

**ROSEBIRCH LIMITED**  
**SUBCONTRACT CONDITIONS**

**1. DEFINITIONS AND INTERPRETATIONS**

**1.1 In this Subcontract the following words and expressions shall, where the context so admits, have the following meanings ;**

**“Adjudicator” means any person appointed to act as an adjudicator pursuant to Clause 16.1 ;**

**“Application for Payment” means a written application for payment made pursuant to and in accordance with Clause 9 and which is effective pursuant to Clause 9.2;**

**“Base Date” means the date identified as such in Part 1 of Appendix A;**

**“Bills of Quantities” means the document described as such at Appendix B (if any);**

**“CIS Legislation” means the Finance Act 2004 and the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) and any other statute or subordinate legislation relating to the Scheme.**

**“Complete” means completion of the Subcontract Works thereof subject only to the existence of minor defects and/or omissions at the time of inspection which are capable of being made good without materially interfering with the continued operation or progress of the Works (if any) or the relevant Section and/or the beneficial use and enjoyment of the property/works to which they relate;**

**“Completion” means the date when the Subcontract Works are complete;**

**“Construction Phase Plan” means the document described as such at Appendix B;**

**“Defects Liability Period” means the period so described in Part 2 of Appendix A;**

**“Discount” means the amount (if any) identified as such in Part 1 of Appendix A;**

**“Employer’s Representative” means the person identified as such in Part 2 of Appendix A;**

**“Final Account Statement” means the document identifying the Final Payment (if any);**

**“Final Completion” means completion of the Works or last Section thereof under the Principal Contract;**

**“Final Payment” means the final payment due to the Subcontractor under the Subcontract;**

**“Health and Safety, Environmental and Quality Questionnaire” means the document described as such at Appendix B;**

**“Numbered Documents”** means the documents listed as such in Appendix B

**“Parties”** means together ROSEBIRCH and the Subcontractor and **“Party”** shall mean either one of them;

**“Payment Notice”** means a notice issued by ROSEBIRCH pursuant to Clause 9 or Clause 18;

**“Period(s) for Completion”** means the period(s) set out in Part 1 of Appendix A;

**“Phase”** means those parts of the Subcontract Works (if any) identified as such in Part 1 of Appendix A;

**“Prescribed Rate”** means the rate of interest stated in Part 1 of Appendix A;

**“Principal/Employer”** means the person identified as such in Part 2 of Appendix A;

**“Principal/Main Contractor”** means the person identified as such in Part 2 of Appendix A;

**“Retention”** has the meaning ascribed to it in Clause 9.4.5;

**“Schedule of Rates”** means the document described as such at Appendix B (if any);

**“Section”** or **“Sections”** means the part(s) of the Works (if any) identified as such and notified in writing to the Subcontractor by ROSEBIRCH from time to time;

**“Simplified Method of Measurement”** means builders quantities which are not prepared in accordance with the Standard Method of Measurement of Building Works, 7<sup>th</sup> Edition produced by The Royal Institution of Chartered Surveyors and the Construction Federation;

**“Statutory Requirements”** means any Act of Parliament, any instrument, rule or order made under any Act of Parliament, or any regulation or byelaw of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Subcontract Works or with whose systems the same are connected;

**“Subcontract”** means the contractual rights and obligations of ROSEBIRCH and the Subcontractor as set out in the Subcontract Documents;

**“Subcontract Drawings”** means those drawings to be provided by the Subcontractor as part of the Subcontract Works;

**“Subcontract Site Materials”** means all unfixed materials and goods delivered to, placed on or adjacent to the Subcontract Works which are intended for incorporation therein;

A **“Subcontract Sum”** means the figure as such in Part 1 of Appendix A less the Discount; <sup>1</sup>

OR

B **“Subcontract Sum”** means the tender figure identified as such in Part 1 of Appendix

**A less the Discount subject to remeasurement in accordance with Clause 12.2; <sup>2</sup>**

**“Subcontract Works” means the works and services referred to in Part 1 of Appendix A and described in the Numbered Documents and to be executed as part of the Works including any changes made to such works and services in accordance with This Subcontract;**

**“Technical Data and Documents” means any and all data and/or documents (whether in hard copy form or stored on electronic media) produced or procured by or on behalf of the Subcontractor in connection with the Subcontract Works (including enquiries, studies, reports, calculations, bills of quantities, schedules of work, programmes, budgets and cost plans);**

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**A Applies if Subcontract to be lump sum**

**B Applies if Subcontract to be remeasured**

**“Variation” means any alteration or modification of the design, quality or quantity of the Subcontract Works including :**

- a) the addition, omission or substitution of any work;**
- b) the alteration of the kind or standard of any of the materials or goods to be used in the Subcontract Works;**
- c) the removal from the Site of any work, materials or goods executed or brought thereon by the Subcontractor for the purpose of the Subcontract Works other than work, materials or goods which are not in accordance with The Subcontract.**

**which is required by a direction of ROSEBIRCH issued under the Subcontract;**

**“Working Day” means any day (other than Saturday or Sunday) upon which clearing banks in the City of London are open to the public for the transaction of business during ordinary banking hours;**

**“The Works/Project” means the works to be undertaken by ROSEBIRCH at the Site pursuant to the terms of the Principal Contract and as briefly referred to in Part 1 of Appendix A;**

**1.1 Save where expressly provided otherwise in this Subcontract or the context requires otherwise:**

**1.2.1 any references to Clauses or references to Clauses of this Subcontract and any reference to an Appendix is a reference to the Appendices to this Subcontract;**

**1.2.2 the words “herein” and “hereto” refer to this Subcontract as a whole and not to the particular Clause or Schedule in which such word may be used;**

**1.2.3 use of word “including” is without prejudice to the generality of the provision or provisions to which it relates and is to be construed without limitation: and**

**1.2.4 a reference to any statute or statutory instrument shall include a reference to any modification, extension or re-enactment of it from time to time.**

