

Knight Build Limited (“KBL”)

SUB-CONTRACT CONDITIONS

These Sub-Contract Conditions are to be read together with the relevant Sub-Contract Particulars. To the extent that these Sub-Contract Conditions are in conflict with the conditions of any standard sub-contract form referred to in the Sub-Contract Particulars, these conditions shall take priority. The Sub-Contract Particulars and Sub-Contract Conditions take priority over any conditions or qualifications contained in the Sub-Contractor’s quotation or tender and all such terms of the Sub-Contract are deleted / excluded from the Sub-Contract, notwithstanding any reference to the Sub-Contractor’s tender or quotation within the Numbered Documents. The Sub-Contractor acknowledges that the Sub-Contract Order, the Sub-Contract Particulars and the Sub-Contract Conditions constitute the entire agreement between KBL and the Sub-Contractor to the exclusion of all other terms put forward by the Sub-Contractor, agreements or representations.

1. SUB-CONTRACTOR’S UNDERTAKING

- (1) The Sub-Contractor shall, pursuant to the terms of this Sub-Contract, provide everything necessary for the execution and completion of the Works in accordance with the Numbered Documents, all applicable standards and regulations and in accordance with all drawings, specifications and /or instructions supplied to him and will deliver up the Works to KBL complete in every particular to the satisfaction of KBL and / or the Contract Administrator under the Principal Contract.
- (2) The Sub-Contractor shall perform, observe and comply with all the terms and provisions of the Principal Contract and of any warranties provided by KBL in favour of purchasers, tenants or funders of the project or other third parties in accordance with the terms of the Principal Contract which are to be performed, observed and complied with by KBL in so far as they relate to the Works, of which the Sub-Contractor is deemed to have notice. In particular (but without limitation to the generality of the foregoing) the Sub-Contractor shall not specify for use nor use any materials the use of which is prohibited by the terms of the Principal Contract. The Sub-Contractor shall indemnify and hold harmless KBL from and against any costs, losses or expenses (including legal fees) arising out of the Sub-Contractor’s breach of this clause. The terms and provisions of the Principal Contract (excluding rates or prices or other sensitive or confidential information), including the warranties are available for inspection at KBL’s offices by prior appointment.
- (3) The Sub-Contractor shall not sub-let the Works or any portion of the Works, or assign the benefit of the Sub-Contract or any part of it, without the prior written consent of KBL, the giving of which consent shall be at KBL’s absolute discretion.

2. PROGRESS AND COMPLETION

- (1) The Sub-Contractor shall commence the Works on the commencement date specified in the Sub-Contract Particulars and shall complete them by the completion date specified in the Sub-Contract Particulars subject to any extensions under this clause 2. (“the Completion Date”), in accordance with the programme and / or durations specified in the Sub-Contract Particulars. Where sectional completion applies, this will be specified in the Sub-Contract Particulars, including a schedule setting out each section of the Works, together with the start date and the finish date for each such section. The Sub-Contractor shall complete each section by the relevant finish date subject to any extensions under this clause 2 (“the Sectional Completion Date”).

- (2) The Sub-Contractor shall contact KBL's site representative 14 days prior to each anticipated start on site date for the Works and each section thereof to confirm these dates. KBL may instruct that the Works and/or any section(s) thereof are started on site on a later date, in which event the Sub-Contractor shall be entitled to claim an extension to the Completion Date for the Works and/or the relevant section(s) of the Works but shall not be entitled to claim any additional payment (whether pursuant to any clause of this Sub-Contract or as damages) in respect thereof.
- (3) After commencing the Works and each section thereof in accordance with the above provisions, the Sub-Contractor shall proceed with the Works and each section thereof regularly and diligently and shall complete the Works and each section thereof on or before the Completion Date or Sectional Completion Date relevant thereto. The Works and each section thereof are to be carried out in such order, manner and time as KBL may reasonably direct. The progress of the Sub-Contract Works is to be fully in accordance with KBL's current programme for the works and any subsequent revisions. Should the progress of the Principal Contract works make it necessary, the Sub-Contract programme period(s) will be subject to revision and alteration, which will be confirmed by KBL. The Sub-Contractor shall co-ordinate and integrate the Sub-Contract Works fully with those of others engaged on site, the Sub-Contract Works being executed in as many visits as are necessary for their satisfactory completion. The Sub-Contractor shall proceed industriously and efficiently with appropriate resources in order to progress the Sub-Contract Works steadily towards completion. Notwithstanding anything else herein or herein referred to neither the Sub-Contract rates or prices nor the Sub-Contract Sum shall be subject to amendment or alteration in these respects. Without prejudice to any other rights or remedies which KBL may possess, if the Sub-Contractor fails to proceed with and / or complete the Sub-Contract works in accordance with the requirements set out in this clause or reasonably in accordance with the progress of the Principal Contract works, KBL may thereupon omit any areas of the Sub-Contract Works that KBL may deem necessary and either complete such areas of the works itself or sub-let them to a third party as KBL sees fit. In such circumstances, KBL shall be entitled to set-off, withhold and / or deduct any loss and / or expense or damage suffered / incurred, with any balance being recoverable from the Sub-Contractor as a debt.
- (4) The Sub-Contractor shall notify KBL forthwith in the event it becomes aware that the progress of the Works is being or is likely to be delayed and / or that it may complete the Works or any section thereof after the Completion Date or Sectional Completion Date relevant thereto, together with details of the cause of the delay and the date upon which the Sub-Contractor considers it will complete the Works and / or the relevant section. Without limiting the Sub-Contractor's obligations hereunder and at no cost to KBL, in such event KBL may instruct the Sub-Contractor to accelerate its performance of the Works and / or any section(s) except where the Sub-Contractor has been delayed by one of the events set out in clauses 2(5)(a) to (d) below.
- (5) If the Sub-Contractor shall be delayed in the completion of the Works and / or any section thereof:
 - a) by any circumstance or occurrence (other than a breach of this Sub-Contract by the Sub-Contractor) entitling KBL to an extension of time under the Principal Contract; or
 - b) by the ordering of any variation to the Works as defined in clause 11; or
 - c) by any breach or act of prevention on the part of KBL; or
 - d) by a valid suspension by the Sub-Contractor of performance of its obligations pursuant to clause 3(17)(b)

then in any such event the Sub-Contractor shall be entitled to a fair and reasonable extension to the Completion Date or Sectional Completion Date(s) for the Works and / or the section(s) of the Works affected by such delay provided that the Sub-Contractor has given written notice to KBL of the circumstance or occurrence which is delaying the Works and details of the effects or likely effects of such delay with a best estimate of the continuing extent of such delay and its impact on completion of the works and / or the relevant section within fourteen days of such circumstance or occurrence first occurring.

