

BARTON KNIGHT

SUBCONTRACT TERMS AND CONDITIONS

1. **Sub-Contractor's Obligations**

- 1.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works and any variations thereto to the satisfaction of the Contractor and in compliance with the terms and conditions of this Sub-Contract and other Statutory Requirements and using materials and workmanship of satisfactory quality and in conformity with all instructions, directions and requirements of the Contractor.
- 1.2 Notwithstanding the provisions of Clause 2.1, the Sub-Contractor shall be deemed to have knowledge of the terms and conditions of the contract between the employer and the Contractor ("Main Contract") (except the detailed prices) and undertakes to observe, perform and comply with all the provisions of the Main Contract on the part of the Contractor to be observed, performed and complied with so far as they relate and apply to the Sub-Contract (or any portion of the same) and are not expressly varied hereunder and the Sub-Contractor acknowledges that any breach by him of this Sub-Contract may result in the Contractor committing breaches of and becoming liable in damages under the Main Contract and all such damages are hereby agreed to be included as being within the contemplation of the parties. The redacted Main Contract is available for inspection by the Sub-Contractor on prior written request.
- 1.3 Notwithstanding the provisions of Clause 2.1 and without prejudice to any other remedies the Contractor may have, the Sub-Contractor shall indemnify the Contractor against all claims, liabilities, demands, proceedings, damages, costs and expenses made against or incurred by the Contractor in relation to any negligence or breach of duty by the Sub-Contractor or any breach of or failure by him to carry out his obligations under this Sub-Contract.
- 1.4 The Sub-Contractor shall, if not already provided, provide to the Contractor within seven days of executing this Sub-Contract a Parent Company Guarantee and/or Performance Bond in the form reasonably required by the Contractor.
- 1.5 In no circumstances whatsoever shall any alteration or modification of the Sub-Contract Works or the Works be done without the prior written authority of the Contractor and the Sub-Contractor shall be responsible for any damage which is occasioned thereby.

2. **Design Obligations**

- 2.1 Without prejudice to the provisions of Clauses 1.2 and 1.3, where the Sub-Contractor designs any part of the Sub-Contract Works (including all associated or related works whether permanent or temporary in nature) the Sub-Contractor warrants to the Contractor that he shall exercise all reasonable skill and care to be expected of a qualified and competent designer experienced in carrying out work of a similar scope, nature and size to the Sub-Contract Works in:-
 - 2.1.1 the design of the Sub-Contract Works, and
 - 2.1.2 the selection of kinds and standards of materials and goods for incorporation into the Sub-Contract Works; and

- 2.1.3 the co-ordination and integration of the Sub-Contractor's design with the remainder of the Works and design by others.
- 2.2 The Sub-Contractor further warrants to the Contractor that the Sub-Contract Works shall satisfy any performance specification or other requirements included or referred to in the Sub-Contract and/or Main Contract which relate to the Sub-Contract Works and shall comply with all Statutory Requirements which are applicable to the Sub-Contract Works. If there are any discrepancies or divergences within or between the documents comprising the Sub-Contract Documents and/or the documents comprising the Main Contract, so far as they relate and apply to the Sub-Contract, then the Sub-Contractor shall notify the Contractor of his proposal to deal with them. The Contractor shall decide between the discrepant items or otherwise may accept the Sub-Contractor's proposal. The Sub-Contractor shall be obliged to comply with the decision or acceptance by the Contractor, without cost to the Contractor and without having any entitlement to an extension of time.
- 2.3 The Sub-Contractor hereby grants to the Contractor a royalty free irrevocable non exclusive licence to use such documents and drawings prepared and produced by the Sub-Contractor for any purpose relating to the Works and shall allow the employer licence in similar terms. If required the Sub-Contractor shall supply the Contractor with such drawings, negatives and information showing or describing the Sub-Contract Works as built and concerning the maintenance, operation and management of the Sub-Contract Works as may be required under the Main Contract.

