

TERMS AND CONDITIONS OF PURCHASE FOR SUBCONTRACT LABOUR**1. Existence and Scope of Contract**

- 1.1 These Conditions together with the Order set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms and conditions are implied by statute. To the extent that there is any discrepancy between these Conditions and the Order, the content of the Order shall prevail.
- 1.2 Unless otherwise expressly agreed, commencement of the Subcontract Works shall signify acceptance of these Conditions which will be deemed to apply to any provision of services by the Subcontractor to GBE Converge whether or not an Order has been issued. For the avoidance of doubt GBE Converge do not intend to enter into contract on any terms and conditions other than those set out herein and, if issued, the Order.
- 1.3 The Subcontract Works are executed as part or all of the work to be carried out by GBE Converge for the Principal under the Principal Contract.

2. Interpretation

- 2.1 In these Conditions:-

- "GBE Converge"** means GB Electronics Ltd trading as GBE Converge, a company registered in England and Wales under number 2674826 whose registered office is at GBEC House, 31 Barnett Way, Barnwood, Gloucester, GL4 3RT; And as well as Converge Technology trading as GBE Converge, a company registered in England and Wales under number 08225307 whose registered office is at GBEC House, 31 Barnett Way, Barnwood, Gloucester, GL4 3RT;
- "These Conditions"** means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between GBE Converge and the Subcontractor;
- "The Order"** means GBE Converge's Order (if issued) and the Subcontractor's acceptance of these Conditions and any document referred to therein including the provisions of the Principal Contract where applicable to the Subcontract Works;
- "The Principal"** means the legal entity with which GBE Converge has contracted to deliver the Subcontract Works;
- "The Principal Contract"** means the contract between GBE Converge and the Principal;
- "Subcontract"** means GBE Converge's Order (if issued), these Conditions, the Subcontractor's acceptance of these Conditions and any document referred to therein including but not limited to the provisions of the Principal Contract where applicable to the Subcontract Works;
- "Subcontractor"** means the legal entity to whom the Order is addressed or alternatively the name of the signatory below;
- "Subcontract Sum"** means the amount stated in the Order and any adjustment thereto which is accepted by GBE Converge as being the value of the Subcontract Works as valued in accordance with these Conditions;
- "Subcontract Works"** means the works to be carried out by the Subcontractor as more specifically particularised in the Order;

