

CONDITIONS OF SUB-CONTRACT REV L

1. (1) In these conditions in respect of this Sub-Contract (as hereinafter defined) the following words and expressions have the following meanings.
 - (a) "Contractor" means J.N. Bentley Limited.
 - (b) "Employer" means the party who has entered into the Main Contract with the Contractor for the carrying out of works of which the Sub-Contract Works form part.
 - (c) "The Main Contract" means the contract for the carrying out of the works of which the Sub-Contract Works form part, but unless otherwise instructed as a variation the Sub-Contractor is only deemed aware of the relevant details of it which are set out in the Sub-Contract Order.
 - (d) "The Sub-Contract" means the contract for the provision or supply of services and/or goods in accordance with these conditions together with such other documents as are specified within the Sub-Contract Order.
 - (e) "The Sub-Contract Works" means the works described within the Description of Work – Specific" and "Description of Work - General" sections of the Sub-Contract Order which are to be carried out in accordance with these conditions.
 - (f) "Sub-Contractor's Equipment" means all appliances or other things of whatsoever nature required by the Sub-Contractor in the fulfilment of their obligations under this Sub-Contract but not including materials or other things intended to form or forming part of the Sub-Contract Works.
 - (g) "Maintain" means prior to Site Works Completion protect from damage, repair damage, execute outstanding works, correct defects and generally maintain in good order and condition and the words "Maintenance" and "Maintaining" shall be construed accordingly.
 - (h) "Completion" means that the works under the Main Contract (or where the works under the Main Contract are to be completed by sections then the relevant section of those works) have reached substantial completion (or whatever similar term is used in the Main Contract) so that those works or that section of them is taken over by the Employer and the Employer shall on request confirm to the Sub-Contractor the date on which Completion occurred.
 - (i) "Portal" means the JN Bentley Xpedeon Web Portal for Suppliers for which the Sub-Contractor has been given login details prior to the date of issue of the Sub-Contract Order.
 - (j) "Contract Date" means the dates termed Contract Dates within the Sub-Contract Order.
 - (k) "Assessment Date" means the relevant date (as stated within the Sub-Contract Order or determined in accordance with these conditions) on which the Contractor assess the amount due to Sub-Contractor.
 - (l) "Price" means the total sum payable to the Sub-Contractor for carrying out the Sub-Contract Works which is stated in the Sub-Contract Order as that sum may be adjusted in accordance with these conditions but is exclusive of Value Added Tax unless specifically stated to the contrary in the Sub-Contract Order.
 - (m) the "Act" means the Housing Grants, Construction and Regeneration Act 1996 (as amended).
 - (n) "Site Works Completion" means that the whole of the works under the Main Contract have reached Completion.
 - (2) Words importing the singular also include the plural and vice-versa where the context requires.
 - (3) All references herein to clauses are references to clauses numbered in these conditions and not to those in any other document forming part of this Sub-Contract unless otherwise stated.
 - (4) The word "including" and its cognate expressions will be construed as if followed by the words "without limitation".
 - (5) All applications for payment and other notices which must be submitted in writing by the Sub-Contractor shall be validly delivered only if submitted via the Portal and shall be deemed not delivered to or received by the Contractor if sent in any other way (except that if the Portal is not useable for a continuous period exceeding 24 hours then notices may be validly delivered by hand only to the Contractor's registered office addressed to the Company Secretary and must be submitted via the Portal as soon as it is again useable). The Contractor may in its absolute discretion elect to waive this requirement in respect of any notice, but such waiver shall not create any implication that the Contractor will waive again in similar circumstances. The Contractor may serve notices on the Sub-Contractor via the Portal or any other effective means.
2. (1) Unless the Sub-Contractor has notified the Contractor in writing to the contrary within 7 days of receipt of the Sub-Contract Order the Sub-Contractor shall be deemed to have (and by commencing the Sub-Contract Works re-confirms that they have) full access to the specifications and other documents referred to in the Sub-Contract Order.
 - (2) The Sub-Contractor shall carry out the Sub-Contract Works in conformity with the requirements of this Sub-Contract.
 - (3) The Sub-Contractor hereby grants (or to the extent that such a grant cannot take place until a later date agrees to grant) to the Contractor a licence to use such intellectual property and other rights (on an irrevocable and royalty-free basis) as may be necessary to enable the Contractor, the Employer, their successors and assigns and those authorised by any of them to use the materials and designs provided by the Sub-Contractor for all purposes related to the works of which the Sub-Contract Works form part and the property on which they are carried out. The Sub-Contractor shall for the avoidance of doubt provide such information and documents in relation to the Sub-Contract Works and in relation to this Sub-Contract, and within such timescales, as the Contractor may at any time reasonably request. Nothing in this Sub-Contract (other than an express provision in the Sub-Contract Order which refers expressly to this clause 2(3) and is signed as required by clause 17(2)) shall be interpreted as entitling the Sub-Contractor to act or refrain from acting in a way which is contrary to this clause 2(3) and (save as aforesaid) in the event of conflict with another provision of this Sub-Contract this clause 2(3) shall prevail
 - (4) Nothing in this Sub-Contract shall be construed as creating or evidencing any contract between the Sub-Contractor and the Employer. No person is intended to have any right to enforce any provision of this Sub-Contract under the Contracts (Rights of Third Parties) Act 1999.
3. The Sub-Contractor undertakes:
 - (1) to execute, complete and deliver up the whole of the Sub-Contract Works: in accordance with these conditions; with the best workmanship and materials; as and when required in accordance with the Contract Dates; in such manner as the Contractor may direct; to the satisfaction of the Contractor or any authorised employees or representatives under the control of the Contractor (or otherwise as the Contractor may direct); in accordance with the drawings, specifications and/or instructions or any amendments

