



SBCSub/**C** 2024

Standard Building Sub-Contract  
**Conditions** 2024

SAMPLE DOCUMENT

2024

STANDARD BUILDING CONTRACT

## Standard Building Sub-Contract (SBCSub/A and SBCSub/C)

Appropriate:

- for use where the main contract is the Standard Building Contract (with quantities, without quantities or with approximate quantities); and
- for sub-contract works where the Sub-Contractor is not required to design.

Can be used:

- where the sub-contract works and/or main contract works are to be carried out in sections;
- for sub-contract works that are to be carried out on the basis of an adjusted sub-contract sum (adjustment for variations etc.) or by complete remeasurement.

Not suitable:

- where the Sub-Contractor is to design any part of the sub-contract works, even though the other criteria are met – consider using the Standard Building Sub-Contract with sub-contractor's design (SBCSub/D/A and SBCSub/D/C).

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For details of 2024 Edition changes, see the Standard Building Sub-Contract Guide (SBCSub/G) and the Tracked Change Document.

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# Conditions

## Section 1 Definitions and Interpretation

### Definitions

#### 1.1 Definitions

Unless the context otherwise requires or this Sub-Contract specifically provides otherwise, the following words and phrases, where they appear in capitalised form in the Sub-Contract Agreement or these Conditions, shall have the meanings stated or referred to below:

**Acceleration Quotation:** a quotation by the Sub-Contractor for an acceleration in the carrying out of the whole or part of the Sub-Contract Works made under paragraph 2 of **Schedule 2**.

**Activity Schedule:** see the **Third Recital**.

**Adjudicator:** an individual appointed under **clause 8.3** as the Adjudicator.

**Adjustment Basis:** see **clause 4.1**.

**Approximate Quantity:** a quantity in any Bills of Quantities included in the Numbered Documents that is there, or by the nature of the bill, identified as an approximate quantity.

**Arbitrator:** an individual appointed under **clause 8.5** as the Arbitrator.

**Architect/Contract Administrator:** the person named as such in the **Main Contract Information Schedule** or any successor appointed by the Employer.

**Article:** an article in the **Sub-Contract Agreement**.

**Bills of Quantities:** any bills of quantities supplied by the Contractor and included in the Numbered Documents.

**BIM Protocol:** (where applicable) the document(s) identified as such in the **Sub-Contract Particulars (item 3)**.

**Building Regulations:** the Building Regulations 2010.

**Business Day:** any day which is not a Saturday, a Sunday or a Public Holiday.

**CDM Regulations:** the Construction (Design and Management) Regulations 2015.

**Completion Date:** the Date for Completion of the Main Contract Works or of a Section as stated in the Main Contract Particulars or such other date as is fixed under the Main Contract.

**Conditions:** the clauses set out in sections 1 to 8 of these Conditions, together with and including the Schedules hereto, as modified by any Sub-Contract Modifications Schedule included in the Numbered Documents.

**Construction Industry Scheme (or 'CIS'):** the current scheme under the Finance Act 2004.

**Construction Phase Plan:** those parts of the construction phase plan for the Main Contract that are applicable to the Sub-Contract Works and included as a Numbered Document, together with any updates and revisions of it by the Principal Contractor notified to the Sub-Contractor before or during the progress of the Sub-Contract Works.

**Consultants:** see **clause 2.26.6**.

**Contract Bills:** the Contract Bills as defined in the Main Contract.

**Contractor:** the person named as Contractor in the **Sub-Contract Agreement**.

**Contractor's Persons:** the Contractor's employees and agents and all other persons employed or engaged on or in connection with the Main Contract Works or any part of them or any other person properly on the site in connection therewith excluding the Architect/Contract Administrator, the Quantity Surveyor, the Employer, Employer's Persons, the Sub-Contractor, Sub-Contractor's Persons and any Statutory Provider.

**Employer:** the person named as Employer in the **Main Contract Information Schedule**.

**Employer Rights:** the rights in favour of the Employer to be granted by the Sub-Contractor in accordance with the Sub-Contract Rights Particulars either as the third party rights set out in **Part 3 of Schedule 5** to these Conditions or by way of collateral warranty in JCT form SCWa/E.

**Employer's Persons:** all persons employed, engaged or authorised by the Employer, excluding the Contractor, Contractor's Persons, the Architect/Contract Administrator, the Quantity Surveyor, the Sub-Contractor, Sub-Contractor's Persons and any Statutory Provider but including any such third party as is referred to in clause 3.22.2 or 3.22.4 of the Main Contract Conditions.

**Excepted Risks:** see **clause 6.1**.

**Final Payment Notice:** see **clauses 1.8 and 4.7.2**.

**Final Sub-Contract Sum:** see **clause 4.19**, if **Article 3** applies, or **clause 4.20**, if **Article 4** applies.

**Fluctuations Provision:** the provisions (if any) identified by the **Sub-Contract Particulars (item 9)**.

**Funder:** any person identified as such in the Sub-Contract Rights Particulars.

**Funder Rights:** the rights in favour of the Funder to be granted by the Sub-Contractor in accordance with the Sub-Contract Rights Particulars either as the third party rights set out in **Part 2 of Schedule 5** to these Conditions or by way of collateral warranty in JCT form SCWa/F.

**Gross Valuation:** see **clause 4.9**.

**Insolvent:** see **clause 7.1**.

**Insurance Options A, B and C:** the provisions relating to insurance of the Main Contract Works and (where applicable) existing structures set out in Schedule 3 to the Main Contract Conditions.

**Interest Rate:** a rate 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Sub-Contract becomes overdue.

**Interim Valuation Date:** see the **Sub-Contract Particulars (item 10)**.

**Joint Fire Code:** the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire Protection Association, current at the Sub-Contract Base Date.

**Joint Names Policy:** see **clause 6.1**.

**Listed Items:** the items (if any) listed as such in the **Sub-Contract Particulars (item 11)**, as referred to in **clause 4.11**.

**Local or Public Authority:** a body that is a 'contracting authority' as defined by the PC Regulations.

**Main Contract:** see the **First Recital** and the **Main Contract Information Schedule**.

**Main Contract Base Date:** the date stated as such date in the Main Contract Particulars.

**Main Contract Conditions:** the conditions of the Main Contract, as stated in the **Main Contract Information Schedule**.

**Main Contract Information Schedule:** the schedule annexed to the **Sub-Contract Agreement** giving information relating to the Main Contract.

**Main Contract Particulars:** the Contract Particulars for the Main Contract included in the Numbered Documents.

**Main Contract Works:** the Main Contract Works as briefly described in the **Sub-Contract Agreement**, including the Sub-Contract Works, and any changes made to those works in accordance with the Main Contract.

**Measurement Rules:** the RICS New Rules of Measurement – Detailed Measurement for Building Works (NRM2), in the form published at the Sub-Contract Base Date, unless otherwise stated in the Sub-Contract Documents.

**Minimum Retention Amount:** see **clause 4.12.2** and the **Sub-Contract Particulars (item 12)**.

**Numbered Documents:** the documents listed in the **Sub-Contract Particulars (item 19)** and annexed to the Sub-Contract Agreement.

**P&T Rights:** the rights in favour of a Purchaser or Tenant to be granted by the Sub-Contractor in accordance with the Sub-Contract Rights Particulars either as the third party rights set out in **Part 1 of Schedule 5** to these Conditions or by way of collateral warranty in JCT form SCWa/P&T.

**Parties:** the Contractor and the Sub-Contractor together.

**Party:** either the Contractor or the Sub-Contractor.

**Pay Less Notice:** see **clauses 4.7.5, 4.7.6, 7.12.3 and 7.12.5**.

**Payment Application:** see **clauses 4.6.2 and 4.6.3**.

**Payment Notice:** see **clause 4.7.2**.

**PC Regulations:** the Public Contracts Regulations 2015.

**Pre-agreed Adjustment:** see **clause 2.16.2**.

**Principal Contractor:** any person named as such in the **Main Contract Information Schedule** or any successor appointed by the Employer.

**Principal Designer:** any person named as such in the **Main Contract Information Schedule** or any successor appointed by the Employer.

**Provisional Sum:** includes a sum provided for work that the Contractor may or may not decide to have carried out, or which cannot be accurately specified in the Sub-Contract Documents.

**Public Holiday:** Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.<sup>[1]</sup>

**Purchaser:** any person identified as such in the Sub-Contract Rights Particulars.

**Recitals:** the recitals in the **Sub-Contract Agreement**.

**Relevant Sub-Contract Event:** any of the events set out in **clause 2.19**.

**Relevant Sub-Contract Matter:** see **clause 4.16**.

**Relevant Sub-Contract Omission:** see **clause 2.16.3**.

**Remeasurement Basis:** see **clause 4.2**.

**Retention:** see **clause 4.12**.

**Retention Bond:** see **clause 4.13** and the **Sub-Contract Particulars (item 13)**.

**Retention Release Date:** see **clause 4.12.2** and the **Sub-Contract Particulars (item 12)**.

**Scheme:** Part 1 of the Scheme to The Scheme for Construction Contracts (England and Wales) Regulations 1998.

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[1] Amend as necessary if different Public Holidays are applicable.

**Section:** one of the Sections into which (where applicable) the Main Contract Works have been divided, as referred to in the **Main Contract Information Schedule**.

**Site Materials:** all unfixed materials and goods delivered to and placed on or adjacent to the Main Contract Works which are intended for incorporation therein.

**Specified Perils:** see **clause 6.1**.

**Statutory Provider:** any person executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by such person upon or in connection with that work.

**Statutory Requirements:** any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Sub-Contract Works or performance of any obligations under this Sub-Contract and any regulation or bye-law of any person which has any jurisdiction with regard to the Sub-Contract Works or with whose systems they are, or are to be, connected.

**Sub-Contract:** see **Article 1**.

**Sub-Contract Agreement:** the Standard Building Sub-Contract Agreement 2024 Edition (SBCSub/A) between the Parties relating to the Sub-Contract Works, including its Recitals, Articles and Sub-Contract Particulars.

**Sub-Contract Base Date:** the date stated as such date in the **Sub-Contract Particulars (item 3)**<sup>[2]</sup>.

**Sub-Contract Conditions:** see Conditions.

**Sub-Contract Documents:** the documents referred to in **Article 1**.

**Sub-Contract Modifications Schedule:** the schedule of amendments to the Sub-Contract Conditions, see **Article 1**.

**Sub-Contract Particulars:** the particulars in the **Sub-Contract Agreement** and there described as such, including the entries made by the Parties.

**Sub-Contract Rights Particulars:** the details relating to the grant of third party rights and/or collateral warranties set out in the document identified in the **Sub-Contract Particulars (item 7)** for **clause 2.26**.

**Sub-Contract Site Materials:** Site Materials intended for incorporation in the Sub-Contract Works.

**Sub-Contract Sum:** the sum referred to in **Article 3**.

**Sub-Contract Tender Sum:** the sum referred to in **Article 4**.

**Sub-Contract Works:** the works referred to in the **Sub-Contract Agreement** and described in the Numbered Documents that are to be executed as part of the Main Contract Works, including any changes made to such works in accordance with this Sub-Contract.

**Sub-Contractor:** the person named as Sub-Contractor in the **Sub-Contract Agreement**.

**Sub-Contractor's Persons:** the Sub-Contractor's employees and agents and all other persons employed or engaged on or in connection with the Sub-Contract Works or any part of them or any other person properly on the site in connection therewith excluding the Architect/Contract Administrator, the Quantity Surveyor, the Employer, Employer's Persons, the Contractor, Contractor's Persons and any Statutory Provider.

**Tenant:** any person identified as such in the Sub-Contract Rights Particulars.

**Terminal Date:** see **clause 6.1**.

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[2] The Sub-Contract Base Date is relevant (inter alia) to the JCT Fluctuations Options (see the Sub-Contract Particulars (item 9)) and it helps to determine the edition/issue and/or version of documents relevant to this Sub-Contract, e.g. the Measurement Rules and definitions of the prime cost of daywork (clause 5.9).

**Termination Payment:** a payment to which **clauses 7.7.6, 7.11.5 and 7.12** refer.

**Terrorism Cover:** see **clause 6.1**.

**Valuation:** a valuation by the Contractor in accordance with the Valuation Rules, pursuant to **clause 5.2**.

**Valuation Rules:** see **clauses 5.6 to 5.12**.

**Variation:** see **clause 5.1**.

**Variation Quotation:** see **clause 5.3** and paragraph 1 of **Schedule 2**.

**VAT:** Value Added Tax.

**Works Insurance Policy:** see **clause 6.1**.

## **Interpretation**

### **1.2 Reference to clauses etc.**

Unless otherwise stated, a reference in the Sub-Contract Agreement or in these Conditions to a clause or Schedule is to that clause in or Schedule to these Conditions and, unless the context otherwise requires, a reference in a Schedule to a paragraph is to that paragraph of that Schedule.

### **1.3 Sub-Contract to be read as a whole**

This Sub-Contract is to be read as a whole, provided that:

- 1.3.1 if there is any inconsistency between the Sub-Contract Agreement and these Conditions, the Sub-Contract Agreement shall prevail;
- 1.3.2 if there is any inconsistency between the Sub-Contract Documents (other than the Numbered Documents) and the Numbered Documents (excluding the Sub-Contract Modifications Schedule (if any)), those Sub-Contract Documents shall prevail;
- 1.3.3 if there is any inconsistency between the Sub-Contract Documents and the Main Contract Conditions, the Sub-Contract Documents shall prevail;
- 1.3.4 nothing in any descriptive schedule or similar document issued in connection with and for use in carrying out the Sub-Contract Works shall impose any obligation beyond those imposed by the Sub-Contract Documents; and
- 1.3.5 nothing in the Sub-Contract Documents shall be construed as imposing any liability on the Sub-Contractor in respect of any act, omission or default on the part of the Employer, any Employer's Person, the Contractor or any Contractor's Person.

### **1.4 Headings, references to persons, legislation etc.**

In the Sub-Contract Agreement and these Conditions, unless the context otherwise requires:

- 1.4.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Sub-Contract;
- 1.4.2 the singular includes the plural and vice versa;
- 1.4.3 a gender includes any other gender;
- 1.4.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 1.4.5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and

- 1.4.6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information under this Sub-Contract, be deemed to include information in a form or medium conforming to that protocol.

## **1.5 Reckoning periods of days**

Where under this Sub-Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.

## **1.6 Contracts (Rights of Third Parties) Act 1999**

Other than such rights of any Purchasers, Tenants, Funder and/or the Employer as are referred to in clause 2.26, nothing in this Sub-Contract confers or is intended to confer any right to enforce any of its terms on any person which is not a party to it.

## **1.7 Notices and other communications**

- 1.7.1 Any notice or other communication between the Contractor and the Sub-Contractor that is expressly referred to in the Sub-Contract Agreement or these Conditions (including, without limitation, each application, approval, consent, confirmation, counter-notice, decision, direction or other notification) shall be in writing.
- 1.7.2 Subject to clause 1.7.4, each such notice or other communication and any documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing for the purposes of this Sub-Contract.
- 1.7.3 Subject to clauses 1.7.2 and 1.7.4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if:
- 1.7.3.1 delivered by hand or sent by pre-paid post to the recipient's address stated in the Sub-Contract Particulars (item 4), or to such other address as the recipient may from time to time notify to the sender, or if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office; or
- 1.7.3.2 sent by email to the recipient's email address stated in the Sub-Contract Particulars (item 4), or to such other email address as the recipient may from time to time notify to the sender.
- 1.7.4 Any notice expressly required by this Sub-Contract to be given in accordance with this clause 1.7.4:
- 1.7.4.1 shall be delivered by hand or sent by Signed For 1st class or Special Delivery Guaranteed post (or any method of posting as has replaced either method and is then current) and, where sent by post in that manner, shall be deemed to have been received on the second Business Day after the date of posting; or
- 1.7.4.2 (where clause 1.7.4.2 is stated in the Sub-Contract Particulars (item 5) to apply) shall be sent by email to the recipient's email address stated in the Sub-Contract Particulars (item 5), or to such other email address as the recipient may from time to time notify to the sender (provided that such notification states that it is a notice of change under this clause 1.7.4.2), and shall be deemed to have been received on the next Business Day after the day on which it was sent.
- 1.7.5 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

## **1.8 Effect of Final Payment Notice**

- 1.8.1 Subject to clauses 1.8.2 and 1.8.3 (and save in respect of fraud), the Final Payment Notice under clause 4.7.2 shall have effect in any proceedings under or arising out of or in connection with this Sub-Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:

- 1.8.1.1 where and to the extent that any of the particular qualities of any materials or goods or any particular standard of an item of workmanship was described expressly to be for the approval of the Architect/Contract Administrator in any of the Sub-Contract Documents or in any instruction issued by the Architect/Contract Administrator under the Main Contract that affects the Sub-Contract Works, the particular quality or standard was to the reasonable satisfaction of the Architect/Contract Administrator, but the Final Payment Notice shall not be conclusive evidence that they or any other materials or goods or workmanship comply with any other requirement or term of this Sub-Contract;
- 1.8.1.2 any necessary effect has been given to all the terms of this Sub-Contract which require that an amount is to be taken into account in the calculation of the Final Sub-Contract Sum save where there has been any accidental inclusion or exclusion of any work, materials, goods or figure in any computation or any arithmetical error in any computation, in which event the Final Payment Notice shall have effect as conclusive evidence as to all other computations;
- 1.8.1.3 all and only such extensions of time, if any, as are due under clause 2.18 have been given;
- 1.8.1.4 the reimbursement of direct loss and/or expense, if any, to the Sub-Contractor pursuant to clause 4.14 is in final settlement of all and any claims which the Sub-Contractor has or may have arising out of the occurrence of any Relevant Sub-Contract Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise; and
- 1.8.1.5 the reimbursement of direct loss and/or expense, if any, to the Contractor pursuant to clause 4.17 is in final settlement of all and any claims which the Contractor has or may have arising out of any of the matters referred to in clause 4.17, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.
- 1.8.2 The effects of the Final Payment Notice specified in clause 1.8.1 shall be suspended pending the conclusion of any adjudication, arbitration or other proceedings, and shall thereafter be subject to the terms of any decision, award or judgment in and any settlement of those proceedings:
- 1.8.2.1 where either Party commences those proceedings before or within 10 days after the date of receipt of the Final Payment Notice; or
- 1.8.2.2 where the Employer at any time within the periods referred to in clause 1.9 of the Main Contract commences proceedings that relate in whole or in part to the Sub-Contract Works or other matters connected with this Sub-Contract and the Sub-Contractor is either a party to those proceedings or (if not then party to them) is notified of them within 14 days of their commencement; or
- 1.8.2.3 where in relation to any proceedings commenced by the Employer after the date of issue of the Final Payment Notice but within the period referred to in clause 1.8.2.2, the Contractor commences proceedings against the Sub-Contractor, provided that the Sub-Contractor (if not then a party to the Employer's proceedings) has been notified in accordance with that clause and the Contractor commences its proceedings within 28 days of the commencement of the Employer's proceedings.
- 1.8.3 Where any such proceedings as are mentioned under clause 1.8.2 initially consist of a reference to adjudication in which the Adjudicator's decision is given after the issue of the Final Payment Notice, the suspension referred to in that clause shall extend to the conclusion of any arbitration or legal proceedings for final determination of the dispute or difference in question that are commenced by either Party or by the Employer within 28 days of that decision but not otherwise.
- 1.8.4 If the Final Payment Notice is not given in accordance with clause 4.7.2, references in this clause 1.8 to that notice and its effects shall be read and construed as references to any Payment Application made by the Sub-Contractor under clause 4.22.3.

### **1.9 Consents and approvals**

Where consent or approval of either Party is expressly required under these Conditions and is requested by the other Party, such consent or approval shall not be unreasonably delayed or withheld, except in the case of the Contractor's consent under clause 3.1 the giving of which shall be at its sole discretion.

### **1.10 Applicable law**

This Sub-Contract shall be governed by and construed in accordance with the law of England.<sup>[3]</sup>

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**[3]** Where the Parties do not wish the law applicable to this Sub-Contract to be the law of England appropriate amendments should be made.

**Sub-Contractor's Obligations****2.1 General obligations<sup>[4]</sup>**

2.1.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works in a proper and workmanlike manner, in compliance with the Sub-Contract Documents, the Construction Phase Plan and Statutory Requirements and in conformity with directions given in accordance with clause 3.4 and all other reasonable requirements of the Contractor (so far as they apply) regulating the carrying out of the Main Contract Works, and shall in relation to the Sub-Contract Works give all notices required by the Statutory Requirements.

2.1.2 The Sub-Contractor is encouraged to suggest economically viable amendments to the Main Contract Works which, if instructed as a Variation under the Main Contract and/or directed as a Variation under this Sub-Contract, may result in an improvement in environmental performance and sustainability in the carrying out of the Main Contract Works or of the completed Main Contract Works and a reduction in environmental impact, provided that no such instruction or direction shall impose on the Sub-Contractor obligations in relation to design under this Sub-Contract.

**2.2 Not used****2.3 Time of commencement and completion**

The Sub-Contract Works shall be carried out and completed in accordance with the programme details stated in the Sub-Contract Particulars (item 6) and reasonably in accordance with the progress of the Main Contract Works or each relevant Section of them, subject to receipt by the Sub-Contractor of notice to commence work on site in accordance with those particulars and subject to clauses 2.16 to 2.19.

**2.4 Materials, goods and workmanship**

2.4.1 All materials and goods for the Sub-Contract Works shall, so far as procurable, be of the kinds and standards described in the Sub-Contract Documents. The Sub-Contractor shall not substitute any materials or goods so described without the Contractor's consent, which, if given, shall not relieve the Sub-Contractor of its other obligations.

2.4.2 The Sub-Contractor shall provide to the Contractor all information that the Contractor reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Sub-Contractor selects.

2.4.3 Workmanship for the Sub-Contract Works shall be of the standards described in the Sub-Contract Documents.

2.4.4 Insofar as the quality of materials or goods or standards of workmanship are stated to be a matter for the Architect/Contract Administrator's approval, such quality and standards shall be to the Architect/Contract Administrator's reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are neither described in the manner referred to in clause 2.4.1 or 2.4.3 nor stated to be a matter for such approval or satisfaction, they shall be of a standard appropriate to the Sub-Contract Works.

