

# LINK

67 Windmill Avenue,  
Bicester Oxon OX26 3DZ

## Definitions and interpretation

1. In the Sub-Contract (as hereinafter defined) the following words and expressions shall have the following meanings hereby respectively assigned to them.
  - (1) "Appointer" means the Chartered Institute of Arbitrators.
  - (2) "Adjudication Procedure" means the adjudication procedure set out in Part I of the Scheme for Construction Contracts (England and Wales) Regulations 1988 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1988 (Amendment) (England) Regulations 2011 or any amended or modified version thereof current at the time of the appointment of the adjudicator.
  - (3) "Link" means Link Groundworks Bicester Ltd, registered in England and with company number 08427118.
  - (4) "Contract" means the contract between Link and the Employer for the Works.
  - (5) "Contract Administrator" means the Architect, Engineer, Employer's Agent or other authorised Administrator of the Contract, as defined in the Contract.
  - (6) "Defects Period" means the defects period specified in the Sub-Contract Order, such period commencing on the date of certification of practical completion of the whole of the Works under the Contract.
  - (7) "Employer" means the person identified in the Sub-Contract Order or otherwise notified to the Sub-Contractor by Link.
  - (8) "insolvent" has the same meaning as in Section 113 of the Housing Grants, Construction and Regeneration Act 1996 or any amendment or re-enactment thereof for the time being in force.
  - (9) "Interest Rate" means the rate of 5% per annum above the official dealing rate of the Bank of England current at the date that a sum due under this Sub-Contract becomes overdue.
  - (10) "Order Value" means the order value specified in the Sub-Contract Order (less any applicable discount) payable to the Sub-Contractor for the Sub-Contract Works, or such other sum as may become payable to the Sub-Contractor pursuant to the express provisions of the Sub-Contract. Unless expressly stated in the Sub-Contract Order, the Order Value is deemed to be exclusive of VAT and any applicable VAT shall be payable in addition in accordance with the terms of the Sub-Contract. Where the Order Value is expressed in the Sub-Contract Order to be a lump sum, the Order Value shall not be adjusted or altered in any way other than in accordance with the express provisions of these Standard Conditions. Where the Order Value is expressed in the Sub-Contract Order to be subject to remeasurement, the Order Value shall be calculated and determined by remeasurement of the Sub-Contract Works properly completed in accordance with the Sub-Contract valued at the Sub-Contractor's agreed rates and prices for measured work, less any applicable discount.
    - (11) "party" means either the Sub-Contractor or Link as the context requires and "parties" means both the Sub-Contractor and Link.
    - (12) "Standard Conditions" means the clauses of these Standard Conditions.
    - (13) "the Sub-Contract" comprises:
      - (a) the Sub-Contract Order;
      - (b) the Standard Conditions; and
      - (c) the drawings, specifications and other documents appended to or referenced in the Sub-Contract Order and/or referenced in the Standard Conditions including (but not limited to) the provisions of and documents comprising the Contract insofar as they relate to and/or are applicable to the Sub-Contract Works.
    - (14) "Sub-Contract Order" means Links' Sub-Contract Order for the Sub-Contract Works, referencing or appending these Standard Conditions.
    - (15) "Sub-Contract Variation" means an instruction issued by Link in writing requiring an addition to, omission from or other change in the Sub-Contract Works or the order or period in which they are to be carried out.
    - (16) "Sub-Contract Works" means the works described in the Sub-Contract Order, including any Sub-Contract Variations. Where stated in the Sub-Contract Order, the Sub-Contract Works shall include the design of the Sub-Contract Works or such part of the Sub-Contract Works as is specified in the Sub-Contract Order.
    - (17) "Sub-Contractor" means the person so named in the Sub-Contract Order.
    - (18) "Sub-Contractor Documents" means any and all drawings, designs, reports, models, specifications, bills of quantities, calculations and other documents and information (whether created or stored electronically or otherwise) prepared or to be prepared by or on behalf of the Sub-Contractor in connection with the Sub-Contract Works.
    - (19) "Valuation Interval" means the payment interval (fortnightly, monthly or at specified dates) specified in the Sub-Contract Order.
    - (20) "VAT" means value added tax chargeable under the Value Added Tax Act 1994 and any similar additional or replacement tax.
    - (21) "Works" means the works to be executed by Link under the Contract of which the Sub-Contract Works form part.
  2. In the Sub-Contract and these Standard Conditions, unless the context otherwise requires:
    - (1) words importing the singular also include the plural and vice-versa;
    - (2) reference to a gender includes any gender;
    - (3) a reference to a "person" includes any individual, firm, partnership, company and any other body corporate;
    - (4) 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.
  3. The Sub-Contract shall be governed by and construed in accordance with the law of England.
  4. Nothing in the Sub-Contract confers or is intended to confer any right pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms on any person who is not a party to it.

