

CIOB

TIME AND COST MANAGEMENT CONTRACT

05

SUBCONTRACT CONDITIONS

2015 EDITION



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INTRODUCTION

The Time and Cost Management Subcontract (the Subcontract) is written for use with the suite's Time and Cost Management Contract and Time and Cost Management Consultancy Appointment to provide a consistent approach to time cost and risk management from initiation to completion of building and engineering projects.

NAMING

The Subcontract is formally called the "CIOB Time and Cost Management Subcontract, 2015 Edition." However, it may also be referred to as the "Time and Cost Management Subcontract" or simply TCM/SC15. It is referred to within this document as the "Subcontract".

USE OF THE SUBCONTRACT

The Subcontract is intended for use only in connection with the CIOB Time and Cost Management Contract, 2015 Edition and is not suitable for use with other forms of construction or engineering main forms of contract.

PRICING

The Subcontract can be used for any method of pricing. Commonly, these include fixed price, target cost, measured term, fixed fee, cost reimbursement, partnering and alliancing. The method of pricing is to be set out in the Subcontract Special Conditions.

SUBCONTRACT SPECIAL CONDITIONS

The standard documentation is expected to be supplemented by Subcontract Special Conditions setting out the method of pricing, insurance requirements, bonding and any other matter peculiar to the particular project for which it is used. The Subcontract Special Conditions take priority over these standard conditions.

SUBCONTRACT SPECIFICATION

The standard documentation is expected to be supplemented by a Subcontract Specification identifying the standards of performance required for the particular project.

TIME MANAGEMENT

The Subcontract requires critical path network modelling, resource allocation and productivity analysis. The Subcontractor is required to produce a Scheduling Contribution in differing densities updated and revised on the rolling wave principle that constantly predicts the currently attainable completion date, sectional completion dates and key dates.

COST MANAGEMENT

Cost management is by reference to the values attributed to the activities in the Subcontractor's Scheduling Contribution with progress updated from databased progress records. The updated Scheduling Contribution constantly predicts the out-turn cost of the Subcontract Works and the value of work done to date.

RISK MANAGEMENT

The Contract is a collaborative contract requiring the Contractor, its Subcontractors and the design Consultants to work with Time Manager, Cost Manager, Contract Administrator and the Employer to constantly appraise risk, its probable consequences and to confer in taking practical action to overcome and avoid unnecessary time and cost risks. The Time Manager is required to collaborate with the Contractor, Subcontractors and Consultants. The Subcontract contains power to instruct acceleration both to overcome the effects of a delay to progress and bring forward completion dates where practical.

COLLABORATION

The Subcontract requires a collaborative approach to design in conformity with British Standards Institution's British Standard BS 1192:2007, but goes further in expressly requiring the Contractor, Subcontractors and Consultants having a continuing role in design, administration or quality control during the continuation of the Subcontract Works to participate in decision making, quality control, time management, cost management and risk management.

BUILDING INFORMATION MODELLING

The Subcontract is suitable for Level 2 Projects¹ and the collaborative production of information throughout the project life cycle. It is compatible with the requirements of the British Standards Institution's PAS 1192: Part 2, 2013 "Specification for information management for the capital/delivery phase of construction projects using building information modelling" and it may be used with any desired Building Information Modelling Protocol.

INFORMATION TRANSFER

The Subcontract requires information to be transferred electronically either by readable file or in native file format and in accordance with a File Transfer Protocol compatible with the British Standards Institution's PAS 1192:4 2014 COBie.

STANDARD DOCUMENTATION

In addition to this Document No. 5 (the Subcontract Conditions, 2015 Edition), the Subcontract comprises

- Document No. 4, Subcontract Agreement, 2015 Edition, and
- Document No. 6, Subcontract Appendices, 2015 Edition.

Also available for use with the Contract are

- Document No. 1, Contract Agreement, 2015 Edition
- Document No. 2, Contract Conditions, 2015 Edition
- Document No. 3, Contract Appendices, 2015 Edition
- Document No. 7, Consultancy Appointment, 2015 Edition
- Document No. 8, Schedules 8 and 9 for the appointment of the Project Time Manager, 2015 Edition, and
- Document No. 9, Schedules 8 and 9 for the appointment of the Contract Administrator, 2015 Edition.

DISCLAIMER

The Subcontract has been produced for use in a wide variety of construction and engineering projects to be carried out under the CIOB's Time and Cost Management Contract. As with any standard form document, however, the unique circumstances of each project will demand careful consideration as to its suitability and that of each provision. The parties will need to rely upon their own skill and judgement (and/or that of their advisers) in making use of this or any other standard form document comprised in, or for use in connection with, this Subcontract. Neither the Chartered Institute of Building, nor any author or contributor, assumes any liability to anyone for any loss or damage caused by any error or omission, whether such error or omission is the result of negligence or any other cause.

FEEDBACK

The Chartered Institute of Building would like to receive your comments on the Subcontract in use, which should be addressed to

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¹ Defined by the UK Government's Construction Strategy for reducing construction costs. Cabinet Office, Government Construction Strategy, May 2011, available at www.gov.uk/government.

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APPENDIX 5	Progress Records
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APPENDIX 7	Issue Resolution

1. DEFINED TERMS

- 1.1 The capitalised terms used in these Subcontract Conditions shall have the meanings stated in Appendix 1.

2. INTERPRETATION

- 2.1 The language of the Subcontract shall be English.
- 2.2 The Subcontract shall be governed and construed in accordance with the Law of the Subcontract identified in the Subcontract Agreement.
- 2.3 All monetary amounts shall be in the currency identified in Appendix 2.
- 2.4 The Base Date shall be that stated in Appendix 2.
- 2.5 Unless the context requires otherwise in the Subcontract
- 2.5.1 words in the singular include the plural and vice versa
 - 2.5.2 references to a person include human persons and corporate and unincorporated bodies
 - 2.5.3 any reference to a day shall mean a calendar day and any reference to a date shall mean a calendar date
 - 2.5.4 any reference to a meeting includes a virtual meeting by video and/or telephone conference, the substance of which is recorded in writing
 - 2.5.5 any reference to a statute, statutory instrument or other subordinate legislation is a reference to such legislation in force in the relevant jurisdiction at the Base Date
 - 2.5.6 headings and titles are for information purposes only and shall not be deemed part of the Subcontract or be used in its interpretation or construction
 - 2.5.7 where the Subcontract requires any document or information to be distributed, unless stated or instructed otherwise it shall be distributed to the other party (or if distributed by another, to both parties) and to the
 - 2.5.7.1 Contract Administrator
 - 2.5.7.2 Time Manager, and

2.5.7.4 Cost Manager

in portable document format (PDF) by means of

2.5.7.5. download by the agreed File Transfer Protocol, or

2.5.7.6 email

and the words “distribute”, “re-distribute”, “distributes”, “distributed” and “distribution” shall be construed accordingly, and

2.5.8 where the Subcontract requires any document or information to be published, unless stated or instructed otherwise, it shall be provided to the other party (or if published by another, to both parties) and to the

2.5.8.1 Contract Administrator

2.5.8.2 Time Manager, and

2.5.8.3 Cost Manager

in native file format in the specified software by means of

2.5.8.5 the Common Data Environment

2.5.8.6 download by the agreed File Transfer Protocol, or

2.5.8.7 email

and the words “publish”, “re-publish”, “publishes”, “published” and “publication” shall be construed accordingly.

3. THE SUBCONTRACT

3.1 The Subcontract supersedes all previous representations, arrangements, understandings and agreements between the parties relating to the Subcontract Works and sets out the entire agreement between them.

3.2 All the terms of the Subcontract are severable. In the event that any provision is found to be unenforceable, illegal or void the remaining terms of the Subcontract shall continue in full force and effect.

- 3.3 To the extent that there is any inconsistency between any of the Subcontract Documents, the documents shall, for the purpose of interpretation, have the following order of priority
- 3.3.1 the Subcontract Agreement
 - 3.3.2 the Subcontract Special Conditions
 - 3.3.3 these Subcontract Conditions
 - 3.3.4 the Subcontract Appendices
 - 3.3.5 the Subcontract Model and/or Subcontract Federated Model, and where applicable, any information derived from the Subcontract Model and/or Subcontract Federated Model
 - 3.3.6 the Subcontract Drawings
 - 3.3.7 the Subcontract Specification
 - 3.3.8 the Subcontract Bill of Quantities
 - 3.3.9 the Subcontractor's Pricing Document
 - 3.3.10 the Subcontractor's Design Contribution
 - 3.3.11 the Working Schedule and Planning Method Statement identified in the Subcontract Agreement, and
 - 3.3.12 any other documents forming part of the Subcontract.
- 3.4 In the event of any inconsistency in the Subcontract Drawings between dimensions, the order of priority shall be dimensions
- 3.4.1 electronically calculated from any Model
 - 3.4.2 electronically calculated from any Drawing
 - 3.4.3 figured, and
 - 3.4.4 scaled, in which case the larger scale Drawing shall prevail.
- 3.5 The Subcontractor shall identify and notify the Contractor at the earliest opportunity of any actual or potential impossibility, clash, conflict, discrepancy, omission, error, inconsistency

and/or ambiguity in and/or between the Subcontract Documents and/or between the Subcontract Documents and Applicable Law.

- 3.6 Unless Applicable Law requires or the Subcontract Special Conditions state otherwise, the Subcontractor shall not be responsible for verifying the adequacy of any design contained in any Subcontract Document that has not been produced by or on behalf of the Subcontractor.
- 3.7 Within 10 Business Days of receiving a notice under Clause 3.5, the Contractor shall issue an instruction for correction. The instruction shall be valued as a Variation unless such instruction requires
- 3.7.1 adoption of a description or data in a higher priority document over that in a lower priority document (as between the documents listed in Clause 3.3), or
- 3.7.2 correction of any actual or potential impossibility, clash, conflict, discrepancy, omission, error, inconsistency and/or ambiguity in and/or between any Subcontractor's Design Contribution and any Subcontract Document or Applicable Law.
- 3.8 If at the date of notice under Clause 3.5 an affected Activity is intended to be started within 20 Business Days, any delay to the progress of that Activity caused by the notice shall be at the Subcontractor's risk.

4. OBLIGATIONS OF THE PARTIES

- 4.1 The parties shall work together in the manner required by the Subcontract and shall co-operate in a spirit of mutual trust and fairness and in good faith.
- 4.2 Where the Contract Administrator, Time Manager, Cost Manager and/or any Listed Person is required to exercise discretion as between the interests of the Employer or Contractor and the Subcontractor, it shall do so independently and fairly.
- 4.3 The Subcontractor shall exercise the level of skill, care and diligence to be expected of a properly qualified and competent subcontractor. The Subcontractor shall be experienced in performing subcontract works for projects of a similar size, value and complexity to the Subcontract Works and shall
- 4.3.1 carry out the Subcontract Works in such a way that no act, omission or default of the Subcontractor shall constitute, cause or contribute to any breach by the Contractor of its obligations under the Construction Contract or any Connected Contract, and
- 4.3.2 comply with all reasonable instructions issued by the Contractor.

- 4.4 In carrying out any work in connection with the Subcontractor's Design Contribution, including any inspection and/or check, the Subcontractor shall exercise the diligence, skill and care that is reasonably to be expected of a relevant professional practitioner experienced in the design of work of a similar size, value and complexity to the Subcontract Works.
- 4.5 The Subcontractor shall comply with Applicable Law and if, and for so long as, the Subcontractor carries out a part of the Subcontract Works in a country and/or region where the Site is not located, the Subcontractor shall in respect of that part of the Subcontract Works comply with the laws of that country and/or region. If the Subcontractor fails to do so and
- 4.5.1 loss and/or expense is incurred by the Contractor, the Subcontractor shall reimburse the same to the Contractor, and/or
- 4.5.2 as a result the Contractor becomes subject to claims by third parties, the Subcontractor shall indemnify the Contractor in respect of such claims.
- 4.6 Within 10 Business Days of receiving any reasonable request from the Contractor to do so, the Subcontractor shall provide such documentary evidence as is required by the Subcontract Special Conditions that financial arrangements have been made, and are being maintained, by the Subcontractor to enable the Subcontractor to fund the progress of the Subcontract Works in accordance with its current Scheduling Contribution.
- 4.7 If the Subcontractor fails to provide the information required by Clause 4.6, the Contractor may instruct the Subcontractor to suspend all or any of its obligations under the Subcontract (from a date not earlier than 10 Business Days after the notice) until such information is provided. The Subcontractor shall bear the time and cost effect of any such suspension.
- 4.8 Within 10 Business Days of receiving any reasonable request from the Subcontractor to do so, the Contractor shall provide documentary evidence that financial arrangements have been made and are being maintained by the Contractor to enable the Contractor to pay the Predicted Subcontract Cost. If the Contractor intends to make any change to its financial arrangements that might have a material impact upon the Subcontractor, it shall notify the Subcontractor and provide detailed particulars of the intended change before making it.
- 4.9 If the Contractor fails to provide the information required by Clause 4.8, the Subcontractor may notify the Contractor that it intends to suspend all or any of its obligations under the Subcontract from a date not earlier than 10 Business Days after the notice. The Subcontractor may continue with any such suspension until such information is provided. The Subcontractor shall include in such notice a statement setting out which obligations it intends to suspend. The Contractor shall bear the time and cost effect of any such suspension.

- 4.10 The party identified in the Subcontract as host of the File Transfer Protocol and/or Common Data Environment shall be responsible for updating and maintaining the hardware, software and data, and for maintaining the integrity and security of the server and the data to which access is provided. The party identified shall also indemnify and hold harmless any authorised user against loss and/or damage arising from breach of this Clause 4.10.
- 4.11 No acceptance, approval, confirmation, representation or issue of instructions (conditional or otherwise) by the Contractor, the Employer, the Contract Administrator, the Time Manager, the Cost Manager or any of the Listed Persons shall relieve the Subcontractor of any of its obligations under the Subcontract.
- 4.12 Where and to the extent that prior to the Subcontract Date the Subcontractor has performed any work and/or services in connection with the Project not forming part of the Subcontract Works, such work and/or services shall
- 4.12.1 be deemed to have been performed under, and to be covered by the terms of, the Subcontract, regardless of for whom they were performed
 - 4.12.2 be deemed to have been paid for in full, and
 - 4.12.3 not entitle the Subcontractor to any additional payment, and
- the Subcontractor shall provide a Collateral Warranty to the Employer in respect of such work and/or services in accordance with Clause 8.

5. COMMENCEMENT AND COMPLETION

- 5.1 On the Access Date stated in Appendix 2, the Contractor shall afford access to the Subcontractor for carrying out the Subcontract Works in accordance with the latest accepted Subcontractor's Scheduling Contribution.
- 5.2 Where the Subcontract Works include a Subcontractor's Design Contribution, or under the Subcontract Special Conditions the Subcontractor is to have access to the Site before the Access Date, the Subcontractor's obligations shall commence no later than the Start Date stated in Appendix 2.
- 5.3 The Subcontractor shall achieve Handover no later than the Handover Date stated in Appendix 2.
- 5.4 Where it is stated in the Subcontract Special Conditions that the Subcontract Works are to be started and/or handed over in Subcontract Sections

- 5.4.1 the Subcontract Sections shall be those described in the Subcontract Special Conditions
 - 5.4.2 the Subcontract Sectional Values shall be those stated in Appendix 2
 - 5.4.3 the Contractor shall afford access for the commencement of each Subcontract Section to the Subcontractor by the relevant Sectional Access Date or the Logical Date for Sectional Access identified in the latest accepted Subcontractor's Scheduling Contribution, whichever is the later, and
 - 5.4.4 the Subcontractor shall start the work comprised in each Subcontract Section on the date Sectional Access is provided, and shall achieve Handover of each Subcontract Section by the relevant Sectional Handover Date.
- 5.5 Where a part of the Subcontract Works identified is described in the Subcontract Special Conditions as to be completed by a Key Date stated in Appendix 2, the Subcontractor shall achieve Handover of the defined part by the Key Date.
- 5.6 Where it is reasonably foreseeable that the commencement or completion of any part of the Subcontract Works is, or is likely to be, dependent upon services or work carried out by others, the logical connection between that part and such other services or work shall be indicated on the Subcontractor's Scheduling Contribution and clearly described in the supporting information.
- 5.7 A failure by others to undertake any services or work at a time or in a sequence not identified in accordance with Clause 5.6 shall not constitute an Event.

6. AUTHORISED REPRESENTATIVES AND SITE SUPERVISION

- 6.1 The person identified in the Subcontract Agreement as the Subcontractor's Authorised Representative shall be empowered to act with the Subcontractor's full authority in all matters relating to the Subcontract. If at any time the appointed person is unable to act, or the Contractor makes reasonable objection to the appointed person, the Subcontractor shall within 5 Business Days appoint another in its place and shall notify the Contractor of the name, qualifications, experience and contact details of the replacement.
- 6.2 No less than 10 Business Days before the Access Date, the Subcontractor shall notify the Contractor, with a copy to the Contract Administrator, of the name, qualifications, experience and contact details of the Subcontractor's Site Agent who shall remain on Site until Handover or termination (whichever is later). If for any reason the Subcontractor's Site Agent is, or is likely to be, absent from the Site, the Subcontractor shall advise the

Contractor, with a copy to the Contract Administrator, of a suitably qualified replacement. Any instructions issued to the Subcontractor's Site Agent shall be deemed to have been issued to the Subcontractor.

- 6.3 Unless stated otherwise in the Subcontract Special Conditions, the person identified in the Subcontract Agreement as the Contractor's Authorised Representative shall be empowered to act with the Contractor's full authority in all matters relating to the Subcontract. If at any time the appointed person is unable to act, the Contractor shall within 5 Business Days appoint another in its place and shall notify the Subcontractor of the name, qualifications and contact details of the replacement.
- 6.4 No less than 10 Business Days before the Access Date, the Contractor shall notify the Subcontractor, with a copy to the Contract Administrator, of the name, qualifications, experience and contact details of the Contractor's Subcontract Supervisor who shall remain on Site until Handover or termination (whichever is later). If for any reason the Contractor's Subcontract Supervisor is, or is likely to be, absent from the Site, the Contractor shall advise the Subcontractor, with a copy to the Contract Administrator, of a suitably qualified replacement. Any instructions issued by the Contractor's Subcontract Supervisor to the Subcontractor's Site Agent shall be deemed to have been given by the Contractor to the Subcontractor.

