

ANNEX 1

THIS IS THE SUB-CONTRACT MODIFICATIONS SCHEDULE REFERRED TO IN THE SUB-CONTRACT AGREEMENT

THIS SCHEDULE AMENDS THE JCT 2016 DESIGN AND BUILD SUB-CONTRACT CONDITIONS (DBSUB/C 2016)

SECTION 1: DEFINITIONS AND INTERPRETATION.

Definitions

1.1. Delete the opening paragraph of the clause and replace with:-

“Unless the context otherwise requires or this Sub-Contract specifically provides otherwise, terms appearing in capitalised form in the Sub-Contract Agreement and/or these Conditions (as amended by the Sub-Contract Modifications Schedule) and/or the Main Contract Information Schedule and/or the Sub-Contract Particulars are either defined in the Sub-Contract Agreement and/or these Conditions.”

[Delete the definition of ‘Activity Schedule’.]

Delete the definition of ‘Arbitrator’.

Insert the following before the full stop at the end of the definition of ‘Article’: “, as amended by the Sub-Contract Modifications Schedule”.

Insert the following after “Sunday” in the definition of ‘Business Day’: “, 27, 28, 29, 30 and 31 December”.

Delete “any Sub-Contract Modifications Schedule included in the Numbered Documents” in the definition of ‘Conditions’ and replace with: “this Sub-Contract Modifications Schedule”.

*Delete “included as a Numbered Document” in the definition of ‘Construction Phase Plan’ and replace with: “annexed or referred to the **Main Contract Information Schedule**”.*

Insert the following before the full stop at the end of the definition of ‘Employer’: “(which expression shall include its successors in title and permitted assigns)”.

*Delete the definition of ‘Employer Rights’ and replace with: “the rights in favour of the Employer to be granted by the Sub-Contractor in accordance with the Sub-Contract Rights Particulars by way of collateral warranty in the form contained or referred to in **Annex 4**”.*

Delete the definition of ‘Fluctuations Provision’.

Delete the definition of 'Funder' and replace with: "any funder providing finance in connection with the Main Contract Works or the completed Main Contract Works."

Delete the definition of 'Funder Rights'.

Delete the definition of 'Insolvent' and replace with: "An entity (including, where the context requires, an individual, a partnership or a company) is or becomes Insolvent on the occurrence of:

- (a) any of the following events:
 - (i) an order is made for its winding up or a petition is presented or a meeting is convened for the purpose of considering a resolution for its winding up or any such resolution is passed (otherwise than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations of the entity in question); or
 - (ii) a receiver (including any administrative receiver) or similar person is appointed in respect of the whole or any part of any of its property, assets or undertaking or any step is taken by any person to enforce any rights under or in accordance with any security interest of any kind over any of its undertaking, property or assets; or
 - (iii) an administrator is appointed (whether by the court or otherwise) or any step is taken (whether in or out of court) for the appointment of an administrator or any notice is given of an intention to appoint an administrator; or
 - (iv) any distress, execution or other process is levied or applied for in respect of the whole or any part of any of its property, assets or undertaking which is not remedied within 14 days; or
 - (v) any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangements between it and its creditors and/or members or any class of its creditors and/or members is proposed, sanctioned or approved; or
 - (vi) it is unable to pay its debts for the purposes of the Insolvency Act 1986 or otherwise or it becomes insolvent under any applicable legislation; in relation to an individual, he is adjudged bankrupt or enters into any composition or arrangement with his creditors generally; or
- (b) any event analogous to any of the above occurs in any jurisdiction in which the entity in question is incorporated, carries on business or has any assets."

Delete "5%" in the definition of 'Interest Rate' and replace with: "2.89 %" and insert the following at the end of the definition: "The Parties acknowledge that such rate is a substantial remedy for late payment (as defined in the Late Payment of Commercial Debts (Interest) Act 1998). If the Interest Rate is held not to be a substantial remedy within the meaning of section 9 of the 1998 Act, there shall be substituted for the Interest Rate such higher rate of interest as is necessary to ensure that it is a substantial remedy for the purposes of the 1998 Act."

*Delete the definition of 'Main Contract' and replace with: "see **Recital (A)** of the **Sub-Contract Agreement** and the **Main Contract Information Schedule**."*

*Delete the definition of 'Main Contract Works' and replace with: "the Main Contract Works as briefly described in the **Main Contract Schedule of Information** and as more particularly described in the Main Contract Documents, including the Sub-Contract Works, and any changes made to those works in accordance with the Main Contract or otherwise."*

Delete the definition of 'Minimum Retention Amount'.

Delete the definition of 'P&T Rights'.

*Delete "and **4.6.3**" from the definition of 'Payment Application'.*

Delete the definition of 'Purchaser' and replace with: "any first purchaser of the whole or part of the Site upon which the Main Contract Works are situated."

Insert the following before the full stop at the end of the definition of 'Recitals': "as amended by the Sub-Contract Modifications Schedule".

Insert the following before the full stop at the end of the definition of 'Scheme': "(as amended)".

Delete the definition of 'Sub-Contract Agreement' and replace with: "the agreement entered into by or on behalf of the Parties which replaces the JCT Design and Build Sub-Contract Agreement (2016 Edition), as amended by the Sub-Contract Modifications Schedule".

*Insert the following before the full stop at the end of the definition of 'Sub-Contract Documents': "and in **Annex 4**".*

*Delete the definition of 'Sub-Contract Particulars' and replace with: "the particulars in **Annex 3** which replaces the JCT Sub-Contract Particulars and including the entries made by the Parties".*

*Delete the definition of 'Sub-Contract Rights Particulars' and replace with: "the details relating to the rights in favour of the Employer to be granted by the Sub-Contractor by way of collateral warranty in the form contained or referred to in **Annex 4**".*

Insert the following before the full stop at the end of the definition of 'Sub-Contract Works': "and anything which would be reasonably inferred therefrom by a competent sub-contractor familiar with projects of a like nature to the Main Contract Works to enable the Sub-Contractor to satisfy the Contractor's Requirements or any requirements included or referred to in the Sub-Contract Documents."

Delete the definition of 'Tenant' and replace with: "any first tenant of the whole or part of the Site upon which the Main Contract Works are situated and any tenant taking a new lease following the insolvency and termination of the lease of any first tenant."

Insert the following before the full stop at the end of the definition of 'VAT': "imposed by the Valued Added Tax Act 1994".

Insert the following new definitions in alphabetical order:

“Affiliate”: any company which (at the date of the Sub-Contract Agreement or at any time thereafter), in relation to any company is:

- (i) its holding company (whether immediate or otherwise);
- (ii) its subsidiary; or
- (iii) any other subsidiary of its holding company (whether immediate or otherwise)

where “holding company” and “subsidiary” have the meaning given to them by section 1159 of the Companies Act 2006 (or, where the jurisdiction to which the Sub-Contractor is subject means that the Sub-Contractor is not bound by the relevant parts of the Companies Act 2006, then the words have a meaning which has an effect equivalent, analogous or similar to the meaning they have under the Companies Act 2006 taking into account the jurisdiction to which the Sub-Contractor is subject).

“Annex” means any numbered annex attached to the Sub-Contract Agreement as it may be numerically ordered; and

“Buildings” the buildings to be erected or as from time to time in the course of being erected on the Site and forming part of the Main Contract Works (and as detailed on the Plan forming part of the Main Contract Documents (Annexure 4)).

“Consents” all approvals, consents, licences, permissions, certificates and statutory agreements required from any competent authority or any other relevant third party and necessary for carrying out and completing the Sub-Contract Works (or proper and valid waivers made by the relevant competent authority).

“Construction Act” Part 2 of the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Enterprise Act 2002 (Insolvency) Order 2003 and Part 8 of the Local Democracy, Economic Development and Construction Act 2009).

“Construction Products Requirements” the Construction Products Regulations 2013 (S.I. No. 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (S.I. No. 1991/1620) and the Construction Products Directive (89/109/EC).

“Contractor’s Policy Document” the policy document contained in the Numbered Documents which sets out or incorporates the Contractor’s standard (non-project specific) rules, policies and procedures to be complied with by the Sub-Contractor.

“Declaration

"Date" means (for the purposes of **clause 4.21A** only) the date on which the Declaration of Sub-Contract Final Account is issued by the Contractor to the Sub-Contractor.

"Declaration
Final Date for
Final Payment" see **clause 4.21A.1**.

"Declaration of
Sub-Contract
Final Account" see **clause 4.21A**.

"Default Final
Payment
Notice" see **clause 4.22.2.1**.

"Final Date for
Payment" see **clause 4.7.1**.

"Final Payment" see **clause 4.22**.

"Main Contract
Documents" the documents contained or referred to in **Annex 5**.

"Postponed
Final Date for
Final Payment" see **clause 4.7.4**.

"Programme" the programme (if any) and its detailed requirements as more particularly described in the Sub-Contract Documents.

"Property" As set out in the Sub-Contract Agreement or described in the Main Contract Documents.

"Schedule of
Contractor
Third Party
Rights" any schedule of rights in favour of any Purchaser and/or Tenant which have been or are to be granted by the Contractor as third party rights under Part 1 of Schedule 5 to the Main Contract, (as amended by the Employer) or any schedule of rights in favour of the Funder which have been or are to be granted by the Contractor as third party rights under Part 2 of Schedule 5 to the Main Contract (as amended by the Employer), referred to in the **Main Contract Information Schedule** and contained or referred to in **Part 3 of Annex 6** (and 'Schedules of Contractor Third Party Rights' shall be construed accordingly).

"Site" the site described in the Main Contract Documents.

"Site Designs

Constraints

Plan the plan labelled as such (and forming part of the Main Contract Documents)

“Site Planning

Boundary the boundary labelled as such on the Plan forming part of the Main Contract Documents.

“Sub-Contract Modifications Schedule”

means the schedule of amendments that the Contractor has prepared and which has been provided to the Sub-Contractor as is referred to in the Sub-Contract Agreement; and

“Sub-Contract

Review

Agenda the document contained or referred to in **Annex 4**.

“Third-Party

Agreement”

any agreement which has been or is to entered into by the Employer with any third party or by the Contractor with any third party (including, without limitation, any collateral warranty with any Funder, Purchaser or Tenant) or which has been or may be entered into by the Employer with any third party (including, without limitation, any finance agreement or development agreement) in connection with the Main Contract Works and/or the Site referred to in the **Main Contract Information Schedule** and contained or referred to in **Parts 1 and 2 of Annex 6** (respectively) (and ‘Third Party Agreements’ shall be construed accordingly).

Interpretation

Sub-Contract to be read as a whole

Insert the following clause after clause 1.3:

“1.3A For the avoidance of doubt, the documents comprising this Sub-Contract shall be construed in the following order of precedence:

- .1 the Recitals and Articles (as amended by the Sub-Contract Modifications Schedule);
- .2 the Conditions and the Schedules (as amended by the Sub-Contract Modifications Schedule);
- .3 the Contractor’s Requirements; and
- .4 the Sub-Contractor’s Proposals.”

Reckoning periods of days

- 1.5 *Insert the following after “done” in the first line of the clause: “in relation to any notice to be given relating to any payment to be made (or not to be made, as the case may be) or the suspension by the Sub-Contractor of any or all of his obligations under this Sub-Contract”.*

Contracts (Rights of Third Parties) Act 1999

- 1.6 *Delete the clause and replace with:*

“1.6 Subject to clause 2.26 and clause 3.1A, any person who is not a party to this Sub-Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Sub-Contract provided always that this shall not affect any right or remedy of such person which exists or is available apart from that Act.”

Notices and other communications

- 1.7.4 *Insert the following at the end of the clause: “Where sent by hand in that manner it shall, subject to proof to the contrary, be deemed to have been received on the day it is delivered.”.*

Effect of Final Payment Notice

- 1.8.1 *Delete “, arbitration” in the third line of the clause.*

- 1.8.1.1 *Delete the clause and replace with:*

“1.8.1.1 not used;”

- 1.8.1 *Insert the following new hanging paragraph at the end of the clause (after clause 1.8.1.5):*

“But nothing in this clause 1.8 shall relieve the Sub-Contractor of any liability he may have under this Sub-Contract in respect of any latent defects in the Sub-Contract Works due to faulty goods, materials, designs, workmanship and/or failure to comply with the Contractor’s Requirements or other Sub-Contract Documents.”

- 1.8.2 *Delete “, arbitration” in the second line of the clause and delete “, award” in the fourth line of the clause.*

- 1.8.2.1 *Delete the clause and replace with:*

“1.8.2.1 where the Sub-Contractor commences those proceedings before or within 10 days after the date of his receipt of the Final Payment Notice; or”

- 1.8.3 *Delete “arbitration or” in the fourth line of the clause.*

- 1.8.4 *Delete the clause and replace with:*

“1.8.4 Not used.”