## Acceptance of terms

5. If the Sub-Contractor commences performance of the Sub-Contract Works (including, but not limited to preparation of designs or commencing work on site or ordering goods or materials for use in the Sub-Contract Works) the Sub-Contractor shall be deemed to have accepted the terms and conditions of the Sub-Contract.
6. The Sub-Contract constitutes the entire agreement between the parties in respect of the Sub-Contract Works and supersedes and replaces any and all previous agreements arrangements or understandings between parties and any terms and conditions, caveats or exclusions contained in the Sub-Contractor's tender for the Sub-Contract Works. Any work, services or supplies performed or provided prior to the date of the Sub-Contract Order in connection with the Sub-Contract Works shall be treated as having been performed under and shall be subject to the provisions of this Sub-Contract.

## Notices and communications

7. Any communication which under the Sub-Contract is required to be given or confirmed in writing may be hand-written, typewritten or printed. A communication shall be deemed to have been given to the Sub-Contractor when it is delivered to him or his agent (whether on or off the site), or, if sent by post or e-mail to the agreed address or registered office or last known address of the Sub-Contractor. Each and every communication to Link shall be served by actual delivery by hand or pre-paid post to the registered office of Link or to the last address of Link that has been specifically notified in writing by Link for receiving communications from the Sub-Contractor under the Sub-Contract.

## Assignment and sub-contracting

8.

- (1) The Sub-Contractor shall not assign or sub-let the Sub-Contract or any part thereof without the prior express written consent of Link.

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- (2) No assignment or sub-letting by the Sub-Contractor shall in any way relieve the Sub-Contractor of any of his obligations or liabilities under the Sub-Contract and the Sub-Contractor shall remain wholly responsible for carrying out and completing the Sub-Contract Works in all respects in accordance with the Sub-Contract.
- (3) The Sub-Contractor shall supply to Link a comprehensive list of all site operatives and other staff and all sub-contractors engaged by the Sub-Contractor in connection with the Sub-Contract Works.