7. COMMUNICATIONS

- 7.1 Whenever any instruction, direction, certificate, submission, proposal, register, record, request, determination, acceptance, approval, notice, reply, consent, non-acceptance, rejection, refusal, warning or any other communication is required by the Subcontract to be issued, it shall, unless the Subcontract provides otherwise, be in writing in the language of the Subcontract and transmitted electronically by email or by the agreed File Transfer Protocol or shall be delivered by hand or sent by pre-paid recorded delivery. Recorded delivery means a form of delivery by post whereby the sender may obtain a record of the delivery.
- 7.2 Email shall be deemed to be received as soon as it is sent provided that it bears the subject code data identified in Appendix 2, and subject to evidence to the contrary.
- 7.3 Information transmitted in accordance with the File Transfer Protocol shall be deemed to have been received when the recipient is notified that it has been uploaded for file transfer in accordance with the File Transfer Protocol.
- 7.4 Any contribution made in a Common Data Environment shall be deemed to have been received when such contribution is recorded as having been made.

- 7.5 A communication sent by recorded delivery has effect when it is received at the last address notified by the recipient for receiving postal communications or, if none is notified, at the address of the recipient stated in the Subcontract Agreement.
- 7.6 Delivery of communications made by hand shall be deemed to have taken place when signed for upon delivery.

8. SUBCONTRACTOR COLLATERAL WARRANTIES

- 8.1 Within 15 Business Days of any written request by the Contractor to do so the Subcontractor shall execute and provide in the form required by the Subcontract Special Conditions
 - 8.1.1 a Collateral Warranty in respect of the Subcontract Works in favour of any Connected Party identified by the Employer in its request, and/or
 - 8.1.2 a Collateral Warranty in respect of the Subcontract in favour of the Employer.

9. SECURITY FOR SUBCONTRACTOR'S PERFORMANCE

- 9.1 Where require by Appendix 2, the Subcontractor shall, within 5 Business Days of the Date of Subcontract, deliver to the Contractor
 - 9.1.1 a Holding Company Guarantee, and/or
 - 9.1.2 a Performance Bond,in the form required by the Subcontract Special Conditions.
- 9.2 Where any advance payment and/or advance mobilisation costs are to be paid to the Subcontractor and Appendix 2 requires an Advance Payment Bond, the Subcontractor shall, on or before the Start Date, deliver it to the Contractor in the form required by the Subcontract Special Conditions.
- 9.3 The guarantor in respect of any Performance Security shall be a financial institution or insurer approved in advance by the Contractor, such approval not to be unreasonably withheld or delayed.

10. INSURANCES

- 10.1 The Subcontractor shall be responsible for, and shall take all necessary steps to secure the care and protection of the Subcontractor's Temporary Buildings, Laydown, materials, goods and Subcontractor's Plant and the Subcontract Works. The Subcontractor shall remain responsible for the repair or replacement of any damage thereto arising prior to Handover howsoever caused.
- 10.2 The parties shall take out and maintain insurances for the risks, periods and amounts required by the Subcontract Special Conditions.
- 10.3 Upon request by either party, the other party shall provide satisfactory evidence that such insurances are in place. If such evidence is not provided within 15 Business Days of the request, the requesting party may notify the other party and take out such insurances as the other party has failed to satisfactorily evidence as a Variation.
- 10.4 The Subcontractor shall be liable for, and shall indemnify the Contractor against, any expense, liability, loss, claim or proceedings arising in connection with the carrying out of the Subcontract Works from
- 10.4.1 personal injury to or the death of any person, except to the extent that the same is caused by any act or neglect of the Contractor or those for whom the Contractor is responsible, and/or
 - 10.4.2 injury or damage to any property (real or personal) in so far as the same is caused by negligence, breach of Applicable Law, omission or default of the Contractor, or those for whom the Contractor is responsible.
- 10.5 Any monies received by the Subcontractor, pursuant to an accepted claim for damage caused to the Subcontract Works under the insurances, shall be placed in a separate insurance receipts account for the benefit of the Contractor and applied to repair or replace the work as the Contractor may instruct.

11. INFORMATION

- 11.1 Where the Contractor has provided a Reference Design, it shall have the status identified in Appendix 2.
- 11.2 Where the Contractor provides the Subcontractor with any investigation report, data, map, Drawing, historical record or any other information of any kind concerning
- 11.2.1 existing structures

- 11.2.2 physical ground conditions
- 11.2.3 subsurface conditions
- 11.2.4 geology
- 11.2.5 below ground services on the Site, and/or
- 11.2.6 other significant physical features,

it shall have the status identified in the Subcontract Specification. If no status is identified, it may be relied upon by the Subcontractor.

- 11.3 The Contractor shall provide the Subcontractor with the information reasonably necessary for the performance of the Subcontract

- 11.3.1 at the time identified by

- 11.3.1.1 the Subcontract Specification or, (if none is stated therein)
- 11.3.1.2 the Subcontractor's latest accepted Scheduling Contribution, or (if none is stated therein)
- 11.3.1.3 the Contractor's current Working Schedule, or (if none is stated therein)

- 11.3.2 in due time for Handover to be achieved by the Relevant Date for Handover.

- 11.4 Where the Subcontractor is required to rely upon information provided by the Contractor or any person appointed by the Contractor, the Contractor warrants that the information so provided is satisfactory for the proper carrying out of the Subcontract Works.

- 11.5 If not permitted to rely upon any information to which Clause 11.3 refers, or if the information provided is in any way unsatisfactory, before commencing the Subcontractor's Design Contribution, or the relevant part of the Subcontract Works, the Subcontractor shall notify the Contractor of the investigations required. Unless specifically instructed otherwise, the Subcontractor shall not commence the Subcontractor's Design Contribution or the relevant part of the Subcontract Works until satisfactory information has been provided by the Contractor, with a copy to the Contract Administrator.

12. SUBCONTRACTOR'S REQUESTS FOR SUPPLY

- 12.1 The Subcontractor may request from the Contractor
 - 12.1.1 comments on, or acceptance, or approval of, a design, sample, work, materials, goods or plant, and/or
 - 12.1.2 the supply of
 - 12.1.2.1 anything the Contractor is required to provide
 - 12.1.2.2 instructions and other information, and/or
 - 12.1.2.3 drawings and details other than those comprising the Subcontractor's Design Contribution.
- 12.2 For the avoidance of doubt, except for instructions to which Clauses 3.7 and 19.3 apply, Clause 12.1.2.2 does not apply to a request for an instruction requiring a Variation.
- 12.3 The Subcontractor shall make any request to which Clause 12.1 applies at least 15 Business Days before the Logical Date by which the Subcontractor requires the Contractor's response.
- 12.4 The Contractor shall provide a response to a Subcontractor's request under Clause 12.1 by no later than the latest of the following
 - 12.4.1 15 Business Days after receiving the request
 - 12.4.2 the Logical Date identified, if any, for the relevant supply in the latest accepted Subcontractor's Scheduling Contribution at the time of the request
 - 12.4.3 the date stated in the Subcontract Specification by which the relevant supply is to be made, and
 - 12.4.4 the Logical Date identified in the latest accepted Subcontractor's Scheduling Contribution by which the Subcontractor reasonably requires the supply in light of the progress actually achieved.

13. SUBCONTRACTOR'S SUBMISSIONS

- 13.1 Where the Subcontractor is required to provide a submission, unless stated otherwise in the Subcontract the submission shall be distributed at least 15 Business Days before the Logical Date by which the Subcontractor reasonably requires acceptance or approval.

- 13.2 Any such submission shall be deemed accepted 15 Business Days after its receipt, unless by then the Contractor notifies the Subcontractor stating that the submission
- 13.2.1 does not comply with the Subcontract
 - 13.2.2 would impose an obligation on the Contractor that the Subcontract does not require the Contractor to bear
 - 13.2.3 would be contrary to Applicable Law
 - 13.2.4 would have an adverse effect on the Contractor's ability to comply with the Construction Contract
 - 13.2.5 would have an adverse effect on the Subcontractor's ability to comply with the Subcontract, or
 - 13.2.6 is rejected on any other ground stated in the Subcontract Special Conditions.

The notice shall also provide particulars supporting the statement.

- 13.3 A submission may be accepted or approved in part in the notice referred to in Clause 13.2, provided that the notice identifies
- 13.3.1 the part which is unacceptable
 - 13.3.2 the reasons why it is unacceptable, and
 - 13.3.3 the date by which the amended submission is to be received.
- 13.4 As soon as is reasonably practicable after a submission has been rejected, deemed rejected, or conditionally accepted, the Subcontractor shall distribute a submission complying with the Subcontract. The Subcontractor shall bear the time and cost effect of any such rejection or conditional acceptance and/or re-submission.
- 13.5 No comment by the Contractor or any other person shall relieve the Subcontractor of its obligations under the Subcontract.
- 13.7 If the Subcontractor considers that any notice under Clause 13.2 is in conflict with any provisions of the Subcontract or amounts to a Variation, it shall, within 5 Business Days of receiving the decision, refer the issue for Issue Resolution. If the Subcontractor does not do so, it shall be deemed to be agreed that the decision is compliant with the Subcontract and does not amount to a Variation.

- 13.8 The Subcontractor shall not implement any submission
- 13.8.1 before it has been accepted or approved
 - 13.8.2 in the absence of a response within the permitted period, until after the period for acceptance or approval has ended
 - 13.8.3 that is contrary to any objection raised under Clause 13.2, or
 - 13.8.4 that is contrary to any conditional acceptance or approval under Clause 13.3.
- 13.9 The Contractor shall maintain a database of submissions received from the Subcontractor, identifying in respect of each submission any relevant Activity ID and
- 13.9.1 the submission identifier
 - 13.9.2 a description of the submission
 - 13.9.3 the date of its receipt
 - 13.9.4 the method of its delivery
 - 13.9.5 whether it is accepted, approved, rejected or conditionally accepted or approved, and
 - 13.9.6 the document comprising the notice.
- 13.10 The Contractor shall publish the current database of submissions no less than 5 Business Days before each Site Meeting.

14. INTELLECTUAL PROPERTY

- 14.1 The Subcontractor shall
- 14.1.1 warrant that it has intellectual property rights in the Subcontractor's Design Contribution
 - 14.1.2 indemnify the Contractor against any loss or damage sustained by the Contractor as a result of the infringement of any intellectual property rights in the Subcontractor's Design Contribution held by the Subcontractor or any Sub-subcontractor, and

- 14.1.3 retain all intellectual property rights in the Subcontractor's Design Contribution, except that the Subcontractor hereby irrevocably waives any moral rights it may have.
- 14.2 The Subcontractor grants the Contractor, Employer and Listed Persons a perpetual, transferable, irrevocable, non-exclusive, sub-licensable, royalty-free licence to copy, use and modify the Subcontractor's Design Contribution and to reproduce any Subcontractor's Design Contribution in connection with
- 14.2.1 constructing the Works
- 14.2.2 resolving any issue or dispute arising out of, or in connection with, the Construction Contract
- 14.2.3 commissioning, maintaining and operating the finished project
- 14.2.4 promotional activity, advertising, leasing or selling, and/or
- 14.2.5 repairing, altering, or reconstructing the project, irrespective of who performs such repairs, alterations, or reconstruction.
- 14.3 For any part or parts of the Subcontractor's Design Contribution in which the Subcontractor does not hold all relevant intellectual property rights, the Subcontractor warrants and undertakes that it has been granted, or shall obtain for itself, a licence or licences on the terms required by Clause 14.2. The Subcontractor hereby grants, or (in respect of any licences yet to be obtained) shall grant, a sub-licence or sub-licences to the Contractor, Employer and Listed Persons on terms no less favourable than those of the Subcontractor's own licence or licences.

15. DESIGN EXECUTION PLAN

- 15.1 If the Subcontractor is required to make a Design Contribution, no less than 20 Business Days after the Start Date the Subcontractor shall distribute its Design Execution Plan for acceptance by the Contractor. The Design Execution Plan shall identify the timing of submissions and any other matters required by the Subcontract, and be accompanied by sufficient information to facilitate its interpretation and evaluation.
- 15.2 The Subcontractor's Design Execution Plan, and any revision of it, shall not constitute or cause
- 15.2.1 a breach of the Subcontract

- 15.2.2 a breach of the Construction Contract and/or any Connected Contract
 - 15.2.3 an illegal operation
 - 15.2.4 a hazard to health and/or safety
 - 15.2.5 a hazard to the safety and/or stability of the Works or Temporary Work or any other property
 - 15.2.6 a method or sequence of working which is not conducive to effective time and/or cost control, or
 - 15.2.7 a fraudulent misrepresentation or any unethical conduct.
- 15.3 If the Subcontractor wishes to revise its Design Execution Plan at any time then, no less than 20 Business Days before the relevant work is scheduled to be carried out, the Subcontractor shall distribute for acceptance by the Contractor its revised intentions for its Design Execution Plan.
- 15.4 Where the current Subcontractor's Scheduling Contribution indicates that any Activity affected by a submission under Clause 15.3 is intended to be started within 20 Business Days, any delay to the progress of that Activity caused by the submission shall be at the Subcontractor's risk.
- 15.5 The Contractor shall consult over and consider with the Contract Administrator and Subcontractor the Design Execution Plan and any revision to it. If the Contractor considers that any submission does not comply with the Subcontract, within 15 Business Days of its receipt the Contractor shall
- 15.5.1 reject the submission in accordance with Clause 13.2, or
 - 15.5.2 issue a conditional acceptance of the submission in accordance with Clause 13.3.
- 15.6 If not rejected, and subject always to any condition of acceptance, the Design Execution Plan (and any revision of it) shall be deemed to be agreed to be conclusive evidence of the Subcontractor's intentions for the future performance of the Subcontractor's Design Contribution at the Data Date of its acceptance. The accepted Design Execution Plan and any revision of it shall be incorporated in the Subcontractor's Scheduling Contribution under Clause 35 or Revised Scheduling Contribution under Clause 42, as the case may be.
- 15.7 The Subcontractor shall not carry out any work described in the Design Execution Plan before acceptance of the Design Execution Plan or any revision of it. If the Subcontractor carries out, or attempts to carry out, any work before acceptance, the Contractor may instruct

the Subcontractor to suspend performance of the Subcontract Works or any part of them. The suspension shall remain in force until a satisfactory Design Execution Plan has been accepted, and adequate records have been made of any resources and work carried out before acceptance. The cost and time effect of any such suspension, investigation or record keeping shall be borne by the Subcontractor.

16. SUBCONTRACTOR'S DESIGN CONTRIBUTION

- 16.1 Any change to the design of any part of the Subcontract Works proposed by the Subcontractor for the purpose of reducing cost shall be deemed to be an offer of a Design Contribution to which this Clause 16 applies. If acceptable to the Contractor, it shall be instructed as a Variation.
- 16.2 Any Subcontractor's Design Contribution shall
- 16.2.1 comply with Applicable Law
 - 16.2.2 comply with Standards
 - 16.2.3 be of good quality
 - 16.2.4 be prepared to the Design Stages stated in the Subcontract Specification
 - 16.2.5 incorporate the requirements and benefits of its predecessor Design Stage
 - 16.2.6 facilitate the Subcontract Works being
 - 16.2.6.1 safe to construct and operate, and
 - 16.2.6.2 fit for the purpose required by the Subcontract, and
 - 16.2.7 include all work
 - 16.2.7.1 reasonably to be inferred from the Subcontract Specification as necessary for the proper carrying out of the Subcontract Works
 - 16.2.7.2 not specifically referred to or described in the Subcontract Specification but which is required to achieve Handover of the Subcontract Works, and
 - 16.2.7.3 otherwise necessary for the Subcontract Works to be fit for the purposes required by the Subcontract.

- 16.3 The Subcontractor shall inspect and check the Subcontractor's Design Contribution to establish that there is no potential or actual clash, conflict, discrepancy, omission, error, inconsistency and/or ambiguity in the Subcontractor's Design Contribution and/or between the Subcontractor's Design Contribution and any other part of the design of the Works affected by it.
- 16.4 Where the Subcontractor's Design Contribution is required to be based upon information provided by the Contractor, and the Subcontractor considers that, if made in compliance with that information, its Design Contribution is likely to be in conflict with its obligations it shall immediately notify the Contractor seeking modified information. Upon receiving such notice, the Contractor shall modify, cancel or confirm the information provided. The Subcontractor shall not proceed with its Design Contribution unless such information is modified to minimise or remove the conflict, or it is confirmed.
- 16.5 At the completion of each Design Stage, the approved design shall be signed by the Subcontractor and Contractor solely for the purpose of demonstrating that the Design Stage is complete and without relieving the Subcontractor of any of its obligations under the Subcontract. The Contractor shall immediately provide a copy of the signed accepted design to the Design Coordination Manager and the Contract Administrator.
- 16.6 Unless stated otherwise in the Subcontract, or the Contractor otherwise instructs, the Subcontractor shall not commence any Design Stage until the previous Design Stage has been confirmed by the Contractor as complete and in accordance with the Subcontract.
- 16.7 The Subcontractor shall update the Subcontractor's Design Contribution with the effect of Variations and as-built information standard. The Subcontractor shall ensure consistency between the Subcontractor's Design Contribution and the built Subcontract Works.
- 16.8 The Subcontractor shall publish its Design Contribution
- 16.8.1 at completion of each required Design Stage, and
 - 16.8.2 whenever the Subcontractor's Design Contribution is updated or revised.
- 16.9 Except where the Design Contribution is one to which Clause 17 applies
- 16.9.1 the Contractor shall maintain a database of the Subcontractor's submissions in connection with the Design Contribution, and
 - 16.9.2 no less than 5 Business Days before each Site Meeting, the Contractor shall publish a current copy of the database of submissions.

