

SPATIAL TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION:

1.1 The following definitions and rules of interpretation apply to this Sub Contract except where the context requires otherwise: **Adjudicator:** A person appointed in accordance with clause 14; **Application Date:** The date set out in the Sub Contract Order or in the Schedule for receipt by Spatial of the first Interim Application (or if no date is so specified the 26th day of the month following the month in which the Sub Contract Order is issued to the Sub Contractor) and thereafter, for each subsequent interim Application, at the intervals specified in the Sub Contract Order or the Schedule (or on 26th day of each month if no such interval is specified) up to and including the month following Practical Completion; **Completion Date:** The date specified in the Sub Contract Order or such other date as may be agreed in accordance with clause 6.2; **Conditions:** These terms and conditions, Contractor's Health & Safety's Health, Safety and Environmental handbook which defines Spatial's health Safety Booklet and the safety manual which may be added from time to time; **Contractor's Health & Safety policy:** Spatial's publication which defines Spatial's health and safety policy; **Organisation & Arrangements:** Spatial is the organisation, and may be amended from time to time; **COSHH:** Control of Substances Hazardous to Health Regulations; **CSCS:** Construction Skills Certification Scheme or affiliated schemes; **Defects Liability Period:** The period commencing upon Practical Completion of the Sub Contract Works for the duration specified in the Sub Contract Order or if no duration is so specified, for 24 months from Practical Completion of the Sub Contract Works; **Delivery Notice Period:** The notice period set out in the Schedule (or as may be notified to the Sub Contractor if no such period is identified) required to be provided to Spatial by the Sub Contractor prior to the delivery of goods and materials to the Site or to the Sub Contractor for incorporation into the Sub Contract Works; **Documents:** All documents of any kind including drawings, CAD materials, Plans, designs, diagrams, details, specifications, technical data, bills of quantities, reports, films and photographs (including negatives) and other design information which has been or is to be written, prepared or provided by or on behalf of the Sub Contractor for any purpose whatsoever in connection with the Sub Contract Works whether in paper form or stored electronically or disc or otherwise; **Force Majeure:** Any of the following circumstances beyond the reasonable control of either Party to the extent that such circumstances prevented or impedes the due performance of the Sub Contract by that Party and provided that such Party has used all reasonable endeavours to avoid and mitigate its effects: government action or trade embargo, act of terrorism or war, flood, fire or other natural physical disaster, denial of the use of any railway, port, airport, shipping service or their means of public transport other than where such denial is a result of an act or inaction by the Sub Contractor and/or his Suppliers; or industrial dispute, other than any such dispute between the Sub Contractor and his Suppliers; **Free Issue Material:** All goods and materials, special access equipment and/or any large items of plant or equipment supplied by Spatial to the Sub Contractor for incorporation by the Sub Contractor into, or use by the Sub Contractor in carrying out, the Sub Contract Works; **Final Statement of Account:** As defined at clause 5.14; **Health & Safety Plan:** The document detailing the health and safety arrangements, site rules and any special measures for the works to be undertaken; **Interim Application:** The Sub Contractor's interim application for payment submitted in accordance with this Sub Contract and Interim Applications shall mean more than one interim application in accordance with the context; **Spatial:** Spatial or such other Spatial company as may assume Spatial's responsibilities pursuant to clause

15.1; **Spatial's Representative:** The person named in the Schedule or as may be notified by Spatial from time to time appointed by Spatial as its representative throughout the duration of the Sub Contract; **Party:** Spatial or the Sub Contractor as the case may be, and Parties means both Spatial and the Sub Contractor; **Pay Less Notice:** As defined at clauses 5.12, 5.18 and 5.22; **Payment Notice:** Whether Interim, as defined at clause 5.11, Final as defined at clause 5.17 and/or Final Retention as defined at clause 5.21; **Plant and Equipment:** All plant, equipment and tools of whatever nature that the Sub Contractor uses in or is required to use in carrying out the Sub Contract Works and is not intended for loading, scaffolding, support, temporary access and such other plant, equipment and tools as may be set out in the Schedule; **PPE:** Personal Protective Equipment; **Practical Completion:** The notification by Spatial that the Sub Contract Works comply in all respects with this Sub Contract; **Principal:** The party who has contracted with Spatial under the Principal Contract; **Principal Contract:** The contract between Spatial and the Principal for the Works which is available on request if the Sub Contractor does not have a copy of it; **Principal Contract Administrator:** The person appointed by the Principal who administers the Principal Contract on behalf of the Principal as notified to the Sub Contractor; **Principal Practical Completion:** The certification by the Principal that the Works comply with the Principal Contract; **Retention:** The retention percentage stated in the Sub Contract Order or if no such percentage is stated then 5%; **Schedule:** The schedule to the Conditions; **Scheme:** The Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011; **Site:** The land and/or buildings described in the Sub Contract Order; **Site Working Hours:** The working hours for the Site as defined in the Schedule or in the absence of such definition in the Schedule then 8.00am to 6.00pm Monday to Friday; **Specification:** All plans, drawings, data or other information relating to the Sub Contract Works supplied to the Sub Contractor in connection with the Sub Contract Works including but not limited to all such information provided to the Sub Contractor for the purposes of tendering for the Sub Contract Works; **Sub Contract Order:** The order issued by Spatial to the Sub Contractor for the Sub Contract Works which comprises the following: (1) the Purchase Order; (2) the Sub Contract Order; (3) the Conditions; (4) the Schedule; (5) the Specification; and (6) the Drawings which are hereby incorporated into the Sub Contract Order; **Sub Contract Order:** Spatial's Sub Contract order form for the Sub Contract Works; **Sub Contract Sum:** The sum specified in the Sub Contract Order exclusive of any applicable value added tax. Unless otherwise stated in this Sub Contract the Sub Contract Sum is a firm fixed lump sum price subject to any discount stated on the Sub Contract Order; **Sub Contract Works:** The works described in the Sub Contract Order and more particularly described in the Schedule and the Specification together with any variations to such works made in accordance with this Sub Contract; **Sub Contractor:** The party named in the Sub Contract Order and to whom the Sub Contract Order is addressed; **Sub Contractor's Insurances:** The insurances and minimum levels of indemnity referred to in the Schedule (or if no details are entered into the Schedule then the types and levels of insurance that a contractor would reasonably expect a Sub Contractor to maintain given the type of works and services to be performed by the Sub Contractor) and required by law; **Sub Contractor's Representative:** The person named in the Schedule or as may be notified by the Sub Contractor from time to time to Spatial's satisfaction appointed by the Sub Contractor as its representative throughout the duration of the Sub Contract; **Sub Contractor's Safety:** The general approach, objectives and the arrangement put in place for Policy Statement managing health and safety. It is a unique document that says who does what, when and how; **Suppliers:** The Sub Contractor's Sub Contractors and suppliers and their Sub Contractors and suppliers; **Works:** The works Spatial has agreed to undertake at the Site and which the Sub Contractor Works shall form part.

1.2 Reference in this Sub Contract to any statute or statutory instrument shall be construed as a reference to such statute or statutory instrument as amended, re-enacted, consolidated or extended as relevant and shall include any subordinate legislation for the time being in force and made under it.

1.3 In the case of discrepancy or ambiguity between these Conditions and any other documents incorporated into the Sub Contract, such discrepancy or ambiguity shall be resolved by the following order of precedence: (1) the Purchase Order; (2) the Sub Contract Order; (3) the Conditions; (4) the Schedule; (5) the Specification; (6) the Drawings; (6) any other documents incorporated into the Sub Contract. If the Sub Contractor shall find any discrepancy or ambiguity it shall forthwith give written notice to Spatial and it shall not proceed with the discrepant or ambiguous Subcontract Works until Spatial so directs. If such discrepancy or ambiguity cannot be resolved by reference to the above then Spatial shall resolve the same by issuing a direction in writing to the Sub Contractor and, unless otherwise agreed, the Sub Contractor shall comply with Spatial's direction without any increase in the Sub Contract Sum.