3. Instructions and Variations

- 3.1 All instructions issued by the Contractor to the Sub-Contractor under either this Clause 3.1 or Clause 3.2 in respect of the Sub-Contract Works, shall be of no effect unless issued or confirmed in writing by the Contractor. The Sub-Contractor shall comply with all such instructions forthwith. If after issue of a written notice by the Contractor requiring compliance with an instruction the Sub-Contractor does not so comply within the period specified within the notice (or if no period is specified within ten days) then the Contractor may employ and pay other persons to execute any work which may be necessary to give effect to such instruction. All costs and expenses incurred by the Contractor in connection with such employment shall be recoverable from the Sub-Contractor.
- 3.2 The Contractor may, by means of a written instruction to the Sub-Contractor only, alter or modify the design, quantity or quality of, or the conditions under which the Sub-Contract Works shall be executed and such alterations or modifications shall not vitiate this Sub-Contract. Unless any such alterations modifications variations or changes are due to the Sub-Contractor's negligence, omission or default, such alterations modifications variations or changes shall be valued and paid for by the Contractor at the prices contained in the Sub-Contract or where the varied or altered work differs from that originally tendered for, at prices or charges analogous thereto, or in the absence of such prices in the Sub-Contract, at a fair and reasonable rate determined by the Contractor, or if applicable, in accordance with Clause 3.3 or Clause 3.4.
- 3.3 The Sub-Contractor may not claim payment for daywork unless the Sub-Contractor has given to the Contractor reasonable prior written notice of any work pursuant to any variation or change as referred to in Clause 3.2 above for which he intends to apply for payment on a daywork basis and the Contractor has agreed that such work is to be carried out on a daywork basis.

4. Commencement and Completion

- 4.1 The Sub-Contractor shall commence the Sub-Contract Works in accordance with either the agreed commencement date or the Contractor's notice to commence and shall regularly and diligently carry out the Sub-Contract Works (including the production of and the obtaining of all necessary approvals of any drawings, details or calculations for which he is responsible) at such times and such periods as will suit the progress of the Works and as may be directed by the Contractor and shall complete the Sub-Contract Works or any sections thereof within the Sub-Contract Period(s) as may be amended in accordance with Clause 4.2. The Contractor shall determine and notify the Sub-Contractor in writing of the date when the Sub-Contract Works or any sections thereof are practically complete.
- 4.2 Upon it becoming reasonably apparent that the Sub-Contract Works or any part thereof have been or are likely to be delayed, the Sub-Contractor shall notify the Contractor in writing forthwith specifying the extent of the delay and the cause(s) in sufficient time to enable the Contractor to comply with such requirements of the Main Contract. If for such cause(s) the Contractor is granted an extension of time under the Main Contract or it is a cause within the control of the Contractor or if the Contractor has impeded or prevented the carrying out of the Sub-Contract Works then unless the delay was caused by omission, negligence or default of the Sub-Contractor or unless the Sub-Contractor has failed to comply with the requirements of this clause 4.2 in regard to the giving of notices and details required in relation to the same, the Contractor shall by written notice to the Sub-Contractor grant a fair and reasonable extension of time.

5. Property and Risk

- 5.1 All equipment materials and goods not for incorporation in the Sub-Contract Works brought on to the Site by the Sub-Contractor shall be at the sole risk of the Sub-Contractor. All equipment, materials and goods properly on the Site for incorporation in the Sub-Contract Works shall become the property of and vest in the Contractor upon payment for the same but the Sub-Contractor shall be solely responsible for any damage to them and shall remain liable for their safe keeping. The Sub-Contractor shall ensure that such equipment, materials and goods shall not be removed from the Site unless the Contractor so instructs or permits.
- 5.2 Risk in the Sub-Contract Works and each part thereof shall remain with the Sub-Contractor until completion of the Sub-Contract Works or the Contractor shall specifically agree in writing to the contrary. The Sub-Contractor shall protect the Sub-Contract Works and each part thereof and all or any part or parts of the Main Contract Works which may in any way be affected by the carrying out of the Sub-Contract Works or otherwise until completion of the Sub-Contract Works as may be directed by the Contractor without addition to the Sub-Contract Sum.

