



Rooff Construction Limited General Conditions of Contract

1. Definitions

In these Conditions the following words and expressions shall have the following meanings:

- 1.1. "Completion Date" shall mean the date for completion of the Sub-Contract Works set out in the Sub-Contract Order and/or the Sub-Contract Documents
- 1.2. "Conditions" shall mean the terms and conditions herein numbered as clauses 1-20 and any additional conditions specifically incorporated into the Sub-Contract Order by the Contractor.
- 1.3. "Contractor" shall mean Rooff Construction Limited.
- 1.4. "Due Date" shall mean the date stated in the Schedule of Due Dates within the Sub-Contract Documents or, if no Schedule of Due Dates is provided, the date 10 days after the date of submission of the Sub-Contractor's application for payment under clause 10.
- 1.5. "Employer" shall mean the party or parties to the Main Contract other than the Contractor.
- 1.6. "Main Contract" shall mean the contract between the Employer and the Contractor.
- 1.7. "Main Contract Works" shall mean the works to be undertaken by the Contractor under the terms of the Main Contract.
- 1.8. "Maintenance Period" shall mean the Defects Liability period stated in the Sub-Contract Order, or a minimum 12 month period, whichever is greater, that commences from the date of practical completion of the Sub-Contract Works, and continues until the Contractor has confirmed in writing that all defects or other faults in the Sub-Contract Works have been repaired, rectified or made good.
- 1.9. "Sub-Contractor" shall mean the company, firm or person who has been engaged by the Contractor to carry out the Sub-Contract Works pursuant to the Sub-Contract.
- 1.10. "Sub-Contract" shall mean the agreement between the Contractor and the Sub-Contractor which is governed by these Conditions and incorporates the Sub-Contract Order and the Sub-Contract Documents.
- 1.11. "Sub-Contract Documents" shall mean those documents described in the Sub-Contract Order, including these Conditions.
- 1.12. "Sub-Contract Order" shall mean the order to which these Conditions are attached.
- 1.13. "Sub-Contract Sum" shall mean the sum stated in the Sub-Contract Order.
- 1.14. "Sub-Contract Works" shall mean the works to be undertaken by the Sub-Contractor as defined in the Sub-Contract Order and carried out pursuant to these Conditions.

2. General Obligations

- 2.1. The Sub-Contract will be deemed to have commenced on the date of the Sub-Contract Order and any Sub-Contract Works carried out prior to the date of the Sub-Contract Order shall be treated as having been carried out under the terms of the Sub-Contract, which shall supersede any previous agreements with regard to the Sub-Contract Works, and any payments made shall be deemed to have been made on account of the Sub-Contract Sum. Any terms and conditions contained in any document provided by the Sub-Contractor (including any quotation) are excluded and shall not apply to the Sub-Contract unless expressly agreed in the Sub-Contract Order.
- 2.2. The parties shall work with each other and with other project team members in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect.
- 2.3. The Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with the Sub-Contract Documents, to the satisfaction of the Contractor and in conformity with all reasonable directions and requirements of the Contractor.
- 2.4. In carrying out the Sub-Contract Works the Sub-Contractor shall comply with all statutes, statutory instruments, regulations, rules and orders made under any statute having the force of law which affects the Sub-Contract Works or performance of any obligations under the Sub-Contract, including where applicable the Building Regulations 2010, the Building Act 1984, the Defective Premises Act 1972, and the Building Safety Act 2022, and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Sub-Contract Works or with whose systems the Sub-Contract Works are, or are to be, connected.
- 2.5. The workmanship of the Sub-Contractor shall be of a standard that complies with good working practices and is to the approval of the Contractor and the Employer. The Sub-Contractor shall use goods and materials which are of good quality and appropriate for use in the Sub-Contract Works.
- 2.6. The Sub-Contractor shall not assign the Sub-Contract or sub-let any portion of the Sub-Contract Works without the written consent of the Contractor provided always that if such consent is given it shall not relieve the Sub-Contractor from any of his obligations, duties or liabilities under the Sub-Contract. The Contractor shall be entitled to assign the benefit of the Sub-Contract without the Sub-Contractor's consent.
- 2.7. The commencement of the Sub-Contract Works will be deemed to signify the acceptance by the Sub-Contractor of the Sub-Contract including these Conditions and that the conditions of the site are ready to receive the Sub-Contract Works and are satisfactory to enable the Sub-Contractor to properly carry out the Sub-Contract Works.
- 2.8. The Sub-Contractor warrants that it satisfies the requirement of competence pursuant to Part 2A of the Building Regulations 2010 and:
 - 2.8.1. it has the skills, knowledge, experience, behaviours and organisational capability to:
 - 2.8.1.1. carry out any design work so that the building work to which the design relates would be in accordance with all relevant requirements of the Building Regulations;
 - 2.8.1.2. carry out any building work in accordance with all relevant requirements of the Building Regulations;
 - 2.8.1.3. fulfil the duties of a designer and/or a contractor, as the case may be, under the Building Regulations in relation to the Sub-Contract Works;
 - 2.8.2. it shall ensure that all design work and building work it carries out is planned, managed and monitored so as to be in compliance with all relevant requirements of the Building Regulations;
 - 2.8.3. it shall cooperate with the Contractor and any other designers and contractors to the extent necessary to ensure that the Main Contract Works are in compliance with all relevant requirements of the Building Regulations;
 - 2.8.4. it has allocated or, as appropriate, will allocate, adequate resources to comply with its obligations under the Building Regulations;
 - 2.8.5. it shall provide the Contractor with such information regarding its competence and resources as the Contractor may reasonably require, and warrants that any such information is accurate and complete in all respects; and
 - 2.8.6. it shall immediately inform the Contractor if there is any change in the Sub-Contractor's skills, knowledge, experience, behaviours and organisational capability which affects or could reasonably affect the Sub-Contractor's ability to meet the competence requirements under Part 2A of the Building Regulations.

