 The Sub-Contractor shall not be entitled to any extensions of time or to any additional payment on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Sub-Contractor be released from any of the risks accepted or obligations undertaken by him under the Sub-Contract on the ground that he did not or could not have foreseen any matter which might affect or have affected the execution of the Sub-Contract Works, or from failure to visit the site.
- 12.3 The Sub-Contractor will comply with any project specific site conditions set out in the Numbered Documents and / or listed in the Special Conditions section of the Sub-Contract Particulars.

13. Protection and Site Security

- 13.1 The Sub-Contractor is deemed to have included within the Sub-Contract Sum the costs for the provision of any protection and / or security as may be necessary in relation to the Sub-Contract Works.
- 13.2 All goods or materials supplied by the Contractor remain the property of the Contractor. The Sub-Contractor shall indemnify the Contractor against any loss or damage to any such goods or materials.

14. Health and Safety and CDM Regulations

- 14.1 The Sub-Contract Works shall be carried out by the Sub-Contractor in accordance with the Contractor's health and safety and environmental policy.
- 14.2 The Sub-Contractor will ensure at all times compliance with all current health and safety legislation and statutory requirements applicable to

the Sub-Contract Works and shall indemnify the Contractor in relation to any costs, expenses, losses, damages, claim and the like suffered by the Contractor in relation to such breach.

- 14.3 The Sub-Contractor is required to comply with the Construction (Design and Management) Regulations 2015 and shall submit all relevant information in respect of their compliance with the Regulations to the Contractor prior to the commencement of the Sub-Contract Works.
- 14.4 The Sub-Contractor shall at all times comply with the Control of Substances Hazardous to Health (COSHH) Regulations which came into effect on 1st October 1989. In addition to such compliance, the Sub-Contractor shall submit to the Contractor his assessment of control of methods covering all materials and working methods to be used in the Sub-Contract Works.
- 14.5 As and when instructed by the Contractor, the Sub-Contractor shall provide (for the Contractor's approval) risk assessments in relation to the carrying out of the Sub-Contract Works and a detailed method statement prior to the commencement of the Sub-Contract Works.

15. Working Drawings, As-Built Drawings etc

- 15.1 The Sub-Contractor shall prepare and supply working drawings in accordance with the Sub-Contract Particulars. The Sub-Contractor shall be responsible for taking and ascertaining all relevant site dimensions for the purposes of completing the Sub-Contract Works and will be responsible for any setting out of the Sub-Contract Works. Any inspection or waiver or inspection or comments made or not made by the Contractor shall in no way diminish or relieve the Sub-Contractor of its liabilities and / or obligations under this Sub-Contract.
- 15.2 Prior to practical completion of the Sub-Contract Works, the Sub-Contractor shall provide to the Contractor one electronic copy and four paper copies of any information which is to form part of the health and a safety file for the Sub-Contract Works and / or the Main Contract Works and any information as may be specified in the Sub-Contract and all as-built drawings, operation and maintenance manuals, health and safety documentation, specifications, warranties, product guarantees (which shall be made in favour of such persons as the Contractor may instruct), certifications and the like as may relate to the Sub-Contract Works. It shall be a condition precedent of the Final Payment and any Retention that the Sub-Contractor has provided all documents in accordance with this condition.

16. Copyright

- 16.1 The Sub-Contractor hereby grants to the Contractor (and the Employer under the Main Contract) a full and irrevocable non-exclusive

royalty free licence in perpetuity for the full term of copyright to use and reproduce all and any drawings, designs, plans, design details, photographs, brochures, notes of meetings, CAD materials, reports, specifications, calculations and other records and documents created or prepared by the Sub-Contractor (or any sub-sub-contractors or sub-consultants employed by the Sub-Contractor) for use in connection with the Sub-Contract Works and the right to grant sub-licences of the same.

16.2 The Sub-Contractor shall indemnify the Contractor against all claims for infringement of any patent, registered design, copyright, trademark or trade name or other intellectual property right if the claims arise out of the design, construction and manufacture or use of the Sub-Contract Works or part thereof.

17. Hours of Working

17.1 The Site will be open to the Sub-Contractor between the Hours of Working set out in the Sub-Contract Particulars. The Sub-Contractor shall make full use of such hours in order to effect the timely completion of the Sub-Contract Works. The Sub-Contractor agrees that it may be required to work out of hours and has included in the Contract Sum all costs associated with out of hours and overtime working

18. Dayworks

18.1 The Sub-Contractor shall give the Contractor 24 hours' notice of any work which in the opinion of the Sub-Contractor can only be valued on a daywork basis. Subject to the Sub-Contractor first receiving approval in writing from the Contractor's Key Representative, the Sub-Contractor shall carry out works on a daywork basis at the rates set in the Sub-Contract Particulars.