Consents and approvals

- 1.9 *Insert the following before the full stop at the end of the clause: “and except where expressly set out to the contrary in this Sub-Contract. For the avoidance of doubt, the Contractor shall be acting reasonably in withholding consent or approval to a matter which requires approval of the Employer, the Employer’s Agent or a third party (including but not limited to consent) where such consent or approval has been sought by the Contractor but not obtained from the Employer, the Employer’s Agent or that third party”.*

Applicable law

Delete the sub-heading.

- “1.10 *Delete the clause and replace with:*

“1.10 Not used”

Insert the following new clauses:

- 1.11 Nothing contained in the Sub-Contractor’s Proposals or the Sub-Contractor’s Designed Works Analysis and/or the Sub-Contract Sum Analysis shall override or modify the application or interpretation of that which is contained in the Contractor’s Requirements.
- 1.12 Notwithstanding any other provision of this Sub-Contract, the term “approval” when used in the context of any approval to be given by the Contractor shall have the meaning “acceptance of general principles only”, and no such approval or failure to approve or act or omission of the Contractor shall diminish or relieve the Sub-Contractor from any of his obligations or liabilities under this Sub-Contract. For the avoidance of doubt, only directions requiring variations expressly and specifically given by the Contractor in accordance with clause 3.4 (unless expressly stated to the contrary) shall constitute Variations for the purposes of this Sub-Contract.
- 1.13 Notwithstanding any other provision of this Sub-Contract, the Sub-Contractor shall not be relieved from his liabilities or obligations under this Sub-Contract nor shall such liabilities or obligations be restricted or qualified in any way by the presence of the Employer, the Employer's Agent or the Contractor, or a representative of any of the aforementioned on the Site, or the carrying out of tests on the instructions of the Employer, the Employer's Agent or the Contractor, or by any admission, consent, approval, confirmation, comment, sanction, acknowledgement, advice or inspection made or given by or on behalf of the Employer, the Employer's Agent or the Contractor.”
- 1.14 References to Annexes**

Where any provision of this Sub-Contract refers to any Annex (whether by number or description), and that Annex is not annexed, is incomplete, or does not contain or refer to the document, form, information, particulars or matter in question:

- .1 such reference shall be deemed to include, and be construed as a reference to, the equivalent or analogous document, schedule, annex, appendix, particulars, form or information contained or referred to in the Main Contract Documents and/or the Numbered Documents appended to or referred to in this Sub-Contract (as applicable);
- .2 the Sub-Contractor shall be deemed to have had a reasonable opportunity to inspect the same and to have taken account of it in agreeing the Sub-Contract Sum and the period for completion; and
- .3 any obligation of the Sub-Contractor under this Sub-Contract that is dependent on, or is to be performed by reference to, the document, form, information or particulars in question shall be construed and performed accordingly, without addition to the Sub-Contract Sum or extension of time.

1.15 Main Contract – deemed knowledge

The Sub-Contractor warrants that he has been afforded a reasonable opportunity to inspect the Main Contract and the Main Contract Documents (whether in hard copy, electronic copy, or via inspection at the Contractor's offices or on the Contractor's website) and is fully aware of the terms thereof, the obligations assumed by the Contractor thereunder and the documents, forms, particulars and information referred to or contained therein. No claim by the Sub-Contractor based on lack of knowledge of the same shall be entertained by the Contractor.

1.16 Numbered Documents – gaps, errors and discrepancies

- .1 Where any provision of this Sub-Contract refers to any of the Numbered Documents (whether by number, name or description), and the relevant Numbered Document is not annexed, is incomplete, contains any error, omission, discrepancy or ambiguity, or does not contain or refer to the document, information, particulars or matter in question, the Contractor shall (acting reasonably) determine the document, information, particulars or matter to be applied, and the Sub-Contractor shall comply with that determination without addition to the Sub-Contract Sum or extension of time.
- .2 The Sub-Contractor warrants that he has been afforded a reasonable opportunity to inspect each of the Numbered Documents (whether annexed hereto, provided separately, or made available for inspection by the Contractor) and is fully aware of the contents thereof.
- .3 No determination by the Contractor under this clause 1.16, nor any review, comment, acceptance, instruction or failure to comment by the Contractor in relation to any Numbered Document or any matter arising from it, shall (i) constitute a Variation; or (ii) relieve the Sub-Contractor of any of his obligations or liabilities under this Sub-Contract.

SECTION 2: CARRYING OUT THE SUB-CONTRACT WORKS

Sub-Contractor's Obligations

General obligations

- 2.1.1 *Insert the following after "Phase Plan" in the third line of the clause: ", the Consents" and insert the following before the full stop at the end of the clause: "and Consents".*

Insert the following new clauses:

- "2.1.4 The Sub-Contractor shall carry out and complete the design of such temporary works for the carrying out of such permanent works as are comprised in the Sub-Contract Works so far as the necessity for providing such temporary works is specified in or can reasonably be inferred from the Sub-Contract Documents.
- 2.1.5 So far as they relate and apply to the Sub-Contract Works or to the performance of his other obligations under this Sub-Contract, the Sub-Contractor shall also comply with all the requirements set out in the Contractor's Policy Document and with any change(s) which may, from time to time, be made to the same by the Contractor (acting reasonably) and notified by the Contractor to the Sub-Contractor.
- 2.1.6 The Sub-Contractor shall not have or make any claim for an extension of time under clause 2.18 or for damages or loss and/or expense under clause 4.15 or otherwise and clause 7.8.1 shall not have effect where and to the extent that the cause of the progress of the Sub-Contract Works having been delayed, affected or suspended is or arises from compliance or failure by the Sub-Contractor to comply with clause 2.1.4 and/or clause 2.1.5 and/or any failure on his part to provide necessary temporary works drawings, information or Sub-Contractor's Design Documents in due time."

Sub-Contractor's Designed Works

- 2.2.1 *Insert the following before "complete" in the first line of the clause: "carry out and".*

Insert the following new clause after clause 2.2:

- "2.2A The Sub-Contractor shall ensure that the design of the Sub-Contractor's Designed Works shall be accommodated within the Site."

Time of commencement and completion

- 2.3 *Insert "regularly and diligently" after "carried out" in the first line of the clause.*

Insert the following new sub-headings and clauses after clause 2.3:

"Programming

- 2.3A.1 The Sub-Contractor shall comply with any requirements for the Programme set out in the Sub-Contract Documents including but not limited to the timing of the provision of any programme

required and the provision of such information necessary for any such programme. In the event that the Sub-Contractor fails to provide a first Programme within the time stipulated and in the format and degree of detail specified in the Sub-Contract Documents or in the event that the Sub-Contractor fails to supply any further or updated programme as may be required from time to time as stated in the Sub-Contract Documents, the Contractor shall be entitled to deduct 10% of the value of the next interim payment due to the Sub-Contractor under this Sub-Contract following the date by which the Programme was to be supplied (and any such deducted amount shall be deemed not to have been due to the Sub-Contractor for the purposes of clause 4.6). The amount of any sum deducted shall be released to the Sub-Contractor (without entitlement to interest) on the Final Date for Payment of the next interim payment due after the Sub-Contractor has submitted the outstanding Programme fully complying with the requirements for the Programme set out in the Sub-Contract Documents.

- 2.3A.2 The submission of the Programme shall not relieve the Sub-Contractor of any of his obligations under this Sub-Contract, nor create any obligation or liability on the part of the Contractor, nor establish the Programme as part of this Sub-Contract.

Key Dates

- 2.3B.1 The Sub-Contractor acknowledges that:

- .1 the Sub-Contract Particulars (item 5) provides for Key Dates by which certain activities shall be completed by the Sub-Contractor in order for the Contractor to carry out his obligations in accordance with the Main Contract and/or in accordance with other sub-contracts entered or to be entered into by the Contractor in connection with the Main Contract Works; and
 - .2 if any relevant activity is not completed by its corresponding Key Date, it is foreseeable that:
 - .1 the Sub-Contractor may be required to complete such activity after its corresponding Key Date in an uneconomical and/or unproductive manner in accordance with and/or to suit the progress of the Main Contract Works; and
 - .2 the Contractor may suffer or incur costs, losses, expenses and/or damage whether in respect of liabilities to the Employer under the Main Contract, to any third party under any Third Party Agreement or Schedule of Contractor Third Party Rights and/or to other sub-contractors under the terms of their respective sub-contracts;
- and
- .3 as a consequence of this clause 2.3B, the Sub-Contractor shall carry out his obligations under this Sub-Contract so as to ensure that any activity is completed by its corresponding Key Date.

- 2.3B.2 The Sub-Contractor shall not have or make any claim for an extension of time under clause 2.18 or for damages or loss and/or expense under clause 4.15 or otherwise and clause 7.8.1 shall not have effect where and to the extent that the cause of the progress of the Sub-Contract Works

having been delayed, affected or suspended is or arises from compliance or failure by the Sub-Contractor to comply with his obligations under this clause 2.3B.

- 2.3B.3 Nothing in this clause 2.3B limits or derogates from the Sub-Contractor's other obligations or liabilities under this Sub-Contract, and in particular his primary obligation to achieve completion of the Sub-Contract Works (or any works in a Section thereof) within the relevant period for completion.
- 2.3B.4 The provisions of this clause 2.3B, the Contractor's right to be reimbursed against any liability of the Contractor to the Employer under the Main Contract, to any third party under any Third Party Agreement or Schedule of Contractor Third Party Rights and/or to recover loss and/or expense as a result of any failure by the Sub-Contractor to ensure that any activity is completed by its corresponding Key Date and the Sub-Contractor's right to apply for an extension of time for any delay in completing any activity by its corresponding Key Date shall be subject to the provisions of clauses 2.21 and 2.16 to 2.19 amended for the purposes of this clause 2.3B such that references in clauses 2.21 and 2.16 to 2.19 to the following words and phrases shall have the following meanings:

WORDS AND PHRASES

MEANING

"the Sub-Contract Works"

"the relevant activity"

"period for completion"

"the relevant Key Date"

"Sub-Contract Particulars"

"the entries for clause 2.3B in the Sub-Contract Particulars"

"completion of the Sub-Contract Works or such works in a Section"

"completion of the relevant activity"]

Materials, goods and workmanship

- 2.4.1 *Insert the following after "Contractor's consent" in the penultimate line of the clause: "in his absolute discretion".*

Insert the following new clause:

- "2.4.7 The Sub-Contractor warrants that unless authorised by the Contractor in writing he will use in the Sub-Contract Works only materials in accordance with the guidelines contained in the edition of "Good Practice in the Selection of Construction Materials" (BPF/BCO) current at the date of commencement of the Sub-Contract Works on the Site and which are not generally known in the industry to be deleterious."

Insert the following new sub-headings and clauses after clause 2.4:

Construction Products Requirements

- 2.4A.1 In addition to and without derogation from any other obligation, requirement or duty arising in connection with the Sub-Contract Works, the Sub-Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of all the obligations, requirements and duties arising under the Construction Products Requirements in connection with the Sub-Contract Works and shall on reasonable request being made by the Contractor, and as a condition precedent to the Sub-Contract Works being considered as practically complete (or being deemed practically complete, as the case may be) and as a condition precedent to any sum (or any further sum) becoming due to the Sub-Contractor under or in connection with this Sub-Contract, provide such documentation (including, without implying limitation, any relevant 'Declaration of Performance') as may reasonably be required by the Contractor to demonstrate the Sub-Contractor's compliance with such Requirements.
- 2.4A.2 The Sub-Contractor shall indemnify and hold harmless the Contractor against and from any claim made against the Contractor and/or any damage, loss or expense suffered or incurred by the Contractor (and/or which, in the reasonable opinion of the Contractor, may be brought against and/or suffered or incurred by the Contractor) due to or resulting from any failure by the Sub-Contractor and/or his sub-subcontractors, employees, servants or agents to comply with the Construction Products Requirements.

[Building Minimum Areas

- 2.4B The Sub-Contractor's attention is specifically drawn to the obligations placed on the Contractor by clause 2.2A of the Main Contract Conditions. Without prejudice to the generality of clause 2.5, and insofar as applicable to the Sub-Contract Works, the Sub-Contractor shall carry out and complete the Sub-Contract Works in such manner so as not to put the Contractor in breach of such obligations. The Sub-Contractor shall:
- 2.4B.1 indemnify and hold harmless the Contractor against and from any act, omission or default of the Sub-Contractor or any of the Sub-Contractor's Persons which involves the Contractor in any liability to the Employer under clause 2.2A of the Main Contract Conditions; and/or
- 2.4B.2 be liable for any and all loss and/or expense suffered or incurred by the Contractor (other than and in addition to that indemnified under clause 2.4B.1) as a result of any breach by the Contractor of clause 2.2A.1 of the Main Contract Conditions arising from any act, omission or default of the Sub-Contractor or any of the Sub-Contractor's Persons and the Sub-Contractor agrees that all such loss and/or expense is within the reasonable contemplation of the Parties as being the probable result of any such act, omission or default of the Sub-Contractor or any of the Sub-Contractor's Persons.