- (6) The giving of notice in accordance with clauses 2(4) and 2(5) above and the provision of the details required in accordance with clauses 2(4) and 2(5) above shall be conditions precedent to the Sub-Contractor's entitlement to any extension of time.
- (7) KBL shall review any such notice and shall notify the Sub-Contractor of the extension to the relevant Completion Date or Sectional Completion Date(s) it awards to the Sub-Contractor within the later of (i) 12 weeks of the Sub-Contractor's notice, or (ii) where the subject matter of the Sub-Contractor's notice forms part of any claim for an extension of time made by KBL pursuant to the Principal Contract, 2 weeks after the date upon which KBL is notified of the new completion date under the Principal Contract.
- (8) The obligation of KBL to grant an extension to any Completion Date or Sectional Completion Date(s) is also conditional upon the Sub-Contractor demonstrating to the reasonable satisfaction of KBL that the relevant event will delay completion of the Works and / or any section(s) beyond the Completion Date or Sectional Completion Date(s) relevant thereto, the Sub-Contractor having used its best endeavours to prevent delay to completion of the Works and each section thereof and having done and continuing to do all that may reasonably be required to KBL's satisfaction to proceed with the Works and each section thereof.
- (9) If the Sub-Contractor is in breach of any of the foregoing provisions of this clause 2 then without prejudice to its other rights and remedies the Sub-Contractor shall, without prejudice to and pending the final determination or agreement between the parties as to the amount of the loss or damage suffered or which may be suffered by KBL in consequence thereof, forthwith pay or allow to KBL such sum, in which event KBL shall be entitled to deduct such sum from the amount otherwise due pursuant to clause 3 as KBL shall bona fide estimate as the amount of such loss or damage, such estimate to be binding and conclusive upon the Sub-Contractor until such final determination or agreement. Such estimate may include without limitation a sum in respect of liquidated damages paid or to be paid by KBL under the Principal Contract where KBL reasonably considers that the Sub-Contractor has caused or contributed to delay to completion of KBL's works under Principal Contract.
- (10) The Sub-Contractor acknowledges that liquidated damages are payable by KBL to the Employer at the rate specified in the Sub-Contract Particulars for delay in completion of the works to be carried out by KBL under the Principal Contract.

3. PAYMENT

- (1) Where the Sub-Contract Particulars provide that payment under this Sub-Contract is to be on a fixed price lump sum basis, the Sub-Contractor shall be paid the fixed price lump sum specified in the Sub-Contract Particulars (as adjusted in accordance with these Sub-Contract Conditions) for the proper performance of all its obligations hereunder and such fixed price lump sum shall be strictly net of discounts (the "Sub-Contract Sum"). Where the Sub-Contract Particulars provide that payment under this Sub-Contract is to be on a remeasurement basis and the Sub-Contractor's tender has been provided on the basis of estimated quantities only, the Sub-Contractor shall be paid such sum on a remeasurement basis as becomes payable in accordance with this Sub-Contract (the "Sub-Contract Sum").
- (2) The Sub-Contract Sum includes without limitation sufficient provision for unloading materials and conveying them to the points of fixing, all site visits necessary and co-ordination with other trades necessary to complete the Works, and such temporary works as are necessary to enable the Works to continue unabated during adverse weather.

- (3) This Sub-Contract is subject to the retention amount specified in the Sub-Contract Particulars (“the Retention Amount”). Subject to clause 3(4), the first moiety of the Retention Amount will be released (subject to KBL’s rights of set-off) on the date stated in the Sub-Contract Particulars or on the date of practical completion of the Sub-Contract Works, whichever date is the later. The second moiety of the Retention Amount shall be released 12 months after the release of the first moiety of the Retention Amount strictly subject to and conditional upon completion of making good of all defects in the Sub-Contract Works, but subject also to sub-clauses 3(17) to 3(21) below. The Retention Amount shall be applied to the amount which KBL notifies the Sub-Contractor it proposes to pay pursuant to clause 3(8) in respect of the Works (but excluding the amount of any set off notified by KBL thereunder). It shall be a condition precedent to the second moiety of the Retention Amount becoming due that the Sub-Contractor shall have first submitted to KBL all documentation required under the Sub-Contract or otherwise to be submitted by the Sub-Contractor, including, but without limitation, any Operation and Maintenance manuals (“O&M manuals”), documentation required to comply with Health & Safety legislation / CDM Regulations, as-built drawings / records etc.
- (4) The Retention Amount, when held, is not automatically released at the end of the stated retention period. The Sub-Contractor must present an invoice in respect of release of the Retention Amount, clearly identifying the job number and the amount claimed. Such invoice shall supplement the statement of computation of the ascertained final sub-contract sum prepared pursuant to clauses 3(17) to 3(21) below. In the event that the Sub-Contractor is insolvent as defined in any of clauses 3(24) to 3(27) below, or otherwise, KBL shall not be obliged to release the Retention Amount until 12 years after the date that practical completion is certified under the Principal Contract.
- (5) Save as may expressly be stated otherwise in the Sub-Contract Particulars the following first and interim payment terms shall apply:
- (6) The Sub-Contractor shall submit a first and subsequently an interim application (‘Interim Payment Application’) for payment to KBL by the 23rd day of the relevant month or nearest Business Day in that month, with valuation of the Works being projected to the end of that month (the “Interim Valuation Date”).
- (7) The monthly due date for the first and interim payments shall in each case be the date 7 days after the relevant Interim Valuation Date (the “Due Date”).
- (8) Not later than 5 days after the Due Date, KBL shall give notice to the Sub-Contractor specifying the amount (if any) of the first and interim payments proposed to be made, and the basis on which that amount is calculated (a ‘Payment Notice’) and, subject to any Pay Less Notice given under clause 3 (11), the sum paid by KBL shall be the sum specified in the Payment Notice.
- (9) The Final Date for Payment of the first and each interim payment shall be 30 days from its Due Date.
- (10) Intentionally left blank
- (11) KBL shall, if it intends to pay less than the notified sum stated as due in the Payment Notice, notify the Sub-Contractor in writing not later than 1 day before the Final Date for Payment of the relevant Interim Payment Application of the sum KBL considers to be due on the date that notice is served, and the basis on which that sum is calculated (“a Pay Less Notice”).
- (12) The amount to be included in a Payment Application shall be the amount due to the Sub-Contractor from KBL which shall be:

- (a) where the Sub-Contractor is being paid on a fixed price lump sum basis, (i) where the Numbered Documents include a milestone schedule, the total of the prices for the elements of work separately identified in such milestone schedule properly executed and completed in accordance with this Sub-Contract or (ii) where the Numbered Documents do not include a milestone schedule, the total value of work properly executed in accordance with this Sub-Contract; or
- (b) where the Sub-Contractor is being paid on a remeasurement basis, the total value of the work properly executed in accordance with this Sub-Contract as ascertained and determined by remeasurement in accordance with this Sub-Contract.
- (c) in addition to the amount payable under clauses 12(a) or 12(b), the amount of any additions to the Contract Sum ascertained under this Sub-Contract to the extent that such additions are in respect of work already executed by the Sub-Contractor in accordance with the Sub-Contract;

up to and including the date of the application, less all amounts previously stated as due in any notification as to payment previously issued by KBL under this clause.

