

**Protec Camerfield Ltd Sub-Contract Conditions**

**Protec Camerfield Ltd**

**Sub-Contract Conditions**

**Recitals**

- 1 This Sub-Contract relates to works which Protec Camerfield Ltd has or is intending to contract in relation to under a contract, the Principal Contract.
- 2 The Sub-Contractor is required to perform all of its obligations under this sub-contract so as to facilitate and assist Protec Camerfield Ltd’s performance of that Principal Contract.
- 3 The Sub-Contractor is required to take all steps, actions and measures required under this Sub-Contract so as to prevent any breach of the Principal Contract by Protec Camerfield Ltd including without limitation as to the standard of work, timeliness of performance and obligations for the supply of information and assistance.
- 4 The Sub-Contractor is accordingly deemed to have full knowledge of the Principal Contract (save for prices) and the implications thereof.

**1.0 Definitions**

- 1.1 In these conditions the words and phrases set out below shall have the following meanings:

<u>Word or Phrase</u>	<u>Meaning</u>
“The Contractor”	Protec Camerfield Ltd (hereinafter referred to as the Contractor).
“The Sub-Contractor”	The Sub-Contractor named in the Sub-Contract Order (hereinafter referred to as the Sub-Contractor).
“The Sub-Contract Order”	The Contractors Order to the Sub-Contractor, and all documents referred to therein.
“The Sub-Contract Conditions”	These Conditions and completed Appendices referenced Pro/Sub/Con/rev3 including any schedule of modifications annexed hereto.
“The Works”	All of the works described in the Sub-Contract Order and documents referred to therein to be performed by the Sub-contractor.
“The Principal Contract”	The Contract between the Contractor and their employer.

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“The Principal Contractor”	The employing party under the Principal Contract.
“The Project”	The Project referred to on The Sub-Contract Order.
“The Project Manager”	The Project Manager Employed by the Contractor or the Contractor’s agent or representative.

- 1.2 If the Sub-Contractor shall find any discrepancy or divergence within any of the documents he shall immediately give to the Contractor a written notice specifying the discrepancy or divergence and the Contractor shall issue directions in regards thereto.
- 1.3 If any divergence appears between these Sub-Contract Conditions and the Sub-Contract Order then these Sub-Contract Conditions shall prevail. If any divergence appears between these Sub-Contract Conditions and the Principal Contract then these Sub Contract Conditions shall prevail.
- 1.4 It shall not be deemed to be a divergence merely because an obligation on the Sub-Contractor arising under or by virtue of the Principal Contract is more onerous than the obligations arising under these Sub-Contract Conditions. In such circumstances the Sub-Contractor is obligated to meet both or all obligations.
- 1.5 The Sub-Contractor acknowledges that it does not enter into this Sub-Contract on the basis of and does not rely, and has not relied upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Sub-Contract or not).
- 1.6 The words in this Sub-Contract shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Sub-Contract and no term shall therefore be construed *contra proferentem*

### **2.0 Sub-Contractor’s Undertaking**

- 2.1 The Sub-Contractor will carry out and complete the Works in accordance with all drawings, programmes, specifications and/or instructions supplied to him and set out within the Sub-Contract Order and all documents referred to therein and in accordance with the obligations relating to those Works contained in the Principal Contract and all documents referred to therein. The Works shall be completed, in every respect, to the satisfaction of the Contractor and to the satisfaction of the Principal Contractors Project Manager. No approval expressed or implied without confirmation in writing by a director of the Contractor shall in any way relieve the Sub-Contractor of his responsibilities in complying with the Sub-Contract.
- 2.2 All materials and goods shall be of the kinds and standards described in the Sub-Contract documents. All associated accessories are to comply with relevant British Standards, Regulations and manufacturers recommendations.
- 2.3 The Sub-Contractor shall together with its Sub-subcontractors at all material times have and maintain resources (including financial resources) adequate to execute and complete the Sub-Contract Works in accordance with this Sub-Contract and in the circumstances in which the Sub-Contract Works fall to be performed.

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- 2.4 The Sub-Contractor shall use all reasonable endeavours to ensure that any key personnel of the Sub-Contractor being staff who are important to the completion of the Sub-Contract Works by the Sub-Contractor shall continue to be employed in their specified capacities on the work for so long as and to the extent that the Sub-Contract Works require. The Sub-Contractor shall not, whether without the written consent of the Contract Manager, replace any such key personnel.
- 2.5 If the Contract Manager is of the opinion that any member of the Sub-Contractor's staff at the Site is incompetent or has been guilty of misconduct or serious breach of his duties or breach of any Law or health and safety regulations or is a risk to health and safety of persons or whose behaviour is otherwise inappropriate he may by notice to the Sub-Contractor require such person to leave the Site with immediate effect. The Sub-Contractor shall refuse to admit such person to the Site or be under any obligation to act on such notice forthwith or as soon as reasonably practicable. The Contractor shall have no obligation to reimburse the Sub-Contractor the cost of replacing such person but shall afford all reasonable assistance (not being financial assistance) to the Sub-Contractor in resisting and resultant claim for unfair dismissal.
- 2.6 The Sub-Contractor shall ensure that in respect of each individual intended to work at the site before the individual begins to attend the site to participate in the Sub-Contract Works.
- (a) the results are received of a check of the most extensive available kind made with the Criminal Records Bureau; and
  - (b) a copy of the results of such check are notified to the Contractor.
- 2.7 The Contractor reserves the right to refuse to admit to the site any person who has a Conviction or who received a Conviction at any time whilst such individual is attending site to participate in the Sub-Contract Works.