The provisions of this clause 2.4B are in addition to and without prejudice to any right of the Contractor to direct the Sub-Contractor to make good any non-conformity of the Sub-Contract

Works at any time pursuant to clause 3.11.1 so that (to the extent necessary) the Minimum Areas (as referred to in clause 2.2A.1 of the Main Contract Conditions) are achieved, at no cost to the Contractor and the Sub-Contractor shall not be entitled to any extension of time or loss and/or expense under this Sub-Contract in respect of the same.]

[Site Plan Clay Extraction Zone]

2.4C.1 The Sub-Contractor shall:

2.4C.1.1 not excavate or extract clay from the area as detailed on the Site Plan Clay Extraction Zone;

2.4C.1.2 not excavate any clay from the Property nearer than a distance of 40 feet from the northern and eastern boundaries of the land edged and numbered MX120654 in green on the Title Plan and such excavations as are made on the Property shall not exceed a depth of 40 feet;

2.4C.1.3 not excavate any clay from the Property nearer than a distance of 40 feet from the northern and eastern boundaries of the land edged and numbered MX320849 in green on the Title Plan and that any excavations up to that point shall be worked to a batter of 45 degrees;

2.4C.1.4 not excavate any clay from the Property nearer than a distance of 40 feet from any boundary of the land edged and numbered MX405565 in green on the Title Plan and such excavations as shall be made on the Property shall not exceed a depth of 40 feet; and

2.4C.1.5 not remove any clay from the Property.]

2.4C.2 The Sub-Contractor shall:

2.4D.2.1 comply with all requirements under the Site Designs Constraints Plan; and

2.4D.2.2 carry out and complete the Sub-Contract Works within the Site Planning Boundary.

2.4C.3 The Sub-Contractor acknowledges and agrees that the Employer or the Contractor shall, from time to time and acting reasonably, be entitled to request (at the Sub-Contractor's expense) that a third party (as identified by the Employer or the Contractor) inspect the Sub-Contract Works to ensure that clause 2.4C.1 and/or clause 2.4C.2 is being complied with and that such third party provide a corresponding written confirmation.

2.4C.4 The Sub-Contractor shall be responsible for and shall indemnify the Contractor from and against any and all expenses, liabilities, losses, claims and proceedings resulting from a breach of clause 2.4C.1 and/or clause 2.4C.2.

2.4C.5 If the Sub-Contractor is in breach of either clause 2.4C.1 and/or clause 2.4C.2, the Contractor shall be entitled to require that the Sub-Contract Works are stopped until such breach has been remedied. The Sub-Contractor shall not be entitled to any extension of time or adjustment to the

Sub-Contract Sum in the event that the Contractor operates his rights under, or the Employer operates its rights as referred to in, this clause 2.4C.5.”

Compliance with the Main Contract and indemnity

- 2.5.1 *Delete “as identified in or by the Main Contract Information Schedule” in the first and second lines of the clause.*

Insert the following new clause:

- “2.5.3 Without prejudice to clauses 2.5.1, 2.5.2 and 2.5A:

2.5.3.1 the Sub-Contractor shall indemnify and hold harmless the Contractor against and from any act or omission of the Sub-Contractor or his employees or agents which involves the Contractor in any liability to any third party under:

2.5.3.1.1 any Third-Party Agreement; or

2.5.3.1.2 any Schedule of Contractor Third Party Rights;

2.5.3.2 the Sub-Contractor acknowledges that any breach by him of this Sub-Contract may cause loss and/or expense to the Contractor in connection with the Main Contract Works, including, but not limited to, under or in connection with any other sub-contract entered or to be entered into by the Contractor in connection with the Main Contract Works, and agrees that all such loss and expense is within the reasonable contemplation of the Parties as being the probable results of any such breach by the Sub-Contractor and shall be recoverable by the Contractor from the Sub-Contractor and/or deducted from any sum otherwise due to the Sub-Contractor.”

Insert the following new sub-headings and clause after clause 2.5:

“Third Party Agreements and Schedules of Contractor Third Party Rights

- 2.5A.1 The Sub-Contractor shall be deemed to have read the Third-Party Agreements and the Schedules of Contractor Third Party Rights and to be fully aware of the obligations, risks and liabilities assumed by the Employer and Contractor respectively under them.

- 2.5A.2 The Sub-Contractor shall perform and assume, as part of his obligations under this Sub-Contract, the Employer’s and the Contractor’s obligations, liabilities and risks contained within the Third-Party Agreements and the Schedules of Contractor Third Party Rights that relate to the carrying out of the Sub-Contract Works as if they were expressly referred to in this Sub-Contract as obligations, liabilities and risks of the Sub-Contractor, all other things being equal.

- 2.5A.3 The Sub-Contractor shall ensure that no act or default or omission on his part or on the part of any of the Sub-Contractor’s Persons in relation to the performance by the Sub-Contractor of his obligations under this Sub-Contract shall cause, contribute or otherwise give rise to any breach by the Employer under any Third Party Agreement entered or which may be entered into by the Employer or by the Contractor under any Third Party Agreement entered or which may be entered into by the Contractor or under any Schedule of Contractor Third Party Rights of any of

their respective obligations thereunder.

- 2.5A.4 The Sub-Contractor shall indemnify the Contractor against and from any cost, damage or other expense incurred by the Contractor due to any breach of clause 2.5A.3 by the Sub-Contractor; provided always that if a copy or relevant extracts of any new or amended Third Party Agreement entered or to be entered into by the Employer is provided to the Sub-Contractor after the date of the Sub-Contract Agreement which necessitates or results in any amendment to the Sub-Contract Documents, the matter shall be treated as a Variation (subject always to clause 3.5.1).

Work not forming part of the Sub-Contract

- 2.5B.1 The Sub-Contractor shall permit the Contractor, the Contractor's Persons, the Employer, Purchasers and/or Tenants and any person authorised or licensed by the Employer, Purchasers and/or Tenants (together '**Other Contractors**'), to have access to the Site for the execution of the Main Contract Works. The Other Contractors shall be deemed to be persons for whom the Employer is responsible and not to be sub-contractors of the Contractor or sub-subcontractors of the Sub-Contractor. For the avoidance of doubt, the execution of such works shall not in any way be deemed to be obtaining beneficial occupation or use of any part of the Site.
- 2.5B.2 The Sub-Contractor shall use reasonable endeavours not to interfere with the carrying out of any works by the Contractor's Persons or the Other Contractors and shall co-operate with the Contractor's Persons and the Other Contractors with regard to access and other working arrangements.
- 2.5B.3 The Sub-Contractor confirms that subject to the Contractor's Persons complying with any arrangements agreed with the Contractor and the Other Contractors complying with any arrangements agreed with the Employer, he shall not be entitled to any extension of time or adjustment to the Sub-Contract Sum by virtue of the operation of this clause 2.5B.

Site Conditions

- 2.5C.1 The Sub-Contractor warrants that he has inspected the Site (including verification of any information provided to the Sub-Contractor by the Contractor) and taken account of and made all necessary allowances in the Sub-Contractor's Proposals and the Sub-Contract Sum for: (a) the location of the Site and the position and nature of any adjoining structures; (b) all relevant ground conditions and any existing site infrastructure and services; (c) the general condition of any existing buildings (having particular regard to structures and existing services); and (d) all factors likely to affect or restrict access to and use of the Site and/or the carrying out and completion of the Sub-Contract Works. For the avoidance of doubt, it is agreed by the Contractor and the Sub-Contractor that no such conditions, works or facilities shall give rise to a Variation or to any entitlement to an extension of time under clause 2.18, reimbursement of loss and/or expense under clause 4.15 or any other addition to the Sub-Contract Sum."

Errors, Discrepancies and Divergences

Preparation of Bills of Quantities and Contractor's Requirements

2.8.2 *Delete the clause and replace with:*

“2.8.2 Not used.”

Bills of Quantities, Contractor’s Requirements and Sub-Contractor’s Designed Works Analysis – errors and inadequacy

Insert the following new clauses after clause 2.9.1:

“2.9.1A Where the Sub-Contract Works are not subject to remeasurement (by reason of the application of the Adjustment Basis (Article 3A)):

2.9.1A.1 the Sub-Contractor acknowledges and agrees that he will bear at his own cost and risk any error or omission relating to the quantity of the work included in the Sub-Contract Sum where that quantity is set out:

2.9.1A.1.1 in the Bills of Quantities (including any error or omission arising from any departure from any rule relating to the preparation of the Bills of Quantities in accordance with the standard Method of Measurement); or

2.9.1A.1.2 where there are no Bills of Quantities, in the Sub-Contract Documents provided by the Contractor.

2.9.1A.2 for the avoidance of doubt, the Sub-Contract Sum is a fixed lump sum price and the Sub-Contractor shall not be entitled to any addition to the Sub-Contract Sum (or to payment of any other additional sum whatsoever) or to any extension of time for delay to the completion of the whole or any part of the Sub-Contract Works arising from any error or omission referred to in clause 2.9.1A.1.

2.9.1B Where the Sub-Contract Works are subject to remeasurement (by reason of the application of the Remeasurement Basis (Article 3B)):

2.9.1B.1 the Sub-Contractor shall be entitled to an addition to the Sub-Contract Tender Sum but not entitled to an extension of time for delay to the completion of the whole or any part of the Sub-Contract Works arising from any difference between the final total quantity of work done and the quantity stated for an item in the Bills of Quantities;

2.9.1B.2 the Sub-Contractor further acknowledges and agrees that only the items of permanent work stated in the Bills of Quantities shall be subject to remeasurement; and

2.9.1B.3 for the avoidance of doubt, the Sub-Contractor shall not be entitled to any addition to the Sub-Contract Tender Sum (or to payment of any other additional sum whatsoever) or to any extension of time for delay to the completion of the whole or any part of the Sub-Contract Works arising from any difference between the final total quantity of work done and the quantity stated for an item in the Bills of Quantities where such difference arises from a breach of contract or any other default of the Sub-Contractor

or from any risk for which the Sub-Contractor is responsible under this Sub-Contract.”

2.9.2 *Delete “to which clause 2.8.2 applies,” in the first and second lines of the clause.*

2.9.3 *Delete the clause and replace with:*

“2.9.3 Any correction under clause 2.9.1 shall constitute a Variation but any alteration or modification under clause 2.9.2 shall not constitute a Variation.”

Notice of discrepancies etc.

2.10 *Delete the opening paragraph of the clause and replace with:*

“The Sub-Contractor shall forthwith upon receiving such documents search for discrepancies within the Contractor’s Requirements and the Sub-Contractor’s Proposals and if the Sub-Contractor becomes aware of any inadequacy as is referred to in clause 2.8.2, any departure, error or omission as is referred to in clause 2.9.1 or clause 2.9.1A or clause 2.19.1B (whichever clause applies) or in clause 2.9.4, or any discrepancy or divergence in or between any of the following, namely:”

Discrepancies

2.11.1 *Delete the clause and replace with:*

“2.11.1 Without prejudice to the generality of clause 1.11, where there is a discrepancy within the Sub-Contractor’s Proposals or other Sub-Contractor’s Design Documents including any non-compliance with the Statutory Requirements or a divergence between the Contractor’s Requirements and the Sub-Contractor’s Proposals or other Sub-Contractor’s Design Documents, the Sub-Contractor shall inform the Contractor in writing of the discrepancy or divergence and of his proposed amendment to remove the discrepancy or divergence (as the case may be) and (subject always to compliance with the Statutory Requirements) the Contractor shall decide between the discrepant or divergent items (as the case may be) and may accept the Sub-Contractor’s proposed amendments or shall direct otherwise and the Sub-Contractor shall be obliged to comply with the decision, acceptance or direction by the Contractor without adjustment of the Sub-Contract Sum or extension of time for completion and without affecting in any way or to any extent the responsibility of the Sub-Contractor under this Sub-Contract.”

2.11.2 *Delete “treated as a Variation” at the end of the clause and replace with: “complied with by the Sub-Contractor without adjustment of the Sub-Contract Sum or extension of time for completion”.*

Sub-Contractor’s Designed Works

Design liabilities and limitation

Delete the sub-heading and replace with: “Design liabilities”.

- 2.13.1 *Delete the beginning of the clause up to “as a result of a Variation), the Sub-Contractor” and insert:*

“The Sub-Contractor shall be fully responsible in all respects for the design of the Sub-Contractor’s Designed Works including, but without limitation, that contained in the Contractor’s Requirements and Sub-Contractor’s Proposals, other Sub-Contractor’s Design Documents (and including any further design required to be carried out by the Sub-Contractor as a result of a Variation) and shall adopt and take responsibility for any design work in relation thereto which may be carried out or which may have been carried out at the request of or on behalf of or for the Contractor or the Employer. Without prejudice to the generality of the foregoing, the Sub-Contractor warrants to the Contractor that the Sub-Contractor’s Designed Works and all design and workmanship designed therein shall be fully and properly carried out for the purposes set out in the Contractor’s Requirements and shall comply with those requirements. The Sub-Contractor”

Insert the following after “take on work for such design” in the seventh line of the clause: “and experienced in designing work of a similar scope, nature and value to the Sub-Contractor’s Designed Works”.

