

The Standard Form of Building Sub-Contract

2019 Edition

Issued by



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2019 Edition
Issued by AIAC

ARTICLES OF AGREEMENT

THIS SUB-CONTRACT AGREEMENT is made on the day of
year

Between

.....
of (or whose registered office is situated at)
.....
.....
..... (hereinafter called the “**Contractor**”) of
the first part;

And

.....
of (or whose registered office is situated at)
.....
.....
(hereinafter called the “**Sub-Contractor**”) of the second part.

WHEREAS

- A.** is the Employer of the Project known
as.....
.....
..... situated at
.....(hereinafter called the “**Site**”).
- B.** The Employer has entered/will enter into a contract with the Contractor
(hereinafter called the “Main Contract”) for the execution and completion of the

Main Contract Works described as
.....
.....

- C.** As part of the execution and completion of the Main Contract Works, the Contractor is obliged to execute and complete
..... (hereinafter called the “Sub-Contract Works”). The Employer has caused the following Sub-Contract Drawings identified as, the Specification, and Sub-Contract Bills showing and describing the Sub-Contract Works to be prepared by or under the direction of his Contract Administrator and Consultant.
- D.** Pursuant to the Main Contract, the Contract Administrator, with the approval of the Employer, has nominated the Sub-Contractor abovenamed to undertake the Sub-Contract Works upon the terms and conditions contained herein.
- E.** The Contractor and the Sub-Contractor agree for the Sub-Contractor to carry out and complete the Sub-Contract Works upon the terms and conditions contained herein.
- F.** The Sub-Contractor has had reasonable opportunity to examine, and have full knowledge of the parts of the Main Contract which are relevant and necessary for the execution and completion of the Sub-Contract Works.

Now the Employer and the Contractor agree as follows:

Article 1

Sub-Contractor's Obligations

In consideration of the payments to be made by the Contractor to the Sub-Contractor as mentioned in this Sub-Contract, the Sub-Contractor agrees with the Contractor to execute and complete the Sub-Contract Works in conformity with the provisions of this Sub-Contract.

Article 2

Sub-Contract Documents

The following documents shall be deemed to form, and be read and construed as part of the Sub-Contract Documents:

- (a) The Letter of Appointment;
- (b) This Articles of Agreement;
- (c) The Sub-Contract Conditions and the Appendix;
- (d) The Employer's Requirements, which are relevant to the Sub-Contract Works;
- (e) The Specification;
- (f) The Sub-Contract Drawings;
- (g) The Sub-Contract Bills and Schedule of Rates*;
- (h); and
- (i) Any other documents incorporated in the Sub-Contract Documents, unless expressly stated to be excluded in any of the Sub-Contract Documents.

[] Delete or amend as may be necessary or required by the Parties.*

The Sub-Contract Documents are to be read as mutually explanatory of one another. In the event of any conflict or inconsistency between any of the Sub-Contract Documents, the priority in the interpretation of such documents shall be in the descending order as listed above.

Article 3.1

Contract Sum

The Contractor will pay the Sub-Contractor the sum of
..... (RM.....) or such other
sum as shall become payable under the Sub-Contract and be paid in the manner prescribed
by the Sub-Contract. Sub-Contract Sum means—

- (a) where the Contractor accepted a lump sum, a fixed firm lump sum. Save as otherwise expressly provided in the Sub-Contract, the Sub-Contract Sum which is agreed on a fixed firm lump sum basis shall not be adjusted or altered in any way whatsoever ("Lump Sum"). Any errors in the prices and rates in the Schedules shall be corrected and/or rationalised by the Contractor, with the approval of the CA, without any changes to the lump sum before signing of the Sub-Contract. Notwithstanding Article 2, for the purposes of works executed based on lump sum, the quantities in the Bill of Quantities and the prices and rates in the Schedules shall be used for reference only and shall not form part of the Sub-Contract. Unless otherwise provided, the fixed firm lump sum price is deemed to include all ancillary and other works and expenditure, which may or may not have been specifically mentioned or described in the Sub-Contract Documents, but which are indispensably or contingently necessary to be carried out to bring the Sub-Contract Works to completion or to overcome difficulties before completion in accordance with the Sub-Contract;
- (b) where the Contractor accepted the Sub-Contract Works (or any part of the Sub-Contract Works) to be valued based on re-measurement, and unless otherwise stated or amplified by the Parties, the method of measurement shall be in accordance with the Bill of Quantities and the applicable Schedules. The quantities of the works executed shall be subject to remeasurement. For the avoidance of doubts, any error in description, quantity or omission of items in the Sub-Contract Bills shall not vitiate the Sub-Contract and shall be rectified by the Contractor, with the approval of the CA. Unless otherwise expressly stated in the Sub-Contract, the sum for the works executed shall be ascertained based on the rules as follows:
- (i) where work is of similar character to the work as specified in the Sub-Contract, is executed under similar conditions, and the quantity of the work is not changed by more than (*if none is stated, then 12%) from the quantity of this item of work in the Sub-Contract, the rates and prices in the Bill of Quantities and applicable Schedules shall determine the valuation;
 - (ii) where work is of a similar character to the work set out in the Sub-Contract but is not executed under similar conditions or, is executed under similar conditions but the quantity of work is changed by more than (*if none is stated, then 12%) of the quantity of this item of work specified in the Sub-Contract, the rates and prices in the Bill of Quantities and applicable Schedules shall be the basis for determining the valuation which shall include a fair adjustment of the rates to consider such difference;
 - (iii) where work is of a different character to the work as set out in the Sub-Contract, the valuation shall be at fair market rates and prices determined by the Contractor, with the approval of the CA;
 - (iv) where work cannot be properly measured and valued in accordance with Articles 3.1(a), (b) or (c), the Sub-Contractor shall be allowed the daywork rates specified in the Bill of Quantities and applicable Schedules, or where there are no such daywork rates in the Sub-Contract Bill of Quantities and applicable Schedules, the actual cost to the Sub-Contractor of his materials, transport and labour for the work concerned, plus fifteen (15) percent, which percentage shall include the use of all tools, plant, scaffolding, supervision, overheads, profit and similar charges. In either case, the Sub-Contractor shall

provide the vouchers specifying the time spent on a daily basis in carrying out the works, the workers' names and designation, the materials, additional construction plant, scaffolding and transport used which shall be signed by the Site Agent and verified by the Site Staff and shall be delivered to the Contractor at weekly intervals (or any other period as reasonably determined by the Contractor, with the approval of the CA) with the final records delivered not later than fourteen (14) Days after the work has been completed. Where the Sub-Contractor fails to provide the vouchers as aforesaid, the Contractor, with the approval of the CA, may at his discretion proceed to value the same based on the information available to him;

or

- (c) where the Contractor accepted a lump sum and re-measurement, the aggregate of the sums referred to in paragraphs (a) and (b) above;

including Provisional Sums but excluding any variations which may be required to be made under the Sub-Contract.

Article 3.2

Valuation of the Sub-Contract Works

Types of Valuation	Amount and Details of Scope of the Sub-Contract Works
Fixed Firm Lump Sum Price ...	
Remeasurement according to quantities and unit rates and prices set out in the Schedules	
Or, any other type of valuation as agreed between the Parties ...	

Article 4

Contract Administrator ("CA")

The term 'Contract Administrator' or 'CA' referred to in the Sub-Contract means
.....
of

If no such Person named herein as the CA, then the Architect shall be the CA, and all references to CA in this Sub-Contract shall refer to the Architect. Except where otherwise provided in the Sub-Contract, no CA so appointed shall be entitled to disregard or overrule any certificate or opinion or decision or approval or instruction given by the preceding CA. In the event of his death or ceasing to be the CA for the purpose of this Sub-Contract, such other Person as the Employer shall nominate and appoint within twenty-eight (28) Days therefrom.

Article 5

Architect

The term 'Architect' referred to in the Sub-Contract means
.....
of

or in the event of his death or ceasing to be the Architect for the purpose of this Sub-Contract, such other Person as the Employer shall nominate and appoint within twenty-eight (28) Days therefrom. The Architect shall perform the duties expected of his profession. The CA may from time to time delegate such duties and authority of the CA to the Architect as the CA deems fit.

Article 6

Engineer

The term 'Engineer' in the Sub-Contract means:

(a) Structural & Civil Engineer:
.....
of
.....
.....

(b) Mechanical & Electrical Engineer:
.....
of
.....
.....

(c)
of
.....
.....

or in the event of his death or ceasing to be the Engineer for the purpose of this Sub-Contract, such other Person as the Employer Engineer shall nominate and appoint within twenty-eight (28) Days therefrom. The Engineer shall perform the duties expected of his profession. The CA may from time to time delegate such duties and authority of the CA to the Engineer as the CA deems fit.

Article 7

Quantity Surveyor

The term 'Quantity Surveyor' in the Sub-Contract means
.....

of
.....
.....

or in the event of his death or ceasing to be the Quantity Surveyor for the purpose of this Sub-Contract, such other Person as the Employer shall nominate and appoint within twenty-eight (28) Days therefrom. The Quantity Surveyor shall perform the duties expected of his profession. The CA may from time to time delegate such duties and authority of the CA to the Quantity Surveyor as the CA deems fit.

Article 8

Specialist Consultant

The term 'Specialist Consultant' in the Sub-Contract means:

(a)
of
.....
.....

(b)
of
.....
.....

(c)
of
.....
.....

or in the event of his death or ceasing to be the Specialist Consultant for the purpose of this Sub-Contract, such other Person as the Employer shall nominate and appoint within twenty-eight (28) Days therefrom. The Specialist Consultant shall perform the duties expected of his profession. The CA may from time to time delegate such duties and authority of the Architect to the Specialist Consultant as the CA deems fit.

Article 9

Definitions

In the Sub-Contract Documents, the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

9.1 **AIAC** means the Asian International Arbitration Centre (Malaysia), a successor of the Kuala Lumpur Regional Centre for Arbitration;

9.2 **Appendix** means the Appendix to the Sub-Contract Conditions;

- 9.3 **Appropriate Authority** means any statutory authority having jurisdiction over the Sub-Contract Works;
- 9.4 **Architect** means the Person named in Article 5 and shall be a Professional Architect or any other form of practice registered under the Architect Act 1967 and approved by the Board of Architects, Malaysia;
- 9.5 **Articles** means the articles in the Articles of Agreement;
- 9.6 **As-Built Drawings** means as-built drawings for works designed (including alternative design) by the Sub-Contractor and any other as-built drawings required to be provided as specified in the Sub-Contract Documents;
- 9.7 **Certificate of Extension of Time** means the certificate issued by the Contractor under Clause 19.0;
- 9.8 **Certificate of Making Good Defects** means the certificate issued under the Main Contract Conditions;
- 9.9 **Certificate of Non-Completion** means the certificate issued by the Contractor under Clause 15.1;
- 9.10 **Certificate of Practical Completion of Sub-Contract Works** means the certificate issued by the CA under Clause 13.1;
- 9.11 **CIPAA** means Construction Industry Payment and Adjudication Act 2012 [Act 746];
- 9.12 **Clause** means the clauses or the sub-clauses (as the case may be) in the Sub-Contract Conditions;
- 9.13 **Conditions** means the Sub-Contract Conditions, including all revisions, amendments and/or amplifications as may be agreed by the Parties and incorporated as part of these Sub-Contract Conditions;
- 9.14 **Confirmation of CA's Instruction** or **CCI** means the written confirmation of CA's Instructions issued by the Contractor pursuant to the provisions of the Main Contract Conditions;
- 9.15 **Consultant** means the Architect, Engineer, Quantity Surveyor and/or Specialist Consultant as appropriate;
- 9.16 **Contract Administrator** or **CA** means the Person named in Article 4 as the Contract Administrator or other Person from time to time appointed in writing by the Employer to be the Contractor Administrator and notified in writing to the Contractor by the Employer. In the event that no such Person is appointed by the Employer or named in Article 4 as the Contract Administrator, then the Architect shall be the Contract Administrator for the purposes of the Contract;

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- 9.17 **Contractor** means the Party named in the second part of the Articles of Sub-Contract Agreement and includes the Contractor's legal successors or personal representatives or any Person to whom the rights and obligations of the Contractor have been transferred with the agreement of the Employer;
- 9.18 **Contractor's All Risks Insurance** ('CAR Insurance') means an insurance policy which provides coverage against any physical loss or damage to work executed and materials and goods under a standard CAR Insurance policy. The minimum insurance risks are specified in the Main Contract Conditions. Any additional insurance risks in addition to those stated in these Conditions that are required to be covered under the CAR Insurance shall be stated in the Sub-Contract Bills;
- 9.19 **Day** means calendar day including the weekly day of rest but excluding gazette holidays applicable to the location where the Sub-Contract Works is carried out;
- 9.20 **Defects** means defects, shrinkages or other faults due to materials or workmanship not in accordance with the sub-Contract Contract, and/or due to any faulty design (if any) undertaken by the Sub-Contractor;
- 9.21 **Defects Liability Period** means the same Defects Liability Period as agreed by the Contractor and the Employer under the Main Contract;
- 9.22 **Employer** means the Party named in the Articles of Sub-Contract Agreement and includes the Employer's legal successors or personal representatives or any Person to whom the rights and obligations of the Employer have been transferred;
- 9.23 **Engineer** means the Person named in Article 6 and shall be a professional Engineer or any other form of practice registered under the Registration of Engineers Act 1967 and approved by the Board of Engineers, Malaysia;
- 9.24 **EOT** means extension of time;
- 9.25 **Exceptionally Adverse Weather Condition** means a condition of weather on a day before the Sub-Contract Completion Date for the whole of the Sub-Contract Works in the area of or nearby the Site within the particular Month the value of which, by comparison with the weather data, is shown to occur on average less frequently than once in ten years. Only the difference between the weather measurement and the weather which the weather data show to occur on average less frequently than once in ten years is taken into account in assessing a Time Impact Event;
- 9.26 **Final Account** means the documents showing the adjustment of the Sub-Contract Sum issued under Clause 24.6;
- 9.27 **Final Certificate** means the final certificate issued by the CA under the Main Contract Conditions;
- 9.28 **Force Majeure** means an exceptional event or circumstance which:
(a) is beyond a Party's control;

- (b) such Party could not reasonably have provided against before entering into the Sub-Contract;
- (c) having arisen, such Party could not reasonably have avoided or overcome; and
- (d) is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions in Article 9.28(a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
- (iii) riot, commotion, disorder, strike or lockout by Persons other than the personnel, servants, agents, and employees of the Contractor and Sub-Contractors;
- (iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Sub-Contractor's use of such munitions, explosives, radiation or radio-activity; and
- (v) natural catastrophe such as earthquakes, hurricane, typhoon or volcanic activity.

9.29 **Interim Certificate** means the progress payment certificate issued by the CA under the Main Contract Conditions;

9.30 **Letter of Appointment** means the letter from the Contractor to the Sub-Contractor accepting him as the Nominated Sub-Contractor;

9.31 **Limit of Liquidated Damages** means the amount as stated in the Appendix under Clause 15.2;

9.32 **Limit of Retention Fund** means the amount as stated in the Appendix under Clause 24.4;

9.33 **Lump Sum** means a fixed firm lump sum price for the Sub-Contract Works as defined in Article 3.1(a);

9.34 **Main Contract** means the contract between the Employer and the Contractor for the Main Contract Works, in respect of which the Sub-Contract Works form a part;

9.35 **Main Contract Conditions** means the Conditions of the Main Contract;

9.36 **Main Contract Works** means the works described in the Main Contract;

9.37 **Month** means calendar month;

9.38 **Party** (or **party**) means the Contractor or the Sub-Contractor, as the context requires;

9.39 **Performance Bond** means the bonds required to be provided by the Sub-Contractor as a security for the due performance of the Sub-Contract under Clause 28;

10 *The Standard Form of Building Sub-Contract*

- 9.40 **Period of Honouring Certificate** means the Period of Honouring Certificate as stated in the Appendix under Clause 30.1 of the Main Contract Conditions;
- 9.41 **Person** (or **person**) means a natural person, sole proprietorship, firm (partnership) or body corporate;
- 9.42 **Practical Completion** or **Practically Completed** means the state of completion described in Clause 13.1;
- 9.43 **Provisional** or **Provisional Quantity** means the estimated quantities of work provided in the Sub-Contract Bills for work to be executed or for the supply of any materials and goods which cannot be determined or detailed at the time;
- 9.44 **Provisional Sum** means a sum included in the Sub-Contract and so designated in the Sub-Contract Bills for the execution of any part of the Sub-Contract Works or for the supply of goods and materials, or for contingencies, which sum may be used in whole or in part, or not at all, on the instruction of the CA. The Sub-Contractor shall be entitled to only such amounts in respect of the Works, supply or contingencies to which such Provisional Sum relate as the Contract Administrator shall determine in accordance with Clause 11.5 of the Main Contract Conditions;
- 9.45 **Quantity Surveyor** means the Person named in Article 7 and shall be a Registered Quantity Surveyor or any other form of practice registered under the Quantity Surveyors Act 1967 and approved by the Board of Quantity Surveyors, Malaysia;
- 9.46 **Retention Fund** (or **Retention Money** or **Retention Monies**) means the sum retained in accordance with Clause 24.4;
- 9.47 **Schedules** means the document(s) entitled schedules, completed by the Sub-Contractor and included in the Sub-Contract. Such document may include the Bill of Quantities, data, lists, and schedule of rates and/or prices;
- 9.48 **Schedule of Rates** means any documents however entitled or described comprised in the Schedules and which is intended to be used for the purpose of valuing Variations;
- 9.49 **Service Provider** means any company or body authorised to provide water, electricity, telephone, sewerage and other related services;
- 9.50 **Site** means the Site designated as such in the Articles of Agreement and includes the land or other places on, under, in or through which the Sub-Contract Works are to be executed and any other land or places provided by the Contractor and accepted by the Employer as forming part of the Site;
- 9.51 **Site Agent** means the Person appointed by the Sub-Contractor under Clause 8.1;
- 9.52 **Site Staff** means the Person appointed by the Employer under Clause 10.1 of the Main Contract Conditions;

- 9.53 **Specialist Consultant** means the Person named in Article 8 and such Person shall be a Specialist Consultant appointed by the Employer for a designated scope of professional work;
- 9.54 **Specification** means the document entitled specification, as included in the Sub-Contract, and any additions and modifications to the specification in accordance with the Sub-Contract. Such document specifies the Sub-Contract Works;
- 9.55 **Sub-Contract or Sub-Contract Documents** means the documents as described in Article 2;
- 9.56 **Sub-Contract Bills** comprise the following documents:
- (a) Form of Tender;
 - (b) Instructions to Tenderers;
 - (c) Conditions of Tendering;
 - (d) Preambles;
 - (e) Preliminaries;
 - (f) Summary of the Tender (or Sub-Contract Sum);
 - (g) Schedules; and
 - (h) Other documents included as part of the Sub-Contract Bills.