2.4.5 The Sub-Contractor shall at the Contractor's request provide the Contractor with reasonable proof that the materials and goods used comply with this clause 2.4.

2.4.6 The Sub-Contractor shall take all reasonable steps to encourage the Sub-Contractor's Persons to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.

**[4]** The Parties may wish to agree an overall cap on the Sub-Contractor's liabilities. See the Standard Building Sub-Contract Guide which provides guidance regarding the use of such a cap including a model provision.

## 2.5 Compliance with the Main Contract and indemnity

2.5.1 Insofar as the Contractor's obligations under the Main Contract, as identified in or by the Main Contract Information Schedule, relate and apply to the Sub-Contract Works or any part of them, the Sub-Contractor shall observe, perform and comply with those obligations (including, without limitation, those under clauses 2.10 (*Levels and setting out*), 2.21 (*Fees or charges legally demandable*), 2.22 and 2.23 (*Patent rights and royalties*) and 3.22.1 and 3.22.2 (*Antiquities*) of the Main Contract Conditions) and shall, subject to clause 2.5.2, indemnify and hold harmless the Contractor against and from:

2.5.1.1 any breach, non-observance or non-performance by the Sub-Contractor or its employees or agents of any of the provisions of the Main Contract; and

2.5.1.2 any act or omission of the Sub-Contractor or its employees or agents which involves the Contractor in any liability to the Employer under the provisions of the Main Contract,

provided always that the Contractor shall take reasonable steps to mitigate any claim, damage, loss or expense arising from any breach, non-observance or non-performance by the Sub-Contractor or its employees or agents under clause 2.5.1.

### 2.5.2

2.5.2.1 No action or proceedings for indemnification under clause 2.5.1 shall be commenced against the Sub-Contractor after the expiry of the relevant period:

2.5.2.1.1 from the date of practical completion of the Main Contract Works (or last Section) under the Main Contract where and to the extent that such action or proceedings relates to any breach, non-observance or non-performance by the Sub-Contractor other than those referred to in clause 2.5.2.1.2; and

2.5.2.1.2 from the date of expiry of the Rectification Period for the Main Contract Works (or last Section) where and to the extent that such action or proceedings relates to any breach, non-observance or non-performance by the Sub-Contractor which occurred during any part of any Rectification Period applicable to the Main Contract Works which falls between the date of practical completion of the Main Contract Works (or last Section) and such date of expiry.

2.5.2.2 For the purposes of clause 2.5.2.1.1, the relevant period shall be:

2.5.2.2.1 where the Main Contract is executed under hand, 6 years; and

2.5.2.2.2 where the Main Contract is executed as a deed, 12 years.

2.5.2.3 For the purposes of clause 2.5.2.1.2, the relevant period shall be:

2.5.2.3.1 where the Main Contract is executed under hand, 6 years and 6 months; and

2.5.2.3.2 where the Main Contract is executed as a deed, 12 years and 6 months.

## Supply of Documents, Setting Out etc.

### 2.6 Not used

## **2.7 Further drawings, details and directions**

- 2.7.1 Subject to clauses 2.11 and 2.12 of the Main Contract Conditions, the Contractor shall from time to time, without charge to the Sub-Contractor, provide the Sub-Contractor with such further drawings or details as are reasonably necessary to explain and amplify Numbered Documents furnished by the Contractor and issue such directions (including those for or in regard to the expenditure of Provisional Sums) as are necessary to enable the Sub-Contractor to carry out and complete the Sub-Contract Works in accordance with this Sub-Contract.
- 2.7.2 Subject to clause 2.7.1, the Sub-Contractor shall provide the Contractor with working/setting out drawings and other information necessary for the Contractor to make appropriate preparations to enable the Sub-Contractor to carry out and complete the Sub-Contract Works in accordance with this Sub-Contract.
- 2.7.3 The further drawings, details, information and directions referred to in clauses 2.7.1 and 2.7.2 shall be provided or given at the time the recipient Party reasonably requires, having regard to the progress of the Sub-Contract Works and Main Contract Works.
- 2.7.4 Where the recipient Party has reason to believe that the other Party is not aware of the time by which the recipient Party needs to receive such further drawings, details, information or directions, the recipient Party shall, so far as reasonably practicable, give such advance notice to the other Party as should enable the other Party to comply with that requirement.

## **Errors, Discrepancies and Divergences**

### **2.8 Preparation of Bills of Quantities**

Unless in respect of any specified item or items it is otherwise specifically stated in any Bills of Quantities, such bills are to have been prepared in accordance with the Measurement Rules and, unless so stated, any addendum bills issued for the purposes of obtaining a Variation Quotation shall be prepared on the same basis.

### **2.9 Bills of Quantities – errors and inadequacy**

- 2.9.1 If in any Bills of Quantities, or any such addendum bill as is referred to in clause 2.8, there is any unstated departure from the method of preparation referred to in that clause or any error in description or in quantity or any omission of items (including any error in or omission of information in any item which is the subject of a Provisional Sum for defined work), the departure, error or omission shall not vitiate this Sub-Contract but shall be corrected and, where the description of a Provisional Sum for defined work does not provide the information required by the Measurement Rules, the description shall be corrected so that it does provide that information.
- 2.9.2 Subject to clause 2.12, any correction, alteration or modification under clause 2.9.1 shall be treated as a Variation.

### **2.10 Notice of discrepancies etc.**

If the Sub-Contractor becomes aware of any such departure, error, omission or inadequacy as is referred to in clause 2.9 or any other discrepancy or divergence in or between any of the following, namely:

- 2.10.1 the Sub-Contract Documents;
- 2.10.2 the Main Contract; and
- 2.10.3 any direction issued by the Contractor under these Conditions,

it shall immediately give notice with appropriate details to the Contractor, and the Contractor shall issue directions in that regard.

### **2.11 Not used**

## **2.12 Divergences from Statutory Requirements**

- 2.12.1 If the Sub-Contractor or Contractor becomes aware of a divergence between the Statutory Requirements and a document referred to in clause 2.10, it shall immediately give the other notice specifying the divergence.
- 2.12.2 Within 10 days of becoming aware of such divergence, the Contractor shall issue directions in that regard, and insofar as those directions require the Sub-Contract Works to be varied, they shall be treated as a Variation.

## **2.13 Not used**

## **2.14 Not used**

## **Unfixed Materials and Goods**

### **2.15 Unfixed Materials and Goods**

- 2.15.1 Site Materials shall not be removed from storage on or adjacent to the Main Contract Works except for use on the Main Contract Works unless the Contractor with the Architect/Contract Administrator's agreement consents to such removal.
- 2.15.2 Where, under the Main Contract Conditions, the value of any Site Materials has been included in an Interim Certificate under which the amount properly due to the Contractor has been paid to it by the Employer, they shall upon such payment become, and the Sub-Contractor shall not deny that they have become, the Employer's property.
- 2.15.3 If the Contractor pays the Sub-Contractor for any Site Materials before their value is included in any Interim Certificate under the Main Contract, they shall upon such payment become the Contractor's property.
- 2.15.4 Nothing in this clause 2.15 shall affect any vesting in the Contractor of property in any Listed Item required under clause 4.16.2.1 of the Main Contract Conditions.

## **Adjustment of Period for Completion**

### **2.16 Related definitions and interpretation**

In clauses 2.17 to 2.19 and, so far as relevant, in the other clauses of these Conditions:

- 2.16.1 any reference to delay or extension of time includes any further delay or further extension of time;
- 2.16.2 'Pre-agreed Adjustment' means the fixing of a revised period or periods for completion of the Sub-Contract Works or for such works in a Section by the acceptance of a Variation Quotation or an Acceleration Quotation;
- 2.16.3 'Relevant Sub-Contract Omission' means the omission of any work or obligation through a direction for a Variation under clause 3.4 or in regard to a Provisional Sum for defined work in any Bills of Quantities.

### **2.17 Notice by Sub-Contractor of delay to progress**

- 2.17.1 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Sub-Contract Works or such works in a Section is being or is likely to be delayed the Sub-Contractor shall forthwith give notice to the Contractor of the material circumstances, including, insofar as the Sub-Contractor is able, the cause or causes of the delay, and shall identify in the notice any event which in its opinion is a Relevant Sub-Contract Event.

- 2.17.2 In respect of each event identified in the notice the Sub-Contractor shall, if practicable in such notice or otherwise in writing as soon as possible thereafter, give particulars of its expected effects, including an estimate of any expected delay in the completion of the Sub-Contract Works or such works in any Section beyond the relevant period or periods for completion stated in the Sub-Contract Particulars (item 6) or any previously revised period or periods.
- 2.17.3 The Sub-Contractor shall forthwith notify the Contractor of any material change in the estimated delay or in any other particulars.
- 2.17.4 If, on receiving the particulars under clause 2.17.2, or any notification under clause 2.17.3, the Contractor requires such further information as is reasonably necessary to enable it to reach a decision under clause 2.18.1, then, not later than 14 days from receipt of the particulars or notification, it shall notify the Sub-Contractor stating the further information required, and the Sub-Contractor shall supply such further information.

## **2.18 Fixing Period for Completion**

- 2.18.1 If on receiving a notice and particulars under clauses 2.17.1 and 2.17.2 or (where applicable) a notification under clause 2.17.3 the Contractor properly considers that:
  - 2.18.1.1 any of the events which are stated to be a cause of delay is a Relevant Sub-Contract Event; and
  - 2.18.1.2 completion of the Sub-Contract Works or such works in a Section is likely to be delayed thereby beyond the period or periods stated in the Sub-Contract Particulars (item 6) or any revised period or periods,

then, save where these Conditions expressly provide otherwise, the Contractor shall give an extension of time by fixing such revised period or periods for completion as it then estimates to be fair and reasonable.
- 2.18.2 The Contractor shall notify the Sub-Contractor of its decision in respect of each notice and particulars under clauses 2.17.1 and 2.17.2 and each notification (if any) under clause 2.17.3, whether or not an extension is given, as soon as is reasonably practicable and in any event not later than 10 weeks from the later of:
  - 2.18.2.1 the date of receipt of the particulars or notification; or
  - 2.18.2.2 the date of receipt of the further information required under clause 2.17.4.

Where the period from receipt to the Completion Date is less than 10 weeks, it shall endeavour to do so prior to the Completion Date.
- 2.18.3 The Contractor shall in its decision state:
  - 2.18.3.1 the extension of time that it has attributed to each Relevant Sub-Contract Event; and
  - 2.18.3.2 in the case of a decision under clause 2.18.4 or 2.18.5, the reduction in time that it has attributed to each Relevant Sub-Contract Omission.
- 2.18.4 After the first extension of time in respect of the period or periods for completion of the Sub-Contract Works or such works in a Section, either under clause 2.18.1 or by a Pre-agreed Adjustment, but subject to clauses 2.18.6.3 and 2.18.6.4, the Contractor may by notice to the Sub-Contractor, giving the details referred to in clause 2.18.3, fix a period or periods for completion for such works shorter than previously fixed if it properly considers that is fair and reasonable, having regard to any Relevant Sub-Contract Omissions for which directions have been issued after the last occasion on which a new period for completion was fixed for the Sub-Contract Works or for that Section.
- 2.18.5 After the expiry of the period or periods for completion of the Sub-Contract Works or such works in a Section, if this occurs before the date of their practical completion, the Contractor may, and not later than the expiry of 16 weeks after the date of their practical completion shall in each case, by notice to the Sub-Contractor, giving the details referred to in clause 2.18.3:

- 2.18.5.1 extend the relevant period or periods previously fixed if it properly considers that is fair and reasonable having regard to any Relevant Sub-Contract Event, whether on reviewing a previous decision or otherwise and whether or not the Relevant Sub-Contract Event has been specifically notified by the Sub-Contractor under clause 2.17; or
  - 2.18.5.2 subject to clauses 2.18.6.3 and 2.18.6.4, shorten the relevant period or periods previously fixed if it properly considers that is fair and reasonable having regard to any directions for Relevant Sub-Contract Omissions issued after the last occasion on which a new period for completion was fixed for the Sub-Contract Works or for works in the relevant Section; or
  - 2.18.5.3 confirm the period or periods previously fixed.
- 2.18.6 Provided always that:
- 2.18.6.1 the Sub-Contractor shall constantly use its best endeavours to prevent delay in the progress of the Sub-Contract Works or of such works in any Section, however caused, and to prevent their completion being delayed or further delayed beyond the relevant period for completion;
  - 2.18.6.2 in the event of any delay the Sub-Contractor shall do all that may reasonably be required to the satisfaction of the Contractor to proceed with the Sub-Contract Works;
  - 2.18.6.3 no decision of the Contractor under clause 2.18.4 or 2.18.5.2 shall fix a shorter period or periods for completion of the Sub-Contract Works or of such works in any Section than that stated in the Sub-Contract Particulars (item 6);
  - 2.18.6.4 no decision under clause 2.18.4 or 2.18.5.2 shall alter the length of any Pre-agreed Adjustment except in the case of a Variation Quotation where the relevant Variation is itself the subject of a Relevant Sub-Contract Omission.

## 2.19 Relevant Sub-Contract Events

The following are the Relevant Sub-Contract Events referred to in clauses 2.17 and 2.18:

- 2.19.1 Variations and any other matters or directions which under these Conditions are to be treated as, or as requiring, a Variation;
- 2.19.2 Contractor's directions, including those which pass on the Architect/Contract Administrator's instructions:
  - 2.19.2.1 given in order to comply with instructions under any of clauses 2.15, 3.15, 3.16 (excluding an instruction for expenditure of a Provisional Sum for defined work) or 5.3.2 of the Main Contract Conditions;
  - 2.19.2.2 for the opening up for inspection or testing of any of work, materials or goods under clause 3.17 or 3.18.4 of the Main Contract Conditions (including making good), unless the inspection or test shows that the work, materials or goods comprised in the Sub-Contract Works are not in accordance with this Sub-Contract; or
  - 2.19.2.3 for the opening up for inspection or testing of any work, materials or goods under clause 3.10 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Sub-Contract;
- 2.19.3 deferment of the giving of possession of the site or any Section under clause 2.5 of the Main Contract Conditions;
- 2.19.4
  - 2.19.4.1 the execution of work for which an Approximate Quantity included in the Contract Bills is not a reasonably accurate forecast of the quantity of work required;

- 2.19.4.2 where there are Bills of Quantities, the execution of work for which an Approximate Quantity included in those bills is not a reasonably accurate forecast of the quantity of work required;
- 2.19.5 compliance with clause 3.22.1 of the Main Contract Conditions and related directions, including those passing on instructions under clause 3.22.2 of those Conditions or (except to the extent that the presence of asbestos or contaminated material has been identified in the Numbered Documents and/or any such material has been brought on to the site by the Sub-Contractor or any Sub-Contractor's Person) compliance with clause 3.19.1 and related directions, including those passing on instructions under clause 3.22.4 of the Main Contract Conditions;
- 2.19.6 suspension by the Sub-Contractor under clause 4.8 of the performance of any or all of its obligations under this Sub-Contract;
- 2.19.7 suspension by the Contractor under clause 4.13 of the Main Contract Conditions of the performance of any or all of its obligations under the Main Contract;
- 2.19.8 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person except to the extent caused or contributed to by any default, whether by act or omission, of the Sub-Contractor or any Sub-Contractor's Person;
- 2.19.9 any impediment, prevention or default, whether by act or omission, by the Contractor or any Contractor's Person (including, where the Contractor is the Principal Contractor, any default, whether by act or omission, in that capacity) except to the extent caused or contributed to by any default, whether by act or omission, of the Sub-Contractor or any Sub-Contractor's Person;
- 2.19.10 an epidemic:
- 2.19.10.1 first occurring after the Sub-Contract Base Date which affects the execution of the Sub-Contract Works; or
- 2.19.10.2 first occurring before the Sub-Contract Base Date whose effects change after the Sub-Contract Base Date and any such change affects the execution of the Sub-Contract Works
- by limiting the availability or use of labour or the availability of persons engaged in providing services for the Sub-Contract Works where such labour and/or persons are necessary for the proper carrying out of the Sub-Contract Works, or preventing the Sub-Contractor from, or delaying the Sub-Contractor in, securing such goods or materials or such services as are necessary for the proper carrying out of the Sub-Contract Works;
- 2.19.11 the occurrence after the Sub-Contract Base Date of any of the following which affects the execution of the Sub-Contract Works:
- 2.19.11.1 the passing into law of any statute, statutory instrument or other subordinate legislation, regulation or bye-law, whether to make a new law or change or repeal an existing law;
- 2.19.11.2 the exercise of any statutory power, except to the extent caused or contributed to by any default, whether by act or omission, of the Sub-Contractor or any Sub-Contractor's Person; or
- 2.19.11.3 the publication of any guidance,
- by the United Kingdom Government or any of the devolved administrations, or any Local or Public Authority or any equivalent authority governed by public law in any of the devolved administrations, or in the case of guidance by the Construction Leadership Council or its successor;
- 2.19.12 the carrying out by a Statutory Provider of work in pursuance of its statutory obligations in relation to the Main Contract Works, or the failure to carry out such work;
- 2.19.13 exceptionally adverse weather conditions;
- 2.19.14 loss or damage occasioned by any Specified Peril;

- 2.19.15 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 2.19.16 strike, lock-out or local combination of any trades employed upon the Main Contract Works or engaged in the preparation, manufacture or transportation of any of the goods or materials required for them;
- 2.19.17 force majeure.

## **Practical Completion and Lateness**

### **2.20 Date of practical completion**

- 2.20.1 The Sub-Contractor shall notify the Contractor of the date when in its opinion the Sub-Contract Works as a whole or such works in a Section are practically complete and it has complied sufficiently with clause 3.21 in respect of documents and information relating to that completed work. Unless the Contractor dissents by notice, giving reasons, within 14 days of receipt of the Sub-Contractor's notice, practical completion of such work shall be deemed for all the purposes of this Sub-Contract to have taken place on the date so notified.
- 2.20.2 If the Contractor so dissents, then, as soon as it is reasonably satisfied that such work is complete and that there has been such compliance, it shall as soon as practicable notify the Sub-Contractor and practical completion of such work shall be deemed for all the purposes of this Sub-Contract to have taken place on the date notified by the Contractor or on such other date as is either agreed or determined in accordance with the dispute resolution procedures of this Sub-Contract. The date shall in any event be no later than the date of practical completion of the Main Contract Works or relevant Section or part under the Main Contract. Any agreed date shall be confirmed by the Contractor to the Sub-Contractor.

### **2.21 Failure of Sub-Contractor to complete on time**

If the Sub-Contractor fails to complete the Sub-Contract Works or such works in any Section within the relevant period or periods for completion, and if the Contractor gives notice to that effect to the Sub-Contractor within a reasonable time of the expiry of the period or periods, the Sub-Contractor shall pay or allow to the Contractor the amount of any direct loss and/or expense suffered or incurred by the Contractor that is caused by that failure.

## **Defects**

### **2.22 Sub-Contractor's liability**

- 2.22.1 The Sub-Contractor shall make good at its own cost and in accordance with any direction of the Contractor all defects, shrinkages and other faults in the Sub-Contract Works or in any part of them due to materials, goods or workmanship not in accordance with this Sub-Contract.
- 2.22.2 When the Sub-Contractor considers any such making good has been achieved, it shall notify the Contractor and, as soon as the Contractor is reasonably satisfied that that has been achieved, it shall notify the Sub-Contractor. Making good shall be deemed to have taken place on the date notified by the Contractor or on such other date as is either agreed or determined in accordance with the dispute resolution procedures of this Sub-Contract. The date shall in any event not be later than the date of issue of the relevant Certificate of Making Good under the Main Contract. Any agreed date shall be confirmed by the Contractor to the Sub-Contractor.
- 2.22.3 Compliance in respect of defects, shrinkages or other faults notified to the Sub-Contractor by the Contractor shall not limit the Sub-Contractor's other obligations under clause 2.22.1.

## **2.23 Deductions under the Main Contract Conditions**

Where an appropriate deduction is made under clause 2.10 or 2.38 of the Main Contract Conditions, then, to the extent that such deduction is properly attributable to inaccurate setting out by the Sub-Contractor or to defects or other faults in the Sub-Contract Works, the deduction, or the appropriate proportion of it, shall be borne by the Sub-Contractor and shall either be taken into account in the calculation of the Final Sub-Contract Sum or be recoverable by the Contractor from the Sub-Contractor as a debt.

## **2.24 Not used**

## **2.25 Not used**

## **Third Party Rights and Collateral Warranties etc.**

### **2.26 Particulars and notices**

- 2.26.1 The beneficiaries entitled to P&T Rights, Funder Rights or Employer Rights either by way of third party rights or a collateral warranty from the Sub-Contractor shall be those identified, whether by name, class or description, in the document specified in the Sub-Contract Particulars (item 7) ('the Sub-Contract Rights Particulars').
- 2.26.2 If in relation to an identified beneficiary the Sub-Contract Rights Particulars fail to specify the method by which rights are to be conferred by the Sub-Contractor, the Sub-Contractor may elect to do so either as third party rights or by collateral warranty, but there shall be no obligation to grant such rights to any person other than those identified beneficiaries.
- 2.26.3 Where in accordance with clause 2.26.1 a beneficiary is entitled to third party rights under Schedule 5 such rights shall vest in that beneficiary on the date of receipt by the Sub-Contractor of notice from the Contractor to that effect, given in accordance with clause 2.26.5.
- 2.26.4 Where in accordance with this clause 2.26 a beneficiary is entitled to a Collateral Warranty, then, upon or within 14 days of notice from the Contractor given at any time in accordance with clause 2.26.5, the Sub-Contractor shall execute a Collateral Warranty in the appropriate form in favour of that beneficiary and deliver it to the Contractor or as the Contractor shall direct.
- 2.26.5 Any notice from the Contractor under this clause 2.26 shall be given in accordance with clause 1.7.4 and shall identify the beneficiary, the nature of its interest in the Main Contract Works and (where such notice is under clause 2.26.3) any email address for that beneficiary as referred to in paragraph 7.2, Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants), paragraph 11.2, Part 2 of Schedule 5 (Third Party Rights for a Funder) or paragraph 11.2, Part 3 of Schedule 5 (Third Party Rights for the Employer) and, in the case of notice under clause 2.26.4, the form of warranty required, which shall be completed in accordance with the Sub-Contract Rights Particulars. Where the Sub-Contract is executed as a deed, any such warranty shall be executed as a deed. Where the Sub-Contract is executed under hand, any such warranty may be executed under hand.
- 2.26.6 Unless otherwise stated in the Sub-Contract Rights Particulars, the term 'the Consultants' shall in all third party rights and/or collateral warranties to be granted mean the Architect/Contract Administrator and the Quantity Surveyor (including any replacements), together with any other consultants providing design services to the Employer in connection with the Main Contract Works.