- 2.13.2 *Delete the clause and replace with:*

“2.13.2 Not used.”

- 2.13.3 *Delete the clause and replace with:*

“2.13.3 The Sub-Contractor warrants that unless authorised by the Contractor in writing he will specify and use in the Sub-Contractor’s Designed Works only materials in accordance with the guidelines contained in the edition of “Good Practice in the Selection of Construction Materials” (BPF/BCO) current at the date of commencement of the execution of the Sub-Contractor’s Designed Works on the Site and which are not generally known in the industry to be deleterious.”

Insert the following new clause:

“2.13.5 No provision in this Sub-Contract in relation to the Sub-Contractor’s design obligations shall be interpreted as imposing a fitness for purpose obligation, and any terms to this effect are hereby excluded.”

Adjustment of Period for Completion

Notice by Sub-Contractor of delay to progress

- 2.17.3 *Insert the following after “further information” in the second line of the clause: “, and programmes”.*

Fixing Period for Completion

- 2.18.1 *Insert the following after “notice” in the first line of the clause: “, programmes (if required)”.*
- 2.18.1.2 *Insert “has been or” after “Section” in the first line of the clause.*
- 2.18.2 *Insert the following after “required” in the third line of the clause: “programmes and”.*
- 2.18.6.2 *Insert the following before the semi-colon at the end of the clause: “and shall take all reasonable steps to mitigate the effects of any delay”.*
- 2.18.6.4 *Delete the full stop at the end of the clause and replace with: “; and”.*

Insert the following new clause:

“2.18.6.5 save where clause 2.19.12 applies, the Sub-Contractor shall not, in any event, be entitled to an extension of time to the extent that any delay in the progress of the Sub-Contract Works or of the works in any Section is due to any breach of this Sub-Contract by the Sub-Contractor or any negligence or default of the Sub-Contractor or any of his professional consultants, sub-subcontractors or suppliers or any of their respective employees or agents.”

Relevant Sub-Contract Events

- 2.19.2 *Insert the following after “Employer’s instructions”: “(other than directions and/or instructions wholly consequent upon or necessitated or to the extent that the same are consequent upon or necessitated by omission, default or breach of contract or breach of statutory duty by the Sub-Contractor, his servants or agents or any consultant to the Sub-Contractor or sub-subcontractor)”.*
- 2.19.2.1 *Delete “2.13,” in the first line of the clause.*
- 2.19.2.2 *Insert the following before the semi-colon at the end of the clause: “or was consequent upon or was necessitated by similar works, materials or goods being shown not to be in accordance with this Sub-Contract”.*
- 2.19.2.3 *Insert the following before the semi-colon at the end of the clause: “or was consequent upon or was necessitated by similar works, materials or goods being shown not to be in accordance with this Sub-Contract”.*
- 2.19.4 *Delete the clause and replace with:*

“2.19.4 not used;”
- 2.19.6 *Insert the following after “4.11” in the first line of the clause: “or clause 7.10.2.2”.*
- 2.19.10 *Insert the following before the semi-colon at the end of the clause: “provided that the Sub-Contractor has placed all orders and given instructions promptly and is not in breach of his*

obligations under this Sub-Contract”.

2.19.14 *Insert the following before the semi-colon at the end of the clause: “provided that the same is not limited to the Site or to the Sub-Contractor at his various sites of operation or in any way caused by the Sub-Contractor”.*

2.19.15 *Insert the following before the semi-colon at the end of the clause: “subject to such exercise not being reasonably foreseeable to the Parties at the date of the Sub-Contract Agreement”.*

2.19.17 *Delete the full stop at the end of the clause and replace with a semi-colon.*

Insert the following new sub-headings and clauses after clause 2.19:

“Assessment of Extensions of Time

2.19A.1 The Sub-Contractor shall not be entitled to an extension of time in any event if he has not complied with the requirements of clause 2.17 and clause 2.18.6.2.

2.19A.2 Notwithstanding any other provision of this Sub-Contract to the contrary, the Sub-Contractor accept that he shall not be entitled to any extension of time or to any other relief whatsoever, whether under this Sub-Contract at law or otherwise, for any delay which has been caused and/or may be caused to the commencement, progress and/or completion of the Works by or as a consequence of any direct/indirect actions taken in response to an epidemic, pandemic or other public health emergency (whether national or international).

2.19A.3 Notwithstanding that the Sub-Contractor has not made or is not entitled to make an application for an extension of time, [or clause 2.19A.1 would otherwise have disentitled the Sub-Contractor to an extension of time,] the Contractor may unilaterally and in his absolute discretion at any time and from time to time grant the Sub-Contractor an extension of time.

Expedition of progress of Sub-Contract Works

2.19B If, for any reason which does not entitle the Sub-Contractor to an extension of time under clause 2.18, the rate of progress of the Sub-Contract Works or any part thereof is at any time in the opinion of the Contractor too slow to achieve practical completion within the period for completion and/or to achieve completion of any activity or activities by the corresponding Key Date(s) stated in item 5 of the Sub-Contract Particulars, the Contractor may notify the Sub-Contractor in writing whereupon the Sub-Contractor shall forthwith propose and subject to the approval of the Contractor take such steps as are reasonably necessary to expedite the progress of the Sub-Contract Works or that part so as to complete the same within the period for completion and/or to complete such activity or activities by the corresponding Key Date(s). Should the Sub-Contractor’s proposals be in the opinion of the Contractor inadequate to permit completion within the period for completion and/or permit completion of such activity or activities by the corresponding Key Date(s), the Contractor may modify the proposals with the agreement of the Sub-Contractor (such agreement not to be unreasonably withheld or delayed)

and/or direct the Sub-Contractor to take other measures (without in any way relieving the Sub-Contractor of any of his obligations, liabilities or responsibilities under this Sub-Contract) and the Sub-Contractor shall forthwith comply with such modified proposals and/or directions. The Sub-Contractor shall not be entitled to any additional payment for taking such steps or complying with such modified proposals and/or directions.”

Practical Completion and Lateness

Date of practical completion

Insert the following new clauses after clause 2.20:

“2.20A The Contractor shall be entitled to dissent if:

- .1 there are any apparent incomplete works or are any apparent defects unless such incomplete work or defects are insignificant in which case the provisions of clause 2.20B shall apply; or
- .2 any works necessary to complete any incomplete work or to remedy any defects as referred to in clause 2.20A.1 will cause material interference or disruption to the use and occupation of the Main Contract Works or relevant Section; or
- .3 where relevant, the Sub-Contractor has not carried out a satisfactory demonstration for the Contractor and/or the Employer of the controls of all mechanical and electrical equipment and provided three hard copies and (save where the Contractor agrees to the contrary) one electronic copy of the maintenance manuals in respect of the lifts, mechanical and electrical services and all other relevant items, which manuals shall comply with the requirements set out in the Contractor’s Requirements; or
- .4 the Sub-Contractor has not provided such information and documents as the Contractor may require for the compilation of the health and safety file (in both a hard and soft electronic copy) containing, so far as applicable to the Sub-Contract Works:
 - .1 a complete set of “as built” drawings with reasonably complete details of all materials used; and
 - .2 a complete set of all instruction, operating and maintenance manuals applicable to the mechanical and electrical installations;
- .5 the Sub-Contractor has not issued all relevant test certificates to the Contractor;
- .6 the Sub-Contractor has failed to deliver a collateral warranty or warranties pursuant to clause 2.26; or
- .7 so far as relevant, the Sub-Contractor or an independent third party (as the case may be) has failed to deliver any written confirmations as may be required under clause 2.4C.3.

- 2.20B At any time within the 14 day period referred to in clause 2.20.1, the Contractor may (at the same time as confirming that practical completion of the Sub-Contract Works or such works in a Section has been achieved), or within a reasonable time after the expiry of that 14 day period (in circumstances where the Contractor has not dissented to the Sub-Contractor's notice of practical completion under clause 2.20.1), the Contractor may deliver to the Sub-Contractor as a direction of the Contractor a schedule of any incomplete items of work and defects outstanding at practical completion (or deemed practical completion) which he requires to be completed or made good immediately following the issue of such schedule. The Sub-Contractor shall complete or make good any outstanding items of work and defects referred to in the schedule within 3 weeks of practical completion (or deemed practical completion) or receipt of such schedule (whichever is the later) provided that for the avoidance of doubt if the Sub-Contractor fails to make good any defects, shrinkages or other faults notified by the Contractor pursuant to this clause within the time required under this clause then the Contractor shall be entitled to engage another sub-contractor to carry out such works and recover the cost of the same from the Sub-Contractor as a debt and/or to deduct the same from any sums otherwise due to the Sub-Contractor."

Failure of Sub-Contractor to complete on time

- 2.21 *Insert the following before the full stop at the end of the clause: "or such amount of direct loss and/or expense which, in the Contractor's reasonable opinion, is likely to be suffered or incurred by the Contractor as a consequence of such failure on the part of the Sub-Contractor".*

Insert the following at the end of the clause: "The Sub-Contractor's attention is specifically drawn to the provisions of the Main Contract Particulars relating to the liquidated and ascertained damages which the Contractor may have to pay or allow to the Employer under the Main Contract for any delay in completion of the (a) Main Contract Works as a whole and/or (b) any Section. The Sub-Contractor acknowledges and accepts that the amount of direct loss and/or expense which he is required to pay or allow to the Contractor under this clause 2.21 shall include any liquidated and ascertained damages which the Contractor may be required to pay or allow to the Employer under the Main Contract for any delay in completion of the Main Contract Works as a whole and/or of any Section to the extent such damages arise from any failure by the Sub-Contractor to complete the Sub-Contract Works as a whole or such works in any Section within the relevant period or periods for completion."

Defects

Sub-Contractor's liability

- 2.22.1 *Insert the following at the end of the clause: "In the case of a defect, shrinkage or other fault raising health and safety issues or preventing occupation of the relevant part of the Main Contract Works, the Sub-Contractor shall make good such defect, shrinkage or other fault forthwith. The Sub-Contractor shall also be required to indemnify the Contractor from and against the cost incurred by the Contractor in engaging other sub-contractors to make good any damage caused to the Main Contract Works (other than to the Sub-Contract Works) by such defect, shrinkage or other fault and/or by the Sub-Contractor making good such defect, shrinkage or other fault."*

Insert the following new clause:

- “2.22.4 If the Sub-Contractor fails to make good any defect, shrinkage or other fault notified under clause 2.22.1, then the Contractor shall, either by himself and/or the engagement of others, be entitled to make good such defect, shrinkage or other fault and the reasonable and proper costs thereof shall be a debt payable by the Sub-Contractor to the Contractor and/or may be deducted from any sums otherwise due and payable to the Sub-Contractor by the Contractor.”

Sub-Contractor’s Design Documents

As-built Drawings

- 2.24 *Insert the following after “before” in the second line of the clause: “, and as a condition precedent to,” and insert the following after “Employer” in the fourth line of the clause: “five copies of”.*

Copyright and use

- 2.25.2 *Delete “Subject to all sums due and payable under this Sub-Contract to the Sub-Contractor having been paid, the” and replace with: “The”, insert “(including any documents prepared by any of the Sub-Contractor’s consultants and sub-subcontractors)” after “Documents” in the fourth and eighth lines of the clause and insert the following before the full stop at the end of the clause: “; such licence shall be without limit of time and shall carry the right to grant sub-licences and shall be transferable to third parties”.*

Insert the following new clauses:

- “2.25.5 The Sub-Contractor will not grant to any third party the right to use any of the Sub-Contractor’s Design Documents except under any warranty he is obliged to give under this Sub-Contract.
- 2.25.6 The Sub-Contractor warrants that the Sub-Contractor’s Design Documents (except to the extent that duly authorised sub-subcontractors have been used) are the Sub-Contractor’s own original work and that in any event their use in connection with the Main Contract Works will not infringe the rights of any third party. The Sub-Contractor further warrants that where duly authorised sub-subcontractors are used their work will be original and that the Sub-Contractor will obtain the necessary consents in relation to clause 2.25.2.
- 2.25.7 The Sub-Contractor agrees on reasonable request at any time and following reasonable prior written notice to give to the Contractor, or to the Employer or to those authorised by the Contractor or the Employer, access to the Sub-Contractor’s Design Documents and to provide copies (including copy negatives and CAD disks) of the Sub-Contractor’s Design Documents at the Contractor’s expense.”

Insert the following new sub-heading and clause after clause 2.25:

“Anti-bribery

- 2.25A The parties to this Sub-Contract shall comply with and provide all necessary co-operation to ensure that each party complies with the obligations of the Bribery Act 2010 and any other

applicable anti-bribery legislation in relation to the Sub-Contract Works, including but without limitation, compliance with the anti-bribery policies of the Contractor and the Employer.”