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thereof supplied to them from time to time by the Contractor; and at all times in compliance with all reasonable instructions of the Contractor and its authorised employees and representatives;

(2) save to the extent expressly stated otherwise in the Sub-Contract Order or documents referred to in it to indemnify the Contractor against: claims and proceedings from the Employer or other third parties and compensation and costs payable to them which arise from or in connection with the Sub-Contractor carrying out (or failing to carry out) the Sub-Contract Works; loss of or damage to the Sub-Contract Works; loss of or damage to property owned or occupied by the Employer or Contractor other than the Sub-Contract Works which arises from or in connection with the carrying out of (or failing to carry out) the Sub-Contract Works; death or bodily injury to the employees of the Sub-Contractor;

(3) save to the extent expressly stated otherwise in the Sub-Contract Order or documents referred to in it to maintain the insurances listed below and any additional insurances specified in the Sub-Contract Order (and without limitation the Sub-Contractor shall be liable for the risks covered by such insurances save to the extent expressly stated otherwise in the Sub-Contract Order or documents referred to in it). Such insurances shall be in the joint names of the Sub-Contractor and the Contractor (save for the fourth and fifth insurances listed below) and shall cover events which are the Sub-Contractor's liability from the date on which any part of the Sub-Contract Works are commenced until the liability of the Sub-Contractor for the risk in question ends. The insurances and the required amounts of cover (unless any other amount of cover is specified in respect of the insurance in question in the Sub-Contract Order or documents referred to in it) are:

- against loss of or damage to the Sub-Contract Works and materials and other items intended to form part of the Sub-Contract Works, to cover the replacement cost;
- against loss of or damage to the Sub-Contractor's Equipment, to cover the replacement cost;
- against loss of or damage to property (except the Sub-Contract Works, materials and other items intended to form part of them and the Sub-Contractor's Equipment) and liability for bodily injury to or death of a person (not an employee of the Sub-Contractor) arising from or in connection with the Sub-Contractor carrying out (or failing to carry out) the Sub-Contract Works, to cover for any one event a reasonable sum in light of the nature of the Sub-Contract Works and the context in which they are carried out and with cross liability so that the insurance applies to the Contractor and the Sub-Contractor separately;
- against death of or bodily injury to employees of the Sub-Contractor arising out of and in the course of their employment in connection with the sub-contract, to cover at least the amount required by law;
- against claims against the Sub-Contractor arising out of its failure to use the skill and care normally used by professionals designing works similar to the Sub-Contract Works, to provide an amount of cover at least equal to the Sub-Contractor's potential liability under this sub-Contract and on an each and every claim basis unless otherwise stated in the Sub-Contract Order or documents referred to in it;