### **3.0 Design, Design Development and Co-ordination.**

- 3.1 Where described The Sub-Contractor is responsible for the Design, Design Development and Design Co-ordination as fully detailed within the Documents forming this Sub-Contract. This will include but will not be limited to: Drawings Submission for Comment/Approval (Layout Plans, Schematics, Elevations, Equipment Details etc.); Drawings Incorporation of Comments; Design working drawings (Include Design and Coordinated Information); As-fitted Drawing to include all final equipment positions, distribution of wiring and pipes. All Design & Co-ordination information is required timely to meet the contract programme and not cause delay.
- 3.2 The installation distribution network (wiring and/or pipes) must be fully co-ordinated by the Sub-Contractor and be installed in compliance with the relevant British Standards.
- 3.3 Additionally, where free issue equipment is supplied by Protec to the Sub Contractor, the Sub Contractor must fully co-ordinate his distribution network

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works (wiring and/or pipes), to ensure compliance with the relevant recommendations for such equipment.

- 3.4 Unless agreed by the Contractor, no additional payment will be made to the Sub Contractor in the event of any failure by the Sub Contractor to take cognisance of the above matters.
- 3.5 Where required in the documents forming this Sub-Contract Order the Sub-Contractor is deemed to have allowed in his prices for all builders work and making good required to complete his Works.

### **4.0 Performance Bond**

- 4.1 Where a Performance Bond is required to be provided by the Sub-Contractor under this Sub-Contract this will be as detailed in clause 3 of The Sub-Contract Order.

### **5.0 Confidentiality**

- 5.1 The Sub-Contractor agrees that documentation, drawings or information supplied by the Contractor are provided only to assist in the completion of the works.
- 5.2 The Sub-Contractor is not a liberty to divulge or pass on any such information provided to any third party without the approval in writing from a director of the Contractor.

### **6.0 Progress and Completion**

- 6.1 The works shall commence in accordance with the Contractors programme and shall be completed within the period or periods stated within the Sub-Contract, subject only to such fair and reasonable extension of time as the Sub-Contractor may be due or entitled under the Sub-Contract. The works are to be carried out in a diligent and professional manner and in such order as directed by the Contractor in accordance with the Principal Contract.
- 6.2 Prior to commencing the Works, the Sub-Contractor shall provide the Contractor with a Method Statement specific to the Works which sets out the way and method in which the Sub-Contractor intends to carry out his Works, which at all times is compliant with current Health and Safety requirements and all or any relevant British Standards and C.D.M. Requirements.
- 6.3 The Sub-Contractor shall be responsible for Managing and co-ordinating his own Sub-Contract labour.
- 6.4 The Sub-Contractor has reviewed the Contractor's programme and any other programmes referred to in or annexed to this Sub-Contract, and acknowledges and accepts that it is required to co-ordinate and integrate the Sub-Contract Works with the designs, works and programmes of others. Notwithstanding the need for the Sub-Contract Works to be properly co-ordinated and integrated with the designs, works and programmes of others, the properly co-ordinated and integrated with the designs, works and programmes of others, the Sub-Contractor acknowledges and accepts that it will not have exclusive access to and/or possession of the Site or any

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part or parts therefore and that it will be required to work alongside the Employer, the Contractor and other trades, sub-contractors and/or suppliers.

