

SUBCONTRACT ORDER MAJOR FORM (PART B)

APPENDIX 2 PART B – CONDITIONS OF CONTRACT

1 DEFINITIONS AND INTERPRETATION

1.1 In these conditions of contract, the following definitions shall apply:

'Applicable Laws' means all applicable laws, enactments (as interpreted in accordance with clause 1.2.3), rules, regulations, orders, regulatory policies, guidelines, industry codes of practice, regulatory permits and licences, and any mandatory instructions or requests of a regulator, in each case which are in force from time to time.

'Building Contract' has the meaning given in clause 7.1 of Part A.

'Building Contract Works' has the meaning given in clause 7.1 of Part A.

'CDM Regulations' means the Construction (Design and Management) Regulations 2015.

'Conditions' means the terms and conditions set out in this Part B – Conditions of Contract as amended from time to time in accordance with clause 26.3.

'Contract Documents' means the documents identified in clause 2.1 of Part A.

'Data Protection Legislation' means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction as updated and amended from time to time which relates to the protection of individuals with regards to the processing of Personal Data to which a Party is subject, including the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and with effect from 25 May 2018 the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016 ("GDPR") and the Data Protection 2018.

'Defects Rectification Period' means the period identified in clause 5.3 of Part A.

'Instalment Date' means the date four weeks after the commencement of the Works and thereafter the same date in each month or the nearest business day in that month.

'Interest Rate' means the amount stated as such in Part A.

'Notice to Commence Works' means a notice issued by the Company to the Subcontractor in accordance with the Contract.

'Part A' means Part A – Agreement and Particulars to which this Part B – Conditions of Contract are appended.

'Period for Completion' means the period identified in clause 5.2 of Part A

'Retention Release Date' means the date that is twenty-four (24) months after the date of practical completion of the whole of the Works unless otherwise agreed in writing

'Site' means the premises at which the Works are to be carried out.

'Subcontractor's Designed Works' means that part of the Works (if any) identified as such in clause 3.3 of Part A.

'Subcontract Sum' means the sum stated as such in clause 4.1 of Part A.

'Works' means the works described in clause 3.1 of Part A, as may be varied (under clause 11 (Changes)).

'Works Specification' means the document at Appendix 1 to Part A.

1.2 In these Conditions, the following rules of interpretation apply:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to writing or written includes faxes and e-mail.

2 GENERAL

2.1 These terms and conditions shall override any terms or conditions stipulated, incorporated or referred to by the Subcontractor whether in any quotation, correspondence or negotiation.

2.2 No failure or delay by the Company to exercise any right or remedy provided under the Contract by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

2.3 No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Company shall operate to exclude or limit the Subcontractor's obligations under the Contract.

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

2.5 If any provisions of the Contract shall be prohibited by law or adjudged by a court to be unlawful, void or enforceable, it shall be severed from the Contract and rendered ineffective without modifying the remaining provisions and shall not in any way affect the validity or enforceability of the Contract.

2.6 If the Subcontractor considers that there is any conflict, inadequacy, error, mistake, ambiguity, discrepancy or divergence between or within (including the Building Contract) any of the provisions of any of the Contract Documents or any other provision or matter relating to the carrying out of the Works, the Subcontractor shall immediately give notice with appropriate details to the Company including the Subcontractor's proposals to remove any such conflict, inadequacy, error, mistake, ambiguity, discrepancy or divergence. The Company may accept the Subcontractor's proposals or otherwise decide the steps to be taken, and the Subcontractor shall be obliged to comply with any instruction issued by the Company in respect of such decision and shall complete the construction of the Works and if applicable their design in accordance with the instruction without any cost whatsoever to the Company. The instruction by the Company shall not be treated as a change. The Subcontractor shall not be entitled to any extension of time to the Period for Completion or to any Change or to any other adjustment of the Subcontract Sum (or to make any other claim whether in contract, tort or by way of misrepresentation or otherwise) by reason of any such matter or instruction and the instruction of the Company shall not affect in any way the responsibilities or liabilities of the Subcontractor arising out of or in connection with the Contract

3 THE SUBCONTRACTOR'S OBLIGATIONS

3.1 In so far as it is applicable to the Works the sub-contractor shall be deemed to have inspected the physical conditions and all other conditions of/or affecting the Site at the most appropriate time to expedite the Works and to have fully acquainted himself with the same and to have obtained all necessary information as to risks contingencies and all other circumstances which may influence or affect the execution of the Works. No failure on the part of the Subcontractor to discover or foresee such condition risk contingency or circumstance whether or not the same ought to have been reasonably discovered or foreseen shall entitle the Subcontractor to an addition to the Subcontract Sum or to a claim for an extension of time or loss and expense. The Subcontractor shall not be entitled to rely upon any survey report or other document prepared by or on behalf of the Company and the Company makes no representation or warranty as to the accuracy or completeness of any such survey report or documents.

