

# ENVIRONMENTAL RESOURCES MANAGEMENT

## GENERAL TERMS AND CONDITIONS OF SUBCONTRACT

### 1. APPLICABILITY

- 1.1 These General Terms and Conditions of Subcontract (“**General Terms and Conditions**”) shall apply to any work performed for ERM by the Subcontractor. By signing the Work Authorisation, the Subcontractor agrees to be bound by these General Terms and Conditions. Each Work Authorisation constitutes a separate Subcontract incorporating these General Terms and Conditions. These General Terms and Conditions may be modified by ERM from time to time, and the version of these General Terms and Conditions posted on the date the Work Authorisation is signed by the Subcontractor shall apply to the Work Authorisation. These General Terms and Conditions also include ERM’s Code of Business Conduct and Ethics and ERM’s Insider Trading Policy accessible at the same website as these General Terms and Conditions of Subcontract (<https://www.erm.com/erm-subcontract-terms/europe-the-middle-east-and-africa/general-terms-and-conditions-for-subcontracts/>).

### 2. DEFINITIONS AND INTERPRETATION

- 2.1 “**Subcontractor**” means the party entering into a Work Authorisation as subcontractor with ERM.
- 2.2 “**ERM**” means the ERM company entering into the Work Authorisation.
- 2.3 “**ERM’s Client**” means the client who entered into the Main Contract with ERM.
- 2.4 “**Expenses**” means the expenses reimbursed to the Subcontractor for the Work identified in the Work Authorisation.
- 2.5 “**Fee**” means the fee paid to the Subcontractor for the Work identified in the Work Authorisation.
- 2.6 “**Main Contract**” means the contract between ERM and ERM’s Client that covers the Project that is the subject of the Work Authorisation.
- 2.7 “**Programme**” means the timetable for completing the Work that has been agreed by ERM, as amended from time to time.
- 2.8 “**Project**” means the project identified in the Work Authorisation.
- 2.9 “**Project Site**” means the site of the Project identified in the Work Authorisation.
- 2.10 “**Subcontract**” means: (i) these General Terms and Conditions; (ii) the Work Authorisation signed by ERM and the Subcontractor and all documents, drawings, specifications, schedules, data or information listed or identified therein; (iii) any Special Terms and Conditions expressly identified in the Work Authorisation; (iv) the Main Contract; and (v) any change orders made in accordance with these General Terms and Conditions.
- 2.11 “**Work Authorisation**” means the form entitled “**Subcontractor Work Authorisation**” provided by ERM to the Subcontractor and signed by both parties.
- 2.12 ERM and the Subcontractor are hereinafter sometimes referred to individually as a “**Party**” and collectively as the “**Parties**”.
- 2.13 The effective date of the Subcontract is the date stated on the Work Authorisation (“**Effective Date**”).

### 3. THE SERVICES

- 3.1 The Subcontractor shall furnish all services, supervision, labour, materials, tools, supplies, goods and equipment and shall perform all work necessary for the complete, proper, timely and safe completion of the Work as described in the Work Authorisation in accordance with the terms of the Subcontract (**collectively, “Work”**). Where this Subcontract does not identify the Work in the level of detail necessary in order for the Work to be provided, the Work shall be deemed to include any such additional documents issued by ERM after the Effective Date, provided such additional documents do not constitute a substantial change in the scope of the

Work.

- 3.2 The Subcontractor agrees to perform the Work to the satisfaction of ERM and in accordance with the terms of this Subcontract. The Subcontractor shall perform the Work:
- 3.2.1 exercising all the skill, care and diligence to be expected of a properly qualified and competent service provider experienced in the provision of similar services in respect of projects of a similar size, scope, nature and complexity as the Project; and
  - 3.2.2 in accordance with any relevant Treaty, regulation and/or directive, any local or national statutory enactment or any regulation, bylaw, rule, order or under and pursuant to any notices served thereunder, and in accordance with applicable codes of practice and industry standards.
- 3.3 The Work shall be performed and/or supervised by the Key Personnel identified in the Work Authorisation. The Subcontractor shall not replace the Key Personnel without the prior written approval of ERM, such approval not to be unreasonably withheld. ERM may request the removal of any Key Personnel if, in ERM's opinion, such person's performance or conduct is inappropriate or unsatisfactory and the Subcontractor shall promptly replace such person with another person acceptable to ERM at the Subcontractor's own cost and expense.
- 3.4 The Subcontractor represents that it is fully able and qualified to perform the Work and that it has the expertise, experience and knowledge, as well as the necessary personnel and financial capability to perform the Work in accordance with the terms of the Subcontract.
- 3.5 The Subcontractor shall be responsible for obtaining, maintaining and paying for all permits, insurance, licences, certificates, fees, or notifications required by the applicable law for the performance of the Work. Further, at the Subcontractor's own expense, the Subcontractor shall furnish any bonds, security, guarantees or deposits required to permit performance of the Work, including without limitation any bonds, security, guarantees or deposits requested by ERM or ERM's Client.
- 3.6 ERM, ERM's Client or their representatives shall have the right to inspect the Work and, for the purposes of such inspection, shall have full and free access to all pertinent locations including, but not limited to, shops, factories or other places of business of Subcontractor and its subcontractors and suppliers.

