

CITY & COUNTRY CONSTRUCTION LTD.

SUB-CONTRACT TERMS AND CONDITIONS

Definitions and Interpretation

1. In these terms and conditions the definitions in the Order and as follows apply:

1.1 "Contractor": City & Country Construction Limited whose principal place of business is at Bentfield Place, Bentfield Road, Stansted, Essex, CM24 8HL or as otherwise identified in the Order.

"CDM Regulations": The Construction (Design and Management) Regulations 2015.

"Development": The development or project to which the Sub-Contract relates as identified in the Order.

"Order": The order for the Sub-Contract Works from the Contractor and the Sub-Contractor.

"Period for completion": The period in which the Sub-Contract Works are to be carried out and completed by the Sub-Contractor as identified in the Sub-Contract Documents.

"Prohibited Materials": Materials or equipment that are generally accepted, or generally suspected, in the construction industry at the relevant time as: (a) posing a threat to the health and safety of any person; (b) posing a threat to the structural stability, performance or physical integrity of the Development or any part or component of the Development; (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Development; or (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agreement.

"Site": The site of the Development.

"Sub-Contract": The contract between the Contractor and the Sub-Contractor which shall include the Order, these terms and conditions and the Sub-Contract Documents.

"Sub-Contractor": As identified in the Order.

"Sub-Contract Sum": The price stated in the Order for the Sub-Contract Works.

"Sub-Contract Rates": The priced rates stated or inferred in the Order for the Sub-Contract Works.

"Sub-Contract Documents": The details, drawings, specifications or other documents defining or relating to the Sub-Contract Works including the minutes of any pre-Order meetings, the basis for valuations and payments for undertaking the Sub-Contract Works which are identified or referred to in the Order, including any additions, omissions, or variations to the same either confirmed or notified to the Sub-Contractor in writing.

"Sub-Contract Works": The works identified in the Sub-Contract Documents to be carried out by the Sub-Contractor including (where relevant) design services, the supply of goods, materials, labour and installation works to be carried out at the Development in accordance with the Sub-Contract.

1.2 These terms and conditions apply to the Sub-Contract to the exclusion of any other terms and conditions that the Sub-Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.3 Any offer, tender or quotation from the Sub-Contractor for the Sub-Contract works will constitute an invitation for the Contractor to issue an Order for the Sub-Contract. A binding Sub-Contract shall only come into existence when the Sub-Contractor signs and returns a copy of the Order as issued by the Contractor or otherwise confirms its acceptance of the Sub-Contract by conduct.

1.4 The Sub-Contract shall commence on and from the date of the Order provided that if and to the extent that any of the Sub-Contract Works are or have been performed by the Sub-Contractor or if any sums in respect of the Sub-Contract Works have been paid prior to the date of the Order the same shall be deemed to have been performed under the Sub-Contract or treated as payments to account in respect of the Sub-Contract Sum.

1.5 In the event of there being any conflict, divergence, ambiguity and/or discrepancy (as the case may be) within or between any part of the Sub-Contract the same shall be resolved by applying the following order of precedence; the Order; these terms and conditions; the Sub-Contract Documents; all other documents.

- 1.6 Without prejudice to clause 1.5 above where there is any conflict, discrepancy, ambiguity or divergence within or between any part of the Sub-Contract, the Sub-Contractor shall inform the Contractor in writing of its proposed amendment to remove the same and the Contractor shall make a decision or may accept the Sub-Contractor's proposed amendment and the Sub-Contractor shall be obliged to comply with the decision or amendment without cost to the Contractor and the Sub-Contractor shall not be entitled to receive and shall not make any claim for an extension of time or for any loss and/or expense arising as a consequence.
- 1.7 All headings and sub-headings appearing in this Agreement are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement.

Sub-Contractor obligations

2. The Sub-Contractor shall carry out and complete the construction, design (where applicable), completion, commissioning and testing of the Sub-Contract Works; to the satisfaction of the Contractor, diligently and in a proper and workmanlike manner, in compliance with the Sub-Contract and so that:
 - 2.1 the Sub-Contract Works will fully comply with the provisions of the Sub-Contract, good industry practice, all relevant legislation, regulations, British Standards and codes of practice, consents and approvals and (where appropriate) the technical requirements of the LABC and as may be specified in the Sub-Contract Documents;
 - 2.2 all workmanship, materials and goods shall be of the kinds and standards described or referred to in the Sub-Contract or to the extent that no such standards are described shall be of a satisfactory standard appropriate to the Development and approved by the Contractor;
 - 2.3 the Sub-Contractor shall not use in the Sub-Contract Works any Prohibited Materials;
 - 2.4 all persons employed in connection with the performance of the Sub-Contract Works will be skilled and experienced in their several professions, trades and callings or adequately supervised by the Sub-Contractor;
 - 2.5 all aspects of the Sub-Contract Works will be supervised by a person/s having sufficient knowledge and experience of such matters for the satisfactory and safe performance of the Sub-Contract Works in accordance with the Sub-Contract;
 - 2.6 the Sub-Contract Works are maintained in good order, kept in a safe condition and protected from damage by the Sub-Contractor, and working areas of the Site are kept secure against trespassers and clean and tidy so far as practicable having regard to the nature and scope of the Sub-Contract Works;
 - 2.7 where materials are supplied to the Sub-Contractor by the Contractor then the Sub-Contractor shall be responsible for the same as if they were supplied by the Sub-Contractor directly.
 - 2.8 generally and notwithstanding any other provision in the Sub-Contract, the Sub-Contractor shall act as stated in the Sub-Contract and in good faith and co-operation in its dealings with the Contractor and with any other party engaged in connection with the Development and will take all reasonable action as is necessary in undertaking its obligations under the Sub-Contract for the overall benefit and success of the Development.
3. The Sub-Contractor shall not sub-contract or assign any of its obligations under the Sub-Contract without the Contractor's prior written consent. Where such consent is given the Sub-Contractor shall remain directly and wholly responsible for complying with its obligations under the Sub-Contract.
4. The Sub-Contractor shall provide a suitably qualified representative on Site to supervise the Sub-Contract Works and to receive instructions from the Contractor or its representative.
5. The Sub-Contractor shall provide all plant, tools and equipment including generators and lighting (where appropriate) required for carrying out and completing the Sub-Contract Works including as provided for in the Sub-Contract Documents.
6. If it becomes necessary to vary the nature or extent of the Sub-Contract Works during the absence of the Contractor's site representative the Sub-Contractor shall use best endeavours to contact the Contractor's site representative or contracts manager immediately or the Contractor's head office.
7. The Contractor makes no guarantee of continuity of work or that the Sub-Contractor will be afforded the opportunity to carry out and complete the Sub-Contract works in a continuous manner. The Contractor may at its discretion amend the timing or programme of the Sub-Contract work to suit the Contractor's requirements without adjustment to the Sub-Contract Sum or incurring any liability to the Sub-Contractor for additional costs, losses or expense.
8. The Sub-Contractor shall indemnify the Contractor against all costs, losses, expenses, damages, claims and demands incurred by the Contractor as a result of any breach by the Sub-Contractor of the Sub-Contract or any act, omission, default breach of statutory duty or otherwise on the part of the Sub-Contractor.