## **2. SUBCONTRACTOR'S UNDERTAKING**

- 2.1** The subcontractor undertakes to provide, upon the preceding and following terms and conditions, everything which is necessary to complete the Subcontract Works described herein and to complete these works fully in accordance with all relevant contract documentation (defined as any documentation whatsoever arising under, out of and in connection with this subcontract) issued to the subcontractor by ROSEBIRCH from time to time and to the full satisfaction of the Employer's Representative and ROSEBIRCH.
- 2.2** Where the Subcontract Works include design the Subcontractor shall be responsible for the integration of that design with the Works and/or design of the others, including the services and structures indicated in any specification drawing or quantities and the Subcontractor shall have in respect of its design the like responsibility and/or liability to ROSEBIRCH as ROSEBIRCH has in respect of such design to the Principal under the Principal Contract.
- 2.3** **2.3.1** Subject to Clause 12.3 the Subcontract Sum includes the cost of compliance with any Statutory Requirements with regards to the Subcontract Works and with the requirements of any statutory undertaker with whose systems the Subcontract Works are, or will be, connected.
- 2.3.2** During the performance of this Subcontract and in respect of matters arising therefrom, the Subcontractor shall conform to and comply with the Statutory Requirements and shall indemnify ROSEBIRCH and the Principal from and against any expenses, liability, loss, claim or proceedings including any penalties or fines whatsoever arising from the Sub-Contractor's failure to conform to or comply with the Statutory Requirements.
- 2.4** **2.4.1** It will be a condition of the Subcontract that the works at all times will be managed and supervised by experienced personnel and the operatives engaged in the contract works are acceptable if applicable to the relevant Trade Union recognised.
- 2.4.2** ROSEBIRCH shall have the right after consultation with the Subcontractor to require the removal of any person or persons engaged in the performance of the Subcontract Works if, in ROSEBIRCH's opinion (acting reasonably), that person's performance or conduct is or has been unsatisfactory including where any person has failed to comply with any reasonable health and safety requirements (including the failure to wear the appropriate personal protection equipment) (provided that ROSEBIRCH shall be acting reasonably in requiring the removal of any person pursuant to this Clause 2.4, if the Principal has required the removal of such person pursuant to the Principal Contract) and the Subcontractor will promptly remove such person and appoint a suitable substitute person.
- 2.5** The Subcontractor's attention is drawn to the Health and Safety, Environmental and Quality Questionnaire regarding the policy and requirements for Health and Safety, Environmental and Quality issues. This policy statement shall be retained by the Subcontractor and a copy returned with the Subcontract acceptance form duly completed.

- 2.6** Without prejudice to the generality of the Subcontract Conditions ROSEBIRCH and the Subcontractor shall comply with the provisions and responsibilities stated in the Schedule of Provisions and Responsibilities.
- 2.7** A full method statement indicating how the Subcontractor intends to carry out the Subcontract Works must be issued to ROSEBIRCH no later than the agreed designated date which will be no later than 7 days prior to commencement on site.
- 2.8** **2.8.1** ROSEBIRCH may issue to the Subcontractor in writing;
- (a)** any instruction received by or on behalf of ROSEBIRCH under the Principal Contract which affects the Subcontract Works.
  - (b)** any instruction which ROSEBIRCH is expressly empowered by this Subcontract to issue; and
  - (c)** any other instruction or direction.
- 2.8.2** The Subcontractor shall forthwith upon receipt comply with any instruction Referred to in Clause 2.8.1
- 2.9** The Subcontractor warrants that it:
- 2.9.1** is a qualified and professional contractor experienced in carrying out work of a similar size, scope and complexity to the Subcontract Works,
  - 2.9.2** will execute the Subcontract Works in accordance with the CDM regulations, the Construction Phase Plan, the sufficient and appropriate subcontractor method statements, any risk assessments and the Statutory Requirements; and
  - 2.9.3** will comply with any requirements of the CDM co-ordinator and/or the Principal Contractor.
  - 2.9.4** Will ensure that any design element undertaken by the subcontractor is fit for its intended purpose.
- 2.10** **2.10.1** The Subcontractor shall supply sufficiently skilled and competent labour at all times as is necessary to effectively execute the Subcontract Works and in sufficient quantity to maintain the progress of the Subcontract Works pursuant to Clause 3.1 and to comply with any key milestones and/or critical path(s) for the Subcontract Works as may be reasonably required by ROSEBIRCH.
- 2.10.2** The Subcontractor shall take all reasonable steps to encourage employees and agents of the Subcontractor and its subcontractors employed in the execution of the Subcontract Works to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or any successor, or qualified under an equivalent recognised qualification scheme.
- 2.11** The Subcontractor shall at all times prevent any public or private nuisance (including any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway) or other interference with the rights of any adjoining or neighbouring landowner, tenant or occupier or any statutory

undertaker arising out of the carrying out of the Sub-Contract Works and shall defend or, at ROSEBIRCH's option; assist ROSEBIRCH in defending any action or proceedings which may be instituted in relation thereto howsoever such action may arise. The Sub-Contractor shall be liable for and shall indemnify ROSEBIRCH against any expense, liability, loss, claim or proceedings whatsoever and howsoever arising resulting from any such nuisance, or interference, save only where such nuisance or interference is the consequence of carrying out the subcontract works or of a Variation or other instruction of ROSEBIRCH pursuant to Clause 12 (which is not itself the result of any negligence, default or breach of contract by or on behalf of the Sub-Contractor or any sub-sub-contractor or supplier) and which could not have been avoided by the Sub-Contractor using all reasonable and practical means. For the avoidance of doubt, ROSEBIRCH may issue to the Sub-Contractor such instructions as he considers necessary if any injunction is granted or court order is made in consequence of any such nuisance or interference, but (save as aforesaid) no such instruction shall be construed as a Variation pursuant to Clause 12.

**2.12 2.12.1 The Sub-Contractor shall when necessary or when directed by ROSEBIRCH**

clear away to a designated area on the Site all rubbish resulting from his execution of the Subcontract Works and shall keep access to those Subcontract Works clear at all times.

**2.12.2 The Sub-Contractor shall both during and upon Completion of the Sub-Contract Works or each Phase (if applicable) properly clear up in a continuous and planned manner and leave the Sub-Contract Works and all areas made available to him for the purpose of executing the Sub-Contract Works, so far as used by him for that purpose, clean and tidy to the reasonable satisfaction of ROSEBIRCH.**

