



SubSub 2016

Sub-subcontract 2016

SPECIMEN

2016

GENERIC CONTRACTS

Sub-subcontract (SubSub)

Appropriate:

- for use where the main contract is a JCT contract.

Can be used:

- with any sub-contract;
- where the sub-subcontract works and/or sub-contract works are to be carried out in sections;
- for sub-subcontract works that are to be carried out on the basis of an adjusted sub-subcontract sum (adjustment for variations etc.) or by complete remeasurement.

Not suitable:

- where the sub-subcontract works are of a complex technical nature;
- where provisions which are fully back to back with the sub-contract are required.

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For details of 2016 Edition changes, see the Guidance Notes and the Tracked Change Document.

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Agreement

This Agreement is made the _____ 20 _____

Between

The Subcontractor _____

(Company No. _____)^[1]

of/whose registered office is at _____

And

The Sub-subcontractor _____

(Company No. _____)^[1]

of/whose registered office is at _____

[1] Where the Subcontractor or Sub-subcontractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number.

Recitals

Whereas

First the Subcontractor has entered into a subcontract with the Contractor ('the Subcontract'), details of which are as follows:

dated _____

between _____ ('the Contractor') and the Subcontractor

the conditions of the Subcontract are^[2] _____

brief description of the Subcontract Works _____

_____ ;

Second the Contractor has entered into a contract ('the Main Contract'), details of which are as follows:

dated _____

between _____ ('the Employer') and the Contractor

for the construction of^[3] _____

_____ ('the Main Contract Works')

at _____ ('the Site');

the conditions of the Main Contract are _____ ;

Third this Sub-subcontract relates to the following work^[4]:

_____ ('the Sub-subcontract Works');

Fourth for the purposes of the Sub-subcontract, the Pricing Documents comprise^[5] _____

_____ and

the following further documents form part of this Sub-subcontract^[6] _____

[2] Where the conditions of the Subcontract are not on a published form or contain amendments to a published form, a copy of the conditions or the amendments excluding all pricing information should be annexed to this form and signed or initialled by or on behalf of each Party. See also clause 8.1.

[3] Insert a brief description of the Main Contract Works.

[4] Insert a brief description of the Sub-subcontract Works.

[5] State any documents which show the rates and prices for the Sub-subcontract Works.

[6] Include those parts of the Construction Phase Plan applicable to the Sub-subcontract Works. Where there is an agreed BIM protocol that is relevant to this Sub-subcontract, it (or relevant parts of it) may be incorporated in the Sub-subcontract by including reference to it in the last entry in the Fourth Recital.

(collectively with this Agreement and its Conditions 'the Sub-subcontract Documents');

Fifth this Sub-subcontract is supplemented by the Framework Agreement(s) identified below^[7]:

_____;

Sixth whether any of Supplemental Provisions 1 to 6 (set out in the Schedule) apply is stated below^[8]:

(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)

Collaborative working * Supplemental Provision 1 applies/does not apply

Health and safety * Supplemental Provision 2 applies/does not apply

Cost savings and value improvements * Supplemental Provision 3 applies/does not apply

Sustainable development and environmental considerations * Supplemental Provision 4 applies/does not apply

Performance Indicators and monitoring * Supplemental Provision 5 applies/does not apply

Notification and negotiation of disputes * Supplemental Provision 6 applies/does not apply

where Supplemental Provision 6 applies, the respective nominees of the Parties are

Subcontractor's nominee

Sub-subcontractor's nominee

or such replacement as each Party may notify to the other from time to time

[7] State date, title and parties of any Framework Agreement(s) that apply to this Sub-subcontract – see the Guidance Notes. Delete the Fifth Recital if not applicable.

[8] Supplemental Provision 7 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and the Main Contract is subject to the PC Regulations.

Seventh for the purposes of clause 13 of the Conditions:

Payments – Valuation Dates for clause 13.1^[9]

(If no date is stated or the stated date is more than one month after the date of commencement of the Sub-subcontract Works on Site, the first Valuation Date is the date falling one month after the date of commencement of the Sub-subcontract Works on Site and, if no intervals are specified, thereafter at monthly intervals.)

The Valuation Date is

_____ 20 _____
and thereafter at intervals of

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[9] The Valuation Date should be the same as the first interim valuation date as applies under the Subcontract and the intervals as apply to interim valuation dates under the Subcontract should also apply to the intervals for Valuation Dates in this Sub-subcontract.

Articles

Now it is hereby agreed as follows

Article 1: Sub-subcontractor's obligations

The Sub-subcontractor shall carry out and complete the Sub-subcontract Works in accordance with the Sub-subcontract Documents.

Article 2: Sub-subcontract Sum

The Subcontractor shall pay to the Sub-subcontractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of

£_____ or such other sum as becomes payable in accordance with the Sub-subcontract Documents ('the Sub-subcontract Sum').

Article 3: Date for commencement

The date for commencement of the Sub-subcontract Works on Site will be

between _____ 20____ and _____ 20____

For the purposes of clause 9.1 of the Conditions, the period of notice required for the Sub-subcontractor to commence the Sub-subcontract Works on Site is

(If not specified, the period shall be 10 days.)