- 2.9. The Sub-Contractor shall be deemed to have had an opportunity to inspect the site and the physical and other conditions of or affecting the site and shall be deemed to have fully acquainted itself with the same and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the Sub-Contract Works, including the ground conditions and the availability of access, equipment and facilities necessary to carry out the Sub-Contract Works. No failure on the part of the Sub-Contractor to discover or foresee any condition, risk, contingency or circumstance, whether the same ought reasonably to have been discovered or foreseen or not, shall entitle the Sub-Contractor to an addition to the Sub-Contract Sum or to claim damages or any additional payment or to an extension of time. The Sub-Contractor shall not be entitled to rely upon any survey, report, data or other document prepared by or on behalf of the Contractor or the Employer regarding any such matter as is referred to in this clause 2.9 and the Contractor makes no representation and gives no warranty as to the accuracy or completeness of any such survey, report, data or document or any representation, recommendation or statement, whether negligently or otherwise made, therein contained.
- 2.10. The Sub-Contractor shall prevent any nuisance, trespass or other interference with the rights of members of the public, any adjoining or neighbouring owner, tenant or occupier and any statutory undertaker of which the Sub-Contractor ought reasonably to be aware arising out of the carrying out of the Sub-Contract Works.
- 2.11. The Sub-Contractor shall exercise all proper care in the use of plant, equipment, materials or other property supplied by the Contractor to carry out the Sub-Contract Works. The plant, equipment, materials or other property belonging to the Sub-Contractor (other than materials or goods on site for use in the Sub-Contract Works) shall be at the sole risk of the Sub-Contractor and any loss or damage to the same, or caused by the same, shall be the sole liability of the Sub-Contractor who shall indemnify the Contractor against any loss, claims or proceedings arising therefrom.
- 2.12. If, during the course of carrying out the Sub-Contract Works, the Sub-Contractor becomes aware of any issue, matter or thing, whether in the form of defects or otherwise, which may materially affect the carrying out and completion of the Sub-Contract Works and/or the Main Contract Works, the Sub-Contractor shall forthwith draw such issue, matter or thing to the attention of the Contractor in writing.
- 2.13. Collateral warranties will be provided by the Sub-Contractor as requested by the Contractor in favour of the Employer and any other party who is entitled to receive a collateral warranty or the benefit of third party rights from the Contractor under the Main Contract. The form of collateral warranty shall be as attached to the Main Contract or as otherwise agreed by the parties acting reasonably. If the Sub-Contractor fails to execute and deliver any collateral warranty within 14 days of the Contractor's written instruction, no further sums shall become due to the Sub-Contractor under the Sub-Contract until such warranty has been executed and delivered to the Contractor.