- 6.5 If and whenever the commencement, progress or completion of the Sub-Contract Works or any part thereof is being or is likely to be delayed, it is a condition precedent to the Sub-Contractor's right to an extension for the period for completion in relation thereto that the Sub-Contractor shall forthwith give written notice to the Contractor of the material circumstances including, insofar as the Sub-Contractor is able, the cause or causes of the delay and identify in such notice any matter which is or may constitute a relevant event as identified or provided for in the Principal Contract and provide all information the Contractor would or could be required to provide under the Principal Contract within 4 days of such delay first occurring and in any event not later than the time period for the Contractor to provide notification under the Principal Contract.
- 6.6 If upon receipt of any notice, particulars and estimate under clause 6.4 the Contractor considers that:
- .1 any of the causes of delay is an act, omission or default of the Contractor his servants or agent or his sub-contractors, their servants or agents (other than the Sub-Contractor, his servants or agents) or any act, omission or default of the Principal Contractor, his servants or agent or his sub-contractors, their servants or agents, is the occurrence of a relevant event identified within the Principal Contract; and
  - .2 the completion of the Sub-Contract Works is likely to be delayed thereby beyond the period or periods stated in the Sub-Contract Order or any such revised periods
- Then the Contractor shall in writing, give an extension of time to the Sub-Contractor by fixing such revised or further revised period or periods for the completion of the Sub-Contract Works as the Contractor then estimates to be reasonable save that any extension of time shall not exceed the extension of time to which the Contractor is entitled under the Principal Contract.
- 6.7 If upon receipt of any notice, particulars and estimate under clause 6.4, the Contractor properly considers that he is unable to give, in writing, an extension of time to the Sub-Contractor, the Contractor shall, if reasonably practicable having regard to the aforesaid notice, particulars and estimate, notify the Sub-Contractor in writing not later than 16 weeks from receipt of the notice, particulars and estimate.
- 6.8 The operation of clause 6.1 to 6.6 shall be subject to the proviso that the Sub-Contractor shall use constantly his best endeavours to prevent delay in the progress of the Sub-Contract Works or any part thereof, however caused, and to prevent any such delay resulting in the completion of the Sub-Contract Works being delayed or further delayed beyond the period or periods for completion, and the Sub-Contractor shall do all that may be reasonably required to the satisfaction of the Contractor to proceed with the Sub-Contract Works.
- 6.9 If the Sub-Contractor fails to complete the Sub-Contract Works within the period or periods for completion or any revised period or periods for completion as provided in clauses 6.1 to 6.7, the Contractor shall so notify the Sub-Contractor in writing within reasonable time of the expiry of those periods. On receipt of the notice 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

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of the Sub-Contractor as aforesaid without limitation to the foregoing. The loss and/or expense can include any actual or potential liability to damages for delay under the Principal Contract.

### **7.0 Maintenance, Protection and Defects Liability**

7.1 During the progress of the Works the Sub-Contractor shall remain responsible for the protection of all equipment and materials stored on site or installed by him. The Sub-Contractor shall at his own expense, be responsible for making good or replacing any materials or goods that have not adequately been protected by him.

7.2 Any Defects which exist in the Sub-Contract Works during the period applicable thereto under the Principal Contract and which are due to any failure of the Sub-Contractor to comply with his obligations under this Sub-Contract shall be made good by the Sub-Contractor to the standards required by this Sub-Contract within the period required under the Principal Contract.

### **8.0 Scaffolding and Mobile Access Equipment**

8.1 The Sub-Contractor at his own risk shall provide his own scaffolding and/or Mobile Access Equipment. Should the Contractor grant authority for the Sub-Contractor to utilise scaffolding, ladders and/or other items of plant, the Sub-Contractor will indemnify the Contractor in respect of any damage or claim loss or expense involving any equipment or plant hired or loaned or otherwise made available to the Sub-Contractor for the Sub-Contractor's benefit. The Sub-Contractor shall ensure that all his employees are fully trained in the erection and the use of the above.

### **9.0 Storage, Offices and Temporary Services**

9.1 The Sub-Contractor shall, at his own risk, have reasonable and free use, in common with other Contracts on site, of any water supply, temporary plumbing, temporary lighting and/or electrical power. The Sub-Contractor shall, be provided with free office accommodation and welfare facilities that have been allowed to the Contractor under the Principal Contract, the Sub-Contractor will however provide his own storage. The Sub-Contractor shall be provided with general lighting, but shall provide all his own task lighting, small tools, plant, machinery, workshops, generators, transformers and everything that is necessary for him to carry out his works.

### **10.0 Plant and Tools**

10.1 All power tools employed by the Sub-Contractor on any site shall not exceed 110 volts AC single phase. All such electrical equipment used to carry out the Sub-Contract works must satisfy the requirements of current legislation, be in good mechanical condition and suitable for the electric power supply and fittings either brought or made available on site. Likewise, all access equipment, for example, steps, mobile scaffold towers, fixed scaffold or similar should be in sound condition and complete with all safety guards, so as to comply with the current Health and Safety Legislation.

### **11.0 Welfare Facilities**

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11.1 The Sub-Contractor shall, at his own risk, have reasonable and free use of any temporary welfare accommodation and/or services that may be provided by the Contractor or the Principal Contractor. The Sub-Contractor shall indemnify the Contractor and the Principal Contractor and/or their employees against any claim for loss, damage or personal injury arising from the use of welfare facilities that may be provided.

### **12.0 Building Fabric/Sub-Contractors**

12.1 The Sub-Contractor shall at all times take due care when cutting away or drilling holes. Should any such works be carried out without taking due care, then the Sub-Contractor shall put right at his own expense any damage caused by him and indemnifies the Contractor for any actual or potential liabilities arising under the Principal Contract.

12.2 The Sub-Contractor shall satisfy himself before commencing work as to the suitability of any surfaces on which or to which he is to fix equipment or apply or lay his work.

