

Definitions:

In these Conditions the following expressions have the following meaning:

Client: -	The person who has engaged SME for the execution of the Main Contract Works.
Commencement Date: -	The date stated as such in the Order.
Conditions: -	These standard terms and conditions.
Confidential Information: -	Any information relating to SME's or the Client's (or their respective associated companies') businesses which is not in the public domain or already in the possession of the Sub-Contractor.
Completion Date: -	The date stated as such in the Order or if no such date is stated, the date agreed between the Sub-Contractor and the SME Project Manager.
Intellectual Property Rights	All patents, know-how, copyrights, trade or service marks, design rights, and all other intellectual property rights of any kind.
Main Contract: -	The contract between the Client and SME in relation to the Main Contract Works.
Main Contract Valuation Date: -	The date of the main valuation carried out on site and typically set by the Client.
Main Contract Works: -	The works carried out at the Site by SME under the Main Contract.
SME: -	SME Managed Services Limited or any affiliate which has issued the Order.
SME Project Manager: -	The person notified from time to time by SME to the Sub-Contractor as the SME representative managing the Sub-Contract.
Order: -	The order issued by SME setting out the particulars of the Works required to be performed by the Sub-Contractor and all other terms specific to the Works, and includes all documents referred to in it.
Site: -	The actual place or places where the Works are to be performed by the Sub-Contractor.
Sub-Contract: -	The agreement between SME and the Sub-Contractor, comprising these Conditions and the Order.
Sub-Contractor: -	The person to whom the Order is addressed.
Works: -	This works to be performed by the Sub-Contractor in accordance with the particulars set out in the Order (in the term includes any Bespoke Works referred to in clause 11).
Working Day: -	A day other than a Saturday or Sunday or public holiday in the country where the Works are performed.

1. General

- 1.1. The headings to these Conditions of this Sub-Contract are for convenience only and will not affect its construction or interpretation.
- 1.2. In these Conditions: -
 - 1.2.1. words denoting any one gender include all genders and vice versa and the singular includes the plural and vice versa;
 - 1.2.2. references to persons include individuals, partnerships, bodies corporate and unincorporated associations;
 - 1.2.3. a reference to a clause is a reference to a clause or sub-clause of these Conditions;
 - 1.2.4. reference to statutes or statutory provisions shall be construed to include references to those statutes or provisions as amended or re-enacted from time to time; and
 - 1.2.5. the words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words.
- 1.3. In the event of any conflict whatsoever between these Conditions and any part(s) of the Order and associated documentation, the terms of these Conditions shall prevail.

- 1.4. Following the issuing of an Order the Sub-Contract shall be formed, and a binding contract shall exist to supply the Works, on the earlier of the Sub-Contractor indicating its acceptance of the Order (e.g. by a written or oral order confirmation) or commencing performance of the Order. For the avoidance of doubt unless otherwise agreed in writing SME does business

only on these Conditions and any Sub-Contractor who makes offers to SME or accepts offers made or orders placed by SME (whether expressly or by performance) shall be deemed to accept these Conditions to the exclusion of all others including the Sub-Contractor's own business terms.

2. Appointment

- 2.1. Subject to and in accordance with the terms of the Sub-Contract, SME appoints the Sub-Contractor and the Sub-Contractor accepts the appointment as an independent contractor and agrees to provide the Works at the Site. SME reserves the right to appoint other sub-contractors in respect of other and similar works.

3. Main Contract

- 3.1. The Sub-Contractor shall be deemed to have full knowledge and understanding of the contents and requirements of the Main Contract.
- 3.2. The terms and conditions of the Main Contract are deemed to be incorporated into and form part of the Sub-Contract. In the event of any conflict the provisions of the Sub-Contract shall prevail.
- 3.3. The Sub-Contractor shall perform the Works so that no act, error or omission on its part shall cause or contribute to any breach by SME of the Main Contract and the Sub-Contractor shall carry out the Works in accordance with all the requirements (including all timescales, specifications and service levels) of the Main Contract and shall (except to the extent provided otherwise in the Sub-Contract) assume all of SME's obligations and liabilities under the Main Contract in relation to the Works.
- 3.4. The Sub-Contractor hereby acknowledges that a default, error, omission or breach of the Sub-Contract by the Sub-Contractor may result in liability for SME to third parties for damages, penalties, costs and expenses (including under the Main Contract and other contracts made by SME in connection therewith). All such liability is hereby agreed to be within the contemplation of the Parties as recoverable losses of SME.

4. Price & Payment

- 4.1. The total price to be paid for the Works shall be the sum stated on the Order. Unless otherwise stated in the Order, the price will be: -
 - 4.1.1. a lump sum price for the entire Works;
 - 4.1.2. fully fixed for the duration of the Sub-Contract;
 - 4.1.3. inclusive of all charges for packaging (and the return thereof), packing, shipping, carriage, insurance, delivery, off-loading to the Site, installation, testing and/or commissioning, production of operating and maintenance manuals (and associated documents) and any duties, imposts or levies other than tax;
 - 4.1.4. subject only to adjustment in respect of changes to the Works in accordance with clause 10; and
 - 4.1.5. exclusive of any applicable tax (which shall be payable by SME subject to receipt of a tax invoice).
- 4.2. The Sub-Contractor is deemed to have considered the details of the Order and inspected the Site and to have satisfied itself regarding any circumstances, conditions or restrictions which may affect the Works and failure to fully consider instructions or information in the Order or to inspect the Site or take due note of prevailing conditions will in no way permit the Sub-Contractor to claim for any additional costs or expenses whatsoever.
- 4.3. The Sub-Contractor will be required to prepare and submit, within seven days of a request by SME, a fully detailed and quantified schedule of rates summing to the sum stated on the Order, for agreement by SME. On acceptance by SME the quantities will be deleted and the rates used as the basis for pricing any variations to the Sub-Contract, which SME may instruct.
- 4.4. On or before the date in each month agreed between SME and the Sub-Contractor (the "Agreed Date"), or the 28th of the month if no date is agreed, the Sub-Contractor shall submit to SME a signed application for payment (the "Application") together with such documentation as SME may require for the purpose of verifying the amount stated on the Application. The Application must record the percentage of completion of each element of work. The Application must also specify the value of materials and goods properly delivered to Site for incorporation into the Works and separate categories for variations, dayworks and any other items. Subject to the written permission of SME's Project Manager, the Sub-Contractor may, in lieu of issuing the Application, issue a

- 4.5. valid tax invoice which for the purposes of this clause 4 is included within the meaning of the Application.
- 4.6. The due date (the "Due Date") for payment of an Application shall be thirty one days following receipt of the Application by SME.
- 4.7. SME shall issue a payment notice (the "Payment Notice") to the Sub-Contractor no later than five days after the Due Date specifying the amount (if any) of the payment proposed to be made and the basis upon which the payment has been calculated.
- 4.8. In the event SME fail to issue the Payment Notice within the time specified in clause 4.6 the Sub-contractor shall notify SME in writing of the failure not later than 7 days after the Due Date.
- 4.9. Upon receipt of the Payment Notice, or in the event SME fail to issue a Payment Notice, following the last day such a Payment Notice could have been issued by SME, the Sub-Contractor shall issue to SME a valid tax invoice for the amount stated in the Payment Notice. If the Sub-Contractor has issued a tax invoice as the Application, then where SME's Payment Notice is of a different value to the Application, the Sub-Contractor must either credit the original tax invoice and issue a new tax invoice which corresponds with the value shown on SME's Payment Notice or issue a tax credit note or additional tax invoice for the difference.
- 4.10. The final date for payment (the "Final Date for Payment") shall be 14 days after the Due Date or 14 days after receipt of the valid invoice issued pursuant to Clause 4.8 which ever is the later
- 4.11. For the avoidance of doubt SME shall not be obliged to make payment in the absence of a valid tax invoice for the value stated in the Payment Notice referred to in Clause 4.8 and the Sub-Contractor shall not be entitled to exercise its rights under Clauses 4.17 or 4.20 unless and until such a valid tax invoice has been received by SME.
- 4.12. Not prior to the issue of the Payment Notice and not later than the Final Date for Payment SME may give the Sub-Contractor written notice (the "Pay Less Notice") of SME's intention to pay less than the amount specified in the Payment Notice and the Pay Less Notice shall state the sum SME consider to be due on the date the Pay Less Notice was issued and the basis upon which the sum was calculated.
- 4.13. Where applicable, the provision of accurate test records, as manufactured drawings and full operating and maintenance manuals shall be a condition precedent to final payment. SME reserves the right to withhold payment of such sums as it deems necessary to obtain these documents from other commercial organisations.
- 4.14. Notwithstanding anything else stated herein if any party in the contractual chain, for which the Works form a part, becomes insolvent then SME will not be required to make any further payments to the Sub-Contractor until such time and to such extent as SME receives further payment from the Client in respect of the Works.
- 4.15. Notwithstanding any right entitling the Sub-Contractor to payment SME shall be entitled to deduct from or set off against any money (including retention monies) due to the Sub-Contractor, whether under the Sub-Contract or any other contract or order or arrangement between the parties, any sum or sums for which the Sub-Contractor is liable to SME under the Sub-Contract or any other contract or order or arrangement between the parties provided that a Pay Less Notice is served by SME five days prior to the Final Date For Payment as defined in accordance with clause 4.11 above.
- 4.16. Where appropriate retention shall be deducted at the agreed rate or at the rate included within the Main Contract and shall be released to the Sub-Contractor at the end of the defect liability period provided that the Sub-Contractor has rectified all known defects.
- 4.17. The final payment shall evidence full and final settlement of all sums due to the Sub-Contractor in respect of the Sub-Contract but shall not relieve the Sub-Contractor of any of his remaining responsibilities or liabilities under the Sub-Contract.
- 4.18. In the event that SME fail to pay the amount certified under this clause 4 by the Final date for Payment and such failure shall continue for seven days after the Sub-Contractor has given to SME written notice of his intention to suspend performance of his obligations under the Sub-Contract specifying the grounds on which it is intended to suspend performance then the Sub-Contractor may suspend such performance of his obligations under the Sub-Contract until payment is made in full.
- 4.19. Each invoice and Application issued under this Sub-Contract must be supplied in the format required by SME and will in any event contain the following information:
 - 4.19.1. the number of the Order;
 - 4.19.2. the address of the Site to which the Works relate;
 - 4.19.3. the period to which the invoice or Application relates;
 - 4.19.4. a breakdown of the Work completed.
- 4.20. The Sub-Contractor must issue his final Application or invoice within 30 days of the Works being completed. Any invoice received after 60 days of the Works being completed will not be accepted by SME.

- 4.21. If SME fails to make any payment when due, the Sub-Contractor shall be entitled to be paid compensation and charge simple interest on the overdue amount at a rate of 3% above the sterling base rate from time to time of Barclays Bank plc which shall accrue from day to day (both before and after any judgment) from the due date until payment in full is received by the Sub-Contractor.
- 4.22. In the event of the Sub-Contractor's insolvency then SME shall not be obliged to pay any sum due to the Sub-Contractor and SME may employ others to complete the works and perform the Sub-Contractor's obligations under this contract. Within 3 months of completion of the works and performance of the Sub-Contractor's obligations SME shall prepare an account of the costs, expenses and losses suffered as a consequence of the Sub-Contractor's insolvency and shall be entitled to deduct.

the same from any sums due to the Sub-Contractor under the Sub-Contract. SME shall notify the Sub-Contractor of the sum due if any by way of a Payment Notice issued not later than 3 months following completion of the Works

5. The Sub-Contractor's General Obligations

- 5.1. The Sub-Contractor shall provide the Works: -
- 5.1.1. with reasonable skill, care and diligence;
 - 5.1.2. in accordance with the Order and other terms of the Sub-Contract;
 - 5.1.3. in accordance with all instructions issued by SME; and
 - 5.1.4. in a timely and professional manner.
- 5.2. The Sub-Contractor shall use reasonable skill, care and diligence to ensure compliance with: -
- 5.2.1. all applicable laws and regulations, Site rules, safety and security procedures notified by SME or the Client and all health, safety and hygiene regulations required by law, or which otherwise form an industry standard (including, but not limited to, any applicable safety guidance and recommendations approved or published by the Health and Safety Executive (or its successor));
 - 5.2.2. any manufacturer's guarantees or recommendations; and
 - 5.2.3. any rules and regulations issued by the Client to the SME governing the performance of the Main Contract Works at the Site.
- 5.3. The Sub-Contractor shall provide all resources necessary to carry out and complete Works.
- 5.4. The Sub-Contractor shall ensure that its employees, agents and contractors are fully aware of all of the matters referred to in clause 5.2 and shall procure compliance by its employees, agents and contractors with all such rules, procedures and requirements.
- 5.5. Without prejudice to the generality of clause 5.2.1, the Sub-Contractor shall ensure that it holds and that all of its employees, agents and contractors hold all relevant licences, permits and authorisations to allow the lawful performance of the Works at all times.
- 5.6. The Sub-Contractor shall have access only to such parts of the Site as are reasonably necessary for the purpose of providing the Works and shall ensure that its employees, agents and contractors do not enter other parts of the Site.
- 5.7. The Sub-Contractor shall without additional cost, provide upon request suitable facilities/attendance in order that SME or the Client may make detailed inspection and measurement of the Works during the Sub-Contract at all reasonable times.

6. Progress

- 6.1. The Sub-Contractor shall provide to SME a programme for the performance of the Works within 5 Working Days from the date of the Order. The programme must comply with any dates stated upon the Order and with any Main Contract programme. Such programme will not be accepted by SME until such time as SME's Project Manager confirms so in writing.
- 6.2. The Sub-Contractor shall proceed regularly and diligently with the Works in accordance with the Sub-Contract so that the Works are completed by the Completion Date and in accordance with any programme agreed for the Works (including any milestone or sectional completion dates) and in such order, manner and time that they do not delay completion of the Main Contract Works or any portion thereof by the practical completion date, or any other such dates as may be stated, so that SME shall not suffer any damage, loss or expense arising out of any failure by the Sub-Contractor to comply with his contractual obligations relating to programme, progress or completion.

- 6.3 The Sub-Contractor will maintain full co-operation with SME and other sub-contractors during the execution of the Works. The Sub-Contractor shall cause the minimum level of disruption reasonably possible in performing the Works and shall keep SME advised in good time of any significant disruption that may arise.
- 6.4 Unless the Sub-Contract specifies otherwise or SME otherwise requires, the Sub-Contractor shall submit regular progress reports (at least on a monthly basis but where requested by SME either weekly or fortnightly) to SME showing: -
- 6.4.1 Actual progress made to date;
 - 6.4.2 Comparison of progress against the agreed programme for the Works;
 - 6.4.3 Estimated value of the part of the Works completed to date;
 - 6.4.4 Outstanding issues to be resolved;
 - 6.4.5 Forecast completion date for the Works; and
 - 6.4.6 Forecast total price at completion of the Works.
- 6.5 Additionally, the Sub-Contractor will comply with any requests from SME to record and demonstrate the progress of the Works both on and off the Site as to continuously compare actual performance with the progress required to achieve the Completion Date and any programme agreed for the Works (including any milestone or sectional completion dates) and/or the Main Contract programme or any other such dates as may be stated or agreed.
- 6.6 The parties hereto shall throughout the performance of the Works meet with such frequency as is specified or as may be reasonably required by SME, in order to monitor the progress of the Works, agree the effect of variations or deal with any other matters whatsoever arising under or in connection with the Sub-Contract. The Sub-Contractor may also be required to complete a detailed site log, the format of which is subject to prior agreement by SME.
- 6.7 If and when it becomes reasonably apparent that the commencement, progress or completion of the Works is, or is likely to be delayed, the Sub-Contractor shall forthwith (no later than 3 days of becoming aware) give written notice to SME of the material circumstances including the cause or causes of the delay and the anticipated effect and length of the delay, together with an estimate of the expected delay, if any, in the completion of the Works.
- 6.8 Subject to clause 6.9 and subject to the Sub-Contractor giving notice in accordance with clause 6.7, an extension of time to the Completion Date may be granted by SME if the delay notified by the Sub-Contractor is caused by any reason which enables SME to obtain an extension of time for completion of Main Contract Works under the Main Contract or is due to SME's default or other act of prevention or cause for which SME is liable. No extension of time shall be deemed to have been granted to the Sub-Contractor until confirmed in writing by SME. Alternatively, SME may instruct the Sub-Contractor to adopt special measures to overcome the effects of this delay.
- 6.9 The Sub-Contractor shall not be entitled to any extension to the Completion Date (or any milestone or sectional completion dates contained within any programme) in respect of any variation, suspension or delay caused by default of the Sub-Contractor.
- 6.10 SME shall notify the Sub-Contractor if SME deems that the rate of progress of the Works or any part thereof is too slow to meet the Completion Date (or any milestone or sectional completion dates contained within any programme) where this is not due to circumstances for which the Sub-Contractor is entitled to an extension to the Completion Date. Following receipt of such notice the Sub-Contractor shall at its own cost take such corrective measures as are in the reasonable opinion of SME necessary or prudent to remedy the likely delay and shall demonstrate the same to the reasonable satisfaction of SME.
- 6.11 Should progress of the Works be delayed beyond the agreed Completion Date or any extension thereof, as a result of any act, omission or default of the Sub-Contractor, the amount of liquidated and ascertained damages payable to the Client and/ or any direct loss or expense suffered or incurred or likely to be suffered or incurred by SME shall be deducted from the price agreed for the Works, or otherwise recovered as an outstanding debt to SME.
- 6.12 All timescales and dates in a Sub-Contract must be met by the Sub-Contractor. Any failure to meet such timescales and dates shall be treated as a breach which cannot be remedied and shall entitle SME to terminate the Sub-Contract without affecting any other of SME's rights or remedies.

7. Measurement of Work Executed

- 7.1. The Sub-Contractor will, on request, carry out and submit for consideration such measurements and other calculations as necessary to agree any Application with SME to the satisfaction of the SME Project Manager (and where applicable SME's Client).
- 7.2. The Sub-Contractor shall give adequate written notice to SME before the covering up of any work which requires inspection and / or measurement.
- 7.3. Should the Sub-Contractor fail to give such notice, he is to uncover the work as required and reinstate and make good afterwards

all at his own expense.

- 7.4. Unless otherwise stated within the Order the Sub-Contract will not be subject to re-measure.

8. Equipment, Facilities and Resources

- 8.1. The Sub-Contractor shall, at his own expense, provide all the Sub-Contractor's equipment necessary for the proper execution of the Works and shall keep the Sub-Contractor's equipment in good repair and safe condition. SME shall not be required to provide any facilities, services, materials, equipment, tools or any other matter for the performance of the Works unless specifically set out in the Order.
- 8.2. The Sub-Contractor shall be responsible for supplying all goods which are supplied as part of the Works adequately protected to prevent accidental damage during the course of the Main Contract Works and until such time as a certificate of practical completion is issued.
- 8.3. The Sub-Contractor shall provide all resources necessary (at the Sub-Contractor's expense) to execute and complete the Works in accordance with any programme.
- 8.4. SME may at any time, upon giving reasonable notice, examine and copy those of the Sub-Contractor's books, records and accounts which relate to the provision of the Works
- 8.5. The Sub-Contractor shall, following receipt of reasonable notice from SME, allow, during normal business hours, employees and/or other representatives of SME and/or the Client to have access to anywhere reasonably necessary (including areas of work, manufacturing places, vehicles, offices) for any purpose reasonably associated with the Sub-Contract, including assessing the Sub-Contractor's quality assurance procedures and auditing the compliance of the Sub-Contractor with the requirements of the Sub-Contract.
- 8.6. Representatives of SME and/or the Client may undertake unannounced inspections of the Works being performed and interview the Sub-Contractors employees, agents and contractors on Site in order to monitor the Works.

9. Instruction

- 9.1. Any instructions, drawings, specifications or other information required to be provided to the Sub-Contractor and related to the Works will be issued in writing by SME.
- 9.2. The Sub-Contractor will promptly execute any instructions issued to him by SME within the existing agreed timeframe for the Works or such other period as may be agreed.
- 9.3. The Sub-Contractor must ensure that any instructions, drawings, specifications and any other information relating to his work received from any other source other than SME shall not be acted upon until written confirmation of instruction has been sought by the Sub-Contractor and issued by SME.
- 9.4. The Sub-Contractor will be held responsible for the consequences (including costs and delays) of any unauthorised deviation from the drawings, specification and other information issued to him by SME.
- 9.5. Instructions which will constitute a variation to the Sub-Contract shall be subject to valuation in accordance with clause 10 of this document.
- 9.6. No instruction issued by SME to the Sub Contractor shall vitiate or invalidate the Sub-Contract.

10. Variations

- 10.1. No variations or extra works of any kind are to be carried out without prior written instruction by SME. However, SME may, without invalidating this Sub-Contract, issue instructions requiring an addition to, omission from, or other change in the Works or the order or period in which they are to be carried out and may instruct the Sub-Contractor to comply with any instruction prior to any price or programme implication being agreed.
- 10.2. Within 5 Working Days of receipt of an instruction from SME, the Sub-Contractor shall advise the SME Project Manager in writing the associated cost and programme implications associated with the instruction. Should circumstances beyond the Sub-Contractor's control prevent adherence to the aforementioned timescale, then the Sub-Contractor is to submit budget costings

and indicative programme implications within five Working Days to be followed by confirmation of firm details as soon as is reasonably possible. Variations will not be admissible as a result of any error in the Order price in respect of quantities or interpretation.

- 10.3. Any instruction issued under clause 10.1 shall be valued by SME on a fair and reasonable basis using any relevant prices in the Order or any schedule of rates submitted by the Sub-Contractor which have been agreed by SME. In situations where there is no relevant prices in the Order or an agreed schedule of rates, the Sub-Contractor will be required to demonstrate that his submitted rates have been calculated in accordance with the principles of his Order price by production of cost invoices, timesheet and mark-up/ profit allowances. Any such prices will be subject to agreement by SME and/or the Client as applicable.
- 10.4. Where the Sub-Contractor considers that the nature of variation work would preclude proper measurement for valuation purposes he may, prior to commencement, make written application to SME within seven days minimum of the proposed commencement of the works, for permission to execute the works on a daywork basis. In the absence of prior agreement, it will be for SME to determine the correct method of valuation to arrive at a fair and reasonable price.
- 10.5. Where it is agreed that the work shall be carried out as dayworks it is the Sub-Contractor's responsibility to familiarise himself with the correct procedure, timescale for submission etc and to fully comply with such requirements. The rates used shall be in accordance with the current RICS definition of the applicable prime costs of dayworks and the percentage addition to prime cost will, if not detailed within the documents enclosed with or referred to in the Order, be agreed with SME in good faith.
- 10.6. Where in the opinion of the Sub-Contractor, the nature or extent of a variation instruction will result in an extension of time being required for completion of the additional works, or of the Works as a whole, the Sub-Contractor shall immediately notify SME in writing in accordance with clause 6 of this document.
- 10.7. It should be noted that a variation order/ instruction which deletes work contained within the original Order may result in the date for completion in the agreed programme being advanced.

11. Intellectual Property Rights

- 11.1. All Intellectual Property Rights in or arising out of any goods, materials, designs, drawing and specifications provided by SME in connection with the Sub-Contract shall remain at all times vested in, and the property of, SME. Where designs, products, or any developments are specifically produced or developed by the Sub-Contractor for SME ("Bespoke Works") in connection with this Sub-Contract, all Intellectual Property Rights in such Works shall be the exclusive property of SME.
- 11.2. The Sub-Contractor hereby assigns (or shall procure the assignment) to SME absolutely, with full title guarantee, all right, title and interest in any present and future Intellectual Property Rights in or arising out of any Bespoke Works for the full term of such rights and all renewals and extensions, together with all rights of action and remedies in relation to infringements thereto and hereby waives or shall procure a waiver of all moral rights in such Bespoke Works. At the request of and at no additional cost to SME, the Sub-Contractor shall promptly do all such further things and sign all documents or instruments necessary to vest all Intellectual Property Rights in or arising out of any Works in SME.
- 11.3. The Sub-Contractor shall indemnify and keep indemnified SME and its directors, officers, employees and agents from and against any and all damages (including legal fees and expenses) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation, possession or use of the Bespoke Works by SME or the Client infringes the confidentiality or other Intellectual Property Rights of the said third party.
- 11.4. The parties agree that the Bespoke Works (and all other things in which SME holds the Intellectual Property Rights pursuant to clause 10.1):
 - 11.4.1. may only be used by the Sub-Contractor as necessary to perform the Sub-Contract; and
 - 11.4.2. shall not be made available to any third party (other than the Client where required under the Main Contract) without SME's prior written consent.

12. Confidentiality

- 12.1. The Sub-Contractor shall not during or after termination of this Sub-Contract use (other than in the performance of this Sub-Contract) or disclose to any other person any Confidential Information of SME or the Client, except that any obligations contained in this clause shall not prevent any disclosure of: -
 - 12.1.1. Confidential Information which is required by law, court order or any legal or regulatory authority, which is required to comply with the rules of any relevant stock exchange or disclosure to a party's professional advisors acting in their capacity as such; or
 - 12.1.2. SME's Confidential Information where the Sub-Contractor has obtained the prior written consent of SME to such disclosure.

- 12.2. The Sub-Contractor acknowledges the importance of protecting the confidentiality of SME's and the Client's Confidential Information and shall ensure that all its employees, agents and contractors are aware of this and shall procure that they comply with confidentiality obligations equivalent to those of the Sub-Contractor in this Sub-Contract. The Sub-Contractor shall, if requested by SME, require all of its relevant employees, agents and contractors to enter into specific confidentiality agreements (which may be directly with SME, if so requested) protecting the Confidential Information of SME and the Client, in terms approved by SME and where the Sub-Contractor is a party to such agreements, shall take all steps necessary to enforce such agreements.
- 12.3. The Sub-Contractor shall not publicise or disclose the existence or content of the Sub-Contract, its relationship with SME, or SME's relationship with the Client, without the prior written agreement of SME.
- 12.4. The Sub-Contractor shall not, without the prior written approval of SME, take or authorise the taking of any photographs for use in any publicity or advertising, or publish alone or in conjunction with any other person or article, photographs or other illustrations relating to the Works, the Client or the Site, nor shall it impart to any publication, journal or newspaper or any radio or television programme any information relating to the Sub-Contract.
- 12.5. The Confidential Information of SME shall include all know-how, patents, copyrights, design rights and any other intellectual property rights arising from the execution of the Sub-Contract.
- 12.6. Any Confidential Information shall be returned to SME or deleted by the Sub-Contractor at the request of SME.

13. Non-Solicitation

- 13.1. In order to protect the value of SME's client contacts, the Sub-Contractor undertakes, in relation to any works similar or connected to the Works, during the term of this Sub-Contract and for 12 months thereafter not to directly or indirectly (including through any associated companies or other associated individuals) solicit orders from, supply, quote, tender or carry out any works whatsoever for the Client. Should the Client approach the Sub-Contractor, the Sub-Contractor will refuse any such approach and refer the Client to SME. If the Client will only deal with the Sub-Contractor, the Sub-Contractor shall pay to SME a commission of an amount equal to the amount that SME would have earned on the transaction had the supply been made through SME.

14. Liability, Insurance and Indemnity

- 14.1. The Sub-Contractor shall be liable for and shall indemnify and keep indemnified SME and its directors, officers, employees and agents from and against any and all claims, demands, proceedings, damages, losses, liabilities, costs, charges and expenses (including professional fees on a full indemnity basis) of whatever nature which are brought against or incurred or suffered by SME arising out of or in connection with the Sub-Contractor's breach of the Sub-Contract or negligence or otherwise arising out of or in connection with the Sub-Contractor's, its employees, directors, contractors or agents activities in relation to the Sub-Contract, including but not limited to claims for (i) death or personal injury, (ii) loss of or damage to property (iii) any economic loss, loss of profit, revenue, anticipated savings, data, use, contract, goodwill, opportunities, or business and (iv) any indirect or consequential loss or damage, in each case whether suffered by SME, the Client or any other third party.
- 14.2. Subject to clause 14.4, SME shall not be liable to the Sub-Contractor, or to any of the Sub-Contractor's employees, agents, or contractors, for any damages and/or compensation in respect of claims for personal injury or death suffered by any of the Sub-Contractor's employees or other staff. Subject to clause 14.3, the Sub-Contractor shall indemnify and keep indemnified SME and its directors, officers, employees, and agents from and against all claims, demands, proceedings, damages, losses, liabilities, costs, charges, expenses (including professional fees on a full indemnity basis) of whatever nature which are brought against or incurred or suffered by SME in connection with such claim.
- 14.3. The indemnities in clauses 14.1 and 14.2 shall not apply to any damages, losses, liabilities, costs, and expenses:
 - 14.3.1. to the extent caused by the negligence or wilful act or omission of SME; and
 - 14.3.2. to the extent caused by any breach or non-performance by SME of this Sub-Contract.
- 14.4. Nothing in this Sub-Contract shall exclude or restrict the liability of either party to the extent prohibited by law and in particular nothing in this Sub-Contract shall limit or exclude liability for death or personal injury caused by negligence to the extent prohibited by law, or for fraudulent misrepresentation or other fraud.
- 14.5. The Sub-Contractor shall take out and keep in force suitable Employers Liability, Contract Works, Public and Products Liability insurance and other insurance that may be required against its liabilities under the Sub-Contract and shall demonstrate the same to SME at all reasonable times. The amount for each type of insurance shall be no less than £5,000,000.00 (or an equivalent amount in the local currency where Services are ordered) unless SME agrees in writing to a lower figure. Where the Works involve design, then the Sub-Contractor shall also take out and keep in force Professional Indemnity insurance for an amount of no less

than £5,000,000 (or an equivalent amount in the local currency where Services are ordered).

- 14.6. The Sub-Contractor must, prior to commencing the Works, ensure that the current copies of his insurance Certificate(s) are held by SME.

15. Goods and Materials supplied by the Sub-Contractor

- 15.1. All goods and/or materials supplied as part of the Works shall be as specified in, and comply with the requirements of, the Order. Where standards of quality are not specified for the goods and/or materials in the Order, such goods and/or materials shall be of the best available quality suitable for the purposes for which they are intended and shall comply with the latest standards, regulations and laws (where appropriate) or where applicable the Main Contract.
- 15.2. The Sub-Contractor shall ensure that the benefit of any warranty, guarantee or other protections provided by the manufacturer or other supplier of the goods and/or materials supplied as part of the Works shall extend to SME and the Client, or shall be capable of transfer to SME or the Client.

16. Ownership, Title and Risk

- 16.1. Ownership and title in all products, goods and materials supplied under the Sub-Contract shall pass to SME on delivery.
- 16.2. Ownership and title in items issued to the Sub-Contractor on a "free issue" basis by SME shall remain with SME at all times. Risk of loss of or damage to any such items shall pass to the Sub-Contractor on delivery and shall remain at the Sub-Contractor's risk until returned to the custody of SME.

17. Site Attendance

- 17.1. If the Sub-Contractor is required to attend the Site for any activity whatsoever, it is a condition of the Sub-Contract that it and all its employees, agents and contractors have read, understood and fully comply with the SME Health and Safety Rules for Contractors (which is available upon request) prior to and during the execution of any Works on Site.
- 17.2. The Sub-Contractor is responsible for arranging access to the Site. This must be arranged by the Sub-Contractor through a SME representative at least 48 hours prior to a visit. SME will not be held responsible for any costs incurred by the Sub-Contractor for failure to arrange access. SME cannot guarantee that car parking is available on Site and no additional costs will be accepted in respect of car parking and/or any other travel related costs.

18. Supervision

- 18.1. At all times during the carrying out of the Works the Sub-Contractor shall provide all necessary supervision to ensure the proper execution of the Works and shall have a competent person in charge on the Site who shall be authorised to accept instructions and directions on behalf of the Sub-Contractor.
- 18.2. The Sub-Contractor shall provide such evidence as SME may reasonably require relating to the suitability and competence of any person employed by the Sub-Contractor in the performance of the Works. SME shall have the right to require the Sub-Contractor to provide a competent substitute for any person so employed who in SME's opinion is incompetent, negligent or otherwise unsuitable. For the avoidance of doubt, should the Sub-Contractor be unable to satisfy SME in their reasonable opinion that any person is suitable, then SME will have no alternative but to refuse entry and/or commencement of the Works and/or cease the progress of the Works. In these circumstances, SME shall not be responsible for any abortive or additional costs the Sub-Contractor may incur as a result. Furthermore, should SME incur any costs, either itself or from third parties (including the Client), then such costs will be deducted from the Sub-Contractor in accordance with clause 4.10.

19. Drawings

- 19.1. Where applicable, the Sub-Contractor will be required to provide as manufactured/ as installed drawings progressively throughout the Sub Contract, and for final submittal to meet SME and their Client's satisfaction, within one month of completion of the this Sub-Contract.
- 19.2. Unless otherwise stated within the contract documentation all drawings are to be in the approved SME format bearing the standard SME logo to allow direct submission to the Client for record information.

20. Defects Liability

- 20.1. Unless otherwise stipulated the defects liability period applicable to the Works will be 12 months from the date of practical completion for the whole of the Main Contract Works. Any defects, shrinkages or other faults in the Works, which appear before expiry of the defects liability period or any materials or workmanship not in accordance with the contract specification, or frost damage occurring before practical completion of the Main Contract Works, shall be specified in a schedule of defects. As soon as possible after receipt of such schedule, the defects, shrinkages and other faults therein specified shall be made good by the Sub-Contractor (unless SME shall otherwise instruct in writing) entirely at the Sub-Contractor's cost.

21. Bonds Warranties and Guarantees

- 21.1. Where so stated in the Sub-Contract Order or required as an obligation of the Main Contract, the Sub-Contractor shall within fourteen days of any such request by SME provide SME with a performance bond ("the Bond") executed as a deed by a surety acceptable to SME on terms acceptable to SME. If the Sub-Contractor should fail to provide the required Bond, then SME shall be entitled to withhold payment equal to the value of the Bond until the end of the defects liability period.
- 21.2. The Sub-Contractor shall provide collateral warranties to the Client(s), and/or others if and as specified in the Main Contract and requested by SME in writing.
- 21.3. Where so stated in the Sub-Contract Order or required as an obligation of the Main Contract, if the Sub-Contractor is a company, the final control and direction of which is exercised by another company, or companies, not party to the Sub-Contract, the Sub-Contractor will provide SME with a parent company guarantee on terms acceptable to SME if required. The Sub-Contractor shall not be entitled to receive any payment otherwise due until the parent company guarantee has been properly completed by the necessary parties and accepted by SME.

22. Termination

- 22.1. The Sub-Contractor's engagement under this Sub-Contract may be terminated by SME in the following circumstances: -
- 22.1.1. upon giving the Sub-Contractor not less than 2 weeks prior written notice at any time;
- 22.1.2. by written notice with immediate effect if the Sub-Contractor has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets which is not discharged or paid out in full within 3 Working Days or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Sub-Contractor is incorporated, resident or carries on business;
- 22.1.3. by written notice with immediate effect if the Sub-Contractor is in breach of any of its obligations under this Sub-Contract and, if the breach is capable of remedy, the Sub-Contractor has failed to remedy such breach within 10 Working Days of receipt of a request to do so.
- 22.2. Notwithstanding clause 22.1 above, this Sub-Contract shall automatically terminate in the event that SME's engagement under the Main Contract is terminated.
- 22.3. Notwithstanding any other provision of the Sub-Contract, in the event of any termination of this Sub-Contract for any default of the Sub-Contractor including (without limitation) pursuant to clause 22.1.2 or 22.1.3 or 22.2, SME reserves the right to withhold or suspend payment to the Sub-Contractor until such time as SME has assessed (i) the additional cost to SME of completing the Works (or arranging for a third party to complete the Works), (ii) any other costs and liabilities incurred by SME in connection with the termination, (iii) the quality and value of the Works carried out by the Sub-Contractor up to the date of termination in connection with the Sub-Contract and (iv) any other issues that SME considers require SME's assessment in connection with the Works and/or this Sub-Contract. In accordance with clause 4.10, SME shall be entitled to set off against any sums that are due to the Sub-Contractor any amounts calculated in accordance with this clause 22.3 and any other amounts owed to SME by the Sub-Contractor whether under the Sub-Contract or any other contract or order or arrangement between the parties.
- 22.4. SME shall not be liable to the Sub-Contractor for any loss of or damage to profit, revenue, anticipated savings, wasted costs, contract, goodwill, opportunities or business or any indirect or consequential loss or damage in the event that SME terminates the Sub-Contract in accordance with this clause 22.
- 22.5. Termination, howsoever, caused shall not affect:
- 22.5.1. any right or liabilities which have accrued prior to the time of termination;
- 22.5.2. the continuance in force of any provision of this Sub-Contract which expressly or by implication is intended to come into

or continue in force after termination (including, but not limited to, clause 3 (Main Contract), clause 5 (The Sub-Contractor's General Obligations), clause 11 (Intellectual Property Rights), clause 12 (Confidentiality), clause 14 (Liability, Insurance and Indemnity), clause 15 (Goods and Materials supplied by the Sub-Contractor), clause 22.3 (Termination), clause 22.4 (Termination), clause 22.5 (Termination), clause 22.6 (Termination), clause 24 (Third Party Rights), clause 26 (Severability) and clause 30 (Applicable Law)).

- 22.6. On termination of the engagement of the Sub-Contractor for any reason, the Sub-Contractor shall, where applicable, take immediate steps to bring to an end its performance of the Works in an orderly manner but with all reasonable speed and economy and shall forthwith vacate the Site. In addition the Sub-Contractor shall deliver to SME all Confidential Information of SME and the Client and correspondence and documentation (including but not limited to engineers reports and test certificates) relating to the Works.

23. Step-in

- 23.1. SME at its sole discretion may, in lieu of giving notice of termination under Clause 22.1.3, by written notice to the Sub-Contract remove from the scope of the Sub-Contract any portion or portions of the Works and may elect to either step-in itself or appoint third parties to complete and maintain such portion(s). In such event SME may recover the reasonable costs associated with the step-in or appointment under this clause from monies otherwise due or becoming due to the Sub-Contractor, or otherwise recovered as an outstanding debt to SME. The Sub-Contractor shall have no right or claim against SME in respect of this clause.

24. Third Party Rights

- 24.1. No person who is not a party to the Sub-Contract shall have any rights under the Sub-Contract to enforce any term of the said Sub-Contract.

25. Assignment and Sub-Contracting

- 25.1. SME may at any time assign, transfer, charge or deal in any other manner with any of its rights or obligations under the Sub-Contract.
- 25.2. The Sub-Contractor shall not assign, transfer, charge, hold on trust for another or deal in any other manner with any of its rights or obligations under the Sub-Contract, nor purport to do so.
- 25.3. The Sub-Contractor shall not sub-contract, sub-let or otherwise delegate the performance of the Works without the prior written consent of SME. Such consent, if given, shall in no way relieve the Sub-Contractor of its responsibilities under the Sub-Contract.

26. Severability

- 26.1. If any one or more provisions of the Sub-Contract shall be declared to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions shall not as a result in any way be affected or impaired. However, if any provisions shall be adjudged to be void or ineffective but would be adjudged to be valid and effective if part of the wording were deleted or the scope or periods reduced, they shall apply with such modifications as may be necessary to make them valid and effective while adhering as closely as possible to the original intent, period and scope of the provisions and the parties hereby undertake to make such modifications.

27. Sub-Contract as a Deed

- 27.1. Wherever the contract which SME has entered into and to which Sub-Contract relates has been executed or is deemed to be executed as a deed, this Sub-Contract shall be deemed (for the purpose only of the Limitations Act 1980 and any amendment thereto) also to be executed as a deed and neither party shall assert in any action or adjudication, or otherwise to rely on a shorter period of limitation than is prescribed by the Act for contracts executed as a deed.

28. Bribery and Corrupt Practices

- 28.1. Sub-Contractor represents, warrants and undertakes to SME and the Client or the affiliates of SME or the Client (for the purposes of this Clause 28, the "Assured Parties") that neither it nor its officers, employees, agents, consultants, subcontractors or affiliates

- in connection with the Works or with any other business transactions with the Assured Parties, has made or shall make any payment or transfer anything of value, offer, promise or give a financial or other advantage or request, agree to receive or accept a financial or other advantage either directly or indirectly to: any government official or employee (including employees of a government corporation or public international organisation); any political party or candidate for public office; or any other person, if to do so would violate or cause the Assured Parties to be in violation of any applicable law.
- 28.2. It is the intention of the Assured Parties that in the course of the respective negotiations and performance of this Sub- Contract no payments or transfers of value, offers, promises or giving of any financial or other advantage or requests, agreements to receive or acceptances of any financial or other advantage shall be made either directly or indirectly which have the purpose or effect of public or commercial bribery or acceptance of or acquiescence in bribery, extortion, kickbacks, greasing or other unlawful or improper performance of any function or activity.
- 28.3. The Sub-Contractor warrants that:
- 28.3.1. it is not a government official or affiliated with any government official;
- 28.3.2. it has not engaged and shall not engage in conduct in breach of the U.S. Foreign Corrupt Practices Act, the UK Bribery Act or other analogous applicable anti-bribery and corruption legislation (together the "Bribery Laws");
- 28.3.3. it shall not violate or cause SME, the Client or an affiliate of Owner or SME to violate the Bribery Laws;
- 28.4. Notwithstanding any other provisions to the contrary the Assured Parties may suspend or terminate this Sub-Contract for material breach which is not capable of remedy in accordance with Clause 17.1.3 on becoming aware of information that gives it a factual basis to conclude that Sub-Contractor or any of its officers, employees, agents, consultants, subcontractors or affiliates has violated or caused the Assured Parties to violate the Bribery Laws. In the event of termination for such cause, the Assured Parties may withhold payment relating to the portion of the Works to which the conduct breaching the Bribery Laws relates and Sub-Contractor shall indemnify and hold harmless the Assured Parties against any and all claims, demands, proceedings, damages, losses, liabilities, costs, charges and expenses (including professional fees on a full indemnity basis) of whatever nature incurred as a consequence of such breaching conduct.

29. Disputes

- 29.1. In the event of any dispute arising out of or in connection with the Sub-Contract the following procedures shall apply:
- 29.1.1. in the first instance the matter shall be referred to the SME Business Unit Manager and the Sub-Contractor's representative of equivalent status who shall use their reasonable endeavours to resolve such dispute promptly by negotiation
- 29.1.2. in the event that the dispute is not resolved in accordance under clause 29.1.1 within 10 Working Days the dispute shall be referred to the Managing Directors of each party.
- 29.1.3. Failing any agreement having been reached within a further period of 10 Working Days the parties shall seek settlement of the dispute by mediation in accordance with the LCIA Mediation Rules, which are deemed to be incorporated by reference into this clause.

30. Applicable Law

- 30.1. This Sub-Contract shall be governed by and interpreted in accordance with the laws of England and Wales.

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