## **Sub-Contractor's obligations**

9. The Sub-Contractor shall execute and complete the Sub-Contract Works:
  - (1) in accordance with the Sub-Contract;
  - (2) to the satisfaction of Link and of the Contract Administrator (acting reasonably); and
  - (3) in conformity with all the reasonable directions and requirements of Link including all reasonable site and health and safety rules of Link for the time being regulating the carrying out of the Works or the management or operation of the site. Further, the Sub-Contractor shall execute and complete the Sub-Contract Works with due diligence and in a good and workmanlike manner and with all reasonable skill and care. All materials, goods and workmanship incorporated or used in the Sub-Contract Works shall be of the standard specified in the Sub-Contract or Contract or (where not so specified) shall be to a standard acceptable to Link and to the Contract Administrator.
10. Save where expressly specified in the Sub-Contract Order, the Sub-Contractor shall provide all supervision, labour, materials, goods, vehicles, plant, equipment, tools, access and other facilities, setting-out, temporary works and everything whether of a permanent or temporary nature required for the execution and completion of the Sub-Contract Works.
11. The Sub-Contractor shall be deemed to have notice of and to have had reasonable opportunity of inspecting all of the provisions of the Contract (except the prices of Link included therein) and shall observe, perform, comply with and be bound by all the provisions of the Contract so far as they relate to and/or are applicable to the Sub-Contract Works or any part thereof and are not inconsistent with the express provisions of this Sub-Contract as if all the same were severally set out herein. For the avoidance of doubt, nothing herein shall be construed as creating any privity of contract between the Sub-Contractor and the Employer and the Sub-Contractor shall not be entitled to receive the benefit of any right or claim under the Contract.
12.
  - (1) Link may issue any reasonable instructions and directions to the Sub-Contractor in regard to the Sub-Contract Works (including the ordering of a Sub-Contract Variation). No Sub-Contract variation issued by Link or subsequently sanctioned by Link shall vitiate the Sub-Contract.
  - (2) The Sub-Contractor shall comply forthwith with any written instructions or directions issued to the Sub-Contractor by Link.
  - (3) If, within 7 days after receipt of a notice from Link requiring compliance with an instruction or direction the Sub-Contractor does not comply, Link may employ and pay other persons to execute any work whatsoever that may be necessary to give effect to that instruction or direction. The Sub-Contractor shall be liable for all additional costs incurred by Link in connection with such employment and such costs shall either be deducted from any sums due to the Sub-Contractor under the Sub-Contract or shall be recoverable from the Sub-Contractor as a debt.
  - (4) The Sub-Contractor shall not act upon any instruction or direction in connection with the Sub-Contract Works which is received by him directly from the Employer or the Contract Administrator or any of their respective servants or agents. If the Sub-Contractor shall receive any such instruction or decision then the Sub-Contractor shall forthwith inform Links' agent in charge of the Works and shall provide such agent with full written details of such instruction or direction.
13. The Sub-Contractor shall ensure that at all times during the execution of the Sub-Contract Works he has on the site a competent person in charge and any directions given to that person by Link shall be deemed to have been issued to the Sub-Contractor.
14. Where any design for the Sub-Contract Works (including but not limited to any specifications for the kinds or standards of materials, goods or workmanship) has been or will be prepared or completed by or on behalf of the Sub-Contractor, the Sub-Contractor shall be fully responsible to Link for such design, including but not limited to ensuring that such design is fit for the purposes for which it is required under the Contract and in particular is compliant in every respect with (amongst other things) any and all performance specifications and/or requirements included in the Contract and/or in the Sub-Contract and with all legislation applicable to the Works and that all necessary statutory permissions and consents are obtained. The Sub-Contractor shall exercise all the reasonable skill, care and diligence to be expected of a competent and experienced professional consultant in undertaking such design work.
15. The Sub-Contractor shall before preparing any design or specification for the Sub-Contract Works and/or before procuring any materials or goods for the Sub-Contract Works give adequate notice in writing to Link of any discrepancies and/or divergences in or between any of the documents included in the Sub-Contract.
16. The Sub-Contractor hereby warrants and undertakes to Link that there is not any discrepancy or other conflict between any Sub-Contractor Documents and any other document forming part of the Sub-Contract and/or of the Contract or any discrepancy or other conflict within or between any such Sub-Contractor Documents.
17. The Sub-Contractor shall comply with and be bound by the requirements of Link as to the integration and co-ordination of the designs for the Sub-Contract Works with those for the rest of the Works.
18. Without prejudice to the generality of clause 11, whenever Link is required by the terms of the Contract to give any proposal, return, account, notice, drawing, detail, specification, operating and maintenance manuals, estimate, quotation or other information the Sub-Contractor shall in relation to the Sub-Contract Works give a similar proposal, return, account, notice, drawing, detail, specification, operating and maintenance manuals, estimate or quotation or such other information in writing to Link as will enable Link to comply with such terms of the Contract and shall do so in sufficient time to enable Link to comply with such terms punctually. The Sub-Contractor shall prepare and supply to Link for approval such further drawings, details, specifications, method statements, calculations and the like as may be necessary for the execution or completion of the Sub-Contract Works, except only such of the same as are specified in the Sub-Contract as to be provided by link to the Sub-Contractor or are to be issued to Link under the Contract.
19. The Sub-Contractor shall set out the Sub-Contract Works and shall ensure that the positions, levels, dimensions and alignment of all parts of the Sub-Contract Works are correct according to the drawings, specifications and other written or physical data provided by Link, notwithstanding any assistance or checking by Link or any other person, and shall provide all necessary instruments, appliances, services and labour for the same, except if and to the extent otherwise agreed in writing.
20. The Sub-Contractor shall check the suitability of all areas and surfaces to which any goods and materials comprising the Sub-Contract Works are to be affixed before commencement of the relevant work on site.
21. Link shall permit the Sub-Contractor to use such scaffolding (if any) for the purposes of the Sub-Contract Works as is from time to time erected by Link for the Works. Such permission shall not imply any warranty as to the fitness, condition or suitability of any such scaffolding. The Sub-Contractor shall satisfy himself that all such scaffolding (if any) complies with current safety rules and regulations. Link shall not be bound to provide or retain scaffolding for the Sub-Contractor's use.
22. The Sub-Contractor shall observe and comply with:
  - (1) all Acts of Parliament and other statutory provisions, regulations, bylaws, rules and approved codes of practice in so far as the same are applicable to the Sub-Contract Works; and
  - (2) Links' regulations and procedures concerning site safety and Links' health and safety policies and procedures. The Sub-Contractor shall ensure each of his sub-contractors, servants and agents is aware of and complies with the matters referred to in this clause.

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23. The Sub-Contractor shall apply for and obtain in adequate time all permissions, consents, approvals, licences and the like required under the law applicable to the Works and necessary for the execution and completion of the Sub-Contract Works in accordance with the Sub-Contract, except only those (if any) expressly stated in the Contract as having been obtained or to be obtained by the Employer.
24. In this clause "the CDM Regulations" means the Construction (Design and Management) Regulations 2015 or any statutory re-enactment or amendment thereof for the time being in force. Without prejudice to the generality of clause 22, the Sub-Contractor shall comply with the CDM Regulations and with all the requirements of Link in regard to the CDM Regulations and without prejudice to the generality of this clause the Sub-Contractor shall provide, and shall ensure that all his design consultants and other sub-contractors provide to Link (via the Sub-Contractor) such documentation and other information in connection with the Sub-Contract Works as is required for the purpose of ensuring compliance in all respects with the CDM Regulations.

