

- recover the cost thereof from the Subcontractor as a debt or set off the said cost from any amount otherwise due to the Subcontractor.
- 3.5 Where part or all of the Main Contract Works are to be executed in accordance with a Quality System, the Subcontractor is deemed to have allowed in its Subcontract Price or Pricing Document or Schedules of Rates for complying with the requirements of the Quality System which relates to the Subcontract Works.
- 3.6 The Subcontractor shall carry out, complete and maintain the Subcontract Works so that no act or omission of it in relation thereto shall constitute, cause or contribute to any breach of the Main Contract by the Contractor, and the Subcontractor shall assume and perform hereunder all the liabilities and obligations of the Contractor under the Main Contract. Without prejudice to the generality of the provisions contained herein, the Subcontractor shall serve on the Contractor such notices as are required by the Main Contract so that the Contractor is thereby enabled to comply with the notice provisions of the Main Contract. It is expressly agreed that any failure by the Subcontractor to serve such notices as aforesaid shall be a breach of the Subcontract by the Subcontractor.
- 3.7 The Subcontractor shall not be entitled to any addition to the Subcontract Price if it fails to comply with any provision in the Subcontract (including for the avoidance of doubt but without limitation provisions relating to time) by which the Subcontractor is required to serve notices on the Contractor or to provide details or estimates.
- 3.8 No adjustment shall be made to the Subcontract Price or the Pricing Document or the Schedule of Rates other than as provided by this Subcontract.
- 3.9 The Subcontractor shall start work on Site within seven days of the Contractor's written notice to proceed. The Subcontractor shall execute the Subcontract Works for the Subcontract Price upon and subject to the terms of the Subcontract to the Contractor's satisfaction and the Subcontract Works shall be completed not later than the period or periods or time or times stated in the Order.
- 3.10 The Contractor shall give the Subcontractor such access to the Site as may be necessary for the Subcontractor to carry out the Subcontract Works.
- 3.11 The Subcontractor shall comply with all site regulations in force such as but not limited to health and safety, working hours, materials storage, welfare facilities, noise and no smoking, as the Contractor may notify the Subcontractor from time to time.
- 3.12 The Subcontractor warrants that it has familiarised itself with both the statutory and the Contractor's health and safety requirements and that it has fully informed its labour of those requirements and its obligations thereunder. Compliance with the said requirements is mandatory. The Subcontractor is deemed to have allowed in its Subcontract Price or Pricing Document or Schedule of Rates for complying with all health and safety requirements. The Subcontractor shall provide all information reasonably required by the Contractor to comply with the CDM Regulations including supplying information required for the completion of the Health and Safety files.
- 3.13 The Subcontractor shall provide all plant, materials, labour, transport and supervision and any other resources as are necessary for the Subcontractor to carry out and complete the Subcontract Works, other than the facilities to be provided by the Contractor as set out in the Subcontract. Any further items provided by the Contractor to the Subcontractor shall be charged at cost plus the percentage stated in the Order, or if none is stated 25%. The Subcontractor shall indemnify the Contractor against all damage to and replacement costs caused to the Contractor's facilities until the Subcontract Works have been certified by the Contractor as substantially complete.
- 3.14 The Subcontractor shall comply with the reasonable instructions issued by the Contractor's Representative including any instructions of the Employer's Representative which may be passed on by the Contractor's Representative to the Subcontractor.
- 3.15 Goods and materials used in the Subcontract Works shall be of good quality, fit for the purpose intended and in accordance with the Main Contract. Where no specification is mentioned in the Main Contract the goods and materials shall comply with the British Standard or Code of Practice or such other industry standard as may be applicable.
- 3.16 The Contractor may, at its absolute discretion, accept any unsatisfactory work or work which is not in accordance with the Main Contract and abate any sum which would otherwise be due to the Subcontractor by such amount as the Contractor may consider to be reasonable.
- 3.17 The Subcontractor shall allow the Contractor's Representative and the Employer's Representative to inspect the Subcontractor's work, goods or materials whether on or off the Site at such times as the Contractor may reasonably require.
- 3.18 The Subcontractor shall satisfy itself that any work which precedes the Subcontract Works has been properly executed. No warranty is given by the Contractor as to the positions, dimensions, levels or suitability of any work previously carried out by any other contractor or other subcontractor and the Subcontractor shall, before commencing the Subcontract Works, notify the Contractor in writing if any previous work is unsatisfactory. The Subcontractor shall not be entitled to make any claim against the Contractor in respect of any such previous work or for any loss, damage or expense incurred by the Subcontractor as a result of any previous work being unsatisfactory unless notice has been given by the Subcontractor in accordance with these provisions.
- 3.19 The Subcontractor shall in accordance with the requirements of the Contractor afford all reasonable access to and facilities for any other contractors and their subcontractors employed by the Employer and other subcontractors employed by the Contractor and any authorities or statutory bodies which may be employed on or near the Site.

- 3.20 The Subcontractor shall co-operate fully with the Contractor and shall provide advice to the Contractor to enable the Contractor to fulfil its obligations under the Main Contract. The Subcontractor agrees to be bound by the decision of any person appointed under the Main Contract to decide any matters or to resolve any disputes arising thereunder.

4 Protection of the Subcontract Works

- 4.1 The Subcontractor shall ensure that all necessary adequate temporary works and measures are provided, and precautions are taken to protect the Subcontract Works and materials on Site for incorporation in the Subcontract Works from damage.
- 4.2 The Subcontractor will at its own expense provide erect and (after completion of the Subcontract Works) remove all protection necessary for the safe execution of the Subcontract Works from commencement, during execution and up to Completion or Practical Completion of the Main Contract Works. The Subcontractor shall be responsible for the protection of the work of others where it could be reasonably envisaged that damage to the work of others might occur due to the execution of the Subcontract Works.
- 4.3 The Subcontractor will be held entirely responsible for the adequacy of the protection afforded and it shall make good any damage caused by the execution of the Subcontract Works to the Main Contract Works, the Site and to works of and materials supplied by any other trades on Site at its own expense. Should the Subcontractor wish to be reimbursed for the making good of damage caused by others to the Subcontract Works, it will be a condition precedent to payment that the Subcontractor shall provide sufficient documentation and proof to the Contractor to enable all such costs to be recovered by the Contractor from the offending person.