Third Party Rights and Collateral Warranties etc

Particulars and notices

2.26.1 *Delete the clause and replace with:*

“2.26.1 The Employer is entitled to Employer Rights by way of a collateral warranty in the form of the document specified in the Sub-Contract Particulars (item 6) (the ‘**Sub-Contract Rights Particulars**’).”

2.26.2 *Delete the clause and replace with:*

“2.26.2 Not used.”

2.26.3 *Delete the clause and replace with:*

“2.26.3 Not used.”

2.26.4 *Delete “14 days” in the second line of the clause and replace with: “7 days”, insert “set out in **Part 3 of Annex 4**” after “form” at the beginning of the fourth line of the clause and insert the following at the end of the clause: “It shall be a condition precedent to any or any further sum(s) becoming due to the Sub-Contractor under or in connection with this Sub-Contract that the Sub-Contractor shall have delivered to the Contractor any and all collateral warranties the Sub-Contractor is required to deliver to the Contractor in accordance with this clause 2.26.4.”.*

2.26.5 *Delete the clause and replace with:*

“2.26.5 Not used.”

2.26.6 *Delete the clause and replace with:*

“2.26.6 Not used.”

Rights of termination, variation etc.

Delete the sub-heading and clause 2.27 in its entirety and replace with:

“2.27 Not used”

Insert the following new sub-heading and clause after clause 2.27:

“Confidentiality and Publicity

2.28.1 The Sub-Contractor shall not, without the prior written approval of the Contractor, take or permit

to be taken any photographs of the Main Contract Works for use in any publicity or advertising.

- 2.28.2 The Sub-Contractor and his agents and employees shall not, without the prior written approval of the Contractor, disclose to any other person (other than any person to whom disclosure must be made in order for the Sub-Contractor to fulfil his duties under this Sub-Contract, the Sub-Contractor's lawyers, auditors and other professional advisers subject to a duty of confidence or as may be required by statute or by a court of competent jurisdiction), any information about the Main Contract Works including the Sub-Contractor's Design Documents or any information about the Employer or its business, or about the Contractor or its business, or any information about any person in whose favour the Sub-Contractor is obliged by this Sub-Contract to execute a warranty or their business, nor shall the Sub-Contractor exploit any such information for his own benefit or for the benefit of any other person. The Sub-Contractor's obligations under this clause 2.28.2 shall not apply to any information which is already in the public domain or to any information which came to him otherwise than in connection with his involvement in relation to the Sub-Contract Works except where its entry into the public domain or its coming to the Sub-Contractor was as a result of a breach of any contractual obligation by the Sub-Contractor or by any Sub-Contractor Person.
- 2.28.3 The Sub-Contractor shall ensure that similar provisions are included in his contracts with sub-subcontractors and shall enforce such provisions."

SECTION 3: CONTROL OF THE SUB-CONTRACT WORKS

Assignment and Sub-Contracting

Non-Assignment

3.1 *Delete the clause and replace with:*

"3.1 The Sub-Contractor shall not without the prior written consent of the Contractor assign the benefit of or any of his rights under this Sub-Contract."

Insert the following new clauses after clause 3.1:

- 3.1A The Contractor may, without the consent of the Sub-Contractor, by written notice to the Sub-Contractor, assign the benefit of or any of his rights under this Sub-Contract on not more than two occasions provided that assignments to an Affiliate of the Contractor shall not count towards such limited number of assignments.
- 3.1B The Sub-Contractor agrees with the Contractor not to contend or argue that any person to whom this Sub-Contract may be assigned shall be precluded or prevented from recovering under this Sub-Contract any loss or damage resulting from any breach of this Sub-Contract by the Sub-Contractor (whenever it happens) by reason of the fact that such person is an assignee only or otherwise is not the original Contractor or because the loss or damage suffered has been suffered by such person only and not by the original Contractor."

Consent to sub-contracting

Insert the following new clauses after clause 3.2:

“3.2A As a condition precedent, the Sub-Contractor shall not be entitled to sub-contract any part(s) of the Sub-Contract Works (and no sub-subcontractor shall be permitted to enter upon the Site) unless and until:

3.2A.1 the Sub-Contractor has provided to the Contractor:

3.2A.1.1 full details of that part or of those parts of the Sub-Contract Works that the Sub-Contractor proposes to sub-contract and the name and address of the proposed sub-subcontractor; and

3.2A.1.2 copies of the documents (save for any documents which contain any confidential or commercially sensitive information) which will form part of any sub-subcontract that the Sub-Contractor proposes to enter into with the sub-subcontractor for the Contractor’s review (such sub-subcontract to expressly require the sub-subcontractor, as a condition precedent to any payment being made by the Sub-Contractor to such sub-subcontractor under the sub-subcontract, to enter into and deliver to the Contractor a collateral warranty in the form provided by the Contractor to the Sub-Contractor on entering into the sub-subcontract with the Sub-Contractor); and

3.2A.1.3 where applicable, the collateral warranty referred to in clause 3.2A.1.2 entered into by the sub-subcontractor in favour of the Contractor, and also entered into by the Sub-Contractor,

and

3.2A.2 the Contractor has consented in writing (which consent shall not be unreasonably withheld or delayed) to:

3.2A.2.1 the proposed sub-subcontractor;

3.2A.2.2 the sub-contracting of that part or of those parts of the Sub-Contract Works to the proposed sub-subcontractor; and

3.2A.2.3 the terms of the proposed sub-subcontract

3.2B If any sub-subcontractor enters upon the Site before (i) the Sub-Contractor has complied with clauses 3.2A.1.1, 3.2A.1.2 and 3.2A.1.3 and (ii) the Contractor has consented in writing to the matters referred to in clauses 3.2A.2.1, 3.2A.2.2 and 3.2A.2.3, the Contractor shall be entitled to suspend the Sub-Contract Works (and, for the avoidance of doubt, any delay, costs and/or expenses suffered and/or incurred by the Contractor or the Sub-Contractor as a result of such suspension shall be the risk and liability of the Sub-Contractor and the Sub-Contractor shall not be entitled to an extension of time or any additional payment for any period of delay arising from

the suspension. The Contractor shall also be entitled to defer making payment of any sum due or which may become due to the Sub-Contractor in respect of any work which has been carried out by any such sub-subcontractor until such time as the Sub-Contractor has complied with this clause and the Contractor has consented to the work in question being sub-contracted).

- 3.2C No sub-subcontractor may commence work on the Site until the sub-subcontract documents have been executed and the Sub-Contractor is in possession of documentary evidence that all required insurances are in place.”

Conditions of sub-contracting

- 3.3.1 *Insert the following at the beginning of the clause: “subject to clause 7.7.2.3,” and insert the following before the semi-colon at the end of the clause: “(save to the extent the sub-subcontractor has executed a collateral warranty in favour of the Contractor entitling the Contractor to step into the sub-subcontract in the event of the sub-subcontractor seeking to terminate his employment thereunder or determine the same)”.*

Contractor’s Directions

Compliance with directions

- 3.5.3 *Delete the full stop at the end of the clause and replace with a semi-colon and insert the following new clause:*

“3.5.4 no act, omission or document prepared by the Contractor shall, in the absence of a direction confirming that it is to be treated as such, amount to a Variation or relieve the Sub-Contractor of any of his obligations under this Sub-Contract.”

Insert the following new clause after clause 3.5:

“3.5A If the Sub-Contractor considers that a direction would change the conditions of execution of other work as envisaged by clause 5.11 then the Sub-Contractor shall give written notice of such changes within three days of receipt of the direction.”

Non-compliance with directions

- 3.6 *Delete “7 days” in the first line of the clause and replace with: “3 days”.*

Insert the following new sub-heading and clause after clause 3.9:

“Provisional Sums

- 3.9A.1 The Contractor shall issue instructions in regard to the expenditure of Provisional Sums included in the Contractor’s Requirements.
- 3.9A.2 The Contractor may omit a Provisional Sum from this Sub-Contract and the Sub-Contractor shall not be entitled to any loss of profit or any other loss through such omission.”

Opening Up and Remedial Measures

Directions to open up and test

- 3.10 *Insert the following after “the Contractor may” in the first line of the clause: “at any time prior to expiry of the Rectification Period stated in the Sub-Contract Particulars” and insert the following before the full stop at the end of the clause: “, or unless the direction was reasonable in the circumstances”.*

Attendance and Site Conduct

Attendance

Insert the following new sub-heading and clause after clause 3.16:

“Accreditation(s)

- 3.16A It is a condition precedent to the payment of any sum (or of any further sum, as the case may be) which may be due from the Contractor to the Sub-Contractor under or in connection with the Sub-Contract that the Sub-Contractor shall have provided such documentation as may reasonably be required to demonstrate to the Contractor’s complete satisfaction that he has such accreditation(s) as may be necessary for the purpose of carrying out the Sub-Contract Works.”

Health and Safety and CDM Requirements

Health and Safety

Insert the following new clause after clause 3.19:

- “3.19A.1 The Contractor is entitled after due warning in writing to instruct the Sub-Contractor to remove from the performance of the Sub-Contract Works any employee of the Sub-Contractor or any sub-subcontractor who in the opinion of the Contractor misconducts himself or is incompetent or negligent in the performance of his duties or otherwise fails to observe or where necessary comply with the Health and Safety Requirements or who persists in any conduct which is prejudicial to health or safety and such employee or sub-subcontractor is not again employed in relation to the performance of the Sub-Contract Works without the prior written permission of the Contractor. The Sub-Contractor agrees that the opinion or instruction of the Contractor in regard to the removal of any employee of the Sub-Contractor or any sub-subcontractor under this clause 3.19A.1 is final and binding on the Sub-Contractor.
- 3.19A.2 The Sub-Contractor shall indemnify the Contractor in respect of any Health and Safety Executive (‘HSE’) investigation fees which the Contractor has paid or is liable to pay to the HSE by virtue of the Health and Safety (Fees) Regulations 2012 and where such investigation fees arise as a consequence of a breach by the Sub-Contractor of any health and safety legislation and/or regulations.”

CDM Regulations

3.20 *Insert the following new clause after the new clause 3.20:*

“3.20A The Sub-Contractor warrants to the Contractor that he has the competence and has allocated or (as the case may be) will allocate adequate resources to enable him to comply with all his obligations under the CDM Regulations.”

SECTION 4: PAYMENT

Sub-Contract Sum and Sub-Contract Tender Sum

Adjustment Basis

4.1.2 *Delete “these Conditions” in the second line of the clause and replace with: “this Sub-Contract”.*

Taxes

VAT

Delete clause 4.4 in its entirety and replace with:

“4.4 This clause 4.4 applies where it is stated in the Sub-Contract Particulars that it applies.

4.4.1 It shall be a condition precedent to the Contractor becoming obliged to make payment on or before (i) the Final Date for Payment of any interim payment; or (ii) the Final Date for Payment of the Final Payment; or (iii) the Postponed Final Date for Final Payment; or (iv) the Declaration Final Date for Final Payment (whichever is applicable) of any sum stated be due from the Contractor to the Sub-Contractor:

- .1 in any Payment Notice given by the Contractor to the Sub-Contractor (**‘Amount A’**); or
- .2 if the second sentence of clause 4.7.3 applies, in any Application for Payment submitted by the Sub-Contractor to the Contractor (**‘Amount B’**); or
- .3 in any Final Payment Notice given by the Contractor to the Sub-Contractor (**‘Amount C’**); or
- .4 if clause 4.22.2 applies, in any Default Final Payment Notice given by the Sub-Contractor to the Contractor (**‘Amount D’**); or
- .5 in any Declaration of Sub-Contract Final Account received by the Contractor from the Sub-Contractor (**‘Amount E’**); or
- .6 in (i) any Pay Less Notice given by the Contractor to the Sub-Contractor in respect of any interim payment no less than 3 days before the Final Date for Payment; or (ii) any Pay Less Notice given by the Contractor to the Sub-Contractor in respect of the Final Payment no

less than 3 days before the Final Date for Payment or the Postponed Final Date for Final Payment ('Amount F'),

that the Contractor shall have received at the Contractor's registered office (addressed to the 'Accounts Department') no later than 7 days before (i) the Final Date for Payment (for Amount A, Amount B or if applicable, Amount F); or (ii) the Final Date for Payment (for Amount C or if applicable, Amount F); or (iii) the Postponed Final Date for Final Payment (for Amount D or if applicable, Amount F); or (iv) the Declaration Final Date for Final Payment (for Amount E) (whichever applies), a VAT invoice from the Sub-Contractor and, in the case of Amount F, if the Contractor has already received a VAT invoice from the Sub-Contractor for Amount A, Amount B, Amount C or Amount D, a credit note for the sum included in that previous VAT invoice.

4.4.2 If the Contractor does not receive a VAT invoice from the Sub-Contractor in accordance with clause 4.4.1, the Final Date for Payment in respect of the relevant interim payment, or the Final Date for Payment or the Postponed Final Date for Final Payment in respect of the Final Payment (whichever applies) shall (for the purposes of payment only and not, for the avoidance of doubt, the giving of any Pay Less Notice by the Contractor to the Sub-Contractor) be regarded as postponed by the same number of days as the number of days after the latest date by which the Contractor should have received a VAT invoice from the Sub-Contractor that the Contractor actually received the Sub-Contractor's VAT invoice.