Article 4: Period for Completion

The period for completion of the Sub-subcontract Works ('the Period for Completion') is

_____ weeks from the expiry of the period of notice to commence the Sub-subcontract Works referred to in Article 3.

Article 5: Adjudication

If any dispute or difference arises under this Sub-subcontract, either Party may refer it to adjudication in accordance with clause 18.2.

Article 6: Arbitration

Arbitration applies/does not apply.^[10]

Where arbitration applies, then, subject to Article 5, any dispute or difference between the Parties arising out of or in connection with this Sub-subcontract, except in connection with the enforcement of any decision of an adjudicator, shall be referred to arbitration in accordance with clause 18.3.

[10] Delete as appropriate. If disputes or differences are to be determined by arbitration and not by legal proceedings, the words "does not apply" **must** be deleted. If neither entry is deleted Article 6 will not apply.

Article 7: Legal proceedings

Subject to Article 5 and (where it applies) to Article 6, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Sub-subcontract.

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Attestation

Note on Execution

This Agreement should be executed by both the Subcontractor and the Sub-subcontractor either under hand or as a deed. Where the Subcontract is executed as a deed it may be required that this Sub-subcontract should be similarly executed.

Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or his authorised representative should sign where indicated in the presence of a witness who should then sign and set out his name and address.

Execution as a Deed

If this Agreement is to be executed as a deed, each Party should use the relevant form marked 'Execution as a Deed' in accordance with the notes provided.

Other forms of Attestation

In cases where the forms of attestation set out are not appropriate, e.g. in the case of certain housing associations and partnerships or if a Party wishes an attorney to execute this Agreement on his behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.

As witness

the hands of the Parties
or their duly authorised representatives

Signed by or on behalf of
the Subcontractor

in the presence of:

_____ *witness' signature*

_____ *witness' name*

_____ *witness' address*

Signed by or on behalf of
the Sub-subcontractor

in the presence of:

_____ *witness' signature*

_____ *witness' name*

_____ *witness' address*

Notes on Execution as a Deed

- 1 For the purposes of execution as a deed, two forms are provided for execution, one for the Subcontractor and the other for the Sub-subcontractor. Each form provides four methods of execution, **(A)** to **(D)**, for use as appropriate. The full name of the Subcontractor or Sub-subcontractor (whether an individual, a company or other body) should be inserted where indicated at the commencement of the relevant form. This applies irrespective of the method used.
- 2 For public and private companies incorporated and registered under the Companies Acts, the three principal methods of execution as a deed are:
 - (A)** through signature by a Director and the Company Secretary or by two Directors;
 - (B)** by affixing the company's common seal in the presence of a Director and the *Company* Secretary or of two Directors or other duly authorised officers; or
 - (C)** signature by a single Director in the presence of a witness who attests the signature.

Methods **(A)** and **(C)** are available to public and private companies whether or not they have a common seal. (Method **(C)** was introduced by section 44(2)(b) of the Companies Act 2006.) Methods **(A)** and **(C)** are not available under companies legislation to local authorities or to certain other bodies corporate, e.g. bodies incorporated by letters patent or private Act of Parliament that are not registered under companies legislation and such bodies may only use method **(B)**.
- 3 Where method **(A)** is being used, delete the inappropriate words and insert in the spaces indicated the names of the two Directors, or of the Director and the Company Secretary, who are to sign.
- 4 If method **(B)** (affixing the common seal) is adopted in cases where either or both the authorised officers attesting its affixation are not themselves a Director or the *Company* Secretary, their respective office(s) should be substituted for the reference(s) to Director and/or to *Company* Secretary/Director. (In the case of execution by bodies that are not companies, the reference to "*Company*" under the second signature should be deleted where appropriate.)
- 5 Method **(C)** (execution by a single Director) has been introduced primarily, but not exclusively, for 'single officer' companies. The Director should sign where indicated in the presence of a witness who should then sign and set out his name and address.
- 6 Where the Subcontractor or Sub-subcontractor is an individual, he should use method **(D)** and sign where indicated in the presence of a witness who should then sign and set out his name and address.

Executed as a Deed by the Subcontractor

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors **of the company** ^{2, 3}

(Print name of signatory)

and

(Print name of signatory)

Signature Director

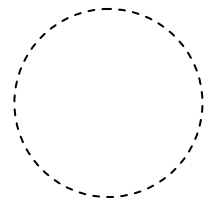
Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate** ^{2, 4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director **of the company** ^{2, 5}

Signature Director

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature **of the individual** ⁶

Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.

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Executed as a Deed by the Sub-subcontractor

namely ¹ _____

(A) acting by a Director and the Company Secretary/two Directors **of the company** ^{2,3}

(Print name of signatory)

and

(Print name of signatory)

Signature Director

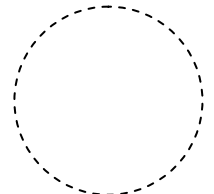
Signature Company Secretary/Director

(B) by affixing hereto the common seal **of the company/other body corporate** ^{2,4}

in the presence of

Signature Director

Signature Company Secretary/Director



[Common seal of company]

(C) by attested signature of a single Director **of the company** ^{2,5}

Signature Director

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

(D) by attested signature **of the individual** ⁶

Signature

in the presence of

Witness' signature _____ (Print name) _____

Witness' address _____

Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.