5 Design

- 5.1 Where the Subcontract imposes design responsibilities on the Subcontractor, whether expressly stated or otherwise, the Subcontractor warrants that:

- 5.1.1 It has exercised and will continue to exercise all the skill and care in the design of the Subcontract Works to be expected of a specialised and competent Subcontractor experienced in projects of similar complexity, type and nature to the Subcontract Works (including experience of managing and co-ordinating the design and execution of the Subcontract Works).
- 5.1.2 Without prejudice to sub-clause 5.1.1 that it has used all reasonable skill and care to ensure that the Subcontract Works will, when completed, be reasonably fit for the purpose intended and will comply with any performance specification or requirement contained within the Requirements, the provisions of the Main Contract and will be in compliance with British Standards and Codes of Practice where applicable and any other applicable industry standards.
- 5.1.3 Without prejudice to sub-clause 5.1.1 that it has used all reasonable skill and care to ensure that it has not and will not specify for or use in the Subcontract Works any products or materials which are at the time of use generally known within the United Kingdom to designers or specialist Subcontractors (in each case experienced in the design and/or construction of works such as the Subcontract Works) to be deleterious or hazardous to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are to be used.

- 5.2 The Subcontractor shall ensure that its designs are compatible and co-ordinated with the designs of the Contractor or others as may be notified to the Subcontractor from time to time. The Subcontractor shall as necessary or when requested to do so by the Contractor submit to the Contractor three copies of all designs, drawings, details, documents and any other information prepared as part of the Subcontractor's designs and shall submit such further information as the Contractor requires as may be necessary from time to time to explain or amplify the Subcontractor's designs and intentions in respect of the Subcontract Works. The Subcontractor shall further submit at the request of the Contractor such information as is reasonably necessary to explain or amplify the effect of the Subcontractor's designs on the Works to enable the Contractor to carry out the design of the Works under the Main Contract and to obtain the Employer's approval or consent to such design. The submissions shall be made at such times as are appropriate having regard to the programmes for the carrying out of the Works and the Subcontract Works and any requirements or procedures in the Main Contract and the Subcontract for approvals or consents to be given.

6 Temporary Works Design

- 6.1 The Subcontractor shall be responsible for:
- 6.1.1 the design of the temporary works necessary for the construction of the Subcontract Works; and
- 6.1.2 the selection of materials and goods for the temporary works necessary for the construction of the Subcontract Works; and
- 6.1.3 the satisfaction of any performance specification or requirements insofar as such performance specification or requirements are included in the Subcontract or the Main Contract; and shall indemnify and keep indemnified the Contractor against any damage, expense, liability, loss or claim that the Contractor may incur arising out of or in consequence of the Subcontractor's failure to comply with its said responsibilities.
- 6.2 The Subcontractor shall, on request, provide such design calculations, drawings, method statements or other details in relation to the design of the temporary works as may be required by the Contractor.

7 Practical Completion and Defects

- 7.1 When the Subcontractor is satisfied that the Subcontract Works are practically complete the Subcontractor shall notify the Contractor in writing and provided that Contractor is of the opinion that practical completion of the Subcontract Works has been achieved the Contractor will issue a certificate to that effect to the Subcontractor. The Defects Correction Period shall commence from the date stated on the said certificate. The Subcontractor shall return to Site when requested to do so by the Contractor at any time during the Defects Correction Period or the NHBC initial guarantee period or similar (such as but not limited to the Zurich Building Guarantee) and rectify any defects notified by the Contractor to the Subcontractor, at the sole expense of the Subcontractor. In case the Subcontractor fails to rectify any such defects within a reasonable time the Contractor may carry out the said rectification or arrange for the rectification to be carried out by others and deduct the cost from any monies due or to become due to the Subcontractor under this Subcontract or be entitled to recover the cost from the Subcontractor as a debt. The Defects Correction Period shall end twenty-four months after the date stated on the certificate confirming practical completion of the Subcontract Works.

8 Extensions of Time

- 8.1 If for reasons beyond the control of the Subcontractor the execution of the Subcontract Works is delayed the Subcontractor shall notify the Contractor of the reason for the delay. Such notification shall be given in writing as soon as possible and not later than two working days after the cause of the delay became known to the Subcontractor. Subject to the above and the following, the Contractor shall allow the Subcontractor such extension of time for completion of the Subcontract Works as is reasonable in the circumstances. The Subcontractor shall also be allowed a reasonable extension of time where it properly suspends the performance of any or all of its obligations under the Subcontract pursuant to sub-clause 28.2.
- 8.2 The Subcontractor shall only be entitled to an extension of time in circumstances where the Contractor is entitled to and/or awarded an extension of time under the Main Contract, except where the delay is caused by an act, omission or default of the Contractor, its servants or agents including subcontractors. The Subcontractor shall not be entitled to an extension of time in excess of that granted to the Contractor under the Main Contract. Whether or not the Subcontractor is entitled to an extension of time under the Subcontract, the Subcontractor shall reimburse the Contractor any amount for which the Contractor is liable under the Main Contract where and to the extent that such liability is caused by any act, omission or default of the Subcontractor and the Contractor may deduct such amount from any monies that may be or become due to the Subcontractor or may recover the same from the Subcontractor as a debt, save where the Subcontractor is allowed a reasonable extension of time for suspending performance of any or all of its obligations under the Subcontract pursuant to sub-clause 28.2.
- 8.3 If the Subcontractor fails to complete the Subcontract Works within the period specified in the Order or agreed in writing between the parties or any extended period agreed by the Contractor taking into account matters beyond the Subcontractor's control which have delayed the Subcontract Works, the Subcontractor shall pay the Contractor any loss or damage suffered or incurred by the Contractor and caused by the failure of the Subcontractor as aforesaid of which loss or damage the Contractor shall at the earliest opportunity give reasonable notice to the Subcontractor that the same is being or has been suffered or incurred.
- 8.4 The liability of the Subcontractor for delay shall include liability for any liquidated damages for which the Contractor may be liable under the Main Contract, provided such damages have been notified to the Subcontractor.