### **13.0 Responsibilities and Indemnities in respect of Damage or Loss**

13.1 The Sub-Contractor shall indemnify the Contractor against and from all claims, causes of action, and/or costs in respect of:

13.1.1 The Personal injury or death to any person employed by him or the Contractor or any other person employed by any third party on/or within the Project, or damage to any property arising out of or, or in the course of, or caused by any Sub-Contract works executed by the Sub-Contractor (including by not restricted to the use of any plant, equipment or facilities whether in connection with such execution or otherwise).

13.1.2 Any negligence or break of duty on the part of the Sub-Contractor, his servants and/or agents.

13.1.3 Any breach or non-performance or non-observance by the Sub-Contractor or his servants or agents, for the provisions of the Principal Contract in so far as they relate or apply to the Sub-Contract works.

13.1.4 Any act, omission, default or neglect of the Sub-Contractor or his servants or agents which involves the Contractor in any liability under the Principal Contract and/or which reduces or extinguishes any entitlement the Contractor might otherwise have had under the Principal Contract.

13.2 The Sub-Contractor shall adequately insure his and the Contractors liability in respect of claims, causes of action, costs, loss and expense as a result of any matters referred to in clause 13.1 above and shall produce to the Contractor adequate evidence of such insurance before commencing the Sub-Contract works.

13.3 The Works, materials, tools, plant, scaffolding machinery and buildings of the Sub-Contractor, the subject of or used in connection with the Sub-Contract whether on

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site or not, shall in every respect be at the Sub-Contractor's risk except for those risks for which the Sub-contractor is expressly not responsible.

### **14.0 Insurance Requirements**

- 14.1 The Sub-Contractor shall adequately provide the insurance set out in this clause 14.0, unless varied in writing by a Director of the Contractor.
- 14.2 The Sub-Contractor shall provide insurance cover to a minimum level of that stated within clause 5 of The Sub-Contract Order, for Public and Product Liability insurance, which includes an indemnity clause to the Contractor or Principal Contractor.
- 14.3 In all cases the Sub-Contractor shall maintain a minimum level of Employer's Liability Insurance of that stated within clause 5 of The Sub-Contract Order which includes an indemnity clause to the Contractor or Principal Contractor.
- 14.4 In all cases the Sub-Contractor shall maintain a minimum level of Contractors All Risks Insurance of that stated within clause 5 of The Sub-Contract Order which includes an indemnity clause to the Contractor or Principal Contractor.
- 14.5 The Sub-Contractor shall provide the Contractor on demand the policies of any insurance effected in accordance with this or any other clause in the Sub-Contract together with any receipt for payment of premiums. If the Sub-Contractor fails to produce any such policy and/or receipt on demand, then the Contractor shall be entitled to arrange such insurance as necessary and deduct the total value of the premium paid and any other cost associated with arranging such insurance from any monies due or becoming due to the Sub-Contractor.

### **15.0 Determination of Sub-Contractor's Employment**

- 15.1 The Contractor may, without prejudice to any other of its right or remedies, determine the Sub-Contractor's employment under the Sub-Contract in respect of the whole or any portion of the works should the Sub-Contractor:
  - 15.1.1 After 7 days notice in writing from the Contractor, fail to act upon any instruction issued by the Contractor or proceed diligently with the Sub-Contract Works or any part thereof, or fail to carry out the Sub-Contract Works to the reasonable satisfaction of the Contractor or the Project Manager employed under the Principal Contract, or fails carry out the Sub-Contract Works in such a manner as will, in the opinion of the Contractor, prejudice the completion of the whole or any part of the Works under the Sub-Contract or work to be performed under the Principal Contract.
  - 15.1.2 Fail, forthwith upon notice from the Contractor, to commence remedial work or to correct any defective workmanship and/or materials or fail to proceed with the same with due diligence and to complete such remedial work to the satisfaction of the Contractor or the or the Project Manager employed under the Principal Contract, and within such period as the Contractor may specify or, in the absence of any specified period, within a reasonable time that shall not prejudice the satisfactory completion of the Sub-Contract Works under the Sub-Contract or Principal Contract.

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- 15.1.3 Fail to complete and deliver the whole or any part of the Works by the times specified by the Contractor or by such extended time or times which may be allowed by Contractor under the Principal Contract.
- 15.1.4 Fail to withdraw immediately, at the request of the Contractor, any one or more of the Sub-Contractors employees or agents to whom the Contractor reasonably objects or whose presence on the project may contravene the Conditions of the Sub-Contract or the Principal Contract or who may cause labour disputes in the Sub-Contractor's or any other trade or organisations.
- 15.2 The Contractor retains the right to determine the Sub-Contractors employment if the Sub-Contractor makes an arrangement with his creditors, has a bankruptcy order made against him, executes a bill of sale or commits any act of bankruptcy, or if the Sub-Contractor is a company, the ownership of the shares or the identity of the principal directors changes, the Sub-Contractor becomes insolvent, a resolution is proposed or made to wind up, winding up or administration proceedings are begun, or an administrative or other receiver is appointed.
- 15.3 The Sub-Contractors employment shall be determined forthwith if the Sub-Contractor fails within 7 days notice in writing from the Contractor to comply with any of his obligations under the Sub-Contract.
- 15.4 If the employment of the Contractor is determined under the Principal Contract (or Principal Contractors employment under the Main Contract) the employment of the Sub-Contractor under this Sub-Contract shall thereupon also determine and the Contractor or the person acting for the Contractor shall immediately so inform the Sub-Contractor.