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Conditions

Definitions

- 1 Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, words and phrases defined in the Agreement shall have the same meanings in these Conditions and the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated or referred to below:

<i>Word or phrase</i>	<i>Meaning</i>
Agreement:	the Agreement to which these Conditions are annexed, consisting of the Recitals and the Articles.
CDM Regulations:	the Construction (Design and Management) Regulations 2015.
Conditions:	clauses 1 to 18 of these Conditions, together with and including the Schedule hereto.
Construction Phase Plan:	those parts of the Construction Phase Plan for the Main Contract that are applicable to the Sub-subcontract Works and are annexed to this Sub-subcontract, together with any relevant updates and revisions of it by the Principal Contractor notified to the Sub-subcontractor before or during the progress of the Sub-subcontract Works.
Local or Public Authority:	a body that is a 'contracting authority' as defined by the PC Regulations.
Main Contract:	see the Second Recital .
PC Regulations:	the Public Contracts Regulations 2015.
Pricing Documents:	the document(s) identified as such in the Fourth Recital , showing rates and prices.
Sub-subcontract Documents:	see the Fourth Recital .
Sub-subcontract Works:	the works referred to in the Third Recital , as varied (where applicable) under clause 11 .
Valuation Date:	see the Seventh Recital .

Agreement etc. to be read as a whole

- 2 The Agreement and these Conditions are to be read as a whole. Nothing contained in any other Sub-subcontract Documents, nor anything in any Framework Agreement, shall override or modify the Agreement or these Conditions.

Headings, references to persons, legislation etc.

- 3 In the Agreement and these Conditions, unless the context otherwise requires:
- .1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Sub-subcontract;
 - .2 the singular includes the plural and vice versa;
 - .3 a gender includes any other gender;
 - .4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate; and

- .5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom.

Reckoning periods of days

- 4 Where under this Sub-subcontract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday that day shall be excluded.

Contracts (Rights of Third Parties) Act 1999

- 5 Nothing in this Sub-subcontract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

Giving or service of notices and other documents

- 6 .1 A notice or other document may be served by any effective means.
- .2 A notice or other document shall be treated as effectively served if it is addressed, pre-paid and delivered by post:
- .1 to the addressee's last known principal residence, or, if he is or has been carrying on a trade or business, his last known principal business address; or
- .2 where the addressee is a body corporate, to the body's registered or principal office.

Sub-subcontractor's obligations

- 7 .1 The Sub-subcontractor shall carry out and complete the Sub-subcontract Works with due diligence, in a proper and workmanlike manner and in compliance with the Sub-subcontract Documents and the Construction Phase Plan.
- .2 The Sub-subcontractor shall provide goods and materials of the standard stated in the Sub-subcontract Documents or, where no standard is so stated, of a satisfactory quality.
- .3 The Sub-subcontractor shall take all reasonable steps to encourage employees and agents of the Sub-subcontractor and those engaged by him in the execution of the Sub-subcontract Works to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.
- .4 The Sub-subcontractor shall provide everything required to carry out and complete the Sub-subcontract Works except for the attendances set out in the Sub-subcontract Documents which others shall provide free of charge to the Sub-subcontractor.
- .5 The Sub-subcontractor shall not make any assignment of the benefit of this Sub-subcontract nor sub-contract any of the Sub-subcontract Works, without the Subcontractor's written consent.
- .6 The Sub-subcontractor shall comply with, and give all notices required by, any statute, any statutory instrument, rule or order or any regulation or bye-law applicable to the Sub-subcontract Works and to the extent required by the Sub-subcontract Documents, pay any fees and charges payable in respect of the Sub-subcontract Works.

Main and Subcontract

- 8 .1 The Sub-subcontractor shall be deemed to know the provisions of the Subcontract insofar as they apply to the Sub-subcontract Works (other than details of the Subcontractor's pricing). The Subcontractor shall, if so requested by the Sub-subcontractor, provide to the Sub-subcontractor a copy of the Subcontract (omitting details of the Subcontractor's pricing).
- .2 The Sub-subcontractor shall carry out and complete the Sub-subcontract Works so that no act or omission of the Sub-subcontractor shall result in any breach of contract by the Subcontractor.
- .3 The Sub-subcontractor shall perform the obligations and assume the liabilities of the Subcontractor under the Subcontract to the extent that such obligations and liabilities relate to the Sub-subcontract Works.

Commencement and completion

- 9 .1 The Sub-subcontractor shall, upon the expiry of the period stated in Article 3 from the Subcontractor's written direction to commence the Sub-subcontract Works, commence the Sub-subcontract Works on Site.
- .2 Subject to receipt by the Sub-subcontractor of the Subcontractor's written direction to commence the Sub-subcontract Works in accordance with clause 9.1 and subject to the provisions of clause 12, the Sub-subcontractor shall:
- .1 proceed with the Sub-subcontract Works regularly and diligently and reasonably in accordance with the progress of the Subcontract Works and the Main Contract Works; and
- .2 achieve practical completion of the Sub-subcontract Works within the Period for Completion.
- .3 The Subcontractor shall comply with the CDM Regulations, shall provide sufficient access to the Site for the Sub-subcontractor to perform his obligations under this Sub-subcontract and shall in no way hinder or prevent the Sub-subcontractor, whether by act or omission, from performing such obligations.
- .4 The Subcontractor shall determine and notify the Sub-subcontractor in writing of the date when the Sub-subcontract Works are practically complete.
- .5 The Subcontractor shall, if he is so notified, notify the Sub-subcontractor in writing as soon as reasonably practicable of the date of practical completion and of the date of the expiry of the rectification period under the Main Contract.
- .6 The Subcontractor shall notify the Sub-subcontractor of any defects that appear in the Sub-subcontract Works during the rectification period of the Main Contract Works and the Sub-subcontractor shall, at the Sub-subcontractor's expense, make good such defects within a reasonable time from notification.