(4) to submit to the Contractor before starting the Sub-Contract Works and on each renewal of any relevant insurance policy until the liability of the Sub-Contractor for the risk in question ends certificates signed by its insurers or insurance brokers showing that the required insurances are in force. The insurances must be with reputable insurers authorised to provide insurance within the UK and must include a waiver by the insurers of their subrogation rights against the Contractor and Sub-Contractor and the directors and other employees of every insured except where there is fraud. The Contractor and Sub-Contractor must comply with the terms and conditions of the insurance policies to which they are a party. The Contractor may insure an event or liability which the Sub-Contract requires the Sub-Contractor to insure if the Sub-Contractor does not submit a required certificate and the cost of such insurance is paid by the Sub-Contractor;

(5) to Maintain their work and materials in good repair and condition until Site Works Completion and to make good any defects or incomplete works to the satisfaction of the Contractor and in accordance with clause 12;

(6) to make good at their own expense any damage and/or consequential damage (whether accidental or otherwise) consequent upon their work or otherwise caused by the Sub-Contractor or those for whom the Sub-Contractor is responsible;

(7) not to assign or sub-let the whole or any part of the Sub-Contract Works, without the prior written consent of the Contractor (which will not be unreasonably withheld);

but for the avoidance of doubt nothing in this clause 3 requires the Sub-Contractor to indemnify the Contractor in respect of any liability for death or personal injury to the extent that it was caused by the Contractor's own negligence.

4. The Sub-Contractor shall apply to the Contractor for all drawings, details or information necessary to perform the Sub-Contract Works by the time or times required. Copyright and other intellectual property rights in all drawings, specifications and all other documents supplied by the Employer or the Contractor shall not pass to the Sub-Contractor.
5. The Sub-Contractor shall provide the Sub-Contractor's Equipment and all labour, tools and plant necessary for the execution completion and maintenance of the Sub-Contract Works. Where the Sub-Contract Order or documents referred to in it state that the Sub-Contractor may use any scaffolding, ladders or other equipment owned by or hired to or under the control of the Contractor the Sub-Contractor shall use it in compliance with all relevant instructions, rules and safety procedures and the Sub-Contractor shall make good any damage to such equipment caused by their employees, workmen or agents and shall indemnify and keep indemnified the Contractor against all liability, loss, claims and/or proceedings arising out of or in the course of such use (but for the avoidance of doubt this does not require the Sub-Contractor to indemnify the Contractor in respect of any liability for death or personal injury to the extent that it was caused by the Contractor's own negligence).
6. The Sub-Contractor shall liaise with and cooperate with the Contractor and its other subcontractors including providing to them and obtaining from them in good time programmes and other information; acting reasonably in agreeing access arrangements and arrangements relating to the availability and use of power, water and other resources; accepting a reasonable amount of interference with the Sub-Contract Works as a result of the Contractor and its other subcontractors carrying out their work; and seeking to minimise the impact of the Sub-Contract Works on the Contractor's and its other subcontractors' work.