The Site

9. The Sub-Contractor shall be deemed to have visited the Site and to be fully satisfied with all local conditions, means of access, feasibility of deliveries, unloading, storage, the location of all services and drainage, the existing features, appearances and styles of the existing premises forming the Site of the Works (if any) and all other matters which may affect the carrying out of the Sub-Contract Works. The Sub-Contractor shall not be entitled to any adjustment of the Sub-Contract Sum including (but not limited to) any costs, losses or expenses incurred by reason of such matters.
10. The Sub-Contractor shall at all times keep the Site clean and tidy and shall clear away all rubbish and waste and return all surplus usable material to a suitable store or compound in accordance with the instructions of the Contractor. Without prejudice to any other rights or remedies it may have the Contractor reserves the right to charge the Sub-Contractor for any undue wastage of the Contractor's materials and goods and/or any costs incurred by the Contractor as a result of any breach by the Sub-Contractor of this clause.
11. Access to the Site shall not be exclusive and the Sub-Contractor shall liaise and co-operate with the Contractor and other contractors to ensure that the Sub-Contract Works are co-ordinated and integrated with works undertaken by others.
12. Where the Sub-Contractor is carrying out Sub-Contract Works at any time in the absence of the Contractor's representative, the Sub-Contractor shall make appropriate arrangements with the Contractor for the Sub-Contractor's arrival and departure from the Site and establish suitable emergency procedures before commencing any works.
13. Where the Sub-Contractor is working alone on Site, the Sub-Contractor shall ensure that on leaving the Site it is left in a secure and safe condition.
14. Working hours on Site shall be between the hours and on the days identified in the Sub-Contract Documents or such other times as may be required by any relevant authority or as may be varied by the Contractor.
15. The Contractor shall provide free of charge such facilities and attendances as may be identified in the Sub-Contract Documents PROVIDED THAT where such facilities or attendances are provided by the Contractor no warranty is given as to their condition or suitability for use with the Sub-Contract Works and the Sub-Contractor must satisfy itself that any such facilities and attendances are suitable for its requirements and comply with any relevant statutory requirements and codes of practice.

Materials, Goods or Equipment

16. Where any materials, goods or equipment have been incorporated into the Sub-Contract Works and/or the Development, title in the same shall pass to the Contractor upon incorporation notwithstanding that payment for the same has not been made.
17. Title in unfixed materials, goods and equipment delivered to, placed on or adjacent to the Site for use in connection with the Sub-Contract Works shall remain with the Sub-Contractor until the value of the same has been included in any payment by the Contractor at which point title shall pass to the Contractor. No payment shall be made to the Sub-Contractor for any materials delivered to Site but that are unfixed.
18. Notwithstanding the point at which title in any materials, goods and equipment passes such items shall remain at the risk of the Sub-Contractor who shall be responsible for any loss or damage of such items until formal acceptance by the Contractor. The Sub-Contractor shall ensure that such items are properly protected against any loss or damage and adequately covered for their full reinstatement value by a suitable policy of insurance.

Statutory provisions

19. The Sub-Contractor shall undertake its obligations under the Sub-Contract in compliance with all current statutory provisions, including legislation, bye-laws rules and directives applicable to the Site and the Sub-Contract Works including but not limited to Health & Safety at Work Act, the CDM Regulations and relevant British Standards all as may be modified or re-enacted from time to time. Prior to commencement of the Sub-Contract Works the Sub-Contractor will provide the Contractor with such risk assessments and method statements relating to the carrying out of the Sub-Contract Works as the Contractor may require and provide appropriate evidence of compliance with the previously mentioned statutory provisions.