#### **4. INCORPORATION OF MAIN CONTRACT**

- 4.1 The Subcontractor agrees that it shall be bound by the Main Contract, which is incorporated herein by reference. With respect to the Work, the Subcontractor shall assume toward ERM all the obligations, risks and responsibilities that ERM assumes toward ERM's Client under the Main Contract to the extent applicable to the Work, and all requirements relating to quality, quantity and timeliness of Work. ERM shall have the benefit of all rights, remedies and redress against the Subcontractor that ERM's Client has against ERM in the Main Contract. Where any provision of the Main Contract conflicts with a provision of this Subcontract, the provisions most favourable to ERM shall govern.
- 4.2 The Subcontractor warrants that it has been given ample opportunity to review the Main Contract, and that it has reviewed the Main Contract to the extent it feels necessary.

#### **5. ERM'S CLIENT LIAISON**

- 5.1 Unless the Subcontractor has received prior written permission from ERM, the Subcontractor shall have no direct contact with ERM's Client in relation to the provision of the Work. The Subcontractor shall immediately notify ERM in writing of any direction given by ERM's Client and shall seek ERM's instructions if any direction of ERM's Client is not consistent with the Work or any instruction by ERM. The Subcontractor shall not undertake any work or services for ERM's Client that flows from or relates to this Subcontract or the Work without the prior written consent of ERM.
- 5.2 The Subcontractor undertakes to ERM that no act, omission or default of the Subcontractor in relation to the Work shall constitute, cause or contribute to a breach by ERM of its obligations under the Main Contract or any other

agreement in connection with the Project to which ERM is a party.

## **6. EMERGENCIES**

- 6.1 In an emergency affecting the safety of persons or property, where it is impracticable for the Subcontractor to obtain immediate authorisation from ERM, the Subcontractor shall act, at its discretion and exercising all the skill, care and diligence necessary to prevent any threatened personal injury or death and/or loss or damage to property real or personal. The Subcontractor shall use best endeavours to notify ERM at the earliest possible opportunity of any such emergency.

## **7. SITE CONDITIONS**

- 7.1 The Subcontractor warrants that it has examined the site of the Project, including any access constraints, site conditions, difficulties and/or hazards in connection with the performance of the Work, and has included any costs associated with the same in its Fee. Claims for additional compensation or extensions of time because of failure of the Subcontractor to familiarise itself with local and special conditions at or in the vicinity of the Project Site will not be accepted by ERM.
- 7.2 The Subcontractor shall have no right to rely on any materials or information relating to conditions on the Project Site that are provided by ERM and/or ERM's Client which, if provided, shall be provided for information purposes only. Neither ERM nor ERM's Client assumes any responsibility whatsoever in respect to the sufficiency or accuracy of such investigations.

## **8. EQUIPMENT**

- 8.1 Except as otherwise agreed in writing, the Subcontractor shall provide all necessary and appropriate equipment and materials to perform the Work, including, but not limited to, all necessary and appropriate personal protective equipment ("PPE"). The Subcontractor warrants that any such equipment and materials are, and shall be maintained, in good and safe condition and comply with all applicable legal requirements. ERM does not endorse, warrant, or assume any responsibility whatsoever for the adequacy of the PPE provided by or used by the Subcontractor in performing any Work.
- 8.2 The Subcontractor acknowledges that it shall assume the risk of loss, theft or damage to any of the **Subcontractor's equipment** or materials used in the performance of the Work (including as a consequence of exposure to any chemical or other contaminant).
- 8.3 Title to all equipment and materials for which payment has been made, whether or not the same has been incorporated in the Work or work product, and title to all completed Work whether paid for or not, shall vest in ERM, and in any case shall not be part of the **Subcontractor's** property or estate in the event the Subcontractor is adjudged bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the **Subcontractor's** insolvency, or if this contract is terminated.
- 8.4 All warranties provided or available to the Subcontractor for any goods, equipment, services or supplies procured by the Subcontractor in connection with the Work shall be for the benefit of ERM and ERM's Client, and the Subcontractor shall take all steps to ensure that ERM and ERM's Client have all rights to claim directly under such warranties.

