



Subcontractor Agreement

To protect your interests please read this document carefully as it is legally binding.

This agreement provides the terms and conditions for the provision of subcontracting services to 1st Facility Management Ltd T/A First Facility Management (a company registered in England and Wales number 09432388) whose registered office is Wellesley House, 204 London Road, Waterlooville, Hampshire, PO7 7AN; “FFM” or the “Contractor”

1. Definitions and interpretation

- 1.1. In this agreement the following terms mean;
 - 1.1.1 **“Agreement”** This agreement as originally executed or as may be amended from time to time by a specific written document executed on behalf of both Parties;
 - 1.1.2 **“Additional Service”** Any service supplied by The Subcontractor to the Client in addition to the specification and that is provided as a direct result of the Engagement or offer of an Engagement;
 - 1.1.3 **“Ancillary Services”** Any service which is supplied by The Subcontractor to the Client as a result of the contact with the Client but which is not connected to the Engagement in any way;
 - 1.1.4 **“CIS”** Construction Industry Scheme;
 - 1.1.5 **“Client”** Any sole trader, partnership, firm or company engaging the services of the Contractor which include the Services provided under a Purchase Order;
 - 1.1.6 **“Confidential information”** Any information relating to a business, including but not limited to products, affairs and finances and trade secrets including technical data and know-how relating to the business or any business contacts and any affiliated companies or subsidiaries;
 - 1.1.7 **“Contract”** The agreement between the Contractor and the Client, or any Main Contractor applicable to a particular Purchase Order;
 - 1.1.8 **“Contractor”** The sole trader, partnership, firm or company engaging the Services of the Subcontractor as defined by the Purchase Order;
 - 1.1.9 **“Defects Liability Period”** The period from the date of actual Practical Completion during which the Subcontractor shall remedy any defects or substandard work in respect of the Specified Services and during which FFM may withhold the Retention sum.
 - 1.1.10 **“EOM”** End of month;
 - 1.1.11 **“Engagement”** An individual and discrete piece of work offered via the Purchase Order to The Subcontractor;
 - 1.1.12 **“FFC Portal”** A cloud based software application entitled First For Contractor which manages sub contractor diligence and is hosted by Solution Host at <https://portal.solutionhost.co.uk/portallogin.html>;

- 1.1.13 **"Intellectual Property Rights"** Any and all patents, trade marks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether now or in the future subsisting in the United Kingdom or any other part of the world together with all or any goodwill and accrued rights of action;
- 1.1.14 **"Liquidated Damages"** An amount as specified in a Purchase Order and payable by The Subcontractor in accordance with clause 9;
- 1.1.15 **"Main Contractor"** Any sole trader, partnership, firm or company engaging the Services of the Contractor which include the Services provided under a Purchase Order;
- 1.1.16 **"Month"** A calendar Month comprising a period from a specified day in one Month to the day numerically corresponding to that day in the following Month, less one;
- 1.1.17 **"Order"** The formal offer to purchase made by FFM by the delivery of a Purchase Order to The Subcontractor;
- 1.1.18 **"Party or Parties"** Either the Contractor or Subcontractor or both;
- 1.1.19 **"Personal Data"** Data as defined in Section 1 of the Data Protection Act 1998;
- 1.1.20 **"Purchase Order"** FFM's Purchase Order bearing a unique Purchase Order number;
- 1.1.21 **"Practical Completion"** The date on which it is agreed the Specified Services should be completed by for the purposes of Liquidated Damages and the date on which the Specified Services are completed for the purposes of any Retention;
- 1.1.22 **"Price"** The charge for the provision of the Service set out in the Purchase Order excluding VAT which shall be due at the rate ruling on the date of the VAT invoice if produced;
- 1.1.23 **"Regular Job"** A piece of work which will occur on a repeating basis and therefore a fixed price or cost per unit can be agreed in advance;
- 1.1.24 **"Retention"** A percentage of the Price as defined in a Purchase Order which may be withheld from each and every invoice for the Specified Services in accordance with Clause 9;
- 1.1.25 **"Specified Service"** The professional or business service or services provided to the Contractor by the Subcontractor under this agreement and any associated Specification or Purchase Order;
- 1.1.26 **"Specified Service Delivery Date"** The date for the commencement of the performance of the service as set out in the Purchase Order (or if not so set out as otherwise directed by FFM by reasonable notice in writing);
- 1.1.27 **"Special Conditions"** The special conditions (if any) set out or referred to in the Purchase Order;
- 1.1.28 **"Specification"** The specification of the service set out or referred to in the Purchase Order and (unless expressly excluded) the specification comprised in any promotional material or offer provided by The Subcontractor or in any material published by The Subcontractor on which FFM has relied in its decision to purchase and (where applicable) the attributes of any sample exhibited to FFM by The Subcontractor to induce the purchase;
- 1.1.29 **"Standard Practices & Procedures for Contractors"** The working protocols for Subcontractors operating on behalf of FFM, at <http://www.ffmservices.com/wordpress/wp-content/uploads/2016/07/MF-MP07-02-Standard-Practices-Procedures-for-Contractors-.pdf>;
- 1.1.30 **"Staff"** Any person whether paid or unpaid and whether or not employed by The Subcontractor who is engaged in the performance of the Engagement on behalf of The Subcontractor and includes The Subcontractor where The Subcontractor is an individual;
- 1.1.31 **"Subcontractor"** The sole trader, partnership, firm or company providing Services to the Contractor as defined by a Purchase Order;
- 1.1.32 **"Subcontractor Questionnaire Form"** A form (or other device) supplied by FFM to be completed prior to any engagement being entered into and at such other times as FFM require and to a standard acceptable to FFM at their sole discretion;