3. Compliance with the Main Contract

- 3.1. The Sub-Contractor shall have a reasonable opportunity of inspecting, and is deemed to have notice of, the terms and conditions of the Main Contract (with the exception of the detailed prices of the Contractor and any other commercially sensitive material), and so far as they are applicable to the Sub-Contract shall be bound to observe and perform the obligations, duties and conditions to be observed and performed by the Contractor as if the Sub-Contractor had been named in the Main Contract as the Contractor and the Contractor had been named therein as the Employer. The Sub-Contractor warrants and undertakes that it shall perform its obligations in accordance with the requirements of the Sub-Contract so that no act, omission, breach or negligence by the Sub-Contractor shall constitute, cause or contribute to any breach by the Contractor of any of its obligations under the Main Contract or shall cause, contribute or otherwise give rise to any other liability on the part of the Contractor to the Employer or pursuant to any necessary consent or law. The Sub-Contractor further warrants and undertakes that (without restricting the right of the Contractor to claim damages or other relief on any basis available to it) the Sub-Contractor shall indemnify the Contractor against all losses, damages, costs and expenses (whether direct or consequential) recoverable by the Employer from the Contractor as a result of any act, omission or breach by the Sub-Contractor of the Sub-Contract.
- 3.2. If any conflict shall appear between any provisions of the Main Contract and the Sub-Contract then the latter shall prevail. Should any conflict appear between these Conditions and any other Sub-Contract Documents then the former shall prevail. If the Sub-Contractor becomes aware of any such conflict or any error or omission in any Sub-Contract Documents, it shall immediately give notice to the Contractor with appropriate details. The Contractor shall issue instructions in regard to any such error, omission or inconsistency and the Sub-Contractor shall comply with the Contractor's instructions without any increase to the Sub-Contract Sum and without any extension of time.
- 3.3. The Sub-Contractor shall provide all notices and other particulars in respect of the Sub-Contract within a reasonable time so as to allow the Contractor to provide the same in accordance with the Main Contract.

4. Programme, Extension of Time and Loss and Expense

- 4.1. The Sub-Contractor shall commence the Sub-Contract Works on 2 days' written notice to commence being given by the Contractor.
- 4.2. Subject to clause 4.4, the Sub-Contractor shall regularly and diligently carry out and complete the Sub-Contract Works by the Completion Date in conformity with the requirements of the Main Contract and in such a manner as to avoid delay and/or hindrance to the progress of others.
- 4.3. In the event that the Contractor incurs any delay to the progress of the Main Contract Works as a result of the failure by the Sub-Contractor to provide information (including but not limited to the information required pursuant to clause 3.3), or otherwise progress the Sub-Contract Works in accordance with the Sub-Contract, or any agreed variations or supplements thereto, then the Sub-Contractor shall take all reasonable and timely measures to mitigate the effects of such delays and such measures shall include but shall not be limited to the employment of additional resources at no additional cost to the Contractor. In the event the Sub-Contractor fails to employ additional resources within 3 days of the Contractor's written instruction to do so, the Contractor shall be entitled to either employ such additional resources itself and recover the cost incurred from the Sub-Contractor or determine the Sub-Contractor's employment under the Sub-Contract pursuant to clause 12.1.4.
- 4.4. Subject to clause 3.3 and provided always that the Sub-Contractor notifies the Contractor of the delay or likely delay forthwith upon the same becoming reasonably apparent and supplies to the Contractor full particulars of the expected effects of the delay demonstrating cause and effect, the Contractor shall grant to the Sub-Contractor a reasonable extension of time for completion of the Sub-Contract Works to the extent that delay has been or is likely to be caused to the Sub-Contract Works by reason of:
 - 4.4.1 any event which is grounds under the Main Contract for an extension of time;
 - 4.4.2 any variation instructed under clause 5; and
 - 4.4.3 any impediment, prevention or default by the Contractor or any of its employees, agents or other sub-contractors, provided always that the Contractor shall not be obliged to grant the Sub-Contractor an extension of time for completion of the Sub-Contract Works under clause 4.4.1 until such time as the Contractor has been awarded an extension of time under the Main Contract by reason of the said event.
- 4.5. The provisions of the Main Contract relating to the payment to or allowance by the Contractor of direct loss and/or expense caused by the disturbance of regular progress shall apply like for like to the Sub-Contract as between the Contractor and the Sub-Contractor as if they were respectively the Employer and the Contractor.