## **9. HEALTH AND SAFETY**

- 9.1 The Subcontractor acknowledges that safe practices are considered a priority requirement of ERM in the performance of the Project. The Subcontractor shall be solely responsible for the health and safety of its employees, agents and lower-tier subcontractors, as well as their property, in connection with the performance of the Work.
- 9.2 The Subcontractor acknowledges that it is familiar with the type of work and/or services comprising the Work under this Subcontract, including but not limited to the inherent hazardous conditions of performing the Work and the need to ensure the safety of its personnel and others during the performance of the Work. Subcontractor shall comply with all applicable local safety and health laws, any project or site-specific

requirements, or other rules or procedures imposed by ERM or **ERM's** Client, including those set out in the Main Contract. If there is any conflict between any such provisions, Subcontractor shall comply with the most stringent provision. The Subcontractor acknowledges that it has included any costs associated with these health and safety obligations in the Fee.

## **10. PROGRAMME**

10.1 The Subcontractor shall perform the Work strictly in accordance with the Programme, and time shall be of the essence. If the provision of the Work is, or is likely to be, delayed, the Subcontractor shall immediately give written notice to ERM, which notice shall include details of the reasons for any delay and the **Subcontractor's** best estimate of the length of the delay. The Subcontractor shall use its best endeavours to minimise any delays.

10.2 The Subcontractor acknowledges that delay on the part of the Subcontractor in the performance of the Work may constitute a breach by ERM of **ERM's** obligations under the Main Contract, and accordingly the Subcontractor shall be liable to ERM for any and all penalties, fines, fees, damages (actual or liquidated), costs or other payments ERM may be required to pay as a result of any delay in the Work or schedule for performance caused by Subcontractor, its employees, agents, suppliers or sub- subcontractors.

## **11. VARIATIONS TO THE SERVICES**

11.1 ERM may at any time instruct the Subcontractor to perform services in addition to the Work, to omit the performance of all or any part of the Work, or to otherwise vary the Work. Within 10 working days from receipt of **ERM's** notice, the Subcontractor shall submit to ERM a detailed estimate with supporting calculations and pricing, together with any adjustments in the Programme reflecting any changes in the prices and time for performance as a result of the order. Such additional or varied services instructed shall be deemed to form part of the Work under this Subcontract. Any variation to any such matter is not permitted without prior written approval of ERM.

11.2 No adjustment to the Fee shall be made as a consequence of any such additional or varied services to the extent that those additional or varied services shall not require the Subcontractor to expend any substantially additional time and/or incur any substantially additional expense, and/or if the additional or varied services arise as a result of the **Subcontractor's** breach. To the extent that such additional or varied services require the Subcontractor to expend any substantially additional time and/or incur any substantially additional expense, the Subcontractor and ERM shall negotiate in good faith an adjustment to the Fee and Programme using the pricing methods specified in the Work Authorisation if applicable. If pricing methods are inapplicable, the cost of the change or the amount of the adjustment shall be limited to direct material and direct labour costs. The Subcontractor shall not suspend or delay performance of the original Work or the changed or extra Work pending discussion of the pricing for the changed Work.

11.3 Except as agreed in writing by ERM pursuant to Clause 11.2, no claim for additional payment, compensation or extension of time, whether for extra labour and materials furnished, changes or otherwise, shall be due from ERM for any changed Work.

## **12. COMMUNICATIONS AND RECORD KEEPING**

12.1 The Subcontractor shall report to, and shall provide all deliverables to the ERM Representative identified in the Work Authorisation, in accordance with the requirements of the Programme and this Subcontract. The Subcontractor shall: (a) maintain copies of all working files, communications, meeting notes, calculations, datalogs, field notes, analytical results, sample logs, equipment calibration certificates and all other such documents and records relevant to the Work and/or the Project and shall provide copies of these to ERM on request; (b) promptly provide to ERM such information and copies of documents relating to this Subcontract, the Work and/or the Project as may be required or requested by ERM or **ERM's** Client; and (c) immediately give written notice to ERM if the Subcontractor becomes aware of any matter which could amount to any breach of this Subcontract and/or any delay to the Programme, and/or any potential liability of ERM to **ERM's** Client or to any third party.

