

SUB-CONTRACT TERMS AND CONDITIONS

A: GENERAL

1. In these terms and conditions the following definitions apply:

Commencement Date	The agreed on-site start date for the Sub-Contract Works.
Company	Silverlife Limited (Company No. 5510414) Registered office: 10 Towerfield Road, Shoeburyness, Essex SS3 9QE
Deleterious	any products or materials which are generally known within the Sub-Contractor's profession to be deleterious at the time of specification, in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with relevant British or European Standards or Codes of Practice or relevant publications of the Building Research Establishment.
Employer	The party named as Employer in the Order or any successor in title.
Goods	Any goods or materials which are specified in the Order and which are to be manufactured and/or supplied by the Sub-Contractor;
HGCRA	The Housing Grants, construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.
Insolvent	Insolvent within the meaning of section 113 of HGCRA.
Main Contract	The contract between the Employer and the Company for the Main Contract Works of which the Sub-Contract Works form part.
Main Contract Works	The works described in the Main Contract, including any changes made to those works in accordance with the Main Contract.
Parties	The Company and the Sub-Contractor together.
Pay Less Notice	Has the meaning set out in clause 59.
Payment Due Date	Any of the dates listed in the Schedule of Dates or any updated schedule of dates as may be issued by the Company. In the absence of such a schedule of dates, 'Payment Due Date' shall mean the 26 th day of each month, falling at least one calendar month after commencement of the Sub-Contract Works on site. In any event the last Payment Due Date shall fall up to one calendar month after written notification of completion of the Sub-Contract Works by either the company or the Sub-Contractor, whether or not completion is disputed and whether or not the Schedule of Dates extends beyond such date.
Period for Completion	The period for completion of the Sub-Contract Works set out in the Order or if none, then any period for completion agreed by the parties in writing prior to commencement of the Sub-Contract Works. Where only the month of completion is stated in the Order, the Period for Completion shall end on the last working day of that calendar month.
Schedule of Dates	The schedule of due dates accompanying the Order.
Sub-Contract	Has the meaning ascribed to it in clause 2.
Sub-Contract Documents	The documents referred to in the Order, including without limitation any check-list specifications or schedule of rates.
Sub-Contract Sum	The sum defined in the Sub-Contract, or such other sum calculated in accordance therewith and agreed by the Company. The Sub-Contract Sum is exclusive of VAT unless the contrary is stated in the Order.

Sub-Contract Works	The design (if any), supply, execution and/or completion of any works or Goods as are described in the Sub-Contract, including any changes made to those works or Goods in accordance with the Sub-Contract.
Sub-Contractor	The person(s), firm, or company engaged by the Company under the Sub-Contract.
Order	The order given by the Company to the Sub-Contractor to carry out the Sub-Contract Works (irrespective of whether or not that order has been signed and returned by the Sub-Contractor.)
Variation	Has the meaning ascribed to it in clause 33.

2. The Sub-Contract consists of the Order, the Sub-Contract Documents, the Schedule of Dates (if any) and these Sub-Contract Terms & Conditions which together constitute the entire agreement between the Parties. These Sub-Contract Terms & Conditions (as supplemented and amended by the Order and the Sub-Contract Documents) apply to the Sub-Contract to the exclusion of any other terms that the Sub-Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Sub-Contractor acknowledges that it has not relied on any statement, promise, or representation made or given by or on behalf of the Company which is not set out in the Sub-Contract.
3. The Sub-Contract is to be read as a whole save that in the event of any inconsistency between the terms of the Sub-Contract and those of the Main Contract (or alternatively in the event of any inconsistency between the Sub-Contract Documents); the Sub-Contractor shall promptly notify the Company of the same in writing. Irrespective of whether the inconsistency has been notified to the Company, the Company may at its absolute discretion decide which of the relevant inconsistent terms shall prevail.
4. The Sub-Contractor shall be deemed to have full knowledge of the Main Contract (including, without limitation, the rate of liquidated damages under the Main Contract). The Sub-Contractor shall perform and assume, as part of its obligations under the Sub-Contract, the Company's obligations, liabilities and risks contained within the Main Contract to the extent that they relate to the Sub-Contract Works as if they were expressly referred to in the Sub-Contract as obligations, liabilities and risks of the Sub-Contractor.
5. The Sub-Contractor shall be deemed to have inspected and examined the site and its surroundings and all the information in connection therewith and to have satisfied itself in full as to the form and nature of the site including without limitation, the subsurface, hydrological and climatic conditions and the nature and extent of the work and materials necessary for carrying out and completing the Sub-Contract Works in accordance with the Sub-Contract, and to have obtained all necessary information which may affect the Sub-Contract Sum or the execution of the Sub-Contract Works.