2. GENERAL CONDITIONS

2.1 The Sub Contractor agrees that by signing and returning the Sub Contract Order and/or by commencing performance of the Sub Contract Works that it shall undertake the Sub Contract Works in accordance with the Sub Contract to the exclusion of all other terms, conditions, warranties and representations. The Sub Contractor warrants that the Subcontract Works it has carried out before the date of the Subcontract Order and/or its acceptance of the Subcontract Order complies with the Subcontract in all respects.

2.2 This Subcontract supersedes any previous agreement or arrangement between the Parties in relation to the subject matter of this Subcontract (whether oral or written) and represents the entire understanding between the Parties. The Sub Contractor acknowledges that in entering into this Sub Contract it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

2.3 It is a condition precedent to the Sub Contractor's payment to and return of the Sub Contractor's deposit that the Sub Contractor signs and returns to the Sub Contractor a copy of the Sub Contract Order; (2) provides evidence of insurance as required by this Sub Contract; (3) executes a deed or deeds of warranty as required by this Sub Contract; and (4) does any other thing identified by this Sub Contract as a condition precedent to Spatial's liability to pay the Sub Contractor; and (5) Spatial has received verification of the Sub Contractor's status pursuant to clause 5.2.

2.4 This Sub Contract is subject to and the Sub Contractor shall be paid of notice and shall be bound by and shall observe, perform, comply with and be bound by all the provisions of the Principal Contract (so far as they relate to and are applicable to the Sub Contract Works or any part thereof) provided that if any conflict arises between the provisions of the Principal Contract and this Sub Contract then this Sub Contract shall prevail. In particular, (but without limitation to the generality of the foregoing) the Sub Contractor shall be bound by and shall observe and perform and comply with all those provisions of the Principal Contract requiring compliance with any condition precedent and/or requiring the giving or submission of information, drawings, detail, notices or other communication or paper work as if the same were set out in full herein and insofar as not inconsistent with the Sub Contract. For the purpose of giving effect to this clause references to the Sub-Contractor, Principal/Main Contractor and Client/Employer in the Principal Contract shall be construed as references to the Sub Contractor, Spatial and the Principal/Main Contractor respectively where the context so permits. The Sub Contractor acknowledges that any breach of the Sub Contract may result in Spatial being in breach and/or becoming liable for costs, losses, expenses or damages (including legal fees) under the Principal Contract and all such costs, losses, expenses or damages (including legal fees) are hereby agreed as being in the contemplation of the parties. The Sub Contractor shall indemnify and hold harmless Spatial from and against any such breach and/or costs, losses, expenses, or damages (including legal fees).

2.5 The Principal Contract, with the omission of pricing and other commercial and/or confidential details, may be inspected by the Sub Contractor by appointment at Spatial's offices.

2.6 Where the Principal Contract is executed as a deed, the Sub Contract will be deemed to be executed as a deed for the purpose only of calculating any period of limitation prescribed by law and no Party will assert in any adjudication, court, tribunal or arbitration proceedings any shorter period of limitation than is prescribed for a contract executed as a deed.

2.7 In the event that the Schedule and/or the Specification and/or any other document incorporated into the Sub Contract by the Schedule and/or the Specification are not complete at the date of the Sub Contract Order then upon their completion they shall be deemed to be incorporated into the Sub Contract and shall apply retrospectively in all respects to the Sub Contract Works.

2.8 The Sub Contractor shall provide all necessary information and assistance to Spatial to enable Spatial to complete the Schedule and when requested by Spatial it shall complete sections of the Schedule in the timeframe specified by Spatial or if none is specified in a reasonable timeframe.

2.9 Notwithstanding clause 2.1, no other terms and/or conditions, including but not limited to any terms or conditions included in any document issued by the Sub Contractor before or after the date of the Sub Contract Order, shall be incorporated into this Sub Contract unless such terms and/or conditions are expressly accepted by Spatial in writing. For the avoidance of doubt, such other terms and/or conditions which are so expressly accepted and incorporated in the Sub Contract Order shall be categorised as documents falling under clause 1.3(5) in the event of discrepancy or ambiguity with any other provision of the Sub Contract.

3. SUB CONTRACTOR'S OBLIGATIONS

3.1 With any applicable British or European Standard or any applicable code of practice.

3.2 Number not used.

3.3 The Sub Contractor shall supply all labour, supervision, Administration and Plant and Equipment (including any storage on site required) necessary for the Sub Contractor to carry out the Subcontract Works in accordance with the Subcontract

3.4 The Sub Contractor shall deliver the Subcontract Works in readiness for Practical Completion by the time or times and in such a manner required by the Subcontract or as directed by Spatial. The Sub Contractor shall provide facilities free of charge for any inspection before Practical Completion by Spatial and/or the Principal Contractor at the Subcontract Site or at the Site or at the Sub Contractor's premises.

3.5 The Sub Contractor undertakes to maintain its work and materials in good repair and condition during the progress of the Subcontract Works and until the end of the Defects Liability Period.

3.6 If prior to Practical Completion The Sub Contractor fails to comply with its obligations at clause 3.8 and/or any work, materials, goods or workmanship is/are not in accordance with this Sub Contract Spatial may, without prejudice to any other rights Spatial has under this Sub Contract or at law, and entirely at the Sub Contractor's cost, issue directions requiring that the Sub Contractor complies with its obligations at clause 3.8 and/or requiring the removal from the Site and/or rectification of all or any such non-compliant work, materials, goods or workmanship as Spatial deems necessary. If the Sub Contractor fails to commence to comply with Spatial's directions issued under this clause within 7 days from the issue of such directions Spatial may omit all of part of the Sub Contract Works and/or Spatial may employ others to carry out such directions or may elect to carry out such directions itself and Spatial may recover all costs it incurs in doing so as a debt from the Sub Contractor or by way of set-off from sums due to the Sub Contractor. The Sub Contractor shall be entitled to an extension of time because of directions issued under this clause.

3.7 The Sub Contractor shall from notification by Spatial take immediate steps to make good any defects arising during the Defects Liability Period to the satisfaction of Spatial and the Principal Contract Administrator. If the Sub Contractor fails to commence to make good such defects within a period of 7 days from notification by Spatial, Spatial may employ others to make good the defects or may elect to make good such defects itself and Spatial may recover all costs it incurs in doing so as a debt from the Sub Contractor or by way of set-off from sums due to the Sub Contractor whether under this Sub Contract or otherwise. The Sub Contractor undertakes to take immediate action to repair and/or replace any replacement goods and materials which become defective in the 12 months following their installation if installed less than 12 months before the end of the Defects Liability Period.

3.8 The Sub Contractor shall carry out the Sub Contract Works, together with any variations issued pursuant to clause 7.0, in such order or manner or at such times or within such periods as Spatial may instruct or direct and in accordance with any program issued and shall proceed regularly and diligently and with such expedition as will ensure that Spatial and all others working upon the Site are not disrupted or delayed in their work. The Sub Contractor shall work alongside, co-operate and co-ordinate the Subcontract Works with the Principal, Spatial and any other contractors and Sub Contractors at the Site as may be required by the Principal Contract. The Sub Contractor shall not be entitled to an increase or addition to the Subcontract Sum for complying with this clause nor for reasonable deviations and modifications arising out of such compliance. Any loss and expense caused to Spatial by the Sub Contractor's failure to comply with this clause shall be recoverable as a debt due from the Sub Contractor or by way of set-off from sums due to the Sub Contractor whether under this Sub Contract or otherwise.

3.9 The Sub Contractor shall be deemed to have inspected the Site and to be satisfied regarding local conditions or any other circumstances which may affect the carrying out of the Subcontract Works. The Sub Contractor's failure to carry out such inspection shall in no way relieve the Sub Contractor from any obligation under this Subcontract. The Sub Contractor shall not be entitled to an extension of time and/or any increase in the Sub Contract Sum whatsoever for any local condition and/or any other circumstances which a reasonably competent Sub Contractor would have discovered or foreseen by undertaking an inspection of the Site or making enquiries prior to offering to carry out and complete the Sub Contract Works for the Sub Contract Sum.

