

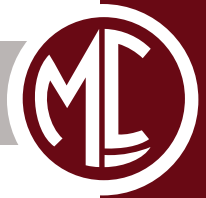
1. THE SUB-CONTRACT AND DEFINITIONS

1.1. Within the Sub-Contract, the following words and phrases shall have the meanings given below:

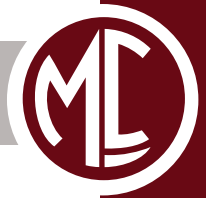
- 1.1.1. “Anti-Corruption Laws” means the United Kingdom Bribery Act 2010 (c.23) (as the same may be amended or re-enacted from time to time) together with any associated guidance published by the relevant Secretary of State under that Act, along with any other applicable UK legislation, statutory instruments or regulations relating to the prevention of bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction which applies to either McPhillips or the Sub-Contractor;
- 1.1.2. “Anti-Corruption Policy” means any policy relating to the prevention of bribery and corruption provided by McPhillips to the Sub-Contractor from time to time;
- 1.1.3. “Applicable Laws” mean any statutes, statutory instruments, regulations, rules, orders, bylaws, notices, proclamations, delegated or subordinated legislation made under any statute or directive, and any codes of practice, planning or building permission or regulations or other official consents, requests or requirements made by any body of competent jurisdiction in respect of which the Sub-Contractor, McPhillips or the Employer has a legal obligation to comply, each as is in force from time to time;
- 1.1.4. “CDM Regulations” means the Construction (Design and Management) Regulations 2015 (as may be amended or re-enacted from time to time);
- 1.1.5. “Consents” means any consents, permits, approvals agreements and the like specified in the Main Contract;
- 1.1.6. “Contract Administrator” means the person or entity appointed to act as Architect/Contract Administrator, Employer’s Agent, or Project Manager (as applicable) under the Main Contract;
- 1.1.7. “Data Protection Legislation” means (i) the Data Protection Act 2018; (ii) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), as it forms part of the law of England and Wales,

Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018; (iii) any other legislation referred to within section 3(9) of the Data Protection Act 2018; in each case as the same may be amended or re-enacted from time to time;

- 1.1.8. “Data Protection Policy” means any policy relating to the protection of data provided by McPhillips to the Sub-Contractor from time to time;
- 1.1.9. “Documents” means any documents and any other design, drawings, details, calculations, models, reports, specifications of materials, goods and/ or workmanship, plans, and all other data, information and related documents which has or may be required to be prepared by or on behalf of the Sub-Contractor in relation to the Sub-Contract.
- 1.1.10. “Employer” means the other party to the Main Contract;
- 1.1.11. “McPhillips” means McPhillips (Wellington) Limited, a company registered in England & Wales with company number 00832117;
- 1.1.12. “McPhillips’ Director” means any active company director of McPhillips as identified on Companies House.
- 1.1.13. “McPhillips’ Sub-Contractor Pre Order Minutes” means the Sub-Contractor Pre Order Minutes supplied by McPhillips for the Sub-Contract Works.
- 1.1.14. “Main Contract” means the contract between McPhillips and the Employer under which McPhillips is to carry out the Main Contract Works as further described in the Sub-Contract Documents.
- 1.1.15. “Main Contract Works” means the works which McPhillips is to complete under the Main Contract, (including any changes to those works in accordance with the Main Contract), of which the Sub-Contract Works form the whole or a part;
- 1.1.16. “Modern Slavery Act” means the United Kingdom Modern Slavery Act 2015 (c.30) as the same may be amended or re-enacted from time to time.
- 1.1.17. “Modern Slavery Policy” means any policy relating to the prevention of modern slavery and human trafficking provided by McPhillips to the Sub-Contractor from time to time;



- 1.1.18. “Quantity Surveyor” means McPhillips’ quantity surveyor as identified in the McPhillips’ Sub-Contractor Pre Order Minutes, or any replacement notified to the Sub-Contractor by McPhillips from time to time;
 - 1.1.19. “Sub-Contract” is as defined in clause 1.3.
 - 1.1.20. “Sub-Contract Agreement” means the agreement titled “Sub-Contract Agreement” between McPhillips and the Sub-Contractor in relation to the Sub-Contract Works.
 - 1.1.21. “Sub-Contractor” means the other party to the Sub-Contract Agreement.
 - 1.1.22. “Sub Contract Order” means the subcontract order provided by McPhillips for the Sub-Contract Works.
 - 1.1.23. “Sub-Contract Period” means the period or periods for completing the Sub-Contract Works detailed within the McPhillips’ Sub-Contractor Pre Order Minutes, including any key dates to be met by the Sub-Contractor;
 - 1.1.24. “Sub-Contractor’s Persons” means the Sub-Contractor’s employees and agents and all other persons employed or engaged by or on behalf of the Sub-Contractor on or in connection with the Sub-Contract Works or any part of them or any other person properly on the site in connection therewith.
 - 1.1.25. “Sub-Contract Sum” means the sum payable to the Sub-Contractor for performing the Sub-Contract Works, as set out in the Sub-Contract Documents;
 - 1.1.26. “Sub-Contract Works” means the works which the Sub-Contractor is to perform as identified and described within the Sub-Contract Documents, including any changes to those works made in accordance with the Sub-Contract;
 - 1.1.27. “Standard Sub-Contract Conditions” means the McPhillips (Wellington) Limited Standard Sub-Contract Conditions Rev. 4: March 2023.
 - 1.1.28. “Third Party Agreements” means any third party agreements referred to in the Main Contract.
- 1.2. McPhillips engages the Sub-Contractor to carry out the Sub-Contract Works in accordance with the Sub-Contract for the Sub-Contract Sum or such other sum as may become payable under the Sub-Contract.
- 1.3. The Sub-Contract is comprised of the following documents (together “the Sub-Contract Documents”):
 - 1.3.1. The Sub-Contract Agreement
 - 1.3.2. these Standard Sub-Contract Conditions;
 - 1.3.3. McPhillips’ Sub-Contractor Pre Order Minutes, along with any documents appended or referred to therein;
 - 1.3.4. McPhillips’ Sub Contract Order;
 - 1.3.5. any other documents referred to within the Sub-Contract but excluding any Sub-Contractor conditions of contract which may be included or referred to in the Sub-Contract Documents.
 - 1.4. The Sub-Contract Documents are to be read together and as a whole. The order of priority of the Sub-Contract Documents is as they are listed at clause 1.3, in descending order.
 - 1.5. It is intended by the parties that this Sub-Contract will govern the entirety of the Sub-Contract Works performed by the Sub-Contractor, whether carried out before or after the date of this Sub-Contract. This Sub-Contract therefore supersedes and entirely replaces, with retrospective effect, any interim agreement, letter of intent or other arrangement which may have been put in place between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the Sub-Contract. Accordingly, except where expressly provided otherwise in this Sub-Contract, this Sub-Contract constitutes the entire agreement between the parties.
 - 1.6. Unless stated otherwise, all notices, applications and other communications under this Sub-Contract shall be in writing and transmitted by any effective method, subject to the following:
 - 1.6.1. where the transmission is by post, it is to be sent to the receiving party’s address set out in the Sub-Contract Documents;
 - 1.6.2. transmission by email is acceptable, provided always that the email must be transmitted to 2 or more persons in the relevant organisation, and where the recipient is McPhillips, one of those persons must be the Quantity Surveyor. Transmission to a personal email address is not acceptable.
 - 1.7. Any period of days shall mean calendar days. Where an act is required to be done within a specified period or from a specified date, the period begins immediately after that date.
- 2. THE SUB-CONTRACT WORKS**
- 2.1. The Sub-Contractor shall:
 - 2.1.1. carry out and complete the Sub-Contract



Works a good and proper workmanlike manner and in accordance with the Sub-Contract Documents and in accordance with any Consents, Third Party Agreements and Applicable Laws;

- 2.1.2. carry out the Sub-Contract Works regularly, diligently, and in an expeditious manner without delay.
- 2.1.3. carry out any design and/or workmanship and provide any goods and materials so that the same shall comply with any descriptions, standards or requirements set out in the Sub-Contract Documents and with any relevant British Standards or Codes of Practice; and
- 2.1.4. supply goods or materials for incorporation or use in the Sub-Contract Works which are of satisfactory quality and fit for any intended purposes which have been made known (expressly or by reasonable implication) to the Sub-Contractor.

2.2. If the Sub-Contractor proposes to sub-sub-contract any part of its Sub-Contract Works, it shall inform McPhillips in writing of the proposed scope of work to be sub-sub-contracted and the identity of the proposed sub-sub-contractor and shall provide any further information reasonably required by McPhillips. If within 14 days of receiving the information McPhillips objects to the engagement of the sub-sub-contractor then the Sub-Contractor shall not engage that sub-sub-contractor in the performance of the Sub-Contract Works. The Sub-Contractor remains fully responsible for the carrying out and completion of the Sub-Contract Works, notwithstanding the engagement of any sub-sub-contractor.

2.3. The Sub-Contractor warrants that, unless previously disclosed in writing to McPhillips, it is not a personal service company; and it further warrants that in the performance of the Sub-Contract Works, it shall not use any workers who are employed through agencies, personal service companies, umbrella companies or other intermediary arrangements.