### **16.0 Provisions in Case of Determination**

- 16.1 Should the Sub-Contractors employment be determined in accordance with clause 15, the Sub-Contractor shall not be entitled to any further payment until completion of the works has been achieved by the Contractor or by others on its behalf.
- 16.2 No further payments shall be made to the Sub-Contractor until the Works are fully completed and accepted by or on behalf of the Employer and the Final Certificate under the Principal Contract has been issued. Any losses, expenses or damages suffered, or which may be suffered, by the Contractor by reason of such determination and/or in relation to completion of the Works will be deducted from any sums payable to the Sub-Contractor.
- 16.3 Following termination of the Sub-Contractor's employment under this Sub-Contract the Contractor shall have no liability to the Sub-Contractor for any claim, remuneration, payment or compensation of any kind whatsoever including any claim for loss of fees, loss of profit, loss of contribution, loss of overhead, loss of expectation, loss of opportunity or any other economic, direct, indirect and/or consequential loss or damage, or claim based upon quantum meruit or unjust enrichment.
- 16.4 For the purposes of completing the work the Contractor shall have free use of the Sub-Contractor's accommodation, plant, materials, and/or any other items which the

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Contractor may (in its discretion) consider necessary or essential to complete the Sub-Contract Works. The Sub-Contractor will remove from the site at his own expense, any such items which the Contractor does not require within 7 days of written notice by the Contractor to that effect. Should the Sub-Contractor fail to respond or act upon the Contractors instruction, then the Contractor shall be entitled to remove and sell such items, provided that the net proceeds of sale (after deduction of the costs thereof) shall be credited to the account of the Sub-Contractor in calculating any sums due under the Sub-Contract.

### **17.0 Payment**

- 17.1 Where the Sub-Contract period identified in the Sub-Contract Order is greater than 45 days interim payments shall be due to the Sub-Contractor from the Contractor, in the following manner;
- 17.2 The Sub-Contractor shall issue his interim application for payment to the Contractor on the dates set out within Appendix B. In the event that no dates for the issue of interim applications are identified the first application shall be due on the last Friday of the month following the commencement on site and subsequent applications shall be on the last Friday of following months up to Practical Completion of the Sub-Contract Works. The amount of such interim payments shall be calculated in accordance with the rates specified within the Sub-Contract.
- 17.3 No later than 16 days from receipt of the Sub-Contractors interim application, the Contractor shall certify amounts that are properly due. The Contractor shall inform the Sub-Contractor within that certificate of any amounts he intends to with hold from the interim payment. Should the Contractor intend to with hold any amount, he shall set out the reason(s) why he intends to withhold, deduct, or set off payment, and shall provide the Sub-Contractor with his calculation of the payment that he considers due to the Sub-Contractor.
- 17.4 Upon receipt of the Certificate identified within clause 17.3 the Sub-Contractor shall issue to the Registered Office of the Contractor a valid VAT invoice and appropriate CIS vouchers/ Certificate as required by the Inland Revenue to comply with the provisions of the Income Tax (Sub-Contractors in the Construction Industry)(Amendment) Regulations 1998 No 2622. The Final Date for payment by the Contractor shall be no later than the period specified in clause 6a of the Sub-Contract Order from the due date the Sub-Contractors VAT invoice is received by the Contractor.
- 17.5 Not later than 5 days before the final date for payment of any interim payment, the Contractor may give a written notice to the Sub-Contractor which shall specify any amount proposed to be withheld and/or deducted from the amount notified under clause 17.3, the ground or grounds for such withholding and/or deduction and the amount of the withholding and/or deduction attributable to each ground. If no notice is given, the Contractor shall pay the amount stated in his notice under clause 17.3 by the final date for payment of it.
- 17.6 All interim payments due to the Sub-Contractor shall be subject to retention as detailed in the Sub-Contract Order, of which, the first moiety shall be released upon the issue of the Practical Completion Certificate under the Principal Contract. The second and final moiety shall be released based upon the expiry of the defects

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liability period, or the issue of the Making Good Defects Certificate under the Principal Contract, whichever is the later.