3.10 The Sub Contractor shall deliver to Spatial the Delivery Notice Period when it requires the delivery (whether to Site or the Sub Contractor's premises) of Free Issue Materials. The Sub Contractor shall retain all delivery/advice/col location notes for all such items provided by Spatial and shall return such documents to Spatial as directed by Spatial. Free Issue Material not incorporated into the Subcontract Works and/or used in the carrying out of the Subcontract Works shall be returned to Spatial immediately upon Practical Completion.

3.11 Free Issue Material shall become the responsibility of the Sub Contractor upon delivery to it either at the Site or the Sub Contractor's premises. The Sub Contractor shall assume all risks in Free Issue Materials upon such delivery to it until Practical Completion. Title in Free Issue Materials shall always be retained by Spatial.

3.12 The Sub Contractor shall ensure that Plant and Equipment (including plant and equipment provided as Free Issue Materials) comply in all respects with the Work Equipment Regulations 1998 and the Electricity at Work Regulations 1989. Nothing in this Subcontract shall excuse the Sub Contractor from complying with this or any other applicable legislation.

3.13 The Sub Contractor shall identify any special requirements particular to the Sub Contractor's trade in the Schedule.

3.14 Drawings: The Sub Contractor shall be deemed to be satisfied with the drawings of the Sub Contract Works and shall not necessarily indicate of the Works or the Subcontract Works when completed. The Sub Contractor shall produce working drawings for the Subcontract Works and maintain such drawings up to date as the Subcontract Works progress. The Subcontract Sum includes for the provision of all working drawings necessary for the proper execution of the Subcontract Works to the satisfaction of Spatial and the Principal.

3.15 The Sub Contractor shall keep on Site at all times a set of marked drawings showing details from the working drawings, or other services including but not limited to main cable routes, trunking runs, drain pipes for the purpose of issuing record drawings.

3.16 **Copyright:** Copyright in Documents shall remain vested in the Sub Contractor and the Sub Contractor grants and agrees to grant to Spatial with full title guarantee an irrevocable, royalty-free and non-exclusive licence to copy and use the Documents, to reproduce the contents of them and to reproduce the designs, works and inventions and sub-inventions and to be used in connection with the Sub Contract Works, including (but not limited to) the Sub Contractor's alteration, modification, improvement and repair of the Works. This licence shall carry the right to grant sub-licences and to be transferable to third parties.

3.17 Where ownership of the copyright or other intellectual property right in any Document prepared in connection with the Sub Contract Works is vested in any other person other than the Sub Contractor, the Sub Contractor shall procure for Spatial the benefit of a licence for such Documents as set out in clause 3.16 for the purposes referred to in that clause.

3.18 The Sub Contractor warrants to Spatial that the use of any of the Documents for any purpose set out in clause 3.16 shall not infringe the rights of any third party in relation to the Documents.

3.19 **Access to the Works and Work by Others:** Spatial shall give to the Sub Contractor such access during the Site Working Hours as shall be necessary to enable the Sub Contractor to carry out and complete the Sub Contract Works in accordance with the Sub Contract subject always to such access being restricted as necessary to accommodate the requirements of all other parties who require access to the Site.

3.20 The Sub Contractor shall not be entitled to an extension of time or claim, whether as damages or otherwise, any additional payment nor an extension of time by virtue of others working on the Site during the performance of the Sub Contract Works nor if Spatial alters the arrangements for access (unless such alterations effectively prevent or substantially hinder the Sub Contractor from performing his obligations).

3.21 The Sub Contractor is to ensure that their and their Suppliers' employees, agents and contractors hold and produce to Spatial on request a CSCS or affiliated card. At the sole discretion of Spatial, any such person who does not hold such a card may be refused entry to the Site. Any costs and/or damages incurred by Spatial as a consequence of refusal of entry of any person to the Site creating a delay to the progress of the Works shall be paid by the Sub Contractor and recovered as a debt by Spatial or set-off from any payment due to the Sub Contractor under this Sub Contract. The Sub Contractor shall not be entitled to an extension of time or an increase in the Subcontract Sum because of such refusal of entry to the Site of any person.

3.22 **Co-ordination and Setting Out of the Sub Contract Works:** The Sub Contractor shall appoint a Sub Contractor's Representative who shall have the authority to act for the Sub Contractor in all respects and who shall supervise and superintend the carrying out of the Sub Contract Works and ensure there is a full exchange of information with all other parties in connection with the Works. The Sub Contractor's Representative shall be available during the Site Working Hours and shall, if required by Spatial, attend all meetings on Site in relation to the Works and/or the Site.

3.23 The Sub Contractor shall set out the Subcontract Works in accordance with such criteria and/or instructions for setting out as may be notified by Spatial for time to time. The Sub Contractor shall be responsible for, and shall at no cost to Spatial, amend any errors arising from the Sub Contractor's inaccurate setting out.

3.24 The Sub Contractor shall be responsible for taking its own site dimensions, checking runs and levels, and marking out for builder's work and for obtaining all information necessary to carry out the Subcontract Works.

3.25 The Sub Contractor shall satisfy itself in good and sufficient time before commencing any part of the Sub Contract Works as to the position; dimensions and suitability of any previous work, which might affect the Sub Contract Works and shall promptly advise Spatial in writing if any such previous work is out of position, wrongly dimensioned or in any other way unsuitable. The Sub Contractor shall not be entitled to any adjustment of the Sub Contract Sum or to an extension of time in respect of any discrepancy in position or dimension or other unsuitability of any such previous work unless the Sub Contractor shall have advised Spatial of the same in accordance with this clause.

3.26 **Attendance and Site Facilities:** The Subcontract Sum includes the costs of all attendances set out in the Schedule.

3.27 The Sub Contractor shall be responsible for its own building work including but not limited to openings up to 50mm in diameter and for the removal of single brick/blocks, subject to the prior written approval of Spatial.

3.28 The Sub Contractor shall be responsible for removing from the Site all debris, and surplus or redundant materials resulting from the performance of the Subcontract Works during the course of the Contract and at Practical Completion and before Principal Practical Completion. All costs caused to Spatial due to the Sub Contractor not complying with this clause shall be a debt due to Spatial shall either be recoverable as a debt from the Sub Contractor or may be set off by Spatial from any payments due to the Sub Contractor under this Sub Contract.

3.29 The Sub Contractor shall be liable for the cost of replacement of any items of Plant and Equipment, Free Issue Material and materials and goods (whether Free Issue Materials and/or materials and goods are incorporated into the Sub Contract Works or not) stolen or damaged whilst on Site. All costs caused to Spatial because of such theft or damage shall be recovered as a debt due from the Sub Contractor or set off against any payment due to the Sub Contractor under this Subcontract.

3.30 Unless specified in the Schedule, there shall be no parking facilities for the Sub Contractor at the Site and in such case the Sub Contractor shall make its own arrangements for parking.

3.31 **Deliveries to Site:** The Sub Contract Sum includes all costs connected with acceptance, unloading, checking, handling, placing into position, storage, protection and security of Plant and Equipment, the Sub Contractor's goods and materials and Free Issue Materials whether to be incorporated into the Sub Contract Works or not.

3.32 The Sub Contractor shall be responsible for the off-loading, transportation to storage and storage of Free Issue Materials and must retain. All costs caused to Spatial as a result of damage or loss to Free Issue Materials shall be recovered as a debt due from the Sub Contractor or set off against any payment due to the Sub Contractor under this Sub Contract.

3.33 All deliveries to Site in relation to the Subcontract Works shall be organised by the Sub Contractor and shall be addressed for Spatial's attention.

3.34 The Sub Contractor must Plant and Equipment, materials and goods and Free Issue Materials within the Site, from time to time, as instructed by the Principal and/or Spatial.

3.35 **Testing and Commissioning:** The Sub Contract Sum includes for testing and commissioning of the Sub Contract Works, including by sections if appropriate, in accordance with the requirements of the Specification and/or all applicable statutory requirements and codes of practice, and for the provision of all related documentation in connection with such testing and commissioning. The Subcontract Sum includes for all test equipment, rigs, and other such equipment necessary to carry out testing and commissioning in accordance with this Subcontract. Test documentation shall include test certificates and a set of marked up drawings indicating the extent of each test.