2.4. The Sub-Contractor undertakes, warrants and represents that:

- 2.4.1. the Sub-Contractor has and shall at all times continue to comply with the Anti-Corruption Laws and with any Anti-Corruption Policy notified to the Sub-Contractor by McPhillips.
- 2.4.2. the Sub-Contractor has and shall at all times continue to comply with all applicable requirements of the Data Protection Legislation and the Data

Protection Policy and shall not do or permit to be done or omit to do anything which may result in a breach by McPhillips of McPhillips' obligations under the Data Protection Legislation and/or the Data Protection Policy.

- 2.4.3. the Sub-Contractor has and shall at all times continue to comply with the Modern Slavery Act and with any Modern Slavery Policy notified to the Sub-Contractor by McPhillips; and
- 2.4.4. the Sub-Contractor has maintained and at all times shall continue to maintain adequate records relating to the supply of goods and services under each sub-sub-contract in order to enable the supply chain for those goods and services to be traced and to determine the Sub-Contractor's compliance with the Modern Slavery Act and the Modern Slavery Policy.

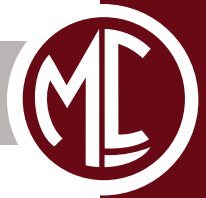
3. MAIN CONTRACT

3.1. The Sub-Contractor acknowledges that the Sub-Contract Works form part of the Main Contract Works to be performed by McPhillips.

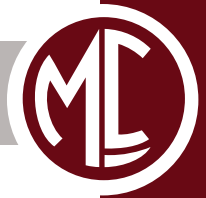
3.2. The Sub-Contractor is deemed to have notice of the provisions of the Main Contract.

3.3. The Sub-Contractor shall carry out the Sub-Contract Works in compliance with the Main Contract requirements and as far as is within its power shall not carry out the Sub-Contract Works or otherwise conduct itself in any way that would cause or contribute to a breach by McPhillips of its obligations under the Main Contract. In particular and without prejudice to the generality of the foregoing:

- 3.3.1. the Sub-Contractor shall provide the Sub-Contract Works in such manner and time so as to not put McPhillips in breach of the Main Contract;
- 3.3.2. any time periods set out in these Standard Sub-Contract Conditions shall be read alongside and in compliance with the equivalent provisions of the Main Contract, and as far as it is necessary for the Sub-Contractor to comply with the procedures set out in these Standard Sub-Contract Conditions at an earlier time in order to enable McPhillips to comply with the equivalent provisions of the Main Contract, then the Sub-Contractor shall so comply;
- 3.3.3. the Sub-Contractor agrees to provide any information in connection with the Sub-Contract Works to McPhillips that McPhillips is obliged to provide to any third party (including but not



- limited to the Employer and/or Contract Administrator) under the terms of the Main Contract, at the time(s) and in the format(s) required under the Main Contract;
- 3.3.4. the Sub-Contract Works (including but not limited to the workscope and/or the time for the carrying out of the Sub-Contract Works) shall be carried out as far as reasonably possible, having regard to the requirements of the Sub-Contract Documents, in compliance with any term, provision, standard, programme or other requirement of the Main Contract which relates to the Sub-Contract Works;
 - 3.3.5. the Sub-Contractor is deemed to be aware of any Third Party Agreements and Consents incorporated into or referred to in the Main Contract and acknowledges and agrees that it is aware of the obligations and liabilities imposed on McPhillips under the Main Contract and, to the extent that it applies to the Sub-Contract Works, the Sub-Contractor shall provide the Sub-Contract Works and performs its obligations under this Sub-Contract in such manner and at all times so as not to, whether by way of any act, omission and/or default by the Sub-Contractor, cause or contribute to any breach by McPhillips under the Main Contract;
 - 3.3.6. The Sub-Contractor warrants and undertakes it has not and shall not use or specify for use in relation to the Sub-Contract Works and it has not and will not authorise or approve the specification or use by others of any products, materials or goods:
 - 3.3.6.1. which have been designated as “prohibited” or “deleterious” under the terms of the Main Contract;
 - 3.3.6.2. that are not in conformity (or which incorporate substances which are not in conformity) with relevant British or European Standards or Codes of Practice or which at the time of specification or use are widely known to builders or designers of the relevant discipline within the construction industry to be dangerous or hazardous to health and safety or deleterious to the integrity or durability of buildings and/or for other structures and/or finishes in the particular circumstances in which they are used;
 - 3.3.6.3. that are not in accordance with Applicable Laws;
 - 3.3.6.4. that do not conform with (i) the guidelines contained in the edition of the publication ‘Good Practice in the Selection of Construction Materials’ published by The British Council for Offices current at the date of this Sub-Contract; and (ii) any publications of the Building Research Establishment related to the specification of products or materials, or any or good building practice or techniques.
- If in the performance of its duties under this Sub-Contract, the Sub-Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of, any such products or materials, the Sub-Contractor shall notify McPhillips in writing forthwith. This clause 3.3.6 does not create any additional duty for the Sub-Contractor to inspect or check the work of others which is not required by this Sub-Contract.
- 3.3.7. the Sub-Contractor shall at all reasonable times allow access by the Employer, Contract Administrator and/ or McPhillips (or any person authorised by the same) to any workshops and/or premises of the Sub-Contractor where work is being prepared for this Sub-Contract.
- 3.4. The Main Contract identifies who is the Principal Contractor and who is the Principal Designer for the purposes of the CDM Regulations. The Sub-Contractor warrants and undertakes the Sub-Contractor shall comply with its obligations under the CDM Regulations and that:
 - 3.4.1. to the extent that the Sub-Contractor is responsible for any design or detailing of the Sub-Contract Works, it is competent to fulfil its role as a designer for the purposes of the CDM Regulations and that it will comply with its obligations as a designer under the CDM Regulations;
 - 3.4.2. it has the requisite competence and resources in order that at all stages in the design and construction process it will comply in all respects with the CDM Regulations as applicable to the



Sub-Contract Works and shall at all times provide McPhillips with such co-operation, co-ordination and information as is required to enable the McPhillips to fulfil its obligations under the CDM Regulations;

- 3.4.3. it shall provide all information required by the Principal Contractor and Principal Designer for the health and safety file;
- 3.4.4. it shall comply with the requirements of the construction phase plan; and
- 3.4.5. to the extent that it is in control of the site or any part of it within the meaning of section 4 of the Health and Safety at Work etc Act 1974, it shall keep the site, the access thereto and the egress therefrom safe and without risk to the health of persons using it.

3.5. The Sub-Contractor further acknowledges that any breach of contract, breach of statutory duty, neglect, or other default or failure by the Sub-Contractor may lead to McPhillips becoming liable to pay damages to the Employer or to others or to McPhillips otherwise incurring additional costs, losses and/or expenses in connection with the Main Contract Works. All such liabilities, damages, costs, losses and expenses are accordingly within the contemplation of the Sub-Contractor as being the probable result of its breach, neglect, default or failure.

4. DESIGN

- 4.1. This clause 4 applies where the Sub-Contract Works include any element of design or selection of materials or detailing by the Sub-Contractor.
- 4.2. In carrying out its design the Sub-Contractor shall use all the reasonable skill, care and diligence that would be expected from an architect or other appropriate professional designer properly qualified, skilled and experienced in carrying out similar design services for works of a similar size, type, scope and complexity as the Main Contract Works.
- 4.3. The Sub-Contractor shall comply with McPhillips' instructions for the integration of its design with the design of the Main Contract Works as a whole.
- 4.4. The Sub-Contractor shall provide the Documents: (i) in accordance with any design submission procedure in the Sub-Contract Documents; and (ii) in sufficient time to enable McPhillips to comply with any design submission procedure set out in the Main Contract. For the avoidance of doubt the Sub-Contractor shall not carry out the relevant part(s) of the Sub-Contract Works unless and until these design submission procedures have been complied with.
- 4.5. The Sub-Contractor shall provide any further

Documents as may be required from time to time to enable McPhillips or its other sub-contractors to perform the Main Contract Works.

5. ATTENDANCE AND SITE CONDUCT

- 5.1. All items of attendance for the Sub-Contract Works shall be provided by the Sub-Contractor unless otherwise set out in the McPhillips' Sub-Contractor Pre Order Minutes.
- 5.2. The Sub-Contractor and the Sub-Contractor's Persons may have the use of McPhillips' scaffold and lifting appliances for the Sub-Contract Works whilst they remain erected on site in common with all others having a like right but such usage will be on the express condition that no warranty or other liability on the part of the McPhillips (whether by itself or by others acting on its behalf) shall be created or implied as to the fitness condition of such scaffold and lifting appliances or the availability. The responsibility for, and cost of, unloading, hoisting and distributing materials and goods for incorporation in the Sub-Contract Works and any property belonging to or for use by the Sub-Contractor, or which is brought on site, is the sole concern of the Sub-Contractor unless otherwise agreed in the McPhillips' Sub-Contractor Pre Order Minutes.
- 5.3. The Sub-Contractor shall not, and shall ensure that any of its Sub-Contractor's Persons shall not, wrongfully use or interfere with plant, ways, scaffolding, temporary works, appliances or other property belonging to McPhillips or provided by others or infringe any Applicable Laws, but nothing in this clause 5.3 shall affect the rights of the Sub-Contractor to carry out its respective statutory duties and contractual obligations under this Sub-Contract.
- 5.4. The Sub-Contractor acknowledges and agrees that the Sub-Contractor shall not be entitled to:
 - 5.4.1. any extension of time to the period(s) for completion of the Sub-Contract Works and/or
 - 5.4.2. any loss and/or expense and/or damages arising from any loss of continuity or unavailability of any items of attendance provided by McPhillips unless caused or contributed to by any negligent act or omission of McPhillips.
- 5.5. The Sub-Contractor acknowledges and agrees that the Sub-Contractor shall be solely responsible for the security and safety of any temporary works, plant, tools, vehicles, equipment, clothing or other protective equipment or other property belonging to or provided by the Sub-Contractor or the Sub-Contractor's Persons or of any materials or goods of the Sub-Contractor whilst stored at McPhillips' premises or the site of the Main Contract Works until completion of the Sub-Contractor Works.