17. BUILDING INFORMATION MODELLING

- 17.1 Where the Works have been designed by, or under the direction of, the Employer or Contractor with the aid of Building Information Modelling, unless stated otherwise in the Subcontract
- 17.1.1 the Subcontractor may not modify, publish or use any Contract Model and/or Contract Federated Model for any purpose whatsoever, except in connection with, and for the purposes of, the Subcontract Works. Any such use shall be in accordance with Appendix 3 and the Building Information Modelling Protocol
 - 17.1.2 for the purposes of carrying out the Subcontract Works and fulfilling its obligations under Clause 55, the Subcontractor shall receive a licence to use any Contract Model and/or Contract Federated Model and/or any drawings or information extracted from them
 - 17.1.3 neither the Employer nor the Contractor grants any other intellectual property rights in respect of the Contract Model, Contract Federated Model, and/or any drawings or information extracted from them
 - 17.1.4 to the extent that information is required for analysis, review, tender, bidding and/or construction purposes, it shall be extracted from the Contract Model and/or Contract Federated Model in accordance with Appendix 3 and the Building Information Modelling Protocol
 - 17.1.5 the Contract Model and/or Contract Federated Model shall be maintained in accordance with the Building Information Modelling Protocol, and
 - 17.1.6 any use by the Subcontractor of the Contract Model and/or Contract Federated Model that is inconsistent with Appendix 3 and/or the Building Information Modelling Protocol shall be at the sole risk of the Subcontractor.
- 17.2 Where the Subcontractor is required by the Subcontract to make a Design Contribution to a Contract Model and/or Contract Federated Model prepared by, or under the direction of, the Employer or Contractor
- 17.2.1 the intellectual property rights in the Subcontractor's Design Contribution, and any information derived from it, shall remain the Subcontractor's, subject to the Employer's and Contractor's right to use the Design Contribution in accordance with, and to the extent identified in, Clauses 14 and 18, and
 - 17.2.2 the Subcontractor shall

- 17.2.2.1 produce a Design Contribution in compliance with Appendix 3 and the Building Information Modelling Protocol
 - 17.2.2.2 maintain and update the Subcontractor's Design Contribution as required by the Contractor throughout the course of the Subcontract Works
 - 17.2.2.3 indemnify the Contractor against any loss, whether direct or consequential, or damage the Contractor may suffer and against any liability, whether direct or indirect, arising out of, or in connection with, the use by other Design Users of the Subcontractor's Design Contribution, and
 - 17.2.2.4 warn the Contractor of any potential or actual clash, conflict, discrepancy, or inconsistency, error, omission and/or ambiguity between the Subcontractor's Design Contribution and any other Design Contribution.
- 17.3 Where no other part of the Works is designed using Building Information Modelling, and the Subcontractor is required by the Subcontract to design the whole of the Subcontract Works using Building Information Modelling
- 17.3.1 the copyright in the Model and/or Federated Model and any information derived from it shall remain the Subcontractor's, subject to the Employer's and Contractor's rights to use the Model and/or Federated Model in accordance with, and to the extent identified in, Clauses 14 and 18, and
 - 17.3.2 the Subcontractor shall
 - 17.3.2.1 notify the Contractor of the person appointed to act on behalf of the Subcontractor to manage the coordination of the Design Execution Plan, the Building Information Modelling Protocol and the Model and/or Federated Model
 - 17.3.2.2 provide the Common Data Environment and/or File Transfer Protocol
 - 17.3.2.3 publish each Model and/or the Federated Model in accordance with Appendix 3 and the Building Information Modelling Protocol
 - 17.3.2.4 select and remain solely responsible for the suitability and integrity of the selected software, and any information, drawings, specifications or other information extracted from any Model

- 17.3.2.5 obtain the Contractor's confirmation of acceptance of the completion of each Design Level of Development required by the Design Execution Plan
 - 17.3.2.6 maintain and update the Model and/or Federated Model as required by the Contractor throughout the course of the Subcontract Works, and
 - 17.3.2.7 archive each completed Design Level of Development in accordance with the Building Information Modelling Protocol.
- 17.4 To the extent that there is any clash, conflict, discrepancy and/or inconsistency between the terms of this Clause 17 and the Building Information Modelling Protocol, save to the extent stated otherwise in the Subcontract Specification the terms of this Clause 17 shall prevail.

18. CONFIDENTIALITY

- 18.1 Except where required otherwise by Applicable Law, the Contractor shall keep confidential any Subcontractor's Design Contribution and any rates and prices or other records that have been identified in the Subcontractor's Pricing Document as confidential, other than those referred to in Clauses 18.4 and 18.6.
- 18.2 The Contractor shall promptly notify the Subcontractor of any lawful request for disclosure of any information relating to the Subcontract Works required by Applicable Law.
- 18.3 Subject to Clauses 18.4 and 18.6, the Contractor shall not use any of the documents provided, or contributed to, by the Subcontractor, other than in connection with the carrying out of the Works, or for the determination of the rights and liabilities of any party arising under, or in connection with, the Subcontract, the Construction Contract or any Connected Contract.
- 18.4 The Employer, Contract Administrator, Contractor, Time Manager and Cost Manager may use the data contained in the database referred to in Clause 40 for any purpose whatsoever, whether or not in connection with the Subcontract Works.
- 18.5 Except in respect of a lawful request for information required by Applicable Law to be disclosed, or for the purposes identified in Clause 18.3, the Employer, Contractor, Contract Administrator, Time Manager, Cost Manager and the Listed Persons shall not divulge or use any of
- 18.5.1 the Subcontractor's Design Contribution

- 18.5.2 the rates or prices in the Subcontractor's Pricing Document, or
- 18.5.3 the Subcontractor's Scheduling Contribution, whether or not accepted.
- 18.6 Nothing in this clause shall prevent
 - 18.6.1 disclosure of information to the employees of the Subcontractor, Contractor and Employer and their professional advisers, who have first given an undertaking in the terms of this clause to their respective employers, to the extent necessary
 - 18.6.1.1 for the execution of the Subcontract Works
 - 18.6.1.2 to enforce the Subcontract, or
 - 18.6.1.3 under Applicable Law, or
 - 18.6.2 disclosure of information
 - 18.6.2.1 that has, except as a result of breach of confidentiality, become available or generally known to the public, or
 - 18.6.2.2 in connection with an award or decision under Clause 75.6.
- 18.7 The obligations under this clause shall cease upon the later of
 - 18.7.1 the subject information ceasing to be commercially and/or security sensitive, or
 - 18.7.2 three years after
 - 18.7.2.1 the Subcontract Termination Date, or
 - 18.7.2.2 the Substantial Completion Date.

19. FINDINGS

- 19.1 Findings discovered in any existing structures on the Site, or on any access or right of way to the Site, shall remain in the care and control of the Employer.
- 19.2 On discovering any Finding, the Subcontractor shall
 - 19.2.1 cease work in the area of the Finding

- 19.2.2 take appropriate precautions so that the Finding is protected and not damaged or further disturbed, and
- 19.2.3 issue an Early Warning including details of
 - 19.2.3.1 the time and date of discovery
 - 19.2.3.2 the location of the discovery, and
 - 19.2.3.3 the nature of the Finding.
- 19.3 On receiving an Early Warning, the Contractor shall confer with the Subcontractor and the Contract Administrator and shall issue instructions for the further excavation, investigation, recovery and/or disposal of such findings by the Subcontractor or by others as the Contract Administrator considers appropriate, and/or continuance of the Subcontract Works or any part of them.

20. UNFORESEEABLE CONDITIONS

- 20.1 If Unforeseeable Conditions are discovered, the Subcontractor shall issue an Early Warning together with its proposals for overcoming, avoiding, or minimising the likely effects of the discovery on the progress of the Subcontract Works.
- 20.2 On receiving the Early Warning, the Contractor, together with the Subcontractor, the Contract Administrator and any Listed Persons, or others whom the Contractor or Contract Administrator, as the case may be, considers necessary, shall inspect, investigate and make such tests as are appropriate.
- 20.3 As soon as possible the Contractor shall confirm to the Subcontractor that the notified discovery is
 - 20.3.1 an Event, and that the Subcontractor should proceed to comply with Clause 43, or
 - 20.3.2 not an Event, and shall either instruct the Subcontractor to proceed with its proposals, or such other proposals as are accepted by the Contractor, at the Subcontractor's risk as to time and/or cost.
- 20.4 If the Subcontractor considers that the decision under Clause 20.3.2 is in conflict with any provisions of the Subcontract and/or amounts to a Variation, the Subcontractor shall within 5 Business Days of its receipt refer the matter for Issue Resolution. If the Subcontractor does not do so, it shall be deemed to be agreed that the decision is compliant with the Subcontract and does not amount to a Variation.

21. TEMPORARY AND ANCILLARY WORK AND CONTRACTOR'S FACILITIES

- 21.1 The Contractor shall provide the Subcontractor with Temporary Work necessary for the Subcontract Works described in the Subcontract Specification. Except to the extent stated in the Subcontract Specification, the Subcontractor shall carry out, maintain in a good and safe working condition, and be responsible for, all other temporary work necessary for the Subcontract Works. Unless expressly described and priced otherwise, such work shall be deemed to be included in the Subcontractor's Pricing Document as Preliminaries.
- 21.2 The Contractor shall provide the Subcontractor with the Contractor's Facilities and other things described in the Subcontract Specification. Anything not so described shall be provided by the Subcontractor and, unless expressly described and priced otherwise, shall be deemed to be included in the Subcontractor's Pricing Document as Preliminaries.
- 21.3 Where it is stated in the Subcontract Specification that the Contractor shall provide the Subcontractor with Temporary Work, Contractor's Facilities or any other thing, it shall be provided in accordance with the terms and conditions stated in the Subcontract Specification and
- 21.3.1 at the time identified by
 - 21.3.1.1 the Subcontract Specification, or (if none is stated therein)
 - 21.3.1.2 the Subcontractor's latest accepted Scheduling Contribution, or (if none is stated therein)
 - 21.3.1.3 the Contractor's current Working Schedule, or (if none is stated therein)
 - 21.3.2 in due time for Handover to be achieved by the Relevant Date for Handover.
- 21.4 The Subcontractor shall inspect the supply and notify the Contractor within 5 Business Days of any apparent deficiency. If no deficiency is notified, and subject always to proof to the contrary, anything to which Clause 21.3 refers shall be deemed to have been supplied in accordance with the Subcontract.
- 21.5 The Contractor shall immediately rectify any deficiency notified by the Subcontractor in accordance with Clause 21.4, the time and cost effect of which shall be borne by the Contractor.

22. HEALTH, SAFETY AND WELFARE

- 22.1 Unless stated otherwise in the Subcontract, the Contractor shall provide and maintain all necessary Welfare Facilities for the Subcontractor's personnel.
- 22.2 The Subcontractor shall not permit anyone to maintain living quarters within any structure forming part of the Subcontract Works or the Works.
- 22.3 The Contractor shall provide all necessary medical staff, first aid facilities and ambulance services to the Site whenever any work of any nature is carried out on the Site.
- 22.4 The Contractor shall appoint a safety manager to be responsible for maintaining safety and protection against accidents on the Site. The Contractor's safety manager shall
- 22.4.1 be suitably qualified for this responsibility
 - 22.4.2 have the authority to issue instructions to take protective measures to prevent accidents occurring and promote health and safety on the Site
 - 22.4.3 maintain records of accidents occurring on the Site, and
 - 22.4.4 make any reports concerning health, safety and welfare of persons, and damage to property, which Applicable Law requires.
- 22.5 The Subcontractor shall appoint a safety manager to be responsible for maintaining safety and protection against accidents in the carrying out of the Subcontract Works. The Subcontractor's safety manager shall
- 22.5.1 be suitably qualified for this responsibility
 - 22.5.2 cooperate with the Contractor's safety manager
 - 22.5.3 subject to the overriding authority of the Contractor's safety manager, issue instructions to take protective measures to prevent accidents and to promote health and safety in the carrying out of the Subcontract Works
 - 22.5.4 maintain records of accidents occurring during the carrying out of the Subcontract Works, and
 - 22.5.5 make any reports concerning health, safety and welfare of persons, and damage to property, which Applicable Law requires.

- 22.6 The Subcontractor shall, within 1 Business Day, notify the Contractor with details of any accident which may occur on the Site. In default of such notice, the Contractor may instruct the Subcontractor to suspend the carrying out of the Subcontract Works or any part of them until such accident has been properly investigated and recorded. The cost and time effect of such suspension, investigation and/or record keeping shall be borne by the Subcontractor.
- 22.7 If either party's safety manager considers it necessary to issue instructions to take protective measures to promote health and safety and/or to prevent accidents, it shall immediately notify the other and within 1 Business Day meet to agree such instructions. In default of agreement, the Contractor's safety manager shall issue any instructions it considers necessary and either party may refer the issue to Issue Resolution. If the matter is not referred to Issue Resolution within 5 business days of the notice, it shall be deemed to be agreed between the parties that the instruction is reasonably given in conformity with the Subcontract and does not constitute a Variation.

23. SUBCONTRACTOR'S METHODS

- 23.1 The Subcontractor's working methods for the construction of the Subcontract Works, and any amendments made to them, shall not constitute or cause
- 23.1.1 an illegal operation
 - 23.1.2 a breach of contract
 - 23.1.3 a hazard to health and/or safety
 - 23.1.4 a hazard to the safety and/or stability of the Works or Temporary Work or any other property
 - 23.1.5 a method or sequence which is not conducive to effective time and/or cost control, or
 - 23.1.6 a fraudulent misrepresentation or any unethical conduct.
- 23.2 No less than 25 Business Days before the Access Date, the Subcontractor shall prepare and distribute its statement of working methods for the construction of the Subcontract Works. The submission shall be accompanied by sufficient information to facilitate its interpretation and evaluation.
- 23.3 If the Subcontractor wishes to amend its statement of working methods at any time, then no later than 25 Business Days before the relevant work is scheduled to be carried out,

the Subcontractor shall distribute for acceptance its revised intentions for its working methods.

- 23.4 Where at the date of submission under Clause 23.3 the current Scheduling Contribution indicates that any Activity affected by the submission is intended to be started within 20 Business Days, any delay to the progress of that Activity caused by the submission shall be at the Subcontractor's risk.
- 23.5 If a submission under Clause 23.2 or Clause 23.3 does not comply with the Subcontract, the Contractor shall within 15 Business Days of its receipt either
- 23.5.1 reject the submission in accordance with Clause 13.2, or
 - 23.5.2 issue a conditional acceptance of the submission in accordance with Clause 13.3.
- 23.6 If not rejected, and subject always to any condition of acceptance, the submission shall be deemed to be accepted as conclusive evidence of the Subcontractor's intentions for the method of constructing the Subcontract Works at the Data Date of the submission.
- 23.7 The Subcontractor shall not carry out any work described in its statement of working methods before such statement has been accepted. In the event that the Subcontractor carries out, or attempts to carry out, any work not described in its statement, the Contractor may instruct the Subcontractor to suspend the carrying out of the Subcontract Works or any part of them. The suspension shall remain in force until a satisfactory statement of working methods for the construction of the Subcontract Works has been accepted, and adequate records have been made of any resources used and work wrongfully carried out. The cost and time effect of any such suspension, investigation or record keeping shall be borne by the Subcontractor.

24. LABOUR, PLANT AND MATERIALS

- 24.1 Except for goods and materials to which Clause 62.2.3 or Clause 62.2.4 applies, and unless prohibited by Applicable Law, goods, materials and Permanent Plant shall become the property of the Employer free from any encumbrance when
- 24.1.1 properly incorporated into the Works, or
 - 24.1.2 their value is included in a Notice of Payment Due and they are suitably marked by the Subcontractor to that effect,
- whichever occurs first.

- 24.2 Where property in goods and/or materials is intended to be passed to the Employer before being incorporated in the Works, they shall be clearly marked as such by the Subcontractor at the time of valuation.
- 24.3 Unless stated otherwise in the Subcontract Specification, the Subcontractor shall at its own cost provide all labour, goods, materials and Subcontractor's Plant necessary for the proper carrying out of the Subcontract Works.
- 24.4 The work, goods, materials and plant for the Subcontract Works shall be to the standard specified in the Subcontract Specification. Where no such standard is specified, such work, goods, materials and plant shall be of good quality and fit for the intended purpose.
- 24.5 Where the Subcontract Specification requires samples of work, goods, materials or plant to be approved, the Subcontractor shall submit such samples, together with any relevant test certificates, technical and/or user information, to the Contractor before incorporation into the Subcontract Works.
- 24.6 If and to the extent that any items of work, goods, materials or plant are required to be to the Contractor's or the Contract Administrator's satisfaction, they shall be to that person's reasonable satisfaction.
- 24.7 The Subcontractor warrants that the goods and materials for inclusion in the Subcontract Works are integrated, co-ordinated and compatible with one another and with the rest of the Works.
- 24.8 The Subcontractor warrants that, to the extent that it is required to specify or approve goods or materials for use in the Subcontract Works, or does so specify or approve, it shall not specify, approve or use any goods or materials which are generally known, or ought to be known by subcontractors having expertise in, and experience of, designing or constructing works of similar scope, complexity, purpose, location and size to the Subcontract Works, to be deleterious in the particular circumstances in which they are to be used, including without limitation those identified as potentially hazardous under, or not in conformity with, Applicable Law or Standards.
- 24.9 Where the Subcontract Specification states that any materials or goods shall be provided by the Contractor to the Subcontractor as Free Issue Materials, the Contractor shall provide such goods and/or materials to the Subcontractor in accordance with the terms and conditions stated in the Subcontract Specification.
- 24.9.1 at the time identified by
- 24.9.1.1 the Subcontract Specification, or (if none is stated therein)

- 24.9.1.2 the Subcontractor's latest accepted Scheduling Contribution, or (if none is stated therein)
- 24.9.1.3 the Contractor's current Working Schedule, or (if none is stated therein)
- 24.9.2 in due time for Handover to be achieved by the Relevant Date for Handover.
- 24.10 Unless a deficiency is notified to the Contractor and subject always to proof to the contrary, anything to which Clause 24.9 refers shall be deemed to have been supplied in accordance with the Subcontract Specification.
- 24.11 The Contractor shall immediately rectify any deficiency notified by the Subcontractor in accordance with Clause 24.10, the time and cost effect of which shall be borne by the Contractor.
- 24.12 The Subcontractor shall provide all Subcontractor's Plant for the Subcontract Works and shall maintain it in a good and safe condition.
- 24.13 All persons engaged in connection with the Subcontract Works shall be appropriately qualified, skilled and experienced in their respective trade or profession.
- 24.14 If the Contractor becomes aware that any person employed by the Subcontractor in connection with the Subcontract Works
- 24.14.1 has performed or is performing any element of work incompetently or negligently
- 24.14.2 has failed or is failing to comply with any provisions of the Subcontract whether by act or omission, or
- 24.14.3 has behaved or is behaving in a manner which is prejudicial to the health and safety of others, or is prejudicial to the protection of the environment,
- the Contractor shall notify the Subcontractor of such default and, if such default is continued or repeated at any time, the Contractor may instruct the Subcontractor to exclude that person from involvement in the Subcontract Works. If the Contractor considers it necessary, the Contractor shall then direct the Subcontractor to appoint a suitable replacement, or may instruct others to be employed to execute the relevant work, the time and cost risk of which shall be borne by the Subcontractor.
- 24.15 The Subcontractor warrants that all workers not resident in the country of the Site have the necessary visas and work permits. The Subcontractor shall be responsible for paying

all costs in connection with any necessary repatriation on completion of their trade or profession, or earlier termination.

24.16 The Subcontractor shall provide working conditions and shall pay such rates of wages as are agreed by the trade union representing the relevant trade or industry in the region in which the relevant work is carried out. Where no relevant trade union exists, the Subcontractor shall

24.16.1 provide working conditions not inferior to the general level of working conditions, and

24.16.2 pay rates of wages not lower than the general level of rates of wages provided, or paid locally, by employers whose trade or industry is similar to that of the Subcontractor and who are subject to Applicable Law.

24.17 Unless agreed otherwise, neither party shall recruit or attempt to recruit human resources from the other, or from any person identified in the Subcontract Agreement, the Listed Persons or any other subcontractor.