## **Risk assessment, PPE and hot work**

25.
  - (1) Where the Sub-Contractor's programme of works involves the use of plant or materials that could reasonably be construed as posing a possible fire risk, the Sub-Contractor will be responsible for ensuring comprehensive fire prevention measures are provided and maintained throughout the Sub-Contractor's execution of these works. Sub-Contractor's plant posing an implied fire risk includes any work involving use of/production of/ causing a naked flame, sparking, hot air, hot exhaust, inflammable fumes and liquids or explosion.
  - (2) The Sub-Contractor will be responsible for preparing a risk assessment prior to the commencement of the Sub-Contract Works which shall (inter alia) identify all possible fire hazards and set out fire prevention measures to be adopted by the Sub-Contractor associated with the Sub-Contract Works.
  - (3) The Sub-Contractor will not store on site any flammable or explosive materials without the express prior written authority of Link.
  - (4) Where the Sub-Contractor needs to carry out 'Hot Works', the Sub-Contractor must apply to Link in advance for a 'Hot Works' permit. The Sub-Contractor will be responsible for ensuring all the conditions and requirements of a Hot Work permit are met which will include the Sub-Contractor providing all necessary fire fighting equipment and a minimum time period of 3 hours between the end of the Hot Works being carried out by the Sub-Contractor and the end of that working day/site closing. The Sub-Contractor will be responsible for actively monitoring this time period, the length of the period itself being agreed in advance with Link.
  - (5) The Sub-Contractor shall ensure that all of the Sub-Contractor's site operatives only smoke in areas designated by Link as smoking areas.
  - (6) The Sub-Contractor shall provide to its employees and operatives hard hats, high visibility waistcoats and such other personal protective equipment or clothing as may be reasonably necessary and shall ensure that such items are worn at all times whilst on the site.

## **Commencement and completion of the Sub-Contract Works**

26. The Sub-Contractor shall commence the Sub-Contract Works on the Commencement Date specified in Sub-Contract Order and shall complete the Sub-Contract Works on or before the Completion Date specified in Sub-Contract Order, subject only to such extension to the Completion Date as is fair and reasonable for:
  - (1) any Sub-Contract Variation;
  - (2) any breach of the Sub-Contract by Link; or
  - (3) any act of prevention by Link.
27. Where differing periods for completion are specified in the Sub-Contract Order for different parts of the Sub-Contract Works then each such part of the Sub-Contract Works shall be treated separately in accordance with the provisions of clause 26.
28. The Sub-Contractor shall give to Link prompt notice and full particulars in writing of any actual or potential delay in the execution or completion of the Sub-Contract Works or any part of the same.
29.
  - (1) Unless otherwise specifically stated in the Sub-Contract Order, the Sub-Contractor shall in the execution of the Sub-Contract Works on the site observe the same days and hours of working as Link, which shall be:  
Monday- Thursday: 7.30 a.m. – 4.30 p.m.  
Friday 7.30 a.m. – 4.15 p.m.
  - (2) At the end of each working day the Sub-Contractor shall provide Link with a written return identifying the resources employed on the Sub-Contract Works that day and the respective work by and times involved of each such resource.
  - (3) Any alternative working hours required by the Sub-Contractor will be subject to prior agreement/authorisation by Link.
30. The Sub-Contractor will provide such numbers of suitably qualified experienced operatives as are necessary to carry out and complete the Sub-Contract Works at a rate of progress to ensure adherence to the programme for the completion of the Works under the Contract.
31. Link shall not at any time be bound to give to the Sub-Contractor exclusive or uninterrupted possession of or access to work areas or any part of the site. The Sub-Contractor shall provide and maintain such means of access to and within the site as shall be necessary to enable the Sub-Contractors to execute and complete the Sub-Contract Works in accordance with the Sub-Contract.
32. The Sub-Contractor shall comply with Links' requirements for:
  - (1) the progress and sequencing of the design for, and the execution of, the Sub-Contract Works;
  - (2) the co-ordination of the design for, and the execution of, the Sub-Contract Works with other parts of the Works.
33. The Sub-Contractor shall be deemed to have inspected and examined the site, including but not limited to arrangements for access, ground conditions, mains, services and other physical conditions and obstructions, and made all reasonable and investigations and to have satisfied himself before entering the Sub-Contract as to the correctness and sufficiency of the Order Value to cover all his obligations under the Sub-Contract.
34. The Sub-Contractor shall clear away and properly dispose of all debris, rubbish and other waste material arising from the Sub-Contract Works and shall do so at such times and in such manner and to such places, whether on or off the site, as Link may direct and shall properly clean all affected works and surfaces throughout the execution of the Sub-Contract Works and in any event at such times and in such manner as Link may direct. On completion of the Sub-Contract Works (or on termination of the Sub-Contract, if earlier) the Sub-Contractor shall remove from the site all his equipment and other things and shall leave the Sub-Contract Works and such other places on the site as may have been made available to him, clean, tidy and in a workmanlike condition to the satisfaction of Link.
35. If the regular progress of the whole or any part of the Works is delayed, disrupted or otherwise affected by any act or default of the Sub-Contractor, his servants or agents, the amount of any loss and/or expense and/or damage thereby suffered or incurred by Link shall be regarded as a debt due from the Sub-Contractor to Link.
36. The Sub-Contractor shall make good at its own cost and in accordance with any direction of Link all defects, shrinkages and other faults in the Sub-Contract Works or any part of them (including, but not limited to, any defects appearing during the Defects Period) due to materials, goods, workmanship or (where the Sub-Contractor is responsible for the design of the Sub-Contract Works) design not being in accordance with the Sub-Contract.