Design

20. Where the Sub-Contract Documents identify that the Sub-Contractor is responsible for any element of the design or specification of the Sub-Contract Works:-
 - 20.1 the Sub-Contractor accepts full responsibility for undertaking the design and ensuring that such design will comply with and satisfy all the requirements of the Sub-Contract and acknowledges and agrees that the Contractor has relied on and is relying exclusively upon the Sub-Contractor in relation to all aspects of such design;
 - 20.2 any reference to the design shall include any design which the Sub-Contractor has caused or shall cause to be prepared and/or issued by others;

- 20.3 the Sub-Contractor shall be wholly responsible for any error, inaccuracy, discrepancy or inconsistency (a) within the design of the Sub-Contract Works (or any part thereof) and/or (b) between any provision in the Sub-Contract Documents, good industry practice and any applicable guidance, relevant legislation and consents, such as planning consents;
- 20.4 the Sub-Contractor shall take all reasonable steps to co-ordinate (and to the fullest extent reasonably possible) to integrate the design and execution of the Sub-Contract Works with the design and execution of the works for the wider Development and (subject always to co-ordinating with the Contractor) the Sub-Contractor shall liaise, consult and co-operate with relevant third parties who have a design responsibility in relation to the Development;
- 20.5 the Sub-Contractor shall review the design produced by the Contractor or any third parties engaged in regard to the design of the Development which interfaces with the Sub-Contract Works (provided that the Contractor shall have provided such design to the Sub-Contractor) and the Sub-Contractor shall be responsible for identifying any error, inaccuracy, discrepancy or inconsistency within such other design(s) and between such other design(s) and the Sub-Contractor's design for the Sub-Contract Works;
- 20.6 the Sub-Contractor shall notify the Contractor upon it discovering any error, inaccuracy, conflict, omission, discrepancy, ambiguity or inconsistency within the design of the Sub-Contract Works (or any part thereof) and/or within the design(s) of any other part or element of the Development that the Sub-Contractor becomes aware of, in which event the Contractor shall give an instruction to the Sub-Contractor in order to deal with the same provided that no such instruction shall entitle the Sub-Contractor to any extension of time or to any loss and/or expense;
- 20.7 where the Sub-Contractor is responsible for developing, submitting and finalising the design of the Sub-Contract Works it shall do so in accordance with the Sub-Contract Documents (including any employer's requirements or relevant extracts) and the other applicable provisions of this Sub-Contract. Further, the Sub-Contractor will specify as part of any design proposals potential value engineering options for consideration by the Contractor;
- 20.8 the Sub-Contractor will as part of its design provide any necessary design risk assessments and account for and/or incorporate advice or comments raised by the CDM Co-ordinator or Principle Designer. The Sub-Contractor will undertake its design, ensuring that the Sub-Contract Works will be delivered within the agreed values;
- 20.9 unless otherwise instructed or provided for in the Sub-Contract, the Sub-Contractor shall not commence or permit the commencement of the construction of the part or parts of the Sub-Contract Works to which any of its design relates until it has submitted the relevant design information relating to the Sub-Contract Works for review and it is confirmed, in writing, by the Contractor that the Sub-Contractor is entitled to proceed with construction. This provision assumes that the relevant design has not been confirmed in writing at the date of this Sub-Contract but instead is subject to development and finalisation and submission for review subsequently;
- 20.10 if the Sub-Contractor commences or permits the commencement of construction of the relevant part or parts of the Sub-Contract Works before the Contractor notifies the Sub-Contractor that it may proceed then the Sub-Contractor shall at its own cost, undo, remove from the site and replace (in a manner complying with this Sub-Contract) any parts of the Sub-Contract Works which are applicable;
- 20.11 no approval, comment, suggestion, review, revision or otherwise by the Contractor or any other party in connection with the Sub-Contractor's design submitted in relation to the Development shall in any way relieve or affect the responsibility of the Sub-Contractor for that design. The rights in designs, drawings or other documents prepared by or for the sub-contractor shall remain vested in the Sub-contractor, subject to which the contractor shall have an irrevocable, royalty free, non-exclusive licence, with the full right to sub-licence and to copy and use the said materials and to reproduce the designs and content of them for any purpose relating to the Development. The Sub-contractor shall on request, provide the Contractor with copies of any such materials in such quantity and form as the Contractor shall reasonably require.

Time

- 21. The Sub-Contractor shall commence the Sub-Contract Works either on the date specified in the Sub-Contract Documents or on the expiry of the period of notice identified in the Sub-Contract Documents whichever is applicable.
 - 21.1 Completion of the Sub-Contract Works shall be achieved on or before the expiry of the Period for Completion and in accordance with any programme (including stages of completion) notified in writing by the Contractor to the Sub-Contractor or contained within the Sub-Contract Documents or any amended or revised programme which the Contractor may from time to time notify in writing to the Sub-Contractor.
 - 21.2 Time for achieving completion shall be of the essence.
 - 21.3 If at any time as a result of an event it becomes apparent to the Sub-Contractor that the progress of the Sub-Contract Works is being delayed and/or will not be completed within the Period for Completion, or that any dates for completion of stages as identified in the Sub-Contract Programme may not be

achieved the Sub-Contractor shall within 7 days of any such event give notice to the Contractor in writing of the probable cause and duration of such delay along with a revised Sub-Contract Programme showing the manner and the periods in which the Sub-Contract Works will be carried out to achieve completion before the expiry of the Period for Completion and/or showing the steps which are to be taken to eliminate or reduce the delay.