3.2 The Subcontractor shall carry out and complete in accordance with the Works Specification, and in a good and workmanlike manner and take full compliance and ensure works are in accordance with the requirements, where applicable, with the Building Safety Act 2022 and all relevant Channel policies and procedures

3.3 Where the Works includes the provision of goods and materials by the Subcontractor, the Subcontractor shall provide goods and materials of the standard stated in the Works Specification or, where no standard is so stated, of best quality.

3.4 The Subcontractor observes, performs and complies with the Company's obligations under the Building Contract to the extent that they relate and apply to the Works and performs its obligations under the Contract at such time and in such a manner so as to allow the Company to comply with its equivalent obligations under the Building Contract.

3.5 Where there is an inconsistency between the obligations of the Subcontractor under clause 3.4 and the obligations of the Subcontractor under the other provisions of the Contract, the obligations of the Subcontractor under the other provisions of the Contract prevail.

3.6 The Subcontractor shall carry out the Works and perform its obligations under the Contract in such manner as will not constitute, cause or contribute to any breach by the Company of any of the Company's obligations under the Building Contract and/or other agreements, contracts and subcontracts entered into by the Company in relation to the works under the Building Contract, and/or may cause further loss and/or expense to the Company in connection with the Building Contract Works.

3.7 The Subcontractor is deemed to have full knowledge of the terms of the Building Contract, and the Company if so, requested by the Subcontractor in writing provides the Subcontractor with a copy of the same or a draft thereof (less any commercially confidential details that the Company may choose to omit).

3.8 The Subcontractor acknowledges that any breach by it of the Contract may result in the Company committing breaches of and being liable in damages under or in relation to the Building Contract and/or other agreements, contracts and subcontracts entered into by the Company in relation to the works under the Building Contract, and/or may cause further loss and/or expense to the Company in connection with the works under the Building Contract, and all such damages, loss and expense are agreed to be within the contemplation of the parties hereto as being the probable results of any such breach by the Subcontractor.

3.9 The Subcontractor shall meet any performance dates for the Works specified in Part A, the Building Contract and/or notified to the Subcontractor by the Company from time to time.

3.10 The Subcontractor acknowledges and agrees that the Company shall have no responsibility to the Subcontractor for the security and safety of any temporary works, plant, tools, vehicles, equipment, clothing or other protective equipment or other property belonging to or provided by the Subcontractor or the Subcontractor's Persons whilst stored at the Company's premises or the Site.