### **2.27 Rights of termination, variation etc.**

Where third party rights have vested in any beneficiary pursuant to clause 2.26.3:

- 2.27.1 no amendment or variation shall be made to the express terms of clause 2.26 or clause 2.27 or of Schedule 5 (Third Party Rights) without the prior written consent of that beneficiary; and

2.27.2 where that beneficiary is the Employer or a Funder, neither the Contractor nor the Sub-Contractor shall agree to rescind this Sub-Contract, and the rights of the Sub-Contractor to terminate its employment under this Sub-Contract or to treat this Sub-Contract as repudiated shall in all respects be subject to the provisions of paragraph 6 of Part 2 of Schedule 5 or paragraph 6 of Part 3 of Schedule 5 (as the case may be)

but, subject thereto, unless and until either the Funder gives notice under paragraph 5.1 or paragraph 6.4 of Part 2 of Schedule 5, or the Employer gives notice under paragraph 5.1 or paragraph 6.4 of Part 3 of Schedule 5, the Sub-Contractor and the Contractor shall remain free to agree to amend or otherwise vary or to waive any term of this Sub-Contract and to settle any dispute or other matter arising out of or in connection with this Sub-Contract, in each case in such terms as they think fit, without any requirement that they obtain the consent of any beneficiary thereto.

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**Assignment and Sub-Contracting****3.1 Non-Assignment**

The Sub-Contractor shall not without the Contractor's consent assign this Sub-Contract or any rights thereunder.

**3.2 Consent to sub-contracting**

The Sub-Contractor shall not without the Contractor's consent sub-contract the whole or any part of the Sub-Contract Works. The Sub-Contractor shall remain wholly responsible for carrying out and completing the Sub-Contract Works in all respects in accordance with this Sub-Contract notwithstanding any such sub-contracting.

**3.3 Conditions of sub-contracting**

It shall be a condition of any sub-subcontract that:

- 3.3.1 the sub-subcontractor's employment under the sub-subcontract shall terminate immediately upon the termination (for any reason) of the Sub-Contractor's employment under this Sub-Contract;
- 3.3.2 the sub-subcontract shall provide that:
  - 3.3.2.1 (without limiting either party's statutory and/or regulatory duties) each party to the sub-subcontract shall in relation to the Main Contract Works and the site comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations<sup>[5]</sup>;
  - 3.3.2.2 if by the final date for its payment stated in the sub-subcontract the Sub-Contractor fails to pay a sum, or any part of it, due to the sub-subcontractor, the Sub-Contractor shall, in addition to any unpaid amount that should properly have been paid, pay simple interest on that amount at the Interest Rate for the period from the final date for payment until such payment is made; such payment of interest to be on and subject to terms equivalent to those of clause 4.7.7 of these Conditions;
  - 3.3.2.3 where documents or information or the grant of licences are or may be required from the sub-subcontractor under a BIM Protocol or for the purposes of clause 3.21 of these Conditions, the sub-subcontractor shall supply and grant and (where applicable) be entitled to all information and licences reasonably necessary for that purpose.

**Contractor's Directions****3.4 Power to issue directions**

The Contractor may issue any reasonable direction to the Sub-Contractor in regard to the Sub-Contract Works (including the ordering of any Variation). Any instruction of the Architect/Contract Administrator under the Main Contract that affects the Sub-Contract Works and is issued by the Contractor to the Sub-Contractor shall be deemed to be a direction of the Contractor. No Variation directed by the Contractor or subsequently sanctioned by it shall vitiate this Sub-Contract.

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**[5]** See footnote [6] to clause 3.21 below.

### **3.5 Compliance with directions**

The Sub-Contractor shall forthwith comply with all directions issued to it under clause 3.4, save that:

- 3.5.1 where such a direction requires a Variation of the type referred to in clause 5.1.2 the Sub-Contractor need not comply to the extent that it notifies a reasonable objection to the direction to the Contractor;
- 3.5.2 where a direction for a Variation is given which under clause 5.3.1 requires the Sub-Contractor to provide a Variation Quotation, the Variation shall not be carried out until the Contractor has in relation to it issued either written acceptance or a further direction under clause 5.3.2.

### **3.6 Non-compliance with directions**

Subject to clause 3.5, if within 7 days after receipt of a notice from the Contractor requiring compliance with a direction the Sub-Contractor does not comply, the Contractor may employ and pay other persons to execute work of any kind necessary to give effect to that direction. The Sub-Contractor shall be liable for all additional costs incurred by the Contractor in connection with such employment and an appropriate deduction may either be taken into account in the calculation of the Final Sub-Contract Sum or be recoverable by the Contractor from the Sub-Contractor as a debt.

### **3.7 Directions other than in writing**

Where the Contractor gives a direction to the Sub-Contractor or the Sub-Contractor's authorised representative otherwise than in writing, it shall be of no immediate effect but the Sub-Contractor shall confirm the terms of the direction in writing to the Contractor within 7 days, and, if the Contractor does not dissent by notice to the Sub-Contractor within 7 days from receipt of the Sub-Contractor's confirmation, the direction shall take effect as from the expiry of the latter 7 day period. Provided always that:

- 3.7.1 if prior to or within 7 days from receipt of the Sub-Contractor's confirmation the Contractor confirms the terms of the direction in writing, it shall take effect from the date and in the terms of the Contractor's confirmation; and
- 3.7.2 if neither Party confirms such a direction in the manner and time stated but the Sub-Contractor nevertheless complies with it, the Contractor may at any time confirm it with retrospective effect.

### **3.8 Person-in-charge**

The Sub-Contractor shall ensure that at all times during the execution of the Sub-Contract Works it has on the site a competent person-in-charge. Any directions given to that person by the Contractor shall be deemed to have been issued to the Sub-Contractor.

### **3.9 Access for Contractor and Architect/Contract Administrator**

The Contractor, the Architect/Contract Administrator and any person authorised by either of them shall at all reasonable times have access to any work which is being prepared for or is to be utilised in the Sub-Contract Works but subject to such reasonable restrictions as are necessary to protect any proprietary rights.

## **Opening Up and Remedial Measures**

### **3.10 Directions to open up and test**

Without limiting its powers under clause 3.4, the Contractor may issue directions requiring the Sub-Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Sub-Contract Works) or of any executed work. The cost of that opening up or testing (including the cost of making good) shall be taken into account in calculating the Final Sub-Contract Sum unless the requirement for such opening up or testing is included in this Sub-Contract or unless the inspection or test shows that the materials, goods or work are not in accordance with it.

### **3.11 Work not in accordance with the Sub-Contract**

If any work, materials or goods are not in accordance with this Sub-Contract ('non-compliant work') the Contractor, in addition to its other powers, may:

- 3.11.1 issue directions requiring the removal from the site or rectification of all or any of the non-compliant work provided that, unless those directions are issued following similar instructions under clause 3.18 of the Main Contract Conditions, the Contractor shall prior to the issue of such directions consult with the Sub-Contractor and shall have regard to the Sub-Contract Code of Practice set out in Schedule 4;
- 3.11.2 after consultation with the Sub-Contractor, issue such directions requiring a Variation as are reasonably necessary as a consequence of any direction under clause 3.11.1 (but to the extent that such directions are reasonably necessary, no adjustment shall be taken into account in the calculation of the Final Sub-Contract Sum and no extension of time shall be given); and/or
- 3.11.3 having due regard to the Sub-Contract Code of Practice, issue such directions under clause 3.10 to open up for inspection or to test as are reasonable in all the circumstances to establish to the reasonable satisfaction of the Contractor the likelihood or extent, as appropriate to the circumstances, of any further, similar non-compliance. To the extent that those directions are reasonable, whatever the results of the opening up, no addition shall be made in calculating the Final Sub-Contract Sum but clauses 2.18 and 2.19.2.3 shall apply unless the inspection or test shows that the work, materials or goods are non-compliant.

Provided that the Contractor may not issue any direction under this clause 3.11 which relates to materials or goods or workmanship the approval of the quality and standards of which is, as referred to in clause 2.4.4, a matter for the Architect/Contract Administrator's approval unless such direction comprises or reflects an instruction of the latter relating to the Sub-Contract Works. Where non-compliant work is the subject of an instruction issued under clause 3.18 of the Main Contract Conditions, the Contractor, in issuing the relevant direction, shall so notify the Sub-Contractor.

### **3.12 Instructions and deductions under the Main Contract**

- 3.12.1 Where the Architect/Contract Administrator consults with the Contractor as required by clause 3.18.2 of the Main Contract Conditions and such consultation relates, in whole or in part, to the Sub-Contract Works or any part of them, the Contractor shall immediately consult with the Sub-Contractor.
- 3.12.2 Where the Architect/Contract Administrator under that clause 3.18.2 allows all or any non-compliant work to remain, the Contractor shall notify the Sub-Contractor and (where applicable) an appropriate deduction may be made in calculating the Final Sub-Contract Sum or the amount of such deduction shall be recoverable by the Contractor from the Sub-Contractor as a debt.
- 3.12.3 The Sub-Contractor shall comply with any directions of the Contractor requiring a Variation to the extent that they are a reasonably necessary consequence of the Architect/Contract Administrator allowing all or any non-compliant work to remain. To the extent that those directions are reasonably necessary, no addition shall be made in calculating the Final Sub-Contract Sum and no extension of time shall be given.

### **3.13 Workmanship not in accordance with the Sub-Contract**

- 3.13.1 Where there is any failure to comply with clause 2.1.1 in regard to the carrying out of work in a proper and workmanlike manner or in accordance with the Construction Phase Plan, the Contractor, in addition to its other powers, may, after consultation with the Sub-Contractor, issue such directions (whether requiring a Variation or otherwise) as are in consequence reasonably necessary. To the extent that such directions are reasonably necessary, no addition shall be made in calculating the Final Sub-Contract Sum and no extension of time shall be given.
- 3.13.2 Where failure to comply as referred to in clause 3.13.1 is the subject of an instruction issued by the Architect/Contract Administrator under clause 3.19 of the Main Contract Conditions, the Contractor shall, in issuing the relevant direction, so notify the Sub-Contractor.

### **3.14 Indemnity by Sub-Contractor**

In the case of non-compliant work or workmanship by the Sub-Contractor, or failure by it to carry out work in accordance with this Sub-Contract, it shall in addition to any other liability or indemnity under any other provision of this Sub-Contract indemnify the Contractor in respect of any liability and reimburse the Contractor for any costs which the Contractor has incurred either:

- 3.14.1 as a direct result of any action taken by the Sub-Contractor in order to comply with any of clauses 3.11 to 3.13; or
- 3.14.2 as a result of the operation of clause 3.15 (or of any equivalent provision) in any other sub-contract let by the Contractor in relation to the Main Contract Works (including any liability for direct loss and/or expense and/or as a result of any extension of time under that sub-contract),

but only to the extent that such liabilities and costs are a direct result of the operation of any of clauses 3.11 to 3.13 (and/or the corresponding provision of the Main Contract) and are not recovered under another provision of this Sub-Contract.

### **3.15 Effect of non-compliant work by others**

- 3.15.1 Where compliance by the Contractor or any other sub-contractor with any instruction or other exercise of the Architect/Contract Administrator's powers under clause 3.18 or 3.19 of the Main Contract Conditions or compliance by any other sub-contractor with any direction of the Contractor of the types referred to in clauses 3.11 to 3.13 of these Conditions necessitates work properly executed or materials or goods properly fixed or supplied under this Sub-Contract being taken down, re-executed, re-fixed and/or re-supplied, the Sub-Contractor shall comply with directions so to take down, re-execute, re-fix and/or re-supply provided they are issued before the date of practical completion of the Sub-Contract Works or of such works in the relevant Section. A copy of those directions to the Sub-Contractor shall be sent forthwith by the Contractor to the sub-contractor whose non-compliant work or failure to comply gave rise to those directions or the decision to allow such work to remain.
- 3.15.2 The Sub-Contractor shall be paid on the basis of a fair valuation for any taking down, re-execution, re-fixing and/or re-supply directed under clause 3.15.1 that it carries out. The amount of that valuation shall be taken into account in calculating the Final Sub-Contract Sum and the provisions of clauses 2.16 to 2.19 and clauses 4.14 to 4.16 shall apply in respect of compliance with such directions.

## **Attendance and Site Matters**

### **3.16 Attendance**

- 3.16.1 The Contractor shall provide free of charge to the Sub-Contractor the items of attendance stated in the Sub-Contract Particulars (item 8). All other items of attendance shall be provided by the Sub-Contractor.
- 3.16.2 The Contractor, the Sub-Contractor, Contractor's Persons and Sub-Contractor's Persons in common with all others having a like right shall for the purposes of the Main Contract Works (but not otherwise) be entitled to use any erected scaffolding belonging to or provided by the Contractor or the Sub-Contractor while it remains erected. Such use shall be on the express condition that no warranty or other liability on the part of the Contractor or any Contractor's Person or of the Sub-Contractor or any Sub-Contractor's Person, as the case may be, shall be created or implied under this Sub-Contract in regard to the fitness, condition or suitability of such scaffolding.
- 3.16.3 The Contractor and the Sub-Contractor shall not, and shall respectively ensure that Contractor's Persons and Sub-Contractor's Persons do not, wrongfully use or interfere with plant, ways, scaffolding, temporary works, appliances or other property belonging to or provided by others or infringe any Statutory Requirements, but nothing in this clause 3.16.3 shall affect the rights of the Contractor or of the Sub-Contractor to carry out their respective statutory duties and contractual obligations under this Sub-Contract or the Main Contract.

### **3.17 Temporary buildings**

Subject to clause 3.16.1 the Sub-Contractor shall at its own expense provide, erect and maintain all necessary workshops, sheds or other temporary buildings for Sub-Contractor's Persons and temporary services to them, such facilities to be sited at and as necessary moved from such places on the site as the Contractor, subject to any reasonable objection by the Sub-Contractor, shall from time to time direct. The Contractor agrees to give all reasonable facilities to the Sub-Contractor for such purposes.

### **3.18 Site clearance**

The Sub-Contractor:

- 3.18.1 in the manner set out in the Sub-Contract Particulars (item 8.4) shall clear away all rubbish resulting from its carrying out of the Sub-Contract Works so as to keep access to the Sub-Contract Works clear at all times; and
- 3.18.2 upon practical completion of the Sub-Contract Works or such works in a Section, shall clear up and leave those works and any other areas used by it for the purpose of carrying them out clean and tidy to the Contractor's reasonable satisfaction and shall promptly remove its temporary buildings from the site.

### **3.19 Asbestos, contaminated material and unexploded ordnance**

- 3.19.1 Upon discovery of any asbestos, contaminated material or unexploded ordnance on the site or in excavating it during the progress of the Sub-Contract Works the Sub-Contractor shall forthwith:
  - 3.19.1.1 use its best endeavours not to disturb the material or item and cease work if and insofar as continuing work would endanger health and safety and/or life and property or prevent or impede the disposal or removal of the material or item; and
  - 3.19.1.2 report the discovery of such material or item and the steps it is taking under clause 3.19.1.1 to the Contractor.
- 3.19.2 The Contractor shall issue directions with respect to any material or item reported under clause 3.19.1, which (without limiting its powers) may require the Sub-Contractor to permit the investigation, disposal or removal of such material or item by a third party.

## **Health and Safety, CDM Regulations and Part 2A of the Building Regulations**

### **3.20 Health and Safety**

The Sub-Contractor shall comply with:

- 3.20.1 all health and safety legislation relevant to the Sub-Contract Works and the manner in which they are being carried out;
- 3.20.2 all reasonable directions of the Contractor aimed at ensuring such compliance by the Contractor and the Sub-Contractor in relation to the Sub-Contract Works; and
- 3.20.3 within the time reasonably required, any request by the Contractor for information reasonably necessary to demonstrate such compliance.

### **3.21 CDM Regulations and Part 2A of the Building Regulations**

Without limiting either Party's statutory and/or regulatory duties and responsibilities, each Party undertakes to the other that in relation to the Main Contract Works and the site it will duly comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations<sup>[6]</sup>, and in particular but without limitation:

- 3.21.1 if the Employer notifies the Contractor of a new appointee as Principal Designer and/or as Principal Contractor, the Contractor shall immediately copy that notification to the Sub-Contractor;
- 3.21.2 the Contractor shall ensure that the Sub-Contractor is supplied forthwith with any updates or revisions of the Construction Phase Plan;
- 3.21.3 the Sub-Contractor shall comply with all reasonable directions and requirements of the Principal Designer and the Principal Contractor relating to the supply of all documents and information reasonably necessary for the purposes of the health and safety file under the CDM Regulations.

## **Suspension of Main Contract by Contractor**

### **3.22 Notification by Contractor**

If the Contractor under clause 4.13 of the Main Contract Conditions gives the Employer a written notice of its intention to suspend the performance of any of its obligations under the Main Contract, it shall thereupon copy that notice to the Sub-Contractor and immediately notify the Sub-Contractor of any such suspension.

### **3.23 Directions following suspension**

- 3.23.1 Upon such suspension the Contractor may direct the Sub-Contractor to cease carrying out the Sub-Contract Works and, following such cessation, shall issue such further directions as may be necessary.
- 3.23.2 If the Contractor resumes performance of its Main Contract obligations, it shall, if it has directed such cessation by the Sub-Contractor, direct the Sub-Contractor to recommence work and may issue further directions in that regard.

## **Other Provisions**

### **3.24 Strikes**

If the Main Contract Works are affected by a strike, lock-out or local combination of any trades employed upon them or engaged in preparation, manufacture or transportation of any goods or materials required for them:

- 3.24.1 neither Party shall have any claim on the other for any loss and/or expense resulting from such action;
- 3.24.2 the Contractor shall take all reasonably practicable steps to keep the site open and available for the use of the Sub-Contractor; and
- 3.24.3 the Sub-Contractor shall take all reasonably practical steps to continue with the Sub-Contract Works.

Nothing in this clause shall affect any other right of either Party under this Sub-Contract if such action occurs.

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[6] Part 2A of the Building Regulations, introduced by the Building Regulations etc. (Amendment) (England) Regulations 2023 pursuant to the Building Safety Act 2022, sets out a framework of safety duties and competence requirements for those persons involved in the procurement, design and undertaking of building work to which building regulations apply (including higher-risk building work for which additional duties apply).  
If any project involves higher-risk building work, see the Standard Building Sub-Contract Guide.

### **3.25 Benefits under the Main Contract**

At the Sub-Contractor's request, the Contractor shall, so far as it lawfully may, obtain for the Sub-Contractor any rights or benefits of the provisions of the Main Contract to the extent applicable to the Sub-Contract Works and not inconsistent with the express terms of the Sub-Contract, but not further or otherwise. Any action taken by the Contractor in compliance with any such request shall be at the cost of the Sub-Contractor and shall be subject to the Sub-Contractor providing such indemnity and security as the Contractor may reasonably require.

### **3.26 Certificates under the Main Contract**

The Contractor shall forthwith notify the Sub-Contractor of the issue of each of the following under the Main Contract, specifying its date of issue and its operative date:

- 3.26.1 any fixing or confirmation of the Completion Date for the Main Contract Works or any Section;
- 3.26.2 any notice or certificate issued under clause 2.33 or 2.35 of the Main Contract Conditions;
- 3.26.3 the Practical Completion Certificate or each Section Completion Certificate;
- 3.26.4 each Certificate of Making Good; and
- 3.26.5 the Final Certificate.

**Sub-Contract Sum and Sub-Contract Tender Sum****4.1 Adjustment Basis**

Where the Adjustment Basis (Article 3) applies:

- 4.1.1 the quality and quantity of the work included in the Sub-Contract Sum is that set out in the Bills of Quantities or, where there are no Bills of Quantities, that included in the Sub-Contract Documents taken together, but, where quantities are contained in the Sub-Contract Documents provided by the Contractor, the quantity of work shall to that extent be that set out in those quantities;
- 4.1.2 the Sub-Contract Sum shall not be adjusted or altered in any way other than in accordance with the express provisions of these Conditions and, subject to clause 2.9, any error in the computation of the Sub-Contract Sum is accepted by the Parties; and
- 4.1.3 the Final Sub-Contract Sum shall be calculated in accordance with clause 4.19.

**4.2 Remeasurement Basis**

Where the Remeasurement Basis (Article 4) applies:

- 4.2.1 the quality and quantity of the work included in the Sub-Contract Tender Sum is that set out in the Bills of Quantities or, where there are no Bills of Quantities, that included in the Sub-Contract Documents taken together, but, where quantities are contained in the Sub-Contract Documents provided by the Contractor, the quantity of work shall to that extent be that set out in those quantities; and
- 4.2.2 the Sub-Contract Works shall be subject to complete remeasurement and the Final Sub-Contract Sum shall be calculated in accordance with clause 4.20.

**4.3 Taking adjustments into account**

Where these Conditions provide that an amount is to be taken into account in the calculation of the Final Sub-Contract Sum, then, as soon as the amount is ascertained in whole or in part, the ascertained amount shall be taken into account in the next interim payment.

**Taxes****4.4 VAT**

- 4.4.1 The Sub-Contract Sum or Sub-Contract Tender Sum and the Final Sub-Contract Sum are exclusive of VAT and in relation to each payment to the Sub-Contractor under this Sub-Contract, the Contractor shall in addition pay the amount of any VAT properly chargeable in respect of it.
- 4.4.2 If after the Sub-Contract Base Date the supply of any goods or services to the Contractor becomes exempt from VAT there shall be paid to the Sub-Contractor an amount equal to the input tax on the supply to the Sub-Contractor of goods and services that contribute to the Sub-Contract Works but which as a consequence of that exemption the Sub-Contractor cannot recover.