- 5.6. Save as otherwise provided in the McPhillips' Sub-Contractor Pre Order Minutes, the Sub-Contractor at its own expense, shall provide and erect all necessary workshops, sheds or other buildings for use by the Sub-Contractor and the Sub-Contractor's Persons and all necessary protection for materials / property brought on site at such places on the site as McPhillips may permit. Unless otherwise stated in the McPhillips' Sub-Contractor Pre Order Minutes, McPhillips shall provide electric in respect of the Sub-Contract Works and the Sub-Contractor will pay McPhillips for electricity used.
- 5.7. Prior to starting work in any new area of the site, the Sub-Contractor shall ensure that it has inspected that area of the site and any preceding works and has ensured that the site and the preceding works are in a suitable condition to receive the Sub-Contract Works. The Sub-Contractor has made allowance for visiting site to carry out any relevant checks or surveys required.
- 5.8. During the performance of the Sub-Contract Works, the Sub-Contractor will maintain the site, all adjacent or neighbouring property and all access roads used by the Sub-Contractor from time to time in carrying out the Sub-Contract Works, in a condition reasonably satisfactory to McPhillips and will remove therefrom in the manner set out in the McPhillips' Sub-Contractor Pre Order Minutes all rubbish, debris, waste, surplus material and plant for which the Sub-Contractor is responsible so as to keep access to the SubContract Works clear at all times and make good any damage caused.
- 5.9. The Sub-Contractor shall notify McPhillips immediately if it identifies any defects, faults, non-conformances or other issues with the site or in any preceding works which will adversely affect the Sub-Contract Works. Such notice shall contain sufficient information to enable McPhillips to understand the issue and take steps to resolve it.
- 5.10. On completion of the Sub-Contract Works (or such works in a section) or on termination the Sub-Contractor will leave all areas on site in a condition reasonably satisfactory to McPhillips and the Sub-Contractor shall:
 - 5.10.1. in the manner set out in the Sub-Contract Documents, clear away all rubbish resulting from the carrying out of the Sub-Contract Works;
 - 5.10.2. clear up and leave such works and any other areas used by the Sub-Contractor and/or the Sub-Contractor's Persons clean and tidy to McPhillips' reasonable satisfaction; and

- 5.10.3. promptly remove any such temporary buildings identified in clause 5.5 from the site.

If the Sub-Contractor fails to comply with its obligations under this clause 5.10, McPhillips may, without liability to the Sub-Contractor, clear up and remove from all such areas and dispose of all debris, waste, surplus material and plant and make good any damage caused.

- 5.11. The Sub-Contractor shall be liable for any delay or disruption caused by, or additional work required and additional costs arising out of or in connection with the Sub-Contractor's failure to comply with this clause 5 and McPhillips shall be entitled to deduct any additional costs incurred as a result from the Sub-Contract Sum or otherwise to recover those costs from the Sub-Contractor as a debt.

6. TITLE AND RISK IN MATERIALS AND THE SUB-CONTRACT WORKS

- 6.1. Title to materials and/or goods forming part of or intended to form part of the Sub-Contract Works shall vest in McPhillips when the Sub-Contractor has received payment for the same or the same have been delivered to the site, whichever is the earlier. Except for use in the Main Contract Works, no materials and/or goods brought onto the site shall be removed by the Sub-Contractor without McPhillips' written consent. Risk in those materials and/or goods shall remain solely with the Sub-Contractor until such time as the Sub-Contract Works have reached completion.
- 6.2. It is a condition precedent to any payment becoming due for any goods and materials delivered to site that the Sub-Contractor shall have provided to McPhillips satisfactory evidence that title to such goods and materials has passed to McPhillips in accordance with clause 6.1.
- 6.3. In the event the McPhillips' Sub-Contractor Pre Order Minutes specify certain unfixed goods and materials are to be paid to the Sub-Contractor in advance of delivery to site, as a condition precedent to payment, the Sub-Contractor must:
 - 6.3.1. confirm the relevant unfixed goods and materials are in accordance with this Sub-Contract;
 - 6.3.2. provide to McPhillips reasonable proof that:
 - 6.3.2.1. title to such unfixed goods and materials is unconditionally vested in the Sub-Contractor; and
 - 6.3.2.2. such goods and materials are and will remain insured in full against loss or damage for its full value under a



policy of insurance protecting the interests of McPhillips, the Employer and the Sub-Contractor in respect of all causes; and

6.3.2.3. at the premises where such goods and materials are situated pending delivery, there is in relation to each such item clear identification of (i) the person to whose order they are held i.e. McPhillips and the Employer; and (ii) the Main Contract Works as its destination, each item being either set apart of clearly and visibly marked, individually or as a set, by letter, figure or a predetermined code agreed with McPhillips;

6.3.3. provide to McPhillips a vesting certificate on terms no less onerous than this clause 6; and

6.3.4. permit (and where applicable facilitate) McPhillips and the Employer (including their respective nominees) to inspect all such unfixed goods and materials under clause 6.3 and the Sub-Contractor shall provide such oral or written explanations as McPhillips considers necessary free of charge.

7. INSTRUCTIONS

7.1. McPhillips may at any time issue reasonable instructions of any nature (including variations) to the Sub-Contractor. Subject to clauses 7.2, 7.3 and 7.4, instructions issued by McPhillips have effect and are to be complied with by the Sub-Contractor as soon as they are received by the Sub-Contractor.

7.2. If the Sub-Contractor considers that an instruction it has received from McPhillips constitutes a variation to the Sub-Contract Works but McPhillips has not identified it as such, then the Sub-Contractor shall prior to complying with the instruction (and in any event no later than 7 days after receiving the instruction) give McPhillips written notice that it considers that the instruction is a variation. Unless McPhillips withdraws the instruction, or unless clause 7.4 applies, the Sub-Contractor shall then comply with the instruction.

7.3. This clause 7.3 applies where:

Prior to instructing a variation under clause 7.1, or following receipt of a notice from the Sub-Contractor under clause 7.2, McPhillips instructs the Sub-Contractor to provide a quotation for a proposed variation; or

McPhillips instructs that a quotation is to be

provided for a provisional sum under clause 8.7.

The Sub-Contractor shall within 7 days of the date of McPhillips' instruction provide a quotation for the adjustment to the Sub-Contract Sum and the Sub-Contract Period for the proposed variation or provisional sum. Following receipt of the quotation, McPhillips may:

7.3.1. accept the quotation, in which case McPhillips' instruction for the variation or provisional sum expenditure shall be immediately complied with by the Sub-Contractor. The provisional sum (if applicable) shall be omitted from the Sub-Contract Sum and the Sub-Contract Sum and Sub-Contract Period shall then be adjusted in accordance with the quotation. McPhillips' acceptance shall be in writing. The Sub-Contractor shall not be entitled to claim any further adjustment to the Sub-Contract Sum or Sub-Contract Period in relation to the variation / provisional sum expenditure;

7.3.2. reject the quotation but confirm the instruction for the variation / provisional sum expenditure, in which case the Sub-Contractor shall immediately comply with the instruction. McPhillips' confirmation shall be in writing. The provisional sum (if applicable) shall be omitted from the Sub-Contract Sum and the work set out in the instruction shall be valued in accordance with clauses 8.3 to 8.6 (inclusive) below;

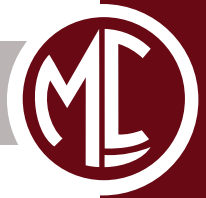
7.3.3. issue an amended instruction, in which case the Sub-Contractor shall provide a new quotation under clause 7.3; or

7.3.4. withdraw the proposed variation or provisional sum instruction.

7.4. Instructions shall be issued to the Sub-Contractor only by the Quantity Surveyor and/or by a McPhillips' Director. No other person or entity has any authority to issue any instructions (including variations) to the Sub-Contractor under this Sub-Contract. For the avoidance of doubt the Sub-Contractor is not entitled to payment for instructions issued by any other person or entity, unless ratified by McPhillips in writing.

7.5. All employees and agents of the Sub-Contractor have authority to receive instructions and other communications issued by McPhillips to the Sub-Contractor.

7.6. McPhillips may omit all or part of the Sub-Contract Works in order to carry out the omitted work itself or may engage third parties to carry out the omitted work, and the Sub-Contractor shall have no claim against McPhillips for so doing.