- 21.4 following service of a notice by the Sub-Contractor pursuant to clause [21.3] the Sub-Contractor shall promptly supply to the Contractor any further information relating to the delay which is requested by the Contractor.
- 21.5 the Sub-Contractor shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to clause [21.3].
- 21.6 the Sub-Contractor acknowledges that a breach by it of its obligations under the Sub-Contract (including but not limited to achieving completion before the expiry of the Period of Completion) could result in the Contractor suffering or incurring losses or expense and/or owing liabilities to third parties regardless of whether the particular breach by the Sub-Contractor causes delay to the completion of the Development. The Sub-Contractor shall be liable to the Contractor for such losses or expenses and/or liabilities which may be deducted from any monies due or to become due to the Sub-Contractor or may be recoverable from the Sub-Contractor as a debt.
- 21.7 losses, expenses and/or liabilities in clause 21.6 could include those relating to any delay in the completion of the sale or disposal of any property forming part of the Development.
- 21.8 at any time the Contractor shall be entitled to instruct the Sub-Contractor, by notice, to immediately accelerate the performance and completion of the Sub-Contract Works (at no additional cost to the Contractor) in order to ensure (a) that the programme dates are achieved and (b) that the Sub-Contract Works achieve completion before the expiry of the Period for Completion in which event the Sub-Contractor shall (at its own expense) forthwith comply with such notice and provide the Contractor with the Sub-Contractor's proposed amendments to the Sub-Contract Programme (including any relevant critical paths and any supporting documentation) demonstrating how such acceleration shall be achieved.
- 21.9 in the event of non-performance by the Sub Contractor the Contractor reserves the right to supplement the Sub-Contractor's labour and/or material for the best interests of the Development at the Sub-Contractor's expense. The Sub-Contractor shall be liable to the Contractor for such expense which may be deducted from any monies due or to become due to the Sub-Contractor or may be recoverable from the Sub-Contractor as a debt.

Liability for Defects

- 22. Any defects or other material defaults which appear within 24 months of completion of the property to which the Sub-Contract Works relate and which are due to design, materials or workmanship not in accordance with the Sub-Contract shall be made good by the Sub-Contractor at its own cost and to the satisfaction of the Contractor within 14 days (24 hours in the case of an emergency) after written notification from the Contractor.
 - 22.1 Notwithstanding any other provision of the Sub-Contract, the Sub-Contractor shall indemnify the Contractor against all costs, losses, expenses, damages, claims and demands incurred by the Contractor as a result of any defects in the Sub-Contract Works.
 - 22.2 Where provided for in the Sub-Contract Documents, the Sub-Contractor shall comply with the "City and Country Customer Care Sub-Contractor Defects Procedure"

Variations

- 23. The Contractor may issue to the Sub-Contractor such instructions as it sees fit to vary the quantity or quality of the Sub-Contract Works (including any design) or any other matter which may affect the carrying out of the Sub-Contract Works including, but not limited to (a) any addition, omission or substitution of work; (b) alteration of the kind of standard of any materials or goods for use in the Sub-Contract Works; and (c) obligations or restrictions relating to access, working space or working hours.
 - 23.1 any instructions issued by the Contractor to the Sub-Contractor must be given in writing. The Sub-Contractor shall comply with any such instruction from the Contractor immediately upon receipt of such instruction.
 - 23.2 no instructions issued by the Contractor or subsequently sanctioned by it shall vitiate the Sub-Contract.
 - 23.3 where the Subcontractor believes there a financial impact arising from the instruction against the Sub-Contract Sum, the Sub-Contractor is to notify the Contractor of that prior to commencing the relevant works.
 - 23.4 when the financial impact of the instruction is evaluated, this may also result in a reduction in the Sub-Contract Sum. The Contractor reserves the right to make adjustments to the Sub-Contract Sum accordingly.

- 23.5 the Contractor and the Sub-Contractor will agree in writing an appropriate adjustment to the Sub-Contract Sum resulting from the impact of an instruction by the Contractor at any time prior to compliance with such instruction and any payment due to the Sub-Contractor shall be made in accordance with the Sub-Contract.
- 23.6 where on occasions an immediate response is required from the Subcontractor and there is no opportunity to agree on the impact of an instruction in advance of the works being carried out, in these instances the Subcontractor is to obtain an instruction from the Contractor (or its Project Manager in charge) to proceed without advance agreement of a price and to supply the following information; (a) signed day work sheets with actual effective hours worked, agreed by the Contractor's Site Project Manager; (b) description of works undertaken; (c) description and quantities of materials used including copies of any relevant invoices; and (d) description of plant utilised and periods for these including copies of any relevant invoices.
- 23.7 the instruction and day work sheets will be considered to be a record of time and resources spent carrying out the specified works only and the value of these will be assessed against the Sub-Contract Sum and/or Sub-Contract Rates by the Contractor. The Sub-Contractor is to submit its day works claim along with its claim for payment for the relevant month by the end of that month.
- 23.8 the Contractor reserves the right not to pay for variations or day works if not accompanied by the relevant instructions and information.
- 23.9 where the Contractor and the Sub-Contractor have not agreed or cannot agree an appropriate adjustment to the Sub-Contract Sum it shall be adjusted as follows; (a) where any additional, substituted or omitted work is of a similar nature or character to any parts of the Sub-Contract Works it shall be valued by reference to an appropriate Sub-Contract Documents (if any); (b) alternatively such work shall be valued at fair rates and prices as determined by the Contractor; and any payment due to the Sub-Contractor shall be made in accordance with the Sub-Contract.