- 1.1.33 **“Working Day”** A day between and including Monday to Friday excluding public holidays.
- 1.2. Also:
 - 1.2.1 words with the singular meaning include the plural and vice versa:
 - 1.2.2 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.3 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
 - 1.2.4 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.

2. The Services

- 2.1. The Subcontractor will be permitted to inspect the Contract (except for the detailed prices of the Contractor or Main Contractor or other commercially sensitive information) on request and will be deemed to have notice of the terms and conditions of the Contract.
- 2.2. The Subcontractor is bound, unless otherwise expressly stated in writing, by the same obligations as the Contractor, and any Main Contractor, under the Contract which applies to the works in the Purchase Order.
- 2.3. The Subcontractor wishes to provide services, to Clients of FFM on its behalf, within The Subcontractor’s technical field of expertise. This may be over the telephone through to site visits.
- 2.4. This document is a framework setting out the overarching terms and conditions applying to the supply of services on behalf of FFM. Subject to clause 2.5 task specifics will be formally set out in a Purchase Order and if necessary a supplementary Specification, for each Engagement.
- 2.5. Each Purchase Order and Specification if provided, in combination with this framework, forms the full agreement between the parties. FFM shall notify The Subcontractor in writing of any material changes to the Specified Services as soon as practicable.
- 2.6. The Subcontractor shall notify FFM in writing of any material variations or matters relating to the delivery of the Specified Services as soon as practicable.
- 2.7. FFM agrees not to impede the performance of the Services by the Subcontractor, except where necessary in order to comply with any statutory or legal requirement, of to allow FFM to comply with its duties under the Contract.
- 2.8. FFM agrees to notify the Subcontractor in writing of any material changes to the Contract which would affect the Services to be provided under a Purchase Order.
- 2.9. The Subcontractor must abide by the Standard Practices & Procedures for Contractors at all times when operating on behalf of FFM.

3. Independence

- 3.1. FFM and The Subcontractor are independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless expressly agreed to in writing by both parties.
- 3.2. Our relationship is limited to the performance of the terms and conditions of this agreement. Nothing in the agreement shall be construed as to create a partnership between the parties or to authorise either of the parties to act as a general agent for the other, or to permit either of the parties to bind the other except as set out in the agreement, or to borrow money on behalf of the other or to use the credit of either of the parties for any purpose.
- 3.3. The Subcontractor must keep FFM indemnified in full against all direct, indirect and consequential liabilities (including, but not limited to, loss of profits, loss of business and loss of contracts), loss, damages, injury, costs and expenses (including legal and professional fees) awarded against or paid by the parties in connection with any claim made against the parties in the event that FFM is held to be acting as your agent or otherwise arising through your breach of these terms.
- 3.4. The Subcontractor may not describe the relationship with FFM in any terms and in any medium without prior written consent from FFM as to the form of wording for each such use.

4. Provision and Acceptance of Services

- 4.1. FFM is under no duty or obligation to provide The Subcontractor with work at any time or of any nature.
- 4.2. The Subcontractor is under no duty or obligation to accept any offer of work received from FFM.
- 4.3. FFM is entitled to offer work to, and engage the services of, any other party who provides the same or similar services as The Subcontractor.
- 4.4. The Subcontractor is entitled to carry out its services for any other party, subject to clause 5 except where to do so would, for whatever reason and including especially a conflict of interest, detrimentally affect The Subcontractor's ability to provide the Specified Services to FFM.