- (13) The Sub-Contractor shall only be entitled to payment for goods or materials which have not been delivered to site if they satisfy the following conditions; the items are included as a Listed Item in the Sub-Contract Particulars, the Listed Item is in accordance with this contract, the sub-contractor has provided KBL with reasonable proof that the property in the Listed Item is vested in KBL (and the Employer if required), the Listed Item is and will remain insured against loss or damage for its full value under a policy of insurance protecting the Sub-Contractor, KBL and the Employer in respect of the Specified Perils until delivered to, or adjacent to, the Works, at the premises where the Listed Item is situated pending delivery, there is in relation to that item clear identification of; KBL (or the Employer) as the person whose order it is held and the works as its destination. Each item being either set apart or clearly and visibly marked.
- (14) Should the Sub-Contractor receive any form of Advance Payment (For the avoidance of doubt the term 'Advance Payment' includes for Deposits, Upfront Payments, Payments on Account, Milestone Payments, Stage Payments and any Payment that cannot be valued as completed works) The full value of these payments would be considered refundable in full within 7 days of notice without any retention of said sums under any circumstances. If the contract is deemed frustrated or incomplete especially if works are not finished in accordance with the order or any works deemed incomplete, unfinished or defective KBL retain the right under clause 20 of this Sub-Contract to be terminated in accordance with that failure to complete or finish works and/or defective workmanship in accordance with the specific notice given accordingly. The Sub-Contractor shall also be deemed wholly responsible and liable to KBL for the costs of any breach or failure, inclusive of legal costs, adjudicator's fees and/or cost of substituted supplier to complete such works for project.
- (15) The submission of a Payment Application in accordance with the Sub-Contract Conditions shall be a condition precedent to any amount becoming due for the relevant period in question. Any payment made in the absence of an application for payment from the Sub-Contractor shall be at KBL's discretion and such discretionary payment shall not serve as a waiver of KBL's right to rely on this clause in subsequent payment periods.
- (16) All applications for payment made by the Sub-Contractor shall be accompanied by:-
 - (a) sufficient documentary evidence (including, without limitation, invoices, and, where remeasurement applies, take-offs and build-ups to support the remeasured quantities claimed) to enable KBL to assess (i) that the work claimed for has been properly executed and completed where clause 3(12)(a)(i) applies or (ii) the total value of work properly executed where clause 3(12)(a)(ii) above applies or (iii) the total value of the work properly executed where clause 3(12)(b) applies;
 - (b) copies of variation orders signed by both KBL and the Sub-Contractor where the Sub-Contractor claims additions to the Contract Sum pursuant to clause 3(12)(c) in respect of any variations; and

- (c) any other documents reasonably requested or required by KBL.
- (17) Where any amount due to the Sub-Contractor is not paid in full by its final date for payment and no effective notice is given under clause 3(11):
- (a) KBL shall pay to the Sub-Contractor in addition to the amount not properly paid simple interest thereon at a rate of 5% per annum above the official dealing rate of the Bank of England current at the date that the relevant payment under this Sub-Contract became overdue for the period until such payment is made. The parties agree this to be a substantial remedy:
 - (b) the Sub-Contractor shall be entitled (without prejudice to any other right or remedy) to suspend performance of its obligations under this Sub-Contract by giving not less than 7 days prior notice in writing to KBL stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when KBL makes payment in full of the relevant amount due:
 - (c) where the Sub-Contractor exercises its right of suspension under clause 3(17)(b), it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of the exercise of the right. The Sub-Contractor shall submit details of the costs and expenses as are reasonably necessary to enable KBL to ascertain the Sub-contractor's entitlement.
- (18) Not later than 4 months after practical completion of the Sub-Contract Works the Sub-Contractor shall send to KBL all documents necessary for the purpose of computing the final sub-contract sum.
- (19) Not later than 4 months after receipt by KBL of the documents referred to in clause 3(18) above a statement of the computation of the ascertained final sub-contract sum shall be prepared by KBL and a copy shall be issued to the Sub-Contractor.
- (20) The ascertained final sub-contract sum shall be the aggregate of the following:
- (a) any amount ascertained pursuant to clauses 12(a), 12(b) and 12(c) above, as applicable;
 - (b) any amount ascertained by reference to clause 13 below;
 - (c) any amount deducted or deductible by KBL pursuant to the terms of this sub-contract or otherwise, or otherwise any amount paid by or payable by or allowed by or allowable by the Sub-Contractor to KBL pursuant to the terms of this sub-contract;
 - (d) any other amount which is required to be included or taken into account in the computation of the ascertained sub-contract sum pursuant to the terms of this sub-contract.
- (21) The total amount of the ascertained final sub-contract sum less the applicable Retention Amount less the total amount previously due in the first and interim payments in respect of the Sub-Contract Works shall constitute the residual payment to the Sub-Contractor ("the Residual Payment").
- (22) The Residual Payment shall be due not later than 28 days after the date of issue of the statement of the computation of the ascertained final sub-contract sum under sub-clause 3(19) above. Not later than 5 days after the date the Residual Payment becomes due KBL shall send to the Sub-Contractor a notice specifying the amount of the Residual Payment proposed to be made, and the basis on which that amount is calculated ("a Residual Payment Notice"). The final date for payment of the Residual Payment shall be 30 days after the date that it becomes due. KBL shall, if it intends to pay less than the amount stated as due in the Residual Payment Notice, notify the Sub-Contractor in writing not later than 1 day before the final date for payment of the Residual Payment, of the sum KBL considers to be due on the date that notice is served, and the basis on which that sum is calculated ("A Pay Less Notice").

