

SCHEDULE A.2 – SUB-SUB-CONTRACT TERMS & CONDITIONS
Inconjunction with Schedule A.1 Sub-Sub-Contract Recitals

Sub-Sub-Contract Terms & Conditions

Definitions

The following expressions shall have the following meanings:

- 1.1. "Conditions" means the conditions herein numbered as clauses 1-20 along with the Sub-Sub-Contract Recitals which shall form part of the Conditions.
- 1.2. "Contractor" means the Contractor named in the Sub-Contract.
- 1.3. "Defects Correction Period" means the period from the date of issue of a certificate of practical completion (practical completion) of the Sub-Sub-Contract Works, issued by the Sub-Contractor to the Sub-Sub-Contractor.
- 1.4. "Retention Percentage" means the retention Percentage as stated in the Sub-Sub-Contract.
- 1.5. "Sub-Contract" means the contract entered into between the Contractor and the Sub-Contractor.
- 1.6. "Sub-Contract Works" means the works to be carried out by the Sub-Contractor under the Sub-Contract.
- 1.7. "Sub-Contractor" means Ampsail Ltd.
- 1.8. "Sub-Sub-Contract" means this agreement between the Sub-Contractor and the Sub-Sub-Contractor which is governed by these Terms, the Conditions, Sub-Sub-Contract Documents and Schedules.
- 1.9. "Sub-Sub-Contract Documents" means all of the documents expressly incorporated into the Sub-Sub-Contract, as set out in the Sub-Sub-Contract.
- 1.10. "Sub-Sub-Contract Works" means the work agreed to be performed under the Sub-Sub-Contract, as more particularly described and/or stated in Schedule B.
- 1.11. "Notice to Commence" means the notice from the Sub-Contractor to the Sub-Sub-Contractor to immediately commence its Sub-Sub-Contract Works as stated in the notice and/or accordant with the Sub-Sub-Contract.
- 1.12. "Sub-Sub-Contractor" means the company, firm or person who has been engaged by the Sub-Contractor to carry out the Sub-Sub-Contract Works pursuant to these Conditions.
- 1.13. "Sub-Sub-Contract Sum" means the lump sum fixed price, particularly described and stated in Schedule C, excluding value added tax which shall be added to the agreed invoice amount at the rate prevailing at the time of invoice.
- 1.14. "Terms" means the Terms stated herein along with the Schedules, Schedule of Rates, Sub-Sub-Contractor Review Meeting form and Construction Programme; along with any other information that may be so annexed.
- 1.15. Words importing persons include firms and corporations.

2. Execution of Sub-Sub-Contract Works

- 2.1. The Sub-Sub- Contractor shall carry out the Sub-Sub-Contract Works in accordance with the Terms and Conditions, except as modified herein, and to the entire satisfaction of Sub-Contractor.
- 2.2. The Sub-Sub-Contractor shall neither assign the Sub-Sub-Contract nor any benefit or interest hereunder nor sub-let the Sub-Sub-Contract Works, in either case whether in whole or in part, without the express written consent of the Sub-Contractor.
- 2.2.1 The Sub-Sub-Contractor acknowledges and fully accepts that the Sub-Sub-Contract Works set-out in the Sub-Sub-Contract; may, at any time in whole or in part, be omitted by the Sub-Contractor. The Sub-Sub-Contractor acknowledges and fully accepts that any such omission shall adjust the Sub-Sub-Contract Sum accordingly; such adjustment of the Sub-Sub-Contract Sum shall be evaluated and administered accordant with the rates and prices set-out in the Sub-Sub-Contract.
- 2.2.2 The Sub-Sub-Contractor acknowledges and warrants that any omission made by the Sub-Contractor shall not change any of the rates and prices incorporated into the Sub-Sub-Contract. All rates and prices incorporated into the Sub-Sub-Contract shall remain valid and effective for the duration of the Sub-Sub-Contract Works as set-out in the Sub-Sub-Contract.