4.4.3 If the Contractor gives the Sub-Contractor a Pay Less Notice no more than 10 days but no less than 3 days before (whichever of the following is applicable):

.1 the Final Date for Payment in respect of any interim payment; or

.2 the Final Date for Payment in respect of the Final Payment; or

.3 the Postponed Final Date for Final Payment,

(1) the Sub-Contractor shall submit a VAT invoice to the Contractor's registered office (addressed to the 'Accounts Department') for the sum included in the Contractor's Pay Less Notice and, if the Contractor has already received a VAT invoice from the Sub-Contractor in accordance with clause 4.4.1 for Amount A, Amount B, Amount C or Amount D, a credit note for the sum included in that previous VAT invoice; and

(2) the Final Date for Payment in respect of that interim payment, or the Final Date for Final Payment or the Postponed Final Date for Final Payment in respect of the Final Payment (whichever applies) shall be regarded as postponed by the same number of days as the number of days after the date on which the Sub-Contractor received the Contractor's Pay Less Notice that the Contractor actually received the Sub-Contractor's VAT invoice (and, if applicable, credit note) provided that any previous postponement of the Final Date for Payment, or the Final Date for Payment or the Postponed Final Date for Final Payment in respect of the Final Payment (whichever applies) by virtue of the operation of clause 4.4.2 shall, for the purposes of the operation of this clause 4.4.3, be ignored."

Insert the following new sub-headings and clauses after clause 4.4:

“Income Tax and other Payments

4.4A The Sub-Contractor shall at all times ensure that he is responsible for all income tax and national insurance contributions (and for any and all other taxes imposed from time to time by HMRC) in respect of his employees and where necessary, his sub-subcontractors and other agents and suppliers working under his control for the purposes of this Sub-Contract and shall indemnify the Contractor from and against any and all costs (including reasonable legal and other professional fees), damage, loss, expense, liability, claims and proceedings whatsoever as a result of any tax liabilities being imposed on the Contractor from time to time by HMRC as a result of the Sub-Contractor’s employment or engagement of such persons. Without limiting the foregoing, if:

.1 the Sub-Contractor:

.1 is a natural person who is carrying out the Sub-Contract Works; or

.2 has engaged or engages any natural person as his sub-subcontractor or other agent or supplier to carry out any part of the Sub-Contract Works,

through an intermediary (including but not limited to any ‘personal service company’), and

.2 HMRC (or any court or other tribunal of competent jurisdiction) decides that the person referred to in clause 4.4A.1.1 and/or the person referred to in clause 4.4A.1.2 is, and/or in respect of any period before the date of the Sub-Contract Agreement was, within HMRC’s IR35 off-payroll working rules,

then, notwithstanding that the Contractor may have determined (via the issue of an IR35 “Status Determination Statement” that the person referred to in clause 4.4A.1.1 and/or the Sub-Contractor may have determined (via the issue of an IR35 “Status Determination Statement”) that the person referred to in clause 4.4A.1.2 does not fall within HMRC’s IR35 off-payroll working rules, the Sub-Contractor shall be wholly responsible and liable for, and shall indemnify the Contractor from and against, any and all costs (including reasonable legal and other professional fees), damage, loss, expense, liability, claims and proceedings whatsoever as a result of that decision by HMRC (or by that court or tribunal).

Reverse Charge Order

4.4B This clause 4.4B applies where it is stated in the Sub-Contract Particulars that it applies.

4.4B.1 For the purposes of this clause 4.4B, the ‘**Reverse Charge Order**’ is the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019.

4.4B.2 The Parties agree that because:

.1 the Contractor is neither an ‘end user’ nor an ‘intermediary supplier’ (as both of those terms are defined in article 2 of the Reverse Charge Order); and

.2 the Sub-Contract Works include the supply of ‘specified services’ (as that term is defined in articles 2 and 4 of the Reverse Charge Order) the value of which services is greater than five per cent (5%) of the Sub-Contract ~~Tender~~ Sum,

the Reverse Charge Order applies to the Sub-Contract Works carried out and/or to be carried out by or on behalf of the Sub-Contractor. Accordingly, the Sub-Contractor shall submit VAT invoices to the Contractor's registered office addressed to the 'Accounts Department' in accordance with clause 4.4 stating that the Contractor is to account to HMRC for the amount of the reverse charge output tax on the VAT exclusive price of the Sub-Contract Works carried out by or on behalf of the Sub-Contractor."

Construction Industry Scheme (CIS)

Delete clause 4.5 and replace with:

"4.5 This clause 4.5 applies where it is stated in the Sub-Contract Particulars that it applies.

4.5.1 No later than one week after the date of the Sub-Contract Agreement and as a condition precedent to any sum becoming due from the Contractor to the Sub-Contractor under this Sub-Contract or otherwise, the Sub-Contractor shall submit to the Contractor such evidence as is required by the current HMRC Construction Industry Scheme (the '**CIS**') proving that the Sub-Contractor is registered with HMRC under the CIS to allow payments to be made without statutory deduction of tax by the Contractor.

4.5.2 If the Sub-Contractor:

- .1 does not provide the information which he is required by clause 4.5.1 to provide;
- .2 during the currency of this Sub-Contract, ceases to be registered with HMRC for the above purpose; or
- .3 breaches any of the requirements of the CIS in respect of:
 - .1 his own employees; or
 - .2 any sub-subcontractor,

then the Contractor shall be entitled to terminate the Sub-Contractor's employment under this Sub-Contract in accordance with clause 7.4.1.7 without any liability to the Sub-Contractor and/or the Sub-Contractor shall indemnify the Contractor from and against any and all costs (including reasonable legal or other professional fees), damage, loss, expense, liability, claims and proceedings whatsoever as a result of such breach."

Payments and Notices – general provisions

Interim payments – due dates, applications and sums due

Delete clauses 4.6.1 and 4.6.2 and replace them with the following:

"4.6 The procedure for the making of interim payments shall be as follows:

- 4.6.1 The Sub-Contractor shall submit a Payment Application (in accordance with clause 4.6.2) every month up to and including the month following the month in which practical completion of the Sub-Contract Works is expected to occur in accordance with clause 2.20. The due date of each interim payment to which any Payment Application submitted by the Sub-Contractor referred to in the foregoing sentence of this clause 4.6.1 relates is 14 days after the relevant Interim Valuation Date, commencing with the Interim Valuation Date next following the commencement of the Sub-Contract Works on the Site.

For the avoidance of doubt, the due date and Interim Valuation Date in respect of each interim payment (up to the month following the month in which practical completion of the Sub-Contract Works is expected to occur in accordance with clause 2.20) is set out in the schedule (the '**Sub-Contract Payment Schedule**') contained in the Sub-Contract Particulars (item 9). Except where practical completion of the Sub-Contract Works is not achieved within the period for completion, any entries in the Sub-Contract Payment Schedule for any month after the month following the month in which practical completion of the whole of the Sub-Contract Works is expected to occur shall, for the purposes of this Sub-Contract, be ignored.

- 4.6.1A Not used.
- 4.6.1B Following the month after the month in which practical completion of the Sub-Contract Works occurs or is deemed to occur in accordance with clause 2.20, the Sub-Contractor may submit a Payment Application at intervals of 2 months (unless otherwise agreed in writing and subject to any Declaration of Sub-Contract Final Account sent by the Contractor to the Sub-Contractor) but only in respect of work he has carried out after the date of practical completion of the Sub-Contract Works for which he has not previously applied for payment. The Due Date of each interim payment to which any Payment Application submitted by the Sub-Contractor referred to in the foregoing sentence of this clause 4.6.1B relates shall be 14 days after the same Interim Valuation Date as that for the first interim payment.
- 4.6.1C The last due date (unless otherwise agreed in writing) shall be the date determined in accordance with clause 4.22.1.
- 4.6.2 Notwithstanding any other provision of this Sub-Contract, it is a condition precedent to any interim payment becoming due to the Sub-Contractor that the Contractor shall have received a Payment Application from the Sub-Contractor electronically (by email to Conamar Surveyor and accounts not later than the applicable date stated in the Sub-Contract Payment Schedule (or, where the Sub-Contract Payment Schedule has not been completed, not later than 5 days before the relevant Interim Valuation Date) (the '**Sub-Contract Application Date**'). The Sub-Contractor's Payment Application must give full and proper details of the amount which in the opinion of the Sub-Contractor will become due to the Sub-Contractor under this Sub-Contract at the due date and setting out the basis on which that sum has been calculated by the Sub-Contractor.

For the avoidance of doubt, if the Contractor does not receive a Payment Application from the Sub-Contractor in respect of any interim payment by the relevant Sub-Contract Application Date, the Contractor shall be entitled to certify, in accordance with clause 4.7.2, that no sum is due to the Sub-Contractor in respect of that interim payment (in which event the sum included in the Payment Notice to be given by the Contractor to the Sub-Contractor shall be nil)). Any Payment

Application received by the Contractor from the Sub-Contractor in respect of that interim payment after the relevant Sub-Contract Application Date shall be considered as a Payment Application for the following interim payment (or for the Final Payment, as the case may be) unless a further Payment Application is submitted by the Sub-Contractor for that interim payment (or for the Final Payment, as the case may be) in which case the Sub-Contractor's prior Payment Application shall be disregarded."

4.6.3 *Delete the clause and replace with:*

"4.6.3 Not used."

Interim and final payments – final date, notices and amount

4.7.1 *Delete the clause and replace with:*

"4.7.1 The final date for payment of any payment shall be as per the Schedule (the 'Sub-Contract Payment Schedule') contained in the Sub-Contract Particulars (item 9) (or, where the Sub-Contract Payment Schedule has not been completed, 28 days after its due date), subject to any adjustment required by virtue of clause 1.5 (the '**Final Date for Payment**')."

4.7.2 *Delete "clause 4.22.2" in the penultimate line of the clause and replace with: "clause 4.21.1 (the Final Payment)" and insert the following at the end of the clause: "The Sub-Contractor shall notify the Contractor in writing forthwith if the Contractor has failed to give the Sub-Contractor a Payment Notice (or a Final Payment Notice) in accordance with this clause 4.7.2."*

Insert the following new clause after clause 4.7.2:

"4.7.2A If the amount shown in any Payment Notice given by the Contractor to the Sub-Contractor in respect of any interim payment is a negative figure (or otherwise shows an amount due from the Sub-Contractor to the Contractor), the Sub-Contractor shall be obliged, subject to any Pay Less Notice given by the Sub-Contractor to the Contractor, to pay such amount to the Contractor in accordance with the provisions of clause 4.7.1 as if the Sub-Contractor were the paying party."

4.7.3 *Delete the second sentence of the clause and replace with: "If the Contractor fails to give the Sub-Contractor a Payment Notice in respect of any interim payment but a Payment Application has been submitted by the Sub-Contractor in respect thereof in accordance with clause 4.6.2, the Contractor shall, subject to any Pay Less Notice given by the Contractor to the Sub-Contractor, pay the Sub-Contractor the sum specified in that Payment Application."*

4.7.4 *Delete the clause and replace with:*

"4.7.4 Where the Sub-Contractor submits a Default Final Payment Notice under clause 4.22.2.1 following failure by the Contractor to give the Sub-Contractor a Final Payment Notice, the Final Date for Final Payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 4.7.2 that the Default Final Payment Notice is given by the Sub-Contractor (the '**Postponed Final Date for Final Payment**')."

- 4.7.5.1 *Insert “(or in the Sub-Contractor’s Default Final Payment Notice)” after “Payment Application” in the second line of the clause.*
- 4.7.5.2 *Insert “any Payment Notice or” before “the Final Payment Notice” in the first line of the clause.*
- 4.7.5 *Delete “5 days” in the first line of the hanging paragraph beneath clause 4.7.5 and replace with: “3 days”.*

Insert the following new clause:

- “4.7.10 For the avoidance of doubt, the sum specified in any Pay Less Notice given by the Contractor to the Sub-Contractor in respect of any interim payment shall be in respect of the Sub-Contract Works and the proper performance by the Sub-Contractor of his other obligations under this Sub-Contract for the period up to the Interim Valuation Date applicable to the corresponding interim payment.”