- 4.6. The Sub-Contractor shall notify the Contractor in writing when it considers that the Sub-Contract Works are practically complete. The Contractor shall confirm in writing the date when practical completion of the Sub-Contract Works has been achieved. The Contractor shall not be obliged to confirm practical completion until the Sub-Contractor has provided complete and final O&M, H&S File and Golden Thread documentation associated with the Sub-Contract Works. If no confirmation is issued by the Contractor in accordance with this clause, the Sub-Contract Works shall be deemed to be practically complete on the date of practical completion of the whole of the Main Contract Works.
 - 4.7. If the Sub-Contractor fails to complete the Sub-Contract Works by the Completion Date (as such date may be extended by the Contractor under clause 4.4), then the Sub-Contractor shall pay or allow to the Contractor a sum equivalent to any direct loss and/or expense suffered or incurred by the Contractor and caused by the failure of the Sub-Contractor as aforesaid.
- 5. Variations**
- 5.1. The Contractor may vary the quality, quantity or form of the Sub-Contract Works (including omitting works) by authorising the variations in writing to the Sub-Contractor and the Sub-Contractor shall comply with such authorised variations fully and promptly. No such authorised variations shall invalidate the Sub-Contract.
 - 5.2. The valuation of such authorised variations shall be carried out in accordance with the valuation rules set out in the Main Contract or, if there are none, agreed between the Contractor and Sub-Contractor, and the Sub-Contract Sum shall be adjusted accordingly. Where agreement cannot be reached as to the value of such variations, the Sub-Contractor shall be entitled to be paid a fair and reasonable sum for carrying out such variations. The Contractor shall have no liability whatsoever to pay for any variations to the Sub-Contract Works unless this clause 5 has been properly complied with, but nevertheless the Contractor shall be entitled to the benefit of such work. For the avoidance of doubt, oral instructions shall not be effective unless confirmed in writing by the Contractor within 3 days of the oral instruction.
 - 5.3. The Contractor is entitled, by authorising a variation, to omit any part of the Sub-Contract Works for any reason in the Contractor's discretion, including that the Contractor no longer requires the omitted work to be carried out or that the Contractor wishes to have the omitted work carried out by another sub-contractor. The Contractor shall not be liable for any loss of profit, loss of contracts, loss of opportunities, loss of revenue, loss of business or any indirect or consequential losses incurred by the Sub-Contractor as a result of any instruction.
- 6. Epidemics**
- 6.1. In the event that the progress of the Sub-Contract Works on site is delayed due to the inability to secure sufficient labour and/or materials or an order of the UK Government requiring the closure or partial closure of the site, resulting solely from the effects of an epidemic or pandemic, the Contractor shall be entitled to issue an instruction suspending the Sub-Contract Works and the Sub-Contractor shall be entitled to claim an extension of time, but not loss and expense or any other additional payment whatsoever, arising from such delay.
 - 6.2. If the progress of the Sub-Contract Works is suspended for a continuous period of 1 month as a consequence of delays resulting solely from an epidemic or pandemic, the Contractor may, following expiry of that 1 month period, give notice to the Sub-Contractor that, unless the suspension ceases within 7 days after the date of receipt of that notice, the Contractor may determine the Sub-Contractor's employment under the Sub-Contract. Failing such cessation within that 7 day period, the Contractor may then by further notice determine the Sub-Contractor's employment.
 - 6.3. Following a termination under clause 6.2, the provisions of clause 12.6 shall apply.
- 7. Indemnity**
- 7.1. The Sub-Contractor shall indemnify the Contractor against any liability for personal injury (whether fatal or otherwise) loss of, or damage to property and/or any losses, damages, costs and expenses (whether direct or consequential) howsoever caused or incurred by reason of the Sub-Contractor's errors, omissions or negligence in connection with the carrying out of the Sub-Contract Works.
 - 7.2. Where the Sub-Contract Works require the Sub-Contractor to select materials or goods for incorporation into the Sub-Contract Works, such materials or goods shall be safe and suitable for the purpose for which they are required and shall not be considered within the UK construction industry to be deleterious, hazardous to health and safety or detrimental to the long term integrity of the Main Contract Works. The Sub-Contractor shall indemnify the Contractor against all losses, damages, costs and expenses (whether direct or consequential) arising out of such materials or goods not being safe or suitable as stipulated.
- 8. Insurances**
- 8.1. Without prejudice to its liability to indemnify the Contractor under clause 7.1, the Sub-Contractor shall have in place and maintain in terms to be approved by the Contractor employer's liability insurance, public liability insurance, all risks insurance for the Sub-Contract Works and all other insurances deemed necessary by the Contractor which shall include the Employer (if required) and the Contractor as joint insured. The Sub-Contractor will, in particular, insure any plant, equipment or materials owned by, hired and/or loaned to the Sub-Contractor.
 - 8.2. Whenever reasonably required by the Contractor the Sub-Contractor shall produce for inspection evidence that such policies of insurance referred to in this clause 8 are valid and are being maintained.
 - 8.3. For the avoidance of doubt, the insurance of the Main Contract Works (if any) by the Contractor shall not limit or relieve the Sub-Contractor of its obligations and responsibilities to insure under this clause 8.
- 9. Design Warranty and Indemnity [*Only applicable to sub-contractors with design responsibility]**
- 9.1. Insofar as the Sub-Contractor is responsible for any design under the Sub-Contract, the Sub-Contractor warrants to the Contractor that it will exercise all the reasonable skill and care to be expected of a competent and experienced designer of the relevant profession undertaking the design of works similar in scope and character to the Sub-Contract Works and that the design of the Sub-Contract Works is strictly in accordance with the requirements of the Sub-Contract Documents. The Sub-Contractor shall indemnify the Contractor against any and all costs, loss, expense or other sums which the Contractor may incur as a consequence of the failure of the Sub-Contract Works to comply with this warranty.
 - 9.2. The Sub-Contractor warrants to the Contractor that it has in force a policy of professional indemnity and/or product liability insurance with a reputable insurer authorised to carry on business in the United Kingdom for at least £5 million for each and every claim in any 12 month period which will remain in force for the duration of the limitation period set out in clause 20.6, provided always that such insurance is available in the market place at commercially reasonable rates. If for any period such insurance ceases to be available at commercially reasonable rates, the Sub-Contractor shall retain in respect of such period such reduced level of insurance as is available and as would be fair and reasonable in the circumstances for the Sub-Contractor to obtain. Whenever required by the Contractor the Sub-Contractor shall produce the relevant policy or policies of insurance referred to in this clause 9.2 for inspection.
 - 9.3. The Sub-Contractor shall retain copyright in any drawings, details, specifications and designs (the "Documents") produced by the Sub-Contractor or on the Sub-Contractor's behalf in respect of the Sub-Contract Works and the Sub-Contractor shall grant the Contractor a royalty free non exclusive licence to use and reproduce all Documents for any purpose whatsoever connected with the Main Contract Works. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the Sub-Contractor's consent. The Sub-Contractor warrants that the Documents are the Sub-Contractor's own work and their use in connection with the