3.36 The Sub Contractor shall complete and return to Spatial a Sub Contractor Test & Measuring Equipment Form (insert reference) which shall provide calibration details of all test equipment to be used during the testing and commissioning of the Sub Contract Works. The Sub Contractor shall only conduct tests using calibrated test and measuring equipment for which there are valid calibration certificates.

3.37 The Sub Contractor shall allow adequate time for all tests and retests, including witnessing of such tests and re-tests by the Principal Contract Administrator and/or Spatial.

3.38 The Sub Contractor shall demonstrate through testing and commissioning to Spatial and/or Principal Contract Administrator, and/or any other representative of the Principal, that the Sub Contract Works are properly complete and/or installed, operate in the correct manner and are capable of functioning in accordance with the Specification and the Sub Contract.

3.39 The Sub Contractor shall ensure that all parts of the Subcontract Works are connected in final installation form to power supplies and all other services.

3.40 **Sub-Contractor Insurances:** The Sub Contractor shall maintain the Sub Contractor's Insurances as set out in the Schedule for a period of 12 years from Practical Completion or for 12 years after an earlier determination of the Sub Contractor's employment under the Sub Contract.

3.41 The Sub Contractor shall provide evidence of the Sub Contractor's Insurances when requested by Spatial from time to time. Should the Sub Contractor fail to, or be unable to produce satisfactory evidence of the Sub Contractor's Insurances Spatial shall have the right to affect the necessary insurance and set off the cost of such insurances from payments to the Sub Contractor under this Sub Contract or recover such sums as a debt from the Sub Contractor.

3.42 **Professional Indemnity Insurance:** The Sub Contractor warrants that it shall maintain professional indemnity insurance cover with a reputable insurance company with a limit of indemnity of not less than the amount specified in the Schedule in respect of each and every claim to cover any claims made against the Sub Contractor in relation to the design of the Sub Contract Works and, provided that such insurance is available in the market, the Sub Contractor shall continue to maintain such insurance with that insurer or another reputable insurer throughout the duration of the Sub Contract Works and for a period of 12 years following the date of Practical Completion or for 12 years after an earlier determination of the Sub Contractor's employment under the Sub Contract.

3.43 The Sub Contractor shall provide evidence of professional indemnity insurance when requested by Spatial from time to time. Should the Sub Contractor fail to, or be unable to produce satisfactory evidence of the Sub Contractor's Insurances Spatial shall have the right to affect the necessary insurance and set off the cost of such insurances from payments to the Sub Contractor under this Sub Contract or recover such sums as a debt from the Sub Contractor.

4. HEALTH, SAFETY AND ENVIRONMENT

4.1 The Sub Contractor shall comply with all construction design, safety, health, environmental, welfare and all other applicable legislation including but not limited to the Health and Safety at Work Act 1974, the Construction (Design and Management) Regulations 2007 and the Site Waste Management Plans Regulations 2008, and with the notes, orders and/or regulations of any competent authority dealing with matters of construction design, safety, health, environmental and welfare. The Sub Contractor shall comply with all requirements under this clause at no cost to Spatial and without any extension of time.

4.2 The Sub Contractor shall appoint such competent persons as required and necessary to comply with clause 4.1.

4.3 Notwithstanding clause 4.1, the Sub Contractor shall carry out the Subcontract Works in accordance with the Health & Safety Plan and the provisions of clause 4.0.

4.4 The Sub Contractor shall do all that is reasonably practicable to promote co-operation between companies, groups and individuals working at or in connection with the Works, the Sub Contract Works and the Site so that health and safety is a collaborative effort.

4.5 The Sub Contractor shall provide risk and COSHH assessments, safety plan and/or method statements for the Subcontract Works in accordance with all applicable statutory requirements and as instructed by Spatial from time to time. The Sub Contractor shall design, develop, and operate suitable management procedures, risk control systems and workplace precautions that are proportionate to the complexity, hazards and risks identified by the Sub Contractor for the Subcontract Works at the Site.

4.6 The Sub Contractor shall review its assessments carried out under its COSHH obligations to identify any high-risk substances that it has proposed to be used for the Sub Contract Works and where it is reasonably practicable to do so, the Sub Contractor shall identify, substitute and use safer substances or processes to control the risks.

4.7 The Sub Contractor shall always employ competent workers to carry out and/or supervise the Subcontract Works and where required will provide adequate proof to Spatial and/or the Principal Contractor of their competence.

4.8 If in Spatial's opinion, the Sub Contractor's site supervision of the Sub Contract Works is inadequate, or any person employed by the Sub Contractor is incompetent or negligent, the Sub Contractor shall upon the request in writing of Spatial immediately remove such persons from the Sub Contract Works and improve the level of supervision.

4.9 The Sub Contractor shall provide information to Spatial as may be requested from time to time for inclusion in the Health & Safety File. Such information shall be sufficient to inform third parties of the risks that have to be managed during maintenance, repair, or renovation of the Subcontract Works.

4.10 The Sub Contractor shall observe and comply with Spatial's Health & Safety Policy, Organisation & Arrangements, Spatial's Health & Safety booklet (copies of which are available for inspection by the Sub Contractor by appointment at all Spatial offices). The Sub Contractor shall ensure that the contents of these publications shall be communicated to its employees, agents and Suppliers involved in the Subcontract Works. The Sub Contractor's compliance with these publications shall not in any way absolve or excuse the Sub Contractor from its duty to comply with all applicable legislation.

4.11 The Sub Contractor shall provide a copy of the Sub Contractor's Safety Policy Statement prior to commencement of any Subcontract Works on Site.

4.12 All Sub Contractor employees, agents and Suppliers attending Site shall attend the Principal Contractor's induction course if applicable, prior to commencing work on Site. All time and costs associated with this requirement are included in the Subcontract Sum.

4.13 Plant and Equipment shall comply with the Provision and Use of Work Equipment Regulations 1998, the Electricity at Work Regulations 1989, and any other applicable legislation. The Sub Contractor's and its Suppliers employees, agents and contractors shall have received adequate information, instruction and training for the Plant and Equipment.

4.14 The Sub Contractor shall always comply with the Work at Height Regulations 2005 (as amended).

4.15 **Safety Equipment:** The Sub Contractor's employees, agents and Suppliers shall wear full PPE. The Sub Contractor shall provide free of charge to the Sub Contractor's employees, agents and Suppliers full PPE as is necessary.

4.16 Notwithstanding anything in this Subcontract, the Sub Contractor shall throughout duration of the Subcontract be responsible for the safety of all its and its Suppliers' employees, agents, Sub Contractors, and contractors present at any time at the Site. If, subject to clauses 4.13 and 4.14, any such person fails to have all the necessary safety equipment and clothing to enable the Sub Contract Works to be carried out in accordance with this Sub Contract then Spatial may (at its sole discretion) provide such person such additional safety equipment necessary to enable such person to carry out the Sub Contract Works (who shall receive the additional safety equipment as agents for and on behalf of the Sub Contractor) and the Sub Contractor shall at the cost of the Sub Contractor, the price of such item of additional safety equipment may be stated in the Schedule or if not, it shall be the actual cost to Spatial of the relevant equipment plus 20%. Spatial shall be entitled to set off the cost of such additional safety equipment from any payment to the Sub Contractor under this Subcontract or may recover the sum from the Sub Contractor as a debt.

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4.17 Environmental: The Sub Contractor shall assist Spatial and the Principal in considering ways in which the environmental performance and sustainability of the Works might be improved, and the environmental impact reduced. Consideration shall be given to: (1) reductions in waste; (2) reductions in energy consumption; (3) reductions in mains water consumption; (4) reductions in CO2 emissions; (5) reductions in materials from non-renewable resources; (6) reductions in commercial vehicle movements; (7) maintenance or optimisation of ecologically valuable habitat and of biodiversity; and (8) improvements in whole life performance.

4.18 The Sub Contractor shall provide to Spatial all information that Spatial requires regarding the environmental impact of the supply and use of materials and goods selected by the Sub Contractor.