9 Variations

- 9.1 The Subcontractor shall be deemed to have made proper allowance in submitting its estimate to tender to the Contractor for any defects, extra work or other circumstances that were reasonably apparent during the tender process arising from the nature of the Site and the setting out of the Main Contract Works and Subcontract Works and no payment shall be made for any extra work unless the same is carried out upon the written instruction of the Contractor.
- 9.2 The Contractor may order the Subcontractor to make variations to the Subcontract Works, comprising additions, alterations or omissions or the method, timing or manner of their execution, and no such instruction will vitiate the Subcontract. All such variations shall be ordered in writing. If a variation or instruction entails a change to the Subcontract Price, and the parties are unable to agree the value of the change, the value shall be fixed by the Contractor's Representative on the basis of the Subcontract Price or the prices entered in the Pricing Document or the Schedule of Rates. No payment will be made for variations other than for variations ordered in writing. Upon receipt of any oral instructions which the Subcontractor considers to be a variation the Subcontractor shall seek in writing immediate written confirmation of the same from the Contractor.
- 9.3 Without prejudice to the generality of sub-clause 9.2 above the Contractor may at its sole discretion omit the whole or any of the Subcontract Works for any reason whatsoever and to have such whole or any part either carried out by the Contractor or arrange for the whole or omitted portion to be carried out by others. In such case the Subcontract Price shall be reduced by the amount which represents the value of the Subcontract Works omitted and the Subcontractor shall not be entitled to any damages or compensation or loss of profits whatsoever.
- 9.4 In case the progress of the Subcontract Works is delayed due to variations or due to any reason beyond the control of the Subcontractor the Contractor may instruct the Subcontractor to accelerate the progress of the Subcontract Works. Such instruction shall be regarded as a variation to be valued in accordance with the provisions of sub-clause 9.2. In case the progress of the Subcontract Works is delayed due to the fault of the Subcontractor or due to what the Contractor deems to be the fault of the Subcontractor then the Subcontractor shall upon the written instructions of the Contractor accelerate the carrying out of the Subcontract Works at no additional cost to the Contractor.
- 9.5 The Subcontractor's entitlement to payment for any variation shall be limited to an appropriate proportion of the amount awarded to the Contractor from the Employer in respect thereof under the Main Contract, and the Contractor shall pay the Subcontractor such sum as it considers reasonable.
- 9.6 Any work carried out by the Subcontractor on dayworks shall be subject to the Contractor's Policy Statement for Dayworks current at the date of the Subcontract. The said Policy Statement for Dayworks is deemed to be incorporated into the Subcontract.

9.7 Any variation or alteration in the extent of the Subcontract Works shall be subject to final adjustment only as provided for in this clause 9 and the Subcontractor shall have no claim against the Contractor for any other payment or compensation in any respect.

10 Claims

10.1 If for any reason the Subcontractor incurs or expects to incur loss or expense he shall give notice to the Contractor immediately the Subcontractor becomes aware of the situation giving rise to or which may give rise to the loss or expense. Full details shall be supplied to the Contractor as soon as possible thereafter, together with supporting documentation. The value of claims agreed by the Contractor's Representative shall be included in the Subcontractor's next application for payment following agreement.

10.2 Without prejudice to the provisions of the Main Contract or the Subcontract, the Contractor will not be liable to the Subcontractor for anything or any matter arising out of or in connection with this Subcontract or the execution of the Subcontract Works, unless the Subcontractor has made a written and detailed claim in respect thereof to the Contractor within seven days of practical completion of the Subcontract Works.

10.3 The Subcontractor shall only be entitled to recover loss and expense in circumstances where the Contractor is entitled to recover and/or awarded loss and expense under the Main Contract, except where such entitlement arises from an act, omission or default of the Contractor, its servants or agents including other subcontractors, or in accordance with sub-clause 28.3. The Subcontractor's entitlement to recover loss and expense shall be limited to an appropriate proportion of the amount received and/or awarded to the Contractor under the Main Contract, save where such loss and expense are incurred due to the act, omission or default of the Contractor, or in accordance with sub-clause 28.3.

11 Payment and Notices

11.1 The due dates for interim payments shall be appended to the Order or in the absence of such appendix the due dates for interim payments shall be given by the Contractor to the Subcontractor in a document entitled the "Subcontract Pre-Order Meeting Minutes" or if no due dates for interim payments are stated therein the first due date for interim payments shall, unless agreed in writing, be the date one month after the date of the commencement of the Subcontract Works on Site and thereafter the same date at intervals of one month (unless otherwise agreed). If the first due date for an interim payment is a date that does not recur in a subsequent month the due date for that interim payment shall be the last day of that subsequent month. The last due date for interim payment shall be the period up to and including the month following practical completion of the Subcontract Works as defined in Clause 7.

11.2 Seven days before each due date for interim payment the Subcontractor shall submit to the Contractor an interim application for payment for the value of the work carried out under the Subcontract up to the due date for interim payment in question less retention of the amount stated in the Order or if none is stated 5% ("the Interim Application for Payment"). The said value shall be calculated by reference to the Pricing Document or the Schedule of Rates as the case may be and to the provisions of these Standard Terms and Conditions of Subcontract.

11.3 Not later than five days after each due date for interim payment the Contractor shall give written notice to the Subcontractor specifying the sum that it considers to be or have been due at the due date and the basis on which that sum has been calculated (the "Interim Payment Notice"). Subject to any Pay Less Notice served in accordance with sub-clause 11.6 the sum to be paid by the Contractor to the Subcontractor shall be the sum specified as due in the Interim Payment Notice. The final date for payment of each Interim Application for Payment shall be 30 days after the due date for each interim payment, as fixed by sub-clause 11.1. It is immaterial if the sum specified as due in any notice referred to under this Clause 11 may be zero.

11.4 If the Contractor fails to serve an Interim Payment Notice the sum to be paid by the Contractor shall, subject to the service of a Pay Less Notice, be the sum specified in the Interim Application for Payment.

11.5 If the Subcontractor does not submit an Interim Application for Payment and the Contractor fails to serve an Interim Payment Notice, the Subcontractor may submit to the Contractor an Interim Application for Payment (assessed in accordance with sub-clause 11.2) at any time after the 5-day period referred to in sub-clause 11.3. The final date for payment of the sum specified in the Interim Application for Payment (subject to sub-clause 11.6) shall be postponed by the same number of days after the expiry of the five-day period referred to in sub-clause 11.3 that the Interim Application for Payment was submitted.