## **13. PAYMENT**

- 13.1 Fee: ERM shall pay the Fee to the Subcontractor for the proper performance of the Work in accordance with this Subcontract. Subject to payment of Expenses, the Fee shall be inclusive of all costs, disbursements, expenses and overheads incurred by the Subcontractor in connection with the Work **and/or the Project. ERM may reschedule any instalments of the Fee if, in ERM's reasonable opinion,** the amount of the Fee which would otherwise be payable is not substantially commensurate as a proportion of the whole of the Fee to the Work properly performed by the Subcontractor at any time.
- 13.2 Expenses: ERM shall reimburse to the Subcontractor the cost of any approved Expenses actually incurred by the Subcontractor in the proper performance of the Work. The Subcontractor shall not incur any Expense without the prior written approval of ERM. ERM shall not be obliged to reimburse to the Subcontractor any approved Expenses unless the same are supported by receipts and other documentation as may be reasonably required by ERM.
- 13.3 Invoicing: The Subcontractor shall submit to ERM valid tax invoices showing any instalment of the Fee and any Expenses which are payable under this Subcontract, together with a description of the work performed in sufficient detail, and a calculation of any applicable tax. Invoices shall be supported by documents, vouchers and receipts necessary for computing and verifying them. Invoices shall be sent by the Subcontractor to ERM addressed to the Accounts Department of the ERM entity stated in the Work Authorization, noting the ERM reference and the name of the ERM Representative.
- 13.4 Invoices submitted in accordance with this Subcontract shall be paid within the later of 60 days of their receipt by ERM, or on receipt by ERM of the applicable payment from **ERM's Client** (where permitted by law). ERM reserves the right to withhold payment on any amounts in the invoice that are disputed by ERM. All discounts provided to or available to the Subcontractor in connection with any services or items procured by the Subcontractor in connection with the Work shall be passed through to ERM. The Subcontractor shall seek to obtain such discounts to the fullest extent possible. Payment by ERM shall not constitute acceptance by ERM that the Work conforms to this Subcontract nor be deemed to be settlement of any dispute or otherwise waive any rights ERM may have. ERM may correct or modify any sum previously paid in the event that any such sum was incorrect; or any such sum was not properly payable to the Subcontractor.
- 13.5 Taxes:
- 13.5.1 The Subcontractor shall be wholly liable, and agrees to fully and properly indemnify and keep indemnified ERM against any demand, for the payment of all taxes, duties, levies, charges and contributions (including, without limitation, income tax and social security contributions) relating to the **Subcontractor's** Work as imposed by any tax or government authority and also any interest, penalties, costs, claims, damages or other expenses which ERM may incur as a result of challenging such a demand. ERM does not assume any liability in case of defaults on these payments by the Subcontractor who undertakes to strictly abide by the rules in force on the matter.
- 13.5.2 The fees quoted are exclusive of Value Added Taxes and/or other similar indirect taxes including GST ("**VAT**"). The VAT treatment of the services under this Subcontract shall be determined pursuant to the laws of the jurisdiction where a taxable transaction for VAT is deemed to take place. If VAT is payable on any such amounts under this Subcontract, ERM shall pay to the Subcontractor or the relevant tax or government authority an amount equal to the VAT at the rate applicable.
- 13.5.3 If ERM is required by any tax or government authority to withhold taxes from payments due to the Subcontractor under this Subcontract, then ERM shall withhold such amounts. The appropriate withholding tax will be deducted, where applicable, from the fees payable to the Subcontractor by ERM. In cases where ERM is required to withhold such taxes, a certificate to the effect that tax has been deducted will be issued by ERM to the Subcontractor as required by law. The certificate shall specify the amount so deducted and the rate at which the tax has been deducted.
- 13.6 Withholding Payments: ERM may withhold payment otherwise due to the Subcontractor without payment of interest on account of: (i) delayed, faulty or defective Work performed and not immediately remedied by the

Subcontractor; (ii) failure of the Subcontractor to pay amounts when due for labour, materials or equipment used by the Subcontractor in performing the Work; or (iii) any material breach of the Subcontract. The remedy of withholding payment is not exclusive. ERM will have the right to set-off, against amounts otherwise payable hereunder, any amounts owing from the Subcontractor to ERM.

- 13.7 Records: The Subcontractor shall maintain until the expiration of 6 years from the date of payment of each invoice in connection with the Work, full records of the **Subcontractor's** documents, information and data in connection with the Fee and any Expenses, and shall make the same available for inspection to ERM and/or any appointee of ERM. Subject to payment of the **Subcontractor's** reasonable copying charges, the Subcontractor shall provide to ERM copies of the same.

