

CONDITIONS OF SUB-CONTRACT

Revised: 24th March 2017



1.0 AGREEMENT

- 1.1** This Agreement is comprised of the completed Sub-Contract Order, these Conditions of Sub-Contract, and any and all documents expressly referred to within the Sub-Contract Order;
- 1.2** This Agreement may not be waived, varied or altered by the parties, except by their express written agreement;
- 1.3** This Agreement applies to all work undertaken by the Sub-Contractor for the Contractor in connection with the Sub-Contract Works and shall be deemed to have retrospective effect to cover all works undertaken in relation to the Sub-Contract Order. The Sub-Contractor acknowledges that any payment made to it has been made in accordance with this Agreement and forms part of the Sub-Contract Price.
- 1.4** This Agreement constitutes the entire agreement between the parties and supersedes all previous drafts, agreements, arrangements and understandings between them whether written or otherwise;
- 1.5** If there is any conflict, ambiguity or discrepancy between or within any of the documents which constitute this Agreement, then these Conditions of Sub-Contract shall take precedence over the Sub-Contract Order Form which itself shall take precedence over each of the other documents referred to in it, which shall be construed so that the documents created latest in time take precedence over any earlier created documents.
- 1.6** If the Sub-Contractor commences works in accordance with the Sub-Contract Order then such commencement constitutes acceptance by the Sub-Contractor of these terms.
- 1.7** If the Sub-Contractor's tender or quotation or equivalent is included within the Sub-Contract Order then such inclusion does not signify acceptance of the tender or quotation or equivalent and any terms and conditions contained within or referred to in any such tender, quotation or equivalent shall be void and of no contractual effect including any clause within such tender, quotation or equivalent or separate terms and conditions which purport to prevail over this sub-contract.

2.0 SUB-CONTRACTORS OBLIGATIONS

- 2.1** The Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with this Agreement, in consideration for which the Contractor must pay the Sub-Contract Price to the Sub-Contractor in accordance with this Agreement.
- 2.2** The Sub-Contractor shall commence the Sub-Contract Works on the date for commencement stated within the Sub-Contract Order and carry out and complete the Sub-Contract Works in a proper and workmanlike manner within the period for completion stated within the Sub-Contract Order. The Sub-Contractor shall regularly and diligently carry out the Sub-Contract Works to achieve completion within the period.
- 2.3** Upon it becoming reasonably apparent that the Sub-Contract Works or any part thereof have been or are likely to be delayed, the Sub-Contractor shall notify the Contractor in writing forthwith specifying the extent of the delay and the cause(s) of delay and shall comply with these Conditions of Sub-Contract in relation to the giving of notices and any details required in relation to the same. If such cause is within the control of the Contractor then unless the delay was caused in whole or in part by the omission, negligence, or default of the Sub-Contractor, the Contractor shall by written notice to the Sub-Contractor extend, if necessary, the Sub-Contract period(s) by an appropriate period.
- 2.4** The Sub-Contractor must provide everything required to carry out and complete the Sub-Contract Works, unless otherwise stated in the Order. The Sub-Contractor must comply with and give all notices required by any legislation (including statutes, statutory instruments, rules, orders, regulations, or bye-laws) applicable to the Sub-Contract Works and shall pay all fees and charges under such legislation in respect of the Sub-Contract Works.
- 2.5** Where there is a main contract, the Sub-Contractor is deemed to know all of its provisions (except for the Contractor's pricing information) and shall at its request be entitled to see such a copy and the Sub-Contractor must:
- 2.5.1** carry out and complete the Sub-Contract Works in accordance with the Contractor's progress of the Works under the main contract; and

- 2.5.2** carry out and complete the Sub-Contract Works so that no act or omission of the Sub-Contractor shall result in any breach of the main contract or any other liability of the Contractor under or in relation to the main contract.

To the extent that such obligations and liabilities relate to the Sub-Contract Works the Sub-Contractor must perform the obligations and assume the liabilities of the Contractor under the main contract and indemnify the Contractor for any breaches of those obligations or liabilities.