11.6 If the Contractor intends to pay less than the sum stated as due from it in the Interim Payment Notice or the Interim Application for Payment, it shall not later than one day before the final date for payment give the Subcontractor written notice specifying the sum that it considers to be due to the Subcontractor at the date the notice is given and the basis on which that sum has been calculated (the "Pay Less Notice"). If a Pay Less Notice is served, the sum to be paid on or before the final date for payment shall be the sum stated as due in the Pay Less Notice.

11.7 Following practical completion of the Subcontract Works as defined in Clause 7, 1.5% of the retention shall become due to the Subcontractor.

11.8 Subject to there being no defects shrinkages or other faults with the Subcontract Works the remaining balance of the retention shall become due to the Subcontractor twenty-four months after practical completion of the Subcontract Works as defined in Clause 7 (the "Retention Release Date").

11.9 In the event that the Employer enters administration within the meaning of Schedule B1 to the Insolvency Act 1986, or has an administration order made against it, or an administrative receiver or receiver or manager of its property is appointed or a resolution passed for winding up or on the making of a winding up order, or an award of sequestration on a partnership or individual's estate or grant of a trust for its creditors or the equivalent under a foreign jurisdiction of any of the foregoing

then the Contractor shall only subsequently be obliged to pay to the Subcontractor sums due pursuant to this Subcontract following receipt of such sums due from the Employer.

- 11.10 The Subcontractor shall not be entitled to payment for goods or materials delivered to the Site except in the absolute discretion of the Contractor. The Subcontractor shall produce proof whenever requested to do so that he has title to the said goods or materials. Upon payment therefore in whole or in part by the Contractor to the Subcontractor title to the said goods or materials shall immediately vest in the Contractor. In case the Contractor agrees to make payment in respect of goods or materials delivered to the Site the said payments shall not exceed the percentage stated in the Order or if no percentage is stated 75%. Payment by the Contractor for goods or materials shall not release the Subcontractor from its liability for the care thereof.
- 11.11 The Subcontractor shall not become entitled to any payment whatsoever under the Subcontract until the following documents have been completed and returned to the Contractor:
- (a) Evidence of insurance required by this Subcontract;
 - (b) Any information required by H M Revenue & Customs in accordance with the Construction Industry Scheme;
 - (c) Warranties required by the Subcontract;
 - (d) A copy of the Subcontractor's safety policy and the name of its safety officer;
 - (e) Such risk assessments and method statements as may be specified in the Subcontract documents;
 - (f) The Self Billing Form; and
 - (g) The Subcontract Order.
- 11.12 Within seven days of practical completion of the Subcontract Works the Subcontractor shall submit to the Contractor as a final application for payment a statement of final account complete with any supporting documentation required showing in detail the value of the Subcontract Works, and stating any further sum which the Subcontractor considers to be due from the Contractor to the Subcontractor or from the Subcontractor to the Contractor (as the case may be) under the Subcontract or in relation to the Subcontract Works. No later than 3 months after receipt by the Contractor of the aforesaid documents a Statement of Final Account will be issued by the Contractor to the Subcontractor detailing the said further sum that the Contractor considers to be due to the Subcontractor or the Contractor (as the case may be). The due date for payment of the Statement of Final Account shall be two months after the Retention Release Date or upon completion of the NHBC initial guarantee period or similar (such as but not limited to the Zurich Building Guarantee), if applicable; whichever is the later ("Final Due Date").
- 11.13 Not later than five days after the Final Due Date, the Contractor shall give written notice to the Subcontractor specifying the final sum that it considers to be due at the Final Due Date and the basis on which that sum has been calculated (the "Final Payment Notice"). The Final Payment Notice may show a balance due from the Contractor to the Subcontractor or from the Subcontractor to the Contractor.
- 11.14 Subject to sub-clause 11.6 the final date for payment of the Final Payment Notice shall be 30 days after the Final Due Date, as fixed by sub-clause 11.12.
- 11.15 If the party by whom the Final Payment Notice is stated to be payable intends to pay less than the stated balance, it shall not later than one day before the final date for payment serve on the other party a notice specifying 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 (the "Final Pay Less Notice"). If a Final Pay Less Notice is served, the sum to be paid on or before the final date for payment shall be the sum stated as due in the Final Pay Less Notice.
- 11.16 If the Final Payment Notice is not issued in accordance with sub-clause 11.13:
- 11.16.1 the Subcontractor may give written notice to the Contractor (a "Default Payment Notice") stating what the Subcontractor considers to be the amount of the Final Payment Notice due to it under the Subcontract and the basis on which the sum has been calculated and, subject to any Final Pay Less Notice under sub-clause 11.16.3, the Final Payment Notice shall be that amount.
 - 11.16.2 if the Subcontractor serves a Default Payment Notice, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days after expiry of the five day period referred to in sub-clause 11.13 that the Default Payment Notice is given.
 - 11.16.3 following the Default Payment Notice the Contractor may not later than five days before the final date for payment serve a Final Pay Less Notice in accordance with sub-clause 11.15.

12 Set - Off

- 12.1 The Contractor has the right to withhold from monies due to the Sub-Contractor any amounts which are owed to the Contractor by the Sub-Contractor arising out of or in connection with the Subcontract or any other contract between the Contractor and the Subcontractor. If at any time the Subcontractor is in breach of the provisions of the Subcontract, then, without prejudice to the foregoing, until such time as the parties have finally agreed the amount of loss or damage suffered or to be suffered by the Contractor because of such breach the Subcontractor shall pay or allow the Contractor such sum as the Contractor shall in good faith estimate as the amount of such loss or damage.
- 12.2 In case the Subcontractor does not maintain progress in carrying out the Subcontract Works to the entire satisfaction of the Contractor the Contractor reserves the right to supplement the Subcontractor's labour force or such other of the Subcontractor's resources as the Contractor may decide and the cost thereof may be recovered by the Contractor from the Subcontractor in accordance with the provisions of the previous sub-clause or otherwise recovered as a debt due to the Contractor from the Subcontractor. Without prejudice to any other rights which the Contractor has under the Subcontract

the Contractor may further or alternatively instruct the Subcontractor to accelerate the carrying out of the Subcontract Works without additional cost to the Contractor.