6. Indemnity and Insurance

- 6.1 The Sub-Contractor shall take out and maintain the necessary insurance against Employer's Liability and third party liability risks for not less than £5,000,000 (five million pounds). The Sub-Contractor shall produce documentary evidence to the Contractor if such insurance ceases to be available so that the parties can discuss the best means of protecting their respective interests, while the Sub-Contractor as much insurance cover as would be reasonable in the circumstances.

- 6.2 The Sub-Contractor shall take out or maintain professional indemnity insurance for a period of 12 years from practical completion of the Main Contract Works for not less than £5,000,000 (five million pounds) in respect of any failing by the Sub-Contractor in the design of any works, goods and/or materials provided that the same is available at commercially reasonable terms. The Sub-Contractor shall inform the Contractor if such insurance ceases to be available so that the parties can discuss the best means of protecting their respective interests while the Sub-Contractor has as much insurance cover as would be reasonable in the circumstances.
- 6.3 If the Sub-Contractor shall fail to take out or maintain the insurance required in Clauses 6.1 and 6.2 then the Contractor may, without prejudice to any other rights or remedies it possesses, take out or maintain the insurances and the costs thereof including any premiums payable shall be recoverable from the Sub-Contractor.
- 6.4 The Contractor shall take out and maintain or procure that the employer takes out and maintains the insurance of the Works in accordance with the Main Contract and shall use reasonable endeavours to procure that either the Sub-Contractor is recognised as a joint name insured or that the insurers waive any rights of subrogation against the Sub-Contractor. The cover afforded to the Sub-Contractor in relation to the Sub-Contract Works will be limited to those perils as set out in the Main Contract and the Sub-Contractor shall observe and comply with the conditions contained in the Contractor's or employer's insurance policy relating to the Works and shall (if required) pay the excesses due if any claim arises due to the negligence, omission or default of the Sub-Contractor.

7. Attendances

- 7.1 The Sub-Contractor shall provide everything necessary for the proper execution and completion of the Sub-Contract Works, except where expressly excluded, but shall have the use of water, temporary lighting and if and when erected, standing scaffolding. All facilities supplied by the Contractor shall be used under the express condition that no warranty or liability on the part of the Contractor or any other sub-contractors shall be implied or created with regard to the fitness, condition or suitability of such facilities.

8. Payment

- 8.1 The Sub-Contractor shall submit to the Contractor an application for each interim payment (a 'Payment Application') no later than 10 (ten) calendar days before the date on which such interim payment becomes due. Applications for interim payment must include:
- 8.1.1 a brief description of the Sub-Contract Works;
 - 8.1.2 a brief, but clear description of each element of the works properly executed in accordance with this Sub-Contract and for any unfixed equipment, materials and goods properly stored on the Site for incorporation in the Works;
 - 8.1.3 a statement of the sum that the Sub-Contractor considers will become due on the payment due date in respect of the interim payment, to include the Sub-Contractor's valuation of each element of the works and equipment, materials and goods described in sub-Clause 8.1.2 above;