3.0 THE SITE

- 3.1** The Sub-Contractor agrees and acknowledges that it is not entitled to exclusive possession of the Site and may be required to work in the same areas as other contractors or sub-contractors (whether employed by the Contractor or any other person), and to share any facilities or attendances made available by the Contractor with them and shall not be entitled to extra payment or time as a result.

- 3.2** The Sub-Contractor acknowledges that it has had sufficient opportunity prior to entering into this Agreement to investigate the Site and the documents comprising this Agreement and referred to in it to appreciate fully the risks involved in executing the Sub-Contract Works. The Sub-Contractor accepts the sole responsibility for, and assumes the risk of, all increased costs, loss and/or expense arising out of the physical conditions and characteristics of the Site and its surroundings encountered while carrying out the Sub-Contract Works.

4.0 HEALTH, SAFETY, THE ENVIRONMENT AND QUALITY ASSURANCE

- 4.1** The Sub-Contractor must comply with all of the requirements in any Contractor's Health, Safety and Environmental Manual and Quality Assurance Manual, copies of which are available from the Contractor's office, in carrying out the Sub-Contract Work. The Sub-Contractor must immediately inform the Contractor if any conflict with the requirements of any legislation which will prevail over the Contractor's policies if there is any conflict.

5.0 INSURANCE AND INDEMNITY

- 5.1** The Sub-Contractor must take out and maintain levels of insurance for Employers Liability with a limit of indemnity of not less than £1,000,000 (one million pounds) and Public Liability with a limit of indemnity of not less than £1,000,000 (one million pounds). It is a condition precedent to payment that the Sub-Contractor provides copies of their current Insurance Certificates and proof of premium payments prior to commencement of the Sub-Contract Works on-site.

- 5.2** Where the Sub-Contract Works include any element of design by the Sub-Contractor, the Sub-Contractor shall at their own cost take out and maintain Professional Indemnity Insurance with a limit of indemnity of not less than £1,000,000 (one million pounds) for a period of 12 years from the date of practical completion of the works under the main contract. The Sub-Contractor shall produce on request reasonable evidence of such insurance cover.

- 5.3** The Sub-Contractor will have the benefit of any insurance effected in relation to the main contract which relates to the Sub-Contract Works insofar as it has been effected. Under no circumstances will such insurance cover the Sub-Contractor's temporary huts, plant, tools or equipment.

- 5.4** The Sub-Contractor must indemnify and hold the Contractor harmless from all claims, causes of action, costs, damages, losses and expenses whatsoever in respect of

5.4.1 personal injury or death of any person or damage to any property (including the Works) real or personal arising out of or in the course of or in relation to or by reason of the execution of the Sub-Contract Works by the Sub-Contractor including any design undertaken by the Sub-Contractor (and including but not restricted to the use of any plant equipment or facilities whether in connection with such execution or otherwise); and

5.4.2 any negligence or breach of duty on the part of the Sub-Contractor, its sub-contractors, it's or their servants or agents; and

5.4.3 any breach or non-performance or non-observance by the Sub-Contractor, it's sub-contractors, it's or their servants or agents, of the provisions of this Sub-Contract Order; save to the extent that such claims, causes of action, costs, damages, loss and/or expense are occasioned by any act or negligence or default of the Contractor.

6.0 INTELLECTUAL PROPERTY

- 6.1** The Sub-Contractor warrants that any design, materials, documents and methods of working he proposes to use in carrying out the Sub-Contract Works will not infringe any patent, registered design, trade mark or name, copyright or any protected right.

- 6.2** The Sub-Contractor grants to the Contractor an irrevocable royalty-free, non-exclusive, licence to copy and use all documents including (but without limitation) plans, drawings, specifications, reports and calculations, prepared by or on behalf of the Sub-Contractor for use in connection with the Sub-Contract Works for all purposes connected with the project to which the Main Contract Works relate. Such licence shall carry with it the right to grant sub-licences and shall be transferable to third parties.

