

## TERMS AND CONDITIONS (SUBCONTRACT)

### 1. GENERAL

1.1 In this Subcontract, unless the context otherwise requires, the following words shall have the following meanings:

<b>"Appendices"</b>	means appendices attached to the Subcontract Agreement and Appendix means any one of them;
<b>"Beneficiary"</b>	includes each and every one of the following for their respective interests: Employer, Freeholder, Funder, Group Company, Purchaser, Tenant and any other person in whose favour the Contractor is required by the Main Contract to procure a collateral warranty, by the Subcontractor;
<b>"Commencement Date"</b>	the date of commencement of the Subcontract;
<b>"Conditions"</b>	means the conditions set out in this Schedule including any Subcontract Agreement and any supplementary conditions agreed in writing between the Contractor and the Subcontractor;
<b>"Contractor"</b>	means EFT Systems Limited (Company Registration No. 01172575) whose registered office is at xxx;
<b>"Contractor's Programme"</b>	means the programme prepared by or on behalf of the Contractor for the Main Contract Works as may be amended from time to time.
<b>"Contractor's Representative"</b>	means the Contractor's representative described in the Subcontract Agreement;
<b>"Collateral Warranty"</b>	means a collateral warranty from the Subcontractor and/or its sub-subcontractors and sub-consultants;
<b>"Data Controller, Data Subject, Data Processor and Personal Data Breach"</b>	have the meaning given to the terms in the GDPR and any subsequent legislation;
<b>"Data Protection Legislation"</b>	means the Data Protection Act 2018 (DPA) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the GDPR and any legislation implemented in connection with the GDPR and the DPA and any replacement legislation coming into effect from time to time;
<b>"Defects Period"</b>	means the period specified in the Subcontract Order and if not specifically specified stated, it is deemed to be for a period of 12 months from the date of the completion of any works;
<b>"Employer"</b>	means the employer under the Main Contract;
<b>"Form of Enquiry"</b>	means the Contractor's Form of Enquiry sent to the Subcontractor where applicable;
<b>"GDPR"</b>	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data;
<b>"Main Contract"</b>	means the contract between the Contractor and the Employer for the completion of the Works;
<b>"Necessary Consents"</b>	means all permissions licences and consents granted under the Planning Acts (as amended or replaced from time to time) and all approvals and details pursuant thereto building regulation consents and approvals and all other certificates, agreements, consents and approvals whether statutory or otherwise necessary to authorise and permit the execution of the Works;
<b>"Other Consultant"</b>	means any other consultant engaged by the Contractor in relation to the Works;
<b>"Other Subcontractor"</b>	means any other subcontractor engaged by the Contractor in relation to the Works;
<b>"Parent Company Guarantee"</b>	a guarantee from the ultimate holding company of the Subcontractor in the form of the draft parent company guarantee;
<b>"Payment Timetable"</b>	means the payment timetable set out in Section 8 of the Subcontract Agreement;
<b>"Performance Bond"</b>	a performance bond in a sum equal to ten per cent (10%) of the Sub-Contract Sum or (where Article 3.2 applies) in a sum equal to ten per cent (10%) of the anticipated price of the Sub-Contract Works, from a clearing bank or surety acceptable to the Contractor in the form of the draft performance bond;
<b>"Personal Data"</b>	means any information relating to an identified or identifiable natural person being processed in relation to the Subcontractor;
<b>"Planning Acts"</b>	means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and all other statutes containing provisions relating to town and country planning from time to time in force together with all secondary legislation arising under such statutes;

<b>"Plant"</b>	includes all items of equipment, vehicle, access systems, power tools etc. used to carry out the Subcontract Works;
<b>"Processing"</b>	has the meaning given to it in the Data Protection Legislation in force from time to time and "Process" and "Processed" will be construed accordingly
<b>"Programme"</b>	means the programme for the Works including any variation to such programme made by the Contractor from time to time;
<b>"Schedules"</b>	means schedules attached to the Subcontract Agreement;
<b>"Site"</b>	means the site described in the Subcontract Order;
<b>"Statutory Requirements"</b>	means any requirements imposed by: <ul style="list-style-type: none"> <li>a) any act of parliament, statutory instrument, rule or order made under any act of parliament;</li> <li>b) any proclamation, regulation, rule of court, directions or guidance or bye law or approved code of practice of any local authority, statutory undertaker or of any public or private utility or undertaking or other body which has jurisdiction with regard to the Works and the Development or to whose systems the Works are or will be connected;</li> <li>c) the terms of any planning permission, building regulation approval or other consent or approval required for the execution of the Works and the Development;</li> <li>d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972; and</li> <li>e) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales;</li> </ul>
<b>"Subcontract"</b>	means the Subcontract Order, these Conditions, the Subcontract Agreement and any documents incorporated into the Subcontract by its terms;
<b>"Subcontract Agreement"</b>	means the Subcontract Agreement between the Contractor and the Subcontractor;
<b>"Subcontractor's Programme"</b>	the programme prepared by or on behalf of the Subcontractor for the Subcontract Works or any part in accordance with the programme as set out in the Subcontract Agreement;
<b>"Subcontractor's Persons"</b>	means any subcontractor, subconsultant, supplier, agent or any other person engaged or authorised by the Subcontractor;
<b>"Subcontract Order"</b>	means the order issued by the Contractor for the Subcontract Works in accordance with the relevant Subcontract Agreement or part thereof up to the maximum value stated in the Subcontract Agreement;
<b>"Subcontract Sum"</b>	means the subcontract sum set out in the Subcontract Order;
<b>"Subcontract Works"</b>	means the works briefly described in the Subcontract Order including the Conditions, the Subcontract Agreement and any Appendices and documents incorporated into this Subcontract by its terms;
<b>"Subcontractor"</b>	means an individual, partnership or limited company, which for the purposes of this contract for services: <ul style="list-style-type: none"> <li>(a) supplies his/her own labour and goods or materials for the execution of the work; OR</li> <li>(b) supplies his own employed labour and does not supply goods or materials for the execution of the work; OR</li> <li>(c) supplies his own employed labour and goods for the execution of the Subcontract Works;</li> </ul>
<b>"Subcontractor's Persons"</b>	means any sub-subcontractor (of any tier), sub-consultant, supplier, agent or any other person engaged or authorised by the Subcontractor;
<b>"Supplementary Conditions"</b>	means those additional conditions which shall apply to any particular Subcontract Order and are appended to such Subcontract Order or Subcontract Agreement;
<b>"Third Party Agreements"</b>	any agreement between the Employer and/or the Contractor and a third party (including, without limitation, any Beneficiary but excluding the Subcontractor) which concerns or affects the subcontract works;
<b>"Variation"</b>	means (but only where and to the extent that the same is required under an instruction of the Contractor) any addition, omission, substitution, alteration or modification of the Subcontract Works or any works outside of the scope of the Contract and does not arise from any negligence, omission or default of the Subcontractor and/or its agents, employees, sub-subcontractors or suppliers;
<b>"Works"</b>	means the works (including the Subcontract Works) described in the Main Contract.