### **3. RATE OF PROGRESS**

- 3.1** Subject to receipt of the notice to commence work on Site stated in Part 1 of Appendix A, the Sub-Contractor shall carry out and complete the Sub-Contract Works in accordance with the details in Part 1 of Appendix A by the Period (s) for Completion or such extended period (s) (if any) as may be fixed under this Sub-Contract. If no such periods are stated, the Sub-Contract Works are to be executed in such order, manner and time as ROSEBIRCH may direct. In any event the Sub-Contract Works are to be executed reasonably in accordance with the progress of the Works so as to ensure Final Completion of the Works by the completion date or dates thereof under the Principal Contract.
- 3.2** The Sub-Contractor shall recognise and make due allowance for the freedom of and shall not unreasonably impede any other trades employed on the Site including any other sub-contractors employed by ROSEBIRCH on the Works or in any other way hinder the progress of the Works. The Sub-Contractor shall make due allowance for sharing work areas with such other sub-contractors as necessary and appropriate.
- 3.3** Upon it becoming reasonably apparent that the performance by the Sub-Contractor of all or any part of its obligations under this Sub-Contract will be or is delayed for any reason, the Sub-Contractor shall forthwith give written notice of the expected delay and its cause and the Sub-Contractor's estimate of its effect on the progress of the Sub-Contract Works to ROSEBIRCH whether such delay and/or perceived delay has or has not been caused by an event listed at Clause 3.5.
- 3.4** If the Completion of the Sub-Contract Works or any Phase thereof is likely to be or has been delayed beyond the Period(s) for Completion thereof by reason of any of the matters referred to in Clause 3.5 (whether occurring before or after such Period for Completion has expired) then ROSEBIRCH shall grant in writing a fair and reasonable extension of such Period for Completion provided that;
- 3.4.1** the Sub-Contractor shall ;
- (a)** in addition to reporting requirements set out at Clause 3.3 as soon as such delay has or should reasonably have become apparent, forthwith give written notice to ROSEBIRCH containing any information and/or details which ROSEBIRCH is obliged to include in any notice to be given by ROSEBIRCH under the Principal Contract in the event of the occurrence of any delay to the progress of the Works (and whether or not required as a condition precedent to ROSEBIRCH's entitlement to an extension of time for such delay under the Principal Contract) and, in any event, setting out the cause of delay and the likely effects thereof; and
  - (b)** as soon as possible and in any event within 14 days after service of a notice pursuant to Clause 3.4.1 (a), submit full and detailed particulars of the extension of time to which the Sub-Contractor may consider himself entitled and shall keep such particulars up to date by submitting such further particulars which may be necessary or may



be requested from time to time by ROSEBIRCH provided that in the event of any matter listed at Clause 3.5.1. (but not otherwise), compliance with Clauses 3.4.1. (a) and (b) shall be a condition precedent to the Sub-Contractor's right to such extension of time.

- 3.4.2 the Subcontractor shall constantly use his best endeavours to avoid or prevent delay and to minimise unavoidable delays and shall do all that may be required by ROSEBIRCH to proceed with the Sub-Contract Works or any Phase thereof;
  - 3.4.3 the Subcontractor shall not be entitled to any extension of time where the delay or likely delay is attributable to any negligence, default, improper conduct and/or lack of endeavour by the Sub-Contractor, its subcontractors or suppliers;
  - 3.4.4 ROSEBIRCH shall be entitled to take into account in determining any extension hereunder, the effects of any omission from the Sub-Contract Works or any Phase thereof; and
- 3.5 The matters referred to are as follows :
- 3.5.1 the occurrence of the matters sets out in the relevant provisions of the Principal Contract for which ROSEBIRCH may be granted an extension of time for Completion of the Works (or a section which includes the Sub-Contract Works or the relevant Phase, as the case may be);
  - 3.5.2 any act or default or omission of ROSEBIRCH or any other sub-contractor employed by ROSEBIRCH on or in connection with the Works; or
  - 3.5.3 the circumstances set out in Clause 11.3
- 3.6 Within a reasonable time after Completion of the Sub-Contract Works or any Phase thereof ROSEBIRCH at their discretion may grant an extension or further extension of time in accordance with Clause 3.4 (but shall not reduce any extension previously granted) whether as a result of reviewing any previous decisions or otherwise.
- 3.7 If the Sub-Contractor fails to Complete the Sub-Contract Works or any Phase thereof within the Period (s) for Completion or such extended period(s) (if any) as may be fixed under this Sub-Contract (or, where no such Period(s) for Completion are stated, within a reasonable time) it shall pay or allow to ROSEBIRCH a sum equivalent to any loss and/or damage suffered or incurred or likely to be suffered or incurred by ROSEBIRCH (under the Principal Contract or otherwise) and to also include for any liquidated and ascertained damages if applicable and levied under the Principal Contract as a result of or due to the failure of the Sub-Contractor as aforesaid. ROSEBIRCH shall at the earliest opportunity given written notice to the Sub-Contractor that such loss and/or damage is likely to be, is being or has been suffered or incurred and ROSEBIRCH may without prejudice to any other method of recovery but subject to Clause 10 deduct the amount of any loss or damage incurred or to be incurred howsoever as a result of the Sub-Contractor's failure to perform as aforesaid from any money due or which may become due to the Sub-Contractor.

#### **4. SUB-CONTRACTOR'S RESPONSIBILITY AND RISK**

- 4.1** The Sub-Contract Works and all services, materials, tools, plant, scaffolding, machinery and buildings including the Sub-Contract Site Materials belonging to or provided by the Sub-Contractor, the subject of or used in connection with this Sub-Contract whether at its workshop or on the Site, shall be at the Sub-Contractor's risk for every description of loss or damage and the Sub-Contractor shall be responsible for and shall with all possible speed make good at its own expense any loss or damage including all defects, shrinkages and other faults that may occur to the same and shall indemnify ROSEBIRCH and the Principal against all liability, damage, expense, loss, cost, claim or proceedings whether arising under or pursuant to statute at common law or otherwise suffered or incurred by ROSEBIRCH (including any liability of ROSEBIRCH under the Principal Contract) as a result of any such loss or damage and shall deliver up all the Sub-Contract Works to ROSEBIRCH completed in every respect to the satisfaction of ROSEBIRCH and the Employer's Representative.
- 4.1** From completion of the Sub-Contract Works until the end of ROSEBIRCH's liability to the Principal during the Defects Liability Period the Sub-Contractor shall be liable to make good at his own cost and in accordance with any direction of ROSEBIRCH all defects, shrinkages and other faults in the Sub-Contract Works or in any Phase thereof due to failure by the Sub-Contractor to comply with its obligations under this Sub-Contract including any negligence, breach of statutory duty, omission or default of the Sub-Contractor or due to frost occurring before completion.
- 4.2** The Sub-Contractor shall indemnify ROSEBIRCH and the Principal against all liability, damage, expense, loss, cost, claim or proceedings whether arising under or pursuant to statute or common law or otherwise suffered or incurred by ROSEBIRCH (including any liability of ROSEBIRCH under the Principal Contract) to the extent that the same arises out of or in connection with any loss or damage accruing to the new and/or existing adjoining premises or to ROSEBIRCH's or other sub-contractor's plant or materials, caused by the Sub-Contractor, its servants and/or agents and or the Sub-Contract Works.
- 4.3** No inspection, test, review, agreement, consent, approval, comment, certification, payment and/or other approval made or given by ROSEBIRCH or its agents and/or employees and/or the Principal or its agents and/or employees shall relieve or derogate the Sub-Contractor from any of its obligations, risks or liabilities under this Sub-Contract.
- 4.4** The Sub-Contractor shall not and the Sub-Contractor shall procure that its servants and/or agents shall not wrongfully use or interfere with the plant, access ways, scaffolding, temporary works, appliances or other property respectively belonging to or provided by ROSEBIRCH or any of its agents and/or employees and/or sub-contractors or cause ROSEBIRCH to be guilty of any breach or infringement of any of its statutory or contractual Duties under this Sub-Contract and/or the Principal Contract.