3. Subcontractors Obligations

- 3.1 The Subcontractor warrants that it shall carry out and complete the Subcontract Works with due diligence and with all the skill and care expected of a reasonably competent contractor of the discipline relevant to the Subcontract Works experienced in carrying out services similar in scope, nature, complexity and value to the Subcontract Works. The Subcontractor shall also execute the Subcontract Works in a good and workmanlike manner and in accordance with the Order and subject to these Conditions using materials where applicable and appropriate of the quality and standard therein specified or in accordance with current British Standards and Codes of Practice, all to the reasonable satisfaction of GBE Converge.
- 3.2 The Subcontractor shall supply sufficient, suitable labour to execute the Subcontract Work in accordance with the Subcontract and, where applicable, the Principal Contract (the terms of which the Subcontractor is deemed to have had a reasonable opportunity to inspect). Should any worker be, in the opinion of GBE Converge, incapable or unsatisfactory for any other reason, GBE Converge may instruct the Subcontractor to remove such worker from the site and the Subcontractor shall forthwith comply with such instruction and replace the worker concerned.
- 3.3 The Subcontractor shall indemnify and hold harmless GBE Converge against any breach or non-observance or non-performance by the Subcontractor or his servants or agents of the provisions of the Principal Contract insofar as they relate and apply to the Subcontract. The Subcontractor hereby acknowledges that any breach by him of the Subcontract may result in GBE Converge committing breaches of and becoming liable in damages under the Principal Contract and may occasion further damage, loss or expense to GBE Converge in connection with the Principal Contract works and further or otherwise and all such damages, loss or expense is hereby agreed to be within the contemplation of the parties as being the probable result of any such breach by the Subcontractor.
- 3.4 The Subcontractor shall supply and maintain all necessary small plant and tools in connection with the Subcontract Works. The Subcontractor is solely responsible for the direct supervision and control of its own labour (as well as any subcontracted or agency labour engaged for delivering the Subcontract Works) and achieving any performance criteria. All directions and instructions from GBE Converge will be issued only to supervisory staff. The Subcontractor shall provide a competent supervisor on site at all times and any instructions given to him by GBE Converge shall be deemed to be given to the Subcontractor.
- 3.5 The Subcontractor shall comply with and give all notices required by any Act of Parliament and Instrument, rule or order made under any Act of Parliament or any regulation or byelaw of any Local Authority or of any Statutory Undertaker or Public Utility which has any jurisdiction with regard to the Subcontract Works. The Subcontractor shall fully acquaint itself with all restrictions, local conditions, requirements and the like which will affect the execution of the Subcontract Works. No claim will be allowed due to a lack of knowledge of any such matter.
- 3.6 The Subcontractor shall not assign, transfer or sub-let the Works or any part thereof without the written consent of GBE Converge (provided at its sole discretion). GBE Converge shall be entitled to assign, novate, charge, transfer and otherwise dispose of any or all of its rights and obligations under this Subcontract without the prior consent of the Subcontractor, and the Subcontractor shall enter into such agreements, including deeds of novation, as GBE Converge may require from time to time in connection therewith.
- 3.7 The Subcontractor shall fully comply with its industry's Working Rule Agreement current in force and shall supply such evidence in verification of its compliance as may reasonably be required by GBE Converge from time to time upon request.
- 3.8 The Subcontractor shall comply with all right to work regulations within the EU and indemnify GBE Converge in respect of any non-compliance or any other breach of the same.
- 3.9 The Subcontractor shall comply with all requirements in respect of eligibility to work in the UK as defined within the Immigration (Restrictions on Employment Order 2007, SI2007/3290, the Immigration, Asylum and Nationality Act 2006, along with the Employment Relations Act 1999 or any subsequent re-enactment thereof.
- 3.10 The Subcontractor shall also fully comply with all requirements in respect of The Modern Slavery Act 2015 or any subsequent re-enactment thereof.
- 3.11 The Subcontractor shall comply fully with all requirements in respect of the General Data Protection Regulation 2016. A copy of GBE Converge's GDPR policy is available on request in relation to how GBE Converge shall process the Subcontractor's information relevant to the execution of the Subcontract Works.
- 3.12 The subcontractor shall, where applicable comply with any relevant Company policies and procedures, available upon request.

4. Instructions and Variations

- 4.1 GBE Converge may, without invalidating this Subcontract, issue instructions, order additions to or omissions from or other change in the Subcontract Works which the Subcontractor shall carry out forthwith.
- 4.2 Variations, additions or omissions shall not be made unless ordered by GBE Converge in writing.
- 4.3 GBE Converge will require an estimation of the value of any variation to be submitted within 7 days of instruction, and prior to its execution by the Subcontractor. If GBE Converge accepts the estimation in writing, that estimate shall become binding on the parties. If GBE Converge do not expressly accept the Subcontractor's estimate in writing, the Subcontractor's estimate shall be of no effect, but the variation shall be implemented and the variation shall be valued by GBE Converge in accordance with clause 4.4, and the Subcontractor shall not be entitled to be reimbursed for any cost incurred in connection with the preparation of the variation price submitted.
- 4.4 Subject to clause 4.3, the value of all authorised variations shall be ascertained by measurement and by reference to the rates and prices specified in the Order (if any) for like or analogous work, but if there are no such rates and prices, or if they are not applicable, then GBE Converge shall determine a reasonable valuation in all the circumstances. The value thereof shall be added to or deducted from the Subcontract Sum.
- 4.5 For variations relating to daywork, the Subcontractor shall only be entitled to payment at the daywork rates contained in the Order or as otherwise agreed if prior to the commencement of that work GBE Converge has issued express written instructions that the work shall be valued upon a daywork basis. Daywork rates shall not apply in any other circumstances.