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- 2.2.3 The Sub-Sub-Contractor further acknowledges and warrants that any omission made by the Sub-Contractor shall not bring forth from the Sub-Sub-Contractor to the Sub-Contractor any type of claim whatsoever for, but not limited thereto: loss of profit, loss of overhead, loss of opportunity or opportunities, loss of production or any other type of loss and/or cost claim.
3. **Sub-Sub-Contract Relationship**
- 3.1. The Sub-Sub-Contractor shall have reasonable opportunity to inspect, and is deemed to have full knowledge of, the provisions of, the Sub-Contract (save the price and any other commercially sensitive material) and shall so execute, complete and maintain the Sub-Sub-Contract Works so that no act or omission of his in relation thereto shall constitute, cause or contribute to any breach by the Sub-Contractor of his obligations under the Sub-Contract and the Sub-Sub-Contractor shall assume and perform all the obligations and liabilities of the Sub-Contractor under the Sub-Contract in relation to the Sub-Sub-Contract Works.
- 3.2. The Sub-Sub-Contractor shall be liable for and shall indemnify the Sub-Contractor against any expense, liability, loss, claim or proceedings made against or incurred by the Sub-Contractor, by reason of any breach by the Sub-Sub-Contractor of the Sub-Sub-Contract or where he puts the Sub-Contractor in breach of Sub-Contract.
4. **Commencement and Completion**
- 4.1. Subject to the Sub-Contractor giving the Sub-Sub-Contractor a Notice to Commence, as set out in the Terms, the Sub-Sub-Contractor shall carry out and complete the Sub-Sub-Contract Works accordant with the period of time or completion date stated in the Sub-Sub-Contract and, at all times, reasonably in accordance with the progress of the Sub-Contract Works.
- 4.2. Any Sub-Sub-Contract Works carried out prior to such Notice to Commence shall be treated as having been carried out under the Sub-Sub-Contract which shall supersede any previous agreements with regard to the Sub-Sub-Contract Works and any payments made shall be deemed to have been made on account of the Sub-Sub-Contract Sum.
5. **Instructions to Sub-Sub-Contractor**
- 5.1. The Sub-Sub-Contractor shall comply promptly with all written directions/instructions/notices given by the Sub-Contractor.
- 5.2. Instructions issued by the Sub-Contractor to the Sub-Sub-Contractor for changes to the Sub-Sub-Contract Works shall be assessed and valued by the Sub-Contractor using the rates set-out in the detailed quantified Schedule of Rates or rates analogous thereto and/or the rates and/or pricing method set-out in the Sub-Sub-Contract. The Sub-Contractor shall decide upon any alteration to the period for the completion of the Sub-Sub-Contract Works as may be reasonable in all the circumstances.
- 5.3. The Sub-Contractor shall have no liability whatsoever to pay for any changes to the Sub-Sub-Contract Works unless this clause has been properly complied with, but nevertheless the Sub-Contractor shall be entitled to the benefit of such work.
6. **Copyright**
- 6.1. The Sub-Sub-Contractor shall retain copyright in any drawings, details, specifications and designs (the "Documents") produced by the Sub-Sub-Contractor or on the Sub-Sub-Contractor's behalf in respect of the Sub-Sub-Contract Works and the Sub-Sub-Contractor shall grant the Sub-Contractor and any person authorised by them an irrevocable royalty free non-exclusive licence to use and reproduce all Documents for any purpose whatsoever connected with the Sub-Sub-Contract, Sub-Contract, Contract. Such Licence shall carry the right to grant sub-licences and shall be transferable to third parties.
7. **Payments**
- 7.1. The first application for payment shall be submitted by the Sub-Sub-Contractor to the Sub-Contractor no later than 5 working days before the valuation date set-out in Schedule A or the valuation date advised by the Sub-Contractor. Monthly applications for payment shall be submitted by the Sub-Sub-Contractor to the Sub-Contractor so as to be received by the Sub-Contractor no later than 5 working days before the valuation date. The submission of an application for payment on or before the stated dates is a condition precedent to payment becoming due. Any application for payment which is received after the stated dates of any calendar month shall not be considered by the Sub-Contractor and must be re-submitted by the Sub-Sub-Contractor the following month. The due date for payment of any valid monthly application shall be 5 days from the valuation date. (the "Due Date").
All applications must be received by the Sub-Contractor (Project Quantity Surveyor) no later than 22nd of each month and valued to month end, unless otherwise stated by the Sub-Contractor.
- 7.2. Each application shall specify the sum that the Sub-Sub-Contractor considers due, the basis on which the sum is calculated, properly detailed with full particulars along with all necessary substantiation covering the valuation of measured works, variations and the valuation of materials on site; to enable the same to be considered and assessed by the Sub-Contractor.
- 7.3. No later than 5 days after the Due Date, the Sub-Contractor shall by written notice to the Sub-Sub-Contractor specify the sum which the Sub-Contractor considers is due to the Sub-Sub-Contractor and the basis on which such amount is calculated (the "Payment Notice").
- 7.4. If the Sub-Contractor intends to pay less than the sum stated as due in the Payment Notice (or, if no Payment Notice has been served by the Sub-Contractor, the sum stated as due in the Sub-Sub-Contractor's relevant application), the Sub-Contractor shall serve on the Sub-Sub-Contractor no later than one (1) day before the final date for payment a notice specifying the sum the Sub-Contractor considers is due to the Sub-Sub-Contractor on the date the notice is served and the basis on which that sum is calculated (the "Pay Less Notice"). The Sub-