24.18 No work shall be carried out on the Site other than during Working Hours on the Business Days stated in the Subcontract Specification and/or the Subcontractor's Pricing Document, whichever is the more restrictive, unless

24.18.1 the Contractor issues an instruction to do so

24.18.2 the particular work is necessary for the immediate protection of life or property or

24.18.3 for the safety of the Works or any part of them. In such circumstances, the Subcontractor shall within 5 Business Days notify the Contractor of the nature and quantity of work and the reason for it. In default of such notice

24.18.3.1 the Contractor may instruct the Subcontractor to suspend the performance of the Subcontract Works or any part of them until work wrongfully carried out has been properly investigated and recorded, and

24.18.3.2 the Contractor may employ and pay others to

24.18.3.2.1 make whatever reasonable investigations the Contractor and/or the Contract Administrator see fit, and/or

24.18.3.2.2 make and keep any records or schedules the Contractor and/or the Contract Administrator reasonably require to assist in the management of risks,

and the cost and time effect of such suspension, investigation, record keeping and/or schedule preparation shall be borne by the Subcontractor.

25. TEMPORARY BUILDINGS AND LAYDOWN

25.1 Where it is stated in the Subcontractor's Pricing Document that the Subcontractor requires an area for Temporary Buildings, the Contractor shall provide the stated areas together with suitable access for their safe and secure erection and maintenance and the required Site Services in accordance with the terms and conditions stated in the Subcontract Specification

25.1.1 at the time identified by

25.1.1.1 the Subcontractor's Pricing Document, or (if none is stated therein)

25.1.1.2 the Subcontractor's latest accepted Scheduling Contribution, or (if none is stated therein)

25.1.1.3 the Contractor's current Working Schedule, or (if none is stated therein)

25.1.2 in due time for Handover to be achieved by the Relevant Date for Handover.

25.2 The Subcontractor shall inspect the areas, access and Site Services provided under Clause 25.1 and notify the Contractor within 5 Business Days of any apparent deficiency. Unless a deficiency is notified, and subject always to proof to the contrary, anything to which Clause 25.1 refers shall be deemed to have been supplied in accordance with the Subcontract.

25.3 The Contractor shall immediately rectify any deficiency notified by the Subcontractor in accordance with Clause 25.2, the time and cost effect of which shall be borne by the Contractor.

25.4 Unless stated otherwise in the Subcontract or instructed otherwise, in respect of such Temporary Buildings the Subcontractor shall

25.4.1 provide and erect them together with any security provisions to the standards required by the Subcontract and Applicable Law

- 25.4.2 connect the Site Services
 - 25.4.3 maintain the Temporary Buildings and services in a condition that is fit for purpose
 - 25.4.4 warrant their safety and security throughout the period indicated in the latest accepted Subcontractor's Scheduling Contribution or, if none is indicated, the duration of the Subcontract Works, and
 - 25.4.5 on Handover, remove any Temporary Buildings, fencing and/or other security, goods, materials and/or plant and leave the area clean and safe.
- 25.5 Where it is stated in the Subcontractor's Pricing Document that the Subcontractor requires an area for Laydown, the Contractor shall provide such area, suitable access for the safe and secure erection and maintenance of fencing and Site Services in accordance with the Subcontract Specification
- 25.5.1 at the time identified by
 - 25.5.1.1 the Subcontractor's Pricing Document or (if none stated therein)
 - 25.5.1.2 the Subcontractor's latest accepted Scheduling Contribution, or (if none is stated therein),
 - 25.5.1.3 the Contractor's current Working Schedule, or (if none is stated therein),
 - 25.5.2 in due time for Handover to be achieved by the Relevant Date for Handover.
- 25.6 The Subcontractor shall inspect the areas, access and Site Services and notify the Contractor within 5 Business Days of any apparent deficiency. If no deficiency is notified, and subject always to proof to the contrary, anything to which Clause 25.5 refers shall be deemed to have been supplied in accordance with the Subcontract.
- 25.7 The Contractor shall immediately rectify any deficiency notified by the Subcontractor in accordance with Clause 25.6, the time and cost effect of which shall be borne by the Contractor.
- 25.8 Unless stated otherwise in the Subcontract, the Subcontractor shall
- 25.8.1 erect fencing and install all other required security provisions
 - 25.8.2 connect the Site Services

- 25.8.3 maintain the Laydown and services in a condition that is fit for purpose
- 25.8.4 warrant the safety and security of the Laydown provided throughout the period indicated in the latest accepted Subcontractor's Scheduling Contribution or, if none indicated, the duration of the Subcontract Works, and
- 25.8.5 on Handover remove any fencing and/or other security, goods, materials and/or plant and leave the Laydown area clean and safe.

26. QUALITY CONTROL

- 26.1 The Subcontractor shall carry out and complete Handover Testing and any other testing required by the Subcontract. Such Handover Testing and other testing shall be carried out in the presence of the Contractor and such other persons as the Contractor and/or Subcontractor require. Where any measurement, test or inspection is to be carried out by the Contractor, the Contractor may carry it out in the presence of the Subcontractor and such other persons as the Contractor requires.
- 26.2 Unless stated otherwise, the Subcontractor shall provide and bear the cost of providing all necessary information, assistance, documentation and resources for the satisfactory carrying out, recording and completion of all specified testing and Handover Testing.
- 26.3 The Subcontractor shall notify the Contractor no less than 5 Business Days before it intends to carry out Handover Testing or other testing.
- 26.4 Unless the Contractor instructs otherwise, if any person who is required under Clause 26.1 to witness Handover Testing or other testing does not attend at the time and place agreed, the Subcontractor may proceed in the person's absence. The Handover Testing or other testing shall then be deemed to have been carried out in the person's presence. If the Contractor does not attend the tests, subject to proof to the contrary, the test data shall be deemed to have been accurately recorded.
- 26.5 The Subcontractor shall promptly forward to the Contractor duly certified reports of the conduct and results of the Handover Testing or other testing carried out. When the specified tests have achieved the standard required by the Subcontract, the Contractor shall either sign the Subcontractor's test certificate or issue a certificate to the Subcontractor to that effect.
- 26.6 Where the Subcontract requires Subcontractor's Plant to be approved, the Subcontractor shall submit the relevant technical and user information to the Contractor and shall provide a reasonable opportunity for inspection of the Subcontractor's Plant. No such Subcontractor's Plant shall be used in connection with the Subcontract Works without the Contractor's prior approval.

- 26.7 Where the Subcontract requires work, materials, goods and/or Permanent Plant to be measured, inspected or tested prior to being covered up or packaged for transportation, the Subcontractor shall notify the Contractor no less than 5 Business Days before the measurement, inspection or test. The Contractor shall either carry out and complete the measurement, inspection or test within 5 Business Days of receiving the Subcontractor's notice, or promptly advise the Subcontractor that the Contractor does not intend to do so.
- 26.8 If the Subcontractor fails to issue any notice required by this Clause 26 the Contractor may instruct the Subcontractor to uncover all or any part of the work, goods, materials and/or Permanent Plant for measurement, inspection and testing, the time and cost effect of which shall be borne by the Subcontractor.
- 26.9 If the Contractor considers that any work, materials, goods and/or Permanent Plant is defective, or otherwise not in accordance with the Subcontract, the Contractor may instruct the Subcontractor to
- 26.9.1 uncover, test and, if appropriate, re-test the work, materials, goods and/or Permanent Plant
 - 26.9.2 remove it from the Site and replace it, and/or
 - 26.9.3 do such work as the Contractor considers necessary to enable the Contractor to make any other measurement or test the Contractor considers appropriate,
- and to the extent that such work, materials, goods and/or Permanent Plant is found to be defective, or not in accordance with the Subcontract, the time and cost risk shall be borne by the Subcontractor.
- 26.10 If the Subcontractor considers that any decision under this Clause 26 is in conflict with any provisions of the Subcontract or amounts to a Variation, then within 5 Business Days of its receipt, the Subcontractor shall refer the issue for Issue Resolution. If the Subcontractor does not do so, it shall be deemed to be agreed that the Contractor's decision is compliant with the Subcontract and does not amount to a Variation.

27. COMPLETION TESTING

- 27.1 Where it is stated in the Subcontract that the Subcontract Works are to be subject to Completion Testing, the Subcontractor shall provide and bear the cost of providing all necessary information, assistance, documentation and resources for the satisfactory carrying out, recording and completion of all Completion Testing required by the Subcontract.

- 27.2 The Subcontractor shall carry out and complete Completion Testing required by the Subcontract. Such Completion Testing shall be carried out in the presence of the Contractor and such other persons as the Contractor and/or the Contract Administrator require.
- 27.3 In consultation with the Subcontractor, the Contractor shall identify in the Working Schedule and Planning Method Statement appropriate Activities for the Completion Testing. The Contractor shall notify the Subcontractor no less than 5 Business Days before each Activity comprised in the Completion Testing is required to be carried out.

28. ACCESS

- 28.1 The Subcontractor warrants that it has undertaken all necessary investigation and inquiry to satisfy itself as to the nature and condition of the means of access and transportation to and from the Site and areas for Temporary Buildings and Laydown.
- 28.2 At all reasonable times during the Subcontract, the Employer, the Contractor, the Contract Administrator, the Time Manager, the Cost Manager, the Listed Persons and other persons authorised by the Employer shall have
- 28.2.1 unrestricted access to all parts of the Site, Temporary Buildings, Laydown and, to the extent reasonable, to all places from which work, goods, materials and/or Permanent Plant are being obtained and/or manufactured, and
 - 28.2.2 the right to examine, inspect, measure and test work, goods, materials and/or Permanent Plant in connection with the Subcontract or any Connected Contract.

29. PERMITS AND LICENCES

- 29.1 Unless otherwise stated in the Subcontract, the Contractor shall obtain all permits, licences and approvals necessary for the carrying out of the Subcontract Works and pay all duties, fees and taxes in connection therewith.
- 29.2 If requested by the Subcontractor, the Contractor shall use reasonable endeavours to assist the Subcontractor in any applications for permits, licences or approvals made pursuant to this Clause 29.

30. ASSIGNMENT AND SUB-SUBCONTRACTING

- 30.1 Neither party may assign the whole or any part of the Subcontract without the prior approval of the other, except that, as security in favour of a bank or other financial institution, a

party may assign without approval its right to any monies due or to become due under the Subcontract. The assignor shall promptly notify the other party of any such assignment with a copy to the Contract Administrator.

- 30.2 Except for the supply of materials, labour or plant, or otherwise as provided for in the Subcontract, the Subcontractor may not subcontract any part of the Subcontract Works without the Contractor's prior approval, such approval not to be unreasonably withheld.
- 30.3 The Subcontractor shall provide the Contractor with a complete copy of all permitted Sub-subcontracts relating to the Subcontract Works.
- 30.4 Notwithstanding the appointment of any Sub-subcontractor, the Subcontractor shall remain wholly responsible for carrying out and completing the Subcontract Works.

31. SITE MEETINGS

- 31.1 The Subcontractor shall attend Site Meetings at the intervals stated in Appendix 2, to be arranged by the Contractor.
- 31.2 The time and place of Site Meetings shall be set by the Contractor after consulting with the proposed attendees.
- 31.3 The Contractor shall, no less than 5 Business Days after each Site Meeting, issue minutes to all attendees and the Contract Administrator. The minutes shall be deemed to be agreed unless notice of any objection is issued to the Contractor within 5 Business Days of their issue.

32. CONTRACTOR'S INSTRUCTIONS

- 32.1 The Contractor shall copy to the Subcontractor as a Contractor's instruction any instruction relevant to the Subcontract Works issued by the Contract Administrator under the Construction Contract.
- 32.2 The Contractor shall issue those instructions required by the Subcontract and in addition may at any time issue instructions for
 - 32.2.1 the expenditure, reduction, increase, amalgamation with other time contingencies or omission in whole or in part of any Contractor's Time Contingency described in the Subcontract Specification or provided by the Contractor in accordance with Clause 45.4

- 32.2.2 the omission, or suspension in whole or in part, of any of the Subcontractor's obligations under the Subcontract, and/or
- 32.2.3 anything necessary for the safe, timely and cost-efficient construction of the Subcontract Works to the quality and standards required.
- 32.3 Subject to Clause 32.4, the Subcontractor shall comply with all instructions properly issued by the Contractor within the time specified in the instruction or, if none is specified, within a reasonable time. For the avoidance of doubt, the Contract Administrator may not issue instructions with which it is impossible or illegal to comply, and compliance shall not be considered impossible solely by reason of the likely cost of compliance.
- 32.4 If an instruction requires the performance of anything impossible or illegal, or is likely to put the Subcontractor's Design Contribution in conflict with Clause 16.2 or Clause 16.3, before complying with the instruction the Subcontractor shall notify the Contractor. Upon receiving notice under this Clause 32.4, the Contractor shall modify, cancel or confirm the instruction. The Subcontractor shall not implement the instruction unless it is modified to minimise or remove the conflict, or it is confirmed.
- 32.5 If the Subcontractor considers that the Contractor has failed to issue any instruction required by the Subcontract, or that the Subcontract does not empower the Contractor to issue an instruction, it shall, within 5 Business Days of the instruction or the Logical Date upon which it should have been issued, refer the matter for Issue Resolution. If the Subcontractor does not do so, the instruction shall be deemed to be agreed to have been issued in accordance with the Subcontract or not to be required, as the case may be.
- 32.6 If the Subcontractor is in breach of Clause 32.3, the Contractor may at any time notify the Subcontractor of the default and the Contractor may without further notice employ others to execute the instruction and any other work incidental to it and
- 32.6.1 such work shall be identified in the Subcontractor's Scheduling Contribution and valued as an omission under Clause 34
- 32.6.2 the Subcontractor shall bear all risk as to time and cost which may arise as a consequence, and
- 32.6.3 the Contractor may recover as a debt from the Subcontractor any additional loss and/or expense the Contractor incurs as a consequence.

33. VARIATIONS

- 33.1 The Contractor may at any time before issue of the Certificate of Handover for the Subcontract Works instruct a Variation.
- 33.2 Where the Contractor instructs a Variation, the Subcontractor shall provide to the Contractor its calculation of the valuation in accordance with Clause 34 and the time and cost effect (if any) prepared in accordance with the requirements of Clauses 43 and 44.
- 33.3 Where the Subcontractor considers that it is not possible to predict the time and/or cost effect of work arising from a Variation, it shall provide its best estimate for the purposes of Clauses 43 and 44 and shall revise the estimate as further and better information becomes available.

34. VALUATION OF VARIATIONS

- 34.1 Variations shall be valued as follows
- 34.1.1 in regard to additional or substituted work
- 34.1.1.1 where the work is to be executed under similar conditions and is of similar character and quantity to that in the Subcontract Documents, the valuation shall be based on measurement according to the rates and prices for similar work in the Subcontractor's Pricing Document, and
- 34.1.1.2 where there is a material departure from the description and/or quantity of the work in the Subcontract Documents, the valuation shall include a fair allowance for such difference in description and/or quantity
- 34.1.2 in regard to work which is the subject of approximate quantities
- 34.1.2.1 where the forecast quantity is within plus or minus 10 per cent of the quantity of work actually carried out, the rate or price in the Subcontractor's Pricing Document shall determine the valuation, and
- 34.1.2.2 where the actual quantity of work required differs from the forecast quantity by more than 10 per cent, the rate or price for that work in the Subcontractor's Pricing Document shall be the basis for

- determining the valuation, and the valuation shall include a fair allowance for such difference in quantity
- 34.1.3 valuation of omissions shall be by measurement according to the rates and prices for the work in the Subcontractor's Pricing Document
- 34.1.4 to the extent that a fair valuation of any work or liabilities directly associated with a Variation cannot be made by the application of Clause 34.1.1, 34.1.2 or 34.1.3, the valuation shall be based on fair rates and prices, and
- 34.1.5 no allowance shall be made for any effect upon the regular progress of the Subcontract Works, or of any part of them, or for any other direct loss and/or expense that is reimbursable under any other provision of the Subcontract.
- 34.2 Unless the Contractor, Cost Manager and Subcontractor agree otherwise, Variations shall be valued at the time of their instruction or, if it is not possible to value the Variation at that time, within 10 Business Days of the date when
- 34.2.1 the varied work is completed, or
- 34.2.2 measurement pursuant to Clause 34.3 is carried out,
- whichever is later.
- 34.3 The Cost Manager shall notify the Contractor and Subcontractor no less than 5 Business Days before it intends to measure the quantity of work done for the purpose of a valuation. The Contractor and the Cost Manager shall carry out such measurement together with the Subcontractor, unless the Subcontractor fails to attend.
- 34.4 Where the Subcontractor fails to attend such measurement, the Cost Manager shall, within 5 Business Days of measurement, deliver the measurement to the Subcontractor for agreement. Unless within 5 Business Days of receiving the measurement the Subcontractor rejects any measurement with reasons, the measurement shall be deemed to be accepted as conclusive evidence of the quantity of work carried out.
- 34.5 The valuation shall be submitted to the Subcontractor for agreement within 20 Business Days of completion of the varied work. If no agreement is reached, then within a further 5 Business Days the Subcontractor shall refer the issue for Issue Resolution. Otherwise, the valuation shall be deemed to be accepted as conclusive evidence of the value of the Variation.
- 34.6 If the Subcontractor rejects a valuation or any re-measurement, the valuation and/or re-measurement shall be corrected within 5 Business Days by agreement with the Cost

Manager and the Contractor. If no agreement is reached then, within a further 5 Business Days, the Subcontractor shall refer the issue for Issue Resolution. Otherwise, it shall be deemed to be agreed that the valuation and/or re-measurement is compliant with the Subcontract and the Subcontractor shall not be entitled to any further financial adjustment beyond that concluded by the Cost Manager and the Contractor.

- 34.7 Within 5 Business Days of agreement or deemed agreement, the Cost Manager shall issue the valuation to the Subcontractor, with a copy to the Contractor.

35. EARLY WARNING

- 35.1 If at any time the Subcontractor becomes aware that an Event is likely to occur or is occurring, it shall notify the Contractor of the Event and the material circumstances giving rise to it.
- 35.2 As soon as the Contractor becomes aware that an Event is likely to occur or is occurring and/or on receiving notice under Clause 35.1, the Contractor shall confer with the Subcontractor and prepare a description of the Event and its likely effect on progress and any Due Date in accordance with Clause 44. The Contractor shall issue the description, together with the Draft Impacted Working Schedule and Draft Impacted Planning Method Statement, to the Subcontractor, the Contract Administrator and the Listed Persons as an Early Warning.