Payment

- 24. The Sub-Contract Sum is assessed on the basis identified in the Sub-Contract Documents for the carrying out and completion of the Sub-Contract Works and together with any proper adjustments:
 - 24.1 the Sub-Contractor shall submit its invoice/valuation for payment in accordance with the dates for submission set out in the payment schedule identified in the Sub-Contract Documents, which invoice/valuation shall be an application for payment of the amount which the Sub-Contractor considers itself to be entitled to be paid in respect of the work undertaken by it in the period up to and including the invoice/valuation date and which must be accompanied by such supporting documents and other information as may be necessary to evidence its correctness. If the Sub-Contractor submits its invoice/valuation later than in accordance with the dates specified in the payment schedule the Contractor reserves the right to defer payment until the subsequent month.
 - 24.2 the amounts that the Sub-Contractor shall be entitled to shall be assessed in accordance with the Sub-Contract Documents based on the value of work properly carried out (including goods, materials and equipment delivered and such other sums as may be due) in accordance with the Sub-Contract.
 - 24.3 the due date for payment of each payment (**Due Date for Payment**) shall be the date identified in the payment schedule for the approval of payment assessment of each invoice/valuation by the Contractor's Director, alternatively in the absence of such a date the Due Date for Payment shall be the date which is 25 days after the last day of the end of the previous calendar month.
 - 24.4 the final date for payment (**Final Date for Payment**) shall be the date which is identified in the payment schedule as the date by when payment should be received by the Sub-Contractor, alternatively in the absence of such a date the Final Date for Payment shall be the date which is 14 days after the Due Date for Payment of the relevant payment.
 - 24.5 not later than the date occurring 5 days after the Due Date for Payment of a payment, the Contractor shall issue to the Sub-Contractor a notice specifying the amount (if any) that the Contractor considers to be or to have been due at the Due Date for Payment and the basis on which that amount is calculated (**Payment Notice**). If it has not already done so then the Sub-Contractor shall on receipt of a Payment Notice give the Contractor an invoice valid for VAT purposes in the amount stated as due in the Payment Notice.
 - 24.6 not later than the date occurring 2 days before the Final Date for Payment of each Payment (**Prescribed Period**), the Contractor may give notice to the Sub-Contractor that it intends to pay less than the sum identified in the relevant Payment Notice (**Pay Less Notice**) which notice shall specify the amount that the Contractor considers to be due on the date the Pay Less Notice is served and the basis on which that amount is calculated.
 - 24.7 unless the Contractor has served a Pay Less Notice, the Contractor shall pay the Sub-Contractor the sum referred to in the Payment Notice (or, if the Contractor has not served a Payment Notice, the sum referred to in the Sub-Contractor's invoice/valuation as provided for in clause 24.1) on or before the Final Date for Payment.
 - 24.8 all payments shall be on account, shall be subject to adjustment and review following completion of the Works and shall not signify any approval by the Contractor of workmanship or materials.

- 24.9 if the Sub-Contractor becomes insolvent within the meaning set out in clause 40 after the Prescribed Period, the Client shall not be required to pay the Sub-Contractor the notified sum on or before the final date for payment.

Sub-Contractor's Right to Suspend

25. Where the amount of any payment to be made by the Contractor on or before the Final Date for Payment is not paid in full by the Final Date for Payment, the Sub-Contractor shall have the right to suspend performance of any or all of his obligations under the Sub-Contract by giving not less than 7 days notice to the Contractor stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when the Contractor makes payment in full of the amount of the payment to be made. The Sub-Contractor shall be entitled to a reasonable amount in respect of the costs and expenses reasonably incurred by it as a result of the exercise of such right. The Period for Completion shall be extended to take account of any period during which performance is suspended in pursuance of, or in consequence of the exercise of, such right to suspend.

Retention

26. The Contractor may deduct from any payment due to the Sub-Contractor a sum equivalent to the amount identified in the Sub-Contract Documents from each payment by way of retention.
- 26.1 Following completion of Sub-Contract Works to the acceptance of the Contractor and following receipt of a written request stating the retention value from the Sub-Contractor the Contractor shall release one half of the total retention, payment of which shall become due as part of the payment that next becomes due for payment following completion.
- 26.2 Subject to the Sub-Contractor making good all defects to the satisfaction of the Contractor and following the expiry of the relevant defects liability period the Contractor shall release the balance of the total retention which shall become due as part of the payment that next becomes due for payment following that stage or if there is no such further payment then 28 days thereafter and the final date for payment shall be 7 days later.

Set-off

27. The Contractor shall be entitled to deduct from or set-off against any payments otherwise due to the Sub-Contractor under the Sub-Contract or any other agreement between the Contractor and the Sub-Contractor the amount of any costs, losses, expenses or damages as the Contractor shall determine as being the amount actually incurred or a fair and reasonable estimate of the amount likely to be incurred and to which the Contractor is entitled by reason of any breach by the Sub-Contractor of any of these terms and conditions.
- 27.1 Such right of deduction or set-off shall be in addition to all common law right of set-off or deduction and any other rights, remedies, actions, claims or demands which the Contractor may have against the Sub-Contractor and shall not affect the Contractor's right to recover any further sums due to it under the Sub-Contract or generally.

Construction Industry Scheme

28. Notwithstanding any other provision of the Sub-Contract the Contractor shall not be under any obligation to make any payments to the Sub-Contractor unless the Sub-Contractor has provided the Contractor with a valid authorisation in compliance with the Construction Industry Scheme under the Finance Act 2004 or as the same may be modified or superseded from time to time.