The documents in the Sub-Contract Bills are to be read as mutually explanatory of one another. In the event of any conflict or inconsistencies between any of the documents in the Sub-Contract Bills, the priority in the interpretation of such documents shall be in the descending order as listed above.

- 9.57 **Sub-Contract Completion Date** means the date(s) for completion of the Sub-Contract Works stated in the Appendix under Clauses 14.1 and 14.2 or the last extended date granted under Clause 19.0;
- 9.58 **Sub-Contract Conditions** means the conditions of the Sub-Contract;
- 9.59 **Sub-Contract Date of Commencement** means the date(s) fixed and stated in the Appendix under Clauses 14.1 and 14.2. If no date is specified, the Sub-Contract Date of Commencement shall be fourteen (14) Days from the date of the Letter of Appointment;
- 9.60 **Sub-Contract Sum** means the sum stated in Article 3.1;
- 9.61 **Sub-Contract Works Programme** means the works programme described in Clause 4.4;
- 9.62 **Sub-Contractor** means the Party names in the second part of the Articles of Sub-Contract Agreement and includes the Sub-Contractor's legal successors or personal representatives or any Person to whom the rights and obligations of the Sub-Contractor have been transferred with the agreement of the Contractor;
- 9.63 **Time Impact Events** means any one of the events for extension of time set out in Clause 19.6;

9.64 **Unforeseeable** means not reasonably foreseeable by an experienced contractor at the time of entering into this Sub-Contract;

9.65 **Variation** means changes made to the Sub-Contract Works as defined in Clause 10.1.

Article 10

Meanings

Unless the context requires otherwise, the following shall apply for the purposes of interpretation of the Sub-Contract:

- (a) words of one gender include the other gender, and words indicating Persons or Parties include corporations and other legal entities;
- (b) a reference to any Act of Parliament and its subsidiary legislations is deemed to include references to any subsequent amendments, consolidation or replacement of the Acts and the subsidiary legislations;
- (c) words importing the singular also include the plural and *vice versa* where the context requires; and
- (d) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning.

IN WITNESS WHEREOF the Parties hereto have entered into this Sub-Contract on the day and year first above written:

Signed for and on behalf of
the **Contractor**

}

Signature

}

Name

In the presence of:

Signature

Name

Signed for and on behalf of
the **Sub-Contractor**

}

Signature

}

Name

In the presence of:

Signature

Name

THE CONDITIONS OF SUB-CONTRACT

1.0 SUB-CONTRACTOR'S GENERAL OBLIGATIONS

Completion of Sub-Contract Works

- 1.1 In accordance with the Sub-Contract, the Sub-Contractor shall:
- 1.1(a) carry out and complete the Sub-Contract Works;
 - 1.1(b) remedy any defects in the Sub-Contract Works;
 - 1.1(c) be obliged to provide plant, machinery, labour, materials, goods, services and other things required and necessary for the execution and completion of the Sub-Contract Works.

Site Operations, Temporary Works and Methods of Construction

- 1.2 Save for any temporary works or methods of construction which are designed by the Consultant and provided by the CA, the Sub-Contractor shall be responsible for:
- 1.2(a) the adequacy, stability and safety of all site operations, temporary works and all methods of construction of the Sub-Contract Works; and
 - 1.2(b) submitting details of the arrangements and methods which the Sub-Contractor proposes to adopt for the execution of the Sub-Contract Works, when requested by the CA.

Notwithstanding any checks carried out by or approval by the CA of such proposed arrangements and methods, the Sub-Contractor shall not be relieved of his responsibilities under this Clause.

Sub-Contractor's Design, Responsibilities and Design Guarantee Bond

- 1.3
- 1.3(a) The Sub-Contractor shall be responsible for its part of the Sub-Contract Works, either by Specification under the Sub-Contract to be designed by the Sub-Contractor or by his proposal for any alternative design, and shall ensure that:
 - (i) completed works are fit for their purposes; and
 - (ii) the design and the execution thereof comply with the laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider.
 - 1.3(b) Approval from the CA and the Contractor of any design or alternative design undertaken by the Contractor is necessary prior to its implementation. Notwithstanding such approval and acceptance, the Sub-Contractor remains fully responsible for his design, alternative design and the execution of the Sub-Contract Works.

- 1.3(c) The Sub-Contractor retains the copyright of its design and its alternative design.

However, the Contactor and Employer are entitled to use the design and alternative design for the completion, maintenance, repair and future extension of the Sub-Contract Works. The Sub-Contractor shall be deemed to have given the Contractor and Employer a non-exclusive royalty free license for such use which shall survive any determination of the employment of the Sub-Contractor under the Sub-Contract. Such license may be assigned as part of any future sale or transfer of the Sub-Contract Works by the Contractor and Employer.

- 1.3(d) The Sub-Contractor:

- (i) shall provide an on-demand Design Guarantee Bond for the said part of the Sub-Contract Works which is designed by the Sub-Contractor issued by an approved licensed bank, insurance company or financial institution of the sum equivalent to 5% of the value of the said part of the Sub-Contract Works, the sum of which shall be determined by the Contractor and approved by the CA. The Design Guarantee Bond shall be in the form as approved by the Contractor and submitted to the Contractor upon or before the issuance of the Certificate of Practical Completion of the Sub-Contract Works. Such Design Guarantee Bond shall remain valid until three (3) months after the issuance of the Certificate of Making Good Defects; or
- (ii) alternatively, may opt for a Design Guarantee Sum whereby deductions of 5% from interim payments subsequent to the commencement of the said part of the Sub-Contract Works until the total amount deducted aggregate to a sum equivalent to 5% of the value of the said part of the Sub-Contract Works. The amount deducted shall be retained by the Contractor until three (3) months after the issuance of the Certificate of Making Good Defects.

- 1.3(e) The Sub-Contractor shall provide to the Employer a 5-year design warranty, or a design warranty for any other duration as may be agreed by the Employer and the Contractor, for the said part of the Sub-Contract Works before the expiry of the Defects Liability Period in the terms as approved by the CA and the Employer, commencing from the day after the Defects Liability Period. If the Sub-Contractor fails to provide the design warranty in accordance with this Clause, then without prejudice to any other rights and remedies which the Contractor may possess, the Contractor may:

- (i) in the case where the Sub-Contractor has provided the Design Guarantee Bond, request the Sub-Contractor to extend the duration of the Design Guarantee Bond to expire on a date as may be instructed by the CA. If the Sub-Contractor fails to comply within seven (7) days from the date of the Contractor's request, the Contractor shall notify the CA and the Employer of the non-compliance before calling on the Design Guarantee Bond; or

- (ii) in the case where the Sub-Contractor has opted for the Design Guarantee Sum, withhold the release of the Design Guarantee Sum until the design warranty is provided by the Sub-Contractor.
- 1.3(f) If any defect or damage shall occur to that particular part of the Sub-Contract Works designed by the Sub-Contractor as a result of any defect, fault, insufficiency or inadequacy in the design including workmanship, materials or equipment which has become defective arising directly from design fault, then the Contractor shall be entitled to recover any loss, expense or damage suffered from the Design Guarantee Bond or the Design Guarantee Sum, as the case may be.

Discrepancy or Divergence between Sub-Contract Documents

- 1.4
 - 1.4(a) The Sub-Contractor shall use the Sub-Contract Documents and any other subsequent documents issued by the Contractor and CA to plan the Sub-Contract Works prior to their execution.
 - 1.4(b) If the Sub-Contractor finds any discrepancy or divergence between any of the Sub-Contract Documents, or between the Sub-Contract Documents and any subsequent documents issued by the Contractor and CA, the Sub-Contractor shall immediately give a written notice of such discrepancy or divergence to the Contractor, with a copy to the CA, prior to the commencement of the affected works.
 - 1.4(c) Upon receipt of such written notice, the Contractor shall request the CA to issue a written instruction within a period which would not materially delay the progress of the affected works, having regard to the Sub-Contract Completion Date. Such discrepancy or divergence shall not vitiate the Sub-Contract.

Safety Procedures

- 1.5 The Sub-Contractor shall:
 - 1.5(a) comply with all applicable safety regulations;
 - 1.5(b) take all necessary measures to ensure the safety of all Persons entitled to be on the Site;
 - 1.5(c) provide fencing, lighting, guarding and watching of the Sub-Contract Works until Practical Completion of the Sub-Contract Works; and
 - 1.5(d) provide all necessary temporary works (including roadways, footways, guards and fences) for the execution of the Sub-Contract Works, for the use and protection of the public and of owners and occupiers of adjacent land.

Avoidance of Interference

- 1.6
 - 1.6(a) The Sub-Contractor shall not interfere with:
 - (i) the convenience of the public; or
 - (ii) the access to and use and occupation of all roads and footpaths to which there is a public or private right of use or access.

- 1.6(b) The Sub-Contractor shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such interference.

Maintenance of Access Route

- 1.7 The Sub-Contractor shall use all necessary efforts to prevent any road or bridge from being damaged by the Sub-Contractor's traffic, and his representative, staff, personnel and workmen.

Protection of the Environment

- 1.8 1.8(a) The Sub-Contractor shall take all necessary measures to ensure that any activity connected with or engaged upon the execution of the Sub-Contract Works does not inflict environmental damage and nuisance to people and property.
- 1.8(b) The Sub-Contractor shall ensure that emissions, surface discharges and effluent from the Sub-Contractor's activities shall not exceed the levels stated in the Contract Documents or prescribed by applicable laws, by-laws, regulations, terms and conditions of any Appropriate Authority and Service Provider.

Progress Reports

- 1.9 1.9(a) Unless otherwise informed by the Contractor, each monthly progress reports shall be prepared by the Sub-Contractor and submitted to the Contractor in six (6) copies. The first report shall cover the period up to the end of the first calendar month following the Sub-Contract Date of Commencement. Reports shall be submitted monthly thereafter, each within seven (7) Days after the last day of the period to which it relates. Reporting shall continue until the issuance of the Certificate of Practical Completion of Sub-Contract Works.
- 1.9(b) Unless otherwise instructed by the Contractor, each report shall include (amongst others):
- (i) detailed descriptions of progress, including any Sub-Contractor's design, procurement and mobilisation of any plant, equipment and material, and the construction, erection, testing and commissioning of the Sub-Contract Works both in respect of the Sub-Contractor;
 - (ii) the status of manufacture of any major equipment, material or part of the Sub-Contract Works as may be specifically required by the CA (and informed to the Sub-Contractor);
 - (iii) the details of the Sub-Contractor's personnel, workmen, plant, materials and equipment mobilised for the execution of the Sub-Contract Works;
 - (iv) a list of notices given for any claim for extension of time and loss and/or expense under the Sub-Contract;

- (v) safety statistics, including details of any hazardous incidents and activities relating to environmental issues and public relations;
 - (vi) any outstanding requests for instructions or information given to the Contractor; and
 - (vi) comparisons of actual and planned physical and financial progress, with details of any matters which may jeopardise the timely completion of the Sub-Contract Works in accordance with the Sub-Contract, and the measures being (or to be) adopted to overcome such actual or potential delays.
- 1.9(c) The submission of progress reports by the Sub-Contractor shall not under any circumstances be construed as being the notice or application for EOT as required under Clause 19.0.

Co-operation, Order and Timing for Carrying Out the Sub-Contract Work

- 1.10
- 1.10(a) The Sub-Contractor acknowledges that there will be other works on Site (whether employed by the Contractor or Employer) working concurrently with and in close proximity to the Sub-Contractor. The Sub-Contractor shall give its full co-operation at all times to ensure that all works on Site are fully coordinated by the Contractor in view of their concurrent and sequential nature.
 - 1.10(b) The Contractor may issue directions to the Sub-Contractor with regard to the order and timing of carrying out the Sub-Contract Works. In the event of any disagreement with the Contractor concerning such direction, the Sub-Contractor shall immediately notify the Contractor in writing (with a copy to the CA) giving reasons for his disagreement. Upon receipt of the notice, the Contractor may (after consultation with the CA) confirm his previous direction or revise his previous direction as to the order and timing of carrying out the Sub-Contract Works.
 - 1.10(c) Notwithstanding any dispute after receiving the Contractor's response under Clause 1.10(b), the Sub-Contractor shall without any further delay comply with the Contractor's direction or revised direction. For the avoidance of doubt, the Sub-Contractor's compliance shall be without prejudice to his rights and remedies which he may possess.

2.0 SUB-CONTRACTOR'S DUTIES, LIABILITIES AND BENEFITS IN CONNECTION WITH THE MAIN CONTRACT

Sub-Contractor's Duty to Comply with Relevant Main Contract Obligations

- 2.1 The Sub-Contractor shall observe, perform and comply with all the provisions and requirements of the Main Contract, insofar as they relate and apply to the Sub-Contract Works.

Indemnity to Contractor

- 2.2 The Sub-Contractor shall indemnify and hold harmless the Contractor against and from:
- 2.2(a) any breach, non-observance or non-performance by the Sub-Contractor, his servants, agents, workmen or personnel, which in turn, results in breach, non-observance or non-performance by the Contractor under the Main-Contract;
 - 2.2(b) any act or omission of the Sub-Contractor, his servants, agents, workmen or personnel which involves the Contractor in any liability to the Employer under the Main Contract.

Right to Sue in the Name of the Contractor

- 2.3
- 2.3(a) If requested by the Sub-Contractor, and so far as the law permits, the Contractor agrees to and will obtain for him the rights or benefits under the Main Contract which are applicable to the Sub-Contract Works.
 - 2.3(b) Any action taken by the Contractor in compliance with the Sub-Contractor's request shall be at the cost of the Sub-Contractor.
 - 2.3(c) Subject to the Sub-Contractor giving the Contractor such indemnity and security as the Contractor may reasonably require, the Contractor shall allow the Sub-Contractor to use the Contractor's name, and if necessary, join with the Sub-Contractor in any dispute resolution process against the Employer.

3.0 CA'S INSTRUCTIONS AND COMPLIANCE THEREOF

Compliance with CA's Instructions

- 3.1
- 3.1(a) Upon receipt of any CA's Instruction or issuance of any CA's Instruction affecting the Sub-Contract Works:
 - (i) the Contractor shall forthwith forward the said instruction to the Sub-Contractor, with any further direction in writing, to the Sub-Contractor for his action;
 - (ii) the Sub-Contractor shall forthwith comply with the instruction and such further directions issued by the Contractor.

Consent by Contractor for CA to Issue CA's Instructions Directly to the Sub-Contractor

- 3.2
- 3.2(a) All instructions to the Sub-Contractor shall be issued by or through the Contractor.
 - 3.2(b) The Contractor may:
 - (i) by a written notification, consent to the CA issuing any CA's instruction affecting the Sub-Contract Works directly to the Sub-Contractor. In that event, the Contractor shall request the CA

- to simultaneously extend a copy of the CA's instruction to the Contractor; and
- (ii) issue further directions in writing to the Sub-Contractor in connection with the CA's instruction.

Failure of Sub-Contractor to Comply with CA's Instruction

- 3.3 3.3(a) If within seven (7) Days or within such period as may be stipulated in the CA's Instruction and such further directions issued by the Contractor, the Sub-Contractor fails or refuses to comply with it, the Contractor, without prejudice to any other rights and/or remedies which he may possess, shall carry out the following steps:
- (i) make a written request to the CA to engage other Person to execute any work which may be necessary to give effect to such instruction; and
 - (ii) upon receiving the consent, proceed to engage such other Person to execute any work which may be necessary to give effect to such instruction.
- 3.3(b) Any additional costs incurred in connection with the carrying out of the said instruction by others:
- (i) shall be recoverable from the Sub-Contractor by the Contractor as a debt; or
 - (ii) may be deducted from the Sub-Contractor by the Contractor from any monies due or to become due to the Sub-Contractor under this Sub-Contract; or
 - (iii) recovered by the Contractor from the Performance Bond in accordance with the terms under Clause 28.5.