- 17.7 All interim payments and the Final Payment due to the Sub-Contractor shall be subject to Discount at the rate/value stated on the Sub-Contract Order.
- 17.8 Should the Sub-Contractor become insolvent as defined in the Insolvency Act 1998, all sums due to the Sub-Contractor shall be withheld, whether interim or otherwise and any further payment made in accordance with clause 16 of these Sub-Contract Conditions.
- 17.9 Should the Contractors Employer or the Employer under the Principal Contract become insolvent in accordance with the Insolvency Act 1998 the Contractor shall notify the Sub-Contractor in writing and any payments due, whether interim or otherwise shall be withheld until receipt of any payment under the Principal Contract.
- 17.10 Should the Contractor, subject to any notice issued under clauses 17.3, 17.8, 17.9, 17.12 to 17.15, fail to pay the Sub-contractor in full by the final date for payment as required by clause 17.4 and such failure shall continue for 7 days after the Sub-Contractor has given to the Contractor written notice of his intention to charge interest on the sum due. The Contractor shall pay to the Sub-Contractor in addition to the amount not properly paid simple interest thereon for the period until such payment is made. Payment of such interest shall be treated as a debt due to the Sub-Contractor by the Contractor. The rate of interest shall be Five percent (5%) over the Base Rate which is current at the date the payment by the Contractor became overdue. The payment of simple interest under clause 17.10 shall not in any circumstances be construed as a waiver by the Sub-Contractor of his right to proper payment of the principal amounts due from the Contractor in accordance with, and within the time stated in, this Sub-Contract or of the rights of the Sub-Contractor in regard to suspension of performance of his obligations under this Sub-Contract the Contractor pursuant to clause 17.11.
- 17.11 Without prejudice to any other rights and remedies which the Sub-Contractor may possess, if the Contractor shall, subject to any notice issued under clause 17.3, 17.8, 17.9, 17.12 to 17.15, fail to pay the Sub-contractor in full by the final date for payment as required by clause 17.4 and such failure shall continue for 14 days after the Sub-Contractor has given to the Contractor written notice of his intention to suspend the performance of his obligation under the Sub-Contract and the grounds on which it is intended to suspend performance, the Sub-Contractor may suspend performance of such obligations until such payment occurs.
- 17.12 No later than 3 months after Practical Completion of the Sub-Contract Works the Sub-Contractor shall provide to the Contractor all documents necessary for the computing the Ascertained Final Sub-Contract Sum in accordance with this Sub-Contract.
- 17.13 Not later than 8 months after receipt by the Contractor of the documents referred to in clause 17.12 and before the issue of the Final Certificate under the Principal Contract a statement of the computation of the Ascertained Final Sub-Contract Sum shall be prepared by the Contractor and issued to the Sub-Contractor.

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- 17.14 Should the Sub-Contractor not provide the documents referred to in clause 17.12 the Contractor shall proceed with the computation of the Ascertained Final Sub-Contract Sum on the basis of all information available 3 months after Practical Completion of the Sub-Contract Works.
- 17.15 The Final Payment to the Sub-Contractor shall be the Ascertained Final Sub-Contract Sum less the total amount previously paid in respect of the Sub-Contract Works. The Final Payment shall be due 7 days after the issue by the Contractor notice in writing sent by special delivery or recorded delivery notifying the Sub-Contractor of the amount of Final Payment to be made to the Sub-Contractor, to what the amount relates and the basis on which such amount was calculated. The final date for payment of the Final Payment shall be 28 days after the date it becomes due.

### **18.0 Variations, extra works and Dayworks**

- 18.1 Prior to commencing the Works the Sub-Contractor shall provide the Contractor with a fully priced schedule of rates based upon his tender price and likewise a schedule of daywork rates.
- 18.2 The issue of variations instructions by the Contractor shall not in any way prejudice the Sub-Contract Conditions. It is a condition precedent to the Sub-Contractor's right to payment that the Sub-Contractor shall notify the Contractor in writing within 4 days of it becoming apparent of all work they consider a change in their Contract, and at the same time shall provide fully substantiated and priced particulars in writing showing any Adjusted Sub-Contract value. Variations or extra works shall be valued and paid for at the rates set out in the schedule provided under clause 18.1.
- 18.3 Variations or extra works shall not be undertaken without written authority of the Contractor.
- 18.4 No daywork will be permitted except where, in the opinion of the Contractor, it would be unreasonable to value such work at other than by daywork rates. Where the Sub-Contractor considers he has a claim to daywork, due notice must be given to and approved by the Contractor in writing prior to the Sub-Contractor carrying out such work. In the event of agreement to carry out works under daywork arrangements, fully detailed and signed daywork sheets must be submitted for consideration within 7 days after completion of the described works. Payments against daywork sheets submitted outside the 7-day period may be made at the discretion of the Contractor.