4.19 The Sub Contractor may suggest changes to the Works and/or the Sub Contract Works which may result in financial benefits to the Principal such as a reduction in the capital cost of the project, lifecycle or operating costs, or improvement in environmental performance.

5. PAYMENT AND PRICE

5.1 The Sub Contract Sum is inclusive of all costs to the Sub Contractor of carrying out its obligations in accordance with this Sub Contract and save for VAT as may be applicable, the provisions of clause 7.0 and fluctuations (If this option is selected in the Sub Contract Order) the Sub Contractor shall not be entitled to any increase in the Sub Contract Sum.

5.2 Notwithstanding this clause 5.0, and subject to clause 2.3, no payments shall be made to the Sub Contractor until Spatial has received verification from HMRC of the Sub Contractor's tax status under the Construction Industry Scheme operated by the Finance Act 2004 and any and all payments thereafter shall be subject to any appropriate deduction under the Construction Industry Scheme.

5.3 The Subcontractor shall submit an Interim Application to Spatial: (1) commencing on the first Application Date and thereafter at the specified intervals or dates in the Sub Contract Order or the Schedule or as defined in clause 1.1, up to and including the month following Practical Completion; or (2) where payment stages are set out in the Schedule in accordance with the Application Date stated for each stage or as defined in clause 1.1, up to and including the month following Practical Completion. An interim Application submitted after an Application Date will not be considered by Spatial until the following Application Date and the due date and the provisions for payment under this clause 5.0 shall accordingly apply.

5.4 The Sub Contractor's Interim Application shall state the sum that the Sub Contractor considers will become due on the due date for payment and the basis on which the sum is calculated and shall also indicate: (1) its valuation of the Sub Contract Works properly completed at the Application Date subject to title in goods and materials vesting in Spatial pursuant to clause 9.1 and less Retention and previous payments made to the Sub Contractor pursuant to previous Interim Applications; or (2) where payment stages are set out in the Schedule in accordance with such stages, details of the payment stage and the payment due less Retention; and (3) the amount of Value Added Tax properly chargeable thereon, such invoice to be supported by such documents, vouchers or receipts as shall be necessary for computing the same or as may be required by Spatial.

5.5 Interim Applications shall be remitted by the Sub Contractor in accordance with Spatial's instructions and supported by such evidence as Spatial may request.

5.6 All Interim Applications which are not accompanied by payment of the materials and goods to be accounted for by a priced schedule shall be rejected by Spatial.

5.7 Interim Applications which include a request for payment for materials stored off Site will be considered by Spatial only to the extent permitted by the Principal Contract. Payment for such materials shall be entirely at Spatial's discretion and shall be subject to the receipt of an appropriate financial guarantee and/or vesting certificate from the Sub Contractor, which may take the form of a guarantee or bond or certificate of indemnity.

5.8 Spatial shall be entitled to deduct from or set off against any payment due to the Sub Contractor under this Sub Contract any sum or sums which the Sub Contractor may be liable to pay Spatial or any other company within the Spatial of Companies.

5.9 The due date for payment of an Interim Application shall be 17 days from the end of the month in which the Interim Application is received.

5.10 The final date for payment of an Interim Application shall be 45 days after the payment date for payment providing always that the Sub Contractor shall submit a VAT invoice within 5 days of reasonable request and the Sub Contractor acknowledges that any invoice received by Spatial out of this timescale may cause a delay in payment by Spatial beyond the 45 days proportionate to the delay of the receipt of the VAT invoice.

5.11 Not later than 5 days after the date on which a payment becomes due under the Sub Contract Spatial shall give a notice specifying the sum that Spatial considers to be or to have been due at the due date for payment and the basis on which that sum is calculated (an "Interim Payment Notice").

5.12 If Spatial intends to pay less than the sum stated as due in the Interim Payment Notice (or Interim Application as the case may be) Spatial shall, not later than 2 days before the final date for payment, give the Sub Contractor notice of that intention (a "Pay Less Notice"). The Pay Less Notice shall specify the sum that Spatial considers to be due to the Sub Contractor at the date the notice is given and the basis on which the sum has been calculated. Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall be no less than the sum stated as due in the Pay Less Notice.

5.13 Number not used.

5.14 No later than 4 weeks after Practical Completion the Sub Contractor shall send to Spatial all documents necessary for the purpose of calculating the final Subcontract Sum. If the Sub Contractor fails to provide such documents to the satisfaction of Spatial, Spatial shall use all documents already in its possession and such other methods as it deems reasonable to calculate the final Subcontract Sum. No later than 2 months after the end of the Defects Liability Period Spatial shall issue the final statement of account which shall set out all adjustments to the final Sub Contract Sum calculated by Spatial ("Final Statement of Account").

5.15 Unless the Sub Contractor serves notice to Spatial setting out the grounds for disputing the Final Statement of Account within 30 days of its issue under clause 5.14 it shall become final and conclusive as to the final Sub Contract Sum.

5.16 The due date for payment of the balance of the Final Statement of Account shall be 45 days after the issue of the Final Statement of Account and the final date of payment shall be 45 days thereafter providing always that the Sub Contractor shall submit a VAT invoice equal to the amount stated in the Final Statement of Account within 5 days of receipt of the Final Statement of Account and the Sub Contractor acknowledges that any invoice received by Spatial out of this timescale may cause a delaying payment by Spatial beyond the 45 days proportionate to the delay of the receipt of the VAT invoice.

5.17 Not later than 5 days after the due date for payment Spatial shall serve a notice specifying the sum that it considers to be due at the due date for payment from Spatial to the Sub Contractor or from the Sub Contractor to Spatial and the basis on which that sum is calculated (a "Final Payment Notice"). The Final Payment Notice shall show the final Sub Contract sum less: (1) all previous payments made to the Sub Contractor under this Sub Contract; (2) any sums that Spatial is entitled to set off under the Sub Contract; and (3) any other sums Spatial is entitled to deduct under this Sub Contract.

5.18 If the party who is required to pay the final payment ("the payee") intends to pay less than the sum stated in the final Payment Notice he shall, not later than 2 days before the final date for payment, give to the other Party notice of that intention (a "Pay Less Notice"). The Pay Less Notice shall specify the sum that the payee considers to be due to the other party at the date the notice is given and the basis on which the sum has been calculated. Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall be no less than the sum stated as due in the Pay Less Notice.

5.19 Where the Subcontract Works have not reached Practical Completion Spatial shall deduct and retain Retention. The cumulative Retention shall be reduced to half at Practical Completion and shall be included in the next interim payment due in accordance with clause 5.0 after Practical Completion.

5.20 The remaining balance of Retention shall be deducted and retained until the payment of the balance of Final Statement of Account or until the end of the Defects Liability Period whichever is later. If the end of the Defects Liability Period is later, the due date for payment of the remaining balance of Retention shall be 45 days from the end of the Defects Liability Period and the final date for payment shall be 17 days after the sum becomes due.

5.21 Not later than 5 days after the date on which the payment of the balance of Retention becomes due Spatial shall give a notice specifying the sum that Spatial considers to be or have been due at the due date for payment and the basis on which that sum is calculated (a "Final Retention Payment Notice").

5.22 If Spatial intends to pay less than the sum stated as due in the final Retention Payment Notice Spatial shall, not later than 2 days before the final date for payment give the Sub Contractor notice of that intention (a "Pay Less Notice"). The Pay Less Notice shall specify the sum that Spatial considers to be due to the Sub Contractor at the date the notice is given and the basis on which the sum has been calculated. Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall be no less than the sum stated as due in the Pay Less Notice.

5.23 In the event that the Final Statement of Account is incomplete Spatial shall determine acting reasonably provided always that any such extension of time shall not exceed any extension of time to which Spatial is properly entitled under the Principal Contract.