## **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 Copyright and all other rights in reports, documents, information, data, materials deliverables, work product and other creations prepared or supplied by or for ERM shall remain the property of ERM. ERM grants to the Subcontractor a personal, non-transferable and non-sublicensable licence to use the reports, documents, information or materials provided by ERM to the Subcontractor for the purpose of providing the Work. No licence is granted to any other person or for any other purpose.
- 14.2 The Subcontractor acknowledges that copyright and all other rights in reports, documents, information, data, materials deliverables, work product and other creations prepared by the Subcontractor, its employees, sub-subcontractor or agents in connection with the Work shall be the sole property of ERM; and that the Subcontractor, in consideration of ERM entering into this Subcontract, hereby assigns to ERM all such rights.
- 14.3 The Subcontractor shall not infringe any third party rights in respect of patents, copyrights, registered designs or other intellectual property rights and shall not breach any duty of confidence or other duty owed to any other person. The Subcontractor shall indemnify and undertakes to keep ERM and **ERM's** Client indemnified against any liability, damage, loss, claims, demands, expenses and legal fees incurred by ERM and arising out of any actual or alleged infringement or breach.
- 14.4 The Subcontractor warrants that the Subcontractor is the author of the copyright in reports, documents, information, data or materials prepared by the Subcontractor, its employees and agents in connection with the performance of Work and (where permitted by law) the Subcontractor waives any moral rights which the Subcontractor might otherwise possess.

## **15. INSURANCE**

- 15.1 The Subcontractor shall take out and maintain policies of insurance as set out in the Work Authorisation and any other insurance required by applicable law. If, however, the Main Contract requires types of insurance coverage and/or endorsements not required hereunder, and/or requires minimum limits of liability greater than the limits required hereunder, the Subcontractor shall provide such additional insurance cover, endorsements and/or limits of liability. Such insurance policies shall not be subject to unusual conditions and/or excesses to those applicable at the time and shall be maintained with reputable insurers carrying on business in jurisdictions where the Work is performed. As and when the Subcontractor is reasonably required to do so by ERM, the Subcontractor shall produce documentary evidence that the insurance policies required by this Subcontract are being properly maintained and, if so required by ERM, copies of all such insurance policies. The Subcontractor shall immediately notify ERM if at any time the Subcontractor is unable to obtain any insurance as required by this Subcontract. Nothing in this Subcontract shall be construed as limiting or capping the **Subcontractor's** liability to the limit of its insurance.

## **16. INDEMNITY**

- 16.1 **The Subcontractor shall be liable for and shall indemnify, hold harmless and defend ERM, ERM's Client** and their respective officers, directors, agents, employees, and independent contractors against, any cost, expense, liability, loss, claim or proceedings (including, without limitation, reasonable legal costs) incurred or arising as a consequence of any loss, injury or damage arising out of, or in the course of the performance of the Work and/or any other obligations of the Subcontractor under this Subcontract,

including without limitation, any property damage (real or personal) and/or any personal injury or death.

16.2 In the event the Main Contract contains indemnities that are more onerous than those contained herein, the Main **Contract's** indemnity provisions shall supersede this provision and the Subcontractor shall have the same obligation to indemnify ERM and **ERM's Client** that ERM has under the Main Contract to indemnify **ERM's Client**.

16.3 The Subcontractor shall at its own cost promptly remedy any defects in any of the Work or deliverables.

## **17. CONFIDENTIALITY**

17.1 All documents, information and advice provided by ERM to the Subcontractor, its employees, agents, or representatives in connection with this Subcontract, the Project, **ERM's Client** or any of **ERM's Client's** activities shall be treated by the Subcontractor as confidential and shall not be disclosed to any third party, used, or relied on for any purpose other than the performance of the Work.

17.2 The Subcontractor shall not be entitled to disclose any confidential information or the fact that it has provided the Work to ERM or ERM's Client unless: (a) ERM gives its prior written consent; (b) the Subcontractor is required by law or by any regulatory authority to make the disclosure; or (c) the document or information or advice enters the public domain through no fault of the Subcontractor.

17.3 The Subcontractor agrees that ERM will suffer irreparable harm if Subcontractor breaches any of its covenants pursuant to this Clause and that monetary damages alone would be inadequate to compensate ERM for such breach. Accordingly, Subcontractor agrees that, if Subcontractor breaches or threatens to breach any provision of this Clause 17, ERM shall be entitled to apply for a preliminary injunction and/or permanent injunction in order to prevent or to restrain any such breach by Subcontractor, its officers, directors, employees, agents or representatives.