- (23) Notwithstanding anything to the contrary elsewhere in this Sub-Contract, if the Employer is insolvent as defined in any of clauses 3(24) to 3(27) or otherwise, KBL shall not be obliged to make any further payment to the Sub-Contractor of any amount which is due or which may become due to the Sub-Contractor unless KBL has received payment in respect thereof from the Employer and then only to the extent such receipt relates to the Works.
- (24) The Sub-Contractor acknowledges that it is a condition of payment by the Employer to KBL that the Employer shall have been paid by its employer (“the Ultimate Employer”). Without prejudice to sub-clause 3(22) above, and notwithstanding anything to the contrary elsewhere in this Sub-Contract, if the Ultimate Employer is insolvent as defined in any of clauses 3(24) to 3(27) or otherwise, KBL shall not be obliged to make any further payment to the Sub-Contractor of any amount which is due or which may become due to the Sub-Contractor unless KBL has received payment in respect thereof from the Employer and then only to the extent such receipt relates to the Works.
- (25) For all purposes a company becomes insolvent:
- (a) when it enters administration within the meaning of Schedule B1 to the insolvency Act 1986;
 - (b) on the appointment of an administrative receiver or manager of its property under Chapter 1 of Part III of that Act, or the appointment of a receiver under Chapter II of that Part of that Act;
 - (c) on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
 - (d) on the making of a winding-up order under Part IV or V of that Act.
- (26) For all purposes a partnership becomes insolvent:
- (a) on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act.
- (27) For all purposes an individual becomes insolvent:
- (a) on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986.
- (28) A company, partnership or individual shall also be treated as insolvent on the occurrence of any event corresponding to those specified in clauses 3(24) to 3(26) under the law of Northern Ireland/or of a country outside of United Kingdom.
- (29) The Sub-Contractor shall supply to KBL all materials, fixtures and fittings and other items which are to be used in the Works described in the Sub-Contract (“the Goods”).
- (30) Title in the Goods shall pass to KBL on the earliest of:
- (a) delivery of the Goods to the Site notwithstanding that sums are owed by KBL in respect of either the Goods themselves or the Sub-Contract;
 - (b) payment for the Goods by KBL; and
 - (c) the point at which title in the Goods passes from KBL to the Employer pursuant to the Principal Contract,

notwithstanding that they have not been fitted or incorporated into the Works or any other work carried out by, or on behalf of KBL. If requested by KBL, the Sub-Contractor shall provide an acknowledgement in the form required by the Principal Contract that title in the Goods has passed to KBL.

- (31) The obligation of KBL to make any payment under this Sub-Contract is subject to the provisions of the Construction Industry Scheme (“the CIS”) under the Income Tax Act 2007 and the Corporation Tax Act 2010. It is hereby confirmed that KBL is a “contractor” for the purposes of CIS. It shall be a condition precedent to the payment of any amount to the Sub-Contractor that it shall have first produced a valid Sub-Contractor’s tax certificate, registration card or certifying document as the case may be, pursuant to the regulations made under the Income Tax Act 2007 and the Corporation Tax Act 2010.
- (32) Subject to clause 3(11), any sum of money recoverable from or payable by the Sub-Contractor under or in connection with this Sub-Contract may be deducted from any sum then due or which may at any time thereafter become due to the Sub-Contractor under this Sub-Contract or under any other agreement between the Sub-Contractor and KBL and any sum of money recoverable by KBL from or payable to KBL by the Sub-Contractor under or in connection with any other agreement may be deducted from any sum then due or which at any time may become due to the Sub-Contractor under this Sub-Contract.

4. PROFESSIONAL INDEMINITY INSURANCE

- (1) Without prejudice to the Sub-Contractor’s obligations under this Sub-Contract, where the Sub-Contractor has a design obligation under the Sub-Contract, the Sub-Contractor shall take out and maintain for a period from the date of commencement of the Works (or the works under the Principal Contract if earlier) to 12 years after the date that Practical Completion is certified under the Principal Contract professional indemnity insurance in an amount of not less than the amount specified in the Sub-Contract Particulars in respect of any breach of statutory duty, negligence, omission or other default on the Sub-Contractor’s part in respect of any of its obligations arising out of this Sub-Contract. The Sub-Contractor’s insurers shall produce documentary evidence that such insurance is being maintained from time to time upon KBL’s request. If the Sub-Contractor fails to take out and maintain such insurance (and for the purposes of this clause KBL shall be entitled to assume the same where the Sub-Contractor has failed to produce the requisite documentary evidence of insurance) KBL shall be entitled to take out insurance against the risk arising from the same and the premium paid and other costs resulting from the same shall be debts due from the Sub-Contractor to KBL which may be deducted from any monies due or becoming due to the Sub-Contractor.
- (2) Where the Sub-Contractor has a design obligation under the Sub-Contract (whether full design or design portion), the entire design provisions of the Principal Contract, together with any schedule of amendments thereto, shall be incorporated herein and shall apply *mutatis mutandis* as between KBL and the Sub-Contractor.

5. THIRD PARTY RIGHTS, COLLATERAL WARRANTIES, BONDS AND GUARANTEES.

- (1) The parties to this Sub-Contract do not intend that any term of the Sub-Contract should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Sub-Contract. Notwithstanding any other provision of this Sub-Contract nothing in this Sub-Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.
- (2) The Sub-Contractor shall execute and return to KBL all of the required Collateral Warranties, Bonds and / or Guarantees identified in the Sub-Contract Particulars or elsewhere in the Sub-Contract documents, or which are otherwise required in connection with this Sub-Contract.
- (3) The Sub-Contractor shall deliver to KBL within 10 days of any request by KBL to do so duly executed Sub-Sub-Contractor warranties as required by the Sub-Contract Particulars.

- (4) In the event of a breach of this clause KBL shall, subject to clause 3(11), be entitled to withhold all payments otherwise due to the Sub-Contractor:
 - (a) in respect of clause 5(2) until such documents are provided (save that in the case of any Bond, KBL's withholding entitlement shall be limited to a sum or sums equal to the value of such Bond); and
 - (b) in respect of clause 5(3) which relate to the part or parts of the Works in respect of which such Sub-Sub-Contractor warranties are required until they are provided.

6. SITE

- (1) This Sub-Contract is executed on the understanding that the Sub-Contractor has visited the Site to assess the conditions at and / or affecting the Site relating to the Works, including without limitation the full scope of works, ground conditions, suitability of any surfaces to which the Sub-Contractor is to fix, apply or lay its work, access and unloading of materials and is satisfied with the same. The Sub-Contractor shall not be entitled to any additional payments or any extension to the Completion Date or Sectional Completion Date(s) for any such conditions encountered at or affecting the Site which may increase the Sub-Contractor's costs or cause it delay.

7. SUB-SURFACES

- (1) The Sub-Contractor shall satisfy itself before commencing work, as to the suitability of any surfaces to which the Sub-Contractor is to fix, apply or lay its work.