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7. The Sub-Contractor shall make all provision for the safe transporting, unloading and storing of their materials and subsequent handling on site. Without prejudice to the generality of clause 2, the Sub-Contractor shall comply with the requirements of this Sub-Contract as to the bringing on to and removal from the site of the Sub-Contractor's Equipment, materials and other things and in so far as any items thereof are hired by the Sub-Contractor, they shall comply with all the requirements of this Sub-Contract as to the terms of such hirings and as to the giving of information and certificates in relation thereto.
8. The Sub-Contractor shall constantly keep at the site and at any other locations required to carry out the Sub-Contract Works a competent foreman who shall be authorised to receive instructions on behalf of the Sub-Contractor. The Sub-Contractor shall permit the Employer, and the Employer's employees, servants and agents and the Contractor, their employees, servants and agents (including any other sub-contractors engaged in the execution of the Main Works), during working hours to have reasonable access to the Sub-Contract Works and to the places on the site where any work or materials therefore are being executed prepared or stored and the Sub-Contractor shall also permit or procure reasonable access for the Employer, their employees, servants and agents and for the Contractor, their employees, servants and agents during working hours to such places off the site where work is being executed or prepared by or on behalf of the Sub-Contractor in connection with the Sub-Contract Works.
9. Where the Employer has notified or notifies the Sub-Contractor that the Main Contract requires that the property in any Sub-Contractor's Equipment, materials or things whatsoever shall in certain events vest in the Employer or vest or re-vest in the Contractor, then in so far as such Sub-Contractor's Equipment, materials or things are to be provided by the Sub-Contractor in connection with the Sub-Contract Works, the property therein shall pass from the Sub-Contractor to the Contractor immediately before it is due to vest in the Employer in accordance with the Main Contract and shall re-pass from the Contractor to the Sub-Contractor immediately after it has re-vested in the Contractor in accordance with the Main Contract.
10.
 - (1) Variations, additions or omissions shall not invalidate this Sub-Contract and the Sub-Contractor shall make such variations of the Sub-Contract Works and/or the methods by which they are carried out, whether by way of addition, modification or omission, as may be:
 - (a) Agreed to be made by the Contractor and confirmed in writing to the Sub-Contractor by the Contractor; or
 - (b) Instructed in writing by the Contractor.
 - (2) The Sub-Contractor shall not act upon an instruction for the variation of the Sub-Contract Works, which is directly received by them from the Employer or anyone acting on the Employer's behalf. If the Sub-Contractor shall receive any such direct instruction, they shall forthwith inform the Contractor's agent or foreman in charge of the Main Works and shall supply them with a copy of such direct instruction, if given in writing. The Sub-Contractor shall only act upon such direct instruction as directed in writing by the Contractor, but the Contractor shall give their directions thereon with all reasonable speed.
 - (3) Where a variation is instructed or confirmed by the Contractor or where the Contractor notifies the Sub-Contractor that they are contemplating instructing a variation (and to avoid doubt a variation may include alterations to Conditions) the Sub-Contractor shall provide a written quotation to the Contractor identifying any addition to or reduction in the sums payable under this Sub-Contract and any necessary change to any Contract Dates as a result of the variation. The Contractor may either accept such quotation (or any revised quotation following negotiations) or reject it.
 - (4) If the Contractor rejects any quotation then the amount to be paid or allowed for the variations in question and any effect on the Contract Dates shall be ascertained in accordance with any specific arrangements set out in the Sub-Contract Order or otherwise in this Sub-Contract and in the absence of any specific arrangements then the addition to or reduction in the sums payable under this Sub-Contract and any necessary change to any Contract Dates shall be such as are fair and reasonable in all the circumstances.
 - (5) Should the Sub-Contractor consider they have been asked to carry out works not covered by the Sub-Contract Order or any other variation the Sub-Contractor shall notify the Contractor's QS and agree rates for the work prior to the commencement of it and if the Sub-Contractor fails to comply with this requirement Contractor will be entitled to pay for the work at whatever rates are reasonable in the circumstances.
 - (6) The Sub-Contractor shall not be entitled to any additional payment or any change to the Contract Dates in respect of any variation unless prior to carrying out the work in question the Sub-Contractor has notified the Contractor in writing that they believe a variation has been required or has occurred and has either provided a written quotation in accordance with clause 10(3) or has been specifically instructed by the Contractor to proceed before providing such a quotation.
11.
 - (1) The Sub-Contract Order is on a fixed price basis unless otherwise clearly specified in the Sub-Contract Order.
 - (2) If the Sub-Contract Order specifies a bonus arrangement for achieving the Condition for a Contract Date early then subject to clause 11 (3) that arrangement shall be implemented.
 - (3) If a Contract Date or Condition are changed (whether by extension of time, variation or otherwise) then the Contractor may within 14 days of the change by written notice to the Sub-contractor reduce, increase, remove, or in any other way vary any bonus arranged for achieving the relevant Condition by the relevant Contract Date or may add a bonus arrangement where none previously applied, in each case so as to reflect the changed value to the Contractor of the Condition being achieved by the Contract Date.