Dispute as to CA's Power to Issue Instructions

- 3.4 3.4(a) Upon receipt of such instruction and direction under Clause 3.1 or Clause 3.2, the Sub-Contractor may within five (5) Days require the Contractor to make a written request to the CA to specify in writing the provision in the Main Contract Conditions which empowers the issuance of the said instruction. The Contractor shall within three (3) Days thereof comply with such a request. If the CA issues a response to the Contractor's request, the Contractor shall forthwith extend a copy of the response to the Sub-Contractor.
- 3.4(b) If the Sub-Contractor complies with the said instruction without requesting the Contractor to make a request under Clause 3.4(a), the instruction shall be deemed to have been properly given under the stated provision.
- 3.4(c) Notwithstanding the CA's failure to comply with the Contractor's request made under Clause 3.4(a), or any dispute with regard to the CA's power to issue such instruction after receiving the CA's answer to the Contractor's request, the Sub-Contractor shall, unless otherwise

instructed by the Contractor, comply with the said instruction. For the avoidance of doubt, the Sub-Contractor's compliance with the instruction shall be without prejudice to any other rights or remedies which he may possess.

Delayed Instructions

- 3.5 3.5(a) The Sub-Contractor shall give written request to the Contractor to notify the CA whenever the Sub-Contract Works are likely to be delayed or disrupted if any necessary instruction is not issued to the Sub-Contractor within a reasonable time. The written request must be given to the Contractor in sufficient time before the commencement of construction of the affected works, and shall include details of the necessary instruction, details of why and by when it should be issued, and details of the nature and amount of the delay or disruption likely to be suffered if the issuance of the instruction is to be delayed. The Contractor shall forthwith notify the CA of the Sub-Contractor's said request.
- 3.5(b) If the Sub-Contractor suffers delay and/or incurs loss and expense as a result of a failure of the Contractor to notify the CA under Clause 3.5(a) or failure of the CA to issue the instruction within the time required or within a reasonable time:
- (i) the Sub-Contractor may apply for an EOT under Clause 19.0 and for loss and expense under Clause 20.0;
 - (ii) however, if and to the extent that the Contractor's failure or the CA's failure was caused by any negligence, omission, default and/or breach of contract by the Sub-Contractor, the Sub-Contractor shall not be entitled to any extension of time, or any loss and expense.

4.0 SUB-CONTRACT AND OTHER DOCUMENTS

Custody and Care of the Documents

- 4.1 4.1(a) The Sub-Contract Documents shall be in the custody and care of the CA, the Consultant, the Contractor and Sub-Contractor so as to be available at all reasonable times for inspection by the Employer whenever so required.
- 4.1(b) The Sub-Contractor shall keep, on the Site, one copy of the documents referred to in Clauses 4.2, 4.3 and 4.4, together with drawings and documents required to be supplied by the Sub-Contractor under the Sub-Contract (if any) and other communications given under the Sub-Contract. The Employer, CA, Consultant, Contractor and their authorised representatives shall have the right of access to all these documents at all reasonable times.

Copies of Documents

- 4.2 Immediately after the execution of this Sub-Contract, the Contractor shall without charge to the Sub-Contractor provide him with:
- 4.2(a) one (1) signed original copy of the Sub-Contract Documents;
 - 4.2(b) two (2) further copies of the Sub-Contract Drawings; and
 - 4.2(c) two (2) further copies of the Specification which relate and apply to the Sub-Contract Works.

Further Drawings or Details

- 4.3
- 4.3(a) From time to time as may be necessary, the CA and Contractor shall, without charge to the Sub-Contractor, furnish him with two (2) copies of further drawings, details, levels and any other information as is reasonably necessary either to explain and amplify the Sub-Contract Drawings or to enable the Sub-Contractor to complete the Sub-Contract Works in accordance with the Sub-Contract.
 - 4.3(b) If the Sub-Contractor requires any further drawings, details, levels and/ or any other information, he shall request in writing to the Contractor to apply to the CA for these items in sufficient time before the commencement of construction of the affected works to enable the Contractor and CA to issue instructions within such period so as not to materially delay the progress of the affected works having regard to the progress of the Sub-Contract Works and Sub-Contract Completion Date.
 - 4.3(c) The written notice in Clause 4.3(b) shall also state the consequences in terms of delay to the progress or completion of the Sub-Contract Works or any part of the Sub-Contract Works and any financial consequences if the Contractor does not comply with the Sub-Contractor's request.

Sub-Contractor to Provide Sub-Contract Works Programme

- 4.4
- 4.4(a) Within fourteen (14) days upon issuance of the Letter of Acceptance (or within such longer period as may be agreed in writing by the Contractor), the Sub-Contractor shall, without charge to the Contractor, provide him with six (6) copies of the Sub-Contract Works Programme for the execution of the Sub-Contract Works.
 - 4.4(b) The Sub-Contract Works Programme shall comply with the requirements specified in the Sub-Contract Documents. The Contractor may instruct the Sub-Contractor to prepare and submit the Sub-Contract Works Programme in a particular form and content.
 - 4.4(c) If the Sub-Contract Works or any part thereof are delayed for any reason, or that the progress of the Sub-Contract Works does not conform to the current Sub-Contract Works Programme, the Sub-Contractor shall, without charge to the Contractor, submit a revised Sub-Contract Works Programme to address such delay including the remedial action to be taken in order to meet the Sub-Contract Completion Date or projected

completion date as approved by the Contractor and CA. The Sub-Contractor shall continue to provide monthly updates on the progress of such remedial action until he is able to demonstrate that there is no longer any delay in the Sub-Contract Works.

- 4.4(d) Notwithstanding any instruction or approval of the Sub-Contract Works Programme (whether current or revised) by the Contractor and/or the CA, the Sub-Contractor shall remain solely responsible for any error, omission and/or deficiency in the Sub-Contract Works Programme.

Sub-Contract Works Programme Not Part of or Incorporated into the Sub-Contract Documents

- 4.5 The Sub-Contract Works Programme shall not constitute part of the Sub-Contract, whether or not it is physically incorporated into the Sub-Contract Documents.

Submission, Approval, and Use of Sub-Contract Works Programme

- 4.6 4.6(a) Approval of Sub-Contract Works Programme (whether current or revised) by the Contractor and/or the CA shall not be a condition precedent to starting or continuing with the Sub-Contract Works.
- 4.6(b) The submission to and approval by the Contractor and/or the CA of such Sub-Contract Works Programme shall not relieve the Sub-Contractor of his obligations under the Sub-Contract.
- 4.6(c) The Sub-Contract Works Programme may be used by the Contractor or CA to monitor progress of the Sub-Contract Works. The Contractor and CA are entitled to rely on the Sub-Contract Works Programme, if and in so far as he deems it appropriate to do so, as a basis for the assessment of extension of time and the effect of the delay and/or disturbances to the progress of the Sub-Contract Works and the Sub-Contract Completion Date.

Submission of Design and Drawings by Sub-Contractor

- 4.7 4.7(a) The Sub-Contractor shall supply six (6) copies of the Sub-Contractor's design drawings (if any), co-ordination, shop drawing or builder's work drawing to the Contractor for the acceptance by the CA or Consultant, in accordance with the requirements in the Sub-Contract.
- 4.7(b) The Contractor shall then submit four (4) copies of such Sub-Contractor's design or drawings to the CA or Consultant.
- 4.7(c) The acceptance by the CA or Consultant of any such Sub-Contractor's design or drawings shall not relieve the Sub-Contractor of his responsibilities under the Sub-Contract.

Limitation of Use of Documents

- 4.8 Neither the Sub-Contractor, Contractor, Employer nor the CA and/or his authorised representative shall use the Sub-Contract Documents for any purpose other than

this Sub-Contract, or divulge the Sub-Contract Documents or the information contained therein including the rates and prices for the Sub-Contract Works to any other Person.

As-built Drawings, etc.

- 4.9 Before the Completion Date, or any other period as provided for in the Sub-Contract, the Sub-Contractor shall, without charge, supply to the Contractor four (4) copies of such drawings and information describing the Sub-Contract Works as-built and concerning the maintenance and operation of the Sub-Contract Works, including any installation comprised in the Sub-Contract Works, as may be required by the Sub-Contract Documents or the CA.

5.0 STATUTORY OBLIGATIONS, NOTICES, FEES, LEVIES AND CHARGES

Compliance with Statutory Requirements

- 5.1 5.1(a) Unless otherwise stated in the contract, the Contractor shall comply with and give all notices required by any laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider in respect of and/or arising from the execution of the Sub-Contract Works, including all temporary works.
- 5.1(b) At the request of the Sub-Contractor, the Contractor shall (where he is in a position to do so) provide reasonable assistance to the Sub-Contractor for the Sub-Contractor's applications for any permits, licenses or approvals required by the laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider in connection with the Sub-Contract Works.
- 5.1(c) The Sub-Contractor shall provide to the Contractor, where applicable, all original copies of the permits, licenses, notices, certificates and/or approvals issued by the Appropriate Authorities and/or Service Provider upon obtaining the same.
- 5.1(d) The Sub-Contractor shall do everything necessary to assist the Contractor, the CA and/or the relevant Consultant in arranging for the Certificate of Completion and Compliance to be issued, including (where applicable) completing, signing and submitting the necessary notices, forms or applications required by the law in connection with the Sub-Contract Works for the purposes of the issuance of the Certificate of Completion and Compliance. This obligation of the Sub-Contractor shall continue even after the Practical Completion of the Sub-Contract Works.

Inconsistencies with Statutory Requirements

- 5.2 If the Sub-Contractor finds any inconsistencies between any of the documents in the Sub-Contract Documents (or any subsequent documents issued by the

CA) and any laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider, he shall immediately notify the Contractor (with a copy to the CA). The notice shall include:

- 5.2(a) the details of the inconsistencies;
- 5.2(b) the proposed action to be taken by him to address such inconsistencies; and
- 5.2(c) the time and estimated costs (if any) required to undertake such action.

Conformance with Statutory Obligations

- 5.3 5.3(a) If the Sub-Contractor does not receive any instruction from the Contractor after seven (7) days from the date of receipt of the notification as set out in Clause 5.2, the Sub-Contractor shall proceed with the work as proposed and in conformity with the laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider.
- 5.3(b) Any changes so necessitated shall be deemed to be a Variation under Clause 10.0.

Fees, Levies or Charges

- 5.4 5.4(a) The Sub-Contractor shall indemnify the Contractor against liability in respect of any fees, levies or charges (including any penalties, rates or taxes) which result from the Sub-Contractor's non-compliance with any laws, regulations, by-laws, terms and conditions of any Appropriate Authority and Service Provider in respect of and/or arising from the execution of the Sub-Contract Works, including all temporary works.
- 5.4(b) If the Sub-Contractor fails to pay any such fees, levies or charges, the Contractor may pay such amount on behalf of the Sub-Contractor and recover such amount together with any additional cost in connection therewith as a debt from the Sub-Contractor, or may deduct the same from any monies due or to become due to the Sub-Contractor under the Sub-Contract, or recover the same from the Performance Bond in accordance with the terms provided under Clause 28.5.

6.0 WORKS AND SERVICES TO CONFORM TO SUB-CONTRACT

Standards of Works, Workmanship, Materials, Good and Services

- 6.1 All works, workmanship, materials and goods and services shall be of the respective kinds and standards described in the Sub-Contract Documents.

Production of Proof of Compliance for Materials and Goods

- 6.2 The Sub-Contractor shall, upon the request of the Contractor or the CA, provide him with the necessary documentary proof that the materials and goods supplied for or installed in the Sub-Contract Works comply with Clause 6.1.

Inspection and Testing

- 6.3
- 6.3(a) Before their incorporation in the Sub-Contract Works, the Sub-Contractor shall provide for testing samples of any materials or goods as may be identified and requested by the Contractor or as instructed by the CA.
- 6.3(b) The Contractor, when instructed by the CA, issue instructions requiring the Sub-Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Sub-Contract Works) or of any executed work, or if the inspection and/or test is in the opinion of the CA required.
- 6.3(c) The cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Sub-Contract Sum unless:
- (i) such cost is already provided for in the Specification or Sub-Contract Bills;
 - (ii) the inspection or test shows that the works, materials and goods were not in accordance with the Sub-Contract; or
 - (iii) inspection or test was in the opinion of the CA required in consequence of prior negligence, omission, default and/or breach of contract by the Sub-Contractor.

Works, Materials, Workmanship and Goods Not in Accordance with Sub-Contract

- 6.4 If the Contractor receives a CA's Instruction concerning any works, materials, workmanship and/or goods and services which are not in accordance with the Sub-Contract, the Contractor shall instruct the Sub-Contractor in writing to do any or all of the following;
- 6.4(a) to remove from and/or not to bring to the site any materials or goods which in the opinion of the CA are not in accordance with the Sub-Contract;
- 6.4(b) to demolish and reconstruct any work so that it complies with the requirements of the Sub-Contract;
- 6.4(c) to rectify such work as instructed by the CA so that it complies with the requirements of the Sub-Contract;
- 6.4(d) within the time as stipulated in the Contractor's instruction to submit a method statement proposing how much works, materials, goods, services or workmanship can be rectified to render them in accordance with the Sub-Contract. If the CA and Contractor accept the Sub-Contractor's proposal, the Sub-Contractor shall carry out the rectification work without any delay. However, if the CA and Contractor do not accept the proposal, the CA and Contractor may issue any other written instruction under this Clause so as to render the work in accordance with the Sub-Contract;

- 6.4(e) with the consent of the CA, to leave all or any such works, materials, goods or workmanship in the Sub-Contract Works without prejudice to the Contractor's right to recover:
- (i) from the Sub-Contractor any reduced value as may be reasonably determined by the Contractor; and
 - (ii) as a debt or deduct it from any monies due or to become due to the Contractor under this Sub-Contract or recover it from the Performance Bond in accordance with the terms provided under Clause 28.5.

No Compensation for Time and Cost

- 6.5 The Sub-Contractor shall not be entitled to any extra time or any loss, expense or cost that may be incurred as a result of his compliance with the Contractor's instruction under Clause 6.4.

Compliance with Contractor's Instruction

- 6.6
- 6.6(a) The Sub-Contractor shall comply with Contractor's instruction under Clause 6.4 within a reasonable time, specified by the Contractor in the instruction, or immediately if there is urgency in complying with the subject matter of the instruction.
 - 6.6(b) If the Sub-Contractor fails, neglects or refuses to comply with such an instruction, the Contractor (with the consent from the CA) may, without prejudice to any other rights or remedies, employ and pay other Persons to carry out the subject matter of the instruction.
 - 6.6(c) Any loss, expense or damage thereby suffered or incurred by the Contractor shall be recoverable from the Sub-Contractor as a debt, or may be deducted from any monies due or to become due to the Sub-Contractor under this Sub-Contract, or may be recovered from the Performance Bond in accordance with the terms under Clause 28.5.

Warranties or Guarantees in Respect of Any Works, Materials and Goods

- 6.7
- 6.7(a) If the Sub-Contract requires the Sub-Contractor, any manufacturer or supplier to give a warranty or guarantee in respect of any proprietary systems, materials and goods supplied, the Sub-Contractor shall:
 - (i) provide or procure such warranty or guarantee and submit it to the Contractor as soon as practicable upon obtaining the same;
 - (ii) ensure that all original certificates of warranties or guarantees to any proprietary systems, materials and goods supplied comply with the requirements of the Sub-Contract and the Main Contract, and are issued in the name and favour of the Employer and to take effect from the Date of Practical Completion of the Main Contract Works.

- 6.7(b) The provision of such warranty or guarantee shall in no way relieve or release the Sub-Contractor from any duties, responsibilities or liability under the Sub-Contract.
- 6.7(c) The Contractor shall forthwith submit the said warranty or guarantee to the Employer after receiving the same from the Sub-Contractor.

7.0 ROYALTIES AND INTELLECTUAL PROPERTY RIGHTS

Indemnity to Contractor Against Claims

7.1 Subject to Clause 7.2:

- 7.1(a) all licenses, royalties or other sums payable in respect of the supply and use of any articles, processes, inventions or drawings for the Sub-Contract Works shall be deemed to have been included in the Sub-Contract Sum;
- 7.1(b) the Sub-Contractor by infringing or being held to have infringed any such intellectual property rights shall indemnify the Contractor from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Contractor.

The indemnity provided for in Clauses 7.1(a) and (b) above are without prejudice to other rights and remedies of the Contractor in respect of any such infringement.

Exclusion of Sub-Contractor's Liability to Pay for Infringement

- 7.2 7.2(a) Where in compliance with the Sub-Contract, CA's Instruction or the Contractor's instruction, the Sub-Contractor supplies or uses any articles, processes, inventions or drawings for the Sub-Contract Works which infringes intellectual property rights, the Sub-Contractor shall not be held liable for such infringement, and shall be indemnified by the Contractor in respect of any liability for the consequences thereof.
- 7.2(b) All royalties, damages or other monies which the Sub-Contractor may be liable to pay for such infringement shall be added to the Sub-Contract Sum.