- 12.3 NOTHING CONTAINED IN THE SUBCONTRACT WHETHER EXPRESSLY OR BY INCORPORATION OR BY IMPLICATION SHALL IN ANY WAY RESTRICT THE CONTRACTOR'S EQUITABLE OR COMMON LAW RIGHTS OF SET OFF. WITHOUT PREJUDICE TO THE GENERALITY OF THE FOREGOING, THE CONTRACTOR SHALL HAVE THE RIGHT TO SET OFF AGAINST ANY SUM DUE TO THE SUBCONTRACTOR WHETHER HEREUNDER OR OTHERWISE A FAIR AND REASONABLE SUM IN RESPECT OF OR ON ACCOUNT OF ANY CLAIM OR CLAIMS THAT HAVE BEEN MADE AGAINST THE CONTRACTOR BY THE EMPLOYER THE SUBJECT MATTER OF WHICH TOUCHES OR CONCERNS THE SUBCONTRACT WORKS.

13 Indemnity

- 13.1 The Subcontractor shall indemnify and keep indemnified and save harmless the Contractor against all claims, proceedings, loss, liabilities, expense, costs or demands whatsoever in respect of personal injury to or disease suffered by or death of any person, and loss or damage or injury to any property or premises arising out of or in the course of or through the carrying out of the Subcontract Works, provided that the same is caused or contributed to by the act, omission, neglect or default of the Subcontractor, its directors, employees, agents or its own subcontractors or suppliers unless and save to the extent due to any act or omission of the Contractor or of another subcontractor to or supplier of the Contractor.
- 13.2 The said indemnity shall be for all liabilities, such as but not limited to:
- (a) liquidated damages, loss or expense incurred by the Contractor through the Subcontractor's failure to perform in accordance with the Subcontract;
 - (b) negligence on the part of the Subcontractor or any of its employees or because of any breach of statutory duty by the Subcontractor;
 - (c) any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury or death of any person arising out of or in the course of or caused by the carrying out of the Subcontract Works;
 - (d) any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal due to any negligence, omission or default of the Subcontractor its servants or agents; and
 - (e) any other liability which the Contractor may incur to any person whatsoever and against all claims demands proceedings damages costs or expenses made against or incurred by the Contractor by reason of any breach by the Subcontractor of this Subcontract.

14 Insurance

- 14.1 Where required to do so by the Standard Terms and Conditions of Subcontract and/or the Main Contract Conditions, the Subcontractor shall arrange and produce satisfactory evidence of suitable insurance policies as undernoted;
- a) All Risks insurance (in which the Contractor shall be named as the Joint insured) of the Subcontract Works, together with all materials, plant and equipment for incorporation therein to the full replacement costs, including, but not limited to, professional fees and the reasonable costs of the removal and disposal of debris;
 - b) Public Liability insurance against liabilities for death of or injury to any person or loss of or damage to any property, real or personal, arising out of the performance of the Subcontract Works. Such insurance should include an *Indemnity to Principal* Clause;
 - c) Employers Liability insurance to cover the Subcontractor's legal liability for personal injury to or death of any person under a contract of service or apprenticeship with the Subcontractor and arising out of and in the course of that person's employment. This insurance shall comply with all relevant legislation. Unless otherwise stated in the Order the minimum indemnity shall be £5 million or such other minimum amount as may be fixed by law.
- 14.2 In cases where the Subcontractor is required to carry out professional services as part of its obligations under the Subcontract (including but not limited to design) the Subcontractor shall take out Professional Indemnity insurance to cover its legal liability in respect of claims made against it as a result of any negligent act, error or omission on the part of the Subcontractor or its subcontractors or agents in the execution of the said professional services for at least the amount stated in the Order. The Subcontractor shall maintain this insurance for the number of years stated in the Order, if no period is stated the period should be 12 years, provided that the insurance is available to the Subcontractor at commercially reasonable rates and terms. The Subcontractor shall provide confirmation that these Conditions for Subcontract Works and any modification thereof have been disclosed to its Professional Indemnity insurers.
- 14.3 The Subcontractor shall produce evidence of the insurance policy or policies whenever required to do so by the Contractor.
- 14.4 For the avoidance of doubt, the Subcontractor has no benefit in the Contractor's insurance policies.
- 14.5 The Subcontractor shall not take or fail to take any action or permit or suffer anything to occur in relation to a joint name policy which may be taken out by the Contractor which would entitle an insurer to refuse to pay any claim or which might otherwise prejudice the policy.
- 14.6 No payment will be made to the Subcontractor until the Subcontractor has submitted fully completed and satisfactory details of its insurance policies to the Contractor in the form specified by the Contractor.

15 Annual Holidays

- 15.1 Attention is drawn to the fact that under the Annual Holidays agreement the Site may be closed down for periods while the Subcontractor's work is in progress. The Subcontractor shall be deemed to have included in the Subcontract Price or Pricing Document or Schedule of Rates for any additional costs due to the phasing of its work in progress to suit the requirements of this clause.

16 Statutory Requirements

16.1 The Subcontractor shall comply in all respects with all statutory requirements including the giving of all notices and the paying of all fees applicable to the Subcontract Works including without limitation the New Roads and Street works Act 1991 or any amendment thereto.

17 Collateral Warranties

17.1 In case the Contractor requires that the Subcontractor shall provide warranties to third parties the Subcontractor shall comply with such requirements as are reasonable provided that the Subcontractor's liabilities thereunder shall not be greater than those under the Subcontract.

17.2 The Subcontractor shall provide confirmation that such warranties have been disclosed to its Professional Indemnity insurers.

17.3 As a condition precedent to payment by the Contractor under the Subcontract, the Subcontractor shall execute and deliver to the Contractor warranties in the form set out in the Main Contract with such amendments as the Contractor may reasonably require in favour of the Employer and any other persons required by the Main Contract. The Subcontractor shall within seven days of being requested to do so by the Contractor procure from any person employed by the Subcontractor (including such as without limitation subcontractors and designers) or from any supplier to the Subcontractor for the Subcontract Works such warranties as the Contractor may reasonably require in favour of the Contractor. Such warranties shall be in a form similar to that required by the Main Contract.