Subcontractor's directions

- 10 .1 The Subcontractor may issue written directions which the Sub-subcontractor shall forthwith carry out.
- .2 If directions are given orally, they shall, within 2 working days, be confirmed in writing by the Subcontractor.
- .3 Except as provided in clause 11, the Sub-subcontractor shall not be entitled to any additional payment in respect of the Subcontractor's directions.
- .4 If within 5 days after receipt of a written notice from the Subcontractor requiring compliance with a direction, the Sub-subcontractor does not comply, then the Subcontractor may employ and pay other persons to carry out the work and all additional costs incurred shall be due to the Subcontractor.

Variations

- 11 .1 The Sub-subcontractor shall carry out any reasonable variation of the Sub-subcontract Works or changes in the order or manner in which they are to be carried out that is directed in writing by the Subcontractor ('variation').
- .2 The Subcontractor and the Sub-subcontractor shall endeavour to agree a price prior to the Sub-subcontractor carrying out the direction.
- .3 Failing agreement under clause 11.2, variations shall be valued by the Subcontractor on a fair and reasonable basis, with reference, where available and relevant, to rates and prices in the Pricing Documents, and such valuation shall also include any direct loss and/or expense incurred by the Sub-subcontractor due to the regular progress of the Sub-subcontract Works being affected by compliance with any variation, provided that the Sub-subcontractor notifies the Subcontractor as soon as reasonably practicable that it has been incurred.
- .4 The Sub-subcontractor shall not make any alteration to the Sub-subcontract Works, other than as directed pursuant to clause 11.1.

Extension of time

- 12 .1 If the Sub-subcontractor is delayed in completing the Sub-subcontract Works within the Period for Completion by the ordering of any variation of the Sub-subcontract Works or for other reasons beyond the control of the Sub-subcontractor, the Sub-subcontractor shall notify the Subcontractor in writing and the Subcontractor shall make such extension of time (if any) as is reasonable.
- .2 The Sub-subcontractor shall constantly use his best endeavours to prevent or minimise any delay in the progress of the whole or any part of the Sub-subcontract Works.

Payments – due dates and amounts

- 13 .1 The due dates for payments to the Sub-subcontractor shall in each case be the date 17 days after the relevant Valuation Date, commencing with the Valuation Date next following the commencement of the Sub-subcontract Works on Site.
- .2 The amount of each payment due shall be the value of work properly carried out by the Sub-subcontractor calculated as at the Valuation Date, plus the whole of any amounts payable under clause 11.3 or 15.2 and less the total amount due in previous payments. The value of work shall be determined in accordance with the rates and prices specified in the Pricing Documents or, where there are no applicable rates or prices, by reference to the Sub-subcontract Sum.

Payment – final date and notices

- 14 .1 Subject to clause 14.4, the final date for each payment shall be 13 days after the due date.
- .2 Not later than 5 days after each due date the Subcontractor shall give a payment notice to the Sub-subcontractor which shall state the sum that he considers to be or have been due to the Sub-subcontractor in accordance with clause 13 at the due date and the basis on which that sum has been calculated and, subject to any notice given under clause 14.5, the sum to be paid by the Subcontractor shall be the sum specified in the payment notice.
- .3 If the Subcontractor fails to give a payment notice in accordance with clause 14.2, the Sub-subcontractor may at any time after the 5 day period referred to in clause 14.2 make a payment application to the Subcontractor stating the sum that he considers to be or have been due at the due date and the basis on which that sum has been calculated. In that event the sum to be paid by the Subcontractor shall, subject to a notice given under clause 14.5, be the sum stated as due in the Sub-subcontractor's payment application.
- .4 Where the Sub-subcontractor makes a payment application under clause 14.3 the final date for payment of the sum specified in it shall be regarded as postponed by the same number of days as the number of days after expiry of the 5 day period referred to in clause 14.2 that the Sub-subcontractor's payment application is made.
- .5 If the Subcontractor intends to pay less than the sum stated as due from him in his payment notice or, where applicable, in the Sub-subcontractor's payment application, he shall not later than 4 days before the final date for payment give the Sub-subcontractor notice of that intention stating the sum that he considers to be due to the Sub-subcontractor at the date he gives notice under this clause 14.5 and the basis on which that sum has been calculated. Where such notice has been given, the sum to be paid on or before the final date for payment shall not be less than the amount stated as due in the notice.
- .6 In relation to the requirements for the giving of notices under this clause 14, it is immaterial that the amount then considered to be due may be zero.
- .7 If the Subcontractor fails to pay a sum, or any part of it, due to the Sub-subcontractor by the final date for payment, the Subcontractor shall, in addition to any unpaid amount that should properly have been paid, including the amount of any VAT properly chargeable, pay the Sub-subcontractor interest on that amount at the rate of 5% per annum above the official bank rate of the Bank of England for the period from the final date for payment until such payment is made.
- .8 If in the case of the final payment a balance is due to the Subcontractor, it shall be shown as such in the Subcontractor's payment notice under clause 14.2. If the Sub-subcontractor intends to pay less than the amount so shown, he shall not later than 4 days before the final date for payment give the Subcontractor notice of that intention, stating the sum, if any, that he considers due to the Subcontractor at the date he gives notice and the basis on which

that sum has been calculated. If the Sub-subcontractor gives such notice, the sum to be paid on or before the final date for payment shall not be less than the amount stated as due in the notice. Failing payment of any amount properly due to the Subcontractor by the final date for payment, interest shall be payable on that amount at the rate specified in clause 14.7.