8. VARIATIONS AND PROVISIONAL SUMS

- 8.1. Variations comprise:
 - 8.1.1. additions to, omissions from and/or changes to the Sub-Contract Works, including the substitution of any work which forms part of the Sub-Contract Works;
 - 8.1.2. changes to the method or sequence of the Sub-Contract Works which are imposed under the Main Contract and subsequently instructed under the Sub-Contract (except for instructions to accelerate the Sub-Contract Works);
 - 8.1.3. alterations to site access or working hours or the imposition of restrictions to the use of the site imposed by the Employer under the Main Contract and subsequently instructed under the Sub-Contract.
- 8.2. For the avoidance of doubt any instruction given as a result of a breach of this Sub-Contract by the Sub-Contractor (including but not limited to the failure by the Sub-Contractor to progress the Sub-Contract Works and/or the failure of the Sub-Contractor to supply goods or materials or to install the Sub-Contract Works in accordance with the requirements of the Sub-Contract) shall not be treated as a variation.
- 8.3. It is a condition precedent to payment for any variation that the Sub-Contractor has complied with clause 7.2 above.
- 8.4. The parties may agree the value of any variation (whether pursuant to the quotation procedure set out in clause 7.3, or otherwise).
- 8.5. If an agreement is not reached as to the value of any variation, then variations shall be valued as follows:
 - 8.5.1. if the work is similar in character, quantity and conditions of execution to work set out in the Sub-Contract Documents, the Sub-Contract rates and/or prices shall be used as the basis of the valuation; and
 - 8.5.2. if the work is dissimilar to work set out in the Sub-Contract Documents, fair rates and/or prices shall be used as the basis of the valuation.
- 8.6. Variations for work which cannot properly be valued by measurement may be valued on the basis of agreed daywork rates, provided always that:
 - 8.6.1. prior to commencement of the varied work sought to be valued on dayworks rates, the Sub-Contractor shall have notified the Quantity Surveyor in writing

that the work would be sought to be valued on dayworks rates and the Quantity Surveyor has confirmed that this is agreed; and

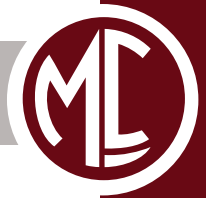
- 8.6.2. signed dayworks sheets recording the time spent carrying out the work sought to be valued on dayworks rates shall be submitted to the Quantity Surveyor for verification no later than the Wednesday of the week following the week in which the work was carried out. Submission of signed dayworks sheets without more is not evidence that the work has been carried out nor that the time/plant/materials recorded in that dayworks sheet are accurate nor agreement that the work should be valued on a dayworks basis.

8.7. If the Sub-Contract Sum includes any provisional sums, then:

- 8.7.1. the Sub-Contractor shall give McPhillips advance notice of the time by which it requires McPhillips' instructions in relation to the expenditure of each provisional sum, in good time to enable McPhillips to give those instructions without causing delay to the Sub-Contract Works;
- 8.7.2. McPhillips shall issue instructions to the Sub-Contractor with regards to the expenditure of any provisional sums. For the avoidance of doubt, if McPhillips decides not to issue any instructions in relation to the expenditure of a provisional sum (or withdraws an instruction), then the Sub-Contractor shall not carry out the work in question and the provisional sum shall be omitted from the Sub-Contract Sum;
- 8.7.3. the Sub-Contractor shall (unless instructed to the contrary by McPhillips under clause 7.3) immediately comply with the instruction. The provisional sum shall be omitted from the Sub-Contract Sum and the work set out in McPhillips' instruction shall be valued as if it were a variation in accordance with clauses 8.3 to 8.6 (inclusive) above.

9. THE SUB-CONTRACT PERIOD

- 9.1. The Sub-Contractor shall carry out and complete the Sub-Contract Works within and in compliance with the Sub-Contract Period, at all times having regard to the progress of McPhillips' Main Contract Works. If the McPhillips' Sub-Contractor Pre Order Minutes do not detail a Sub-Contract Period, the Sub-Contractor shall:



- 9.1.1. commence carrying out the Sub-Contract Works within 14 days of receiving notice to do so from McPhillips; and
- 9.1.2. carry out and complete the Sub-Contract Works within a reasonable period, having regard to the progress of the Main Contract Works.
- 9.2. The Sub-Contractor shall notify the Quantity Surveyor in writing of the date on which the Sub-Contractor considers that the Sub-Contract Works have been completed. The notice shall be given on or before that date.
 - 9.2.1. If McPhillips agrees that the Sub-Contractor's notice is correct then McPhillips shall in writing notify the Sub-Contractor that this is the case, and the date so notified and agreed is the date of completion of the Sub-Contract Works.
 - 9.2.2. If McPhillips considers that the Sub-Contractor's notice is not correct, then McPhillips may give its own notice setting out either the proper date of completion of the Sub-Contract Works or setting out that the Sub-Contract Works are not yet complete; but no failure by McPhillips to so notify shall imply that McPhillips agrees with the Sub-Contractor's notice.
- 9.3. McPhillips may refuse to treat the Sub-Contract Works as having reached completion if the Sub-Contractor has not provided two copies of the following:
 - 9.3.1. all handover documentation required by the Sub-Contract Documents; and
 - 9.3.2. any other additional documentation required by the McPhillips' Sub-Contractor Pre Order Minutes

At the sole discretion of the Quantity Surveyor, an electronic copy of the above listed documentation may be accepted by McPhillips as fulfilling the requirement in this clause.

- 9.4. If the McPhillips' Sub-Contractor Pre Order Minutes detail the Sub-Contract Period and at any time the Sub-Contractor is delayed by reason of:
 - 9.4.1. the breach of contract, negligent act or omission, impediment or default of McPhillips or a person for whom McPhillips is responsible (who shall for the purposes of this clause 9.4 include the Employer or any person for whom the Employer is responsible);
 - 9.4.2. a variation for which there is no accepted quotation under clause 7.3 above;

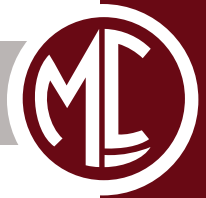
- 9.4.3. an instruction for the expenditure of an undefined provisional sum for which there is no accepted quotation under clause 7.3 above;
 - 9.4.4. suspension of the Sub-Contract Works, or any part thereof, under clause 16,
- then McPhillips shall extend the Sub-Contract Period (or any relevant part thereof) by a fair and reasonable extension provided always that the Sub-Contractor shall comply with all of the following conditions precedent:

- 9.4.4.1. the Sub-Contractor shall notify McPhillips in writing as soon as the delay becomes, or should reasonably have become, apparent to the Sub-Contractor. The notice shall identify the cause of the delay, and indicate what the Sub-Contractor expects the effects of the delay to be including whether it will delay the overall completion of the Sub-Contract Works;
- 9.4.4.2. the Sub-Contractor shall provide such further notices as are reasonably required to keep McPhillips up-to-date with the expected effects of the delay;
- 9.4.4.3. the Sub-Contractor shall promptly provide McPhillips with any further information and/or documentation that McPhillips may reasonably request; and
- 9.4.4.4. the Sub-Contractor shall use its best endeavours to avoid and/or mitigate any and all delays to the Sub-Contract Works.

9.5. The Sub-Contractor shall not be entitled to any extension of time in respect of any period of delay which is the responsibility of McPhillips if that delay is concurrent with any delay which is the responsibility of the Sub-Contractor.

9.6. McPhillips may instruct the Sub-Contractor to accelerate the Sub-Contract Works, and the Sub-Contractor shall comply, save only as set out below:

- 9.6.1. the Sub-Contractor may make a reasonable objection to McPhillips within 5 days of receipt of the instruction to accelerate; and to the extent that the Sub-Contractor has reasonably objected to the instruction to accelerate, the Sub-Contractor shall not be required to comply;
- 9.6.2. if the instruction to accelerate will cause the Sub-Contractor to incur additional



cost, the Sub-Contractor shall notify McPhillips of same within 5 days of receipt of the instruction to accelerate. The notification should include an estimate of the additional cost likely to be incurred.

9.7. Provided always that:

- 9.7.1. clause 9.6.2 has been complied with; and
- 9.7.2. the Sub-Contractor was not in delay at the time the instruction to accelerate was given, unless such delay is of a type that would entitle the Sub-Contractor to a fair and reasonable extension under clause 9.4 above;

then the Sub-Contractor will be entitled to apply for payment of its reasonable costs directly incurred as a result of the acceleration. The Sub-Contractor will not be entitled to apply for the costs of acceleration under any other provision of the Sub-Contract.

9.8. If:

- 9.8.1. the Sub-Contract Works are in delay or, in McPhillips' reasonable opinion, there is a material risk that the Sub-Contract Works (or any part thereof) will not be completed within the Sub-Contract Period or in line with any other programme requirements set out in the Sub-Contract, including any key dates; and
- 9.8.2. the Sub-Contractor is not entitled to an extension of time under clause 9.4 above in respect of the delay or anticipated delay;

then McPhillips may instruct the Sub-Contractor to submit a recovery programme showing how the Sub-Contractor intends to expedite the Sub-Contract Works in order to avoid or mitigate the effects of the delay or anticipated delay. The Sub-Contractor shall provide the recovery programme (along with any further supporting information required, such as revised method statements) within 7 days of the date of McPhillips' instruction. Unless McPhillips notifies the Sub-Contractor otherwise, the Sub-Contractor will then adopt the measures shown in the recovery programme and the Sub-Contractor shall bear any additional costs incurred as a result.