7.0 SITE MEETINGS AND OTHER ATTENDANCES

7.1 The Sub-Contractor shall for the Sub-Contract Price attend all necessary site and other meetings and must provide all attendances unless otherwise stated in the Order.

8.0 VARIATIONS AND INSTRUCTIONS

8.1 The Contractor shall be entitled to instruct variations to the Sub-Contract Works and no variation shall vitiate this Sub-Contract Order. The Sub-Contractor must not undertake any work involving a variation or additional work without prior written instruction from the Contractor.

8.2 The Sub-Contractor shall as soon as reasonably possible, and in any event not later than 2 working days, after receipt of any instruction from the Contractor, advise of any addition or deduction from the Sub-Contract Sum which would be required by the Sub-Contractor as a consequence of the variation and any effect if any, on the Sub-Contractors completion date. If the Sub-Contractor has not stated any effect then it will be deemed that the Sub-Contractor is not entitled to any extension of time in respect of such variation.

8.3 If the Sub-Contractor fails to notify the Contractor of any adjustment to the Sub-Contract Sum within the time period set out in Clause 8.2 then the Contractor may value the variation using fair and reasonable rates.

8.4 If a variation cannot be priced by the Sub-Contractor within the timescales set down in Clause 8.2 due to a lack of information from the Contractor, the Sub-Contractor shall submit as soon as possible and in any event no later than 2 working days from receipt of the instructed variation its budget valuation. This budget value must represent the upper limit of the value of such variation (in the event that it will involve an increase to the Contract Sum) and the Sub-Contractor agrees that the Contractor will thereafter value such variation using fair and reasonable rates but that in any event the Sub-Contractor will not be entitled to any sum greater than the budget valuation in respect of such variation.

8.5 If the Sub-Contractor does not comply with an instruction from the Contractor to the Contractor's satisfaction within 7 days of receiving that instruction then the Contractor may have the work that is the subject of that instruction carried out by others and the cost of doing so shall be a debt due from the Sub-Contractor to the Contractor.

9.0 DESIGN LIABILITY

9.1 In so far as the Sub-Contractor is responsible for the design of the Sub-Contract Works, whether permanent or temporary in nature, the Sub-Contractor warrants that he shall exercise all proper skill and care to be expected of a properly qualified and competent specialist contractor experienced in carrying out work of a similar scope, nature and size to the Sub-Contract Works.

9.2 The Sub-Contractor shall be responsible for all mistakes, inaccuracies, discrepancies, and omissions in all drawings, detail, documents, and information provided by it. Without prejudice to any express or implied warranties or conditions, the Sub-Contractor warrants that the Sub-Contract Works will comply with any performance specification or requirement contained or referred to in this Order.

9.3 Where the Main Contract or Sub-Contract Documents provide, the Sub-Contractor shall upon and within 14 days of a request from the Main Contractor/Contractor, and at his own expense, provide to the Main Contractor/Contractor Collateral Warranties in favour of the employer and/or any third party funder and/or purchaser/tenant of the property on or in which the Sub-Contract works are carried out. The Collateral Warranties shall be either in the form annexed to the Main Contract, of this Sub-Contract, or such other form as the intended beneficiary shall reasonably require and shall be duly executed as a deed.

10.0 PROVISION OF DOCUMENTS

10.1 Within 7 days of the date of this Order, the Sub-Contractor must provide to the Contractor the following:

10.1.1 Any Performance bonds or Parent company guarantees (if required by the Order);

10.1.2 Evidence of the insurance which the Sub-Contractor is required to have in effect under this Agreement (to the satisfaction of the Contractor); and

10.1.3 Copies of its CIS, VAT and other documents required by law or by this Order.

11.0 PAYMENT

11.1 It is a condition precedent to the Sub-Contractor becoming entitled to make its first (and any subsequent) application for payment and any payment becoming due under this Agreement that the Sub-Contractor has procured and delivered to the Contractor each of the documents referred to in clause 10.1. Unless and until all such documents are provided, the Contractor has no obligation to pay the Sub-Contractor and no sums are due whatsoever. In no event shall any departure from any requirement of this Agreement by the Contractor be deemed to be a waiver of any other provision or shall in any way prejudice the rights of the Contractor under this Agreement including its ability to rely upon the conditions precedent in clause 10.