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- Contractor shall then pay to the Sub-Sub-Contractor the sum specified in the Pay Less Notice by the final date for payment.
- 7.5. Notwithstanding any other provision of the Sub-Sub-Contract, no further sum shall become due to the Sub-Sub-Contractor under the Sub-Sub-Contract, moreover the Sub-Contractor need not pay any sum that has become due.
- 7.6. Insofar as the Sub-Contractor has given or gives a Pay Less Notice in accordance with clause 7.4; or
- 7.7. If the Sub-Sub-Contractor, after the last date on which a Pay Less Notice could be given by the Sub-Contractor in respect of that sum, has become insolvent within the meaning of clause 7.7.
- 7.8. In the event that the Contractor or any person or body from whom the Sub-Contractor or the Contractor might expect to receive payment directly or indirectly in respect of the Sub-Sub-Contract Works is insolvent within the meaning in clause 7.7. the Sub-Contractor shall not be obliged, whether under the express or implied terms of the Sub-Sub-Contract or at common law or in any other way to make payment as provided for by the Sub-Sub-Contract unless the Sub-Contractor shall have already received from the Contractor such other person or body an actual money payment which expressly included specified amounts which were paid in the name of works encompassed within the Sub-Sub-Contract and those specified amounts.
- 7.9. For the purposes of clauses 7.5, 7.6 and 11.1.4 "insolvent" shall have the meaning ascribed to it in section 113 of the Housing Grants, Construction and Regeneration Act 1996 (or any amendment or re-enactment thereof).
- 7.10. Any payments to be made under clause 7 shall be subject to the deduction of the Retention Percentage. Any deduction must be specified in the Sub-Contractor's Payment or Pay Less Notice in accordance with clauses 7.3 and/or 7.4. Retention shall be released as follows; first moiety, 65 days from the date of the certificate of practical completion of the Sub-Sub-Contract Works; from this date, all Sub-Sub-Contractor warranty and guarantee obligations will commence for the Defects liability Period stated in the Sub-Sub-Contract. Second moiety, 65 days from the date of the expiry of the Defects Correction Period, provided that all defects have been made good and all warranty and guarantee obligations have been met and fulfilled to the full and complete satisfaction of the Sub-Contractor along with the full release of retention by the Contractor to the Sub-Contractor.
- 7.11. In the event of the Sub-Contractor failing to pay any sum due to the Sub-Sub-Contractor by the final date for payment, the Sub-Contractor shall pay to the Sub-Sub-Contractor, as a substantial remedy, interest on such overdue sum at the rate of 1% per annum above the base rate of Bank of England at the final date for payment.