5. Defects

- 5.1 The Subcontractor shall be liable for and shall make good at his own expense any defect, shrinkage or other fault in the Subcontract Works until the completion of the Principal Works which are due to a failure of the Subcontractor to comply with any of its obligations hereunder and shall not be entitled to any additional payment for doing so unless such defect, shrinkage or other fault is caused by the faulty design, material or workmanship or the negligence, omission or default of the Principal or GBE Converge.
- 5.2 After completion of the Subcontract Works, the Subcontractor shall make good at his own cost and expense without delay all such defects, shrinkages or other faults in the Subcontract Works which GBE Converge shall be liable to make good under the Principal Contract and the Subcontractor shall not be entitled to any additional payment therefor unless such defect, shrinkage or other fault is proven to be caused by the faulty design, material or workmanship or the negligence, omission or default of the Principal or GBE Converge.
- 5.3 If the Subcontractor fails to remove defective work and material and/or make good the same within a reasonable time, or fails to carry out and remedy any such work or supply such materials, then GBE Converge shall be entitled to carry out such work itself or by others at the Subcontractor's cost including the costs of locating defective work or materials and re-instatement by all trades affected thereby and any such costs or expenses may be (subject to the issue of a valid Pay Less Notice) set off against any amounts due or to become due to the Subcontractor and recovered as a debt due to GBE Converge.
- 5.4 All product warranties and/or guarantees shall be deemed to commence on the date of practical completion of the Principal Contract unless otherwise agreed.

6. Time

- 6.1 Unless already commenced, on the date or dates for commencement stated in the Order the Subcontractor shall commence the Subcontract Works on site and regularly and diligently proceed with and complete Works with the period or periods (if any) specified in the Order. GBE Converge may issue from time to time directions to amend the phasing, sequencing or coordination of the Subcontract Works to facilitate the overall progress of the Principal Contract. It is the responsibility of the Subcontractor to ensure that it is aware of the requirements of the construction program on a daily basis. If it becomes reasonably apparent that the Subcontractor is consistently failing to maintain progress in accordance with the requirements of the construction program, GBE Converge may employ other persons to carry out that part of the Subcontract Works so affected without being in breach of the Subcontract. The costs of labour, plant and materials incurred by GBE Converge including a reasonable allowance for overheads and profit in carrying out that part of the Subcontract Works shall be deducted from any monies due to the Subcontractor.
- 6.2 The Subcontractor shall have allowed for the required number of visits to site to properly complete the Subcontract Works in accordance with the construction program including any amendments thereto. If the Subcontractor considers it necessary to leave site at any time and make additional visits to complete the Subcontract Works, then it is its responsibility to ensure that any such arrangements are confirmed in writing to GBE Converge before withdrawing operatives and/or leaving site.
- 6.3 If the Subcontractor fails to complete the Subcontract Works or any section thereof within the period or periods specified or any extended period or periods which may be granted by GBE Converge, the Subcontractor shall pay or allow to GBE Converge a sum equivalent to any loss and/or expense suffered or incurred by GBE Converge and caused by the failure of the Subcontractor as aforesaid. GBE Converge shall at the earliest opportunity give reasonable notice to the Subcontractor that loss or damage or expense is being or has been suffered or incurred.
- 6.4 The loss, damage or expense referred to in Clause 6.3 shall be recovered by GBE Converge from the Subcontractor by way of deduction from any monies due to the Subcontractor under this Subcontract or any other contract between GBE Converge and the Subcontractor. GBE Converge shall also be entitled to apply monies due to the Subcontractor under this Subcontract towards payment of any sum owing by the Subcontractor to GBE Converge in relation to any matter whatsoever.