**5. INDEMNITIES AND INSURANCE**

- 5.1 The Sub-Contractor shall be liable for and indemnify ROSEBIRCH for and against any expense, liability, loss, claim or proceedings (including any liability of ROSEBIRCH to the Principal):**
- 5.1.1 arising directly or indirectly from the negligence of the Sub-Contractor, his employees, servants or agents; and/or**
  - 5.1.2 in respect of personal injury to or the death of any person arising out of or in the course of the Sub-Contract Works except to the extent that the same is due to any act or neglect, breach of statutory duty, omission or default of ROSEBIRCH or any person for whom ROSEBIRCH is responsible; and/or**
  - 5.1.3 in respect of any loss, injury or damage whatsoever to any property real or personal arising out of or in the course of the Sub-Contract Works in so far as the same is due to any negligence, breach of statutory duty, omission or default of the Sub-Contractor or any person for whom the Sub-Contractor is responsible.**
- 5.2 Without prejudice to the generality of Clause 5.1 the Sub-Contractor shall take out and in the case of the insurance referred to in Clause 5.2.2 maintain from the date of this Sub-Contract for a period of 12 years from the date of issue of the Certificate for Making Good Defects (or such similar certificate) under the Principal Contract. (notwithstanding determination for any reason of the Sub-Contractor's employment under this Sub- Contract but provided such insurance is generally available at reasonable premium Rates) :**
- 5.2.1 such insurances as are necessary in respect of claims arising out of his liability referred to in Clauses 5.1.2 and 5.1.3 which shall comply with all relevant legislation; and**
  - 5.2.2 professional indemnity or product liability insurance as required by Part 1 of Appendix A with a limit of indemnity of not less than the sum stated in Part 1 of Appendix A for any one occurrence or series of occurrences arising out of any one event to cover any liability which the Sub-Contractor may incur under this Sub-Contract in respect of any negligence, omission or error by the Sub-Contractor or of its respective servants or agents; and**
  - 5.2.3 public liability insurance for the minimum limit of indemnity stated in Part 1 of Appendix A for any one claim.**
- 5.3 The Sub-Contractor shall produce on demand the policies of the insurances required under Clause 5.2. If the Sub-Contractor defaults in insuring as provided in Clause 5.2 ROSEBIRCH may itself take out insurance against any liability or expense which it may incur arising out of such default and the premium for such insurance shall, subject to Clause 10, be paid by the Sub-Contractor to ROSEBIRCH or be recoverable by ROSEBIRCH from The Sub-Contractor as a debt.**

- 5.4 The Sub-Contractor shall not voluntarily do anything which would render void any policy of Insurance to be taken out and maintained pursuant to this Sub-Contract and/or the Principal Contract and/or reduce or tend to reduce the scope of indemnity under its insurance policy or the amount of indemnity monies which will be available thereunder to indemnify the Sub-Contractor were the claim against it succeed in full.**

**6. DETERMINATION OF CONTRACT**

**6.1 ROSEBIRCH may by notice forthwith determine the Sub-Contractor's employment under this Sub-Contract either wholly or in part without payment to the Sub-Contractor other than that to which it may be entitled under the terms and conditions of this Sub-Contract for work already executed and without any further compensation, loss or Damage, if the Sub-Contractor;**

**6.1.1 three days after receiving notice in writing from ROSEBIRCH fails to proceed regularly and diligently with the Sub-Contract Works to the reasonable satisfaction of ROSEBIRCH and at all times in such manner as will not, in the opinion of ROSEBIRCH, prejudice completion of the whole or any section of the Works in accordance with the Principal Contract;**

**6.1.2 three days after receiving notice in writing from ROSEBIRCH, refuses, delays or fails to rectify, reform, reconstruct or replace defective work or materials to the Employer's Representative's satisfaction;**

**6.1.3 fails to complete and deliver the Sub-Contract Works or any Phase thereof by the relevant Period(s) for Completion or such extended period (if any) as may be fixed under this Sub-Contract;**

**6.1.4 fails to withdraw immediately at the request of ROSEBIRCH any one or more of its employees engaged on the Sub-Contract Works who may contravene the conditions of this Sub-Contract and/or the Principal Contract or may cause labour disputes in the Sub-Contractor's or any other trade, and to replace such employees immediately with others against whom there is no such objection;**

**6.1.5 being an individual, he makes a composition or arrangement with his creditors, or becomes bankrupt;**

**6.1.6 being a company,**

**a) makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof, or**

**b) has a provisional liquidator appointed, or**

**c) has a winding-up order made, or**

**d) passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction), or**

**e) under the Insolvency Act 1986 or any amendment or re-enactment thereof has an administrator or an administrative receiver appointed;**

- 6.1.7 breaches any of its obligations provided for expressly or impliedly by this Sub-Contract, or
- 6.1.8 without reasonable cause he wholly or substantially suspends the carrying out of the Sub-Contract Works or any Phase thereof, or
- 6.1.9 fails to comply pursuant to this Sub-Contract with the requirements of the CDM Regulations, the Construction Phase Plan the sufficient and appropriate sub contractors method statements, any risk assessments and/or the requirements of The CDM co-ordinator and/or the Principal Contractor.
- 6.1.10 Three days after receiving notice in writing from ROSEBIRCH, fails to withdraw any employee who has attempted to induce, bribe or corrupt or in any other way compromise a member of ROSEBIRCH's staff or workforce in relation to these subcontract works or any other related subcontract with ROSEBIRCH