5. Provision of Additional and Ancillary Services

- 5.1. The Subcontractor may not provide Additional Services directly to a party that it has previously delivered Specified Services to under an agreement with FFM, or that it has been offered an Engagement with by FFM within 6 Months of the end of the delivery of the Specified Services or the offer of the Engagement or the termination of this agreement, whichever is the later without notifying FFM in writing on each and every such occasion.
- 5.2. The Subcontractor expressly agrees to pay a fee of 10% of its income (excluding VAT) from any Additional Services supplied to a Client during the currency of this agreement and 5% (excluding VAT) otherwise.
- 5.3. If written notification is not provided within five days of the commencement of any Additional Services The Subcontractor expressly agrees to pay a fee of 20% (excluding VAT) of its income from any services provided directly to a party that it has previously delivered Specified Services to, or been offered an Engagement with, under an agreement with FFM.
- 5.4. If any Additional Services or Ancillary Services are provided as a result of the Engagement The Subcontractor will expressly ensure that the Client is under no doubt that there is no connection with, or endorsement of those Services by, FFM or any of its affiliates, associates or business partners.
- 5.5. The Subcontractor shall provide the Client with the pre-agreement information required by the Provision of Services Regulations 2009 in respect of any Additional or Ancillary Services.
- 5.6. The information required by clause 5.4 will be provided on paper or in an email before commencement of the services and FFM reserves the right to examine the information at any reasonable time.
- 5.7. This clause survives the termination of the agreement for any reason.

6. Conditions Applicable

- 6.1. These terms and conditions and any Special Conditions shall apply to the agreement in its entirety, to the exclusion of all other terms and conditions including any terms or conditions which The Subcontractor may purport to apply.
- 6.2. These terms and conditions shall prevail over any other parts of the agreement except for any Special Conditions.
- 6.3. Any variation of the Purchase Order is inapplicable unless agreed in writing by FFM.

7. Price

- 7.1. The Price for the provision of the Specified Services is that agreed and set out in the Purchase Order and is a fixed Price unless otherwise specifically indicated, it includes all travelling and other expenses.
- 7.2. Where regular jobs are concerned a written quotation giving a fixed price or cost per unit will be provided by The Subcontractor. Once this is agreed by both parties in writing it will not be necessary to refer to it in the Purchase Order but is deemed to be The Price.
- 7.3. Where such fixed price or cost per unit changes The Subcontractor shall notify FFM of the change in writing and the change shall only be binding on FFM in respect of any Purchase Order submitted after receipt of the notification.
- 7.4. The Price shall include all time charges, disbursements, overheads and expenses.
- 7.5. All agreed Engagements should be invoiced to FFM on completion.

- 7.6. FFM shall make payment to the Subcontractor in respect of a valid invoice submitted electronically to accounts@ffmservices.co.uk, subject to any queries of that invoice within 30 days EOM. Invoices submitted less than 6 clear working prior to the EOM will not be paid until the following EOM. Invoices will not be paid until the FFC Portal has been fully completed to the satisfaction of FFM. If a subcontractor is required to be registered for CIS then FFM will deduct 20% or 30% as appropriate from the labour charge or 20% or 30% as appropriate from the whole invoice if it is not broken down into labour and materials.
- 7.7. FFM may set-off against the Price (including any applicable VAT payable) amounts due from The Subcontractor whether under the agreement or otherwise. FFM shall notify The Subcontractor of the amount of and reason for any set-off in writing no less than 3 working days prior to the final date for payment.
- 7.8. The Parties agree that The Subcontractor is responsible for payment of any taxes or national insurance arising from the performance of, and remuneration for, the Specified Services.
- 7.9. The Subcontractor agrees that it will indemnify FFM in respect of all liability for taxes and National Insurance contributions including, but not limited to, Income Tax, Corporation Tax and Capital Gains Tax arising out of the performance of the Specified Services.

8. Standard of work

- 8.1. The Subcontractor shall provide the Specified Service in a good and workmanlike manner and to the standard of skill and care reasonably expected of skilled and experienced providers of such services. Information and materials provided must be to the highest professional standards.
- 8.2. If the Specified Service is not undertaken in accordance clause 8.1 then it must be rectified at The Subcontractors own expense by such date as stipulated by FFM. FFM shall be entitled to withhold an appropriate sum from payment of the Price until rectification is completed to the satisfaction of FFM. The sum to be retained shall be notified to The Subcontractor no less than 3 days prior to the final date for payment.
- 8.3. If the Subcontractor fails to rectify any defects of substandard work by the date stipulated by FFM then it shall not be entitled to payment of any amount withheld by FFM pursuant to clause 8.2 above.
- 8.4. The Subcontractor agrees that it will be liable for any additional costs incurred by FFM in rectifying such defects or substandard work.
- 8.5. FFM shall invoice The Subcontractor in respect of any additional costs incurred by FFM in accordance with clause 8.3 and The Subcontractor shall make payment to FFM within 30 days of receipt of the invoice. The Subcontractor agrees that FFM may alternatively set off such costs in accordance with clause 7.7 above against any invoice received from The Subcontractor.