B: DUTIES

6. The Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with the Sub-Contract and to the satisfaction of the Company, regularly and diligently and in a proper and workmanlike and expeditious manner exercising all the skill, care and diligence to be expected of a competent Sub-Contractor qualified and experienced in the execution of works of a similar type, size, scope, character, complexity and timescale to the Sub-Contract Works.
7. Where and to the extent that the Sub-Contract Works require the Sub-Contractor to undertake any design or the selection or specification of any materials or goods:
 - 7.1 the Sub-Contractor shall be fully responsible in all respects for the design, selection or specification of such part or parts of the Sub-Contract Works including any design, selection or specification prepared or made by or on behalf of the Company and referred to or contained within the Sub-Contract; and
 - 7.2 the Sub-Contractor shall exercise all reasonable skill and care in the design of such part or parts of the Sub-Contract Works as is to be expected of a properly qualified and competent design sub-contractor experienced in carrying out work such as its duties under the Sub-Contract in relation to developments of similar scope, size, nature, timescale and complexity and on a similar site or at a similar location to the development as described in the Order.
8. The Sub-Contractor shall commence the Sub-Contract Works on the Commencement Date and shall regularly and diligently proceed with and complete the Sub-Contract Works within the Period for Completion.
9. The Sub-Contractor shall comply with, give all notices required by, and pay all fees and charges applicable to, the Sub-Contract Works in respect of any statute, statutory instrument, rule or order or any regulation or bye-law (including without limitation the Construction

(Design and Management) Regulations 2015, and all relevant Health and Safety regulations and codes of practice).

10. The Sub-Contractor warrants that the Sub-Contract Works shall be carried out using materials and goods of a kind and standard described or referred to in the Sub-Contract which are of good quality, sound and free from any latent or inherent defects, so that the Sub-Contract Works are fit for the purpose intended. Upon the Company's request, the Sub-Contractor shall provide within a reasonable time, proof to the satisfaction of the Company that materials or goods so comply. Where the Main Contract or Sub-Contract do not specify the kind and standard of the materials and goods for the Sub-Contract Works, then the required standard shall comply with the relevant British Standard or Codes of Practice of such other industry standard as may be applicable.
 11. The Sub-Contractor shall not specify, use, cause or knowingly let Deleterious products or materials be used in the Sub-Contract Works, or any materials or substances which are of unsuitable quality and/or not approved and/or not recommended in accordance with the Sub-Contract.
 12. Notwithstanding the point at which property or title and interest in any materials and goods or other things passes to the Company such items shall remain at the risk of the Sub-Contractor who shall be responsible for any loss or damage of such items until completion of the Sub-Contract Works. The Sub-Contractor shall ensure that such items are properly protected against any loss or damage and adequately covered for their full reinstatement value by a suitable policy of insurance. For the avoidance of doubt this clause 12 shall not apply in the event that the Sub Contract Works exclusively relate to the supply of Goods.
 13. All materials and goods provided by the Sub-Contractor shall not be removed from storage on or adjacent to the Sub-Contract Works without the Company's consent, such consent not to be unreasonably delayed or withheld (except where such removal is reasonably necessary for use on the Sub-Contract Works).
 14. Access to the site of the Sub-Contract Works shall not be exclusive and the Sub-Contractor shall liaise and co-operate with the Company's site representative and other contractors to ensure that the Sub-Contract Works are fully co-ordinated and integrated with works undertaken by others. The Sub-Contractor shall be deemed to have reasonably foreseen the presence of other contractors undertaking works on site when agreeing the Period for Completion.
 15. The Sub-Contractor shall carry out the Sub-Contract Works in such order and at such times and in such manner as the Company shall reasonably direct and/or require, and comply with any other or revised programme issued by the Company as and when directed. The Company reserves the right to phase or amend the timing of the Sub-Contract Works to suit the Main Contract programme and the Sub-Contract sum shall include for any costs arising therefrom.
 16. The Sub-Contractor shall comply immediately with any directions the Company may issue from time to time. Except as provided in clause 30, the Sub-Contractor shall not be entitled to any additional payment in respect of the Company's directions. If, within 5 days after receipt of a written notice from the Company requiring compliance with a direction the Sub-Contractor does not comply, then the Company may employ and pay other persons to do so and all associated costs shall be due to the Company and may be deducted from any monies otherwise due to the Sub-Contractor or recovered as a debt.
 17. The Sub-Contractor must advise the Company in good time (at least five working days) in advance of all deliveries to site and must provide the details thereof as a Company may require. In the event that the Sub-Contractor fails to so advise, the Sub-Contractor shall bear all associated Sub-Contractor and Company costs arising from such default. The Sub-Contractor is responsible for obtaining any relevant delivery licences and/or permits.
 18. The Sub-Contractor shall comply (and shall also procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Sub-Contract shall comply) with the Bribery Act 2010. The Sub-Contractor shall promptly notify the Company in writing of any potential breach of this clause 18.
 19. The Sub-Contractor shall within 14 days of the Company's written request, execute and deliver to the Company such parent company guarantee, collateral warranties and/or bonds in such forms as the Order shall stipulate (or in such forms as may otherwise have been issued to the Sub-Contractor prior to the commencement of the Sub-Contract Works).
- C: SUPPLY OF GOODS**
20. Where the Sub-Contract Works include for the manufacture and/or supply of Goods to the Company or at the Company's direction (whether for incorporation into the Sub-Contract Works or other use) the Sub-Contractor shall ensure that the Goods shall:
 - 20.1 correspond with their description and any applicable specification;

20.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Sub-Contractor or made known to the Sub-Contractor by the Company expressly or by implication, and in this respect the Company relies on the Sub-Contractor's skill and judgement;

20.3 where they are manufactured, be free from defects in design, material and workmanship and remain so for 24 months after delivery; and

20.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

21. the Sub-Contractor shall also ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition.

22. The Company may inspect and test the Goods at any time before delivery. The Sub-Contractor shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Sub-Contractor's obligations under the Contract.