3.11 Without prejudice to the generality of the foregoing, in providing the Works, the Subcontractor shall:

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- 3.11.1 co-operate with the Company in all matters relating to the Works and comply with all instructions of the Company.
 - 3.11.2 perform the Works in accordance with best practice in the Subcontractor's industry, profession or trade.
 - 3.11.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Subcontractor's obligations are fulfilled in accordance with the Contract.
 - 3.11.4 ensure that the Works will conform with all descriptions and specifications set out in the Works Specification, and that the Works shall be fit for any purpose expressly or impliedly made known to the Subcontractor by Company.
 - 3.11.5 Use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Works or transferred to the Company, will be free from defects in workmanship, installation and design.
 - 3.11.6 obtain and at all times maintain all necessary licences and consents required for the Works and the performance of the Subcontractor's obligations under the Contract and comply with all Applicable Laws.
 - 3.11.7 observe all health and safety rules and regulations and any other security requirements that apply at any of the Company's premises or the Site (as the case may be).
 - 3.11.8 hold all materials, equipment and tools, drawings, specifications and data supplied by the Company to the Subcontractor ("Company Materials") in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose or use Company Materials other than in accordance with the Company's written instructions or authorisation; and
 - 3.11.9 not do or omit to do anything which may cause the Company to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Subcontractor acknowledges that the Company may rely or act on the Works.
 - 3.11.10 shall take reasonable steps to protect the facility, the systems and equipment therein for the duration of the Works including the testing phase.
- 3.12 Where applicable, the Subcontractor shall ensure that, in connection with any sprinkler system:
- 3.12.1 any sprinkler system shall be installed strictly in accordance with latest revision of issued drawings. All pipework changes to be referred to design office for approval. All pipework changes to be recorded on site record drawings.
 - 3.12.2 only appropriately trained and competent installation personnel should carry out the installation and testing of the sprinkler system.
 - 3.12.3 fabricated pipework shall be checked against the installation drawings for correct pipe diameters, dimensions and fittings.
 - 3.12.4 all rolled grooves shall be checked for correct depth using callipers or tapes.
 - 3.12.5 pipework shall be pneumatically pressure tested for 1 hour and hydraulically pressure tested to 18bar for 4 hours unless otherwise stated on drawings or in the Works Specification; all leaks to be repaired by the Subcontractor and calibrated test pressure gauges shall be used; the Subcontractor must notify the Company when pressure testing under this clause 3.12.5 is to be carried out and allow the Company the opportunity to attend and observe any such testing; subject to the foregoing, once pressure testing has been complete a pressure test certificate in respect of the relevant pipework shall be completed and signed by the Company;
 - 3.12.6 sprinklers, multi-jet controls and sprayers are to be kept in packaging until immediately prior to fitting. They are to be fitted in-situ to all pipework, without exception.
 - 3.12.7 components shall be stored so that they are not damaged by building operations.
 - 3.12.8 earth continuity clips shall be fitted to mechanical joints and fittings where required.
 - 3.12.9 unloading, stacking and storage of equipment and materials shall be carried out with care to prevent damage.
 - 3.12.10 pipes shall be internally inspected for debris immediately prior to erection; and
 - 3.12.11 Company quality procedures shall be followed by the Subcontractor at all times.
- 4 COMMENCEMENT, COMPLETION AND EXTENSIONS OF TIME**
- 4.1 Subject to receipt by the Subcontractor of Notice To Commence Work and subject to clauses 4.9 to 4.15, the Works shall be carried out and completed regularly, diligently and without any delay and in accordance with the details stated in clause 5 of Part A and reasonably in accordance with the progress of the works pursuant to the Building Contract.
 - 4.2 The Company shall determine the date when the Works are practically complete and shall notify the Subcontractor in writing of the same.
 - 4.3 The Subcontractor agrees and acknowledges that it is not entitled to exclusive possession of the Site and may be required to work in the same areas as other contractors or subcontractors (whether employed by the Company or any other person), and to share any facilities or attendances made available by the Company with them and shall not be entitled to any addition to the Subcontract Sum and/or any extension of time to the Period for Completion as a result.
- 4.4 The Subcontractor will not have uninterrupted access to any part of the Site and recognises and shall make due allowance for sharing work areas and shall not unreasonably impede any other persons working on the Site. The Subcontractor also recognises that there may be limitations and restrictions in respect of access to the Site (including car parking) which the Subcontractor has allowed for when agreeing the Contract. The Company does not guarantee continuity of working and reserves the right to amend the programme for the Building Contract Works or the Subcontractor's programme. The Subcontractor acknowledges that the Works may need to be carried out in several visits with no continuity between the visits and with the visits timed to correspond with the other requirements of the Company and other persons working on the Site. The Subcontractor recognises that any such matters as referred to in this clause shall not give rise to or constitute a Change and shall not entitle the Subcontractor to any addition to the Subcontract Sum and/or any extension of time to the Period for Completion.
 - 4.5 If, for any reason which does not entitle the Subcontractor to an extension of time for completion of the Works, the rate of progress of the Works is at any time in the opinion of the Company too slow to ensure compliance with the Subcontractor's obligations under clause 4.1, the Company may notify the Subcontractor in writing. Upon receipt of any such notice, the Subcontractor shall provide to the Company its proposals to expedite the progress of the Works so as to ensure compliance with the Subcontractor's obligations under clause 4.1.
 - 4.6 The Subcontractor shall not be entitled to any additional payment (and there shall be no addition to the Subcontract Sum or extension of time to the Period for Completion) for taking any measures pursuant to clause 4.5.
 - 4.7 The Subcontractor acknowledges that failure by the Subcontractor to comply with the provisions of the Contract (including, without limitation, clause 4.1) may cause delay and/or disruption to the Building Contract Works and/or any part thereof and/or may cause the Company to suffer or incur costs, losses, expenses and/or damages and the Company shall be entitled to recover such costs, losses, expenses and/or damages from the Subcontractor.
 - 4.8 If, in the reasonable opinion of the Company, the Subcontractor is failing to carry out the Works or any part thereof in accordance with clause 4.1, the Company may, following notice to the Subcontractor and without prejudice to any of the Company's other rights and remedies (whether under the Contract or otherwise):
 - 4.8.1 perform the Works or the relevant part thereof, whether by itself or by others, and/or
 - 4.8.2 issue instructions to the Subcontractor removing the relevant parts of the Works from the Contract, and may employ others to carry out these sections; (and in such event the price for the Works shall be reduced by the value of the removed parts),
 and all costs incurred and monies expended in connection therewith shall either be taken into account in the calculation of the final Subcontract Sum or be recoverable by the Company from the Subcontractor as a debt. For the avoidance of doubt, the Subcontractor shall not be entitled to any additional payment under the Contract otherwise as a result of such action by the Company under this clause 4.8.
 - 4.9 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Works is being or is likely to be delayed, the Subcontractor forthwith shall give written notice to the Company of the circumstances, including details of the cause or causes of the delay.
 - 4.10 In respect of each circumstance and/or cause identified in any notice given by the Subcontractor under clause 4.9, the Subcontractor shall, in such notice or otherwise in writing as soon as possible thereafter, give particulars of the expected effects, including an estimate of any expected delay in the completion of the Works.
 - 4.11 The Subcontractor shall forthwith notify the Company in writing of any material change in the estimated delay or in any other particulars and supply such further information as the Company may at any time reasonably require.
 - 4.12 The Subcontractor shall provide the notices and information referred to in clauses 4.9 to 4.11 to the Company in sufficient time to enable the Company to comply with its obligations and claim its entitlements under the Building Contract.
 - 4.13 Following receipt of the notices and information referred to in clauses 4.9 to 4.11, if the Company properly considers that completion of the Works has been, is being or is likely to be delayed beyond the Period for Completion as a result of any Change to the Works or for any other reason beyond the control of the Subcontractor (including, for the avoidance of doubt, any act of impediment or prevention by the Company), the Company shall, as soon as he is able to estimate the length of the delay beyond the Period for Completion, give a fair and reasonable extension to the Period for Completion and shall notify the Subcontractor of the same in writing.
 - 4.14 Reasons within the control of the Subcontractor include, but are not limited to, any default of the Subcontractor or of others employed or engaged by or under him for or in connection with the Works and of any supplier of goods or materials for the Works.
 - 4.15 The Subcontractor shall constantly use his best endeavours to prevent or minimise any delay in the progress of the whole or any part of the Works.
- 5 INDEMNITY AND INSURANCE**
- 5.1 The Subcontractor shall indemnify and hold harmless the Company against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:
 - 5.1.1 loss or damage or injury caused to the Company, its employees, agents and subcontractors, or third parties to which the Company may be