8. RESPONSIBILITIES AND INDEMNITIES IN RESPECT OF INJURY, DAMAGE OR LOSS

- (1) Unless otherwise notified by KBL to the Sub-Contractor, the Sub-Contractor takes the risk of all loss and damage to any goods (whether or not at the Site) which are to be used in the Works up until the issue of the certificate of Practical Completion (or its equivalent) under the Principal Contract and irrespective of whether title in the same has passed to KBL or the Employer. The Sub-contractor shall during this period maintain, fully protect and make good all damage at no additional cost to KBL and to the satisfaction of KBL and the contract administrator under the Principal Contract. Notwithstanding any other provision of this Sub-Contract the Sub-Contractor takes the risk of all loss and damage to any temporary buildings, plant, tools, scaffolding and machinery provided by the Sub-Contractor and shall take out and maintain adequate insurance in respect of the same.
- (2) The Sub-Contractor shall indemnify and save harmless KBL against each and every liability which KBL may incur to any other person whatsoever and from all claims, causes of action, costs, loss and expense whatsoever in respect of:
 - (a) Personal injury or death of any person or injury or damage to any property real or personal arising out of or in the course of or caused by any works executed by the Sub-Contractor and / or the execution of such works (including but not restricted to the use of any plant, equipment or facilities whether in connection with such execution or otherwise) and / or design undertaken by the Sub-Contractor;
 - (b) Any breach or non-performance or non-observance by the Sub-Contractor, its Sub-Sub-Contractors, or either of their servants or agents of the provisions of the Principal Contract in so far as they relate or apply to the works;
 - (c) Any act, omission, default, negligence or breach of duty of the Sub-Contractor, its Sub-Sub-Contractors, or either of their servants or agents of the provisions of this Sub-Contract except to the extent that the same have been caused by any act, default omission of KBL; and
 - (d) Any claim under any statute in force for the time being or at common law or otherwise by an employee of the Sub-Contractor in respect of personal injury arising out of or in the course of his employment.

9. EMPLOYERS LIABILITY AND PUBLIC LIABILITY INSURANCES

- (1) Without prejudice to the Sub-Contractor's obligations under this Sub-Contract, the Sub-Contractor shall adequately insure against all Employers' Liability and Public Liability risks arising out of or in connection with the execution of the Works and produce on demand policies of such insurances, together with receipts for premiums. Employers' Liability insurance in an amount of not less than the amount specified in the Sub-Contract Particulars for each and every occurrence; Public Liability insurance in an amount of not less than the amount specified in the Sub-Contract Particulars for each and every occurrence; and the Public Liability policy shall be endorsed to indemnify the Employer and KBL as principals or name the Employer and KBL as co-insureds for their respective rights and interests.
- (2) In case of failure by the Sub-Contractor to effect the insurances in this or any other clause of this Sub-Contract, KBL shall be at liberty to insure on behalf of the Sub-Contractor and the premium so paid and other costs thereof shall be debts due from the Sub-Contractor to KBL and may be deducted from any monies due or becoming due to the Sub-Contractor.
- (3) The Sub-Contractor shall not at any time knowingly do (or omit to do) any act or thing which may entitle any insurer to refuse to pay a claim under the insurance referred to in this Sub-Contract or which may render any such insurance void, voidable, suspended, impaired or defeated in whole or in part.

10. OVERTIME

- (1) No overtime is to be worked without the Sub-Contractor first obtaining the prior written consent of KBL.

11. VARIATIONS, EXTRA WORK AND DAYWORKS

- (1) The term 'Variation' means:
 - (a) the alteration or modification of the design, quality or quantity of the Works including;
 - i. the addition, omission or substitution of any work;
 - ii. the alteration of the kind or standard of any of the materials or goods to be used in the Works;
 - iii. the removal from the site of any work executed or materials or goods brought thereon by the Sub-Contractor for the purposes of the Works other than work, materials or goods which are not in accordance with the contract;
 - (b) the imposition by KBL of any obligations or restrictions in regard to the matters set out in the Sub-Contract Particulars in regard to:
 - i. access to the site or use of any specific parts of the site;
 - ii. limitation of working space;
 - iii. limitations of working hours; or
 - iv. the execution or completion of the work in any specific order.
- (2) No Variation required by KBL or subsequently sanctioned by KBL shall vitiate this Sub-Contract.

12. VALUATION OF VARIATIONS

- (1) To the extent that a valuation relates to the execution of additional or substituted work which can properly be valued by measurement or to the execution of work for which an approximate quantity is included in the contract bills, such work shall be measured and shall be valued in accordance with the following rules:
 - (a) 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 the contract bills, the rates and prices for the work so set out shall determine the valuation;
 - (b) where the additional or substituted work is of similar character to work set out in the contract bills but is not executed under similar conditions thereto and / or significantly changes its quantity, 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;
 - (c) where the additional or substituted work is not of similar character to work set out in the contract bills, the work shall be valued at fair rates and prices;
 - (d) where the approximate quantity is a reasonably accurate forecast of the quantity of work required the rate or price for the approximate quantity shall determine the valuation; and
 - (e) 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.

provided that clauses 12(1)(d) and 12(1)(e) shall apply only to the extent that the work has not been altered or modified other than in quantity.

- (2) To the extent that a valuation relates to the omission of work set out in the contract bills, the rates and prices for such work therein set out shall determine the valuation of the work omitted.
- (3) In any valuation of work under clauses 12(1) and 12(2):
 - (a) measurement shall be in accordance with the same principles as those governing the preparation of the contract bills;
 - (b) allowance shall be made for any percentage or lump sum adjustments in the contract bills; and
 - (c) allowance, where appropriate, shall be made for any addition to or reduction for preliminary items of the type referred to in the Standard Method of Measurement, provided that no such allowance shall be made in respect of compliance with an instruction for the expenditure of a provisional sum, pursuant to clause 19(1)
- (4) No work will be valued as daywork except where, in the opinion of KBL it would be unfair to value such work using any other method as provided for in this clause 12 and the Sub-Contractor has given due notice to the nominated KBL representative specified in the Sub-Contract Particulars who has approved it in writing prior to the Sub-Contractor commencing execution thereof (in order to facilitate checking the time and materials expended thereon). All daywork sheets shall be submitted to KBL by the end of the week during which the work is executed. All daywork will be paid for at the rates detailed in the Sub-Contract Particulars.
- (5) Provided always that no allowance shall be made as part of any valuation under this clause for any effect upon the regular progress of the Works or of any part of them or for any other direct loss and/or expense for which the Sub-Contract would be reimbursed under any other provision of this Sub-Contract.

- (6) KBL shall be entitled to omit any part of the Works and shall be entitled, either itself or by engaging another contractor, to perform the same and the Sub-Contract Sum shall be adjusted accordingly. The Sub-Contractor shall be entitled to receive any cost reasonably incurred in expectation of performing such omitted works, but shall not be entitled to any allowance for loss of profit.