- 11.2** Subject to the Sub-Contractor's compliance with its obligations under this clause 11, the Sub-Contractor shall be paid by way of monthly interim payments up to and including the month following practical completion of the Sub-Contract Works as determined in accordance with clause 12.2.
- 11.3** The Sub-Contractor shall submit its first interim application for payment to the Contractor not later than the 15th day of the month following commencement of the Sub-Contract Works and thereafter shall submit interim applications for payment to the Contractor not later than the 15th day of each month during which the Sub-Contract Works are carried out up to and including the month following practical completion, time being of the essence. Each application for payment shall set out the sum the Sub-Contractor considers is due to it up to the 28th day of the month in which the application is made and the basis upon which that sum has been calculated. All applications are to be submitted to the Contractor on time, in cumulative format and submitted simultaneously by e-mail and first class post.
- 11.4** Where an application for payment is made late and/or is not in cumulative format and/or is not sent simultaneously by e-mail and post and/or the Sub-Contractor has failed to comply with clause 10.1, that application for payment shall be regarded as void and the Sub-Contractor shall not make a further application for payment until the following month.
- 11.5** Payments shall become due on the last day of the month following the compliant submission of the application for payment (or the next working day thereafter if that date shall not be a normal business day) and the final date for payment shall be 45 days after the due date.
- 11.6** The amount of each interim payment due shall be:
- 11.6.1** The value of the work properly carried out by the Sub-contractor, determined in accordance with the rates and prices contained in the Order, or if there are no rates and prices or the rates and prices in the Order do not apply, by reference to the Sub-Contract Price; plus
- 11.6.2** the value of materials brought timeously, but not prematurely, onto the site for incorporation into the Sub-Contract Works so long as the Sub-Contractor has demonstrated ownership of the said materials; plus
- 11.6.3** The valuation of any approved additional work under clause 8;
- Less the sum of:
- 11.6.4** Any amount previously paid to the Sub-Contractor; and
- 11.6.5** The retained amount under clause 12; and
- 11.6.6** Any amounts to be set off or otherwise withheld from the Sub-Contractor.
- 11.7** Not later than 5 days after the due date the Contractor shall give written notice to the Sub-Contractor ("Payment Notice") specifying the sum that the Contractor considers to be or to have been due at the due date and the basis upon which the sum is calculated, whether or not that sum is zero ("Notified Sum").
- 11.8** In the absence of a valid application for payment submitted by the Sub-Contractor in accordance with this clause 11 the Contractor is deemed to have given a Payment Notice notifying a sum due of zero.
- 11.9** Subject to any Pay Less Notice given under clause 11.10 the sum to be paid to the Sub-Contractor on or before the final date for payment shall be the sum specified in the Payment Notice.
- 11.10** Not later than 1 day before the final date for payment, the Contractor may give a notice to the Sub-Contractor of its intention to pay less than the Notified Sum ("Pay Less Notice"). The Pay Less Notice shall set out the sum that the Contractor considers to be due on the date that notice is served, whether or not that sum is zero, and the basis on which the sum is calculated and the sum to be paid to the Sub-Contractor shall be the sum specified in the Pay Less Notice.
- 11.11** Within 2 months of practical completion of the Sub-Contract Works as determined pursuant to clause 12.2, the Sub-Contractor must provide all supporting documentation or any other information which the Contractor requires for assessing the final Sub-Contract Price and any other entitlements which may be due to the Sub-Contractor under this Agreement or otherwise.
- 11.12** The Sub-Contractor and Contractor shall seek to agree the final sum due to the Sub-Contractor within 8 months following practical completion. Such agreement shall be in the form of an agreed statement of final account ("Agreed Statement of Final Account") issued by the Contractor which the Sub-Contractor shall sign and return to the Contractor in full and final settlement of all entitlements whatsoever due to the Sub-Contractor under to this Agreement or otherwise.
- 11.13** If
- 11.13.1** The Sub-Contractor does not provide the Contractor with the documentation and other information required under clause 11.11 by the time specified in clause 11.11; or

11.13.2 Any Agreed Final Account Statement issued in accordance with clause 11.12 is not signed and returned by the Sub-Contractor within 8 months of practical completion;

the Contractor shall, within 12 months of practical completion, issue to the Sub-Contractor a statement of final account ("Contractor's Statement of Final Account").