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12. (1) If the Sub-Contractor shall complete the Sub-Contract Works as required before Site Works Completion (or where the works under the Main Contract are to be completed by sections before Completion of any particular section which includes any of the Sub-Contract Works), the Sub-Contractor shall Maintain the Sub-Contract Works until Site Works Completion, unless a Sub-Contract Completion Certificate is issued by the Contractor, and subject to any relevant provisions of clause 3 (insurance), shall not be entitled to any additional payment for so doing unless such defect or imperfection is caused by the wilful default of the Contractor.
- (2) The Sub-Contractor shall for a period of 52 weeks (unless an alternative period or defects date is specified in the Specific Information section of the Sub-Contract Order) from the date of Site Works Completion, unless a Sub-Contract Completion Certificate is issued by the Contractor in which case the period of 52 weeks (unless an alternative period or defects date is specified in the Specific Information section of the Sub-Contract Order) shall be from the date of the Sub-Contract Completion Certificate, make good defects and imperfections in the Sub-Contract Works. Provided always that if any defect or imperfection made good by the Sub-Contractor under this sub-clause is caused by the act, neglect or default under the Sub-Contract of the Contractor, their authorised employees, servants or agents, then the Sub-Contractor shall be entitled to be paid by the Contractor their reasonable costs of making good such defect or imperfection.
13. (1) If the Sub-Contractor:
- (a) without the written consent of the Contractor wholly or partly suspends the Sub-Contract Works; or
 - (b) fails to proceed with the Sub-Contract Works with due diligence or fails to proceed with the same in accordance with the Contractor's instructions or fails to ensure that a Contract Date is complied with; or
 - (c) fails to execute the Sub-Contract Works or to perform their other obligations in accordance with the Sub-Contract; and in any of the above cases (a)-(c) shall continue such default for five days after written notice by the Contractor specifying the same or shall thereafter at any time repeat the default so specified; or
 - (d) refuses or to a substantial degree persistently neglects after notice in writing from the Contractor to remove defective materials or make good defective work; or
 - (e) does or omits to do any other act or thing which a reasonable person would expect to occasion or that it might occasion a termination of the Main Contract or of the Contractor's employment under it; or
 - (f) is required by the Employer to be removed from carrying out the Sub-Contract Works; or
 - (g) has substantially broken a health or safety regulation or BMS 02-09 Supplier's Obligations;
- then the Contractor may (in any of the above cases (a) – (g) and without prejudice to any other rights that the Contractor may have) forthwith and without further warning by written notice determine the employment of the Sub-Contractor under this Sub-Contract and retain any monies due to the Sub-Contractor to be applied to the cost of completing the work. Notwithstanding the other provisions of this clause the Contractor may take possession of all materials, Sub-Contractor's Equipment and other things whatsoever brought onto the site by the Sub-Contractor and may use them for the purpose of executing, completing, Maintaining and making good defects in the Sub-Contract Works and may if they think fit, sell all or any of them and apply the proceeds in or towards the satisfaction of monies otherwise due to them from the Sub-Contractor.