Government and/or Appropriate Authority Royalties

- 7.3 Except where otherwise provided for in the Sub-Contract, the Sub-Contractor shall pay all Government and/or Appropriate Authority royalties, levies, rent and all other payments in connection with and/or arising from the Sub-Contract Works, including any temporary works.

8.0 SITE AGENT

Site Agent and His Assistants

- 8.1 8.1(a) The Sub-Contractor shall:
- (i) keep upon the Sub-Contract Works a competent and suitably qualified and experienced Person who shall be the Site Agent of the Sub-Contractor for the purposes of this Sub-Contract;
 - (ii) together with Site Agent, keep such senior assistants and supervisory staff in each trade as set out in the Sub-Contract Documents or as amended from time to time with prior written consent from the Contractor;
 - (iii) ensure that the Site Agent and such senior assistants and supervisory staff are Persons who are capable of receiving instructions in a language as may be required for the purposes of executing the Sub-Contract Works.
- 8.1(b) The Sub-Contractor shall give the Site Agent all authority necessary to act on the Sub-Contractor's behalf under the Sub-Contract.
- 8.1(c) If no Site Agent is named in the Sub-Contract, the Sub-Contractor shall:
- (i) prior to the Date of Commencement, submit to the Contractor for consent the name and particulars of the Person the Sub-Contractor proposes to appoint as the Site Agent; and
 - (ii) if consent is withheld or subsequently revoked, or if the appointed Person fails to act as the Site Agent, the Sub-Contractor shall similarly submit to the Contractor for consent the name and particulars of another suitable Person for such appointment.
- 8.1(d) The Site Agent shall:
- (i) constantly be on Site during normal working hours, on a full-time basis;
 - (i) appoint a suitable replacement Person, who shall first be approved by the Contractor, if the Site Agent is to be temporarily absent from the Site during the execution of the Sub-Contract Works.

Instructions to Site Agent

- 8.2 Any directions or instructions given to the Site Agent and/or his assistants by the Contractor or CA shall be deemed as given to the Sub-Contractor.

Removal of Person Employed on the Sub-Contract Works

- 8.3 8.3(a) The Sub-Contractor is fully aware that the CA has power under the Main Contract Conditions to instruct the Contractor to remove from the Site any Person under the employment of the Contractor, including any workmen, agent and servant of the Sub-Contractor.

- 8.3(b) On receipt of such written instruction:
- (i) the Contractor shall immediately notify the Sub-Contractor and instruct the Sub-Contractor to comply with the instruction;
 - (ii) the Sub-Contractor, upon receipt of the instruction from the Contractor, shall remove such Person from the Site;
 - (iii) the Person removed is a Site Agent, the Sub-Contractor shall, without delay, submit the name and particulars of another suitable replacement Person to the Contractor and CA for their approval;
 - (iv) the Sub-Contractor shall only make such replacement upon receiving the approval from the Contractor and the CA;
 - (v) the Site Agent or such other Person so removed shall not again be employed on the Site.
- 8.3(c) The Sub-Contractor shall not be entitled to any extension of time and additional cost in respect of any instruction or approval given by the Contractor and CA under this Clause.

9.0 ACCESS TO THE SUB-CONTRACT WORKS AND GENERAL ATTENDANCE

Access to Sub-Contract Works to All Persons Concerned

- 9.1 9.1(a) The Contractor shall from time to time make available to the part of the Site and the Main Contract Works and such means of access as shall be necessary to enable the Sub-Contractor to execute the Sub-Contract Works, but the Contractor shall not be bound to give to the Sub-Contractor possession or exclusive control of the part of the Site or the Main Contract Works.
- 9.1(b) The Employer, CA, Consultant, Contractor and/or their authorised representatives shall also at all times have the right of access to the Sub-Contract Works and to the factories, workshops or other places where any construction plant, materials, goods and works are being fabricated, prepared or stored for the purposes of the Sub-Contract.
- 9.1(c) The Sub-Contractor shall also, in accordance with an instruction of the Contractor, afford all reasonable cooperation to any other Person engaged by the Contractor and Employer for purposes of executing any other works not included in the Sub-Contract Works on or near the Site.

General Attendance, and Use of Scaffolding

- 9.2 9.2(a) The Sub-Contractor shall provide all necessary and reasonable general attendances and services as may be required for the execution and completion of the Sub-Contract Works. Save as otherwise provided in the Sub-Contract Documents, the Sub-Contractor is not entitled to claim for any expenses and costs of these general attendances incurred for the purposes of the execution and completion of the Sub-Contract Works.

- 9.2(b) The Contractor, Sub-Contractor and their employees and workmen respectively in common with all other Persons having a like right for the purposes of the Main Contract and Sub-Contract Works shall be entitled to use any standing scaffolding belonging to or provided by the Contractor or Sub-Contractor as the case may be, while it remains so standing upon the Site. The Contractor and Sub-Contractor shall give written notice to the other Party prior to the removal of any standing scaffolding.
- 9.2(c) The Contractor, Sub-Contractor and their employees and workmen respectively in common with all other Persons having a like right for the purposes of the Main Contract and Sub-Contract Works shall not wrongfully use or interfere with the construction plant, ways, scaffolding, temporary works, appliances or other property respectively belonging to or provided by either of them.

10.0 VARIATIONS

Definition of Variation

- 10.1 The term "Variation" means any change in the design, quality or quantity of the Sub-Contract Works described by or defined in the Sub-Contract, and shall include but is not limited to:
- 10.1(a) the addition, omission or substitution of any part of the Sub-Contract Works;
- 10.1(b) a change in the character or standard of any part of the Sub-Contract Works, including the goods and materials specified in the Sub-Contract to be used for the Sub-Contract Works;
- 10.1(c) the demolition of or removal of any part of the Sub-Contract Works no longer desired by the Contractor;
- 10.1(d) changes to the levels, positions and/or dimensions of any part of the Sub-Contract Works;
- 10.1(e) any material change to the Sub-Contractor's access to or possession of the Site, or to the Sub-Contractor's working hours or restrictions on the Sub-Contractor's ability to carry out and complete the Sub-Contract Works in such manner as he deems appropriate.

For the avoidance of doubt, the term "variation" shall exclude any change to the Sub-Contract Works which is necessary to cure or arises from any default of or breach of contract by the Sub-Contractor.

No Variation Required by the Contractor or the CA Shall Vitate Sub-Contract

- 10.2 10.2(a) The CA, or the Contractor with the consent of the CA, may issue instructions requiring a Variation or he may sanction in writing any Variation made by the Sub-Contractor otherwise than pursuant

to an instruction of the CA. Any Variation instructed by the CA or subsequently sanctioned by him shall not have the effect of vitiating this Contract.

- 10.2(b) The Sub-Contractor shall execute and be bound by each Variation, unless the Sub-Contractor promptly gives notice to the CA and the Contractor stating (with supporting particulars) that the Sub-Contractor cannot readily obtain the goods, materials, plant or equipment required for the Variation. Upon receiving this notice, the CA, or the Contractor (with the written consent from the CA), may cancel, confirm or vary the instruction.

Dispute with Regard to whether a Work Constitutes a Variation

- 10.3 Notwithstanding any dispute with regard to whether or not any work instructed by the CA constitutes a Variation, the Sub-Contractor shall, unless otherwise instructed by the CA or the Contractor (with the written consent from the CA), forthwith give effect to the said instruction. For the avoidance of doubt, the Sub-Contractor's compliance with the instruction given by the CA shall be without prejudice to any rights and/or remedies which he may possess.

Issue of Variation

- 10.4 The CA or the Contractor (with the consent of the CA) may issue instructions in writing requiring a Variation at any time before the issuance of the Certificate of Practical Completion of the Sub-Contract Works. After the Certificate of Practical Completion of the Sub-Contract Works has been issued, the CA may not be empowered to issue such instruction unless required for the purposes of instructing the Sub-Contractor to correct defects or remedy non-compliance in the Sub-Contracts Works, or to comply with the requirements of any Appropriate Authority and Service Provider.

Valuation of Variations

- 10.5 10.5(a) Within twenty-one (21) Days after completion of the work constituting a Variation:
- (i) The Sub-Contractor shall submit to the Contractor and CA all documents necessary for their valuation, including details of the quantities of the work done, site information, rates and any additional claims made by the Sub-Contractor arising from the Variation.
 - (ii) Where any recording of site information and/or measurements are required to be carried out at the Site, the Sub-Contractor shall provide such assistance as may be necessary and may be present to take notes and measurements.
- 10.5(b) If the Contractor is informed by the CA of his opinion that the documents and particulars submitted by the Sub-Contractor pursuant to Clause 10.5(a) are insufficient for evaluation and assessment of the Variation, the Contractor shall:

- (i) within three (3) Days from the date of receipt of the CA's said opinion, inform the Sub-Contractor of any deficiency or insufficiency in his submission; and
 - (ii) require such further documents and particulars within ten (10) Days thereof to be provided to the Contractor and CA.
- 10.5(c) In the event the Sub-Contractor fails to submit the requested documents and particulars under Clause 10.5(b), the Sub-Contractor acknowledges that the Contractor and CA may nevertheless complete the valuation of the Variation based on the information available to them and ascertain the value of the Variation (if any) within thirty (30) Days thereafter.
- 10.5(d) However, if the Sub-Contractor fails to submit the documents and particulars within the stipulated twenty-one (21) Days period under Clause 10.5(a), or within any further time as may be allowed by the CA and/or the Contractor:
 - (i) then Clauses 10.5(b) and 10.5(c) shall not apply but the Sub-Contractor may still submit the documents and particulars of the Variation during the final account stage for the CA's assessment under Clause 24.6.
 - (ii) Notwithstanding this, the Sub-Contractor acknowledges that Contractor and CA may (but is not obliged to) assess and ascertain the value of the Variation based on the information available to them at any time prior to the issuance of the Certificate of Practical Completion of the Sub-Contract Works.
- 10.5(e) If the Parties agree with the valuation of the CA under either Clause 10.5(c) or Clause 10.5(d), then the valuation and ascertainment shall become conclusive.
- 10.5(f) If either the Sub-Contractor or the Contractor disputes the valuation of the CA, then the dispute may be referred to arbitration under Clause 25.0.

Valuation Rules

- 10.6 The valuation of any Variations (and of work executed by the Sub-Contractor for which a Provisional Quantity is included in the Sub-Contract and the expenditure of Provisional for which a Provisional Quantity is included in the Sub-Contract and the expenditure of Provisional Sums) shall, unless otherwise agreed, be made in accordance with the following rules:
 - 10.6(a) where work is of similar character to the work as specified in the Sub-Contract, is executed under similar conditions, and the quantity of the work concerned is not changed by more than (*if none is stated, then 12%) from the quantity of this item of work in the Sub-Contract, the rates and prices in the Schedule of Rates shall determine the valuation;
 - 10.6(b) where work is of a similar character to the work set out in the Sub-Contract but is not executed under similar conditions or, is executed

under similar conditions but the quantity of work is changed by more than (*if none is stated, then 12%) of the quantity of this item of work specified in the Sub-Contract, the rates and prices in the Schedules shall be the basis for determining the valuation which shall include a fair adjustment in the rates to take into account such difference;

- 10.6(c) where work is of a different character to the work as set out in the Sub-Contract, the valuation shall be at fair market rates and prices determined by the Contractor, taking into account the CA's determination in respect of the same work;
- 10.6(d) where work cannot be properly measured and valued in accordance with Clauses 10.6(a), 10.6(b) or 10.6(c), the Sub-Contractor shall be allowed:
- (i) the daywork rates in the Schedules; or
 - (ii) where there are no such daywork rates in the Schedules, at the actual cost to the Sub-Contractor of his materials, additional construction plant and scaffolding, transport and labour for the work concerned, plus fifteen (15) percent, which percentage shall include for the use of all tools, standing plant, standing scaffolding, supervision, overheads and profit.

In either case, the Sub-Contractor shall provide the vouchers specifying the time spent on a daily basis in carrying out the works, the workers' names and designation, the materials, additional construction plant, scaffolding and transport used which shall be signed by the Contractor's and Sub-Contractor's Site Agent and verified by the Site Staff. They shall be delivered to the Contractor and CA at weekly intervals with the final records delivered not later than fourteen (14) Days after the work has been completed.

- 10.6(e) The rates and prices in the Schedules shall determine the valuation of items omitted. If omissions substantially vary the conditions under which any remaining items of work are to be carried out, the prices of such affected remaining items shall be valued under Clauses 10.6(b), 10.6(c) or 10.6(d); and
- 10.6(f) in respect of Provisional Quantity, the quantities stated in the Sub-Contract Bills shall be re-measured by the CA based on the actual quantities executed in accordance with Clause 10.5. The rates and prices in the Schedules shall determine their valuations.

Compliance with the CA's Instruction on Variation or Provisional Sums Pending Valuation

- 10.7 Pending the valuation of any Variation or of work executed by the Sub-Contractor for which a Provisional Quantity is included in the Sub-Contract or the expenditure of Provisional Sums, the Sub-Contractor shall forthwith carry out the CA's Instruction on Variations or Provisional Sums.

Additional Expenses Caused by Variation

- 10.8 10.8(a) Where a Variation has caused or is likely to cause the Sub-Contractor to incur additional expenses for which he would not be paid under any provision in Clause 10.6 or Clause 20.0, the Sub-Contractor may make a claim for such additional expenses subject always to the following provisions:
- (i) the Sub-Contractor shall, within a reasonable time from the date of receipt of the CA's instruction giving rise to his claim (or in any event, before the completion of such Variation), give written notice to the Contractor (with a copy to the CA) of his intention to claim for such additional expenses together with an initial estimate of his claim duly supported with all necessary calculations; and
 - (ii) within twenty-eight (28) Days of completing such Variation, the Sub-Contractor shall send to the Contractor (with a copy to the CA) complete particulars of his claim for additional expenses together with all necessary calculations to substantiate his claims.
 - (iii) If the Sub-Contractor fails to submit the required particulars within the stipulated twenty-eight (28) Days of completion such Variation, or within such longer period as may be agreed in writing by the Contractor or the CA, it shall be deemed that the Sub-Contractor has waived his rights under this Sub-Contract and/or the law to claim for or recover any such additional expenses.
 - (iv) If the CA is of the opinion that the particulars submitted by the Sub-Contractor are insufficient for determining the claim for the additional expenses and the Contractor has been so informed, the Contractor shall immediately inform him of any such deficiency in his submission and require the Sub-Contractor to provide such further particulars within such period of time as may be instructed by the CA.
- 10.8(b) At all times during the course of the Sub-Contract Works, the Sub-Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Contractor and CA. Without admitting the Contractor's liability, the Contractor may, after receiving any notice under Clause 10.8(a), monitor the record-keeping and/or instruct the Sub-Contractor to keep further contemporary records. The Sub-Contractor shall permit the Contractor and the CA to inspect and take copies of records at any reasonable time upon request.

Variation and Additional Expenses Added to Sub-Contract Sum

- 10.9 10.9(a) As soon as the CA has ascertained the value of Variations and any additional expenses claimed by the Sub-Contractor, the amount so ascertained and by the CA shall be added to or deducted from the Sub-Contract Sum.

- 10.9(b) When an Interim Certificate is issued after the date of ascertainment, such amount shall be included in or deducted from the certificate.

11.0 SUB-CONTRACT SUM AND VALUATION OF THE SUB-CONTRACT WORKS

Sub-Contract Sum and Valuation of the Sub-Contract Works

- 11.1 The Sub-Contract Sum and Valuation of the Sub-Contract Works under the Sub-Contract shall be in accordance with Article 3.1 and Article 3.2 respectively.

12.0 MATERIALS OR GOODS NOT TO BE REMOVED

Materials or Goods Not to Be Removed

- 12.1 12.1(a) Save as provided in the Clause 12.2, any unfixed materials and goods delivered to the Site and which are intended for the Sub-Contract Works shall not be removed from the Site or other place at which they are stored until completion of the Sub-Contract Works unless prior consent in writing from the Contractor and CA is obtained for the removal. The Contractor and CA shall not unreasonably delay or withhold the giving of such consent.
- 12.1(b) The Sub-Contractor shall provide the necessary and adequate storage and protection for these unfixed materials and goods until completion of the Sub-Contract Works.

Materials or Goods Paid for Becomes Employer's Property

- 12.2 Any unfixed materials and goods shall become the property of the Employer after:
- 12.2(a) Its value has been included in any Interim Certificate; and
- 12.2(b) The Contractor has received its full payment.

Warranty of Title of Goods and Materials

- 12.3 12.3(a) The Sub-Contractor warrants that he has title free from liens and other encumbrances for such materials and goods upon inclusion of the value of such materials and goods in any application for payments under Clause 24.1.
- 12.3(b) In the event that the Sub-Contractor is found to have made a false or inadequate warranty of title, any loss suffered by the Contractor shall be made good by the Sub-Contractor or may be recovered by the Contractor as debt, or by deducting it from any monies due or to become due to the Sub-Contractor under this Sub-Contract, or from the Performance Bond provided under Clause 28.5.