## **18. SUSPENSION AND TERMINATION**

18.1 ERM may at any time, by written notice to the Subcontractor, require the Subcontractor to suspend the performance of the whole or any part of the Work, with no additional cost to ERM. ERM may at any time after any amount shall become overdue from **ERM's Client** to ERM, require the Subcontractor to suspend the performance of the whole or any part of the Work, with no additional cost to ERM, until such time as ERM receives the overdue amount from **ERM's Client**.

18.2 If ERM requires the Subcontractor to suspend the Work under Clause 18.1, ERM may, within a period of 12 months from the date of such notice, require the Subcontractor to resume performance of some or all of the Work and the Subcontractor shall, as soon as reasonably practicable, resume performance of the Work in accordance with this Subcontract. If ERM does not require the Subcontractor to resume the performance of the Work within the period of 12 months from the date of such notice, either party is entitled to terminate this Subcontract by written notice to the other party.

18.3 ERM, may at any time, by written notice to the Subcontractor, terminate this Subcontract in the event of:

**18.3.1** material failure by the Subcontractor to fulfil its obligations under this Subcontract and failure to remedy such breach (if capable of remedy) within 14 days of notice to do so, such notice to contain a warning of intention to terminate;

**18.3.2** the insolvency or bankruptcy of the Subcontractor including, without limitation, a petition being presented or meeting convened for the purpose of winding-up the Subcontractor, the Subcontractor becoming the subject of an administration order or entering into liquidation (whether compulsory or voluntary) or the Subcontractor compounding with its creditors generally or having an administrator, receiver, or administrative receiver appointed of all or any part of its assets;

**18.3.3** any failure to agree within 30 days any adjustment to the Fee following an instruction by ERM to vary the Work under Clause 11;

**18.3.4** or termination of the Main Contract between ERM and ERM's Client.

- 18.4 The Subcontractor shall indemnify and hold harmless ERM from any liabilities to ERM, ERM's Client or any agents, subcontractors (other than the Subcontractor) or other third parties arising out of termination under Clauses 18.3.1-18.3.3, or any breach by the Subcontractor of this Subcontract.
- 18.5 Without prejudice to Clause 18.3, this Subcontract may be terminated by ERM at any time by not less than 7 days written notice to the Subcontractor.
- 18.6 On termination of this Subcontract, or on suspension of the whole of the Work, the Subcontractor shall take immediate steps to bring the Work to an end in an orderly manner (but with all reasonable speed and economy) and shall within 14 days deliver to ERM all the reports, documents, information, data or materials prepared by the Subcontractor, its employees and agents in connection with the performance of the Work (whether in the course of preparation or completed) and any and all copies of the same. The Subcontractor shall use best endeavours to procure the assignment of any supply or other subcontracts with the Subcontractor to ERM or any appointee of ERM, if ERM requires.
- 18.7 On termination of this Subcontract, or on suspension of the whole of the Work, ERM shall (subject to any withholding, deduction, set-off or abatement to which ERM is entitled) pay to the Subcontractor that part of the Fee and any Expenses under this Subcontract which have accrued prior to the date of termination or suspension, less the amount of any payments previously made by ERM to the Subcontractor under this Subcontract and any expenses incurred by ERM or ERM's Client as a result of the termination (including employing the services of another subcontractor). However ERM shall not be liable to the Subcontractor for any loss of profit, loss of contract(s) or other costs, losses and/or expenses in connection with such termination or suspension. If any unpaid balance to the Subcontractor is less than ERM's expense to complete the Work, plus any additional costs or damages incurred by ERM, the Subcontractor shall pay the difference to ERM.
- 18.8 All sub-subcontract or supply agreements entered into by the Subcontractor in connection with the Project shall include a provision that the sub-subcontractor or supplier agrees its agreement may be assigned to ERM on ERM's request, in the event of the termination of this Subcontract.

## **19. ASSIGNMENT**

- 19.1 The Subcontractor shall not assign the benefit of and/or any rights under this Subcontract or subcontract the performance of any of the Work to any person without the prior written consent of ERM. Notwithstanding any subcontracting or assignment of the Work, the Subcontractor shall remain responsible for the performance of the Work and subcontracting or assignment shall not affect the liability and/or obligations of the Subcontractor under this Subcontract or otherwise at law. ERM may assign, charge or transfer the benefit of and/or any rights under this Subcontract to any person without the consent of the Subcontractor being required.

## **20. STATUS OF SUBCONTRACTOR**

- 20.1 The Subcontractor shall not assume, create or incur any liability or obligation on behalf of ERM unless the Subcontractor has received specific written authorisation from ERM to do so. The Subcontractor shall not at any time after the termination of this Subcontract, either personally or by an agent, directly or indirectly, represent itself as being in any way connected with or interested in the business of ERM. This Subcontract shall not create any partnership or employment relationship between ERM and the Subcontractor, and nothing in this Subcontract shall render the Subcontractor or its staff, agents or representatives to be employees or partners of ERM.