23. If following such inspection or testing the Company considers that the Goods do not conform or are unlikely to comply with the Sub-Contractor's undertakings at clause 20, the Company shall inform the Sub-Contractor and the Sub-Contractor shall immediately take such remedial action as is necessary to ensure compliance. The Company may conduct further inspections and tests after the Sub-Contractor has carried out its remedial actions.

24. The Sub-Contractor shall deliver the Goods:

24.1 on the delivery date and location stated in the Order; and

24.2 during the Company's normal business hours, or as instructed by the Company.

25. If any Goods are not delivered as stated in the Order, or do not comply with the undertakings set out in clause 20, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Company may exercise any one or more of the following remedies:

25.1 to terminate the Contract;

25.2 to reject the Goods (in whole or in part) and return them to the Sub-Contractor at the Sub-Contractor's own risk and expense;

25.3 to require the Sub-Contractor to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

25.4 to refuse to accept any subsequent delivery of the Goods which the Sub-Contractor attempts to make;

25.5 to recover from the Sub-Contractor any costs incurred by the Company in obtaining substitute goods from a third party; and

25.6 to claim damages for any other costs, loss or expenses incurred by the Company which are in any way attributable to the Sub-Contractor's failure to carry out its obligations under the Contract.

26. These Sub-Contract Terms & Conditions shall apply to any repaired or replacement Goods supplied by the Sub-Contractor.

27. The Company's rights and remedies under these Sub-Contract Terms & Conditions are in addition to its rights and remedies implied by statute and common law.

28. Title and risk in the Goods shall pass to the Company on completion of delivery.

29. The Sub-Contract Sum includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing with the Company.

D: VARIATIONS

30. The Company may issue to the Sub-Contractor such instructions as it sees fit to vary and modify the quantity or quality of the Sub-Contract Works (including any design, where applicable) or any other matter which may affect the carrying out of the Sub-Contract Works including, but not limited to the following:

30.1 any addition, omission or substitution of work;

30.2 the alteration of the kind or standard of any materials or goods for use in the Sub-Contract Works; and/or

30.3 obligations or restrictions relating to access, working space or working hours.

31. Any instruction issued by the Company shall be effective if:

31.1 it is in writing from the Company; or

31.2 a verbal instruction is confirmed in writing by the Company within 7 days of the date of the verbal instruction.

32. The Sub-Contractor shall issue a formal written request for a written confirmation of any verbal instruction (a "CVI") in the event that the same has not been provided by the Company within 7 days of the date of a verbal instruction. If the Sub-Contractor complies with a verbal instruction prior to the issue of a written confirmation of such instruction from the Company it does so at its own risk, if the Company subsequently does not confirm the verbal instruction.

33. The Sub-Contractor shall carry out any variation ("Variation") to the Sub-Contract Works that the Company may direct in accordance with clauses 30 and 31. Variations shall be valued by the Company on a fair and reasonable basis with reference, where available and relevant, to rates and prices in the Sub-Contract Documents. The Sub-Contractor shall not be entitled to any addition to be made to the Sub-Contract Sum where and to the extent that the need for a variation to the Sub-Contract Works arises by reason of any error, omission, negligence, default or breach of contract on the part of the Sub-Contractor, its servants or agents, or any party involved in the supply chain to the Sub-Contractor or their respective servants or agents.

34. The Sub-Contractor shall not make any alteration to the Sub-Contract Works other than pursuant to clauses 30 to 33 inclusive.

35. The Sub-Contractor shall not be entitled to loss of profit on any part of the Sub-Contract Works that are omitted and/or on termination of the Sub-Contract for any reason whatsoever.

E: DELAY

36. The Sub-Contractor shall constantly use its best endeavours to prevent or minimise any delay in the progress of the whole or any part of the Sub-Contract Works. Immediately upon it becoming apparent that progress of the Sub-Contract Works is being, or is likely to be, delayed, the Sub-Contractor shall give written notice to the Company stating the detailed cause or causes of the delay and the Sub-Contractor's best estimate of delay attributable to each cause.

37. If at any time it becomes (or ought to become) reasonably apparent to the Sub-Contractor that:

37.1 the progress of the Sub-Contract Works is being delayed; and/or

37.2 the Sub-Contract Works will not be completed within the Period for Completion; and/or

37.3 the Sub-Contractor has incurred or reasonably expects to incur additional costs / direct loss and expense;

the Sub-Contractor shall within 14 days of any such matter occurring inform the Company in writing notifying the anticipated duration of any delay, if applicable, and/or any additional costs / direct loss and expense that the Sub-Contractor has incurred or (if it is not possible to provide a full assessment of such costs and/or direct loss and expense at the time) his best estimate of what he reasonably expects to incur as a result of the matter.