- 1.2 The Contractor shall be entitled to withhold any payment due to the Subcontractor until the Subcontract Agreement executed by the Subcontractor has been received by the Contractor.
- 1.3 The Subcontractor is only bound by official written orders (or Variation in contractual terms) signed by the Contractor's Representative (which have been acknowledged in writing to the Subcontractor).
- 1.4 The Subcontractor shall use the Contractor's official Subcontract Order number on all forms, contracts and correspondence.
- 1.5 The Subcontractor acknowledges that the Contractor shall have no obligation to pay any amount greater than the amount paid by the Contractor and in any event the Contractor's aggregate liability shall not exceed the Subcontract Sum. The Contractor shall not be liable to the Subcontractor (whether by reason of any negligence by the Contractor or any of its employees or agents, any non-fraudulent misrepresentation, any breach of contract, an express or implied warranty, condition or other term, breach of statutory duty, under the terms of any indemnity given by the Contractor, or otherwise) for any loss of profits; or damage to reputation; or loss of business opportunities; or loss of contracts; or claim, action or demand made against the Subcontractor by any third party; or any indirect loss, damage, cost, expense, claim or other liability whatsoever; which arises out of or in connection with this Subcontract.
- 1.6 Nothing in this Subcontract will confer any rights to any person under the Contracts (Rights of Third Parties) Act 1999. This Subcontract shall constitute the entire agreement and understanding, and shall supersede any previous agreement(s), between the parties in connection with the subject matter of this Subcontract. The Subcontractor acknowledges that it has not been induced to enter into this Subcontract in reliance upon, and in connection with this Subcontract does not have any remedy in respect of, any representation or other statement or promise of any nature whatsoever other than as expressly set out in this Subcontract.
- 1.7 In these Conditions unless the context otherwise requires:
- 1.7.1 reference to Clauses and Schedules are to Clauses and Schedules of these Conditions unless otherwise stated;
- 1.7.2 headings in these Conditions are for convenience only and do not affect its interpretation.
- 1.7.3 words importing individuals or persons include firms, companies, corporations, association or partnership, government or state (whether or not having a separate legal personality) and the singular includes the plural and vice versa.
- 1.7.4 a reference to a statute or statutory provision includes:
- (a) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it;
- (b) any repealed statute or statutory provision which it re-enacts (with or without modification); and
- (c) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it;
- 1.7.5 a reference to:
- (a) any party includes its successors in title and permitted assigns;
- (b) "indemnify" and "indemnifying" any person against any circumstance includes indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against him and all loss or damage and all payments, costs or expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance.
- 1.8 Nothing in these Conditions confers or purports to confer any rights on any person who is not a party to it, save for any assignee of these Conditions to whom the same shall be expressly assigned, and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be of no effect in respect of these Conditions.
- 1.9 Acceptance of the Subcontract Order which must be made by a director of the Subcontractor or a person authorised on behalf of the Subcontractor indicates acceptance of these Conditions and of any other express conditions contained in the Order or Agreement. In the event of any inconsistency or conflict between these Conditions and any such express conditions then such express conditions shall prevail.
- 1.10 These Conditions override any other conditions in the Subcontractor's quotations and/or proposals to carry out the Services or which the Subcontractor may subsequently seek to impose. No conduct by the Contractor shall be deemed to constitute acceptance of any terms put forward by the Subcontractor. The Contractor is only bound by official written orders that it produces upon its authorised documentation. This incorporates the , Form of Tender, Subcontract Agreement and any Supplementary Conditions for the appointment.
- 1.11 The Subcontractor is deemed to have identified prior to entering into this Subcontract any conflicts or divergences between and/or discrepancies and/or insufficiencies or technical errors within any of the Subcontract Order and/or any conflicts or divergences between the Subcontract Order the resolution of any of which will have a bearing on the Subcontractor's obligations under, pursuant to or arising from this Subcontract and/or the cost to the Contractor of performing the same and, without prejudice to Clause 1.12, to have allowed for the same.
- 1.12 In the event of any such conflict, divergence and/or discrepancy and/or insufficiency or technical error being discovered, the Contractor shall be entitled, in its absolute discretion, to direct the Subcontractor as to which of the conflicting, divergent and/or discrepant provisions are to prevail and which are to be disregarded and the Subcontractor shall comply with such direction and for the avoidance of doubt shall not be entitled to any additional payment (whether by way of adjustment to the Subcontract Sum or otherwise) or to an extension of time for compliance with the same.
- 1.13 Without prejudice to Clause 1.11 above, the Subcontractor shall be responsible for the Subcontractor's proposals, any Variation and all drawings, documents, reports, investigations, information and surveys (including any drawings, details, documents or information produced in compliance with Clause 8) ("Other Documents") used for or in connection with the Subcontract Works. Where there is any mistake, inaccuracy, discrepancy or omission in or between the Subcontractor's proposals and/or other documents and/or any Variation and/or between any such Other Documents and the Statutory Requirements, the Subcontractor shall inform the Contractor in writing of his

proposed amendment to remove the same, the Contractor shall decide how to proceed and the Subcontractor shall comply with the decision or acceptance without cost to the Contractor. The Subcontractor shall not have or make any claim for an extension of time under Clause 4.7, where and to the extent that the cause of the progress of the Works having been delayed, affected or suspended is any such discrepancy, mistake, inaccuracy or omission as is referred to in this Clause 1.13 or any failure by the Subcontractor to provide necessary drawings or documents in due time.

## **2 EXECUTION OF SUBCONTRACT WORKS**

- 2.1 The Subcontractor shall do everything necessary to carry out and complete the Subcontract Works in good and workmanlike manner and in accordance with: this Subcontract; all drawings; specifications; bills of quantities; (where applicable) and/or written instructions issued to it by the Contractor all statutory requirements; consents, permissions; and to the Contractor's satisfaction.
- 2.2 No admission, appraisal, instruction, comment, direction approval whether express or implied, inspection, testing, or review nor any omission to appraise, comment, instruct, direct, inspect, test, approve or review on the part of the Contractor, the Employer or any party or person for or on the Employer's behalf shall relieve the Subcontractor of its responsibilities or liabilities under this Subcontract.
- 2.3 Where required by the Contractor's Representative, the Subcontractor shall provide a method statement and risk assessment for the carrying out of the Subcontract Works and shall, as and when requested by the Contractor, provide such further method statements and risk assessments and in such detail as the Contractor shall consider necessary.

## **3 MAIN CONTRACT**

- 3.1 The Subcontractor acknowledges that it has had an opportunity to read and consider all provisions of the Main Contract (except the Contractor's prices) and any other Third Party Agreements on or before the date of this Subcontract. The Subcontractor is deemed to have full knowledge of and, in so far as they are applicable to the Subcontract Works, shall comply with the provisions of the Main Contract and any relevant Third Party Agreements. If there is any conflict between the provisions of the Main Contract, any relevant Third Party Agreement and the terms of this Subcontract, the terms of this Subcontract shall prevail.
- 3.2 The Subcontractor shall carry out and complete the Subcontract Works and perform its duties and obligations under this Subcontract in such manner and so as to comply with and so as not to cause or contribute to any breach by the Contractor and/or the Employer or failure by the Contractor and/or the Employer to comply with the Main Contract or any Third Party Agreement.
- 3.3 The Subcontractor shall indemnify the Contractor against any liability that the Contractor may incur to any other person whatsoever and against all claims, demands, proceedings, costs (including professional fees and interest) and expenses made against or incurred by the Contractor by reason of any breach by the Subcontractor of this Subcontract.
- 3.4 Without prejudice to Clause 3.3, the Subcontractor shall indemnify and hold harmless the Contractor against and from any breach, non observance or non performance by the Subcontractor and any Subcontractor's Persons; and any act or omission of the Subcontractor and any Subcontractor's Persons; which involves the Contractor incurring any liability and/or expense and/or costs and/or suffering any loss and/or damage under or arising out of; the Main Contract; and/or other subcontracts entered into by the Contractor in relation to the Main Contract Works; and/or any Third Party Agreements notified to the Subcontractor.

## **4 PROGRESS AND COMPLETION**

- 4.1 The Subcontractor shall commence the Subcontract Works on the date specified in the Subcontract Order. If no such date is specified the Subcontractor shall commence the Subcontract Works on the date instructed by the Contractor or in accordance with the notice to commence issued by Contractor. Subject to Clause 4.3 (if applicable) the Subcontract Works and any section of the Subcontract Works and any part shall be carried out and completed in accordance with the Subcontractor's Programme, subject as regards construction but not design, to receipt by the Subcontractor of notice to commence work.
- 4.2 The Subcontract Works are required to be completed in parts (including but not limited to allow following other Subcontractors of the Contractor to progressively commence and carry out their works).
- 4.3 A part of the Subcontract Works is any part of the Subcontract specified in the form of enquiry and/or any part separately identified or shown in any approved Subcontractor's Programme if no such approved Subcontractor's Programme is provided, as identified in the Contractor's Programme.
- 4.4 The Subcontractor shall not have uninterrupted access or exclusive possession to any part of the Site and shall recognise and make due allowance for sharing work areas with and for the freedom of other contractors and consultants employed on the site and shall not unreasonably impede such other contractors and consultants. The Contractor does not guarantee continuity of working. The Contractor makes no guarantee of continuity of work on the site and reserves the right to phase, omit, suspend or stop the Works, or amend the Contractor's Programme and/or the Subcontractor's Programme. The right to phase, omit, suspend, or stop the Subcontract Works or amend the Contractor's Programme may be exercised by the Employer two (2) Working Days notice to the Contractor. The Contractor shall be entitled to require the Subcontractor to resume work in accordance with the terms of the Subcontract within two (2) Working Days of being given notice in writing so to do by the Contractor. The Contractor shall not be liable to the Subcontractor for any loss or damage suffered as a result of any phasing, omission, suspension or stopping of the Subcontract Works.
- 4.5 The Subcontractor acknowledges that failure by the Subcontractor to comply with the provisions of Clause 4.1 may cause delay and/or disruption to the Works and/or any part thereof and/or may cause the Contractor to suffer costs, loss and/or damage. The Subcontractor shall plan, carry out and complete all parts of the Subcontract Works and any section of the Subcontract Works and any part in such manner and at such times and within such periods as will not delay, disrupt or contribute to any delay or disruption to any part of the Works.
- 4.6 The Subcontractor shall complete the Subcontract Works within the duration set out in the Subcontract Agreement or in accordance with the completion date(s) set out in any notice issued by the Contractor.
- 4.7 Where the Subcontractor cannot complete the Subcontract Works within the duration set out in the Subcontract Agreement by the completion date(s) due to Variation instruction by the Contractor and/or an act of prevention or delays caused by the Contractor, the completion period shall be extended by the period of such delay provided always that the Subcontractor shall not become entitled to any extension of time for the completion of the Subcontract Works or any part of the Subcontract Works on account of any circumstance arising by reason of any act, negligence or default of the Subcontractor or the Subcontractor's Persons.