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liable, due to any acts or omissions of the Subcontractor (including but not limited to any breach of the Contract by the Subcontractor);

- 5.1.2 personal injury, sickness, disease or death, of any person whatsoever, whether arising on or off the Site, arising out of or in the course of or by reason of the carrying out of the Works save where the same is caused by negligence on the part of the Company.
- 5.1.3 damage to or loss of any property, real or personal arising from any acts or omissions of the Subcontractor arising from, relating to or in connection with the carrying out of the Works.
- 5.1.4 loss or damage sustained by the Company or for which the Company may be liable as a result of the failure of the Subcontractor:
 - (i) to carry out or complete the Works in accordance with the Contract; and / or
 - (ii) to perform any of the Subcontractor's obligations under the Contract; and / or
 - (iii) as a result of the Subcontractor's failure to comply with the terms and conditions of the Building Contract; and
- 5.1.5 liabilities, deductions, contributions, taxes assessments or claims arising from or made in connection with the performance of the Works by the Subcontractor and any failure to pay the aforementioned.

5.2 The Subcontractor shall take out and maintain the insurances required by Part A.

6 CDM REGULATIONS

6.1 The Subcontractor shall comply with the CDM Regulations or any replacement or amendment of them. Without limitation, the Subcontractor shall where and to the extent applicable perform the duties of a "designer" and "contractor" under the CDM Regulations.

7 PAYMENT

- 7.1 In consideration for the provision of the Works the Company shall pay to the Subcontractor the Subcontract Sum following completion of the Works.
- 7.2 The Subcontractor shall be entitled to invoice monthly the amount agreed by the Company and following completion of the Works to the reasonable satisfaction of the Company and having received a payment certificate from the Company. The Company shall pay such invoice within 60 days of the end of the month in which it is received (unless any alternative payment period is agreed).
- 7.3 If the Company fails to make a payment by the final date (as specified within this Clause 7) the Company shall pay to the Subcontractor interest on any sum overdue at a rate per annum equivalent to Barclays Bank base lending rate plus 2 percent for the period between the final date for payment and the payment being received by the Subcontractor. The Company shall pay the interest together with any overdue amount.

8 RETENTION

- 8.1 Subject to clause 8.2, the Retention which may be deducted and retained by the Company shall be calculated as follows:
 - 8.1.1 where the Works have not reached practical completion, in accordance with the Contract, the Retention which the Company may deduct and retain up to five percent (5%) of the Subcontract Sum.
 - 8.1.2 where the Works have reached practical completion in accordance with the Contract, the Retention which the Company may deduct and retain shall be fifty per cent (50%) of the amount that would have been deductible and retained under clause 8.1.1.
- 8.2 Subject to practical completion of the Works as a whole having been achieved and there being no defects, shrinkages or faults of the types referred to in clause 17 apparent at the Retention Release Date ("apparent defects"), any balance of the Retention shall be included in the next periodic payment due following the Retention Release Date. If those pre-conditions are not then satisfied, the balance shall be included in the payment next following such completion and the making good of any apparent defects. If not already notified to the Subcontractor, any apparent defects shall be listed and notified to him with fourteen (14) days of the Retention Release Date.

9 TITLE

Title to any materials and goods supplied by the Subcontractor shall pass to the Company on the earlier of payment for or delivery of the same.