38. The Sub-Contractor shall not be entitled to any extension of time where and to the extent that any circumstance arises by reason of any error, omission, negligence, default or breach of contract on the part of the Sub-Contractor, its servants or agents, or any party involved in the supply chain to the Sub-Contractor or their respective servants or agents;

39. If following the receipt of such notice as referred to in clause 37, the Company is of the opinion that the cause of the matter referred to in the notice is due to any circumstance or occurrence (other than a breach of the Sub-Contract by the Sub-Contractor) entitling the Company to an extension of time for completion of the Main Contract Works and/or additional costs / direct loss and expense under the Main Contract, then in any such event the Sub-Contractor shall be entitled to such extension to the Period for Completion and to such proportion of its additional costs / direct loss and expense as may in all the circumstances be fair and reasonable, provided that it shall be a condition precedent to the Sub-Contractor's entitlement to any such extension of time and/or additional cost / direct loss and expense that:

39.1 the Sub-Contractor has provided notice in accordance with clause 37; and

39.2 in no circumstances (save where there has been relevant impediment by the Company) shall the Sub-Contractor's entitlement to relief pursuant to this clause exceed the relief to which

the Company is properly entitled under the Main Contract arising out of the same relevant circumstances.

40. If following the receipt of such notice as referred to in clause 37, the Company decides that the cause of the matter referred to in the notice will not entitle the Company to seek an extension of time or loss and expense under the Main Contract, then to the extent only that the cause of the matter referred to in the notice is an impediment to the progress of the Sub-Contract Works which was created by the Company, then the Company shall grant to the Sub-Contractor such extension to the Period for Completion as may be required as a direct consequence of any such impediment.

41. For the avoidance of doubt, in the event that the Sub-Contractor fails to give notice in accordance with clause 37, he shall have waived any right (whether under this Sub-Contract and/or at common law, in equity and/or pursuant to statute) to any entitlement to an extension to the Period for Completion and/or to recovery of any Sub-Contractor's additional costs / direct loss and expense which might otherwise have arisen in accordance with these terms. This is the case notwithstanding the existence of any delay or any impediment as may have been caused by the Company.

42. The Sub-Contractor shall indemnify the Company against all costs, losses, expenses, damages, claims and demands incurred by the Company or to which the Company may become liable as a result of any failure by the Sub-Contractor to complete the Sub-Contract Works within the Period for Completion including, without prejudice to the generality of the foregoing, all damages, costs, losses, payments and charges which may, in the reasonable opinion of the Company, be incurred under the Main Contract.

F: COMPLETION & DEFECTS

43. The Sub-Contractor shall notify the Company in writing of the date when in its opinion the Sub-Contract works are complete. Unless the Company dissents within 90 days of receipt of the Sub-Contractor's notice, the Sub Contract Works shall be deemed to be substantially complete on the date so notified. In the event of the Company having dissented to practical completion, the Company shall thereafter notify the Sub-Contractor of practical completion as soon as it is satisfied that this has been achieved. In the event that practical completion of the Sub-Contract Works is not confirmed by either party by the completion date under the Main Contract, then practical completion shall be deemed to take place on the Main Contract completion date. This is the case irrespective of whether the Sub-Contractor has been notified of completion under the Main Contract.

44. For the avoidance of doubt, to the extent that the Sub-Contract Works require commissioning and/or a handover pack and/or operation & maintenance manuals, they will remain incomplete until commissioning and/or handover has been completed and all and any relevant commissioning and/or hand over information and/or operation & maintenance manuals and/or other relevant documentation has been provided as required by the Company and so as to satisfy the Company's obligations under the Main Contract.

45. The Company shall notify the Sub-Contractor of any defects, shrinkages or other material defaults that appear in the Sub-Contract Works during the rectification/defects liability period of the Main Contract Works and the Sub-Contractor shall (at the Sub-Contractor's expense) make good such defects at its own cost and to the Company's satisfaction within 7 days (or 24 hours in the case of an emergency or other such reasonable period as instructed by the Company) from notification.

46. The Sub-Contractor shall indemnify the Company against all costs, losses, expenses, damages, claims and demands incurred by the Company as a result of any defects in the Sub-Contract Works, and/or any such matters incurred as result of any unreasonable delay on the Sub-Contractor's part in rectifying the same.

G: PAYMENT

47. Where it is stated in the Order that the Period for Completion is less than 45 working days the Sub-Contractor shall not be entitled to receive any stage or interim payments and any such stage or interim payments shall be dealt with entirely at the Company's discretion. Thereafter the final account procedure stated in clause 60 shall apply.

48. In the event of the Company failing to pay any sum due to the Sub-Contractor by its final date for payment, the Company shall pay to the Sub-Contractor interest on such overdue sum at the rate of 2% above the base rate of the Bank of England at the final date for payment. Such interest shall accrue on a daily basis from the final date for payment until actual payment of the overdue amount, whether before or after judgment and the Company shall pay the interest together with the overdue amount.

49. Notwithstanding any other term of the Sub-Contract, if the Sub-Contractor shall at any time be in breach of its obligations to provide any parent company guarantee, collateral warranty and/or bond, the Company shall not be liable to make any further payment to the Sub-Contractor until such document or documents have been provided and such obligations have been satisfied.

50. The Sub-Contractor shall not assign, transfer, charge, Sub-Contract or deal in any other manner with all or any of its rights or obligations under the Sub-Contract without the Company's prior written consent.

INTERIM PAYMENTS:

51. It is a condition precedent that the Sub-Contractor shall make its applications for payment not later than 7 days before each applicable Payment Due Date. If an application is made late it shall not be valid and there will be no entitlement to an interim payment further to that application. In that event the Sub-Contractor may reapply for payment in accordance with any later Payment Due Date and these conditions.