- 4.8 If, for any reason which does not entitle the Subcontractor to an extension of time for completion of the Subcontract Works or any section or any part, the rate of progress of the Subcontract Works or any section or any part is at any time in the opinion of the Contractor too slow to ensure practical completion of the Subcontract Works or a section or any part within the period or periods for completion stated in the Subcontract Agreement or in the Contractor's Programme or any revised period or periods fixed under Clause 4.7, the Contractor shall notify the Subcontractor in writing accordingly ("the Clause 4.7 Notice") and the Subcontractor shall thereupon take such steps as are necessary and to which the Contractor may consent to expedite the progress of the Subcontract Works or the section of the Subcontract Works or the relevant part so as to complete the Subcontract Works or section or relevant part within the said period or periods (or revised period or periods) for completion. The Subcontractor shall not be entitled to any payment or extension of time for taking such steps. If the Subcontractor fails to take such steps within 4 days of the date of service of the Clause 4.7 Notice, then the Contractor may employ and pay other persons to take such steps (or the Contractor may take such steps himself) and all costs and/or expenditure incurred and/or loss and/or damage and/or expense suffered in connection therewith shall be recoverable by the Contractor from the Subcontractor as a debt or may be deducted from any monies otherwise due (or to become due) to the Subcontractor under the Subcontract.
- 4.9 The Subcontract Works are to be carried out regularly and diligently and in such manner, performance and time as the Contractor may direct. The Subcontractor shall give all requisite notices and pay the fees or charges payable by law under the Statutory Requirements and the Necessary Consents. The Sub-Contractor acknowledges that failure by the Sub-Contractor to comply with the provisions of Clauses 4.2 and 4.3 may cause delay and/or disruption to the Works and/or any part thereof and/or may cause the Contractor to suffer costs, loss and/or damage. The Subcontractor shall plan, carry out and complete all parts of the Subcontract Works and any section of the Subcontract Works and any part in such manner and at such times and within such periods as will not delay, disrupt or contribute to any delay or disruption to any part of the Works.
- 4.10 The Subcontractor's Programme shall show the order in which the Subcontractor proposes to carry out the Subcontract Works and any section of the Subcontract and any part and the critical path through the planned sequence of activities which comprise the Subcontract Works and any section of the Subcontract Works and any part with a network diagram showing the sequence and inter-relationship of the activities comprising the Subcontract Works and any section of the Subcontract Works and any part and their relationship to the Works and/or any section of the Works and/or any part of the Works.
- 4.11 The Subcontractor shall assess and demonstrate the impact on the Subcontractor's Programme of any change that may be under consideration, including appropriate re-scheduling to minimise or negate any such impact prior to any decision on the implementation of the change being made.
- 4.12 Whenever requested by the Contractor, the Subcontractor shall provide to the Contractor the current version of the Subcontractor's Programme, together with the Subcontractor's own assessment of his progress on each activity shown in the Subcontractor's Programme as at the date of submission by reference to the identified critical path and network diagram referred to in Clause 4.10. The Subcontractor shall also provide a report explaining in detail any changes to the Subcontractor's Programme from that previously submitted, together with recommendations as to how to recover any delay in the critical path. The Subcontractor shall promptly deliver to the Contractor two copies of any revised Subcontractor's Programme, or such other number of copies as the Contractor may reasonably require.
- 4.13 Without prejudice to any other rights and remedies of the Contractor, if actual progress of the Subcontract Works or any section of the Subcontract Works or any part does not comply with Clause 4.2 and 4.3 the Contractor shall be entitled to require the Subcontractor to produce a revised programme and proposals as may be necessary to ensure completion of the Subcontract Works or any section of the Subcontract Works or any part in accordance with Clause 4.2 and/or 4.3.
- 4.14 Without prejudice to any other rights and remedies of the Contractor, if actual progress of the Subcontract Works or any section of the Subcontract Works or any part does not comply with Clause 4.2 and/or 4.3 or the Subcontractor fails to produce any programme required under this Clause 4 or the Subcontractor's Programme is not compatible with the Contractor's Programme then the Contractor's Programme shall apply in relation to the Subcontract Works and/or any section of the Subcontract Works and/or any part of the Subcontract Works.
- 4.15 Without prejudice to any other right or remedy which the Contractor may possess, if the Subcontractor is, in the Contractor's opinion (such opinion to be final and conclusive) in breach of the foregoing provisions of this Clause 4, then the Contractor may introduce additional labour onto the Subcontract Works and any costs expenses or losses which the Contractor incurs as a result may be deducted from any monies due or to become due to the Subcontractor or may be recoverable from the Subcontractor as a debt. As and when reasonably requested to do so by the Contractor, the Subcontractor (and Subcontractor shall procure that its people, agents, suppliers) as may from time to time be reasonably required by the Contractor shall attend meetings convened by the Contractor in connection with the Development at such times and locations as the Contractor may reasonably require.
- 4.16 The Subcontractor shall keep full and proper records of all meetings and negotiations attended or conducted by the Subcontractor and shall keep any other information as requested by the Contractor and shall make the same available for inspection by the Contractor on request.
- 4.17 The Subcontractor shall maintain a presence at the Site at all times during the normal working hours applicable to the Site.
- 4.18 The Subcontractor shall allow an employee or agent of the Contractor to visit and have unfettered access to the Site to review the progress and quality of the Subcontract Works whenever the Contractor chooses to undertake such visit or visits. If in the opinion of the Contractor the Subcontractor is failing to carry out the Subcontract Works or any section or any part in accordance with Clause 4, the Contractor may, upon giving 4 weeks notice to the Subcontractor and without prejudice to any of the Contractor's other rights and remedies:
- 4.18.1 perform the Subcontract Works or any section or the relevant part, whether by itself or by others, and/or
- 4.18.2 issue instructions to the Subcontractor removing the relevant parts of the Subcontract Works or section or part from the Subcontract, and may employ others to carry out those parts; and in such event the price for the Subcontract Works shall be reduced by the value of the removed parts and any additional costs and/or expenditure incurred or loss and damage suffered by the Contractor in so doing shall be recoverable from the Subcontractor as a debt or may be deducted from any monies due or to become due to the Subcontractor under this Subcontract.

## 5 DESIGN AND WORKMANSHIP

5.1 Without prejudice to any implied warranties or conditions, the Subcontractor acknowledges warrants and agrees with the Contractor that:

5.1.1 it has full responsibility for all aspects of the design and design development of the Subcontract Works which the Subcontractor is required to design (including any design for such parts contained in the Subcontract Order whether or not prepared by or on behalf of the Employer and/or the Contractor), by any provision of this Subcontract;

5.1.2 it is experienced in carrying out work of a similar type, nature and complexity to the Subcontract Works;

5.1.3 it has and will execute the design of the Subcontract Works using all the reasonable skill, care and diligence reasonably to be expected of a skilled and competent architect, engineer or other appropriate professional designer holding itself out as competent to take on design work for work of a similar type, nature and complexity to the Subcontract Works;

5.1.4 it will execute the design and construction of the Subcontract Works in accordance:

(a) with good up to date practice taking account of all prevailing codes of practice, BSI British Standards/The National Standards Body recommendations, manufacturers recommendation; and

(b) any relevant construction phase plan;

5.1.5 the Subcontract Works when completed will comply with the Statutory Requirements, the Necessary Consents, all environmental requirements and any performance specification or requirement included in or reasonably to be inferred from the Subcontract or from any change to the same.