13. LOSS AND / OR EXPENSE

- (1) If in the execution of this Sub-Contract the Sub-Contractor incurs or is likely to incur direct loss and/or expense for which the Sub-Contractor would not be reimbursed by a payment under any other provision in this Sub-Contract because the progress of the Works or any part of them has been or is likely to be materially affected by:-

- (a) the ordering of any Variation to the Works as defined in clause 11(1); or
- (b) any suspension by the Sub-Contractor under clause 3(17)(b), provided the suspension was not frivolous or vexatious; or
- (c) any breach or act of prevention on the part of KBL; or
- (d) any other circumstances or occurrence (other than a breach of this Sub-Contract by the Sub-Contractor) entitling KBL to loss and/or expense under the Principal Contract.

then the Sub-Contractor may make written application to KBL.

- (2) If the Sub-Contractor makes an application as referred to in clause 13(1), then save where this Sub-Contract provides that there shall be no addition to the Sub-Contract Sum or otherwise excludes the operation of this clause, then the amount of the direct loss and /or expense which has been or is being incurred shall be ascertained by KBL; provided always that the Sub-Contractor shall:

- (a) make its application as soon as it has become, or should reasonably have become, apparent to the Sub-Contractor that the progress of the Works or any part of them has been or is likely to be affected;
- (b) in support of its application submit to KBL upon request such information and details as KBL may reasonably require;
- (c) in addition to clause 13(2)(a) and (b), provide KBL with such notices, documents and other information as may be required in good time so as to enable KBL to claim loss and/or expense in accordance with the terms of the Principal Contract;

and provided always that no allowance shall be made as part of any ascertainment under this clause for any direct loss and/or expense for which the Sub-Contractor would be reimbursed under any other provision of this Sub-Contract.

- (3) In the event the Sub-Contractor fails to comply with clause 13(2) then its entitlement to loss and / or expense under this clause shall be reduced by an amount equal to the amount which KBL is unable to claim under the terms of the Principal Contract as a result of such failure by the Sub-Contractor.
- (4) Any amounts ascertained by KBL in accordance with clause 13(2) shall be included within the Sub-Contractor's ascertained final sub-contract sum as referred to in clauses 3(17) to 3(20).
- (5) In the event that KBL's ability to claim any other remedy for losses suffered or incurred (including without limitation damages for breach of contract) under or in connection with the Principal Contract in respect of any matter is excluded or restricted, the Sub-Contractor's ability to claim against KBL is similarly excluded or restricted.

- (6) Notwithstanding any other provision of the Sub-Contract, it shall be a condition precedent to the Sub-Contractor's entitlement to any loss and / or expense under this clause 13 that the Sub-Contractor shall have given KBL the information required by clause 13(2) above within 20 days after the circumstances for such loss and / or expense entitlement became known to the Sub-Contractor, or should have become known to a reasonably competent Sub-Contractor in the Sub-Contractor's position.

14. COMPLIANCE WITH LAWS

- (1) The Sub-Contractor shall comply with all directly applicable provisions of the EU Treaty and/or any EU regulations, all statutes, any instruments, rules or orders made under any statute, any bye laws or regulations of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the same are or will be connected, any decisions of a relevant authority which controls the right to develop the site and any other laws (including without limitation EC laws) applicable to the Works and the carrying out thereof.
- (2) Without prejudice to the generality of the above, the Sub-Contractor shall comply with all employment legislation (including without limitation, the Working Time (Amendment) Regulations 2007), anti-discrimination laws, immigration laws and PAYE Regulations in connection with engaging operatives and / or employees in the Works.

15. INFORMATION PROVIDED BY OTHERS

- (1) KBL shall not be liable to the Sub-Contractor in respect of or in relation to any disruption or delay caused to the Sub-Contractor arising from or in connection with the late receipt or non-receipt by the Sub-Contractor of any instructions, drawings, levels or other information unless the Sub-Contractor has made written application to KBL for such instruction, drawings, levels or other information at a date which is not unreasonably distant from nor unreasonably close to the date on which it is necessary for the Sub-Contractor to receive the same.

16. INFORMATION PROVIDED FOR OTHERS

- (1) The Sub-Contractor shall submit to KBL copies of drawings and documents in relation to those parts of the Works to be designed by the Sub-Contractor ("Designs") as described in the Numbered Documents on the dates stated therein or, if no date is stated, on a date which is not unreasonably distant from nor unreasonably close to the date on which it is necessary for KBL to receive the same to enable it to review and comment on the same and / or integrate such Designs into the design of any other part of the work under the Principal Contract without delaying or disrupting the work under the Principal Contract or the Works or any section thereof. The Sub-Contractor will comply strictly with any procedures set out in the Numbered Documents which allow KBL and any other party specified therein to comment on such drawings and documents and it shall be a condition precedent to the Sub-Contractor's entitlement to payment for any work or goods in respect of any part of the Works to be designed by him that the same have been executed or supplied in accordance with drawings and documents which have been accepted by KBL in accordance with such procedures.
- (2) The Sub-Contractor shall be responsible for all errors, discrepancies and omissions in or between drawings and documents provided by him and the items specified in paragraphs (a) to (c) below and, notwithstanding anything to the contrary contained elsewhere in this Sub-Contract, the Sub-Contractor shall not be entitled to any addition to the Sub-Contract Sum or any extension of time in respect of the correction of such error discrepancy or omission or in respect of any instruction issued by KBL in relation to it. Without prejudice to any express or implied warranties or conditions, the Sub-Contractor warrants that those parts of the Works designed by him will comply with:
 - (a) any performance specification or requirement contained in the Sub-Contract;

- (b) the Statutory Requirements (as defined in the Principal Contract or, if not defined, all statutes, any instruments, rules or orders made under any statute, any bye laws or regulations of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the same are or will be connected, any decisions of a relevant authority which controls the right to develop the site and any other laws (including without limitation EC laws) applicable to the Works and the carrying out thereof; and
 - (c) any other requirement stipulated in the Principal Contract.
- (3) No comments or advice from KBL or from the contract administrator under the Principal Contract in connection with any drawings or documents provided by the Sub-Contractor shall in any way relieve the Sub-Contractor of its responsibility for the same.
 - (4) KBL shall be entitled under an irrevocable royalty free licence granted with full title guarantee to reproduce and use any drawing or documents provided by or on behalf of the Sub-Contractor for all purposes in relation to the Works and the project which is the subject of the Principal Contract and shall be entitled to grant a licence to the Employer and any other third party with an interest in the project to which the Works relate (including without limitation any purchaser, tenant or funder of the whole or part of such project) in respect of such purposes on similar terms. Such licence shall survive termination of this Sub-Contract: on any basis.