5.24 Dayworks: If specifically instructed in writing by Spatial, the Sub Contractor may undertake work to be carried out by the Sub Contractor if Spatial requires any such work. The Sub Contractor shall be entitled to claim payment for such work under the Sub Contract Works from the Principal irrespective of whether any Payment Notices or Pay Less Notices have been issued pursuant to clause 5.0 and such payment to the Sub Contractor shall be made 7 days after Spatial receives payment. For the purpose of this clause 5.23 only "third party" shall mean any person (whether a corporate entity or otherwise) who makes a payment (whether directly or indirectly) to the Principal in respect of such sums and "insolvent" shall have the meaning ascribed to it by Section 113 of the Housing Grants Construction and Regeneration Act 1996.

5.25 In the event that Spatial opt to operate a self-billing system for the payment of VAT as approved by HM Revenue and Customs, on reasonable request the Sub Contractor shall promptly complete and execute a form confirming suspension of VAT in accordance with such self-billing system and return it as directed by Spatial.

5.26 If Spatial fails to make payment to the Sub Contractor of any sum which is due to the Sub Contractor under this Sub Contract by the final date for payment of that sum, Spatial shall pay to the Sub Contractor in addition to the amount not paid simple interest thereon for the period from the final date for payment to the date payment is made. The rate of interest shall be 3% over the Base Rate of the Bank of England current at the date of Spatial's default. The Sub Contractor acknowledges that such rate is a substantial remedy for late payment (as defined in the Late Payment of Commercial Debts (Interest) Act 1998).

5.27 Dayworks: If specifically instructed in writing by Spatial, the Sub Contractor may undertake work to be carried out by the Sub Contractor if Spatial requires any such work. The Sub Contractor shall be entitled to claim a percentage that is fair and reasonable in line with the Sub Contractor's tender.

5.27 For all aspects of the Sub Contract Works instructed as dayworks the Sub Contractor shall present all daywork timesheets for signature by Spatial's Representative by the Monday following the week in which the daywork was carried out and the Sub Contractor's failure to do so shall mean that Spatial will not be obliged to make any payment to the Sub Contractor in respect of such dayworks.

5.28 The signature of Spatial's Representative on any daywork timesheet shall be evidence that dayworks have been carried out but shall not constitute acceptance by Spatial that the hours claimed in respect thereof are reasonable or that the Sub Contractor is entitled to payment for such dayworks.

6. COMPLETION OF THE SUBCONTRACT WORKS

6.1 If the Sub Contractor fails to complete the Sub Contract Works by the Completion Date it shall pay or allow to Spatial as a debt from the Sub Contractor or by way of set-off from sums due to the Sub Contractor under this Sub Contract a sum equivalent to any loss or damage suffered by, and/or anticipated to be suffered by, Spatial and caused by such failure including, but not limited to, Spatial's management time, overhead charges and supervision and damages (whether liquidated or unliquidated) payable by Spatial under the Principal Contract. Spatial is hereby authorised to deduct or set off any amount payable under this clause from any payment which may at any time be due or have become due to the Sub Contractor whether under the Sub Contract or otherwise.

6.2 If the Sub Contractor shall be delayed in the execution of the Sub Contract Works by: (1) Force Majeure; or the order of any variation to the Sub Contract Works under clause 7.0; or (2) any breach of the Sub Contract or act of prevention by Spatial; or (3) suspension of the Sub Contract Works in accordance with clause 8.0 the Sub Contractor shall be entitled to suspend the Completion Date as Spatial may determine acting reasonably provided always that any such extension of time shall not exceed any extension of time to which Spatial is properly entitled under the Principal Contract.

6.3 It shall be a condition precedent to the Sub Contractor being granted an extension of time pursuant to clause 6.2 that the Sub Contractor shall notify Spatial in writing within 14 days of such event occurring that it is or may be prevented from completing the Sub Contract Works by the Completion Date. Except for suspension of the Sub Contract Works pursuant to clause 8.2, a failure to comply with this clause shall prevent the Sub Contractor from being entitled to an extension of time to the Completion Date and any associated loss, expense or damage.

7. VARIATIONS

7.1 Spatial may instruct a variation to the Sub Contractor's access date to the Site as may be set out in the Schedule by giving notice in writing to the Sub Contractor at any time up to 5 business days prior to such date. The Sub Contractor shall not be entitled to an increase in the Subcontract Sum and/or loss and expense because of or in connection with such variation.

7.2 Spatial may, at any time prior to Principal Practical Completion by notice in writing require the Sub Contractor to carry out a variation to the Subcontract Works. Notwithstanding anything to the contrary elsewhere in this Sub Contract, no variation to the Sub Contract Works shall be made necessary by reasons of negligence, omission or default of the Sub Contractor, its servants, agents and Suppliers and in such event the Sub Contractor shall not be entitled to any increase in the Sub Contract Sum or any extension of time to the Completion Date.

7.3 The Sub Contractor shall implement a variation immediately upon receiving notice of the same and the Sub Contractor shall provide a quotation for the variation to Spatial within five days from receipt of the notice. A failure by the Sub Contractor to provide a quotation pursuant to this clause and/or if such quotation is not agreed the Sub Contractor shall not be excused from implementing the variation and in such event the Sub Contractor shall be paid a fair and reasonable price for the variation.

7.4 The Sub Contractor's quotation shall comprise the following: (1) the value of the adjustment to the Sub Contract Sum for performing the additional work supported by all necessary calculations by reference, where relevant, to the rates and prices in the Sub Contractor's tender and including, where appropriate, allowances for any adjustment of preliminary items; (2) any adjustment to the period specified in the Sub Contract Order and/or the Schedule and/or an agreed programme for the completion of the Sub Contract Works to the extent that such adjustment is not included in any other extension of time which has been granted to the Sub Contractor, or included in any other quotation accepted by Spatial in accordance with this clause 7.0; (3) the value of the adjustment to the Sub Contract Sum for any delay and/or disruption likely to be caused to the regular progress and/or completion of the Sub Contract Works by reason of the instruction to carry out the additional work; (4) the method or carrying out the additional work; and (5) any other information required by Spatial.

7.5 Within 7 days of Spatial's receipt of the Sub Contractor's quotation, Spatial shall by written notice to the Sub Contractor state whether it accepts the Sub Contractor's quotation. The acceptance by Spatial of any quotation provided by the Sub Contractor in accordance with clause 7.0 shall be in full and final settlement of the matters and prices contained in the Sub Contractor's quotation and the Sub Contractor shall not be entitled to any further change to the Sub Contract Sum and/or any further extension of time to the Completion Date other than as set out in the quotation accepted by Spatial.

7.6 If Spatial does not accept the Sub Contractor's quotation, Spatial shall by written notice to the Sub Contractor either direct that the additional work shall be performed (which, after completion of the same by the Sub Contractor, shall be measured and valued by Spatial by reference to the rates and prices specified in the Sub Contractor's tender) or that the work shall be performed at a rate or rates to be agreed by Spatial. If Spatial does not accept the Sub Contractor's quotation, Spatial shall be entitled to its complete discretion to assess the rates that have been used to make up the Sub Contractor's tender and apply those assessed rates, or direct that the additional work shall not be performed.

7.7 Spatial may, in the event of a proposed variation pursuant to clause 7.2, request the Sub Contractor to prepare and furnish to Spatial as soon as reasonably practicable and in any event within five days of such request an estimate of the increase or decrease, if any, in the Sub Contract Sum and/or any extension of time required that would result if the proposed variation were to be effected.

7.8 If Spatial accepts the Sub Contractor's estimate submitted under clause 7.7, Spatial will issue a variation notice setting out the agreed increase or decrease in the Sub Contract Sum and/or the agreed extension of time to be granted. Such variation notice shall be entirely conclusive as to the effect of such variation. If the estimate submitted under Clause 7.7 is not agreed, Spatial may nevertheless issue the variation notice and the Sub Contractor shall be paid such sum and granted such extension of time as shall be fair and reasonable in all the circumstances. If a variation notice is issued, the Sub Contractor shall thereupon proceed to comply immediately with such notice.

7.9 Notwithstanding anything in this clause 7.0, Spatial shall not be obliged to make payment to the Sub Contractor for carrying out any variation to the Sub Contract Works unless Spatial has instructed the Sub Contractor to carry out such variation in writing.