- 8.1.4 the basis on which such sum has been calculated together with supporting documentation evidencing the carrying out of such works and/or delivery of such equipment, materials and goods; and
- 8.1.5 such other documents or information as the Contractor may reasonably require.
- 8.2 Subject to Clause 8.5, the first interim payment to the Sub-Contractor shall be due on the final working day of the month following the month in which the Sub-Contract Works commenced on the Site.
- 8.3 Subject to Clause 8.5, interim payments to the Sub-Contractor shall thereafter be due on the same date in each month as that on which the first payment became due save that where the first interim payment becomes due on a date which does not recur in the subsequent month, the interim payment for that subsequent month shall be due on the final working day of the month.
- 8.4 Subject to Clause 8.5, the final date for payment of each interim payment shall be the later of:
- 8.4.1 21 calendar days after the date on which it becomes due; or
- 8.4.2 21 calendar days after the date of receipt by the Contractor from the Sub-Contractor of any required VAT invoice for the amount due.
- 8.5 Without prejudice to any other rights and remedies available to the Contractor under this Sub-Contract, the Sub-Contractor acknowledges and agrees that the submission of a valid application for interim payment in accordance with Clause 8.1 is and shall be a condition precedent to that interim payment becoming due and to the Sub-Contractor's entitlement to that interim payment. If the Sub-Contractor fails to submit or is late in submitting its application for interim payment or the Sub-Contractor's application for interim payment is not properly particularised or substantiated in accordance with Clause 8.1 then the Sub-Contractor's application for interim payment may not be processed that month and the Sub-Contractor's entitlement to an interim payment in respect of the amount claimed may be deferred until the following month or month following the submission of a properly particularised and substantiated application.
- 8.6 The amount due for each interim payment shall be the Contractor's gross valuation determined in accordance with the Sub-Contract Documents less any amounts which may be deducted as Retention and less the total amount due in previous interim payments in respect of the Sub-Contract Works and less any other amounts that the Contractor is entitled to withhold, deduct or set-off pursuant to the terms of this Sub-Contract or otherwise arising out of or in connection with this Sub-Contract.
- 8.7 The Contractor shall no later than five (5) days after the date on which an interim payment becomes due to the Sub-Contractor give a written notice to the Sub-Contractor which shall specify the sum that the Contractor considers to be or to have been due at the payment due date and the basis on which that sum is calculated (a "Payment Notice"). It is immaterial that the sum considered to be due may be zero. Subject to any Pay Less Notice given to the Sub-Contractor under Clause 8.8, the sum to be paid by the Contractor shall be the sum specified in the Payment Notice. If the Contractor fails to give a Payment Notice in accordance with this Clause 8.7, the sum to be paid by the Contractor shall, subject to any Pay Less Notice given under clause 8.8, be the sum specified in the Payment Application.

8.8 Subject to Clause 8.7 and the remainder of this Clause 8.8 and in addition to the Contractor's common law right of set-off, the Contractor may deduct from any sums due or to become due to the Sub-Contractor under this Sub-Contract, or any other sub-contract between the Contractor and the Sub-Contractor the amount of any *bona fide* claim and/or counterclaim for damages, losses, demands, expenses (including reasonable legal and other professional expenses), costs, liabilities and/or fines which the Contractor may have against the Sub-Contractor under or arising out of this Sub-Contract or any other sub-contract between the Contractor and the Sub-Contractor. The foregoing entitlement is in addition to and not in substitution for any other rights of counterclaim, set-off or abatement. If the Contractor intends to pay less than the sum stated as due from him in the Payment Notice or Payment Application (as the case may be), the Contractor shall give written notice (a "Pay Less Notice") of his intention to the Sub-Contractor. The Pay Less Notice shall specify the sum the Contractor considers to be due to the Sub-Contractor on the date the notice is served and basis on which that sum is calculated. It is immaterial that the sum considered to be due may be zero. The Contractor shall issue such Pay Less Notice no later 3 (three) calendar days before the final date for payment.

8.9

8.9.1 The Retention which may be deducted and retained by the Contractor shall be calculated as follows:

- (i) where the Sub-Contract Works or any section thereof have not reached practical completion in accordance with Clause 4.1, the Contractor may deduct and retain 5% retention from interim payments;
- (ii) where practical completion of the Sub-Contract Works has occurred, the Contractor may deduct and retain 2.5% retention from further interim payments.

8.9.2 Subject to practical completion of the Sub-Contract Works as a whole having been achieved and there being no defects, shrinkages or other faults of the types referred to in Clause 14 apparent at a date which is 18 months after practical completion of the Sub-Contract Works, the any balance of the Retention shall be paid to the Sub-Contractor.

8.10 Notwithstanding anything to the contrary contained in this Sub-Contract, in the event that the Employer or any other party responsible for making payments under or in connection with the Main Contract is or becomes insolvent the Sub-Contractor shall not be entitled to be paid any further sums under or arising out of this Sub-Contract, except to the extent that the Contractor actually receives or recovers any monies from the Employer or any other party responsible for making payments under or in connection with the Main Contract or any liquidator, administrator or receiver which include an amount that is specifically attributable to the Sub-Contract Works. For the purposes of this Clause 8.11, "insolvent" shall have the meaning given to that expression by section 113 of the Housing Grants, Construction and Regeneration Act 1996.