17. SUB-CONTRACTOR'S QUALITY PLAN

- (1) The Sub-Contractor shall provide a detailed quality plan in a format agreed with KBL which shall include without limitation: detailed programmes for design, shop drawings, off-site fabrication and construction of the Works and each section thereof and preparation / issue of as-built drawings and operation and maintenance manuals; an environmental impact assessment; and an information release schedule, together with: requests for information; progress reports against programmes; on and off-site testing and inspection procedures, including commissioning and witnessing; snagging and offering works for completion; quality procedures, systems and audits and financial reporting.

18. USE OF SITE

- (1) The Site shall not be used for any purpose other than for the carrying out of the Works. Any of the Works to be executed outside the Site boundary shall be carried out to suit the convenience of adjacent occupiers and local authorities at times to be agreed by KBL in writing. KBL shall be entitled upon reasonable prior notice to visit any place outside the Site where the Works are being executed for the purpose of inspecting the same.

19. ADJUSTMENT OF PROVISIONAL SUMS

- (1) Instructions may be issued in respect of provisional sums. Notwithstanding any other provision of this Sub-Contract, no claims by the Sub-Contractor for extensions of time or for payment of head office overheads, interest, financing charges, loss of profit, preliminaries (whether site based or otherwise) or any indirect or consequential losses of whatsoever kind will be allowed in respect of such instructions or the provisional sums to which they relate, as the Sub-Contractor has made due allowance within the Sub-Contract Sum and the time for completion of the Works and each section thereof for these items.

20. TERMINATION OF SUB-CONTRACTOR'S EMPLOYMENT

- (1) KBL may, without prejudice to any other of its rights or remedies, immediately terminate the Sub-Contractor's employment under this Sub-Contract in respect of the whole or any part of the Works if the Sub-Contractor:

- (a) unless exercising its right of suspension pursuant to clause 3(17)(b), fails within 7 days' notice in writing from KBL to proceed regularly and diligently with the Works and / or any section thereof to the reasonable satisfaction of KBL and at all times in such a manner as will not, in the opinion of KBL, prejudice the completion of the whole or any portion of the works under the Principal Contract in accordance therewith; or
 - (b) fails forthwith upon notice from KBL to commence remedial work to any defective workmanship and / or materials or fails to proceed with the same with due diligence or to complete such remedial work to the satisfaction of KBL or the contract administrator under the Principal Contract within a set period as KBL may specify in the said notice or if none is so specified within a reasonable time; or
 - (c) fails to complete and deliver up the Works and / or any section thereof by the Completion Date relevant thereto; or
 - (d) fails to withdraw immediately at the request of KBL any one or more of its employees or its Sub-Sub-Contractor's employees to whom KBL object or whose involvement in the performance of the Works may contravene the conditions of this Sub-Contract or the Principal Contract or who may cause labour disputes in the Sub-Contractor's or any other trade, and to replace such employees immediately by others against whom there is no such objection; or
 - (e) has a distress or execution levied upon the Sub-Contractor's property or assets or if the Sub-Contractor shall make or offer to make any arrangement or composition of debts or schedule of arrangement approved in accordance with the Insolvency Act 1986 or has an administrator appointed or if a notice of intention to appoint an administrator is filed at court or commits an act of bankruptcy or has a petition to wind up its business (other than for the purpose of a bone fide reconstruction or an amalgamation) passed or presented or a resolution to wind up the Sub-Contractor has been passed or if a provisional liquidator, receiver, administrative receiver or manager of the Sub-Contractor's undertaking property or assets or any part of them shall be appointed or if any analogous proceedings, resolutions, applications or arrangements are made or the Sub-Contractor is unable to pay its debts as they fall due; or
 - (f) fails within 7 days' notice in writing from KBL to comply with any of the obligations on the part of the Sub-Contractor contained in this Sub-Contract; or
 - (g) breaches the terms of this Sub-Contract and the Employer determines the Principal Contract or KBL's employment thereunder as a result.
- (2) Termination under this clause shall be effected by notice in writing. Upon such termination, the Sub-Contractor shall not be entitled to compensation therefor and shall leave the Site without removing any of its equipment, materials or property on the Site unless directed otherwise by KBL (in which event the Sub-Contractor shall forthwith remove the same at its own cost).
 - (3) Notwithstanding anything contained in this Sub-Contract (but subject always to any adjudicator's award), the Sub-Contractor shall be entitled to no further payment until completion of the Works by KBL or by others. For the purposes of such completion KBL shall have free use of the Sub-Contractor's equipment, materials and property in the Site without responsibility to the Sub-Contractor for fair wear and tear thereof and to any materials or fabricated work lying at the Sub-Contractor's offices or workshop which have been bought or fabricated for the purpose of this Sub-Contract.
 - (4) KBL shall be entitled to recover from the Sub-Contractor all losses, expenses, costs and damages suffered or which may be suffered by KBL by reason of such termination.
 - (5) Without prejudice to clauses 20(1), 20(2) and 20(3), if the Principal Contract is terminated for any reason whatsoever before the Sub-Contractor has fully performed its obligations under the Sub-Contract, then:

- (a) KBL may at any time thereafter by written notice to the Sub-Contractor forthwith terminate its employment under this Sub-Contract and thereupon the Sub-Contractor shall with all reasonable speed remove its personnel and plant (excluding equipment) from Site. Upon such a termination of the Sub-Contractor's employment and, except when the Sub-Contractor's breach has caused the determination of the Principal Contract, the Sub-Contractor shall be entitled to be paid for all work executed and all goods supplied by him up to the date of such termination of the Principal Contract. The Sub-Contractor shall, within 14 days of such termination, submit an application for payment for works executed by the Sub-Contractor up to the date of such termination. Such application shall be treated in all respects as if it were a final account submitted by the Sub-Contractor pursuant to clauses 3(17) to 3(20), and the procedures set out in clause 3 shall apply in respect of such an application.
- (6) Irrespective of the grounds of termination of the Sub-Contract, the Sub-Contractor's employment may at any time be reinstated if and on such terms as the parties agree.