36. RISK MANAGEMENT

- 36.1 Within 5 Business Days of receiving an Early Warning, the Contractor Administrator shall
- 36.1.1 add the identified risk to the Risk Register
 - 36.1.2 convene a risk management meeting with the Subcontractor, the Contractor, the Time Manager, the Cost Manager and any other persons likely to be involved in the resolution of the risk to determine what steps, if any, can reasonably be taken to avoid or reduce the likelihood of the occurrence and to minimise the likely effects of the identified risk, and
 - 36.1.3 issue any instructions it considers necessary.
- 36.2 Within 5 Business Days of any risk management meeting, the Contract Administrator shall update the Risk Register identifying
- 36.2.1 the new Data Date

- 36.2.2 the risks identified
 - 36.2.3 any agreement made, and/or
 - 36.2.4 any instructions issued.
- 36.3 Within 5 Business Days of receipt of the revised and updated Risk Register, the Contractor shall provide a copy to the Subcontractor.
- 36.4 If any instruction issued under Clause 36.1.3 or Clause 36.2 involves a revision of the Subcontractor's Scheduling Contribution, the Subcontractor shall revise and re-publish it for acceptance in accordance with Clauses 42 or 49, as the case may be.

37. FAILURE TO PROVIDE RISK MANAGEMENT INFORMATION

- 37.1 If the Subcontractor fails to publish anything required by the Subcontract to be published, the Contractor may at any time notify the Subcontractor, specifying the Subcontractor's default and the date of its occurrence and instructing the Subcontractor to make good the default within 5 Business Days of the notice.
- 37.2 During any period when the Subcontractor is in default of its obligation to publish a submission, the Contractor may
- 37.2.1 employ and pay others to make whatever reasonable investigations the Contractor sees fit, and
 - 37.2.2 make and keep any records or schedules the Contractor reasonably requires to assist in the management of risks.

The cost of such investigations, record keeping and/or schedule preparation shall be borne by the Subcontractor.

- 37.3 Any records or schedules prepared pursuant to Clause 37.2 shall be conclusive evidence of the progress of the Subcontract Works at the Data Date when they are made.

38. SUBCONTRACTOR'S SCHEDULING CONTRIBUTION

- 38.1 The Subcontractor's Scheduling Contribution shall identify the Subcontractor's intentions for the future performance of the Subcontract Works and be prepared in accordance with the requirements of Schedule 2. The Scheduling Contribution shall comply with Appendix 4 and the recommendations of the CIOB Guide.

- 38.2 The Subcontractor shall with each submission distribute sufficient information to identify the assumptions and calculations in the relevant Scheduling Contribution and to facilitate its interpretation.
- 38.3 The Subcontractor's Scheduling Contribution, and any revisions or amendments made to it, shall not constitute or cause
- 38.4.1 an illegal operation
 - 38.4.2 a breach of contract
 - 38.4.3 a hazard to health and/or safety
 - 38.4.4 a hazard to the safety and/or stability of the Works or Temporary Work or any other property
 - 38.4.5 a method or sequence which is not conducive to effective time and/or cost control, or
 - 38.4.6 a fraudulent misrepresentation or any unethical conduct.
- 38.4 Where the Subcontractor is required to make a Design Contribution, its accepted Design Execution Plan and the interface with any Design Contribution of others relevant to the Subcontract Works shall be represented in its Scheduling Contribution.
- 38.5 Where the Subcontractor is required to make a Design Contribution, no less than 20 Business Days after the Start Date the Subcontractor shall prepare and publish for acceptance the Subcontractor's Scheduling Contribution incorporating the Design Execution Plan that has been prepared in accordance with Clause 15.
- 38.6 Unless the Subcontract Specification requires otherwise, no less than 60 Business Days before the Access Date the Subcontractor shall prepare and publish for acceptance its Scheduling Contribution for the execution of the Subcontract Works, incorporating the Subcontractor's Pricing Document as required by Clause 39.
- 38.7 The Scheduling Contribution shall indicate at the relevant Data Date for every Activity planned to be started within the period of 60 Business Days after the Data Date
- 38.7.1 the resources planned to be used
 - 38.7.2 the productivity expected to be achieved
 - 38.7.3 the quantity of work planned to be completed

- 38.7.4 the calculated duration, and
- 38.7.5 the planned value.
- 38.10 If the Contractor considers that the Subcontractor's Scheduling Contribution does not comply with the Subcontract, the Contractor shall within 10 Business Days of publication either
- 38.10.1 reject the submission in accordance with Clause 13.2, or
- 38.10.2 issue a conditional acceptance of the submission in accordance with Clause 13.3.
- 38.11 If not rejected and subject always to any condition of acceptance, the submission shall be deemed to be accepted as conclusive evidence of the Subcontractor's intentions for the future performance of the Subcontract Works at the Data Date of the submission.
- 38.12 The Subcontractor may not carry out any work not described in its Scheduling Contribution before it has been accepted. If the Subcontractor carries out or attempts to carry out any work not so described, the Contractor may instruct the Subcontractor to suspend the carrying out of the Subcontract Works until a satisfactory Scheduling Contribution has been accepted and adequate progress records have been made of any resources used and work wrongfully carried out. The cost and time effect of any such suspension, investigation or record keeping shall be borne by the Subcontractor.
- 38.13 The Contractor shall maintain a database of submissions in accordance with Paragraph A 4.13 of Appendix 4. No less than 5 Business Days before each Site Meeting the Contractor shall publish a current copy of the database of submissions.

39. INCORPORATION OF SUBCONTRACTOR'S PRICING DOCUMENT

- 39.1 Whether work is intended to be executed by the Subcontractor or a Sub-subcontractor, the Subcontractor's Scheduling Contribution shall identify the quantity of work and the value of each Activity described in the Subcontractor's Pricing Document, ignoring any advance mobilisation costs or retention monies.
- 39.2 At Low Density and Medium Density, the quantity of work and planned value for each Activity shall be calculated according to the best data available at the Data Date of the Subcontractor's Scheduling Contribution.
- 39.3 At High Density, the planned value of each Activity shall be calculated by reference to the quantity of work and staff, labour, materials and plant planned to be required to achieve its completion.

- 39.4 Levels of Effort of appropriate description and value shall be represented on the Subcontractor's Scheduling Contribution, logically linked to the Activities to which they apply in respect of
- 39.4.1 each constituent part of Preliminaries, and
 - 39.4.2 Overheads and Profit.
- 39.5 If no rate for Preliminaries and/or Overheads and Profit is identified in the Subcontractor's Pricing Document, it shall be deemed to be agreed that the Subcontractor is not entitled to recover such Preliminaries and/or Overheads and Profit as part of any loss and/or expense incurred as a result of any Contractor's Cost Risk Event.
- 39.6 Where in the Subcontract provision is made for
- 39.6.1 advance payment
 - 39.6.2 proportionate repayment of mobilisation costs, and/or
 - 39.6.3 release of retention funds,
- such payments shall be represented in the Subcontractor's Scheduling Contribution by Activities logically linked to the Activities to which they relate, and reflecting the Logical Date upon which such payments are planned to be made.
- 39.7 The aggregate value of all the planned Activities, Levels of Effort, mobilisation, repayment of mobilisation and release of retention identified in the accepted Subcontractor's Scheduling Contribution shall be equal to the Predicted Subcontract Cost.
- 39.8 Where there is a difference between
- 39.8.1 the Subcontractor's price for an Activity, and
 - 39.8.2 the cost to the Subcontractor of the allocated resources calculated in accordance with the Subcontractor's Pricing Document,
- the difference shall be represented as an Activity on the Subcontractor's Scheduling Contribution, the time and cost risk of which shall be borne by the Subcontractor.
- 39.9 The method of calculation of the valuation of each Activity and Level of Effort at the Data Date of the Draft Scheduling Contribution to which it relates shall be fully described in the submission for acceptance.

- 39.10 If the Contractor and/or the Cost Manager considers that
- 39.10.1 the quantity of work and/or the value of each Activity and/or Level of Effort has not been properly calculated in accordance with the Subcontractor's Pricing Document
 - 39.10.2 the value has not been reasonably and properly attributed to the Activity and/or Level of Effort indicated on the Subcontractor's Scheduling Contribution
 - 39.10.3 any Level of Effort has not been logically linked to appropriate Activities
 - 39.10.4 the method of calculation of value is inappropriate for the effective management of the cost of the Subcontract Works, or
 - 39.10.5 the attribution of quantity of work and value does not otherwise comply with the Subcontract,
- the Contractor shall within 5 Business Days of receiving the submission either
- 39.10.6 reject the submission in accordance with Clause 13.2, or
 - 39.10.7 issue a conditional acceptance of the submission in accordance with Clause 13.3.
- 39.11 If not rejected and subject always to any condition of acceptance, the values attributed shall be deemed to be agreed to be conclusive evidence of the value of the Activities and Levels of Effort illustrated at the Data Date of the relevant submission.

40. PROGRESS RECORDS

- 40.1 The Subcontractor shall accurately maintain Progress Records in accordance with the requirements of Appendix 5 and the recommendations of the CIOB Guide.
- 40.2 At no less than the status interval stated in Appendix 2, the Subcontractor shall publish for the Contractor's acceptance the database containing the Progress Records (including those Activities constituting an Event and/or any other delaying factor at the Subcontractor's risk) for each working day of the interval, together with any other information required by Appendix 5.
- 40.3 If the Contractor considers that any Progress Record published for acceptance under Clause 40.2 does not reflect the resources actually used, or the progress actually achieved, or does not otherwise comply with the Subcontract, the Contractor shall within 5 Business Days of the publication either

- 40.3.1 reject the submission in accordance with Clause 13.2, or
- 40.3.2 issue a conditional acceptance of the submission in accordance with Clause 13.3.
- 40.4 If not rejected and subject always to any condition of acceptance, the Progress Records shall be deemed to be agreed to be conclusive evidence of the Subcontractor's progress at the Data Date of publication.
- 40.5 The Contractor shall maintain a database of submissions of Progress Records in accordance with Paragraph A 5.7 of Appendix 5. No less than 5 Business Days before each Site Meeting the Contractor shall publish a current copy of the database of submissions.

41. UPDATED SCHEDULING CONTRIBUTION

- 41.1 Within 5 Business Days of acceptance of the Progress Records under Clause 40.4 the Contractor shall publish for acceptance by the Subcontractor the Draft Updated Scheduling Contribution incorporating the Progress Records accepted or deemed accepted at the Data Date, identifying the relevant Data date and adding in relation to the reporting period
 - 41.1.1. in so far as it is relevant to an Activity started but not yet finished before the Data Date
 - 41.1.1.1. the date upon which work started
 - 41.1.1.2. the resources used
 - 41.1.1.3. the quantity of work done, and
 - 41.1.1.4. the value of work done
 - 41.1.2. in so far as it is relevant to an Activity previously identified as being in progress, but completed before the Data Date
 - 41.1.2.1. the date upon which work finished
 - 41.1.2.2. the resources used to complete the work
 - 41.1.2.3. the value of the completed work
 - 41.1.3. in so far as it is relevant to any Due Date or Milestone, the date upon which the Due Date or Milestone was achieved, and

- 41.1.4. in so far as it is relevant to any Level of Effort, identifying the expenditure up to the Data Date.
- 41.2. The Contractor shall recalculate the Critical Path, any effect upon progress of the work and/or the likely effect on any Due Date or Milestone caused by the addition of the data described in Clause 41.1.
- 41.3. The Contractor shall with each submission distribute sufficient information to identify
- 41.3.1. the added data referred to in Clause 41.1, and
- 41.3.2. any other revisions made.
- 41.4. If, as a result of anything other than an Event the Draft Updated Scheduling Contribution predicts that any Due Date is unlikely to be achieved, the Contractor shall meet with the Subcontractor to identify what revisions to the Draft Updated Scheduling Contribution may be made to overcome or reduce the likely delay. Any revisions to the Draft Updated Scheduling Contribution shall be made in accordance with Clause 42.
- 41.5. If the Subcontractor considers that the Draft Updated Scheduling Contribution conflicts with the accepted Progress Records, the Subcontractor shall within 5 Business Days of receipt of the submission notify the Contractor of the discrepancy. If the Subcontractor does not do so, it shall be deemed to be agreed that the Draft Updated Scheduling Contribution complies with the Subcontract.
- 41.6. Within 5 Business Days of notice under Clause 41.3, the Contractor shall revise and re publish the Draft Updated Scheduling Contribution to comply with the Subcontractor's notice, or reject the notice in whole or in part, giving reasons.
- 41.7. If not rejected and subject always to any condition of acceptance, the Draft Updated Scheduling Contribution shall be deemed to be conclusive evidence of the Subcontractor's intentions for the future performance of the Subcontract Works at the Data Date of submission and shall become the current Subcontractor's Scheduling Contribution.
- 41.8. Within 5 Business Days of acceptance of the Draft Updated Scheduling Contribution under Clause 42.5 the Contractor shall incorporate the current Scheduling Contribution in the Draft Updated Working Schedule and Draft Updated Planning Method Statement.
- 41.9. If the Subcontractor considers that any decision under Clause 41.6 conflicts with the provisions of the Subcontract or amounts to a Variation, it shall within 5 Business Days of its receipt refer the issue for Issue Resolution. If the Subcontractor does not do so, it shall be deemed to be agreed that the decision complies with the Subcontract, and does not amount to a Variation.

42. REVISED SCHEDULING CONTRIBUTION

- 42.1 At no less than the status interval for publication of the Draft Revised Scheduling Contribution stated in Appendix 2, the Subcontractor shall revise the Subcontractor's Scheduling Contribution and publish it for acceptance by the Contractor. The submission shall identify for every Activity not completed by the Data Date, or planned to be started within the period of 60 Business Days after the Data Date,
- 42.1.1 the resources planned to be used
 - 42.1.2 the productivity expected to be achieved
 - 42.1.3 the quantity of work planned to be performed
 - 42.1.4 the calculated duration, and
 - 42.1.5 the calculated value.
- 42.2 Notwithstanding Clause 42.1, the Draft Revised Scheduling Contribution shall be reviewed and revised by the Subcontractor to reflect any changed intentions for the performance of the Subcontract Works. At the Data Date, the Draft Revised Scheduling Contribution shall accurately reflect the best available information about
- 42.2.1 the resources planned to be made available
 - 42.2.2 the productivity achievable in relation to the work to be carried out, and
 - 42.2.3 the Subcontractor's intentions for the future performance of the Subcontract Works.
- 42.3. The Contractor shall with each submission distribute sufficient information to identify
- 42.3.1. the added data referred to in Clauses 42.1 and/or 42.2, and
 - 42.3.2. any other revisions made.
- 42.3 If, as a result of anything other than an Event, the Draft Revised Scheduling Contribution predicts that any Due Date is unlikely to be achieved, the Contractor shall meet with the Subcontractor to identify what revisions to the Draft Revised Scheduling Contribution may be made to overcome or reduce the likely delay.

- 42.4 If the Contractor considers that any Draft Revised Scheduling Contribution does not comply with the Subcontract, the Contractor shall within 5 Business Days of publication either
- 42.4.1 reject the submission in accordance with Clause 13.2, or
 - 42.4.2 issue a conditional acceptance of the submission in accordance with Clause 13.3.
- 42.5 If not rejected and subject always to any condition of acceptance, the Draft Revised Scheduling Contribution shall be deemed to be agreed to be conclusive evidence of the Subcontractor's intentions for the future performance of the Subcontract Works at the Data Date of publication and shall become the current Subcontractor's Scheduling Contribution.
- 42.6 Within 5 Business Days of acceptance of the Draft Revised Scheduling Contribution in accordance with Clause 42.5, the Contractor shall incorporate the Subcontractor's Scheduling Contribution in the Draft Revised Working Schedule and Draft Revised Planning Method Statement.

43. CALCULATION OF EFFECT OF EVENT ON TIME

- 43.1 On becoming aware that an Event is likely to occur, is occurring or has occurred, for each and every Event the Subcontractor shall prepare a description and notify the Contractor, identifying in the notice
- 43.1.1 the details required by Clause 35.2 and the date and reference of any notice under Clause 35.1
 - 43.1.2 the record identifier of the Event and its Activity Code in accordance with Appendix 4, Paragraph 4.12
 - 43.1.3 the identity of the Event
 - 43.1.4 a statement as to whether the Event is likely to occur, is occurring or has occurred
 - 43.1.5 the Initiation Date of the Event
 - 43.1.6 the identification of any document and fact relied upon by the Subcontractor, and
 - 43.1.7 a description of the Fragnet required by Clause 43.2 or the non-working period identified under Clause 43.3.

- 43.2 For each and every Event which causes a change in a planned Activity, or an additional Activity, the Subcontractor shall identify in its notice
- 43.2.1 the description of the Activities affected or additional Activities
 - 43.2.2 the period or periods required for design, approval, manufacturing, procurement, delivery, licensing, permission, approval or other off-site work before work on Site can commence or recommence
 - 43.2.2 the resources used and/or expected to be used
 - 43.2.4 the estimated or actual value of the resources used or expected to be used
 - 43.2.5 the predicted logical or actual calendar start and finish date
 - 43.2.6 the links to any logical predecessor Activity, successor Activity, Level of Effort and/or Milestone, with a description of any changes to the logic of each such Activity, Level of Effort and/or Milestone, and
 - 43.2.7 the location of the work affected.
- 43.3 For each and every Event which causes a suspension of progress, the Subcontractor shall identify in its notice
- 43.3.1 the Activities affected, and
 - 43.3.2 the period of suspension in relation to each Activity.
- 43.4 Subject to receiving the information required by Clauses 43.1 to 43.3, the Contractor shall prepare the Draft Impacted Scheduling Contribution by
- 43.4.1 adding the relevant non-working period or Fragnet to the Subcontractor's Scheduling Contribution
 - 43.4.2 re-calculating the Critical Path of the Scheduling Contribution and the Working Schedule by re-scheduling, and
 - 43.4.3 identifying the effect of the Fragnet or non-working period upon the Draft Impacted Scheduling Contribution,
- and shall incorporate the Draft Impacted Scheduling Contribution in a Draft Revised Working Schedule and Draft Revised Planning Method Statement.

- 43.5 No less than 5 Business Days before the next Site Meeting the Contractor shall
- 43.5.1 distribute a copy of the information provided under Clauses 43.1 to 43.3, and
 - 43.5.2 publish the Draft Impacted Scheduling Contribution, prepared in accordance with Clause 43.4, together with the
 - 43.5.2.1 Draft Revised Working Schedule, and
 - 43.5.2.2 Draft Revised Planning Method Statement.
- 43.6 For the avoidance of doubt
- 43.6.1 if any Event occurs less than 5 Business Days before a Site Meeting, or if for any reason it is not possible within the time available before a Site Meeting to properly calculate its time effect, the information required by Clause 43.5 shall be distributed and published before the next Site Meeting, and
 - 43.6.2 if more than one Event has occurred between Site Meetings
 - 43.6.2.1 each Event shall be impacted sequentially and in chronological order of the Initiation Dates
 - 43.6.2.2 the impact of each Event shall be calculated and identified in a separate description, and
 - 43.6.2.3 the aggregate effect of all Events occurring in the interval shall be recorded in the information provided under Clause 43.5.
- 43.7 If the Subcontractor fails to provide any information referred to in Clauses 43.1 to 43.3, the Contractor may instruct the Subcontractor to provide any information the Contractor reasonably requires in order to make the calculations required by Clause 43.4, and the Subcontractor shall provide the information within 5 Business Days of such instruction.
- 43.8 If the Subcontractor considers that the calculation prepared in accordance with Clause 43.4 does not fairly reflect the Event that has occurred or its impact, the Subcontractor shall within 5 Business Days of receiving the information provided under Clause 43.5, notify the Contractor of its objection, with reasons.
- 43.9 If not rejected and subject always to acceptance by the Time Manager, the calculation shall be deemed to be agreed to be conclusive evidence of the facts and the effect of the Event,

and the Draft Impacted Scheduling Contribution shall become the Subcontractor's Scheduling Contribution.