**4.5 Construction Industry Scheme (CIS)**

The obligation of the Contractor to make any payment under this Sub-Contract is subject to the provisions of the CIS.

## Payments and Notices – general provisions

### 4.6 Interim payments – due dates, applications and sums due

- 4.6.1 During the period up to the due date for the final payment fixed under clause 4.22.1 and subject to clause 4.6.2 where the Sub-Contract Particulars (item 10.3) state that that clause applies, the monthly due dates for interim payments shall in each case be the date 12 days after the relevant Interim Valuation Date, commencing (unless an earlier date is specified by the Sub-Contract Particulars (item 10.2)) with the Interim Valuation Date next following the commencement of the Sub-Contract Works on site.
- 4.6.2 Where the Sub-Contract Particulars (item 10.3) state that clause 4.6.2 applies, the Sub-Contractor shall each month submit an application to the Contractor stating the sum the Sub-Contractor considers will become due to it at the due date and the basis on which that sum has been calculated (a 'Payment Application'). Where the Payment Application is received not later than 4 days prior to the Interim Valuation Date, the due date shall be the date that would apply under clause 4.6.1; if the Payment Application is received later, the due date shall be 16 days after the date of receipt.
- 4.6.3 Where clause 4.6.2 does not apply, the Sub-Contractor may make a Payment Application in respect of an interim payment to the Contractor either:
- 4.6.3.1 so as to be received not later than 4 days prior to the Interim Valuation Date for the relevant payment; or
- 4.6.3.2 at any time after the 5 day period referred to in clause 4.7.2, if the Contractor fails to give a Payment Notice in accordance with that clause and the Sub-Contractor has not in relation to that payment made a prior application under clause 4.6.3.1.
- 4.6.4 The sum due to the Sub-Contractor in respect of each interim payment shall be the Gross Valuation calculated in accordance with clause 4.9 less the deductions specified in clause 4.10.

### 4.7 Interim and final payments – final date, notices and amount

- 4.7.1 Subject to clause 4.7.4, the final date for payment of any payment shall be 14 days after the due date, as fixed in accordance with clause 4.6.1, 4.6.2 or 4.22.1.
- 4.7.2 Not later than 5 days after the due date in each case the Contractor shall give a notice to the Sub-Contractor which shall specify the sum that the Contractor considers to be or have been due at the due date and the basis on which that sum has been calculated (a 'Payment Notice' or, for the final payment, the 'Final Payment Notice'). The Final Payment Notice shall show the difference referred to in clause 4.22.2 as a balance due from the Contractor to the Sub-Contractor or vice versa.
- 4.7.3 Subject to any Pay Less Notice given by the paying Party under clause 4.7.5, the paying Party shall pay the sum specified in the Payment Notice or Final Payment Notice on or before the final date for payment. If the Contractor fails to give a Payment Notice or the Final Payment Notice in accordance with clause 4.7.2, but a Payment Application has been or is then made, the Contractor shall, subject to any Pay Less Notice given under clause 4.7.5, pay the Sub-Contractor the sum specified in the Payment Application.
- 4.7.4 Where a Payment Application is made following failure by the Contractor to give a Payment Notice or the Final Payment Notice in accordance with clause 4.7.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 4.7.2 that the Payment Application is made.
- 4.7.5 Where:
- 4.7.5.1 the Contractor intends to pay less than the sum stated as due from it in the Payment Notice, the Final Payment Notice or Payment Application, as the case may be; or
- 4.7.5.2 if the Final Payment Notice shows a balance due to the Contractor, the Sub-Contractor intends to pay less than the sum stated as due,

the Party by which the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention in accordance with clause 4.7.6 (a 'Pay Less Notice'). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.

- 4.7.6 A Pay Less Notice given by either Party shall specify the sum it considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated.
- 4.7.7 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by the final date for payment, it shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.
- 4.7.8 Any such unpaid amount and any interest under clause 4.7.7 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Sub-Contractor's rights to suspend performance under clause 4.8 or terminate its employment under section 7.
- 4.7.9 In relation to the requirements for the giving of notices under this clause 4.7, it is immaterial that the amount then considered to be due may be zero.

#### **4.8 Sub-Contractor's right of suspension**

- 4.8.1 If the Contractor fails to pay a sum payable to the Sub-Contractor in accordance with clause 4.7 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Sub-Contractor has given notice to the Contractor of its intention to suspend the performance of its obligations under this Sub-Contract and the grounds for such suspension, the Sub-Contractor, without affecting its other rights and remedies, may suspend performance of any or all of its obligations until payment is made in full.
- 4.8.2 Where the Sub-Contractor exercises its right of suspension under clause 4.8.1, it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of exercising the right.
- 4.8.3 Applications in respect of any such costs and expenses shall be made to the Contractor and the Sub-Contractor shall with its application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

### **Interim Payments – calculation of sums due**

#### **4.9 Gross Valuation<sup>[7]</sup>**

The Gross Valuation for each interim payment shall, subject to any agreement between the Sub-Contractor and the Contractor as to stage payments, be the total of the amounts referred to in clauses 4.9.1 to 4.9.7 less the total of the amounts referred to in clause 4.9.8, calculated as at the Interim Valuation Date:

- 4.9.1 the total value of:
  - 4.9.1.1 sub-contract work on-site properly executed by the Sub-Contractor (including work so executed to which clause 5.2 refers, work so executed for which a Variation Quotation has been accepted by the Contractor and any variations thereto to which clause 5.3.3 applies), but excluding any amounts referred to in clause 4.9.6;
  - 4.9.1.2 Sub-Contract Site Materials, provided they are adequately protected against weather and other casualties and are not on the Main Contract Works prematurely; and

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[7] For guidance on the preparation of a Gross Valuation see the Standard Building Sub-Contract Guide.

4.9.1.3 any Listed Items, for which the conditions in clause 4.11 are satisfied;

those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision or any Acceleration Quotation for which there has been Confirmed Acceptance and, where a priced Activity Schedule is included in the Numbered Documents, the value to be included in respect of the sub-contract work in each activity to which it relates shall be a proportion of the price stated for the sub-contract work in that activity equal to the proportion of the sub-contract work in that activity that has been properly executed;

4.9.2 any amounts to be included in interim payments in accordance with clause 4.3 as a result of payments made or costs incurred by the Sub-Contractor under clause 2.21 or 2.23 of the Main Contract Conditions, as referred to in clause 2.5 of these Conditions;

4.9.3 the amount of any valuation under clause 3.15.2;

4.9.4 any amounts payable under clause 4.8.2;

4.9.5 the amount of any loss and/or expense to which the Sub-Contractor is entitled under clause 4.14.1 or 5.3.3 or by an accepted Variation Quotation or Acceleration Quotation, if not included under clause 4.9.1;

4.9.6 any amounts in respect of any restoration, replacement or repair of loss or damage and removal and disposal of debris which under clause 6.7.4 are treated as a Variation;

4.9.7 any amount payable to the Sub-Contractor under any applicable Fluctuations Provision other than by means of an adjustment made under clause 4.9.1; and

4.9.8 any amounts deductible under clause 2.23, 3.6, 3.12.2, 4.17 or 6.14.4, the amount of any costs to the Contractor referred to in clause 3.14 and any amount allowable by the Sub-Contractor under any applicable Fluctuations Provision other than by means of an adjustment made under clause 4.9.1.

#### **4.10 Sums due as interim payments**

The sum due to the Sub-Contractor in respect of each interim payment shall be the Gross Valuation under clause 4.9 less:

4.10.1 any amount which may be deducted and retained as Retention by the Contractor in respect of the Sub-Contract Works in accordance with clause 4.12; and

4.10.2 the sums previously due as interim payments under this Sub-Contract.

### **Listed Items**

#### **4.11 Listed Items**

The conditions for inclusion of the value of a Listed Item in the Gross Valuation before its delivery to or adjacent to the Main Contract Works as referred to in clause 4.9.1.3 are:

4.11.1 the Listed Item is in accordance with this Sub-Contract;

4.11.2 the Sub-Contractor has provided the Contractor with reasonable proof that:

4.11.2.1 property in the Listed Item is vested in the Sub-Contractor; and

4.11.2.2 the Listed Item is and will remain insured against loss or damage for its full value under a policy of insurance protecting the interests of the Employer, the Contractor and the Sub-Contractor in respect of the Specified Perils until delivered to, or adjacent to, the Main Contract Works;

4.11.3 at the premises where the Listed Items are situated pending delivery, there is in relation to that item clear identification of:

4.11.3.1 the Contractor and the Employer as the persons to whose order it is held; and

4.11.3.2 the Main Contract Works as its destination,

each item being either set apart or clearly and visibly marked, individually or as a set, by letters, figures or a pre-determined code; and

4.11.4 if the Sub-Contract Particulars (item 11) state that such a bond is required, the Sub-Contractor has provided a bond in favour of the Contractor or Employer, as the Contractor directs, from a surety approved by the Contractor in the amount specified in the Sub-Contract Particulars and in the terms set out in Part 1 of Schedule 3.

## Retention

### 4.12 Rules governing Retentions

4.12.1 Subject to clause 4.12.2, the Retention which may be deducted and retained by the Contractor shall be calculated as follows:

4.12.1.1 where the Sub-Contract Works or such works in a Section have not reached practical completion, as defined in clause 2.20, the Retention which the Contractor may deduct and retain shall be the percentage stated in the Sub-Contract Particulars (item 12) of the total values referred to in clauses 4.9.1.1 to 4.9.1.3 or, in the case of a Section, of such amounts as are referable to the Section;

4.12.1.2 where the Sub-Contract Works or such works in a Section have reached practical completion as defined in clause 2.20, the percentage Retention which the Contractor may deduct and retain in respect of the completed works shall be one half of the stated percentage.

4.12.2 Retention shall be subject to the following further rules:

4.12.2.1 If the total Retention under this Sub-Contract would be less than the Minimum Retention Amount specified in the Sub-Contract Particulars (item 12) no Retention shall be deducted.

4.12.2.2 If the release of Retention due to be made in accordance with clause 4.12.1.2 in respect of the Sub-Contract Works as a whole, or the last Section in which there are such works, will reduce the Retention below the Minimum Retention Amount, the whole Retention shall then be released and no further Retention shall be deducted and retained by the Contractor.

4.12.2.3 Subject to practical completion of the Sub-Contract Works as a whole having been achieved and there being no defects, shrinkages or other faults of the types referred to in clause 2.22.1 apparent at the Retention Release Date ('apparent defects'), any balance of the Retention shall be included in the next interim payment due. If those pre-conditions are not then satisfied, the balance shall be included in the payment next following such completion and the making good of any apparent defects. If not already notified to the Sub-Contractor, any apparent defects shall be listed and notified to it within 14 days after the Retention Release Date.

4.12.3 Without affecting any obligation to make an earlier release under clause 4.12.2.2, the Retention Release Date shall be the date specified in the Sub-Contract Particulars (item 12).

### 4.13 Retention Bond

Where the Sub-Contract Particulars (item 13) state that clause 4.13 of these Conditions applies, then:

4.13.1 subject to clauses 4.13.3 and 4.13.4, the provisions of clauses 4.10.1 and 4.12 permitting the deduction of the Retention shall not apply but the Contractor shall prior to each interim payment prepare a statement specifying the deduction in respect of the Retention that would have been made had those clauses applied;

- 4.13.2 on or before the date of commencement of the Sub-Contract Works the Sub-Contractor shall provide to the Contractor and thereafter maintain a bond ('the Retention Bond') in favour of the Contractor from a surety approved by the Contractor ('the Surety') in the terms set out in Part 2 of Schedule 3, incorporating in clauses 2 (*maximum aggregate sum*) and 6.3 (*expiry date*) of the bond the sum and date stated in the Sub-Contract Particulars (item 13);
- 4.13.3 if the Sub-Contractor fails to provide or maintain the Retention Bond in accordance with clause 4.13.2, the provisions of clauses 4.10.1 and 4.12 permitting the deduction of the Retention shall apply in respect of interim payments made after the date of the failure, save that if the Sub-Contractor subsequently provides the required bond, any Retention deducted during the period of failure shall become due for release to the Sub-Contractor on the next due date thereafter;
- 4.13.4 if at any time the amount of the Retention that would have been deducted had the provisions of clauses 4.10.1 and 4.12 applied exceeds the aggregate sum stated in the Retention Bond, then either the Sub-Contractor shall arrange with the Surety for the aggregate sum to equate to such amount or the amount not covered by the bond may be deducted as Retention; and
- 4.13.5 where the Contractor has required the Sub-Contractor to provide a performance bond, then, in respect of any default for which the Contractor is entitled to make a demand under both the performance bond and the Retention Bond, the Contractor shall first have recourse to the Retention Bond.

## Loss and Expense

### 4.14 Matters affecting regular progress

- 4.14.1 If in the execution of this Sub-Contract the Sub-Contractor incurs or is likely to incur any direct loss and/or expense because the regular progress of the Sub-Contract Works or of any part of them has been or is likely to be materially affected by any Relevant Sub-Contract Matter, the Sub-Contractor shall, subject to clause 4.14.2 and compliance with the provisions of clause 4.15, be entitled to reimbursement of that loss and/or expense.
- 4.14.2 No such entitlement arises where these Conditions provide that there shall be no addition to the Sub-Contract Sum or otherwise exclude the operation of clause 4.14.1 or to the extent that the Sub-Contractor is reimbursed for such loss and/or expense under another provision of these Conditions.

### 4.15 Notification and ascertainment

- 4.15.1 The Sub-Contractor shall notify the Contractor as soon as the likely effect of a Relevant Sub-Contract Matter on regular progress becomes (or should have become) reasonably apparent to it.
- 4.15.2 That notification shall be accompanied or, as soon as reasonably practicable, followed by the Sub-Contractor's initial assessment of the loss and/or expense incurred and that likely to be incurred, together with such information as is reasonably necessary to enable the Contractor to ascertain the loss and/or expense incurred.
- 4.15.3 The Sub-Contractor shall thereafter, in such form and manner as the Contractor may reasonably require, update that assessment and information at monthly intervals until all information reasonably necessary to allow ascertainment of the total amount of such loss and expense has been supplied.
- 4.15.4 Within 42 days of receipt of the initial assessment and information and 28 days of each subsequent update of them the Contractor shall notify the Sub-Contractor of the Contractor's ascertainment of the loss and/or expense incurred, each ascertainment being made by reference to the information supplied by the Sub-Contractor and in sufficient detail to enable the Sub-Contractor to identify differences between it and the Sub-Contractor's assessment.

#### **4.16 Relevant Sub-Contract Matters**

The following are the Relevant Sub-Contract Matters:

- 4.16.1 Variations (excluding those for which the amount of loss and/or expense has been agreed by acceptance of a Variation Quotation or Acceleration Quotation by the Contractor but including any other matters or directions which under these Conditions are to be treated as a Variation);
- 4.16.2 Contractor's directions, including those which pass on the Architect/Contract Administrator's instructions:
  - 4.16.2.1 for the expenditure of Provisional Sums included in any Bills of Quantities, excluding directions for expenditure of a Provisional Sum for defined work;
  - 4.16.2.2 for the opening up for inspection or testing of any work, materials or goods under clause 3.17 of the Main Contract Conditions (including making good), unless the inspection or test shows that the work, materials or goods were not in accordance with this Sub-Contract;
  - 4.16.2.3 for the opening up for inspection or testing of any work, materials or goods under clause 3.10 (including making good), unless the inspection or test shows that the work, materials or goods were not in accordance with this Sub-Contract;
  - 4.16.2.4 in relation to any discrepancy in or divergence between any of the Numbered Documents or any discrepancy in or divergence between any of those documents and the Contract Documents under the Main Contract;
  - 4.16.2.5 for the postponement of any work to be executed under this Sub-Contract (whether in connection with a postponement under the Main Contract or otherwise);
- 4.16.3 compliance with clause 3.22.1 of the Main Contract Conditions and related directions, including those passing on instructions under clause 3.22.2 of those Conditions or (except to the extent that the presence of asbestos or contaminated material has been identified in the Numbered Documents and/or any such material has been brought on to the site by the Sub-Contractor or any Sub-Contractor's Person) compliance with clause 3.19.1 and related directions, including those passing on instructions under clause 3.22.4 of the Main Contract Conditions;
- 4.16.4 suspension by the Contractor under clause 4.13 of the Main Contract Conditions of the performance of any or all of its obligations under the Main Contract;
- 4.16.5 the execution of work for which an Approximate Quantity included in any Contract Bills is not a reasonably accurate forecast of the quantity of work required;
- 4.16.6 where there are Bills of Quantities, the execution of work for which an Approximate Quantity included in those bills is not a reasonably accurate forecast of the quantity of work required;
- 4.16.7 any impediment, prevention or default, whether by act or omission, by the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Sub-Contractor or any Sub-Contractor's Person;
- 4.16.8 any impediment, prevention or default, whether by act or omission, by the Contractor or any Contractor's Person (including, where the Contractor is the Principal Contractor, any default, whether by act or omission, in that capacity) except to the extent caused or contributed to by any default, whether by act or omission, of the Sub-Contractor or any Sub-Contractor's Person;
- 4.16.9 (where the Sub-Contract Particulars (item 14) state that clause 4.16.9 of these Conditions applies) an epidemic:
  - 4.16.9.1 first occurring after the Sub-Contract Base Date which affects the execution of the Sub-Contract Works; or

- 4.16.9.2 first occurring before the Sub-Contract Base Date whose effects change after the Sub-Contract Base Date and any such change affects the execution of the Sub-Contract Works

by limiting the availability or use of labour or the availability of persons engaged in providing services for the Sub-Contract Works where such labour and/or persons are necessary for the proper carrying out of the Sub-Contract Works, or preventing the Sub-Contractor from, or delaying the Sub-Contractor in, securing such goods or materials or such services as are necessary for the proper carrying out of the Sub-Contract Works;

- 4.16.10 (where the Sub-Contract Particulars (item 14) state that clause 4.16.10 of these Conditions applies) the occurrence after the Sub-Contract Base Date of any of the following which affects the execution of the Sub-Contract Works:

4.16.10.1 the passing into law of any statute, statutory instrument or other subordinate legislation, regulation or bye-law, whether to make a new law or change or repeal an existing law;

4.16.10.2 the exercise of any statutory power, except to the extent caused or contributed to by any default, whether by act or omission, of the Sub-Contractor or any Sub-Contractor's Person; or

4.16.10.3 the publication of any guidance,

by the United Kingdom Government or any of the devolved administrations, or any Local or Public Authority or any equivalent authority governed by public law in any of the devolved administrations, or in the case of guidance by the Construction Leadership Council or its successor.

#### **4.17 Contractor's reimbursement**

4.17.1 If the regular progress of the Main Contract Works or any part of them is materially affected by any act, omission or default of the Sub-Contractor or any Sub-Contractor's Person, the Contractor shall within a reasonable time of such material effect becoming apparent notify the Sub-Contractor giving reasonable particulars of the effects or likely effects on the regular progress and shall give such details of the resultant loss and/or expense as the Sub-Contractor reasonably requests.

4.17.2 Any amount agreed by the Parties as due in respect of any loss and/or expense thereby caused to the Contractor may be deducted from any sums due or to become due to the Sub-Contractor or shall be recoverable by the Contractor from the Sub-Contractor as a debt.

#### **4.18 Reservation of rights and remedies of Contractor and Sub-Contractor**

The provisions of clauses 4.14 to 4.17 shall not limit or affect any other rights or remedies of the Contractor or the Sub-Contractor.

### **Final Adjustment and Final Payment**

#### **4.19 Final Sub-Contract Sum – Adjustment Basis**

The Final Sub-Contract Sum shall be the Sub-Contract Sum adjusted by:

4.19.1 the amount of each Valuation and any amounts agreed by the Contractor and the Sub-Contractor in respect of Variations and other work of the types referred to in clause 5.2.1, whether by acceptance of a Variation Quotation or otherwise;

4.19.2 any amount agreed by acceptance of an Acceleration Quotation;

4.19.3 where the Sub-Contract Particulars state that a Fluctuations Provision applies, any amounts payable or allowable under that provision;

4.19.4 any amounts referred to in clauses 4.9.2 to 4.9.7 (excluding any loss and/or expense to the extent included under clause 4.19.1 or 4.19.2) and any amounts deductible or allowable under clause 4.9.8;

- 4.19.5 the deduction of all Provisional Sums, the value of any work described as provisional in the Sub-Contract Documents and, where there are Bills of Quantities, the value of all work for which an Approximate Quantity is included in those bills; and
- 4.19.6 any other amount which under this Sub-Contract may or is required to be taken into account in the calculation of the Final Sub-Contract Sum.

#### **4.20 Final Sub-Contract Sum – Remeasurement Basis**

On the Remeasurement Basis the Final Sub-Contract Sum shall be the amount of the Valuation under clause 5.2.2 adjusted by:

- 4.20.1 the amounts stated in the Contractor's acceptance of any Variation Quotation or Acceleration Quotation, and of any Variations to that quotation, as valued under clause 5.3.3;
- 4.20.2 any amounts referred to in clauses 4.9.2 to 4.9.7 (excluding any loss and/or expense to the extent included under clause 4.20.1) and any amounts deductible or allowable under clause 4.9.8; and
- 4.20.3 any other amount which under this Sub-Contract may or is required to be taken into account in the calculation of the Final Sub-Contract Sum.

#### **4.21 Calculation of Final Sub-Contract Sum**

- 4.21.1 Not later than 4 months after practical completion of the Sub-Contract Works the Sub-Contractor shall send to the Contractor all documents necessary for calculating the Final Sub-Contract Sum.
- 4.21.2 Not later than 8 months after receipt of the documents referred to in clause 4.21.1 and in any event before the issue of the Final Certificate under the Main Contract the Contractor shall prepare and send to the Sub-Contractor a statement of the calculation of the Final Sub-Contract Sum.