9. Retention and Liquidated Damages

- 9.1. FFM may withhold a percentage sum from any invoice received from the Subcontractor in respect of Specified Services for which a Retention and Defects Liability Period is specified in the Purchase Order. The amount of the Retention and the length of the Defects Liability Period shall be specified in the Purchase Order.
- 9.2. The Retention will be repayable to The Subcontractor on or before the final day of the Defects Liability Period subject to the rectification of any defects in the Specified Services identified during the Defects Liability Period. The Subcontractor will not be entitled to repayment of the Retention where it fails to remedy all defects identified during the Defects Liability Period and clauses 8.3 and 8.4 shall apply.
- 9.3. Where time is of the essence in relation to the Specified Services then FFM may specify a final date for Practical Completion and an amount for Liquidated Damages in the Purchase Order.
- 9.4. The amount of the Liquidated Damages shall be a genuine pre-estimate of the cost incurred per day by FFM due to the failure of The Subcontractor to complete the Specified Services by the date for Practical Completion.
- 9.5. Where The Subcontractor fails to complete the Specified Services by the date for Practical Completion then The Subcontractor shall be liable to pay the Liquidated Damages in respect of each whole or part day falling after the date for Practical Completion until the Specified Services have been completed.

- 9.6. FFM shall invoice the Subcontractor in respect of any Liquidated Damages payable under clause 9.5 above and The Subcontractor shall make payment to FFM within 30 days of receipt of the invoice. The Subcontractor agrees that FFM may alternatively set off such costs in accordance with clause 7.7 above against any invoice received from The Subcontractor.

10. Assignment and Sub-Contracting

- 10.1. Where the Subcontractor is unable to perform the Services personally for any reason the Subcontractor shall be permitted to provide a substitute person or persons to perform those Services.
- 10.2. The Subcontractor will give notice to the Contractor in writing as soon as reasonably practicable that they will be sending a substitute person or persons to perform the Services.
- 10.3. The Contractor may request from the Subcontractor any such information or documentation which confirms the ability of the substitute person or persons to perform the Services legally, competently and safely.
- 10.4. The Contractor reserves the right to refuse the Subcontractor permission to send a particular substitute person, Such permission will not be unreasonably withheld by the Contractor.
- 10.5. The Subcontractor shall ensure that any sub-contractor or substitute is aware of all obligations and responsibilities incumbent on The Subcontractor under the terms of this agreement that are relevant to the part(s) of the Specified Services to be carried out by the sub-contractor or substitute. These shall include in particular those provisions relating to health and safety and insurances.
- 10.6. The Subcontractor shall not otherwise assign any of its rights, duties or obligations under the agreement without the prior written consent of FFM. For the sake of clarity the Subcontractor remains liable to FFM under clause 8 Standard of Work and should undertake appropriate and sufficient due diligence to ensure that it can comply fully with the terms of this agreement when substituting or sub-contracting.

11. Statutory Regulation

- 11.1. This agreement is subject to all current and future statutory provisions, legislation including but not limited to the Data Protection Act 1998, the Human Rights Act 1998 and the Equality Act 2010 to which the service might be subject.

12. Health and Safety

- 12.1. The Subcontractor shall ensure that safe systems of work and working practices are implemented and fully complied with at all times in the performance of the service and shall take all reasonable steps to avoid risk of injury or ill health to its employees, the Staff of FFM, the Client or otherwise, resulting from the provision of The Specified Service.
- 12.2. In particular The Subcontractor will need to comply with all health and safety requirements and make arrangements to include on-site co-operation and co-ordination, production of risk assessments and method statements and provision of welfare and first aid facilities as appropriate.
- 12.3. It is a condition of this Agreement that the Subcontractor will adhere to the requirements of the Health & Safety at Work etc. Act 1974 and all Regulations, Codes of Practice applicable to the Act and in accordance with the Health & Safety policy of the Client, any Main Contractor and the Contractor.
- 12.4. Without prejudice to the foregoing the Subcontractor shall:
- 12.4.1. **Organisation & Arrangements** - provide to the Contractor the following immediately on request:
- a) Name, qualifications and contact details of the person/organisation providing Health and Safety advice to the Subcontractor.
 - b) Name, qualifications and contact details of the person/organisation acting as competent person for purposes of health and safety.
 - c) Name and contact details of their Director/Manager directly responsible for Health & Safety

matters covered by the Purchase Order in force.

- d) Name of their Manager/Supervisor on site responsible for Health & Safety.
- e) A copy of the Subcontractor's Health & Safety Policy.