11.14 The Contractor's Statement of Final Account shall state the final Sub-Contract Price and any other amounts or other entitlements to which the Sub-Contractor is entitled under this Agreement or otherwise. If the Contractor's Statement of Final Account is not disputed by the Sub-Contractor within 7 days of the date of issue, it shall be final and binding upon the Sub-Contractor in respect of all entitlements whatsoever due to the Sub-Contractor in relation to this Agreement or otherwise

11.15 The amount of the final payment will be either the sum set out in the Agreed Final Account Statement or the sum set out in the Contractor's Final Statement of Account less all previous payments made to the Sub-Contractor and any sums which the Contractor is entitled to set off in accordance with clause 11.23 or otherwise (Final Payment).

11.16 The due date for the Final Payment shall be 60 days after whichever of the following occurs last:

11.16.1 The date the signed Agreed Final Account Statement is received by the Contractor or the date of the Contractor's Statement of Final Account; and

11.16.2 the Retention Release Date;

and the final date for payment will be 30 days after the due date.

11.17 Not later than 5 days after the due date for the Final Payment the Contractor shall give written notice to the Sub-Contractor ("Final Payment Notice") specifying the sum that the Contractor considers to be or to have been due at the due date from the Contractor to the Sub-Contractor or from the Sub-Contractor to the Contractor and the basis upon which the sum is calculated, whether or not that sum is zero ("Final Notified Sum").

11.18 If the party who is required to pay the Final Notified Sum ("the Payer") intends to pay less than the sum stated in the Final Payment Notice he shall, not later than 1 day before the final date for payment give to the other party notice of that intention ("Pay Less Notice"). The Pay Less Notice will specify the sum that the payer considers to be due at the date the notice is given and the basis on which the sum has been calculated. Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall be the sum specified in the Pay Less Notice.

11.19 The Final Notified Sum and any interest pursuant to clause 11.20 shall be a debt due from the Payer to the other party.

11.20 If any sum payable under this Agreement is not paid by the final date for payment then that sum shall bear interest from the final date for payment until payment is made in full at 2% per annum above the Bank of England base rate in force at the time of the final date for payment. The parties agree that this clause is a substantial remedy for late payment of any sum payable under this Agreement in accordance with Section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

11.21 Acceptance of a payment of interest shall not in any circumstances be construed as a waiver of any right to proper payment of the principal amount due.

11.22 Notwithstanding any other provisions of this Order, if the Contractor's employer or the ultimate client is insolvent as defined in Sections 113(2) to (5) of Part II of the Housing Grants Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009, then the Contractor shall not be obliged to make any further payment to the Sub-Contractor of any amount which is due or may become due unless and until the Contractor has received payment in respect thereof from the Contractor's employer and then only to the extent of such receipt.

11.23 Without prejudice to any other rights and remedies it possess, the Contractor shall be entitled to deduct and withhold from monies payable to the Sub-Contractor any losses which the Contractor has suffered, incurred, or is likely to suffer or incur due to a breach by the Sub-Contractor of this Sub-Contract and/or any other contract between the Contractor and the Sub-Contractor, provided always that the Contractor shall have given a Pay Less Notice to the Sub-Contractor.

11.24 Payments are on account only and shall not be held to signify approval by the Contractor and/or any Architect or Engineer of the whole or any part of the Sub-Contract Works executed neither shall any Final Payment prejudice any claim whatsoever which the Contractor may have in respect of or arising out of or in connection with the Sub-Contract Works.