Statutory Obligations

29. The Sub-Contractor shall at its own expense comply with and give all notices or obtain all consents required by any statute, statutory regulations, orders or the like required in connection with the Sub-Contract Works and shall provide all relevant details to the Contractor.
- 29.1 The Sub-Contract Sum shall include the cost of obtaining and/or complying with all appropriate regulations and consents and the Sub-Contractor shall indemnify the Contractor against all costs, losses and expenses it may incur as a result of any breach by the Sub-Contractor of such regulations and consents.
- 29.2 The Sub-Contractor shall be responsible for the prompt and proper payment of all levies due to the Construction Industry Training Board.

Injury Damage and Insurance

30. The Sub-Contractor shall be liable for and shall indemnify the Contractor against any loss, expense, claim or proceedings whatsoever in respect of:-
- 30.1 Personal injury or death of any person arising out of or caused by the carrying out of the works or as a result of the Sub-Contractors failure to comply with its obligations under these terms and conditions;
- 30.2 Loss, injury or damage to any real or personal property but only to the extent that it is due to any act, omission or default by the Sub-Contractor in connection with the carrying out of the works or as a result of the Sub-Contractors failure to comply with its obligations under these terms and conditions.

31. The Sub-Contractor shall take out and maintain insurances in respect of claims arising out of his liability under clause 30. Insurance in respect of claims for personal injury to, or death of any person under a contract of service or apprenticeship with the Sub-Contractor shall comply with all relevant legislation. In regard to employer's liability insurance, the minimum level of cover shall be £10 million, unless otherwise specified in the Sub-contract documents for all other claims under clause 30, the insurance cover shall be not less than £5 million (or such other sum as may be specified in the Sub-Contract Documents) for any one occurrence or series of occurrences arising out of one event.
32. The Sub-Contractor shall be responsible for the Sub-Contract Works and any loss or damage to all work executed and materials and goods for use in connection with the Sub-Contract Works until completion of the Sub-Contract Works except to the extent that any loss or damage is caused by the negligence, omission or default of the Contractor.
33. The Sub-Contractor shall take out and maintain suitable all risks insurance in respect of any loss or damage to all work executed and materials and goods for use in connection with the Sub-Contract Works for their full reinstatement value or such other sum as may be specified in the Order.
34. Where the Sub-Contractor is engaged in regard to any element of the design of the Sub-Contract Works it shall take out and maintain professional indemnity insurance for not less than £5 million (or such other sum as may be specified in the Sub-Contract Documents) for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of commencement of the Sub-Contract Works or the date of this Sub-Contract, whichever is earlier and ending 12 years after the date of completion of the Sub-Contract Works as provided for under clause 21.1, provided that such insurance is available at commercially reasonable rates and terms. The Sub-Contractor shall immediately inform the Contractor if such insurance ceases to be available at commercially reasonable rates and shall discuss with the Contractor the means of best protecting their respective positions in the absence of such insurance. The Sub-Contractor shall maintain that professional indemnity insurance:-
 - 34.1 with reputable insurers lawfully carrying on insurance business in the EU;
 - 34.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and
 - 34.3 on terms that do not require the Sub-Contractor to discharge any liability before being entitled to recover from the insurers and that would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 1930.
35. When required to do so, the Sub-Contractor shall provide such evidence as the Contractor may reasonably require that the insurances referred to in clauses 30 - 34 are being maintained. notwithstanding any other provision of the Sub-Contract, where the Sub-Contractor has failed to provide such evidence then the Contractor shall be entitled to withhold any payment of the Sub-Contract Sum pending delivery of the evidence required.

Suspension and Determination

36. The Contractor may suspend the carrying out and completion of the whole or any part of the Sub-Contract Works, including (without limitation) for example any unforeseen change in market conditions and other external factors beyond the control of the Contractor, by giving to the Sub-Contractor not less than 7 days notice in writing of his intention to suspend. In the event that the Contractor suspends the carrying out and completion of the whole or any part of the Sub-Contract Works, the following provisions of this clause 36 shall apply.
 - 36.1 The Contractor's notice of suspension shall specify which part or parts of the Sub-Contract Works are to be suspended and the date or dates on which, or the circumstances in which, the same are to be suspended.
 - 36.2 Upon receipt of the Contractor's notice the Sub-Contractor shall take all reasonable steps to comply with the notice of suspension and any directions or instructions given by the Contractor with regard to the withdrawal by the Sub-Contractor of its labour, tools, plant and materials from the Site and shall co-operate with the Contractor as regards any steps considered necessary by either party to ensure the continued safety and security of the Sub-Contract Works and the Site.
 - 36.3 The Contractor shall not be liable for any loss, claim, demand, damages or expense whatsoever and howsoever suffered or incurred by the Sub-Contractor by reason of the Contractor serving a notice of suspension in accordance with this clause 36.
 - 36.4 The Contractor may, at any time following the service of a notice of suspension provided in accordance with the provisions of clause 36.1, give a further notice to the Sub-Contractor requiring the Sub-Contractor to resume the carrying out and completion of the whole or any part of the previously suspended Sub-Contract Works.
 - 36.5 Any notice given by the Contractor pursuant to clause 36.4 shall be in writing, shall specify the part or parts of the previously suspended Sub-Contract Works to be resumed and the date or dates on which such part or parts of the Sub-Contract Works are to be re-commenced provided that the Sub-Contractor shall not be required to commence on a date earlier than 7 days from the date of the Contractor's notice.
 - 36.6 Upon receipt of the Contractor's notice given in accordance with the provisions of clause 36.4 the Sub-Contractor shall resume performance of his obligations under this Sub-Contract on the date or dates

stated in the Contractor's notice.