- 43.10 If the Contractor considers that a notice under Clause 43.8 is in conflict with any provisions of the Subcontract, the Contractor shall within 5 Business Days of its receipt refer the issue for Issue Resolution. If the Contractor does not do so it shall be deemed to be agreed that the notice is compliant with the Subcontract and the Contractor shall revise and re-publish the data and calculations in accordance with Clause 43.5.

44. CALCULATION OF EFFECT OF EVENT ON COST

- 44.1 If the impact of an Event identified under Clause 43 indicates that the progress of any part of the Subcontract Works, or the productivity of any resources, is likely to be, is being, or has been adversely affected and
- 44.1.1 either the delay to progress or reduced productivity is likely to cause, is causing, or has caused loss and/or expense to be suffered, or
 - 44.1.2 any part of the Subcontract Works is unlikely to achieve Handover by a Due Date,
- the Subcontractor shall, no less than 5 Business Days before the next Site Meeting, distribute a notice to that effect.
- 44.2 The Subcontractor shall include in its notice under Clause 44.1 or as soon afterwards as the information required becomes available
- 44.2.1 any details provided under Clause 35.2 and the date and reference of any notice issued under Clause 35.1
 - 44.2.2 the description of the Contractor's Cost Risk Event
 - 44.2.3 the valuation of the Contractor's Cost Risk Event
 - 44.2.4 subject to Clause 39.5, the quantification of any loss and/or expense caused by the Contractor's Cost Risk Event
 - 44.2.5 the identification of any document supporting the facts relied upon, and
 - 44.2.6 any further information, documents or statements that the Contractor, the Employer, the Contract Administrator, the Time Manager, the Cost Manager or the Listed Persons may require in order to verify the occurrence of the Event, or its consequences.

- 44.3 If the Subcontractor fails to provide the information required to enable the Contractor and/or Cost Manager to calculate the amount of the Subcontractor's entitlement to compensation for disruption and/or prolongation, the amount shall be calculated after Substantial Completion using
- 44.3.1 the progress records and/or schedules as have been prepared under Clause 37.2, or (if none)
 - 44.3.2 such records and schedules as, in its absolute discretion, the Cost Manager and/or Contractor considers appropriate for the purposes of this Clause 44.3.
- 44.4 If any Contractor's Cost Risk Event occurs later than 5 Business Days before a Site Meeting, or if for any reason it is not possible within the time available before the Site Meeting to properly calculate its cost effect, the information required by Clause 44.2 shall be supplied before the next Site Meeting.

45. FLOAT AND TIME CONTINGENCIES

- 45.1 Each and every Employer's Time Contingency described in the Subcontract shall be identified as a separate Activity in the Subcontractor's Scheduling Contribution.
- 45.2 An Employer's Time Contingency shall be expended, reduced, increased, or amalgamated with other Employer's Time Contingencies or omitted, as the Contract Administrator may instruct from time to time.
- 45.3 Each and every Contractor's Time Contingency described in the Subcontract shall be identified as a separate Activity in the Subcontractor's Scheduling Contribution.
- 45.4 A Contractor's Time Contingency shall be expended, reduced, increased, or amalgamated with other Contractor's Time Contingencies, or omitted, as the Contractor may instruct from time to time.
- 45.5 The Subcontractor shall describe in the Subcontractor's Pricing Document, and shall include in its Scheduling Contribution, all necessary Subcontractor's Time Contingencies against the Subcontractor's risks under the Subcontract. Subject to Clause 48, Subcontractor's Time Contingencies shall be expended, reduced, increased or amalgamated with other Subcontractor's Time Contingencies, or omitted, in order to manage the Subcontractor's time risks under the Subcontract.
- 45.6 Free Float and Total Float shall not be for the exclusive use of either party or the Employer and, to the extent that either is available, it shall be available to both parties and the Employer

to use or absorb in order to manage their respective risks, from time to time, prior to the issue of the Certificate of Handover.

46. SUBCONTRACTOR'S IMPROVEMENT OF PROGRESS

- 46.1 If the Subcontractor wishes to proceed or has proceeded at a greater pace than that identified in the currently accepted Subcontractor's Scheduling Contribution, or has not used the Subcontractor's Time Contingencies, and the Subcontractor does not wish to achieve an earlier Due Date, it shall no less than 5 Business Days before the next Site Meeting allocate in the Subcontractor's Scheduling Contribution one or more Subcontractor's Time Contingencies to replace any float created.
- 46.2 Any intended changes to the Subcontractor's Scheduling Contribution required as a result of the implementation of Clause 46.1 shall be published for acceptance in accordance with Clause 42.

47. CONTRACTOR'S IMPROVEMENT OF PROGRESS

- 47.1 If the Subcontractor is able to proceed at a greater pace than that identified in the currently accepted Subcontractor's Scheduling Contribution as a result of
- 47.1.1 improved progress by the Contractor or any other Subcontractor
 - 47.1.2 improved progress by the Employer or any Listed Person, or
 - 47.1.3 an instruction to omit in whole or in part
 - 47.1.3.1 an obligation
 - 47.1.3.2 a Contractor's Time Contingency, or
 - 47.1.3.3 an Employer's Time Contingency,

but the Contractor does not wish to achieve an earlier Due Date, it shall no less than 5 Business Days before the next Site Meeting instruct the Subcontractor to allocate in the Subcontractor's Scheduling Contribution one or more Contractor's Time Contingencies or Employer's Time Contingencies to replace any float created and to re-publish it for acceptance in accordance with Clause 42.

48. INSTRUCTED RECOVERY

- 48.1 If, as a result of delay to progress caused by anything other than an Event, the Subcontractor publishes a Scheduling Contribution indicating that any part of the Subcontract Works is likely to be completed later than the relevant Due Date, the Contractor and/or the Time Manager shall consult with the Subcontractor about possible ways to overcome or avoid the predicted delay to the Due Date including
- 48.1.1 omitting (in whole or in part), amending or re-allocating one or more of the Subcontractor's Time Contingencies identified under Clause 45.5
 - 48.1.2 changing the order or sequence of one or more specific Activities, or sequence of Activities, or part of the Subcontractor's Scheduling Contribution
 - 48.1.3 changing the resources to be applied to one or more specific Activities, and/or
 - 48.1.4 taking any other action necessary to illustrate how the Subcontractor's obligation to achieve any Due Date is intended to be achieved.
- 48.2 Provided always that the Contractor and/or the Time Manager considers it practicable and reasonable for the Subcontractor to comply (such compliance not to be considered impracticable or unreasonable solely by reason of the likely cost of compliance), the Contractor shall within 5 Business Days of the consultation instruct the Subcontractor to publish for acceptance a Revised Subcontractor's Scheduling Contribution and the Subcontractor shall comply with such instruction at no cost to the Contractor.
- 48.3 For the avoidance of doubt, the Contractor may instruct the Subcontractor to recover from a delay to progress of the Subcontract Works, but not to complete by a date earlier than any Due Date by means of proposals made or implemented under this Clause 48.

49. INSTRUCTED ACCELERATION

- 49.1 If, as a result of any delay to progress caused or likely to be caused by an Event, the Subcontractor publishes a Scheduling Contribution indicating that any part of the Subcontract Works is likely to be completed after any Due Date, then at any time after such publication the Contractor may instruct the Subcontractor to consult with the Contractor and/or the Time Manager to assist in drafting proposals to avoid (whether in whole or in part) the predicted delay by implementing any relevant Contract Administrator's instruction to
- 49.1.1 omit (in whole or in part), amend or re-allocate one or more of the Employer's Time Contingencies identified under Clause 45.2

- 49.1.2 omit (in whole or in part), amend or re-allocate one or more of the Contractor's Time Contingencies identified under Clause 45.4
 - 49.1.3 change the order or sequence of one or more specific Activities, sequence of Activities, or part of the Subcontractor's Scheduling Contribution
 - 49.1.4 change the resources to be applied to one or more specific Activities, and/or
 - 49.1.5 take any other action necessary to mitigate the likely effect of the Event, in order to reduce or eliminate the likely delay to a Due Date.
- 49.2 Provided always that the Contractor and/or the Time Manager considers it practicable and reasonable for the Subcontractor to comply with an instruction under Clause 49.1, the Contractor shall within 5 Business Days of the consultation instruct the Subcontractor to publish for acceptance a Draft Revised Subcontractor's Scheduling Contribution.
- 49.3 For the avoidance of doubt, the Contractor may instruct the Subcontractor to accelerate the progress of the Subcontract Works to achieve a date earlier than any Due Date by means of proposals made or implemented under this Clause 49.
- 49.4 The Subcontractor shall in accordance with Clause 34 keep and deliver to the Contractor and the Cost Manager the calculation of the costs of preparing any required proposals, and of the costs or savings resulting from compliance with any instruction under this Clause 49 to implement such proposals.

50. FAILURE TO COMPLY WITH AN INSTRUCTION TO RECOVER OR ACCELERATE

- 50.1 If the Subcontractor considers that the Subcontract does not empower the issue of instructions issued under Clause 48 or Clause 49, or that such instruction cannot be complied with, it shall within 5 Business Days of receiving the instruction refer the issue for Issue Resolution. If the Subcontractor does not do so, the instruction shall be deemed to be in accordance with the Subcontract.
- 50.2 If the Subcontractor fails to comply with an instruction under Clause 48 or Clause 49, the Subcontractor shall reimburse the Contractor for any loss and/or expense that the Contractor actually incurs as a result of delay to a Relevant Handover Date which could have been avoided by compliance with the instruction. For the avoidance of doubt, the Contractor's entitlement under this Clause 50.2 shall be separate from and additional to any entitlement to Liquidated Delay Damages recoverable or deductible pursuant to Clause 57, subject always to the Contractor giving credit where appropriate for any damages that have been deducted or paid as Liquidated Delay Damages under Clause 57.

51. EXTENSION OF TIME

51.1 If, on receiving the information referred to in Clause 43, the Contractor considers that

51.1.1 the Event described

51.1.1.1 has occurred, and

51.1.1.2 is a Contractor's Time Risk Event

51.1.2 any Fragnet prepared under Clause 43.2 either contemporaneously properly reflects the accepted Progress Records, or is a reasonable estimate of the quantity of work, Activities and the resources, productivity, durations and sequence likely to flow directly from the Event

51.1.3 any non-working period identified under Clause 43.3 either properly reflects the accepted Progress Records, or is a reasonable estimate of the duration of suspension likely to flow directly from the Event, and

51.1.4 the impact of the Event calculated under Clause 43.4 is likely to prevent the Subcontract Works or Subcontract Section from being completed by a Relevant Date for Handover

the Contractor shall within 10 Business Days of receiving this information notify the Subcontractor, with a copy to the Time Manager and the Contract Administrator, of

51.1.4.1 the impact described in Clause 51.1.4, and/or

51.1.4.2 the instructions which may be issued in order to reduce the time required for any part of the Subcontract Works to be carried out, together with any residual consequential impact of the notified Event.

51.2 Within 10 Business Days of giving notice under Clause 51, the Contractor shall either

51.2.1 extend the time for completion by fixing a new Relevant Handover Date reflecting the impact described in Clause 51.1.4, or

51.2.2 issue instructions under Clause 49 for a reduction of the time required for any part of the Subcontract Works and, commensurate with the predicted impact of the Event in the light of such instructions, confirm either

51.2.2.1 the Relevant Handover Date, or

51.2.2.2 the extended time for completion by fixing a new Relevant Handover Date,

and shall forthwith distribute the Contractor's decision.

51.3 Where, in accordance with Clauses 51.1.2 and/or 51.1.3, a calculation of entitlement is made on the basis of an estimate of the Activities, resources, productivity, durations, sequences and/or suspension likely to flow directly from the Event, unless the Time Manager, the Contractor and Subcontractor agree otherwise, that estimate shall be revised to reflect the Progress Records, and any extension of time granted shall be adjusted accordingly.

51.4 For the avoidance of doubt

51.4.1 nothing shall prevent the Contractor from notifying

51.4.1.1 an earlier or later Relevant Handover Date in accordance with Clause 54.3, or

51.4.1.2 a later Relevant Handover Date after a Relevant Handover Date has passed, and

51.4.2 where in relation to suspension according to Applicable Law or the Law of the Subcontract there is a right to relief other than in accordance with the Subcontract, such relief shall be in substitution for, and not in addition to, any contractual relief.

51.5 If the Subcontractor fails to provide the information required under Clause 43 to enable the Contractor to calculate contemporaneously the Subcontractor's entitlement to an extension of time, the Subcontractor's entitlement shall be calculated after Substantial Completion by reference to the Date for Handover that could have been achieved if the Event had not occurred, using

51.5.1 the progress records and/or schedules prepared under Clause 37.2, or (if none)

51.5.2 such records and/or schedules as, in its absolute discretion, the Contractor considers appropriate for the purposes of this Clause 51.5.

52. CONCURRENCY

- 52.1 For the purposes of the Subcontract, concurrent causation occurs when
- 52.1.1 a delay to progress of an Activity is caused by two or more occurrences, at least one of which is at the Subcontractor's risk and at least one of which is an Event, or
 - 52.1.2 a delay to progress of an Activity is caused by one or more occurrences at the risk of the Subcontractor and, over the same period of delay to progress in whole or in part, a delay to progress is caused to another Activity by one or more Events and in the absence of the occurrence which is at the Subcontractor's risk or the Event, the same delay to progress would have occurred.
- 52.2 When, at the date upon which the delay to progress occurs, the delayed Activity is (or, in the case of concurrent causation as described in Clause 52.1.2, both delayed Activities are) on a Critical Path to a Relevant Date for Handover, the likely delay to the Relevant Date for Handover so caused shall, subject to Clauses 46, 47, 48 and/or 49, be deemed to be one for which the Subcontractor is entitled to an extension of time calculated in accordance with Clause 51, but is not entitled to financial compensation.
- 52.3 Where any delay to progress referred to in Clause 52.1.2 is caused solely by a Contractor's Cost Risk Event, the Subcontractor shall be entitled to compensation calculated in accordance with Clause 44.
- 52.4 To the extent that the Subcontractor is unable to demonstrate that loss and/or expense for which compensation is claimed was not caused wholly by a Contractor's Cost Risk Event, the Subcontractor shall not be entitled to recover compensation from the Contractor.

53. PARTIAL POSSESSION AND USE OF THE SUBCONTRACT WORKS

- 53.1 If, with the Subcontractor's consent (conditional or otherwise), the Contractor adopts or uses any part of the Subcontract Works to the exclusion of the Subcontractor before the Certificate of Handover, that part shall be deemed to have been adopted by the Contractor for the purposes of Clause 53.3.
- 53.2 If, with the Subcontractor's consent (conditional or otherwise), the Employer takes into possession or uses any part of the Subcontract Works to the exclusion of the Subcontractor before the Certificate of Handover, that part shall be deemed to have been taken into Partial Possession by the Employer for the purposes of Clause 53.3.
- 53.3 Upon any part being adopted or taken into Partial Possession

- 53.3.1 the Subcontractor shall not be required to insure the part adopted or taken into Partial Possession, and
- 53.3.2 the Contractor shall distribute a Certificate of Handover, identifying
- 53.3.2.1 the date upon which the part was adopted or taken into Partial Possession
 - 53.3.2.2 the part of the Subcontract Works that has been adopted or taken into Partial Possession, clearly illustrated by reference to any Model and/or Drawings and/or Subcontract Bill of Quantities, and
 - 53.3.2.3 the Current Subcontract Value of the part of the Subcontract Works which has been adopted or taken into Partial Possession.
- 53.4 Notwithstanding that the part that is adopted or taken into Partial Possession may not be complete, for the purposes of the Subcontract the part shall be deemed to have achieved Handover on the date certified. Any work to be carried out to that part, or any insurances required to be maintained by the Subcontractor in respect of that part, shall be treated as a Variation and instructed in accordance with Clause 33 unless otherwise agreed by the parties at the date of adoption or Partial Possession.
- 53.5 Any Liquidated Delay Damages stated in Appendix 2 relating to the Subcontract Works, or the relevant Subcontract Section, shall be reduced by the proportion which the value of the adopted or partially possessed part bears to the Current Subcontract Value of the Subcontract Works or Subcontract Section.
- 53.6 For the avoidance of doubt, if before Handover the Contractor or Employer is granted use of any part of the Subcontract Works (whether as described in the Special Conditions or otherwise), but not to the exclusion of the Subcontractor
- 53.6.1 that part shall not be deemed to have been adopted or taken into partial possession by the Contractor or the Employer
 - 53.6.2 any relevant insurances required to be maintained by the Subcontractor shall be amended as necessary to take account of the Contractor's or Employer's use, and
 - 53.6.3 unless described in the Subcontract Special Conditions, such use shall be granted as a Variation.

54. HANDOVER

- 54.1 As soon as the Subcontractor considers that the Subcontract Works have, or any Subcontract Section has, achieved Handover, the Subcontractor shall notify the Contractor and Contract

Administrator and request a Certificate of Handover. The notice shall identify the Subcontract Works or relevant Subcontract Section and when Handover was achieved.

- 54.2 If the Contractor does not accept the notice under Clause 54.1, it shall within 5 Business Days of receipt refer the issue for Issue Resolution. If not so referred, the notice shall be deemed to be accepted.
- 54.3 Unless the issue is referred for Issue Resolution under Clause 54.2, within 5 Business Days of a notice under Clause 54.1 the Contractor shall issue a Certificate of Handover to the Subcontractor with a copy to the Contract Administrator, identifying the date when the relevant Subcontract Section or the Subcontract Works achieved Handover.
- 54.4 From the Handover Date
- 54.4.1 the Subcontractor shall not be required to insure the Subcontract Works or relevant Subcontract Section
 - 54.4.2 the Post-Handover Retention Period in respect of the relevant Subcontract Section or the Subcontract Works shall commence, and
 - 54.4.3 liability under Clause 57 for further delay of the Subcontract Works or relevant Subcontract Section shall cease.
- 54.5 Incomplete or defective work discovered before the Handover Date shall be made good during the Post-Handover Retention Period, in accordance with instructions issued under Clause 32.2.2.