18 Value Added Tax

18.1 All rates and prices in the Subcontract are exclusive of Value Added Tax.

19 Third Parties

19.1 Other than as may be expressly stated herein, nothing in this Subcontract purports to confer on any third party any benefit or right to enforce any term of the Subcontract.

20 Termination of the Main Contract

20.1 If the Main Contract is terminated the Subcontract may also be terminated at the discretion of the Contractor. The Contractor shall bear no liability for any loss or expense suffered by the Subcontractor and shall not be obliged to make any further payments to the Subcontractor in the event of the termination of the Main Contract or the Subcontract save to the extent that payments are received by the Contractor from the Employer.

21 Termination of the Subcontractor's Employment

21.1 Without prejudice to any other rights or remedies under the Subcontract the Contractor may by written notice to the Subcontractor summarily determine the Subcontractor's employment under this Subcontract in respect of the whole or any portion of the Subcontract Works if the Subcontractor:

- a) fails within three days' notice in writing to proceed regularly and diligently with the Subcontract Works in accordance with the provisions of the Subcontract; or
- b) without reasonable cause wholly suspends carrying out the Subcontract Works before completion thereof; or
- c) refuses or neglects after 3 days' notice in writing to remove defective work or improper materials or rectify defects or faults in the Subcontract Works; or
- d) conducts itself in such a manner as to prejudice the completion of the whole or any portion of the Main Contract Works; or
- e) fails to complete and deliver up the whole or any portion of the Subcontract Works by the time or times specified, or by such extended time or times as may be allowed by the Contractor; or
- f) makes any arrangements with its creditors, has a Receiving Order made against it, executes a Bill of Sale, or commits an act of bankruptcy; or, being a limited company, goes into liquidation, enters into administration, or has a Receiver appointed; or
- g) fails within 3 days following a notice in writing from the Contractor to comply with any of the obligations on the part of the Subcontractor herein contained.

21.2 Upon termination as aforesaid the Subcontractor shall not be entitled to compensation therefore and shall not remove any of its equipment, materials or property from the Site until completion of the Main Contract Works, and on termination the Subcontractor shall deliver to the Contractor all drawings and other documents and materials (whether in the course of preparation or completed) which are in its possession in connection with the Subcontract Works.

21.3 On termination no further sum shall become due to the Subcontractor under this Subcontract other than any amount that may become due to it under sub-clause 21.4 and the Contractor need not pay any sum that has already become due either:

21.3.1 insofar as the Contractor has given or gives a Pay Less Notice under sub-clause 11.6 or a Final Pay Less Notice under sub-clause 11.16.3; or

21.3.2 if the Subcontractor, after the latest date upon which such notice could have been given by the Contractor in respect of that sum, has become insolvent as defined at Clause 21.1 f).

21.4 The Contractor shall notify the Subcontractor when practical completion of the Subcontract Works as referred to in Clause 7 has been achieved by the Contractor or other persons engaged by the Contractor ("the First Notice Following Termination"). The Contractor shall further notify the Subcontractor when the rectification of defects has been achieved as referred to in Clause 7 or if appropriate the earlier termination of the Contractor's employment ("the Second Notice Following Termination"). On receipt of the Second Notice Following Termination the Subcontractor may apply to the Contractor and the Contractor shall pay to the Subcontractor the value of Works executed, subject always to the rights of the Contractor to set off all loss, expense and damage suffered by the Contractor by reason of such termination. To the extent that the amounts due to the Contractor exceed the amounts due to the Subcontractor the balance shall be

recoverable from the Subcontractor as a debt. Any payment shall be dealt with as a final application for payment as set out in sub-clauses 11.12 to 11.16.

- 21.5 Following termination, all plant, equipment, goods and materials delivered to the Site by or for use by the Subcontractor shall be deemed to be the property of the Contractor notwithstanding that title thereto may not have passed to the Contractor. The Contractor may take possession of and use, or permit others to use, all such plant, equipment, goods and materials. The Subcontractor shall if required at any time by the Contractor forthwith remove from the Site all plant, equipment, goods and materials, and failing such removal by the Subcontractor within a reasonable time the Contractor may remove and sell the same and hold the proceeds after deduction of the cost of removal and sale to the account of the Subcontractor after deducting any monies that may be due from the Subcontractor to the Contractor.
- 21.6 For the purpose of completion of the Subcontract Works the Contractor shall have the free use of the Subcontractor's equipment, materials and property on the Site without responsibility to the Subcontractor for fair wear and tear thereof and to any materials or fabricated work lying at the Subcontractor's Works or workshop which have been bought or fabricated for the purpose of this Subcontract. If requested the Subcontractor must assign to the Contractor within 14 days of the date of determination, without payment the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Subcontract to the extent that the same is assignable.
- 21.7 Upon determination of the Subcontractor's employment the Subcontractor shall immediately deliver to the Contractor the possession of such part or parts of the Site possessed by the Subcontractor.

22 Disputes

- 22.1 If any dispute arises between the parties to this Subcontract, the parties may first attempt in good faith to resolve amicably the matter of disagreement and failing such resolution the parties may by agreement seek to resolve any dispute by referring it for resolution by mediation to the Centre for Alternative Dispute Resolution. If resolution has not occurred within one month following referral to the Centre for Alternative Dispute Resolution, or in any event, any dispute arising under this Subcontract shall firstly be referred to Adjudication as set out within clause 23 of the Standard Terms and Conditions of Subcontract.