52. Each application for payment shall set out full detail of the sum that the Sub-Contractor considers to be due to it and the basis upon which it is calculated by reference to:

52.1 the value of work properly carried out by the Sub-Contractor and/or reasonably forecasted to be carried out prior to the relevant Payment Due Date, determined in accordance with the rates and prices specified in the Sub-Contract or by reference to the Sub-Contract Sum if there are no rates and prices; and

52.2 the valuation of any Variation under clause 30; less

52.3 the amount the Company is entitled to deduct and retain in respect of retention (calculated in accordance with clause 55) and any amount previously paid.

53. The Sub-Contractor's applications for payment shall become eligible for payment within 35 days of the relevant Payment Due Date.

54. The final date for payment of the Sub-Contractor's applications shall be 90 days after the Sub-Contractor's applications become eligible for payment.

55. Unless stated otherwise in the Order, the Company may deduct and retain a retention which shall be:

- (a) 5% where the Sub-Contract Works have not reached practical completion; and
- (b) 2.5% where the Sub-Contract Works have reached practical completion.

56. The Company shall be under no fiduciary obligation to the Sub-Contractor or any third party with respect to the retention and under no obligation to set aside in a separate bank account any amount representing the retention. The Company 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.

57. No earlier than on practical completion of the Sub-Contract works (or such other period as may be identified in the Order) the Sub-Contractor may make a written request for release of one half of the retention within its application(s) for payment.

58. The Company shall pay the amount stated in the application for payment by the final date for payment unless it gives a Pay Less Notice in accordance with clause 59.

59. If the Company intends to pay less than the sum set out in the application for payment it shall no later than 1 day before the final date for payment give to the Sub-Contractor notice of that intention, specifying the sum that the Company considers due at the date the notice is served and the basis upon which it is calculated (a "Pay Less Notice"). To the extent that the Pay Less Notice notifies a sum due by any party to the other, that party shall pay that notified sum to the other party by the final date for payment.

FINAL ACCOUNT:

60. Within 2 months of the date of completion of the Sub-Contract Works the Sub-Contractor shall submit an account ("the Final Application") representing the total value of the Sub-Contract Works carried out by the Sub-Contractor and calculated in accordance with the Sub-Contract for ascertainment of the value of the Sub-Contract Works by the Company. The Company shall notify the Sub-Contractor of its ascertainment of the value of the Sub-Contract Works ("the Final Account") within 6 months of receipt of the Sub-Contractor's Final Application.

61. The Sub-Contractor's Final Application shall contain such details as the Company may reasonably require in order to properly ascertain the value of the Sub-Contract Works and calculate the final payment.

62. It is a condition precedent that the Sub-Contractor's Final Application shall deal only with the Sub-Contract Works stated in the Order (subject to any Variation in accordance with the Sub-Contract) and shall quote the Company's Order number. To the extent that the Company may have issued multiple orders to the Sub-Contractor separate Final Applications would be required. For the avoidance of doubt if the Final Application does not comply with this clause

it shall not be valid and the Company may assess the final account as though no valid Final Application had been made.

63. If the Sub-Contractor fails to submit its Final Application within 2 months of the date of completion of the Sub-Contract Works the Company may within 6 months of the date of completion of the Sub-Contract Works value the Sub-Contract Works from the information then in its possession and notify such valuation to the Sub-Contractor which shall take effect as the Final Account.

64. If the Sub-Contractor does not dissent from the Company's Final Account within 1 month of its submission to the Sub-Contractor the Company's Final Account shall have effect in any proceedings under or arising out of or in connection with the Sub-Contract as conclusive evidence that any necessary effect has been given to all the terms of this agreement which require an amount to be added to or subtracted from the Sub-Contract Sum and that all and only such extensions of the Period for Completion as are due to the Sub-Contractor have been given.

65. Any interim payments paid or due to be paid to the Sub-Contractor by the Company under clause 58, or otherwise, shall be deducted from the Final Account and any balance shall be the final payment due to the Sub-Contractor from the Company or the final payment due to the Company from the Sub-Contractor, as may be appropriate.

66. No earlier than 12 months after the completion of the Sub-Contract Works (or other such period as may be identified in the Order) and subject to the agreement of the Company that any defects in the Sub-Contract Works have been completed to their satisfaction and in accordance with clause 10, the Sub-Contractor may make a written request for release of the second half of the retention. The due and final dates for payment of such amount shall be the same as for the Final Account.

67. The due date for payment of the Final Account shall be 12 months after practical completion of the Sub-Contract Works and the final date for payment for such sum shall be 90 days thereafter. Clause 59 shall apply to such payment, save that references to application for payment shall be to the Sub-Contractor's Final Application. The Company may, at its discretion, release the Final Account monies (including any retention) earlier.

68. Provided that the Sub-Contractor has completed all its obligations under the Sub-Contract and there are no outstanding defects in the Sub-Contract Works, the Company shall not be entitled to retain any retention after the final date for payment of the Final Account.

DISCRETIONARY ASSESSMENT:

69. Notwithstanding any other provision of the Sub-Contract, the Company may at any time whatsoever (including without limitation between Payment Due Dates) make an assessment of the aggregate of the value of all work properly performed and all other sums properly incurred and/or owing in relation to the Sub-Contract Works up to any selected assessment date, and otherwise calculated in accordance with the Sub-Contract (the "Assessment"). To the extent that any Assessment shows that a sum is due and owing to the Company, such difference shall be a debt due and payable by the Sub-Contractor within 7 days, without any right of set-off and/or deduction.