## **Copyright and as-built drawings**

37. The copyright in all Sub-Contractor Documents shall remain vested in the Sub-Contractor but Link shall have an irrevocable royalty-free and non-exclusive licence to copy and use the Sub-Contractor Documents and to reproduce the designs and content of them for any purpose related to the site or to the Works including, but without limitation, the construction, completion, extension, maintenance, letting, promotion, advertisement, reinstatement, refurbishment and repair of the Works. Such licence shall survive the termination of the Sub-Contract (howsoever arising), shall be transferable to third parties without the consent of the Sub-Contractor being required and shall include the right to grant sub-licences.

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38. Before practical completion of the Sub-Contract Works the Sub-Contractor shall without further charge to Link supply for the retention and use of Link such copies of the Sub-Contractor's Documents as Link may reasonably require or as are reasonably necessary to show and describe the Sub-Contract Works as built and to detail their required maintenance and means of operation ("the as-built information"). If the Sub-Contractor fails to provide the as-built information in accordance with this clause Link shall be entitled to deduct and retain from any monies due to the Sub-Contractor the sum of £1,000.00 or 5% of the Order Value (whichever is the greater) pending the provision of the as-built information.

#### **Collateral Warranties**

39. If the Contract requires Link to procure collateral warranties from sub-contractors in favour of the Employer and/or others, the Sub-Contractor shall execute and deliver collateral warranties in the form specified in the Contract (or such other form as the Employer may reasonably require) to Link within 7 days of demand.

#### **Sub-Contract Variations**

- 40.
- (1) The Sub-Contractor shall carry out and complete such Sub-Contract Variations as may be ordered or authorised in writing by Link (but not further or otherwise). The value of authorised Sub-Contract Variations shall be determined in accordance with the provisions of this clause and shall be added to or deducted from the Order Value, as the case may require.
  - (2) Subject to clause 40(3) and 40(4) the value of any authorised Sub-Contract Variations shall be ascertained by reference to the rates and prices, if any, specified in the Sub-Contract for similar or analogous work, but if there are no such rates or prices, or if they are not applicable, then the value of any such authorised Sub-Contract Variations shall be such as is fair and reasonable in all the circumstances.
  - (3) Where Link and the Sub-Contractor have expressly agreed in writing a sum for a Sub-Contract Variation, such sum (less the main contractor's discount percentage, if any, specified in the Sub-Contract Order) shall be deemed to be the full value to which the Sub-Contractor is entitled in respect of such Sub-Contract Variation.
  - (4) No addition shall be made to the Order Value in respect of any Sub-Contract Variation caused or necessitated by any act, default or breach of the Sub-Contract by the Sub-Contractor, his servants or agents or sub-contractors.
41. The value of an authorised Sub-Contract Variation shall include the reasonable net additional cost (if any) of any disruption to or prolongation of the Sub-Contract Works that is unavoidably and solely caused by the proper execution of such Sub-Contract Variation, but:
- (1) only if and to the extent that such cost:
    - (a) is actually incurred by the Sub-Contractor in the execution of the Sub-Contract Works; and
    - (b) is not included or deemed to be included in any other amount due to the Sub-Contractor under the Sub-Contract; and
  - (2) It shall be a condition precedent to any right of the Sub-Contractor to receive any additional cost associated with disruption to or prolongation of the Sub-Contract Works that Sub-Contractor shall have:
    - (a) made a written claim in respect thereof to Link within 7 days from when such Sub-Contract Variation was ordered under the Sub-Contract; and
    - (b) supplied to Link on request such information (in such form and detail as Link requires) to verify and substantiate that such cost has been so incurred or will be incurred by the Sub-Contractor; and
    - (c) substantiated to the satisfaction of Link that such disruption and/or prolongation has been so caused; and
  - (3) the value of an authorised Sub-Contract Variation shall not otherwise include any amount for any disruption to or prolongation of the Sub-Contract Works or any part thereof.
42. The Sub-Contractor shall, specifically for the purpose of the verification of the resources and of their times and/or quantities, give Link adequate prior notice in writing of the execution of any work for which he intends to claim payment on a daywork basis or similar. It shall be a condition precedent to any right of the Sub-Contractor to receive any payment for any daywork or similarly executed work that at the end of each working day he shall have provided Link with a voucher specifying each person and the time, the work and the other resources involved and which has been signed on behalf of the Sub-Contractor and by Links' agent in charge of the Works. No such voucher signed or agreed on behalf of Link shall of itself be taken as an order for the execution of the work or as acceptance that the work shall be valued on a daywork basis or similar basis. No part of the Sub-Contract Works shall be valued on a daywork basis unless it has been specifically so ordered in advance in writing by Link.