7. Price and Payment

- 7.1 The Subcontract Sum shall include the cost of labour, holidays, overtime, site restrictions on working hours, tools, travel, subsistence, statutory payments, overheads and profit and all other matters necessary to enable the Subcontractor to fulfil its obligations except items listed in the Order as being provided by GBE Converge.
- 7.2 GBE Converge shall pay to the Subcontractor, at the intervals stated in the Order, the total value of all work properly executed by the Subcontractor under these Conditions less amounts previously paid, less any other sums to which GBE Converge is entitled.
- 7.3 Interim valuations of work in progress shall be made by measurement and valued by using the schedule of rates/schedule of works/bill of quantities if any referred to in the Order or some other such method as shall be agreed.
- 7.4 The Subcontractor shall at his own expense apply for interim payments for the work done for GBE Converge in such manner, intervals, form and quantity and according to such methods as notified in the Order. The Subcontractor shall submit his first application on the 20th day of the month after commencing on site and thereafter no later than the 20th day of each subsequent month. Each application shall set out the amount which the Subcontractor considers due at the next valuation date being the last day of the month in which he applies ("Relevant Valuation Date") and the basis on which that amount is calculated.
- 7.5 The Subcontractor shall be due monies based on the total value of work done up to the Relevant Valuation Date as assessed by GBE Converge as having been executed by the Subcontractor in the previous calendar month ("The Subcontractor's Notified Amount") in accordance with clause 7.4 on the 5th day of the month after the Relevant Valuation Date ("the Payment Due Date"). Within 5 days after the Payment Due Date, GBE Converge shall serve notice on the Subcontractor of the amount (if any) of the payment made or to be made ("the Notified Amount") which GBE Converge considers due to the Subcontractor at the Payment Due Date and the basis on which the amount was calculated ("the Payment Notice"). If GBE Converge fails to serve the Payment Notice GBE Converge shall, subject to any Pay Less Notice served by GBE Converge, pay the Subcontractor the Subcontractor's Notified Amount. The final date for payment shall be a further 30 days after the Payment Due Date ("the Final Date for Payment"). Up to 5 days before the Final Date for payment ("the Prescribed Period"), GBE Converge may serve notice on the Subcontractor of GBE Converge's intention to pay less than the Notified Amount or, where GBE Converge fails to serve a Payment Notice on the Subcontractor GBE Converge's intention to pay less than the Subcontractor's Notified Amount, specifying the amount which GBE Converge considers to be due on the date the notice is served and the basis on which that sum is calculated ("the Pay Less Notice"). Any payment to the Subcontractor shall be made less any payments previously made under the Order and shall be subject to such discounts and such retention as have been specified in the Order. Notwithstanding this clause 7.5, if the Subcontractor becomes insolvent at any time GBE Converge shall not