## **7. PROVISIONS IN CASE OF DETERMINATION OF SUB-CONTRACTOR'S EMPLOYMENT UNDER SUB-CONTRACT**

- 7.1 In the event of termination of the Sub-Contractor's employment under this Sub-Contract :
  - 7.1.1 ROSEBIRCH may ;
    - a) exercise the same rights as are reserved by the Principal under the Principal Contract ; and
    - b) shall have the same powers over the Sub-Contractor's plant, materials and property on the site, or any materials lying at the Sub-Contractor's works or workshop which have been bought or fabricated for the purpose of this Sub-Contract as are given to the Principal under the Principal Contract over ROSEBIRCH's plant, materials and property, in like circumstances.
  - 7.1.2 ROSEBIRCH may employ another or other sub-contractors to carry out the Sub-Contract Works, and subject to Clause 10 deduct from any monies due, or becoming due, to the Sub-Contractor and/or otherwise recover from the Sub-Contractor all additional costs or damages incurred or which are likely to be incurred by ROSEBIRCH in discharge of its obligations under the terms and Conditions of the Principal Contract or otherwise suffered or incurred or which Are likely to be incurred as a consequence of the Sub-Contractor's default.
  - 7.1.3 For the avoidance of doubt no further payments shall be made to the subcontractor until all additional costs or damages referred to under Clause 7.1.2 are known and the subsequent affect of the same calculated.

**8. TERMINATION OF PRINCIPAL CONTRACT**

- 8.1** If for any reason ROSEBIRCH's employment under the Principal Contract is determined or the Principal Contract is determined (whether by ROSEBIRCH or by the Principal and whether due to any default of ROSEBIRCH or otherwise) then the employment of the Sub-Contractor under this Sub-Contract shall thereupon also determine.
- 8.2** If the Sub-Contractor's employment under this Sub-Contract is determined pursuant to Clause 8.1, then ROSEBIRCH may by written notice to the Sub-Contractor reinstate the Sub-Contractor's employment under this Sub-Contract and assign the benefit of the Sub-Contract to the Principal/Employer with the reasonable consent (which consent shall not be unreasonably withheld or refused) of the Sub-Contractor being required. The Sub-Contractor shall forthwith upon receipt of ROSEBIRCH's written request do all acts and execute all documents necessary to make such assignment effective.

**9. METHOD OF PAYMENT**

- 9.1** The Sub-Contract Sum shall be paid to the Sub-Contractor by monthly instalments during the Sub-Contract Period in the form of interim payments in accordance with this Clause 9 and thereafter as and when further amounts are ascertained as payable.
- 9.2** The Sub-Contractor shall submit an Application for Payment in respect of each instalment. Each such Application for Payment shall be supported by all relevant documentary evidence showing how the total amount claimed in the Application for Payment has been calculated. An Application for Payment will only be effective where :
- 9.2.1** ROSEBIRCH has in its possession :
- a)** the Sub-Contract Articles of Agreement executed (signed and sealed (if appropriate)) by the Sub-Contractor ; and
  - b)** the Health and Safety, Environmental and Quality Questionnaire signed by the Sub- Contractor ; and
- 9.2.2** the information accompanying the application as required by this clause is sufficient in ROSEBIRCH's reasonable discretion to enable ROSEBIRCH to determine the accuracy of the amount claimed ; and
- 9.2.3** the Sub-Contractor has a current CIS (Reform) UTR Number and the Sub-Contractor has provided the same and any other required associated information to ROSEBIRCH.
- 9.2.4** the Application for Payment is addressed to the ROSEBIRCH office specified in Part 1 of Appendix A stating on its face the relevant contact name, number and site location.
- 9.3** The first Application for Payment shall be made at least 3 (Three) Working Days before

the end of the calendar month during which the Sub-Contract Works commence on site. To the extent that the Sub-Contract Works are commenced on Site on or during the 3 (Three) Working Days preceding the end of the calendar month the first Application for Payment shall be made at least 3 (Three) Working Days before the end of the following calendar month. Thereafter the Sub-Contractor shall submit an Application for Payment to ROSEBIRCH not less than 3 (Three) Working Days before the end of each month but shall not submit more than one such Application for Payment in any one month. For the avoidance of doubt, if any such Application for Payment is received by ROSEBIRCH less than 3 (Three) working days before the end of any month ROSEBIRCH shall be entitled, for all purposes of the Sub-Contract to treat such Application for Payment as having been received by ROSEBIRCH in the following month.

- 9.4 An interim payment shall become due 35 (Thirty Five) days after the end of the calendar month during which ROSEBIRCH receives the Application for Payment for such interim payment. The amount due shall be the aggregate of the following amounts :
- 9.4.1 an amount equal to the value of any work executed in accordance with this Sub-Contract from commencement of the Sub-Contract Works to the date of Submission of the Application for Payment in accordance with Clause 9.3 ;  
and
  - 9.4.2 any other amount or sum which the Sub-Contract specifies shall be payable to the Sub-Contractor ;  
  
Less
  - 9.4.3 the aggregate of any sums which have been paid or are due for payment in accordance with this clause from commencement of the Sub-Contract Works to the date of submission of the previous Application for Payment in accordance with Clause 9.3 ; and
  - 9.4.4 any other amount or sum which the Sub-Contract specifies shall be deducted from sums due to the Sub-Contractor ; and
  - 9.4.5 a sum representing retention calculated as 5% of the value of the interim payment unless otherwise stated in Part 1 of Appendix A (the "Retention").
- 9.5 ROSEBIRCH shall no later than 5 (five) days after the due date determined in accordance with this Clause 9 and subject to Clause 10 send to the Sub-Contractor a Payment Notice for the instalment to which the Application for Payment relates. The Payment Notice shall specify the amount (if any) of the payment proposed to be made and the basis on which the amount was calculated. The extent of information contained in the Payment Notice will be determined by reference to the extent of information in the Application for Payment. The Sub-Contractor hereby agrees that a Payment Notice prepared and given in accordance with this clause will constitute notice required by Section 110 (2) of the Housing Grants, Construction and Regeneration Act 1996.
- 9.6 The final date for payment of each instalment shall be 10 (ten) days after the due date determined in accordance with Clause 9.5.
- 9.7 The Sub-Contractor acknowledges that all interim payments are on account only, and



that they shall not be held to signify approval by ROSEBIRCH and/or the Employer's Representative of the whole or any Phase of the Sub-Contract Works executed nor shall any final payment prejudice ROSEBIRCH's rights during the Defects Liability Period as set out in Clause 4.2.