Main Contract Works will not infringe the rights of any third party. The Sub-Contractor agrees to waive all moral rights in the Documents under Chapter IV of the Copyright, Designs and Patents Act 1988.

10. Valuation and Payment

- 10.1. The sum to be paid to the Sub-Contractor in relation to the Sub-Contract Works shall be determined in accordance with this clause 10.
- 10.2. The Sub-Contractor shall submit monthly applications (properly detailed with full particulars covering the valuation of measured works, variations, the valuation of materials on site and any other reasonably necessary details to enable the same to be considered by the Contractor) to the Contractor specifying the sum the Sub-Contractor considers will become due on the Due Date and the basis on which that sum is calculated. Each application for payment shall be submitted to the Contractor no later than three (3) days before the Due Date stated in the Schedule of Due Dates within the Sub-Contract Documents, or, if no Schedule of Due Dates is provided, it shall be submitted by the 28th day of each calendar month. If any interim application is received late, the Contractor shall not be obliged to consider such application until the following month. For the avoidance of doubt, the Contractor shall have no obligation to issue any Payment Notice, nor to make any interim payment, in the absence of a valid application for payment submitted by the Sub-Contractor in accordance with this clause 10.2.
- 10.3. The final date for payment of the first and each subsequent application shall be twenty five (25) days after the Due Date.
- 10.4. Not later than five (5) days after the Due Date, the Contractor shall give written notice to the Sub-Contractor specifying the sum which the Contractor considers to be or have been due at the Due Date and the basis on which such sum is calculated (the "Payment Notice"). Should the Contractor fail to give a Payment Notice on time in accordance with this clause 10.4, the sum due to the Sub-Contractor shall be the sum stated as due in the Sub-Contractor's relevant application, subject to any Pay Less Notice served by the Contractor in accordance with clause 10.5.
- 10.5. If the party who is required to make payment of the sum stated as due in a Payment Notice (or if no Payment Notice has been given, in an application for payment submitted by the Sub-Contractor) intends to pay less than the sum stated as due in the Payment Notice (or, if no Payment Notice has been given by the Contractor, the sum stated as due in the Sub-Contractor's relevant application), that party shall serve on the other party no later than one (1) day before the final date for payment a notice specifying the sum it considers to be due on the date the notice is served and the basis on which that sum is calculated (the "Pay Less Notice"). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall be the sum stated as due in the Pay Less Notice.
- 10.6. Notwithstanding any other provision of the Sub-Contract, if the Sub-Contractor has become insolvent within the meaning of section 113 of the Housing Grants, Construction and Regeneration Act 1996 (as amended), no further sum shall become due to the Sub-Contractor under the Sub-Contract and the Contractor need not pay any sum that has already become due either:
 - 10.6.1. insofar as the Contractor has given or gives a Pay Less Notice in accordance with clause 10.5; or
 - 10.6.2. if the Sub-Contractor has become insolvent after the last date on which a Pay Less Notice could be given by the Contractor in respect of that sum.
- 10.7. In the event of the Contractor failing to pay any sum due to the Sub-Contractor by the relevant final date for payment, the Contractor shall pay to the Sub-Contractor interest on such overdue sum at the rate of 3% per annum above the official base rate of the Bank of England current at the final date for payment. Both parties agree that the rate of interest payable under this clause 10.7 is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 10.8. Any payments to be made under this clause 10 shall be subject to the deduction of retention stated on the Sub-Contract Order, any statutory taxes (where appropriate) and payments previously certified and made. Retention shall be released as follows; half within 35 days of the date of practical completion of the Sub-Contract Works and the balance one (1) year after the expiry of the Maintenance Period, provided the Sub-Contractor has completed all making good of defects.
- 10.9. The Contractor shall be under no fiduciary obligation with regard to the retention and under no obligation to set aside in a separate bank account any amount representing the retention. The Contractor shall be entitled to the full beneficial interest in any interest accruing on the retention and shall be under no obligation to account to the Sub-Contractor for any such interest. Any right of the Contractor to deduct or to set off any amount (whether arising under any express term of the Sub-Contract or under any rule of law or of 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.
- 10.10. It shall be a pre-condition of payment by the Contractor that the Sub-Contractor shall have complied with all CIS or similar requirements in force in respect of any payment and presented a unique tax reference number for verification by His Majesty's Revenue & Customs and/or valid VAT documentation or any other documents reasonably required by the Contractor to enable payment to be made.
- 10.11. Where, under the Main Contract, the value of any unfixed materials and goods has been included in an interim payment under which the amount properly due to the Contractor has been paid, they shall upon such payment become, and the Sub-Contractor shall not deny that they have become, the property of the Employer. If the Contractor pays the Sub-Contractor for any unfixed materials and goods before their value is included in any interim payment under the Main Contract, they shall upon such payment become the Contractor's property.
- 10.12. Notwithstanding anything to the contrary elsewhere in these Conditions, in the event of the insolvency of the Employer or any other person upon whom payment to the Contractor in respect of the Main Contract Works is conditional (whether directly or indirectly) as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996 (as amended) as a result of which the Contractor does not receive monies otherwise due and owing, the Sub-Contractor shall only be paid any sums due and owing under the Sub-Contract fourteen (14) days after receipt by the Contractor of any sums identified as relating to the Sub-Contract Works and in the proportion received by the Contractor.
- 10.13. Whenever under the terms of the Sub-Contract any sum of money is recoverable from or payable by the Sub-Contractor, or whenever the Contractor incurs or reasonably anticipates incurring any cost, loss or damage arising out of a breach of the Sub-Contract by the Sub-Contractor, or in the event that the Contractor reasonably considers the Sub-Contractor has been overpaid in previous interim payments due to an arithmetical error or due to the Sub-Contractor having previously made an application for payment for a sum greater than it was properly entitled to:
 - 10.13.1. the Contractor shall be entitled to set off or deduct any such sum, cost, loss, damage or overpayment against or from any sum then due or which at any time thereafter may become due to the Sub-Contractor under the Sub-Contract or any other contract between the parties;
 - 10.13.2. a Payment Notice issued by the Contractor may specify that the sum the Contractor considers to be or have been due at the relevant Due Date is a negative sum payable by the Sub-Contractor to the Contractor; and
 - 10.13.3. a Pay Less Notice issued by the Contractor may specify that the sum the Contractor considers to be due at the date such notice is given is a negative sum payable by the Sub-Contractor to the Contractor.
- 10.14. Final Account