7.10 The Sub Contractor shall submit full and proper substantiation and such information as is required by Spatial to the Sub Contractor's satisfaction, in support of any purport to either variation works or any additional entitlement. This requirement shall be a condition precedent to payment for the same. This information provided by the Sub Contractor shall clearly identify the source and basis of any purport to either variation works or any additional entitlement. A fully detailed breakdown of all calculations and rates including, but not limited to, time sheets and material invoices, shall be provided by the Sub Contractor.

8. SUSPENSION

8.1 Spatial shall have the right to suspend performance of the Subcontract Works by the Sub Contractor for any period Spatial requires upon giving written notice to the Sub Contractor who shall forthwith comply with such notice. Spatial may end suspension of the Subcontract Works by giving written notice to the Sub Contractor and the Sub Contractor shall forthwith resume performance the Subcontract Works. The Sub Contractor shall not be entitled to any adjustment to the Subcontract Sum, additional payment of any kind, costs, losses, or damages however caused arising as a result of suspension of the Subcontract Works pursuant to this clause.

8.2 Without prejudice to any other right of remedy, the Sub Contractor may suspend performance of all or any of its obligations under this Sub Contract where a sum due to the Sub Contractor pursuant to clause 5.0 is not paid by the final date for payment pursuant to clause 5.0. Such right to suspend shall not be exercised until the Sub Contractor has given 14 days' notice in writing to Spatial of its intention to suspend performance and stating the ground or grounds on which it intends to suspend performance of its obligations. The Sub Contractor's right to suspend performance under this clause shall cease immediately when payment in full is made.

9. TITLE AND RISK

9.1 Title to and property in any goods or materials shall vest in Spatial upon delivery and safe unloading at the Site by the Sub Contractor.

9.2 Notwithstanding any vesting in Spatial or the Principal, the Sub Contract Works and any materials or goods on Site for incorporation into or for use in connection with the Sub Contract Works shall until Practical Completion be at the risk of the Sub Contractor and any loss or damage to the Sub Contract Works shall be made good by the Sub Contractor at its own expense save where such loss or damage is caused by the negligent act or omission of Spatial, its servants or agents.

10. WARRANTIES AND INDEMNITIES

10.1 The Sub Contractor warrants to the extent that the Sub Contract Works have been or will be designed by the Sub Contractor that he has exercised or will exercise the level of competence to be expected of a professionally qualified and competent engineer or other appropriately qualified design professional experienced in designing works of a size, scope and purpose similar to the Sub Contract Works.

10.2 The Sub Contractor warrants that all machinery, equipment and other items (including but not limited to computer hardware, electronic equipment and computer software) incorporated into the Sub Contract Works are new, unused and of the most recent or current models or types and shall be free from defects in workmanship and materials and that, when completed, they shall be fit for the purposes intended in this Sub Contract.

10.3 The Sub Contractor shall indemnify Spatial in full against all liability, loss or damage (including costs, expense and legal expenses) to persons or property real or personal, arising out of the carrying out of the Sub Contract Works except where and to the extent such liability, loss or damage is caused by an act or omission of Spatial.

10.4 The Sub Contractor warrants that it will carry out and complete the Sub Contract Works in such a way so as not to directly or indirectly cause Spatial to be in breach of any provision of the Principal Contract and/or any other Contract made by Spatial in connection with the Works or incur any liability thereunder. The Sub Contractor hereby acknowledges that any breach or default by it of the Sub Contract may result in Spatial committing breaches and/or becoming liable in damages under the Principal Contract and/or any other Contract made by Spatial in connection with the Works and may occasion further loss and/or expense to Spatial in connection with the Works and Spatial and the Sub Contractor hereby acknowledge that any such damages, loss and expense are hereby agreed to be within the contemplation of the parties as being probable results of any such breach or default by the Sub Contractor and the Sub Contractor shall indemnify Spatial against any and all results of any such breach and/or default.

10.5 The Sub Contractor shall procure that Spatial is granted an irrevocable, worldwide, royalty-free licence in respect of any and all computer software embedded, loaded into or used in any form in the Sub Contract Works such licence to allow the use of the software for the purpose of the Works, its maintenance, modification and the granting of sub-licences to third parties. The licence granted to Spatial under this clause 10.5 shall be transferable to third parties.

10.6 The Sub Contractor shall indemnify Spatial in full against all liability, loss, or damage (including costs, expense, and legal expenses) arising out of the Sub Contractor's failure to comply with clause 10.5.

10.7 The Sub Contractor shall indemnify Spatial in full against all liability, loss or damage (including costs, expense and legal expenses) arising out of the infringement or alleged infringement of any third party's rights in relation to the computer software embedded, loaded or used in any form in the Sub Contract Works.

11. TERMINATION

11.1 If the Sub Contractor: (1) fails to proceed regularly and diligently with the Sub Contract Works after being required in writing to do so; or (2) without reasonable cause suspends the carrying out of the Sub Contract Works; or (3) refuses or persistently neglects after notice in writing from Spatial to remove defective work or improper materials; or (4) becomes insolvent as set out in clause 11.2; or (5) fails to comply with any applicable legislation; or (6) is in breach of this Sub Contract then without prejudice to any other rights and remedies it may have Spatial may, except in the case of sub-clause (4), by written notice (the "Notice") to the Sub Contractor require the Sub Contractor to remedy such failing and/or breach within 7 days from the date of the Notice. In the case of sub-clause (4), if the Sub Contractor fails to remedy its failing and/or breach within 7 days from the date of the Notice, Spatial may forthwith determine the Sub Contractor's employment under the Sub Contract and may elect to employ a third party to complete the Sub Contract Works or complete the Sub Contract Works itself.

11.2 For the purpose of clause 11.1(14), the Sub Contractor will be deemed to have become insolvent if it suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business, it suspends or threatens to suspend payment of its debts or its unable to or admits to being unable to pay its debts as they fall due (whether within the meaning of section 123 of Insolvency Act or otherwise), as an individual or, if a partnership, as any of the individual partners he enters into an agreement, compromise or composition in satisfaction of its debts or is the subject of a bankruptcy petition or order or as a company or as a partnership or limited liability partnership makes a compromise, composition or arrangement with its creditors or has a proposal for a voluntary arrangement for a composition of debts or a scheme of arrangements approved in accordance with the Insolvency Act 1986 or has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrator or has a petition for a winding-up order presented or a winding-up order made or (except for the purposes of an amalgamation or reconstruction) a resolution for voluntary winding-up is passed, a provisional liquidator, receiver or manager of its business or undertaking duly appointed, gives notice of intention to appoint or has an administrator or administrative receiver (as defined in the Insolvency Act 1986) appointed or possession taken of any property comprised in or subject to floating charge by or on behalf of the holders of any debentures secured by such a floating charge, or has any lien enforced or arrestment order made against it or served on any of its debtors on behalf of any of its creditors or commits a variety of insolvency as defined in the Insolvency Act 1986 or where the Sub Contractor is a foreign legal entity the Sub Contractor commits any such act or any such circumstances exist which would be analogous in such foreign jurisdiction.

11.3 Upon the termination of the Sub Contractor's employment under clause 11.1, Spatial may take possession of the Sub Contractor's Plant and Equipment, goods, and other things whatsoever brought onto the Site by the Sub Contractor and may use them for the purposes of executing, completing and maintaining the Sub Contractor Works. The Sub Contractor shall at no time bring any materials, equipment, plant, appliances and other things of his whatsoever onto the Site unless the above right has been reserved to Spatial in respect of time of all and each of them. Further the Sub Contractor shall, if required by Spatial, assign to Spatial without payment the benefit of any agreement for the supply of materials, equipment, plant, appliances or other things or work to be done and shall ensure prior to the commencement of the Sub Contract and as may be required from time to time that such benefits can be so assigned.