13.0 PRACTICAL COMPLETION AND DEFECTS LIABILITY

Certificate of Practical Completion

- 13.1 The Sub-Contract Works are Practically Completed when:
- 13.1(a) the Sub-Contract Works have been completed in accordance with the terms and conditions of this Sub-Contract;
 - 13.1(b) the Employer can have full, proper and beneficial use of the Sub-Contract Works for their intended purpose, notwithstanding that there may be outstanding works and defects which are of a very minor nature in the sense that such minor outstanding works and defects do not prevent or diminish the full, proper and beneficial use as aforesaid;
 - 13.1(c) the Sub-Contract Works have passed any commissioning tests required in the Sub-Contract Documents;
 - 13.1(d) the Sub-Contractor has provided the Contractor with all the warranties and guarantees required pursuant to Clause 12 hereof;
 - 13.1(e) the Sub-Contractor has given to the Contractor and CA a written undertaking to make good and complete such outstanding works and/or defects within a reasonable time as shall be instructed by the CA to the Contractor; and
 - 13.1(f) the Sub-Contractor has discharged any and all other requirements expressly stated in the Sub-Contract Documents as a pre-requisite for the issuance of the Certificate of Practical Completion of Sub-Contract Works.

Certificate of Practical Completion, or Deemed Practically Complete

- 13.2 When the Sub-Contract Works or works in a Section are, in the opinion of the Sub Contractor, practically completed, he may give a written notice to that effect to the Contractor (with a copy to the CA). The Contractor shall immediately write to the CA, setting out his observations on the Sub-Contractor's application and request the CA to do either one of the following within fourteen (14) Days thereof:
- 13.2(a) if the CA opines that the Sub-Contract Works or Section are not Practically Completed, the CA shall give a written notice to the Contractor (with a copy to the Sub-Contractor) giving reasons for his opinion and specifying the work required to be done by the Sub-Contractor to achieve Practical Completion. The Sub-Contractor shall then complete this work before issuing a further written notice under this Sub-Clause; or
 - 13.2(b) if the CA opines that the Sub-Contract Works or Section are actually Practically Completed, the CA shall issue a Certificate of Practical Completion. The Certificate of Practical Completion shall be issued to the Sub-Contractor with copies extended to the Contractor and Employer. The date of Practical Completion shall be:

- (i) where there are still minor outstanding works and defects of a minor nature to be completed, the date of receipt of the Sub-Contractor's written undertaking to make good and to complete such outstanding works and defects; or
- (ii) where there are no outstanding works and defects, the date of receipt of the Sub-Contractor's aforesaid written notice.

Sub-Contractor's Failure to Rectify

- 13.3 In the event the Sub-Contractor fails, neglects or refuses to comply with the undertaking under Clause 13.2(b)(i), the Contractor may, without prejudice to any other rights or remedies which he may possess, do any one of the following;
- 13.3(a) with the consent of the CA and Employer, grant the Sub-Contractor additional time to be specified by the CA to enable the Sub-Contractor to comply with his said undertaking;
 - 13.3(b) with the consent of the CA and the Employer, employ and pay other Persons to execute any work which may be necessary to give effect to the Sub-Contractor's said undertaking. Any loss, expense or damage thereby suffered or incurred by the Contractor shall be recoverable from the Sub-Contractor as a debt or by deducting it from any monies due or to become due to the Sub-Contractor under this Sub-Contract; or
 - 13.3(c) with the consent of the CA and the Employer, accept to leave all or any such works and/or defects of a minor nature in the Sub-Contract Works subject to the Contractor's right to recover any loss and/or expense arising from the Sub-Contractor's said default, as a debt, or by deducting it from any monies due or to become due to the Sub-Contractor under this Sub-Contract.

Obligation to Clear Out Upon Completion

- 13.4 When instructed by the Contractor, the Sub-Contractor shall clear out and leave the Sub-Contract Works and all areas made available to him after achieving Practical Completion.

Attending to Outstanding Works and Defects After Practical Completion

- 13.5 13.5(a) The Defects Liability Period shall commence on the day following the Date of Practical Completion and continue for the duration stated in the Appendix to these conditions. It is the Sub-Contractor's obligation during the Defects Liability Period, forthwith to complete any works outstanding at the Date of Practical Completion and to rectify any defects in the Sub-Contract Works which appear during the Defects Liability Period. Any such defects which have not been rectified by the Sub-Contractor at the conclusion of the Defects Liability Period shall be specified by the CA in a schedule of defects and delivered to the Sub-Contractor not later than fourteen (14) Days after the expiration of the Defects Liability Period.

13.5(b) The Sub-Contractor shall within a reasonable time, which shall be specified by the CA, make good such defects entirely at his own cost. If the Sub-Contractor fails to attend to and complete the rectification of the defects within the time requested by the CA, the Contractor may, without prejudice to any other rights or remedies:

- (i) grant the Sub-Contractor additional time to be specified by the CA to enable the Sub-Contractor to make good the defects so notified; or
- (ii) employ and pay other Persons to rectify the defects in the Sub-Contract Works. Any loss, expense or damage thereby suffered or incurred by the Contractor shall be recoverable from the Sub-Contractor as a debt or by deducting it from any monies due or to become due to the Sub-Contractor under this Sub-Contract; or
- (iii) accept to leave all or any such defects in the Sub-Contract Works subject to the Contractor's right to claim or recover the loss and/or damage in the amount as reasonably determined by the CA, as a debt, or by deducting it from any monies due or to become due to the Sub-Contractor under this Sub-Contract.

Instruction to Make Good Defects within Defects Liability Period

13.6 Notwithstanding Clause 13.5, the Contractor may at any time during the Defects Liability Period issue a written instruction requiring any Defects which appear within the Defects Liability Period to be made good. The Sub-Contractor shall within a reasonable time, which shall be specified by the Contractor, comply with the same entirely at his own cost. If the Sub-Contractor fails to attend to and complete the rectification of the Defects within the specified time, the Contractor may, without prejudice to any other rights or remedies:

- 13.6(a) with the consent of the CA, grant the Sub-Contractor additional time to be specified by the CA to enable the Sub-Contractor to make good the defects so notified; or
- 13.6(b) with the consent of the CA, employ and pay other Persons to rectify the Defects. Any loss, expense or damage thereby suffered or incurred by the Contractor shall be recoverable from the Sub-Contractor as a debt or by deducting it from any monies due or to become due to the Sub-Contractor under this Sub-Contract; or
- 13.6(c) with the consent of the CA, accept to leave all or any such Defects in the Sub-Contract Works subject to the Contractor's right to recover any loss and/or damage arising from the Sub-Contractor's default as a debt, or by deducting it from any monies due or to become due to the Sub-Contractor under this Sub-Contract.

Remedial Works to Main Contract Works Due to Defects in the Sub-Contract Works

13.7 13.7(a) If the Contractor executes any remedial work to any part of the Main Contract Works due to Defects in the Sub-Contract Works, then the

cost of execution of such work shall be recoverable by the Contractor from the Sub-Contractor as a debt, or by deducting it from any monies due or to become due to the Sub-Contractor under the Sub-Contract or from the Performance Bond under Clause 28.5.

- 13.7(b) The CA may, with the consent of the Employer, instruct the Contractor not to carry out any such remedial work subject to an appropriate set off by the Employer under the Main Contract. In that event, the Contractor shall be entitled to recover from the Sub-Contractor the same amount set off by the Employer as a debt, or by deducting it from any monies due or to become due to the Sub-Contractor under the Sub-Contract or from the Performance Bond under Clause 28.5.

Remedial Works Due to Defects in the Main Contract Works

- 13.8 If the Sub-Contractor executes any remedial work to or in connection with the Sub-Contract Works (whether permanent or temporary) required by the Contractor or CA or rendered necessary by reason of any defects in the Main Contract Works, then the Contractor shall pay to the Sub-Contractor the cost of the execution of such remedial works. The CA with the consent of the Employer, may instruct the Contractor and Sub-Contractor not to carry out any such remedial work subject to an appropriate set off.

14.0 DATE OF COMMENCEMENT, DATES FOR COMMENCEMENT GIVEN FOR SECTIONS AND DATE FOR COMPLETION

Date for Commencement and Completion Date

- 14.1 The Contractor shall be given possession of the Site by the Date of Commencement. The Sub-Contractor shall thereupon commence the execution of the Sub-Contract Works and regularly and diligently proceed with and complete the same on or before the Sub-Contract Completion Date.

Dates of Commencement Given for Sections

- 14.2 Where there are different Dates of Commencement for sections of the Sub-Contract Works, they shall be stated in the Appendix or elsewhere in the Sub-Contract Documents.

Different Completion Dates for Identified Sections or Parts of Works

- 14.3 Where there are different Completion Dates for such sections of the Sub-Contract Works stated in the Appendix or elsewhere in the Sub-Contract Documents, the provisions of this Sub-Contract in regard to Practical Completion, Extension of Time, Liquidated Damages, Defects Liability Period, the Sub-Contractor's obligation to make good defects, and release of Retention Fund shall, in the absence of any express provision to the contrary elsewhere in the Sub-Contract

Documents, apply to each such Section with the necessary changes in points of detail.

Suspension of Sub-Contract Work

- 14.4 14.4(a) The Sub-Contractor accepts that The CA may at any time instruct the Contractor to suspend progress of part or all of the Main Contract Works, which may include the Sub-Contract Works. During such suspension, the Sub-Contractor shall protect, store and secure such part of the Sub-Contract Works against any deterioration, loss or damage. The CA shall notify the cause for the suspension. The Party who carries the liability to provide insurance in respect of the cause of the suspension under Clauses 17.0 and 18.0, shall ensure full insurance coverage for the whole period of suspension, or if the insurance is covered by the Contractor under Clause 20.0, the Contractor shall ensure similar insurance coverage. If and to the extent that the cause is notified and is the responsibility of the Sub-Contractor, Clause 14.4(b) shall not apply.
- 14.4(b) If the Sub-Contractor suffers delay and/or incurs loss and/or expense from complying with the CA's Instruction under Clause 14.4(a) and/or from resuming the work, the Sub-Contractor shall be entitled to claim for an extension of time under Clause 19.0 and/or loss and/or expense under Clause 20.0.
- 14.4(c) If and to the extent that the cause is notified and is the responsibility of the Contractor, Clause 14.4(b) above shall not apply. Similarly, the Sub-Contractor shall not be entitled to an extension of time or payment of any loss and/or expense incurred in making good the consequences of the Sub-Contractor's faulty design (if applicable), workmanship or materials, or of the Sub-Contractor's failure to protect, store or secure in accordance with Clause 14.4(a).

15.0 DAMAGES FOR NON-COMPLETION

Consequence of Delayed Completion

- 15.1 If the Sub-Contractor fails to complete the Sub-Contract Works (or any Section of the Sub-Contract Works) by the Sub-Contract Completion Date or by the date as mutually agreed by the Parties, the Contractor shall issue a Certificate of Non-Completion (with a copy to the CA) stating that in his opinion the same ought reasonably so to have been completed by such date(s). Upon such issuance, the Sub-Contractor shall pay or allow to the Contractor a sum calculated at the rate stated in the Appendix as Liquidated Damages for the period from the Completion Date, or any extended date where applicable, to the date of Practical Completion, provided always that the total amount of Liquidated Damages due and retained under this Clause shall not exceed the amount stated in the Appendix as the Limit of Liquidated Damages. The Contractor may recover such sum as a debt or may deduct such sum from any monies due or to become due to the Sub-Contractor

under the Sub-Contract or may recover such sum from the Performance Bond in accordance with the terms under Clause 28.5.

Liquidated Damages Amount Deemed as Agreed

- 15.2 15.2(a) The Liquidated Damages stated in the Appendix is deemed to be the reasonable loss and/or damage which the Contractor will suffer in the event that the Sub-Contractor fails to complete the Sub-Contract Works by the Completion Date. The Parties agree that by entering into this Sub-Contract, Section 75 of the Contracts Act 1950 shall not apply for the purposes of the Sub-Contractor's liability to pay Liquidated Damages under this Clause, and the Sub-Contractor shall, upon first written demand by the Contractor, forthwith pay or allow to the Contractor the said amount of Liquidated Damages due without the need of the Contractor to prove his actual damage or loss.
- 15.2(b) Further and in any event, the Contractor and the Sub-Contractor acknowledge and declare that it will be difficult to assess damages for the actual damage or loss incurred as a result of the Sub-Contractor's failure to complete the Sub-Contract Works by the Completion Date. The Sub-Contractor acknowledges that the Liquidated Damages stated in the Appendix represents the loss or damage that would be caused to the Contractor which naturally arose in the usual course of things from the breach and/or which the Parties knew, when they made the Sub-Contract, to be likely to result from the breach of the Sub-Contract. The Sub-Contractor irrevocably undertakes that he will not, whether by legal proceedings or otherwise, contend that such sums and the limits thereon in the Appendix are not reasonable nor will he put the Contractor to the proof thereof, nor further contend that his agreement to such sum and undertaking as aforesaid were arrived at by force, duress, coercion, mistake or misrepresentation on the part of the Contractor.
- 15.2(c) For the avoidance of doubt, the Liquidated Damages imposed or deducted by the Contractor shall not relieve the Sub-Contractor from his obligation to complete the Sub-Contract Works, or from any other duties, obligations or responsibilities which he may have under the Sub-Contract.

16.0 ASSIGNMENT OR SUB-CONTRACTING

Consent Required to Assign Rights, Interests or Benefits under the Sub-Contract

- 16.1 Other than assigning his rights, interests or benefits under the Sub-Contract to his financial institution, the Sub-Contractor shall not, without the written consent of the Contractor and the Employer (which consent shall not be unreasonably delayed or withheld), assign the Sub-Contract or any part thereof, or any benefit or interest therein or thereunder to any another Person.

Sub-Contracting Portion of Sub-Contract Works

- 16.2 Except as otherwise provided by the Sub-Contract, the Sub-Contractor shall not without the written consent of the Contractor and the CA sub-contract the Sub-Contract Works, in whole or in part. Such consent if given shall not relieve the Sub-Contractor from any liability or obligation under the Sub-Contract. He shall be fully responsible for the acts, defaults, neglects, breach of contract of any of his employees, agents, servants or workmen as if they were the acts, defaults or neglects of the Sub-Contractor. Where the Sub-Contractor sub-contracts labour only of craftsmen, skilled or semi-skilled workmen to carry out any portion of the work, this shall not constitute sub-contracting within the meaning of this Clause and he shall remain fully responsible for the quality of their work and craftsmanship and for any acts, defaults and negligence of the workmen.

17.0 INJURY TO PERSONS OR PROPERTY AND INDEMNITY TO CONTRACTOR

Indemnity Against Claims on Contractor for Injury to or Death of Persons

- 17.1 The Sub-Contractor shall indemnify and hold harmless the Contractor against and from all claims, damages, losses and expenses (including legal and consultancy fees and expenses) in respect of personal injury, sickness, disease or death of any Person arising out of or in the course of or by reason of the Sub-Contractor's design, execution and completion of the Sub-Contract Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of contract by the Contractor, or any Persons for whose actions the Contractor is responsible.

Indemnity Against Claims on Contractor for Injury to Property

- 17.2 The Sub-Contractor shall indemnify and hold harmless the Contractor against and from all claims, damages, losses and expenses (including legal and consultancy fees and expenses) in respect of any damage to or loss of property, real or personal (other than the Works), arising out of or in the course of or by reason of the Sub-Contractor's design, execution and completion of the Sub-Contract Works and the remedying of any defects, to the extent that such damage and loss is attributable to any negligence, wilful act or breach of contract by the Contractor, or any Persons for whose actions the Contractor is responsible.

Sub-Contractor to Indemnify Against Claims by Workmen

- 17.3 The Sub-Contractor shall indemnify and hold harmless the Contractor against and from all claims, damages, losses and expenses (including legal and consultancy fees and expenses) howsoever caused arising out of claims by any and every workman employed in and for the execution of the Sub-Contract Works and for payment of compensation under or by virtue of the Workmen's Compensation Act 1952 and the Employee's Social Security Act 1969.

Indemnities Not to Be Defeated

- 17.4 Save as provided for in Clause 17.1, the indemnities given by the Sub-Contractor under Clauses 17.1 to 17.3 shall not be defeated or reduced by reason of any negligence or omission of the Employer, CA, Consultant or other authorised representatives in failing to:-
- 17.4(a) supervise or control the Sub-Contractor's site operation or methods of working or temporary work;
 - 17.4(b) detect or prevent or remedy defective work; or,
 - 17.4(c) ensure proper performance of any obligation of the Sub-Contractor under the Sub-Contract.

18.0 DUTY OF SUB-CONTRACTOR TO INSURE

SOCSCO and Insurances for Workmen

- 18.1 18.1(a) Without prejudice to his liability to indemnify the Contractor under Clause 17.0, the Sub-Contractor shall:
- (i) register or cause to register all local workmen employed on the Sub-Contract Works and who are subject to registration under the Employee's Social Security Scheme (hereinafter referred to as "SOCSCO") in accordance with the Employees' Social Security Act 1969. The Sub-Contractor shall make payment of all contributions from time to time when the same ought to be paid;
 - (ii) where the workmen are not subject to registration under SOCSCO, effect and maintain an insurance in the joint names of the Parties an insurance policy for liabilities for death or injury to these workmen which may arise in the course of the execution of the Works; and
 - (iii) where the workmen are foreign workers, effect and maintain a similar insurance policy and shall cause all Sub-Contractors to do the same, for these foreign workers employed on the Sub-Contract Works as required by the Workmen's Compensation Act 1952 and Workmen's Compensation (Foreign Worker's Compensation Scheme) (Insurance) Order 1998.
- 18.1(b) The insurance policies mentioned in Clauses 18.1(a)(ii) and 18.1(a)(iii) shall be valid up to the Sub-Contractor Completion Date and the extended maintenance cover shall be for the Defects Liability Period plus a further three (3) Months. If the Sub-Contractor is unable to complete by the Sub-Contractor Completion Date or complete making good the Defects within the insured period, he shall ensure that the insurance is accordingly extended for the same or projected period of delay. The Sub-Contractor shall effect the said extension of the insurance cover not less than one (1) Month before the expiry of the insurance currently in force.