8.11 If the Sub-Contractor's employment is determined under Clause 15.1, 15.2, 15.3 or 15.3A no further sum shall become due to the Sub-Contractor under this Sub-Contract other than any amount that may become due to him under Clause 15.4 and the Contractor need not pay any sum that has already become due either:

8.11.1 insofar as the Contractor has given or gives a Pay Less Notice under Clause 8.8; or

- 8.11.2 if the Sub-Contractor, after the last date upon which such Pay Less Notice could have been given by the Contractor in respect of that sum, has become insolvent within the meaning of section 113 of the Housing Grants, Construction and Regeneration Act 1996.
- 8.12 In the event of the Contractor failing to pay any sum due to the Sub-Contractor by the final date for payment, the Contractor shall pay to the Sub-Contractor interest on such overdue sum from the final date for payment until payment is made at the rate of 3% per annum above the official dealing rate of the Bank of England current at the final date for payment.
- 8.13 If the Contractor fails to pay the Sub-Contractor in accordance with the Sub-Contract, and the failure continues for 7 days after the Sub-Contractor has given notice to the Contractor of his intention to suspend the performance of his obligations under this Sub-Contract and the ground or grounds on which it is intended to suspend performance, the Sub-Contractor may suspend performance of any or all of his obligations until payment is made in full.
- 8.14 The Sub-Contract Sum is exclusive of VAT and in relation to any payment to the Sub-Contractor under this Sub-Contract, the Contractor shall pay the amount of any VAT properly chargeable in respect of it. It is a condition precedent to the Sub-Contractor receiving payment under the Sub-Contract that the Sub-Contractor agrees to the adoption by the Contractor of the self-billing procedures for Value Added Tax purposes.
- 8.15 The obligation of the Contractor to make any payment under this Sub-Contract is subject to the provisions of the Construction Industry Scheme under the Finance Act 2004 or any subsequent revisions thereof.
- 8.16 Unless otherwise agreed with the Contractor in writing, the Sub-Contract Sum is fixed for the duration of the Works.
- 8.17 The final Sub-Contract Sum shall be the Sub-Contract Sum as may be adjusted under Clause 3 or any other term of this Sub-Contract and less any other amounts that the Contractor is entitled to withhold, deduct or set-off pursuant to the terms of this Sub-Contract or otherwise arising out of or in connection with this Sub-Contract.
- 8.18 Not later than 2 months after completion of the Sub-Contract Works the Sub-Contractor shall send to the Contractor its final account application including all documents necessary for calculating the final Sub-Contract Sum.
- 8.19 Not later than 8 months after receipt by the Contractor of the documents referred to in Clause 8.18, the Contractor shall prepare and send to the Sub-Contractor a statement of the calculation of the final Sub-Contract Sum.
- 8.20 If the Contractor does not receive the documents referred to in Clause 8.18 from the Sub-Contractor within 2 months of practical completion of the Sub-Contract Works, the Contractor shall prepare a statement of all adjustments to the Sub-Contract Sum as the Contractor is able to make on the information in his possession and the Contractor shall send a copy of such statement to the Sub-Contractor ("the Contractor's Final Statement") not later than 10 months after practical completion of the Sub-Contract Works.
- 8.21 The due date for the final payment shall be 2 months after the date of issue of the Contractor's statement or Final Statement as applicable.

- 8.22 Not later than 5 days after the due date, the Contractor shall send the final Payment Notice to the Sub-Contractor. The Final Payment Notice shall show the final Sub-Contract Sum, less the total amount previously due as interim payments under this Sub-Contract and the Final Payment shall be the difference (if any) between the two sums. The difference shall be shown in the Final Payment Notice as a balance due from the Contractor to the Sub-Contractor or from the Sub-Contractor to the Contractor, as the case may be, and the Final Payment Notice shall state the basis on which that amount has been calculated.
- 8.23 The final date for payment of the Final Payment (if any) shall be 28 days from its due date.
- 8.24 If the Party by whom the Final Payment is stated to be payable ('the payer') intends to pay less than the stated balance, he shall not later than 5 days before the final date for payment give the other Party a Pay Less Notice in accordance with Clause 8.8.
- 8.25 Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the notice.