- 36.7 The Contractor shall not be liable for any loss, claim, demand, damages or expense whatsoever and howsoever suffered or incurred by the Sub-Contractor by reason of the Contractor giving a notice in accordance with clause 36.4.
- 36.8 Upon resumption of the previously suspended Sub-Contract Works the provisions of this Sub-Contract including those relating to payment of any further sums due, will apply to the Sub-Contract Works as resumed save that the Sub Contractor shall be entitled to apply to the Contractor for an extension of time for completion of the whole or relevant part of the Sub-Contract Works so resumed, the duration of which shall not exceed the period of suspension.
- 36.9 If the Contractor shall not have served a further notice requiring resumption of any previously suspended Sub-Contract Works within a period of 6 months from the date on which the same were suspended, then either party may give notice in writing to the other that, unless the whole or any part of the Sub-Contract Works are resumed upon the Contractor giving a 7 day notice in accordance with the provisions of clause 36.4 the employment of the Sub-Contractor under this Sub Contract will be determined. In default of the Contractor giving a notice under clause 36.4 within 7 days of the date of any notice given by either party to the other pursuant to the provisions of this clause 36.9, the Sub-Contract's employment under this Sub-Contract will be automatically determined on expiry of the aforesaid 7-day notice period, without any requirement for any further notice to be given by either party. The Contractor shall not be liable for any loss, claim, demand, damages or expense whatsoever and howsoever suffered or incurred by the Sub-Contractor by reason of the determination of the Sub-Contractor's employment under this clause 36.9.

Effect of suspension

37. On any suspension of the Sub-Contract Works in accordance with the provisions of clause 36.1 any other provisions of the Sub-Contract which require any further payment or release of retention shall cease to apply.
- 37.1 Not later than 3 months after the whole or any part of the Sub-Contract Works have been suspended the Contractor shall prepare an account (**Suspension Account**) setting out in respect of any part or parts of the Sub-Contract Works so suspended (a) the total value of work properly executed at the date of any such suspension as aforesaid; and (b) the cost of materials or goods properly ordered for the whole or any part of the Sub-Contract Works so suspended for which the Sub-Contractor then has paid or is legally bound to pay.
- 37.2 After taking into account amounts previously paid to the Sub-Contractor pursuant to this Sub-Contract the Contractor shall pay to the Sub-Contractor the amount properly due as set out in the Suspension Account. The due date for payment of any amount properly due as aforesaid shall be 35 days following submission of the Suspension Account to the Sub-Contractor and its final date for payment shall be 7 days thereafter. Payment by the Contractor for any goods and materials shall be subject to such materials and goods thereupon becoming the property of the Contractor.

Determination

38. If the Sub-Contractor shall make default in any of the following respects: -
- 38.1 wholly or substantially suspends the carrying out of the Sub-Contract Works without reasonable cause; or
- 38.2 fails to proceed regularly and diligently with all or any part of the Sub-Contract Works; or
- 38.3 fails to undertake the Sub-Contract works with the required standards of quality and workmanship;
- 38.4 sub-contracts the whole or any part of the Sub-Contract Works without the Contractor's prior written approval and consent; or
- 38.5 fails to comply with an instruction requiring the removal of work, materials or goods which are not in accordance with the Sub-Contract; or
- 38.6 fails to comply with any programme or any amendments or revisions to such programme or any instructions or requests from the Contractor; or
- 38.7 fails to proceed with the rectification of any defects arising during the execution of the Sub-Contract Works or the defects liability with reasonable diligence; or
- 38.8 fails to provide and maintain sufficient or adequate labour on site to comply with any programme or to remedy any delay in respect of all or any part of the programme; or
- 38.9 causes or fails to prevent any loss or damage to all or any part of the Sub-Contract Works or the Development as a result of any act, omission or default on the part of the Sub-Contractor; or
- 38.10 fails to comply with any duties or obligations in respect of health and safety legislation; or
- 38.11 commits a material breach of any of its obligations or duties contained within the Sub-Contract.

the Contractor may issue written notice to the Sub-Contractor specifying the default.

39. If the Sub-Contractor has not taken reasonable steps to remedy such default within 48 hours of receipt of such notice the Contractor may at any time within the next 28 days issue a further notice determining the Sub-Contractor's employment under the Sub-Contract were such determination to be effective upon issue by the Contractor of the second notice.
- 39.1 Without affecting any rights, remedies, actions, claims or demands which the Contractor may have against the Sub-Contractor, the Contractor shall have the right to determine the Sub-Contract by giving written notice to the Sub-Contractor for convenience on 28 days' notice in writing to the Sub-Contractor. The Contractor shall not be liable for any loss, claim, demand, damages or expense whatsoever and howsoever suffered or incurred by the Sub-Contractor by reason of the determination of the Sub-Contractor's employment under this clause 39.1.

Insolvency

40. If the Sub-Contractor enters into an arrangement, compromise, composition in satisfaction of its debts, without a declaration of insolvency passes a resolution or makes a determination to be wound up, has a winding up order or bankruptcy or made against it, has appointed an administrator or administrative receiver, (in the case of a partnership) each partner is the subject of an individual arrangement or any other even or proceeding referred to in this clause, the Contractor may at any time thereafter by written notice determine the Sub-Contractor's employment under the Sub-Contract, such determination to be effective upon receipt of such notice.