- 10.14.1. The Sub-Contractor shall, within a period of three months from the date of practical completion of the Sub-Contract Works, submit to the Contractor all necessary documents, particulars, and other information required to support the Sub-Contractor's final application for payment, provided such particulars have not been previously submitted or agreed.
- 10.14.2. The Contractor shall, within a period of three months of the Main Contract Completion, endeavour to review and assess the Sub-Contractor's submission and issue a written final account statement setting out the Contractor's assessment of the final amount due under the Sub-Contract.
- 10.14.3. If the Sub-Contractor fails to issue written notice disputing the final account statement within three months of its date of issue, the final account statement shall be deemed to represent the full and final settlement of all sums due to the Sub-Contractor under the Sub-Contract, and the Sub-Contractor shall have no further entitlement to any additional payment or adjustment, save only at the sole discretion of the Contractor.

11. Maintenance

- 11.1. The Sub-Contractor shall promptly comply with the Contractor's instructions to carry out all works of repair, rectification and making good of defects, imperfections, shrinkages or other faults in the Sub-Contract Works which may appear within the Maintenance Period, and such work shall be carried out at the Sub-Contractor's own cost if the same is due to any failure on the part of the Sub-Contractor to comply with the provisions or requirements of the Sub-Contract. The said works of repair, rectification and making good shall be carried out within the following periods depending on their category of seriousness: Emergency – within 24 hours; Urgent – within 48 hours; and Non-Urgent – within 7 days.
- 11.2. In the event the Sub-Contractor fails to carry out such maintenance work within 10 days of the date of the Contractor's written instruction to do so, the Contractor shall be entitled to carry out such work by its own workforce or by other contractors, and if such work should have been carried out at the Sub-Contractor's expense the Contractor shall be entitled to recover the cost incurred from the Sub-Contractor as a debt.