CAR Insurance by Contractor

- 18.2 18.2(a) If the Contractor's All Risks ('CAR') insurance or any insurance to that effect is to be taken out by the Contractor under Clauses 19.0 and 20.0 of the Main Contract Conditions, the Contractor shall before the Sub-Contract Date of Commencement furnish to the Sub-Contractor a certified true copy of such insurance policy.
- 18.2(b) If the Sub-Contractor having regard to his indemnity to the Contractor under Clause 17.0 desires to have additional insurance cover, he shall do so at his own cost.

CAR Insurance by Employer

- 18.3 18.3(a) If the Contractor's All Risks ('CAR') insurance or any insurance to that effect is to be taken out by the Employer under Clause 19.0 and Clauses 20.0 of the Main Contract Conditions, the Contractor (provided that he has obtained a certified copy of such insurance policies from the Employer) shall furnish to the Sub-Contractor a certified true copy of such insurance policies before the Sub-Contract Date of Commencement.
- 18.3(b) If the Sub-Contractor having regard to his indemnity to the Contractor under Clause 17.0 desires to have additional insurance cover, he shall do so at his own cost.

Approval of Insurance Companies

- 18.4 Any insurance referred to in Clause 18.1 shall be placed with licensed insurance companies approved by the Employer and the Contractor, and the Sub-Contractor shall, prior to the commencement of any Sub-Contract Works and whenever requested in writing, deposit with the Contractor the policy or policies and the receipts in respect of premiums paid, and provide copies to the CA.

Contractor's or Sub-Contractor's Default

- 18.5 Should the Sub-Contractor make default in insuring or in continuing to insure as required under Clause 18.1, the Contractor may himself insure against any risk with respect to which the default shall have occurred and the amount paid or payable by the Contractor in respect of premiums shall be recovered from the Sub-Contractor by the Contractor as a debt, or deducted from any monies due or to become due to the Sub-Contractor, or from the Performance Bond provided under Clause 28.5.

19.0 EXTENSION OF TIME ("EOT")

Application for EOT

- 19.1 19.1(a) If the regular progress of the Sub-Contract Works has been delayed by any of the Time Impact Events stated in Clause 19.6, then the Sub-Contractor shall be entitled to apply for an EOT under this Clause.

The Sub-Contractor shall be entitled to a reasonable EOT if and to the extent that completion of the Sub-Contract Works is or will be delayed by any of the Time Impact Events;

- 19.1(b) As soon as practicable, but not later than twenty-one (21) Days after the Sub-Contractor became aware, or should have become aware of the regular progress having been delayed by any of the Time Impact Events, the Sub-Contractor shall give written notice to the Contractor (with a copy to the CA) indicating his intention to claim for an EOT and describing the Time Impact Event giving rise to an EOT;
- 19.1(c) Within twenty-one (21) Days of the end of the cause of delay, or within such other period as may be proposed by the Sub-Contractor and approved in writing by the Contractor and CA, the Sub-Contractor shall send to the Contractor (with a copy to the CA) the relevant particulars of the basis of his claim for EOT together with all necessary calculations and documents to substantiate his claims;
- 19.1(d) If the Sub-Contractor either fails to:
 - (i) give such written notice under Clause 19.1(b); or
 - (ii) submit the required particulars within the stipulated twenty-one (21) Days or such other period as approved by the Contractor and CA under Clause 19.1(c).

the Sub-Contractor accepts that the CA is not obliged (until after the Practical Completion of the Main Contract Works) to assess and recommend any EOT in respect of the Sub-Contractor's application for EOT. In that event, subject to the CA's review under Clause 19.8 of the Sub-Contract Conditions of Clause 23.10 of the Main Contract Conditions, the Sub-Contractor shall not be entitled to any EOT, and the non-assessment and non-granting of the EOT due to the Sub-Contractor's failure under this Clause shall not be a ground for challenging the validity of the Certificate of Non-Completion (if any) issued by the Contractor, or any deduction or claim for Liquidated Damages made by the Contractor under Clause 15.0.

- 19.1(e) If the CA is of the opinion that the particulars submitted by the Sub-Contractor pursuant to Clause 19.1(c) are insufficient for his assessment of the EOT applied, the CA shall within fourteen (14) Days from the date of receipt of Sub-Contractor's particulars, inform the Contractor (with a copy to the Sub-Contractor) of any deficiency in his submission and require the Sub-Contractor and Contractor to provide such further particulars within such period of time as may be stated by the CA in writing. If the Sub-Contractor fails to submit the required further particulars within the time as instructed by the CA, the CA may proceed to determine the Sub-Contractor's claim for such EOT based on whatever information which is in the possession of the CA, and may either reject the Sub-Contractor's application or recommend for an EOT within forty-two (42) Days from the last date of the period for the provision of further particulars by the Contractor and Sub-Contractor. The CA shall set out the details of his recommendation. The CA's recommendation shall be

binding upon the Contractor and the Sub-Contractor until and unless it is revised by the CA under Clause 19.8 herein or under Clause 23.10 of the Main Contract Conditions. If the CA recommends the granting of any EOT, the Contractor shall immediately issue to the Sub-Contractor a Certificate of Extension of Time to that effect.

Sub-Contractor to Keep Contemporary Records

- 19.2 The Sub-Contractor shall keep such contemporary records as may be relevant to a claim, made under Clause 19.0, either at the Site or at another location acceptable and accessible to the Contractor and CA. The Sub-Contractor shall permit the Contractor and CA to inspect all these records, and shall (if instructed) submit copies to the Contractor and CA.

Determination of EOT Application

- 19.3 If the CA is of the opinion that the Sub-Contractor has submitted sufficient particulars for his determination, the CA shall determine the Sub-Contractor's application and shall within not later than forty-two (42) Days from the date of the submission thereof, either recommend that the Sub-Contractor's application be rejected or an EOT be granted to the Sub-Contractor. The CA shall provide reasons for his recommendation. If the CA recommends the granting of any EOT, the Contractor shall immediately issue to the Sub-Contractor a Certificate of Extension of Time to that effect.

Other Considerations and Limitation in Fixing Completion Date

- 19.4 In assessing the EOT application, the CA may consider the effect or extent of any work omitted under the Sub-Contract. However, in assessing the Sub-Contractor's claim for any EOT, the CA shall not fix a Completion Date earlier than the Sub-Contract Completion Date stated in the Appendix.

Sub-Contractor to Prevent Delay

- 19.5 The Sub-Contractor shall constantly use his best endeavours and do all that may reasonably be required by the Contractor and CA to prevent or reduce delay in the completion of the Sub-Contract Works, irrespective of whether the delay was caused by the Employer, the Contractor, the Sub-Contractor or other events. For the avoidance of doubts, the Sub-Contractor's compliance with the said request by the Contractor and/or the CA shall be without prejudice to any other rights or remedies which he may possess.

Time Impact Events

- 19.6 The Time Impact Events causing delay where the Sub-Contractor may be given a fair and reasonable EOT are:
- 19.6(a) Force Majeure as defined in Article 9;
 - 19.6(b) Exceptionally Adverse Weather Condition as defined in Article 9. The Sub-Contractor is required to show that:

- (i) the Exceptionally Adverse Weather Condition occurred at the time when the works were actually carried out, and not when they were programmed to be carried out nor, at a time when there was not supposed to be any works done; and
 - (ii) it has caused delay to the completion of the Sub-Contract Works.
- 19.6(c) loss and/or damage occasioned by one or more of the contingencies referred to in Clause 20.0 of the Main Contract Conditions as the case may be, provided always that the same is not attributable to any negligence, wilful act or breach of contract by the Sub-Contractor, or any Person for whose actions the Sub-Contractor is responsible;
- 19.6(d) the Sub-Contractor not having received in due time necessary CA's Instruction or CAI (including those for or in regard to the expenditure of P.C. Sums and Provisional Sums, further drawings, details, levels or any other information) for which he had specifically applied in writing to the Contractor (with a copy to the CA). The Sub-Contractor's application must be submitted to the Contractor (with a copy to the CA) insufficient time before the commencement of construction of the affected works, to enable the Contractor to obtain the necessary CA's Instruction from the CA within a period which would not materially affect the progress of the affected works, having regard to the Sub-Contract Completion Date. Provided always that the CA's Instruction or CAI was not required as a result of any negligence, omission, default and/or breach of contract by the Sub-Contractor;
- 19.6(e) delay by the Employer in giving possession of the Site or any section of the Site in accordance with Clauses 21.1 and 21.2 of the Main Contract Conditions, or having obtained possession of the Site or any section of the Site from the Employer, the Contractor has delayed in giving possession to the Sub-Contract to carry out the Sub-Contract Works as required under the Sub-Contract;
- 19.6(f) compliance with CA's Instructions under Clauses 1.4, 11.2, or 21.4 of the Main Contract Conditions, unless the CA's Instruction was issued due to or is necessitated by or is intended to rectify any negligence, omission, default and/or breach of contract by the Sub-Contractor;
- 19.6(g) re-nomination of Nominated Sub-Contractors under Clause 27.0 and/or Nominated Suppliers under Clause 28.0 under the Main Contract;
- 19.6(h) delay on the part of craftsmen, tradesmen or others employed or engaged by the Employer in executing work not forming part of this Sub-Contract or their failure to execute such work;
- 19.6(i) delay or failure in the supply of materials and goods which the Employer had agreed to supply for the Sub-Contract Works;
- 19.6(j) the opening up for inspection of any work covered up, the testing of any work, materials or goods in accordance with Clause 6.3 (including making good in consequence of such opening up or testing) provided always that the inspection or test is not provided for in the Specification or Sub-Contract Bills; the inspection or test does not show that the

- works, materials or goods failed to comply with the Sub-Contract; or is not required by the Contractor or CA in consequence of prior negligence, omission, default and/or breach of contract by the Sub-Contractor;
- 19.6(k) any act of prevention or breach of the Main Contract by the Employer;
 - 19.6(l) war damage under Clause 32.3 of the Main Contract Conditions;
 - 19.6(m) compliance with CA's Instruction issued in connection with the discovery of fossils, coins, articles of value or antiquity, or structures and other remains or items of geological or archaeological interest on the Site under Clause 33.1 of the Main Contract Conditions;
 - 19.6(n) compliance with any Unforeseeable changes to any law, regulations, by-law or terms and conditions of any Appropriate Authority and/or Service Provider;
 - 19.6(o) delay caused by any Appropriate Authority and Service Provider in carrying out, or failure to carry out their work which affects the Sub-Contractor's work progress, provided always that: the Sub-Contractor has diligently followed the procedures, terms and conditions laid down by the Appropriate Authority and Service Provider; the delay was Unforeseeable; and such delay is not due to any negligence, omission, default and/or breach of contract by the contractor or Sub-Contractor;
 - 19.6(p) delay on the part of the Employer to appoint a replacement Person under Articles 4, 5, 6, 7 and 8;
 - 19.6(q) compliance with CA's Instruction issued in connection with disputes with neighbouring property owners provided always that such dispute is not caused by any negligence, omission, default and/or breach of contract by the Contractor or Sub-Contractor;
 - 19.6(r) delay as a result of the execution of work for which a Provisional Quantity is included in the Sub-Contract Bills which in the opinion of the CA is not a reasonably accurate forecast of the quantity of work required;
 - 19.6(s) failure of the Employer or the Contractor to give in due time entry to or exit from the Site or any part through or over any land, by way of passage adjoining or connected to the Site and in possession or control of the Employer (or the Contractor, as the case may be), provided always that it is duty and responsibility of the Employer and/or the Contractor to give such passage under the Main Contract or the Sub-Contract respectively;
 - 19.6(t) suspension by the Contractor of his obligations under Clauses 30.7 and 30.8 of the Main Contract Conditions;
 - 19.6(u) suspension of the whole or part of the Main Contract Works by order of an Appropriate Authority provided that the same is not due to any negligence, omission, default and/or breach of contract by the Contractor or Sub-Contractor;
 - 19.6(v) industrial action by workmen, strikes, lock-outs or embargoes affecting any of the trades employed upon the Sub-Contract Works or in the preparation, manufacture or transportation of materials or goods

required for the Sub-Contract Works and provided the same are not attributable to any negligence, wilful act or breach of contract by the Sub-Contractor, or any Person for whose actions the Sub-Contractor is responsible; and

19.6(w) any other ground for EOT expressly mentioned in the Sub-Contract.

Delay Caused by the Contractor

- 19.7
- 19.7(a) If the Sub-Contractor opines that the completion of the Sub-Contract Works is or will be delayed beyond the Sub-Contract Completion Date by any negligence, omission, default and/or breach of contract by the Contractor ("Contractor's Default"), the Sub-Contractor may apply for an EOT under this Clause.
- 19.7(b) As soon as practicable, but not later than twenty-one (21) Days after the Sub-Contractor became aware, or should have become aware of the Contractor's Default, the Sub-Contractor shall give written notice to the Contractor (with a copy to the CA) indicating his intention to claim for an EOT and describing the Contractor's Default giving rise to an EOT.
- 19.7(c) Within twenty-one (21) Days of the end of the cause of delay, or within such other period as may be proposed by the Sub-Contractor and approved by the Contractor and CA, the Sub-Contractor shall send to the Contractor (with a copy to the CA) the relevant particulars of the basis of his claim for EOT together with all necessary calculations and documents to substantiate his claims.
- 19.7(d) If the Sub-Contractor either fails to:
- (i) give such written notice under Clause 19.7(b); or
 - (ii) submit the required particulars within the stipulated twenty-one (21) Days or such other period as approved by the Contractor and CA under Clause 19.7(c), the Sub-Contractor accepts that the Contractor is not obliged to assess and grant any EOT in respect of the Sub-Contractor's application for EOT. In that event, subject to the Contractor's review under Clause 19.9, the Sub-Contractor shall not be entitled to any EOT, and the non- assessment and non-granting of the EOT due to the Sub-Contractor's failure under this Clause shall not be a ground for challenging the validity of the Certificate of Non-Completion (if any) issued by the Contractor, or any deduction or claim for Liquidated Damages made by the Contractor under Clause 15.0.
- 19.7(e) If the Contractor is of the opinion that the particulars submitted by the Sub-Contractor pursuant to Clause 19.7(c) are insufficient for his assessment of the EOT applied, the Contractor shall within fourteen (14) Days from the date of receipt of Sub-Contractor's particulars, inform the Sub-Contractor of any deficiency in his submission and require the Sub-Contractor to provide such further particulars within such period of time as may be stated by the Contractor in writing. If the

Sub-Contractor fails to submit the required further particulars within the time as instructed by the Contractor, the Contractor may proceed to determine the Sub-Contractor's claim for such EOT based on whatever information which is available to him, and may either reject the Sub-Contractor's application or grant an EOT within forty-two (42) Days from the last date of the period for the provision of further particulars by the Sub-Contractor.

- 19.7(f) If the Contractor opines that the Sub-Contractor has submitted sufficient particulars for his determination, the Contractor shall determine the Sub-Contractor's application and shall, not later than forty-two (42) Days thereof, either reject the Sub-Contractor's application or grant an EOT to the Sub-Contractor. The Contractor shall set out the details of his recommendation.

CA's Review of EOT after Practical Completion

- 19.8 19.8(a) Notwithstanding the aforesaid, the Sub-Contractor may, within forty-two (42) Days after Practical Completion of the Sub-Contract Works submit to the Contractor (with a copy to the CA) its final application containing a fully detailed claim for an EOT (including all Time Impact Events which have been specifically notified by the Contractor under Clause 19.1) and full supporting particulars of the basis of the EOT claimed.
- 19.8(b) Within forty-two (42) Days after receiving the Sub-Contractor's said final application, the CA shall consider and determine the Sub-Contractor's said final application which shall either maintain his previous recommendation or, increase the EOT previously granted which he considers as fair and reasonable. The CA shall set out the reasons for his recommendation.
- 19.8(c) If the Sub-Contractor fails to submit the final application under Clause 19.8(a), then upon a written request by the Contractor, the CA may (but is not obliged to) within forty-two (42) Days after the expiry of the period within which the Sub-Contractor ought to have submitted his final application, review and recommend further EOT to the Sub-Contractor, if in his opinion the further EOT is fair and reasonable having regard to any of the Time Impact Events. In exercising the power to review, the CA may consider a Time Impact Event which has not been specifically notified by the Contractor under Clause 19.1.
- 19.8(d) If the CA determines and recommends a further EOT under 19.8(b) or 19.8(c), and as a consequence, the amount of Liquidated Damages previously retained by the Contractor is reduced, then the Contractor shall release the surplus amount to the Sub-Contractor within seven (7) Days after the Period of Honouring Certificates from the date of the CA's recommendation.
- 19.8(e) In reviewing his EOT determination under Clauses 19.8(b) or 19.8(c), the CA shall have no power to reduce the EOT previously recommended by him.