- (2) If the Sub-Contractor becomes insolvent (as defined in S113 of the Act) or makes an arrangement or compromise with or assignment in favour of their creditors or applies to the court for a moratorium under Part 1A of the Insolvency Act 1986 the Contractor may without prejudice to any other rights including the continued operation of clause 13(3) by written notice determine this Sub-Contract and/or the Sub-Contractor's employment under it and the effects of such determination shall be the same as if the Sub-Contractor had repudiated this Sub-Contract.
- (3) In the event of determination under this clause the Contractor shall in addition to the powers set out in clause 13(1) have the right to use or permit others to use the Sub-Contractor's Equipment, materials and property to complete the Sub-Contract Works. The Contractor may also complete the Sub-Contract Works themselves or employ another sub-contractor to do so and may recover from the Sub-Contractor as a debt all additional costs and/or damages and/or expenses incurred by the Contractor through the Sub-Contractor's default. Without prejudice to the other provisions of this clause 13 the Contractor may in lieu of giving a notice of determination take part only of the Sub-Contract Works out of the hands of the Sub-Contractor and may by themselves, their employees, agents or sub-contractors execute, complete, Maintain and make good defects in such part of the Sub-Contract Works and in such event the Contractor may recover their reasonable costs of so doing from the Sub-Contractor or deduct such costs from monies otherwise becoming due to the Sub-Contractor.
14. (1) The liability of the Sub-Contractor under this Sub-Contract shall be limited to the sum stated in the Sub-Contract Order except in relation to the following matters in respect of which the Sub-Contractor's liability shall not be limited: fraud or other deliberate and wilful misconduct; death of or bodily injury to any person; a liability which is covered by an insurance policy; loss of or damage to third party property; an infringement by the Sub-Contractor of the rights of third parties.
- (2) The liability of the Sub-Contractor under this Sub-Contract for failure to ensure that a Contract Date is complied with shall be (and shall be limited to) the relevant liquidated damages sum set out in the Sub-Contract Order.
15. (1) If the Main Contract or the Contractor's employment under it is determined for any reason whatsoever before the Sub-Contractor has fully performed their obligations under this Sub-Contract, then the Contractor may at any time thereafter by written notice to the Sub-Contractor forthwith determine this Sub-Contract or the Sub-Contractor's employment under it and thereupon the Sub-Contractor shall cease the Sub-Contract Works and, subject to clause 9, with all reasonable speed remove their people and Sub-Contractor's Equipment from the site.
- (2) Upon such determination of the Sub-Contractor's employment, subject to sub-clause 15(3), the Sub-Contractor shall be entitled to be paid the full value, calculated by reference to the price and to the rates and prices contained in the Schedule of Works forming part of this Sub-Contract, of all work properly done on the site by the Sub-Contractor and of all materials properly brought and left on the site by the Sub-Contractor, together with their reasonable costs of removing their Sub-Contractor's Equipment from the Site, but less such sums as the Sub-Contractor has already received on account and less the value of all such materials which