### **19.0 Direct Loss and/or Expense**

- 19.1 The Sub-Contractor shall not be entitled to any direct loss and/or expense if the regular progress of the Sub-Contract Works is materially affected by an act, omission or default of the Contractor his servants or agent or his sub-contractors, their servants or agents (other than the Sub-Contractor, his servants or agents) or any act, omission or default of the Principal Contractor, his servants or agent or his sub-contractors, their servants or agents, or is materially affected by any one or more of the Relevant Matters under the Principal Contract unless the Sub-Contractor shall within the shorter of 1 week of such material effect becoming apparent or the time

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period under the Principal Contract for the Contractor to make such claim less one day make written application to the Contractor:

- .1 as soon as it has become, or should reasonably have become, apparent to him that the regular progress of the Sub-Contract Works or any part thereof has been or is likely to be affected as aforesaid; and
  - .2 submitting to the Contractor such information in support of his application as is reasonably necessary to show what the regular progress of the Sub-Contract Works or of any part thereof has been or is likely to be affected as aforesaid; and
  - .3 submitting to the Contractor such details of such loss and/or expense as the Contractor requests in order reasonably to ensure that direct loss and/or expense as aforesaid; and
  - .4 where the amount of loss and/or expense in respect of a Variation for which a lump sum quotation or recovery is calculated at daywork rates including all associated costs has been accepted by the Contractor, such amount shall be paid by the Contractor to the Sub-Contractor and clause 19.0 shall not apply.
- 19.2 It shall be a condition precedent to any entitlement to recover direct loss and/or expense that the Sub-Contractor complies in full and with all elements of Clause 19.1
- 19.3 If, and to the extent that, it is necessary for the agreement of any direct loss and/or expense applied for under clause 19.0, the Contractor shall state in writing to the Sub-Contractor what extension of time, if any, has been made under clause 6 in respect of the Relevant Events referred to in the Principal Contract.

### **20.0 Holidays**

- 20.1 Unless otherwise agreed in writing the Sub-Contractor must observe the particular site holiday arrangements and/or standard statutory or national holidays. The Sub-Contractor is therefore deemed to have included within the Sub-Contract price due allowance for any additional costs due to the phasing of the works to comply with recognised holiday periods.

### **21.0 Rubbish/Excess Materials**

- 21.1 The Sub-Contractor shall be responsible for the removal of all rubbish and/or surplus materials and plant from site. If, following reasonable notice, the Sub-Contractor fails to comply with the Contractors instruction to remove rubbish and/or surplus materials, arrangements may be made to remove such items on behalf of the Sub-Contractor and to deduct payment to a value of at least the cost of doing so from any monies otherwise owing to the Sub-Contractor.

### **22.0 Health and Safety**

- 22.1 The Sub-Contractor shall at all times comply with the Contractors requirements on matters affecting safety on site and all statues, bye laws and other regulations affecting the carrying out the works. All Sub-Contractors employees or representatives visiting site shall comply with the Principal Contractor/ Contractors Health and Safety requirements including but not limited to the appropriate training and issue of a SCSC Card or equal approved.

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22.2 A Daily Labour Return Sheet is to be completed and submitted by the Sub-Contractor to the Contractor each day detailing the names and number of operatives on site and the hours worked by each operative.

### **23.0 Fluctuations**

23.1 The sum identified in the Sub-Contract order shall (except as provided in this clause 23) be the maximum payment made to the Sub-Contractor to carry out the Sub-Contract. Unless otherwise stated the sum identified shall be the full and final payment for the Works, including the costs of employer's liability and other insurance which the Sub-Contractor is required to maintain whether under this Sub-Contract or otherwise, and shall remain fixed for the Sub-Contract period. Adjustment to this sum will only be accepted in accordance with the conditions detailed within clause 18 relating to variations and dayworks.

### **24.0 Subletting**

24.1 The Sub-Contractor is not permitted without prior written permission of the Contractor to sublet, assign or otherwise deal with any portion of or the whole of the Works.

### **25.0 Information provided for Others**

25.1 Any instructions, drawings or information relating to the works that are requested from the Sub-Contractor must be provided within the designated time to prevent any disruption or delay to the overall commitment of the Contractor to the Principal Contract. The Sub-Contractor must ensure at all times that the works are undertaken so as to minimise disturbance, delay or disruption to the Contractor or any other Sub-Contractor of the Contractor or any other Contractor involved on/in the Project.

### **26.0 Use of Site**

26.1 Access to the site and any welfare facilities is given to the Sub-Contractor only for the purpose of carrying out the works and therefore, neither the site nor any accommodation or facilities on it must be misused by the Sub-Contractor.

### **27.0 Provisional Sums**

27.1 Instructions will be issued in respect of provisional sums that may have been allowed within the tender value. The adjustment or deduction of such provisional sums shall not entitle the Sub-Contractor to submit claims for loss of profit in respect of such instructions.

### **28.0 Principal Contract Conditions**

28.1 The Sub-Contractor is deemed to have full knowledge of the conditions of the Principal Contract, in so far as they are applicable to this Sub-Contract, and no claim will be accepted or considered by the Contractor resulting from lack of

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knowledge by the Sub-Contractor. The Contractor reserves the right to apply the terms and conditions of the Principal Contract mutatis mutandis should this Sub-Contract be deficient.