- 9.8 In the event that the Principal under the Principal Contract or any third party responsible for discharging payment to ROSEBIRCH under the Principal Contract (whether directly or indirectly) becomes insolvent as defined by Section 113 (2) Housing Grants, Construction and Regeneration Act 1996 ROSEBIRCH's obligations for payment under this Clause 9 shall cease and the Sub-Contractor shall become entitled only to such sum or amount or proportion thereof claimed under any Application for Payment that ROSEBIRCH has in turn received payment in respect thereof into its bank account from the Principal or third party and then only to the extent of such receipt.
10. SET OFF
- 10.1 ROSEBIRCH shall be entitled to deduct from or set off against any money (including any Retention) otherwise due to the Sub-Contractor under the Sub-Contract or pursuant to any Adjudicator's award or any other contract, agreement or arrangement whether independent of or connected to the Sub-Contract any sum or sums which the Sub-Contractor is or may be liable to pay to ROSEBIRCH under the Sub-Contract or pursuant to any other contract, agreement or arrangement whether independent of or connected to the Sub-Contract or such sum finally awarded in adjudication, arbitration or litigation in favour of ROSEBIRCH provided that :
- 10.1.1 ROSEBIRCH has given written notice ("the Set-off Notice") to the Sub-Contractor not later than 2 (Two) day before the final date for payment in accordance with Clause 9 ; and
- 10.1.2 the Set-off Notice specifies the amount proposed to be withheld and the ground for withholding payment. If there is more than one ground, each ground and the amount attributable to it shall be specified.
- 10.1.3 the Sub-contractor hereby agrees that a set-off notice prepared and given in accordance with this Clause will constitute notice as required by Section 111 (2) of the Housing Grants Construction and Regeneration Act 1996.
- 10.2 Where an effective Set-off Notice has been given but on the matter being referred to Adjudication pursuant to Clause 16 it is determined that the whole or part of the amount should be paid that amount shall be paid not later than seven days from the date of the Adjudicator's award or the date which apart from the Set-off Notice would have been the final date for payment whichever is the later.
- 10.3 Without prejudice to preceding provisions of this Clause 10 where ROSEBIRCH has a claim for loss and/or expense and/or damage which it has suffered or incurred by reason of any breach of, or failure to observe, the provisions of the Sub-Contract or any other contract, agreement or arrangement by the Sub-Contractor (whether or not ROSEBIRCH may have further claims for loss and/or expense and/or damage by reason of any breach or failure) ROSEBIRCH shall be entitled to set off the amount of such loss and/or expense and/or damage so suffered or incurred against any money otherwise due under the Sub-Contract or any other contract, agreement or arrangement between ROSEBIRCH and the Sub-Contractor including any Retention.

- 10.4** The rights of Parties in respect of set off are fully set out in this Sub-Contract and no other rights whatsoever shall be implied as terms of this Sub-Contract relating to set off.
- 11. SUSPENSION**
- 11.1** The Sub-Contractor may only suspend performance of its obligations under the Sub-Contract where :
- 11.1.1** the payment notified in a Payment Notice issued pursuant to Clause 9.5 is not made in full by the final date for payment in accordance with Clause 9.6 ; and
- 11.1.2** no effective Set-off Notice has been given in accordance with Clause 10 in relation to the outstanding payments ; and
- 11.1.3** the Sub-Contractor has given at least 7 (Seven) days written notice of his intention to suspend performance stating the ground or grounds upon which it is intended to suspend performance.
- 11.2** The right to suspend ceases where ROSEBIRCH makes payment in full of the amount shown in the relevant Payment Notice.
- 11.3** If the Sub-Contractor validly suspends performance pursuant to this clause it will be a matter for the purposes of Clause 3.5 and an extension of time for completion of the Sub-Contract Works or any Phase thereof will be granted for the period of suspension (“the Period of Suspension”) without reimbursement of costs.
- 11.4** The Period of Suspension shall begin on the first day that performance is actually Suspended in accordance with Clause 11.1 and will cease on the earlier of the date when performance recommences or when the relevant payment under Clause 9 is discharged or the Sub-Contractor’s employment under the Sub-Contract is determined in accordance with Clauses 6 or 8.
- 11.5** If the suspension is found to be invalid for whatever reason the Sub- Contractor shall be liable for and shall indemnify ROSEBIRCH in respect of any liability, damages, loss, expense, costs, claim or proceedings arising, including liquidated damages under the Principal Contract suffered or incurred by ROSEBIRCH as a consequence of the invalid suspension.
- 11.6** If for any reason ROSEBIRCH’s employment under the Principal Contract is suspended (whether by ROSEBIRCH or by the Principal and whether due to any default of ROSEBIRCH or otherwise) then the employment of the Sub-Contractor under this Sub-Contract shall thereupon also be suspended until further notice by ROSEBIRCH.

**12. REMEASUREMENT, VARIATION AND EXTRA WORKS**

**12.1 No variation shall vitiate this Sub-Contract. The Sub-Contractor shall not undertake Any works involving a Variation or extra work without previous written authority from ROSEBIRCH save where such work is required to comply with the Statutory Requirements.**

**A**

**12.2 Variations so authorised either by way of additions or omissions or extra work shall be assessed on the basis of the Schedule of Rates or where no schedule exists at a rate or value agreed upon between the Sub-Contractor and ROSEBIRCH and/or the Employer's Representative.<sup>3</sup>**

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**A Applies if Sub-Contract to be lump sum.**

**OR**

**B**

**12.2.1 The Sub-Contract Works shall be subject to complete re-measurement and the Sub-Contract Works shall be measured and valued as follows :**

**(a) where works is of similar character and executed under similar conditions to work priced in the Bills of Quantities it shall be valued at such rates and prices set out in the Bills of Quantities as may be applicable ;**

**(b) where work is not of a similar character or is not executed under similar conditions the rates and prices in the Bills of Quantities shall be used as the basis for valuation so far as may be reasonable failing which a fair valuation shall be made.**

**Failing agreement between ROSEBIRCH and the Sub-Contractor as to any rate or price to be applied in any valuation ROSEBIRCH shall determine the rate or price in accordance with the above principles and shall notify the Sub-Contractor accordingly.**

**12.2.2 Unless the Principal Contract specifies otherwise, any Bills of Quantities shall have been prepared and measurements shall be made according to a Simplified Method of Measurement (which shall be deemed to include all necessary labours and rates).**

**12.3 If after the Base Date there is a change in the Statutory Requirements affecting the Sub-Contract Works which was not reasonably foreseeable at the date of this Sub-Contract the amendments to the Sub-Contract Works necessary to comply with the same shall be treated as if they were a Variation for the Purposes of Clauses 12.1 and 12.2. If such a change to the Statutory Requirements was reasonably**

foreseeable the Sub-Contractor shall not be entitled to any addition to the Sub-Contract Sum or an extension of the Period(s) for Completion as a result thereof.