Effect of determination

41. Upon suspension or determination of the Sub-Contract under clauses 36 - 40:
- 41.1 the Sub-Contractor shall (unless instructed otherwise by the Contractor) remove from the Site all it's plant, tools, goods and materials not intended for incorporation into the Sub-Contract Works provided that property in any such items shall not have passed to the Contractor under the Sub-Contract;
- 41.2 and notwithstanding anything contained in the Sub-Contract, the Sub-Contractor shall not be entitled to receive any further payments until the Contractor has completed the remainder of the Sub-Contract Works and has agreed the total cost of carrying out of any such works with an alternative sub-contractor;
- 41.3 the Contractor shall be entitled to set-off and/or recover from the Sub-Contractor all costs, losses, damages and expenses incurred by the Contractor by reason of the determination including the costs incurred in completing the remainder of the Sub-Contract Works.
- 41.4 within 3 months of completing any remaining Sub-Contract Works and agreeing the total cost of such works with an alternative sub-contractor the Contractor may, or upon receipt of a written request from the Sub-Contractor shall, provide an account to the Sub-Contractor identifying any balance owing to either the Contractor or the Sub-Contractor. Such balance shall be treated as an application for payment by the Contractor under these terms and conditions. The due date for payment to the Contractor by the Sub-Contractor of such an application for payment under this clause 41.4 shall be the date on which it is submitted to the Sub-Contractor. The final date for payment to the Contractor by the Sub-Contractor of such an application for payment will be 14 days after its due date.
42. These rights and remedies shall be in addition to any other rights, remedies, actions, claims or demands which the Contractor may have against the Sub-Contractor and shall not affect the Contractor's right to recover any further sums due to it under the Sub-Contract or generally.

Settlements of disputes

43. If a dispute or differences arises under or in connection with the Sub-Contract either party may refer it to adjudication in accordance with the provisions set out in Part 1 of the Scheme for Construction Contracts (England and Wales Regulations) (as current at the date of reference) which shall take effect as if it was incorporated into this clause. The adjudicator shall be nominated at the request of either party by the Royal Institute of Chartered Surveyors.

Warranty Agreements, Performance Bonds, Parent Company Guarantees etc.

44. Where it is stated in the Sub-Contract Documents that collateral warranty agreements, performance bonds, parent company guarantees or other similar agreements are required the Sub-Contractor shall within 14 days of receipt of the Contractor's written request:
- 44.1 complete and enter into and complete any such agreements in the form(s) contained in the Sub-Contract Documents (or such other similar form(s) as the Contractor may reasonably require)
- 44.2 in the case of collateral warranty agreements, the Sub-Contractor will enter into such agreements in favour of any third party with an interest or prospective interest in the Development and procure that any contractor or consultant engaged by the Sub-Contractor in connection with the Sub-Contract Works enters into collateral warranty agreements in the form(s) contained in the Sub-Contract Documents (or such other similar form(s) as the Contractor may reasonably require) in favour of the Contractor and any third party with an interest or prospective interest in the Development.

- 44.3 Pending delivery of any such agreements in accordance with this Sub-Contract, the Contractor may withhold from sums otherwise due to the Sub-Contractor the amount equivalent to 10% or an amount equivalent to obtaining such an agreement from an alternative third party contractor whichever is the greater, of the Sub-Contract Sum or such sum shall be recoverable from the Sub-Contractor as a debt, pending delivery of the collateral warranty.

Notices

45. All notices under or in connection with the Sub-Contract must be sent to the addresses stated in the Order. The Contractor may give notice to the Sub-Contractor at either the e-mail or postal address provided by the Sub-Contractor. Notice will be deemed received and properly served 24 hours after an e-mail is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that the e-mail was sent to the specified e-mail address of the addressee. For the avoidance of doubt, the Sub-Contractor shall not be entitled to issue notices under this Sub-Contract by email, unless this is specifically agreed by the Contractor in writing.

Miscellaneous

46. The Sub-Contract is not intended to confer a benefit on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, and no third party shall have any right to enforce any of the provisions of the Sub Contract.
47. The Sub-Contract is subject to English law and the parties submit to the non-exclusive jurisdiction of the English courts.
48. It is acknowledged by the parties that notwithstanding the manner in which the Sub-Contract is entered into, any claim, action or proceedings arising out of or in connection with any breach of the Sub-Contract may be commenced up to 12 (twelve) years from the date the cause of action accrued. The provisions of the Limitation Act 1980 are hereby excluded and do not apply to the Sub-Contract.

TUPE

49. Although neither the Contractor nor the Sub-Contractor expects the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to apply on termination of the Sub-Contract, the Sub-Contractor will promptly comply with any obligations imposed by TUPE as modified or re-enacted from time to time relating to the provision of information and consultation. At any time upon request the Sub-Contractor will give to the Contractor full and accurate information in writing relating to any person engaged in providing the Sub-Contract Works ('Service Personnel') and any claims and liability which may transfer to the Company or any successor supplier under TUPE.
50. The Sub-Contractor will indemnify the Contractor against all damages, liabilities (including any liability to taxation) claims, costs and expenses including fines, penalties, legal and other professional fees and expenses which the Contractor may incur on account of or arising from: (a) any claim from any of the Services Personnel in respect of any fact or matter to the extent that such claim concerns or arises from employment on or before the date the Sub-Contract terminates; (b) any claim by any such personnel in respect of which the Contractor incurs or is alleged to incur responsibility or liability as a result of the operation of TUPE; (c) any claim or allegation arising from or connected with any failure by the Sub-Contractor to comply with its obligations under Regulations 13 or 14 of TUPE; (d) any redundancies or termination of employment by the Contractor or any successor supplier of any Service Personnel subsequent to their transfer to the Contractor or any successor sub-contractor by way of operation of TUPE.

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