9. Supervision

At all times during the carrying out of the Sub-Contract Works the Sub-Contractor shall provide all necessary supervision to ensure the proper execution of the Sub-Contract Works and shall have a competent person in charge on the Site who shall be authorised to accept instructions and directions on behalf of the Sub-Contractor.

10. Access and Use of Site and Work of others

- 10.1 The Sub-Contractor shall have access to such part or parts of the Site as the Contractor may direct. The Sub-Contractor acknowledges that such access shall be in common with other sub-contractors and suppliers and the Sub-Contractor shall not impede such other sub-contractors and suppliers in the execution of their work on the Site.
- 10.2 The Sub-Contractor shall satisfy himself before commencing the Sub-Contract Works as to the work previously carried out by others which may affect the Sub-Contract Works and shall immediately notify the Contractor in writing of any difficulties with the same. Failure to notify the Contractor of any such difficulties in a reasonable time after becoming aware of the same may involve the Sub-Contractor in abortive work which shall be made good at no cost to the Contractor.
- 10.3 The Contractor and the Contract Administrator shall at all times have access to the Sub-Contract Works and to any workshop or other place where any equipment materials or goods are being prepared for incorporation in the Sub-Contract Works.

11. Statutory Obligations and Health and Safety

- 11.1 The Sub-Contractor shall comply at no cost to the Contractor with:
- 11.1.1 all health and safety legislation relevant to the Sub-Contract Works and the manner in which they are being carried out;
- 11.1.2 all reasonable directions of the Contractor to the extent necessary for compliance by the Contractor and the Sub-Contractor with such legislation as it affects the Sub-Contract Works; and

- 11.1.3 within the time reasonably required, any written request by the Contractor for information reasonably necessary to demonstrate compliance by the Sub-Contractor with this Clause 11.1.
- 11.2 Without prejudice to the Sub-Contractor's obligations under Clause 11.1, the Sub-Contractor shall comply at no cost to the Contractor with:
- 11.2.1 all of the Contractor's health and safety, quality assurance and environmental policies and procedures and any other policies of the Contractor, copies of which are available from the Contractor's site office, and the Sub-Contractor shall immediately inform the Contractor if any of such policies and procedures conflict with the requirements of any legislation which will prevail over such policies and procedures if there is any conflict; and
- 11.2.2 all reasonable requirements of the Contractor to the extent that such requirements are necessary for compliance by the Contractor with his obligations under all United Kingdom health and safety and environmental legislation or obligations under the Main Contract.
- 11.3 The Sub-Contractor shall, prior to commencement of the Sub-Contract Works and at any time thereafter upon request, submit to the Contractor a written statement of the Sub-Contractor, a general policy and method of his specific policy for the Sub-Contract Works in relation to health, safety and welfare, including the appointment of a suitable person responsible for the safe execution of the Sub-Contract Works.
- 11.4 Notwithstanding the generality of the foregoing the Sub-Contractor undertakes to comply with the CDM Regulations and shall:
- 11.4.1 provide the Contractor with any information which the Contractor considers is or may be necessary to ensure that the Construction Phase Plan continues to comply with the CDM Regulations;
- 11.4.2 comply at no cost to the Employer or Contractor with all reasonable requirements of the Contractor relating to compliance by the Sub-Contractor with the CDM Regulations, and no extension of time shall be given in respect of such compliance; and
- 11.4.3 within the time reasonably required in writing by the Contractor, provide to the Contractor such information in respect of the Sub-Contract Works as is reasonably necessary to enable the Contractor to comply with its obligations under the Main Contract and the CDM Regulations in respect of the health and safety file (as defined in the CDM Regulations),
- and no extension of time shall be given in respect of the Sub-Contractor's compliance with this Clause 11.4.
- 11.5 Without prejudice to any other remedies the Contractor may have the Sub-Contractor shall indemnify the Contractor against all claims, liabilities, demands, proceedings, damages, costs, expenses and any fees for intervention imposed on the Contractor by the Health & Safety Executive as a result of any failure by the Sub-Contractor to comply with its obligations under this Clause 11.