- be required to pay the Subcontractor the Notified Amount (or the Subcontractor's Notified Amount) on or before the Final Date for Payment.
- 7.6 On completion of the Subcontract Works to GBE Converge's satisfaction, the Subcontractor shall apply for the penultimate payment for work done ("the Subcontractors Penultimate Notified Amount") for GBE Converge in the same form, quantity and methods as under clause 7.4 ("the Penultimate Application"). The Penultimate Application shall also provide the best assessment by the Subcontractor of the final account value of the Subcontract Works. The due date for payment of any such properly completed Penultimate Application shall be 30 days after receipt thereof ("the Penultimate Application Due Date"). Within 5 days after the Penultimate Application Due Date, GBE Converge shall notify the Subcontractor of the amount which GBE Converge considers to be due to the Subcontractor at the Penultimate Application Due Date ("the Penultimate Notified Amount") and the basis on which the amount was calculated ("the Penultimate Application Payment Notice"). If GBE Converge fails to serve a Payment Notice GBE Converge shall, subject to any Penultimate Pay Less Notice, pay the Subcontractor the Subcontractor's Penultimate Notified Amount. The final date for payment of the Penultimate Application shall be a further 30 days after the Penultimate Application Due Date ("the Penultimate Application Final Payment Date"). Up to 1 day before the Final Date for payment of the Penultimate Application ("the Penultimate Prescribed Period"), GBE Converge may serve a notice on the Subcontractor setting out GBE Converge's intention to pay less than the Penultimate Notified Amount or, where GBE Converge fails to serve the Penultimate Application Payment Notice GBE Converge intends to pay less than the Subcontractor's Penultimate Notified Amount, specifying the amount which GBE Converge considers to be due on the date the notice is served and the basis on which that sum is calculated ("the Penultimate Pay Less Notice"). Any payment to the Subcontractor shall be made less any payments previously made under the Order and shall be subject to such discounts and such retention as have been specified in the Order or otherwise agreed in writing. Notwithstanding this clause 7.6 if the Subcontractor becomes insolvent at any time GBE Converge shall not be required to pay the Subcontractor the Penultimate Notified Amount or the (Subcontractor's Penultimate Notified Amount) on or before the Final Date for Payment.
- 7.7 The Subcontractor shall within 30 working days of completion of the Principal Contract or if earlier on GBE Converge's request so to do), submit to GBE Converge the Subcontractor's final account for the Subcontract Works supported by such details, documents, information, vouchers and receipts as shall be reasonably necessary for calculating the same or as may be otherwise required by GBE Converge (the "Final Account Application"). The final account shall identify in what respects and why it deviates from the Penultimate Application. The Final Account Application shall set out the amount that the Subcontractor considers due at the Final Account Due Date and the basis on which that sum is calculated.
- 7.8 No later than 30 working days after receipt of the Subcontractor's Final Account Application ("the SubContractor's Final Notified Amount") which has been properly submitted strictly in accordance with clause 7.7 ("the Final Account Due Date") GBE Converge shall be liable to pay to the Subcontractor the difference (if any) between the Subcontract Sum as finally adjusted in accordance with the provisions of the Order and the total amount already paid to the Subcontractor under this clause 7. Within 5 days after the Final Account Due Date, GBE Converge shall notify the Subcontractor of the amount (if any) which GBE Converge considers to be due to the Subcontractor at the Final Account Due Date ("The Final Account Notified Amount") and the basis on which the amount was calculated ("the Final Account Payment Notice"). If GBE Converge fails to serve the Final Account Payment Notice GBE Converge shall, subject to any Final Pay Less Notice served by GBE Converge, pay the Subcontractor the Subcontractor's Final Notified Amount. The final date for payment of the final account shall be a further 25 days after the Final Account Due Date ("the Final Account Final Date"). Up to 1 day before the Final Account Final Date ("the Final Prescribed Period"), GBE Converge may serve notice on the Subcontractor of GBE Converge's intention to pay less than the Final Notified Amount or, where GBE Converge has failed to serve the Final Account Payment Notice GBE Converge intends to pay less than the Subcontractor's Final Notified Amount, specifying the amount which GBE Converge considers to be due on the date the notice is served and the basis on which that sum is calculated ("the Final Pay Less Notice"). Notwithstanding this clause 7.8 if the Subcontractor becomes insolvent at any time GBE Converge shall not be required to pay the Subcontractor the Final Account Notified Amount or the (Subcontractor's Final Notified Amount) on or before the final date for payment.
- 7.9 GBE Converge may deduct from any sum paid or payable to the Subcontractor any amount levy or other sum that GBE Converge may be or become liable to deduct from or pay on account of such sum paid or payable to the Subcontractor hereunder by reason of any Act of Parliament, Statutory Instrument, rule or regulation which may be or become law during the subsistence of the Order.
- 7.10 The Subcontract Sum unless specifically stated to the contrary shall be exclusive of VAT. If the Subcontractor is a registered person within the meaning of the VAT legislation, it shall immediately after signing this Subcontract give to GBE Converge the registration number shown on the registration certificate issued to the Subcontractor by HM Customs and Excise and shall produce the certificate to the customer on demand. Provided the Subcontractor complies with this clause, GBE Converge shall add to the amount of each payment due, VAT at the rate or rates properly chargeable on any such supply by the Subcontractor.
- 7.11 For the avoidance of doubt, should the Principal or any other person associated with the Subcontract Works make or propose to make any arrangement or composition with its creditors or has a receiver, administrative receiver, administrator, liquidator, manager or similar officer appointed in respect of all or any part of its assets or passes a resolution for the winding-up other than for the purpose of a solvent amalgamation or reconstruction where the resulting entity assumes all obligations under the project or in the case of an individual has a bankruptcy order made against him or has his estate sequestered or grants a trust deed for creditors or dies or in the case of a partnership is dissolved or undergoes or suffers any analogous acts or proceedings under the law or if any of the foregoing is threatened as a result of which GBE Converge does not receive monies otherwise due to it from the Principal, then GBE Converge shall pay the Subcontractor in accordance with clause 9.1.
- 7.12 If GBE Converge fails properly to pay the amount or any part thereof due to the Subcontractor by the Final Date for Payment or the Final date for Payment of the Final Account, GBE Converge shall pay to the Subcontractor in addition to the amount not properly paid simple interest thereon for the period until such payment is made. The rate of interest payable shall be two per cent (2%) over the Base Rate of the Bank of England which is current at the date the payment by GBE Converge became overdue. It is agreed that this provision constitutes a substantial remedy for the purposes of Section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998. Interest shall be calculated from the Final Date for Payment or the Final Date for Payment of the Final Account on a simple daily basis.
- 7.13 GBE Converge may deduct from any sum paid or payable to the Subcontractor any amount levy or other sum that GBE Converge may be or become liable to deduct from or pay on account of such sum paid or payable to the Subcontractor hereunder by reason of any Act of Parliament, Statutory Instrument, rule or regulation which may be or become law during the subsistence of the Subcontract or any sums due as a result of breaches of the Subcontract by the Subcontractor.
- 7.14 Unless otherwise specified in the Subcontract, the Subcontract Sum is fixed and not subject to re-measurement of quantities or any fluctuations in cost or price whatsoever including inter-alia the cost of labour, materials and imposition of any government taxes or levies.
- 7.15 It shall be a condition precedent to any payment or further payment that the Subcontractor executes and returns to GBE Converge the Subcontract within 14 calendar days of issue by GBE Converge unless in the meantime the Subcontractor notifies GBE Converge in writing of good reason(s) why the Subcontractor is unable or unwilling to execute the Subcontract whereupon GBE Converge may make payment or further payments at GBE Converge's sole discretion. All payments made in respect of the Subcontract Works before execution of the Subcontract by both parties shall be treated as previous payments on account pursuant to the Subcontract.
- 7.16 It shall be a further condition precedent to any payment by GBE Converge that the Subcontractor shall have complied with all Construction Industry Scheme requirements, or similar arrangements in force in respect of any payment and presented valid VAT documentation or any other documents reasonably required by GBE Converge to enable payment to be made.
- 7.17 Unless indicated otherwise, any notices issued by GBE Converge to the Subcontractor under this clause 7 shall be provided in hard and/or electronic copy at GBE Converge's discretion to the addresses and/or personnel indicated in the Order.