5.1.6 it is deemed to have included for all things necessary to complete the Subcontract Works whether set out in the Subcontract or otherwise;

5.1.7 the Subcontract Sum is inclusive of all works whether permanent or temporary, materials and expenditure, which will be necessary to complete the Subcontract Works as described in or to be inferred from this Subcontract;

5.1.8 it shall carry out the Subcontract Works (including any design of the Subcontract Works for which it is responsible) without infringement of any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding upon or affecting the site (save as may have been agreed in writing with the Contractor) insofar as details of the same have been made known to the Subcontractor;

5.1.9 it shall carry out the Subcontract Works (including any design of the Subcontract Works for which it is responsible) to ensure proper integration, coordination and compatibility of the various components and elements that make up and comprise the Subcontract Works one with the other and with the other parts of the site.

5.2 The Contractor shall have a royalty-free irrevocable licence for the copyright and other intellectual property and design rights in all drawings, models, plans, elevations, sections, perspectives, design reports, specifications, bills of quantities, calculations and other works, information and documents (including those in computer generated form) produced or to be produced by or on behalf of the Subcontractor pursuant to the Subcontract Works ("the Documents") for all purposes in connection with the Works or its operation or use. The Subcontractor shall not be liable for the consequences of any use of the Documents for any purpose other than those for which the Subcontractor produced them.

5.3 The licence referred to in Clause 5.2 shall carry the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the determination (for any reason) of these Conditions.

5.4 The Subcontractor agrees and undertakes that it hereby irrevocably waives any rights it may have pursuant to Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patent Act 1988 in relation to the Documents and upon reasonable request from the Contractor at any time shall obtain a written waiver from the Subcontractor's employees or sub-consultants of any rights that they may have in respect of the same.

5.5 The Subcontractor shall supply to the Contractor on request (after as well as before the termination of this Subcontract under these Conditions) copies of the Documents.

5.6 If the provision of the Subcontract Works by the Subcontractor leads to or would lead to the infringement of any patent, copyright, design or other proprietary right or any other intellectual property right of any third party the Subcontractor shall indemnify the Contractor against all resulting costs, claims, demands, actions or damages.

## 6 ANCILLARY DOCUMENTS

6.1 Sub-Contractor shall, within 7 days of the Contractor's written request, execute and deliver to the Contractor a Parent Company Guarantee.

6.2 The Sub-Contractor shall, within 7 days of the Contractor's written request, execute and deliver to the Contractor a Performance Bond.

6.3 The Subcontractor shall within seven days of the Parties entering into the Subcontract, or within seven days of any request made by the Contractor from time to time, deliver to the Contractor Collateral Warranties duly executed by the Subcontractor in favour of each and every Beneficiary in the relevant form(s) referred to in or annexed to this Subcontract or the Main Contract, or in such varied or similar terms as the Contractor may reasonably require or agree.

6.4 Notwithstanding any other provision of this Sub-Contract, in the event that the Subcontractor fails to provide any Collateral Warranty and/or Parent Company Guarantee and/or Performance Bond and Clauses 6.1, 6.2 and/or 6.3, such Collateral Warranty, Parent Company Guarantee or Performance Bond, have still not been delivered to the Contractor by the final date for payment for the next payment, due to the Subcontractor (as the case may be), final date for payment or any such payment and in respect of all further payments shall be postponed and there shall be no release of Retention until the Subcontractor has provided to the Contractor all of any outstanding Collateral Warranty and/or Parent Company Guarantee and/or Performance Bond duly executed.

## 7 DEFECTS AND MAINTENANCE

- 7.1 The Subcontractor shall maintain and protect the Subcontract Works at its own expense and shall make good at its own expense any defects, shrinkages and/or other faults in, or damage to the Subcontract Works to the Contractor's satisfaction. The Subcontractor shall make good such defects, shrinkages and/or other faults and/or damage within such time period as required by the Contractor.
- 7.2 The Subcontractor shall make good any such defects, shrinkages or faults referred to in Clause 7.1 so as to cause as little disturbance as possible to any occupier of premises comprised within the site and subject to any restrictions and within any period of time in the Subcontract and/or the Main Contract.
- 7.3 Failure by the Subcontractor to commence and complete the rectification of defects, shrinkages and/or other faults and/or damage to the Subcontract Works within the time periods required by the Contractor shall entitle the Contractor to carry out the rectification themselves or nominate others to do so and deduct the total costs incurred plus overheads from monies due to the Subcontractor or recover the total cost from the Subcontractor as a debt.
- 8 SUBCONTRACT EMPLOYEES**
- 8.1 The Subcontractor shall supply labour, plant and equipment of sufficient quality to carry out and complete the Subcontract Works in accordance with this Subcontract. The Subcontractor shall at the Contractor's request cease to employ on the Subcontract Works any one or more of its employees to whom the Contractor may object and shall replace such employee or employees immediately with others to whom there is no objection from the Contractor.
- 8.2 The Subcontractor will be responsible for the payment of Income Tax, National Insurance and any other statutory deductions for all of its employees employed on the Subcontract Works. The Contractor shall have no responsibility for the non-payment of any such sums.
- 9 ON-SITE FACILITIES/SERVICES**
- 9.1 The Subcontractor shall at its own risk in common with other Subcontractors and others engaged upon the Site have the reasonable and free use of such amenities, facilities and services provided by the Contractor and specified in the Schedules.
- 10 LOSS & DAMAGE TO PLANT AND MATERIALS OF OTHERS, AND WASTAGE**
- 10.1 The Subcontractor shall be responsible for loss or damage to any plant, tools, equipment or materials supplied to it for the Subcontract Works or for loss or damage to the plant, tools, equipment or materials of others that is caused by the Subcontractor's or the Subcontractor's Persons' act, omission, negligence, breach or default.
- 10.2 The Contractor shall be entitled to deduct from monies due to the Subcontractor under this Subcontract or any other agreement between the Contractor and the Subcontractor or to be paid as a debt due all costs that the Contractor may incur.
- 11 BACKGROUNDS AND PREVIOUS WORK BY OTHERS**
- 11.1 The Subcontractor shall satisfy itself before commencing the Subcontract Works as to the position, dimensions and suitability of any previous work which may in any way affect the Subcontract Works, (including without restriction any surface or background to which the Subcontractor is to fix or lay its work) and shall immediately advise the Contractor in writing if such previous work is out of position, wrongly dimensioned or in any other way unsuitable.
- 11.2 The Subcontractor shall make good at its own expense any damage caused to any pipes, wires, cables, drains, ducts, services or other obstructions or obstacles and shall indemnify the Contractor in respect of the same.
- 11.3 The Subcontractor shall have no claim or right of action against the Contractor arising from work previously carried out by others unless any discrepancy in position or dimension or other reason for unsuitability of the work or surfaces has been notified to the Contractor by the Subcontractor pursuant to Clause 11.1 prior to the Subcontractor commencing the Subcontract Works.
- 12 INDEMNITIES AND INSURANCES - INJURY TO PERSONS AND PROPERTY**
- 12.1 The Subcontractor shall indemnify the Contractor against and from all claims, causes of action made or brought against the Contractor and all costs, loss and expense whatsoever incurred by the Contractor in respect of:
- 12.1.1 personal injury or death of any person or injury or damage to any property real or personal arising out of or in the course of or caused by any works executed by the Subcontractor and/or the execution of such works (including but not restricted to the use of any plant, equipment or facilities whether in connection with such execution or otherwise);
- 12.1.2 any negligence or breach of duty on the part of the Subcontractor and/or the Subcontractor's Persons;
- 12.1.3 any breach or non-performance or non-observance by the Subcontractor and/or the Subcontractor's Persons of the provisions of the Main Contract insofar as they relate or apply to the Subcontract Works;
- 12.1.4 any act, omission, default or neglect of the Subcontractor, its servants or agents which involved the Contractor in any liability under the Main Contract; and
- 12.1.5 any injury to any person in the employment of or under the control of the Subcontractor.
- 12.2 The Subcontractor shall adequately insure its and the Contractor's liability in respect of any claims, causes of action, costs, losses and expenses in respect of any of the matters referred to in Clause 12.1 above, with Lloyds underwriters or insurers of good repute licensed to transact business in the United Kingdom. Such insurance shall be not less than the amount set out in the Subcontract Agreement and shall be subject to approval by the Contractor. The Subcontractor shall ensure that the Contractor has the benefit of such insurance. The Subcontractor shall produce to the Contractor adequate evidence of such insurance at least seven (7) days prior to commencement on Site. If the Subcontractor fails to adequately insure as required, the Contractor has the right to effect such insurance as deemed necessary and to set-off the cost of doing so against any sums due under this Subcontract or to recover the same from the Subcontractor as a debt.
- 12.3 The Subcontract Works, and all of the Subcontractor's materials, tools, Plant, scaffolding, machinery and buildings the subject of or used in connection with the Subcontract whether on Site or elsewhere, shall in every respect be at the Subcontractor's risk.
- 12.4 Where the Subcontractor is responsible for carry out any design works under this Subcontract:

12.4.1	The Subcontractor undertakes to the Contractor to maintain with reputable insurers carrying on business in the United Kingdom, from the date of commencement of the Subcontract Works and for a period expiring no earlier than 12 years after the date of practical completion of the Works and notwithstanding the determination for any reason of the Subcontractor's employment under the Subcontract, professional indemnity insurance to cover each and every professional liability which it may incur under this Subcontract with the Limit of Liability in respect of each and every claim, provided always that such insurance continues to be available in the United Kingdom market upon reasonable terms and at commercially reasonable premium rates.	using the details provided by the Subcontractor within the Subcontractor Questionnaire. The Subcontract Sum agreed for the Works is fixed and shall not be adjusted unless otherwise agreed by the Contractor in writing. The Subcontractor warrants and undertakes to the Contractor that the Subcontract Sum is inclusive of all works whether permanent or temporary, goods, materials, plant, equipment and expenditure, which will be necessary to complete the Subcontract Works as described in or to be inferred from the Subcontract Order.
12.4.2	Such insurance shall be subject to such conditions and excesses as may be usual from time to time in the United Kingdom market and in particular (but without limitation) shall not include any condition which may adversely affect the right of the Contractor to proceed directly against the insurers pursuant to and in the circumstances contemplated by the Third Parties (Rights Against Insurers) Act 1930.	13.2 Unless otherwise stated in the documentation forming part of this Subcontract, applications for payment shall be rendered in accordance with this Clause 13 and in accordance with the Payment Timetable.
12.4.3	As and when it is reasonably required to do so by the Contractor, the Subcontractor shall produce for inspection by the Contractor documentary evidence that insurance referred to in Clause 12.4.1 is being properly maintained.	13.3 The Subcontractor shall submit monthly application for payment in arrears to the Contractor quoting the Subcontract title, the Subcontract Order number and any supporting evidence the Contractor may require. The Subcontractor shall not be entitled to submit more than one application for payment in any one month and any further application for payment which is submitted shall not be valid.
12.4.4	The Subcontractor shall notify the Contractor immediately if such insurance referred to in Clause 12.4.1 ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Subcontractor is unable to continue to maintain such insurance.	13.4 The Contractor shall assess and certify the Subcontractor's application for payment in accordance with the Payment Timetable and if no dates are set out in the Payment Timetable within 15 (fifteen) days from the date of receipt of the Contractor's application for payment the amount due to the Contractor in accordance with these Conditions. The Subcontractor shall within two (2) days from the date of receipt of the Contractor's ascertainment issue to the Contractor a valid value added tax (VAT) invoice of the amount ascertained. Payments will become due to the Subcontractor fifteen (15) days (or such other period as agreed between the parties) after receipt by the Contractor of the Subcontractor's VAT invoice. The amount due for payment shall be the amount certified by the Contractor which may be:-
12.5	The Subcontractor shall not compromise, settle or waive any claim which it may have under insurance in respect of any liability which it may incur under this Subcontract without the prior written consent of the Contractor provided that nothing in this Subcontract shall preclude the Subcontractor's insurers from taking over (in the name of the Subcontractor) the defence of any claim made by the Contractor under this Subcontract and (in that capacity) from conducting and settling it as they see fit.	13.4.1 the total value of work properly executed calculated in accordance with the rates and prices in this Subcontract;
12.6	The Subcontractor shall at all times prevent any trespass or public or private nuisance (including any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the right of any adjoining or neighbouring landowner, tenant or occupier or any statutory undertaker or any other contractor engaged on the Project arising out of the carrying out of the Subcontract Works or of any obligation pursuant to Clause 7.	13.4.2 the amount of any additions to the Subcontract Sum ascertained under this Subcontract to the extent that such additions are in respect of work already executed by the Subcontractor;
12.7	The Subcontractor shall be liable for and shall indemnify the Contractor against any expense, liability, loss, claim or proceedings in respect of any trespass to any adjoining property or any nuisance insofar as such trespass or nuisance arises out of or in the course of or by reason of the carrying out of the Subcontract Works or any other obligations of the Subcontractor under this Subcontract and to the extent that the same is due to any act or neglect, breach of statutory duty, omission or default of the Subcontractor or any person for whom the Subcontractor is responsible.	13.4.3 up to and including the date of the application, less:
13	<b>PAYMENT</b>	13.4.4 all amounts previously stated as due in any notification as to payment previously issued by the Contractor under this Clause 12; and
13.1	Subject to proper performance of the obligations under the Subcontract, the Contractor shall pay to the Subcontractor the Subcontract Sum in accordance with this Clause 13 and	13.4.5 any retention applicable and any discounts as stated within this Subcontract.
		13.5 Subject to Clause 13.1 the Contractor shall give written notice to the Subcontractor not later than 5 (five) days after the due date specifying the amount of the payment proposed to be made to the Subcontractor in respect of the application for payment or invoice, to what the amount of the payment relates and the basis on which that amount was calculated.
		13.6 The final date for payment (as such expression is used in Section 110 (1) (b) of the Housing, Grants, Construction and Regeneration Act 1996) shall be forty (40) days (or such other period as agreed between the parties) from the date when the payment became due to the Contractor pursuant to Clause 13.3.
		13.7 Not later than 5 (five) days before the final date for payment of the amount due pursuant to Clause 13.3, the Contractor

- may give written notice to the Subcontractor specifying any amount proposed to be withheld and/or deducted from the due amount, the ground or grounds for such withholding and/or deduction and the amount attributable to each ground.
- 13.8 Payments shall be subject to deduction of retention and any discounts stated in this Subcontract. Subject to the Contractor's right to set-off or withhold, such retention shall be released to Subcontractor in accordance with the Subcontract Agreement. Without prejudice to the foregoing, the retention shall be released to the Subcontractor only after making good of all defects, shrinkages and/or other faults in the Works.
- 13.9 All interim payments shall be on account only and shall not imply approval by the Contractor and/or the Employer or any party or person for or on the Employer's behalf of the whole or any part of the Subcontract Works nor shall any final payment prejudice any claim the Contractor may have in respect of any defects, shrinkages and/or other faults in the Subcontract Works whenever such defects may appear.
- 13.10 If:
- 13.10.1 the Subcontractor causes the Contractor loss by breach of this Subcontract or any other contract or by any act or breach of statutory duty giving rise to a claim for damages or indemnity or contribution by the Contractor against the Subcontractor; or
- 13.10.2 The Contractor shall become entitled to payment from the Subcontractor under this Subcontract or any other contract between the parties, without prejudice to and pending the final ascertainment or agreement between the parties as to the amount of such loss, indemnity, contribution or payment, the Subcontractor shall pay or allow to the Contractor such sum as the Contractor shall in good faith estimate as the amount of such loss, indemnity, contribution or payment and such sum may be deducted from any monies due or to become due to the Subcontractor or may be recovered from the Subcontractor as a debt. Such estimate is to be binding and conclusive upon the Subcontractor until final ascertainment or agreement.
- 13.11 Notwithstanding anything to the contrary in this Subcontract, if the Employer or any other person payment by whom is (directly or indirectly) a condition of payment of the Contractor by the Employer is insolvent (as defined in the Insolvency Act 1986), the Contractor shall not be obliged to make any further payment to the Subcontractor of any amount which is due or may become due to the Subcontractor unless the Contractor has received payment in respect thereof from the Employer and then only to the extent of such receipt.
- 13.12 If the Contractor considers (at his absolute discretion) that the Subcontract Works should be valued as "Daywork", the valuation rules shall comprise:
- 13.12.1 the prime cost of such work (calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under the Main Contract' issued by the Construction Confederation which was current at date of this Subcontract); or where the work is within the province of any specialist trade and the said institution and the appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of daywork, the prime cost of such work calculated in accordance with that definition which was current at the date of this Subcontract provided always that:
- 13.12.2 the Subcontractor shall not carry out any work which cannot properly be valued by measurement unless it has obtained 7 days before commencement of such work (or such other period as the Parties may agree) the written consent of the Contractor's Representative to carry out such work;
- 13.12.3 the Subcontractor shall deliver a daywork sheet for the approval of the Contractor's Representative for any work approved by the Contractor under Clause 13.11.2 no later than 9am on the next working day after the Subcontractor has carried out and/or completed such work, which daywork sheet shall set out all the information that the Contractor may reasonably require to evaluate any work approved under Clause 13.11.2 and include as a minimum the following information:
- (a) a unique daywork reference number and written evidence of the Contractor's approval for that work given in accordance with Clause 13.11.2;
- (b) a description of the work involved including the location of the work, any plant and/or materials and/or consumable items employed (including any relevant dimensions and quantities thereof) and a description of the Subcontractor's understanding as to why the work was not envisaged at the date of this Subcontract;
- (c) the date or dates the work was carried out including a breakdown of the number of hours worked against each person referred to in (d) below;
- (d) a description of the persons who carried out the work including their names, trade and position within that trade;
- (e) a statement as to whether the works are completed or are continuing (and where continuing a statement as to the expected duration of the remaining works); and
- (f) the Contractor's Representative's signature.
- 13.13 It shall be a condition precedent to payment for any works which cannot properly be valued by measurement that the Subcontractor has complied with the time limits for consent and approval of the Contractor's Representative pursuant to Clauses 13.11.2 and 13.11.3.
- 13.14 The Subcontractor shall comply with all tax legislation (including any sub-ordinate legislation, rules, codes of practice) including the Construction Industry Scheme (CIS) under the Income and Corporation Taxes Act 1988. No payment shall become due under this Subcontract if the Subcontractor fails to comply with its obligations under this Clause 13.13 until such breach is rectified. All payments due under this Subcontract shall be subject to all tax legislation (including Income Tax (Sub-Contractor in Construction Industry) Regulations 1993 as amended from time to time.
- 13.15 If the amount of any payment becoming due under this Subcontract is wrongfully withheld after the relevant final date for payment, such amount shall bear simple interest at the rate of 2 % over Bank of England base rate for the time being, from the final date for payment to and including the

date on which such amount is paid or discharged. The Parties hereby agree that such interest shall be a substantial remedy within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998.

#### 14 WORKING HOURS

14.1 The Subcontract Works shall be carried out during normal site working hours and to suit any construction programme that the Contractor shall issue from time to time.

#### 15 ADDITIONAL WORKS

15.1 The Subcontractor shall comply with all instructions and directions issued by the Contractor's Representative relating to the Subcontract Works.

15.2 The Contractor may issue an instruction requiring a Variation. No Variation required by the Contractor shall vitiate this Contract.

15.3 The Contractor shall not be obliged to pay the Subcontractor for any Variation, unless the Subcontractor has first obtained the prior written approval of the Contractor, in order that it may undertake such Variation.

15.4 The Subcontractor shall within seven (7) days of receipt of a Variation instruction provide in writing to the Contractor a quotation setting out details of:

15.4.1 an assessment of the cost and expense plus any VAT associated with such Variation which costs and expense shall include:

- (a) any disruption costs; and
- (b) any fees of any professionals or subcontractors arising in connection with such works;

15.4.2 an assessment of the time within which the Variation is proposed to be executed;

15.4.3 any delays to the Completion Date arising as a result of undertaking such Variation. Service of a written instruction from the Contractor is a condition precedent to the Subcontractor's entitlement to an adjustment to the Subcontract Sum.

15.5 Without prejudice to the Subcontractor's obligations to carry out a Variation, the Subcontractor shall notify the Contractor in writing within 28 days that a Variation may arise pursuant to any Instruction or otherwise and in any event before carrying out any Instruction which would give rise to a Variation. Where any extension of time, amount of loss and expense, addition or deduction from the Contract Sum and any other amount agreed to be payable is agreed in writing at any time, then such agreement shall apply to the Variation in question and no further extension of time shall be given and no further increase to the Subcontract Sum or payment in respect of loss and expense shall be made or entitlement to claim for extension of time shall arise.

15.6 If the Subcontractor fails to comply with its obligations under Clause 15.5, the Subcontractor shall not be entitled to claim any extension of time, loss and expense or addition to the Subcontract Sum or any other additional payment in respect of the Variation.

15.7 The Subcontractor and the Contractor shall thereupon take reasonable steps to agree the Subcontractor's quotation within 14 days from the date of receipt of the Subcontractor's quotation. Any agreements so reached shall be final and binding on the Subcontractor and the Contractor and shall not thereafter be the subject of any review. If agreement is reached on all matters referred to in

Clause 15.7 the Subcontractor shall then execute the Variation in accordance with the Contractor's instruction.

15.8 If agreement cannot be reached within a reasonable time (as determined by the Contractor) on all or any of the matters set out in Clauses 15.7 then:

15.8.1 the Contractor may nevertheless issue an instruction requiring the Subcontractor to execute the Variation in which case the provisions of Clause 15.11 of this Subcontract shall apply to any matters not so agreed; or

15.8.2 the Contractor may instruct the Subcontractor not to execute the Variation, in which case the Subcontractor will have no claim whatsoever in respect of any matters so agreed or otherwise at all.

15.9 The Subcontractor shall undertake such Variation confirmed pursuant to Clause 15.8 above in a good and workmanlike manner with good quality and sound materials and in accordance with this Subcontract.

15.10 Effect shall be given to a valuation of such work by addition to or deduction from the Contract Sum.

15.11 Any adjustments to the Subcontract Sum for Variations, shall

15.11.1 be valued using the rates and prices set out in the Subcontract if, in the reasonable opinion of the Contractor, the varied work is of similar character executed under similar conditions as the work to which those rates and prices relate; or

15.11.2 be valued using fair and reasonable rates and prices (valued by the Contractor if the Subcontractor's valuation is not agreed) if the varied work is not of a similar character or is not executed under similar conditions as the work to which the rates and prices set out in the Subcontract relate.

provided that:

15.11.3 the valuation of items omitted shall be in accordance with the rates and prices set out in the Subcontract;

15.11.4 no loss of profit, overheads, supervision, insurances or other preliminary items shall be recoverable by the Subcontractor in respect of any instruction to omit the work.

15.12 The Contractor may wish to give instructions in respect of any "Provisional" or "Prime Cost" sums. No loss of profit will be allowed in respect of such instructions and the Subcontract Sum will be deemed to include all supervision, plant, insurance and other preliminary and general items in respect of work which is the subject of any Provisional and/or Prime Cost sums except where the same have been declared by the Subcontractor in the Subcontract to have been included in the unit prices used in the calculation of the Subcontract Sum.

15.13 The Subcontract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these terms.

15.14 In the event that the Subcontractor does not comply with its obligations pursuant to Clause 15 the Contractor shall be entitled to engage alternative contractors to undertake such variations and/or modifications and shall be entitled to

recover all costs and/or expenses associated with so doing from the Subcontractor pursuant to the provisions of Clause 15 insofar as such costs exceed the sums which would have been payable to the Subcontractor in respect of such work.

## **16 REMOVAL OF RUBBISH AND CLEANING UP**

16.1 The Subcontractor shall at its own expense clear away regularly all rubbish, debris, rubble and packaging resulting from the execution of the Subcontract Works to a designated area on Site or off-Site and shall keep access to the Subcontract Works clear at all times. If the Subcontractor fails to comply with its obligations under this Clause 17.1, the Contractor may carry out such work at the Subcontractor's costs which costs shall be recoverable as a debt.

## **17 HEALTH AND SAFETY**

17.1 The Subcontractor shall (and ensure that the Subcontractor's Persons shall):

17.1.1 observe and comply with all safety, health and environmental legislation;

17.1.2 complete the SHE competence Assessment Form and shall comply with the Contractor's rules, regulations and requirements;

17.1.3 comply with the Contractor's construction phase plan (including health and safety training) and the Contractor's requirements relating to the Construction Skills Certification Scheme ("CSCS"); and attend a briefing session provided by the Contractor during which generic and site specific safety, health and environmental information is provided (a "Site SHE Induction") prior to commencing work on Site; and participate in the Contractor's weekly Safety and Environmental Operative Training (SEOT) Talks to discuss safety, health and environmental issues.

17.2 Notwithstanding any other provision of this Subcontract, the Subcontractor and/or the Subcontractor's Persons shall not be entitled to access of any part of the Site until such person has completed a Site SHE Induction in accordance with this Clause and provided always that no adjustment shall be made to the Subcontract Sum and no extension of time shall be given as a result of such denial of access.

17.4 The Subcontractor shall provide a safe system of work including all appropriate personal protection equipment and health, safety and welfare facilities for its employees and the Subcontractor's Persons.

17.5 The Subcontractor shall be required to attend any safety training arranged by the Contractor from time to time during the currency of this Subcontract. All costs whatsoever incurred by the Subcontractor in attending any health and safety training shall be borne by the Subcontractor.

17.6 The Subcontractor shall ensure it delivers, and that each of the Subcontractor's Persons shall deliver to the Contractor during the Site SHE Induction:

17.6.1 a CSCS or affiliated registration card for inspection during the Site SHE Induction or a verification letter from the CITB that such a card is not currently available for that person's trade and/or occupation in which case the Subcontractor shall provide documentary evidence from the relevant trade association that that person possesses the relevant qualifications for the trade and/or occupation he practices provided always that as soon as the relevant

card becomes available the Subcontractor will deliver this to the Contractor; and

17.6.2 a copy of the CSCS Health and Safety test result that has been completed successfully within the past two years and a copy of an application for a relevant card.

17.6.3 As requested by the Contractor, the Subcontractor shall participate in and comply with the Contractor's safety, health and environmental inspections and/or audits that are carried out on site from time to time provided always that no adjustment shall be made to the Subcontract Sum.

## **18 ASSIGNMENT AND SUB-LETTING**

18.1 The Subcontractor shall not assign, transfer or charge (whether in whole or in part and including, for the avoidance of doubt, the factoring of any debt arising under it), the benefit of this Subcontract nor sublet (whether in whole or any part) the Subcontract Works.

## **19 INFORMATION AND CO-ORDINATION**

19.1 The Contractor shall not be liable to the Subcontractor in respect of or in relation to any disruption or delay caused to the Subcontractor arising from or in connection with the late receipt or non-receipt by the Subcontractor of any instructions, drawings, levels, or other information. The Subcontractor acknowledges that it shall not have exclusive possession of the Site and it shall share the Site with other contractors and consultants.

19.2 The Subcontractor shall comply with any procedures set out in this Subcontract, which allow the Contractor to comment on such documents, drawings, levels or other information. The Subcontractor shall ensure that the Subcontract Works are undertaken so as to cause the minimum disturbance, delay or disruption to the Contractor, its Other Subcontractors, Other Consultants and any other party.

19.3 The Subcontractor shall:

19.3.1 co-ordinate and integrate the Subcontract Works with that of the Contractor and the Other Subcontractors or Other Consultants engaged on the Site and in relation to the Works, so that the Subcontract Works are executed with due regard to other works taking place and in a manner that ensures satisfactory construction, performance and progress of the Subcontract Works;

19.3.2 take account of any work being undertaken by the Contractor or other subcontractors so that proper co-ordination between the Subcontract Works and other works is achieved;

19.3.3 when requested, prepare and submit to the Contractor a draft detailed programme of the Subcontract Works to be used as a basis for discussion and incorporation into the Main Contract programme;

19.3.4 not be entitled to an extension of time or additional payment for delays caused to the Subcontract Works due to the Subcontractor's failure to co-ordinate and integrate its own work and the works of the Subcontractor's Persons with that of the Contractor or other subcontractors; and

19.3.5 pay or allow the Contractor any additional costs resulting from delay and/or disruption to the Works or to the works of other subcontractors engaged by the Contractor caused by the

Subcontractor's failure properly to co-ordinate the Subcontract Works.

19.4 Without in any way detracting from or affecting the particular notice requirements relating to the Subcontract Works the Subcontractor will promptly warn the Contractor in writing of any matter or concern of which it becomes aware which in the Subcontractor's reasonable opinion is likely to affect the cost or programme or the quality or performance of the Subcontract Works.

19.5 If the Subcontractor fails to comply with its obligations under Clause 19.4, without prejudice to any other rights or remedies the Subcontractor may have whether under pursuant to or arising out of this Subcontract at common law, under statute or otherwise, any liability for damages the Subcontractor may have to the Contractor as a result of any breach of this Subcontract shall be assessed as though the Subcontractor had complied with its obligations under Clause 21.4 and the Subcontractor had had sufficient time to able to take all appropriate measures to mitigate against any delay in the progress of the Works and/or any loss and/or expense suffered or incurred.

## 20 GOODS, MATERIALS AND WORKMANSHIP

20.1 The Subcontractor shall use goods and materials and workmanship of quality and standard specified in this Subcontract save that where no such quality and standard is so specified such quality and standard shall be to the satisfaction of the Contractor. The Subcontract shall not substitute anything so described or defined without prior consent of the Contractor and in any Subcontract. The Contractor shall not be liable to the Subcontractor for any upward variation of prices of materials. Delivery of goods to the Site for use by the Subcontractor and storage of those goods shall be the responsibility of the Subcontractor.

20.2 Title in any goods, materials, plant and equipment procured by the Subcontractor for the purpose of the Subcontract Works or for incorporation into the Subcontract Works shall vest in the Contractor immediately upon it vesting in the Subcontractor but the Subcontractor shall remain responsible for any loss or damage caused to or by such goods, materials, plant and equipment. The Subcontractor shall ensure that, if stored off-site, that such goods, materials, plant and equipment are marked appropriately to identify them as the Contractor's property.

## 21 PLANT AND EQUIPMENT

21.1 Where the Subcontractor is supplying services or hiring equipment or plant to the Contractor:

21.1.1 it shall indemnify the Contractor, its employees, agents and the Employer against any loss or damage to person or property caused (due to negligence or otherwise) by itself or its agents or employees.

21.1.2 it will immediately repair or replace or take away and non- functioning or defective plant or equipment when notified by the Contractor and the Contractor will not be liable for any fees or charges or payment after it gives notice of deficiency, damage or loss. The Subcontractor will be liable to the Contractor for direct and consequential damage or loss resulting there from (including additional labour costs, loss of running time).

21.1.3 the plant and equipment supplied shall be fit for the purpose specified.

21.1.4 the Contractor shall not be liable for any loss or damage whatsoever to plant or equipment unless it caused by its negligence in the event of

a claim for loss or damage arising from the Contractor's negligence the Contractor must be given 14 days written notice for inspection before repairs or replacement are effected. In any or all cases liability will be restricted to the written down book value of the damage or list plant net of any discounts in rebates in respect of that plant.

## 22 TERMINATION AND SUSPENSION

22.1 The Contractor may at any time without prejudice to any other of its rights or remedies terminate the Subcontractor's employment in respect of the whole or any portion of the Subcontract Works

22.1.1 by giving a written notice of not less than 1 (one) day.

22.1.2 immediately where the Subcontractor:

(a) has a distress or execution levied against its property; or

(b) asserts or makes or offers to make any arrangement or composition of debts or schedule of

(c) arrangement approved in accordance with the Insolvency Act 1986; or

(d) has an application made under the Insolvency Act 1986 to the court for the appointment of an administrator or has any corporate action or other procedure taken in relation to the appointment of an administrator; or

(e) becomes bankrupt or has a winding-up resolution or order other than for the purpose of a bona fide reconstruction or amalgamation passed or made (whether compulsory or voluntary); or has committed a data breach as defined within the GDPR and Data Protection Act 2018 and any subsequent or associated legislation. The Subcontractor will immediately stop processing the data and provide all assistance to the Contractor at its own costs to comply with the requirements of the legislation and any subsequent investigations; or

(f) has a liquidator, receiver, administrative receiver or manager appointed;

(g) committing any fraud or any other unlawful or criminal act in respect of its performance of the Subcontract Works

(h) The Subcontractor commits any breach of its data protection obligations under Clause 25 of this Subcontract

22.2.2 If the event in 22.1.2.(h) takes place, the Contractor may instruct the Subcontractor to, and the Subcontractor shall immediately stop any Processing of Personal Data and the Subcontractor shall promptly amend, transfer, vary and/or delete any Personal Data held by or

on behalf of Subcontractor in accordance with the Contractor's written instructions.

- 22.3 Upon termination of its employment, the Subcontractor:
- 22.3.1 shall not be entitled to compensation for determination of its employment under this Clause 22;
- 22.3.2 shall not remove any of its Plant, materials or property from the Site;
- 22.3.3 shall not be entitled to any further payment until completion of the Subcontract Works by the Contractor or by others (notwithstanding anything contained elsewhere in this Subcontract);
- 22.3.4 shall allow the Contractor free use of its Plant, materials and property on the Site and any materials or fabricated work lying at the Subcontractor's works or workshops which have been bought or fabricated for the Subcontract Works; and
- 22.3.5 shall have no claim against the Contractor for fair wear and tear of any equipment plant or materials referred to under Clause 22.3.4.
- 22.4 the Contractor shall use reasonable endeavours to notify the Subcontractor in writing of completion within 60 days of completion of the Subcontract Works.
- 22.5 The Subcontractor shall within 14 days of notice given under Clause 22.3, submit an application for payment for works executed by it up to the date of termination. Such application shall be treated in all respects as if it were an application submitted by the Subcontractor pursuant to Clause 13.1 and the procedures set out in Clause 13.2 shall apply in respect of such an application.
- 22.6 The Contractor shall be entitled to recover from the Subcontractor all losses, expenses, costs and damages suffered or which may be suffered by the Contractor by reason of termination and shall be entitled to set-off any such losses, expenses, costs and damages from any amounts which would otherwise be payable to the Subcontractor.
- 22.7 If the Contractor's employment under the Main Contract is terminated for any reason, the employment of the Subcontractor shall terminate from the same date that the Main Contract was terminated without the requirement for Notice under Clause 22.1. Subject to Clause 22.4, the Subcontractor's entitlement to payment shall be as specified in Clauses 22.3 and 22.4.
- 22.8 The Contractor's may at its sole discretion in circumstances in which it would be entitled to determine the Subcontractor's employment, take over part of the Subcontract Works and may, by itself or others complete and maintain such part. The Contractor in such circumstances shall be entitled to its reasonable costs plus overheads of carrying out the work and may deduct such amounts from sums becoming due to the Subcontractor or may recover the same from the Subcontractor as a debt.
- 22.9 The Contractor may by written notice at any time require the Subcontractor to suspend the performance of all or any part of the Subcontract Works. The Subcontractor shall take necessary steps to ensure a safe conclusion of the suspended Subcontract Works and shall be paid for those Subcontract Works properly undertaken in accordance with this Subcontract up to the date of suspension notice.
- 22.10 The Subcontractor shall resume the performance of any suspended Subcontract Works within 14 days from the date
- of receipt of the Contractor's notice or such other period as agreed by the parties if instructed by the Contractor. In such event, any payment made under Clause 22.8 shall rank as payment on account towards payments due to the Subcontractor under this Subcontract. a suspension lasts more than six months the Contractor may terminate the Subcontractor's employment under this Subcontract immediately.
- 22.11 The Contractor shall have no liability to the Subcontractor (whether by reason of any negligence by the Contractor or any of its employees or agents, any non-fraudulent misrepresentation, any breach of contract, breach of statutory duty, or otherwise) for any: loss of profits; or damage to reputation; or loss of anticipated revenues or savings; or loss of business opportunities; or loss of contracts; or loss of goodwill; or loss or corruption of any data; or claim, action or demand made against the Subcontractor by any third party; or indirect loss, damage, cost, expense, claim or other liability whatsoever; which arises out of or in connection with suspension and/or termination under this Clause 22.
- 23 DISPUTES**
- 23.1 This Subcontract shall be subject to and construed in accordance with English Law.
- 23.2 Either party shall be entitled to refer any dispute or difference arising under the Order to adjudication in accordance with the rules set out in the Scheme for Construction Contracts (England & Wales) Regulations 1998.
- 23.3 Subject to Clause 23.2, any dispute between the parties in relation to any matter arising under this Subcontract shall be referred to the exclusive jurisdiction of the Court of Technology and Construction, which shall have the power to consider any matter in relation hereto.
- 24 NON WAIVER**
- 24.1 Without implying limitation, none of the following shall modify, release, diminish or in any other way affect any of the liabilities and/or obligations and/or warranties of the Subcontractor to the Contractor whether arising at common law (whether under, pursuant to or arising from this Subcontract or otherwise) pursuant to Statutory Requirements or otherwise and none of the following shall be deemed a waiver of any of the Contractor's rights and/or remedies (including any resultant liabilities) in respect of any prior or subsequent breach of any such obligations and/or warranties and/or any negligent act, omission or error by the Subcontractor:
- 24.1.1 failure or delay by the Contractor to insist upon strict performance of any of this Subcontract; or
- 24.1.2 failure or delay by the Contractor to exercise any rights or remedies at common law (whether under, pursuant to arising from this Subcontract or otherwise) and/or pursuant to statute or otherwise; or
- 24.1.3 approval and/or acceptance by the Contractor of any working methods used by the Subcontractor; or
- 24.1.4 any review of or appraisal or failure to review or appraise the Subcontract Works by the Contractor; or
- 24.1.5 any approval of or failure to approve any matter in connection with the Subcontract Works by the Contractor and/or any third party; or

- 24.1.6 any inspection of or enquiry into or failure to inspect or enquiry into the Subcontract Works by the Contractor or by any independent firm or any party whatsoever appointed by the Contractor; or
- 24.1.7 any sanction, consent, comment, direction or instruction or failure to issue any sanction, consent, comment, direction or instruction by the Contractor; or
- 24.1.8 any payment by the Contractor of any monies to the Employer under, pursuant to or arising from this Subcontract or otherwise; or
- 24.1.9 execution of this Subcontract by the Contractor.

**25 DATA PROTECTION**

- 25.1 In the course of your engagement with the Contractor the Contractor will process Personal Data relating to you. A full explanation of how we use your personal data and your rights in relation to your Personal Data are set out in the Privacy Notice which can be accessed on our internet site. For the avoidance of doubt, the Privacy Notice does not form part of, and is not incorporated into, this Subcontract and it may be varied and updated, from time to time, by the Contractor.
- 25.2 The Subcontractor will process Personal Data as a Sub-Processor, in accordance with the instruction of the Contractor as Data Processor who is processing the data on behalf of the Client, the Data Controller.
- 25.3 The Personal Data typically processed by the Subcontractor under instruction by the Contractor will include names, addresses, telephone numbers and email addresses for the purpose of performing the Subcontract Works. Other types of data to be processed may be agreed between the Contractor and the Subcontractor.
- 25.4 When processing Personal Data under these terms and conditions the Subcontractor shall:
  - 25.4.1 solely process the Personal Data for the purpose of fulfilling its obligations under the Subcontract;
  - 25.4.2 notify the Contractor in writing immediately (and in any event within 24 hours) if:
    - (a) any instructions of the Contractor relating to the processing of Personal Data are unlawful;
    - (b) the Subcontractor suffers a Personal Data Breach and must stop all processing of data; or
    - (c) the Subcontractor receives any Personal Data Breach notification, complaint, notice or communication which relates in some way to the Processing of the Personal Data;
  - 25.4.3 not transfer to or access from any Customer Data from a country outside the European Economic Area;
  - 25.4.4 ensure that it treats all Personal Data as confidential;
  - 25.4.5 ensure that it meets the requirements of the GDPR to protect the rights of individuals under the GDPR;

- 25.4.6 take appropriate technical and organisational measures to ensure the security of data processing;
- 25.4.7 makes available to the Client all information necessary to demonstrate compliance with the obligations set out in this Clause 25 and allow for audits, and inspections, conducted by or on behalf of the Client or by the Information Commissioners Office (ICO); and
- 25.4.8 Delete or return all Personal Data at the end of the Subcontract, as per the Contractors' instructions.
- 25.5 The Subcontractor shall be liable for and indemnify the Contractor from and against all costs, expenses (including without limitation, legal and other professional fees and expenses), losses, damages and other liabilities of whatever nature (whether contractual, tortious or otherwise) suffered or incurred by the Contractor and arising out of or in connection with any breach by the Subcontractor of this Subcontract.
- 25.6 The Subcontractor's obligations under Clause 25 shall continue until the Subcontractor stops processing the Personal Data