H: INJURY DAMAGE AND INSURANCE

70. Plant, tools, equipment or other property belonging to or provided by or on behalf of the Sub-Contractor, his servants or agents and any materials which are not property on site for incorporation into the Sub-Contract works shall be at the sole risk of the Sub-Contractor and any loss or damage to the same shall be the liability of the Sub-Contractor save where the terms of clause 72 below applies.

71. The Sub-Contractor shall adequately insure against risks of loss or damage to the Sub-Contract Works, any related temporary works not intended for incorporation into the Sub-Contract Works, materials, goods or plant for the full re-instatement value of the Sub-Contract Works including the physical loss or damage to the works executed and site materials, the removal of debris and shoring and propping of the works which results from physical loss or damage and professional fees.

72. The exception to the responsibility under clause 70 relates to loss or damage to the Sub-Contract Works and materials for incorporation therein only, insofar as loss of or damage caused by fire, storm, tempest, lightning, flood, escape of water, earthquake, aircraft or anything dropped therefrom, aerial objects, riot, civil commotion, is concerned, where, (policy excesses excepted) the Sub-Contractor will be granted full access to the insurances taken out by either the Employer under the main contract or the Company up until completion of the Sub-Contract Works.

73. If specified within the Sub-Contract Documents, the Employer's and/or the Company's responsibility to insure the Sub-Contract Works is extended to provide full access to the Company's All Risks insurances specified in any project specific insurance, the details of which are available on request.

74. Unless indicated otherwise in the Sub-Contract or the Main Contract, the Sub-Contractor is required to have and maintain insurance cover as follows:

74.1 Public Liability - £2,000,000 for each and every occurrence or series of occurrences arising from one event;

74.2 Employers Liability - £2,000,000 for each and every occurrence or series of occurrences arising from one event;

74.3 All risks – for the full re-instatement value as described in clause 71 above; and

74.4 If the Sub-Contractor has any design responsibility under the Sub-Contract, Professional Indemnity to cover any design responsibilities - £5,000,000.

75. When required to do so, the Sub-Contractor shall provide such evidence as the Company may reasonably require that the insurances referred to in this section H are being maintained. If the Sub-Contractor is unable to provide the evidence that the Company reasonably requires that such insurances are being maintained the Company may itself take out any such insurances and set off against any payment otherwise due to the Sub-Contractor or deduct from any payment otherwise due to the Sub-Contractor or otherwise recover from the Sub-Contractor the premiums for such insurance.

I: INDEMNITY & SET OFF

76. The Sub-Contractor shall be responsible for, and shall indemnify and keep indemnified the Company in full and on demand from and against any and all costs, expenses, damages, liabilities, losses, claims, demands and proceedings resulting from any failure or default by the Sub-Contractor or any of its servants or agents in performing its obligations under the Sub-Contract, including, without prejudice to the foregoing and without limitation:

76.1 all damages, costs, losses, payments and charges which may, in the reasonable opinion of the Company, be incurred under the Main Contract, including without limitation as a result of any failure by the Sub-Contractor to complete the Sub-Contract Works within the Period for Completion;

76.2 any costs, losses, expenses, damages, claims and demands incurred as a result of any defects in the Sub-Contract Works;

76.3 all costs, losses, expenses, damages, claims and demands incurred (or any increased preliminary and/or other overhead costs suffered) as a result of any act, omission, default, breach of statutory duty or otherwise on the part of the Sub-Contractor or any of its servants or agents;

76.4 any loss or damage to the Sub-Contract Works and/or materials goods or plant;

76.5 all liabilities (including without limitation any tax liability), direct, indirect and consequential losses, damages, claims, proceedings and legal costs, judgments and costs (including without limitation costs of enforcement) and expenses which the Company incurs or suffers directly or indirectly in any way whatsoever as a result of any breach of clause 18 (save that for the avoidance of doubt, for the purposes of clause 18 only, the indemnity shall not apply in the event of the Company's own criminal liability);

76.6 all costs, losses and expenses the Company may incur as a result of any breach by the Sub-Contractor of clause 36; and/or

76.7 Any claim howsoever arising out of or in connection with the Sub-Contract Works and/or defects any Goods, initiated by:

76.7.1 any person or corporation whomsoever including the Company in respect of injuries to or the death of any person or in respect of damage to property including (without limitation) the Main Contract Works and the Sub-Contract Works not caused by the negligence of the Company and to the extent that the claim is attributable to the acts or omissions of the Sub-Contractor, its employees, agents or subcontractors; or

76.7.2 an employee, servant and/or agent of the Sub-Contractor in respect of personal injury arising out of or in the course of his, her or its employment or other engagement.

76.8 any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of any Goods, to the extent that the claim is attributable to the acts or omissions of the Sub-Contractor, its employees, agents or subcontractors;

76.9 any claim made against the Company by a third party arising out of or in connection with the supply of any Goods, to the extent that such claim arises out of the breach, negligent

performance or failure or delay in performance of the Contract by the Sub-Contractor, its employees, agents or subcontractors.