8. Retention

- 8.1 Retention shall be withheld from all payments to the Subcontractor at the percentage rate specified within the Order.
- 8.2 Subject to their being no defects apparent in the Subcontract Works, retention shall be released to the Subcontractor in full 3 months after the date of practical completion of the Subcontract Works.

9. Pay when Paid Following Insolvency

- 9.1 Notwithstanding anything else to the contrary in the Order, if the Principal or any other person upon whom payment to GBE Converge in respect of the Subcontract Works is conditional (whether directly, or indirectly) is insolvent as defined in sections 113(2) to 113(5) of the Housing Grants, Construction and Regeneration Act 1996, as amended, GBE Converge shall not be obliged to make any further payment to the Subcontractor of any amount which is due or may become due to the Subcontractor unless GBE Converge has received payment in respect thereof from the customer or any other upstream party (as the case may be) and then only to the extent of such receipt.

10. Supervision, Health and Safety

- 10.1 The Subcontractor shall allow for working with and around other subcontractors and cooperating fully as necessary and instructed by GBE Converge.
- 10.2 The Subcontractor as part of its own management role, shall be responsible for the proper and effective coordination of the Subcontract Works with all the other subcontractors either already working or about to commence work on the site.
- 10.3 The Subcontractor shall provide GBE Converge with a 'Labour on Site Return' on a daily basis or otherwise as may be agreed with GBE Converge.
- 10.4 The Subcontractor shall take whatever steps are necessary to comply with all relevant health and safety regulations including the obligations on a Contractor as defined in the Construction (Design and Management) Regulations 2015.
- 10.5 The Subcontractor shall comply with all provisions for health safety and quality of works including those detailed within the Principal Contract and the provisions of GBE Converge's current Health and Safety Regulations, a copy of the latter of which shall be given to the Subcontractor.
- 10.6 Method statements and risk assessments will be applicable to all works carried out by the Subcontractor for GBE Converge. The Subcontractor agrees to work in compliance with these documents without exception.
- 10.7 In line with the UK Contracting Group's commitment to a fully trained workforce, GBE Converge has a set requirement of having 100% of its workforce including subcontractors qualified and holding a valid Construction Skills Card and a CITB 1-day H&S Awareness course certificate. It is the responsibility of the Subcontractor to ensure that they hold these qualifications and issue copies to GBE Converge as and when they are renewed.
- 10.8 Subcontractors are also required to ensure that appropriate training for the works being undertaken is valid and in date, to include but not limited to IPAF, PASMA, SMSTS and/or SSSTS, please refer to PRO006-4 Health & Safety Rules for contractors or speak to a member of the GBE Converge Project Team for clarification
- 10.9 Subcontractors at all times on site must wear the appropriate PPE. GBE Converge will supply hard hats and hi-vis vests, Subcontractors must supply their own protective boots, gloves and eyewear.