### **29.0 Corruption**

29.1 The Sub-Contractor shall comply with this clause together with the provisions of the Contractor's Code of Ethics. The Sub-Contractor shall not itself or in conjunction with any other person:

29.1.1 corruptly solicit, receive or agree to receive for itself or for any other person; or

29.1.2 offer to agree to give any person in the Contractor's service, or other Sub-Contractor or other party who has a contract with the Client;

any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person, in relation to this Sub-Contract or any other Contract; or

29.1.3 enter into any contract with the Contractor in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge unless, before any such contract is made, particulars of any such commission, and of the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to the Contractor.

29.2 The Contractor may by notice with immediate effect determine the appointment of the Sub-Contractor under this Sub-Contract and any other Sub-Contract if:

29.2.1 the Contractor is reasonably satisfied that the Sub-Contractor or anyone employed by it or acting on its behalf (whether with or without the knowledge of the Sub-Contractor) is in breach of this clause 29; or

29.2.2 the Sub-Contractor or anyone employed by it or acting on its behalf is convicted of any offence under the Prevention of Corruption Acts 1889 to 1916 in relation to this Sub-Contract or any other Sub-Contract, or is convicted of a criminal offence related to business or preferential conduct, or commits an act of grave misconduct in the course of business or profession; or

29.2.3 the Sub-Contractor is guilty of serious misrepresentation in providing any information required of it under this Sub-Contract or any Sub-Contract; or

29.2.4 in accordance with clause 29.4 the Contractor is reasonably satisfied that a conflict of interest exists, or may exist, and following written notice from the Contractor the Sub-Contractor has failed to cease such other activity or activities which is causing the conflict within a reasonable time.

29.3 If the Contractor so determines the appointment of the Sub-Contractor under this Sub-Contract and any other Sub-Contract in accordance with clause 29.2 then the Contractor shall be entitled to recover from the Sub-Contractor the amount or value of any such gift, consideration or commission.

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- 29.4 The Sub-Contractor warrants that it is not aware of any actual or potential conflict of interest between the Programme or any Project appointment and any other activity or activities of the Sub-Contractor. The Sub-Contractor must immediately inform the Contractor where it is aware of any actual or potential conflict of interest, and the Contractor may serve written notice on the Sub-Contractor requesting that it cease the other activity or activities causing the actual or potential conflict of interest. Where the Sub-Contractor fails to cease such activity within a reasonable time, the Contractor may terminate the appointment of the Sub-Contractor in accordance with clause 29.2 hereof.
- 29.5 All references to the Sub-Contractor shall be deemed to include a company and every holding company of that company for the time being, and every subsidiary for the time being of every such holding company.

### **30.0 Third Parties**

- 30.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 nothing in this agreement confers or purports to confer on any third party any benefit or right to enforce any terms of this agreement unless otherwise specifically detailed in the documents forming this Sub-Contract.

### **31.0 Disputes**

- 31.1 Adjudication
- 31.2 In the event that a dispute or difference shall arise between the Contractor and the Sub-Contractor under the Sub-Contract, then either the Contractor or the Sub-Contractor may, at any time, give notice to the other indicating its intention to refer the dispute or difference to adjudication. The Adjudicator shall be a nominated by the President or Vice President of the Royal Institution of Chartered Surveyors and the adjudication shall be conducted in accordance with the procedural rules for adjudication know as the CIC Model adjudication Procedure Second Edition (the “CIC Rules”) or any modification thereof current at the date of the Notice of Adjudication.
- 31.3 Without prejudice to any provision of the CIC Rules the Adjudicator’s decision is binding on the parties until the dispute or difference is finally determined by legal proceedings, arbitration or agreement.

### **32.0 Arbitration**

- 32.1 Subject to and without prejudice to the right of either party to refer a matter to an Adjudicator as set out within clauses 30.0, if any question or dispute arises on any matter out of or in connection with the Sub-Contract, the same shall (except where the Principal Contract provides for such to be subject to the final decision of the Architect or Engineer) be referred for arbitration to a person agreed upon between the parties or, failing agreement, to a person appointed by the body nominated in the Principal Contract or, if no such person is nominated, by the President or Vice President at the time of the Royal Institute of Chartered Surveyors. The decision of the Arbitrator appointed shall in every case be binding and accepted by both parties

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within the meaning of the Arbitration Act 1996 and any subsequent amendments or modifications thereof.

- 32.2 The arbitration shall be conducted in accordance with such rules as may be provided for in the Principal Contract or, if no such rules are provided for, in accordance with the Construction Industry Model Arbitration Rules issued in February 1998 or any subsequent modification thereof current at the date of the Sub-Contract.
- 32.3 No arbitration proceedings are to be commenced (unless the Contractor decides otherwise) until after the date of final completion of all works executed under the Principal Contract.

### **33.0 Law**

- 33.1 Whatever the nationality, residence or domicile of the Contractor or the Sub-Contractor and wherever the Works are situated the Law of England and Wales shall be the law applicable to this Sub-Contract.