

Agreement 4 – Sub-Contract – Guidance Notes

1. This is a form of sub-contract. It is intended to be used on construction projects with a relatively low value. It should not be used on complex projects.
2. Amendments to the terms and conditions of the standard form should not be made without taking legal advice.
3. All the items highlighted in blue should be filled in by the draftsman. Care should be taken to ensure that there are no square brackets left in the sub-contract before it is sent out for signature. The collateral warranty in the Annex of the sub-contract does not need to be filled out. It is in template form. If collateral warranties are required the form will need to be saved as new a document and drafted accordingly. In addition, consideration should be given to the list of beneficiaries to be identified in the Sub-Contract Agreement where it reads: 'Third Party'.
4. The sub-contract is to be executed as a deed, which means that the liability period for bringing claims for breach of contract will be 12 years from the date of breach. Some execution options have been inserted, but some companies/partnerships have specific rules on how they can execute their documents and so you will need to confirm their preferred method of execution before finalising the document. It should be noted that executing the sub-contract as a deed will only be essential if the main building contract has been executed as a deed.
5. Current legislation requires that for documents to be entered into as a deed that they need to be signed either by two directors, a director and a company secretary or by a director and a witness. A company can delegate this responsibility by power of attorney by appointing a non-statutory director to sign on behalf of the directors. If the signatory is not a director, documentary evidence should be provided demonstrating that the relevant signatory has legal authority to execute documents. You should also ensure that Blenheim Estates Contractors Limited has a valid power of attorney granting the relevant rights on the non-statutory director to execute deeds should you wish a non-director to sign on its behalf.
6. Care should be taken in completing the Sub-Contract Documents section. This describes the sub-contract works that the sub-contractor will carry out. Should the sub-contractor present its own form of sub-contract order this should not be incorporated into or attached to the Sub-Contract. Such documents sometimes refer to the sub-contractor's standard terms and conditions and would almost certainly conflict with the terms and conditions set out in the Sub-Contract. The sub-contract works should be described in the Contractor's Requirements and referenced and appended to the Sub-Contract accordingly.
7. If delay damages are imposed under the main contract, ie the contract entered into between the employer and Blenheim Estates Contractors Limited, the draftsman should seek advice as to suitable provisions to include so that the risk can be correctly flowed down into the Sub-Contract.
8. Once the final draft has been agreed, you should ensure that two hard copies engrossments of the sub-contract are prepared and issued for signature: one for the contractor and one for the sub-contractor.

Sub-Contract

Sub-Contract Agreement	
Sub Contract Order Number (Project Number/Package Number): [] Date: [] The above reference must be quoted on all invoices and correspondence	
Parties:	
Contractor J A Pye (Oxford) Ltd Business Address Langford Locks, Kidlington, Oxon. OX5 1HZ Tel: 01865 373903 Contact [] Reg No: 01142242 VAT No: GB 348529034	Sub-contractor [] Business Address [] Tel: [] Contact [] Reg No: [] VAT No: []
Site/delivery address: J A Pye (Oxford) Ltd [] Contact: [] Tel: []	Invoices/application to be made out to: J A Pye (Oxford) Ltd Langford Locks Kidlington OX51HZ Contact: Commercial Department Tel: 01865 373903 Email: applications@pyehomes.co.uk
Sub-Contract Particulars	
Project: [] Main Contract Works: [] Scope/description of the Sub-Contract Works: [] Designed Portion: [] Sub-Contract Sum (amount in figures and words): £[] (exclusive of VAT)	

Sub-Contract Documents:

1. The Sub-Contract Agreement;
2. Contractor's Requirements, which include **Scope of Works**
3. Payment Schedule;
4. **Pre start meeting minute**

(together, the '**Sub-Contract Documents**')

Commencement Date:	[]	Retention percentage:	5%
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Completion Date for the Sub-Contract Works:	[]
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This Sub-Contract has been placed in accordance with the terms set out in this Sub-Contract Agreement and the Sub-Contract Conditions.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by
JA Pye (Oxford) Limited

Director/Authorised
Signatory

Director/Secretary/Authorised
Signatory

acting by a director and its
secretary or two directors or
two authorised signatories

Print Name

Print Name

Date

Date

Executed as a deed by

[]

Director/Authorised
Signatory

Director/Secretary/Authorised
Signatory

acting by a director and its
secretary or two directors or
two authorised signatories

Print Name

Print Name

Date

Date

1. Sub-Contract conditions

- 1.1 These are the Sub-Contract Conditions referred to the attached Sub-Contract Agreement. The Sub-Contract Agreement and the Sub-Contract Conditions are to be read as a whole.
- 1.2 The Contractor has sent the Sub-Contractor the Sub-Contract Agreement describing the Sub-Contract Works which the Contractor requires the Sub-Contractor to perform for the Contractor in connection with and/or as part of the Main Contract Works. The Sub-Contract Agreement incorporates by reference these Sub-Contract Conditions and the Sub-Contract Documents identified in the Sub-Contract Agreement.
- 1.3 The Sub-Contractor has accepted the Sub-Contract Agreement either by signing and returning the copy/counterpart agreement or by commencing performance of the Sub-Contract Works.
- 1.4 As a consequence of the Sub-Contractor's acceptance of the Sub-Contract Agreement the resulting Sub-Contract between the Contractor and the Sub-Contractor comprises the Sub-Contract Agreement, these Sub-Contract Conditions and the Sub-Contract Documents.

General Conditions

2. Definitions

In this Sub-Contract the following words and expressions shall have the following meanings:

'Business Days'	any day that is not a Saturday, Sunday, a bank holiday or a public holiday in England or Wales;
'CDM Regulations'	the Construction (Design and Management) Regulations 2015 (SI 2015/51) (as amended from time to time);
'Commencement Date'	the commencement date as stated in the Sub-Contract Agreement;
'Completion Date'	the date for completion of the Sub-Contract Works as stated in the Sub-Contract Agreement or such later date for completion as is fixed under Clause 11;
'Construction Act'	the Housing Grants, Construction and Regeneration Act 1996 (as amended);
'Contractor's Requirements'	as described in the Sub-Contract Agreement;
'Defects Liability Period'	the later of (a) 12 months following the completion of the Sub-Contract Works; or (b) the expiry of the period for the rectification of defects under the Main Contract;
'Designed Portion'	that part of the Sub-Contract Works designed by or on behalf of the Sub-Contractor and more particularly described in the Sub-Contract Agreement;

'Documents'	all drawings, plans, models, specifications, schedules, reports, calculations and other works (including without limitation any such items retained on or in any computer software or other electronic medium) which have been or will be prepared by or on behalf of the Sub-Contractor in the course of carrying out of the Sub-Contract Works whether in existence or to be made or produced and including all amendments and additions to them;
'Employer'	¹ [name : J.A PYE (OXFORD) LIMITED, company registration number 00591940, vat registration 348529034, utr number 1185016210, address LANGFORD LOCKS, KIDLINGTON, OXFORDSHIRE. OX5 1HZ];
'Insolvent'	any event of insolvency suffered by the Contractor or the Sub-Contractor (as applicable);
'Main Contract'	the contract in respect of the Main Contract Works entered into or to be entered into between the Employer and the Contractor or in the absence of a written agreement any instruction(s) by the Employer (whether written or oral) to carry out the Main Contract Works which the Contractor has duly agreed to carry out or has carried out;
'Main Contract Works'	the main contract works as described in the Sub-Contract Agreement;
'Project'	the project as described in the Sub-Contract Agreement;
'Retention'	is the percentage of the Sub-Contract Sum as referred to the in the Sub-Contract Agreement that the Contractor is entitled to retain from payments to be made to the Sub-Contractor in accordance with Clauses 8 and 10;
'Statutory Requirements'	any statute, any statutory instrument, rule or order or any regulation or bye-law affecting the Sub-Contract Works or any other obligation under this Sub-Contract (including the CDM Regulations);
'Sub-Contract'	together the Sub-Contract Agreement, the Sub-Contract Conditions and the Sub-Contract Documents;
'Sub-Contract Sum'	the sub-contract sum as stated in the Sub-Contract Agreement;
'Sub-Contract Works'	the works identified in the Sub-Contract Agreement as the works to be carried out by the Sub-Contractor under the Sub-Contract including and/or taking account of any variations thereto subsequently instructed by the Contractor;
'Third Party'	any funder of the Project and/or the site of the Project; the Employer; a person to whom the Employer transfers or agrees to transfer its

¹ This should be updated if JA Pye (Oxford) Ltd are not the employing entity.

interest in the whole or any part of the site of the Project (including the granting/agreeing to grant of a leasehold interest); a beneficiary with a reversionary interest and/or a freehold interest in the whole or any part of the site of the Project; and any other Third Party as set out in the Sub-Contract Agreement;

'VAT'

value added tax or any tax of a similar nature which may be substituted for or levied in addition to it if and when applicable.

3. **Sub-Contractor's Obligations**

3.1 The Sub-Contractor shall:

- (a) carry out and complete the Sub-Contract Works in accordance with the Sub-Contract Agreement, these Sub-Conditions and the Sub-Contract Documents;
- (b) carry out and complete the Sub-Contract Works with due diligence and in a good and workmanlike manner;
- (c) provide goods and materials of the standard set out in the Sub-Contract Documents but where no standard is provided, these shall be that of satisfactory quality; and
- (d) not use in the Sub-Contract Works any materials or substances which are generally known within the construction industry or which become known during the course of the Sub-Contract Works to be deleterious or hazardous to health and safety.

3.2 The Sub-Contractor warrants and undertakes to the Contractor that:

- (a) it has exercised and will continue to exercise in the design of the Designed Portion all the reasonable skill, care and diligence to be expected of a properly qualified and competent professional designer of the relevant discipline experienced in the design of the Designed Portion of a similar size, scope, value, purpose and complexity as the Sub-Contract Works;
- (b) the Sub-Contractor shall be responsible for the entire design of the Designed Portion including any design contained in the Contractor's Requirements in respect of the same, and all design which the Sub-Contractor prepares or has prepared on his behalf;
- (c) the various elements of the design of the Sub-Contract Works shall be properly co-ordinated and integrated with the Main Contract Works; and
- (d) the design of the Designed Portion and the construction of the Sub-Contract Works shall comply with all consents (including any planning permission, listed building consent, and the discharge of any reserved matters in planning consents relating to the Sub-Contract Works as notified by the Contractor to the Sub-Contractor), Statutory Requirements, relevant codes of practice British Standards or EU equivalents and manufacturers recommendations and the requirements of the Contractor's insurers (insofar as details have been provided to the Sub-Contractor at the date of this Sub-Contract).

- 3.3 The Sub-Contractor shall take all reasonable steps to encourage its employees and its sub-contractors employed in the execution of the Sub-Contract Works to be registered under the Construction Skills Certification Scheme or an equivalent recognised qualification scheme.
- 3.4 The Sub-Contractor shall be entitled at its own risk to the non-exclusive use of the services and facilities provided by the Contractor for common use as set out in the Sub-Contract Agreement, but subject thereto shall provide everything necessary for the execution of the Sub-Contract Works. The Sub-Contractor shall not adjust or interfere with any common user services and facilities without the Contractor's consent. The Sub-Contractor acknowledges that any lack of availability of the services and facilities to be provided by the Contractor for common use shall not give rise to any claim for an extension of time or to compensation.
- 3.5 The Sub-Contract Sum shall be deemed to include all costs and expenses in respect of the Sub-Contract Works and in particular but without prejudice to the generality of the foregoing the Sub-Contractor shall:
- (a) be required to ensure that adequate labour is on the site of the Project at all times to properly complete the Sub-Contract Works within the programme period (as may be updated by the Contractor from time to time, acting reasonably);
 - (b) provide at all times competent supervision and shall be responsible to the Contractor for the progress and quality of the Sub-Contract Works, and shall attend any meetings requested by the Contractor (acting reasonably);
 - (c) include all plant, tools, materials, power and fuel necessary for the completion of the Sub-Contract Works; and
 - (d) undertake a reasonable investigation of the site of the Sub-Contract Works and shall be aware of the site condition and access requirements. In so far as it is relevant to the Sub-Contract Works, the Sub-Contractor shall take all site dimensions, agree all dimensions with the Contractor and check site dimensions in relation to the drawings set out in the Sub-Contract Documents, and will accept full responsibility for the accurate setting out of the Sub-Contract Works.
4. **Main Contract**
- 4.1 The Sub-Contractor shall be deemed to know the provisions of the Main Contract insofar as this applies to the Sub-Contract Works (other than details of the Contractor's pricing and other confidential information). The Contractor shall, if so requested by the Sub-Contractor provide to the Sub-Contractor a copy of the Main Contract (omitting details of the Contractor's pricing and other confidential information).
- 4.2 Subject to the Sub-Contractor complying with the Sub-Contract Documents, the Sub-Contractor shall carry out and complete the Sub-Contract Works so that no act or omission of the Sub-Contractor shall result in any breach of contract by the Contractor under the Main Contract. To the extent that obligations and liabilities of the Sub-Contractor relate to the Sub-Contract Works, the Sub-Contractor shall perform the obligations and assume the liabilities of the Contractor under the Main Contract.

- 4.3 The Sub-Contractor shall indemnify and hold harmless the Contractor against and from any claim, damage, loss or expense due to or resulting from any negligence or breach of duty on the part of the Sub-Contractor, his employees or agents (including any misuse by him or them of scaffolding or other property belonging to or provided by the Contractor).

5. Instructions

- 5.1 The Contractor may issue written instructions which the Sub-Contractor shall carry out. Except as provided under Clause 12, the Sub-Contractor shall not be entitled to additional payments in respect of the instructions.
- 5.2 If within ten days after receipt of a written notice from the Contractor requiring compliance with an instruction, the Sub-Contractor does not comply, then unless Clause 12 applies the Contractor may employ and pay other persons to carry out the work and all costs thereby incurred by the Contractor shall become sums due and payable by the Sub-Contractor or be taken into account by the Contractor and adjusted in accordance with Clause 10.

6. Insurance and indemnity

- 6.1 The Sub-Contractor shall maintain insurance with reputable insurers and shall indemnify the Contractor against any cost, expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of:
- (a) personal injury to or the death of any person whomsoever arising out of or caused by the carrying out of the Sub-Contract Works, unless and to the extent that the same is due to any act or neglect of the Contractor or any person for whom the Contractor is responsible; and
 - (b) any injury or damage to property, real or personal, (other than the Sub-Contract Works) including, but without limitation the Contractor's or the Employer's property arising out of or caused by the carrying out of the Sub-Contract Works and provided always and to the extent that the same is due to any negligence omission or default of the Sub-Contractor, its employees, agents, sub-contractors or suppliers.
- 6.2 Without prejudice to the foregoing the Sub-Contractor shall effect and maintain Public Liability insurance with a minimum level of indemnity as set out in the Sub-Contract Agreement until the end of the Defects Liability Period, Employer's Liability Insurance as required by law, and (where there is a Designed Portion) Professional Indemnity Insurance with a minimum limit of indemnity and for the period as set out in the Sub-Contract Agreement.

7. Programme

The Sub-Contractor shall provide a programme and method statement in the format and content to be agreed with the Contractor. The timing and production of the programme and method statements to be as required by the Contractor (acting reasonably).

8. Start and completion

- 8.1 The Sub-Contractor shall commence the Sub-Contract Works on the site of the Project on the Commencement Date, or on such other date as agreed with the Contractor.
- 8.2 The Sub-Contractor shall proceed with the Sub-Contract Works regularly and diligently in accordance with the Sub-Contract Documents (and by reference to the progress of the Main Contract Works) and shall achieve practical completion of the Sub-Contract Works by the Completion Date, subject always to Clause 11.
- 8.3 The Contractor shall determine and notify the Sub-Contractor in writing of the date when the Sub-Contract Works achieve practical completion. The Contractor shall exercise this discretion fairly, and not acting vexatiously. The Contractor shall be entitled to take account of the completion of the Main Contract Works to the extent the Sub-Contract Works are relevant to the satisfactory completion of the Main Contract Works.
- 8.4 Following issue of the certificate of practical completion by the Contractor half of the amount retained as Retention will be released, provided always that the Sub-Contractor has provided to the Contractor a set of drawings and information showing or describing the Sub-Contract Works as built.
- 8.5 After practical completion of the Sub-Contract Works, the Sub-Contractor shall, at the Sub-Contractor's expense, make good all defects, shrinkages or other faults which appear in the Sub-Contract Works during the Defects Liability Period. The Contractor shall determine when the Sub-Contract Works' defects have been made good and shall notify the Sub-Contractor in writing.
- 8.6 On completion of the Sub-Contract Works, the Sub-Contractor shall remove all plant and tools of the Sub-Contractor and clear away all rubbish occasioned by his operations and leave the job clean and tidy to the Contractor's satisfaction.

9. Goods and materials

- 9.1 The Sub-Contractor shall be responsible for unloading, hoisting, stacking and protecting all materials, plant, goods and storage in connection with the Sub-Contract works. The Sub-Contractor shall be responsible for handling and moving materials to the final place of fixing.
- 9.2 The Sub-Contractor shall be responsible for all the necessary protection and maintenance of the Sub-Contract Works from inclement weather or otherwise, and shall be responsible for all loss, theft, and/or damage to the goods or material in respect of the Sub-Contract Works or the Sub-Contract Works itself until the Contractor has certified practical completion in accordance with Clause 8.3. The Sub-Contractor shall ensure that adequate insurance is available to cover the risk pursuant to this Clause 9.

10. Payment

- 10.1 The Contractor shall pay the Sub-Contractor for the Sub-Contract Works on a monthly interim basis or on a stage payment basis, as set out in the Payment Schedule. Any VAT payment in

respect of the Sub-Contract Sum will be payable following receipt by the Contractor of a VAT invoice.

- 10.2 The cost of any Variation shall be payable in accordance with the provisions of Clause 12.
- 10.3 Following practical completion of the Sub-Contract Works, the Sub-Contractor shall submit to the Contractor its Final Account (defined below) for agreement by the parties.
- 10.4 The Final Account shall set out the Sub-Contract Sum together with any adjustments to the Sub-Contract Sum pursuant to the Sub-Contract and shall set out what the Sub-Contractor considers will be due to it and the basis on which that sum is calculated (the '**Final Account**').
- 10.5 The Final Account as submitted by the Sub-Contractor shall within 30 Business Days of receipt by the Contractor be conclusive as to the balance due between the parties save to the extent that the parties disagree with anything in the Final Account before the date on which, but for the disputed matters, the balance would be conclusive.
- 10.6 The Sub-Contractor shall submit its written application for payments on the dates set out in the Payment Schedule or on completion of the relevant stage (as applicable) as set out in the Payment Schedule. The due date for payment of money under this Sub-Contract shall be:
 - (a) for all payments, excluding the Final Account, 14 Business days for Labour Only Subcontracts and 30 Business days for labour and material subcontracts and following the date of receipt by the Contractor of the written application for payment (setting out what the Sub-Contractor considers is due to it on the Due Date and the basis upon which that sum is calculated); and
 - (b) for the Final Account, the earlier of the date of agreement between the parties of the Final Account and the expiry of 30 Business Days, as set out at Clause 10.5 ('**Due Date**').
- 10.7 Within five days of the Due Date, the Contractor shall provide a payment notice of the sum which the Contractor considers to have been due on the Due Date and the basis on which that sum was calculated (the '**Payment Notice**').
- 10.8 If the Contractor fails to issue a Payment Notice then the Sub-Contractor's written application for payment shall be treated as the Payment Notice.
- 10.9 If the Contractor wishes to pay less than the amount in the Payment Notice the Contractor shall issue a notice specifying the sum the Contractor considers to be due on the date the notice is served and the basis on which that sum is calculated (the '**Pay Less Notice**'). Any Pay Less Notice(s) shall be served no later than one day before the Final Date for Payment (defined below).
- 10.10 The Contractor shall pay the amount stated in any Payment Notice or, if issued, the Pay Less Notice by the Final Date for Payment.
- 10.11 The final date for payment of any sum payable pursuant to this Sub-Contract shall be 30 days after the Due Date (the '**Final Date for Payment**').

10.12 If the Contractor fails to make payment in accordance with the terms of this Clause 10, the Sub-Contractor shall be entitled to simple interest on the amounts outstanding calculated at the rate of two percent over the Bank of England bank rate for the time being from the Final Date for Payment to and including the date on which such amount is paid.

10.13 Ownership of all materials and goods intended for the Sub-Contract Works shall pass to the Contractor when they are incorporated into the Sub-Contract Works or when the Sub-Contractor receives payment for them pursuant to this Clause 10, whichever shall be the earlier. Responsibility for protection and insurance of the materials and goods will remain with the Sub-Contractor until practical completion of the Sub-Contract Works.

11. Extension of time

If the Sub-Contractor is delayed in completing the Sub-Contract Works by the Completion Date due to a Variation of the Sub-Contract Works or for any other reason beyond the control of the Sub-Contractor, the Sub-Contractor shall notify the Contractor in writing. The Contractor shall make such extension of time (if required) as is reasonable. The Sub-Contractor shall use all reasonable endeavours to prevent and/or mitigate any delay to the progress of the Sub-Contract Works.

12. Variations

12.1 The term 'Variation' shall mean the alteration or modification of the design (of the Designed Portion), or the quality or quantity of the Sub-Contract Works as set out in the Sub-Contract Documents or any other reasonable variation (including an omission) of the Sub-Contract Works as directed in writing by the Contractor. No Variation shall be deemed to have been instructed unless and until confirmed in writing by the Contractor.

12.2 Variations shall be valued by the Contractor on a fair and reasonable basis, with reference to the available schedule of rates where applicable or pro-rata thereto, as may be available and set out in the Sub-Contract Documents. The sum due to the Sub-Contractor shall be included in the subsequent application for payment by the Sub-Contractor, after the completion of the Variation by the Sub-Contractor to the Contractor's satisfaction.

12.3 Save where the Variation is not as a result of the Sub-Contractor's act, omission or negligence, the Sub-Contractor shall be paid any direct loss and/or expense incurred by the Sub-Contractor due to the regular progress of the Sub-Contract Works being affected by compliance with any Variation, provided that the Sub-Contractor notifies the Contractor of such as soon as is reasonably practicable. The Contractor shall determine the fair and reasonable amount of that direct loss and/or expense. The Sub-Contractor shall not be entitled to any loss of profit, loss of interest, loss of business or any other loss of an indirect or consequential nature as a result of a Variation.

13. Assignment and sub-contracting

13.1 The Sub-Contractor shall not without the Contractor's written consent assign and/or otherwise transfer or part with its interest under this Sub-Contract to any other.

13.2 The Contractor shall be entitled to assign and/or charge or otherwise transfer all of its rights under this Sub-Contract at any time without the consent of the Sub-Contractor being required.

13.3 The Sub-Contractor shall not without the written consent of the Contractor sub-let any portion of the Sub-Contract Works. Neither the subletting of any of the obligations of the Sub-Contractor, nor any approval by the Contractor of any subletting, shall in any way affect or lessen the liability of the Sub-Contractor under this Sub-Contract or otherwise at law, or in any way relieve the Sub-Contractor from its responsibility for the provision and performance of the Sub-Contract Works in accordance with this Sub-Contract.

14. **Collateral warranty**

The Sub Contractor shall on receiving a written request from the Contractor shall enter into a deed or deeds of collateral warranties in favour of a Third Party within 15 Business Days of such request, in the form annexed or in such other form as specified by the Contractor. This Clause 14 shall survive any termination of this Sub-Contract and/or the termination or suspension of the engagement of the Sub-Contractor.

15. **Third party rights**

Subject to Clause 14, the parties hereby confirm that nothing in this Sub-Contract shall confer or purport to confer on any third party any benefit or any right to enforce any provision of the Sub-Contract.

16. **Copyright**

The Sub-Contractor hereby grants to the Contractor an irrevocable, royalty-free, non-exclusive, licence to use copy and reproduce the Documents for any purpose whatsoever connected with the Project including but without limitation the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the Project provided always that the Sub-Contractor shall not be liable for any such use by the Contractor of the Documents for any purpose other than that for which the same were prepared and provided by the Sub-Contractor. The licence referred to in this Clause 16 carries the right to grant sub-licences, shall be transferable to third parties and shall continue in force notwithstanding any termination of the Sub-Contract and/or the termination or suspension of the engagement of the Sub-Contractor.

17. **Confidentiality**

The Sub-Contractor undertakes that it shall not disclose to any third party or make use of any information of any kind whatsoever relating to the Sub-Contract Works, the Project as a whole or in respect of the Contractor. The restriction shall not apply to confidential information which is disclosed with consent, or to the extent required by law, or that is already in the public domain other than through breach of this Clause.

18. **Termination**

18.1 The Contractor may terminate this Sub-Contract by giving to the Sub-Contractor at least 10 Business Days prior written notice of termination in the event of material breach by the Sub-

Contractor provided that the Sub-Contractor has failed to have remedied such material breach after receiving a previous five Business Days' notice in writing from the Contractor specifying the breach and requiring its rectification.

- 18.2 The Contractor may terminate this Sub-Contract at any time by giving the Sub-Contractor 10 Business Days prior written notice of termination.
- 18.3 Upon determination of this Sub-Contract pursuant to Clause 18.1, 18.2 (if the reason for termination is due to breach by the Sub-Contractor) and Clause 18.4 (where the Sub-Contractor becomes Insolvent):
- (a) the Sub-Contractor shall take steps to bring to an end its engagement under this Sub-Contract. In such event, all reasonable speed and economy shall be exercised to see that the Documents are delivered to the Contractor; and
 - (b) the Contractor shall not after determination of the employment of the Sub-Contractor be obliged to make any further payments to the Sub-Contractor until after completion of the Sub-Contract Works and the making good of defects. The Contractor shall not be obliged to pay any sum that has already become due either: insofar as the Contractor has given or gives a Pay Less Notice under Clause 10; or if the Sub-Contractor, after the last date upon which such a notice could have been given, has become Insolvent in accordance with the Construction Act, and less sums due to the Contractor from the Sub-Contractor in respect of completing the outstanding Sub-Contract Works including any expenses and direct loss and/or damage incurred by the Contractor as a result of the determination.
- 18.4 In the event that the Contractor or the Sub-Contractor become Insolvent then the other party is entitled to on providing five Business Days prior written notice, to determine this Sub-Contract with immediate effect.
- 18.5 In the event of determination of this Sub-Contract pursuant to the provisions of Clauses 18.2 (for any other reason apart from breach by the Sub-Contractor of the terms of the Sub-Contract) and Clause 18.4 (where the Contractor becomes Insolvent) the Contractor shall pay the Sub-Contractor:
- (a) that part of the Sub-Contract Sum and, as applicable, any other sums payable under the terms of this Sub-Contract which shall have accrued due prior to and as at the date of such termination;
 - (b) that part of the Sub-Contract Sum which, although may not have accrued due prior to the date of such termination is a fair and reasonable value for all and any works undertaken and/or procured by the Sub-Contractor; and
 - (c) a fair and reasonable value for any materials and/or goods on or off site which at such date have been ordered and/or delivered to the site of the Project and which are not capable of being cancelled without penalty,

less the amount of any payments previously made by the Contractor to the Sub-Contractor pursuant to this Sub-Contract and Clause 10, and/or any amounts owed by the Sub-Contractor to the Contractor.

- 18.6 If the employment of the Contractor under the Main Contract is determined, the Sub-Contractor's employment under the Sub-Contract shall automatically be determined. The Sub-Contractor shall immediately cease to occupy the site of the Project. If the employment of the Contractor under the Main Contract is determined for any reason other than in consequence of any breach of the Sub-Contract by the Sub-Contractor, 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 of the Project, less sums already paid by the Contractor. The Sub-Contractor shall not be entitled to loss of profit, loss of interest, loss of business or any other indirect or consequential loss in respect of such determination.

19. Notices

- 19.1 Any notice or other communication given to a party under or in connection with this Sub-Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) a communication can (in addition to the above) be sent by email to the address specified by either party to the other.

- 19.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9am on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if sent by email, at 9am on the next Business Day after transmission.

- 19.3 This Clause 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.

20. Dispute resolution and governing law

- 20.1 Subject to Clause 20.3, if any dispute or difference arises out of or in connection with this Sub-Contract the parties shall endeavour in good faith to resolve it by negotiation and without excessive formality within five days of a written notice setting out the nature of such dispute or difference.

- 20.2 Subject to Clause 20.3, if the parties are unable to resolve their dispute or difference in accordance with Clause 20.1 then the parties may attempt to settle it by mediation in accordance with the Centre for Dispute Resolution's Model Mediation Procedure.
- 20.3 Either party may at any time refer any dispute or difference arising under this Sub-Contract to adjudication in accordance with the provisions of Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) 1998 (as amended) except that the adjudicator nominating body shall be TECBAR.
- 20.4 This Sub-Contract is to be governed by and construed in accordance with the laws of England. The courts of England shall have jurisdiction in relation to any disputes between the parties arising out of or in connection with this Sub-Contract including non-contractual claims.

21. **Sub-Contractor's standard terms and conditions**

For the avoidance of doubt, the Sub-Contractor's standard conditions as may be printed with any proposal or tender document received pursuant to any enquiry or otherwise made by the Contractor will have no validity under this Sub-Contract unless specifically referred to by the Contractor in the Contractor's Requirements. This Sub-Contract supersedes any previous agreement and/or arrangements (whether oral or written) between the Contractor and the Sub-Contractor in respect of the Sub-Contract Works and represents the entire understanding between the Contractor and the Sub-Contractor in respect of the same.

Annex

Collateral Warranty