9.9. If, at any time, the Sub-Contractor:

- 9.9.1. fails to comply with McPhillips' reasonable instructions in respect of the Sub-Contract Works; or
- 9.9.2. is in breach of its obligations under clause 9.8 above (either by not providing

a recovery programme, or by failing to implement the measures shown in that recovery programme); or

- 9.9.3. is failing to carry out the Sub-Contract Works regularly and diligently or has suspended the Sub-Contract Works (whether in whole or in part) without lawful cause;

then McPhillips may give the Sub-Contractor a notice setting out a period (not less than 3 days) for the Sub-Contractor to remedy the breach or failure. If the Sub-Contractor has not taken any steps to remedy the default to McPhillips' reasonable satisfaction within that notice period, then McPhillips may without further notice itself remedy the breach/failure and take any further steps which may be reasonable in the circumstances to mitigate the effects of that breach/failure (including that McPhillips may engage others to carry out all or part of the Sub-Contract Works or to supplement the Sub-Contractor's resources on site). McPhillips will be entitled to deduct any additional costs incurred as a result from the Sub-Contract Sum or otherwise to recover those costs from the Sub-Contractor as a debt.

9.10. Clause 9 of these Standard Sub-Contract Conditions sets out all of the Sub-Contractor's time-related rights and remedies in respect of delays to the Sub-Contract Works.

10. LOSS AND EXPENSE

10.1. If the Sub-Contractor incurs any loss and expense as a result of any impediment to or prevention of the carrying out of the Sub-Contract Works caused by McPhillips or any person for whom McPhillips is responsible (who shall for the purposes of this clause 10.1 include the Employer and any person for whom the Employer is responsible), and the loss and expense is not recoverable by the Sub-Contractor in the valuation of any variation, the Sub-Contractor may include that loss and expense in an application for payment provided always that the Sub-Contractor shall comply with all of the following conditions precedent:

- 10.1.1. the Sub-Contractor shall notify McPhillips in writing that it intends to claim loss and expense as soon as (and in any event no later than 7 days after the date that) the impediment or prevention in question becomes, or should reasonably have become, apparent to the Sub-Contractor. If the notice is not given within this time, the Sub-Contractor shall have no right to recover any loss or expense in relation to that impediment or prevention. The notice should set out the impediment or prevention to the Sub-Contract Works



caused by McPhillips and any other material details as to why the loss and expense is being incurred;

- 10.1.2. the Sub-Contractor shall in writing give a full breakdown of the sums claimed as loss and expense, as soon as is reasonably possible;
- 10.1.3. the Sub-Contractor shall provide McPhillips with any further information and/or documentation that McPhillips reasonably requests; and
- 10.1.4. the Sub-Contractor shall use its best endeavours to avoid and/or mitigate any loss and expense.

10.2. Clause 10 of these Standard Sub-Contract Conditions sets out all of the Sub-Contractor's monetary rights and remedies in respect of impediments to and preventions of the carrying out of the Sub-Contract Works, including for the avoidance of doubt any rights or remedies at common law.

11. PAYMENT

- 11.1. It is a condition precedent to any payment becoming due that the Sub-Contractor shall have provided the following to McPhillips:
 - 11.1.1. the properly executed Sub-Contract Agreement from the Sub-Contractor;
 - 11.1.2. any collateral warranties required under this Sub-Contract or manufacturers' guarantees or warranties available in respect of the Sub-Contract Works which have been requested by McPhillips;
 - 11.1.3. any insurance certificates required from the Sub-Contractor under this Sub-Contract;
 - 11.1.4. any bonds or parent company guarantees requested at any time in the form or forms requested;
 - 11.1.5. an application for payment in accordance with clause 11.2.2.

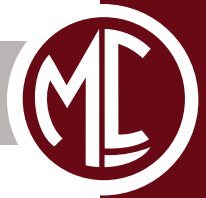
11.2. Subject always to clause 11.1, the Sub-Contractor will apply for and McPhillips will make payment as follows:

- 11.2.1. the valuation dates shall be as set out in the McPhillips' Sub-Contractor Pre Order Minutes. If the McPhillips' Sub-Contractor Pre Order Minutes do not set out valuation dates, then valuations shall be made monthly from commencement of the Sub-Contract Works on site, and the valuation dates shall be the twenty fifth calendar day of each month;
- 11.2.2. the Sub-Contractor shall make an application for payment setting out the amount that will be properly due under

clause 11.3. The application for payment shall contain a full breakdown showing how the Sub-Contractor has calculated that amount, include the purchase order number specified in the Sub Contract Order and shall be accompanied by such supporting information as may reasonably be required by McPhillips (including but not limited to signed dayworks sheets for any daywork activities undertaken in accordance with clause 8.6). The application for payment shall be submitted to McPhillips no later than 3 days prior to the valuation date. The application for payment shall be submitted electronically to subcontractoraccounts@mcphillips.co.uk with a copy to the McPhillips Quantity Surveyor.

- 11.2.3. provided always that the Sub-Contractor has made a valid application, the payment due date is 35 days after the end of the month in which the application was received by McPhillips;
- 11.2.4. not later than 5 days after the payment due date, McPhillips shall issue a notice setting out the sum which McPhillips considers to be due to the Sub-Contractor on the payment due date and the basis on which that amount was calculated;
- 11.2.5. the final date for payment is 10 days from the due date.
- 11.2.6. not later than 2 days before the final date for payment of any sum due under this Sub-Contract, McPhillips may give a written notice of intention to pay less than the notified sum to the Sub-Contractor (a "Pay Less Notice"). The Pay Less Notice shall set out the sum which McPhillips considers is due on the date the Pay Less Notice is served, and the basis on which that sum is calculated.
- 11.2.7. For the avoidance of doubt McPhillips may at any time request from the Sub-Contractor copies of any supporting information that could reasonably be expected to be provided with the Sub-Contractor's applications for payment or which is otherwise reasonably required by McPhillips for the purposes of ascertaining the sums due to the Sub-Contractor under clause 11.3 and the Sub-Contractor shall provide same to McPhillips.

11.3. The Sub-Contractor's applications for payment, and McPhillips' liability to make payment, shall be



in respect of the aggregate of the following sums, as assessed at each valuation date:

- A. the value of those parts of the Sub-Contract Works (including any variations and any adjustments for provisional sums) properly carried out to the valuation date;
- B. the value of any materials that are stored by the Sub-Contractor at the site for incorporation in the Sub-Contract Works;
- C. the value of any advanced payment for any unfixed goods and materials identified in McPhillips' Sub-Contractor Pre Order Minutes (if any); and
- D. any loss and expense and/or reasonable costs directly incurred by acceleration to which the Sub-Contractor is entitled under the Sub-Contract,

less any amounts due from the Sub-Contractor to McPhillips and less all previous payments made by McPhillips to the Sub-Contractor.

11.4. Notwithstanding any other provision of the Sub-Contract, the Main Contract or any other rights the Sub-Contractor may possess, if McPhillips does not receive payment under the Main Contract due to the Employer (or any other party responsible for making payments under or in connection with the Main Contract) becoming insolvent (within the meaning of insolvent set out in Section 113 of the Housing Grants, Construction and Regeneration Act 1996 (as amended)), then McPhillips shall not be obliged to make any further payments to the Sub-Contractor whatsoever except to the extent that McPhillips actually receives or recovers any monies from the Employer or any other such person responsible for such monies which includes an amount that is specifically attributable to the Sub-Contract Works.

11.5. McPhillips is entitled to deduct and retain retention from the Sub-Contractor's payments. The amount of that retention shall be the percentage set out in the McPhillips' Sub-Contractor Pre Order Minutes, and shall be applied to the sums set out at clause 11.3. If no percentage is set out in the Sub-Contract Documents, then the percentage is 5%. The retention shall be released in two equal shares (the first half of the retention and the second half of the retention) as follows:

- 11.5.1. the Sub-Contractor shall be entitled to make an application for the release of the first half of the retention on or after the date specified in the Sub-Contract Documents (provided always that the Sub-Contract Works have reached completion by that date). If no such date is specified in the Sub-Contract Documents, then the application may

be made at any time on or after the date on which the Sub-Contract Works were completed.

- 11.5.2. the Sub-Contractor shall be entitled to make an application for the release of the second half of the retention on or after the date specified in the Sub-Contract Documents. If no such date is specified, then the application may be made at any time on or after the date 24 months after the date the Sub-Contract Works were completed. Provided that the following conditions precedent to Sub-Contractor's right to make such an application are satisfied:

- 11.5.2.1. all defects in the Sub-Contract Works have been rectified; and
- 11.5.2.2. a Final Account Payment Notice has been signed by the Sub-Contractor.

The Sub-Contractor's application for payment shall be submitted and paid in accordance with the provisions of clause 11.2.2 to 11.2.7 (inclusive).