- 7.12. It is condition precedent to payment that the Sub-Sub-Contractor shall provide all necessary information including his Unique Tax Reference and details of his business status to enable the Sub-Contractor to determine the Sub-Sub-Contractor's eligibility for gross or net payments under the Construction Industry Scheme 2007 ("CIS"). The Sub-Sub-Contractor shall indemnify the Sub-Contractor against any cost, loss, expense, damage, claim or other liability which the Sub-Contractor may sustain or incur as a consequence of any breach or non-compliance by the Sub-Sub-Contractor with the CIS.
- 7.13. It is a condition precedent to payment by the Sub-Contractor under the Sub-Sub-Contract that the Sub-Sub-Contractor shall have properly executed the Sub-Sub-Contract, in all respects, and delivered same to the Sub-Contractor.
- 8. Right of Suspension**
- 8.1. Where a sum due under the Sub-Sub-Contract is not paid in full by the final date for payment and no Pay Less Notice has been served, the Sub-Sub-Contractor has the right (without prejudice to any other right or remedy) to suspend performance of any or all of his obligations under the Sub-Sub-Contract.
- 8.1.1. The right may not be exercised without first giving to the Sub-Contractor at least fourteen days' notice of intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance.
- 8.1.2. The right to suspend performance ceases when the Sub-Contractor makes payment in full of the amount outstanding.
- 8.1.3. Any period during which performance is suspended in pursuance of the right conferred by this clause shall be disregarded in computing for the purposes of any contractual time limit the time taken, by the party exercising the right or by a third party, to complete any work directly or indirectly affected by the exercise of the right. Where the contractual time limit is set by reference to date rather than a period, the date shall be adjusted accordingly.
- 9. Indemnity and Insurance**
- 9.1. The Sub-Sub-Contractor shall indemnify and keep indemnified the Sub-Contractor against and shall effect and maintain policies of insurance in respect of any liability, loss, expense, demand, claim, or proceedings whatsoever in respect of personal injury to or death of any injury or damage to property real or personal however arising, whether directly or indirectly, out of or connection with the performance of the Sub-Sub-Contract, except to the extent that the same is due to any act or omissions or default of the Sub-Contract or any person for whom the Sub-Contractor is responsible.
- 9.2. The Sub-Sub-Contractor shall indemnify and keep indemnified the Sub-Contractor against and shall effect and maintain policies of insurance in respect of all claims for damages and/or compensation payable at law or in consequence of any accident or injury to any person in the Sub-Sub-Contractor's employment save and expect an accident or injury resulting from any act or omissions or default of the Sub-Contractor's agents or servants (which expressions shall not include the Sub-Sub-Contractor).
- 9.3. The Sub-Sub-Contractor shall be responsible for and shall effect insurance on the Sub-Sub-Contract Works and the Sub-Sub-Contractor's materials (including Sub-Sub-Contractor's materials delivered to site for incorporation into the Sub-Sub-Contractor Works), temporary buildings, tool, plant, machinery and construction equipment.