#### **4.22 Final payment<sup>[8]</sup>**

- 4.22.1 The due date for the final payment shall be 2 months after whichever of the following occurs last:
  - 4.22.1.1 the Retention Release Date;
  - 4.22.1.2 where applicable, any later due date for Retention release under clause 4.12.2.3; or
  - 4.22.1.3 the last date for issue of the Contractor's statement under clause 4.21.2.
- 4.22.2 The amount of the final payment as shown in the Final Payment Notice given under clause 4.7.2 shall be the difference between the Final Sub-Contract Sum, calculated in accordance with whichever of clause 4.19 or clause 4.20 applies, and the total amount of the interim payments previously paid under this Sub-Contract.
- 4.22.3 The Sub-Contractor may make a Payment Application for the final payment to the Contractor, stating the amount that the Sub-Contractor considers to be or have become due to it under this Sub-Contract and the basis on which the sum has been calculated. That application may be made so as to be received not later than 4 days before the due date or, if the Contractor fails to give the Final Payment Notice in accordance with clause 4.7.2 and the Sub-Contractor has not made a prior application for that payment, it may be made at any time after the 5 day period referred to in that clause.

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[8] The effect of the Final Payment Notice, or the Sub-Contractor's Payment Application in lieu, is set out in clause 1.8.

## General

### 5.1 Definition of Variations

The term 'Variation' means:

- 5.1.1 the alteration or modification of the design, the quality or (except where the Remeasurement Basis applies) the quantity of the Sub-Contract Works including:
  - 5.1.1.1 the addition, omission or substitution of any work;
  - 5.1.1.2 the alteration of the kind or standard of any of the materials or goods to be used in the Sub-Contract Works;
  - 5.1.1.3 the removal from the site of any work executed or Sub-Contract Site Materials other than work, materials or goods which are not in accordance with this Sub-Contract;
- 5.1.2 the imposition in an instruction of the Architect/Contract Administrator issued under the Main Contract (or a direction of the Contractor passing on that instruction) of any obligations or restrictions in regard to the following matters or any addition to or alteration or omission of any such obligations or restrictions that are so imposed or are imposed by the Sub-Contract Documents in regard to:
  - 5.1.2.1 access to the site or use of any specific parts of the site;
  - 5.1.2.2 limitations of working space;
  - 5.1.2.3 limitations of working hours; or
  - 5.1.2.4 the execution or completion of the work in any specific order.<sup>[9]</sup>

### 5.2 Valuation of Work

Unless otherwise agreed by the Contractor and the Sub-Contractor (whether by acceptance of a Variation Quotation or otherwise), a valuation ('Valuation') shall be made by the Contractor of the items referred to in either clause 5.2.1 or 5.2.2 in accordance with clauses 5.6 to 5.12 ('the Valuation Rules'), namely:

- 5.2.1 where the Adjustment Basis applies:
  - 5.2.1.1 all Variations, including any confirmed under clause 3.7 but excluding any to which clause 5.3.3 applies;
  - 5.2.1.2 all work which under these Conditions is to be treated as a Variation;
  - 5.2.1.3 all work executed by the Sub-Contractor in accordance with the Contractor's directions as to the expenditure of Provisional Sums included in the Sub-Contract Documents or work included in them that is described as provisional; and
  - 5.2.1.4 all work executed by the Sub-Contractor for which an Approximate Quantity has been included in any Bills of Quantities; or

[9] See clause 3.5.1 for the Sub-Contractor's right of reasonable objection to Variations.

- 5.2.2 where the Remeasurement Basis applies, all work executed by the Sub-Contractor in accordance with the Sub-Contract Documents and the Contractor's directions, including any direction requiring a Variation or in regard to the expenditure of a Provisional Sum included in the Sub-Contract Documents or work included in them that is described as provisional.

### **5.3 Variation Quotation**

- 5.3.1 If the Contractor in its direction states that the Sub-Contractor is to provide a quotation in accordance with the provisions of Schedule 2 (a 'Variation Quotation'), the Sub-Contractor shall subject to receipt of sufficient information provide a quotation in accordance with those provisions, unless within 4 days of its receipt of that direction (or such longer period as is either stated in the direction or agreed between them) the Sub-Contractor notifies the Contractor that it disagrees with the application of the procedure to that direction.
- 5.3.2 If the Sub-Contractor notifies its disagreement within that period, it shall not be obliged to provide that quotation and the work shall not be carried out unless and until the Contractor gives a further direction that the work is to be carried out and is to be valued by a Valuation.
- 5.3.3 Where a Variation Quotation has been accepted by the Contractor, then, if the Contractor subsequently issues a direction requiring a Variation of that work, the Valuation of that Variation shall be made on a fair and reasonable basis having regard to the content of that quotation and that Valuation shall include the direct loss and/or expense, if any, incurred by the Sub-Contractor because the regular progress of the Sub-Contract Works or of any part of them is materially affected by compliance with the direction. The Valuation Rules shall apply only to the extent that they are consistent with those requirements.

### **5.4 Sub-Contractor's right to be present at measurement**

Where it is necessary to measure work for the purpose of a Valuation the Contractor shall give the Sub-Contractor an opportunity to be present at the time of such measurement and to take such notes and measurements as the Sub-Contractor may require.

### **5.5 Giving effect to Valuations, agreements etc.**

The Final Sub-Contract Sum shall be adjusted for each agreement by the Contractor and the Sub-Contractor under clause 5.2.1, each Valuation and each Variation Quotation or Acceleration Quotation accepted by the Contractor.

## **The Valuation Rules**

### **5.6 Measurable Work – Adjustment Basis**

- 5.6.1 To the extent that a Valuation relates to the execution of additional or substituted work which can properly be valued by measurement or to the execution of work for which an Approximate Quantity is included in any Bills of Quantities, such work shall be measured and shall be valued in accordance with the rules in this clause 5.6 and those in clauses 5.8, 5.11 and 5.12:
- 5.6.1.1 where the additional or substituted work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in any Bills of Quantities and/or other Sub-Contract Documents, the rates and prices for the work so set out shall determine the valuation;
- 5.6.1.2 where the additional or substituted work is of similar character to work set out in any Bills of Quantities and/or other Sub-Contract Documents but is not executed under similar conditions thereto and/or significantly changes its quantity, the rates and prices for the work so set out shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in conditions and/or quantity;
- 5.6.1.3 where the additional or substituted work is not of similar character to work set out in any Bills of Quantities and/or other Sub-Contract Documents, the work shall be valued at fair rates and prices;

5.6.1.4 where the Approximate Quantity is a reasonably accurate forecast of the quantity of work required, the rate or price for that Approximate Quantity shall determine the valuation;

5.6.1.5 where the Approximate Quantity is not a reasonably accurate forecast of the quantity of work required, the rate or price for that Approximate Quantity shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in quantity.

Provided that clauses 5.6.1.4 and 5.6.1.5 shall apply only to the extent that the work has not been altered or modified other than in quantity.

5.6.2 To the extent that a Valuation relates to the omission of work set out in any Bills of Quantities and/or other Sub-Contract Documents, the rates and prices for such work therein set out shall determine the valuation of the work omitted.

## **5.7 Measurable Work – Remeasurement Basis**

To the extent that a Valuation relates to the execution of work which can properly be valued by measurement, such work shall be measured and shall be valued in accordance with the rules in this clause 5.7 and those in clauses 5.8, 5.11 and 5.12:

5.7.1 where the work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in any Bills of Quantities and/or other Sub-Contract Documents, the rates and prices for the work so set out shall determine the valuation;

5.7.2 where the work is of similar character to work set out in any Bills of Quantities and/or other Sub-Contract Documents, but is not executed under similar conditions thereto and/or significantly changes its quantity, the rates and prices for the work so set out shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in conditions and/or quantity; and

5.7.3 where the work is not of similar character to work set out in any Bills of Quantities and/or other Sub-Contract Documents, the work shall be valued at fair rates and prices.

## **5.8 General rules**

In any valuation of work under clause 5.6 or 5.7:

5.8.1 where there are Bills of Quantities, measurement shall be in accordance with the same principles as those governing the preparation of those bills, as referred to in clause 2.8;

5.8.2 allowance shall be made for any percentage or lump sum adjustments in any Bills of Quantities and/or other Sub-Contract Documents;

5.8.3 where the Adjustment Basis applies, an allowance, where appropriate, shall be made for any addition to or reduction of preliminary items of the type referred to in the Measurement Rules, provided that no such allowance shall be made in respect of compliance with a Contractor's direction for the expenditure of a Provisional Sum for defined work; and

5.8.4 where the Remeasurement Basis applies, any amounts priced in the preliminaries section of any Bills of Quantities shall be adjusted, where appropriate, to take into account any Variations or any Contractor's directions for the expenditure of Provisional Sums for undefined work included in the Sub-Contract Documents.

## **5.9 Daywork**

Where the execution of work cannot be valued in accordance with clause 5.6 or 5.7, as applicable, the Valuation shall be based on the Schedule of Daywork Rates, if any, included in the Numbered Documents but if not included it shall comprise:

5.9.1 the prime cost of such work (calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by The Royal Institution of Chartered Surveyors (RICS) and Construction Industry Publications Ltd as current at the Sub-Contract Base Date) together with Percentage Additions to each section of the prime cost at the rates set out in the Sub-Contract Particulars (item 15) or, if they apply in respect of labour, at the All-Inclusive Rates stated therein; or

- 5.9.2 where the work is within the province of any specialist trade and the RICS and the appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of daywork<sup>[10]</sup>, the prime cost of such work calculated in accordance with that definition current at the Sub-Contract Base Date together with Percentage Additions on the prime cost at the rates set out in the Sub-Contract Particulars (item 15) or, if they apply in respect of labour, at the All-Inclusive Rates stated therein.

Provided that in any case vouchers specifying the time daily spent upon the work, the operatives' names, the plant and the materials employed shall be delivered for verification to the Contractor not later than 5 Business Days after the work has been executed.

**5.10 Not used**

**5.11 Change of conditions for other work**

If as a result of:

- 5.11.1 compliance with any direction requiring a Variation (except a Variation for which a Variation Quotation has been accepted or where the Variation is one to which clause 5.3.3 applies) or (where the Remeasurement Basis applies) any direction as a result of which work included in the Sub-Contract Documents is not executed;
- 5.11.2 compliance with any direction as to the expenditure of a Provisional Sum for undefined work;
- 5.11.3 compliance with any direction as to the expenditure of a Provisional Sum for defined work, to the extent that the direction for that work differs from the description given for such work in any Bills of Quantities; or
- 5.11.4 where the Adjustment Basis applies, the execution of work for which an Approximate Quantity is included in any Bills of Quantities, to the extent that the quantity is more or less than the quantity ascribed to that work in those bills,

there is a substantial change in the conditions under which any other work is executed, that other work shall be treated as a Variation and shall be valued on the basis of the rates and prices for the work set out in any Bills of Quantities and/or other Sub-Contract Documents, with a fair allowance for the difference in conditions.

**5.12 Additional provisions**

- 5.12.1 To the extent that a Valuation does not relate to the execution of work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Variation cannot reasonably be effected in the Valuation by the application of clauses 5.6 to 5.11, a fair valuation shall be made.
- 5.12.2 No allowance shall be made under the Valuation Rules for any effect upon the regular progress of the Sub-Contract Works or of any part of them or for any other direct loss and/or expense for which the Sub-Contractor would be reimbursed by payment under any other provision in these Conditions.

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[10] There are currently three definitions to which clause 5.9.2 refers, namely those agreed between the RICS and The Electrical Contractors' Association and SELECT, the RICS and The Building and Engineering Services Association, and the RICS and The Association of Plumbing and Heating Contractors and The Scottish and Northern Ireland Plumbing Employers' Federation.

## Definitions

### 6.1 Definitions

In this section 6 and, so far as relevant, in the other clauses of these Conditions the following phrases shall have the meanings given below:

**Excepted Risks:** the risks comprise:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar, as it is included in the Terrorism Cover from time to time required to be taken out and maintained under the Main Contract);
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
- (c) any act of terrorism that is not within the Terrorism Cover from time to time required to be taken out and maintained under the Main Contract.

**Joint Names Policy:** a policy of insurance which includes the Employer and the Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or, pursuant to clause 6.9 of the Main Contract Conditions, recognised as an insured thereunder.

**Specified Perils:** fire, lightning, explosion, storm, tempest, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks.

**Terminal Date:**

- (a) the date of practical completion of the Sub-Contract Works or, in respect of a Section, of such works in the Section, as determined in accordance with clause 2.20; or
- (b) the date of termination of the Sub-Contractor's employment under this Sub-Contract, however arising;

whichever first occurs.

**Terrorism Cover:** insurance provided by a Joint Names Policy under the Main Contract Conditions against loss or damage to work executed and Site Materials or to an existing structure and/or its contents caused by or resulting from terrorism.

**Works Insurance Policy:** the Joint Names Policy or policies covering the Main Contract Works and Site Materials to be effected and maintained under whichever of Insurance Options A, B or C applies under the Main Contract.

## Injury to Persons and Property

### 6.2 Liability of Sub-Contractor – personal injury or death

The Sub-Contractor shall be liable for, and shall indemnify the Contractor against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Sub-Contract Works, except to the extent that the same is due to any act or neglect, breach of statutory duty, omission or default of the Contractor, any Contractor's Person, the Employer, any Employer's Person or any Statutory Provider.

### **6.3 Liability of Sub-Contractor – injury or damage to property**

The Sub-Contractor shall be liable for, and shall indemnify the Contractor against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Sub-Contract Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Sub-Contractor or any Sub-Contractor's Person. This liability and indemnity is subject to clause 6.4.

### **6.4 Injury or damage to property – Main Contract Works and Site Materials excluded**

The liability and indemnity to the Contractor referred to in clause 6.3 shall not include any liability or indemnity in respect of loss or damage to the Main Contract Works and/or to any Site Materials by any Specified Peril, whether or not caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any Sub-Contractor's Person, for the period up to and including the relevant Terminal Date.

### **6.5 Insurance against personal injury and property damage**

6.5.1 Without prejudice to its obligation to indemnify the Contractor under clauses 6.2 and 6.3, the Sub-Contractor shall take out and maintain insurance in respect of claims arising out of its liability referred to in clauses 6.2 and 6.3 as modified by clause 6.4.<sup>[11]</sup> The obligation of the Sub-Contractor to take out and maintain insurance in respect of its liability for any loss or damage to property as stated in clause 6.3 shall not extend to loss or damage to the Sub-Contract Works or Sub-Contract Site Materials by Specified Perils up to and including the Terminal Date, but:

6.5.1.1 the insurance in respect of claims for personal injury to or the death of any employee of the Sub-Contractor arising out of and in the course of such person's employment shall comply with all relevant legislation;

6.5.1.2 for all other claims to which clause 6.5.1 applies<sup>[12]</sup>, the insurance cover shall indemnify the Contractor in like manner to the Sub-Contractor (but only to the extent that the Sub-Contractor may be liable to indemnify the Contractor under the terms of this Sub-Contract) and shall be in a sum not less than that stated in the Sub-Contract Particulars (item 16) for any one occurrence or series of occurrences arising out of one event.<sup>[13]</sup>

6.5.2 Notwithstanding clauses 6.2, 6.3 and 6.5.1, the Sub-Contractor shall not be liable either to indemnify the Contractor or to insure against any personal injury to or the death of any person or any damage, loss or injury to the Main Contract Works, Site Materials, work executed, the site or any other property, caused by the effect of an Excepted Risk.

6.5.3 As and when reasonably required to do so by the Contractor, the Sub-Contractor shall send to the Contractor documentary evidence that the insurances required by clause 6.5.1 have been taken out and are being maintained, and at any time the Contractor may (but shall not unreasonably or vexatiously) require the Sub-Contractor to produce the relevant policy or policies and related premium receipts.

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[11] The Sub-Contractor has the benefit of the Main Contract Joint Names Policy for loss or damage by the Specified Perils to the Sub-Contract Works but not for other risks e.g. subsidence, impact, theft or vandalism. The insurance to which clause 6.5.1 refers in respect of loss or damage to property is a third party or public liability policy; such policy will not however give cover for the Sub-Contract Works and Sub-Contract Site Materials while they are in the custody and control of the Sub-Contractor. The Sub-Contractor is liable for those other risks if they cause loss or damage to the Sub-Contract Works or Sub-Contract Site Materials and therefore it may well consider that it should take out its own Works insurance to provide the cover which it does not get under the Main Contract Joint Names Policy.

[12] It should be noted that the cover granted under public liability policies taken out pursuant to clause 6.5.1 may not be co-extensive with the indemnity given to the Contractor in clauses 6.2 and 6.3: for example, each claim may be subject to the excess in the policy and cover may not be available in respect of loss or damage due to gradual pollution.

[13] The Sub-Contractor may, if it wishes, insure for a sum greater than that stated in the Sub-Contract Particulars (item 16).

- 6.5.4 If the Sub-Contractor defaults in taking out or in maintaining insurance in accordance with clause 6.5.1 the Contractor may itself insure against any liability or expense which it may incur as a result of such default and the amount paid or payable by it in respect of premiums therefor may be deducted from any sums due or to become due to the Sub-Contractor under this Sub-Contract or shall be recoverable from the Sub-Contractor as a debt.

## **Insurance – Loss or Damage to Work and Site Materials**

### **6.6 Specified Perils cover under the Works Insurance Policy**

- 6.6.1 The Contractor shall, prior to the commencement of the Sub-Contract Works, ensure that the Works Insurance Policy under whichever of Insurance Options A, B or C (paragraph C.2) applies to the Main Contract is issued and/or endorsed in terms that, in respect of loss or damage by the Specified Perils to the Main Contract Works or relevant Section, work executed and Site Materials insured thereunder, either the Sub-Contractor is recognised as an insured under that Policy or the insurers waive any right of subrogation which they may have against the Sub-Contractor; and that this recognition or waiver shall continue in respect of the Sub-Contract Works or such work in the Section up to and including the Terminal Date.
- 6.6.2 As and when reasonably required to do so by the Sub-Contractor, the Contractor shall produce such documentary evidence as the Sub-Contractor may reasonably require that the Works Insurance Policy has been effected and is being maintained in compliance with the provisions of clause 6.6.1.
- 6.6.3 If the Contractor fails within 14 days of the Sub-Contractor's request to provide the documentary evidence referred to in clause 6.6.2 the Sub-Contractor may itself insure against any liability or expense which it may incur as a result of such default and the amount paid or payable by it in respect of premiums therefor shall be taken into account in the calculation of the Final Sub-Contract Sum or be recoverable by the Sub-Contractor from the Contractor as a debt.

### **6.7 Sub-Contractor's responsibility – damage to the Sub-Contract Works etc.**

- 6.7.1 The Sub-Contractor shall, subject to clause 6.7.2, be responsible for the cost of restoration of Sub-Contract Works and replacement or repair of any Sub-Contract Site Materials that are lost or damaged on or before the Terminal Date and of the removal and disposal of any resultant debris in accordance with clause 6.7.3 except to the extent that the loss or damage to the Sub-Contract Works or Sub-Contract Site Materials is due to:
- 6.7.1.1 any Specified Peril (whether or not caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any Sub-Contractor's Person), any Excepted Risk or any other act of terrorism; or
- 6.7.1.2 any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person or the Employer or any Employer's Person or any Statutory Provider.

The exceptions set out in clause 6.7.1.1 apply whether or not the Employer or the Contractor as Joint Insured makes a claim under the Joint Names Policy covering the Main Contract Works and Site Materials and irrespective of any excess under that Policy.

- 6.7.2 Where during the progress of the Sub-Contract Works sub-contract materials or goods have been fully, finally and properly incorporated into the Main Contract Works before the Terminal Date, then, in respect of loss or damage to any of the Sub-Contract Works so incorporated that is caused by the occurrence of a peril other than a Specified Peril, the Sub-Contractor shall only be responsible for the cost of restoration of such work lost or damaged and removal and disposal of any debris in accordance with clause 6.7.3 to the extent that such loss or damage is caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any Sub-Contractor's Person.

- 6.7.3 If before the Terminal Date any loss or damage is occasioned to the Sub-Contract Works or Sub-Contract Site Materials, whether by any Specified Peril or otherwise, then, upon its occurrence or later discovery, the Sub-Contractor shall forthwith give notice to the Contractor of its extent, nature and location. The Sub-Contractor shall in accordance with any directions of the Contractor and with due diligence restore lost or damaged Sub-Contract Works, replace or repair any lost or damaged Sub-Contract Site Materials, remove and dispose of any debris and proceed with the carrying out of the Sub-Contract Works.
- 6.7.4 Where under clause 6.7.1 or 6.7.2 the Sub-Contractor is not responsible for the cost of compliance with clause 6.7.3, such compliance shall be treated as a Variation. The occurrence of loss or damage affecting the Sub-Contract Works occasioned by any Specified Peril shall be disregarded in computing any amounts payable to the Sub-Contractor under this Sub-Contract.
- 6.7.5 The Sub-Contractor shall not object to the payment to the Employer by the insurers under the Joint Names Policy of any relevant insurance monies.
- 6.7.6 The Sub-Contractor shall not be responsible for loss or damage to the Sub-Contract Works occurring after the Terminal Date, except to the extent of any loss or damage caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any Sub-Contractor's Person.
- 6.7.7 Nothing in this clause 6.7 shall in any way modify the Sub-Contractor's obligations in regard to defects in the Sub-Contract Works as set out in clause 2.22.
- 6.7.8 For the purposes of clause 6.7.2 only, materials and goods forming part of the Sub-Contract Works shall be deemed to have been fully, finally and properly incorporated into the Main Contract Works when in each case they have been completed by the Sub-Contractor to the extent indicated or referred to in the Sub-Contract Particulars (item 17).