Contractor's Review of EOT

- 19.9 Within forty-two (42) Days after receipt of the CA's decision on his review under Clause 23.10 of the Main Contract Conditions, the Contractor may review any previous recommendation by CA under Clauses 19.1, 19.3 and 19.8, and his decision under Clause 19.7, and inform the Sub-Contractor (with a copy to the CA) of his review of any EOT. If the Contractor determines and grants further EOT, and as a consequence, the amount of Liquidated Damages previously retained by the Contractor is reduced, then the Contractor shall release the surplus amount to the Sub-Contractor within seven (7) Days after the Period of Honouring Certificates from the date of the Contractor's said determination. No such review of EOT by the Contractor shall result in a decrease in any EOT previously granted to the Sub-Contractor.

19A.0 EOT PURSUANT TO SECTION 29 OF CIPAA

Application for EOT

- 19A.1 If the Sub-Contractor is of the opinion that the completion of the Sub-Contract Works has been delayed by reason of the suspension or reduction of the rate of progress of performance of the works under Section 29 of CIPAA, the following provisions shall apply:
- 19A.1(a) as soon as practicable, but not later than twenty-one (21) Days after the date of resumption of performance or the rate of progress performance of the works under Section 29(4)(d) of CIPAA, the Sub-Contractor shall send to the Contractor (with a copy to the CA) the relevant particulars of his claim for EOT together with all necessary calculations and documents to substantiate his claims;
 - 19A.1(b) if the Sub-Contractor fails to submit the required particulars within the stipulated twenty-one (21) Days under Clause 19A.1(a) or such other period as approved by the Contractor, the Contractor is not obliged to assess and grant any EOT in respect of the Sub-Contractor's application for EOT. In that event, subject to the Contractor's review under Clause 19.9, the Sub-Contractor shall not be entitled to any EOT, and the non-assessment and non-granting of the EOT due to the Sub-Contractor's failure under this Clause shall not be a ground for challenging the validity of the Certificate of Non-Completion (if any) issued by the Contractor, or any deduction or claim for Liquidated Damages made by the Contractor under Clause 15.0;
 - 19A.1(c) if the Contractor is of the opinion that the particulars submitted by the Sub-Contractor pursuant to Clause 19A.1(a) are insufficient for his assessment of the EOT applied, the Contractor shall within fourteen (14) Days from the date of receipt of Sub-Contractor's particulars, inform the Sub-Contractor of any deficiency in his submission and require the Sub-Contractor to provide such further particulars within such period of time as may be stated by the Contractor in writing. If the Sub-Contractor fails to submit the required further particulars within the

time as instructed by the Contractor, the Contractor may proceed to determine the Sub-Contractor's claim for such EOT based on whatever information which is available to him, and may either reject the Sub-Contractor's application or grant an EOT within forty-two (42) Days from the last date of the period for the provision of further particulars by the Sub-Contractor;

19A.1(d) if the Contractor opines that the Sub-Contractor has submitted sufficient particulars for his determination, the Contractor shall determine the Sub-Contractor's application and shall, not later than forty-two (42) Days thereof, either reject the Sub-Contractor's application or grant an EOT to the Sub-Contractor. The Contractor shall set out the details of his recommendation;

19A.1(e) Clauses 19.2 and 19.5 shall apply to an application for EOT under this Clause 19A.1.

Adjudication Decision is Set Aside or Superseded by Court or Arbitration

19A.2 In the event that the Adjudication Decision to which the subject claim made by the Sub-Contractor relates, is subsequently set aside by the Court or superseded by a final decision of the Court or arbitration, the Sub-Contractor shall not be entitled to any such EOT and any EOT previously granted by the Contractor pursuant to this Clause 19A.1 shall be deemed automatically cancelled. The Contractor may (but is not obliged to) issue a revised Certificate of Non-Completion, but the failure of the Contractor to issue a revised Certificate of Non-Completion shall not affect or invalidate the Contractor's right to his Liquidated Damages for the delay from the last date when the Sub-Contractor ought to have completed the Sub-Contract Works, to the date of Practical Completion.

20.0 LOSS AND/OR EXPENSE CAUSED BY MATTERS AFFECTING THE REGULAR PROGRESS OF THE SUB-CONTRACT WORKS

Application to Ascertain Loss and/or Expense

20.1 20.1(a) If the regular progress of the Sub-Contract Works or any section of the Sub-Contract Works has been materially affected by any of the Time Impact Events expressly referred to in Clause 20.3, and the Sub-Contractor has incurred direct loss and/or expense which could not be reimbursed by a payment made under any other provision in the Sub-Contract, the Sub-Contractor may make a claim for such loss and/or expenses subject always to the following provisions:

- (i) the Sub-Contractor shall within twenty-eight (28) Days from the start of the occurrence of the matters referred to in Clause 20.3, give a written notice to the Contractor (with a copy to the CA) of his intention to claim for such direct loss and/or expense together with an initial estimate of his claim duly supported with all necessary calculations and particulars; and

- (ii) within twenty-eight (28) Days after the matter referred to in Clause 20.3 has ended, the Sub-Contractor shall send to the Contractor (with a copy to the CA) relevant particulars of his claim for his direct loss and/or expense together with all necessary calculations and particulars to substantiate his claims.
- (iii) If the Sub-Contractor fails to submit the required written notice in Clause 20.1(a)(i) or the particulars in Clause 20.1(a)(ii), or within such longer period as may be agreed in writing by the Contractor and CA, it shall be deemed that the Sub-Contractor has waived his rights under this Sub-Contract and/or the law to any such direct loss and/or expense.
- (iv) If the CA is of the opinion that the particulars submitted by the Sub-Contractor are insufficient to enable him to decide on the claim for such direct loss and/or expense, the CA shall within fourteen (14) Days from the date of receipt of Sub-Contractor's particulars, inform the Contractor (with a copy to the Sub-Contractor) of any deficiency in the submission and require the Sub-Contractor to provide such further particulars within such period of time as may be stated by the CA in writing. If the Sub-Contractor fails to submit the required further particulars within the time as instructed by the CA, the CA may, with the assistance from the Consultant, assess and value the Sub-Contractor's claim for such direct loss and/or expenses based on whatever information which is available to them and ascertain the amount (if any) entitled by the Sub-Contractor within forty-two (42) Days thereof.

Sub-Contractor to Keep Contemporary Records

- 20.2 The Sub-Contractor shall keep such contemporary records as may be relevant to any Claim made under Clause 20 either on the Site or at another location acceptable to the Contractor and CA. The Sub-Contractor shall permit the Contractor, CA and Consultant to inspect all these records, and shall (if instructed) submit copies to the Contractor, CA and Consultant.

Circumstances Materially Affecting Progress of the Works

- 20.3 The Sub-Contractor is entitled to make a claim for direct loss and/or expense under Clause 20.1 above if any of the Time Impact Events listed in Clauses 19.6 (d), (e), (f), (g), (h), (i), (j), (k), (m), (p), (q), (r), (s), (t) and (u) has materially affected the regular progress of the Sub-Contract Works. The Sub-Contractor's right to make a claim under Clause 20.1 above is separate and distinct from an EOT claim under Clause 19.0 above.

Amount Ascertained to be Added to Sub-Contract Sum, and Included in Certificate

- 20.4 If the CA is of the opinion that the Contractor and the Sub-Contractor have fulfilled their obligation in submitting the required notice and sufficient particulars

for his determination, the CA shall determine and ascertain the amount (if any) of such direct loss and/or expense within forty-two (42) Days of receipt of the particulars from the Sub-Contractor under Clause 20.1(a)(ii). The CA shall notify the Contractor (with a copy to the Sub-Contractor) in writing of his determination, with the reasons for his determination. Any amount so ascertained shall be added to the Sub-Contract Sum, and if an Interim Certificate is issued after the date of ascertainment, such amount shall be included in the certificate.

Loss and/or Expense Arising from Contractor's Default

- 20.5 20.5(a) Where the regular progress of the Sub-Contract Works has been materially affected by any negligence, omission, default and/or breach of contract by the Contractor ("Contractor's Default"), and the Sub-Contractor has incurred direct loss and/or expense, the Sub-Contractor shall be entitled to recover such direct loss and/or expense from the Contractor as a debt under this Clause.
- 20.5(b) As soon as practicable, but not later than twenty-one (21) Days after the Sub-Contractor became aware, or should have become aware of the Contractor's Default, the Sub-Contractor shall give written notice to the Contractor:
- (i) indicating his intention to claim for such direct loss and/or expense together with an initial estimate of his claim duly supported with all necessary calculations and particulars; and
 - (ii) describing the Contractor's Default giving rise to his claim.
- 20.5(c) Within twenty-one (21) Days of the Sub-Contractor giving written notice under Clause 20.5(b), or within such other period as may be proposed by the Sub-Contractor and approved by the Contractor, the Sub-Contractor shall send to the Contractor the relevant particulars of his claim for such direct loss and/or expense together with all necessary calculations and particulars to substantiate his claim.
- 20.5(d) If the Sub-Contractor either fails to:
- (i) give such written notice under Clause 20.5(b); or
 - (ii) submit the required particulars within the stipulated twenty-one (21) Days or such other period as approved by the Contractor under Clause 20.5(c), then it shall be deemed that the Sub-Contractor has waived his rights under this Sub-Contract and/or the law to any such direct loss and/or expense.
- 20.5(e) If the Contractor is of the opinion that the particulars submitted by the Sub-Contractor pursuant to Clause 20.5(c) are insufficient for his assessment of the direct loss and/or expense claimed, the Contractor shall within fourteen (14) Days from the date of receipt of Sub-Contractor's particulars, inform the Sub-Contractor of any deficiency in his submission and require the Sub-Contractor to provide such further particulars within such period of time as may be stated by the Contractor in writing. If the Sub-Contractor fails to submit the required further particulars within the time as instructed by the Contractor, the

Contractor may proceed to determine the Sub-Contractor's claim based on whatever information which is available to him.

- 20.5(f) If the Contractor opines that the Sub-Contractor has submitted sufficient particulars for his determination, the Contractor shall determine the Sub-Contractor's application and shall, not later than forty-two (42) Days thereof, either reject the Sub-Contractor's application or ascertain any amount entitled by the Sub-Contractor for his claim. The Contractor shall set out the details of his recommendation. If any amount is ascertained to be due to the Sub-Contractor, the Contractor shall pay to the Sub-Contractor such amount ascertained within seven (7) Days after the Period of Honouring Certificates.

Loss and/or Expense Arising from Sub-Contractor's Default

- 20.6 20.6(a) Where the regular progress of the Main Contract Works has been materially affected by any negligence, omission, default and/or breach of contract by the Sub-Contractor ("Sub-Contractor's Default"), and the Contractor has incurred direct loss and/or expense, the Contractor shall be entitled to recover such direct loss and/or expense from the Sub-Contractor as a debt under this Clause.
- 20.6(b) As soon as practicable, but not later than twenty-one (21) Days after the Contractor became aware, or should have become aware of the Sub-Contractor's Default, the Contractor shall give written notice to the Sub-Contractor:
- (i) indicating his intention to claim for such direct loss and/or expense together with an initial estimate of his claim duly supported with all necessary calculations and particulars; and
 - (ii) describing the Sub-Contractor's Default giving rise to his claim.
- 20.6(c) Within twenty-one (21) Days of the Contractor giving written notice under Clause 20.6(b), or within such other period as may be proposed by the Contractor and approved by the Sub-Contractor, the Contractor shall send to the Sub-Contractor:
- (i) the amount claimed; and
 - (ii) the relevant particulars of his claim for such direct loss and/ or expense together with all necessary calculations and particulars to substantiate his claim.
- 20.6(d) If the Contractor either fails to:
- (i) give such written notice under Clause 20.6(b); or
 - (ii) submit the required particulars within the stipulated twenty-one (21) Days or such other period as approved by the Sub-Contractor under Clause 20.6(c), then it shall be deemed that the Contractor has waived his rights under this Sub-Contract and/or the law to any such loss and/or expense.
- 20.6(e) If the Sub-Contractor after receipt of the written notice from the Contractor disputes the amount claimed by the Contractor, then the

Sub-Contractor may within twenty-one (21) Days of receipt of such written notice, send to the Contractor a written statement setting out the reasons and particulars for such disagreement. If the parties are unable to agree on the amount claimed by the Contractor within a further twenty-one (21) Days after the receipt of the Sub-Contractor's response, the Parties may refer the dispute to arbitration in accordance with Clause 25.0.

Claims under Clauses 20.5 and 20.6 Not to Be Included in Final Account

- 20.7 Any claims for loss and/or expense under Clauses 20.5 and 20.6 are matters to be resolved between the Parties, and the amount shall not be included in the Final Account.

20A.0 LOSS AND/OR EXPENSE INCURRED PURSUANT TO SECTION 29 OF CIPAA

Application for Loss and/or Expense

- 20A.1 If the Sub-Contractor has incurred loss and/or expense through exercising his right to suspend or reduce the rate of progress of performance of the works under Section 29 of CIPAA, the Sub-Contractor may make a claim for such loss and/or expenses. The following provisions shall apply:
- 20A.1(a) the Sub-Contractor shall, within as soon as practicable but not later than twenty-eight (28) Days after the date of resumption of performance or the rate of progress of performance of the works under Section 29(4) (d) of CIPAA, send to the Contractor (with a copy to the CA) relevant particulars of his claim for his loss and/or expense together with all necessary calculations and particulars to substantiate his claims;
 - 20A.1(b) if the Sub-Contractor fails to submit the required particulars in Clause 20A.1(a), or within such longer period as may be agreed in writing by the Contractor and CA, it shall be deemed that the Sub-Contractor has waived his rights under this Sub-Contract and/or the law to any such loss and/or expense;
 - 20A.1(c) if the CA is of the opinion that the particulars submitted by the Sub-Contractor are insufficient to enable him to decide on the claim for such loss and/or expense, the CA shall within fourteen (14) Days from the date of receipt of Sub-Contractor's particulars, notify the Contractor in writing (with a copy to the Sub-Contractor) of any deficiency in his submission and require the Sub-Contractor to provide such further particulars within such period of time as may be stated by the CA in writing. If the Sub-Contractor fails to submit the required further particulars within the time as instructed by the CA, the CA may, with the assistance from the Consultant, value the Sub-Contractor's claim for such loss and/or expenses based on whatever information which

is available to them and ascertain the amount (if any) entitled by the Sub-Contractor within forty-two (42) Days thereof. The CA shall notify the Contractor in writing (with a copy to the Sub-Contractor) his determination, with the details of his determination.

Contemporary Records

- 20A.2 Clause 20.2 shall apply for any claim made by the Sub-Contractor under Clause 20A.1(a).

Ascertainment of Loss and/or Expense

- 20A.3 If the CA is of the opinion that the Sub-Contractor has submitted sufficient particulars for his determination, the CA shall determine and ascertain the amount (if any) of such loss and/or expense within forty-two (42) Days of receipt of the particulars from the Sub-Contractor under Clause 20A.1(a). The CA shall notify the Contractor in writing (with a copy to the Sub-Contractor) his determination, with the details of his determination. Any amount so ascertained shall be added to the Sub-Contract Sum, and if an Interim Certificate is issued after the date of ascertainment, such amount shall be included in the certificate.

Adjudication Decision Is Set Aside or Superseded by Court or Arbitration

- 20A.4 In the event that the Adjudication Decision to which the subject claim made by the Sub-Contractor relates, is subsequently set aside by the Court or superseded by a final decision of the Court or arbitration, the Sub-Contractor shall not be entitled to any such loss and/or expense and the Contractor shall be entitled to recover from the Sub-Contractor any amount of such loss and/or expense paid by the Contractor as a debt, or by deducting from any monies due or to become due to the Sub-Contractor under this Sub-Contract, or recover from the Performance Bond provided under Clause 28.5.

21.0 DETERMINATION BY CONTRACTOR

Defaults by Sub-Contractor

- 21.1 The Contractor may determine the employment of the Sub-Contractor under the Sub-Contract if the Sub-Contractor makes default in one or more of the following instances
- 21.1(a) fails to commence the Sub-Contract Works for more than fourteen (14) Days from the Sub-Contract Date of Commencement or any other extended date allowed in accordance with the relevant provisions of the Sub-Contract;
- 21.2(b) wholly or substantially suspends the carrying out of the Sub-Contract Works before Practical Completion;

- 21.1(c) fails to proceed with the design (to the extent required by the Sub-Contract) and/or fails to proceed regularly and/or diligently with the Sub-Contract Works;
- 21.1(d) persistently refuses or neglects fails to comply with a CA's Instruction which the CA is empowered to give under the Contract;
- 21.1(e) fails to comply with in breach of the provisions in Clause 16.0; or
- 21.1(f) abandons the Sub-Contract Works or otherwise plainly demonstrates the intention not to continue with the performance of his obligations under the Sub-Contract.