23 Adjudication

- 23.1 A party to this Subcontract provided that the Subcontract is a 'Construction Contract' as defined by the Housing Grants, Construction and Regeneration Act 1996 as amended under Part 8 of the Local Democracy, Economic Development and Construction Act 2009 ("the Act") has the right to refer a dispute arising therefrom to adjudication at any time.
- 23.2 Subject to the Act applying to the Subcontract, either party may give notice at any time of its intention to refer a dispute to adjudication.
- 23.3 The referring party shall secure the appointment of the Adjudicator and the referral of the dispute to him or her not later than seven days from the date of the notice of adjudication. On receipt of the referral notice, the Adjudicator must inform every party to the dispute of the date it was received.
- 23.4 The Adjudicator shall reach a decision within 28 days after receipt of the referral or such longer period as is agreed by the parties after the dispute has been referred and shall set a timetable to enable this. In any event the responding party will be given sixteen days to respond to the Referral.
- 23.5 The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred, or such longer period as may be agreed by the parties.
- 23.6 The Adjudicator has a duty to act impartially.
- 23.7 The Adjudicator is able to take the initiative in ascertaining the facts and the law.
- 23.8 The decision of the Adjudicator shall be binding until the dispute is finally determined by an arbitrator or in legal proceedings. The parties may agree to accept the decision of the Adjudicator as finally determining the dispute.
- 23.9 The Adjudicator is permitted to correct his or her decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within five days of the delivery of the decision to the parties.
- 23.10 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as Adjudicator unless the act or omission is in bad faith, and any employee or agent of the Adjudicator is similarly protected from liability.
- 23.11 An Adjudicator shall be appointed within 7 days of the notice of adjudication by the Royal Institution of Chartered Surveyors.
- 23.12 In case of any dispute arising under the Main Contract or between the Contractor and another subcontractor or supplier connected with the Main Contract (referred to below as a Third Party Dispute) and the Contractor is of the opinion that the Third Party Dispute is substantially the same as or touches or concerns a dispute or potential dispute under the Subcontract then the Contractor may by notice in writing to the Subcontractor require that such dispute or potential dispute be referred to the same adjudicator appointed to decide the Third Party Dispute, who shall have the power to make such directions and all necessary awards and decisions in the same way as if the procedure in the High Court as to the joining of one or more defendants or joining co-defendants was available to the parties and to him.

- 23.13 In deciding a dispute between the Contractor and the Subcontractor under the Subcontract the Adjudicator shall be bound by his or her decisions as to fact in relation to such Third Party Dispute and the Subcontractor shall be bound by any decision or determination made in relation to the Third Party Dispute to the extent that and for so long as the decision or determination is binding on the parties to the Third Party Dispute.
- 23.14 If it is not possible for the same adjudicator who has decided a Third-Party Dispute to be appointed to decide a dispute between the Contractor and the Subcontractor a different adjudicator may be appointed, but he shall be bound by the decisions of fact of the Adjudicator deciding the Third Party Dispute.
- 23.15 The Subcontractor shall afford at no cost to the Contractor such advice and assistance as the Contractor may reasonably require in respect of the conduct of any Third-Party Dispute.

24 Litigation

- 24.1 Subject to clauses 22 and 23 (if appropriate) the English Courts shall have jurisdiction over any dispute or difference between the Contractor and Subcontractor which arises out of or in connection with this Subcontract.
- 24.3 If any dispute arises in connection with the Main Contract and the Contractor is of the opinion that such dispute touches or concerns the Subcontract and the dispute is referred to an arbitrator or the Court under the provisions of the Main Contract the Contractor may by notice in writing require at any time that the Subcontractor shall provide such information and attend such meetings in connection therewith as the Contractor may request. The Contractor may also by notice in writing require that any such dispute under the Subcontract be dealt with jointly with the dispute under the Main Contract and in like manner in which case any litigation proceedings currently taking place under the Subcontract shall terminate forthwith. In case of any such joint dispute the Subcontractor shall be bound in like manner as the Contractor by any award by an arbitrator or judgment of the Court as the case may be.

25 Notices

- 25.1 All notices to be served by the Subcontractor on the Contractor and any other communications and any documents to be supplied shall be served by recorded delivery at the address to be specified by the Contractor or if none is specified at the address stated in the Order, or in the alternative shall be sent or transmitted by email to the email address stated in the Order. All notices communications and any documents to be served by the Contractor on the Subcontractor may be served in writing at the address stated on the Order or the Subcontract Pre-Order Meeting Minutes or may be sent or transmitted by email to the email address stated in the Order or the Subcontract Pre-Order Meeting Minutes.

26 Enforceability

- 26.1 If any provision of the Subcontract is at any time found to be void or unenforceable such provision shall be deemed to be deleted from the Subcontract and the remaining provisions shall continue in full force and effect.

27 Waiver

- 27.1 Waiver by the Contractor of breach by the Subcontractor of any provision of the Subcontract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of that provision. The rights of the Contractor shall not be prejudiced or restricted by any indulgence or forbearance extended to the Subcontractor by the Contractor.

28 Postponement and Suspension

- 28.1 Where the Main Contract Works have been postponed or suspended by the Employer pursuant to an instruction given under the Main Contract or suspended by the Contractor exercising its rights under the Housing Grants Construction and Regeneration Act 1996 the Contractor may direct that the Subcontract Works be postponed or suspended whilst postponement or suspension of the Main Contract Works is in operation. The Subcontractor shall not be entitled to any cost associated with any Postponement and or Suspension.
- 28.2 If the Contractor fails to pay the Subcontractor the sum payable in accordance with any of the payment notices served under Clause 11 by the final date for payment and the failure continues for seven days after the Subcontractor has given written notice to the Contractor of its intention to suspend performance of any or all of the Subcontract Works stating the ground or grounds on which it is intended to suspend performance, the Subcontractor may suspend performance of any or all of its obligations under the Subcontract until payment is made in full.
- 28.3 Where the Subcontractor exercises its right under sub-clause 28.2, it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred as a result of exercise of the right.

29 Adjoining Highways and Control of Pollution

- 29.1 The Subcontractor shall conduct all operations for the execution of the Subcontract Works so far as compliance with the requirements of the Subcontract permits, so as not to interfere unnecessarily or improperly with the convenience of the public, vehicular traffic or the access to or use or occupation of public or private roads and footpaths or to or from properties in the possession of the Contractor.
- 29.2 Notwithstanding the other provisions of the Subcontract, in carrying out the Subcontract Works the Subcontractor shall at all times comply with all statutes, treaties and conventions, directives, regulations and all codes of practice or conduct, circulars and guidance notes having legal or judicial import or effect whether of a criminal, civil or administrative nature, and the rules of common law, relating to or concerning pollution or contamination of the environment.
- 29.3 All reasonable precautions shall be taken to ensure the efficient protection of waterways against pollution, blockage etc. arising out of or by reason of the execution of the Subcontract Works.