10 SUBCONTRACT SUM

10.1 There will be no adjustment to the Subcontract Sum other than in accordance with the terms of the Contract.

11 CHANGES

- 11.1 The Subcontractor shall carry out any reasonable variation of the Works that is instructed in writing by the Company (a "Change").
- 11.2 Changes shall be valued by the Company on a fair and reasonable basis, with reference to, where available and relevant, rates and prices stated or referred to in Part A.
- 11.3 The Subcontractor shall be paid any direct loss and/or expense incurred by the Subcontractor due to the regular progress of the Works being affected by compliance with any Change, provided always that the Subcontractor provides written notification (including reasonable and proper particulars) to the Company as soon as reasonably practicable and in any event within seven (7)

days of such progress being affected. The Company shall determine the fair and reasonable amount of that direct loss and/or expense.

11.4 The Subcontractor shall not make any alteration to the Works, other than pursuant to clause 11.1.

12 EQUIPMENT

- 12.1 Where it is agreed after the date of the Contract that the Company will provide and/or meet the cost of tools, machinery, equipment, plant, scaffolding or power which under the Contract it is the Subcontractor's obligation to provide, then the Subcontractor hereby agrees that the Company is entitled to recover the associated costs either as a change or by way of a withholding as the Company may so choose. Where such an adjustment results in a balance due to the Company, the Company is entitled to be paid by setting-off against any sums due to the Subcontractor under this or any other contract between the parties.
- 12.2 The Subcontractor shall be responsible for the safekeeping of any tools, machinery, equipment, plant or scaffolding provided by the Company and shall indemnify the Company against any cost, loss or damage however caused. The Company will be entitled to withhold monies from the Subcontractor in respect of the cost of replacement or repair (plus a 10% administration cost) or to recover the same (including the aforementioned administration cost) from the Subcontractor as a debt.
- 12.3 If any equipment provided by the Company is substandard the Subcontractor will notify the Company immediately and provide suitable evidence of the inadequacy. The Subcontractor will minimise downtime by performing alternative work in agreement with the Company. The Company will not accept any costs for downtime or slow working if the Subcontractor does not act in accordance with this clause.

13 GOODS AND MATERIALS

- 13.1 Where the Company issues materials free of charge to the Subcontractor such materials shall be and remain the property of the Company ("Free Issue Materials"). The Subcontractor shall maintain the Free Issue Materials in good order and condition. The Subcontractor shall use the Free Issue Materials solely in connection with the Works and any surplus material shall be disposed of at the Company's discretion. Waste of such Free Issue Materials arising from bad workmanship of the Subcontractor shall be made good at the Subcontractor's expense (and without prejudice to any other right available to the Company), the Company shall be entitled to purchase replacement materials and recover the cost of such materials from the Subcontractor (including by way of set-off from any amounts owed to the Subcontractor under any contract between the Subcontractor and the Company). Without prejudice to any other rights of the Company, the Subcontractor shall deliver up to the Company on demand any Free Issue Materials whether or not further processed.
- 13.2 It is the responsibility of the Subcontractor to check the quality and quantity of any delivered Free Issue Materials and to report any errors or shortages to the Company within 24 hours of delivery (unless the order for materials came from the Subcontractor marked as urgent in which case the delivery shall be checked on the day of delivery and errors or shortages reported to the Company immediately). If the Subcontractor fails to so notify any errors or shortages in material, then the Subcontractor will be required to procure material to overcome the error or shortage to the extent the Company is unable to secure same from the Company's supplier.
- 13.3 The Subcontractor shall immediately inform the Company in the event of any delivery (by courier or otherwise) of material failing to arrive on site at the notified time to enable the Company to locate its whereabouts. If the Subcontractor does not so inform the Company to the prejudice of the Company, then the Subcontractor will be liable to the Company for any related costs and/or losses suffered by the Company.
- 13.4 In the event, for any reason whatsoever, of any Free Issue Materials arriving later than expected or the wrong Free Issue Materials being delivered, the Subcontractor will advise the Company immediately and will minimise downtime by performing alternative work in agreement with the Company. The Company will not accept any costs for downtime or slow working if the Subcontractor does not act in accordance with this clause.
- 13.5 In the case of any goods and/or materials which have been designed and manufactured by the Subcontractor in accordance with drawings and/or specifications or patterns supplied by the Company, the Subcontractor agrees not to sell goods created from the same designs to any person, firm or company except the Company or with the permission of the Company in writing. The Subcontractor further agrees not to manufacture quantities in excess of those required for the carrying out and completion of the Works for the purpose of sale or otherwise. Such drawings and/or specifications or patterns shall remain the property of the Company and shall be returned by the Subcontractor to the Company on demand and the Subcontractor shall not keep any copies.
- 13.6 It shall be the Subcontractor's responsibility to notify the Company if any goods and/or materials, or part thereof, are scheduled to become obsolete within 24 months of the date of the Contract.
- 13.7 Regardless of any anticipated obsolescence of any goods and/or materials, the Subcontractor warrants to provide, at a fair price, in accordance with any relevant rates and prices set out in Part A, to be agreed between the Subcontractor and the Company, spare parts for a period of 10 years or such length of period as may be prescribed by any proper government or other authority after the date of practical completion of the Works.
- 13.8 The rights set out in clauses 13.5 to 13.7 are in addition to all other rights which the Company may have, whether at common law, statute or otherwise.