55. MAKING GOOD DEFECTS

- 55.1 The Contractor may, at any time after Handover of the Subcontract Works or any Section has been achieved, instruct the Subcontractor to make good at its own expense any defect, shrinkage or other fault in the Subcontract Works which appears during the Post-Handover Retention Period indicated in Appendix 2. The Subcontractor shall complete the making good or replacement within the period required by the Contractor, or, if no period is stated, within 40 Business Days of the instruction.
- 55.2 The Contractor shall within 20 Business Days of the end of the Post-Handover Retention Period or, in the case of Subcontract Sections, the last Post-Handover Retention Period
- 55.2.1 inspect the Subcontract Works with the Contract Administrator and issue to the Subcontractor, with a copy to the Contract Administrator, a list of all the defects, shrinkages and other faults in the Subcontract Works of which the Contractor

- is then aware, together with any instructions for further investigation and/or making good and replacement, and
- 55.2.2 within 5 Business Days of the completion of any further investigations and/or making good and replacement referred to in Clause 55.2.1, inspect the Subcontract Works with the Contract Administrator and issue to the Subcontractor, with a copy to the Contract Administrator, a final list of all the defects, shrinkages and other faults of which the Contractor is then aware.
- 55.3 On receiving the Contractor's instructions under Clause 55.1, the Subcontractor shall commence and carry out the making good, and shall notify the Contractor when it is complete.
- 55.4 If for any reason the specified making good or replacement has not been properly completed within the required period, the Contractor may
- 55.4.1 notify the Subcontractor that it intends to employ and pay others to complete the incomplete making good or replacement, or
- 55.4.2 make a reasonable estimate of the cost of making good or replacement of any defects, shrinkages or other faults not made good.
- 55.5 Any expenditure and/or loss incurred by the Contractor under Clause 55.4 and/or the estimated cost of making good or replacement of any defects, shrinkages or other faults not made good may be withheld or recovered from the Subcontractor as a debt.
- 55.6 Within 5 Business Days of completion of any making good or replacement, or the date upon which such work is completed by others, whichever is the later, the Contractor shall issue to the Subcontractor, with a copy to the Contract Administrator, a Certificate of Making Good Defects specifying the date upon which the Subcontractor's obligations under this Clause 55 are complete.

56. FAILURE TO ACHIEVE HANDOVER

- 56.1 If the Subcontractor fails to achieve Handover of the Subcontract Works or any Subcontract Section by the Relevant Handover Date, the Contractor shall issue a Certificate of Failure to Achieve Handover to the Subcontractor with a copy to the Contract Administrator identifying the Relevant Handover Date for the Subcontract Works or the Subcontract Section that has not been achieved.
- 56.2 If, after a Certificate of Failure to Achieve Handover has been issued, time for completion is further extended, the Certificate previously issued shall be of no effect and to the extent that

- 56.2.1 the Contractor would not have been entitled to withhold, deduct or be paid Liquidated Delay Damages had the time for completion already been extended, any such Liquidated Delay Damages withheld, deducted or paid pursuant to the Certificate of Failure to Achieve Handover shall be released or repaid to the Subcontractor, and
- 56.2.2 where the extended time for completion referred to in Clause 56.2.1 is to a date earlier than the extended Handover Date, the Contractor shall distribute a further Certificate of Failure to Achieve Handover in accordance with Clause 56.1.

57. LIQUIDATED DELAY DAMAGES

- 57.1 If in Appendix 2 Liquidated Delay Damages are stated to apply, subject to any limit on the period of delay identified there, they shall be calculated by reference to the relevant rate from the date in the Certificate of Failure to Achieve Handover up to the relevant Handover Date. If Liquidated Delay Damages do not apply, the Contractor may recover from the Subcontractor as general damages any loss the Contractor incurs as a result of delay between the date in the Certificate of Failure to Achieve Handover and the Handover Date.
- 57.2. If in Appendix 2 Liquidated Delay Damages are stated to apply in relation to any Section, subject to any limit on the period of delay identified there, they shall be calculated by reference to the relevant rate from the date in the Certificate of Failure to Achieve Handover up to the relevant Sectional Handover Date. If Liquidated Delay Damages do not apply, the Contractor may recover from the Subcontractor as general damages any loss the Contractor incurs as a result of delay between the date in the Certificate of Failure to Achieve Handover and the relevant Sectional Handover Date.
- 57.3 The parties acknowledge the difficulty in determining the exact loss likely to be suffered by the Contractor in the event of a failure to complete by a Relevant Handover Date. Nevertheless, the parties acknowledge that the rate stated in Appendix 2 is a genuine pre-estimate of such loss.
- 57.4 If for any reason applicable Liquidated Delay Damages are found to be unenforceable (whether as a penalty or otherwise), the amount payable for the period of delay up to the limit on the period of delay stated in Appendix 2 or, if no limit on the period of delay is stated, the total sum calculated by reference to the rates stated in Appendix 2, shall nonetheless act as a cap on any general damages recoverable for delay.
- 57.5 Provided always that the Contractor has distributed a Certificate of Failure to Achieve Handover and, subject to any limitation stated in Appendix 2 on the period of delay during which Liquidated Delay Damages may be applied, the Contractor may in respect of the sum due

- 57.5.1 deduct it within the calculation contained in the Contractor's Notice of Payment Due under Clause 65
 - 57.5.2 withhold it in a notice of intention to pay less under Clause 67.3.2, and/or
 - 57.5.3 recover it from the Subcontractor as a debt.
- 57.6 After the issue of a Certificate of Handover, the Contractor shall re-calculate the final amount of Liquidated Delay Damages due from the Subcontractor in respect of the Subcontract Works or any Subcontract Section, giving due credit for any Liquidated Delay Damages previously deducted, withheld or paid.

58. LIMIT OF LIABILITY

The overall Limit of Liability of the Subcontractor to the Contractor under or in connection with the Subcontract shall be that stated in Appendix 2.

59. RETENTION FUND

- 59.1 Where it is identified in Appendix 2 that a percentage of the value of work completed is to be retained pending the Certificate of Making Good Defects, the relevant sums retained shall be placed by the Contractor in a separate bank account and held on trust for the benefit of the Subcontractor.
- 59.2 Within 5 Business Days of the date of Handover, the Contractor shall distribute a Notice of Payment Due releasing half of the retention fund.
- 59.3 Within 5 Business Days of the Certificate of Making Good Defects, the Contractor shall distribute a Notice of Payment Due for the balance of the retention fund, together with any interest earned, less any compensation for expenditure and/or loss due from the Subcontractor to the Contractor under Clause 55.4.
- 59.4 Where it is stated in Appendix 2 that a Retention Bond shall be provided by the Subcontractor in lieu of the Contractor retaining retention monies, the Subcontractor shall within 5 Business Days of the Date of Subcontract deliver to the Contractor a Retention Bond in the form required by the Subcontract Special Conditions. Except as required by Clause 59.5, upon delivery of the Retention Bond the provisions of
- 59.4.1 Clauses 59.1, 59.2 and 59.3, and
 - 59.4.2 to the extent they relate to retention, Clauses 39.6 and 39.7

shall no longer apply.

- 59.5 If any Retention Bond delivered pursuant to Clause 59.4 expires or is otherwise no longer enforceable or compliant with the requirements of the Subcontract, the Contractor may give effect to the provisions of Clauses 39.6, 39.7, 59.1, 59.2 and 59.3 of the Subcontract until such time as the Subcontractor delivers an equivalent replacement Retention Bond.

60. WORKING SCHEDULE AND PLANNING METHOD STATEMENT

- 60.1 In accordance with the Construction Contract, the Contractor shall prepare and publish the Working Schedule and Planning Method Statement and any update and/or revision of it. The Working Schedule and Planning Method Statement shall incorporate all Scheduling Contributions accepted or deemed accepted under Clauses 38.10, 41.5 and 42.5 at the Data Date of publication, and in accordance with Appendix D of the Construction Contract.
- 60.2 No less than 5 Business Days before each Site Meeting, the Contractor shall publish the latest accepted Working Schedule and Planning Method Statement. If the Contractor fails to do so, the Subcontractor shall notify the Time Manager and may request the Time Manager to supply in native file format an electronic copy of the documents referred to in Clause 60.1 to the Subcontractor.

61. PREDICTED SUBCONTRACT COST

- 61.1 The Predicted Subcontract Cost shall be the total cost indicated against all the Activities and Levels of Effort in the latest accepted Subcontractor's Scheduling Contribution, adjusted to take account of
- 61.1.1 any Activity included in the Subcontractor's Scheduling Contribution which is to be carried out by others and/or for which the Subcontractor is not otherwise entitled to payment under the Subcontract
 - 61.1.2 Variations valued under Clause 34
 - 61.1.3 any change in a Level of Effort and any other loss and/or expense ascertained under Clause 44.2.4 arising from a Contractor's Cost Risk Event
 - 61.1.4 any expense incurred by the Subcontractor arising from the calculation of the effect of an Event
 - 61.1.5 any Contract Administrator's instructions issued for the expenditure or omission of any Provisional Sum and/or Employer's Cost Contingency described in the Subcontract

- 61.1.6 taxes and duties legally required to be paid in connection with the Subcontract Works, other than those which are recoverable by the Subcontractor, and
- 61.1.7 any fluctuations since the Base Date in prices or rates in the Subcontractor's Pricing Document, if applicable.

62. CURRENT SUBCONTRACT VALUE

- 62.1 At the intervals stated in Appendix 2, the Contractor shall issue to the Subcontractor a statement of the Current Subcontract Value.
- 62.2 The Current Subcontract Value shall be the Predicted Subcontract Cost less only
 - 62.2.1 the value of any Activities not yet carried out
 - 62.2.2 the value of Activities carried out, but not in accordance with the Subcontract
 - 62.2.3 the cost of goods or materials delivered to the Site prematurely, and
 - 62.2.4 the cost of unfixed goods in which, according to Applicable Law, property cannot be passed to the Employer or Contractor.

63. PENULTIMATE SUBCONTRACT VALUE

- 63.1 The Penultimate Subcontract Value shall be the Current Subcontract Value calculated in accordance with Clause 62 after issue of the Certificate of Handover or, where completed in Sections, after issue of the last Certificate of Handover.
- 63.2 Within 40 Business Days of any Certificate of Handover or termination under Clauses 69, 70, or 72, the Subcontractor shall provide to the Contractor any further information and documentation it wishes the Contractor to take into consideration.
- 63.3 Within 20 Business Days of receiving any information and documentation supplied under Clause 63.2, the Contractor shall issue to the Subcontractor, with a copy to the Contract Administrator and Cost Manager, a statement of the Penultimate Subcontract Value.

64. FINAL SUBCONTRACT VALUE

- 64.1 The Final Subcontract Value shall be the Current Subcontract Value calculated after issue of the Certificate of Making Good Defects or, where completed in Sections, after issue of the last Certificate of Making Good Defects.

- 64.2 Within 5 Business Days of issue of the Certificate of Making Good Defects or, where completed in Sections, after issue of the last Certificate of Making Good Defects the Contractor shall issue to the Subcontractor, with a copy to the Contract Administrator and Cost Manager, a statement of the Final Subcontract Value.

65. CONTRACTOR'S NOTICE OF PAYMENT DUE

- 65.1 The Contractor shall, not later than the Notice Date, issue a Notice of Payment Due to the Subcontractor with a copy to the Valuer in respect of each of the statements of
- 65.1.1 Current Subcontract Value
 - 65.1.2 Penultimate Subcontract Value, and
 - 65.1.3 Final Subcontract Value.
- 65.2 A Notice of Payment Due shall identify the
- 65.2.1 final date for payment, and
 - 65.2.2 amount due to be paid.
- 65.3 The amount to be paid shall be the Predicted Subcontract Cost calculated in accordance with Clause 61, less any deductions and adjustments made in respect of
- 65.3.1 any expenditure incurred under Clause 37.2
 - 65.3.2 any expenditure incurred under Clause 55.4.1
 - 65.3.3 the estimated value of any incomplete work under Clause 55.4.2
 - 65.3.4 Liquidated Delay Damages deducted under Clause 57 and calculated up to the date of the Notice of Payment Due
 - 65.3.5 any sum retained under Clause 59
 - 65.3.6 any sum in respect of those matters listed at Clauses 62.2.1 to 62.2.4 (inclusive)
 - 65.3.7 any expenditure and/or loss incurred by the Contractor as a direct consequence of any default on the part of the Subcontractor, and/or
 - 65.3.8 any amount previously paid.

- 65.4 If the aggregate amount to be deducted exceeds the Predicted Subcontract Cost, the Contractor shall notify the Subcontractor of the amount due from the Subcontractor to the Contractor.
- 65.5 Unless referred for Issue Resolution within 20 Business Days of the date of issue, a Notice of Payment Due issued under Clause 65.1 in respect of the statement of Final Subcontract Value shall be conclusive evidence
- 65.5.1 of the amount due to the Subcontractor under the Subcontract, and
- 65.5.2 that where work, goods, materials or plant are stated to be subject to the Contractor's or Contract Administrator's approval, they have been approved.

66. SUBCONTRACTOR'S NOTICE OF PAYMENT DUE

- 66.1 If the Contractor fails to issue a Notice of Payment Due by the Notice Date, the Subcontractor may issue to the Contractor a Notice of Payment Due setting out
- 66.1.1 the sum that it considers to be due, or to have been due, at the date payment became due in accordance with Clause 67.1
- 66.1.2 the basis of the calculation of the value of the work for which payment is then claimed, and
- 66.1.3 the basis on which the sum is claimed to be due.

67. PAYMENT

- 67.1 Except as provided in Clause 67.2, a payment shall become due on the latest date by which issue is required or, if issued earlier, the date of issue of the statement of
- 67.1.1 Current Subcontract Value
- 67.1.2 Penultimate Subcontract Value, or
- 67.1.3 Final Subcontract Value.
- 67.2 If the Notice of Payment Due is issued by the Subcontractor under Clause 66.1, the final date for payment shall be postponed by the number of days between the Notice Date and the date of such notice.

- 67.3 Where a Notice of Payment Due requires the Contractor to pay the Subcontractor,
- 67.3.1 the Contractor shall on or before the final date for payment stated in Appendix 2 make payment to the Subcontractor of the amount notified in the Notice of Payment Due subject to Clause 67.3.2, or
 - 67.3.2 if the Contractor intends to pay the Subcontractor less than the amount stated in the Notice of Payment Due, unless prohibited by Applicable Law, the Contractor may pay less provided the Contractor notifies the Subcontractor with a copy to the Cost Manager, no less than 5 Business Days prior to the final date for payment, of
 - 67.3.2.1 its intention to pay less
 - 67.3.2.2 the sum that it considers to be due at the date of such notice, and
 - 67.3.2.3 the basis on which that sum has been calculated.
- 67.4 If payment is not made in full by the final date for payment, the Subcontractor may distribute a notice stating that (from a date not earlier than 10 Business Days after the notice) it intends to suspend all or any of its obligations under the Subcontract until full payment has been made. The Subcontractor may continue with the suspension until full payment has been made. The Subcontractor shall include in such notice a statement setting out which obligations it intends to suspend and its reasons for the suspension. The cost and time effect of any such suspension shall be borne by the Contractor.
- 67.5 Where a Notice of Payment Due requires the Subcontractor to pay the Contractor,
- 67.5.1 the Subcontractor shall, on or before the final date for payment stated in Appendix 2, pay the Contractor the amount notified in the Notice of Payment Due subject to Clause 67.5.2, or
 - 67.5.2 if the Subcontractor intends to pay the Contractor less than the amount stated in the Notice of Payment Due, unless prohibited by Applicable Law, the Subcontractor may pay less provided the Subcontractor notifies the Contractor, with a copy to the Cost Manager, no less than 5 Business Days prior to the final date for payment, of
 - 67.5.2.1 its intention to pay less
 - 67.5.2.2 the sum that it considers to be due at the date of such notice, and
 - 67.5.2.3 the basis on which that sum has been calculated.

- 67.6 If as a result of any failure by the Subcontractor to comply with the Subcontract the Contractor incurs expenditure and/or loss, the Contractor may in respect of such expenditure and/or loss
- 67.6.1 deduct it from the amount due within a Contractor's Notice of Payment Due under Clause 65
 - 67.6.2 withhold it in a notice of intention to pay less under Clause 67.3.2, and/or
 - 67.6.3 recover it from the Subcontractor as a debt due on demand.

68. INTEREST ON UNPAID AMOUNTS

- 68.1 Notwithstanding any other rights the parties may have under the Subcontract, unless it is prohibited by Applicable Law, interest at the rate stated in Appendix 2 shall be added to any amount due but not paid within the time provided for by the Subcontract from the date the payment became due until payment in full.
- 68.2 The parties acknowledge that the Interest Rate is intended to constitute a substantial remedy and represents fair compensation for the consequences of late payment.

69. TERMINATION WITHOUT FAULT

- 69.1 If, other than in accordance with Clauses 70, 71 or 72, the Contractor wishes to terminate the Subcontractor's employment under the Subcontract, it shall be entitled to do so provided that no less than 20 Business Days before the Subcontract Termination Date, it notifies the Subcontractor identifying
- 69.1.1 that the termination is under this Clause 69.1, and
 - 69.1.2 the Subcontract Termination Date.
- 69.2 Within 60 Business Days of the Subcontract Termination Date, the Subcontractor shall issue to the Contractor, with a copy to the Contract Administrator and Cost Manager, a statement of the Current Subcontract Value at the Subcontract Termination Date including
- 69.2.1 Overheads and Profit on work not completed at the Subcontract Termination Date
 - 69.2.2 the cost of removal from the site of any unfixured goods, materials, Subcontractor's temporary work and Subcontractor's Plant

- 69.2.3 the value of any Temporary Buildings, Subcontractor's Plant, Subcontractor's temporary work and unfixed goods and materials remaining on Site or in Laydown, and
 - 69.2.4 any costs incurred by the Subcontractor arising directly from the termination.
- 69.3 If the value cannot be determined from the Subcontractor's Scheduling Contribution or, if none, the Subcontractor's Pricing Document, then it shall be calculated on a fair and reasonable basis.