12. Determination

- 12.1. If the Sub-Contractor defaults in any of the following respects:
 - 12.1.1. if, without reasonable cause, it suspends the Sub-Contract Works before completion;
 - 12.1.2. if it fails to proceed with the Sub-Contract Works with reasonable diligence and does not remedy that failure within a period of 7 days after being notified in writing to do so;
 - 12.1.3. if it refuses or neglects to remove or repair defective work or improper material within a period of 7 days after written notice has been given by the Contractor to do so;
 - 12.1.4. if it fails to employ sufficient additional resources in accordance with clause 4.3;
 - 12.1.5. if it fails to otherwise perform the Sub-Contract Works in accordance with the provisions of the Sub-Contract and does not remedy that failure within a period of 7 days after being notified in writing to do so,
 then the Contractor (without prejudice to any other rights or remedies it has) may immediately determine the employment of the Sub-Contractor under the Sub-Contract without any payment to the Sub-Contractor other than that to which the Sub-Contractor may be entitled under the Sub-Contract for work already executed and not paid for at the date thereof, less the amount of damage suffered or likely to be suffered by the Contractor (including the cost of completing and carrying out remedial works to the Sub-Contract Works) and/or loss and expense incurred or likely to be incurred by the Contractor by reason of the determination.
- 12.2. If the Sub-Contractor (being an individual) becomes bankrupt or makes a composition or arrangement with its creditors or (being a company) makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangements to be approved in accordance with the Insolvency Act 1986 or any amendment or re-enactment thereof (the "Act") or has a provisional liquidator appointed, or has a winding up order made or passes a resolution for voluntary winding up (except for the purpose of amalgamation or reconstruction) or under the Act has any administrator or administrative receiver appointed or applies to the courts for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986, then the employment of the Sub-Contractor under the Sub-Contract shall forthwith be automatically determined but the said employment may be reinstated if the Contractor and the Sub-Contractor (or its trustee in bankruptcy, liquidator, provisional liquidator, receiver or manager as the case may be) shall so agree. Until such time as the employment of the Sub-Contractor is reinstated the provisions of clause 12.1 shall apply in terms of the Sub-Contractor's entitlement to further payment.
- 12.3. The Contractor shall be entitled to determine the Sub-Contractor's employment under the Sub-Contract at any time and for any reason in its sole discretion by service of 7 days' written notice.
- 12.4. In the event of the employment of the Sub-Contractor under the Sub-Contract being determined, the Sub-Contractor shall, as and when requested in writing by the Contractor to do so (but not before), remove from the site any temporary buildings, plant, tools, equipment, goods and materials either belonging or loaned to it.
- 12.5. If for any reason the employment of the Contractor under the Main Contract is determined (whether by the Contractor or otherwise) then the employment of the Sub-Contractor under the Sub-Contract shall also determine.
- 12.6. If the employment of the Sub-Contractor under the Sub-Contract is determined under clause 6.2, 12.3 or 12.5 (except where the employment of the Contractor under the Main Contract is determined due to the actions of the Sub-Contractor), the Sub-Contractor shall only be entitled to be paid the following sums namely:
 - 12.6.1. the value of the Sub-Contract Works assessed by the Contractor under clause 10 at the date of such determination;
 - 12.6.2. the value of the Sub-Contract Works begun and executed but not yet certified by the Contractor at the date of such determination, such value to be calculated and certified by the Contractor upon proper receipt of particulars from the Sub-Contractor; and
 - 12.6.3. the value of any unfixed materials and goods delivered to site for incorporation into the Sub-Contract Works, the ownership in which has passed to the Employer under the terms of the Main Contract.

For the avoidance of doubt, the Contractor shall not be liable for any other costs, losses, expenses or other sums (including without limitation any loss of profit or indirect loss) howsoever incurred by the Sub-Contractor due to the determination of the Sub-Contractor's employment under the Sub-Contract regardless of the reason for determination.

- 12.7. Determination of the Sub-Contractor's employment under the Sub-Contract shall not determine the operation of any provisions of the Sub-Contract which remain capable of operation after determination, or affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of determination.

13 Health and Safety

- 13.1. All work performed under the Sub-Contract shall comply fully with the requirements of current health and safety legislation and related regulations and codes of practice. In addition to statutory responsibilities in respect of safe working practices, the Sub-Contractor shall comply in all respects with the particular site requirements of the Employer and the Contractor in relation to health and safety matters and shall comply with all requirements of the Construction (Design and Management) Regulations 2015.
- 13.2. The Contractor shall be entitled to deduct from any sums due to the Sub-Contractor any costs, fines or charges which the Contractor is required to pay to the Health and Safety Executive ("HSE"), whether under the Health and Safety (Fees) Regulations 2012 or

otherwise, as a result of or in consequence of any breach of health and safety law caused by the Sub-Contractor which requires any intervention from the HSE.