11.4 Where the Sub Contractor's employment under the Sub Contract is determined pursuant to sub-clause 11.1, Spatial shall not be obliged to make any further payment to the Sub Contractor: (1) if it has become insolvent, in respect of any sum already due insofar as Spatial has given or gives a Pay Less Notice under clause 5.0; or (2) if it has become insolvent after the last day on which a Pay Less Notice could have been given under clause 5.0, in respect of any sum already due and before the final date for payment; and (3) in respect of any other sum or sums which are not already due for payment under clause 5.0 including any Retention, until the Sub Contract Works have been completed, all defects in the Sub Contract Works have been made good by others and the Sub Contractor's Final Statement of Account is determined pursuant to clause 5.0. In calculating the amount due to/from the Sub Contractor, Spatial shall be entitled to set off any losses, costs, charges and expenses incurred by Spatial in completing the Sub Contract Works following such determination together with a reasonable sum by way of management time, overhead charges and supervision. Any sum payable by the Sub Contractor to Spatial under Spatial's final statement of account shall be payable by the Sub Contractor to Spatial on demand without prejudice to any other claim or right of action which Spatial may have against the Sub Contractor. Spatial is hereby authorised to deduct or set off any amount payable by the Sub Contractor under this clause from any payment which may at any time be due or have become due to the Sub Contractor whether under the Sub Contract or otherwise.

11.5 Determination of the Principal Contract: Subject to clause 11.6, if the Works are abandoned or the Principal Contract or Spatial's employment there under is determined by either party to the Principal Contract before the Sub Contractor has fully performed its obligations under the Sub Contract then the employment of the Sub Contractor shall thereupon determine and the Sub Contractor shall be entitled to be paid: (1) the value of the Sub Contract Works completed at the date of such determination; and (2) the value of work begun and executed but not completed at the date of such determination; and (3) the value of the unfixed materials and goods not prematurely delivered upon the Site for use in the Sub Contract Works the property in which has passed to the Principal under the provisions of the Principal Contract; and (4) the cost of materials or goods properly and necessarily ordered for the Sub Contract Works for which the Sub Contractor shall have paid or of which he is legally bound to accept delivery PROVIDED THAT on such payment by Spatial any materials or goods so paid for have become or shall become the property of Spatial less sums already paid by Spatial and subject to any set off or deduction due to Spatial under this Sub Contract. The Sub Contractor shall submit applications for payments referred to in this clause 11.5 which shall be made in accordance with the relevant provisions of clause 5 in respect of Interim Applications.

11.6 If the Works are abandoned or the Principal Contract or Spatial's employment there under is determined by the Principal in consequence of any breach of the Sub Contract by the Sub Contractor then the provisions as to payment set out in clause 11.5 shall not apply but the rights of Spatial and the Sub Contractor shall be as set out in clause 11.1 to 11.4 inclusive.

12. ASSIGNMENT AND SUB-LETTING

12.1 No part of the Sub Contract may be sub-let by the Sub Contractor without the prior approval in writing of Spatial and in the event of such consent being granted, the Sub Contractor shall not be relieved of any of its duties, responsibilities or liabilities under or arising out of the Sub Contract. The Sub Contractor shall procure that approved sub-letting occurs on terms and conditions that enables the Sub Contractor to comply with its obligations under the Sub Contract and that the Sub Contractor provides a collateral warranty to Spatial in accordance with clause 13.

12.2 Spatial may at any time assign, charge or transfer its interest in the Sub Contract and/or any part of it and/or any rights arising under it to any person upon written notice to the Sub Contractor without the consent of the Sub Contractor being required. The Sub Contractor shall not assign, charge or transfer its interest in the Sub Contract and/or any part of it and/or any rights arising under it to any person except with the prior written approval of Spatial and upon such terms as Spatial may reasonably require.

13. COLLATERAL WARRANTY

13.1 The Sub Contractor shall, as Spatial may at any time or times require, promptly execute, and deliver a deed or deeds of warranty in favour of any third party on such terms as Spatial shall reasonably require. It shall be a condition precedent to any liability of Spatial to pay the Sub Contractor that the Subcontract executes a deed or deeds of warranty when required to do so by Spatial.

14. ADJUDICATION

14.1 Spatial and the Sub Contractor each has the right to refer a dispute arising under or in connection with this Sub Contract for adjudication and either Party may give notice in writing to the other Party at any time of its intention to do so. The adjudication shall be conducted under the Scheme subject to and as amended by this clause 14.

14.2 Any dispute referred to adjudication shall be so referred in accordance with the Scheme subject to the following amendments to the Scheme (hereinafter to paragraphs of the Scheme shall be construed as references to such amendments as may be made to the Scheme from time to time or, if such amendment renders the reference inappropriate Spatial shall decide on the appropriate course of action): (1) Subject to clause 14.2(3) the referring party shall request the President or Vice President of the Royal Institution of Chartered Surveyors to select a person to act as adjudicator; (2) If the Adjudicator fails to give his decision in accordance with the provisions of the Scheme the President or Vice President of the Royal Institution of Chartered Surveyors shall appoint such other person from time to time as Adjudicator in place of the original Adjudicator; (3) The Parties agree that where any dispute which arises between them under this Sub Contract raises the same or parallel issues as a disputed dispute or difference between Spatial and any third party which has already been referred to adjudication, where practicable, the dispute shall be referred to and settled by such adjudicator appointed to settle the same or parallel issue between Spatial and such third party; (4) Paragraph 7(2) of Part I of the Scheme shall be amended by the addition of the following: "provided that the referral notice together with accompanying documents shall not exceed 10 single sided A4 pages; (5) The response to the referral shall be served on the adjudicator and on every other party to the dispute within 14 days of receipt, by the responding party, of the referral notice and all other accompanying documents; (6) Spatial and the Sub Contractor shall not (save in the proper course of disclosure to their professional advisers) for any reason disclose to any person or otherwise make use of and shall maintain strict confidence and secrecy in respect of any intention to refer any dispute to adjudication or any matter or information arising in or under any adjudication of any dispute

15. GENERAL

15.1 Spatial is a member of the Spatial of Companies whose holding company is Spatial Services and accordingly Spatial may perform any of its obligations or exercise any of its rights under or arising from the Sub Contract by itself or through any other member of its Group. Any act or omission of any such other member shall be deemed to be the act or omission of Spatial. Current companies include but are not limited to: Spatial Services Ltd Company No. 06765689; RFM Construction Ltd Company No. 03123895; RFM Facilities Management Ltd Company No. 06765527; RFM Building Repair Ltd Company No. SC247726; RFM Operations Centre Ltd Company No. 11738473; Ashlyn [Yorkshire] Ltd Company No. 3531174; & RFM M&E Ltd Company No. 06765530.

15.2 No waiver by Spatial of any breach of the Subcontract by the Sub Contractor shall be a waiver of any subsequent breach of the same or of any other provision of the Subcontract. No failure by Spatial to exercise any right or remedy arising under the Subcontract or at law shall be a waiver of its right to exercise such rights arising subsequently.

15.3 If any provision of the Sub Contract (or part of any provision) is found by any court, tribunal, arbitrator, adjudicator or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this agreement, and the validity and enforceability of the other provisions of this agreement shall not be affected. If a provision of this agreement (or part of any provision) is found illegal, invalid, or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid, and enforceable.

15.4 Any notice or other communication required to be given under this Sub Contract shall be in writing and shall be delivered by hand, or sent by post to Spatial's or the Sub Contractor's address specified on the Sub Contract Order or as may be amended by notice from the appropriate Party from time to time. Any notice or other communication shall be deemed to have been duly received: (1) if delivered by hand, when delivered to Spatial's or the Sub Contractor's address marked for the attention of Spatial's or the Sub Contractor's representative as named in the Schedule; or (2) if sent by post to Spatial's or the Sub Contractor's address, at 9.00 am on the second business day after posting. Except for notices pursuant to clauses 5.12 and/or 5.13 and/or clause 7.9, no notice or other communication required to be given under this Sub Contract shall be validly given if sent by e-mail or facsimile notwithstanding that the recipient of the email or facsimile may have acknowledged receipt in some way.

15.5 The Subcontract shall be governed by and construed in accordance with the laws of England. The Parties submit to the exclusive jurisdiction of the English Courts save for the purpose of enforcement of any award.

15.6 Except as provided in clause 15.1, no person who is not a party to this Subcontract shall have any right to enforce it pursuant to the Contracts (Rights of Third Parties) Act 1999.