## **21. GOVERNANCE AND COMPLIANCE**

- 21.1 **ERM's Supplier Code:** Subcontractor confirms that it has reviewed ERM's Supplier Code of Business Conduct and Ethics (available here: <https://www.erm.com/globalassets/documents/global-policies/supplier-code-business-conduct-ethics.pdf>), and agrees to comply with its terms when performing any work or services for ERM. Furthermore, Subcontractor shall comply with any codes of conduct from ERM's Client that apply to the Work.



21.2 Anti-Bribery and Corruption: Subcontractor recognises ERM's efforts to combat bribery and corruption. Accordingly, and without limiting the foregoing, Subcontractor agrees that it will:

- 21.2.1 to conduct business in accordance with the highest ethical standards;
- 21.2.2 comply with all applicable anti-bribery legislation, including but not limited to the UK Bribery Act, the US Foreign Corrupt Practices Act, and the Organisation for Economic Co-operation and Development obligations;
- 21.2.3 not engage in any form of bribery, corruption, extortion or embezzlement;
- 21.2.4 not make, offer, or promise to make a payment or transfer anything of value (including services, gift, favours or entertainment) to any public official (or their family or friends) for the purpose of improperly obtaining / retaining business or any other improper purpose, and will report any requests for improper payments to ERM;
- 21.2.5 not make any facilitation payments, including but not limited to any undocumented and unreceipted payments made to speed up routine government actions;
- 21.2.6 **not make political contributions on behalf of ERM or ERM's Client**;
- 21.2.7 not falsify, create, omit information, mischaracterize or alter any accounting or business records for the purpose of violating these obligations;
- 21.2.8 diligently train its employees, agents, suppliers and sub-subcontractors to recognise and avoid misconduct and the appearance of impropriety while conducting business on behalf of ERM; and
- 21.2.9 not use intermediaries, including friends, business associates or relatives of government officials to circumvent these rules.

21.3 Slavery, Child Labor and Human Trafficking: Subcontractor recognises ERM efforts to eliminate all forms of slavery, child labor and human trafficking. Accordingly, Subcontractor agrees that it will:

- 21.3.1 not employ child or forced labour or otherwise support human trafficking, whether in connection with the Work or otherwise;
- 21.3.2 ensure that its employees, agents, suppliers and sub-subcontractors are alert to any evidence of slavery, child labour or human trafficking;
- 21.3.3 promptly notify ERM if it suspects slavery, child labor or human trafficking in relation to its duties for ERM; and
- 21.3.4 **seek ERM's prior written consent before using** students to perform work experience in conjunction with the Work.

21.4 Subcontractor shall include provisions in its contracts with any suppliers and sub-subcontractors whereby they agree to be bound by the requirements of this Clause.

## **22. DATA PRIVACY AND PROTECTION**

22.1 Subcontractor recognises ERM efforts to protect the personal data of ERM's staff, Clients and others in line with applicable data protection law, which includes but is not limited to the General Data Protection Regulation ("**Data Protection Law**"). "**Personal data**" refers to any information describing or relating to an individual by reference to an identifier such as a name, id number, location data, an online identifier or other factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that individual. Accordingly, and without limiting the foregoing, Subcontractor agrees to:

- 22.1.1 observe its obligations under Data Protection Laws;
- 22.1.2 treat all ERM personal data as confidential;
- 22.1.3 process, transfer, modify, disclose, amend or alter personal data in accordance with ERM's

written instructions (unless otherwise required by Data Protection Law);

- 22.1.4 ensure that it has appropriate technical and organizational measures in place to prevent the unauthorized processing, loss, destruction, damage, alteration and/or destruction of personal data, which may include encryption, pseudonymisation, resilience of processing systems and backing up of personal data, where appropriate;
- 22.1.5 not transfer any personal data to any country outside the European Economic Area without the prior written consent of ERM;
- 22.1.6 ensure the reliability of its staff, sub-subcontractors or suppliers who have access to ERM's personal data, and ensure that they are subject to appropriate confidentiality and security undertakings;
- 22.1.7 not permit any third party (including sub-subcontractors or suppliers) to process ERM personal data unless that party has entered into an agreement with the Subcontractor that incorporates these data privacy and protection obligations;
- 22.1.8 promptly notify ERM of any communications received from any person regarding the processing of their personal data, and take steps to assist ERM to respond thereto;
- 22.1.9 immediately notify ERM of any breach of Data Protection Law, and co-operate with ERM in the investigation and remediation thereof;
- 22.1.10 inform ERM if any instruction received from ERM might infringe applicable Data Protection Laws;
- 22.1.11 permit ERM to inspect and audit the **Subcontractor's** facilities for processing personal data, and assist ERM with personal data protection impact assessments as required; and
- 22.1.12 upon the termination of this Subcontract immediately cease processing any ERM personal data and – at ERM's option – return or securely delete all personal data (unless otherwise required by applicable law) and confirm that this has been done.