12.4.2. **Risk Assessments, Safe Systems of Work & Method Statements**

- a) Identify the hazards associated with their work, assess the risks arising from these hazards and advise how significant risks are to be controlled.
- b) Establish safe systems of work and document them as appropriate as identified by the Subcontractor or the Contractor.
- c) Where temporary works either below or above ground form part of the Purchase Order, provide the company with a copy of the Temporary Works proposals and design calculations where necessary.
- d) Provide risk assessments under the COSHH Regulations. These assessments must detail the risk to any persons who may come into contact with any hazardous substances the Subcontractor may be using, or dust, fumes and by-products caused by the Subcontractor's activities, and the measures to be taken by the Subcontractor to control these risks.
- e) Where the Contractor, any Main-Contractor or Client has provided risk assessments, safe systems of work or method statements specifically for, or which relate to, the activities to be undertaken by the Subcontractor they shall work to the requirements and specifications of those risk assessments, safe systems of work or method statements.

12.4.3. **Competence & Training** - Provide evidence of competence and training for all managers, supervisors, tradesmen and operatives under their control. This shall be in accordance with the relevant registration schemes. These are CSCS, CITB (CTA) plant operators, GasSafe Register, CISRS, NRSIA JIB CSCS (Electro technical), PTS and SCORE or Skillcard or similar unless otherwise approved, by the Contractor, in writing. Where project specific training and competencies are required, the Subcontractor shall provide appropriate evidence.

12.4.4. **Plant & Equipment** – Ensure compliance with the following:

- a) The Subcontractor is to provide at the Subcontractor's sole cost all plant and equipment necessary to undertake the Services.
- b) All Subcontractor's plant/equipment (whether owned or hired) is to be thoroughly inspected by the Subcontractor before being put to work on site and relevant certification provided to the Contractor.
- c) All electrically operated portable tools will be restricted to a maximum of 110 volts, unless written approval is obtained from the Contractor. 110 volt portable equipment (including leads) shall be tested as required by the (Main) Contractor and evidence of testing made available on site.
- d) Subcontractors shall take full note of their responsibility under the PUWER Regulations in respect of all plant and equipment brought on to site for their use.
- e) Scaffolding shall only be erected, altered or dismantled by competent CISRS scaffolders. All scaffolding shall be provided with a formal handover certificate. All sheeted scaffolds, scaffolds above 50 metres, suspended scaffolds and load bearing scaffolds shall be designed and checked as Temporary Works. Sheetting includes debris netting.
- f) Proprietary access systems shall only be erected, altered or dismantled by competent, trained personnel.

12.4.5. **Cooperation, Coordination & Communication**

- a) Comply with directions given by the Contractor with regard to coordination and communication.
- b) Ensure that operatives under their control are aware of all matters likely to cause danger to themselves or others through induction training and toolbox talks.

- c) Ensure that everyone under their control receives a site specific safety induction.
- d) Ensure that they are aware of numbers of personnel under their control who are on site at any time.
- e) Provide adequate and appropriate information to those under their control in respect of health and safety.
- f) Ensure that all those under their control comply with the 'Site Rules'.
- g) Immediately inform the Contractor of any death, injury, ill health, dangerous occurrence or incident affecting health and safety, including any near miss or risk.
- h) Provide the Contractor with relevant information for inclusion in the Health and Safety File.
- i) Take the necessary disciplinary action against any employee who fails to comply with safety requirements. This includes removal from site if directed by the Contractor.

12.4.6. Health & Welfare - Ensure compliance with the following:

- a) That adequate and suitable welfare facilities are provided for all those under their control. This includes (but is not limited to) toilets, drying, changing and messing facilities and first aid. Where the Subcontractor is expecting the Contractor/Main Contractor to provide these facilities and the Contractor so agrees, the Subcontractor shall provide details of resource levels in adequate time for their provision.
- b) That any person under their control on site found to be consuming, or under the influence of drugs or alcohol is not permitted to remain on site.
- c) That any person under their control carrying out, promoting, encouraging or threatening an act of violence to be subject to immediate removal from site. This includes both physical and verbal violence.
- d) Take full account of the Statutory Requirements given in the Working Time Regulations.
- e) Ensure that adequate PPE for any given site is provided. Any failure to do so will result in PPE being provided by the Contractor and a charged levied for it. The levels of PPE required will vary from site to site and it is the Subcontractors responsibility to ensure the correct levels are met prior to work commencing.

12.4.7. Young Persons

- a) Obtain permission from the Contractor before allowing any Young Person onto site.
- b) The Subcontractor shall carry out a specific Risk Assessment for each Young Person and ensure suitable and sufficient instruction and training has taken place.
- c) The Subcontractor shall provide adequate supervision to ensure the Health & Safety of those individuals whilst at work.
- d) Ensure no person under 18 years of age is allowed on site without the written permission of the Contractor.
- e) For the purposes of this Agreement 'Young Person' means a person who has not attained the age of 18 pursuant to Regulation 1 of The Management of Health and Safety at Work Regulations 1999.

12.4.8. Notifications

- a) Obtain written permission from the Contractor for any work to be undertaken outside normal working hours, including weekends.
- b) Obtain written permission from the Contractor if they intend to sublet any part of their work packages.
- c) Provide prior notice to the Contractor of any individual(s) that they intend to bring to the site with communication difficulties. Permission to proceed will require evidence that the Subcontractor has adequately addressed all management issues regarding the health and safety of these individuals.