Suspension

- 15** .1 If the Subcontractor fails to pay the sum payable to the Sub-subcontractor in accordance with clause 14 (together with any VAT properly chargeable in respect of such payment) by the final date for payment and the Sub-subcontractor gives a written notice of his intention to suspend the performance of his obligations under this Sub-subcontract and the grounds for doing so, then, if the Subcontractor's failure to make payment continues for 7 days after the giving of that notice, the Sub-subcontractor may suspend performance of any or all of those obligations until payment is made in full.
- .2 Where the Sub-subcontractor exercises his right of suspension under clause 15.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as result of exercising the right.
- .3 Applications in respect of any such costs and expenses shall be made to the Subcontractor and the Sub-subcontractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

Termination – breach or insolvency

- 16** Each Party ('the terminating Party') shall be entitled by written notice to the other Party to terminate the Sub-subcontractor's employment under this Sub-subcontract forthwith if the other Party at any time:

- .1 is in material breach of his obligations under this Sub-subcontract which he fails to rectify within 7 days of a written warning from the terminating Party specifying the breach and requiring that it be remedied within that period; or
- .2 is insolvent. For the purposes of this clause 16.2, a person becomes insolvent on:
- .1 the making of an administration, bankruptcy or winding-up order against him, appointment of an administrative receiver, receiver or manager of his property, his passing of a resolution for voluntary winding-up without declaration of solvency or any other event referred to in section 113, sub-sections (2) to (5), of the Housing Grants, Construction and Regeneration Act 1996;
- .2 otherwise entering administration within the meaning of Schedule B1 to the Insolvency Act 1986;
- .3 entering into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or
- .4 (in the case of a partnership) each partner being the subject of an individual arrangement or any other event or proceedings referred to in this clause 16.2.

In the event of such termination the Sub-subcontractor shall immediately leave the Site and the terminating Party shall be entitled to recover from the other Party the amount of any resultant loss, damage and/or expense incurred by the terminating Party which he would not have incurred had this Sub-subcontract been duly performed in full.

Termination of the Subcontract

- 17** .1 If the Subcontractor's employment under the Subcontract is terminated, the Sub-subcontractor's employment under this Sub-subcontract shall thereupon terminate and the Subcontractor shall immediately notify the Sub-subcontractor. The Sub-subcontractor shall immediately leave the Site.
- .2 If the Subcontractor's employment under the Subcontract is terminated for any reason other than in consequence of any breach of this Sub-subcontract by the Sub-subcontractor:
- .1 the Sub-subcontractor shall be entitled to be paid the value of the Sub-subcontract Works properly carried out and the reasonable cost of removal from the Site, less sums already paid. Except as provided for in clause 17.2.2 the Sub-subcontractor

shall not be entitled to loss of profit;

- .2 in addition to any sums payable under clause 17.2.1, the Sub-subcontractor shall be entitled to be paid any direct loss and/or damage caused to the Sub-subcontractor as a result of the termination of his employment under this Sub-subcontract that arises because of the Contractor's or the Subcontractor's insolvency or either the Contractor or the Subcontractor having an administrator or administrative receiver appointed or having a winding-up order or the like made against him or because of the Contractor's or the Subcontractor's default (other than in consequence of any breach of this Sub-subcontract by the Sub-subcontractor).

Settlement of disputes

- 18 .1 Subject to Article 5, if a dispute or difference arises under this Sub-subcontract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.
- .2 Either Party may at any time refer any dispute or difference arising under this Sub-subcontract to adjudication in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 except that the adjudicator nominating body shall be:

Royal Institute of British Architects;
The Royal Institution of Chartered Surveyors;
constructionadjudicators.com^[11];
Association of Independent Construction Adjudicators^[12]; or
Chartered Institute of Arbitrators,

as selected by the referring Party.
- .3 Where disputes or differences are to be referred to arbitration pursuant to Article 6, then:
 - .1 a Party referring a dispute or difference to arbitration shall serve on the other Party a notice of arbitration to such effect;
 - .2 the date on which the notice of arbitration is served shall be regarded as the date on which the arbitral proceedings are commenced;
 - .3 the arbitrator shall be an individual agreed by the Parties within 14 days of the date of service of the notice of arbitration or, in the absence of agreement within that period, appointed by the President or a Vice-President of the Chartered Institute of Arbitrators;
 - .4 the arbitration shall be conducted in accordance with the JCT edition of the Construction Industry Model Arbitration Rules (CIMAR) applicable to the Main Contract.

[11] constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.

[12] Association of Independent Construction Adjudicators is controlled by and acts as an agent of the National Specialist Contractors' Council for the purpose of the nomination of adjudicators.