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14 SITE CLEARANCE

- 14.1 The Subcontractor is responsible as its work progresses for removing all packaging and waste to the agreed point on Site for disposal by the Company and is to leave all work areas and the Site in a clean, tidy and safe condition at the end of each day. The Subcontractor shall provide all information for the Site file at such times and as required by the Company.
- 14.2 Upon practical completion of the Works, the Subcontractor shall properly clear up and leave the Works and all areas made available to him for the purpose of carrying out the Building Contract Works, so far as used by him for that purpose, clean, tidy and safe to the reasonable satisfaction of the Company.

15 SAFETY

- 15.1 All personnel under the supervision of the Subcontractor are to comply with all Health and Safety legislation. The Subcontractor shall keep the work area clean, tidy and safe at all times and shall comply with all statutory obligations and shall comply with any directions or instructions of the Company in connection with health and safety.

16 ASSIGNMENT

- 16.1 The Subcontractor shall not, without the written permission of the Company, assign the Contractor any part thereof or sublet the execution of the Works.

17 DEFECTS

- 17.1 The Company shall notify the Subcontractor of any defects that appear in the Works during the Defects Rectification Period, and the Subcontractor shall, at the Subcontractor's expense, make good such defects in conformity with the timescales and procedures set out in Building Contract and all reasonable instructions and requirements of the Company.
- 17.2 Without prejudice to the generality of clause 17.1, the Subcontractor shall carry out and complete at his own cost all works to rectify defects in the Works for which the Company has a liability under or arising from the Building Contract (whether or not such defects arise before or after practical completion of the Works or are patent defects or are latent defects and in respect of which the limitation period under the Building Contract has not expired) in conformity with the timescales and procedures set out in the Building Contract and all reasonable instructions and requirements of the Company.

18 DATA PROTECTION

- 18.1 For the purpose of this Clause 18, "Data Controller", "Data Processor", "Process", "Processed", "Processing", "Data Processor" and "Sensitive Personal Data" (including from 25 May 2018 special categories of Personal Data set out in Article 9(1) of the GDPR) shall have the meanings given to them in the Data Protection Legislation.
- 18.2 The parties each acknowledge and agree that they may need to Process Personal Data relating to each party's representatives (in their respective capacities as Data Controllers) in order to (as appropriate): (a) administer and provide the Works; (b) request and receive the Works; (c) compile, dispatch and manage the payment of invoices relating to the Works; (d) compile, dispatch and manage the payment of invoices relating to the Works; (e) manage the Contract and resolve any disputes relating to it; (f) respond and/or raise general queries relating to the Works.
- 18.3 Each party shall Process such Personal Data relating to each party's representatives for the purposes set out in clause 18.2 in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the EEA, in order to carry out the activities listed in clause 18.1, and in doing so each party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Legislation.
- 18.4 Where and to the extent that the Subcontractor may Process Personal Data for and on behalf of the Company in connection with the Works, the Subcontractor shall be deemed the Processor, and the Company shall be deemed the Controller.
- 18.5 The Subcontractor shall comply with the obligations imposed upon a Processor under the Data Protection Legislation and shall co-operate with the Company and take all such action as are necessary to enable the Company to comply with its obligations under the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Company to breach any of its obligations under the Data Protection Legislation, expressly and without limitation:
- 18.5.1 the parties shall agree and document the nature of the processing in accordance with Article 28(3), and otherwise the Processor shall comply with the obligations set out in Article 28(2), (3), and (4) of the GDPR, any other duties as set out in the Data Protection Act 2018.
- 18.5.2 no Personal Data shall be transferred outside the EEA without the express approval of the Company, and such approval is subject to such further conditions or requirements of the Company.
- 18.5.3 notification of any security breach, or breach of the Data Protection Laws by the Processor shall be made promptly and no later than twenty-four hours after the Processor became aware of such incident.
- 18.6 The Subcontractor indemnifies and shall keep the Company fully and effectively indemnified and held harmless from and against any and all losses, liabilities, claims, damages, expenses and costs suffered or incurred by the Company and each member of its group arising out of or in connection with claims and proceedings arising from any breach of the Subcontractor's obligations under this Clause 18.

19 ANTI-BRIBERY

- 19.1 For the purposes of this clause 19 the expressions **adequate procedures** and **associated with** shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 19.2 The Subcontractor shall comply with all applicable laws relating to anti-bribery, including the Bribery Act 2010 ("**Bribery Laws**") including ensuring that it has in place adequate procedures to prevent bribery and ensure that:
- 19.2.1 all of that party's personnel.
- 19.2.2 all others associated with that party; and
- 19.2.3 all of that party's subcontractors.
- involved in performing the Contract so comply.
- 19.3 Without limitation to clause 19.2, the Subcontractor shall not make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 19.4 The Subcontractor shall immediately notify the Company as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 19. Any breach of this clause 19 by the Contractor shall be deemed a material breach of the Contract and shall entitle the Company to terminate the Contract with immediate effect.