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- 9.4. The Sub-Sub-Contractor shall provide to the satisfaction of Sub-Contractor documentary proof that the Sub-Sub-Contractor has effected such insurances and indemnities as are required under this clause 9.
10. **Provision of Facilities**
- 10.1. Unless specifically agreed in writing to the contrary, the Sub-Sub-Contractor is, at the Sub-Sub-Contractor's own expense, to: -
- 10.1.1 Provide all necessary supervision, scaffolding, tools, equipment, tackle, site accommodation and other facilities necessary for the execution of the Sub-Sub-Contractor Works;
- 10.1.2 unload the Sub-Sub-Contractor's own materials, equipment and the like, safely store such items where necessary, and be responsible for any thereof;
- 10.1.3 clear the site of all the Sub-Sub-Contractor's plant, equipment, hutage, materials etc. on completion of the Sub-Sub-Contract Works;
- 10.1.4 Protect the Sub-Sub-Contract Works from any damage whatsoever, in so far as it is reasonable to do so in the circumstances.
- 10.2 The Sub-Contractor shall allow the Sub-Sub-Contractor to connect to any water or electricity supply provided by the Sub-Contractor for the Sub-Sub-Contractor's own use at a point and in manner determined by the Sub-Contractor. The Sub-Sub-Contractor shall be responsible for the payment of all charges for connection, disconnection, metering and consumption of water and/or electricity, incurred in the execution of the Sub-Sub-Contract Works.
- 11 **Determination**
- 11.1 The Sub-Contractor may forthwith, by written notice, determine the engagement of the Sub-Sub-Contractor under the Sub-Sub-Contract if the Sub-Sub-Contractor:
- 11.1.1 is in breach of the Conditions; or
- 11.1.2 is in breach or causes the Sub-Contractor to be in breach of Sub-Contract; or
- 11.1.3 has an administrative receiver, receiver and manager, administrator or similar person appointed over it or its assets or any part thereof; or
- 11.1.4 Becomes insolvent.
- 11.2 Where the Sub-Sub-Contractor's engagement under the Sub-Sub-Contract is determined pursuant to clause 11.1, then without prejudice to any other remedy the Sub-Contractor may have, the Sub-Contractor may engage other persons to carry out and complete the Sub-Sub-Contract Works and deduct the costs of so doing, in addition to any other expenses and direct loss and/or damage suffered by the Sub-Contractor as a result of the determination, from any payment due to the Sub-Sub-Contractor, or recover the costs from the Sub-Sub-Contractor if no such payment is due.
- 11.3 If the Sub-Contractor's employment under the Sub-Contract is determined for a reason other than set out in 11.1.2 before the Sub-Sub-Contractor has fully performed his obligations under the Sub-Sub-Contract then the employment of the Sub-Sub-Contractor may be determined by written notice forthwith by the Sub-Contractor and the Sub-Sub-Contractor shall be entitled to be paid in accordance with clause 7.
- 12 **Adjudication**
- 12.1 Either party may at any time refer any dispute arising under the Sub-Sub-Contract to adjudication.
- 12.2 The adjudicator shall be a person appointed by the President of the Royal Institution of Chartered Surveyors.
- 12.3 The adjudication provisions of the Scheme for Construction Contracts (England and Wales) Regulations 1998, as amended, shall be incorporated by reference into the Sub-Sub-Contract and the parties agree to abide by them, save that the appointed adjudicator shall also have the power to decide whether one party shall pay the other party's legal costs of the adjudication proceedings.
- 12.4 Without prejudice to any rights or remedies that may otherwise exist under the Sub-Sub-Contract, at law, or in equity, the decision of the adjudicator shall be binding so far as it relates to the dispute referred to the adjudicator until the dispute referred to the adjudicator is finally determined by legal proceedings.
- 13 **Joint Fire Code**
- 13.1 The Sub-Sub-Contractor shall comply with the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation published by the Building Contractors Confederation, and the Loss Prevention Council (the Joint Fire Code) which is current at the time of execution of Sub-Sub-Contract Works.
- 13.2 The Sub-Sub-Contractor shall also ensure compliance with the Joint Fire Code by his servant or agents or by any person employed or engaged by him upon or in connection with the Sub-Sub-Contract Works or any part thereof. The Sub-Sub-Contractor shall indemnify the Sub-Contractor in respect of the consequences of any breach by the Sub-Sub-Contractor of the Joint Fire Code.
- 14 **Bribery and Corruption**
- 14.1 The Sub-Sub-Contractor undertakes to protect the Sub-Contractor's standards of business practice at all times and to act in such a way as to uphold the Sub-Contractor's good name and reputation, and not to do or attempt to do any act or thing which is intended and/or which in fact causes any damage to or brings discredit upon the Sub-Contractor and/or which amounts to any offence under the Bribery Act 2010.
- 14.2 The Sub-Contractor shall be entitled by written notice forthwith to terminate the Sub-Sub-Contractor's engagement under the Sub-Sub-Contract or any other contract with the Sub-Contractor if the Sub-Sub-Contractor or any person engaged by him or acting on his behalf, shall have committed an offence under the Bribery Act 2010.
- 15 **Statutory and Other Obligations**
- 15.1 The Sub-Sub-Contractor shall at all times observe, perform and comply with all applicable statutory and other obligations and shall indemnify and keep indemnified the Sub-Contractor from and against all or any breach or non-compliance with or non-performance of any such obligations.