- 12.4 No daywork will be permitted except where in the opinion of ROSEBIRCH or the Employer's Representative it would be unfair to value such work at other than the daywork rates set out in the Sub Contract Award Meeting Minutes included in the Numbered Documents appended to this Sub-Contract.

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B Applies if Sub-Contract to be remeasured.

- 12.5 Where the Sub-Contractor considers it has claim to daywork, due notice must be given to ROSEBIRCH prior to its execution, in order to facilitate the checking of time and materials expended thereon, and all daywork sheets are to be rendered daily in accordance with the instructions of ROSEBIRCH.

### **13. EMPLOYMENT OF OTHERS**

- 13.1** ROSEBIRCH reserves the right and it is expressly agreed that it may carry out work under the Principal Contract of a character similar to that under this particular Sub-Contract and employ its own workmen and materials and/or other sub-contractors in this connection.
- 13.2** The Sub-Contractor shall satisfy himself before commencing the Sub-Contract Works or any Phase thereof as to the position, dimensions and suitability of any previous work which might in any way affect the Sub-Contract Works or relevant Phase and shall immediately advise ROSEBIRCH in writing if such previous work is out of position, wrongly dimensioned or in any other way unsuitable. The Sub-Contractor shall have no claim or right of action against ROSEBIRCH unless such written notice is received by ROSEBIRCH in reasonably sufficient time to enable ROSEBIRCH to arrange for rectification of previous work without prejudicing the time for the commencement of the Sub-Contract Works or the relevant Phase.
- 13.3** Should the Sub-Contractor wish to assign or sub-let any proportion of the Sub-Contract Works, written consent must be obtained from ROSEBIRCH. ROSEBIRCH may with the reasonable consent (such consent not to be unreasonably withheld or refused) of the subcontractor assign the benefit of the Sub-Contract to the Principal/Employer.

### **14. TERMS AND CONDITIONS OF PRINCIPAL CONTRACT**

- 14.1.1** The Sub-Contractor is deemed to have knowledge of the provisions of the Principal Contract in so far as they relate to the subcontract works and where such provisions are not expressly repeated herein and where such provisions are applicable to the Sub-Contract Works the relevant terms in the Principal Contract shall be deemed to be incorporated herein provided that if they differ or are inconsistent in anyway from the provisions embodied in this Sub-Contract the latter shall apply and be enforced accordingly. Any conditions contained in the Sub-Contractor's tender other than those particularly agreed to hereof shall be excluded.
- 14.1.2** Reference should be made to Article 1 herein.
- 14.2** The Sub-Contractor shall indemnify and save harmless ROSEBIRCH against and from :
- 14.2.1** any breach, non-observance or non-performance by the Sub-Contractor or his servants or agents of any of the provisions of the Principal Contract insofar as they relate and apply to the Sub-Contract.
  - 14.2.2** any act or omission of the Sub-Contractor or his servants or agents which involves ROSEBIRCH in any liability to the Principal under the provisions of the Principal Contract insofar as they relate and apply to the Sub-Contract ; and
  - 14.2.3** any claim, damage, loss or expense due to or resulting from any negligence or breach of duty on the part of the Sub-Contractor, his servants or agents (including any wrongful use by him or them of the scaffolding referred to in

this Sub-Contract or other property belonging to or provided by ROSEBIRCH).

14.2.4 any claim, damage, loss or expense whatsoever due to or resulting from any breach or non compliance by the subcontractor or his agents, servants and employees in relation to the requirements of this subcontract concerning bribery, corruption etc. as outlined in Clause 6.1.10. herein.

## 15. COPYRIGHT

- 15.1 The Sub-Contractor hereby grants to ROSEBIRCH and shall procure that any third person to whom it sub-lets any proportion of the Sub-Contract Works pursuant to Clause 13.3 grants to ROSEBIRCH, an irrevocable, royalty-free, non-exclusive licence to use and reproduce the Technical Data and Documents (and any designs contained therein) for any and all purposes whatsoever connected with the Works, including : design; construction; testing; commissioning; completion; snagging; rectification of defects; promotion; advertisements; funding; letting; sales; maintenance; repairs; reinstatement; reconstruction; refurbishment; remodelling; alteration; modification; and/or extension thereof. Such licence shall entitle ROSEBIRCH to grant sub-licences to third parties on the same terms as this licence provided always that the Sub-Contractor shall not be liable to ROSEBIRCH or any sub-licensee or permitted assignee of ROSEBIRCH for any use of the Technical Data and Documents for purposes other than those for which the same were originally prepared by or on behalf of the Sub-Contractor.
- 15.2 The Sub-Contractor waives any right to be identified as author of the Technical Data and Documents in accordance with Section 77 of the Copyright Designs and Patents Act 1988 and any right not to have the design documents subjected to derogatory treatment in accordance with Section 80 of that Act as against ROSEBIRCH or any sub-licensee or permitted assigns of ROSEBIRCH.
- 15.3 The Sub-Contractor warrants to ROSEBIRCH that he has not and shall not (save as required by the Sub-Contract and any collateral warranties which the Sub-Contractor is obliged to provide and/or unless authorised by ROSEBIRCH to do so) grant any rights to any third party to use or otherwise exploit the Technical Data and Documents within any geographical location whatsoever and that he has not and shall not permit or tolerate any use or exploitation of the Technical Data and/or Documents within such territories and that the rights granted under this Sub-Contract do not and will not infringe the rights of any third parties.
- 15.4 In the event that a third party infringes the Sub-Contractor's rights in relation to the Technical Data and Documents the Sub-Contractor hereby undertakes, if ROSEBIRCH so requests, to take such action and institute such proceedings as may be appropriate to ensure that ROSEBIRCH's rights are upheld and respected and ROSEBIRCH's interests therein are not in any way prejudiced.
- 15.5 The Sub-Contractor shall be liable for and shall indemnify ROSEBIRCH against any and all Expenses, liabilities, losses claims or proceedings ROSEBIRCH may incur in the event ;
- 15.5.1 that any of the rights granted by the Subcontractor pursuant to this Clause 15 are found to be invalid, ineffective or impaired in any way ; and/or