20 ANTI-SLAVERY

- 20.1 The Subcontractor undertakes, warrants and represents that:
- 20.1.1 neither the Subcontractor nor any of its officers, employees, agents or subcontractors has:
- a. committed an offence under the Modern Slavery Act 2015 (a "**MSA Offence**").
- b. been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- c. is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.
- 20.1.2 it shall comply with the Modern Slavery Act 2015; and
- 20.1.3 it shall notify the Company immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors have breached or potentially breached any of the Subcontractor's obligations under clause 20.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Subcontractor obligations.
- 20.2 Any breach of clause 20.1 by the Subcontractor shall be deemed a material breach of the Contract and shall entitle the Company to terminate the Contract with immediate effect.

21 LIMITATION OF LIABILITY

- 21.1 Subject to clauses 21.2 to 21.4, the Company's total liability to the Subcontractor under or in connection with the Contract shall not exceed the aggregate of the Subcontract Sums.
- 21.2 Subject to clause 21.4, the Company shall not be liable to the Subcontractor under or in connection with the Contract for any of the following (whether direct or indirect):
- 21.2.1 loss of profit.
- 21.2.2 loss of or corruption to data.
- 21.2.3 loss of use.
- 21.2.4 loss of production.
- 21.2.5 loss of contract.
- 21.2.6 loss of opportunity.
- 21.2.7 loss of savings, discount or rebate (whether actual or anticipated); or
- 21.2.8 harm to reputation or loss of goodwill.
- 21.3 Subject to clause 21.4, the Company shall not be liable to the Subcontractor under or in connection with the Contract for consequential, indirect or special losses.
- 21.4 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 21.4.1 death or personal injury caused by negligence.
- 21.4.2 fraud or fraudulent misrepresentation; and
- 21.4.3 any other losses which cannot be excluded or limited by Applicable Law.

22 DISPUTE RESOLUTION

- 22.1 Subject to the parties right to refer a dispute pursuant to the Contract to adjudication, if there is a dispute matter pursuant to the Contract, in the first instance the parties shall arrange for a suitably authorised and senior representative of each of them to meet within 14 days solely in order to resolve the dispute. Such meeting shall be minuted and shall be chaired by the party calling the meeting (for the avoidance of doubt, the chairman shall not have the casting vote). The parties agree that they will work together in good faith in order to identify a solution and agree timescales for resolution.

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22.2 Nothing in this clause 22 shall prevent either party from instigating legal proceedings or obtaining an order for an injunction or disclosure.

22.3 If a dispute arises pursuant to the Contract, then either party may refer that dispute to adjudication at any time and Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 shall apply in relation to any such adjudication.

23 CONFIDENTIALITY

23.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the other business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, unless permitted by clause 23.2. No party shall use the other party's confidential information for any purpose other than to perform the Contract.

23.2 Each party may disclose the other party's confidential information:

23.2.1 to its employees, officers, representatives or advisers who need to know such information to carry out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 23; and

23.2.2 as may be required by law, court order or any governmental or regulatory authority.

23.3 This clause 23 shall survive termination of the Contract.

24 TERMINATION

24.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving the Subcontractor written notice.

24.2 Without limiting its other rights or remedies, the Company may terminate all or any contract between the parties with immediate effect by giving written notice to the Subcontractor if:

24.2.1 the Subcontractor commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;

24.2.2 the Subcontractor repeatedly breaches any of the terms of the Contract (or any other agreement between the parties) in such a manner as to reasonably justify the opinion of the Company that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract.

24.2.3 the Subcontractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts; or goes into administration or liquidation either compulsorily or voluntarily (save for the purposes of solvent reconstruction or amalgamation); or the Subcontractor (being an individual) is the subject of a bankruptcy petition or order; or if a receiver or administrative receiver is appointed in respect of the whole or any part of its assets; or if the Subcontractor makes an assignment for the benefit of or composition with its creditors generally; or if it ceases to trade; or threatens to do any of the aforementioned things; or when a monitor is appointed or any document is filed at court to obtain or apply for a moratorium or an order is made for a moratorium to come into force; or if any analogous events occur with respect to the Subcontractor in any jurisdiction to which it is subject; or

24.2.4 there is a change in control (as defined in section 574 of the Capital Allowances Act 2001) of the Subcontractor or a member of its group.

24.3 If, for whatever reason, the employment of the Company is terminated under the Building Contract then the employment of the Subcontractor hereunder shall thereupon also terminate.

24.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

25 NOTICES

25.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

25.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 25.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission (provided that no notice of failure of transmission is received).

25.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

26 GENERAL

26.1 No conditions submitted or referred to by the Subcontractor when tendering shall form part of the Contract unless otherwise agreed to in writing by the Company.