21. INDUSTRIAL RELATIONS, SECURITY AND HEALTH AND SAFETY PROVISIONS

- (1) The Sub-Contractor must at all times comply with the Health & Safety at Work Act etc 1974 ("the Act") and all and any regulations or orders made or issued under the Act and any approved codes of practice and published guidance documents issued by the Health and Safety Commission including without limitation the Construction (Design and Management) Regulations 2015 and any amendment or replacement thereof (the "Health and Safety Legislation"). The Sub-Contractor shall provide such evidence as KBL may reasonably request to demonstrate its competence and the adequacy of its arrangements (including the allocation of sufficient time and other resources) to enable it to comply with the Construction (Design and Management) Regulations 2015. A copy of the Sub-Contractor's policy statement on Health and Safety shall be lodged with KBL together with the name of the executive responsible for Health and Safety matters. An operative who refuses to comply with the requirements of the Health and Safety Legislation will be required to leave the Site. The provision of appropriate protective clothing and safety equipment as required under the Health and Safety Legislation is at all times the responsibility of the Sub-Contractor. All operatives and staff employed by the Sub-Contractor on the Site will be required to wear safety helmets in compliance with National Working Rule 23.
- (2) In addition to the requirements of the Health and Safety Legislation, KBL requires that the Sub-Contractor will provide safety helmets for all employees, which will be worn at all times whilst working on, or visiting the Site. In the event that any employee of the Sub-Contractor shall refuse to wear a safety helmet that employee will be required to leave the Site immediately. All operatives are required to hold a CSCS card or other approved card.
- (3) The Sub-Contractor shall comply with KBL's requirements regarding the safe conduct of the Works on the Site or elsewhere.
- (4) The Sub-Contractor shall only provide operatives who are lawfully entitled to work in the United Kingdom.
- (5) Any complaint or comment concerning KBL Site facilities shall be communicated forthwith to KBL's site management, as shall any other matter which might have an adverse effect on industrial relations and / or Health & Safety on Site.

22. ADJUDICATION

- (1) Either party to this Sub-Contract shall have the right to refer any dispute or difference arising under or in connection with this Sub-Contract to adjudication in accordance with the terms of this Sub-Contract at any time.

- (2) Any dispute or difference arising under or in connection with this Sub-Contract may be referred at any time to an adjudicator nominated by The Royal Institution of Chartered Surveyors.
- (3) Any adjudication under this Sub-Contract shall be conducted in accordance with the provisions of the Scheme for Construction Contracts (Part 1 of The Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998 No. 649) (Amendment) (England) Regulations 2011 (SI 2011 No.2333) amended as follows:
 - (a) Insert “or in connection with” before “the contract” in line 2 of paragraph 1(1).
 - (b) Insert a new paragraph 7A as follows:

“7A(1) The responding party shall have the right to respond in writing to the referral notice. Any such written response shall be referred to the adjudicator not later than 14 days from the date of the referral

7A(2) Any such written response shall be accompanied by copies of, or extracts from, any documents the responding party intends to rely upon.

7A(3) The responding party shall, at the same time as it sends to the adjudicator the documents referred to in paragraphs (1) and (2), send copies of those documents to every other party to the dispute.
 - (c) Insert after “expenses” in line 2 of paragraph 8(4) “and the parties liability therefor”.
 - (d) Insert “or the written response and any other documents given under paragraph 7A(2)” at the end of paragraph 13(a).
 - (e) Insert “and obtained their consent (which shall not be unreasonably withheld)” before “appoint experts” in line 2 of paragraph 13 (1).
 - (f) Delete “one person” in paragraph 16(2) and substitute “three people”.
- (4) The decision of an adjudicator appointed under this Sub-Contract shall be binding until the dispute or difference is finally determined by legal proceedings in the English Courts, or by agreement of the parties.
- (5) An adjudicator appointed under this Sub-Contract 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 any employee or agent of an adjudicator appointed under this Sub-Contract is similarly protected.
- (6) In all cases, each party shall bear its own costs and expenses arising out of and incurred in connection with any adjudication.

23. NOTICES

- (1) All instructions, applications, notices and comments to be made or given under this Sub-Contract shall unless otherwise agreed be in writing and given by actual, special or recorded delivery (except notices under clause 20, which shall without exception be given in writing and sent to KBL’s / the Sub-Contractor’s registered office by actual, special or recorded delivery). Where given by special or recorded delivery it shall, subject to proof to the contrary, be deemed received on the second business day after the date of posting. For the purposes of this clause and clause 24, a business day shall include any day that is not a Saturday, Sunday or Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales or, as the case may be, in Scotland.

24. PERIODS OF TIME

- (1) 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 and shall include only business days (as defined in clause 23).

25. CONFIDENTIALITY

- (1) The Sub-Contractor shall ensure that all documents and information provided by KBL to the Sub-Contractor or its sub-contractors during or in connection with the performance of this Sub-Contract (other than those already in the public domain) and including without limitation the terms of this Sub-Contract shall be treated as confidential. Such information shall not be used by the Sub-Contractor except for the purposes for which it was made available and such information and its contents shall not be disclosed by the Sub-Contractor to any other person without prior written consent of KBL.

26. INTERPRETATION

- (1) Subject to applicable law (including without limitation fraudulent misrepresentation), this Sub-Contract supersedes any previous arrangements between KBL and the Sub-Contractor in respect of the Works (whether oral or written and including without limitation any letter of intent).
- (2) References herein to any legislation or section or provision thereof shall include any statutory modification or re-enactment of or statutory provision substituted for the legislation, section or provision.
- (3) Subject to the mandatory provisions of any statute, no rule of contract interpretation applies to the disadvantage of a party on the basis that such party put forward the Sub-Contract or any part thereof.
- (4) No consent, approval or certificate shall relieve the Sub-Contractor of its obligations hereunder.

27. APPLICABLE LAW

- (1) This Sub-Contract is subject to English Law and (subject to clause 22) the exclusive jurisdiction of the English Courts, subject to the right of either party to enforce a judgement obtained in the English Courts in any other jurisdiction.

28. DEFINITIONS AND INTERPRETATION

- (1) Unless the context otherwise requires or the Sub-Contract Particulars or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in these Conditions shall have the meanings stated below:

Conditions:	The clauses set out herein under numbers 1 to 28.
Employer:	KBL's employer under the Principal Contract.
Numbered Documents:	The documents listed as such in the Sub-Contract Particulars, or otherwise the documents comprising the Sub-Contract.
Principal Contract:	The head or main contract between KBL and its Employer / client for the main contract works.
Site:	The place at which the Works, or any part of the Works are to be carried out.

Standard Method of Measurement:	The Standard Method of Measurement of Building Works, 7th Edition produced by the Royal Institution of Chartered Surveyors and the Construction Confederation.
Sub-Contract:	The agreement between KBL and the Sub-Contractor comprising the Sub-Contract Order, the Sub-Contract Particulars, these Conditions and the Numbered Documents.
Sub-Contract Particulars:	The particulars of the sub-contract set out in the document so titled, which particulars form part of the sub-contract
Valuation:	A valuation by KBL in accordance with the valuation rules as set out in clause 12.
Works:	The works which form the subject matter of this Sub-Contract, as may be briefly described in the Sub-Contract Particulars and as more particularly shown, described or referred to in the contract documents, including any changes made to those works in accordance with this Sub-Contract. Works shall include, and may be referred to as, the Sub-Contract Works.
Terms and Conditions:	No amendments, deviations or changes whatsoever to these terms and conditions can be accepted unless specified by written notice by a director of KBL, these terms apply for all contracts between the parties.