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- 16 **Applicable Law**
- 16.1 The law of England shall be the law applicable to the Sub-Sub-Contract and the parties shall submit to the jurisdiction of the English courts.
- 17 **Entire Agreement**
- 17.1 The Sub-Sub-Contractor and Sub-Contractor respectively acknowledge that the Sub-Sub-Contract is the entire understanding and agreement of and between the parties and supersedes any and all antecedent statement or representation. It shall not be varied except by instrument in writing of subsequent date duly executed by authorised representative of each party.
- 18 **Rights of Third Parties**
- 18.1 No provision of the Sub-Sub-Contract is intended to or does confer upon any third party any benefit or right enforceable at the option of that third party of any liability whatsoever on any third party.
- 19 **Clearance of Site**
- 19.1 The Sub-Sub-Contractor shall at all times keep the Sub-Contract Works and Sub-Sub-Contract Works free from waste material, excess material and rubbish and at completion shall leave the whole of the Sub-Sub-Contract Works clean and in a workmanlike condition to the satisfaction of the Sub-Contractor and the Contractor. The Sub-Sub-Contractor acknowledges the importance of maintaining a clean and tidy site in the interests of health and safety.
- 19.2 In advance of commencing the Sub-Sub-Contract Works, the Sub-Sub-Contractor shall provide details of all waste to be produced as result of the Sub-Sub-Contractor's activities for inclusion in the Sub-Contractor's waste management plan. The Sub-Sub-Contractor must obtain the Sub-Contractor's prior agreement in order to use any on-site waste management facilities (bins, skips etc.). If the Sub-Sub-Contractor intends to remove any waste from the site then in advance of removing such waste he shall provide the Sub-Contractor in writing with full details of the types of waste (including a description of the waste and the relevant six figure code taken from the Environment Agency's "List of Wastes"), the proposed waste management action, the identity of the person removing the waste, the waste carrier's licence(s) and registration number(s), the waste disposal site licence(s) and any other information required by the Sub-Contractor in order to comply with any applicable legislation relating to waste management. The Sub-Sub-Contractor shall provide a fully completed waste transfer or consignment note for hazardous waste prior to any such waste being removed from the site.
- 19.3 The Sub-Sub-Contractor shall indemnify the Sub-Contractor in respect of any damages or costs incurred in remedying a breach of this clause 19.
- 20 **Performance Bond, Parent Company Guarantee, Collateral Warranties and/or Tri-Partite Agreements**
- 20.1 If stated in the Sub-Sub-Contract; the Sub-Sub-Contractor shall provide upon written request:
- 20.1.1 a duly executed Performance Bond provided by a surety acceptable to the Sub-Contractor in the form provided within 7 days of a written request to do so; and/or
- 20.1.2 a Parent Company Guarantee in the form provided within 7 days of a written request to do so; and/or
- 20.1.3 a duly executed Collateral Warranty or Warranties in favour of the Contractor, Employer and any purchaser, funder or tenant (it is acknowledged that there may be multiple beneficiaries in each of these categories) of the Works or any other third party requested by the Sub-Contractor in the form provided and/or
- 20.1.4 a duly executed Tri-Partite Agreement in favour of the Contractor, in the form provided.

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