14 As Built Drawings and Operation and Maintenance Manuals

- 14.1 The Sub-Contractor shall within 14 days of the Contractor's written request, produce and provide in relation to the Sub-Contract Works, two copies of as built drawings and operation and maintenance manuals and any other documents reasonably required by the Contractor.

15 Anti-corruption and anti-slavery and human trafficking

- 15.1 The Sub-Contractor shall comply with all applicable laws, statutes, regulations and codes relating to bribery, corruption and slavery and human trafficking, including but not limited to the Bribery Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017.
- 15.2 The Sub-Contractor shall be liable for and shall indemnify the Contractor against any and all payments, losses, damages, actions, costs (including legal costs), proceedings and expenses and, to the extent permitted by law, any and all fines and financial penalties of whatsoever nature paid, made or incurred by the Contractor (including any liability the Contractor owes under the Main Contract) arising out of or in connection with any breach by the Sub-Contractor of clause 15.1.

16 Adjudication

- 16.1 Either party has the right at any time to refer any dispute arising under the Sub-Contract to adjudication and the adjudication shall be conducted in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended) (the "Scheme"). The adjudicator nominating body shall be the Royal Institution of Chartered Surveyors. The parties hereby give their consent for the purposes of paragraph 8(1) of the Scheme.

17 Third Party Rights

- 17.1 Nothing in the Sub-Contract confers or purports to confer on any third party any benefit or right to enforce any term of the Sub-Contract.

18 Applicable Law

- 18.1 The Sub-Contract shall be governed by the laws of England and Wales. Subject to clause 16, any dispute or difference under or in relation to the Sub-Contract shall be determined by litigation subject to the exclusive jurisdiction of the English courts, provided that nothing shall limit the right of either party to take proceedings in any other court of competent jurisdiction for the purposes of enforcing a judgment of the English courts.

19 Confidentiality

- 19.1 The Sub-Contractor shall not at any time use or disclose to any person any confidential information concerning the Sub-Contract, the Sub-Contract Works or the Main Contract Works, except as may be necessary for the performance of the Sub-Contract Works, as the Contractor may allow in writing and as may be required by law.
- 19.2 The Sub-Contractor shall not publish any photographs of the Sub-Contract Works or the Main Contract Works or any information about the Sub-Contract or the Main Contract in any medium without the Contractor's prior written consent.

20 General

- 20.1 These Conditions may not be used or copied by the Sub-Contractor and may only be amended as agreed with the Contractor in writing.
- 20.2 The Sub-Contract represents the entire agreement between the parties and no other agreements or documents, other than those contained within the Sub-Contract Documents, shall be incorporated.
- 20.3 If any provision of these Conditions is found to be wholly or partially illegal, invalid or unenforceable, that provision shall, to the extent of such illegality, invalidity or unenforceability, be severable and the remaining provisions of the Sub-Contract shall continue in full force and effect.
- 20.4 No failure or delay by a party to exercise any right or remedy provided under the Sub-Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 20.5 In these Conditions:
- 20.5.1 any term importing gender includes any gender;
- 20.5.2 any term importing the singular includes the plural and vice versa;
- 20.5.3 a reference to a "person" includes a natural person, corporate body or unincorporated body (whether or not having separate legal personality) and that person's successors and permitted assigns;
- 20.5.4 clause headings are for ease of reference only and shall not affect the interpretation of these Conditions; and
- 20.5.5 any reference to a statute or statutory provision includes any statutory consolidation, re-enactment, amendment or replacement of it and any subordinate legislation made under it.
- 20.6 Notwithstanding the manner in which the Sub-Contract is entered into and any provision of the Limitation Act 1980 to the contrary, any claim, action or proceedings arising out of or in connection with the Sub-Contract may be commenced up to 12 years from the date the cause of action accrued, or 12 years from the date of practical completion of the Main Contract Works, whichever is the later provided that, notwithstanding any other provision of the Sub-Contract, the limitation period for any claim, action or proceedings brought under the Sub-Contract in respect of or relating to:
- 20.6.1 a breach of the duties imposed by Section 1 or Section 2A of the Defective Premises Act 1972; and/or
- 20.6.2 a breach of section 38 of the Building Act 1984; and/or
- 20.6.3 a claim for contribution in accordance with the Civil Liability (Contribution) Act 1978 in relation to any liability under the aforementioned legislation,
- shall be a period of 15 years from (i) the date of issue of the final notice or certificate of completion of making good defects in respect of the Main Contract Works or (ii) if applicable, the date of determination of the Sub-Contractor's employment under the Sub-Contract, or any longer limitation period that would apply to any such claim, action or proceedings if the same was commenced under the Defective Premises Act 1972, the Building Act 1984 or the Civil Liability (Contribution) Act 1978.