Schedule

(Sixth Recital)

Supplemental Provisions

Supplemental Provisions 1 to 6 apply unless otherwise stated in the Sixth Recital. Supplemental Provision 7 applies where the Employer is a Local or Public Authority and the Main Contract is subject to the PC Regulations.

Collaborative working

- 1 The Parties shall work with each other and with other project team members in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect. To that end, each shall support collaborative behaviour and address behaviour which is not collaborative.

Health and safety

- 2
 - .1 Without limiting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of this Sub-subcontract, the Parties will endeavour to establish and maintain a culture and working environment in which health and safety is of paramount concern to everybody involved with the project.
 - .2 In addition to the specific health and safety requirements of this Sub-subcontract, the Sub-subcontractor undertakes to:
 - .1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
 - .2 ensure that all personnel engaged by the Sub-subcontractor and members of the Sub-subcontractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
 - .3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and
 - .4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.

Cost savings and value improvements

- 3
 - .1 The Sub-subcontractor is encouraged to propose changes to designs and specifications for the Sub-subcontract Works and/or to the programme for their execution that may benefit the Subcontractor and/or the Contractor and/or the Employer, whether in the form of a reduction in the cost of the Main Contract Works or their associated life cycle costs, through practical completion at a date earlier than the date for completion for the Main Contract Works or otherwise.
 - .2 The Sub-subcontractor shall provide details of his proposed changes, identifying them as suggested under this Supplemental Provision 3, together with his assessment of the benefit he believes the Employer may obtain, expressed in financial terms, and a quotation.
 - .3 Where the Employer wishes to implement a change proposed by the Sub-subcontractor, the Employer, Contractor and Sub-subcontractor shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to time. Upon agreement, the change and the amount of any adjustment of the Sub-subcontract Sum shall be confirmed in a direction, together with the share of the financial benefit to be paid to the Sub-subcontractor and any adjustment to the period(s) for completion.
 - .4 Original proposals by the Sub-subcontractor under this Supplemental Provision 3 may only be directed by the Subcontractor in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after practical completion of the Main Contract Works.

Sustainable development and environmental considerations

- 4 .1 The Sub-subcontractor is encouraged to suggest economically viable amendments to the works which, if directed as a variation, may result in an improvement in environmental performance in the carrying out of the works or of the completed works.
- .2 The Sub-subcontractor shall provide to the Subcontractor all information that he reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Sub-subcontractor selects.

Performance Indicators and monitoring

- 5 .1 The Subcontractor shall monitor and assess the Sub-subcontractor's performance by reference to any performance indicators stated or identified in the Sub-subcontract Documents.
- .2 The Sub-subcontractor shall provide to the Subcontractor all information that he may reasonably require to monitor and assess the Sub-subcontractor's performance against the targets for those performance indicators.
- .3 Where the Subcontractor considers that a target for any of those performance indicators may not be met, he may inform the Sub-subcontractor who shall submit his proposals for improving his performance against that target to the Subcontractor.

Notification and negotiation of disputes

- 6 With a view to avoidance or early resolution of disputes or differences (subject to Article 5), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Sixth Recital (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.

The Public Contracts Regulations 2015^[13]

- 7 .1 Where the Main Contract is subject to the provisions of regulation 113 of the PC Regulations the Sub-subcontractor shall include in any contract entered into by him for work included in this Sub-subcontract suitable provisions to impose the requirements of regulation 113(2)(c)(ii).
- .2 Where the Employer is a Local or Public Authority and the Main Contract is subject to the PC Regulations, the Subcontractor shall be entitled by written notice to the Sub-subcontractor to terminate the Sub-subcontractor's employment forthwith under this Sub-subcontract if there are grounds for excluding the Sub-subcontractor under regulation 57 of the PC Regulations and where the Sub-subcontractor's employment is terminated under this paragraph 7.2 of Supplemental Provision 7 the consequences of termination under clause 16 shall apply.
- .3 In the event of termination of the Sub-subcontractor's employment under this Sub-subcontract under clause 17.1 that arises because of termination of the Contractor's employment under the Main Contract on any of the grounds set out in regulation 73(1) of the PC Regulations the consequences set out in clause 17.2.1 of this Sub-subcontract shall apply, except that clause 17.2.2 as referred to in clause 17.2.1 shall not apply in the case of termination of the Sub-subcontractor's employment as referred to in this paragraph 7.3 of Supplemental Provision 7 where this occurs in consequence of termination of the Contractor's employment under the Main Contract on the grounds set out in regulation 73(1)(a) or 73(1)(c) of the PC Regulations but shall apply where it occurs in consequence of termination of the Contractor's employment under the Main Contract on the grounds set out in regulation 73(1)(b) of the PC Regulations.
- .4 Where the Employer is a Local or Public Authority and the Main Contract is subject to the PC Regulations the Sub-subcontractor shall supply and notify to the Subcontractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations and shall include in any contract entered into by him for work included in this Sub-subcontract requirements to the same effect as required under this paragraph 7.4 of Supplemental Provision 7.

[13] See the Guidance Notes.

Guidance Notes

General information

The JCT Sub-subcontract is a simple, straightforward form of contract. It is suitable for a sub-subcontract where the main contract is on a JCT form which has a “main contractor” regardless as to whether the subcontract is on a JCT form but clearly it is desirable that a JCT subcontract form is used to ensure consistency of provisions.