29.4 In the event that any Notice being served on the Subcontractor or any subcontractor of the Subcontractor under the Control of Pollution Act, 1974, the Environmental Protection Act, 1990 or any other Statutory Instrument, the Subcontractor shall immediately inform the Contractor of such Notice and shall immediately comply with the instructions and directions issued by the Contractor in relation to such Notice and/or restrictions of such Notice.

29.5 In the event of any Notice being served on either Party, the Subcontractor shall provide all such assistance as the Contractor may require in relation thereto.

30 Fossils, Antiquities, etc

30.1 All fossils, antiquities or other objects of interest or value which may be found on the Site or when excavating on the Site during the progress of the Subcontract Works shall become the property of the Employer. Upon the discovery of the same the Subcontractor shall notify the Contractor and shall comply forthwith with any instruction issued by the Contractor. Any loss or expense or any cost of delay caused by compliance with such instruction shall be reimbursed to the Subcontractor only to the extent that the Contractor has such entitlement under the Main Contract.

31 Health and Safety

31.1 The Subcontractor must supply the required information and adhere to the Construction Stage Health and Safety Plan as issued by the Principal Contractor appointed under the CDM Regulations. The said Health and Safety Plan may be subject to change.

31.2 The Subcontractor shall adhere to all the Contractor's safety management systems and policies. Where a hazard is not rectified by the Subcontractor within specified times or in cases of imminent danger, the Contractor may use a third party to rectify the hazard and all costs incurred may be deducted from any monies due or to become due to the Subcontractor or shall be recoverable by the Contractor from the Subcontractor as a debt.

31.3 The Subcontractor shall comply with all the Health and Safety requirements of the Site including but not limited to:

- a) The provisions of the Contractor's Safety Policy,
- b) A Risk Assessment and Method Statements for the Subcontract Works (risk assessments shall be provided for operations considered to be a hazard) before commencement of the Subcontract Works, to be provided by the Subcontractor,
- c) COSHH assessments to be provided by the Subcontractor for all materials used that are hazardous to health,
- d) Valid certificates of training shall be provided by the Subcontractor in relation to all plant/equipment operators. All operatives and tradesmen shall be suitably experienced and competent to undertake their work and trained, with valid certificates of training where reasonably required.
- e) Safety helmets, high visibility jackets and safety footwear shall be provided by the Subcontractor for its own operatives and tradesmen which must be worn at all times. The Subcontractor shall provide such other safety equipment and clothing as necessary for the hazardous condition or operation being undertaken as part of the Subcontract Works.
- f) The Construction Stage Health and Safety Plan and Method Statements issued by the Principal Contractor, the Contractor or the Subcontractor.
- g) The Contractor's safety induction procedure which all operatives of the Subcontractor shall undergo the prior to commencing work on the Site. They may be issued with an identification badge, which must be displayed at all times, if issued

32 Detailed Method Statement

32.1 As and when required to do so, the Subcontractor shall submit to the Contractor's Representative a detailed method statement, which shall amplify any previous method statement and detail the methodology on how the Subcontract Works are to be executed.

32.2 The said method statement shall include reference to such matters as location of access, direction of workflow, craneage and hoisting facilities, construction methods, materials handling, special design or specification constraints, provision of resources, temporary services and temporary work. All shall be described and programmed allowing time for comment by the Contractor's Representative. Method statements shall address health, safety, environmental and welfare issues.

33 Environmental Conditions

33.1 Where the Subcontract Works incorporate materials likely to be affected by environmental conditions, for example kiln-dried timber in floorings or joinery, ceiling tiles and decorating and the like, it shall be the responsibility of the Subcontractor to ensure that the environmental conditions are suitable in all respects before commencing the Subcontract Works. In each and every case where, environmental conditions are not suitable, the Subcontractor shall notify the Contractor's Representative in writing to that effect, giving the reasons.

34 Setting Out

34.1 The Contractor will provide a set of main reference points comprising base lines and datum levels and grid points at one level from which the Subcontractor shall set out its work and maintain such setting out. The Subcontractor shall also be responsible for checking any setting out carried out by other subcontractors, who may in any way affect the work to be carried out by the Subcontractor, and report to the Contractor or the Contractor's Representative immediately upon any errors in setting out by other subcontractors becoming apparent. The Contractor will not be responsible for the checking of setting out of the Subcontract Works. The Subcontractor shall check the drawings and satisfy itself that all dimensions for setting out are correct.

35 Subcontractor Provisions

35.1 The Subcontractor shall provide everything which may be necessary to comply with the Code of Welfare Conditions for the Building Industry, the Factories Act 1961, the Construction (Lifting) Regulations 1961, the Construction (Working Place) Regulations 1966, The Offices, Shops and Railway Premises Act 1963, the Health & Safety at Work Act 1974, the

Construction (Health, Safety and Welfare) Regulations 1996, the CDM Regulations and any other statutory obligations that relate to welfare matters.

36 Builder's Work Associated with the Subcontract Works

36.1 Holes and other builder's work for services of 50mm diameter or under, chases, recesses and the like shall be undertaken by the Subcontractor. All other builder's work which the Subcontractor requires to be undertaken by the Contractor shall be clearly identified on drawings by the Subcontractor and submitted to the Contractor in adequate time to enable the Contractor to arrange for such work to be formed in the structure. The Subcontractor shall at its own cost undertake all builders' work not so marked or identified, subject to first obtaining permission from the Contractor. The Subcontractor shall be responsible for all necessary sleeving and protection of services.

37 Copyright, Royalties and Patent Rights

37.1 The Subcontractor will be deemed to have allowed in the Subcontract Price or rates for all sums payable in respect of royalties, patented articles or other charges of whatever nature in relation to the Subcontract Works. Copyright of all designs developed or produced for the Subcontract Works shall become the property of the Contractor and a free licence to reproduce such details is hereby granted to the Contractor.

38 Planning Approval Conditions

38.1 The Subcontractor is hereby deemed to have full knowledge of the planning conditions applicable to the Main Contract and Subcontract (which may or may not be incorporated in the Subcontract) that are to be complied with at all times. The full planning approval document is available for inspection at the Contractor's offices.

SIGNED by []

A Director duly authorised

for and on behalf of headoffice³

In the presence of:

Signature

Name

Address

SIGNED by []

for and on behalf of [Sub-Contractor]

In the presence of:

Signature

Name

Address