11.25 If the Contractor fails to pay a sum or any part of it due to the Sub-Contractor under this clause 11 by the final date for payment, then the Sub-Contractor may give a written notice of his intention to suspend the performance of any or all of his obligations under this Sub-Contract and such notice must state the ground(s) on which it is intended to suspend performance. If the Contractor's failure to make payment continues for 7 days after the giving of such notice, then the Sub-Contractor may suspend performance of any or all of those obligations until payment of the sum due is made in full.

12.0 RETENTION AND SECURITY

- 12.1** Where the Sub-Contractor Works have not reached practical completion the Contractor will deduct and retain from any monies otherwise due under Clause 11, 5% of the Sub-Contract Price ("Retention").
- 12.2** The Sub-Contractor shall inform the Contractor in writing when in his opinion the Sub-Contract Works are practically complete. If the Contractor does dissent, then as soon as the Contractor is satisfied that such works are complete, the Contractor shall notify the Sub-Contractor and practical completion of such works shall be deemed to have taken place on the date notified by the Contractor.
- 12.3** Where the Sub-Contract Works have reached practical completion the retention which the Contractor may deduct and retain shall be 2.5% of the Sub-Contract Price.
- 12.4** Subject to practical completion of the Sub-Contract Works, and there being no defects, shrinkages or other faults apparent, any balance of the Retention, will be released upon the expiry of the Defects Liability Period ("Retention Release Date).
- 12.5** Materials goods and equipment brought to and stored on-site for incorporation into the Sub-Contract Works shall not be removed from the Site without the express prior written consent of the Contractor (which consent shall not be unreasonably withheld or delayed). Where the value of materials has been included in any application for interim payment under which the amount properly due to the Contractor has been paid by the Employer, they shall upon such payment become the property of the Contractor. If the Contractor pays the Sub-Contractor for any materials before their value is included in any interim payment under the Main Contract, they shall upon such payment become the Contractor's property.
- 12.6** Risk in the Sub-Contract Works and each part thereof shall remain with the Sub-Contractor until the practical completion date of the sub-contract is determined and notified by the Architect and/or the Main Contractor and/or if the Contractor specifically agrees in writing to the contrary.

13.0 DEFECTS

- 13.1** The defects liability period will commence upon practical completion of the Sub-Contract Works and will continue for 24 months from practical completion of the Sub-Contract Works ("Defects Liability Period")
- 13.2** The Contractor will notify the Sub-Contractor in writing of any defect, imperfection, shrinkage or damage in the Sub-Contract Works which requires rectification. The Sub-Contractor will then make good at its own expense, and at a time and period to be decided by the Contractor, such defect, imperfection, shrinkage or damage to the Sub-Contract Works notified by the Contractor.
- 13.3** In the event of the Sub-Contractor failing to comply with the notice issued by the Contractor pursuant to Clause 13.2, or the Sub-Contractor failing to rectify the defect, imperfection, shrinkage or damage to the Contractor's satisfaction, then the Contractor may have that defect rectified by others and the cost of doing so shall become a debt due from the Sub-Contractor to the Contractor.

14.0 TERMINATION

- 14.1** The Contractor may terminate the Sub-Contractor's employment under this Sub-Contract Order forthwith upon providing notice in writing to the Sub-Contractor to this effect. Following such termination the Sub-Contractor shall be entitled in accordance with Clause 11 above to be paid for the Sub-Contract Works properly performed up to the date of such termination provided that the Sub-Contractor has first released to the Contractor all original and copy documents, drawings and papers of whatsoever nature relating to or in connection with the project.
- 14.2** Without prejudice to any of the Contractor's other rights at common law and notwithstanding Clause 14.1 above, if in the opinion of the Contractor, the Sub-Contractor:
- 14.2.1** fails to proceed regularly and diligently with the Sub-Contract Works;
 - 14.2.2** wholly or substantially suspends the carrying out of the Sub-Contract Works before completion; or
 - 14.2.3** fails to comply with sub-clause 16.1 (other than 16.1.1), or
 - 14.3.4** fails to complete and deliver up the whole or any portion of the Sub-Contract Works by the time or times specified or by such amended time or times as may be allowed by the Contractor; or
 - 14.3.5** fails to comply with an instruction under Clause 8; or
 - 14.3.6** fails forthwith upon notice from the Contractor to commence work to remedy any defective workmanship and/or materials or incomplete work or fails to proceed with such remedial work with due diligence or to complete such remedial work to the satisfaction of the Contractor within such period as the Contractor has specified in the said notice, or if none is so specified then within a reasonable time;