13. Intellectual Property

- 13.1. FFM retains ownership of all Intellectual Property Rights in all documents provided by FFM in connection with or arising out of the agreement. The Subcontractor may obtain or make at their own expense any further copies of such documentation required solely for use by them or their Representatives only as necessary to provide the Specified Service and always subject to the provisions of this clause 12.
- 13.2. The Subcontractor agrees that the Intellectual Property Rights in any and all documents, drawings, designs, data or other material in any format created by The Subcontractor in the course of and for the purpose of providing the Specified Service are assigned to FFM and The Subcontractor shall execute or cause to be executed (by their Representatives as necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in FFM.
- 13.3. The Intellectual Property Rights in all drawings, reports, calculations and other documents provided by The Subcontractor in connection with the Specified Service shall be vested in FFM in accordance with clause 13.1 but The Subcontractor shall have a licence to use such drawings and other documents for any purpose related to the Specified Service. Save as aforesaid, The Subcontractor shall not make copies of such drawings or other documents nor shall they use the same in connection with the making or improvement of any works other than those to which the Specified Service relates without the prior approval of FFM and upon such terms as may be agreed between FFM and The Subcontractor.
- 13.4. The Subcontractor shall indemnify FFM against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and Client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Specified Services, except to the extent that such liabilities have resulted directly from FFM's failure properly to observe its obligations under this Clause 13.
- 13.5. Otherwise each of the parties retains ownership of its own Intellectual Property and such material may not be copied, reproduced or redistributed. In particular it must not be exploited for commercial gain or to cause loss (including loss of profit) to the other party, unless separately agreed in writing.
- 13.6. This term survives the termination of the agreement for whatever reason.

14. Confidentiality and information security

- 14.1. The parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any unauthorised disclosure to any person.
- 14.2. Whilst the other parties confidential information is in possession of either party it is agreed that appropriate and reasonable technical and organisational measures are taken to protect it against accidental loss, unauthorised disclosure, destruction or damage.
- 14.3. Both parties agree not to use, sell, market, or disclose it to any third person, firm, corporation, or association for any purpose, without the others express written authorisation, other than to employees and advisors for the purpose of the discharge of any duties under this agreement.
- 14.4. Third party disclosures, including those to employees and advisors, will only be made if the third party agrees to be bound by the terms of this Clause 14 in writing.
- 14.5. The parties each agree to be liable to the other for any loss or damage caused by any use made of confidential information by any person provided with copies or to whom it has been disclosed. This does not apply to:
 - 13.5.1 any authorised use or disclosure; or
 - 13.5.2 disclosure required by law; or
 - 13.5.3 that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement; or
 - 13.5.4 by FFM of any document which forms part of the Specified Service delivery; or
 - 13.5.5 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 13.5.6 by FFM relating to this agreement and in respect of which the Subcontractor has given their prior written consent to disclosure

- 13.5.7 to any information which is already in (or comes into) the public domain otherwise than through unauthorised disclosure.
- 14.6. On termination of this agreement and on receipt of a written request FFM agrees, that within one Month, it will:
- 13.6.1 return all hard copies of documents and all samples or other items from which confidential information can be acquired that, at the time of the receipt of the notice, are in our possession
- 13.6.2 securely delete and provide written confirmation of this, electronic copies of documents from which confidential information can be acquired that, at the time of the receipt of the notice, are in its control.
- 14.7. On termination of this agreement for whatever reason The Subcontractor shall ensure that all documents and/or computer records in their possession, custody or control which contain information relating to any of FFM's Representatives or any premises or Clients of FFM including any documents in the possession, custody or control of any sub-contractor, are delivered up to FFM or securely destroyed and this is confirmed in writing.
- 14.8. These obligations continue with respect to each item of the confidential information following the termination of the business relationship between the parties, and such obligations shall not terminate until such item shall cease to be secret and confidential and shall be in the public domain, unless such has occurred as a result of wrongful conduct by either of the parties or our advisers agents, servants, officers, or employees.
- 14.9. Both parties consent to the holding and processing of data for legal, personnel, administrative and management purposes.