12. Labour

- 12.1 The Sub-Contractor shall ensure that all of its site operatives and/or its sub-contractors (including any agency labour employed by it) possess and produce to the Contractor prior to such operatives/sub-contractors/or agency labour commencing work on Site, a CSCS card or equivalent documentary evidence from any of the record schemes accepted in the industry as demonstrating competence for the relevant trade or skill ('the Relevant Competence Documentation').
- 12.2 If the Sub-Contractor fails to comply with the requirements of Clause 12.1 then the Contractor shall be entitled to require the immediate removal from the site of any such site operatives/sub-contractors or agency labour and the Sub-Contractor shall as soon as possible thereafter, supply replacement site operative(s)/sub-contractor(s)/agency labour who possess and produce to the Contractor the Relevant Competence Documentation.
- 12.3 If the Sub-Contractor fails to comply with the requirements of Clause 12.1 then the Contractor shall be entitled to employ the services of an approved assessment centre to determine the competence of any such operatives and obtain the Relevant Competence Documentation. Any costs associated with this process will be borne by the Sub-Contractor.

13. Assignment and Sub-letting

The Sub-Contractor shall not assign this Sub-Contract nor sub-let any portion thereof without the prior written consent of the Contractor. The Sub-Contractor shall assign to the Contractor the benefit of any and all product guarantees obtained by the Sub-Contractor from its suppliers or sub-contractors in respect of materials and/or equipment incorporated or to be incorporated in the Sub-Contract Works.

14. Defects and Maintenance

- 14.1 The Sub-Contractor shall rectify at his own cost any defects, shrinkages or other faults in the Sub-Contract Works due to his failure to properly carry out and complete the Sub-Contract Works in accordance with the Sub-Contract and shall have the like obligations as the Contractor under the Main Contract to rectify any such defects, shrinkages or faults which may arise until the issue of the Certificate of Making Good Defects or any such similar certificate under the Main Contract.
- 14.2 Notwithstanding the provisions of Clause 14.1, the Contractor may notify the Sub-Contractor of any defects that appear in the Sub-Contract Works during the defects liability period of the Works under the Main Contract and the Sub-Contractor shall, at the Sub-Contractor's expense, make good such defects within a reasonable time from notification.

15. Determination

- 15.1 Should the Sub-Contractor:-

15.1.1 abandon or without reasonable cause suspend the carrying out of any part of the Sub-Contract Work; or

15.1.2 refuse or fail to remove defective work and/or materials; or

15.1.3 commit any material breach of the Sub-Contract and fail to remedy the same after notice in writing from the Contractor,

then if such default shall continue for seven (7) days after the date a written notice specifying the default has been given to the Sub-Contractor by the Contractor or if the Sub-Contractor shall at any time thereafter repeat such default (whether previously remedied or not), the Contractor may without prejudice to any other rights or remedies thereupon by notice by recorded delivery forthwith determine the Sub-Contractor's employment provided that such notice(s) shall not be given unreasonably or vexatiously.

15.2 The Sub-Contractor's employment under this Sub-Contract shall automatically determine forthwith if it becomes Insolvent. For the purposes of this Clause 15.2, the Sub-Contractor becomes Insolvent:

15.2.1 if the Sub-Contractor is a company:

- (a) when it enters administration within the meaning of Schedule B1 of the Insolvency Act 1986;
- (b) on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I or Chapter II (as applicable) of Part III of the Insolvency Act 1986;
- (c) on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of the Insolvency Act 1986; or
- (d) on the making of a winding-up order under Part IV or V of the Insolvency Act 1986,

15.2.2 if the Sub-Contractor is a partnership:

- (a) on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of the Insolvency Act 1986; or
- (b) when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors,

15.2.3 if the Sub-Contractor who is an individual:

- (a) on the making of a bankruptcy order against him under part IX of the Insolvency Act 1986; or
- (b) on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors,

15.2.4 if:

- (a) he enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or

- (b) in the case of a Party which is a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this Clause 15.2,

and each of Clauses 15.2.1 to 15.2.4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

15.3 Notwithstanding any other provision of this Sub-Contract, if the employment of the Contractor under the Main Contract is determined for any reason then the employment of the Sub-Contractor under the Sub-Contract shall thereupon also automatically determine forthwith.