11.6. The Sub-Contractor shall submit a final application for payment ("Final Application") not later than the date six months after the date of completion of the Sub-Contract Works. The Final Application shall:

- 11.6.1. be marked clearly and unambiguously with the words "Final Account" or "Final Application";
- 11.6.2. set out in full the Sub-Contractor's entitlements to payment under the Sub-Contract;
- 11.6.3. set out any amounts which may be payable by the Sub-Contractor to McPhillips under the Sub-Contract and the total amounts previously paid by McPhillips to the Sub-Contractor;
- 11.6.4. set out the balance which is due to be paid by McPhillips to the Sub-Contractor or by the Sub-Contractor to McPhillips (as the case may be);
- 11.6.5. contain a full breakdown showing how the Sub-Contractor has calculated any amounts;
- 11.6.6. be submitted electronically to subcontractoraccounts@mcphillips.co.uk with a copy to the Quantity Surveyor; and
- 11.6.7. be accompanied by all documents and other information reasonably required to enable McPhillips to calculate fully the Sub-Contractor's entitlements under the Sub-Contract. For the avoidance of doubt such information may be issued

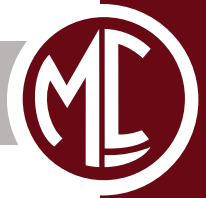


electronically with the Final Application itself or may be issued separately to the Quantity Surveyor.

party considers is due on the date the Pay Less Notice is served, and the basis on which that sum is calculated.

- 11.7. If the Sub-Contractor does not issue the Final Application by the date six months after completion of the Sub-Contract Works, then McPhillips may issue the Sub-Contractor with a notice requiring the Final Application to be issued. If the Sub-Contractor still does not issue the Final Application, then at any time after expiry of the period of one calendar month after the date of the notice McPhillips may (but is not obliged to) carry out the calculation of the Sub-Contractor's final account itself, in which case McPhillips shall notify the Sub-Contractor of the balance which is due between McPhillips and the Sub-Contractor and the basis on which that balance was calculated.
- 11.8. The final application balance shall become due on the date three months after the date the Sub-Contractor submitted the Final Application or the date on which McPhillips notified the Sub-Contractor of its own calculation of the balance under clause 11.7.
- 11.9. Not later than 5 days after the Final Application due date, McPhillips shall issue a final account payment notice setting out the sum which McPhillips considers to be due to the Sub-Contractor or McPhillips (as the case may be) on the due date and the basis on which that sum was calculated (the "Final Account Payment Notice").
- 11.10. The Final Account Payment Notice shall be conclusive evidence in any proceedings as to the sums properly due to the Sub-Contractor under this Sub-Contract (including, for the avoidance of doubt, any sums which may be payable in respect of the Sub-Contract Sum, variations, acceleration and/or loss and expense) as from the date twenty-eight (28) days after it is issued, unless and solely to the extent that the Sub-Contractor has commenced proceedings against McPhillips disputing the Final Account Payment Notice prior to the expiry of that twenty-eight (28) day period. If the Sub-Contractor does not start proceedings, then it shall sign and return the Final Account Payment Notice to acknowledge that the sums set out therein reflect the entirety of its entitlement to payment under the Sub-Contract.
- 11.11. If the Final Account Payment Notice sets out that a sum is payable to McPhillips or to the Sub-Contractor, then the final date for payment of that sum is fifty-six days after the due date.
- 11.12. Not later than 2 days before the final date for payment, the paying party may give a written notice of intention to pay less than the sum set out in the Final Account Payment Notice to the other party (a "Pay Less Notice"). The Pay Less Notice shall set out the sum which the paying

- 11.13. The Sub-Contractor shall ensure that it has applied for payment of all sums which it considers to be due to it under this Sub-Contract (including, for the avoidance of doubt, payment of the Sub-Contract Sum, payment for any variations, any loss and/or expense, and any retention) by the date 24 calendar months after the date the Sub-Contract Works reached completion. No sums will become due in respect of, and McPhillips shall have no liability to make payment in respect of, any application for payment made by the Sub-Contractor after this date.
- 11.14. Clauses 11.10 and 11.13 are without prejudice to any claim under or in connection with the Sub-Contract or the Sub-Contract Works which McPhillips may have against the Sub-Contractor.
- 11.15. In addition to any other rights McPhillips may have at law, McPhillips may set-off against any payment otherwise due to the Sub-Contractor any sums or damages (or reasonable estimates thereof) due from the Sub-Contractor to McPhillips under or in connection with this Sub-Contract or any other contract or agreement between the parties.
- 11.16. No notice setting out the sum proposed to be paid to the Sub-Contractor nor any payment by McPhillips shall (unless it is expressly agreed to the contrary, which agreement shall be in writing) be conclusive evidence that any work, materials or goods to which the notice or payment relates are in accordance with the Sub-Contract; nor (save as set out in clause 11.10) as to the proper value of the Sub-Contractor's works.
- 11.17. If it shall later become apparent that, for whatever reason, a payment has been made to the Sub-Contractor which is in excess of the sums for which McPhillips is properly liable to pay under this Sub-Contract (including, for the avoidance of doubt, because McPhillips has instructed a variation in error) then McPhillips may recover that overpayment from the Sub-Contractor or may set off the overpayment against any other sums due to the Sub-Contractor under this Sub-Contract or under any other contract or agreement between the parties.
- 11.18. If any sums payable under the Sub-Contract to McPhillips are not paid by the final date for payment, interest shall accrue at the simple rate of 2% above Bank of England base rate current at the final date for payment. The parties acknowledge that payment of such interest shall constitute a 'substantial remedy' for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).
- 11.19. VAT Reverse Charge. Prior to the



commencement of the Sub-Contract Works, the Sub-Contractor shall notify McPhillips in writing as to whether or not the Sub-Contractor considers that the VAT reverse charge will apply. Where the VAT reverse charge applies, the Sub-Contractor's VAT invoices shall include clear wording to this effect.

11.20. If McPhillips pays any VAT to the Sub-Contractor in respect of any supply of Sub-Contract Works and it is later determined that the VAT reverse charge should have applied to that supply, then the Sub-Contractor shall immediately on written demand of McPhillips:

- 11.20.1. issue a corrected invoice to McPhillips; and
- 11.20.2. repay the relevant amount of VAT to McPhillips.

12. DOCUMENTS AND INTELLECTUAL PROPERTY RIGHTS

12.1. The Sub-Contractor warrants and undertakes that (i) all documents and information provided by or on behalf of McPhillips to the Sub-Contractor and/or (ii) the Documents shall be treated as confidential and shall not be disclosed by the Sub-Contractor to any third party save to the extent necessary to effect the execution of this Sub-Contract and then only on the basis that the recipient of such information is bound by similar confidentiality obligations to those undertaken by the Sub-Contractor. The Sub-Contractor ensures that the confidentiality provisions contained in this Sub-Contract are incorporated in any sub-sub-contracts which the Sub-Contractor enters into. This clause 12.1 remains binding on the Sub-Contractor notwithstanding completion of the Sub-Contract Works or termination of this Sub-Contract for any reason.

12.2. If the Sub-Contractor requires any information, documents or instructions from McPhillips in order to perform the Sub-Contract Works, then it shall ensure that it requests the same in writing in good time to enable the information, documents or instruction to be provided without causing delay to the Sub-Contract Works or the Main Contract Works.

12.3. The Sub-Contractor agrees that McPhillips has a royalty-free, non-exclusive, irrevocable, perpetual licence (carrying the right to grant sub-licences to the Employer and to others) to use, reproduce, copy, adapt, modify, and communicate the Documents for any purpose whatsoever connected with the Sub-Contract Works, the Main Contract Works and such other purposes as are reasonably foreseeable (including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Sub-Contract Works and the Main Contract Works). Such licence carries the right to grant or permit sub-licences and is freely

assignable by McPhillips and the Employer.

12.4. The Sub-Contractor irrevocably waives, and procures that each of its sub-sub-contractors and suppliers irrevocably waives, any rights it or they may have under Chapter IV (Moral Rights) of Part I of the Copyright, Designs and Patents Act 1988 in relation to the Documents.

12.5. If McPhillips is required by the terms of the Main Contract to assign any intellectual property rights to the Employer, then to the extent necessary to enable McPhillips to comply with that requirement, the Sub-Contractor shall assign to McPhillips copyright and all other intellectual property rights in the Documents.

12.6. The Sub-Contractor indemnifies McPhillips and the Employer against any claims, proceedings, compensations and costs they suffer (and/or their assignees or sub-licensees suffer) or for which the McPhillips and/or the Employer is liable in connection with any infringement or alleged infringement of any existing or future intellectual property right of any third party caused by or arising out of the carrying out of the Sub-Contract Works or by the exercise of the licence granted to the McPhillips and the Employer by the Sub-Contractor or any sub-licence granted pursuant to the McPhillips' and the Employer's licence (including any licence McPhillips and/or the Employer gives to a third party) or by possession of the Sub-Contractor's design or the Documents.

12.7. The Sub-Contractor agrees to give to McPhillips and the Employer (including their respective nominees) at the Sub-Contractor's expense:

- 12.7.1. access to the Documents on reasonable prior written notice from McPhillips; and
- 12.7.2. three (3) copies of the Documents (including copy negatives and CAD disks) in such format or formats as may be reasonably required by McPhillips and/or the Employer.

12.8. Subject always to the Sub-Contractor's obligations under clause 12.1, the Sub-Contractor shall keep all documents and information obtained or prepared by the Sub-Contractor and any sub-sub-contractor in connection with this Sub-Contract until 12 years after the completion of the Main Contract Works.

12.9. The Sub-Contractor shall permit (and where applicable facilitate) McPhillips, the Employer and the Contract Administrator (including their respective nominees) to examine all documents held or controlled by the Sub-Contractor or any sub-sub-contractor in connection with this Sub-Contract and the Sub-Contractor shall provide such oral or written explanations as McPhillips, the Employer and the Contract Administrator (including their respective nominees), considers necessary free of charge.