15. Data Protection

- 15.1. The Subcontractor acknowledges that FFM is subject to obligations under the Data Protection Act as a Data Controller.
- 15.2. The Subcontractor will only process Personal Data that it acquires from FFM as a consequence of this agreement in line with the principles of data protection.
- 15.3. The Subcontractor undertakes to process Personal Data fairly and lawfully and for no other purposes than to fulfil the terms of the individual Engagement.
- 15.4. The Subcontractor undertakes not to transfer Personal Data to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of Personal Data and undertakes to actively carry out appropriate due diligence to establish this fact.
- 15.5. The Subcontractor undertakes to take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and to take reasonable steps to ensure compliance with those measures.
- 15.6. The Subcontractor undertakes to only hold the Personal Data for as long as necessary to perform the individual Engagement under this agreement and then to securely delete or destroy it.
- 15.7. The Subcontractor undertakes to keep the Personal Data up to date and maintain its accuracy.
- 15.8. The Subcontractor shall, at no additional cost to FFM cooperate promptly with FFM's reasonable requests for assistance in complying with its obligations.
- 15.9. Where The Subcontractor is required to provide FFM with information there shall be no charge for the provision of the information.
- 15.10. The Subcontractor shall not respond directly to a request for information relating to the agreement unless it is expressly authorised to do so by FFM or is required to do so by Law.
- 15.11. The Subcontractor shall ensure that it and any of its Representatives notify FFM in writing of all requests for information relating to the agreement that it receives, as soon as practicable and in any event within two working days of receiving such a request.
- 15.12. Subject to The Subcontractor's legal obligations, The Subcontractor shall at no additional cost to FFM permit FFM access to all information it holds in relation to the agreement as reasonably required from time to time.

16. Indemnity, Insurance and FFM Subcontractor Questionnaire Form

- 16.1. The Subcontractor agrees to indemnify and keep indemnified FFM from and against any loss damage damages actions claims demands proceedings costs charges expenses or other liability (whether criminal or civil) suffered or incurred by FFM resulting from its obligation under the agreement including:
- 15.1.1 any act, neglect or default of The Subcontractor or its staff or agents (if any);
 - 15.1.2 breaches in respect of any matter arising from the supply of any Goods or Service resulting in a successful claim by any third party;
 - 15.1.3 The Subcontractor shall be liable for and shall indemnify FFM in respect of any liability, loss, claim or proceeding whatsoever whether arising in common law or by statute, in respect of personal injuries to or death of any person arising out of or in the course of or caused by the performance of the agreement or the use of the Goods unless due to any neglect of FFM or of its officers or employees.
- 16.2. The Subcontractor shall secure the due performance of the indemnities by entering policies of insurance.
- 16.3. The Subcontractor shall determine the amount and type of insurance cover that will be adequate to satisfy the liabilities under this clause.
- 16.4. It shall be the responsibility of the Subcontractor to hold and maintain insurance cover for Public liability to the sum of at least £5 million.
- 16.5. Where the specified service provides for the supply of goods the Subcontractor shall maintain product liability insurance to the sum of at least £5 million.
- 16.6. The Subcontractor shall hold Employer's Liability insurance in respect of Staff in accordance with any legal requirement from time to time in force, to the sum of at least £10 million.
- 16.7. The provisions of any insurance or the amount of cover shall not relieve The Subcontractor of any liabilities under the agreement.
- 16.8. Before any work is awarded and as and when reasonably required in writing by FFM, The Subcontractor shall provide FFM with copies of current insurance certificates or other evidence demonstrating to the satisfaction of FFM that the requirements of this clause 15 have been complied with.
- 16.9. The Subcontractor shall indemnify FFM in respect of any direct loss incurred by FFM in the performance of the Specified Services in consequence of any negligent act or omission committed by any person or organisation acting on behalf of the Subcontractor.
- 16.10. FFM shall indemnify The Subcontractor in respect of any direct loss incurred by The Subcontractor in consequence of any negligent act or omission committed by any person or organisation acting on behalf of FFM in the normal course of the performance of the Specified Services.
- 16.11. Before any work is awarded and as and when reasonably required in writing by FFM, The Subcontractor shall provide FFM with a completed FFM Contractor Questionnaire Form.

17. Additional Insurances

- 17.1. Where the Specified Service is of a type normally covered by professional indemnity insurance The Subcontractor shall maintain such insurance to the sum of at least £250,000.
- 17.2. No policy of insurance required under this clause 16 to be maintained by the Subcontractor shall be subject to an excess or deductible in excess of the amount (if any) disclosed to and agreed by FFM in writing prior to the date of the agreement.
- 17.3. Details of the policies required under this clause 16 shall be produced to FFM upon reasonable request.

18. Liabilities

- 18.1. FFM shall not be liable for any loss or damage arising from the performance of Specified Services that amount to a variation of the Specified Services agreed under this agreement unless such variation has been agreed in compliance with Clause 6 of this agreement.
- 18.2. FFM shall not be liable for any indirect or consequential loss suffered by The Subcontractor due to a breach of this agreement.

- 18.3. Time is of the essence in relation to performance of the Specified Services unless expressly provided otherwise in the agreement Specification, and FFM shall not be liable for any losses incurred by The Subcontractor as a result of a failure to perform the Specified Services within the indicated time frames in the Specification.
- 18.4. Neither party shall exclude liability for death, personal injury or fraud.