76.10 This clause 76 shall survive termination of the Sub-Contract.

77. The Company may at any time set-off any liability of the Sub-Contractor to the Company (or to any other company within the Company's corporate group) against any liability of the Company to the Sub-Contractor, whether any such liability is present or future, liquidated or unliquidated, and whether or not any such liability arises under the Sub-Contract; another contract between the Company and the Sub-Contractor; or a contract between the Sub-Contractor and another company within the Company's corporate group. Any exercise by the Company of its rights under this clause 76.8 shall not limit or affect any other rights or remedies available to it under the Sub-Contract or otherwise.

78. The Company's rights of deduction or set-off set out at clause 76.8 shall be in addition to all common law rights of set-off or deduction and any other rights, remedies, actions, claims or demands which the Company may have against the Sub-Contractor and shall not affect the Company's right to recover any further sums due to it under this agreement or generally.

J: TERMINATION

79. Without affecting any other right or remedy available to it, the Company shall be entitled by written notice to the Sub-Contractor to terminate the Sub-Contractor's employment under the Sub-Contract with immediate effect:

79.1 at any time and for any reason whatsoever within the Company's entire discretion;

79.2 if the Sub-Contractor at any time is Insolvent;

79.3 if, in the reasonable opinion of the Company, the Sub-Contractor has acted in breach of the Bribery Act 2010; and/or

79.4 if, in the reasonable opinion of the Company, the Sub-Contractor has committed a breach of contract which is of a fundamental or repudiatory nature.

80. Where the Sub-Contract Works exclusively involve the supply of Goods the Company may terminate the Sub-Contract in whole or in part at any time before delivery with immediate effect by giving the Sub-Contractor written notice, whereupon the Sub-Contractor shall discontinue all work on the Sub-Contract. The Company shall pay the Sub-Contractor fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

81. If the Sub-Contractor at any time is in breach of its obligations under the Sub-Contract (which breach the Sub-Contractor has failed to rectify within 7 days of a written warning from the Company specifying the breach and requiring that it be remedied within that period) then the Company may on, or within 21 days from, the expiry of the specified notice period by a further notice to the Sub-Contractor either (at the Company's option and absolute discretion):

81.1 terminate the Sub-Contractor's employment under the Sub-Contract; or

82. Supplement the Sub-Contractor's labour for the Sub-Contract Works by itself or by third parties.

83. For the avoidance of doubt, but without limitation, where the Sub-Contractor:

83.1 Fails to proceed regularly and diligently with all or any part of the Sub-Contract Works;

83.2 fails to comply with any programme or any amendments or revisions to such programme or any written instruction or any other instructions or requests from the Company, whether written or unwritten;

83.3 Fails to provide and maintain sufficient or adequate labour on site;

83.4 wrongfully suspends the Sub-Contract Works or any part thereof;

83.5 Causes or fails to prevent any loss or damage to all or any part of the Sub-Contract Works or the Main Contract Works as a result of any act, omission or default on the part of the Sub-Contractor and/or its employees or agents;

83.6 fails to comply with an instruction requiring the removal of work, materials or goods which are defective or otherwise are not in accordance with the Sub-Contract;

83.7 fails to proceed with the rectification of any defects arising during the execution of the Sub-Contract Works or the defects liability period set out at clause 44 with reasonable diligence;

83.8 fails to provide all and any available commissioning information and/or where possible to produce commissioning certificates relating to the Sub-Contract Works on request;

84. Fails to comply with any duties or obligations in respect of health and safety legislation, regulation and/or codes of practice;

85. sub-contracts the whole or any part of the Sub-Contract Works without the Company's prior written approval and consent; and/or

85.1 commits any other material breach of the Sub-Contract;

then in any such event and without prejudice to any other rights and remedies the Contractor may possess, the Company may (at its absolute discretion) elect to terminate or supplement labour in accordance with clause 81.

86. In the event that the Sub-Contractor's labour is supplemented pursuant to this clause 81, then the Company may thereafter terminate the Sub-Contractor's employment under the Sub-Contract by notice with immediate effect in the event of the repetition whatsoever of any specified default.

87. If the Company's employment under the Main Contract is determined for any reason the Sub-Contractor's employment under the Sub-Contract shall thereupon also determine with immediate effect.

88. In the event of termination prior to completion of the Sub-Contract Works for any reason the Sub-Contractor shall immediately leave the site. Upon such termination the Sub-Contractor shall also (save as otherwise provided for in clause 89) remove from the site of the Works all its temporary works, plant, tools, goods and materials not intended for incorporation into the Sub-Contract Works save for any items in which property has passed to the Company under these terms and conditions.

89. On termination of the Sub-Contractor's employment under clauses **Error! Reference source not found.**, 81 or 86 the Company may take immediate possession of all goods and materials, Sub-Contractor's equipment and other things whatsoever brought on to the site by the Sub-Contractor and may use them for the purpose of carrying out, completing and maintaining the Sub-Contract Works and/or may, if it thinks fit, sell all or any of them and apply the proceeds in or towards the satisfaction of monies otherwise due to the Company from the Sub-Contractor.

90. If the Employer becomes Insolvent then no further sums shall become due to the Sub-Contractor after the date of such insolvency, and the Company shall not be required to make any further payment to the Sub-Contractor whatsoever.

91. If the Company's employment under the Main Contract is terminated for any reason other than in consequence of any error, omission, negligence, default or breach of contract on the part of the Sub-Contractor, its servants or agents, or any party involved in the supply chain to the Sub-Contractor or their respective servants or agents, the Sub-Contractor shall be entitled to be paid the value of the Sub-Contract Works properly carried out and the reasonable cost of removal from the site, less sums already paid. The Sub-Contractor shall not be entitled to loss of profit.