#### **Payment**

43. Save where the contrary is expressly stated in the Sub-Contract Order or in any bill of quantities, schedules of rates or the like forming part of this Sub-Contract, no quantity stated therein shall be taken to define or limit the extent of any work to be done by the Sub-Contractor in the execution and/or completion of the Sub-Contract Works.
44. The Order Value shall be paid in accordance with the following provisions:
- (1) The Sub-Contractor shall submit to Link interim applications for payment and a final application for payment in accordance with this clause 44.
  - (2) The first payment due date for interim payments shall be the 30th day of the month following the month in which the Sub-Contract Works commenced. Subsequent payment due dates for interim payments shall occur at the Valuation Intervals up to the date of practical completion of the Sub-Contract Works.
  - (3) The final payment due date shall be 28 days after practical completion of the Sub-Contract Works.
  - (4) Applications for payment shall be submitted by the Sub-Contractor not later than 7 days before the relevant payment due date. Applications for payment shall include and separately specify each and every sum that the Sub-Contractor considers is properly due under the Sub-Contract and the basis on which those sums are calculated. Any application for payment submitted less than 7 days before the relevant payment due date shall not be considered to be a valid application for payment in respect of that due date and shall not fall due for valuation and payment until the next payment due date.
  - (5) Each application for payment shall be in writing and contain or be accompanied by such details and supporting information as Link may reasonably require.
  - (6) Each interim payment due to the Sub-Contractor shall be for the value of the Sub-Contract Works properly executed on site by the Sub-Contractor under the Sub-Contract as at the relevant due date calculated and determined in accordance with the Sub-Contract, less any deductions permitted by the Sub-Contract.
  - (7) The final payment due to the Sub-Contractor shall be the Order Value as at the final payment due date, calculated and determined in accordance with the Sub-Contract, less any deductions permitted by the Sub-Contract.
  - (8) The deductions permitted by the Sub-Contract as referred to in clauses 44(6) and 44(7) are:
    - (a) the main contractor's discount (if any) at the percentage specified in the Sub-Contract Order;
    - (b) retention at the percentage specified in the Sub-Contract Order;
    - (c) previous payments by Link under the Sub-Contract; and
    - (d) any other monies whatsoever which are due to Link from the Sub-Contractor under the Sub-Contract.
  - (9) The payment due date for one half of the retention referred to in clause 44(8)(b) shall be the 30th day of the month following the month in which practical completion of the Sub-Contract Works occurred.
  - (10) The payment due date for the balance of the retention referred to in clause 44(8)(b) shall be the 30th day of the month following the month in which the Defects Period ended.
  - (11) The final date for payment of any sum payable to the Sub-Contractor pursuant to this clause 44 is 28 days following the payment due date.

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(12) Not later than 5 days after the payment due date Link shall give a notice to the Sub-Contractor which shall specify the sum that Link considers to be or to have been due at the payment due date and the basis on which that sum has been calculated (a "Payment Notice"). Subject to any Pay Less Notice given under clause 44(14), the sum to be paid by Link on the final date for payment shall be the sum specified in the Payment Notice.

(13) If Link fails to give a Payment Notice in accordance with clause 44(12), the sum to be paid by Link on the final date for payment shall, subject to any Pay Less Notice given under clause 44(14), be the sum specified in the Sub-Contractor's payment application submitted in accordance with this clause.

(14) If Link intends to pay less than the sum stated as due from him in the Payment Notice or Sub-Contractor's payment application submitted in accordance with this clause (as the case may be) Link shall not later than 1 day before the final date for payment give the Sub-Contractor notice of that intention (a "Pay Less Notice"). The Pay Less Notice shall specify both the sum that Link considers to be due to the Sub-Contractor at the date the notice is given and the basis on which that sum has been calculated. Where a Pay Less Notice is given, the sum to be paid by Link on the final date for payment shall not be less the sum specified in the Pay Less Notice.

(15) If Link fails to pay a sum, or any part of it, properly due to the Sub-Contractor under the Sub-Contract by the final date for its payment, Link shall, in addition to any unpaid amount that should properly have been paid, pay the Sub-Contractor simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.

(16) For the avoidance of doubt no payment (including but not limited to the final payment) under the Sub-Contract nor any act or omission by or on behalf of Link or the issue of any notice, certificate or other document issued under the Contract shall constitute evidence that any design, work, materials or goods incorporated in the Sub-Contract Works are in accordance with the Sub-Contract.

(17) Without prejudice to any other rights or remedies which Link may possess and subject only to clause 44(14), Link shall be entitled to deduct and withhold from any monies otherwise payable to the Sub-Contractor whether under the Sub-Contract or any other contract or otherwise any sum or sums:

- (a) agreed by the Sub-Contractor as due to Link; or
- (b) awarded in favour of Link in any adjudication, arbitration or litigation against the Sub-Contractor; or
- (c) which Link has suffered or incurred or anticipates suffering or incurring by reason of any breach of the Sub-Contract by the Sub-Contractor or any failure by the Sub-Contractor to observe the provisions of the Sub-Contract.