Where the Sub-subcontract Works forms a significant part of the Subcontract Works or are of a fairly substantial value it is most important that the Sub-subcontractor is made aware of all the details of the Subcontract Conditions and that these are attached to the Sub-subcontract form.

The wording of the JCT Sub-subcontract is intended to be easy to understand. The following explains how to complete the form and provides a guide to the less simple provisions.

Completing the form – Agreement

The form has two sections. The first section, the Agreement, consists of the Parties’ details, the Recitals, the Articles themselves and the Attestation pages, all of which need to be completed with the appropriate Attestation page(s) then being duly executed by the Parties. The second section consists of the Conditions, where there are no insertions to make. The information to be inserted and the choices to be made in the first section are generally self-explanatory, but the following points should be noted.

The conditions of the Subcontract should be inserted at the First Recital. Where these conditions are not on a published form or contain amendments to such a form, a copy of the conditions or the amendments excluding all pricing information should be annexed to this form and signed or initialled by or on behalf of each Party.

The conditions of the Main Contract, e.g. the JCT Standard Building Contract and its edition, should be inserted at the Second Recital.

In the Fourth Recital there is a reference to Pricing Documents. Here the Parties should identify any document(s) setting out rates and unit prices which are to be used to value work for payments under clause 13.2 of the Conditions and to value any variations under clause 11.3. The Parties do not need set rates and prices to use this Sub-subcontract; the price may simply be the single Sub-subcontract lump sum to be inserted in Article 2. If so, the reference to Pricing Documents at the Fourth Recital may be deleted. (As to the further documents referred to in the Fourth Recital, see the note on Other Matters below.)

The Fifth Recital makes reference to applicable Framework Agreements, which may include frameworks between others above the Sub-subcontractor in the supply chain. The choice as to which of Supplemental Provisions 1 to 6 (set out in the Schedule to the Conditions) applies is made in the Sixth Recital and if no choice is made in relation to a provision it will apply.

The relevance of Supplemental Provisions 1 to 6 will depend upon the particular circumstances but where there is a Framework Agreement it will generally cover the same ground as Supplemental Provisions 1 to 6: where it does, those Supplemental Provisions may be disapplied. Supplemental Provision 7 will only apply where the Employer is a Local or Public Authority and the Main Contract is subject to the Public Contracts Regulations 2015.

At Article 6, there is a choice as to whether or not arbitration is to apply. If it is intended, subject to the right of adjudication and the exceptions in Article 6, that disputes or differences should be determined by arbitration and not by legal proceedings, the words “does not apply” must be deleted. If neither of the entries is deleted, arbitration will not apply. If final dispute resolution under the Subcontract is through the courts, it may be more convenient to allow final resolution of related disputes under the Sub-subcontract to be dealt with together in the same proceedings. Where claims either way are likely to be small, it may also be considered desirable to keep open the potentially cheaper route of using the County Court small claims track; any agreement to arbitrate, unless suitably qualified, would normally operate as a bar to using that route if the other Party did not agree.

The attestation provisions have in this 2016 edition been made more flexible to allow for execution

under hand or as a deed. Where a contract is executed 'under hand' as a simple contract and not as a deed, the effect is that the limitation period for contract claims will be 6 years, but where a contract is executed as a deed, the limitation period is 12 years. If the Subcontract is executed as a deed and the Subcontractor wishes to have a similar limitation period for recourse against a sub-subcontractor as the Contractor has against the Subcontractor, the Sub-subcontract should be executed as a deed.

Conditions

Most of the Conditions (and modifications made in this 2016 edition) are also self-explanatory and the following notes are limited to less obvious aspects of them:

Clause 7 (Sub-subcontractor's obligations)

The Sub-subcontractor's main obligations are set out in clause 7. Under clause 7.4 he is to provide everything required for him to carry out and complete the Sub-subcontract Works except the attendance items set out in the Sub-subcontract Documents that are to be provided by others free of charge.

Clause 9 (Commencement and completion)

An appropriate period of notice for the Sub-subcontractor to commence the Sub-subcontract Works on Site must be inserted in Article 3, otherwise the default 10 day notice period will apply.

In addition to the Subcontractor's other obligations, he is required under clause 9.3 to comply with the CDM Regulations, to provide sufficient access to Site and not to hinder or prevent the Sub-subcontractor from performing his obligations.

Clauses 13 (Payments – due dates and amounts) and 14 (Payment – final date and notices)

There is no provision for the payment of materials, whether stored on-site or off-site, unless otherwise agreed; payment is for work executed.

It should be noted that payments are required to be made in full, i.e. there is no reduction for retention.

The 2016 edition of this Sub-subcontract makes some revisions to the existing payment provisions, including, in relation to payments, the establishment of Valuation Dates to reflect similar revisions made at main and sub-contract level. In accordance with fair payment principles, the payment periods have been revised to allow for payment of the Sub-subcontractor within 30 days from the Valuation Date.