19. Force Majeure

- 19.1. It is accepted that neither of the parties is liable for failure to perform its obligations if it is as a result of an event beyond their reasonable control including:
- 19.1.1. Strike, lockout or other labour dispute affecting the employees of FFM or the Subcontractor;
 - 19.1.2. Acts of God;
 - 19.1.3. Natural disasters;
 - 19.1.4. Acts of war or terrorism;
 - 19.1.5. Act or omission of government, highway authorities or telecommunications carrier, operator or administrator; Neither of the parties is entitled to terminate this agreement in such circumstances.

20. Term and Termination

- 20.1. The Subcontractor may terminate this agreement if FFM:
- 20.1.1 commits a serious breach of the terms which it fails to remedy within thirty days of receipt of written notice from The Subcontractor specifying the breach and requesting remedy (on written notice to FFM following the end of the thirty day period);
 - 20.1.2 fails to make any outstanding payment within fifteen days of receiving written notice from The Subcontractor that the payment is late (on written notice to FFM following the end of the fifteen day period);
 - 20.1.3 has a receiving order made against it, or makes any arrangement with it's creditors (immediately on written notice).
- 20.2. FFM may terminate this agreement if The Subcontractor:
- 20.2.1 persistently neglects, fails or refuses to perform agreed Specified Services to FFM's reasonable satisfaction (immediately on written notice);
 - 20.2.2 acts in any way materially contrary to FFM or the Clients interests whilst providing the Specified Services (immediately on written notice);
 - 20.2.3 fails to execute the Services with due diligence (immediately on written notice);
 - 20.2.4 fails to execute the Services or other obligations in accordance with this agreement and a relevant Purchase Order (immediately on written notice);
 - 20.2.5 commit a serious breach of the terms which The Subcontractor fails to remedy within fifteen days of receipt of written notice from FFM specifying the breach and requesting remedy (on written notice at any time following the end of the fifteen day period);
 - 20.2.6 is involved in any regulatory actions, civil or criminal proceedings or any other acts or omissions in respect of which may, in the sole opinion of FFM, be prejudicial to FFM or the Client, or bring FFM or the Client into disrepute (immediately on written notice) The Subcontractor agrees to inform FFM of any such circumstances within 2 working days of the matter coming to the attention of The Subcontractor;
 - 20.2.7 becomes insolvent or make an assignment for the benefit of creditors (immediately on written notice).
- 20.3. The Subcontractor will be liable to FFM in respect of the full cost of alternative service provision to the Client and all fees and expenses reasonably incurred by FFM up to the date of termination. Any outstanding balances must be settled in full on termination or if not available at that time when they do become available and invoiced to The Subcontractor.
- 20.4. The termination of this agreement for whatever reason will be without any compensation or damages to The Subcontractor. Termination does not remove the rights of either party to recover damages from the other.
- 20.5. During the operation of a relevant Purchase Order notice can be given by either Party to the other to terminate operation of that Purchase Order in compliance with the Notice Provisions of that

Purchase Order.

- 20.6. The above is without prejudice to any other rights or remedies the Contractor may have under this Agreement or in law.
- 20.7. The term of the agreement is 12 Months. It will be automatically renewed, unless one party gives the other party at least 30 days notice that they wish to terminate the agreement.

21. Dispute Resolution

- 21.1. The parties shall attempt to resolve any dispute arising out of or relating to this contract through negotiations between senior executives of the parties, who have authority to settle the same.
- 21.2. If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators.
- 21.3. If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. The seat of the arbitration shall be England and Wales. The arbitration shall be governed by both the Arbitration Act 1996 and Rules as agreed between the parties. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary.
- 21.4. Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.

22. General

- 22.1. Clause headings are for ease of reference only and do not affect the interpretation of the agreement.
- 22.2. Any amendments to these terms and conditions will be recorded in writing and signed by both parties otherwise they will be void.
- 22.3. Any notices required by the agreement will be sent to the signatories by electronic mail or a letter sent by registered post or recorded delivery to the postal or email addresses set out below or otherwise notified to the other party in writing. Any notices served shall be deemed to be effective on actual receipt by the receiving Party, who shall acknowledge receipt within two working days of the date of receipt.
- 22.4. Neither party intends by virtue of the Contracts (Rights of Third Parties) Act 1999 that any of the terms should be enforceable by a person who is not a party to the agreement.
- 22.5. No failure or delay by either party in exercising any right, power, or remedy under this agreement is a waiver of any such right, power or remedy.
- 22.6. If any provision of this agreement is unlawful, void or unenforceable it is severed from the agreement and the remaining provisions remain in full force and effect.
- 22.7. The agreement is governed by English Law and the Courts of England and Wales shall have exclusive jurisdiction in so far as any matter arising from this Agreement is required to be referred to a court of law.