

# DOM2 2011 Edition Sub-Contract Conditions

The Sub-Contract Conditions for use with the  
Domestic Sub-Contract DOM/2 Articles of Agreement

**Appropriate for use with the  
JCT Design and Build Contract 2011 Edition**

THE  
CONSTRUCTION  
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**The Sub-Contract Conditions  
for use with the  
Domestic Sub-Contract DOM/2  
Articles of Agreement**

Standard Form of Sub-Contract for Domestic Sub-Contractors for use with the JCT Design and Build Contract, 2011 Edition including provisions relating to Sub-Contractor's Designed Works.

(Sub-Contract DOM/2 is not suitable for use with any other versions of JCT contracts.)

These are the Conditions referred to in Article 1.3 of the Domestic Sub-Contract DOM/2 Articles of Agreement. Although these Conditions are deemed to be incorporated in the Domestic Sub-Contract DOM/2 Articles of Agreement, they may be actually attached where so required.

The Fluctuations Supplement referred to in Appendix Part 7 of the Domestic Sub-Contract DOM/2 Articles of Agreement and clause 4.17 of the Domestic Sub-Contract DOM/2 Conditions is published separately.

These Conditions constitute a Sub-Contract only where the Domestic Sub-Contract DOM/2 Articles of Agreement and the associated Appendix have been completed.



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## The Sub-Contract Conditions deemed to be incorporated in the Articles of Agreement

### 1 - Interpretation, definitions, etc.

#### Definitions

**1.1** Unless the context otherwise requires or Sub-Contract DOM/2 specifically otherwise provides, the following words and phrases shall have the meanings given below or as ascribed in the article, clause or other provision to which reference is made.

<b>Word or phrase</b>	<b>Meaning</b>
Adjudicator:	any individual appointed pursuant to clause 8.2 as the Adjudicator.
Appendix:	the completed Appendix to Sub-Contract DOM/2.
Approximate Quantity:	a quantity in any bills of quantities included in the Numbered Documents identified therein as an approximate quantity.
Arbitrator:	the person appointed under clause 8.3 to be the Arbitrator.
Article or Articles of Agreement:	the Articles of Agreement in Sub-Contract DOM/2 in which these Sub-Contract Conditions are incorporated and references to any recital are to the recitals set out before the Articles of Agreement.
Business Day:	any day which is not a Saturday, a Sunday or a Public Holiday.
CDM Regulations:	the Construction (Design and Management) Regulations 2007 or any remaking thereof or any amendment to a regulation therein.
CDM Co-ordinator:	the person named in Appendix Part 1 Section A or any person subsequently appointed by the Employer as the CDM Co-ordinator Supervisor pursuant to Regulation 14(1) of the CDM Regulations.
Completion Date:	the Date for Completion of the Main Contract Works or any Section as set out in the Main Contract Particulars or such other date as may be fixed under the provisions of the Main Contract Conditions.
Construction Phase Plan:	the Construction Phase Plan included in the Numbered Documents where it is stated in the completed Contract Particulars to the Main Contract Conditions that the CDM Regulations apply, and any development thereof by the Principal Contractor during the progress of the Main Contract Works.
Contractor:	the person named as Contractor in the Articles of Agreement.
Contractor's Representative:	The person notified in writing by the Contractor to the Sub-Contractor from time to time to act as Contractor's Representative who shall have authority to issue directions and/or instructions to the Sub-Contractor at any time during the progress of the Main Contract Works. The Contractor's Representative may delegate all or any of his duties to other persons provided that the names and authority of such persons shall be notified to the Sub-Contractor in writing.
Contractor's Requirements:	the documents relating to the Sub-Contractor's Designed Works referred to as such in the Fifth Recital and included in the Numbered Documents.
Construction Industry Scheme (CIS):	the current scheme under the Finance Act 2004 and/or any re-enactment thereof.
Date for Completion:	the date for completion of the Main Contract Works or of a Section as set out in the Main Contract Particulars.



Development Control Requirements: any statutory provisions and any decisions of a relevant authority which control the right to develop the site.

Employer: the person with whom the Contractor has entered into the Main Contract.

Final Payment: see clauses 4.12 and 1.8.1.

Final Sub-Contract Sum: see clause 4.3 if Article 2.1 is applicable or clause 4.4 if Article 2.2 is applicable.

Joint Fire Code: the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation which is published by the Construction Confederation and the Loss Prevention Council with the support of the Association of British Insurers, the Chief and Assistant Chief Fire Officers Association and the London Fire Brigade and any amendments or revisions to it.

Main Contract: the contract between the Contractor and the Employer as described by or referred to in Appendix Part 1 Section A.

Main Contract Conditions: the Articles of Agreement, Conditions and completed Main Contract Particulars of the JCT Design and Build Contract referred to in Appendix Part 1 Section A.

Main Contract Works: the main contract works, including the Sub-Contract Works, briefly described in Appendix Part 1 Section A and including any changes made to those works in accordance with the Main Contract or this Sub-Contract.

Numbered Documents: the documents referred to in the First Recital and listed as such in Appendix Part 2B or in an attachment thereto.

Payment Notice: See clause 4.10.2.

Pay Less Notice: See clause 4.10.9.

Person: See clause 1.4.4.

Principal Contractor: the Contractor or any other contractor subsequently appointed by the Employer as the Principal Contractor pursuant to Regulation 14(2) of the CDM Regulations.

Provisional Sum: includes, where bills of quantities are included in the Numbered Documents, a sum provided in those bills for work whether or not identified as being for defined or undefined work.

Public Holiday: Christmas Day, Good Friday or a day which under the Banking and Finance Dealings Act 1971 is a bank holiday. **[1]**

Relevant Sub-Contract Events: see clause 2.19.

Relevant Sub-Contract Matters: see clause 4.20.

Sub-Contractor's Designed Works Analysis: See Fifth Recital.

Sub-Contractor's Designed Works Documents: the Contractor's Requirements, the Sub-Contractor's Proposals, the Sub-Contractor's Designed Works Analysis together with the drawings and other information submitted by the Sub-Contractor in accordance with clause 2.6.1.

Sub-Contractor's Designed Works: that part of the Sub-Contract Works comprising the Sub-Contractor's Designed Works.

Schedule of Sub-Contract Amendments: the schedule of amendments to these Sub-Contract Conditions referred to in Appendix Part 2C.

Schedule 2 Quotation: see clause 5.3.

Section: where applicable, one of the sections into which the Main Contract Works have been divided as set out in the Main Contract Particulars.

Site Materials: all unfixed materials and goods delivered to, placed on or adjacent to the Main Contract Works and intended for incorporation therein.

Statutory Requirements: any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Sub-Contract Works or performance of any obligation under this Sub-Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Sub-Contract Works or with whose systems they are, or are to be, connected.

Sub-Contract: the contractual rights and obligations of the Contractor and Sub-Contractor as set out in the Sub-Contract Documents.

Sub-Contract Base Date: the date stated in Appendix Part 7A, 7B or 7C.

Sub-Contract Conditions: the Conditions stated in Article 1.3 and which are deemed to be incorporated in the Articles of Agreement.

Sub-Contract Documents: Sub-Contract DOM/2 and the Numbered Documents.

Sub-Contract DOM/2: the Articles of Agreement, the Sub-Contract Conditions deemed to be incorporated therein and the completed Appendix.

Sub-Contract Site Materials: all unfixed materials and goods delivered to and placed upon or adjacent to the Main Contract Works which are intended for incorporation therein.

Sub-Contract Sum: the sum referred to in Article 2.1.

Sub-Contract Tender Sum: the sum referred to in Article 2.2.

Sub-Contract Works: the works referred to in Appendix Part 2A and described in the Numbered Documents listed in Appendix Part 2B or an attachment thereto and to be executed as part of the Main Contract Works including any changes made to such works in accordance with this Sub-Contract.

Sub-Contract/Works Contract Formula Rules: the Sub-Contract/Works Contract Formula Rules published by the Joint Contracts Tribunal for the Standard Form of Building Contract.

Sub-Contractor: the person named as the Sub-Contractor in the Articles of Agreement.

Sub-Contractor's Designed Works: see the Second Recital.

Sub-Contractor's Proposals: see the Fifth Recital.

Terminal Dates: see clause 6.1.

**[1]** Amend as necessary if different Public Holidays are applicable.



### Reference to clauses

- 1.2** Unless otherwise specifically stated a reference in the Articles of Agreement or these Sub-Contract Conditions to any recital, article, clause or Schedule means that recital, or article in the Articles of Agreement, that clause or Schedule in these Sub-Contract Conditions.

### Sub-Contract Documents - relationship of Sub-Contract Documents

- 1.3** Sub-Contract DOM/2 is to be read as a whole and the effect or operation of any recital, article or clause in Sub-Contract DOM/2 must therefore unless otherwise specifically stated be read subject to any relevant qualification or modification in any other recital, article or clause in Sub-Contract DOM/2 provided that:
- 1.3.1 if any conflict appears between these Sub-Contract Conditions and the Appendix, then the Appendix shall prevail;
  - 1.3.2 if any conflict appears between the terms of Sub-Contract DOM/2 and the Numbered Documents, the terms of Sub-Contract DOM/2 shall prevail;
  - 1.3.3 if any conflict appears between the provisions of the Main Contract and the terms of the Sub-Contract Documents, the terms of the Sub-Contract Documents shall prevail;
  - 1.3.4 nothing contained in the Sub-Contract Documents shall be construed so as to impose any liability on the Sub-Contractor in respect of any act, omission or default on the part of the Employer, the Contractor and his other sub-contractors nor create any privity of contract between the Sub-Contractor and the Employer or any other sub-contractor.
- 1.3A** Neither party shall divulge or use except for the purposes of this Sub-Contract:
- 1.3A.1 any of the documents referred to in the Sub-Contract Documents; or
  - 1.3A.2 any confidential information of the other party

save that in accordance with clause 2.8.4 of the Main Contract Conditions, the Contractor may permit the Employer to use, in connection with the maintenance, use, repair, advertisement, letting or sale of the works any of the documents supplied by the Sub-Contractor.

### Interpretation, headings, etc.

- 1.4** Unless the context otherwise requires, in this Sub-Contract:
- 1.4.1 the interpretation of this Sub-Contract shall not be affected by the headings;
  - 1.4.2 the singular includes the plural and vice versa;
  - 1.4.3 reference to a gender includes any other gender;
  - 1.4.4 references to a 'person' includes any individual, firm, partnership, company and any other body corporate;
  - 1.4.5 a reference to a statute, statutory instrument or other subordinate legislation including any legislation in any other relevant part of the United Kingdom (in these Sub-Contract Conditions called 'legislation') is to such legislation as amended and in force from time to time, including any legislation that re-enacts or consolidates it, with or without modification.

### Periods of days

- 1.5** Where under this Sub-Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day that is a Public Holiday, that day shall be excluded.

### Rights of Third Parties

- 1.6** Notwithstanding any other provision of these Sub-Contract Conditions, this Sub-Contract shall not and shall not purport to confer on any third party any right to enforce any term of this Sub-Contract.

### Communications, documents and notices

- 1.7** .1 Any notice or other document or communication between the Parties required or authorised in pursuance of this Sub-Contract (including, without limitation, each approval, consent, confirmation, decision, direction, dissent, or other notification) shall be in writing.
- 1.7.2 Subject to clause 1.7.4, each such notice or other document or communication shall be sent or given in compliance with the procedures stated or identified in the Numbered Documents or subsequently agreed by the Parties.**[2]**
- 1.7.3 Subject to clauses 1.7.2 and 1.7.4, any such notice or other document or communication shall be given or served by any effective means to any agreed address. If no address has been agreed, then if given or served by being addressed and sent by prepaid post to the addressee's last known principal business address or, where the addressee is a body corporate to the body's registered or principal address, it shall be treated as having been effectively given or served.
- 1.7.4 Where notices are required by this Sub-Contract to be given in accordance with this clause 1.7.4 they shall be delivered by hand or sent by prepaid Signed For or Special Delivery post to the addressee's last known principal address or, where the addressee is a body corporate to the body's registered or principal address. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.

### Effect of Final Payment

- 1.8** .1 Except as provided in clauses 1.8.2 and 1.8.3 (and save in respect of fraud) the Final Payment, where made in accordance with clause 4.23, shall have effect in any proceedings under or arising out of or in connection with this Sub-Contract (whether by adjudication under Article 3 or by arbitration under Article 4 or by legal proceedings under Article 5) as:
- 1.8.1.1 conclusive evidence that where and to the extent that any of the particular qualities of any materials or goods or any particular standard of an item of workmanship was described expressly in the Employer's Requirements or in any instruction issued by the Employer under the Main Contract Conditions to be for the approval of the Employer, the particular quality or standard was to the satisfaction of the Employer, but such Final Payment shall not be conclusive evidence that such or any other materials or good or workmanship comply or complies with any other requirement or term of this Sub-Contract;
  - 1.8.1.2 conclusive evidence that any necessary effect has been given to all the terms of this Sub-Contract which require that an amount is to be added to or deducted from the Sub-Contract Sum or included in the calculation of the Final Sub-Contract Sum save where there has been any accidental inclusion or exclusion of any work, materials, goods or figure in any computation or any arithmetical error in any computation in which event the Final Payment shall have effect as conclusive evidence as to all other computations;
  - 1.8.1.3 conclusive evidence that all and only such extensions of time, if any, as are due under clause 2.18 have been given;
  - 1.8.1.4 conclusive evidence of final settlement of all and any claims which the Sub-Contractor has or may have arising out of the occurrence of any of the matters referred to in clause 4.20 whether such claim be for breach of contract, duty of care, statutory duty or otherwise;
  - 1.8.1.5 conclusive evidence of final settlement of all and any claims which the Contractor has or may have arising out of the occurrence of any of the matters referred to in clause 4.21, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.

**[2]** This provision means that the Parties should agree a communications protocol at the earliest opportunity and preferably before commencement of the Sub-Contract Work on site. The protocol needs to cover all forms of written and other forms of communication and should specify any alternative addresses to which documents should be sent. For electronic communications, the protocol needs to describe the types or classes of documentation that is acceptable if sent by e-mail or fax and should prescribe the e-mail addresses and telephone numbers to which such documents are to be sent. If drawings are to be prepared and transmitted electronically, the protocol needs to describe the format of such drawings, the means of transmission and methods of version control.



- 1·8·2 If any adjudication, arbitration or other proceedings have been commenced by either party (or by the Employer to which the Sub-Contractor is a party) before the Final Payment has been made the Final Payment shall have effect as conclusive evidence as provided in clause 1·8·1 after the earlier of either:
- 1·8·2·1 all such proceedings have been concluded, whereupon the Final Payment shall be subject to the terms of any decision, award or judgment in or settlement of such proceedings, or
- 1·8·2·2 the expiry of a period of 12 months after the Final Payment has been made during which no party has taken any further steps in such proceedings, whereupon the Final Payment shall be subject to any terms agreed in partial settlement.
- 1·8·3 If any adjudication, arbitration or other proceedings have been commenced by either party (or by the Employer and to which the Sub-Contractor is a party) within 10 days after the date or receipt by the Sub-Contractor of the notice referred to in clause 4·12·2 or 10 days after the date that the Final Payment is made, whichever first occurs, the Final Payment shall have effect as conclusive evidence as provided in clause 1·8·1 save only in respect of all matters to which those proceedings relate.
- 1·8·4 Where pursuant to clause 8·2·7, either Party wishes to have a dispute or difference on which an Adjudicator has given his decision on a date which is after the date of the Final Payment finally determined by arbitration or other proceedings either Party may commence arbitration or other proceedings within 28 days of the date on which the Adjudicator gave his decision.

#### Law applicable to this Sub-Contract

- 1·9 Whatever the nationality, residence or domicile of the Contractor or the Sub-Contractor and wherever the Main Contract Works are situated the law of England shall be the law applicable to this Sub-Contract. [3]

## 2 - Obligations of the Sub-Contractor

### Execution of the Sub-Contract Works - Contractor's directions - Provision of drawings, details, specifications and other information

- 2·1 ·1 The Sub-Contractor shall carry out and complete the Sub-Contract Works in a proper and workmanlike manner in compliance with the Sub-Contract Documents, the Construction Phase Plan and other Statutory Requirements and in conformity with all the reasonable directions and requirements of the Contractor's Representative (so far as they may apply) regulating for the time being the due carrying out of the Main Contract Works and, in relation to the Sub-Contract Works, shall give all notices required by the Statutory Requirements.
- 2·1·2 The Sub-Contractor shall provide to the Contractor drawings, details, specifications and other information as described in, and at the times set out in, Schedule 4 Parts A and B. Approval of such drawings, details, specifications and other information shall be given in accordance with the procedure set out in Schedule 5.

### Sub-Contractor's Designed Works

- 2·2 Where there are Sub-Contractor's Designed Works, the Sub-Contractor shall:
- 2·2·1 in accordance with the Numbered Documents where and to the extent that the same are relevant, carry out and complete the design for the Sub-Contractor's Designed Works including any further design the Sub-Contractor is required to carry out as a result of a direction of the Contractor's Representative and the selection of any specifications for any kinds and standards of materials and goods and workmanship to be used in the construction of the Works so far as not described or stated in the Contractor's Requirements or the Sub-Contractor's Proposals;
- 2·2·2 comply with the directions which the Contractor shall give for the integration of the design for the Sub-Contractor's Designed Works with the design for the Main Contract Works as a whole, subject to the provisions of clauses 2·23 and 3·5·3; and
- 2·2·3 comply with the requirements of Regulations 11, 12 and 18 of the CDM Regulations.
- 2·2·4 provide such drawings, details, specifications and other information as described in, and at the times set out in, Schedule 4 Parts A and B. Approvals of such drawings, details, specifications and other information shall be given in accordance with the procedure set out in Schedule 5.

### Commencement and completion

- 2·3 ·1 The Sub-Contractor shall carry out and complete the Sub-Contract Works or any Section so as to complete the Sub-Contract Works on or before the last day of the period for completion of the Sub-Contract Works stated in Appendix Part 4 but subject (in the case of construction but not design work) to receipt of the Contractor's notice to commence work on site or, where applicable, any Section and to the operation of clauses 2·16 to 2·19 and any revision to the period or periods for the completion of the Sub-Contract Works in respect of a Variation for which a Schedule 2 Quotation has been given and which have been stated by the Contractor in his acceptance of the Schedule 2 Quotation.
- 2·3·2 The Sub-Contractor shall commence the carrying out of the Sub-Contract Works on site within the period of notice stated in Appendix Part 4·6.

[3] Where the Parties do not wish the law applicable to the Sub-Contract to be the law of England appropriate amendments to clause 1·9 should be made.



## Materials, goods and workmanship

- 2.4 .1 All materials and goods for the Sub-Contract Works other than the part thereof comprised in the Sub-Contractor's Designed Works shall, so far as procurable, be of the kinds and standards described in the Sub-Contract Documents. All materials and goods for the Sub-Contractor's Designed Works shall, so far as procurable, be of the kinds and standards described in the Contractor's Requirements, or, if not there specifically described, the Sub-Contractor's Proposals or documents referred to in clause 2.6 provided that the Sub-Contractor shall not substitute anything without the Contractor's written consent, but no such consent shall relieve the Sub-Contractor of his obligations under this Sub-Contract.
- 2.4.2 All workmanship for the Sub-Contract Works other than the part thereof comprised in the Sub-Contractor's Designed Works shall be of the standards described in the Sub-Contract Documents, or to the extent that no such standards are specified in the Sub-Contract Documents shall be of a standard appropriate to the Sub-Contract Works. All workmanship for the Sub-Contractor's Designed Works shall be of the standards described in the Contractor's Requirements, or, if not there specifically described, the Sub-Contractor's Proposals but to the extent that no such standards are described in the Contractor's Requirements or in the Sub-Contractor's Proposals shall be of a standard appropriate to the Sub-Contractor's Designed Works.
- 2.4.3 The Sub-Contractor shall before ordering any goods or materials and carrying out any work provide the Contractor with samples of the quality of the goods or materials and the standard of workmanship that the Sub-Contractor intends to provide.
- 2.4.4 The Sub-Contractor agrees to provide the Contractor with proof that the goods and materials comply with clause 2.4.1 upon the Contractor's request.
- 2.4.5 All steps shall be taken by the Sub-Contractor to persuade their agents and employees and the agents and employees of the sub sub-contractors engaged upon the Sub-Contract Works to be cardholders registered under the Construction Skills Certification Scheme (CSCS) or hold an equivalent recognised qualification.

## Sub-Contractor to observe etc. all provisions of Main Contract

- 2.5 The Sub-Contractor shall:
- 2.5.1 observe, perform and comply with all the provisions of the Main Contract on the part of the Contractor to be observed, performed and complied with so far as they relate and apply to the Sub-Contract Works (or any portion of the same); and
- 2.5.2 indemnify the Contractor in respect of any liability and shall reimburse the Contractor for any costs which the Contractor has incurred from:
- 2.5.2.1 any breach, non-observance or non-performance by the Sub-Contractor of any of the provisions of the Main Contract insofar as they relate and apply to this Sub-Contract; and
- 2.5.2.2 any act or omission of the Sub-Contractor which involves the Contractor in any liability to the Employer under the provisions of the Main Contract or any other related contract entered into by the Contractor in connection with the Main Contract Works, and shall carry out the Sub-Contract Works in such manner so that no act or omission of the Sub-Contractor shall cause or contribute to any breach or default by the Contractor of the Main Contract or any such related contract, and
- 2.5.2.3 subject to clauses 6.4 and 6.7.1, any claim, damage, loss or expense due to or resulting from any negligence or breach of duty on the part of the Sub-Contractor (including any wrongful use by him of the scaffolding referred to in this Sub-Contract or other property belonging to or provided by the Contractor).

## Sub-Contractor's Designed Works information

- 2.6 .1 In relation to the Sub-Contractor's Designed Works, in addition to the Sub-Contractor's obligation to comply with Regulations 11, 12 and 18 of the CDM Regulations, the Sub-Contractor shall without further charge provide the Contractor with three copies of:
- 2.6.1.1 such drawings or details and specifications of materials, goods and workmanship and (if requested) calculations as are necessary either to explain or to amplify the Sub-Contractor's Proposals; and
- 2.6.1.2 all levels and setting out dimensions which the Sub-Contractor prepares or uses for the purposes of carrying out and completing the Sub-Contractor's Designed Works.
- 2.6.2 The copies referred to in clause 2.6.1.1 shall be provided by the Sub-Contractor as and when from time to time may be necessary or such other date as the Contractor shall have requested in writing and in accordance with the requirements of Schedule 4 or as otherwise stated in the Sub-Contract Documents. The Sub-Contractor shall not commence any work to which these copies relate before such design as is included in them shall have been approved by the Contractor or until after the expiration of 28 days from the date of delivery of these copies to the Contractor.

## Further drawings, details and information

- 2.7 .1 Except to the extent that the Contractor is prevented by an act or default of the Sub-Contractor, two copies of further drawings or additional information reasonably necessary will be provided to the Sub-Contractor by the Contractor without charge where required to explain and amplify the Numbered Documents. The Contractor shall issue such directions (including those relating to Provisional Sums) as are reasonably necessary to enable the Sub-Contractor to perform the Sub-Contract Works in accordance with this Sub-Contract.
- 2.7.2 In relation to the Sub-Contractor's Designed Works, the Sub-Contractor, in addition to complying with his obligations under the CDM Regulations, shall without charge provide the Contractor with 2 copies of;
- 2.7.2.1 the drawings, details and specifications of materials and goods, workmanship, calculations and other related information prepared by the Sub-Contractor in relation to the Sub-Contractor's Designed Works; and
- 2.7.2.2 any information necessary, including but not limited to, setting out or working or fabrication drawings in order for the Contractor to complete any work and/or preparation to enable the Sub-Contractor to complete the Sub-Contract Works in accordance with this Sub-Contract.
- 2.7.3 The information referred to in clauses 2.7.1 and 2.7.2 will be provided to the Sub-Contractor or Contractor when reasonably necessary taking into consideration the progress of the Main Contract Works and the Completion Date for completion of the Main Contract Works or any Section.
- 2.7.4 Where the Contractor or Sub-Contractor reasonably believe that the other Party is unaware of the time when the further information will be required they shall notify the other Party at a reasonable time in advance in order to enable the other Party to comply with clause 2.7.
- 2.7.5 Notwithstanding clauses 2.7.1 to 2.7.4, the Contractor may by a reasonable direction require Sub-Contractor to provide the information described in clauses 2.7.1 to 2.7.4 by a specified date or dates.

## Preparation of bills of quantities - errors in preparation, etc. - Contractor's Requirements

- 2.8 .1 Where bills of quantities are a Sub-Contract Document such bills (or any addendum bill issued as part of the information referred to in clause 5.3.1 for the purpose of obtaining a Schedule 2 Quotation), unless otherwise specifically stated therein in respect of any specified item or items, are to have been prepared in accordance with the Standard Method of Measurement;
- 2.8.2 Subject to clause 2.12, the Sub-Contractor shall not be responsible for the contents of the Contractor's Requirements or for verifying the adequacy of any design within them.



### Errors in bills of quantities - inadequacy of Contractor's Requirements or Sub-Contractor's Proposals

- 2·9 ·1 If in the bills of quantities (or any addendum bill issued as part of the information referred to in clause 5·3·1 for the purpose of obtaining a Schedule 2 Quotation which Quotation has been accepted by the Contractor) there is any departure from the method of preparation referred to in clause 2·8·1 or any error in description or in quantity or omission of items (including any error in or omission of information in any item which is the subject of a provisional sum for defined work) [4] then such departure or error or omission shall not vitiate this Sub-Contract but the departure or error or omission shall be corrected; where the description of a provisional sum for defined work [4] does not provide the information required by General Rule 10·3 in the Standard Method of Measurement the correction shall be made by correcting the description so that it does provide such information.
- 2·9·2 If any design or any aspect of any design in the Contractor's Requirements to which clause 2·8·2 applies is found to be inadequate, then, if any part of the inadequacy is not addressed in the Sub-Contractor's Proposals, the Contractor's Requirements shall be modified or altered accordingly.
- 2·9·3 Any such correction under clause 2·9·1 shall be treated as if it were a Variation required by a Contractor's direction.
- 2·9·4 Any error in description or in quantity in the Sub-Contractor's Proposals or the Sub-Contractor's Designed Works Analysis or Sub-Contractor's Designed Works or any error consisting of an omission of items from the Sub-Contractor's Proposals or the Sub-Contractor's Designed Works Analysis shall be corrected but there shall be no addition to the Sub-Contract Sum/Tender Sum and no extension of the period for the execution of the Sub-Contract Works, and no account shall be taken in calculating the Final Sub-Contract Sum in respect of such correction or any direction requiring a Variation of the Sub-Contract Works not comprised in the Sub-Contractor's Designed Works necessitated by such error or its correction.

### Discrepancies in or divergences between documents

- 2·10 If the Sub-Contractor shall become aware of any discrepancy in, or divergence between any two or more of:
- 2·10·1 the documents referred to in clause 2·15 of the Main Contract Conditions, including a divergence between parts of any one of them or between documents of the same description, any directions issued by the Contractor (save insofar as any such direction requires a Variation); or
- 2·10·2 the Numbered Documents or the Numbered Documents and the documents referred to in clause 2·6 and/or the documents referred to in clause 2·15 of the Main Contract Conditions, including a divergence between parts of any one of them or between documents of the same description, any directions issued by the Contractor (save insofar as any such direction requires a Variation);

he shall immediately give notice to the Contractor specifying the discrepancy or divergence, and the Contractor shall issue directions in regard thereto.

### Discrepancies or divergences relating to the Sub-Contractor's Designed Works

- 2·11 ·1 Where the discrepancy or divergence to which clause 2·10 refers is a discrepancy within or divergence between the Sub-Contractor's Proposals, the Sub-Contractor's Designed Works Analysis and the documents referred to in clause 2·6 the Sub-Contractor shall send with his notice under clause 2·10, or as soon as may be reasonably practicable, a statement setting out his proposed amendments to remove the discrepancy or divergence; and the obligation that the Contractor shall issue directions on such discrepancy or divergence as referred to in clause 2·10 shall not take effect until the Contractor has received that statement. The Sub-Contractor shall comply with the Contractor's directions for the removal of any such discrepancy or divergence and such compliance shall not give rise to any addition to the Sub-Contract Sum/Tender Sum or the Final Sub-Contract Sum and shall not qualify for an extension of the period for the execution of the Sub-Contract Works.

[4] General Rules 10.1 to 10.6 of the Standard Method of Measurement describe where provisional sums for defined work and undefined work are to be used.

- 2·11·2 Where the discrepancy to which clause 2·10 refers is a discrepancy within the Contractor's Requirements (including any Variation thereto issued in accordance with clause 3·4) the Sub-Contractor's Proposals shall prevail (subject always to compliance with Statutory Requirements) without any adjustment of the Sub-Contract Sum/Tender Sum. Where the Sub-Contractor's Proposals do not deal with any discrepancy within the Contractor's Requirements (including any Variation thereto issued in accordance with clause 3·4) the Sub-Contractor shall notify the Contractor of his proposed amendment to deal with the discrepancy and the Contractor shall either agree the proposed amendment or himself decide how the discrepancy shall be dealt with; such agreement or decision shall be notified to the Sub-Contractor and such notification shall be treated as a Variation.

### Divergences from Statutory Requirements

- 2·12 ·1 If the Sub-Contractor or the Contractor shall become aware of any divergence between the Statutory Requirements and
- 2·12·1·1 all or any of the Contractor's Requirements, the Sub-Contractor's Proposals, the Sub-Contractor's Designed Works Analysis and the documents referred to in clause 2·6 or 2·10; or
- 2·12·1·2 any Variation arising from a Contractor's direction issued under clause 3·4
- he shall immediately give the other notice specifying the divergence and, where it is a divergence between the Statutory Requirements and the Sub-Contractor's Designed Works Documents, the Sub-Contractor shall notify the Contractor of his proposed amendment for removing the divergence.
- 2·12·2 The Contractor shall issue directions in regard thereto, and the Sub-Contractor shall comply at no cost to the Contractor save as provided in clause 2·12·4.
- 2·12·3 ·1 If any emergency compliance with clause 2·12·1 requires the Sub-Contractor to supply materials or execute work before receiving the Contractor's direction under clause 2·12·2 the Sub-Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance with the Statutory Requirements.
- 2·12·3·2 The Sub-Contractor shall forthwith notify the Contractor of an emergency and of the steps he is taking under clause 2·12·3·1.
- 2·12·4 If after the Sub-Contract Base Date there is a change in the Statutory Requirements which necessitates some alteration or modification to the Sub-Contractor's Designed Works, such alteration or modification shall be treated as if it were a Contractor's direction under clause 3·4 requiring as a Variation an alteration or modification of the Contractor's Requirements.

### Design Liability

- 2·13 ·1 Where the design of the Sub-Contractor's Designed Works is comprised in the Sub-Contractor's Proposals and in what the Sub-Contractor is to complete under clause 2·2 and in accordance with the Contractor's Requirements and these Sub-Contract Conditions (including any further design which has to be carried out by the Sub-Contractor as a result of a Variation) the Sub-Contractor shall have in respect of any defect or insufficiency in such design the like liability to the Contractor, whether under statute or otherwise, as would an architect or, as the case may be, other appropriate professional designer holding himself out as competent to take on work for such design who, acting independently under a separate contract with the Contractor, had supplied such design for or in connection with works to be carried out and completed by a building contractor not being the supplier of the design.
- 2·13·2 Where and to the extent that this Sub-Contract involves the Sub-Contractor in taking on work for or in connection with the provision of a dwelling or dwellings the reference in clause 2·13·1 to the Sub-Contractor's liability includes liability under the Defective Premises Act 1972 and where the application of Section 2(1) of the Act is included in the Contractor's Requirements the Sub-Contractor and the Contractor respectively shall do all such things as are necessary for a document or documents to be duly issued for the purpose of that Section.



- 2·13·3 The Sub-Contractor shall receive the benefit of any operation of clause 2·17·3 of the Main Contract Conditions in that in seeking any contribution from the Sub-Contractor in respect of the Contractor's liability to the Employer under clause 2·17·1 of the Main Contract Conditions shall relate only to that liability which is not excluded by the operation of clause 2·17·3 of the Main Contract Conditions.
- 2·13·4 The Contractor shall give notice to the Sub-Contractor specifying anything which appears to the Contractor to be a defect or insufficiency of such design as is referred to in clause 2·13·1 but no such notice or want of notice shall have effect so as to relieve the Sub-Contractor of his obligations in connection with the preparation and completion of such design.
- 2·13·5 Any reference to design which the Sub-Contractor has prepared or issued, or shall prepare or issue, for the Sub-Contractor's Designed Works shall include references to any design which the Sub-Contractor has caused, or shall cause, to be prepared or issued by others on his behalf.

#### Errors in Sub-Contractor's Proposals or in design, etc.

- 2·14** An extension of time shall not be given under clause 2·18 and clause 4·20 shall have no effect, where and to the extent that the cause of the regular progress of the Sub-Contract Works having been delayed or materially affected is:
- 2·14·1 an error, divergence, omission or discrepancy in the Sub-Contractor's Proposals or in anything provided under clause 2·6·1, or any failure of the Sub-Contractor in completing the design of the Sub-Contractor's Designed Works to comply with the requirements of Regulations 11,12 and 18 of the CDM Regulations; or
- 2·14·2 failure by the Sub-Contractor to provide in due time necessary drawings, details, specifications, calculations or information concerning the Sub-Contractor's Designed Works as required by clause 2·6·2 or 2·7·2.

#### Unfixed materials

- 2·15** ·1 Subject to clause 2·21 of the Main Contract Conditions, unfixed materials and goods delivered to, placed on or adjacent to the Main Contract Works by the Sub-Contractor and intended therefor shall not be removed except for use on the Main Contract Works unless the Contractor has consented in writing to such removal.
- 2·15·2 Where, in accordance with clauses 4·7 and 4·14 of the Main Contract Conditions, the value of any such materials or goods shall have been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer to the Contractor, such materials or goods shall be and become the property of the Employer and the Sub-Contractor shall not deny that such materials or goods are and have become the property of the Employer.
- 2·15·3 Provided that if the Contractor shall pay the Sub-Contractor for any such materials or goods before the value therefore has, in accordance with clause 4·14 of the Main Contract Conditions, been included in any Interim Certificate under which the amount properly due to the Contractor has been paid by the Employer to the Contractor, such materials or goods shall upon such payment by the Contractor be and become the property of the Contractor.
- 2·15·4 The operation of clauses 2·15·1 to 2·15·3 shall be without prejudice to any property in any materials or goods passing to the Employer as provided in clauses 2·24 of the Main Contract Conditions.

### Extension of the period for the execution of the Sub-Contract Works

#### Extension of the period for the execution of the Sub-Contract Works - definitions and interpretation

- 2·16** For the purposes of these Sub-Contract Conditions:
- 2·16·1 where reference is made to any delay or extension of time the reference includes any further extensions of time or further delays;

- 2·16·2 'Pre-agreed Adjustment' means the fixing of a revised period or periods for completion of the Sub-Contract Works or for such periods in any Section in respect of a Variation or other work referred to in clause 5·2 by the acceptance of a Schedule 2 Quotation.
- 2·16·3 'Omission' means the omission of work or obligation through a direction for a Variation under clause 3·4 or in regard to a Provisional Sum for defined work in any bills of quantities.

#### Notice of delay - fixing Period for Completion

- 2·17** ·1 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Sub-Contract Works or any Section or any part thereof is being or is likely to be delayed, the Sub-Contractor shall forthwith give notice to the Contractor of the material circumstances including, insofar as the Sub-Contractor is able, the cause or causes of the delay and identify in such notice any matter which in his opinion is a Relevant Sub-Contract Event.
- 2·17·2 In respect of each and every matter which comes within clause 2·18 and identified in the notice give in accordance with clause 2·17·1 the Sub-Contractor shall, if practicable in such notice, or otherwise in writing as soon as possible after such notice, give particulars of the expected effects thereof; and estimate the extent, if any, of the expected delay in the completion of the Sub-Contract Works or any Section or any part thereof beyond the expiry of the period or periods stated in Appendix Part 4 or beyond the expiry of any extended period or periods previously fixed under clause 2·18 which results therefrom whether or not concurrently with delay resulting from any other matter which comes within clause 2·18.
- 2·17·3 The Sub-Contractor shall give such further notices to the Contractor as may be reasonably necessary or as the Contractor may reasonably require for keeping up-to-date the particulars and estimate referred to in clause 2·17·2 including any material change in such particulars or estimate.

#### Time limits for fixing revised period or periods - review of periods for completion

- 2·18** ·1 If on receipt of any notice, particulars and estimate under clause 2·17 the Contractor properly considers that:
- 2·18·1·1 any of the causes of the delay is the occurrence of a Relevant Sub-Contract Event; and
- 2·18·1·2 the completion of the Sub-Contract Works or any Section will be delayed thereby beyond the period or periods stated in Appendix Part 4 or any revised such period or periods,
- then the Contractor (subject to clause 2·14) shall notify any extension of time to the Sub-Contractor after fixing such revised or further revised period or periods for the completion of the Sub-Contract Works or any Section as the Contractor then estimates to be reasonable. Provided that where the Contractor has stated a revision to the period or periods for the completion of the Sub-Contract Works or any Section in his acceptance of a Schedule 2 Quotation in respect of any Variation, such revision shall be made and no further or other extension of time shall be given in respect of the Variation to which the Schedule 2 Quotation relates.
- 2·18·2 When fixing such revised period or periods, the Contractor shall, if reasonably practicable having regard to the sufficiency of the notice, particulars and estimate, fix such revised period or periods within the following time limit:
- 2·18·2·1 not later than 16 weeks from the receipt by the Contractor of the notice and of reasonably sufficient particulars and estimates; or
- 2·18·2·2 where the time between receipt thereof and the expiry of the period or periods for the completion of the Sub-Contract Works is less than 16 weeks, not later than the expiry of the aforesaid period or periods.
- 2·18·2·3 if, upon receipt of any notice particulars and estimate under clause 2·17 the Contractor properly considers that he is unable to give an extension of time to the Sub-Contractor, the Contractor shall, if reasonably practicable having regard to the aforesaid notice, particulars and estimate, so notify the Sub-Contractor not later than 16 weeks from receipt of the notice, particulars and estimate, or, where the time between such receipt and the expiry of the period or periods for the completion of the Sub-Contract Works is less than 16 weeks, not later than the expiry of the aforesaid period or periods.



- 2·18·3 The Contractor, when fixing such revised period or periods, shall state:
- 2·18·3·1 which of the matters, including any of the Relevant Sub-Contract Events, referred to in clause 2·18·1 he has taken into account; and
  - 2·18·3·2 the extent, if any, to which the Contractor has had regard to any direction requiring as a Variation the omission of any work or obligation or restriction issued since the previous fixing of any such revised period or periods for the completion of the Sub-Contract Works.
- 2·18·4 After the first exercise by the Contractor of the duty under clause 2·18·1, or after any revision to the period or periods for the completion of the Sub-Contract Works or any Section stated by the Contractor in his acceptance of a Schedule 2 Quotation in respect of a Variation, the Contractor may by notice to the Sub-Contractor fix a period or periods for completion of the Sub-Contract Works or any Section shorter than that previously fixed under clause 2·18·1 or stated by the Contractor in his acceptance of a Schedule 2 Quotation if, in the opinion of the Contractor, the fixing of such shorter period or periods is fair and reasonable having regard to any direction issued requiring as a Variation the omission of any work or obligation or restriction where such issue is after the last occasion on which the Contractor made a revision of the aforesaid period or periods. Provided that no decision under this clause 2·18·4 shall alter the length of any revision to the period or periods for the completion of the Sub-Contract Works or any Section in respect of a Variation for which a Schedule 2 Quotation has been given and which has been stated by the Contractor in his acceptance of the Schedule 2 Quotation, or any decision of the Adjudicator under clause 8·2 or of an arbitrator under clause 8·3 or the courts, as the case may be.
- 2·18·5 If the expiry of the period when the Sub-Contract Works or any Section should have been completed in accordance with clause 2·1 occurs before the date of practical completion of the Sub-Contract Works or any Section established under clause 2·20, the Contractor, shall not later than the expiry of 16 weeks from the aforesaid date of practical completion of the Sub-Contract Works or any Section, either:
- 2·18·5·1 fix such a period or periods for completion of the Sub-Contract Works or any Section longer than that previously fixed under clause 2·18 or stated by the Contractor in his acceptance of a Schedule 2 Quotation as the Contractor properly considers to be fair and reasonable having regard to any of the matters referred to in clause 2·18·1 whether upon reviewing a previous decision or otherwise and whether or not the matters referred to in clause 2·18·1·1 have been specifically notified by the Sub-Contractor under clause 2·17; or
  - 2·18·5·2 fix such a period or periods for completion of the Sub-Contract Works or any Section shorter than that previously fixed under clause 2·18 as the Contractor properly considers to be fair and reasonable having regard to any direction issued requiring as a Variation the omission of any work where such issue is after the last occasion on which the Contractor made a revision of the aforesaid period or periods; or
  - 2·18·5·3 confirm to the Sub-Contractor the period or periods for the completion of the Sub-Contract Works or any Section previously fixed.

Provided that no decision under clause 2·18·5·2 or 2·18·5·3 shall alter the length of any revision to the period or periods for the completion of the Sub-Contract Works or any Section in respect of a Variation for which a Schedule 2 Quotation has been given and which has been stated by the Contractor in his acceptance of a Schedule 2 Quotation, or any decision of the Adjudicator under clause 8·2 or of an arbitrator under clause 8·3 or the courts, as the case may be.

#### Sub-Contractor's best endeavors to prevent delay - limitation of powers

- 2·18·6 Provided always that:
- 2·18·6·1 the operation of clause 2·18 shall be subject to the proviso that the Sub-Contractor shall use constantly his best endeavors to prevent delay in the progress of the Sub-Contract Works or any part thereof, however caused, and to prevent any such delay resulting in the completion of the Sub-Contract Works being delayed or further delayed beyond the period or periods for completion stated in Appendix Part 4 or beyond the expiry of any extended period or periods previously fixed under clause 2·18, and
  - 2·18·6·2 the Sub-Contractor shall do all that may reasonably be required to the satisfaction of the Employer and the Contractor to proceed with the Sub-Contract Works.

- 2·18·6·3 no decision of the Contractor under clauses 2·18·4 or 2·18·5·2 shall fix a period or periods for completion of the Sub-Contract Works which will be shorter than the period or periods stated in Appendix Part 4 or shorter than any extended period or periods for completion previously fixed under clause 2·18.

#### Relevant Sub-Contract Events

2·19 The following are the Relevant Sub-Contract Events referred to in clauses 2·17 and 2·18:

- 2·19·1 Variations and any other matters or directions which under these Sub-Contract Conditions are to be treated as, or as requiring, a Variation;
- 2·19·2 Directions of the Contractor's Representative, including those which pass on the instructions of the Employer:
  - 2·19·2·1 given in order to comply with instructions under any of clauses 2·15, 3·10, 3·11 (excluding instructions for the expenditure of a Provisional Sum for defined work), 3·15 (Antiquities) or 3·16 of the Main Contract Conditions;
  - 2·19·2·2 for the opening up for inspection or testing of any work, materials or goods under clause 3·12 or 3·13·3 of the Main Contract Conditions (including making good), unless the inspection or test shows that the work, materials or goods comprised in the Sub-Contract Works are not in accordance with this Sub-Contract; or
  - 2·19·2·3 for the opening up for inspection or testing of any work, materials or goods under clause 3·10 (including making good), unless the inspection or test shows that the work, materials or goods were not in accordance with this Sub-Contract.
- 2·19·3 deferment of the giving of possession of the site or any Section under clause 2·4 of the Main Contract Conditions;
- 2·19·4 where there are bills of quantities, the execution of any work for which an Approximate Quantity included in those bills is not a reasonably accurate forecast of the quantity of work required;
- 2·19·5 suspension by the Sub-Contractor under clause 4·11 of the performance of any or all of his obligations under this Sub-Contract;
- 2·19·6 suspension by the Contractor under clause 4·11 of the Main Contract Conditions of the performance of his obligations under the Main Contract;
- 2·19·7 any impediment, prevention or default, whether by act or omission, by the Employer or any other person for whom the Employer is responsible except to the extent caused or contributed by any default, whether by act or omission of the Sub-Contractor;
- 2·19·8 any act, omission or default of the Contractor or his sub-contractors (other than the Sub-Contractor); and
- 2·19·9 the carrying out by a statutory undertaker of work in pursuance of its statutory obligations in relation to the Main Contract Works, or the failure to carry out such work;
- 2·19·10 exceptionally adverse weather conditions;
- 2·19·11 loss or damage caused by any of the Specified Perils;
- 2·19·12 civil commotion or the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such event or threat;
- 2·19·13 strike, lock-out or local combination of workmen affecting any of the trades employed upon the Main Contract Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Main Contract Works or any persons engaged in the preparation of the Contractor's design for the Main Contract Works;
- 2·19·14 the exercise after the Main Contract base date by the United Kingdom Governments of any statutory power which directly affects the execution of the Main Contract Works;



2·19·15 late receipt of any necessary permission or approval of any statutory bodies and in respect of Development Control Requirements and which the Sub-Contractor has taken all practicable steps to avoid;

2·19·16 force majeure.

#### Practical Completion of the Sub-Contract Works or any Section

- 2·20** ·1 The Sub-Contractor shall give notice to the Contractor of the date when in his opinion the Sub-Contract Works or any Section are practically completed and he has complied sufficiently with clauses 2·23 (*Health and Safety File*) and 3·20·6 (*Supply of as-built drawings, etc.*) and if not dissented from by the Contractor within fourteen days of receipt of the Sub-Contractor's notice practical completion of the Sub-Contract Works or any Section shall for all the purposes of this Sub-Contract be deemed to have taken place on the date so notified. Any notice of dissent from the Contractor to the Sub-Contractor shall set out the Contractor's reasons for such dissent.
- 2·20·2 When the Contractor gives notice of dissent under clause 2·20·1 practical completion will for all the purposes of this Sub-Contract be deemed to have taken place on such date as may be agreed and for which the Contractor has issued to the Sub-Contractor a confirmation of the agreement, or, if the Parties fail to agree, as may be determined by the Adjudicator [5]. Failing such agreement or determination practical completion will be deemed to have taken place on the date of Practical Completion of the Sub-Contract Works or any Section or any part thereof certified by the Employer under clause 2·27 of the Main Contract Conditions.
- 2·20·3 Practical completion of the Sub-Contract Works shall be deemed to have taken place on the practical completion of the last part of the Sub-Contract Works to be completed.

#### Failure of Sub-Contractor to complete on time

- 2·21** ·1 If the Sub-Contractor fails to complete the Sub-Contract Works or any Section within the period or periods for completion stated in Appendix Part 4 or any revised period or periods as provided in clause 2·18, the Contractor shall give notice to the Sub-Contractor within a reasonable time of the expiry of that period or those periods.
- 2·21·2 On receipt of the notice referred to in clause 2·21·1 and subject to any notice given under clause 4·10·3, the Sub-Contractor shall pay or allow to the Contractor a sum equivalent to any direct loss and/or expense suffered or incurred by the Contractor and caused by the failure of the Sub-Contractor as aforesaid.

#### Liability of Sub-Contractor for defects in Sub-Contract Works

- 2·22** Subject to clause 2·35 of the Main Contract Conditions but without prejudice to the obligation of the Sub-Contractor to accept a similar liability to any liability of the Contractor under the Main Contract to remedy defects in the Sub-Contract Works, the Sub-Contractor shall be liable to make good at his own cost and in accordance with any direction of the Contractor all defects, shrinkages and other faults in the Sub-Contract Works or any Section or in any part thereof due to materials, goods or workmanship not in accordance with this Sub-Contract or due to frost occurring before the date of practical completion of the Sub-Contract Works or any Section or other failure of the Sub-Contractor to comply with his obligations under this Sub-Contract in respect of the Sub-Contractor's Designed Works.

#### Supply of as-built drawings, etc. - Sub-Contractor's Designed Works

- 2·23** Before practical completion of the Sub-Contract Works or any Section the Sub-Contractor shall without further charge to the Contractor supply to the Contractor such drawings and other information relating to the Sub-Contract Works or any Section showing or describing the Sub-Contractor's Designed Works as built, without prejudice to the Sub-Contractor's obligations under clause 3·20·4 (*Health and Safety File*), and concerning the maintenance and operation of those Works, including any installations forming part of those Works, as may be specified in the Numbered Documents or as the Contractor may reasonably direct.

#### Copyright and use of Sub-Contractor's Designed Documents

- 2·24** ·1 The copyright contained in the Sub-Contractor's Designed Documents shall remain the property of the Sub-Contractor. This clause is subject to any rights in documents, drawings or designs supplied by the Contractor to the Sub-Contractor for the purpose of this Sub-Contract.
- 2·24·2 The Contractor will have a non-exclusive, royalty-free, irrevocable licence to use and copy the Sub-Contractor's Designed Documents and to reproduce the content and design of them for any purpose which relates to the Main Contract Works, with a full right to provide a sub-licence to the Employer, including the maintenance, construction, completion, promotion, advertisement, sale, letting, refurbishment, repair and reinstatement of the Main Contract Works. This list is without limitation. Any licence shall allow the Contractor and Employer to use and copy the Sub-Contractor's Design Documents for the expansion of the Main Contract Works but shall not include a licence to replicate the designs contained in them for any expansion of the Main Contract Works. This clause is subject to the Sub-Contractor receiving all monies payable and due under this Sub-Contract.
- 2·24·3 Any use of the Sub-Contractor's Designed Documents by the Contractor or the Employer for any purpose other than that for which they were prepared will not be a liability of the Sub-Contractor.

#### Provision of Collateral Warranties by the Sub-Contractor

- 2·25** Where it is provided that the Sub-Contractor shall give collateral warranties to a Tenant, Purchaser, Funder or the Employer in accordance Part 2 of the Main Contract Particulars (as annexed to the Sub-Contract Documents) and/or any direction or notice by the Contractor:
- 2·25·1 Within 14 days of receipt of a notice from the Contractor that specifies the beneficiary and requires execution of such a collateral warranty the Sub-Contractor shall execute and deliver the warranty to the Contractor or as he may direct. If a reasonable request for amendment is made by the Sub-Contractor within 7 days of receipt of the warranty, the Sub-Contractor agrees to execute and deliver the amended warranty with any approved amendment within 7 days of notification of the decision of the Employer on that request;
- 2·25·2 Each such warranty shall be executed using the same form of execution as the Main Contract.

[5] Clause 2·20·2 refers to practical completion of the Sub-Contract Works or any Section "being deemed to have taken place on such date as may be agreed"; clause 2·20·2 does not expressly require such agreement to be in writing nor that such agreement be confirmed in writing. However, the benefit of the Joint Names Policy of insurance granted to the Sub-Contractor under clause 6·5·1 ceases upon the earlier of the "Terminal Dates" as defined in clause 6·1. It will be noted from that definition that one of the Terminal Dates is "the date upon which the Contractor issues in writing to the Sub-Contractor a confirmation of the agreement under clause 2·20·2". For the purposes of the insurance provisions it is, therefore, notwithstanding the provisions of clause 2·20·2, essential that a written confirmation of any agreement reached thereunder is issued by the Contractor to the Sub-Contractor on the same date as that upon which any agreement under clause 2·20·2 is reached. See also Footnote 19.



### 3 - Control of the Sub-Contract Works

#### Assignment - sub-letting

##### Sub-Contractor not to assign without consent

- 3.1 The Sub-Contractor shall not assign this Sub-Contract without the Contractor's prior written consent.

##### Sub-Contractor not to sub-let without consent

- 3.2 The Sub-Contractor shall not without the Contractor's written consent sub-let:

3.2.1 the whole or any portion of the Sub-Contract Works; or

3.2.2 the design for the Sub-Contractor's Designed Works.

The Sub-Contractor shall remain wholly responsible for carrying out and completing the Sub-Contract Works in all respects in accordance with this Sub-Contract notwithstanding the sub-letting of any portion of the Sub-Contract Works and the Contractor's consent to any such sub-letting of design shall not in any way affect the Sub-Contractor's obligations under clause 2.13.1 or any other provision of this Sub-Contract.

##### Conditions of sub-letting

- 3.3 The conditions of any sub-letting are that:

3.3.1 if the Sub-Contractor's employment under this Sub-Contract is terminated for any reason, the sub-sub-contractor's employment under the sub sub-contract shall terminate with immediate effect;

3.3.2 it shall be provided in the sub sub-contract that:

3.3.2.1 the Sub-Contractor and the sub-sub-contractor each undertakes to the other that they will comply with the CDM Regulations; and

3.3.2.2 if the Sub-Contractor shall fail to correctly pay any sum, or any part of it, by the final date provided for payment of the sum in the sub sub-contract to the sub sub-contractor then the sub sub-contractor shall receive from the Sub-Contractor as well as the amount due an additional sum by way of simple interest on the sum due at the interest rate for the period until such payment is made; the payment of interest shall be provided to be on and subject to terms equal to those of clauses 4.10.5 and 4.12.4.

#### Directions of Contractor

##### Authority of Contractor's Representative to issue directions

- 3.4.1 The Contractor's Representative may issue any reasonable direction in writing to the Sub-Contractor in regard to the Sub-Contract Works (including the ordering of any Variation therein). Provided that, in respect of the Sub-Contractor's Designed Works, any such direction shall be a statement of an alteration to or modification of the Contractor's Requirements.
- 3.4.2 Any written instruction of the Employer issued under the Main Contract affecting the Sub-Contract Works and issued by the Contractor's Representative to the Sub-Contractor shall be deemed to be a Contractor's direction.
- 3.4.3 No Variation required by the Contractor's Representative or subsequently sanctioned by him shall vitiate this Sub-Contract.

##### Obligation of Sub-Contractor to comply with directions

- 3.5.1 The Sub-Contractor shall, subject to clauses 3.5.2 and 3.5.3, forthwith comply with any instruction or direction referred to in clause 3.4.
- 3.5.2 Where the direction of the Contractor's Representative requires the Sub-Contractor to provide a Schedule 2 Quotation the Variation to which that direction refers shall not be carried out by the Sub-Contractor until receipt by the Sub-Contractor of its acceptance by the Contractor or a direction in respect of the Variation has been issued under clause 5.3.2.
- 3.5.3 If the Sub-Contractor is of the opinion that compliance with any direction of the Contractor's Representative injuriously affects the efficacy of the Sub-Contractor's Designed Works (including the Sub-Contractor's obligation to comply with the requirements of Regulations 11, 12 and 18 of the CDM Regulations), he shall within 7 days of receipt of the Direction give notice to the Contractor specify the injurious affection, and the direction shall not take effect unless confirmed by the Contractor.

##### Sub-Contractor's failure to comply with directions

- 3.6 Subject to clause 3.5, if within 7 days after receipt of a notice from the Contractor requiring compliance with a Contractor's reasonable direction the Sub-Contractor does not begin to comply therewith, then the Contractor may employ and pay other persons to comply with such direction and all costs incurred in connection with such employment may be deducted from any monies due or to become due to the Sub-Contractor under this Sub-Contract or shall be recoverable from the Sub-Contractor as a debt.

##### Directions otherwise than in writing

- 3.7 If the Contractor's Representative purports to give any direction referred to in clause 3.4 otherwise than in writing to the Sub-Contractor or his authorised representative then such direction shall be of no immediate effect but shall be confirmed by the Sub-Contractor to the Contractor within 7 days and, if not dissented from in writing by the Contractor within 7 days from the receipt of the Sub-Contractor's confirmation, shall take effect as from the expiration of the latter 7 day period. Provided always that:
- 3.7.1 if the Contractor within 7 days of such direction otherwise than in writing having been given shall himself confirm the same in writing, then the Sub-Contractor shall not be obliged to confirm as aforesaid and the said direction shall take effect as from the date of the Contractor's confirmation; and
- 3.7.2 if neither the Contractor nor the Sub-Contractor shall confirm such a direction in the manner and at the time aforesaid but the Sub-Contractor shall nevertheless comply with the same, then the Contractor may confirm the same in writing at any time prior to the Sub-Contractor's Final Payment in accordance with this Sub-Contract and the said direction shall thereupon be deemed to have effect on the date on which it was issued.

##### Person-in-charge

- 3.8 The Sub-Contractor shall appoint a competent person to be in charge on site at all times during the carrying out of the Sub-Contract Works and any directions provided by the Contractor's Representative to that person shall be treated as having been issued to the Sub-Contractor.

##### Right of Access of Contractor and Employer

- 3.9 The Contractor and the Employer and all persons duly authorised by either of them shall at all reasonable times have access to any work which is being prepared for or will be utilised in the Sub-Contract Works but subject to such reasonable restrictions of the Sub-Contractor as are necessary to protect any proprietary right of the Sub-Contractor.



## Opening Up and Remedial Measures

### Inspection - tests

- 3·10** Without prejudice to the generality of clause 3·4, the Contractor's Representative may issue directions requiring the Sub-Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Sub-Contract Works) or of any executed work. The cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Sub-Contract Sum or taken into account in the computation of the Final Sub-Contract Sum unless the requirement for such opening up or testing is included in the Sub-Contract Documents or the inspection or test shows that the materials, goods or work are not in accordance with this Sub-Contract.

### Powers of Contractor - work not in accordance with this Sub-Contract

- 3·11** If any work, materials or goods are not in accordance with this Sub-Contract ("non-compliant work") the Contractor's Representative, without prejudice to the generality of his powers, may:
- 3·11·1 issue directions requiring the removal from the site or rectification of all or any of such non-compliant work; provided that, unless such direction is issued to the Sub-Contractor by the Contractor's Representative pursuant to clause 3·11·2 following the issue of instructions under clause 3·13 of the Main Contract Conditions, the Contractor must consult with the Sub-Contractor and have regard to the Sub-Contract Code of Practice 'A' set out in Schedule 1 prior to the issue of the said direction; and/or
- 3·11·2 after consultation with the Sub-Contractor and subject to clause 3·5·3 issue such directions requiring a Variation as are reasonably necessary as a consequence of a direction under clause 3·11·1 and to the extent that such directions requiring a Variation are so necessary and notwithstanding clauses 2·18, 4·19 and 5·2 no adjustment shall be made to the Sub-Contract Sum or be included in the computation of the Final Sub-Contract Sum and no extension of time shall be given; and/or
- 3·11·3 having had due regard to the Sub-Contract Code of Practice 'B' set out in Schedule 1, issue such directions under clause 3·10 to open up for inspection or to test as are reasonable in all the circumstances to establish to the Contractor's reasonable satisfaction the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that such directions are so reasonable, whatever the results of the opening up for inspection or test and notwithstanding clauses 2·18, 4·19 and 5·2, no adjustment shall be made to the Sub-Contract Sum or be included in the computation of the Final Sub-Contract Sum. Clause 2·19·2·3 shall apply unless as stated therein the inspection or test showed that the work was non-compliant.

Provided that the Contractor's Representative may not issue any direction under this clause 3·11 which relates to materials or goods or workmanship the approval of the quality and standards of which is, as referred to in clause 2·4·3, a matter for the opinion of the Employer unless such direction is issued to the Sub-Contractor by the Contractor pursuant to clause 3·4 following the issue of an instruction of the Employer affecting the Sub-Contract Works under clause 3·13 of the Main Contract Conditions.

And provided also that where in any case non-compliant work is the subject of an instruction issued by the Employer pursuant to clause 3·13 of the Main Contract Conditions, the Contractor's Representative shall, in issuing the said instructions as a direction pursuant to clause 3·4, so notify the Sub-Contractor.

- 3·12** ·1 Where the Employer consults with the Contractor as required by clause 3·14 of the Main Contract Conditions and such consultation relates, in whole or in part, to the Sub-Contract Works or any part thereof, the Contractor shall consult with the Sub-Contractor.
- 3·12·2 The Sub-Contractor shall comply with any direction under clause 3·14 of the Main Contract Conditions issued to the Sub-Contractor by the Contractor's Representative pursuant to clause 3·4. To the extent that such directions are necessary and notwithstanding clauses 2·18, 4·19 and 5·2 no adjustment shall be made to the Sub-Contract Sum or be included in the computation of the Final Sub-Contract Sum and no extension of time shall be given.

### Powers of the Contractor - non-compliance with clause 2·1

- 3·13** ·1 Where there is any failure to comply with clause 2·1 the Contractor's Representative, without prejudice to the generality of his powers, may, after consultation with the Sub-Contractor, issue such directions whether requiring a Variation or otherwise as are reasonably necessary as a consequence thereof. To the extent that such directions are so necessary and notwithstanding clauses 2·18, 4·19 and 5·2 no adjustment shall be made to the Sub-Contract Sum or be included in the computation of the Final Sub-Contract Sum and no extension of time shall be given in respect of compliance by the Sub-Contractor with such direction.
- 3·13·2 Where in any case a failure to comply with clause 2·1 is the subject of an instruction issued by the Employer pursuant to clause 3·14 of the Main Contract Conditions, the Contractor's Representative shall, in issuing the said instruction as a direction, so notify the Sub-Contractor.
- 3·14** ·1 Where compliance by the Contractor or by any other sub-contractor with any instruction or other exercise of a power of the Employer under clause 3·13 and/or clause 3·14 of the Main Contract Conditions or compliance by any other sub-contractor with any Contractor's direction as is referred to in clause 3·11, 3·12 and/or 3·13 of these Sub-Contract Conditions necessarily results in work properly executed or materials or goods properly fixed or supplied under this Sub-Contract having to be taken down and/or re-executed or re-fixed or re-supplied, the Sub-Contractor shall, in accordance with directions, so take down and/or re-execute or re-fix or re-supply if the direction so to do is issued at any time before the date of practical completion of the Sub-Contract Works (as referred to in clause 2·20). A copy of such directions to so take down and/or re-execute or re-fix or re-supply shall be sent by the Contractor to the Sub-Contractor in respect of whose non-compliant work or failure to carry out work in accordance with clause 2·1 the Employer issued instructions or the Contractor issued directions under clause 3·12·2 and/or clause 3·13.
- 3·14·2 The Sub-Contractor shall be paid by the Contractor on the basis of a fair valuation for any taking down and/or re-execution or re-fixing or re-supply directed under clause 3·14·1 and which has been carried out by the Sub-Contractor. The provisions of clauses 2·16 to 2·19 and clause 4·19 and 4·20 shall apply in respect of any compliance with directions to take down and/or re-execute or re-fix or re-supply as referred to in clause 3·14·1.
- 3·15** The Sub-Contractor shall, subject to clause 4·10·3, indemnify the Contractor in respect of any liability, and reimburse the Contractor for any costs, which the Contractor has incurred:
- 3·15·1 as a direct result of compliance by the Sub-Contractor with clauses 3·11 and/or 3·13; or
- 3·15·2 arising out of the operation of clause 3·14 in other sub-contracts let under Sub-Contract DOM/2 or the operation of provisions in any other sub-contract which provide for the sub-contractor to be paid for taking down and/or re-execution or re-fixing or re-supply and/or any direct loss and/or expense and/or to be granted extension of time in consequence of compliance by the Sub-Contractor with any instruction of the Employer under clause 3·18·2 of the Main Contract Conditions or with any direction of the Contractor as is referred to in clause 3·11 and/or 3·13
- but only to the extent that such operation is a direct result of clause 3·18·2 of the Main Contract Conditions and/or clause 3·11 being operated in respect of non-complying work and/or clause 3·13 being operated in respect of a failure to carry out work in accordance with clause 2·1.



## Attendance items

### Attendance

- 3·16** ·1 The Contractor shall provide free of charge to the Sub-Contractor the items of attendance stated in Appendix Part 5 Section A and, where the Joint Fire Code applies, attendances in respect of the requirements of the Joint Fire Code stated in Appendix Part 5 Section B. The Contractor shall provide free of charge to the Sub-Contractor the particular items of attendance stated in Appendix Part 5 Section C. All other items of attendance shall be provided by the Sub-Contractor.
- 3·16·2 The Contractor and the Sub-Contractor, in common with all other persons having a like right, shall for the purposes of the Main Contract Works (but not further or otherwise) be entitled to use any erected scaffolding belonging to or provided by the Contractor or the Sub-Contractor as the case may be while it remains so erected upon the site. Provided that such use shall be on the express condition that no warranty or other liability on the part of the Contractor or the Sub-Contractor, as the case may be, or of their other sub-contractors shall be created or implied under this Sub-Contract in regard to the fitness, condition or suitability of the said scaffolding.
- 3·16·3 The Contractor and the Sub-Contractor shall not wrongfully use or interfere with the plant, ways, scaffolding, temporary works, appliances or other property belonging to or provided by the other of them or be guilty of any breach or infringement of any Act of Parliament or bye-law, regulations, order or rule made under the same or by any local or other public or competent authority; provided that nothing herein contained shall prejudice or limit the rights of the Contractor or of the Sub-Contractor in the carrying out of their respective statutory duties or contractual duties under this Sub-Contract or under the Main Contract.

### Temporary buildings, etc. of the Sub-Contractor

- 3·17** Subject to clause 3·16 the Sub-Contractor shall at his own expense provide, erect, maintain, move and subsequently remove all necessary workshops, sheds or other temporary buildings and the temporary services thereto for the Sub-Contractor at or from such places on the site as the Contractor shall appoint.

### Clearance of rubbish

- 3·18** The Sub-Contractor shall:
- 3·18·1 clear away to a dump or other place provided on the site all rubbish resulting from his execution of the Sub-Contract Works and shall keep access to those works clear at all times.
- 3·18·2 upon practical completion of the Sub-Contract Works or any Section properly clear up and leave the Sub-Contract Works or any Section and all areas made available to him for the purpose of executing those works, so far as used by him for that purpose, clean and tidy to the Contractor's reasonable satisfaction.

## Health and Safety and CDM Requirements

### Health and Safety

- 3·19** At no cost to the Contractor the Sub-Contractor shall comply with:
- 3·19·1 all health and safety legislation **[6]** appropriate to the Sub-Contract Works and the format in which they are being executed;
- 3·19·2 all the Contractor's directions necessary for compliance by the Contractor and the Sub-Contractor with such legislation as it impacts on Sub-Contract Works;
- 3·19·3 any written request from the Contractor for information to establish compliance by the Sub-Contractor with this clause 3·19. Such information to be provided within a time stipulated by the Contractor.

[6] The obligations of the parties in regard to the management and implementation of health and safety legislation on construction projects are set out and described in the *Construction Health and Safety Manual* published by Construction Industry Publications ([www.cip.books.com](http://www.cip.books.com)).

## CDM Regulations

- 3·20** Clause 3·20 applies where it is stated in the Main Contract Particulars that all the CDM Regulations apply.
- 3·20·1 the Contractor and the Sub-Contractor each undertakes to the other that they will comply with the CDM Regulations;
- 3·20·2 if under clause 3·17 of the Main Contract Conditions the Employer notifies the Contractor of a new appointee as the CDM Coordinator and/or as the Principal Contractor the Contractor shall copy that notification to the Sub-Contractor;
- 3·20·3 the Contractor shall ensure that the Principal Contractor supplies the Sub-Contractor with a copy of any development of the Construction Phase Plan.
- 3·20·4 the Sub-Contractor shall provide the Contractor with any information, which the Sub-Contractor considers, or which the Contractor reasonably considers, is or may be necessary to ensure that the Construction Phase Plan continues to have the features required by the CDM Regulations.
- 3·20·5 the Sub-Contractor shall at no cost to the Employer or the Contractor comply with all the reasonable requirements of the Principal Contractor to the extent that such requirements are necessary for compliance by the Sub-Contractor with the CDM Regulations; and notwithstanding clause 2·16 no extension of time shall be given in respect of such compliance.
- 3·20·6 promptly upon the Contractor's written request the Sub-Contractor shall provide to the Contractor such information in respect of the Sub-Contract Works as is reasonably necessary to enable the Contractor to comply with clause 3·16·5 of the Main Contract Conditions (*Health and Safety file*).

## Suspension of Main Contract by Contractor

### Notification by Contractor

- 3·21** If a notice in accordance with clause 4·11 of the Main Contract is given to the Employer by the Contractor notifying an intention to suspend the carrying out any or all of his obligations under the Main Contract, that notice shall be copied to the Sub-Contractor by the Contractor; and if the Contractor then suspends his obligations under the Main Contract, he shall immediately notify the Sub-Contractor.

### Directions following suspension

- 3·22** ·1 If the Contractor suspends the performance of his obligations he may direct the Sub-Contractor to stop performing the Sub-Contract Works and following such a direction the Contractor will issue such additional directions as may be necessary.
- 3·22·2 If the carrying out of obligations in accordance with the Main Contract is re-commenced by the Contractor, and the Contractor had directed the Sub-Contractor to stop performing the Sub-Contract Works, the Contractor shall direct the Sub-Contractor to resume the Sub-Contract Works and if required shall issue further directions to facilitate the recommencement.

## Other Provisions

### Strikes etc. - position of Contractor and Sub-Contractor

- 3·23** If the Main Contract Works are affected by a local combination of workmen, strike or lockout affecting any of the trades employed upon the Main Contract Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Main Contract Works:
- 3·23·1 neither the Contractor nor the Sub-Contractor shall be entitled to make any claim upon the other for any loss and/or expense resulting from such action aforesaid;
- 3·23·2 the Contractor shall take all reasonably practicable steps to keep the site open and available for the use of the Sub-Contractor;



3·23·3 the Sub-Contractor shall take all reasonably practical steps to continue with the Sub-Contract Works.

Nothing in this clause 3·23 shall affect any other rights of the Contractor or Sub-Contractor under this Sub-Contract if such action as aforesaid occurs.

#### Benefits under the Main Contract

**3·24** The Contractor will so far as he lawfully can at the request and cost, if any, of the Sub-Contractor obtain for him any rights or benefits of the Main Contract so far as the same are applicable to the Sub-Contract Works but not further or otherwise.

#### Certificates under the Main Contract

**3·25** The Contractor shall, upon receipt of a written request, notify the Sub-Contractor the dates of the following under the Main Contract:

- 3·25·1 the fixing or affirmation of the Completion Date for the Main Contract Works or any Section;
- 3·25·2 any certificate issued and any written statement issued in accordance with 2·30 and 2·32 of the Main Contract Conditions;
- 3·25·3 each Section Completion Certificate and the Practical Completion Certificate;
- 3·25·4 each Certificate of Making Good;
- 3·25·5 the Final Certificate.

## 4 - Payment

### Sub-Contract Sum and Sub-Contract Tender Sum Adjustment Basis

**4·1** Where Article 2·1 (the Adjustment Basis) is applicable:

- 4·1·1 where bills of quantities are included in the Sub-Contract Documents provided by the Contractor, the quantity of work shall be as set out in those quantities; the quantity and quality of the work included in the Sub-Contract Sum shall be that set out in the bill of quantities and Sub-Contractor's Designed Works Documents or, if there are no bills of quantities, that included in the Sub-Contract Documents taken together;
- 4·1·2 there will be no alteration or adjustment to the Sub-Contract Sum except in accordance with the express provisions of these Sub-Contract Conditions and, subject to clause 2·9, any error in the computation of the Sub-Contract Sum or the Tender Sub-Contract Sum shall be taken to be accepted by the Parties;
- 4·1·3 the computation of the Final Sub-Contract Sum shall be in accordance with clause 4·3.

### Re-measurement Basis

**4·2** Where Article 2·2 (the Re-measurement Basis) is applicable:

- 4·2·1 where quantities are included in the Sub-Contract Documents provided by the Contractor, the quantity of work shall be as set out in those quantities; the quantity and quality of the work included in the Sub-Contract Tender Sum shall be that set out in the Sub-Contractor's Designed Works Documents and bill of quantities or, if there are no bills of quantities, that included in the Sub-Contract Documents taken together;
- 4·2·2 the computation of the Final Sub-Contract Sum shall be in accordance with clause 4·4 and the Sub-Contract Works will be subject to complete re-measurement.

### Computation of Final Sub-Contract Sum - Adjustment Basis

- 4·3** ·1 Where the Adjustment Basis is applicable the Final Sub-Contract Sum shall be the Sub-Contract Sum adjusted by the amount stated by the Contractor in his acceptance of any Schedule 2 Quotation, by the amount of any Variations thereto as valued under clause 5·3·3 and as set out in clauses 4·3·2 and 4·3·3.
- 4·3·2 There shall be deducted from the Sub-Contract Sum:
- 4·3·2·1 all provisional sums and the value of all work described as provisional included in the Sub-Contract Documents and where bills of quantities are included in the Numbered Documents, the value of all work for which an Approximate Quantity is included in those bills;
  - 4·3·2·2 the amount of each Valuation under clause 5·6·2 and 5·10·3 of items omitted in accordance with a Variation required by a Contractor's direction or subsequently sanctioned by him in writing, together with the amount included in the Sub-Contract Documents for any such other work as is referred to in clause 5·11;
  - 4·3·2·3 any amount deducted or deductible under clauses 2·15·2, 2·21, 2·23, 3·6, 3·12·2, 3·15, 4·21, 6·14·1 or 6·14·3 and any amount allowed to the Contractor under whichever Fluctuations Option is applicable; and
  - 4·3·2·4 any other amount which is required by this Sub-Contract to be deducted from the Sub-Contract Sum or is payable to or recoverable by the Contractor or allowed by the Sub-Contractor.
- 4·3·3 There shall be added to the Sub-Contract Sum:



- 4.3.3.1 any amount paid or payable by the Contractor to the Sub-Contractor as a result of payments made or costs incurred by the Sub-Contractor under clause 2.20 of the Main Contract Conditions as referred to in clause 2.5;
- 4.3.3.2 the amount of the Valuation under the Valuation Rules of any Variation including the valuation of other work as referred to in clause 5.11 other than the amount of the Valuation of any omission under clause 5.6.2;
- 4.3.3.3 the amount of the Valuation of work executed by, or the amount of any disbursement made by, the Sub-Contractor in accordance with the directions of the Contractor's Representative as to the expenditure of provisional sums included in the Sub-Contract Documents and of all work described as provisional included in the Sub-Contract Documents and, where bills of quantities are included in the Numbered Documents, of all work for which an Approximate Quantity is included in those bills;
- 4.3.3.4 any amount ascertained as a result of the application of clause 4.19;
- 4.3.3.5 the amount of any valuation under clause 3.14.2;
- 4.3.3.6 any costs payable under clause 4.11.2;
- 4.3.3.7 any amount paid or payable to the Sub-Contractor under whichever Fluctuations Option is applicable; and
- 4.3.3.8 any other amount which is required by this Sub-Contract to be added to the Sub-Contract Sum.

#### Computation of Final Sub-Contract Sum - Re-measurement Basis

- 4.4** Where the Re-measurement Basis is applicable the Final Sub-Contract Sum shall be the amount of the Valuation under clause 5.2.2 adjusted by:
- 4.4.1 any amount paid or payable by the Contractor to the Sub-Contractor as a result of payments made or costs incurred by the Sub-Contractor under clause 2.20 of the Main Contract Conditions as referred to in clause 2.5;
  - 4.4.2 the amount stated by the Contractor in his acceptance of any Schedule 2 Quotation and the amount of any Variations thereto to which clause 5.3.3 applies;
  - 4.4.3 any amount ascertained as a result of the application of clause 4.19;
  - 4.4.4 the amount of any valuation under clause 3.14.2;
  - 4.4.5 any costs payable under clause 4.11.2;
  - 4.4.6 any amount deducted or deductible under clause 2.23, 3.6, 3.12.2 or 4.21 and any amount paid or payable to or allowed or allowable by the Sub-Contractor under whichever of the Fluctuations Options is applicable; and
  - 4.4.7 any other amount which is required by this Sub-Contract to be included or taken into account in the computation of the Final Sub-Contract Sum.

#### Sub-Contract Sum - additions or deductions - to be taken into account

- 4.5** Where in these Sub-Contract Conditions it is provided that an amount is to be added to or deducted from the Sub-Contract Sum or dealt with by adjustment of the Sub-Contract Sum or included in the computation of the Final Sub-Contract Sum or allowed by the Sub-Contractor or payable to the Contractor by the Sub-Contractor, then as soon as such amount is ascertained and agreed in whole or in part such ascertained amount shall be taken into account in the computation of the interim payment next following such whole or partial ascertainment and agreement.

#### Computation and notice of Final Sub-Contract Sum

- 4.6** 1 Not later than 2 months after practical completion of the Sub-Contract Works or any Section the Sub-Contractor shall send to the Contractor all documents necessary for the purpose of the computing the Final Sub-Contract Sum.

- 4.6.2 Not later than 6 months after receipt by the Contractor of the documents referred to in clause 4.6.1 and in any event prior to the issue of the Final Statement by the Contractor or the Employer under clause 4.12 of the Main Contract Conditions the Contractor shall prepare and send a statement of the computation of the Final Sub-Contract Sum to the Sub-Contractor.
- 4.6.3 If the Sub-Contractor does not submit to the Contractor within 2 months of practical completion of the Sub-Contract Works the documents referred to in clause 4.6.1, the Contractor may finally adjust the Sub-Contract Sum (which, as so finally adjusted, is hereinafter referred to as the Contractor's Final Sub-Contract Sum) in accordance with clause 4.6.4.
- 4.6.4 The Contractor's Final Sub-Contract Sum shall be sent to the Sub-Contractor and set out the Sub-Contract Sum together with such adjustments as are referred to in clause 4.3 and such other adjustments which are in accordance with the Sub-Contract Conditions as the Contractor, on the information in his possession, can make.
- 4.6.5 If nothing in the Contractor's Final Sub-Contract Sum as sent to the Sub-Contractor in accordance with clause 4.6.4 is disputed in writing by the Sub-Contractor, giving his grounds for so disputing, within one month thereof, the Contractor's Final Sub-Contract Sum as so sent shall be conclusive as to the balance due between the parties in accordance therewith.

#### Value Added Tax ("VAT")

- 4.7** Unless otherwise stated the Sub-Contract Sum, Sub-Contract Tender Sum and Final Sub-Contract Sum are exclusive of VAT and the Contractor will pay the VAT on any payment made to the Sub-Contractor in accordance with this Sub-Contract.

#### Construction Industry Scheme

- 4.8** Where the Contractor is a 'contractor' for the purposes of the Construction Industry Scheme, the Contractor's obligation to make any payment to the Sub-Contractor under this Sub-Contract is subject to the provisions of the Construction Industry Scheme.

#### Payment of Sub-Contractor

##### First and interim payments - date interim payments are due and made

- 4.9** 1 The first and interim payments shall subject to clause 4.23 be made to the Sub-Contractor in accordance with the provisions of this clause 4.9.
- 4.9.2 The first due date for payment shall be the next due date for payment listed in Appendix Part 6A *Schedule of due dates* after the date of commencement of the Sub-Contract Works on-site or, if so agreed in writing, of off-site works related thereto. Payments shall thereafter be due on the due dates listed in Appendix Part 6A *Schedule of due dates*.
  - 4.9.3 The final date for payment for the first and interim payments shall be not later than the number of days stated in Appendix Part 6B *Sub-Contract payment period* after the date when they become due.

##### Ascertainment of amounts due in first and interim payments, Payment Notices, Pay Less notices and Interest

- 4.10** 1 Not later than 7 days before the due date for an interim payment the Sub-Contractor shall submit a detailed payment application to the Contractor setting out the amounts he considers should be included in the Contractor's Payment Notice and the basis on which that amount has been calculated; and the amount that he considers due to him at the due date.
- 4.10.2 The Contractor shall not later than five days after each due date issue a Payment Notice to the Sub-Contractor.
  - 4.10.3 Each Payment Notice, or any accompanying statement, shall state the Gross Valuation made by the Contractor in accordance with clause 4.13.1 less:
    - 4.10.3.1 an amount equal to any amount which may be deducted and retained as Retention by the Contractor in respect of the Sub-Contract Works in accordance with clause 4.15; and



- 4.10.3.2 any amounts the Sub-Contractor is liable to pay the Contractor; and
- 4.10.3.3 the total amount previously due in first and interim payments in respect of the Sub-Contract Works.
- 4.10.4 Unless the Contractor operates 'self-billing' in accordance with the VAT Regulations, the Sub-Contractor shall promptly issue an appropriate VAT Invoice to the Contractor in respect of the amount stated in the Payment Notice as due to the Sub-Contractor.
- 4.10.5 The final date for payment shall be the sub-contract payment period after the due date or, if later, 7 days after the date of receipt by the Contractor of the Sub-Contractor's VAT invoice.
- 4.10.6 Subject to any Pay Less Notice given under clause 4.10.9, the Contractor shall no later than the final date for payment pay the Sub-Contractor the amount stated as due in the Contractor's Payment Notice, or, if that notice is not issued, the amount of the Sub-Contractor's payment application.
- 4.10.7 Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall be not less than the amount stated as due in the notice.
- 4.10.8 In relation to the requirements for the issue of Payment Notices and Pay Less Notices it is immaterial that the amount then considered to be due may be zero.

#### Pay Less Notices

- 4.10.9 If the Contractor intends to pay less than the sum stated as due in a Payment Notice, or, if that notice is not issued, in the Sub-Contractor's payment application, the Contractor shall no less than 7 days before the final date for payment give the Sub-Contractor notice of his intention (a "Pay Less Notice") specifying the sum that he considers to be due to the Sub-Contractor at that date and the basis on which that sum has been calculated.

#### Interest

- 4.10.10 If the Contractor fails properly to pay the amount, or any part thereof, due to the Sub-Contractor by the final date for payment the Contractor shall pay to the Sub-Contractor in addition to the amount not properly paid simple interest thereon for the period until such payment is made. The Contractor shall treat payment of such simple interest as a debt due to the Sub-Contractor. The rate of interest payable shall be **five per cent (5%)** over the Bank of England Base Rate which is current at the date the payment by the Contractor became overdue. Any payment of simple interest under this clause 4.10.10 shall not in any circumstances be construed as a waiver by the Sub-Contractor of his right to proper payment of the principal amounts due from the Contractor in accordance with, and within the time stated in, this Sub-Contract, or of the rights of the Sub-Contractor in regard to suspension of performance of his obligations under this Sub-Contract to the Contractor pursuant to clause 4.11 or to determination of his employment pursuant to the default referred to in clause 7.

#### Right of Sub-Contractor to suspend execution of Sub-Contract Works

- 4.11.1 Without prejudice to any other rights and remedies which the Sub-Contractor may possess, if the Contractor shall, subject to any notice issued under clause 4.10 fail to pay the Sub-Contractor in full by the final date for payment as required by this Sub-Contract and such failure shall continue for seven days after the Sub-Contractor has given to the Contractor notice of his intention to suspend the performance of his obligations under this Sub-Contract and the ground or grounds on which it is intended to suspend performance, then the Sub-Contractor may suspend such performance of his obligations under this Sub-Contract until payment in full has been made. Such suspension shall not be treated as a failure on the part of the Sub-Contractor to proceed with the Sub-Contract Works in accordance with the provisions of this Sub-Contract. Where under the Main Contract the Contractor exercises his right to suspend performance of his obligations, the Contractor shall so notify the Sub-Contractor and may direct the Sub-Contractor to suspend performance of the Sub-Contract Works.
- 4.11.2 The Sub-Contractor shall be entitled to reimbursement of any costs reasonably incurred by reason of any exercise of his right to suspend under clause 4.11.1.

- 4.11.3 The Sub-Contractor shall make application to the Contractor setting out details of the costs he has incurred and shall include sufficient details to allow ascertainment of the costs by the Contractor.

#### Amount due in penultimate interim payment - Date of penultimate payment - Final Payment - Date of Final Payment

- 4.12.1 Following issue by the Contractor of the statement of the computation of the Final Sub-Contract Sum to the Sub-Contractor under clause 4.6.2, the Contractor shall issue a final Payment Notice in respect of the total amount to which the Sub-Contractor is entitled and showing the balance due to the Sub-Contractor.
- 4.12.2 At the next due date for payment following the issue of the final Payment Notice under clause 4.6.2, the Contractor shall make a penultimate interim payment comprising the amount of the Final Sub-Contract Sum less Retention and less the total amount previously due in the first and interim payments in respect of the Sub-Contract Works.
- 4.12.3 The due date for payment of the Final Payment shall be not later than the number of months stated in Appendix Part 6C *Final Sub-Contract Payment period* after the Date for Completion of the Main Contract Works stated in Appendix Part 1 Section A. The amount of the Final Payment shall be the amount of the Final Sub-Contract Sum less the total amount previously due in the first, interim and penultimate payments in respect of the Sub-Contract Works.
- 4.12.4 Unless the Contractor operates 'self-billing' in accordance with the VAT Regulations, the Sub-Contractor shall promptly issue an appropriate VAT invoice to the Contractor in respect of the amount stated as due to the Sub-Contractor in the final Payment Notice.
- 4.12.5 The final date for the Final Payment shall be the sub-contract payment period after the due date or, if later, 7 days after the date of receipt by the Contractor of the Sub-Contractor's VAT invoice.
- 4.12.6 If the contractor intends to pay less than the sum stated as due in the final Payment Notice the Contractor shall no less than 7 days before the final date for payment give the Sub-Contractor notice of that intention (a "Pay Less Notice") specifying the sum that that he considers to be due to the Sub-Contractor at that date and the basis on which that sum has been calculated.

#### Interest

- 4.12.7 If the Contractor fails properly to pay the amount, or any part thereof, by the final date for its payment the Contractor shall pay in addition to the amount not properly paid simple interest thereon for the period until such payment is made. The rate of interest payable shall be **five per cent (5%)** over the Bank of England Base Rate which is current at the date the payment by the Contractor became overdue. Any payment of simple interest under this clause 4.12.4 shall not in any circumstances be construed as a waiver by the Sub-Contractor of his right to proper payment of the aforesaid amount accordance with clause 4.12.3, nor to determine his employment pursuant to the default referred to in clause 7.

#### Gross valuation

##### Computation of gross valuation

- 4.13 The gross valuation to be made by the Contractor shall be the total of the amounts referred to in clauses 4.13.1 to 4.13.6 less the total amount referred to in clause 4.13.7 up to and including a date not more than 7 days before the date when the first and each interim payment is due:
  - 4.13.1 the total value of the sub-contract work on-site properly executed by the Sub-Contractor, including any work so executed to which clause 5.2 refers and including any work so executed for which a Schedule 2 Quotation has been accepted by the Contractor and any variations thereto to which clause 5.3.3 applies, together, where applicable, with any adjustment of that total value under Fluctuations Option C, but excluding any restoration, replacement or repair of loss or damage and removal and disposal of debris which under clause 6.7.4 are treated as if they were a Variation. Where a priced Activity Schedule is included in the Numbered Documents, the value to be included in respect of the sub-contract work in each activity to which it relates shall be a proportion of the price stated for the sub-contract work in that activity equal to the proportion of the sub-contract work in that activity that has been properly executed;



- 4.13.2 the total value of the materials and goods delivered to or adjacent to the Works for incorporation therein by the Sub-Contractor but not so incorporated provided that the value of such materials and goods shall only be included as and from such times as they are reasonably, properly and not prematurely so delivered and are adequately protected against weather and other casualties;
- 4.13.3 the total value of any materials or goods other than those to which clause 4.13.2 refers where listed by the Employer in the Main Contract and where the conditions set out in clause 4.15 of the Main Contract Conditions have been fulfilled so that the total value of them is included in the amount stated as due to the Contractor in an Interim Certificate issued under clause 4.9 of the Main Contract Conditions. Provided always that the Sub-Contractor shall observe any relevant conditions set out in the Main Contract which have to be fulfilled before the Employer is empowered so as to include the value of goods or materials not delivered to or adjacent to the Works in Interim Certificates issued under clause 4.9 of the Main Contract Conditions;
- 4.13.4 any amount to be included in interim payments in accordance with clause 4.5 as a result of payments made or costs incurred by the Sub-Contractor under clauses 2.20 or 3.15 of the Main Contract Conditions as referred to in clause 2.5 of these Sub-Contract Conditions;
- 4.13.5 any amount ascertained as a result of the application of clause 4.19 or in respect of any restoration, replacement or repair of loss or damage and removal and disposal of debris which in clause 6.7.4 are treated as if they were a Variation;
- 4.13.6 any amount payable under clause 4.11.2;
- 4.13.7 any amount payable to the Sub-Contractor under Fluctuations Option A or B, whichever is applicable; and
- 4.13.8 any amount deductible under clause 2.2.3, 2.5.2, 2.21, 3.6, 3.12.2, 3.15 or 4.21 or any amount allowable by the Sub-Contractor to the Contractor under Fluctuations Option A or B, whichever is applicable or is payable to or recoverable by the Contractor or allowed by the Sub-Contractor.

4.14 Clause not used.

## Retention

### Retention - rules for ascertainment

- 4.15 The Retention which may be deducted and retained by the Contractor shall be ascertained as follows:
- 4.15.1 where any part of the Sub-Contract Works or any Section have not reached practical completion, as defined in clause 2.20, the Retention which the Contractor may deduct and retain in respect of such part as referred to in clause 4.10.1.1 shall be the percentage stated in Appendix Part 6D of the total of the amounts referred to in clause 4.13.1 to 4.13.3;
- 4.15.2 where any part of the Sub-Contract Works or any Section has reached practical completion as defined in clause 2.20 the Retention which the Contractor may deduct and retain in respect of such part as referred to in clause 4.10.1.1 shall be one half of the amount that would have been deductible under clause 4.15.1 if the Sub-Contract Works or any Section has not reached practical completion as defined in clause 2.20.

4.16 Clause not used.

## Fluctuations

### Choice of fluctuations provisions [7] [8]

- 4.17 The amounts payable to or allowed by the Sub-Contractor in respect of fluctuations shall be computed by the application of the Fluctuations Supplement in accordance with whichever of the following Fluctuations Supplement Options is stated in Appendix Part 7 as being applicable to this Sub-Contract:

Fluctuations Supplement Option A: Contributions, levy and tax fluctuations; or  
 Fluctuations Supplement Option B: Labour and materials cost and tax fluctuations; or  
 Fluctuations Supplement Option C: Formula adjustment; or  
 This Sub-Contract is fixed price and Fluctuations Options A, B or C shall not apply.

### Non-applicability to Schedule 2 Quotation

- 4.18 Neither Fluctuations Supplement Option A, B or C shall apply in respect of the work for which a Schedule 2 Quotation has been accepted by the Contractor or in respect of a Variation to such work.

## Loss and Expense

### Matters affecting regular progress - direct loss and expense - Sub-Contractor's rights

- 4.19 If the regular progress of the Sub-Contract Works or any Section is materially affected by any one or more of the Relevant Sub-Contract Matters referred to in clause 4.20 and not excluded by the provisions of clause 2.14, the Sub-Contractor shall give notice to the Contractor within a reasonable time of such material effect becoming apparent and the agreed amount of any direct loss and/or expense thereby caused to the Sub-Contractor shall be recoverable from the Contractor as a debt. Provided always that:
- 4.19.1 the Sub-Contractor's notice shall be given as soon as it has become, or should reasonably have become, apparent to him that the regular progress of the Sub-Contract Works or any Section or any part thereof has been or is likely to be affected as aforesaid; and
- 4.19.2 the Sub-Contractor shall include in his notice to the Contractor such information in support of his application as is reasonably necessary to show that the regular progress of the Sub-Contract Works or any Section or any part thereof has been or is likely to be affected as aforesaid; and
- 4.19.3 the Sub-Contractor shall include in his notice to the Contractor such details of such loss and/or expense as the Contractor requests in order reasonably to enable that direct loss and/or expense as aforesaid to be agreed; and
- 4.19.4 where the amount of loss and/or expense in respect of a Variation for which a Schedule 2 Quotation has been accepted by the Contractor, such amount shall be paid by the Contractor to the Sub-Contractor and this clause 4.19 shall not apply, and
- 4.19.5 each notice to which this clause 4.19 applies shall be given in accordance with clause 1.7.4.

### Relevant Sub-Contract Matters

- 4.20 The following are the Relevant Sub-Contract Matters referred to in clause 4.19:
- 4.20.1 Variations (excluding any for which a Schedule 2 Quotation has been accepted by the Contractor but including any other matters or directions which under these Sub-Contract Conditions are to be treated as, or as requiring, a Variation);
- 4.20.2 Directions of the Contractor's Representative, including those which pass on instructions of the Employer:

[7] The Fluctuations Supplement is published separately by Construction Industry Publications Ltd.  
 [8] Fluctuations Supplement Option B should be used where the Parties have agreed to allow the labour and materials cost and tax fluctuations to which Fluctuations Supplement Options paragraphs B.1 to B.3 refer. Alternatively, Fluctuations Supplement Option C should be used where the Parties have agreed that the Sub-Contract Sum or the Sub-Contract Tender Sum shall be adjusted by the formula method under the Sub-Contract/Works Contract Formula Rules published by the JCT.



- 4·20·2·1 for the expenditure of Provisional Sums included in the Contractor's Requirements or any bills of quantities, excluding a direction for expenditure of a Provisional Sum for defined work;
  - 4·20·2·2 for the opening up for inspection or testing of any work, materials or goods under clause 3·12 of the Main Contract Conditions (including making good), unless the inspection or test shows that the work, materials or goods were not in accordance with this Sub-Contract;
  - 4·20·2·3 for the opening up for inspection or testing of any work, materials or goods under clause 3·10 (including making good), unless the inspection or test shows that the work, materials or goods were not in accordance with this Sub-Contract;
  - 4·20·2·4 in relation to any discrepancy in or divergence between any of the Numbered Documents or any discrepancy in or divergence between any of those documents and the Contract Documents under the Main Contract;
  - 4·20·2·5 for the postponement of any work to be executed under this Sub-Contract (whether in connection with a postponement under the Main Contract or otherwise);
  - 4·20·2·6 with respect to clause 3·15 of the Main Contract (*Antiquities*) and directions related thereto.
- 4·20·3 where there are bills of quantities, the execution of work for which an Approximate Quantity included in those bills is not a reasonably accurate forecast of the quantity of work required;
  - 4·20·4 any impediment, prevention or default, whether by act or omission, by the Employer or any other person for whom the Employer is responsible except to the extent caused or contributed to by any default, whether by act or omission, of the Sub-Contractor;
  - 4·20·5 late receipt of any necessary permission or approval in respect of Development Control Requirements and which the Sub-Contractor has taken all practicable steps to avoid;
  - 4·20·6 any material act, omission or default of the Contractor or any sub-contractor (other than the Sub-Contractor).

#### Disturbance of regular progress of the works - direct loss and expense - Contractor's rights

- 4·21** If the regular progress of the works is materially affected by any act, omission or default of the Sub-Contractor and if the Contractor shall within a reasonable time of such effect becoming apparent give notice to the Sub-Contractor, the amount of any direct loss and/or expense thereby caused to the Contractor may, subject to any notice given under clause 4·10·3, be deducted from any monies due or to become due to the Sub-Contractor or may be recoverable from the Sub-Contractor as a debt. Provided always that:

- 4·21·1 the Contractor's notice shall be made as soon as it has become, or should reasonably have become, apparent to him that the regular progress of the Main Contract Works or of any part thereof has been or is likely to be affected as aforesaid; and
- 4·21·2 each notice to which this clause 4·21 applies shall be given in accordance with clause 1·7·4.

#### Reservation of rights and remedies of Contractor and Sub-Contractor

- 4·22** The provisions of clauses 4·19 to 4·21 are without prejudice to any other rights or remedies which the Contractor or the Sub-Contractor may possess.

#### Insolvency of Employer - position of Contractor and Sub-Contractor

- 4·23** Notwithstanding anything to the contrary elsewhere in this Sub-Contract if the Employer suffers an insolvency event as defined in clause 7·1, the Contractor shall not be obliged to make any further payment to the Sub-Contractor of any amount which is due or may become due to the Sub-Contractor unless the Contractor has received payment in respect thereof from the Employer and then only to the extent of such receipt.

## 5 - Valuation of Work and Variations

### Definition of Variation

- 5·1** The term "Variation" means any of the following changes which are required by a direction of the Contractor's Representative issued under this Sub-Contract:
- 5·1·1 the alteration or modification of the design, quality or quantity of the Sub-Contract Works including:
    - 5·1·1·1 the addition, omission or substitution of any work;
    - 5·1·1·2 the alteration of the kind or standard of any of the materials or goods to be used in the Sub-Contract Works;
    - 5·1·1·3 the removal from the site of any work, materials or goods executed or brought thereon by the Sub-Contractor for the purposes of the Sub-Contract Works other than work, materials or goods which are not in accordance with this Sub-Contract.
  - 5·1·2 the imposition in an instruction of the Employer issued under the Main Contract of any obligations or restrictions in regard to the matters set out in clauses 5·2·1 to 5·2·4 or the addition to or alteration or omission of any such obligations or restrictions set out or referred to in Appendix Part 1 Section C or in the Contractor's Requirements, in so far as such addition, alteration or omission is contained in such an instruction of the Employer, in regard to:
    - 5·1·2·1 access to the site or use of any specific parts of the site;
    - 5·1·2·2 limitations of working space;
    - 5·1·2·3 limitations of working hours;
    - 5·1·2·4 the execution or completion of the work in any specific order.

Provided that, where Article 2·2 and clause 4·2 (the Re-measurement Basis) apply, the term 'Variation' has the meaning given in clause 5·1 but in clause 5·1·1 of this definition delete 'design, quality or quantity' and insert 'design or quality'.

### Valuation of Sub-Contract Work

- 5·2** Unless otherwise agreed by the Contractor and the Sub-Contractor or unless a Schedule 2 Quotation has been accepted by the Contractor, a valuation shall, save in respect of the Sub-Contractor's Designed Works, be made by the Contractor of the items referred to in either clause 5·2·1 or 5·2·2 in accordance with clauses 5·6 to 5·12 ('the Valuation Rules') as follows:
- 5·2·1 where Article 2·1 and clause 4·1 (the Adjustment Basis) apply:
    - 5·2·1·1 all Variations (including any sanctioned by the Contractor in writing) but excluding any to which clause 5·3·3 (*Variations to Schedule 2 Quotation*) or 5·10 (*Sub-Contractor's Designed Works*) apply;
    - 5·2·1·2 all work which is to be treated as a Variation under these Sub-Contract Conditions;
    - 5·2·1·3 all work executed by the Sub-Contractor in accordance with the Contractor's directions as to the expenditure of Provisional Sums which are included in the Sub-Contract Documents; and
    - 5·2·1·4 all work for which an Approximate Quantity has been included in any bills of quantities or in the Contractor's Requirements and executed by the Sub-Contractor: or
  - 5·2·2 where Article 2·2 and clause 4·2 (the Re-measurement Basis) apply, all work executed by the Sub-Contractor in accordance with the Sub-Contract Documents and the Contractor's directions including any direction requiring a Variation or in regard to the expenditure of a Provisional Sum included in the Sub-Contract Documents. Such Valuation by the Contractor insofar as it relates to the Sub-Contractor's Designed Works shall be made in accordance with clause 5·10 and references in clause 5·6 and 5·7 shall exclude the Sub-Contractor's Designed Works Analysis.



### Variations - Schedule 2 Quotation by Sub-Contractor

- 5.3.1 Where in his direction the Contractor's Representative states that the Sub-Contractor is to provide a quotation in accordance with the provisions of Schedule 2 (a 'Schedule 2 Quotation'), the Sub-Contractor shall, provided the direction has provided sufficient information, provide a quotation in accordance with those provisions. Provided that unless within 4 days of receipt of the direction (or within such longer period as is either stated in the direction or subsequently agreed between the Contractor and the Sub-Contractor) the Sub-Contractor has notified the Contractor that he disagrees with the application of the Schedule 2 procedure to that direction.
- 5.3.2 If the Sub-Contractor within that 4 day period gives the Contractor notice of such disagreement, he shall not be obliged to provide the Schedule 2 Quotation and the work shall not be carried out. Provided that the Contractor may issue a further direction requiring that the work be carried out and valued as a Variation under the Valuation Rules.
- 5.3.3 If the Contractor's Representative issues a direction requiring a Variation to work for which a Schedule 2 Quotation has been accepted by the Contractor, such Variation shall not be valued under clauses 5.6 to 5.12 but the Variation shall be valued on a fair and reasonable basis having regard to the content of such Schedule 2 Quotation and shall include the direct loss and/or expense, if any, incurred by the Sub-Contractor because the regular progress of the Sub-Contract Works has been materially affected by compliance with the direction requiring the Variation.

### Sub-Contractor's right to be present at measurement

- 5.4 The Contractor shall, where it is necessary to measure work for the purpose of a Valuation, give the Sub-Contractor a reasonable opportunity to be present at the time of such measurement and to take such notes and measurements as the Sub-Contractor may require.

### Addition to or deduction from Sub-Contract Sum

- 5.5 Effect shall be given to a Valuation under clause 5.3.3, to a Schedule 2 Quotation which has been accepted by the Contractor and to each Valuation under clause 5.2 by taking such Valuation into account in the next computation of an interim payment and by addition to or deduction from the Sub-Contract Sum.

### Valuation Rules

- 5.6.1 Subject to clause 5.10 in the case of Sub-Contractor's Designed Works, to the extent that the Valuation relates to the execution of additional or substituted work which can properly be valued by measurement or where bills of quantities are included in the Numbered Documents, or to the execution of work for which an Approximate Quantity is included in those bills or in the Contractor's Requirements, such work shall be measured and shall be valued by the Contractor in accordance with the following rules:
- 5.6.1.1 where the additional or substituted work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in bills of quantities and/or other documents comprised in the Sub-Contract Documents the rates and prices for the work so set out shall determine the Valuation;
- 5.6.1.2 where the additional or substituted work is of similar character to work set out in bills of quantities and/or other documents comprised in the Sub-Contract Documents but is not executed under similar conditions thereto and/or significantly changes the quantity thereof, the rates and prices for the work so set out shall be the basis for determining the Valuation and the Valuation shall include a fair allowance for such difference in conditions and/or quantity;
- 5.6.1.3 where the additional or substituted work is not of similar character to work set out in bills of quantities and/or other documents comprised in the Sub-Contract Documents the work shall be valued at fair rates and prices;
- 5.6.1.4 where the Approximate Quantity is a reasonably accurate forecast of the quantity of work required the rate or price for that Approximate Quantity shall determine the Valuation;

5.6.1.5 where the Approximate Quantity is not a reasonably accurate forecast of the quantity of work required the rate or price for that Approximate Quantity shall be the basis for determining the Valuation and the Valuation shall include a fair allowance for such difference in quantity.

5.6.2 Subject to clause 5.10 in the case of Sub-Contractor's Designed Works, to the extent that the Valuation relates to the omission of work set out in bills of quantities and/or other documents comprised in the Sub-Contract Documents the rates and prices for such work therein set out shall determine the Valuation of the work omitted.

### Valuation of all work comprising the Sub-Contract Works - Re-measurement Basis

5.7 Where Article 2.2 and clause 4.2 (the Re-measurement Basis) apply, to the extent that the Valuation relates to the execution of work which can properly be valued by measurement such work shall be measured and shall be valued by the Contractor in accordance with the following rules:

- 5.7.1 where the work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in bills of quantities and/or other documents comprised in the Sub-Contract Documents, the rates and prices for the work so set out shall determine the Valuation;
- 5.7.2 where the work is of similar character to work set out in bills of quantities and/or other documents comprised in the Sub-Contract Documents, but is not executed under similar conditions thereto and/or significantly changes the quantity thereof, the rates and prices for the work so set out shall be the basis for determining the Valuation and the Valuation shall include a fair allowance for such difference in conditions and/or quantity;
- 5.7.3 where the work is not of similar character to work set out in bills of quantities and/or other documents comprised in the Sub-Contract Documents the work shall be valued at fair rates and prices.

### General Rules relating to measurement of Variations

5.8 In any Valuation of work under clauses 5.6 and 5.7:

- 5.8.1 where bills of quantities are a Sub-Contract Document measurement shall be in accordance with the same principles as those governing the preparation of those bills of quantities as referred to in clause 2.8;
- 5.8.2 allowance shall be made for any percentage or lump sum adjustments in bills of quantities and/or other documents comprised in the Sub-Contract Documents;
- 5.8.3 where the Adjustment Basis applies, allowance, where appropriate, shall be made for any addition to or reduction of preliminary items of the type referred to in the Standard Method of Measurement 7th Edition, Section A (Preliminaries General Conditions) provided that where bills of quantities are included in the Numbered Documents, no such allowance shall be made in respect of compliance with a direction by the Contractor for the expenditure of a Provisional Sum for defined work; and
- 5.8.4 where the Re-measurement Basis applies, any amounts priced in the Preliminaries section of the Sub-Contract Documents, adjusted where appropriate, to take into account any Contractor's directions requiring a Variation or in regard to the expenditure of a provisional sum included in the Sub-Contract Documents, shall be included provided that, where bills of quantities are included in the Numbered Documents, no such allowance shall be made in respect of compliance with a Contractor's direction for the expenditure of a Provisional Sum for defined work.

### Daywork

5.9 To the extent that the Valuation relates to the execution of work which cannot properly be valued by measurement the Valuation shall comprise:

- 5.9.1 the prime cost of such work (calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by the Royal Institution of Chartered Surveyors and the Construction Confederation which was current at the Sub-Contract Base Date) together with percentage additions to each section of the prime cost at the rates set out by the Sub-Contractor in the Sub-Contract Documents and stated in Appendix Part 8; or



- 5·9·2 where the work is within the province of any specialist trade and the said Institution and the appropriate [9] body representing the employers in that trade have agreed and issued a definition of prime cost of daywork, the prime cost of such work calculated in accordance with that definition which was current at the Sub-Contract Base Date, together with percentage additions on the prime cost at the rates set out by the Sub-Contractor in the Sub-Contract Documents and as stated in Appendix Part 8; or
- 5·9·3 the cost of such work calculated in accordance with any Schedule of Daywork Rates stated in Appendix Part 8

Provided that in any case vouchers specifying the time daily spent upon the work, the workmen's names, the plant and the materials employed shall be delivered for verification to the Contractor not later than the Wednesday following the week in which the work has been executed.

### Valuation Rules - Sub-Contractor's Designed Works

- 5·10** Valuations relating to the Sub-Contractor's Designed Works shall be made in accordance with this clause 5·10.
- 5·10·1 allowance shall be made for the addition or omission of the relevant design work.
- 5·10·2 the Valuation of additional and substituted work shall be consistent with the values of work of a similar character set out in the Sub-Contractor's Designed Works Analysis making due allowance for any change in the conditions under which the work is carried out and/or any significant change in the quantity of work so set out. Where there is no work of a similar character set out in the Sub-Contractor's Designed Works Analysis a fair valuation shall be made.
- 5·10·3 the Valuation of the omission of work set out in the Sub-Contractor's Designed Works Analysis shall be in accordance with the values therein for such work.
- 5·10·4 clauses 5·8·2, 5·8·3, 5·8·4 and 5·11 shall apply so far as is relevant to a Valuation relating to the Sub-Contractor's Designed Works.

### Valuation - change of conditions for other work

- 5·11** If:
- 5·11·1 compliance with any direction requiring a Variation (except a Variation where a Schedule 2 Quotation is accepted or where the Variation is one to which Clause 5·3·3 applies);
- 5·11·2 work carried out in compliance with any Contractor's direction as to the expenditure of a Provisional Sum for undefined work;
- 5·11·3 compliance with any direction as to the expenditure of a Provisional Sum except, where bills of quantities are included in the Numbered Documents, a provisional sum for defined work included in those bills other than to the extent that the instruction for that work differs from the description given for such work in the bills of quantities;
- 5·11·4 bills of quantities are included in the Numbered Documents, the execution of work for which an Approximate Quantity is included in any bills of quantities to such extent as the quantity is more or less than the quantity ascribed to that work in the bills of quantities,

substantially changes the conditions under which any other part or parts of the Sub-Contract Works which are not the subject of the aforementioned direction are executed, then such other part or parts shall be treated as if they had been the subject of a Contractor's direction requiring a Variation which shall be valued in accordance with the Valuation Rules.

[9] There are only three Definitions to which clause 5·9·2 refer: namely, those agreed between the Royal Institution of Chartered Surveyors and the Electrical Contractors Association, the Electrical Contractors Association of Scotland and the Heating and Ventilating Contractors Association.

### Valuation - general rules

- 5·12** ·1 To the extent that the Valuation does not relate to the execution of additional or substituted work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Variation cannot reasonably be effected in the Valuation by the application of clauses 5·6 to 5·11 a fair valuation thereof shall be made.
- 5·12·2 Provided that no allowance shall be made under the Valuation Rules for any effect upon the regular progress of the Sub-Contract Works or for any other direct loss and/or expense for which the Sub-Contractor would be reimbursed by a payment under any other provision in this Sub-Contract.



## 6 - Injury, Damage, Insurance, etc.

### Insurances, etc. - definitions

6.1 In this clause 6, the following words or phrases shall have the meanings given below:

The Contractor or any person for whom the Contractor is responsible:	the Contractor or any person employed or engaged upon or in connection with the Main Contract Works or any part thereof his servants or agents (other than the Sub-Contractor or any person for whom the Sub-Contractor is responsible), or any other person who may properly be on the site upon or in connection with the Main Contract Works or any part thereof, his servants or agents; but such persons shall not include the Employer or any person employed, engaged or authorised by him or by any local authority or statutory undertaker executing work solely in pursuance of its statutory rights or obligations.
The Sub-Contractor or any person for whom the Sub-Contractor is responsible:	the Sub-Contractor or any person employed or engaged by the Sub-Contractor upon or in connection with the Sub-Contract Works or any part thereof, his servants or agents or any other person who may properly be on site upon or in connection with the Sub-Contract Works or any part thereof, his servants or agents; but such persons shall not include the Contractor or any person for whom the Contractor is responsible nor the Employer or any person employed, engaged or authorised by him or by any local authority or statutory undertaker executing work solely in pursuance of its statutory rights or obligations.
The term "Terminal Dates" shall mean:	(a) the date of the Sub-Contractor's notice under clause 2.20.1 for the Sub-Contract Works or any Section provided the Contractor does not dissent therefrom under clause 2.20.1 or, where the Contractor does so dissent, the date upon which the Contractor issues to the Sub-Contractor a confirmation [10] of the agreement under clause 2.27.2 for the Sub-Contract Works or any Section or, failing such agreement, the date of issue of a Practical Completion Certificate of the Main Contract Works or a Section Completion Certificate of a Section under clause 2.27 of the Main Contract Conditions, whichever is applicable (provided that where a Terminal date occurs as aforesaid such Terminal Date shall be deemed to have occurred only in respect of that part of the Sub-Contract Works which is in the Section to which such notice agreement of certificate relates); or  (b) the date of determination of the employment of the Contractor (whether or not the validity of that determination is contested) under paragraph C.4.3 of Schedule 3 ( <i>insurances</i> ) (where applicable) or clause 8 of the Main Contract Conditions (and where the Terminal Date occurs as aforesaid such Terminal Date shall be deemed to have occurred in respect of all parts of the Sub-Contract Works in respect of which a Terminal Date has not already occurred under the preceding sub-paragraph).
Excepted Risks:	(a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar, as it is included in the Terrorism Cover required to be taken out under the Main Contract); (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; (c) any act of terrorism that is not within the Terrorism Cover required to be taken out by the Contractor under the Main Contract.

[10] Clause 2.20.2 refers to practical completion of the Sub-Contract Works or any Section "being deemed to have taken place on such date as may be agreed"; clause 2.20.2 does not expressly require such agreement to be in writing nor that such agreement be confirmed in writing. It is, therefore, possible that practical completion of the Sub-Contract Works may be deemed to have occurred on such date as may be agreed by Parties but with the Terminal Date not occurring until the date of issue by the Contractor of a written confirmation of such agreement. It is, therefore, essential that such written confirmation is issued on the same date as that upon which any agreement under clause 2.20.2 is reached. See also Footnote [5].

Joint Names Policy:	a policy of insurance which includes the Contractor and the Employer as the insured and under which the insurers have no right of recourse against any person named as insured, or, pursuant to clause 6.9 of the Main Contract Conditions and clause 6.6.1 of these Sub-Contract Conditions, recognised as an insured thereunder.
Specified Perils:	fire, lightning, explosion, storm, tempest, flood, bursting or over-flowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion but excluding Excepted Risks.
Terrorism Cover:	a Joint Names Policy of insurance provided under the Main Contract Conditions against loss or damage to work completed and Site Materials or to an existing structure and/or the contents of an existing structure caused by or resulting from terrorism.

### Liability of Sub-Contractor – personal injury or death - injury or damage to property - indemnity to Contractor

6.2 The Sub-Contractor shall be liable for, and shall indemnify the Contractor against, any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Sub-Contract Works except to the extent that the same is due to any act or neglect, breach of statutory duty, omission or default of the Contractor or any person for whom the Contractor is responsible or of the Employer or of any person for whom the Employer is responsible including the persons employed or otherwise engaged by the Employer to whom clause 2.6 of the Main Contract Conditions refers or of any local authority or statutory undertaker executing work solely in pursuance of its statutory rights or obligations.

### Liability of Sub-Contractor – injury or damage to property – indemnity to Contractor

6.3 The Sub-Contractor shall be liable for, and shall indemnify the Contractor against any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Sub-Contract Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Sub-Contractor or any person for whom the Sub-Contractor is responsible. This liability and indemnity is subject to clause 6.4.

### Extent of liability and indemnity under clause 6.3 - exclusion

6.4 The liability and indemnity to the Contractor referred to in clause 6.3 shall not include any liability or indemnity in respect of injury or damage to the Main Contract Works and/or Site Materials by one or more of the Specified Perils, whether or not caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any person for whom the Sub-Contractor is responsible, for the period up to and including whichever is the earlier of the Terminal Dates.

### Insurance against injury to persons or property - amount of insurance cover, additional insurances, etc.

6.5 .1 Without prejudice to his obligation to indemnify the Contractor under clauses 6.2 and 6.3, the Sub-Contractor shall take out and maintain insurance which shall comply with clause 6.5.1.1 and 6.5.1.2 in respect of claims arising out of his liability referred to in clauses 6.2 and 6.3 as modified by clause 6.4, and for the avoidance of doubt, the Sub-Contractor's obligation to take out and maintain insurance in respect of his liability for injury or damage to property as stated in clause 6.3 shall include taking out and maintaining insurance for injury and damage to the Sub-Contract Works by a risk other than a Specified Peril, such as impact, subsidence, theft, vandalism, etc. up to and including whichever is the earlier of the Terminal Dates [11], but

[11] The Sub-Contractor has the benefit of the Main Contract Joint Names Policy for loss or damage by the Specified Perils to the Sub-Contract Works but not for other risks e.g. subsidence, impact, theft or vandalism. As the Sub-Contractor is liable for those other risks if they cause loss or damage to the Sub-Contract Works he is required take out an insurance policy to provide such cover which he does not get under the Main Contract Joint Names Policy.



- 6.5.1.1 the insurance in respect of claims for personal injury to, or the death of any person under a contract of service or apprenticeship with the Sub-Contractor and arising out of and in the course of such person's employment, shall comply with all relevant legislation;
- 6.5.1.2 for all other claims to which clause 6.5.1 applies the insurance cover shall indemnify the Contractor in like manner to the Sub-Contractor but only to the extent that the Sub-Contractor may be liable to indemnify the Contractor under the terms of this Sub-Contract and shall be not less than [12] the sum stated in Appendix Part 9A for any one occurrence or series of occurrences arising out of one event.

**Excepted Risks**

- 6.5.2 Notwithstanding the provisions of clauses 6.2, 6.3 and 6.5.1 the Sub-Contractor shall not be liable either to indemnify the Contractor or to insure against personal injury to or the death of any person or any damage, loss or injury caused to the Main Contract Works, work executed, Site Materials, the site or any property by the effect of an Excepted Risk.

**Policies of insurance - production - payment of premiums**

- 6.5.3 The Sub-Contractor shall, as and when reasonably required to do so by the Contractor, produce documentary evidence showing that the insurances required under clause 6.5.1 have been taken out and are being maintained by the Sub-Contractor. On any occasion the Contractor may, but not unreasonably or vexatiously, require the Sub-Contractor to produce the relevant policy or policies and premium receipts therefor.
- 6.5.4 If the Sub-Contractor defaults in insuring as provided in clause 6.5.1 the Contractor may himself take out insurance against any liability or expense which he may incur arising out of such default and the premium for such insurance shall be paid by the Sub-Contractor to the Contractor or recoverable by the Contractor from the Sub-Contractor as a debt.

**Sub-Contract Works and Sub-Contract Site Materials - benefit of Joint Names Policy for loss or damage by the Specified Perils**

- 6.6 .1 The Contractor shall, prior to the commencement of the Sub-Contract Works, ensure that the Joint Names Policy under whichever of the Insurance Options A, B or C applies to the Main Contract shall be so issued or so endorsed that, in respect of loss or damage by the Specified Perils to the Main Contract Works or any Section and Site Materials insured thereunder, the Sub-Contractor is either recognised as an insured under the Joint Names Policy or the insurers waive any rights of subrogation they may have against the Sub-Contractor; and that this recognition or waiver shall continue up to and including whichever is the earlier of the Terminal Dates.
- 6.6.2 Except where the Employer is a Local Authority and Main Contract Insurance Option B or C applies [13] the Contractor shall, as and when reasonably required to do so by the Sub-Contractor, produce documentary evidence of compliance by the Contractor with the provisions of clause 6.6.1 and the Sub-Contractor may on any occasion but not unreasonably or vexatiously, require the Contractor to produce the relevant policy or policies and premium receipts therefor.
- 6.6.3 If the Contractor defaults in compliance with clause 6.6.2 the Sub-Contractor may himself take out insurance against any liability or expense which he may incur arising out of such default and the premium for such insurance shall be paid by the Contractor to the Sub-Contractor or recoverable by the Sub-Contractor from the Contractor as a debt.

[12] It should be noted that the cover granted under public liability policies taken out pursuant to clause 6.5.2 may not be co-extensive with the indemnity given to the Contractor in clause 6.5.1; for example each claim may be subject to the excess in the policy and cover may not be available in respect of loss or damage due to gradual pollution. The Sub-Contractor may, if he so wishes, insure for a sum greater than that stated in the Appendix Part 9A.

[13] The exception is included because, where the Employer under the Main Contract is a Local Authority, the Main Contract Conditions do not provide any right for the Contractor to require the Employer to produce any documentary evidence or the relevant policy or policies and premium receipts.

**Responsibility of Sub-Contractor - loss or damage to the Sub-Contract Works and Sub-Contract Site Materials before practical completion**

- 6.7 .1 Before whichever is the earlier of the Terminal Dates the Sub-Contractor shall (subject to clause 6.7.2) be responsible for the cost of restoration of the Sub-Contract Works or any part thereof lost or damaged, replacement or repair of Sub-Contract Site Materials and removal and disposal of any debris arising therefrom in accordance with clause 6.7.3 except to the extent that the loss or damage to the Sub-Contract Works or Sub-Contract Site Materials is due to:
  - 6.7.1.1 one or more of the Specified Perils (whether or not caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any person for whom the Sub-Contractor is responsible), any Excepted Risk or any other kind of terrorism, or
  - 6.7.1.2 any negligence, breach of statutory duty, omission or default of the Contractor or any person for whom the Contractor is responsible or of the Employer or of any person engaged, employed or authorised by him or by any local authority or statutory undertaker.
- 6.7.2 Where, during the progress of the Sub-Contract Works, Sub-Contract Site Materials or goods have been fully, finally and properly incorporated into the Main Contract Works before practical completion of the Sub-Contract Works, the Sub-Contractor shall be responsible, in respect of loss or damage to sub-contract works comprising the materials or goods so incorporated caused by the occurrence of a peril other than a Specified Peril, for the cost of restoration of such work lost or damaged and removal and disposal of any debris arising therefrom in accordance with clause 6.7.3 but only to the extent that such loss or damage is caused by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any person for whom the Sub-Contractor is responsible.

**Sub-Contractor's obligation to restore, etc. such loss or damage**

- 6.7.3.1 If before the earlier of the Terminal Dates any loss or damage affecting the Sub-Contract Works or any part thereof or Sub-Contract Site Materials is occasioned, whether by one or more of the Specified Perils or otherwise, then, upon discovering the loss or damage, the Sub-Contractor shall forthwith give notice to the Contractor of the extent, nature and location thereof.
- 6.7.3.2 Where Main Contract Insurance Option A or B applies the Sub-Contractor shall, in accordance with any Contractor's directions, with due diligence restore the Sub-Contract Works lost or damaged, replace or repair any Sub-Contract Site Materials which have been lost or damaged, remove and dispose of any debris arising therefrom and proceed with the carrying out and completion of the Sub-Contract Works.
- 6.7.3.3 Where Insurance Option C applies, if the occurrence of such loss or damage or any other loss or damage gives rise to determination of the Contractor's employment under paragraph C.4.4 of the Schedule 3 (*insurances*) of the Main Contract clause 7.11 shall apply.
- 6.7.3.4 If the Contractor's employment is not determined under paragraph C.4.4 of the Schedule 3 (*insurances*) of the Main Contract, the Sub-Contractor shall, in accordance with any Contractor's directions, with due diligence restore the Sub-Contract Works or any part thereof lost or damaged, replace or repair any Sub-Contract Site Materials which have been lost or damaged, remove and dispose of any debris arising therefrom and proceed with the carrying out and completion of the Sub-Contract Works.

**Payment for restoration, etc. of work done under clause 6.7.3 by Sub-Contractor**

- 6.7.4 Where under clause 6.7.1 the Sub-Contractor is not responsible for the cost of compliance with clause 6.7.3, such compliance shall be treated as if it were a Variation required by a direction of the Contractor's Representative to which clause 3.4 refers and, except for a variation for which the Contractor has issued to the Sub-Contractor a confirmed acceptance of a Schedule 2 Quotation pursuant to Clause 4.6.3 or for a variation to such work, valued under clause 5.2 whichever is applicable. The amount of the valuation shall not be added to the Sub-Contract Sum but the Contractor shall pay such amounts to the Sub-Contractor in accordance with clause 4 or recoverable by the Sub-Contractor from the Contractor as a debt.



6.7.5 The Sub-Contractor shall not object to payment to the Employer by the insurers under the Joint Names Policy of any relevant insurance monies.

#### Loss or damage occurring to the Sub-Contract Works after their practical completion - Sub-Contractor's responsibility

6.7.6 On or after the earlier of the Terminal Dates the Sub-Contractor shall not be responsible for loss or damage to the Sub-Contract Works except to the extent of any loss or damage caused thereto by the negligence, breach of statutory duty, omission or default of the Sub-Contractor or any person for whom the Sub-Contractor is responsible.

6.7.7 The Sub-Contractor's obligations in regard to defects in the Sub-Contract Works as set out in clause 2.22 shall not in any way be modified by this clause 6.7.

#### Non availability of Terrorism Cover under Joint Names Policy

- 6.8.1 If the named insurers in the Joint Names Policy referred to in clause 6.6 notify the Employer or Contractor that Terrorism Cover will cease in their insurance contract and no longer be available, or will only be available in any modified form, from a specific date ('the cessation date'), the Contractor shall inform the Sub-Contractor and, following notification by the Employer, shall notify the Sub-Contractor of the Employer's election under clause 6.10.2 of the Main Contract Conditions.
- 6.8.2 If notice is given by the Employer to determine the Contractor's employment under the main contract pursuant to clause 6.11.2.2 of the Main Contract Conditions, then the Sub-Contractor's employment under this Sub-Contract shall terminate on the date stated in the notice of the Employer. The provisions of clause 7.11 (except clause 7.11.3.5) shall apply upon and from such determination.
- 6.8.3 If notice to terminate the Contractor's employment is not given by the Employer, then:
- 6.8.3.1 where any completed Sub-Contract Works or any part thereof and/or Sub-Contract Site Materials suffer physical damage as a direct result of Terrorism, the damaged or lost work will be restored, any lost or damaged Sub-Contract Site Materials shall be replaced or repaired and any debris will be removed and disposed of by the Sub-Contractor with due diligence and the Sub-Contractor will continue with the carrying out of the Sub-Contract Works;
  - 6.8.3.2 the repair, restorations and replacement of such damage or loss and the disposal and removal of debris shall be treated as a Variation. There shall be no deduction in any sum payable to the Sub-Contractor under this clause 6.8.3 by reason of any neglect or act by the Sub-Contractor or any of his sub-contractors which may have contributed to the physical loss or damage; and
  - 6.8.3.3 where Insurance Option C applies and subject to paragraph C.4.4 of Insurance Option C, the requirement for the Sub-Contract Works to continue shall not be affected by any damage or loss to the existing structures and/or their contents caused by Terrorism.

#### Sub-Contractor's plant, etc. – responsibility of Contractor

- 6.9 The Contractor shall only be responsible for any loss or damage to temporary works, plant, tools, equipment or other property belonging to or provided by the Sub-Contractor and to any Sub-Contractor's materials or goods which are not Sub-Contract Site Materials to the extent that such loss or damage is due to any negligence, breach of statutory duty, omission or default of the Contractor or any person for whom the Contractor is responsible.

## Sub-Contractor's Design Works - Professional Indemnity Insurance

### Obligation to insure

- 6.10 The Sub-Contractor shall:
- 6.10.1 if he has not already done so, immediately after this Sub-Contract has been entered into, take out a Professional Indemnity insurance policy in accordance with the limit of indemnity of the type and in an amount not less than stated in Appendix Part 9B;
  - 6.10.2 maintain such insurance until expiration of the period stated in Appendix Part 9B from the date of practical completion of the Sub-Contract Works provided such insurance remains available at commercially reasonable rates; and
  - 6.10.3 as and when requested to do so by the Contractor, send documentary evidence that such insurance has been effected and/or is being maintained to the Contractor.

### Increased cost and non-availability

- 6.11 If the insurance referred to in clause 6.10 stops being available at commercially reasonable rates, the Sub-Contractor shall immediately notify the Contractor in order that the Contractor and Sub-Contractor can consider the means of best protecting the individual positions of the Contractor and the Sub-Contractor in the absence of such insurance.

## Joint Fire Code – compliance

### Application of clause

- 6.12 Clauses 6.12 to 6.15 apply where it is stated in Appendix Part 1 Section A that the Joint Fire Code applies.

### Compliance with Joint Fire Code

- 6.13.1 the Contractor and the Sub-Contractor shall comply with the Joint Fire Code;
- 6.13.2 the Sub-Contractor shall comply with any directions of the Contractor's Representative that are necessary to ensure compliance with the Joint Fire Code.

### Breach of Joint Fire Code – Remedial Measures

- 6.14.1 Where under clause 6.16 of the Main Contract Conditions, the Contractor is required in consequence of a breach of the Joint Fire Code to carry out such remedial measures as the insurer requires ("the Remedial Measures") the Contractor shall send to the Sub-Contractor a copy of the notice requiring the Remedial Measures; and the Sub-Contractor shall comply with the directions of the Contractor's Representative which are reasonably necessary for implementing the Remedial Measures in respect of the carrying out of the Sub-Contract Works.
- 6.14.2 Provided that the Sub-Contractor has not caused the breach of the Joint Fire Code for which the insurer has required the Remedial Measures, the Contractor shall pay the Sub-Contractor the reasonable costs of complying with the directions of the Contractor's Representative under clause 6.14.1; and clauses 2.19.2 to 2.19.15 (*Extension of the period for the execution of the Sub-Contract Works*) and clause 4.19 (*Disturbance of regular progress of Sub-Contract Works – Sub-Contractor's claims*) shall apply, as relevant, to such compliance.
- 6.14.3 The Sub-Contractor shall, within 2 days of receipt of a direction of the Contractor's Representative under clause 6.14.1, begin to comply therewith or shall thereafter fail without reasonable cause to regularly and diligently comply therewith, then the Contractor may either himself or by employing and paying other persons carry out the work stated in the direction of the Contractor's Representative. All costs reasonably incurred by the Contractor under clause 6.14.3 may be withheld and/or deducted from any monies due or to become due to the Sub-Contractor or may be recoverable from the Sub-Contractor by the Contractor as a debt.



6.14.4 Where the act, omission or default of the Sub-Contractor has caused the breach of the Joint Fire Code for which the insurer has required the Remedial Measures, the Sub-Contractor shall pay to the Contractor the cost incurred by the Contractor for the Remedial Measures; and such cost may be withheld and/or deducted from any monies due or to become due to the Sub-Contractor under this Sub-Contract or may be recoverable by the Contractor from the Sub-Contractor as a debt.

#### Joint Fire Code – amendments

6.15 If after the Sub-Contract Base Date the Joint Fire Code is amended and the Joint Fire Code as amended is applicable to the Main Contract Works, the net extra cost, if any, of compliance by the Sub-Contractor with the amended Joint Fire Code shall be added to the Sub-Contract Sum or included in the computation of the Final Sub-Contract Sum.

## 7 - DETERMINATION

### GENERALLY

#### Insolvency

- 7.1 A party to this Sub-Contract becomes insolvent for the purposes of these Sub-Contract Conditions, if:
- 7.1.1 being a company:
    - 7.1.1.1 an administration order is made against it within the meaning of Schedule B1 to the Insolvency Act 1986;
    - 7.1.1.2 an administrative receiver or a receiver or manager of its property is appointed under Chapter I of Part III of that Act, or a receiver is appointed under Chapter II of that Part;
    - 7.1.1.3 a resolution for voluntary winding-up is passed without a declaration of solvency under section 89 of that Act, or
    - 7.1.1.4 a winding-up order is made under Part IV or V of that Act.
  - 7.1.2 being a partnership:
    - 7.1.2.1 a winding-up order is made against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act, or
    - 7.1.2.2 each of the partners is the subject of any event or proceedings referred to in this clause 7.1, or
    - 7.1.2.3 sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.
  - 7.1.3 being an individual:
    - 7.1.3.1 a bankruptcy order is made against him under Part IX of the Insolvency Act 1986, or
    - 7.1.3.2 sequestration is awarded on his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.
  - 7.1.4 being a company, partnership or individual any arrangement, compromise or composition in satisfaction of debts is entered into (other than a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
  - 7.1.5 a company, partnership or individual shall also be treated as insolvent on the occurrence of any event analogous to those specified in clauses 7.1.1 to 7.1.4 under any corresponding legislation in any other part of the United Kingdom.

#### Notices under these determination clauses

- 7.2
- 7.2.1 A notice of determination under clauses 7.4.2, 7.4.3 or 7.8.2 shall not be given unreasonably or vexatiously.
  - 7.2.2 Such determination shall take effect on the date of receipt of the relevant notice under clauses 7.4.2, 7.4.3, or 7.8.2.
  - 7.2.3 Each notice or further notice to which clauses 7.4.1, 7.4.2, 7.4.3, 7.5.1, 7.6, 7.8.1 or 7.8.2 refer shall be given in accordance with clause 1.7.4.

#### Other rights of the Parties; reinstatement

- 7.3
- 7.3.1 The provisions of clause 7.4 to 7.8, 7.10 and 7.11 are without prejudice to any other rights or remedies which the Contractor may possess.



7.3.2 The Sub-Contractor's employment may be reinstated at any time on such terms as may be agreed between the Parties regardless of the grounds of determination.

## Determination of the Sub-Contractor's employment by the Contractor

### Default by Sub-Contractor

- 7.4** .1 If before the date of practical completion of the Sub-Contract Works the Sub-Contractor shall make default in anyone or more of the following respects:
- 7.4.1.1 without reasonable cause he wholly or substantially suspends the carrying out of the Sub-Contract Works or the design of the Sub-Contractor's Designed Works; or
  - 7.4.1.2 without reasonable cause he failed to proceed regularly and diligently with the Sub-Contract Works or the design of the Sub-Contractor's Designed Works; or
  - 7.4.1.3 he refuses or neglects to comply with a written direction from the Contractor requiring him to remove any work, materials or goods not in accordance with this Sub-Contract and by such refusal or neglect the Works are materially affected; or
  - 7.4.1.4 he fails to comply with the provisions of clauses 3.1 and/or 3.2; or
  - 7.4.1.5 he fails pursuant to these Sub-Contract Conditions to comply with the requirements of the CDM Regulations

then the Contractor may issue a notice to the Sub-Contractor specifying the default or defaults (the 'specified default or defaults').

- 7.4.2 If the Sub-Contractor continues the specified default or defaults for 7 days from receipt of the notice under clause 7.4.1 then the Contractor may on, or within 7 days from, the expiry of that 7 days by a further notice to the Sub-Contractor determine the Sub-Contractor's employment under this Sub-Contract.
- 7.4.3 If the Sub-Contractor ends the specified default or defaults or the Contractor does not give the further notice referred to in clause 7.4.2, and the Sub-Contractor repeats the specified default or defaults (whether previously repeated or not) then, upon or within a reasonable time after such repetition, the Contractor may by notice to the Sub-Contractor determine the Sub-Contractor's employment under this Sub-Contract.

### Sub-Contractor becoming Insolvent, etc.

- 7.5** .1 If the Sub-Contractor is insolvent, the Contractor may terminate the Sub-Contractor's employment under this Sub-Contract at any time by notice to the Sub-Contractor.
- 7.5.2 The Sub-Contractor shall immediately notify the Contractor if he has made a composition or arrangement with his creditors, or being a company, has made a proposal for a voluntary arrangement for a composition of debts or schemes of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof;
  - 7.5.3 Whether or not notice of termination has been given by the Contractor:
    - 7.5.3.1 the obligation of the Sub-Contractor to carry out and complete the Sub-Contract Works and to complete the design of the Sub-Contractor's Designed Works pursuant to Article 1.2 and these Sub-Contract Conditions shall be suspended; and
    - 7.5.3.2 any necessary steps may be taken by the Contractor to protect the Sub-Contract Works and to make sure that Sub-Contract Site Materials are not removed from the site and that no interference with those measures occurs by the Sub-Contractor.

## Corruption

- 7.6** If the Sub-Contractor or any person employed by the Sub-Contractor or acting on his behalf (whether with or without the knowledge of the Sub-Contractor)
- 7.6.1 shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to obtaining or execution of this or any other sub-contract with the Contractor or for showing or forbearing to show any favour or disfavour to any person in relation to this or any other sub-contract with the Contractor; or
  - 7.6.2 in relation to this or any other sub-contract with the Contractor shall have committed any offence under the Bribery Act, 2010 or where the Employer is a local authority shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972 or any re-enactment thereof

then the Contractor may by notice to the Sub-Contractor determine the Sub-Contractor's employment under this Sub-Contract or any other sub-contract referred to in this clause 7.6.

### Determination of Sub-Contractor's employment by Contractor - rights and duties of Contractor and Sub-Contractor

- 7.7** In the event of the Sub-Contractor's employment under this Sub-Contract being determined under clause 7.4, 7.5 7.6 and so long as that employment has not been reinstated:
- 7.7.1 the Contractor and/or his sub-contractors and/or his or their agents may enter upon the Sub-Contract Works and use all temporary buildings, plant, tools, equipment, goods and materials intended for, delivered to and placed on or adjacent to the Main Contract Works, and may purchase all materials and goods necessary for the carrying out and completion of the Sub-Contract Works and the making good of defects of the kind referred to in clause 2.16; provided that where the aforesaid temporary buildings, plant, tools, equipment, goods and materials are not owned by the Contractor or by the Sub-Contractor the consent of the owner thereof is obtained by the Contractor;
  - 7.7.2 the Sub-Contractor shall:
    - 7.7.2.1 when required by a Contractor's direction so to do (but not before) remove from the Main Contract Works or the site thereof any temporary buildings, plant, tools, equipment, goods and materials belonging to the Sub-Contractor and any persons for whom he is responsible and have removed by the owner any temporary buildings, plants, tools, equipment, goods and materials not owned by him. If within a reasonable time after any such requirement has been made the Sub-Contractor has not complied therewith in respect of temporary buildings, plant, tools, equipment, goods and materials belonging to him, then the Contractor may (but without being responsible for any loss or damage) remove and sell any such property of the Sub-Contractor holding the proceeds less all costs incurred to the credit of the Sub-Contractor;
    - 7.7.2.2 without charge to the Contractor provide the Contractor with three copies of, and the Contractor may retain, all such drawings or details or descriptions as the Sub-Contractor has prepared or previously provided and drawings and information for the purposes referred to in clause 2.23 relating to the Sub-Contractor's Designed Works completed before determination of the Sub-Contractor's employment;
    - 7.7.2.3 except where an insolvency event listed in clause 29.3.1 has occurred the Sub-Contractor shall if so required by the Contractor within 14 days of the date of determination, assign to the Contractor without payment the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Sub-Contract to the extent that the same is assignable;
  - 7.7.3 until after completion of the design and construction of the Sub-Contract Works and the making good of defects as referred to in clause 2.22 the Contractor shall not be bound by any provisions of this Sub-Contract to make any further payment to the Sub-Contractor of any amount that has already become due either:
    - 7.7.3.1 insofar as the Contractor has given or gives a Pay Less notice under clause 4.10.5; or



7.7.3.2 if the Sub-Contractor, after the last date upon which the Contractor could have given the Pay Less notice, has become insolvent.

7.7.4 upon completion of the design and construction of the Sub-Contract Works and the making good of defects of the kind referred to in clause 2.22 the Sub-Contractor may apply to the Contractor and the Contractor shall pay to the Sub-Contractor the value of any work executed or goods and materials supplied by the Sub-Contractor to the extent that their value has not been included in previous interim payments. The Contractor, in discharging his obligations to pay the Sub-Contractor may deduct therefrom, without prejudice to any other rights of the Contractor and subject to any notice given under clause 4.10.3, the amount of any direct loss and/or damage caused to the Contractor by the determination; or, to the extent that such deduction does not account for the full amount of any such direct loss and/or damage, may recover the difference between the amount deducted and the aforesaid full amount as a debt from the Sub-Contractor.

## Determination of employment under the Sub-Contract by the Sub-Contractor

### Acts, etc. giving grounds for determination of employment by Sub-Contractor

- 7.8** .1 If before the date of practical completion of the Sub-Contract Works the Contractor shall make default in one or more of the following respects:
- 7.8.1.1 without reasonable cause he wholly or substantially suspends the carrying out of the Main Contract Works; or
  - 7.8.1.2 without reasonable cause he fails to proceed with the Main Contract Works so that the reasonable progress of them is seriously affected; or
  - 7.8.1.3 he fails to make payment in accordance with this Sub-Contract; or
  - 7.8.1.4 he fails pursuant to these Sub-Contract Conditions to comply with the requirements of the CDM Regulations
- then the Sub-Contractor may give the Contractor a notice specifying the default or defaults (the 'specified default or defaults').
- 7.8.2 If the Contractor continues the specified default or defaults for 10 days from receipt of the notice under clause 7.8.1 then the Sub-Contractor may on, or within 10 days from, the expiry of that 10 days by a further notice to the Contractor determine the Sub-Contractor's employment under this Sub-Contract.
- 7.8.3 If the Contractor ends the specified default or defaults or the Sub-Contractor does not give the further notice referred to in clause 7.8.2, and the Contractor repeats the specified default or defaults (whether previously repeated or not) then, upon or within a reasonable time after such repetition, the Sub-Contractor may by notice to the Contractor determine the Sub-Contractor's employment under this Sub-Contract.
- 7.8.4 Where the Sub-Contractor has suspended the further execution of the Sub-Contract Works under clause 4.11 the Sub-Contractor will not be entitled to issue a notice of determination in respect of any default under clause 7.8 until 10 days after the date of commencement of the suspension.

### Determination of the Contractor's employment under the Main Contract

- 7.9** If the Contractor's employment is determined under either Insurance Option C or clause 8.4.2 or 8.5.1 or 8.11 of the Main Contract Conditions, then the Sub-Contractor's employment under this Sub-Contract shall thereupon also determine and the provisions of clause 7.11 shall thereafter apply.

## Insolvency of Contractor

- 7.10** The Contractor shall notify the Sub-Contractor if he has made an arrangement or composition with his creditors, or if the Contractor is a company, if a proposal is to be approved for a voluntary arrangement for a composition of debts or schemes of arrangement in accordance with whichever is appropriate of the Insolvency Act 1986 or the Companies Act 1985 or any amendment or re-enactment thereof and the Sub-Contractor may by notice to the Contractor terminate the Sub-Contractor's employment under this Sub-Contract, provided that the Sub-Contractor shall not issue a notice under this clause 7.10 or clause 7.8.2 before the expiry of four weeks after the Contractor became Insolvent.

## Determination of employment of Sub-Contractor by Sub-Contractor - rights and duties of Contractor and Sub-Contractor

- 7.11** In the event of determination of the Sub-Contractor's employment under clause 7.8, 7.9 or 7.10 and so long as that employment has not been reinstated then:
- 7.11.1 any further payments to the Sub-Contractor shall only be made in accordance with this clause 7.11;
  - 7.11.2 the Sub-Contractor shall:
    - 7.11.2.1 with all reasonable dispatch and in such manner and with such precautions as will prevent injury, death or damage of the classes in respect of which before the date of determination he was liable to indemnify the Contractor under clauses 6.3 and 6.4 remove from the site all his temporary buildings, plant, tools, equipment, goods or materials (including Sub-Contract Site Contract Materials) subject always to the provisions of clause 7.11.5;
    - 7.11.2.2 without charge to the Contractor provide the Contractor with three copies of, and the Contractor may retain, all such drawings or details or descriptions as the Sub-Contractor has prepared or previously provided and drawings and information for the purposes referred to in clause 2.24 relating to the Sub-Contractor's Designed Works completed before determination of the Sub-Contractor's employment;
  - 7.11.3 the Sub-Contractor shall with reasonable dispatch prepare and submit to the Contractor an account setting out the sum of the amounts referred to in clauses 7.11.3.1 to 7.11.3.5:
    - 7.11.3.1 the total value of work completed at the date of determination, such value to be ascertained in accordance with clause 4.13;
    - 7.11.3.2 the total value of work begun and executed but not completed at the date of determination, such value to be ascertained either under clause 5.6 as if it were a valuation of a variation (where the Adjustment Basis applies) or under clause 5.7 (where the re-measurement basis applies);
    - 7.11.3.3 any sum ascertained in respect of direct loss and/or expense under clause 4.19 (whether ascertained before or after the date of determination);
    - 7.11.3.4 the cost of materials or goods (including Sub-Contract Site Materials) properly ordered for the Sub-Contract Works for which the Sub-Contractor shall have paid or for which the Sub-Contractor is legally bound to pay and on such payment in full by the Contractor such materials or goods shall become the property of the Contractor;
    - 7.11.3.5 the reasonable cost of removal pursuant to clause 7.11.2; and

provided that clause 7.11.3.5 shall not apply where any direct loss and/or damage caused to the Sub-Contractor by the determination occurs by reason of any of the events in clauses 6.11.2.2, 8.11.1.1, 8.11.1.2, 8.11.1.4 or 8.11.1.5 or paragraph C.4.4 of Schedule 3 (*Insurances*) of the Main Contract Conditions.
  - 7.11.4 After taking into account amounts previously paid to or otherwise discharged in favour of the Sub-Contractor under this Sub-Contract in respect of the amounts referred to in clauses 7.11.3.1 to 7.11.3.5 inclusive and any sum agreed in respect of direct loss and/or expense under clause 4.19 whether agreed before or after the determination, the Contractor shall subject to clause 4.23 pay to the Sub-Contractor the amount properly due in respect of this account within 28 days of its submission by the Sub-Contractor to the Contractor without deduction of Retention.



## 8 - Settlement of Disputes

### Alternative Dispute Resolution

- 8.1 Any dispute or difference arising under this Contract may, where the Parties so agree, be resolved through an Alternative Dispute Resolution procedure.

### Adjudication

#### Application of clause 8.2

- 8.2 .1 Clause 8.2 applies, where pursuant to Article 3, either Party refers any dispute or difference arising under this Sub-Contract to adjudication.
- 8.2.2 Such adjudication shall be conducted in accordance with Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 ('the Scheme').

#### Identity of Adjudicator

- 8.2.3 The Adjudicator [14] to decide the dispute or difference shall be, on the application of either party, an individual to be nominated as the Adjudicator by the nominating body named in Appendix Part 10.

#### Dispute or difference - notice of intention to refer to Adjudication - referral

- 8.2.4.1 When pursuant to Article 3 a Party requires a dispute or difference to be referred to adjudication then that Party shall give notice to the other Party of his intention to refer the dispute or difference, briefly identified in the notice, to adjudication. Within 7 days from the date of such notice the Party giving the notice of intention shall refer the dispute or difference to the Adjudicator for his decision ("the referral"); and shall include with that referral particulars of the dispute or difference together with a summary of the contentions on which he relies, a statement of the relief or remedy which is sought and any material he wishes the Adjudicator to consider. The referral and its accompanying documentation shall be copied simultaneously to the other Party.
- 8.1.4.2 The referral by a Party with its accompanying documentation to the Adjudicator and the copies thereof to be provided to the other Party shall be given in accordance with clause 1.7.4.

#### Conduct of the Adjudication

- 8.2.5.1 The Party not making the referral may, by the same means stated in clause 8.4.2, send to the Adjudicator within 7 days of the date of the referral with a copy to the other Party, a written statement of the contentions on which he relies and any material he wishes the Adjudicator to consider.
- 8.2.5.2 The Adjudicator shall within 28 days of his receipt of the referral and its accompanying documentation under clause 8.4.1 and acting as an Adjudicator for the purposes of the Scheme and not as an expert or an arbitrator reach his decision and forthwith send that decision in writing to the Parties. Provided that the Party who has made the referral may consent to allowing the Adjudicator to extend the period of 28 days by up to 14 days; and that by agreement between the Parties after the referral has been made a longer period than 28 days may be notified jointly by the Parties to the Adjudicator within which to reach his decision.
- 8.2.5.3 The Parties shall meet their own costs of the Adjudication except that the Adjudicator may direct as to who should pay the cost of any test or opening up if required.

[14] An Adjudicator shall be a natural person acting in his personal capacity and shall not, unless otherwise agreed, be an employee of the Contractor or the Sub-Contractor.

### Adjudicator's fees and reasonable expenses

- 8.2.6.1 The Adjudicator in his decision shall state how payment of his fee and reasonable expenses is to be apportioned as between the Parties. In default of such statement the Parties shall bear the cost of the Adjudicator's fee and reasonable expenses in equal proportions.
- 8.2.6.2 The Parties shall be jointly and severally liable to the Adjudicator for his fee and for all expenses reasonably incurred by the Adjudicator pursuant to the Adjudication.

### Effect of Adjudicator's decision

- 8.2.7.1 The decision of the Adjudicator shall be binding on the Parties until the dispute or difference is finally determined by arbitration or by legal proceedings or by an agreement in writing between the Parties made after the decision of the Adjudicator has been given. [15]
- 8.2.7.2 The Parties shall, without prejudice to their other rights under the Contract, comply with the decisions of the Adjudicator; and the Contractor and the Sub-Contractor shall ensure that the decisions of the Adjudicator are given effect.
- 8.2.7.3 If either Party does not comply with the decision of the Adjudicator the other Party shall be entitled, to take proceedings in the courts to secure such compliance pending any final determination of the referred dispute or difference pursuant to clause 8.7.1.

### Immunity

- 8.2.8 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith and this protection from liability shall similarly extend to any employee or agent of the Adjudicator.

## Arbitration

### Application of clause 8.3

- 8.3 .1 Where Article 4 applies, either party refers any dispute or difference arising under this Contract to arbitration.
- 8.3.2 The arbitration shall be conducted in accordance with the JCT 2011 edition of the Construction Industry Model Arbitration Rules [16]. Provided that if any amendments to those Rules have been issued by the Joint Contracts Tribunal after the Sub-Contract Base Date the Parties may, by a joint notice in writing to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended; and
- 8.3.3 A reference in Clauses 8.3 and 8.4 to a Rule or Rules is a reference to the Rule or Rules of the Construction Industry Model Arbitration Rules.

### Dispute or difference - notice of reference to Arbitration

- 8.4 .1 When pursuant to Article 4 either party requires a dispute or difference to be referred to arbitration then that party shall serve on the other Party a notice of arbitration to be given in accordance with clause 1.7.4 to such effect in accordance with Rule 2.1 which states:
- "Arbitral proceedings are begun in respect of a dispute when one party serves on the other a notice of arbitration identifying the dispute and requiring him to agree the appointment of an arbitrator;"
- and an arbitrator shall be an individual agreed by the Parties or appointed by the person named in Appendix Part 10 in accordance with Rule 2.3 which states:

[15] Where the arbitration or legal proceedings arise from an adjudication, such arbitration or legal proceedings are not an appeal against the decision of the Adjudicator but are a consideration of the dispute or difference as if no decision had been made by an Adjudicator.

[16] The JCT 2011 edition of the CIMAR Rules contain stricter time limits than those prescribed by some arbitration rules of those frequently observed in practice. The Parties should note that a failure by a party or the agent of a party to comply with the time limits incorporated in these Rules may have adverse consequences.



"If the parties fail to agree on the name of an arbitrator within 14 days (or any agreed extension) after: the notice of arbitration is served, or a previously appointed arbitrator ceases to hold office for any reason either party may apply for the appointment of an arbitrator to the person so empowered."

By Rule 2.5 "the arbitrator's appointment takes effect upon his agreement to act or his appointment under Rule 2.3, whether or not his terms have been accepted."

- 8.4.2 Where two or more related arbitral proceedings in respect of the Works fall under separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply thereto.
- 8.4.3 After an arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 4 to be decided in the arbitral proceeding and Rule 3.3 shall apply thereto.
- 8.4.4 In any such arbitration as is provided for in clause 8.3 any decision of the Employer which is final and binding on the Contractor under the Main Contract shall also be and be deemed to be final and binding between and upon the Contractor and the Sub-Contractor.

#### **Powers of Arbitrator**

- 8.5 Subject to the provisions of Article 4, clause 1.8, clauses A.4.3, B.3.3 or C.5 of the Fluctuations Supplement (as applicable) and clause 4 of the Main Contract Conditions the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Sub-Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any payment or certificate and to open up, review and revise any payment, certificate, opinion, decision (except a decision of the Employer to issue instructions pursuant to clause 3.18.1 of the Main Contract Conditions and which instructions were issued to the Sub-Contractor pursuant to clause 3.11.2), requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such payment had been made or no such certificate, opinion, decision, requirement or notice had been given.

#### **Effect of Arbitrator's award**

- 8.6 Subject to clause 8.7 the award of such Arbitrator shall be final and binding on the Parties.

#### **Appeal - question of law**

- 8.7 The Parties hereby agree and consent pursuant to Sections 45(2)(a) and 69(2)(a) of the Arbitration Act 1996 that either Party may (upon notice to the other Party and to the Arbitrator):
- 8.7.1 apply to the courts to determine any question of law arising in the course of the reference; and
- 8.7.2 apply to the courts on any question of law arising out of an award made in an arbitration under this Arbitration Agreement.

#### **Arbitration Act 1996**

- 8.8 The provisions of the Arbitration Act 1996 shall apply to any arbitration under this Sub-Contract wherever the same, or any part of it, shall be conducted. [17]

[17] Where the site of the Works is situated in Scotland then the forms issued by the Scottish Building Contract Committee which contain Scots proper law adjudication and arbitration provisions are the appropriate documents. The SBCC issues guidance. It should be noted that the provisions of the Arbitration Act 1996 do not extend to Scotland.

#### **Legal proceedings**

- 8.9 .1 Clause 8.9 shall apply if it is stated in Appendix Part 10 that Article 5 and this clause 8.9 applies.
- 8.9.2 When any dispute or difference is to be determined by legal proceedings then insofar as this Sub-Contract provides for the issue of a certificate or a direction, or the expression of an opinion or the giving of a decision, requirement or notice such provision shall not prevent the court, in determining the rights and liabilities of the Parties hereto, from making any finding necessary to establish whether such certificate was correctly issued or opinion correctly expressed or decision, requirement or notice correctly given on the facts found by the court; nor shall such provision prevent the court establishing what certificate or direction ought to have been issued or what other opinion should have been expressed or what other decision, requirement or notice should have been given as if no certificate, opinion, decision, requirement or notice had been issued, expressed or given.



## Schedules

### Schedule 1 - Codes of Practice

#### Code of Practice 'A': referred to in clause 3.11.1

- 1 This is the Code of Practice referred to in clause 3.11.1. The purpose of the Code is to assist the Contractor in deciding whether to issue directions requiring the removal or directions requiring the rectification of non-complying work under clause 3.11.1.
- 2 The Contractor and the Sub-Contractor should endeavor to agree whether non-complying work is to be removed or is to be rectified but, in any case, in issuing his directions pursuant to clause 3.11.1, the Contractor is required to consider the following criteria:
  - 2.1 whether rectifying non-complying work will enable the Contractor to comply with his obligations under clauses 2.1 and 3.13 of the Main Contract Conditions;
  - 2.2 whether the rectification as opposed to the removal of non-complying work may still leave such work with an inherent or probable weakness;
  - 2.3 the significance of the non-compliance having regard to the nature of the work in which it has occurred;
  - 2.4 the likelihood of the rectification as opposed to the removal of non-complying work giving rise to further non-compliance;
  - 2.5 the reason for the non-compliance;
  - 2.6 whether any non-compliance is in a primary structural element or in a less significant element which can easily be repaired;
  - 2.7 whether the non-compliance indicates an inherent weakness;
  - 2.8 the time required for and the consequential costs of rectification as opposed to removal;
  - 2.9 the method of rectification, if any, proposed by the Sub-Contractor;
  - 2.10 the practicability of the rectification as opposed to the removal of the non-complying work;
  - 2.11 the level and standard of supervision and control of the Sub-Contract Works by the Sub-Contractor;
  - 2.12 any previous failure by the Sub-Contractor satisfactorily to rectify any non-complying work;
  - 2.13 any Codes of Practice or similar advice issued by a responsible body which are applicable to the non-complying work;
  - 2.14 any technical advice that the Sub-Contract has obtained in respect of the non-complying work;
  - 2.15 current recognised procedures; and
  - 2.16 any other relevant matters.

#### Code of Practice 'B': referred to in clause 3.11.3

- 1 This is the Code of Practice referred to in clause 3.11.3. The purpose of the Code is to help in the fair and reasonable operation of the requirements of clause 3.11.3.
- 2 The Contractor and the Sub-Contractor should endeavor to agree the amount and method of opening up or testing but in any case in issuing his directions pursuant to clause 3.11.3 the Contractor is required to consider the following criteria:
  - 2.1 the need in the event of non-compliance to demonstrate at no cost to the Contractor either that it is unique and not likely to occur in similar elements of the Sub-Contract Works or alternatively the extent of any similar non-compliance in the Sub-Contract Works already constructed or still to be constructed;
  - 2.2 the need to discover whether any non-compliance in a primary structural element is a failure of workmanship and/or materials such that rigorous testing of similar elements must take place; or where the non-compliance is in a less significant element whether it is such as is to be statistically expected and can be simply repaired; or whether the non-compliance indicates an inherent weakness such as can only be found by selective testing the extent of which must depend upon the importance of any detail concerned;
  - 2.3 the significance of the non-compliance having regard to the nature of the work in which it has occurred;
  - 2.4 the consequence of any similar non-compliance on the safety of the building, its effect on users, adjoining property, the public, and compliance with Statutory Requirements;
  - 2.5 the level and standard of supervision and control of the Sub-Contract Works by the Sub-Contractor;
  - 2.6 the relevant records of the Sub-Contractor and where relevant of any sub sub-contractor resulting from the supervision and control referred to in paragraph 2.5 above or otherwise;
  - 2.7 any Codes of Practice or similar advice issued by a responsible body which are applicable to the non-complying work, materials of goods;
  - 2.8 any failure by the Sub-Contractor to carry out, or to secure the carrying out of any tests specified in the Numbered Documents or in a Contractor's direction ;
  - 2.9 the reason for the non-compliance when this has been established;
  - 2.10 any technical advice that the Sub-Contractor has obtained in respect of the non-complying work, materials or goods;
  - 2.11 current recognised testing procedures;
  - 2.12 the practicability of progressive testing in establishing whether any similar non-compliance is reasonably likely;
  - 2.13 if alternative testing methods are available, the time required for and the consequential costs of such alternative testing methods;
  - 2.14 any Sub-Contractor's proposals ;
  - 2.15 the extent, if any, to which the Employer has issued instructions under clause 3.13.3 of the Main Contract Conditions affecting the Sub-Contract Works and the nature and extent of any such instructions;
  - 2.16 any decision of the Employer not to issue instructions under clause 3.13.3 of the Main Contract Conditions affecting the Sub-Contract Works; and
  - 2.17 any other relevant matters.



## Schedule 2 - Schedule 2 Quotation

### Sub-Contractor to submit his quotation ("Schedule 2 Quotation")

- 1.1 The direction of the Contractor's Representative to which Schedule 2 is to apply shall have provided sufficient information [18] to enable the Sub-Contractor to provide a quotation, which shall comprise the matters set out in paragraph 2 of this Schedule (a 'Schedule 2 Quotation'), in compliance with the direction. If the Sub-Contractor reasonably considers that the information provided is not sufficient, then, not later than 4 days from the receipt of the direction, he shall request the Contractor to supply sufficient further information.
- 1.2 The Sub-Contractor shall submit to the Contractor his Schedule 2 Quotation in compliance with the direction not later than 14 days from the later of:
  - 1.2.1 the date of receipt of the direction; or
  - 1.2.2 if applicable, the date of receipt by the Sub-Contractor of the sufficient further information to which paragraph 1.1 refers.
- 1.3 The Schedule 2 Quotation shall remain open for acceptance by the Contractor for 14 days (or for such other number of days as may have been agreed pursuant to paragraph 7) from the date of receipt by the Contractor of the Schedule 2 Quotation.
- 1.4 The Variation for which the Sub-Contractor has submitted his Schedule 2 Quotation shall not be carried out by the Sub-Contractor until receipt by the Sub-Contractor of its acceptance by the Contractor pursuant to paragraph 3.

### Content of the Sub-Contractor's Schedule 2 Quotation

- 2 The Schedule 2 Quotation shall separately comprise:
  - 2.1 the value of the adjustment to the Sub-Contract Sum or the amount to be taken into account in the computation of the Final Sub-Contract Sum (other than any amount to which paragraph 2.3 refers) supported by all necessary calculations by reference, where relevant, to the rates and prices in the Sub-Contract Documents and including, where appropriate, allowances for any adjustment of preliminary items;
  - 2.2 any adjustment to the time required for the completion of the Sub-Contract Works or any Section by reference to the period or periods stated in Appendix Part 4 to the extent that such adjustment is not included in any other extension of time that has been given by the Contractor, or included in any other Schedule 2 Quotation accepted by the Contractor.
  - 2.3 the amount to be paid in lieu of any ascertainment under clause 4.19 of direct loss and/or expense not included in any other Schedule 2 Quotation accepted by the Contractor or in any previous ascertainment under clause 4.19.
  - 2.4 a fair and reasonable amount in respect of the cost of preparing the Schedule 2 Quotation, and
  - 2.5 where specifically required by the direction, shall provide indicative information in statements on
    - 2.5.1 the additional resources (if any) required to carry out the Variation; and
    - 2.5.2 the method of carrying out the Variation.

Each part of the Schedule 2 Quotation shall contain reasonably sufficient supporting information to enable that part to be evaluated by the Contractor.

[18] The information provided to the Sub-Contractor should normally be in a similar format to that provided in the Sub-Contract Documents; and may be in the form of drawings and/or in a specification and/or in an addendum bill of quantities or otherwise.

### Acceptance of a Sub-Contractor's Schedule 2 - Contractor's confirmed acceptance

- 3 Not later than the last day of the period for acceptance stated in paragraph 1.3 the Contractor shall issue a direction to the Sub-Contractor if he wishes to accept the Schedule Quotation and, if so, the Contractor shall state in such acceptance:
  - 3.1 that the Sub-Contractor is to carry out the Variation;
  - 3.2 the adjustment to the Sub-Contract Sum, or the amount to be taken into account in the computation of the Final Sub-Contract Sum and any amounts to which paragraphs 2.3 and 2.4 refer, to be made for complying with the direction requiring the Variation; and
  - 3.3 any revised period or periods for completion of the Sub-Contract Works or any Section.

### Sub-Contractor's Schedule 2 Quotation not accepted

- 4 If the Contractor does not accept the Schedule 2 Quotation by the expiry of the period for acceptance stated in paragraph 1.3, the Contractor shall, on the expiry of that period, either
  - 4.1 direct that the Variation is to be carried out and is to be valued under the Valuation Rules; or
  - 4.2 direct that the Variation is not to be carried out.

### Payment for a Schedule 2 Quotation

- 5 If a Schedule 2 Quotation is not accepted by the Contractor a fair and reasonable amount shall be included in the computation of the Final Sub-Contract Sum in respect of the cost of preparation of the Schedule 2 Quotation provided that the Schedule 2 Quotation has been prepared on a fair and reasonable basis. The non-acceptance by the Contractor of a Schedule 2 Quotation shall not of itself be evidence that the quotation was not prepared on a fair and reasonable basis.

### Restriction on use of Schedule 2 Quotation

- 6 If the Contractor has not, under paragraph 3, accepted a Schedule 2 Quotation, neither the Contractor nor the Sub-Contractor may use that quotation for any purpose whatsoever.

### Number of days - paragraphs 1.1 and 1.2

- 7 The Contractor and the Sub-Contractor may agree to increase or reduce the number of days stated in clauses 5.3.1 and 5.3.2 and/or in paragraphs 1.1 and 1.2 of this Schedule and any such agreement shall be confirmed by the Contractor to the Sub-Contractor.



### Schedule 3

#### Form of Guarantee Bond for Sub-Contractors

BY THIS BOND, we [Insert Bank's Name]

whose registered office is at [Insert Bank's Address]

(hereinafter called "the Surety") are held and firmly bound unto [Insert Contractor's Name]

of [Insert Contractor's Address]

(hereinafter called "the Contractor")

WHEREAS by an Agreement (hereinafter called "the Principal Agreement") made between the Contractor and

[Insert Employer's Name and Address]

(hereinafter called "the Employer") the Contractor contracted with the Employer to execute and perform the Works the subject of the Principal Agreement.

AND WHEREAS [Insert Sub-contractor's Name]

of [Insert Sub-contractor's Address]

(hereinafter called "the Sub-Contractor") by an agreement made between the Contractor of the one part and the Sub-Contractor of the other part has entered into a Sub-Contract (hereinafter called "the Sub-Contract") to execute and perform the Sub-Contract Works therein described in conformity with the provisions of the said Sub-Contract and in the appropriate provisions of the Principal Agreement.

The Surety hereby gives the contractor its guarantee and undertakes to pay to the Contractor any amount or amounts not exceeding in total a maximum of on receipt of the Contractor's first demand in writing. Any claims will bear the confirmation of the Contractor's bankers that the signatures thereon are authentic.

This guarantee is valid for written demands received by the Surety on or before the date of the issue of the Certificate of Making Good Defects under the Principal Agreement after which date the Surety's liability to the Contractor under this guarantee will cease and this guarantee will be of no further effect but no alteration in terms of the said Sub-Contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning the Sub-Contract on the part of the Contractor shall in any way release the Sureties from any liability under the above-written Bond.

This guarantee is personal to the Contractor and is not assignable.

This guarantee shall be governed by English Law.

THE COMMON SEAL of )  
was hereto affixed in the presence )  
of:- )

..... Director

..... Secretary

THE COMMON SEAL of )  
was hereto affixed in the presence )  
of:- )

..... Director

### Schedule 4

#### Provision of drawings, details, specifications and other information by the Sub-Contractor

##### Part A The Sub-Contract Works do not include Sub-Contractor's Designed Works

- A1 ·1 The Sub-Contractor is to provide detailed information and working drawings as described in paragraphs A2, A3 and A4 of this Schedule 5 together with all other information which is reasonably necessary to co-ordinate the design and construction of the Sub-Contract Works with the design and construction of the Main Contract Works to meet the Sub-Contract programme.
- 2 The Sub-Contractor is to advise the Contractor of any errors that are reasonably apparent in the design as provided by the Contractor, and any discrepancies within or between any of the above.
- 3 The Sub-Contractor is to request additional information as required to carry out the construction of the Sub-Contract Works in sufficient time to meet the Sub-Contract programme.
- 4 The Sub-Contractor is to allow sufficient time within the Sub-Contract programme for carrying out and completing of the detailed information and working drawings, inspection and comment by the Contractor and/or the Employer and any subsequent amendment(s), re-submission(s) and re-inspection(s).

##### Working Drawings

- A2 ·1 The information produced for the purpose of translating the design and production information into working proposals shall include but not be limited to:
  - 'Shop Drawings:' meaning all drawings produced for the purpose of explaining how the components of the design are to be fabricated;
  - 'Installation Drawings:' meaning all drawings showing the Sub-Contractor's proposals for the execution of the Sub-Contract Works, in such detail as to enable the works to be properly installed on site, including drawings which detail and co-ordinate the position of all services and equipment to be supplied under this Sub-Contract and which take account of other trades; and
  - 'Fixing Drawings' meaning drawings which show the method by which items of equipment supplied under this Sub-Contract are supported, fixed to each other, fixed to building components and fixed to items of equipment which do not form part of this Sub-Contract.
- 2 All information as described in this paragraph A2·1 is to be provided in accordance with the requirements of Schedule 5.

##### Manufacturers Design and Production Information

- A3 ·1 The information produced by the manufacturers of specialist components required by the designs and specifications shall include but not be limited to:
  - 'Manufacturers Drawings' meaning drawings produced by a manufacturer or equipment supplier detailing principal dimensions, fixings, connections and all other relevant details, including detailed wiring diagrams for each item requiring electrical connections to be made on site; and
  - 'Technical Literature' meaning manufacturers current literature relating to all products to be used in the Sub-Contract Works.
- 2 All information as described in this paragraph A3·1 is to be provided in accordance with the requirements of Schedule 5.



### Builder's Work Information

- A4**
- 1 Detailed drawings of all builder's work associated with the Main Contract Works which the Contractor is required to carry out under the terms of this Sub-Contract are required in sufficient time for the Contractor to incorporate such builder's work in the natural course of construction of the Main Contract Works in accordance with the Main Contract programme.
  - 2 Such drawings should include where applicable requirements for foundations, bases and supporting structures for plant and equipment and be prepared to scales appropriate to the stage of design development to which they relate.
  - 3 All information as described in paragraphs A4·1 and A4·2 is to be provided in accordance with the requirements of Schedule 5.

### Part B The Sub-Contract Works includes Sub-Contractor's Designed Works

- B1**
- 1 In addition to complying with the requirements of Part A of this Schedule, the Sub-Contractor is to provide the detailed information and working drawings as described in paragraph B2 of this Schedule 4 together with all other information which is reasonably necessary to co-ordinate the design and construction of the Main Contract Works with the design and construction of the Sub-Contract Works under this Sub-Contract in time to meet the Sub-Contract Programme.
  - 2 The Sub-Contractor is to request additional information as required to carry out the design and construction of the Sub-Contract Works in sufficient time to meet the Sub-Contract Programme.
  - 3 The Sub-Contractor is to allow sufficient time within the Sub-Contract programme for carrying out and completing of the design, detailed information and working drawings, inspection and comment by the Contractor and/or the Employer and any subsequent amendment(s), re-submission(s) and re-inspection(s).

### Sub-Contractor's Design and Production Information

- B2**
- 1 The design and production information produced by or on behalf of the Sub-Contractor in order to carry out and complete the design of the Sub-Contractor's Designed Works shall include but not be limited to:
    - 'Layout Drawings' meaning line diagrams and layouts indicating basic proposals, location of main items of plant and equipment, routes of main pipes, ducts, cable runs where applicable, in such detail as to illustrate the design concept and the incorporation of the Sub-Contractor's Designed Works within the project as a whole;
    - 'Specifications' meaning all written specification products and workmanship;
    - 'Co-ordination Drawings' meaning drawings showing the inter-relationship of two or more elements in relationship to the structural and architectural details, in such detail as to demonstrate that the elements will be properly separated from one another and can be satisfactorily installed and maintained;
    - 'Controls Drawings' meaning drawings and/or schematic details of components showing where applicable control layouts with each item uniquely identified including a brief description of the controls operation and associated interlocking; and
    - 'Design Calculations' meaning all calculations made in order to prepare and back up the design scheme proposed.
  - 2 All information as described in this paragraph B2·1 is to be provided in accordance with the requirements of Schedule 5.

## Schedule 5

### Drawings, details, specifications and other information approval procedures

- 1** Where the Sub-Contractor is responsible for the design and/or the provision of detailed information and working drawings, the Sub-Contractor shall within two weeks after receipt of notification by the Contractor, provide a comprehensive list of all drawings, including numbers, titles; submission dates and approval periods (minimum 21 days) to meet the programme.
- 2** Where the Sub-Contractor is responsible for the design and/or the provision of detailed information and working drawings, the Sub-Contractor shall submit copies of design and production information (including as appropriate any information required by clauses A2, A3, A4 and B2 of Schedule 4) to the Contractor for design inspection.
- 3** The Contractor will comment, as applicable, then return the documents "status stamped" indicating the action required by the Sub-Contractor:
  - 3·1 Status C: Do not proceed - incorporate comments and re-submit.
  - 3·2 Status B: Amend as necessary and issue copies for construction.
  - 3·3 Status A: Proceed and issue copies for construction.
- 4** The Contractor is to be issued with copies of all documents issued for construction. The Sub-Contractor is to ensure that any amendments are made without delay. Unless and until the Contractor confirms that resubmission is not required, the Sub-Contractor is to submit copies of amended drawings etc. to the Contractor and ensure incorporation of all necessary amendments.
- 5** If submitted design/production information differs from the tender documents, each such difference must be the subject of a request for substitution or a variation, supported by all relevant information.
- 6** Should any amendment required by the Contractor be considered to involve a variation which has not already been acknowledged as a variation by him, the Sub-Contractor shall notify the Contractor without delay and in any case within 7 days, and should not proceed with ordering, fabrication, erection or installation until subsequently instructed (such instruction being without prejudice to the proper valuation of variations under this Sub-Contract). Claims for the extra cost of such work, if made after it has been carried out, may not be allowed.
- 7** The Sub-Contractor shall provide copies of any risk assessments undertaken in compliance with the requirements of Regulations 11, 12 and 18 of the Construction (Design and Management) Regulations 2007.



Date \_\_\_\_\_ 20\_\_

Standard Form of Domestic Sub-Contract DOM/2  
2011 Edition.

**The Sub-Contract Conditions  
for use with the  
Domestic Sub-Contract DOM/2  
Articles of Agreement**

between \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

and \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_







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