The payment provisions in the Sub-subcontract comply with the requirements of the Housing Grants, Construction and Regeneration Act 1996 ('the Construction Act') as amended by the Local Democracy, Economic Development and Construction Act 2009. The payment provisions are divided between clause 13, which continues to set out the due dates for payment and amounts payable to the Sub-subcontractor, and clause 14, which gives the final date for payments and reflects the Construction Act's provisions with regard to payment notices. The latter provisions consist of the requirement for the Subcontractor to give the Sub-subcontractor a payment notice within 5 days of each due date, the right of the Sub-subcontractor to make an application if the Subcontractor fails to give that notice in due time, coupled with the Subcontractor's right to give a pay less notice not later than 4 days before the final date for payment.

If the Subcontractor fails to give a payment notice and the Sub-subcontractor makes an application that states the amount he then considers due to him, the Construction Act provides that that will be the sum then payable unless the Subcontractor in due time gives a pay less notice. (It will be noted that delay in making the application delays the final date for payment.)

The revisions in this edition include modifications to the payment due date provisions of clause 13.1. Under the revised provisions of clause 13.1, the due dates for payments are in each case the date 17 days after the relevant Valuation Date, commencing with the Valuation Date next following the commencement of the Sub-subcontract Works on Site. There are new entries in the Seventh Recital which require the Valuation Date and the intervals that will apply for subsequent Valuation Dates to be specified. To allow for the Valuation Dates at sub-subcontract level to be the same as the interim valuation dates operating at sub-contract level, the Valuation Date should be the same as the first interim valuation date under the Subcontract and the intervals that apply to interim valuation dates under the Subcontract should also apply to the intervals for Valuation Dates in this Sub-subcontract; otherwise, the relevant default provisions in the Seventh Recital (for clause 13.1) apply, which cannot be relied upon to have this effect.

Clause 15 (Suspension)

Under section 112 of the Construction Act there is a statutory right, reflected in clause 15, for the Sub-subcontractor to claim reasonable costs and expenses if he exercises his right to suspend work for non-payment. The right to suspend arises where a sum payable under the Sub-subcontract (including any VAT) is not paid in full by the final date for payment and no effective pay less notice has been given. The right to suspend may not be exercised without the Sub-subcontractor first giving at least 7 days' written notice and ceases when the Subcontractor makes payment.

Clause 18 (Settlement of disputes)

In the case of disputes, Supplemental Provision 6 is relevant but if direct discussion and negotiation is not successful, the Parties are encouraged to seek to resolve any disputes through mediation (clause 18.1). There is no requirement to use the mediation process and one Party cannot compel the other to mediate, if the other Party is unwilling to do so. But if either Party institutes court proceedings, the court may in terms of recovery of costs penalise a Party who refuses to mediate, even if he is otherwise successful in that litigation.

Under clause 18.2, either Party is entitled to refer any dispute arising under the Sub-subcontract to adjudication at any time. The Scheme for Construction Contracts (made under section 114 of the Construction Act) applies for that purpose, whether or not the Sub-subcontract is a construction contract for the purposes of the Act.

Schedule (Supplemental Provisions)

Supplemental Provisions 1 to 6 are intended to encourage collaborative working and to achieve value and environmental improvements. Some of them are specifically referred to in these notes but their applicability needs to be considered, as indicated in the context of the comments above on the Fifth and Sixth Recitals.

The Schedule also includes new Supplemental Provision 7; this sets out provisions relevant to the Public Contracts Regulations 2015 ('the PC Regulations') which will only be applicable where the Employer is a Local or Public Authority and the Main Contract is subject to the PC Regulations. For some background information on the PC Regulations and a summary of those provisions in the PC Regulations that are reflected in Supplemental Provision 7, please go to www.jctltd.co.uk.

Health and Safety

The Subcontractor needs to agree with the Sub-subcontractor how Health and Safety issues are to be dealt with, including compliance with the Construction (Design and Management) Regulations 2015, the Work at Height Regulations 2005, and the development of, for example, Risk Assessments, Method Statements, and Control of Substances Hazardous to Health (COSHH) assessments. Supplemental Provision 2 may also be relevant, if it applies.

Other matters

Since this form is intended to be simple and short, other matters that need to be covered should, as respects payments, be set out in the Pricing Document (if there is one) or if there is not, they, and in any event the other relevant matters, should be set out in the further document or documents which are to be listed in the Fourth Recital. Relevant matters may include:

- A Payment
 - .1 dayworks – if considered applicable, the method of calculating the payment to be made in respect of dayworks;
 - .2 fluctuations – whether the Sub-subcontract Sum is to be adjusted for fluctuations and, if so, the provisions applicable to such adjustment.
- B Insurances – the insurances that each Party is required to take out and maintain; it should be noted that under certain JCT Main Contracts the Subcontractor is entitled to protection from some of the policies that the Contractor and the Employer are required to take out and maintain but that this protection does not extend to Sub-subcontractors.
- C Attendances – attendance items such as scaffolding, temporary accommodation, electrical supplies, water, use of on-site facilities, hoisting and watching that are to be provided to the Sub-subcontractor free of charge.

- D Programme – any programme information beyond that set out in Articles 3 and 4, including the times that the Site is open for working, any dates the Site is closed, the order of work etc.
- E Design – if the Sub-subcontractor is required to complete the design of all or any of the Sub-subcontract Works, the Subcontractor should provide his requirements in respect of the Sub-subcontract Works for which the Sub-subcontractor is required to complete the design.

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Short Form of Sub-Contract 2016

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