18.2 It shall be a condition precedent to payment to the Sub-Contractor in respect of any dayworks that such dayworks have been approved in writing by the Contractor prior to them being carried out. Daywork records must be dated, fully detailed, stating the personnel concerned, hours worked, materials and plant utilised, and a full description of the work carried out on site.

19. Programme and Delays

19.1 Unless otherwise instructed by the Contract, the Sub-Contractor shall commence, carry-out and co-ordinate the Sub-Contract Works regularly and diligently and shall complete the Sub-Contract Works in accordance with the Construction Programme issued by the Contractor to the Sub-Contractor from time to time.

19.2 The Sub-Contractor acknowledges and accepts that sequencing of the Sub-Contract Works may not be continuous.

19.3 Upon it becoming reasonably apparent that the Sub-Contract Works or any part thereof have been or are likely to be delayed, the Sub-Contractor shall immediately notify the Contractor in writing specifying the extent of the delay and the cause(s) and shall comply with the requirements of the Main Contract in relation to the giving of notices and any details required in relation to the same. If for such cause(s) the Contractor is granted an extension of time under the Main Contract then unless the delay was caused by the omission negligence or default of the Sub-Contractor the Contractor shall by written notice to the Sub-Contractor extend if necessary the period for completion of the Sub-Contract Works.

19.4 If the Sub-Contractor fails to commence or complete the Sub-Contract Works by the Completion Date or dates or within the period set out in the Sub-Contract (or such extended dates or period allowed under the Main Contract) the Sub-Contractor shall pay or allow to the Contractor a sum equal to any loss or damage or liability suffered by the Contractor and caused directly or indirectly by the failure of the Sub-Contractor to so commence or complete the Sub-Contract Works.

20. Instructions and Variations

20.1 The Sub-Contractor shall comply with all instructions given in writing by the Contractor and in the case of emergency all verbal instructions. Any verbal instruction given by the Contractor shall be confirmed by the Contractor in writing as soon as reasonably practicable.

20.2 Notwithstanding condition 21.1, the Contractor shall have the like right to issue instructions and make requests and the like in relation to the Sub-Contract as the Employer has under the Main Contract and the Sub-Contractor shall have the equivalent obligations in respect of any such instruction and the like issued by the Contractor under the Sub-Contract as the Contractor has in respect of instructions and requests and the like issued by the Employer and/or Employer's Representative under the Main Contract.

20.3 If the Sub-Contractor receives any instruction, drawing, specification, approval or other information from any person other than the Contractor or any verbal instruction from Contractor, the Sub-Contractor shall immediately notify or confirm to the Contractor the same in writing and shall not act on the same unless and until the Contractor confirms the same by way of a written instruction.

20.4 The Sub-Contractor shall notify the Contractor in writing of all work involving a Variation whether by addition omission substitution alteration change in quality form character position or level together with any cost and/or time implication of such variation as soon as is reasonably practicable of the same becoming apparent, where upon any necessary instructions will be issued by the

Contractor to the Sub-Contractor in writing. It shall be a condition precedent to payment of additional sums or allowance of additional time that the Contractor has provided his written instruction.

20.5 The Contractor shall not be liable for any additional costs arising from any instruction, direction or variation being given otherwise than in writing by the Contractor, or, in the case of verbal instructions given in an emergency, not confirmed in writing together with costs and/or programme implications, by the Contractor to the Sub-Contractor as soon as reasonably practicable thereafter.

20.6 The Contractor shall not be liable for any loss of the Sub-Contractor arising from or connected to the omission of any part of the Sub-Contract Works.

21. Valuation and Payment

The Sub-Contract Sum payable under the Sub-Contract to the Sub-Contractor shall be in accordance with the following:

21.1 The Sub-Contractor shall on or before the date of the Sub-Contract provide the Contractor with (i) all relevant VAT information; (ii) UTR number; and (iii) either the Sub-Contractor's National Insurance or company registration number for tax purposes.

21.2 Any payment made by the Contractor to the Sub-Contractor pursuant to the Sub-Contract (whether an interim payment or the final payment or otherwise) shall be made on account only and shall not be held to signify approval or waiver to the value, design, quality or workmanship of the whole or any part of the Sub-Contract Works and the Contractor shall not be precluded from making any claim against the Sub-Contractor on the basis that such payment has been made.

21.3 Unless instructed to do so by the Contractor, the Sub-Contractor shall not submit invoices to the Contractor. All valuations/applications for payment must quote the "project title" and "job number" stated on the Sub-Contract Particulars located at the front of this Sub-Contract.