Sub-Contractor’s right of suspension

- 4.8.1 *Delete “7 days” in the third line of the clause and replace with: “14 days” and insert “any or all of” before “his obligations” in the fourth line of the clause.*

Insert the following new sub-headings and clauses after clause 4.8:

“Right of deduction

- 4.8A Without prejudice to any other rights or remedies available to the Contractor under this Sub-Contract or otherwise, the Contractor shall be entitled to take into account when calculating the amount (if any) to be included in any Payment Notice (or in any Final Payment Notice), or in any Pay Less Notice to be given to the Sub-Contractor any sum of money which is due and owing from the Sub-Contractor and/or from any Affiliate of the Sub-Contractor (as may be applicable) to the Contractor and/or any Affiliate of the Contractor (which sum may include the amount of any actual or bona fide contingent claim and/or counterclaim which the Contractor and/or any Affiliate of the Contractor may have against the Sub-Contractor and/or any Affiliate of the Sub-Contractor, as may be applicable):
- 4.8A.1 under this Sub-Contract; and/or
- 4.8A.2 under any other contract entered into by the Sub-Contractor with the Contractor, whether before or after the date of the Sub-Contract Agreement; and/or
- 4.8A.3 under any other contract entered into by the Sub-Contractor with any Affiliate of the Contractor, whether before or after the date of the Sub-Contract Agreement; and/or
- 4.8A.4 under any other contract entered into by any Affiliate of the Sub-Contractor with the Contractor, whether before or after the date of the Sub-Contract Agreement; and/or

- 4.8A.5 under any other contract entered into by any Affiliate of the Sub-Contractor with any Affiliate of the Contractor, whether before or after the date of the Subcontract Agreement.

Employer insolvency

- 4.8B If the Employer, or any person on whom the Employer depends for making payment in connection with the Main Contract, shall become Insolvent, the Contractor shall not be obliged to make any further payment to the Sub-Contractor of any sum which is due or which may become due to the Sub-Contractor unless and until the Contractor has received payment in respect thereof from the Employer and then only to the extent of such receipt.

Sub-Contractor insolvency

- 4.8C Notwithstanding any other provision of this Sub-Contract, if the Sub-Contractor becomes Insolvent then no further sum shall become due to the Sub-Contractor under this Sub-Contract or otherwise. In such circumstances, the Contractor need not pay any sum that has already become due to the Sub-Contractor where the Contractor has given or gives the Sub-Contractor a Pay Less Notice, or where the Sub-Contractor becomes Insolvent after the last date on which a Pay Less Notice could be given by the Contractor in respect of that sum (and notwithstanding that the Contractor did not give the Sub-Contractor such notice)."

Interim Payments – calculation of sums due

Gross Valuation

- 4.9 *In the third line of the clause, insert the following after "clause 4.9.8": "and clause 4.9.9".*
- 4.9.1.2 *Insert the following after "casualties" in the second line of the clause: "and provided always that the Sub-Contractor has produced to the Contractor such proof as the Contractor shall require that there is no term of any contract or other circumstance which would operate to prevent the passing of property in such Sub-Contract Site Materials to the Contractor as provided for in clause 2.15".*
- 4.9.1 *Delete "any applicable Fluctuations Provision or" in the first and second lines of the hanging paragraph beneath clause 4.9.1.*
- 4.9.7 *Delete the clause and replace with:*
- "4.9.7 not used;"
- 4.9.8 *Insert "2.22.4," before "2.23" in the first line of the clause and insert the following after "3.14" in the second line of the clause: "; and" and delete the remainder of the clause.*

Insert the following new clause:

“4.9.9 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.”

Retention

Rules governing Retentions

4.12.1 *Delete “Subject to clause 4.12.2, the” at the beginning of the clause and replace with: “The”.*

4.12.2.1 *Delete the clause and replace with:*

“4.12.2.1 not used;”

4.12.2.2 *Delete the clause and replace with:*

“4.12.2.2 not used;”

Insert the following new clauses after clause 4.12:

“4.12A The amount of any balance of the Retention shall be included (but shown as a deduction in the computation of the amount of the Final Payment) in any Sub-Contract Final Statement sent to the Contractor by the Sub-Contractor in accordance with clause 4.21.1, in any Contractor’s Final Sub-Contract Statement sent to the Sub-Contractor by the Contractor in accordance with clause 4.21.2 or clause 4.21.3 or in any Declaration of Sub-Contract Final Account sent to the Sub-Contractor by the Contractor in accordance with clause 4.21A.1 (or, where no valid Sub-Contract Final Statement, Contractor’s Final Sub-Contract Statement or Declaration of Sub-Contract Final Account is sent, in any Final Payment Notice given to the Sub-Contractor by the Contractor in accordance with clause 4.7.2 or, absent such Notice, in any Sub-Contractor’s Default Final Payment Notice given to the Contractor by the Sub-Contractor in accordance with clause 4.22.2.1).

4.12B The Retention shall be subject to the following rules:

4.12B.1 the Contractor’s interest in the Retention shall not be fiduciary either as trustee for the Sub-Contractor or any other person, or in any other capacity. The relationship of the Contractor and the Sub-Contractor with regard to the Retention shall solely be that of debtor and unsecured creditor, subject to the terms hereof and the Contractor shall have no obligation to invest the Retention or any part thereof. Any right of the Contractor to deduct or set off any amount (whether arising under any express provision of this Sub-Contract or under any rule of law or equity) shall be exercisable against any monies due or to become due to the Sub-Contractor, whether or not such monies consist of or include any Retention; and

4.12B.2 the Contractor shall have no obligation to segregate the Retention or any part thereof in a separate banking account, or in any other manner whatsoever, and shall be entitled to the full beneficial interest in the Retention and every part thereof (and, without limitation, interest thereon and income arising therefrom) unless and until the

Retention is paid to the Sub-Contractor pursuant to this Sub-Contract.”

Loss and Expense

Notification and ascertainment

4.15.1 *Insert the following before the full stop at the end of the clause: “and it shall be a condition precedent to the Sub-Contractor’s entitlement to pursue a claim under clause 4.14 that the Sub-Contractor’s application shall be made within 7 days of the date when the effect became or should have become apparent”.*

4.15.3 *Insert the following at the end of the clause: “The Sub-Contractor shall as soon as reasonably practicable and in any event upon request provide sufficient particulars to demonstrate the causative link between each and every event alleged and the costs which the Sub-Contractor contends he has suffered as a result and a detailed breakdown of the alleged costs along with the documentary evidence to support them and such further or other information and details as the Contractor may reasonably require.”.*

Insert the following new clauses:

“4.15.5 For the further avoidance of doubt it is hereby agreed that the Sub-Contractor shall not be entitled to claim any reimbursement of loss and/or expense and/or any damages for breach of contract to the extent that the matters identified as giving rise to the application pursuant to clause 4.14 have been caused or contributed to by any negligence, default or breach of contract on the part of the Sub-Contractor, any sub-subcontractor or supplier, or their respective servants or agents or to the extent of any failure by the Sub-Contractor, any sub-subcontractor or supplier or their servants or agents to take all proper steps to mitigate the impact of the Relevant Sub-Contract Matter.

4.15.6 For the further avoidance of doubt, the Sub-Contractor shall have no entitlement to such loss and/or expense and/or damages for breach of contract until such time as the Sub-Contractor has provided sufficient particulars (including as set out above) to demonstrate such entitlement. Interest (if applicable) on any loss and/or expense and/or any claim for damages for which the Sub-Contractor has provided sufficient particulars, shall accrue from a date 13 weeks after the date on which all such particulars have been provided.”

Relevant Sub-Contract Matters

4.16.2 *Insert the following after “Employer’s instructions”: “(other than directions and/or instructions wholly consequent upon or necessitated or to the extent that the same are consequent upon or necessitated by omission, default or breach of contract or breach of statutory duty by the Sub-Contractor, his servants or agents or any consultant to the Sub-Contractor or sub-subcontractor)”.*

[4.16.2.4 *Delete the clause and replace with:*

“4.16.2.4 not used;”]

4.16.5 *Delete the clause and replace with:*

“4.16.5 not used;”

Contractor’s reimbursement

Delete the sub-heading and replace with: “Contractor’s reimbursement/recovery”.

4.17.2 *Insert the following after “Contractor” in the second line of the clause: “or, in default of agreement, any amount which in the reasonable opinion of the Contractor has been or is likely to be suffered or incurred by the Contractor,”.*

Reservation of rights and remedies of Contractor and Sub-Contractor

Delete the sub-heading and replace with: “Rights and remedies of Sub-Contractor”.

4.18 *Delete the clause and replace with:*

“4.18 Reimbursement of the Sub-Contractor for loss and/or expense under clause 4.15 shall be deemed to be full compensation for the Sub-Contractor in respect of the matter for which the compensation is paid and the Contractor shall have no further liability to the Sub-Contractor in respect of such matters arising under this Sub-Contract or generally at law.”

Insert the following new sub-heading and clause after clause 4.18:

“Reservation of rights and remedies of the Contractor

4.18A The provisions of clause 4.17 are without prejudice to any other rights or remedies which the Contractor may possess.”

Final Adjustment and Final Payment

Final Sub-Contract Sum – Adjustment Basis

4.19.3 *Delete the clause and replace with:*

“4.19.3 not used;”

4.19.6 *Insert the following before the full stop at the end of the clause: “including, without limitation, 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”.*

Final Sub-Contract Sum – Remeasurement Basis

4.20.3 *Insert the following before the full stop at the end of the clause: “including, without limitation, 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”.

Calculation of Final Sub-Contract Sum

4.21.1 *Delete the clause and replace with:*

“4.21.1 Not later than 2 months after practical completion of the Sub-Contract Works the Sub-Contractor shall send his final account (the ‘**Final Sub-Contract Statement**’) to the Contractor and supply the Contractor with such supporting documents as the Contractor may reasonably require. The Final Sub-Contract Statement must include any claim in respect of any fact, matter or thing arising out of or in connection with the Sub-Contract or the Sub-Contract Works. The Final Sub-Contract Statement shall set out the adjustments to the Sub-Contract Sum to be made in accordance with whichever of clause 4.19 or clause 4.20 applies and shall state:

4.21.1.1 the Sub-Contract Sum (including the amount of any balance of the Retention which the Contractor is entitled to continue to withhold in accordance with clause 4.12.1.2 but excluding any VAT), as so adjusted (the ‘**Gross Final Sub-Contract Sum**’); and

4.21.1.2 the sum of the VAT exclusive amounts already paid by the Contractor to the Sub-Contractor; and

4.21.1.3 the amount of any balance of the Retention which the Contractor is entitled to continue to withhold in accordance with clause 4.12.1.2,

and the final payment (the ‘**Final Payment**’) shall be shown as the difference (if any) between (a) the Gross Final Sub-Contract Sum and (b) the aggregate of (i) the sum of the VAT exclusive amounts already paid by the Contractor to the Sub-Contractor and (ii) the amount of any balance of the Retention which the Contractor is entitled to continue to withhold in accordance with clause 4.12.1.2, plus any VAT on such difference which the Contractor is required to pay to the Sub-Contractor.

For the avoidance of doubt, no Final Sub-Contract Statement sent to the Contractor by the Sub-Contractor in accordance with this clause 4.21.1 shall constitute or be deemed to constitute a payee’s payment notice pursuant to section 110A(1)(b) of the Construction Act or a payee’s default payment notice pursuant to section 110B(4) of the Construction Act.”

4.21.2 *Insert the following before the full stop at the end of the clause: “(the ‘**Contractor’s Final Sub-Contract Statement**’) in the form and with the details required by clause 4.21.1, so far as the Contractor, on the information in his possession, is reasonably able to do so”.*

4.21.3 *Insert the following after “statement” in the third line of the clause: “(the Contractor’s Final Sub-Contract Statement)”.*

4.21.4 *In the first and third lines of clause delete “statement” and replace with: “Contractor’s Final Sub-Contract Statement” and insert the following before the full stop at the end of the clause: “and, for the avoidance of doubt, shall be deemed to have the same effect as a Final Payment Notice issued by the Contractor to the Sub-Contractor in accordance with clause 4.7.2 as that stated in*

clause 1.8”.

Insert the following new clauses after clause 4.21:

“4.21A.1 If the Sub-Contractor submits a Final Sub-Contract Statement in accordance with clause 4.21.1, the Contractor may, in lieu of preparing and sending to the Sub-Contractor a Contractor’s Final Sub-Contract Statement, accept the amount of the Gross Final Sub-Contract Sum and the amount of the Final Payment included in the Sub-Contractor’s Final Sub-Contract Statement by sending to the Sub-Contractor a declaration in the form contained in **Part 4 of Annex 4** (a ‘**Declaration of Sub-Contract Final Account**’) which the Sub-Contractor shall sign and return to the Contractor within 14 days of his receipt of the same from the Contractor. The Contractor may (but for the avoidance of doubt, is not obliged to) agree the amount of the Final Payment with the Sub-Contractor notwithstanding any failure by the Sub-Contractor to submit a Final Sub-Contract Statement in accordance with clause 4.21.1 in which case the Contractor shall send a Declaration of Sub-Contract Final Account to the Sub-Contractor showing the agreed amount of the Final Payment.

For the purposes of the Construction Act, the payment due date in respect of any Final Payment to be made by the Contractor to the Sub-Contractor shall be 14 days from the date of the Contractor’s receipt of such Declaration from the Sub-Contractor (duly signed by or on behalf of the Sub-Contractor) and the final date for its payment (the ‘**Declaration Final Date for Final Payment**’) shall be 17 days thereafter (subject to any adjustment required by virtue of clause 1.5).