**15.5.2 of any claim by any third party (whether upheld or not) that the exercise of the rights granted by the Sub-Contractor pursuant to this Clause 15 infringe the rights of such third party.**

**16. DISPUTE**

**16.1 Adjudication**

**16.1.1 The parties shall have the right to defer any dispute or difference arising under the Sub-Contract for adjudication at any time in accordance with this clause.**

**16.1.2 In the event that any dispute or difference arises under the Sub-Contract ROSEBIRCH or the Sub-Contractor may at any time serve a written notice ("the Notice of Adjudication") on the other party indicating their intention to refer the dispute to adjudication.**

**16.1.3 The Notice of Adjudication shall include a brief statement of the issue or issues which it is desired to refer to adjudication together with the redress sought. The referring party shall send a copy of the Notice of Adjudication to the Adjudicator.**

**16.1.4 The parties to this Sub-contract agree that the provisions of Section 108 (1) – (6) inclusive of the Housing Grants, Construction and Regeneration Act 1996 are hereby incorporated within Clause 16.**

**16.1.5 As a consequence of Clause 16.1.4, the parties to this Subcontract hereby agree that the Adjudication provisions of Part I of the Scheme for Construction Contracts (England and Wales) & Regulations 1998 apply in their entirety to any Adjudication brought by either party in accordance with this Sub-contract.**

**16.1.6 Any notice or communication which is given pursuant to or is relevant or connected with the procedure set out in this clause shall be served upon the ROSEBIRCH office indicated on Part 1 Appendix A.**

**16.1.7 Notwithstanding any referral to adjudication, the Parties will continue to perform the Sub-Contract before, during and after such adjudication in accordance with the terms of this Sub-Contract, the Adjudicator's decision and any court order enforcing such decision.**

**17. AMENDMENTS**

- 17.1 Unless expressly accepted in writing by ROSEBIRCH, no alterations to or qualification of this Sub-Contract shall be deemed to apply to the Sub-Contract Works, whether contained in any of the Sub-Contractor's written or printed documents or otherwise.**



**18. FINAL ACCOUNT STATEMENT**

- 18.1** The Sub-Contractor shall submit to ROSEBIRCH its claimed Final Account together with supporting documentary evidence sufficient to enable ROSEBIRCH to substantiate the amount claimed including a written statement showing how the total amount claimed has been calculated and where appropriate by reference to previous Applications for Payment, within 1 (one ) month of the agreed Completion date of the Sub-contract works.
- 18.1.1** If the information required under Clause 18.1 is not provided within the required timescale, ROSEBIRCH shall utilising their reasonable discretion and following any further investigation deemed required then prepare the 'final account statement'. This document shall then be formally issued in writing to the Sub-contractor and shall become conclusive if not challenged by the Sub-contractor within 14 days of the issue date. If such statement is challenged then both parties undertake to attempt to agree the final account within 28 days of the issue date of the final account statement. If such agreement is reached then a revised final account statement will be issued which shall become conclusive 14 days after the date of its issue. If no agreement is reached then the parties shall refer to Clause 16 of the Sub-contract conditions.
- 18.1.2** If the information required under Clause 18.1 is provided within the required timescale but in ROSEBIRCH's reasonable discretion it is deemed not substantive enough to justify the Sub-contractors claimed position then ROSEBIRCH shall carry out any further investigations necessary and then prepare the 'final account statement'. This document will then be formally issued to the Sub-contractor and shall become conclusive if not challenged within 14 days of the issue date. If such statement is challenged then both parties undertake to attempt to agree the final account within 28 days of the issue date of the final account statement. If such agreement is reached then a revised final account statement will be issued which shall become conclusive 14 days after the date of its issue. If no agreement is reached then the parties shall refer to Clause 16 of these Sub-contract conditions.
- 18.2** The final date for payment of the first half of the Retention fund shall be 50 (fifty) days after the date of practical completion under the Principal Contract.
- 18.3** The final date for payment of the second half of the Retention fund shall be 50 (fifty) days after the date of the certificate of Making good defects (or equivalent certificate) under the Principal Contract.
- 18.4** The Final Payment under this Sub-Contract shall unless the parties agree otherwise become due on the later of either ;
- 18.4.1** 50 (fifty) days after the date of the final certificate (or equivalent) under the Principal Contract ; or
- 18.4.2** 35 (thirty five) days after the date upon which the final account statement became conclusive.
- 18.5** ROSEBIRCH shall send a Payment Notice complying with the requirements of Clause 9.5 for the Final Payment to the Sub-Contractor within 5 (five) days of the date upon which the Final Payment becomes due.

18.6 The final date for payment of the Final Payment shall be 10 (ten) days after the due date determined in accordance with Clause 18.4

19. CONSTRUCTION INDUSTRY SCHEME

19.1 The Parties shall each comply with their obligations under the CIS Legislation and if compliance with their obligations under the CIS Legislation involves either Party not complying with any other obligations under this Sub-Contract the obligations under the CIS Legislation shall prevail.

20. WAIVER

20.1 This Sub-Contract may not be varied except by an agreement in writing signed by the authorised representatives of the Parties. No waiver by either Party or any default or defaults by the other in the performance of any provisions of this Sub-Contract shall operate or be construed as a waiver of any other or future default or defaults whether of a like or different character.

21. SEVERANCE

21.1 If any provision of this Sub-Contract shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Sub-Contract.

22. CONFIDENTIALITY

22.1 Save as may be strictly necessary for the proper performance of the Sub-Contract Works, or as ROSEBIRCH may consent in writing, the Sub-Contractor shall treat as confidential and shall not disclose to any person, including for the avoidance of doubt the Principal/Employer and his agents, any information relating to ROSEBIRCH, the Works, the Sub-Contract or any other related agreement or contract disclosed to and/or acquired by the Sub-Contractor during the currency of the Works. Furthermore the Sub-Contractor shall not, without ROSEBIRCH's prior written consent, publish alone or in conjunction with any other person any articles, illustrations, photographs or videos relating to the Works.

23. GOVERNING LAW

23.1 This Sub-Contract shall be governed by and construed in accordance with English Law.

24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

24.1 The Parties hereby confirm that except where expressly stated it is not the intention of this Sub-Contract to confer any benefit upon third parties who are not parties to this Sub-Contract or to confer upon such persons any right to directly enforce any of the provisions of this Sub-Contract against any or all of the Parties hereto pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise and this Sub-Contract shall be construed accordingly.