## **23. NOTICES**

- 23.1 Any notice to be given under this Subcontract shall be in writing and sent by post by recorded delivery to the receiving Party at its registered business address from time to time.

## **24. GOVERNING LAW AND DISPUTES**

- 24.1 This Subcontract shall be construed and governed in accordance with: (i) the internal laws of the jurisdiction specified in the Main Contract; or (ii) if no jurisdiction is specified in the Main Contract, in **accordance with the internal laws of the jurisdiction in which ERM is formed (the "Jurisdiction")**. If any dispute or difference shall arise between the Subcontractor and ERM under or in connection with this Subcontract, then if the same cannot be settled amicably within 30 days of the dispute or difference being communicated in writing, that dispute or difference shall be settled by arbitration undertaken in the **capital city of the Jurisdiction (as determined by ERM) by three arbitrators (the "Arbitral Tribunal") appointed in accordance with the UNCITRAL Arbitration Rules (the "UNCITRAL Rules") in force at the time of commencement of the arbitration**. The IBA Rules on the Taking of Evidence in International Commercial Arbitration (the **"IBA Rules of Evidence"**) shall apply to any arbitration in accordance with this Clause. In case of any inconsistency with the UNCITRAL Rules, the IBA Rules of Evidence shall prevail but solely as regards the presentation of evidence. The costs of any such arbitration shall be awarded at the discretion of the arbitrator and the arbitrator shall decide the procedure of the arbitration.
- 24.2 Without prejudice to the above, ERM may seek such other relief (including, without limitation, injunctions or other interim measures) from the courts of the Jurisdiction.

## **25. MISCELLANEOUS**

- 25.1 Upon completion of the Work and prior to final payment, the Subcontractor shall at its expense dispose of

all rubbish, remove all equipment and materials belonging to Subcontractor, and leave its work area in a tidy and safe condition. At its sole cost and expense, the Subcontractor shall restore its work area at the Project Site to substantially the same condition as it was prior to commencing the Work.

- 25.2 References in this Subcontract to any statute or statutory instrument include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time. Reference to any statute includes any statutory instrument, regulation, bylaw, rule or order made pursuant thereto.
- 25.3 The clause and paragraph headings in these General Terms and Conditions are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer. These General Terms and Conditions shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favour of or against either party.
- 25.4 This Subcontract constitutes the entire agreement between the parties in relation to the provision of the Work and supersedes and extinguishes any prior drafts, agreements, undertakings, representations and arrangements of any nature whatsoever, whether or not in writing. This Subcontract shall not be varied unless such variation is expressly agreed in writing by a duly authorised representative of each of the Parties. No enquiry, inspection, approval, sanction, comment, consent, decision, direction or instruction at any time by ERM shall operate to exclude or limit the Subcontractor's obligations under this Subcontract.
- 25.5 Nothing in the Subcontract shall be construed as creating third-party beneficiary rights in any person or entity, unless specifically provided otherwise, but the foregoing shall not limit the right of ERM's Client to use and rely on Subcontractor's Work Product.
- 25.6 No delay, neglect or forbearance on the part of ERM in enforcing any provision of this Subcontract shall be deemed to be a waiver or in any way prejudice its rights under this Subcontract. The provisions of Clauses 3, 5, 12-17, 19, 21 - 24 of these General Terms and Conditions, and any and all provisions of this Subcontract which by their nature generally would be construed as surviving termination of this Subcontract, shall survive the completion of Work or the expiration, cancellation or termination of this Subcontract, the Main Contract and any other agreement between ERM and ERM's Client, and shall apply to the fullest extent permitted by law.
- 25.7 Each provision of this Subcontract is distinct and severable from the others. If a provision is or becomes invalid, unlawful or unenforceable in whole or in part, the validity, lawfulness and enforceability of the remaining provisions (and of the same provision to the extent enforceable) will not be impaired, and the Parties agree to substitute a provision as similar to the offending provision as possible without its being invalid, unlawful or unenforceable.