12.10. The Sub-Contractor must obtain the written consent of McPhillips (which consent may be withheld for any reason, including that McPhillips has been unable to obtain the approval of the Employer or other third parties) before it issues any press release or publishes or permits the publication of any information concerning the Sub-Contract Works or the Main Contract Works.

12.11. The rights or benefits conferred on the McPhillips, the Employer and the Contract Administrator by this clause 12 survive any termination of the Sub-Contractor's obligation to provide the Sub-Contract Works.

13. COLLATERAL WARRANTIES AND THIRD PARTY RIGHTS

13.1. The Sub-Contractor agrees to execute as a deed within 7 days of McPhillips' written request, any collateral warranty in favour of the Employer and any third party which McPhillips is obliged to procure from the Sub-Contractor by the Employer, in the form prescribed by the Main Contract (or if no form is prescribed, then either in the form included within the Sub-Contract Documents or otherwise in a form that would be standard for the work carried out by the Sub-Contractor).

13.2. The Sub-Contractor shall procure that its sub-sub-contractors provide a collateral warranty in favour of McPhillips in the form reasonably required by McPhillips.

13.3. This clause 13.3 applies if it is stated in the Main Contract that third party rights are to be granted by the Sub-Contractor. On McPhillips giving notice to the Sub-Contractor, which notice shall state the name of the beneficiary of the third party rights and the nature of the beneficiary's interest in the Main Contract Works, then such third party rights shall be conferred by the Sub-Contractor and vest in that beneficiary.

13.4. This clause 13.4 applies if (i) a beneficiary under a collateral warranty or third party rights schedule exercises any right of "step in" or novation in relation to the Sub-Contract, so that the beneficiary is substituted for McPhillips as a party to the Sub-Contract; or (ii) the Employer exercises a right to have the benefit of this Sub-Contract assigned to the Employer. Following the exercise of such right, the Sub-Contractor and McPhillips agree that it is intended under the Sub-Contract to confer a benefit on McPhillips (Wellington) Limited and therefore McPhillips (Wellington) Limited may continue to enforce the terms of the Sub-Contract as if McPhillips (Wellington) Limited were still party to the Sub-Contract.

13.5. The rights of McPhillips and/or the Sub-Contractor to terminate the Sub-Contractor's engagement, to amend or vary or waive any terms of this Sub-Contract, and/or to agree to settle any dispute or other matter arising out of this Sub-Contract, shall

not be subject to the consent of any beneficiary of third party rights.

13.6. Save as set out in this clause 13, these Standard Sub-Contract Conditions do not confer, or purport to confer, any right on any parties other than McPhillips and the Sub-Contractor, and the parties acknowledge that it is not their intention to confer any right on any other parties.

14. DEFECTS

14.1. Unless stated otherwise in the Sub-Contract Documents, the Defects Liability Period shall commence at the time of completion of the Sub-Contract Works and shall expire 7 days after the last date on which defects may be notified in relation to the defects liability period (or equivalent) under the Main Contract.

14.2. McPhillips may (but is not obliged to) at any time up until the expiry of the Defects Liability Period notify the Sub-Contractor that it is required to make good any defects and/or faults in the Sub-Contract Works.

14.3. If McPhillips notifies the Sub-Contractor that it is required to make good any defects and/or faults in the Sub-Contract Works during the Defects Liability Period, the Sub-Contractor shall within a reasonable time (and in compliance with any time periods for the rectification of defects under the Sub-Contract Documents or Main Contract) and in any event no later than 28 days from the date of issue of such notification make good those defects and/or faults.

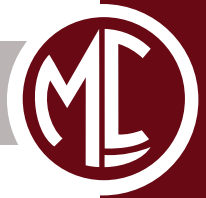
14.4. If the Sub-Contractor fails within a reasonable time to make good defects and/or faults in the Sub-Contract Works, or if McPhillips chooses (at its discretion) not to notify the Sub-Contractor that it is required to make good a defect or fault, then McPhillips may instead make good those defects/faults itself (including for the avoidance of doubt that McPhillips shall have the right to employ others to make good those defects/faults), and McPhillips' costs shall be recoverable from the Sub-Contractor as a debt.

15. INSURANCE AND LIABILITY

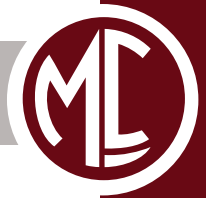
15.1. Unless otherwise set out in the McPhillips' Sub-Contractor Pre Order Minutes the Sub-Contractor shall take out and maintain for as long as the Sub-Contractor remains liable under the Sub-Contract insurance which complies with the following requirements:

15.1.1. Public Liability Insurance with a minimum level of cover of five million pounds (£5,000,000) (or such greater sum as may be specified in the Sub-Contract Documents) for any one occurrence or series of occurrences arising out of one event;

15.1.2. Employer's Liability Insurance with a



- minimum level of cover of ten million pounds (£10,000,000) (or such greater sum as may be specified in the Sub-Contract Documents) for any one occurrence or series of occurrences arising out of one event;
- 15.1.3. if the Sub-Contractor is carrying out any design, professional indemnity insurance with a minimum level of cover of five million pounds (£5,000,000) (or such greater sum as may be specified in the Sub-Contract Documents) for any one claim or series of claims arising out of one event;
- 15.1.4. Contractor's All Risks Insurance with a minimum level of cover of not less than the replacement cost to cover:
- 15.1.4.1. loss of or damage to the Sub-Contractor's tools and equipment;
- 15.1.4.2. the replacement of any plant and materials provided by the Sub-Contractor; and
- 15.1.4.3. loss of or damage to the Sub-Contract Works; and
- 15.1.5. such other insurances as may be specified in the Sub-Contract Documents or which are specified by the Main Contract as to be taken out and maintained by the Sub-Contractor.
- 15.2. With the sole exception of the Professional Indemnity Insurance policy, each insurance referred to in clause 15.1, is to include a general endorsement for indemnity to principals under which McPhillips is indemnified for claims made against McPhillips for the acts or omissions of the Sub-Contractor or any sub-sub-contractor of any tier of the supply chain and the Sub-Contractor shall ensure that the Contractor's All Risks Insurance is endorsed in terms that McPhillips is recognised as an insured under the policy.
- 15.3. The Sub-Contractor's insurances are to be placed with reputable providers licenced to conduct business in the United Kingdom and who are of good repute and financial standing in the international insurance market.
- 15.4. The Sub-Contractor does not do anything, or fail to do anything, which would entitle any insurer to refuse to pay any claim under an insurance policy to be provided and/or maintained under this Sub-Contract.
- 15.5. McPhillips may at any time (but not unreasonably or vexatiously) instruct the Sub-Contractor to produce documentary evidence (including a copy of the relevant policies) that the insurances required by the Sub-Contract have been taken out and maintained. The Sub-Contractor shall provide such documentary evidence to McPhillips within 7 days of receiving the instruction.
- 15.6. If the Sub-Contractor fails to take out and maintain the insurances required by this Sub-Contract or to produce documentary evidence that the insurances required by this Sub-Contract have been taken out and are being maintained, then McPhillips may elect either to (i) take out equivalent insurances itself and the amount of any premium or other cost incurred by McPhillips in so doing shall be recoverable by McPhillips as a debt from the Sub-Contractor; or (ii) terminate the Sub-Contract in accordance with clause 17.1 below.
- 15.7. The Sub-Contractor will be responsible for any loss or damage however caused to the Sub-Contract Works and to the Sub-Contractor's materials, plants, tools, equipment and other property.
- 15.8. Without prejudice to McPhillips' other rights and remedies under the Sub-Contract, the Sub-Contractor shall indemnify and hold McPhillips harmless against any and all expenses, claims or proceedings, loss, damage, cost and/or liabilities incurred by McPhillips to the extent that the same result from the Sub-Contractor's breach of contract, breach of statutory duty, or negligent act or omission.
- 15.9. Further and in addition to any other rights McPhillips may possess if, in the reasonably-held opinion of McPhillips, McPhillips suffers loss which was caused by reason of the Sub-Contractor's breach of this or any other contract between the parties or by any tortious act or by any breach of statutory duty giving rise to a claim for damages or indemnity or contribution by McPhillips against the Sub-Contractor or McPhillips becomes entitled to payment from the Sub-Contractor under this or any other contract between the parties, then without prejudice to and pending the final determination or agreement between the parties as to the amount of the loss, indemnity, contribution or payment, the Sub-Contractor shall forthwith pay or allow to McPhillips such sum as McPhillips shall bona fide estimate to be the amount of the loss, indemnity, contribution or payment; such estimate to be binding and conclusive upon the Sub-Contractor until such final determination or agreement is made.
- 15.10. The parties agree that Section 5 of the Limitation Act 1980 does not apply to this Sub-Contract and that neither party will rely upon a defence pleading Section 5 of the Limitation Act 1980 in any proceedings connected with this Sub-Contract.
- 15.11. No action is to be brought under this Sub-Contract after the expiration of 12 years from the date of



completion of the Main Contract Works save in the event of fraud or deliberate concealment.