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the Sub-Contractor is permitted by the Contractor to remove from the site. Furthermore if at the date of such determination the Sub-Contractor has properly prepared or fabricated off the site any goods for subsequent incorporation in the Sub-Contract Works and they shall deliver such goods to the site or to such other place as the Contractor may reasonably direct, then they shall be paid for such goods as for materials properly brought and left on the site by him. Provided always that nothing herein shall affect the rights of either party in respect of any breach of this Sub-Contract committed by the other prior to such determination, nor any right which accrued to the Sub-Contractor prior to such determination to receive any payment which is not in respect or on account of the price payable under the Sub-Contract.

(3) If the Main Contract or the Contractor's employment under it is determined by the Employer in consequence of any breach of this Sub-Contract by the Sub-Contractor, then the provisions of the preceding sub-clause as to payment shall not apply, but the rights of the Contractor and the Sub-Contractor hereunder shall be the same as if the Sub-Contractor had by such breach repudiated this Sub-Contract and the Contractor had by their notice of determination under clause 15(1) elected to accept such repudiation.

16. (1) The Sub-Contractor shall notify the Contractor in writing of any delay in or affecting their work as soon as reasonably practical, giving details. Subject thereto, the Contractor will grant in writing a reasonable extension of time (identifying the Contract Dates in respect of which it applies and recognising that different extensions may be appropriate in respect of different Contract Dates) for delays arising in their opinion solely from impediment, prevention or default by the Contractor or any other causes which are clearly stated in the Sub-Contract Order or documents specified within it to be risks borne by the Contractor.
(2) The Contractor shall not be responsible for any loss or damage to the Sub-Contractor, their employees, materials, plant tools or equipment from any cause whatsoever other than negligence or wilful default on the part of the Contractor.
17. (1) No conditions in or attached to any tender or quotation for this Sub-Contract or other communications from the Sub-Contractor shall be of any legal effect except such as constitute warranties or guarantees on the part of the Sub-Contractor.
(2) No purported amendment to these conditions shall be of any legal effect unless in the form of a written memorandum referring expressly to this clause 17(2) (which may be the original Sub-Contract Order) which is signed by authorised representatives of the Sub-Contractor and a director or commercial manager of the Contractor (only people with these specific titles have authority to agree amendments to these conditions on behalf of the Contractor and then only when they do so in writing).
18. The method of measurement shall be the Schedule of Works stated in the Sub-Contract Order. The prices and items listed in the Schedule of Works are in every case the lump sum prices for each of the items listed unless otherwise clearly stated in the Sub-Contract Order.
19. (1) The Sub-Contractor shall be entitled to interim payments on account of the Price, calculated as at each Assessment Date and being, subject to clause 19(5): the proportion of the Price which corresponds to the work done by the Sub-Contractor in accordance with this Sub-Contract at that Assessment Date valued in accordance with the method of measurement set out at clause 18; less the sums which have already become due to the Sub-Contractor in respect of previous Assessment Dates.
(2) Should any Sub-Contract Works be carried out after the Assessment Dates stated in the Subcontract Order, the Sub-Contractor should request the Contractor to provide further Assessment Dates which the Contractor shall do (acting reasonably) and which generally will be the last Sunday of each calendar month.
(3) The Sub-Contractor shall submit their application for payment to the Contractor prior to the Assessment Date to assist the Contractor to assess the amount which will become due in respect of that Assessment Date. If the Sub-Contractor fails to provide an application for payment prior to the Assessment Date the Contractor will carry out the assessment of amounts due without reference to any Sub-Contractor's application for payment which is presented late. Any late application for payment provided by the Sub-Contractor may be considered by the Contractor at the next Assessment Date.
(4) The Subcontractor's application for payment shall be submitted via the Portal in a format acceptable to the Contractor, which details the expected final quantity & value of work as well as the quantity & value of work completed (or expected to be completed) up to the Assessment Date.
(5) the Contractor may retain the retention percentage stated in the Sub-Contract Order from each interim payment due to the Sub-Contractor. The sum retained shall become due to the Sub-Contractor on the date or dates set out in the Sub-Contract Order or if no dates are set out there (or if the dates set out there do not comply with the requirements of the Act to provide an "adequate mechanism" for determining what payments become due and when) then the sum retained shall become due to the Sub-Contractor 18 months after completion of the Sub-Contract Contract Works.
20. (1) Payments shall subject to clause 22 become due to the Sub-Contractor at the end of the period stated on the Sub-Contract Order from the Assessment Date (hereinafter called 'the Due Date') and the final date for payment shall be the end of the period stated in the Sub-Contract Order from the Due Date plus 3 working days (for bank clearing, these being days when clearing banks are open for normal business in the City of London).
(2) The Contractor will give written notice to the Sub-Contractor not later than five days after each Due Date specifying the sum (even if it is zero) that the Contractor considers to be or to have been due at the Due Date and the basis on which that sum is calculated. If the Contractor intends to pay less than the sum notified (or if no such notice was given intends to pay less than the sum applied for all invoiced by the Sub-Contractor) the Contractor shall give written notice to the Sub-Contractor not later than one day before the final date for payment specifying the sum (even if it is zero) that the Contractor considers to be due on the date the notice is served and the basis on which that sum is calculated.
21. This Sub-Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English Courts (save that proceedings may be brought in the courts of other jurisdictions in order to enforce any decision of the English Courts). All other disputes shall (save as aforesaid in relation to enforcement proceedings) be referred to