15.3A Notwithstanding any other provision of this Clause 16, the Contractor shall be entitled by notice to the Sub-Contractor to determine the Sub-Contractor's employment, under this Sub-Contract or any other contract with the Contractor if, in relation to this Sub-Contract or any other such contract, the Sub-Contractor or any person employed by it or acting on its behalf shall have committed an offence under the Bribery Act 2010 or, where the Employer is a Local Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972.

15.4 If the Sub-Contractor's employment is determined under Clause 15.1, 15.2, 15.3 or 15.3A hereof then the following shall apply:

15.4.1 the Contractor may expel the Sub-Contractor from the Sub-Contract Works and take over all the materials and plant provided by or on behalf of the Sub-Contractor which are upon the Site or are being used in connection therewith and may use the same to complete the Sub-Contract Works;

15.4.2 the Contractor shall be liable only for the value of such part of the Sub-Contract Works properly executed at the date of such determination. Such value shall be calculated in accordance with the Sub-Contract and shall include the value of any unfixed materials and goods for incorporation in the Sub-Contract Works properly stored on the Site and in which property has passed to the Contractor or the Employer but shall include no other sum or sums whatsoever.

15.4.3 Where such determination is due to the default of the Sub-Contractor, all damages, costs, losses and expenses incurred by the Contractor in connection with such determination shall be payable by the Sub-Contractor to the Contractor and shall be recoverable as a debt. The Contractor shall have the right to deduct from or set off against any sums due to the Sub-Contractor under this Sub-Contract and/or any other agreement between the Contractor and the Sub-Contractor all such damages, costs, losses and expenses.

16. **Adjudication**

16.1 Subject to Clause 16.2 if at any time either party is dissatisfied with any matter arising under or in connection with this Sub-Contract the matter may with the agreement of both parties be referred to senior management at director / board level of each party ('the Representatives') who shall meet to resolve the matter. Any agreement reached by the Representatives shall be final, conclusive and binding upon the parties.

16.2 Either party to this Sub-Contract may give notice at any time of his intention to refer a Dispute to adjudication and the Adjudicator to be appointed must be so appointed within 7 days of the giving of such notice. The adjudication shall be conducted in accordance with the CIC Model Adjudication Procedure Fourth Edition or the edition current at the date of this Sub-Contract ('the Procedure') issued by the Construction Industry Council except that paragraphs 6, 7 and 27 shall not apply and at the start of paragraph 17 the words "Subject to paragraph 17A" shall be added. An additional paragraph 17A shall be added as follows:

"17A The Adjudicator may not:

- (a) receive any written submissions from either party that are not made available to the other;
- (b) refuse either party the right at any hearing to be represented by any representative of that party's choosing who is present;
- (c) act or continue to act if a conflict of interest arises;
- (d) require either party to pay or make contribution to the legal costs of the other arising in the adjudication.

The Procedure as varied by this Clause is incorporated into this Sub-Contract. If a conflict arises between the terms of this Sub-Contract and the Procedure then the terms of this Sub-Contract shall prevail."

16.3 The decision of the Adjudicator will be binding until the Dispute is finally determined by arbitration or litigation pursuant to Clause 17 or by agreement between the parties unless the parties agree to accept the decision of the Adjudicator as finally determining the dispute.

16.4 The Adjudicator shall be entitled to correct his decision so as to remove a clerical or typographical error arising by accident or omission.

17. **Jurisdiction**

17.1 The English courts shall have exclusive jurisdiction over any claims arising hereunder.

18. **Proper Law**

18.1 This Sub-Contract shall be governed by and construed in accordance with the Laws of England and Wales. All correspondence and documents arising from and in connection with the Sub-Contract shall be in English.

18.2 A reference in this Sub-Contract to a statute, statutory instrument or other subordinate legislation ("legislation") is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom.