

## CONDITIONS OF CONTRACT FOR SUBCONTRACT WORKS (ENGLAND, WALES AND SCOTLAND) TS1

Version 1.2 published [June 2018]

### 1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions:

**"Accreditation Scheme"** means an accreditation system operated by Avetta or equivalent as specified by the Contractor;

**"Application for Payment"** means an application for payment in the agreed form under the self-billing agreement where relevant;

**"the CDM Regulations"** means the Construction (Design and Management) Regulations 2015;

**"the Conditions"** means these terms and conditions;

**"Confidential Information"** means all non-public information (whether oral, written or electronic form) given by one Party to the other or otherwise obtained by the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and clients, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that Party excluding the information set out in the clause 14;

**"Contractor's Equipment"** means any vehicle, item of plant, equipment, materials or other resource, whether owned by the Contractor or hired, made available by the Contractor to the Sub-Contractor for use in connection with the Sub-Contract Works;

**"CIS"** means the Construction Industry Scheme;

**"Contractor"** means Tarmac Trading Limited (a company registered in England and Wales with company number 453791);

**"Documents"** means all the Sub-Contract documents referred to in the Order;

**"Employer"** means the party with whom the Contractor is in contract under the Main Contract;

**"Front Sheets"** means the front sheets [setting out][summarising] the Order, to which these Conditions are appended;

**"HMRC"** means H M Revenue & Customs;

**"IPR and Intellectual Property Rights"** means copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights, chip topography rights, and any other intellectual property rights (whether registered or unregistered) and all applications for any of the foregoing, anywhere in the world;

**"Main Contract"** means the contract between the Employer and the Contractor in connection with which the Sub-Contract Works are to be carried out;

**"Nominated Site Representative"** means the Contractor's nominated site representative from time to time;

**"Operatives"** means operatives and personnel supplied by the Sub-Contractor to carry out the Sub-Contract Works in accordance with the Conditions;

**"Order"** means the Contractor's purchase order issued to the Sub-Contractor to carry out the Sub-Contract Works;

**"PPE"** means Tarmac branded or non-branded personal protective equipment suitable for the relevant Tasks and fit for purpose including safety footwear, hard hat and class III high visibility waistcoat or jacket, and overtrousers;

**"RIDDOR"** means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013/147, as amended or re-enacted from time to time;

**"SHE Policy Statements and Rules"** means the policy statements and rules adopted by the Contractor from time to time relating to safety, health or the environment, including without limitation;

- 4.1.1. Tarmac Safety and Health Policy;
- 4.1.2. Tarmac Environmental Policy;
- 4.1.3. Tarmac Energy & Greenhouse Gas Policy;
- 4.1.4. Tarmac Anti Bribery and Corruption Policy;
- 4.1.5. Tarmac Safety and Health Standard, Contractor Management;
- 4.1.6. Tarmac Safety and Health Standard, Site Safety Standards & Welfare Provision;
- 4.1.7. Tarmac Safety and Health Standard, Personal Protective Equipment;
- 4.1.8. Tarmac Safety and Health Standard, Drugs and Alcohol;
- 4.1.9 Tarmac Plant Policy
- 4.1.10. CRH Supplier Code of Conduct;

**"Site"** means the site upon which the Sub-Contract Works are to be performed;

**"Sub-Contract"** means the Order, the Documents and the Conditions, and in the event of any inconsistency between them they shall have precedence Order, Documents, Conditions;

**"Sub-Contractor"** means the party named as the sub-contractor in the Order

**"Sub-Contract Sum"** means the sum payable to the Sub-Contractor in accordance with the Sub-Contract;

**"Sub-Contract Works"** means the sub-contract works particulars of which are set out in the Order;

**"Sub-Contract Work Period"** means the period for the Sub-Contract Works set out in the Order;

**"Third Party Audit"** means an audit of the Sub-Contractor's health, safety and environmental management systems carried out by an independent body with the intention of making the results of the audit available to the Contractor and other members of the Accreditation Scheme;

**"Traffic Signs Manual"** means the traffic signs manual issued by the Department for Transport as amended from time to time;

**"Valid Invoice"** means either of the self-billing invoice or the Sub-Contractor's invoice which specifies the Sub-Contractor's purchase order number, the invoice date and number, the Sub-Contractor's name and address, the location, date of execution, and brief description of the Sub-Contract Works being invoiced, any value added tax payable, the Sub-Contractor's VAT number, and any other particulars required by law or regulation from time to time;

**"Valuation Date"** means the date of valuation of the Sub-Contract Works agreed between the parties where payment is to be made pursuant to clause 9.3.2;

**"Variation"** means

- (a) the alteration of the design, the quality or (except on a measure and value subcontract) the quantity of the Sub-Contract Works including the addition, omission or substitution of any work, the alteration of the kind or standard of any of the materials or goods to be used in the Sub-Contract Works, or the removal from the Site of any work executed or goods or materials brought onto the Site (save where such removal is required because they are not in accordance with the Sub-Contract); or
- (b) the addition, alteration or omission of any obligations or restrictions included in the Documents with regard to access to the Site or the use of the specific part of it, limitations of working space or working hours, or the execution or completion of the work in any specific order or time;

**"Works"** means the contract works as defined by the Main Contract.

- 1.2. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.3. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.4. A reference to writing or written includes email.
- 1.5. Any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.6. References to clauses are to the clauses of these Conditions.
- 1.7. The singular includes the plural and vice versa.
- 1.8. The words "including" or "includes" means including or includes without limitation

## **2. MAIN CONTRACT**

- 2.1 Save for details and particulars of rates and prices and any information classified as confidential pursuant to the terms of the Main Contract, the Main Contract is available for inspection and copying by the Sub-Contractor on request to the Contractor and in performing the Sub-Contract the Sub-Contractor shall be deemed to have inspected the Main Contract and to have perused, read and understood its contents.

## **3. OBLIGATIONS OF THE SUBCONTRACTOR**

3.1 The Sub-Contractor shall:

- 3.1.1 Comply with all the terms, conditions, obligations, and provisions of the Main Contract in so far as the same are applicable to the Sub-Contract Works as if the Sub-Contractor were party to the Main Contract in place of the Contractor and so that the Contractor is able to fulfil its obligations to the Employer under the Main Contract.
- 3.1.2 Carry out and complete the Sub-Contract Works in accordance with the Sub-Contract and in accordance with the instructions of the Contractor and thereafter correct any default, defects, shrinkages or faults in the Sub-Contract Works until the end of the defects liability period under the Main Contract to the satisfaction of the Contractor and Employer.
- 3.1.3 Allow such reasonable facilities and access to the Contractor and to any other contractor or subcontractor engaged on the Site as may from time to time be necessary in the opinion of the Contractor.
- 3.1.4 Verify and confirm all details of the Sub-Contract Works including lines and levels and check that surfaces into which or upon which Sub-Contract Works are to be carried out are in a suitable condition therefore. The Sub-Contractor acknowledges that no error or omission in the Documents or any of them nor any misdirection or misinformation given by or on behalf of the Contractor shall relieve the Sub-Contractor from its obligations and liabilities pursuant to the Sub-Contract where reasonable and prudent inspection of the Documents or consideration of the direction or information would reveal such error.

- 3.1.5 Save for any goods, materials, facilities or attendances to be provided by the Contractor as stated in the Order, provide all goods, services, labour, plant, tools, tackle, and equipment necessary for or in connection with the due execution of the Sub-Contract Works in accordance with the Sub- Contract and shall only procure the same from third parties with the prior approval of the Contractor (without prejudice to Clause 10 (Assignment and Subcontracting)).
  - 3.1.6 Supervise and control the Operatives engaged in connection with the Sub- Contract Works and duly account for and pay all salaries levies taxes contributions and other fiscal impositions of whatsoever nature relating to the Operatives.
  - 3.1.7 Comply with the SHE Policy Statements and Rules and all laws, Acts of Parliament, statutory instruments, byelaws, regulations and statutory requirements whether European, national, local, parochial or otherwise, relating to the Sub-Contract Works, and give all notices to third parties in connection with the Sub-Contract Works as required by law.
  - 3.1.8 Pay all fees, levies, taxes and other fiscal impositions levied or made by any competent authority, whether European, parliamentary, local, parochial or otherwise, in relation to the Sub- Contract Works.
  - 3.1.9 Protect the Sub-Contract Works and every part thereof from and against damage loss or injury from whatsoever cause until the end of the construction phase under the Main Contract and if such shall nonetheless occur, at the Sub-Contractor's own cost, repair and make good the same to the satisfaction of the Contractor.
  - 3.1.10 Repair and make good at the Sub-Contractor's own cost and to the satisfaction of the Contractor damage loss or injury caused by the Sub-Contractor to the property of the Contractor or third parties..
  - 3.1.11 Where required produce reports on the progress of the Sub-Contract Works and shall, if requested by the Contractor, arrange and attend regular meetings to monitor the progress of the Sub-Contract Works.
- 3.2 Without prejudice to Clause 3.1.10 and the insurance provisions in the Sub-Contract, the Sub Contractor shall be liable for and shall indemnify the Contractor against any liability, loss, claim, proceedings and legal fees arising in connection with the Sub-Contract Works in respect of the death or personal injury to any persons and in respect of any damage to any property save to the extent caused or contributed to by the negligence of the Contractor.
- 3.3 Where the Sub-Contract or any Variation in respect thereof expressly or impliedly requires the Sub-Contractor to design or complete the design of any part of the Sub-Contract Works then the Sub-Contractor shall be fully responsible for the design thereof and shall ensure that such design complies with all legal requirements and relevant British and European standards and codes of practice. The Sub-Contractor shall submit such draft designs, specifications and drawings as the Contractor may reasonably require and at such times as required in order for the Contractor to comply with any design submission procedure under the Main Contract. Any discrepancy between the Sub-Contractor's design and the Documents or any legal requirements or relevant British and European Standards and Codes of Practice shall be corrected by the Sub-Contractor at its own cost.
- 3.4 The Sub-Contractor shall comply with all reasonable instructions of the Contractor including any instruction requiring a Variation. The Nominated Site Representative must sign any such instruction. If so requested by the Contractor, the Sub-Contractor shall provide at no cost to the Contractor a quotation for a proposed Variation. If the Sub-Contractor receives an instruction which is not expressed to be a Variation but the Sub-Contractor wishes to contend that it is, it shall as a condition precedent to any right to claim additional money or time give written notification of its contention to the Contractor within 7 days of the date of the instruction. The Sub-Contractor acknowledges that no claim may be made in respect of any instruction not signed by the Nominated Site Representative.
- 3.5 Unless otherwise agreed in advance and confirmed in writing, the Sub-Contractor shall not act upon the instructions of anyone other than the Contractor and without prejudice to that the Contractor shall not be liable to pay the Sub-Contractor for any work carried out in breach of this clause.
- 3.6 The Sub-Contractor shall keep a competent supervisor at the Site at all times when the Sub- Contract Works are in progress and any instructions or directions issued to the supervisor by the Contractor shall be deemed to have been issued to the Sub-Contractor.
- 3.7 All authorised Variations shall be valued in accordance with Clause 9.
- 3.8 The Sub-Contractor shall regularly during the course of the Sub-Contract Works and as required by the Contractor remove all rubbish, surplus materials and waste arising from the Sub-Contract Works and on completion of the Sub-Contract Works shall leave the Sub-Contract Works and the Site or that part thereof which has been used or occupied by the Sub-Contractor its employees agents and subcontractors clean and tidy and clear and free from all rubbish surplus materials and waste to the satisfaction of the Contractor.
- 3.9 The Sub-Contractor shall ensure (without prejudice to Clause 3.1.7) that every item of machinery plant and equipment including vehicles used employed or hired by the Sub-Contractor for the purpose of or in

connection with the Sub-Contract Works shall conform and comply with all applicable laws regulations and rules including as to testing, licensing, insurances and records relating thereto. All testing certificates shall be made available on request.

#### **4. SERVICES AND SERVICE MEDIA**

4.1 The Sub-Contractor shall ascertain the location route depth and details of all services or service media under over or affecting the Site for the period of its operations, and shall be responsible for taking such action in relation to such service or service media as is prescribed by the regulations in force and by the SHE Policy Statements and Rules.

4.2 In the event of the Sub-Contractor causing damage to the said services or service media resulting in a third party claim the Sub-Contractor shall indemnify the Contractor in accordance with the provisions of Clause 8 (Indemnity).

#### **5. HEALTH AND SAFETY AND ENVIRONMENTAL MATTERS**

5.1 The Sub-Contractor shall ensure:

5.1.1 (without prejudice to Clause 3.1.7) the safe adequate and correct construction erection fixing and maintenance of all guards protective devices access equipment platforms scaffolding temporary structures and the like necessary or desirable for or in connection with the due execution of the Sub-Contract Works; and

5.1.2 that all its Operatives provide to the Nominated Site Representative prior to the commencement of the Sub-Contract Works all relevant certification, qualifications and authorizations (including where required CSCS cards) relevant to the tasks likely to be undertaken at the Site, including the use of power tools and operated plant. Failure to provide such documentation shall entitle the Contractor to exclude or remove with immediate effect from the Site Operatives in respect of which such documentation is not provided by the Sub-Contractor and the Contractor reserves the right not to pay the Sub-Contractor in respect of the time spent on Site by such Operatives;

5.1.3 that all its Operatives are provided with and wear PPE which shall at all times be clean and in good condition. In the event that the Sub-Contractor fails to provide such PPE, the Contractor may provide replacement PPE and the Sub-Contractor shall reimburse to the Contractor for the full cost incurred in providing the PPE which the Contractor may set off against the Sub-Contract Sum;

5.1.4 that all Operatives behave in a professional, appropriate and acceptable manner at all times (the failure to fulfil any of these criteria being in the reasonable opinion of the Contractor), and a failure to do so will entitle the Contractor to exclude or remove the relevant Operatives from the Site and the Contractor reserves the right not to pay the Sub-Contractor in respect of time spent on Site by such Operatives.

5.2 The Sub-Contractor shall procure that Operatives disclose to the Nominated Site Representative prior to commencing work on Site any relevant medical complaints, and if they have any disabilities of any kind. The Contractor shall have the right to exclude or remove the relevant Operative(s) from the Site if there is a failure to make such disclosure provided that neither the Contractor nor the Sub-Contractor shall unlawfully discriminate against any Operative.

5.3 If any Operative is involved in any accident or incident resulting in injury to person or property, the Sub-Contractor shall immediately inform and provide full particulars to the Contractor's nominated site representative, and if required an entry must be made in the Sub-Contractor's Accident Book. If the matter comes under RIDDOR all necessary procedures shall be undertaken and completed by the Sub-Contractor in accordance with RIDDOR and shall fully cooperate with any investigation either by the Contractor, the Employer or other relevant authority.

5.8 If the Contractor supplies any Contractor's Equipment to the Sub-Contractor for use in the Sub-Contract Works the sub-Contractor may use such equipment at its own risk and shall not damage it or cause it to be damaged.

5.9 A sum equal to the costs of repair or replacement of any Contractor's Equipment incurred by the Contractor as the result of damage caused by the Sub-Contractor or any Operative (fair wear and tear excepted) will be paid by the Sub-Contractor to the Contractor and may be deducted from the Sub-Contract Sum.

5.10 The Sub-Contractor shall not and shall procure that Operatives shall not accept delivery of or sign on behalf of the Contractor or anyone other than the Sub-Contractor for any delivery of plant, equipment, vehicle or materials. The Sub-Contractor shall indemnify the Contractor from and against any costs losses and expenses arising from a breach of this prohibition and the Contractor may deduct a sum equal to the same from the Sub-Contract Sum.

5.11 Site vehicles shall have signage as required by Chapter 8 of the Traffic Signs Manual.

5.12 In performing its obligations under the Sub-Contract the sub-Contractor shall comply with:

5.12.1 all relevant legislation, regulations and requirements of the competent authorities relating to health and safety and environmental matters from time to time;

- 5.12.2 the SHE Policy Statements and Rules and any additional rules relating to environmental protection, health and safety specified in writing by the Contractor to the Sub-Contractor from time to time;
  - 5.12.3 the Health & Safety at Work etc. Act 1974 and the conditions stated in the SHE policy Statements and Rules including “*Safety Health and Environmental Rules for Contractors*”;
  - 5.12.4 the Control of Substances Hazardous to Health Regulations 2002/2677 (**COSHH**) and provide to the Nominated Site Representative and/or safety officer all product data sheets, COSHH assessments and additional information as may be required by the Contractor;
  - 5.12.5 the Environmental Protection Act and the Environmental Protection (Duty of Care) Regulations 1991;
  - 5.12.6 the CDM Regulations;
  - 5.12.7 any guidance given by the Environment Agency or the Scottish Environmental Protection Agency
- 5.16 The Sub-Contractor shall provide appropriate certification of the facility of final disposition to the Contractor before commencing works at the Site for inclusion in any construction phase health and safety plan.
- 5.17 Where the facility of final disposition needs to be changed, the Sub-Contractor shall notify the Contractor in writing and obtain any and all required third party permissions and authorisations and provide copies thereof to the Contractor, and the Sub-Contractor shall complete correctly any relevant waste transfer notes and shall provide copies thereof to the Contractor.
- 5.18 Where the CDM Regulations apply, the Sub-Contractor warrants that it and any design consultants and subcontractors it engages are fully aware of their obligations under the CDM Regulations and possess the requisite degree of competence and level of resources to meet those obligations and that it and they shall do so.
- 5.20 Without prejudice to the above, the Sub-Contractor shall comply with all reasonable requirements of the Principal Contractor and Principal Designer including the provision of information required for the preparation of the construction phase plan and health and safety file.
- 5.21 Notwithstanding any other provisions of the Sub-Contract, the Sub-Contractor shall not be entitled to any extension of time or addition to the Sub-Contract Sum for complying with the CDM Regulations and the reasonable requirements of the Principal Contractor and the Principal Designer.

## **6. INSURANCE**

- 6.1 Without prejudice to Clause 8, the Sub-Contractor shall effect and maintain at its own expense and with reputable insurers the types of insurances for the respective amounts of cover set out in the Front Sheets, or if not set out therein, as the Contractor may reasonably require and at all times as required pursuant to all applicable laws. The following provisions shall apply in respect of the different types of insurance required which shall be maintained in force for the duration of liabilities or potential liabilities within the policy scope arising from acts matters or things occurring during the term of the Sub-Contract or during its performance.
- 6.2 The insurances required by Clause 6.1 shall note the interest of and waive subrogation rights against the Employer and the Contractor and shall contain an indemnity to principals clause.
- 6.4 To the extent that the Sub-Contractor fails to effect and keep in force any of the insurances required under Clause 6.1, then and in any such case the Contractor may effect and keep in force any such insurances and pay any sum or premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Sub-Contractor or recover the same from the Sub-Contractor as a debt due to the Contractor.
- 6.5 If the Sub-Contractor shall fail to comply with the conditions of any insurance policy effected pursuant to the requirements of the Sub-Contract or shall by any act or omission affect the validity of any such policy the Sub-Contractor shall fully and effectually indemnify the Contractor from and against all losses and claims arising from such failure, act or omission.

## **7. TIME FOR COMPLETION AND EXTENSIONS OF TIME**

- 7.1 The Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with the programme details and commencement and completion dates specified in the Order.
- 7.2 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Sub-Contract Works is being or likely to be delayed the Sub-Contractor shall forthwith and as a condition precedent to the granting of any extension of time give written notice to the Contractor of the delay and the cause or causes thereof. The notice referred to in this Clause 7.2 shall give particulars of the expected delay, and forthwith notify the Contractor of any material change in the estimated delay, and shall supply such further information as the Contractor may at any time reasonably require.
- 7.3 Within a reasonable period of time after receiving a notice of delay and sufficient particulars and information in respect thereof from the Sub-Contractor, the Contractor may (at its discretion) grant a fair and reasonable extension of time if the cause or causes of delay entitle the Contractor to an extension of time under the Main Contract or if the cause or causes of delay is any impediment, prevention or default of the Contractor provided always that:

- 7.4.1 the Sub-Contractor shall constantly use the Sub-Contractor's best endeavours to prevent delay in the progress of the Sub-Contract Works however caused;
  - 7.4.2 the Sub-Contractor shall not become entitled to an extension of time on account of any circumstance arising from any error, omission, negligence or default of the Sub-Contractor or any of his subcontractors or suppliers, or any of his or their employees or agents;
  - 7.4.3 the Contractor may shorten the relevant period for completion previously fixed having regard to any Variations or any information received by the Contractor.
- 7.5 Without prejudice to Clause 8 but subject to any extension of time granted, the Sub-Contractor shall indemnify the Contractor for losses which the Contractor incurs as a result of the Sub- Contractor's breach of Clause 7.1 including any liabilities which the Contractor incurs under the Main Contract.

## **8. INDEMNITY**

- 8.1 The Sub-Contractor shall fully and effectually indemnify the Contractor from and against:
- 8.1.1 all losses claims demands (including liquidated damages levied by the Employer and/or any other liabilities arising against the Contractor pursuant to the Main Contract) proceedings damages costs liabilities charges and expenses of whatsoever nature and howsoever arising directly or indirectly from any failure by the Sub-Contractor to perform all or any of its obligations to the Contractor pursuant to the Sub-Contract; and
  - 8.1.2 all losses claims demands proceedings damages costs liabilities charges and expenses of whatsoever nature arising from any negligence breach of statutory duty default act or omission of the Sub-Contractor its employees agents or subcontractors and others whom the Sub-Contractor shall, either directly or indirectly, cause or permit to be present on or about the Site.

## **9. PRICE AND PAYMENT**

- 9.1.1 The Sub-Contractor shall be deemed to have satisfied itself before entering into the Sub-Contract as to the correctness and sufficiency of the Sub-Contract Sum to cover all the Sub-Contractor's obligations under and in relation to the Sub-Contract and all matters and things necessary for the proper execution of the Sub-Contract Works.
  - 9.1.2 Without prejudice to Clause 9.1.1, the Sub-Contractor shall be deemed to have visited and inspected the Site including its ground conditions, existing structures, and means of and extent of access, and no failure on the part of the Sub-Contractor to discover or foresee any issues relating thereto, or any other risks, contingencies or circumstances shall entitle the Sub-Contractor to claim damages or any addition to the Sub-Contract Sum or any extension of time.
  - 9.2.1 It is a condition precedent before any or any payment can be made that proof of valid and current Insurance, Tax status, VAT registration and confirmation of acceptance of the Order is received from the Sub-Contractor.
  - 9.2.2.1 Without prejudice to Clause 9.2.1, where the Contractor is or becomes a "Contractor" for the purpose of the CIS, it shall be a condition precedent to any payment (or further payment, as the case may be) that the Sub-Contractor confirms its payment status and provides all information required by the Contractor in order for the Contractor to verify the Sub-Contractor's payment status for the purpose of the CIS.
  - 9.2.2.2 In the event that the Contractor fails to make any statutory deductions under the CIS which ought to have been made due to a failure by the Sub-Contractor to provide information or due to the provision of false or inaccurate information, or due to the payment status of the Sub-Contractor being different to that stated by the Sub-Contractor, or assessed by the Contractor, then the Sub-Contractor shall fully indemnify the Contractor in respect of any liability it incurs including to HMRC as a result thereof.
  - 9.3.1 Subject to Clauses 9.3.6 and 9.3.11, the Contractor shall pay to the Sub-Contractor the value of work properly executed in respect of which payment has been certified in accordance with this Clause 9.3<sup>1</sup>. All such payments to the Sub-Contractor shall be subject to any discount specified in the Order, and any retention provisions set out in the Order, and the Contractor may deduct and retain retention for such periods and for such purposes as under the provisions of the Main Contract the Employer is entitled to deduct and retain retention from the Contractor.
  - 9.3.2 Interim applications for payment by the Sub-Contractor shall set out the value of the Sub-Contract Works properly executed and the basis on which this sum has been calculated at a date not less than 4 days before the Valuation Date or if no Valuation Date is specified the Valuation Date shall be the last Friday of the month ("Payment Application"). Only valid applications which
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must be received no later than 4 days before the end of the month (unless alternative dates are specified in the Order) shall be accepted for the purpose of making a payment less any Contractor's discount, less retention and less any payments previously made under this Clause. Effect shall also be given to agreed or required amendments to the Sub-Contract Sum and account shall be taken of any amounts due to the Contractor in accordance with the provisions of the Sub-Contract. Payment shall be due to the Sub-Contractor 16 days after the Valuation Date. The final date for payment shall be 14 days after the payment becomes due, or 14 days after the receipt of a Valid Invoice for the amount payable, whichever is the later.<sup>2</sup>

9.3.3 Not more than 5 days after a payment becomes due the Contractor shall issue a certificate to the Sub-Contractor specifying the amount (if any) of the payment to be made or proposed to be made and the basis on which that amount has been calculated. This shall become the notified sum. If the Contractor does not provide such a certificate within the prescribed period or at all then the amount set out in the Payment Application shall be deemed to be the notified sum.<sup>3</sup>

9.3.4 If the Contractor intends to pay the Sub-Contractor an amount less than the notified sum, the Contractor shall issue a notice not later than 5 days before the final date for payment specifying the amount to be paid and the basis upon which the sum has been calculated.

9.3.5 The Sub-Contractor shall provide a final statement of account within 3 months following completion of the Sub-Contract Works setting out the value of the Sub-Contract Works properly executed and the basis on which this sum has been calculated. The final statement of account shall be supported by all necessary documentation to verify the amount claimed. The Contractor shall issue a certificate to the Sub-Contractor specifying the amount (if any) of the final account value and the sum so certified less any Contractor's discount, less any applicable retention and less any payment previously made under this Clause will be due within 16 days of receipt of the final statement of account and necessary supporting documentation. If the Contractor does not provide such a certificate within the prescribed period or at all then the amount set out in the Sub-Contractor's final statement of account shall be deemed to be the final account value. The final date for payment shall be 14 days after the payment due date, or 14 days after the receipt of a Valid Invoice for the amount payable, whichever is the later.

9.3.6 If the Contractor intends to pay the Sub-Contractor an amount less than the final account value, the Contractor shall issue a notice not later than 5 days before the final date for payment specifying the amount to be paid and the basis upon which the sum has been calculated.

9.3.7 180 days after the expiry of the Rectification Period under the terms of the Main Contract (or equivalent), or of an application for payment of any outstanding balance from the Sub-Contractor (whichever is the later), the Contractor shall issue a certificate of final payment. Payment shall be due to the Sub-Contractor within 16 days of the date for issue of the certificate of final payment. The final date for payment shall be 14 days after the payment due date, or 14 days after the receipt of a Valid Invoice for the amount payable, whichever is the later.<sup>4</sup>

9.3.8 No Sub-Contract Works shall be carried out or valued on a dayworks basis without the prior written agreement of the Contractor and where valuation on a dayworks basis is agreed the Sub-Contractor must complete vouchers specifying the time spent each day on specified items of work, the Operatives' names, and the plant and materials employed, and such vouchers must be submitted to the Contractor by the Monday of the week following that in which the work was executed. Any signature on such vouchers or other approval thereof by or on behalf of the Contractor shall not be treated as any agreement by the Contractor to pay the amounts claimed but shall simply indicate its agreement that the vouchers are accurate records.

9.3.9 Where it is stated in the Order or other Documents that the valuation of the Sub-Contract Works is to be done on the basis of a measure and value, then the Sub-Contract Works shall be subject to a complete remeasurement. In any other case, the Sub-Contract shall be deemed to be a lump sum contract.

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9.3.10 Unless otherwise stated in the Sub-Contract, the Sub-Contractor's rates and prices are firm and fixed for the duration of the Sub-Contract and are deemed to include all taxes and duties (but excluding VAT) and for the avoidance of doubt shall not fluctuate due to any changes in the cost of labour, materials, goods, or plant, or any increase in overheads or taxes or duties.

9.3.11 The Contractor shall make every reasonable effort to be paid in full for all works including the Sub-Contract Works carried out in accordance with the Main Contract, but in the event that payment to the Contractor is not made because of the insolvency of the Employer or other party then the sum payable to the Sub-Contractor shall be no greater than the amount paid to the Contractor under the Main Contract for the Sub-Contract Works.

9.3.12 If the Contractor fails properly to pay the amount, or any part thereof, due to the Sub-Contractor by the final date for its 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 rate of interest payable shall be two percent (2%) over the Base Rate of the Bank of England which is current at the date the payment by the Contractor became overdue.

9.3.13 Without prejudice to any other rights and remedies which the Sub-Contractor may possess if the Contractor shall, subject to any notice issued pursuant to this Clause, fail to pay the Sub-Contractor in full by the final date for payment as required by the Sub-Contract and such failure shall continue for 7 days after the Sub-Contractor has given to the Contractor written notice of its intention to suspend performance of its 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 its obligations to the Contractor under this Sub-Contract until such payment is made in full.

9.3.14 Materials, plant or equipment delivered to the Site for incorporation into the Sub-Contract Works shall become the property of the Contractor immediately upon arrival on the Site but the risk in the materials, plant or equipment shall remain with the Sub-Contractor until complete and final incorporation into the Sub-Contract Works and completion of the Sub-Contract Works has been achieved and a certificate to that effect has been granted.

9.3.15 The provision of any operation and maintenance manuals, certificates, and as-fitted drawings/information required under the Sub-Contract is an essential part of the Sub-Contract Works and until these documents are submitted and accepted by the Contractor and the Employer completion will not be deemed to have been achieved.

9.4 Unless a price or a deduction from the Sub-Contract Sum (as the case may require) has been agreed, the value of all authorised Variations shall be determined by measurement and by reference to the prices or rates specified in the Sub-Contract for the like or analogous work but if there are no such prices or rates applicable then such valuation shall be a fair and reasonable valuation in all the circumstances.

#### **10. ASSIGNMENT AND SUBCONTRACTING**

10.1 The Sub-Contractor shall not without the prior written consent of the Contractor assign the Sub-Contract or any part thereof or any benefit or interest therein or thereunder otherwise than by a charge in favour of its bankers of any monies due or to become due from the Contractor to the Sub-Contractor pursuant to the Sub-Contract.

10.2 The Sub-Contractor shall not sub-subcontract the whole or any part of its obligations to the Contractor hereunder without the Contractor's prior written consent. The Contractor shall have the right to assign to the Employer the benefit of the Sub-Contract and in such case the Employer shall have the right to enforce the obligations of the Sub-Contractor hereunder as if the Employer was the Contractor.

#### **11. PERIOD OF SUB-CONTRACT, DETERMINATION AND SUSPENSION**

11.1 The duration of the Sub-Contract shall be for the Sub-Contract Work Period, unless earlier determined or suspended in accordance with this Clause.

11.2 If for any reason the Contractor's employment under the Main Contract is determined before the Sub-Contractor has fully performed its obligations under the Sub-Contract, then the employment of the Sub-Contractor shall also determine and the Sub-Contractor shall, subject to the provisions of Clause 9.3.11 and Clause 11.4 hereof be entitled to be paid:

11.2.1 the value of the Sub-Contract Works properly completed at the date of such determination, such value to be calculated according to Clause 9 of the Sub-Contract as if the Sub-Contractor's employment had not been terminated;

11.2.2 the value of work begun and properly executed but not completed at the date of such determination, such value to be calculated according to Clause 9 of the Sub-Contract as if the Sub-Contractor's employment had not been terminated;;

11.2.3 the value of the unfixed materials and goods properly and not prematurely delivered to the Site



for use in the Sub-Contract Works, provided that title has passed to the Contractor<sup>5</sup>; and  
11.2.4 the cost of materials or goods properly and not prematurely ordered for the Sub-Contract Works for which the Sub-Contractor shall have paid or in respect of which it is legally bound to accept delivery provided that upon payment therefor by the Contractor title can and shall pass to the Contractor.

11.3 As soon as practicable after the date of termination the Sub-Contractor shall provide to the Contractor full details of the value of the Sub-Contract Works completed and the other valuation information referred to in Clause 11.2. The due date for payment shall be 16 days after receipt of all the required information and the Contractor shall certify on or before the due date what payment is due and the final date for payment shall be 14 days after the issue of the Contractor's payment certificate, or 15 days after the receipt of a Valid Invoice for the amount payable, whichever is the later.

11.4 If the Main Contract is determined by the Employer in consequence of any breach of the Sub-Contract by the Sub-Contractor then the above provisions as to payment shall not apply and the rights of the Contractor and Sub-Contractor hereunder shall be the same as if the Sub-Contract had been determined in accordance with this Clause 11.

#### **Determination Sub-Contract**

11.5 Without prejudice to any other rights and remedies the Contractor may by written notice to the Sub-Contractor forthwith determine the Sub-Contractor's employment under the Sub-Contract if the Sub-Contractor:

11.5.1 fails to proceed regularly and diligently with the Sub-Contract Works;

11.5.2 fails to remedy defective work or remove unfit or unsuitable materials after being required in writing to do so;

11.5.3 partially or wholly suspends the Sub-Contract Works without written permission from the Contractor or lawful excuse;

11.5.4 ceases to trade or threatens to cease to trade, or becomes bankrupt or has a receiving order or administration order made against it or a petition for its bankruptcy issued or makes an arrangement with or assignment in favour of its creditors or agrees to carry out the Sub-Contract under a committee of inspection of its creditors or goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation);

11.5.5 commits any material breach of the terms of the Sub-Contract.

Thereupon the Sub-Contractor shall vacate the Site and the Contractor may take possession of all materials, machinery, plant, appliances and other things whatsoever brought onto the Site by the Sub-Contractor and may use them for the purpose of executing, completing and maintaining the Sub-Contract Works and may, if it thinks fit, sell any of them and apply the proceeds in or towards the satisfaction of monies otherwise due to it from the Sub-Contractor. The Sub-Contractor shall at no time bring any materials, machinery, plant, appliances and other things whatsoever onto the Site unless the above right has been reserved to the Contractor in respect of all and each of them.

11.6 Upon termination the Contractor shall not be liable to make any further payments to the Sub-Contractor until the Sub-Contract Works have been completed and the Contractor has ascertained the costs charges and expenses so incurred in completing the Sub-Contract Works (including a reasonable sum by way of overhead charges and supervision) and other losses and liabilities incurred by the Contractor as a result of the determination (the "Determination Costs") and the Contractor shall be entitled to setoff the Determination Costs against any monies due or to become due on any account whatsoever to the Sub-Contractor and so far as not satisfied by any such setoff they shall be payable by the Sub-Contractor to the Contractor in accordance with Clause 11.7 without prejudice to any other claim or right of action which the Contractor may have against the Sub-Contractor.

11.7 Upon completion of the Sub-Contract Works and ascertainment of the Determination Costs the Contractor shall issue a certificate of payment certifying what (if any) payment is due to the Sub-Contractor from the Contractor or from the Sub-Contractor to the Contractor. The due date for payment shall be 30 days after the issue of the certificate of payment and the final date for payment shall be 45 days after the issue of the certificate of payment, or 45 days after the receipt of a Valid Invoice for the amount payable, whichever is the later.

#### **Suspension**

11.8 The Contractor shall be entitled on giving written notice to the Sub-Contractor to suspend the performance of the Sub-Contract in the same circumstances and for the same period as the Employer is entitled to suspend performance of the Main Contract<sup>6</sup>.

#### **12. SET OFF**

The Contractor shall have the right to set off any amount due from the Sub-Contractor to the Contractor or due from the Sub-Contractor to any other subsidiary (as defined by Section 1159 of the

Companies Act 2006) of the Contractor's holding company (as so defined) against any amount due from the Contractor to the Sub-Contractor whether pursuant to the Sub-Contract or any other contract between the Contractor and the Sub-Contractor.

### **13. DISPUTE RESOLUTION**

13.1 Mediation Subject to Clause 13.2, in the event of any dispute arising between the parties in connection with the Sub-Contract, the parties will in good faith seek to resolve that dispute through mediation under the auspices of the ADR Group. The mediator shall be agreed upon within 21 days of one party requesting mediation, failing which either party may apply to the President of the Law Society to appoint a mediator. Unless otherwise agreed each party shall share equally the costs of the mediator, the ADR Group and the President of the Law Society and each party shall bear their own legal and other fees and expenses incurred in relation to the mediation. If the dispute is not resolved within 28 days of the mediator's appointment, then either party may commence Court proceedings, but provided that nothing in this Clause shall prevent either party seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.

13.2 Adjudication Each party has the right to refer any dispute under or in connection with the Sub-Contract to Adjudication at any time and either party may at any time give notice in writing (hereinafter called the 'Notice of Adjudication') to the other of its intention to refer the dispute to Adjudication. Any dispute referred to Adjudication shall be conducted in accordance with the TeCSA Adjudication Rules current at the time of the Notice of Adjudication. The Chairman of TeCSA shall be entitled to nominate an Adjudicator on the application of the Contractor or the Sub-Contractor, in default of agreement between them as to who should be appointed as the Adjudicator. The decision of the Adjudicator shall be binding until the dispute is finally determined by Court proceedings or by agreement between the parties.

### **14. CONFIDENTIALITY**

14.1 In the event of either Party ('the Disclosing Party') making available to the other ('the Receiving Party') Confidential Information, the Receiving Party shall maintain the confidentiality of such information, and shall not disclose it to any third party save in respect of its employees, agents or representatives.

14.2 If either Party uses the services of Sub-contractors, agents or representatives to perform part of the Sub-Contract Works, that Party shall promptly and diligently ensure that such Sub-contractors, agents or representatives sign a written undertaking agreeing to abide by the same conditions of confidentiality as are set out in this Agreement.

14.3 The obligations in clause 14.1 shall not apply to data or information which the Receiving Party can clearly demonstrate:

14.3.1 was known to the Receiving Party otherwise than under any obligation of confidentiality prior to disclosure; or

14.3.2 was in or enters the public domain through no fault of the Receiving Party; or

14.3.3 becomes available to the Receiving Party by an unconnected third party with the lawful right to make such a disclosure;

14.3.4 has been independently developed or conceived by it; or

14.3.5 is required to be disclosed by law, regulation or order of a court of competent jurisdiction ('Operation of Law').

14.4 If required to make a disclosure by Operation of Law, the Receiving Party will immediately notify the Disclosing Party in writing of any request or requirement for disclosure and of all relevant surrounding circumstances. If the Receiving Party is unable so to notify the Disclosing Party before such disclosure is required it will notify the Disclosing Party immediately after the disclosure has been made. The Receiving Party will use all reasonable endeavours to resist any requirement for disclosure (and to assist the Disclosing Party in resisting the requirement for disclosure) and to maintain the confidentiality of the Confidential Information.

**15 INTELLECTUAL PROPERTY** Nothing in this Sub-Contract shall affect the ownership of Intellectual Property Rights owned by either Party and existing prior to this Sub-Contract or generated outside the Work or Sub-Contract Work and which the respective Party agrees to make available to the other in the course of the Work or Sub-Contract Work (Background).

15.2 If one Party makes any of its Intellectual Property Rights available to the other Party in the course of the Sub-Contract Work, the Party receiving such Background shall treat it as Confidential Information, and shall not disclose it to a third party nor use it for any purposes other than that for which it was made available to that Party. Each Party agrees to make any Background which is relevant to the Sub-Contract Work available to the other solely for the purposes of undertaking the Sub-Contract Work and the Work.

15.3 The Results shall be owned by the Contractor. For the avoidance of doubt, the ownership of the Results as described in this clause shall apply whether the Results have been made by any one of the Main Contractor and Sub-Contractor or by the two Parties. The provisions of this clause shall be subject to the provisions of the Main Contract.

## **16 NOTICES**

16.1 Any notice given to a party under or in connection with these Conditions should be in writing and shall be:

- 16.1.1 delivered by hand or by pre-paid first class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other place); or
- 16.1.2 sent by email to the email address contact provided on the Front Sheet.

16.2 Any notice shall be deemed to have been duly received:

- 16.2.1 if delivered by hand on signature of a delivery receipt or at the time the notice is left at the proper address;
- 16.2.2 if sent by pre-paid first class post or other next Business Day delivery service, at 9:00 am on the second Business Day after posting or at the time recorded by the delivery service;
- 16.2.3 if sent by email at the time of transmission.

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

## **17 COMPLIANCE**

17.1 The Sub-Contractor shall:

- 17.1.1 comply with all applicable laws in relation to the provision of the Sub-Contract Works;
- 17.1.2 ensure that all Operatives have a right to work in the UK and are able to provide the necessary documentation required if requested by the Contractor to do so;
- 17.1.3 ensure that all Operatives employed by the Sub-Contractor in the performance of the Sub-Contract Works shall be paid not less than the minimum wage in accordance with UK Government legislation or any other applicable law which may be updated from time to time.

17.2 The Sub-Contractor shall further:

- 17.2.1 comply with all applicable laws, statutes, regulations and codes relating to modern slavery and human trafficking including but not limited to the Modern Slavery Act 2015;
- 17.2.2 not engage in any activity, practice or conduct that would constitute an offence under Sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- 17.2.3 notify the Contractor as soon as it becomes aware of any breach or potential breach of the Modern Slavery Act 2015 or any actual or suspected slavery or human trafficking in the supply chain which has a connection with the Sub-Contract Works.

## **18 ACCREDITATION SCHEME**

18.1 During the period of the Sub-Contract Works the Sub-Contractor shall:

- 18.1.1 maintain valid registration at an appropriate level predetermined by the Contractor;
- 18.1.2 successfully complete a Third Party Audit;
- 18.1.3 promptly rectify at its own cost all non conformances highlighted on the Third Party Audit;
- 18.1.4 maintain the registration and compliance in accordance with the requirements for membership of the Accreditation Scheme;
- 18.1.5 warrant and undertake to the Contractor that the Sub-Contractor will within two months from [the date of signature of this Sub-Contract] be accredited under the Accreditation Scheme and that it will provide a copy of its accreditation to the Contractor if requested to do so.

## **19 GENERAL**

19.1 No delay neglect extension of time or forbearance on the part of the Contractor in enforcing against the Sub-Contractor any provision of the Sub-Contract shall either be or be deemed to be a waiver of or in any way prejudice any right of the Contractor against the Sub-Contractor under the Sub-Contract or otherwise.

19.2 Neither inspection nor approval nor failure by the Contractor to disapprove the Sub-Contract Works or any part or design thereof shall relieve the Sub-Contractor from its obligation to make good defects subsequently discovered in the Sub-Contract Works where the same have not been executed in all respects in accordance with the Sub-Contract.

19.3 If at any time any one or more of the terms of the Sub-Contract, or any part thereof, is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted therefrom and the validity and/or enforceability of the remaining provisions of the Sub-Contract shall not in any way be affected or impaired thereby.

19.4 No variation of the Sub-Contract shall be effective unless it is in writing and signed by or by some person duly authorised by each of the Contractor and the Sub-Contractor.

19.5 The Sub-Contract embodies the entire agreement and understanding of the Contractor and the

Sub-Contractor in relation to the subject matter thereof and all other terms and conditions save those terms and conditions implied by any statute as to the quality and title to goods and performance of services and those expressly set out in the Sub-Contract are hereby excluded to the fullest extent permitted by law provided always that if the Main Contract requires the Contractor to incorporate terms conditions or provisions into the Sub-Contract such provisions shall be deemed to have been expressly incorporated into the Sub-Contract whether or not they have been so incorporated and in the event of any conflict between such terms conditions and provisions and the terms and conditions of the Sub-Contract such terms conditions and provisions shall prevail. Without prejudice to the above, no terms and conditions of the Sub-Contractor shall apply to the Sub-Contract notwithstanding the incorporation thereof into a document which forms part of the Documents.

19.6 Without prejudice to any other mode of contract formation, the commencement by the Sub-Contractor of the Sub-Contract Works or any part thereof shall constitute a binding contractual acceptance by the Sub-Contractor of the terms of the Sub-Contract and the Contractor's acquiescence in such commencement shall be consideration moving from the promisee.

19.7 The Parties are independent businesses and not partners, principal and agent, or employer and employee, or in any relationship of trust, or in any other relationship other than the contractual relationship set out in this Sub-Contract.

## **20 GOVERNING LAW, JURISDICTION AND LIMITATION**

20.1 The formation, construction and performance of the Sub-Contract shall be governed in all respects by the law which applies to the Main Contract.

20.2 Subject to and without prejudice to Clause 13 the parties agree that the Courts of England and

20.3 Wales shall have exclusive jurisdiction to settle any dispute which arises in connection with the Sub-Contract save in respect of any Sub-Contract where Scots law applies by virtue of clause 18.1 and where Scots law applies the Courts of Scotland shall have exclusive jurisdiction.

20.4 The limitation period in respect of any claims for breach of the Sub-Contract Shall be the same as the limitation period for bringing any claims for breach of the Main Contract.