70. TERMINATION FOR SUBCONTRACTOR INSOLVENCY OR DEFAULT

- 70.1. If at any time before issue of the Certificate of Handover, or where Clause 27 applies, at any time before issue of the certificate of Substantial Completion the Subcontractor
- 70.1.1. becomes bankrupt or insolvent
 - 70.1.2. goes into liquidation
 - 70.1.3. has a receiving or administration order made against it
 - 70.1.4. compounds with its creditors
 - 70.1.5. carries on business under a receiver, trustee or manager for the benefit of its creditors, or
 - 70.1.6. anything occurs which under Applicable Law has the effect of depriving the Subcontractor of the power to manage its financial affairs,
- the Contractor may notify the Subcontractor that the Subcontractor's employment is immediately terminated, stating
- 70.1.7. that the termination is under this Clause 70.1, and
 - 70.1.8. the Subcontract Termination Date.
- 70.2. If, at the Subcontract Termination Date stated under Clause 70.1.8, the Subcontractor has failed to provide in accordance with Clause 8.1.2 any requested sub-subcontractor collateral warranties in favour of the Employer, that include step-in rights which would allow the Employer to take over the sub-subcontracts and complete the Works by the time of termination for insolvency, then to the extent it fails to do so and to the extent the failure is

not due to Subcontractor insolvency, the Contractor may withhold a reasonable proportion of any sums owing to the Subcontractor until such collateral warranties are provided.

70.3 If at any time before issue of the Certificate of Handover or, where Clause 27 applies, at any time before issue of the Certificate of Substantial Completion the Subcontractor

70.3.1 fails to

70.3.1.1 comply with its obligations under Clause 9 and/or Clause 59.4

70.3.1.2 carry out the work in accordance with Applicable Law

70.3.1.3 complete the Subcontract Works or any Subcontract Section by any limit on the period of delay stated in Appendix 2

70.3.1.4 comply with Applicable Law or any other law relevant to the Subcontract and/or the parties in respect of

70.1.1.4.1 health and safety, or

70.1.1.4.2 corruption

70.3.2 refuses or neglects to comply with

70.3.2.1 a Contractor’s instruction

70.3.2.2 any Contractor’s request under Clause 8.1, or

70.3.2.3 without reasonable cause suspends the carrying out of the Subcontract Works, or

70.3.3 contrary to Clause 30 sub-subcontracts or assigns the Subcontract or a substantial part of it,

the Contractor shall, within 10 Business Days of the Subcontractor’s default, notify the Subcontractor specifying

70.3.5 the nature of the default

70.3.6 the date of its occurrence, and

70.3.7 the action required to remedy the default or, if appropriate, that it considers that the default cannot be remedied.

- 70.4 Subject to Clause 70.5, if the Subcontractor fails to remedy the default within 10 Business Days of the notice of default, the Contractor may notify the Subcontractor that from a date not earlier than 5 Business Days after the notice the Subcontractor's employment shall be terminated stating
- 70.4.1 that the termination is under this Clause 70.4, and
 - 70.4.2 the Subcontract Termination Date.
- 70.5 Notwithstanding that the Contractor considers that the Subcontractor's default cannot be remedied, the Subcontractor may, within 5 Business Days of notice under Clause 70.4, propose a solution to the Contractor, which the Subcontractor reasonably considers would adequately remedy its default. The Contractor shall, at its discretion, within 5 Business Days of receiving the proposal, notify the Subcontractor that
- 70.5.1 its proposal is accepted as an adequate remedy (in which case Clause 70.4 shall apply, with the 10 Business Day period required by Clause 70.4 being deemed to commence on the date on which the Contractor issues its notice under Clause 70.5)
 - 70.5.2 its proposal is rejected, or
 - 70.5.3 the Subcontractor is required within 10 Business Days to provide details of its proposal, so that the Contractor may consider further whether it would adequately remedy the default.
- If the Subcontractor fails to provide any required details within the period stated in Clause 70.5.3, or the Contractor notifies the Subcontractor that its proposal is rejected, the Contractor may notify the Subcontractor that from a date not earlier than 5 Business Days after the notice the Subcontractor's employment shall be terminated stating
- 70.5.4 that the termination is under this Clause 70.5, and
 - 70.5.5 the Subcontract Termination Date.
- 70.6 Notwithstanding the Subcontractor's remedy of the specified default, if at any time the Subcontractor repeats the default, the Contractor may notify the Subcontractor that from a date not earlier than 5 Business Days after the notice the Subcontractor's employment shall be terminated, stating
- 70.6.1 that the termination is under this Clause 70.6, and

- 70.6.2 the Subcontract Termination Date.
- 70.7 The Subcontractor shall not remove from the Site and/or any Laydown any Temporary Buildings, unfixed goods, materials, Subcontractor's Plant or Subcontractor's temporary work and shall vacate the Site and any Temporary Buildings and/or Laydown on or before the Subcontract Termination Date. The Contractor may take whatever steps are reasonably necessary to secure the Site and to prevent the removal of Temporary Buildings, unfixed goods, materials, Subcontractor's Plant and Subcontractor's temporary work from the Site, Temporary Buildings or Laydown.
- 70.8 Within 100 Business Days of the Subcontract Termination Date, or within 60 Business Days of Handover of the Subcontract Works by another subcontractor, whichever is the later, the Contractor shall issue to the Subcontractor, with a copy to the Contract Administrator and Cost Manager, a statement of the Penultimate Subcontract Value of the work properly completed at the Subcontract Termination Date. The Penultimate Subcontract Value shall include the value of any unfixed goods, materials, Subcontractor's Plant and Subcontractor's temporary work not returned to the Subcontractor, less any expenditure and/or loss incurred by the Contractor and arising directly from the termination and any additional cost to the Contractor of completing the Subcontract Works.
- 70.9 Within 10 Business Days of issue of a statement of the Penultimate Subcontract Value under Clause 70.8, the Contractor shall issue a Notice of Payment Due.

71. TERMINATION FOR CONTRACTOR INSOLVENCY OR DEFAULT

- 71.1. If at any time before issue of the Certificate of Handover, or where Clause 27 applies, at any time before issue of the Certificate of Substantial Completion the Contractor
- 71.1.1. becomes bankrupt or insolvent
 - 71.1.2. goes into liquidation
 - 71.1.3. has a receiving or administration order made against it
 - 71.1.4. compounds with its creditors
 - 71.1.5. carries on business under a receiver, trustee or manager for the benefit of its creditors, or
 - 71.1.6. anything occurs which under Applicable Law has the effect of depriving the Contractor of the power to manage its financial affairs,

the Subcontractor may notify the Contractor that the Subcontractor's employment is immediately terminated, stating

71.1.7. that the termination is under this Clause 71.1, and

71.1.8. the Contract Termination Date.

71.2 If at any time before issue of the Certificate of Handover or, where Clause 27 applies, at any time before issue of the Certificate of Substantial Completion the Contractor

71.2.1 fails to

71.2.1.1 pay by the final date for payment the amount due to the Subcontractor, or

71.2.1.2 comply with Applicable Law in respect of

71.2.1.2.1 health and safety, or

71.2.1.2.2 corruption,

71.2.2 contrary to the provisions of Clause 30 assigns the Subcontract or a substantial part of it, or

71.2.3 interferes with or obstructs the issue of any Certificate, or

the Subcontractor may within 10 Business Days of the Contractor's default notify the Contractor, specifying

71.2.5 the nature of the Contractor's default

71.2.6 the date of its occurrence, and

71.2.7 the action required to remedy the default, or if appropriate that it considers that the default cannot be remedied.

71.3 Subject to Clause 71.4, if the Contractor fails to remedy the default within 10 Business Days of the notice under Clause 71.2, the Subcontractor may notify the Contractor that from a date not earlier than 5 Business Days after the notice the Subcontractor's employment will be terminated, stating

71.3.1 that the termination is under this Clause 71.3, and

- 71.3.2 the Subcontract Termination Date.
- 71.4 Notwithstanding that the Subcontractor considers that the Contractor's default is incapable of being remedied, the Contractor may, within 5 Business Days of the notice under Clause 71.2, propose a solution to the Subcontractor which the Contractor reasonably considers would adequately remedy the default. The Subcontractor shall then, at its sole discretion, within 5 Business Days of receiving the proposal, notify the Contractor that
- 71.4.1 its proposal is accepted as an adequate remedy (in which case Clause 71.3 shall apply, with the 10 Business Day period required by Clause 71.3 being deemed to commence on the date on which the Subcontractor issues its notice under this Clause 71.4)
- 71.4.2 its proposal is rejected, or
- 71.4.3 the Contractor is required within 10 Business Days to provide details of its proposal, so that the Subcontractor may consider further whether it would be an adequate remedy.
- 71.5 If the Contractor fails to provide any required details within the period stated in Clause 71.4.3, or the Subcontractor notifies the Contractor that its proposal is rejected, the Subcontractor may notify the Contractor that from a date not earlier than 5 Business Days after the notice the Subcontractor's employment shall be terminated, stating
- 71.5.1 that the termination is under this Clause 71.5, and
- 71.5.2 the Subcontract Termination Date.
- 71.6 Notwithstanding the Contractor's remedy of the specified default, if at any time the Contractor repeats the default, the Subcontractor may notify the Contractor that (from a date not earlier than 5 Business Days after the notice) the Subcontractor's employment is terminated, stating
- 71.6.1 that termination of employment is under this Clause 71.6, and
- 71.6.2 the Subcontract Termination Date.
- 71.7 Within 60 Business Days of termination under this Clause 71 or within 20 Business Days of receiving the next Notice of Payment Due after the Termination Date, whichever is the later, the Contractor shall pay to the Subcontractor the value of the work properly completed at the Subcontract Termination Date including
- 71.7.1 Overheads and Profit on work not completed at the Subcontract Termination Date

- 71.7.2 the cost of removal from the site of any unfixed goods, materials, Subcontractor's Plant and Subcontractor's temporary work
- 71.7.3 the value of any Temporary Buildings, Subcontractor's Plant, Subcontractor's temporary work and unfixed goods and materials remaining on Site or in Laydown, and
- 71.7.4 any expenditure and/or loss incurred by the Subcontractor arising directly from termination under this Clause 71.

72. TERMINATION FOR IMPOSSIBILITY, ILLEGALITY, OR PROLONGED SUSPENSION

72.1 If at any time before issue of the Certificate of Handover

72.1.1 without fault on the part of the Subcontractor, it becomes impossible or illegal to continue the Subcontract Works, or

72.1.2 part or the whole of the Subcontract Works is suspended by reason of any of the occurrences described in Appendix 6 for a continuous period of 120 Business Days or more,

either party may notify the other that if the impossibility, illegality or suspension continues for a further 5 Business Days, it intends to terminate the Subcontractor's employment under the Subcontract.

72.2 Unless during the period of notice the impossibility, illegality or suspension ceases, either party may notify the other of the termination of the Subcontractor's employment identifying

72.2.1 that the termination is under this Clause 72.2, and

72.2.2 the Subcontract Termination Date.

72.3 Within 60 Business Days of termination under this Clause 72, the Contractor shall issue to the Subcontractor, with a copy to the Cost Manager, a statement of the Penultimate Subcontract Value of the work properly completed at the Subcontract Termination Date. The Penultimate Subcontract Value shall include the value of any Temporary Buildings, Subcontractor's Plant, Subcontractor's temporary work and unfixed goods and materials remaining on Site in Temporary Buildings or in Laydown, less any amount previously included in a Notice of Payment Due.

72.4 Within 10 Business Days of issue of the statement of Penultimate Subcontract Value under Clause 72.3, the Contractor shall issue a Notice of Payment Due in accordance with Clause 65.

73. CONSEQUENCES OF TERMINATION

- 73.1 Upon termination of its employment the Subcontractor shall publish its Design Contribution and distribute any access codes and/or passwords relating to it, provided that
- 73.1.1 subject to any effective pay less notice, or, where termination is under Clause 70, the Contractor having paid in full all sums of which Notice of Payment Due has been issued prior to the Subcontract Termination Date, and
 - 73.1.2 instructions have not been issued by the Contractor to the contrary.
- 73.2 On confirmation of receipt by the Contractor of an accessible copy of the Subcontractor's Design Contribution, the Subcontractor shall delete from its own computer the files delivered.
- 73.3 Except where the Subcontract states otherwise or the Subcontractor is otherwise instructed, the Subcontractor shall vacate the Site and any Laydown on the Subcontract Termination Date. To the extent that it is possible without adversely affecting the safety of the Subcontract Works, the Works or other persons or property, the Subcontractor shall remove all Temporary Buildings, Subcontractor's Plant, Subcontractor's temporary work and unfixed goods and materials remaining on Site or in Laydown, property in which has not passed to the Employer under Clause 24.1, and vacate and leave clean and tidy any Laydown.
- 73.4 For the avoidance of doubt, after termination the Contractor shall not be entitled to
- 73.4.1 any payment except payment becoming due in accordance with Clauses 69.2, 70.8, 71.7 or 72.3, or
 - 73.4.2 any other compensation, including without limitation consequential loss or damages, for termination under Clauses 69, 70 or 72.

74. ISSUE RESOLUTION

- 74.1 Unless the Subcontract requires any issue arising under or in connection with the Subcontract to be referred to Issue Resolution within a particular time, either party may within 20 Business Days of the issue arising notify the other that they wish it to be referred to Issue Resolution.
- 74.2 All notices requiring Issue Resolution shall be issued to the other party, with a copy to the Contract Administrator.

- 74.3 Within 5 Business Days of receiving notice under Clause 74.1, the Subcontractor's Authorised Representative and the Contractor's Authorised Representative shall meet to try to resolve the issue. If the Subcontractor's Authorised Representative or the Contractor's Authorised Representative is unavailable for the meeting, the relevant party shall promptly notify the other and shall use all reasonable endeavours to send a director or senior employee who shall have authority to agree the issue.
- 74.4 If within 10 Business Days of the Contractor's or Subcontractor's Authorised Representative receiving notice under Clause 74.1 the issue is not resolved by agreement, the Principal Expert identified in Appendix 2 shall be appointed to resolve the issue by Determination.
- 74.5 The Principal Expert may consult any other experts identified in Appendix 2. Where the Principal Expert wishes to consult an expert not identified in Appendix 2, because none is identified in the appropriate discipline or an identified expert is not available, the Principal Expert may consult such other expert as it considers reasonably necessary.
- 74.6 The Principal Expert shall follow the procedure in Appendix 7 in conducting the Issue Resolution.
- 74.7 As soon as it is able to do so, and in any event within 20 Business Days of being appointed, the Principal Expert shall issue its Determination to both parties, with a copy to the Contract Administrator, setting out those reasons for the Determination which the Principal Expert considers may be helpful to the parties for the avoidance of further issues.
- 74.8 If within 10 Business Days of its issue the Principal Expert discovers, or has it brought to its attention, that the Determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, issue, matter or thing, or any defect of form, the Principal Expert shall issue to both parties, with a copy to the Contract Administrator, a corrected Determination.
- 74.9 Neither the Principal Expert nor any other expert appointed for the purposes of this Clause 74 shall be liable in any way for any error, omission or misconduct in the Issue Resolution.
- 74.10 Unless the parties agree otherwise, the parties shall
- 74.10.1 each bear their own costs of the Issue Resolution, and
 - 74.10.2 bear equally the fees and out-of-pocket expenses of the Principal Expert and any other expert consulted by the Principal Expert.
- 74.11 A Determination may be relied upon by either party in any dispute resolution proceedings and the Principal Expert and/or any other expert consulted by the Principal Expert may be called as a witness by either party or the tribunal.

75. DISPUTE RESOLUTION

- 75.1 The parties may settle any dispute by mediation or negotiation.
- 75.2 Unless Applicable Law requires that a party may refer a dispute to adjudication at any time, the parties hereby agree that no dispute shall arise and no adjudicator shall be appointed under Clause 75.8 unless and until the Principal Expert has issued its Determination under Clause 74.7.
- 75.3 If the Principal Expert fails to issue a Determination within the time required by the Subcontract, either party shall be entitled to treat any issue referred to the Principal Expert as having given rise to a dispute.
- 75.4 A Determination by the Principal Expert shall be final and binding on the parties unless
- 75.4.1 it is issued late, and/or
 - 75.4.2 either party issues a notice of adjudication or arbitration within 20 Business Days of issue of the Determination.
- 75.5 Except where any matter is deemed to be agreed or is stated to be conclusive as to the rights of the parties or has been decided by Issue Resolution, the adjudicator or arbitrator may open up, review and revise any measurement, valuation, record, decision, extension of time or certificate issued under the Subcontract.
- 75.6 Any adjudicator's decision or arbitral award in respect of the Subcontract shall be a public document unless
- 75.6.1 the parties agree otherwise
 - 75.6.2 in consolidated proceedings to which Clause 75.14 applies, the consent of all other Consenting Parties has not been obtained, or
 - 75.6.3 in proceedings to which Clause 75.15 applies, a connected contract expressly prohibits any arbitration award from being a public document.
- 75.7 Where the parties have agreed in Appendix 2 that adjudication is applicable and have agreed the adjudication rules, either party may refer any dispute to adjudication in accordance with the agreed adjudication rules. If the parties have not agreed that disputes may be determined by adjudication, but Applicable Law requires that a party may refer a dispute to adjudication, then either party may refer any dispute to adjudication in accordance with Applicable Law. In such circumstances, the adjudication rules shall be the default adjudication rules of the Applicable Law. If no adjudication rules are agreed in Appendix 2 and the

Applicable Law does not provide any default adjudication rules, the adjudication rules shall be the Scheme for Construction Contracts, modified as necessary to meet any requirements of adjudication under Applicable Law not provided for.

- 75.8 The adjudicator shall be that person identified in Appendix 2.
- 75.9 The adjudicator's decision shall be binding on the parties unless and until the dispute is finally determined by arbitration or by agreement.
- 75.10 No party may issue more than one notice of adjudication in respect of any dispute. If having served a notice of adjudication the referring party fails to serve its referral documents on time, or within such extended time as may be agreed by the parties, the referral shall lapse and the subject dispute shall not be referred to adjudication.
- 75.11 Unless indicated otherwise in Appendix 2, the final dispute resolution mechanism for any dispute shall be arbitration. Arbitration shall be in accordance with the rules stated in Appendix 2 and the procedural law of the arbitration shall be the same as the Law of the Subcontract.
- 75.12 The arbitrator shall be that person identified in Appendix 2.
- 75.13 Each Consenting Party shall be bound to all other Consenting Parties in respect of Clause 75.14.
- 75.14 Any Consenting Party may be joined as an additional party to an arbitration involving any other Consenting Party under any contract between the Contractor and the other Consenting Party. If more than one arbitration has begun under any such contract, and the Contractor notifies the other relevant Consenting Parties and arbitrators that two or more arbitrations are substantially related in issues of law and/or fact, and that the issues should be heard in one arbitration, the arbitrator selected in the first-filed arbitration shall determine as soon as reasonably practicable whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator.
- 75.15 If an arbitration has begun under any subcontract (including the Subcontract) to which the Contractor or the Subcontractor is a party, and either party notifies the other and the relevant arbitrator that the arbitration is substantially related in issues of law and/or fact to one or more arbitrations under another subcontract or other contracts between them, and that the issues should be heard in one arbitration, the arbitrator selected in the first-filed arbitration shall determine as soon as reasonably practicable whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator.



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