92. In the event of termination in accordance with clauses **Error! Reference source not found.**, 81 or 86 or owing to a termination of the Main Contract in consequence of any error, omission, negligence, default or breach of contract on the part of the Sub-Contractor, its servants or agents, or any party involved in the supply chain to the Sub-Contractor or their respective servants or agents; the Company shall be entitled to recover from the Sub-Contractor the amount of any resultant loss, damage and/or expense incurred by the Company which it would not have incurred had the Sub-Contract been duly performed in full.

93. Upon determination of the Sub-Contractor's employment for any reason, and notwithstanding any other provision of these Sub-Contract Terms and Conditions:

93.1 The Sub-Contractor shall not be entitled to receive any further payments until the Company or an alternative contractor has completed the remainder of the Main Contract Works; and

93.2 Save where clause 91 applies, the Company shall be entitled to set-off and/or recover from the Sub-Contractor all costs, losses, damages and expenses incurred or which have or may in the opinion of the Company be incurred by the Company by reason of the determination of the Sub-Contractor's employment under the Sub-Contract including (without limitation) the costs incurred in completing the remainder of the Sub-Contract Works.

94. For the avoidance of doubt the Sub-Contractor shall not be entitled to loss of profit or to any indirect and/or consequential losses whatsoever resulting from any termination of the Sub-Contract for any reason.

95. Within 3 months of the Company or an alternative contractor completing any remaining Main Contract Works or within 3 months of the total cost of such works having been agreed between the Company and the employer under the Main Contract (whichever is the later) the Company may (or upon receipt of a written request from the Sub-Contractor will) provide an

account to the Sub-Contractor identifying any balance owing to either the Company or the Sub-Contractor. Such balance shall become due 35 days after submission of the Company's account to the Sub-Contractor, and the final date for payment for such sum shall be 90 days thereafter.

96. The rights and remedies set out in this section J shall be in addition to any other rights, remedies, actions, claims or demands which the Company may have against the Sub-Contractor and shall not affect the Company's right to recover any further sums due to it under the Sub-Contract or generally.

K: CONFIDENTIALITY AND NON DISCLOSURE/SOLICITATION

97. The Sub-Contractor shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Company or the Employer, except as permitted by clause 98.

98. The Sub-Contractor may disclose confidential information as defined in clause 97:

98.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Sub Contract Works, provided always that the Sub-Contractor ensures that such parties also comply with section K of the Sub-Contract; and

98.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

99. For the purposes of this section K references to a Restricted Party shall mean the Employer, or any other client of the Company who is in receipt of any services which are relevant to the Main Contract during the currency of the Sub Contract Works.

100. In order to protect the legitimate business interests of the Company, the Sub-Contractor covenants with Company that it shall not, within 12 months of termination or completion of the Sub-Contract Works (as may be appropriate):

100.1 solicit or entice away (or attempt to solicit or entice away) from the Company the business or custom of any Restricted Party; or

100.2 be involved with the provision of goods or services to any Restricted Party.

101. In order to protect the legitimate business interests of the Company, the Sub-Contractor covenants with Company that it shall not at any time after termination of this agreement, say anything which may be harmful to the reputation of the Company, whether defamatory or otherwise.

102. The Sub-Contractor acknowledges that the Company would incur significant costs, fees and expenses by relying on this section K that where the Sub-Contractor is in breach of any of its obligations under this section K it must (without prejudice to any other remedies the Company may have) indemnify and keep indemnified the Company for an amount equal to all the costs, fees and expenses which have been or will be incurred by the Company arising out of or in connection with that breach.

103. This section K shall survive termination of the Sub-Contract for any reason.

BOILERPLATE

104. The Company's waiver of any right or remedy under the Sub-Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. The Company's failure to exercise or delay in exercising any right or remedy provided under the Sub-Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the future 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 by the Company.

105. A person who is not a party to the Sub-Contract shall not have any rights under or in connection with it.

106. A notice or other document may be served by any effective means and (without limitation) shall be treated as effectively served if it is addressed, pre-paid and delivered by post:

106.1 to the addressee's last known principal residence or if (s)he is or has been carrying on a trade, profession or business, his/her last known principal business address; or

106.2 where the addressee is a body corporate, to the body's registered or principal office.

This clause 106 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

107. The Sub-Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

DISPUTES

108. If any dispute or difference shall arise between the parties at any time in connection with this agreement then the parties shall use reasonable endeavours to resolve the same by negotiation and/or by mediation.

109. If any dispute or difference shall arise between the parties at any time in connection with this agreement then either party may also refer such dispute or difference to Adjudication and the Scheme for Construction Contracts (England and Wales) Regulations 1998 Part 1 (as amended) shall apply, but amended to insert additional paragraphs as follows:

109.1 "1 (4) The notice of adjudication shall be accompanied by the referring party's intended referral notice and all documents which are to be included in the referring party's referral notice."

109.2 "7A Subject to any agreement to the contrary between the parties, the responding party shall be permitted a period of at least 14 days from the date of the referral notice to provide its written response to the same."

110. The adjudicator nominating body shall be the Royal Institute of Chartered Surveyors.