16. SUSPENSION OF THE SUB-CONTRACT WORKS

16.1. If McPhillips fails to pay the Sub-Contractor in full a sum which has become due under clause 11 above (payment of such sum being always subject to McPhillips' right to give a Pay Less Notice) the Sub-Contractor may suspend any or all of the Sub-Contract Works for non-payment upon giving McPhillips 14 clear days' written notice of the suspension setting out the ground or grounds on which it is intended to suspend work. The written notice must be sent by special delivery to the address set out in the Sub-Contract Documents and marked for the attention of McPhillips' Quantity Surveyor. The right to suspend performance ceases immediately when McPhillips makes payment in full.

16.2. McPhillips may at any time instruct the Sub-Contractor to suspend (and subsequently to recommence) all or any part of the Sub-Contract Works and the Sub-Contractor shall immediately comply.

16.3. If the site is closed or if McPhillips suspends the Sub-Contract Works for reasons outside McPhillips' reasonable control, then (unless the closure or suspension has been caused or contributed to by the Sub-Contractor's breach of contract or other default) the Sub-Contractor shall be entitled to an extension of time under clause 9 for the period of site closure and/or suspension. The Sub-Contractor shall not be entitled to claim for any site closure or suspension as a variation nor to make any claim for the reimbursement of loss and/or expense in relation to the same.

17. TERMINATION OF THE SUB-CONTRACT

17.1. In the event that:

- 17.1.1. the Sub-Contractor becomes insolvent or McPhillips has reasonable cause to believe that the Sub-Contractor has become insolvent (for the purposes of this clause "insolvent" includes (i) entering administration or having an administrative receiver, receiver or manager appointed; (ii) passing a resolution for winding up without making a statutory declaration of solvency; (iii) the making of a winding up order or bankruptcy order against the Sub-Contractor; (iv) the Sub-Contractor entering into an arrangement, compromise or composition in satisfaction of its debts (but not a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction) or becoming subject to a moratorium under

Part A1 of the Insolvency Act 1986; and (v) any other analogous arrangement, event or proceedings including in any other jurisdiction); or

17.1.2. the Sub-Contractor fails to comply with health and safety requirements; or

17.1.3. the Sub-Contractor fails to take out, maintain or renew the insurances required by the terms of the Sub-Contract or such insurances are made unenforceable by the actions or inactions of the Sub-Contractor, so that the Sub-Contractor at any time does not have the insurances required by the terms of this Sub-Contract; or the Sub-Contractor does not provide the documentary evidence required under clause 15.5; or

17.1.4. the Sub-Contractor breaches clause 2.4; then

McPhillips shall be entitled by written notice to terminate the Sub-Contractor's engagement under the Sub-Contract with immediate effect.

17.2. In the event that the Sub-Contractor:

17.2.1. fails regularly and diligently to carry out the Sub-Contract Works in whole or in part, or suspends carrying out the Sub-Contract Works in whole or in part, in either case without lawful cause;

17.2.2. fails promptly to comply with McPhillips' instructions; or

17.2.3. fails to provide any collateral warranty, bond, performance guarantee or parent company guarantee which it is obliged to provide under the Sub-Contract, then

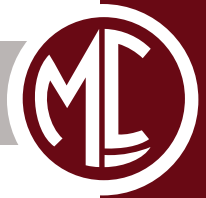
McPhillips shall be entitled to give a notice to the Sub-Contractor requiring the Sub-Contractor to rectify the failure at once; and should the failure not be rectified within 7 days of receipt of the notice by the Sub-Contractor, McPhillips shall be entitled to terminate the Sub-Contractor's engagement under the Sub-Contract with immediate effect by giving a further written notice.

17.3. If McPhillips terminates the Sub-Contract, McPhillips shall calculate the final amount payable between McPhillips and the Sub-Contractor as follows:

17.3.1. the sum for which the Sub-Contractor is entitled to apply for payment at the date of termination calculated in accordance with clause 11.3;

from which shall be deducted:

17.3.2. any damages, compensation, indemnities, reimbursements, or other

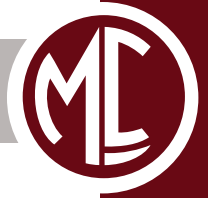


payments to which McPhillips is or will be entitled from the Sub-Contractor, including but not limited to the costs of completing the Sub-Contract Works, (or reasonable estimates thereof);

- 17.3.3. such reasonable costs and/or expenses as McPhillips may incur in calculating the final amount payable to the Sub-Contractor including external costs of advice and/or representation; and
- 17.3.4. any other additional cost to McPhillips arising as a consequence of the termination (including but not limited to payments of additional amounts to others and/or the Employer as a consequence of the termination and any bona fide claim against the Sub-Contractor).
- 17.4. If McPhillips terminates the Sub-Contract under clause 17.1 or clause 17.2, and under clause 17.3 there is a balance owing to the Sub-Contractor, then the Sub-Contractor shall be entitled to apply for payment of that balance on the date 1 year after the date of termination of the Sub-Contract by McPhillips. The provisions of clause 11.2 apply to that application for payment.
- 17.5. If the calculation of the final amount payable between the parties results in a balance owing from the Sub-Contractor to McPhillips, that balance shall be recoverable by McPhillips from the Sub-Contractor as a debt.
- 17.6. If McPhillips' employment under the Main Contract is terminated for any reason whatsoever then the Sub-Contractor's employment under the Sub-Contract shall automatically and immediately terminate.
- 17.7. McPhillips may terminate the Sub-Contractor's engagement under the Sub-Contract at any time for convenience, on giving 7 days' notice in writing to the Sub-Contractor.
- 17.8. If the Sub-Contractor's engagement is terminated under clause 17.6 or clause 17.7, then the Sub-Contractor shall be entitled to the following:
 - 17.8.1. if the termination of McPhillips' employment under the Main Contract was caused or contributed to by any breach of this Sub-Contract or other default by the Sub-Contractor, then the Sub-Contractor's entitlement to payment on termination shall be calculated in accordance with clause 17.3 above and any balance payable to the Sub-Contractor shall be notified and become due in accordance with clause 11.3 above;
 - 17.8.2. if the termination of McPhillips'

employment under the Main Contract was for any reason other than a breach or default by the Sub-Contractor, or if McPhillips terminates for convenience under clause 17.7, then the Sub-Contractor shall be entitled to payment for the portion of the Sub-Contract Works completed up to the date of the termination. Payment shall be applied for, calculated and paid in accordance with clause 11 of this Sub-Contract.

- 17.9. Following termination, McPhillips may carry out the Sub-Contract Works itself or may engage others to carry out the Sub-Contract Works, and the Sub-Contractor shall have no claim against McPhillips for so doing.
 - 17.10. Clause 17 is without prejudice to any other accrued rights and remedies of either party.
 - 18. DISPUTE RESOLUTION**
 - 18.1. Either of the parties may at any time give notice of its intention to refer to adjudication any dispute or difference of any kind whatsoever arising under or in connection with the Sub-Contract and/or the Sub-Contract Works.
 - 18.2. The adjudication shall be conducted in accordance with Part I of the Scheme for Construction Contracts (England & Wales) Regulations 1998 (as amended).
 - 18.3. All information and documents provided to the adjudicator for the purposes of the adjudication are to be treated as confidential within the meaning of paragraph 18 of the Scheme.
 - 18.4. Any dispute or difference of any kind whatsoever arising under or in connection with the Sub-Contract and/or the Sub-Contract Works, shall:
 - 18.4.1. regardless of whether the Sub-Contract Works are yet to commence, are being carried out, have been completed, or have been abandoned or discontinued, and regardless of whether the Sub-Contract has been suspended or terminated;
 - 18.4.2. subject to the parties' rights to refer disputes and/or differences to adjudication;
 - 18.4.3. except in the case of disputes or differences in connection with the enforcement of any decision of an adjudicator; and
 - 18.4.4. except in the case of disputes or differences in connection with VAT or the Construction Industry Scheme,
- be referred to the arbitration of a single arbitrator. The seat of the arbitration shall be London, England.



18.5. If the parties do not agree upon an arbitrator, the President or a Deputy-President of the Chartered Institute of Arbitrators shall upon the referring party's application nominate an individual to be the arbitrator.

19. MISCELLANEOUS

- 19.1. The Sub-Contractor shall not assign, novate or otherwise transfer this Sub-Contract or any part thereof or any benefit or interest therein or thereunder without the prior written consent of McPhillips, which may be withheld for any reason.
- 19.2. Section headings in these Standard Sub-Contract Conditions are for convenience only and do not affect the interpretation of the individual document or the Sub-Contract.
- 19.3. Should any part of these Standard Sub-Contract Conditions be found to be illegal, unenforceable and/or otherwise invalid, that part of these Standard Sub-Contract Conditions shall be severed and deleted from the remaining part of these Standard Sub-Contract Conditions, and treated as if it had never been incorporated in the Sub-Contract, and the remaining part of these Standard Sub-Contract Conditions shall remain enforceable and of full force and effect.
- 19.4. Any delay by McPhillips in exercising any of its rights shall not be or be treated as being a waiver of any rights by McPhillips, and failure by McPhillips to exercise any of its rights on any given occasion shall not prevent McPhillips from exercising those or other rights on any future occasion.
- 19.5. Unless it is made or recorded in writing and in either case signed by a company director of McPhillips:
- 19.5.1. no agreement to vary these Standard Sub-Contract Conditions; and
 - 19.5.2. no agreement to disapply or not to rely on any of the provisions of these Standard Sub-Contract Conditions, shall be of any effect whatsoever.
- 19.6. The Sub-Contract shall be governed by and construed in accordance with the laws of England.