21.4 The Contractor shall not be obliged at any time to pay for any materials ordered by the Sub-Contractor which have not yet been properly incorporated into the Sub-Contract Works.

21.5 The Sub-Contractor shall submit (via email or post addressed to the Contractor's Key Representative) his first valuations/applications for payment (which shall be assessed by the Contractor as part of the Contractor's Gross Valuation) 30 days after the Sub-Contractor commenced the Sub-Contract Works (the "First Valuation Date"). The valuation dates for subsequent interim payments shall be every 30 days thereafter, notwithstanding that a valuation may be nil in value. The Contractor shall not be obliged to consider any

valuation/application for payment submitted by the Sub-Contractor via fax.

21.6 The valuations/applications and supporting documents (if any) shall specify the sum that the Sub-Contractor considers will become due on the payment due date in respect of the interim payment of the Sub-Contract Sum, and the basis on which that sum is calculated. Payment of the valuations/applications shall be due on the valuation dates that apply under condition 22.5.

21.7 No later than 5 days after payment becomes due the Contractor shall notify the Sub-Contractor of the sum that the Contractor considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated (the "Payment Notice").

21.8 The final date for payment shall be 35 days after the date on which payment becomes due unless otherwise stated in the Sub-Contract Particulars.

21.9 Subject to condition 22.12 (a) and unless the Contractor has served a notice under condition 22.10, the Contractor shall pay the Sub-Contractor the sum referred to in the Sub-Contractor's application under clause 22.5 (or, if the Sub-Contractor has not served a valuation/application under condition 22.5, the sum referred to in the Payment Notice) (the "Notified Sum") on or before the final date for payment of each application.

21.10 Not less than 1 day before the final date for payment ("the Prescribed Period"), the Contractor may give the Sub-Contractor notice that it intends to pay less than the Notified Sum (a "Pay Less Notice"). Any Pay Less Notice shall specify:

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

21.11 Provided that a Pay Less Notice is served in accordance with this condition, the Contractor may at any time set off any liability of the Sub-Contractor to the Contractor against any liability of the Contractor to the Sub-Contractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Sub-Contract. If the liabilities to be set off are expressed in different currencies, the Contractor may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Contractor of its rights under this condition shall not limit or affect any other rights or remedies available to it under this Sub-Contract or otherwise

21.12 Notwithstanding conditions 22.9 and 22.10:

- (a) if the Sub-Contractor becomes Insolvent after the Prescribed Period, the Contractor shall not be required to pay the Sub-Contractor the Notified Sum on or before the final date for payment;
- (b) the Contractor shall be entitled to deduct the

Retention from all interim payments made to the Sub-Contractor;

- (c) no payment shall be made for on or off-site goods and materials unless specifically agreed by the Contractor;
- (d) no payment shall be made until the Sub-Contractor has given the Contractor evidence of compliance with the Sub-Contractor's insurance obligations under condition 8;
- (e) in the event that the Employer becomes Insolvent then the Contractor shall only subsequently be obliged to pay to the Sub-Contractor sums due pursuant to this Sub-Contract following receipt of such sums due from the Employer.

21.13 The Sub-Contractor shall provide his final account (so as to assist the Contractor in the Contractor's calculation of the sum stated as due to the Sub-Contractor as set out in the final certificate under the Main Contract) within one calendar month from the date of practical completion of the Sub-Contract Works.

21.14 It is a condition of the Sub-Contractor's entitlement to be paid that all applications for payment are submitted to the Contractor prior to or at midnight on the day immediately preceding the first anniversary of the date of Practical Completion.

22. Retention

22.1 The Retention shall be 5%, unless otherwise stated in the Sub-Contract Particulars in relation to all payments to be made by the Contractor to the Sub-Contractor up to and including the date of the practical completion of the Sub-Contract Works. Thereafter the Retention shall be 2.5% until the Retention is released on the later of:

- (a) expiry of the Defects Liability Period; or
- (b) rectification of all defects, settlement or other faults in the Sub-Contract Works notified to the Sub-Contractor in accordance with condition 4.5.

23. Breaches etc.

23.1 The Sub-Contractor shall indemnify and hold harmless the Contractor against any liability which the Contractor may incur to any person whatsoever and against any claims, demands, costs and or expenses sustained, incurred or payable by the Contractor to the extent that the same arises by reason of any breach of the Sub-Contract or any tortious act or omission on the Sub-Contractor's part (and / or any third party to whom the Sub-Contractor has subcontracted) in the performance of the Sub-Contractor's obligations under and in connection with the Sub-Contract.