11. Indemnity and Insurance

- 11.1 The Subcontractor shall indemnify GBE Converge against and from any breach, non-observance or non-performance by the Subcontractor, its servants or independent contractors of any of the provisions of the Principal Contract or the Subcontract, any act, omission or default of the Subcontractor, its servants, agents or independent contractors which involves GBE Converge in any liability whatsoever and against any claim, damage, loss or expense due to or resulting from any negligence or breach of duty of the Subcontractor, its servants, agents or independent contractors. The limit of such indemnity shall be no less than £5,000,000.
- 11.2 The Subcontractor shall without prejudice to its liability to indemnify GBE Converge as aforesaid, adequately insure against any expense, liability, loss, claim or proceedings whatsoever arising under any statute in force or at common law in respect of personal injury to or death of any person whomsoever and arising out of, or in the course of, or caused by or in connection with the carrying out of the Subcontract Works and against any expense, liability, loss, claim or proceedings in respect of any injury, loss or damage whatsoever to any property real or personal in so far as such injury or damage arises out of, or in the course of, or is caused by, or by reason of or in connection with the carrying out of the Subcontract Works and provided that the same is due to any act, omission or default of the Subcontractor or anyone for whom the Subcontractor is responsible.
- 11.3 The Subcontractor shall provide for inspection the policies of insurance required by Clause 11.2 on the occasion of renewal.

12. Termination

- 12.1 Without prejudice to any other rights and remedies which GBE Converge may possess, if the Subcontractor shall make default in any of the following respects, viz:
- If without reasonable cause it fails to commence Works on the date or dates set for commencement, or
 - If without reasonable cause it wholly suspends the carrying out of the Subcontract Works before completion thereof, or
 - If it fails to proceed regularly and diligently with the Subcontract Works, or any part thereof, or
 - If it refuses or persistently neglects after notice in writing from GBE Converge to remove defective work or materials, or
 - If it refuses or persistently neglects after notice in writing from GBE Converge to comply with any of his obligations under this Subcontract.

then if such default shall continue for seven days after written notice (registered post, electronic mail) specifying the default has been given to it by GBE Converge, GBE Converge may thereupon by written notice (registered post, electronic mail) determine the employment of the Subcontractor under this Subcontract.

- 12.2 In the event of determination of the Subcontractor's employment GBE Converge may either complete the Works itself or employ others in place of or in addition to the Subcontractor and in any event retain monies which may be due to the Subcontractor and apply the same towards the amount of the damage suffered and/or loss and expense incurred by reason of the said determination, the balance of any such damage, loss and expense being a debt recoverable by GBE Converge from the Subcontractor.
- 12.3 If for any reason GBE Converge's employment under the Principal Contract is determined then the employment of the Subcontractor under this Subcontract shall automatically be determined and the Subcontractor shall be entitled to payment for work properly carried out to the extent that it has not already received such payment to include:
- the value of the unfixed materials and goods delivered to the site for use in the Subcontract Works the property in which has passed to the Principal under the provisions of the Principal Contract;
 - the cost of materials or goods properly ordered for the Subcontract Works for which the Subcontractor shall have paid or delivery of which it is legally bound to accept. On such payment by GBE Converge any materials or goods so paid for shall become GBE Converge's property; and
 - any reasonable cost of removal from site of the Subcontractor's temporary buildings, plant, machinery, appliances, goods and materials.

but the Subcontractor shall not be entitled to recover from GBE Converge any amount in respect of contribution, overhead or loss of profit on work not carried out as a result of such determination.