26.2 The Company will be entitled but not obliged at any time or times without notice to the Subcontractor to set off any liability of the Subcontractor to the Company

against any liability of the Company to the Subcontractor (in either case howsoever arising, whether under the Contract or otherwise, and whether any such liability is present or future, liquidated or unliquidated. Any exercise by the Company of its rights under this clause will be without prejudice to any other rights or remedies available to the Company under the Contract or otherwise.

26.3 No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Company.

26.4 The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

26.5 The Subcontractor recognises that any breach or threatened breach of the Contract may cause the Company irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Company, the Subcontractor acknowledges and agrees that the Customer is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

26.6 A person who is not a party to the Contract shall not have any rights to enforce its terms.

27 APPLICABLE LAW AND JURISDICTION

27.1 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

27.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

28 DESIGN

28.1 Where the Subcontractor is carrying out design of the Works or any part thereof, then the Subcontractor shall, without prejudice to its obligations set out in clauses 1 to 27 above, comply with the obligations set out in this supplemental clause 28 (Design).

28.2 In relation to Subcontractor's Designed Works, the Sub-Contractor shall:

28.2.1 without prejudice to any other warranties, terms and/or conditions of the Contract, (whether express or implied at common law or pursuant to statute), use the same level of skill, care and diligence as the Company is obliged to use under the Building Contract to carry out and/or complete such design (as applicable), including, so far as not described in the Works Specification, the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in such designed works;

28.2.2 comply with the Company's instructions for the integration of the design of the Works by the Subcontractor with the design of the works pursuant to the Building Contract as a whole,

28.2.3 without charge provide the Company, as and when necessary and forthwith upon any termination of the Subcontractor's employment under the Contract, with two copies of such drawings or details and specifications of materials, goods and workmanship and (if requested) related calculations and information, as are reasonably necessary to explain the Subcontractor's designs of the Works and so that the Company can comply with any obligations to supply such information under the Building Contract.

28.3 Without prejudice to the Subcontractor's other obligations under the Contract, the Subcontractor warrants that it has not specified for use in the Works or the works pursuant to the Building Contract, and further warrants that the Subcontractor has not used and will not use in the Works, any of the following:

28.3.1 any goods or materials known generally to building contractors to be deleterious or prejudicial to health and safety and/or the environment and/or the durability or integrity of the works pursuant to the Building Contract, in the particular circumstances in which they are used; or

28.3.2 any other goods or materials which at the time of use do not conform with or contravene British Standards and Codes of Practice (or EU equivalent); or

28.3.3 any products or materials which have been identified in the publication entitled "Good Practice in the Selection of Construction Materials 2011" (published by the British Council for Offices) as being deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or Works and machinery in the particular circumstances in which they are used; or

28.3.4 any other goods, materials or products which have been prohibited for use by the Building Contract.

28.4 No approval or inspection or review by the Company or by any person acting on behalf of the Company nor any omission to inspect or review or to disapprove shall negate or diminish any duty or liability of the Subcontractor under or in connection with the Contract.

Copyright

28.5 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other similar documents provided by or on behalf of the Subcontractor in connection with the project comprising the works pursuant to the Building Contract shall remain vested in the Subcontractor but the

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Subcontractor grants to the Company and its nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the works pursuant to the Building Contract including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the project comprising the works pursuant to the Building Contract. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties. This licence carries the right to grant sub-licences and is transferable to third parties without the Subcontractor's consent.

28.6 The Subcontractor shall not be liable for any such use by the Company or its nominees of any drawings and other documents for any purposes other than those for which they were originally prepared by the Subcontractor.

Professional Indemnity Insurance

28.7 The Subcontractor shall maintain professional indemnity insurance covering (inter alia) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than the amount stated in Part A for a period beginning now and ending 12 years after the date of practical completion of the works pursuant to the Building Contract, provided always that such insurance is available at commercially reasonable rates. [The said terms and conditions shall not include any term or condition to the effect that the Subcontractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof]. The Subcontractor shall not, without the prior approval in writing of the Company, settle or compromise with the insurers any claim which the Subcontractor may have against the insurers, and which relates to a claim by the Company against the Subcontractor, or by any act or omission lose or prejudice the Subcontractor's right to make or proceed with such a claim against the insurers.

28.8 Any increased or additional premium required by insurers by reason of the Subcontractor's own claims record or other acts, omissions, matters or things particular to the Subcontractor shall be deemed to be within commercially reasonable rates.

28.9 The Subcontractor shall immediately give notice to the Contractor if such insurance ceases to be available at commercially reasonable rates in order that the Subcontractor and the Company can discuss means of best protecting their respective positions in the absence of such insurance.

28.10 As and when reasonably requested to do so by the Company the Subcontractor shall produce for inspection documentary evidence (including, if required by the Company, the original of the relevant insurance documents) that his professional indemnity insurance is being maintained.

29 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of the Contractor the Subcontractor's employment under it for any reason whatsoever, including (without limitation) breach by the Company.

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