then the Contractor may give notice to the Sub-Contractor which specifies the default and

requires it to be remedied. If the Sub-Contractor does not remedy the default within 7 days, the Contractor may determine the employment of the Sub-Contractor in whole or in part by serving a further notice. The determination shall take effect from when the further notice is given.

14.3 If the Sub-Contractor:

- 14.3.1** becomes bankrupt;
- 14.3.2** has a provisional liquidator appointed;
- 14.3.3** has a winding-up order made;
- 14.3.4** passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction); or
- 14.3.5** has an administrator or administrative receiver appointed under the Insolvency Act 1986 (or any amendment or re-enactment of that Act),

then the Contractor may determine immediately the employment of the Sub-Contractor by serving a notice. The determination shall take effect when the notice is given.

14.4 If the employment of the Sub-Contractor is determined, the Sub-Contractor shall immediately leave the Site.

14.5 The Contractor shall not be obliged to make any further payments to the Sub-Contractor until after completion of the Sub-Contract Works and the making good of defects.

14.6 There shall be due to the Contractor from the Sub-Contractor the additional costs of completing the Sub-Contract Works including the right to set off all losses, expense, and damages suffered or which may be suffered by the Contractor by reason of such determination.

14.7 Where there is a main contract, this Agreement may also be determined (at the Contractor's discretion) if the main contract is determined, in which case the Sub-Contractor:

- 14.7.1** must immediately leave the Site; and
- 14.7.2** subject to clause 11 is entitled to be paid for work completed up to the date of determination (valued in accordance with the payment clause of this Agreement), plus a reasonable amount for removing its plant, equipment and operatives from the Site but which shall not exceed the amount of Retention held by the Contractor as at the date of determination of the Sub-Contract.

15.0 DISPUTES

15.1 Without prejudice to the statutory right of a party to refer a Dispute to adjudication at any time the parties shall endeavour to resolve the Dispute by discussion between them. Such dispute (whether this may be a matter of contractual interpretation or otherwise) shall be referred in the first instance to a senior representative of each party who shall within 10 days of such referral endeavour to resolve the Dispute by agreement. If they are unable to do so either party may refer the Dispute to a main board director of each of the parties who shall within 10 days of such further referral endeavour to resolve the Dispute by agreement. The parties' representatives shall promptly and in good faith use reasonable endeavours to resolve such Dispute as soon as reasonably practicable. In each case a referral may be initiated by written notice by either party to the other requiring that the Dispute be referred for discussion between senior representatives or main board directors (as the case may be). All communication and discussion between the parties representatives shall be confidential and without prejudice.

15.2 If the dispute is not resolved through the above procedure as set out in clause 15.1, or either party fails to participate or ceases to participate in the process the dispute shall be finally resolved via litigation through the courts of England and Wales.

Notwithstanding any provision to the contrary, either the Contractor or the Sub-Contractor may refer a dispute arising under the Sub-Contract to adjudication at any time in accordance with the Scheme for Construction Contracts. Unless otherwise stated in the Order, the adjudicator shall be appointed by the President of the Royal Institute of Chartered Surveyors.