13. Right of Set-Off

- 13.1 GBE Converge shall be entitled to deduct from any money (including the Subcontractor's retention) otherwise due under the Order and to recover from the Subcontractor as a debt any amount due to GBE Converge, or awarded to GBE Converge in adjudication or finally awarded in litigation to GBE Converge, and which arises out of or under the Order or any other sums payable by the Subcontractor (pursuant to the Order or as a result of or arising from other subcontracts or contracts between GBE Converge and the Subcontractor) including those matters that are the subject of indemnity pursuant to clause 11 above.
- 13.2 Where GBE Converge has a claim against the Subcontractor for loss and/or expense and/or damage which it has incurred, or is likely to incur by reason of any breach of, or failure to observe the provisions of this Order and/or any tortious act or omission or breach of

statutory duty by the Subcontractor (whether or not GBE Converge may have further claims for loss and/or expense and/or damage by reason of any such breach, failure, act or omission) GBE Converge shall be entitled to set-off the amount of such loss and/or expense and/or damage so suffered or incurred and/or which GBE Converge bona fide estimates it is likely to incur against any money otherwise due to the Subcontractor including any Subcontractor's retention.

13.3 The Subcontractor waives the right to set off any claim and/or dispute against GBE Converge for loss and/or expense and/or damage which it has incurred, or believes to have incurred by any other means other than those detailed under this section 13.

14. **Non-solicitation**

14.1 During the period of the Subcontract Works and for six months thereafter, the Subcontractor shall not (with the prior consent of GBE Converge) whether as shareholder, director, employee, contractor, partner, consultant, proprietor, agent or otherwise, either directly or indirectly:

- a) be engaged by, or
- b) provide services to, or
- c) be, or become involved in,

any business which is in competition with any business carried on, or about to be carried on, at the relevant time by GBE Converge or which could otherwise have a prejudicial effect on any such business.

14.2 During the period of the Subcontract Works and for six months thereafter, the Subcontractor shall not (with the prior consent of GBE Converge) whether as shareholder, director, employee, contractor, partner, consultant, proprietor, agent or otherwise, either directly or indirectly solicit for employment or solicit with the intention of entering into a contract for services with, any employee, officer or director of GBE Converge (or any affiliate or other business connected to it) or any of its clients.

15. **Performance Bond, Parent Company Guarantee, Collateral Warranties**

15.1 If stated in the Order as required, the Subcontractor shall provide:

- a) a duly executed Performance Bond provided by a surety acceptable to GBE Converge in substantially the same form as notified to the Subcontractor within 7 days of a written request to do so; and/or
- b) a Parent Company Guarantee in substantially the same the form notified to the Subcontractor within 7 days of a written request to do so; and/or
- c) at GBE Converge's written request or requests the Subcontractor shall provide within 14 days of such a written request(s) a duly executed Collateral Warranty or Warranties in favour of the Principal or any funder or first purchaser or tenant (it is acknowledged that there may be multiple beneficiaries in each of these categories) in substantially the same form as notified by GBE Converge from time-to-time.

16. **Severability and non-waiver**

16.1 The invalidity or unenforceability for any reason of any part of this Order shall not prejudice or affect the validity or enforceability of the remainder.

16.2 GBE Converge's failure to enforce any right or remedy under the Subcontract (including but not limited to acceptance of late receipt of any application from the Subcontractor contrary to clauses 7.4, 7.6 or 7.7) shall not constitute a waiver of any such right or remedy available to GBE Converge whether or not arising by virtue of these Conditions.

16.3 In the event that GBE Converge does expressly waive any breach of the Subcontract such waiver shall not be construed as a waiver of any subsequent breach.

17. **Entire Agreement**

17.1 Any Subcontract Works carried out prior to the date of the Subcontract shall be treated as having been carried out under the terms of the Subcontract. The Subcontract shall constitute the entire agreement between the parties with respect to the subject matter covered by it and supersedes and replaces all prior communications, drafts, agreements, representations, warranties, undertakings and agreements of whatsoever nature whether oral or written between the parties relating thereto.

18. **Settlement of Disputes**

18.1 Should any dispute or difference arise at any time between the parties under the Subcontract, either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions.

18.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Respondent") a notice in writing ("the Notice") which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.

18.3 The parties shall within four days of the Notice being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement, the Applicant shall and the Respondent may apply for an appointment to the Construction Industry Council (whilst at the same time serving a copy of the application on the other party) whose written notification of an appointment of an Adjudicator shall be served on both parties and shall be binding on both parties.

19. **Governing Law and Jurisdiction**

The Contract shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English courts.

20. **Off-Payroll Working Rules (IR35)**

Please be aware that GBE Converge will undertake a review of our client contracts and our third-party suppliers to understand which engagements would potentially fall within the scope of IR35.