(18) Notwithstanding any other provision in the Sub-Contract, Link shall not be liable to make any payment under this Sub-Contract pending receipt of:

- (a) the Sub-Contractor's written acceptance of the terms and conditions of the Sub-Contract;
- (b) (if required under this Sub-Contract) any collateral warranty, performance bond and/or parent company guarantee executed by the Sub-Contractor, such document(s) being properly executed in the form and manner required by the Sub-Contract Order;
- (c) (for inspection by Link) the Sub-Contractor's valid tax certificate or valid tax registration card; and
- (d) verification (in the form of a broker's certificate or similar) that the insurances that the Sub-Contractor is required to maintain pursuant to this Sub-Contract are currently in force.

## Tax and deductions

45. The Sub-Contractor shall pay and shall indemnify Link against all and any liability in respect of any fees and/or charges (including but not limited to any rates, levies, National Insurance contributions, import, export or other duties, taxes and/or the like) legally demandable by Government authorities or other bodies in respect of the Sub-Contract Works or in relation to the employment of the Sub-Contractor under the Sub-Contract and the Sub-Contractor shall not be entitled to any additional payment for or in respect of the same.
46. Link and the Sub-Contractor shall, respectively, comply with the law on tax deduction and with the law on VAT. If the Sub-Contractor fails, within seven days of receipt of any payment under the Sub-Contract, to issue to Link a properly completed form of receipt in respect of either amounts paid without deduction of tax or VAT remitted to him, then without prejudice to clause 44(18) Link may withhold further payments equivalent to the amount of the outstanding receipt or receipts.
47. If the Sub-Contract is a labour only agreement then Link shall be entitled to deduct and withhold from payments otherwise due to the Sub-Contractor under the Sub-Contract the then current construction industry training board levy applicable to payments under such agreements.
48. Link shall be entitled to make any relevant statutory deduction required by the Construction Industry Scheme from all or any payments made or to be made by Link to the Sub-Contractor under the Sub-Contract. Title, risk, insurance and liability
49. The Sub-Contractor shall be responsible for the protection and care of all and any vehicles, plant, equipment, tools, access and other facilities, setting-out and temporary works supplied or brought onto the site by or on behalf of the Sub-Contractor and shall at his own expense make good all loss of or damage to the same.
50. The Sub-Contractor shall be fully responsible for the protection and care of the Sub-Contract Works until they have been fully and properly completed under the Sub-Contract and ceased to be at Links' risk under the Contract. The Sub-Contractor shall make good such loss or and/or damage to the Sub-Contract Works as Link is liable to make good under the Contract for the like period and otherwise upon the like terms as Link is liable to do under the Contract. In this clause 50, reference to the Sub-Contract Works includes all materials and goods for incorporation in the same.
51. Unfixed goods and materials delivered to and stored on site may not be removed without Links' prior written consent.
52. Where Sub-Contractor has been paid for any materials or goods, whether in whole or in part, they shall be and become the property of Link, without prejudice however to any passing of title at any earlier time, or to the provisions of clause 50.
53. The Sub-Contractor shall be liable for and shall indemnify Link against all and any liability incurred at any time by Link in respect of personal injury to or the death or sickness of any person or in respect of loss of or injury or damage to any property (including the Sub-Contract Works and the rest of the Works), which is due to any negligence, breach of statutory duty, omission or default of the Sub-Contractor, his servants or agents.
54. Without in any way limiting his liabilities under the Sub-Contract, the Sub-Contractor shall immediately effect the following insurances:
  - (1) Insurance of the Sub-Contract Works covering Link and the Sub-Contractor against all loss of and/or damage to the Sub-Contract Works and any materials, plant, equipment and/or other goods for incorporation other than such excepted risks (if any) as are provided by the express terms of the Contract to be at the sole risk of the Employer in respect of such loss and damage; the insurance shall be for the full reinstatement cost of the Sub-Contract Works plus 10% and shall be maintained until the Sub-Contractor has finally performed his obligations under clause 36;
  - (2) Employer's liability insurance which complies with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder, which insurance shall be as the minimum amount for such insurance under the Contract (and in any event as the minimum amount for such insurance required by law) for any one occurrence and shall be maintained until the Sub-Contractor has finally performed his obligations under clause 36;
  - (3) Third party/public liability insurance for any one occurrence or series of occurrences arising out of any one event and covering Link and the Sub-Contractor against liabilities for death of or personal injury to any person or loss of or damage to any property arising out of or in consequence of the carrying out, completion or maintenance of the Sub-Contract Works, save that such insurance need not cover the liability of Link if the death, injury, loss or damage was caused solely by the wrongful act or omission of Link, its servants or agents. If the amount of insurance cover is not specified in the Sub-Contract Order it shall be as the minimum amount of third party/public liability insurance required under the Contract or £5 million (whichever is the greater sum) and such insurance shall be maintained until the Sub-Contractor has finally performed his obligations under clause 36;
  - (4) Professional indemnity insurance (required if the Sub-Contract Works include design) for any one occurrence or series of occurrences arising out of any one event and covering all negligent acts or omissions of the Sub-Contractor, his servants or agents in respect of any design work connected with the Sub-Contract Works. If the amount of insurance cover is not specified in the Sub-Contract Order it shall be as the minimum amount of professional indemnity insurance required under the Contract or £2 million (whichever is the greater sum) and such insurance shall be maintained for a period of 6

# LINK

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years from the expiry of the Defects Period. All such insurance shall be held with insurers approved in writing by Link. As and when requested by Link the policies of insurance and/or premium receipts therefore shall be produced forthwith to Link.