16.0 GENERAL

16.1 The Sub-Contractor must not (without the prior written consent of the Contractor):

- 16.1.1** take or permit any visual records of the Sub-Contract Work to be taken for the purposes of promotion or publication, or mention the Contractor's name or the existence of the Sub-Contract in any publicity material or other communications to third parties;
- 16.1.2** assign, novate or sub-let the whole or any part of the Sub-Contract Work or this

Agreement;

- 16.1.3** factor any payments it may be entitled to receive under this Agreement; or
- 16.1.4** in any way encumber or charge any of the materials or goods which are to be used or incorporated into the Sub-Contract Works, and the Sub-Contractor warrants that it shall have capacity to transfer good and unencumbered title to all goods, materials and equipment used in the Sub-Contract Works to the Contractor.
- 16.2** Each indemnity and warranty in this document survives the expiry or termination of this document.
- 16.3** To be effective, any notices under this Agreement must be given in writing to the registered addresses of the Contractor and/or Sub-Contractor, and shall be deemed duly given or made when delivered by hand, recorded courier, or 3 days after posting if sent by pre-paid first class registered post.
- 16.3.1** If the Contractor notifies the Sub-Contractor in writing that service of certain notices are acceptable by e-mail communication, then service by e-mail to the designated e-mail addresses shall be deemed to have been given upon proof of a "delivery receipt" from the sending party's e-mail software application that the e-mail has been successfully delivered to the designated e-mail addresses, provided that the e-mail is successfully delivered before 4 p.m. on any working day ("working day" for this clause being Monday to Friday inclusive). Any e-mail delivered after that time shall be deemed to have been delivered at 9 a.m. the following working day.
- 16.4** Nothing in this Agreement shall confer or purport to confer upon any third party any benefit or right against the Contractor or the Sub-Contractor.
- 16.5** If the regular progress of the works is materially affected by any act, omission or default of the Sub-Contractor, his servants or agents or if the Sub-Contract Works, or any part thereof, is not completed by the date(s) for completion or extended date(s) for completion of the Sub-Contract Works, the Contractor shall be entitled to recover or deduct from monies otherwise due to the Sub-Contractor any associated costs, losses, damages for the culpable delay by the Sub-Contractor.
- 16.6** The Sub-Contractor shall provide as-wired drawings, cable test results, and an installation certificate no later than the Project Completion Date or 5 days after being requested to do so by the Contractor, whichever is the earliest. The Contractor shall be entitled to withhold or deduct a sum equivalent to 10% of the Sub-Contract Sum until such time as the Sub-Contractor properly provides all documents required by the Sub-Contract. This shall not relieve the Sub-Contractor of its obligations under the Sub-Contract or its liability for any consequences of its failure or delay in providing such documents. Monies retained pursuant to this clause shall be paid 14 days after the Sub-Contractor has fully and properly complied with its obligations under the Sub-Contract.
- 16.7** The Sub-Contractor agrees that it will not specify or use any substance or material which it knows or in exercising the standard of skill and care ought to know is deleterious and/or which would not constitute good building practice and/or which are generally known or suspected to be deleterious and/or which would not comply with British Standards / Codes of Practice applicable at the time of specification and/or use and/or incorporation, including without limitation substances which have been published in the Building Research Establishment Digests as being deleterious to health and safety or to the durability of the Sub-Contract Works in the particular circumstance in which they are used. The Sub-Contractor further warrants that it has exercised and will continue to exercise all proper professional skill, care and attention to see that no such materials have been or will be used in the construction of the Sub-Contract Works.
- 16.8** In addition to the Contractor's common law right of set-off, the Contractor may, in calculating the sums due for payment to the Sub-Contractor under this sub-contract, take into account the amount of any bona fide claim and/or counterclaim for damages, losses, demands, expenses (including reasonable legal and other professional expenses), costs, liabilities and/or fines which the Contractor may have against the Sub-Contractor under or arising out of this Sub-Contract or any other sub-contract to which the Contractor and the Sub-Contractor are a party or arising out of any other contract to which the Sub-Contractor and the Contractor and/or any Group Company are a party. The foregoing entitlement is in addition to and not in substitution for any other rights of counterclaim, set off or abatement.
- 16.9** This Agreement is governed by the laws of England and Wales.