#### **6.8 Terrorism Cover – non-availability – Employer's options**

- 6.8.1 If the insurers named in any Joint Names Policy effected under the Main Contract notify the Contractor or the Employer that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the Contractor shall immediately notify the Sub-Contractor and, as soon as notified by the Employer, shall notify the Sub-Contractor of the Employer's election under clause 6.11.2 of the Main Contract Conditions.
- 6.8.2 If the Employer gives notice under clause 6.11.2.2 of the Main Contract Conditions to terminate the Contractor's employment under the Main Contract, then upon and from the date stated by the Employer in its notice to the Contractor the Sub-Contractor's employment under this Sub-Contract shall terminate. Upon and from such termination the provisions of clause 7.11 shall apply.
- 6.8.3 If the Employer does not give notice to terminate the Contractor's employment, then:
- 6.8.3.1 if Sub-Contract Works executed and/or Sub-Contract Site Materials suffer physical loss or damage caused by terrorism, the Sub-Contractor shall with due diligence restore lost or damaged work, replace or repair any lost or damaged Sub-Contract Site Materials, remove and dispose of any debris and proceed with the carrying out of the Sub-Contract Works;
  - 6.8.3.2 the restoration, replacement or repair of such loss or damage and (when required) the removal and disposal of debris shall be treated as a Variation with no reduction in any amount payable to the Sub-Contractor pursuant to this clause 6.8.3.2 by reason of any act or neglect of the Sub-Contractor or of any of its sub-contractors which may have contributed to the physical loss or damage; and
  - 6.8.3.3 where Insurance Option C applies in respect of the Works Insurance Policy and subject to clause 6.14 of the Main Contract, the requirement that the Sub-Contract Works continue to be carried out shall not be affected by any loss or damage to the existing structures and/or their contents caused by terrorism.

**6.9 Damage to Sub-Contractor's plant, etc.**

In the case of loss of or damage to temporary works, plant, tools, equipment or other property belonging to or provided by the Sub-Contractor or the Sub-Contractor's Persons or to any materials or goods of the Sub-Contractor which are not Sub-Contract Site Materials, the Contractor shall be responsible only to the extent that such loss or damage is due to any negligence, breach of statutory duty, omission or default of the Contractor or any Contractor's Person.

**6.10 Not used**

**6.11 Not used**

**Joint Fire Code – compliance**

**6.12 Application of clauses**

Clauses 6.13 to 6.15 apply where the Main Contract Particulars state that the Joint Fire Code applies.

**6.13 Compliance with Joint Fire Code**

The Parties shall comply with the Joint Fire Code and any amendments or revisions to it; the Contractor shall ensure such compliance by all Contractor's Persons and the Sub-Contractor shall ensure such compliance by all Sub-Contractor's Persons. The Sub-Contractor shall comply with any directions of the Contractor necessary for such compliance.

**6.14 Breach of Joint Fire Code – Remedial Measures**

6.14.1 Where there is a breach of the Joint Fire Code under clause 6.18 of the Main Contract Conditions and the Contractor is required by the insurers to carry out remedial measures ('the Remedial Measures'), the Contractor shall forthwith send to the Sub-Contractor a copy of the notice requiring the Remedial Measures; and the Sub-Contractor shall comply with such directions of the Contractor as are reasonably necessary for implementing them in respect of the Sub-Contract Works.

6.14.2 Save to the extent that the breach and Remedial Measures arise from an act, omission or default of the Sub-Contractor or any Sub-Contractor's Person, compliance by the Sub-Contractor with the Contractor's directions under clause 6.14.1 shall be treated as a Variation.

6.14.3 If the Sub-Contractor, within 4 days of receipt of a direction under clause 6.14.1, does not begin to comply with it or thereafter fails without reasonable cause regularly and diligently to comply, the provisions of clause 3.6 shall apply.

6.14.4 To the extent that the breach and Remedial Measures arise from an act, omission or default of the Sub-Contractor or any Sub-Contractor's Person, the Sub-Contractor shall be liable for the additional cost incurred by the Contractor in taking the Remedial Measures which shall be recoverable by the Contractor from the Sub-Contractor either through an appropriate deduction in calculating the Final Sub-Contract Sum or as a debt.

**6.15 Joint Fire Code – amendments/revisions**

Where the Joint Fire Code is applicable to the Main Contract Works and amendments or revisions are made to it after the Sub-Contract Base Date, the cost, if any, of compliance by the Sub-Contractor with amendments or revisions made after that date shall be added into the calculation of the Final Sub-Contract Sum.

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**General****7.1 Meaning of insolvency**

For the purposes of these Conditions:

- 7.1.1 a company becomes Insolvent:
  - 7.1.1.1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
  - 7.1.1.2 on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
  - 7.1.1.3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
  - 7.1.1.4 on the making of a winding-up order under Part IV or V of that Act.
- 7.1.2 a partnership becomes Insolvent:
  - 7.1.2.1 on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or
  - 7.1.2.2 when sequestration is awarded on the estate of the partnership under section 22 of the Bankruptcy (Scotland) Act 2016 or the partnership grants a trust deed for its creditors.
- 7.1.3 an individual becomes Insolvent:
  - 7.1.3.1 on the making of a bankruptcy order against them under Part IX of the Insolvency Act 1986; or
  - 7.1.3.2 on the sequestration of their estate under the Bankruptcy (Scotland) Act 2016 or when they grant a trust deed for their creditors.
- 7.1.4 a person also becomes Insolvent if:
  - 7.1.4.1 it enters into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction);
  - 7.1.4.2 (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this clause 7.1;
  - 7.1.4.3 (in the case of a company) a moratorium pursuant to Part A1 of the Insolvency Act 1986 comes into force with respect to it; or
  - 7.1.4.4 (in the case of a company) an order is made sanctioning a compromise or arrangement pursuant to Part 26A of the Companies Act 2006 with respect to it.

Each of clauses 7.1.1 to 7.1.4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

**7.2 Notices under section 7**

- 7.2.1 Notice of termination of the Sub-Contractor's employment shall not be given unreasonably or vexatiously.
- 7.2.2 Such termination shall take effect on receipt of the relevant notice.

- 7.2.3 Each notice referred to in this section, except for the notices referred to in clause 7.12, shall be given in accordance with clause 1.7.4.

### **7.3 Other rights, reinstatement**

- 7.3.1 The provisions of clauses 7.4 to 7.8, 7.10 and 7.11 are without prejudice to any other rights and remedies which the Contractor or the Sub-Contractor may possess.
- 7.3.2 Irrespective of the grounds of termination, the Sub-Contractor's employment may at any time be reinstated if and on such terms as the Parties agree.

## **Termination by Contractor**

### **7.4 Default by Sub-Contractor**

- 7.4.1 If, before practical completion of the Sub-Contract Works, the Sub-Contractor:
- 7.4.1.1 without reasonable cause wholly or substantially suspends the carrying out of the Sub-Contract Works; or
  - 7.4.1.2 fails to proceed regularly and diligently with the Sub-Contract Works; or
  - 7.4.1.3 refuses or neglects to comply with a direction from the Contractor requiring it to remove any work, materials or goods not in accordance with this Sub-Contract and by such refusal or neglect the Main Contract Works are materially affected; or
  - 7.4.1.4 fails to comply with clause 3.1 or 3.2; or
  - 7.4.1.5 fails to comply with clause 3.21,
- the Contractor may give a notice to the Sub-Contractor specifying the default or defaults (a 'specified' default or defaults).
- 7.4.2 If the Sub-Contractor continues a specified default for 10 days from receipt of the notice under clause 7.4.1, the Contractor may on, or within 21 days from, the expiry of that 10 day period by a further notice to the Sub-Contractor terminate the Sub-Contractor's employment under this Sub-Contract.
- 7.4.3 If the Contractor does not give the further notice referred to in clause 7.4.2 (whether as a result of the ending of any specified default or otherwise) but the Sub-Contractor repeats a specified default (whether previously repeated or not), then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Sub-Contractor terminate that employment.

### **7.5 Insolvency of Sub-Contractor**

- 7.5.1 If the Sub-Contractor is Insolvent, the Contractor may at any time by notice to the Sub-Contractor terminate the Sub-Contractor's employment under this Sub-Contract.
- 7.5.2 The Sub-Contractor shall immediately notify the Contractor if it makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 7.1.
- 7.5.3 As from the date the Sub-Contractor becomes Insolvent, whether or not the Contractor has given such notice of termination:
- 7.5.3.1 the Sub-Contractor's obligations under Article 2 and these Conditions to carry out and complete the Sub-Contract Works shall be suspended; and
  - 7.5.3.2 the Contractor may take reasonable measures to ensure that the Sub-Contract Works and Sub-Contract Site Materials are adequately protected and that such Sub-Contract Site Materials are retained on site; the Sub-Contractor shall allow and shall not hinder or delay the taking of those measures.

## 7.6 Corruption

The Contractor shall be entitled by notice to the Sub-Contractor to terminate the Sub-Contractor's employment, under this Sub-Contract or any other contract with the Contractor if, in relation to this or any other such contract, the Sub-Contractor or any person employed by it or acting on its behalf shall have committed an offence under the Bribery Act 2010, or, where the Employer is a Local or Public Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972.

## 7.7 Consequences of termination under clauses 7.4 to 7.6

If the Sub-Contractor's employment is terminated under clause 7.4, 7.5 or 7.6:

- 7.7.1 the Contractor may employ and pay other persons to carry out and complete the Sub-Contract Works and to make good any defects of the kind referred to in clause 2.22.1, or may do so itself, and the Contractor and such other persons may enter upon and take possession of the Sub-Contract Works and (subject to obtaining any necessary third party consents) may use all the Sub-Contractor's temporary buildings, plant, tools, equipment and Sub-Contract Site Materials for those purposes;
- 7.7.2 the Sub-Contractor shall:
  - 7.7.2.1 when required in writing by the Contractor to do so (but not before), remove or procure the removal from the site of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Sub-Contractor or Sub-Contractor's Persons;
  - 7.7.2.2 if so required by the Contractor within 14 days of the date of termination, assign (so far as assignable and so far as it may lawfully be required to do so) to the Contractor, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Sub-Contract<sup>[14]</sup>;
- 7.7.3 no further sum shall become due to the Sub-Contractor under this Sub-Contract other than any amount that may become due to it under clause 7.7.5 and the Contractor need not pay any sum that has already become due either:
  - 7.7.3.1 insofar as the Contractor has given or gives a Pay Less Notice under clause 4.7.5; or
  - 7.7.3.2 if the Sub-Contractor, after the last date upon which such notice could have been given by the Contractor in respect of that sum, has become insolvent within the meaning of clauses 7.1.1 to 7.1.3;
- 7.7.4 upon completion of the Sub-Contract Works and the making good of defects of the kind referred to in clause 2.22.1 ('completion') or earlier termination of the Contractor's employment, however arising, the Contractor shall forthwith notify the Sub-Contractor (stating in such notification that it is a notice under this clause 7.7.4) of the date of completion or termination and such completion or termination shall be deemed for the purposes of this clause 7.7 to have taken place on the date so notified;
- 7.7.5 the due date for the Termination Payment under clause 7.7.6 shall be 2 months after the date of completion or termination as referred to in clause 7.7.4;
- 7.7.6 the amount due on termination shall be the value of any work executed or goods and materials supplied by the Sub-Contractor to the extent not included in previous payments less (without prejudice to any other rights of the Contractor) the amount of any direct loss and/or damage caused to the Contractor as a result of the termination and any other amounts payable to the Contractor under this Sub-Contract. To the extent that the amounts due to the Contractor exceed the amounts due to the Sub-Contractor the balance shall be payable by the Sub-Contractor and to the extent that the amounts due to the Sub-Contractor exceed the amounts due to the Contractor the balance shall be payable by the Contractor (the 'Termination Payment').

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[14] Clause 7.7.2.2 may not be effectual in cases of Sub-Contractor's insolvency.

## **Termination by Sub-Contractor etc.**

### **7.8 Default by Contractor**

#### **7.8.1 If the Contractor:**

- 7.8.1.1 without reasonable cause wholly or substantially suspends the carrying out of the Main Contract Works; or
- 7.8.1.2 without reasonable cause fails to proceed with the Main Contract Works so that the reasonable progress of the Sub-Contract Works is seriously affected; or
- 7.8.1.3 fails to make payment in accordance with the Sub-Contract; or
- 7.8.1.4 fails to comply with clause 3.21,

the Sub-Contractor may give to the Contractor a notice specifying the default or defaults (a 'specified' default or defaults).

#### **7.8.2 If a specified default continues for 10 days from receipt of notice under clause 7.8.1, the Sub-Contractor may on, or within 21 days from, the expiry of that 10 day period by a further notice to the Contractor terminate the Sub-Contractor's employment under this Sub-Contract.**

#### **7.8.3 If the Sub-Contractor for any reason does not give the further notice referred to in clause 7.8.2 but (whether previously repeated or not) the Contractor repeats a specified default, then, upon or within a reasonable time after such repetition, the Sub-Contractor may by notice to the Contractor terminate the Sub-Contractor's employment under this Sub-Contract.**

### **7.9 Termination under the Main Contract**

If the Contractor's employment under the Main Contract is terminated, the Contractor shall immediately notify the Sub-Contractor stating the date of such termination. The Sub-Contractor's employment under this Sub-Contract shall terminate forthwith on the date of such termination unless prior to the date of termination of the Contractor's employment third party rights have vested in any Funder and/or the Employer pursuant to clause 2.26.3 and/or the Sub-Contractor has executed and delivered a collateral warranty or collateral warranties in favour of any such person pursuant to clause 2.26.4 and such rights or warranty entitle the beneficiary, in the event of termination of the Contractor's employment, to issue a written notice to the Sub-Contractor to accept the instructions of the beneficiary or its appointee to the exclusion of the Contractor, in which case:

#### **7.9.1 the Sub-Contractor may suspend the performance of its obligations under this Sub-Contract with effect from the date of termination of the Contractor's employment until receipt of any such written notice (if one is served), or if no such notice is served the Sub-Contractor's employment under this Sub-Contract shall immediately terminate on the day after the last date on which such written notice may be served;**

#### **7.9.2 any such suspension shall be deemed to be a suspension as a result of an instruction of the Architect/Contract Administrator under the Main Contract passed on as a direction by the Contractor under this Sub-Contract.**

### **7.10 Insolvency of Contractor**

#### **7.10.1 If the Contractor is Insolvent or makes any proposal, gives notice of any meeting or becomes the subject of any proceedings relating to any of the matters referred to in clause 7.1, the Contractor shall immediately notify the Sub-Contractor.**

#### **7.10.2 If the Contractor is Insolvent:**

- 7.10.2.1 the Sub-Contractor shall be entitled by notice to the Contractor to terminate the Sub-Contractor's employment under the Sub-Contract, but, unless the Sub-Contractor shall have given notice of a specified default or defaults under clause 7.8.1 prior to its being notified that the Contractor is Insolvent, the Sub-Contractor shall not exercise that right either under clause 7.8.1 or this clause 7.10.2.1 prior to the expiry of a period of 3 weeks (or such further period as the Parties may agree) from the date upon which the Contractor became Insolvent;
- 7.10.2.2 pending such termination of the Sub-Contractor's employment (whether under clause 7.8, 7.9 or 7.10.2.1) or the date for commencement of any continuation agreed between the Parties, the Sub-Contractor's obligations under Article 2 and these Conditions to carry out and complete the Sub-Contract Works shall be suspended; and
- 7.10.2.3 such suspension of the Sub-Contractor's obligations shall for the purposes of clauses 2.19 and 4.16.8 be deemed to be a default of the Contractor.

## **7.11 Consequences of termination under clauses 7.8 to 7.10**

If the Sub-Contractor's employment is terminated under clause 7.8, 7.9 or 7.10:

- 7.11.1 no further sums shall become due to the Sub-Contractor otherwise than in accordance with this clause 7.11;
- 7.11.2 the Sub-Contractor shall with all reasonable dispatch remove or procure the removal from the site of any temporary buildings, plant, tools and equipment belonging to the Sub-Contractor and Sub-Contractor's Persons and, subject to the provisions of clause 7.11.5, all goods and materials (including Sub-Contract Site Materials);
- 7.11.3 the Sub-Contractor shall not later than 2 months after the date of termination provide the Contractor with all documents necessary for calculating the amounts referred to in clause 7.11.5, and not later than 3 months after receipt of those documents the Contractor shall prepare and send to the Sub-Contractor an account which shall set out the amounts referred to in clause 7.11.5;
- 7.11.4 the due date for the Termination Payment under clause 7.11.5 shall be the last date for issue of the Contractor's account under clause 7.11.3;
- 7.11.5 the amount due on termination from the Contractor to the Sub-Contractor or (if a negative amount) from the Sub-Contractor to the Contractor shall be the aggregate of:
  - 7.11.5.1 the total value of work properly executed at the date of termination of the Sub-Contractor's employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Sub-Contractor under these Conditions;
  - 7.11.5.2 any sums ascertained in respect of direct loss and/or expense under clause 4.15 (whether ascertained before or after the date of termination);
  - 7.11.5.3 the reasonable cost of removal under clause 7.11.2;
  - 7.11.5.4 the cost of materials or goods (including Sub-Contract Site Materials) properly ordered for the Sub-Contract Works for which the Sub-Contractor then has paid or is legally bound to pay; and
  - 7.11.5.5 any direct loss and/or damage caused to the Sub-Contractor by the termination, provided that this clause 7.11.5.5 shall not apply in the case of any termination of the Sub-Contractor's employment where the termination occurs under clause 7.9 by reason of any of the events specified in clause 8.11.1 of the Main Contract Conditions, other than loss or damage to the Main Contract Works caused by the negligence or default of the Employer or of any of the Employer's Persons, or termination under clause 6.11.2.2 or 6.14 of the Main Contract Conditions, but shall otherwise apply in respect of termination under any of clauses 7.8 to 7.10,

less amounts previously paid to the Sub-Contractor under this Sub-Contract, but without deduction of any Retention (the 'Termination Payment'). Payment by the Contractor for any such materials and goods as are referred to in clause 7.11.5.4 shall be subject to those materials and goods thereupon becoming the Contractor's property.

## **Termination Payment – final date, notices and amount**

### **7.12 Termination Payment – final date, notices and amount**

- 7.12.1 Subject to clause 7.12.5, the final date for payment of the Termination Payment shall be 14 days from its due date, as fixed in accordance with clause 7.7.5 or 7.11.4.
- 7.12.2 Not later than 5 days after the due date for the Termination Payment the Contractor shall give a notice to the Sub-Contractor, stating the sum that it considers to be or have been due at the due date, calculated in accordance with clause 7.7.6 or 7.11.5, and the basis on which that sum has been calculated (the 'Contractor's Termination Payment Notice'). Such notice shall show the amount referred to in clause 7.7.6 or 7.11.5 as a balance due to the Sub-Contractor from the Contractor or vice versa.
- 7.12.3 If the Party by which the Termination Payment is stated to be payable ('the payer') intends to pay less than the stated balance, it shall not later than 5 days before the final date for payment give the other Party a Pay Less Notice in accordance with clause 4.7.6.
- 7.12.4 Where a Pay Less Notice is given under clause 7.12.3, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.
- 7.12.5 If a Contractor's Termination Payment Notice is not given in accordance with clause 7.12.2:
- 7.12.5.1 the Sub-Contractor may at any time after the 5 day period referred to in clause 7.12.2 give a notice to the Contractor, stating the sum that the Sub-Contractor considers to have become due under clause 7.7.6 or 7.11.5 at the due date and the basis on which that sum has been calculated (the 'Sub-Contractor's Termination Payment Notice') and, subject to any Pay Less Notice given under clause 7.12.5.3, the Termination Payment shall be the sum stated as due in the Sub-Contractor's Termination Payment Notice;
  - 7.12.5.2 if the Sub-Contractor gives a Sub-Contractor's Termination Payment Notice, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 7.12.2 that the Sub-Contractor's Termination Payment Notice is given;
  - 7.12.5.3 following the Sub-Contractor's Termination Payment Notice the Contractor may not later than 5 days before the final date for payment give a Pay Less Notice in accordance with clause 4.7.6 and, if it gives such notice, the provisions of clause 7.12.4 shall correspondingly apply.
- 7.12.6 If the payer fails to pay the Termination Payment, or any part of it, by the final date for its payment, the payer shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made. Acceptance of a payment of any such interest shall not in any circumstances be construed as a waiver of any right to proper payment of the principal amount due. Any such unpaid amount and any interest under this clause 7.12.6 shall be recoverable as a debt.
- 7.12.7 In relation to the requirements in this clause 7.12 for the giving of Contractor's Termination Payment Notices, and Pay Less Notices, it is immaterial that the amount then considered to be due may be zero.

## Notification and negotiation of disputes

### 8.1 Notification and negotiation of disputes

With a view to avoidance or early resolution of disputes or differences (subject to Article 6), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Sub-Contract Particulars (item 18) (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.

## Mediation

### 8.2 Mediation

Subject to Article 6, if a dispute or difference arises under this Sub-Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.<sup>[15]</sup>

## Adjudication

### 8.3 Adjudication

If a dispute or difference arises under this Sub-Contract which either Party wishes to refer to adjudication, the Scheme shall apply, subject to the following:

8.3.1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Sub-Contract Particulars (item 18);

8.3.2 where the dispute or difference is or includes a dispute or difference relating to clause 3.11.3 and as to whether a direction issued thereunder is reasonable in all the circumstances:

8.3.2.1 the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the direction or issue in dispute;

8.3.2.2 if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the direction under clause 3.11.3 is reasonable in all the circumstances.

## Arbitration

### 8.4 Conduct of arbitration

Any arbitration pursuant to Article 7 shall be conducted in accordance with the JCT 2024 edition of the Construction Industry Model Arbitration Rules (CIMAR), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice in writing to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in clause 8.5 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2024 edition of CIMAR.<sup>[16]</sup>

[15] See the Standard Building Sub-Contract Guide.

[16] Arbitration or legal proceedings are **not** an appeal against the decision of the Adjudicator but are a consideration of the dispute or difference as if no decision had been made by an Adjudicator.

## **8.5 Notice of reference to arbitration**

- 8.5.1 Where pursuant to Article 7 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2.3 by the person selected in accordance with the Sub-Contract Particulars (item 18).
- 8.5.2 Where two or more related arbitral proceedings in respect of the Main Contract Works or the Sub-Contract Works fall under separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.
- 8.5.3 After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 7 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

## **8.6 Powers of Arbitrator**

Subject to the provisions of Article 7 and clause 1.8, the Arbitrator shall, without prejudice to the generality of their powers, have power to rectify this Sub-Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in their opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to them in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

## **8.7 Effect of award**

Subject to clause 8.8 the award of the Arbitrator shall be final and binding on the Parties.