55. Link may at any time require the Sub-Contractor to remove or cause to be removed from the site any person engaged on or in connection with the Sub-Contract Works if in the opinion of Link (acting reasonably) the conduct of such person is prejudicial to health and safety and or to the regular progress and completion of the Sub-Contract Works and the Works. Such person shall be replaced by the Sub-Contractor at the Sub-Contractor's own cost.
56. The Sub-Contractor shall indemnify Link against each and every liability which Link may incur at any time to any other person whatsoever and against all claims, demands, proceedings, damages, costs and expenses made against or incurred at any time by Link by reason of any breach by the Sub-Contractor of the Sub-Contract.
57. The rights and remedies of Link as provided in his Sub-Contract are without prejudice to any other rights or remedies that Link may possess. Approval by Link or any other person of any design, work, materials, goods, document or other thing provided by the Sub-Contractor shall not in any way relieve the Sub-Contractor of any of his obligations or liabilities under the Sub-Contract.

#### **Termination and suspension**

58.

- (1) Without prejudice to any other rights or remedies Link may possess, Link may at its discretion at any time by written notice to the Sub-Contractor forthwith determine the Sub-Contractor's employment under the Sub-Contract. The Sub-Contractor's employment under the Sub-Contract shall forthwith automatically be determined if Links' employment under the Contract is determined.
- (2) If in the reasonable opinion of Link any determination of the Sub-Contractor's employment pursuant to clause 58(1) is wholly or partially as a result of any act, neglect or default of the Sub-Contractor or of any of his servants or agents or is in circumstances where the Sub-Contractor is insolvent, then without prejudice to any other rights or remedies of Link, the Sub-Contractor shall be liable to Link for all and any losses, damages, costs and expenses suffered or incurred by Link by reason of such determination.
- (3) If Link is insolvent
- (4) Upon any determination of the Sub-Contractor's employment to which the provisions of clause 58(2) apply Link may take possession of all or any materials, goods, plant and/or other things whatsoever brought on to the site by or on behalf of the Sub-Contractor and may use them for the purpose of executing and completing the Sub-Contract Works.
- (5) Any termination of the Sub-Contract shall be without prejudice to the parties' respective rights under the Sub-Contract accruing prior to the date of termination.

#### **Dispute resolution**

59.

- (1) Subject to clause 59(2), if a dispute or difference arises under the Sub-Contract which cannot be resolved by direct negotiations, each party shall give serious consideration to any request made by the other to refer the matter to mediation.
  - (2) If any dispute or difference arises under the Sub-Contract either party may refer it to adjudication in accordance with the Adjudication Procedure. The parties shall attempt to agree the identity of the adjudicator. If the parties fail to agree the adjudicator, the adjudicator shall be a person appointed on the application of either party by the Appointer.
  - (3) The decision of the adjudicator shall be binding until the dispute is finally determined by legal proceedings or by agreement and Link and the Sub-Contractor shall, without prejudice to their respective rights under the Sub-Contract, comply with the adjudicator's decision accordingly.
  - (4) If any dispute arises in connection with the Contract (a "Contract Dispute") and Link is of the opinion that the Contract Dispute has a connection with the Sub-Contract Works and/or the Sub-Contract and such Contract Dispute is referred to an adjudicator, an arbitrator or the Courts, as the case may be, Link may by notice in writing require that the Sub-Contractor provide such statements, information and assistance and attend such meetings and hearings in connection therewith as Link may request and the Sub-Contractor shall at his own cost comply with any such directions.
  - (5) Link may by notice in writing require that any dispute or difference arising under the Sub-Contract which is or may be related to a Contract Dispute (a "Related Sub-Contract Dispute") shall be dealt with jointly with and in like manner to any actual or potential Contract Dispute. In connection with any such Related Sub-Contract Dispute the Sub-Contractor shall be bound in like manner as Link by any decision of an adjudicator or arbitrator under the Contract or any award by the courts, as the case may be, in relation to such Contract Dispute.
60. Subject to clause 59(2), the English courts shall have jurisdiction over any dispute or difference between the parties which arises out of or in connection with the Sub-Contract.

#### **Confidentiality**

61.

- (1) The Sub-Contractor will not communicate with or disclose any information regarding the Sub-Contract or the Sub-Contract Works to the Employer or the Employer's representatives without Link prior written consent or as expressly provided in this Sub-Contract.
- (2) Damages may not be an adequate remedy for Link in respect of any actual or threatened breach of this Sub-Contract and Link shall be entitled to remedies of injunction, specific performance and other equitable relief.