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the English Courts unless the parties agree in writing to submit the dispute to arbitration but this is without prejudice to the right of either party to refer the matter at any time to adjudication pursuant to the Act in which case the adjudication shall be conducted in accordance with the Scheme for Construction Contracts made under the Act. All claims by the Sub-Contractor for payment shall be deemed relinquished on the date which is one year after the earlier of: the actual date of substantial completion of the Sub-Contract Works (whether or not certified); the date of termination of this Sub-Contract; and the date of termination of the Sub-Contractor's employment under it; except for claims in relation to the sums retained pursuant to clause 19(5) and claims which before the end of the one year period have been referred to the Courts or arbitration and claims in respect of which the Subcontractor's solicitors have within the 2 months before the end of the one year period given formal written notice to the Contractor stating that the Subcontractor wishes to make a claim, stating the exact sum claimed and giving reasonable details of the grounds for the claim.

22. The Contractor shall not be obliged to make any payment in respect of value added tax ("VAT") unless either the Contractor and Sub-Contractor have agreed to operate a self-billing arrangement or in the absence of such agreement the Contractor has previously received from the Sub-Contractor a valid VAT invoice in respect of it (and if not received by the relevant Due Date then the VAT payment shall not be due until the Due Date following the date on which the valid VAT invoice has been received).
23. The Contractor is a "contractor" for the purposes of the Construction Industry Scheme under the Finance Act 2004 ("CIS") and the Contractor's obligation to make any payment under this Sub-Contract is subject to the provisions of the CIS.
24. (1) No neglect or forbearance by the Contractor in pursuing any claim or right hereunder against the Sub-Contractor shall prejudice or in any way affect the Contractor's rights hereunder or constitute a waiver of the Contractor's entitlement to subsequently pursue such claim or right.
(2) Any reference to a statute, statutory provision or statutory instrument shall be deemed to include a reference to any modification or re-enactment or revision or re-issuing of it from time to time in force.
(3) If any term or provision of these conditions shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to the extent necessary to remove the illegality or unenforceability be deemed not to form part of these conditions and the enforceability of the remainder of these conditions shall not be affected.
(4) These conditions are exclusive and no other terms or conditions which the Sub-Contractor may purport to apply or incorporate into this Sub-Contract or introduce in any modification of the terms of this Sub-Contract whether under any purchase order confirmation of order or otherwise shall be of any legal effect unless otherwise agreed in writing signed by an authorised officer of the Contractor. For the avoidance of doubt where any document referred to in the Sub-Contract Order contains or refers to any set of standard legal terms and conditions used by the Sub-Contractor they shall not be incorporated into this Sub-Contract and shall be of no legal effect.
(5) An order by the Contractor for goods or services which is accepted by the Sub-Contractor but which does not include a written Sub-Contract Order referring to specific legal terms and conditions which are to apply to it shall be deemed to incorporate these conditions unless the Sub-Contractor shall notify the Contractor via the Portal within 2 days of receipt of the order that it does not accept these conditions and stating the reasons why these conditions are not accepted. An order (including the Sub-Contract Order if this Sub-Contract is not otherwise evidenced) shall be deemed accepted by the Sub-Contractor so as to create a legally binding sub-contract incorporating these conditions as soon as the Sub-Contractor carries out any work in pursuance of it or if earlier 2 weeks after the Sub-Contractor accesses it via the Portal unless within that 2 week period the Sub-Contractor notifies the Contractor via the Portal that it rejects the order in question.
25. The Contractor and the Sub-Contractor shall act as stated in this Sub-Contract and in a spirit of mutual trust and co-operation.