## **8.8 Appeal – questions of law**

The Parties hereby agree pursuant to section 45(2)(a) and section 69(2)(a) of the Arbitration Act 1996 that either Party may (upon notice to the other Party and to the Arbitrator):

- 8.8.1 apply to the courts to determine any question of law arising in the course of the reference; and
- 8.8.2 appeal to the courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.

## **8.9 Arbitration Act 1996**

The provisions of the Arbitration Act 1996 shall apply to any arbitration under this Sub-Contract wherever the same, or any part of it, shall be conducted.

# Schedules

## Schedule 1 Supplemental Provisions

(Sixth Recital)

Supplemental Provisions 1 to 3 apply unless otherwise stated in the Sub-Contract Particulars (item 1). Supplemental Provision 4 applies where the Employer is a Local or Public Authority and the Main Contract is subject to the PC Regulations.

### Health and safety

1

- 1.1 Without limiting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of this Sub-Contract, the Parties will endeavour to establish and maintain a culture and working environment in which health and safety is of paramount concern to everybody involved with the project.
- 1.2 In addition to the specific health and safety requirements of this Sub-Contract, the Sub-Contractor undertakes to:
  - 1.2.1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
  - 1.2.2 ensure that all personnel engaged by the Sub-Contractor and members of the Sub-Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
  - 1.2.3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and
  - 1.2.4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.

### Cost savings and value improvements

2

- 2.1 The Sub-Contractor is encouraged to propose changes to designs and specifications for the Sub-Contract Works and/or to the programme for their execution that may benefit the Contractor and/or the Employer, whether in the form of a reduction in the cost of the Main Contract Works or their associated life cycle costs, through practical completion at a date earlier than the Completion Date or otherwise.
- 2.2 The Sub-Contractor shall provide details of its proposed changes, identifying them as suggested under this Supplemental Provision 2, together with its assessment of the benefit it believes the Employer may obtain, expressed in financial terms, and a quotation.
- 2.3 Where the Employer wishes to implement a change proposed by the Sub-Contractor, the Employer, Contractor and Sub-Contractor shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to time. Upon agreement, the change and the amount to be included in the Final Sub-Contract Sum shall be confirmed in a direction, together with the share of the financial benefit to be paid to the Sub-Contractor and any adjustment to the period(s) for completion.

- 2.4 Original proposals by the Sub-Contractor under this Supplemental Provision 2 may only be directed by the Contractor in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after practical completion of the Main Contract Works.

### **Performance Indicators and monitoring**

## **3**

- 3.1 The Contractor shall monitor and assess the Sub-Contractor's performance by reference to any performance indicators stated or identified in the Sub-Contract Documents.
- 3.2 The Sub-Contractor shall provide to the Contractor all information that the Contractor may reasonably require to monitor and assess the Sub-Contractor's performance against the targets for those performance indicators.
- 3.3 Where the Contractor considers that a target for any of those performance indicators may not be met, it may inform the Sub-Contractor and the Sub-Contractor shall submit its proposals for improving its performance against that target to the Contractor.

### **The Public Contracts Regulations 2015<sup>[17]</sup>**

## **4**

- 4.1 Where the Main Contract is subject to the provisions of regulation 113 of the PC Regulations the Sub-Contractor shall include in any sub-subcontract it enters into for work included in this Sub-Contract suitable provisions to impose the requirements of regulation 113(2)(c)(ii).
- 4.2 Where the Employer is a Local or Public Authority and the Main Contract is subject to the PC Regulations, the Contractor shall be entitled to terminate the Sub-Contractor's employment under this Sub-Contract by notice to the Sub-Contractor in accordance with the provisions of clause 7.2 if there are grounds for excluding the Sub-Contractor under regulation 57 of the PC Regulations and where the Sub-Contractor's employment is terminated under this paragraph 4.2 of Supplemental Provision 4 the consequences of termination under clause 7.7 shall apply.
- 4.3 Where the Sub-Contractor's employment under this Sub-Contract is terminated under clause 7.9 upon termination of the Contractor's employment under the Main Contract on the grounds set out in regulation 73(1) of the PC Regulations as referred to in clause 8.6 (where regulation 73(1)(b) applies) or clause 8.11.3 (where regulation 73(1)(a) applies) of the Main Contract Conditions the consequences set out in clause 7.11 of this Sub-Contract shall apply, except that clause 7.11.5 shall not apply in the case of termination of the Sub-Contractor's employment where this occurs by reason of termination under clause 8.11.3 of the Main Contract Conditions but shall apply where it occurs by reason of termination under clause 8.6 of the Main Contract Conditions on the grounds set out in regulation 73(1)(b) of the PC Regulations as referred to in that clause.
- 4.4 Where the Employer is a Local or Public Authority and the Main Contract is subject to the PC Regulations the Sub-Contractor shall supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations and shall include in any sub-subcontract it enters into for work included in this Sub-Contract requirements to the same effect as required under this paragraph 4.4 of Supplemental Provision 4.

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[17] See the Standard Building Sub-Contract Guide. The JCT Sub-subcontract meets the requirements of Supplemental Provision 4 (where applicable).

## Schedule 2 Variation and Acceleration Quotation Procedures

(Clause 5.3)

### Variation Quotation

1

- 1.1 Any direction of the Contractor requesting a Variation Quotation shall provide sufficient information<sup>[18]</sup> to enable the Sub-Contractor to provide that quotation in accordance with paragraph 1.2. If the Sub-Contractor reasonably considers that the information provided is not sufficient, then, not later than 4 days from the receipt of the direction, it shall notify the Contractor and the Contractor shall supply the information that the Sub-Contractor reasonably requires.
- 1.2 The Variation Quotation shall separately comprise:
- 1.2.1 the amount of the adjustment to the Sub-Contract Sum and/or Final Sub-Contract Sum, excluding any loss and/or expense referred to in paragraph 1.2.3, but including the effect of the direction on any other work (supported by all necessary calculations, which shall be made by reference, where relevant, to the rates and prices in the Sub-Contract Documents) and including also, where appropriate, allowances for any adjustment of preliminary items;<sup>[19]</sup>
  - 1.2.2 any adjustment to the time required for completion of the Sub-Contract Works and/or of such works in any Section by reference to the period or periods stated in the Sub-Contract Particulars (item 6) to the extent that such adjustment is not included in any other adjustment of time;
  - 1.2.3 the amount to be paid in respect of any direct loss and/or expense that is not included in any other amount agreed or accepted by the Contractor;
  - 1.2.4 a fair and reasonable amount in respect of the cost of preparing the quotation;
  - 1.2.5 where specifically required by the direction, indicative statements on:
    - 1.2.5.1 the additional resources (if any) required to carry out the Variation; and
    - 1.2.5.2 the method of carrying out the Variation.
- Each part of the quotation shall contain supporting information that is reasonably sufficient to enable that part to be evaluated by the Contractor.
- 1.3 The Variation for which the Sub-Contractor has submitted a Variation Quotation shall not be carried out until the Sub-Contractor receives the Contractor's acceptance of it under paragraph 4 or a direction under paragraph 5.1.1.

[18] The information provided to the Sub-Contractor should normally be in a similar format to that provided at the tender stage. If an addendum bill is provided, see clauses 2.8 and 2.9.

[19] If a Fluctuations Provision applies under the Sub-Contract and is also to apply in respect of the Variation, that should be stated in the quotation and an appropriate base date should be given for calculation purposes.

## Acceleration Quotation

### 2

- 2.1 If the Contractor wishes to investigate the possibility of the Sub-Contractor completing all or any of the Sub-Contract Works at a date or dates earlier than expiry of the relevant period or periods for their completion it may invite proposals from the Sub-Contractor in that regard (an 'Acceleration Quotation'). The Sub-Contractor on receiving such an invitation shall either:
- 2.1.1 provide an Acceleration Quotation accordingly, identifying the time that can be saved, the amount of the adjustment to the Sub-Contract Sum and/or Final Sub-Contract Sum (inclusive of such amounts as are referred to in paragraphs 1.2.3 and 1.2.4) and any other conditions attached; or
  - 2.1.2 explain why it would be impracticable to achieve practical completion earlier than the expiry of the relevant period for completion.
- 2.2 The Contractor may on or before receipt of the quotation seek revised proposals.
- 2.3 Without affecting its obligations under clauses 2.1 and 2.3, the Sub-Contractor shall be under no obligation to accelerate, or take any steps for that purpose, until it receives the Contractor's acceptance of its Acceleration Quotation under paragraph 4.

## Time for submission and acceptance

### 3

- 3.1 Unless otherwise agreed, the Sub-Contractor's Variation Quotation or Acceleration Quotation shall be submitted in compliance with the direction or invitation not later than 14 days from the later of:
- 3.1.1 the date of receipt of the direction or invitation; or
  - 3.1.2 the date of receipt by the Sub-Contractor of information sufficient to enable it to prepare the quotation.
- 3.2 The quotation shall remain open for acceptance by the Contractor for not less than 14 days from its receipt by the Contractor.
- 3.3 The Parties may agree to increase or reduce any of the periods referred to in clause 5.3.1 or this Schedule; confirmation of such agreement shall be notified to the Sub-Contractor by the Contractor.

## Acceptance of the quotation

### 4

- If the Contractor wishes to accept a Variation Quotation or Acceleration Quotation, it shall within the period for acceptance confirm such acceptance by a direction to the Sub-Contractor stating:
- 4.1 the adjustment to the Sub-Contract Sum and/or Final Sub-Contract Sum (including any amounts to which paragraphs 1.2.3 and 1.2.4 refer) to be made for complying with the direction;
  - 4.2 the adjustment to the period or periods required by the Sub-Contractor for completion of the Sub-Contract Works and/or such works in a Section; and
  - 4.3 (in the case of an Acceleration Quotation) any such conditions as are referred to in paragraph 2.1.1.

## Non-acceptance of the quotation

### 5

- 5.1 If a Variation Quotation is not accepted by the expiry of the period for acceptance, the Contractor shall on the expiry of that period either:
- 5.1.1 direct that the Variation is to be carried out and is to be valued under the Valuation Rules (*clauses 5.6 to 5.12*); or

5.1.2 direct that the Variation is not to be carried out.

5.2 If a Variation Quotation or Acceleration Quotation is not accepted, a fair and reasonable amount shall be added to the Sub-Contract Sum and/or included in the Final Sub-Contract Sum in respect of the cost of its preparation provided that it has been prepared on a fair and reasonable basis. Non-acceptance by the Contractor of a quotation shall not of itself be evidence that the quotation was not prepared on such a basis.

5.3 Unless the Contractor accepts a Variation Quotation or Acceleration Quotation, neither Party may use the quotation for any purpose whatsoever.

SPECIMEN

## Schedule 3 Forms of Bonds

(Clauses 4.11 and 4.13)

(Agreed between the JCT and the British Bankers' Association<sup>[20]</sup>)

### Part 1: Bond in respect of payment for off-site materials and/or goods

1 THE parties to this Bond are:

\_\_\_\_\_

whose registered office is at \_\_\_\_\_

\_\_\_\_\_ ('the Surety'), and

\_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ ('the Contractor').

2 The Contractor and \_\_\_\_\_ ('the Sub-Contractor')  
have agreed to enter into a sub-contract ('the Sub-Contract') for works ('the Sub-Contract Works')

at \_\_\_\_\_

3 Subject to the relevant provisions of the Sub-Contract as summarised below but with which the Surety shall not at all be concerned:

3.1 the Contractor has agreed to include in an amount stated as due in a payment by the Contractor to the Sub-Contractor the value of those materials or goods or items pre-fabricated for inclusion in the Sub-Contract Works listed by the Contractor in a list which has been included as part of the Sub-Contract ('the Listed Items'), before their delivery to or adjacent to the Main Contract Works; and

3.2 the Sub-Contractor has agreed to insure the Listed Items against loss or damage for their full value under a policy of insurance protecting the interests of the Employer (the person referred to as Employer in the Sub-Contract), the Contractor and the Sub-Contractor during the period commencing with the transfer of the property in the items to the Sub-Contractor until they are delivered to or adjacent to the Main Contract Works; and

3.3 this Bond shall exclusively relate to the amount paid to the Sub-Contractor in respect of the Listed Items which have not been delivered to or adjacent to the Main Contract Works.

4 The Contractor shall in making any demand provide to the Surety a Notice of Demand in the form of the **Schedule** attached hereto which shall be accepted as conclusive evidence for all purposes under this Bond. The signatures on any such demand must be authenticated by the Contractor's bankers.

5 The Surety shall within 5 Business Days after receiving the demand pay to the Contractor the sum so demanded. 'Business Day' means the day (other than a Saturday or a Sunday) on which commercial banks are open for business in London.

[20] The British Bankers' Association has been merged into UK Finance.

- 6 Payments due under this Bond shall be made notwithstanding any dispute between the Contractor and the Sub-Contractor and whether or not the Contractor and the Sub-Contractor are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Surety from liability to the extent of such payment.
- 7 The Surety consents and agrees that the following actions by the Contractor may be made and done without notice to or consent of the Surety and without in any way affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any way be affected hereby. The actions are:
- 7.1 waiver by the Contractor of any of the terms, provisions, conditions, obligations and agreements of the Sub-Contractor or any failure to make demand upon or take action against the Sub-Contractor;
- 7.2 any modification or changes to the Sub-Contract; and/or
- 7.3 the granting of an extension of time to the Sub-Contractor without affecting the terms of clause 9.2 below.
- 8 The Surety's maximum aggregate liability under this Bond shall be \* [\_\_\_\_\_].
- 9 The obligations of the Surety under this Bond shall cease upon whichever is the earlier of:
- 9.1 the date on which all the Listed Items have been delivered to or adjacent to the Main Contract Works as certified in writing to the Surety by the Contractor; or
- 9.2 [longstop date to be given],
- and any claims hereunder must be received by the Surety in writing on or before such earlier date.
- 10 The Bond is not transferable or assignable without the prior written consent of the Surety. Such written consent will not be unreasonably withheld.
- 11 Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person which is not a party to it.
- 12 This Bond shall be governed and construed in accordance with the laws of England and Wales.

\*The value stated in the Sub-Contract which the Contractor considers will be sufficient to cover it for maximum payments to the Sub-Contractor for the Listed Items that will have been made and not delivered to the site at any one time.

**IN WITNESS** whereof this Deed of Guarantee has been duly executed and delivered on the date below:

Signed as a Deed by: \_\_\_\_\_

as the Attorney and on behalf of the Surety: \_\_\_\_\_

In the presence of:

\_\_\_\_\_  
*witness' signature*

\_\_\_\_\_  
*witness's name*

\_\_\_\_\_  
*witness's address*

Date: \_\_\_\_\_

## Schedule to Bond

(clause 4 of the Bond)

## Notice of Demand

Date of Notice: \_\_\_\_\_

Date of Bond: \_\_\_\_\_

Contractor: \_\_\_\_\_

Surety: \_\_\_\_\_

We hereby demand payment of the sum of £ \_\_\_\_\_  
being the amount stated as due in respect of Listed Items included in the amount stated as due in an  
interim payment(s) which has been duly made to the Sub-Contractor by the Contractor but such  
Listed Items have not been delivered to or adjacent to the Main Contract Works.

Address for payment: \_\_\_\_\_

This Notice is signed by the following persons who are authorised by the Contractor to act for and on  
its behalf:

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

**The above signatures to be authenticated by the Contractor's bankers**

~~~~~

## Part 2: Retention Bond

BOND dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

issued by \_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ ('the Surety')

in favour of \_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ ('the Contractor')

- 1** By a sub-contract ('the Sub-Contract') between the Contractor and

\_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ ('the Sub-Contractor')

the Contractor has agreed that it will not exercise its right under the Sub-Contract to deduct Retention from amounts included in interim payments provided the Sub-Contractor has taken out this Bond in favour of the Contractor.

- 2** The Surety is hereby bound to the Contractor in the maximum aggregate sum of

\_\_\_\_\_ (figures and words)  
until the Surety is notified by the Contractor in writing of the date of issue of the next interim payment after practical completion of the Sub-Contract Works when the maximum aggregate sum shall be reduced by 50 per cent.

- 3** The Contractor shall, on a demand which complies with the requirements in clause 4 below, be entitled to receive from the Surety the sum therein demanded.

- 4** Any demand by the Contractor under clause 3 above shall:

- 4.1 be in writing addressed to the Surety at its office at

\_\_\_\_\_ refer to this Bond, and with the signature(s) therein authenticated by the Contractor's bankers; and

- 4.2 state the amount of the Retention that would have been held by the Contractor at the date of the demand had Retention been deductible; and

- 4.3 state the amount demanded, which shall not exceed the amount stated pursuant to clause 4.2 above, and identify for which one or more of the following such amount is demanded:

4.3.1 the costs actually incurred by the Contractor by reason of the failure of the Sub-Contractor to comply with the directions of the Contractor under the Sub-Contract;

4.3.2 any expenses or any direct loss and/or damage caused to the Contractor as a result of the termination of the Sub-Contractor's employment by the Contractor;

4.3.3 any costs, other than the amounts referred to in clauses 4.3.1 and 4.3.2 above, which the Contractor has actually incurred and which, under the Sub-Contract, it is entitled to deduct from monies otherwise due or to become due to the Sub-Contractor; and identify its entitlement;

and

4.4 incorporate a certification that the Sub-Contractor has been given 14 days' written notice of its liability for the amount demanded hereunder by the Contractor and that the Sub-Contractor has not discharged that liability; and that a copy of this notice has at the same time been sent to the Surety at its office at

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Such demand as above shall, for the purposes of this Bond but not further or otherwise, be conclusive evidence (and admissible as such) that the amount demanded is properly due and payable to the Contractor by the Sub-Contractor.

- 5** If the Sub-Contract is to be assigned or otherwise transferred with the benefit of this Bond, the Contractor shall be entitled to assign or transfer this Bond only with the prior written consent of the Surety, such consent not to be unreasonably delayed or withheld.
- 6** The Surety, in the absence of a prior written demand made, shall be released from its liability under this Bond upon the earliest occurrence of either:
- 6.1 the date of issue under the Main Contract of the Certificate of Making Good as confirmed by the Contractor to the Surety; or
- 6.2 satisfaction of a demand(s) up to the maximum aggregate under the Bond; or
- 6.3 \_\_\_\_\_ (insert calendar date).
- 7** Any demand made hereunder must be received by the Surety accompanied by the documents as required by clause 4 above on or before the earliest occurrence as stated above, when this Bond will terminate and become of no further effect whatsoever.
- 8** Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person which is not a party to it.
- 9** This Bond shall be governed and construed in accordance with the laws of England and Wales.

**IN WITNESS** whereof this Deed of Guarantee has been duly executed and delivered on the date below:

Signed as a Deed by: \_\_\_\_\_

as the Attorney and on behalf of the Surety: \_\_\_\_\_

In the presence of:

\_\_\_\_\_  
*witness' signature*

\_\_\_\_\_  
*witness's name*

\_\_\_\_\_  
*witness's address*

Date: \_\_\_\_\_

## Notes<sup>[21]</sup>

- 1 The terms of this Retention Bond have been agreed with the British Bankers' Association<sup>[22]</sup>. The JCT understands that a Bond which embodies the terms of this Part 2 of Schedule 3 is, at the proposed Surety's discretion, available to Sub-Contractors where clause 4.13 of the JCT Standard Building Sub-Contracts 2024 Edition applies.
- 2 In clause 2 the figure to be inserted here is the amount stated in the Sub-Contract Particulars (item 13) pursuant to clause 4.13. It is understood that a Surety will, at additional cost to the Sub-Contractor, and which may be subject to other terms and conditions of the Surety, provide for a greater sum than that stated in clause 2 of the Bond if, due to variations, and had Retention been applicable, that amount would have increased. The reduction by 50% of the maximum aggregate sum at the date of issue of the next interim payment after practical completion of the Sub-Contract Works matches a similar reduction had Retention been applicable.
- 3 The inclusion in the last paragraph of clause 4 of the words "but not further or otherwise" is to make clear that the Sub-Contractor would not be prevented by the terms of clause 4 from alleging, under the Sub-Contract, that the Sub-Contractor was not in breach on any of the matters stated in clauses 4.3.1 to 4.3.3 of the Bond.  
  
Any demand by the Contractor under clause 4 of the Bond must not exceed the costs actually incurred by the Contractor and is not to be in excess of the amount stated pursuant to clause 4.2.
- 4 The Surety will require an actual expiry date to be stated in clause 6.3 of the Bond or (if earlier) a date that is capable of being ascertained on the face of the Bond. Where this is not possible, alternative terms should be discussed with the Surety.

[21] These Notes will not appear on the Bond issued by the Surety.

[22] The British Bankers' Association has been merged into UK Finance.

## Schedule 4 Sub-Contract Code of Practice

(Clause 3.11)

**(A)** For the purposes of the reasonable operation of the requirements of clause 3.11.3 and in relation to any directions of the Contractor under clause 3.11.1, an assessment should be made of the non-compliance, the likelihood of it affecting other parts of the Sub-Contract Works (whether already constructed or not) and the reasons for it, including:

- (a) where the non-compliance is in a primary structural element, whether it is a failure of workmanship or materials such as to require rigorous testing of similar elements; or
- (b) whether it indicates an inherent weakness such as to require selective testing, and (if so) the appropriate extent of such testing; or
- (c) where it is a less significant element, whether it is such as is statistically to be expected and can be simply repaired.

In making that assessment regard shall be had to all the circumstances, including:

- .1 the nature of the work;
- .2 the significance of the non-compliance (including any likely, similar non-compliance) in terms of the safety of the building, its users, adjoining property, the public and compliance with Statutory Requirements;
- .3 any applicable Codes of Practice or similar advice issued by responsible bodies, recognised testing and remedial procedures and technical advice obtained by either Party;
- .4 any instructions of the Architect/Contract Administrator (or any decision by it not to issue instructions);
- .5 the level of supervision and control of the Sub-Contract Works exercised by the Sub-Contractor;
- .6 relevant records of the Sub-Contractor and (where relevant) of any sub-subcontractor; and
- .7 any failure by the Sub-Contractor to carry out, or secure the carrying out, of any other required opening up, testing or remedial work.

**(B)** The Parties should endeavour to agree the amount and method of any opening up and testing and/or any remedial work but, in any event, in issuing any directions (other than to the extent that they reflect Architect/Contract Administrator's instructions) the Contractor shall have regard to:

- .1 that assessment and the matters referred to in (A).1 to (A).7;
- .2 the obligations of the Contractor under the Main Contract;
- .3 (in the case of opening up or testing) the practicability of progressive testing to establish the likelihood of similar non-compliance and, where alternative testing methods are available, the efficacy and the likely time and cost of each;
- .4 (in the case of remedial measures) the practicability of, the time required for and the consequential costs of rectification as opposed to removal;
- .5 any proposals of the Sub-Contractor; and
- .6 any other relevant matters.

## Schedule 5 Third Party Rights

(Clause 2.26)

### Part 1: Third Party Rights for Purchasers and Tenants

#### ('P&T Rights')

#### 1

- 1.1 The Sub-Contractor warrants as at and with effect from practical completion of the Main Contract Works (or, where there are Sections, practical completion of the relevant Section) that it has carried out the Sub-Contract Works (or such works in the relevant Section) in accordance with this Sub-Contract. In the event of any breach of this warranty and subject to paragraphs 1.2, 1.3 and 1.4:
- 1.1.1 the Sub-Contractor shall be liable for the reasonable costs of repair, renewal and/or reinstatement of any part or parts of the Sub-Contract Works to the extent that the Purchaser or Tenant incurs such costs and/or the Purchaser or Tenant is or becomes liable either directly or by way of financial contribution for such costs; and
- 1.1.2 where the Sub-Contract Rights Particulars state that paragraph 1.1.2 applies, the Sub-Contractor shall in addition to the costs referred to in paragraph 1.1.1 be liable for any other losses incurred by the Purchaser or Tenant up to the maximum liability stated in those particulars;
- 1.2 where paragraph 1.1.2 does not apply, the Sub-Contractor shall not be liable for any losses incurred by the Purchaser or Tenant other than the costs referred to in paragraph 1.1.1;
- 1.3 the Sub-Contractor's liability to a Purchaser or Tenant in respect of its P&T Rights shall be limited to the proportion of the Purchaser's or Tenant's losses which it would be just and equitable to require the Sub-Contractor to pay having regard to the extent of the Sub-Contractor's responsibility for the same, on the following assumptions, namely that:
- 1.3.1 the Consultant(s) has or have provided contractual undertakings to or conferred third party rights on the Purchaser or Tenant as regards the performance of its or their services in connection with the Main Contract Works in accordance with the terms of its or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s);
- 1.3.2 the Contractor has provided contractual undertakings to or conferred third party rights on the Purchaser or Tenant that it has complied and will continue to comply with its obligations under the Main Contract but, for the purposes of this paragraph 1.3, excluding any liability for work sub-contracted to the Sub-Contractor; and
- 1.3.3 the Consultant(s) and the Contractor have paid to the Purchaser or Tenant such proportion of the Purchaser's or Tenant's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Purchaser's or Tenant's losses;
- 1.4 the Sub-Contractor shall be entitled in any action or proceedings by the Purchaser or Tenant to rely on any term in this Sub-Contract and to raise the equivalent rights in defence of liability as it would have against the Contractor under this Sub-Contract;
- 1.5 the obligations of the Sub-Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Purchaser or Tenant to carry out any independent enquiry into any relevant matter.

- 2 The Sub-Contractor further warrants that unless required by this Sub-Contract or unless otherwise authorised in writing by the Contractor, it has not used and will not use materials in the Sub-Contract Works other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of the Main Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.
- 3 The Purchaser or Tenant has no authority to issue any direction or instruction to the Sub-Contractor in relation to this Sub-Contract.
- 4 Not used
- 5 Not used
- 6 P&T Rights may be assigned without the Sub-Contractor's consent by a Purchaser or Tenant, by way of absolute legal assignment, to another person (P1) taking an assignment of the Purchaser's or Tenant's interest in the Main Contract Works and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Main Contract Works. In such cases the assignment shall only be effective upon written notice of it being given to the Sub-Contractor. No further or other assignment of a Purchaser's or Tenant's rights under this Schedule will be permitted and in particular P2 shall not be entitled to assign these rights.
- 7 Any notice to be given by the Purchaser or Tenant to the Sub-Contractor or by the Sub-Contractor to the Purchaser or Tenant shall be duly given if:
  - 7.1 delivered by hand or sent by Signed For 1st class or Special Delivery Guaranteed post (or any method of posting as has replaced either method and is then current) to the recipient at such address as it may from time to time notify to the sender or (if no such address is then current) its last known principal business address or (where a body corporate) its registered or principal office and, where sent by post in that manner, it shall be deemed to have been received on the second Business Day after the date of posting; or
  - 7.2 (where an email address has been stated for the Purchaser or Tenant (as the case may be) in the Contractor's notice under clause 2.26.3 and for the Sub-Contractor in the Sub-Contract Particulars against clause 1.7.3) sent by email to the recipient's email address as there stated, or to such other email address as the recipient may from time to time notify to the sender, and shall be deemed to have been received on the next Business Day after the day on which it was sent.
- 8 No action or proceedings for any breach of P&T Rights shall be commenced against the Sub-Contractor after the expiry of the relevant period from the date of practical completion of the Main Contract Works. Where the Main Contract provides for completion by Sections, no such action or proceedings shall be commenced against the Sub-Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
  - 8.1 where this Sub-Contract is executed under hand, 6 years; and
  - 8.2 where this Sub-Contract is executed as a deed, 12 years.
- 9 For the avoidance of doubt, the Sub-Contractor shall have no liability to the Purchaser or Tenant under this Schedule for delay in completion of the Sub-Contract Works.
- 10 This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Sub-Contractor and any Purchaser or Tenant which arises out of or in connection with this Schedule.

## Part 2: Third Party Rights for a Funder

### ('Funder Rights')

- 1 The Sub-Contractor warrants that it has complied and will continue to comply with this Sub-Contract. In the event of any breach of this warranty:

- 1.1 the Sub-Contractor's liability to the Funder for costs under this Schedule shall be limited to the proportion of the Funder's losses which it would be just and equitable to require the Sub-Contractor to pay having regard to the extent of the Sub-Contractor's responsibility for the same, on the following assumptions, namely that:
- 1.1.1 the Consultant(s) has or have provided contractual undertakings to or conferred third party rights on the Funder that it or they has or have and will perform its or their services in connection with the Main Contract Works in accordance with the terms of its or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s);
  - 1.1.2 the Contractor has provided contractual undertakings to or conferred third party rights on the Funder that it has complied and will continue to comply with its obligations under the Main Contract but, for the purposes of this paragraph 1.1, excluding any liability for work sub-contracted to the Sub-Contractor; and
  - 1.1.3 the Consultant(s) and the Contractor have paid to the Funder such proportion of the Funder's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Funder's losses;
- 1.2 the Sub-Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in this Sub-Contract and to raise the equivalent rights in defence of liability as it would have against the Contractor under this Sub-Contract;
- 1.3 the obligations of the Sub-Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.
- 2 The Sub-Contractor further warrants that unless required by this Sub-Contract or unless otherwise authorised in writing by the Contractor, it has not used and will not use materials in the Sub-Contract Works other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of the Main Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.
- 3 The Funder has no authority to issue any direction or instruction to the Sub-Contractor in relation to this Sub-Contract unless and until the Funder has given notice under paragraph 5.1 or 6.4.
- 4 The Funder has no liability to the Sub-Contractor in respect of amounts due under this Sub-Contract unless and until the Funder has given notice under paragraph 5.1 or 6.4.
- 5
- 5.1 The Sub-Contractor agrees that, in the event of the termination of the Contractor's employment under the Main Contract, the Sub-Contractor shall, if so required by written notice given by the Funder within 14 days after the date of such termination and subject to paragraph 7, accept the instructions of the Funder or its appointee to the exclusion of the Contractor in respect of the Sub-Contract Works upon the terms and conditions of this Sub-Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by the Funder under this paragraph 5.1 as conclusive evidence for the purposes of this Sub-Contract of the termination of the Contractor's employment under the Main Contract; and further acknowledges that such acceptance of the instructions of the Funder to the exclusion of the Contractor shall not constitute any breach of the Sub-Contractor's obligations to the Contractor under the Sub-Contract.
  - 5.2 Where the Sub-Contractor exercises its right of suspension under clause 7.9.1, it shall immediately upon commencement of the suspension notify the Funder in writing stating the date of commencement of the suspension and that it is a suspension under that clause.
- 6
- 6.1 The Sub-Contractor shall not exercise any right of termination of its employment under this Sub-Contract without having first:

- 6.1.1 copied to the Funder any notices required by this Sub-Contract to be sent to the Contractor prior to the Sub-Contractor being entitled to give notice under this Sub-Contract that its employment under this Sub-Contract is terminated; and
- 6.1.2 given to the Funder written notice that it has the right under this Sub-Contract forthwith to notify the Contractor that its employment under this Sub-Contract is terminated.
- 6.2 The Sub-Contractor shall not treat this Sub-Contract as having been repudiated by the Contractor without having first given to the Funder written notice that it intends so to notify the Contractor.
- 6.3 The Sub-Contractor shall not:
- 6.3.1 issue a notice to the Contractor to which paragraph 6.1.2 refers; or
- 6.3.2 notify the Contractor that it is treating this Sub-Contract as having been repudiated by the Contractor as referred to in paragraph 6.2
- before the lapse of 14 days from receipt by the Funder of the notice by the Sub-Contractor which the Sub-Contractor is required to give under paragraph 6.1.2 or 6.2.
- 6.4 The Funder may, not later than the expiry of the period referred to in paragraph 6.3, require the Sub-Contractor by written notice and subject to paragraph 7 to accept the instructions of the Funder or its appointee to the exclusion of the Contractor in respect of the Sub-Contract Works upon the terms and conditions of this Sub-Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by the Funder under this paragraph 6.4 and that acceptance by the Sub-Contractor of the instruction of the Funder to the exclusion of the Contractor shall not constitute any breach of the Sub-Contractor's obligations to the Contractor under this Sub-Contract. Provided that nothing in this paragraph 6.4 shall relieve the Sub-Contractor of any liability it may have to the Contractor for any breach of this Sub-Contract.
- 7 It shall be a condition of any notice given by the Funder under paragraph 5.1 or 6.4 that the Funder or its appointee accepts liability for payment of the sums due and payable to the Sub-Contractor under this Sub-Contract and for performance of the Contractor's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Funder under paragraph 5.1 or 6.4, this Sub-Contract shall continue in full force and effect as if no right of termination of the Sub-Contractor's employment under this Sub-Contract, nor any right of the Sub-Contractor to treat this Sub-Contract as having been repudiated by the Contractor, had arisen and the Sub-Contractor shall be liable to the Funder and its appointee under this Sub-Contract in lieu of the Sub-Contractor's liability to the Contractor. If any notice given by the Funder under paragraph 5.1 or 6.4 requires the Sub-Contractor to accept the instructions of the Funder's appointee, the Funder shall be liable to the Sub-Contractor as guarantor for the payment of all sums from time to time due to the Sub-Contractor from the Funder's appointee.
- 8 Not used
- 9 Not used
- 10 Funder Rights may be assigned without the Sub-Contractor's consent by the Funder, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Main Contract Works and by P1, by way of absolute legal assignment, to another person (P2) providing finance or re-finance in connection with the carrying out of the Main Contract Works. In such cases the assignment shall only be effective upon written notice of it being given to the Sub-Contractor. No further or other assignment of Funder Rights will be permitted and in particular P2 shall not be entitled to assign these rights.
- 11 Any notice to be given by the Sub-Contractor to the Funder or by the Funder to the Sub-Contractor shall be duly given if:
- 11.1 delivered by hand or sent by Signed For 1st class or Special Delivery Guaranteed post (or any method of posting as has replaced either method and is then current) to the recipient at such address as it may from time to time notify to the sender or (if no such address is then current) its last known principal business address or (where a body corporate) its registered or principal office and, where sent by post in that manner, it shall be deemed to have been received on the second Business Day after the date of posting; or

- 11.2 (where an email address has been stated for the Funder in the Contractor's notice under clause 2.26.3 and for the Sub-Contractor in the Sub-Contract Particulars against clause 1.7.3) sent by email to the recipient's email address as there stated, or to such other email address as the recipient may from time to time notify to the sender, and shall be deemed to have been received on the next Business Day after the day on which it was sent.
- 12 No action or proceedings for any breach of Funder Rights shall be commenced against the Sub-Contractor after the expiry of the relevant period from the date of practical completion of the Main Contract Works. Where the Main Contract provides for completion by Sections, no such action or proceedings shall be commenced against the Sub-Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
- 12.1 where this Sub-Contract is executed under hand, 6 years; and
- 12.2 where this Sub-Contract is executed as a deed, 12 years.
- 13 Notwithstanding the rights contained in this Schedule, the Sub-Contractor shall have no liability to the Funder for delay under this Sub-Contract unless and until the Funder serves notice pursuant to paragraph 5.1 or 6.4.
- 14
- 14.1 This Schedule shall be governed by and construed in accordance with the law of England and subject to paragraph 14.2 the English courts shall have jurisdiction over any dispute or difference between the Sub-Contractor and the Funder which arises out of or in connection with this Schedule.
- 14.2 Following the giving of any notice by the Funder pursuant to paragraph 5.1 or 6.4, any dispute or difference which shall arise between the Sub-Contractor and the Funder (including any appointee or permitted assignee) shall be subject to the provisions of Article 6 and (where they apply) Article 7 and clauses 8.4 to 8.9.

### Part 3: Third Party Rights for the Employer

#### ('Employer Rights')

1

- 1.1 The Sub-Contractor warrants and undertakes to the Employer that it has complied and will continue to comply with this Sub-Contract. In the event of any breach of this warranty and subject to paragraphs 1.2, 1.3 and 1.4:
- 1.1.1 the Sub-Contractor shall be liable for the reasonable costs of repair, renewal and/or reinstatement of any part or parts of the Sub-Contract Works to the extent that the Employer incurs such costs and/or the Employer is or becomes liable either directly or by way of financial contribution for such costs; and
- 1.1.2 where the Sub-Contract Rights Particulars state that paragraph 1.1.2 applies, but subject to paragraph 1.2, the Sub-Contractor shall in addition to the costs referred to in paragraph 1.1.1 be liable for any other losses incurred by the Employer up to the limit, if any, stated in those particulars;
- 1.2 where in the Sub-Contract Rights Particulars no single liability option is selected for paragraph 1.1.2 or where the selected option has a limit but no amount is stated, the Sub-Contractor shall not be liable for any losses incurred by the Employer other than the costs referred to in paragraph 1.1.1;
- 1.3 where the Sub-Contract Rights Particulars state that paragraph 1.3 applies, the Sub-Contractor's liability to the Employer under this Schedule shall be limited to the proportion of the Employer's losses which it would be just and equitable to require the Sub-Contractor to pay having regard to the extent of the Sub-Contractor's responsibility for the same, on the following assumptions, namely that:

- 1.3.1 the Consultant(s) has or have provided contractual undertakings to or conferred third party rights on the Employer as regards the performance of its or their services in connection with the Main Contract Works in accordance with the terms of its or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s);
- 1.3.2 the Contractor has provided contractual undertakings to the Employer that it has complied and will continue to comply with its obligations under the Main Contract but, for the purposes of this paragraph 1.3, excluding any liability for work sub-contracted to the Sub-Contractor; and
- 1.3.3 the Consultant(s) and the Contractor have paid to the Employer such proportion of the Employer's losses which it would be just and equitable for them to pay having regard to the extent of their responsibility for the Employer's losses;
- 1.4 the Sub-Contractor shall be entitled in any action or proceedings by the Employer to rely on any term in this Sub-Contract and to raise the equivalent rights in defence of liability as it would have against the Contractor under this Sub-Contract;
- 1.5 the obligations of the Sub-Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Employer to carry out any independent enquiry into any relevant matter.
- 2** The Sub-Contractor further warrants to the Employer that:
  - 2.1 it has exercised and will exercise reasonable skill and care in:
    - 2.1.1 Not used
    - 2.1.2 the selection of materials and goods for the Sub-Contract Works to the extent that such materials and goods have been or will be selected by the Sub-Contractor;
  - 2.2 it will satisfy any performance specification or requirement contained in or referred to in this Sub-Contract;
  - 2.3 it has not used nor will it use any materials or goods which at the time of use do not conform with British and European Standards or Codes of Practice; and that unless required by this Sub-Contract or unless otherwise authorised in writing by the Contractor, it has not used and will not use materials in the Sub-Contract Works other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of the Main Contract.
- 3** The Employer has no authority to issue any direction or instruction to the Sub-Contractor in relation to this Sub-Contract unless and until the Employer has given notice under paragraph 5.1 or 6.4.
- 4** The Employer has no liability to the Sub-Contractor in respect of amounts due under this Sub-Contract unless and until the Employer has given notice under paragraph 5.1 or 6.4.
- 5**
  - 5.1 The Sub-Contractor agrees that, in the event of the termination of the Contractor's employment under the Main Contract, the Sub-Contractor shall, if so required by written notice given by the Employer within 14 days after the date of such termination and subject to paragraph 7, accept the instructions of the Employer or its appointee to the exclusion of the Contractor in respect of the Sub-Contract Works upon the terms and conditions of this Sub-Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by the Employer under this paragraph 5.1 as conclusive evidence for the purposes of this Sub-Contract of the termination of the Contractor's employment under the Main Contract; and further acknowledges that such acceptance of the instructions of the Employer to the exclusion of the Contractor shall not constitute any breach of the Sub-Contractor's obligations to the Contractor under this Sub-Contract.

- 5.2 Where the Sub-Contractor exercises its right of suspension under clause 7.9.1, it shall immediately upon commencement of the suspension notify the Employer in writing stating the date of commencement of the suspension and that it is a suspension under that clause.

**6**

- 6.1 The Sub-Contractor shall not exercise any right of termination of its employment under this Sub-Contract without having first:

6.1.1 copied to the Employer any notices required by this Sub-Contract to be sent to the Contractor prior to the Sub-Contractor being entitled to give notice under this Sub-Contract that its employment under this Sub-Contract is terminated; and

6.1.2 given to the Employer written notice that the Sub-Contractor has the right under this Sub-Contract forthwith to notify the Contractor that its employment under this Sub-Contract is terminated.

- 6.2 The Sub-Contractor shall not treat this Sub-Contract as having been repudiated by the Contractor without having first given to the Employer written notice that it intends so to notify the Contractor.

- 6.3 The Sub-Contractor shall not:

6.3.1 issue a notice to the Contractor to which paragraph 6.1.2 refers; or

6.3.2 notify the Contractor that it is treating this Sub-Contract as having been repudiated by the Contractor as referred to in paragraph 6.2

before the lapse of 14 days from receipt by the Employer of the notice by the Sub-Contractor which the Sub-Contractor is required to give under paragraph 6.1.2 or 6.2.

- 6.4 The Employer may, not later than the expiry of the period referred to in paragraph 6.3, require the Sub-Contractor by written notice and subject to paragraph 7 to accept the instructions of the Employer or its appointee to the exclusion of the Contractor in respect of the Sub-Contract Works upon the terms and conditions of this Sub-Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by the Employer under this paragraph 6.4 and that acceptance by the Sub-Contractor of the instruction of the Employer to the exclusion of the Contractor shall not constitute any breach of the Sub-Contractor's obligations to the Contractor under this Sub-Contract. Provided that nothing in this paragraph 6.4 shall relieve the Sub-Contractor of any liability it may have to the Contractor for any breach by the Sub-Contractor of this Sub-Contract.

- 7 It shall be a condition of any notice given by the Employer under paragraph 5.1 or 6.4 that the Employer accepts liability for payment of the sums due and payable to the Sub-Contractor under this Sub-Contract and for performance of the Contractor's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Employer under paragraph 5.1 or 6.4, this Sub-Contract shall continue in full force and effect as if no right of termination of the Sub-Contractor's employment under this Sub-Contract, nor any right of the Sub-Contractor to treat this Sub-Contract as having been repudiated by the Contractor, had arisen and the Sub-Contractor shall be liable to the Employer under this Sub-Contract in lieu of its liability to the Contractor.

- 8 Not used

- 9 Not used

- 10 The rights contained in this Schedule may be assigned without the Sub-Contractor's consent by the Employer, by way of absolute legal assignment, to another person (P1) and by P1, by way of absolute legal assignment, to another person (P2). In such cases the assignment shall only be effective upon written notice of it being given to the Sub-Contractor. No further or other assignment of Employer rights will be permitted and in particular P2 shall not be entitled to assign these rights.

- 11 Any notice to be given by the Sub-Contractor to the Employer or by the Employer to the Sub-Contractor shall be duly given if:

- 11.1 delivered by hand or sent by Signed For 1st class or Special Delivery Guaranteed post (or any method of posting as has replaced either method and is then current) to the recipient at such address as it may from time to time notify to the sender or (if no such address is then current) its last known principal business address or (where a body corporate) its registered or principal office and, where sent by post in that manner, it shall be deemed to have been received on the second Business Day after the date of posting; or
- 11.2 (where an email address has been stated for the Employer in the Contractor's notice under clause 2.26.3 and for the Sub-Contractor in the Sub-Contract Particulars against clause 1.7.3) sent by email to the recipient's email address as there stated, or to such other email address as the recipient may from time to time notify to the sender, and shall be deemed to have been received on the next Business Day after the day on which it was sent.
- 12 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Sub-Contractor after the expiry of the relevant period from the date of practical completion of the Main Contract Works. Where the Main Contract provides for completion by Sections, no such action or proceedings shall be commenced against the Sub-Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
- 12.1 where this Sub-Contract is executed under hand, 6 years; and
- 12.2 where this Sub-Contract is executed as a deed, 12 years.
- 13 This Agreement shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor to the Employer.
- 14 This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Sub-Contractor and the Employer which arises out of or in connection with this Schedule.

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