4.21A.2 Any Declaration of Sub-Contract Final Account sent by the Contractor to the Sub-Contractor in accordance with clause 4.21A.1 shall, on the date of the Contractor’s receipt of the same (duly signed by or on behalf of the Sub-Contractor), be deemed to have the same effect as a Final Payment Notice issued by the Contractor to the Sub-Contractor in accordance with clause 4.7.2 as that stated in clause 1.8.”

Final Payment

Delete clause 4.22 in its entirety and replace with:

“4.22.1 The due date for the Final Payment payable by the Contractor to the Sub-Contractor, or by the Sub-Contractor to the Contractor (as the case may be), shall be:

4.22.1.1 if the Sub-Contractor submits a Final Sub-Contract Statement in accordance with clause 4.21.1 and the Contractor sends to the Sub-Contractor a Declaration of Sub-Contract Final Account in accordance with clause 4.21A.1, the date falling 1 month following the date of the Contractor’s receipt of such Declaration duly signed by the Sub-Contractor; or

4.22.1.2 if the Sub-Contractor:

4.22.1.2.1 does not submit a Final Sub-Contract Statement in accordance with clause 4.21.1; or

4.22.1.2.2 does submit a Final Sub-Contract Statement in accordance with clause 4.21.1 but the amount of the Gross Final Sub-Contract Sum and the amount of the Final Payment included therein is not accepted by the Contractor in accordance with clause 4.21A.1,

the date falling 2 months after whichever of the following occurs last:

4.22.1.2.3 the Retention Release Date; and

4.22.1.2.4 where applicable, any later due date for Retention release under clause 4.12.2.3.

4.22.2 Where the Contractor has not given the Sub-Contractor a Final Payment Notice in accordance with clause 4.7.2, then:

4.22.2.1 the Sub-Contractor may, at any time after the date by which the Contractor was required by clause 4.7.2 to give the Sub-Contractor a Final Payment Notice, give the Contractor a default payment notice (a '**Default Final Payment Notice**') which shall specify both the amount of the Final Payment which the Sub-Contractor considers was due to him at the due date for the Final Payment and the basis on which that amount has been calculated; and

4.22.2.2 subject to any Pay Less Notice which the Contractor may give the Sub-Contractor, the payment to be made by the Contractor to the Sub-Contractor shall be the sum included in the Sub-Contractor's Default Final Payment Notice."

SECTION 5: VALUATION OF WORK AND VARIATIONS

General

Definition of Variations

5.1 *Insert the following after "Sub-Contract Works" in the second line of the clause: "(other than any variation arising from the resolution of any defect, error or omission in the Contractor's Requirements)".*

Insert the following new paragraph beneath the clause:

"PROVIDED THAT, for the avoidance of doubt, to the extent that a Variation is necessary due to:

- (i) any alteration or modification to the Contractor's Requirements as a result of any defect, error or omission in the Contractor's Requirements; or
- (ii) any omission, negligence or default of the Sub-Contractor or any sub-subcontractor or supplier or any of his or their employees or agents,

then, notwithstanding clauses 5.2, 2.18 and 4.15, no addition shall be made to the Sub-Contract **[Tender]** Sum and no extension of time shall be granted (and Section 4 of these Conditions and the Sub-Contract Agreement shall be read and construed accordingly) in respect of compliance by the Sub-Contractor with the Variation.”

The Valuation Rules

Change of conditions for other work

- 5.11 *In the final paragraph of the clause, after “then” in the second line, insert “(unless the Variation was necessary due to one of the factors detailed in the proviso to clause 5.1)”.*

SECTION 6: INJURY, DAMAGE AND INSURANCE

Injury to Persons and Property

Liability of Sub-Contractor – personal injury or death

- 6.2 *In the third line of the clause, after “Sub-Contract Works”, insert “or in the performance of the Sub-Contractor’s obligations under clauses 2.20B and 2.22”.*

Liability of Sub-Contractor – injury or damage to property

- 6.3 *In the fourth line of the clause, after “Sub-Contract Works”, insert “or in the performance of the Sub-Contractor’s obligations under clauses 2.20B and 2.22”.*

Insert the following new sub-heading and clause after clause 6.4:

“Nuisance

- 6.4A The Sub-Contractor shall at all times use best endeavours to prevent any nuisance (including, but without limitation, any noisy working operations) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Sub-Contract Works and shall if applicable assist the Contractor with assisting the Employer in defending any action or proceedings which any be instituted in relation thereto. The Sub-Contractor shall be responsible for and shall indemnify the Contractor from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Sub-Contractor in performing his obligations under this clause.”

Insurance – Loss or Damage to Work and Site Materials

Sub-Contractor’s responsibility – damage to the Sub-Contract Works etc.

- 6.7.1 *In the second line of the clause after “Site Materials” insert: “together with the cost of any design work of the Contractor plus the percentage (if any) stated in the Main Contract Particulars to cover any professional fees incurred by the Employer”.*

Further insurance

- 6.11B If the Sub-Contractor has not provided evidence of any policies required under this Sub-Contract to the Contractor at tender stage, he will provide it immediately after the execution of the Sub-Contract Agreement. In the event that in the Contractor's reasonable opinion those policies do not effect proper cover in accordance with this Sub-Contract, the Contractor may require the Sub-Contractor to effect and the Sub-Contractor will effect such further insurance as the Contractor may reasonably require without any addition being made in the calculation of the Final Sub-Contract Sum."

Joint Fire Code – compliance

Breach of Joint Fire Code – Remedial Measures

Insert the following new clause:

- "6.14.5 The Sub-Contractor shall indemnify the Contractor against any legally enforceable and properly mitigated loss, claim, action, liability or proceedings arising under the CDM Regulations which is caused in whole or in part by any act, error or omission on the part of the Sub-Contractor."

Joint Fire Code – amendments/revisions

- 6.15 *Delete "added into the calculation of the Final Sub-Contract Sum" and replace with: "borne by the Sub-Contractor".*

SECTION 7: TERMINATION

General

Meaning of insolvency

- 7.1 *Delete the clause in its entirety and replace with:*

"7.1 Not used"

Termination by Contractor

Insert the following new sub-heading and clause before the sub-heading "Default by Sub-Contractor":

"Termination at Will

- 7.4A.1 The Contractor may, in addition to any other power he may have, at any time by notice to the Sub-Contractor forthwith terminate the employment of the Sub-Contractor under this Sub-Contract.
- 7.4A.2 If the Contractor, in the exercise of the power afforded to him by clause 7.4A.1, shall terminate

the Sub-Contractor's employment under this Sub-Contract, the provisions of clause 7.11.2 shall apply and the Contractor shall pay the Sub-Contractor (insofar as such amounts or items have not already been covered by payments on account made to the Sub-Contractor) the value of all work carried out prior to the date of termination and in addition:

7.4A.2.1 the amounts payable in respect of preliminary items insofar as the work or service comprised therein has been carried out or performed and a proper proportion of any such items which have been partially carried out or performed;

7.4A.2.2 the cost of materials or goods reasonably ordered for the Sub-Contract Works which have been delivered to the Sub-Contractor or for which the Sub-Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Contractor upon such payment being made to the Sub-Contractor);

7.4A.2.3 a sum being the amount of any expenditure reasonably incurred by the Sub-Contractor in the expectation of completing the whole of the Sub-Contract Works insofar as such expenditure has not been recovered by any other payments referred to above; and

7.4A.2.4 the reasonable costs of removal of all the Sub-Contractor's plant, tools, equipment, goods and materials from the Site.

Save as set out in this clause 7.4A, the Sub-Contractor shall not be entitled to payment of any other loss and/or damage arising from such termination (including, for the avoidance of doubt, any loss of profit)."

Default by Sub-Contractor

7.4.1.3 *Insert the following after "remove" in the second line of the clause: "or make good".*

7.4.1.5 *Delete the comma at the end of the clause and replace with: "; or".*

Insert the following new clauses:

"7.4.1.6 fails, within 3 Business Days of his receipt of a written request to do so from the Contractor, to provide such documentation as may reasonably be required to demonstrate to the Contractor's complete satisfaction that he has such accreditation(s) as may be necessary for the purpose of carrying out the Sub-Contract Works; or

7.4.1.7 fails to comply with clause 4.5 (where that clause applies),"

Insolvency of Sub-Contractor

7.5.1 *Insert the following after "Insolvent" in the first line of the clause: "then such event shall constitute a default and breach by the Sub-Contractor of this Sub-Contract and".*

7.5.3.2 *Insert ", at the Sub-Contractor's expense," after "the Contractor may" at the beginning of the clause.*

Corruption

- 7.6 *Insert the following after “behalf” in the fourth line of the clause: “or associated with him” and insert the following at the end of the clause: “For the purpose of this clause 7.6, whether a person is associated with another person shall be determined in accordance with section 8 of the Bribery Act 2010 and a person associated with the Sub-Contractor includes, but is not limited to, any sub-subcontractor of the Sub-Contractor.”.*

Consequences of termination under clauses 7.4 to 7.6

- 7.7.1 *Insert after “persons to” in the first line of the clause: “and/or may himself”.*

- 7.7.2 *Insert the following before the colon at the end of the clause: “at his own expense”.*

Insert the following new clause:

“7.7.2.4 when required in writing by the Contractor to do so, vacate the Site.”

Insert the following new sub-headings and clauses:

“Accreditation(s)

- 7.7A The Sub-Contractor shall indemnify and hold harmless the Contractor against and from any claim made against the Contractor and/or damage, loss or expense suffered or incurred by the Contractor (and/or which in the reasonable opinion of the Contractor, may be brought against and/or suffered or incurred by the Contractor) due to or resulting from any determination of the Sub-Contractor’s employment under this Sub-Contract on the ground set out in clause 7.4.1.6.

Insert the following new sub-heading and clause after clause 7.11:

“Consequences of termination under clauses 7.4 to 7.6 or 7.8 to 7.10

- 7.12 Upon any termination of the Sub-Contractor’s employment under clauses 7.4 to 7.6 or 7.8 to 7.10, or if this Sub-Contract is otherwise terminated, repudiated, abandoned or discharged and notwithstanding that the validity of such determination, repudiation, abandonment or discharge may be disputed by the Sub-Contractor or the Contractor, the Sub-Contractor shall immediately vacate the Site. On application from the Sub-Contractor, the Contractor will allow the Sub-Contractor an opportunity, or will procure from the Employer an opportunity for the Sub-Contractor, to visit the Site to remove any equipment or plant belonging to the Sub-Contractor and which was not capable of being removed when the Sub-Contractor vacated the Site.”

SECTION 8: SETTLEMENT OF DISPUTES

Arbitration

8.3 Delete the sub-heading and clauses 8.3 to 8.8 inclusive.

SCHEDULES

Schedule 1: Supplemental Provisions

Insert the following new sub-heading and paragraph 8:

“8 BIM Building Information Modelling

8.1 For the purposes of this paragraph 8:

‘BIM Protocol’ means the Building Information Modelling Protocol referred to in the Main Contract, a copy of which is contained or referred to in **Annex 5**.

‘Sub-Contractor BIM Documents’ means any designs, details, drawings, plans, reports, specifications, charts, software and any other documents (in any medium) prepared or to be prepared by or on behalf of the Sub-Contractor in relation to the BIM Protocol.

8.2 Insofar as the Contractor’s obligations set out in the BIM Protocol relate and apply to the Sub-Contract Works or any part of them, the Sub-Contractor shall:

8.2.1 observe, perform and comply with those obligations;

8.2.2 promptly comply with all reasonable directions issued to him by the Contractor which pass on the Employer’s instructions to the Contractor in relation to the BIM Protocol;

8.2.3 as and when relevant, comply with all procedures and requirements in the BIM Protocol; and

8.2.4 review all outputs of the BIM Protocol notified to him by the Contractor and in good time provide the Contractor with any comments which he may wish to make concerning the same.

8.3 The Sub-Contractor warrants that the use of any Sub-Contractor BIM Documents will not infringe any copyright, design right or other intellectual property right of any third party and the Sub-Contractor shall indemnify and hold harmless the Contractor from and against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever in any way arising from any breach of this paragraph 8.3 by the Sub-Contractor including any loss, damage or expense incurred as a result of any claim of infringement of third party rights.

8.4 Notwithstanding any other provision of this Sub-Contract to the contrary, the provisions of the BIM Protocol shall override any conflicting or inconsistent provision of these Conditions relating to building information modelling.

8.5 At the request of the Sub-Contractor, the Contractor shall, so far as he lawfully may, obtain for him any rights or benefits of the provisions of the BIM Protocol so far as they relate and apply to the Sub-Contract Works or any part of them, but not further or otherwise. Any action taken by

the Contractor in compliance with any such request shall be at the cost of the Sub-Contractor and shall be subject to the Sub-Contractor providing such indemnity and security as the Contractor may reasonably require.”

Schedule 4: Fluctuations Options

Delete and replace with: “Schedule not used”.

Schedule 6: Third Party Rights

Delete and replace with: “Schedule not used”.

END