24. Suspension

24.1 The Contractor may, at any time, suspend performance of all or part of the Sub-Contract

Works by giving written notice to the Sub-Contractor. The Sub-Contractor shall resume performance of the Sub-Contract Works as soon as reasonably practicable after receiving a written notice to do so from the Contractor.

25. Termination of the Sub-Contract by the Contractor

25.1 The Contractor may, without prejudice to any other rights or remedies, by notice terminate the Sub-Contractor's employment under the Sub-Contract in respect of the whole or any portion of the Sub-Contract Works if the Sub-Contractor:

- (a) improperly wholly suspends the carrying out of the Sub-Contract Works before the completion of the Sub-Contract Works or abandons the Sub-Contract Works; or
- (b) fails to proceed regularly or diligently with the Sub-Contract Works or to properly perform the Sub-Contract Works in accordance with the Sub-Contract; or
- (c) refuses or persistently neglects to comply with a written instruction from the Contractor to remove work or materials not in accordance with the Sub-Contract; or
- (d) fails to complete and deliver up the Sub-Contract Works or any Section by the date required in the Sub-Contract, or by such extended time or times as may be allowed by the Contractor; or
- (e) fails to complete and deliver up the Sub-Contract Works or any Section by the date required in the Sub-Contract, or by such extended time or times as may be allowed by the Contractor; or
- (f) commits any other material breach of the Sub-Contract; or
- (g) becomes Insolvent or takes any action or fails to take action which would lead to the Contractor reasonably believing that there is a risk of the Sub-Contractor becoming Insolvent.

25.2 Upon any termination of the Sub-Contract the Sub-Contractor shall not be entitled to compensation and shall not remove any of its equipment, materials or property from the site and for the purpose of completion of the Sub-Contract Works and 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 to any materials or fabricated work lying at the site of the Sub-Contract Works which have been bought or fabricated for the purpose of the Sub-Contract.

25.3 Notwithstanding anything contained in these conditions, the Sub-Contractor shall not be entitled to further payment until:

- (a) the final report/account has been approved by the Employer, under the Main Contract;

- (b) the Sub-Contract final account has been agreed whereupon the Sub-Contractor shall become entitled to payment for Sub-Contract Works executed by the Sub-Contractor subject always to the rights of the Contractor to set off all loss, expense and damage suffered by the Contractor by reason of such determination (including but not limited to the cost of employing others to carry out and complete the Sub-Contract Works). After the approval of the final report/account the Sub-Contractor may apply for payment in which case such application shall be dealt with as if it was an application for payment as set out in accordance with these conditions

26. Termination of the Sub-Contract by the Sub-Contractor

26.1 If the Contractor:

- (a) fails to pay to the Sub-Contractor the sums properly due under the Sub-Contract and continues for such failure for 28 days from receipt of a notice from the Sub-Contractor to the Contractor specifying such failure; or
- (b) is Insolvent,

then the Sub-Contractor may serve notice on the Contractor to determine its employment under the Sub-Contract immediately.

26.2 Upon such determination of the Sub-Contractor's employment the Sub-Contractor shall make one final application for payment in accordance with the conditions of this Sub-Contract. In addition to this entitlement the Sub-Contractor shall be entitled to the reasonable and proper cost of the removal from site of the Sub-Contractor's temporary buildings plant equipment and materials save to the extent that such costs have been recovered in previous payments made to the Sub-Contractor.

27. Termination of the Main Contract

27.1 If the Main Contract is determined, or the Contractor's employment under the Main Contract ceases for any reason, or if the Contractor is required under the Main Contract to determine the Sub-Contractor's employment under this Sub-Contract, the Contractor may by notice determine this Sub-Contract. The Contractor shall bear no liability for any loss or expense suffered by the Sub-Contractor and shall not be obliged to make any further payment to the Sub-Contractor in the event of the termination of the Main Contract, in the event of the Contractor's employment under the Main Contract ceasing for any reason, or in the event of the Contractor being required under the Main Contract to determine the Sub-Contractor's employment under this Sub-Contract.

28. Assignment etc

28.1 The Sub-Contractor shall not be permitted to assign, transfer or sub-let any part or the whole of

the Sub-Contract Works without the prior written approval of the Contractor. Where such consent is given, it shall not relieve the Sub-Contractor of any of its obligations under the Sub-Contract.

29. Applicable Legislation

29.1 The courts of England and Wales shall have exclusive jurisdiction over any dispute or difference between the Contractor and Sub-Contractor which arises out of or in connection with this Sub-Contract.

29.2 References to statutes or statutory instruments include references to any modification, extension or re-enactment of them from time to time.

29.3 If any dispute or difference arises under this Sub-Contract and the matter is referred to Adjudication, the nominating body shall be the Royal Institution of Chartered Surveyors.