Determination of Employment of Sub-Contractor

- 21.2 21.2(a) Upon occurrence of any default under Clause 21.1, and if the Contractor decides to determine the Sub-Contractor's employment, the Contractor shall send to the CA (with a copy to the Sub-Contractor) a written report stating the Sub-Contractor's default. The CA may request the Sub-Contractor to respond to the Contractor's report before he decides whether or not to give his written consent for the Contractor to determine the employment of the Sub-Contractor.
- 21.2(b) If the CA gives his written consent, the Contractor shall give to the Sub-Contractor a written notice delivered by hand or by registered post specifying the default.
- 21.2(c) If the Sub-Contractor continues with such default for fourteen (14) Days from the receipt of the Notice of Default, then the Contractor may, within ten (10) Days from the expiry of the said fourteen (14) Days, by a further written notice delivered by hand or by registered post, forthwith determine the employment of the Sub-Contractor under the Sub-Contract ("Notice of Determination").

Sub-Contractor Becoming Insolvent, etc

- 21.3 If the Sub-Contractor:
 - 21.3(a) has committed an act of bankruptcy or becomes bankrupt or insolvent or makes a composition with creditors; or
 - 21.3(b) being a company, any winding up order of any kind is made; or
 - 21.3(c) having a receiver or manager or judicial manager of the Sub-Contractor's undertaking duly appointed; or
 - 21.3(d) having possession taken or execution levied by creditors or debenture holders or under a floating charge;
 then the employment of the Sub-Contractor under this Sub-Contract shall be forthwith automatically determined.

Bribery or Corrupt Practices

- 21.4 If the Contractor determines, based on reasonable evidence, that the Sub-Contractor has given or offered to give (directly or indirectly) to any Party or Person

any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

- 21.4(a) for doing or forbearing to do any action in relation to the Sub-Contract; or
- 21.4(b) for showing or forbearing to show favour or disfavour to any Person in relation to the Sub-Contract, or that any of the Sub-Contractor's personnel, servants, agents or workmen has given or offered to give any such inducement or reward as aforesaid described, then the Contractor shall send to the CA (with a copy to the Sub-Contractor) a written report stating the Sub-Contractor's said bribery or corrupt practice. The CA may request the Sub-Contractor to respond to the Contractor's report before he decides whether or not to give his written consent for the Contractor to determine the employment of the Sub-Contractor. If the CA gives his written consent, then the Contractor may by a written notice delivered by hand or by registered post, forthwith determine the employment of the Sub-Contractor under the Sub-Contract. However, the Contractor shall not be entitled to determine the Sub-Contractor's employment under this Clause if the inducements and rewards are lawful. The burden of showing that any inducements or rewards offered or provided are lawful rests with the Sub-Contractor.

Rights and Duties of Contractor and Sub-Contractor on Determination of Employment of Sub-Contractor

- 21.5 In the event that the employment of the Sub-Contractor is determined under Clauses 21.2, 21.3 or 21.4, the following shall be the respective rights and duties of the Contractor and the Sub-Contractor:
 - 21.5(a) irrespective of the validity or legality of the determination of the Sub-Contractor's employment, the Sub-Contractor shall, not later than fourteen (14) Days thereof, vacate the Site;
 - 21.5(b) the CA, with the approval of the Employer, shall nominate a Person as the new Sub-Contractor, or the Employer may employ and pay other Persons to carry out and complete the Sub-Contract Works and to make good any defects. Such Person may enter upon the Sub-Contract Works and use and may take possession of all temporary buildings, plant, tools, equipment, unfixed materials and goods that belong to the Sub-Contractor intended for, delivered to and placed on or adjacent to the Site, other than those which the CA specifically instructs in writing to be removed by the Sub-Contractor. The Employer may purchase all materials and goods necessary for the carrying out and completion of the Sub-Contract Works; if so required by the Contractor, the Sub-Contractor shall within fourteen (14) Days of the date of determination, assign to the Contractor the benefit of any agreement for the continuation of the hire of any plant and equipment already on the Site. In this regard, the Sub-Contractor shall, before entering into such agreement, ensure that such agreement is assignable;

- 21.5(c) if so required by the Contractor, the Sub-Contractor shall within fourteen (14) Days of the date of determination, and without any charge, assign to the Contractor the benefit of any agreement for the continuation of the hire of any plant and equipment on site, for the supply of materials or goods and/or for the execution of any work for the purposes of this Sub-Contract. In this regard, the Sub-Contractor shall, before entering into such agreement, ensure that such agreement is assignable;
- 21.5(d) when instructed in writing by the Contractor to do so (but not before), the Sub-Contractor shall remove, at his own risk and cost, from the Site any temporary buildings, plants, tools, equipment, materials or goods belonging to or hired by him. After fourteen (14) Days from the date of receipt of such instruction and the Sub-Contractor has failed, neglected or refused to comply with the instruction, then the Contractor may without liability remove and sell any such property belonging to the Sub-Contractor (except those that are on hire) and hold the proceeds less all costs incurred to the credit of the Sub-Contractor;
- 21.5(e) the Sub-Contractor shall submit to the Contractor or CA all plans, drawings, designs, specification, manuals, records, reports, documents, latest as-built drawing (if any), and any other information as the Contractor or CA may require in relation to the Sub-Contract Works as at the date of the determination at no cost and expense to the Contractor; and
- 21.5(f) the Sub-Contractor shall allow or pay to the Contractor all additional costs incurred to complete the Sub-Contract Works including all losses and/or expenses suffered by the Contractor. Save for any outstanding payments which have been certified and are due for payment under the Sub-Contract prior to the date of determination (after taking into account any set-off and/or deductions to which the Contractor is entitled under the Sub-Contract), the Parties agree that the Contractor shall not be bound by any provision in the Sub-Contract to make any other or further payment to the Sub-Contractor when the employment of the Sub-Contract was determined until after the completion of the balance of the Sub-Contract Works. Upon completion of the balance of the Sub-Contract Works, an account taking into consideration the value of works carried out, and goods and materials supplied by the Sub-Contractor, and all cost, damages, loss and/or expenses incurred or suffered by the Contractor in completing the Sub-Contract Works shall be incorporated in final cost account prepared in accordance with Clause 21.7.

Site Inspection and Records of Works

- 21.6 21.6(a) The CA shall within fourteen (14) Days of the determination of the Sub-Contractor's employment, give a written notice to the Contractor and the Sub-Contractor of the date and time of inspection on Site to jointly record the extent of the Sub-Contract Works executed and the materials and goods delivered to the Site. The Contractor and Sub-Contractor

shall provide all necessary assistance to the CA and Consultant to perform their task.

- 21.6(b) If the Sub-Contractor fails to attend the site inspection at the appointed time and date, or the Sub-Contractor refuses or fails to cooperate with the CA, Consultant or Contractor for the purposes of conducting the site inspection, the CA, Consultant and Contractor shall nevertheless proceed to carry out the inspection on Site to record the extent of the Sub-Contract Works executed and the materials and goods delivered to the Site by the Sub-Contractor.
- 21.6(c) Within twenty-eight (28) Days of the completion of the site inspection under Clauses 21.6(a) or 21.6(b), the CA and the Consultant shall complete the record and forward a copy thereof to the Contractor and Sub-Contractor.

Settlement of Account Upon Determination

- 21.7 21.7(a) The CA shall within six (6) Months from the date of completion of the balance of the Sub-Contract Works submit to the Contractor and Sub-Contractor for their agreement, a final cost account for the total cost incurred by the Sub-Contractor in respect of the execution of the Sub-Contract Works prior to the determination, Liquidated Damages and all loss and expense suffered by the Contractor.
- 21.7(b) If the Parties agree with the final cost account presented by the CA, then the final cost account shall become final and conclusive and the following provisions shall apply:
- (i) if the amount in the final cost account entitled to by the Contractor exceeds the total amount which would have been payable to the Sub-Contractor on completion in accordance with the Sub-Contract, the difference shall be a debt payable to the Contractor by the Sub-Contractor;
 - (ii) if, on the other hand, the amount in the final cost account entitled to by the Contractor is less than the said total amount payable to the Sub-Contractor, the difference shall be paid by the Contractor to the Sub-Contractor within seven (7) Days after the Period of Honouring Certificates, commencing from the date of the agreement of the Parties with regard to the final cost account.
- 21.7(c) If either Party has any dispute on any item or amount in the final cost account, then the following provisions shall apply:
- (i) the Party disputing the final cost account shall by written notice to the other Party (with a copy to the CA) set out any disagreement thereof complete with particulars within one (1) Month of the date of receipt of the final cost account from the CA;
 - (ii) within one (1) Month from the date of receipt of the notice of dispute, the CA shall decide either to amend or not to amend the final cost account, and provide reasons for his decision. The CA may also request any necessary further particulars, but shall

nevertheless give his decision within the stipulated one (1) Month period (unless such period is extended by mutual agreement of the Parties);

- (iii) any Party disagreeing with the CA's decision under Clause 21.7(c) (ii) shall refer the dispute to arbitration under Clause 25.0."

Contractor's Other Rights and Remedies Not Prejudiced

- 21.8 The provisions of Clause 21.0 are without prejudice to any other rights and/or remedies which the Contractor may possess under the Sub-Contract and/or the law.

22.0 DETERMINATION BY SUB-CONTRACTOR

Defaults by Contractor

- 22.1 The Sub-Contractor may determine his own employment if:
- 22.1(a) the Contractor refuses or fails to pay the Sub-Contractor the amount due on any certificate (less any deduction, set off and/or Liquidated Damages to which the Contractor is entitled to make under these Conditions), within seven (7) Days after the Period of Honouring Certificates;
 - 22.1(b) without reasonable cause, the Contractor wholly or substantially suspends the carrying out of the Main Contract Works;
 - 22.1(c) without reasonable cause, the Contractor fails to proceed with the Main Contract Works with due diligence so that the reasonable progress of the Sub-Contract Works is seriously affected.

Determination of Own Employment

- 22.2 Upon occurrence of any default under Clause 22.1, and if the Sub-Contractor decides to determine his own employment, then the Sub-Contractor shall give to the Contractor (with a copy to the CA) a written notice delivered by hand or by registered post specifying the Contractor's default. If the Contractor shall continue with such default for fourteen (14) Days from the receipt of such written notice, then the Sub-Contractor may, within ten (10) Days from the expiry of the said fourteen (14) Days, by a further written notice delivered by hand or by registered post, forthwith determine his own employment under the Sub-Contract.

Contractor Becoming Insolvent, etc.

- 22.3 If the Contractor:
- 22.3(a) has committed an act of bankruptcy or becomes bankrupt or insolvent or makes a composition with creditors; or
 - 22.3(b) if, being a company, any winding up order of any kind is made; or

- 22.3(c) a receiver or manager or judicial manager of the Employer's undertaking or assets is appointed, or possession taken or execution levied by creditors or debenture holders or under a floating charge;

then the employment of the Sub-Contractor under this Sub-Contract shall be forthwith automatically determined.

Rights and Duties of Contractor and Sub-Contractor Upon Determination

- 22.4 Upon such determination under Clause 22.2 or 22.3, the following shall be the respective rights and duties of the Contractor and Sub-Contractor:

- 22.4(a) the Sub-Contractor shall within fourteen (14) Days or within such longer period as may be agreed in writing by the Contractor, remove from the Site all his temporary buildings, plant, tools, equipment, materials and goods. The Sub-Contractor shall be paid the cost of de-mobilisation;
- 22.4(b) the Sub-Contractor shall, within fourteen (14) Days or within such longer period as may be agreed in writing by the Contractor, vacate the Site and surrender possession of the Site to the Employer;
- 22.4(c) if so required by the Contractor, the Sub-Contractor shall, within fourteen (14) Days of the date of determination, assign to the Contractor the benefit of any agreement for the continuation of the hire of any plant and equipment on Site, for the supply of materials or goods and/or for the execution of any work for the purposes of this Sub-Contract. In this regard, the Sub-Contractor shall, before entering into such agreement, ensure that such agreement is assignable;
- 22.4(d) the Sub-Contractor shall submit to the Contractor or CA all plans, drawings, designs, specification, manuals, records, reports, documents, latest as-built drawing (if any), and any other information as the Contractor or CA may require in relation to the Sub-Contract Works as at the date of the determination; and
- 22.4(e) the Contractor shall allow or pay to the Sub-Contractor the total value of work properly executed and the value of materials and goods supplied including any loss and/or expense suffered by the Sub-Contractor arising from and/or caused by such determination.

Site Inspection and Records of Works

- 22.5 22.5(a) Within fourteen (14) Days of the determination of his own employment, the Contractor and Sub-Contractor shall give a written notice to the CA, or the CA may give notice fixing the time and date of inspection on Site to jointly record the extent of the Sub-Contract Works executed and the materials and goods delivered to the Site. The Contractor and Sub-Contractor shall provide all necessary assistance to the CA and Consultant to perform their task.
- 22.5(b) If the Sub-Contractor fails to give a notice under Clause 22.5(a) within the stipulated time, or fails to attend the site inspection at the time and date as instructed by the CA, or the Sub-Contractor or the Contractor

refuses or fails to cooperate with the CA and/or the Consultant for the purposes of conducting the site inspection, the CA and the Consultant shall nevertheless proceed to carry out the inspection on Site to record the extent of the Sub-Contract Works executed and the materials and goods delivered to the Site by the Sub-Contractor.

- 22.5(c) Within twenty-eight (28) Days of the completion of the site inspection under Clauses 22.5(a) or 22.5(b), the CA and the Consultant shall complete the record and forward a copy thereof to the Contractor and the Sub-Contractor.

Settlement of Account Upon Determination

- 22.6 22.6(a) The Sub-Contractor shall within six (6) Months after the determination of his own employment, submit to the Contractor and CA his final claim containing the total value of work properly executed, the value of materials and goods supplied and loss and/or expense suffered by the Sub-Contractor caused by such determination. Within three (3) Months after receiving the said final claim from the Sub-Contractor, the CA shall assess and prepare a final cost account taking into account the final claim submitted by the Sub-Contractor and all deductions, set off and Liquidated Damages (if any) which the Contractor is expressly entitled under the Sub-Contract.
- 22.6(b) If the Parties agree with the final cost account presented by the CA, then the final cost account shall become conclusive and the following provisions shall apply:
- (i) if the amount in the final cost account entitled to by the Sub-Contractor exceeds the sums paid to the Sub-Contractor (less any deductions, set off and Liquidated Damages which the Contractor is expressly entitled under the Sub-Contract), the balance shall be a debt payable to the Sub-Contractor by the Contractor within seven (7) Days after the Period of Honouring Certificates, commencing from the date of the agreement of the Parties with regard to the final cost account;
 - (ii) if, on the other hand, the amount in the final cost account entitled by the Sub-Contractor is less than the said total amount payable to the Sub-Contractor, the difference shall be a debt payable to the Contractor by the Sub-Contractor.
- 22.6(c) If either Party has any dispute on any item or amount in the final cost account, then the following provisions shall apply:
- (i) the Party disputing the final cost account shall by written notice to the other Party (with a copy to the CA) set out any disagreement thereof complete with particulars within one (1) Month of the date of receipt of the final cost account from the CA;
 - (ii) within one (1) Month from the date of receipt of the notice of dispute, the CA shall decide either to amend or not to amend the final account, and provide reasons for his decision. The CA may also request any necessary further particulars, but shall

nevertheless give his decision within the stipulated one (1) Month period;

- (iii) any Party disagreeing with the CA's decision under Clause 22.6(c)(ii) shall refer the dispute to arbitration under Clause 25.0.

Sub-Contractor's Other Rights and Remedies Not Prejudiced

- 22.7 The provisions of Clause 22.0 are without prejudice to any other rights and/or remedies which the Sub-Contractor may possess under the Sub-Contract and/or the law.

23.0 DETERMINATION OF CONTRACTOR'S EMPLOYMENT BY EMPLOYER

Defaults by Sub-Contractor

- 23.1 If the employment of the Contractor is determined by the Employer under Clause 25.0 of the Main Contract Conditions, then unless the Employer requires the benefit of this Sub-Contract to be assigned to the Employer under Clause 25.5(b) of the Main Contract Conditions, the employment of the Sub-Contractor under the Sub-Contract shall be automatically determined after the expiry of fourteen (14) Days after the determination of the employment of the Contractor. The Sub-Contractor shall extend all necessary co-operation and information to the Contractor, CA and Consultant for the purposes of determining the extent of works executed by the Sub-Contractor up to the date of determination of the Contractor's employment, and the preparation of the final account thereof as required under Clauses 25.6 and 25.7 of the Main Contract Conditions.

Determination by Contractor of his Own Employment

- 23.2 If the Contractor determines his own employment under Clause 26.0 of the Main Contract Conditions, then unless the Employer requires the benefit of this Sub-Contract to be assigned to the Employer under Clause 26.4(c) of the Main Contract Conditions, the employment of the Sub-Contractor under the Sub-Contract shall be automatically determined after the expiry of fourteen (14) Days after the determination of the employment of the Contractor. The Sub-Contractor shall supply all necessary information to the Contractor in order that the Contractor can include a record of works executed by the Sub-Contractor to be followed by a final account to be submitted to the Employer and the CA as required under Clause 26.6 of the Main Contract Conditions.

24.0 PAYMENT AND FINAL ACCOUNT

Submission of Payment Application

- 24.1 24.1(a) The Sub-Contractor shall submit a payment application at the Interim Claim Interval stated in the Appendix with complete details and

particulars to the Contractor to enable the Contractor to consider and ascertain the amount to be included in his payment application under the Main Contract.

- 24.1(b) Any failure by the Sub-Contractor to submit a payment application under this Clause shall be deemed to be a waiver of his contractual entitlement for that interim payment.

Amount Claimed in Payment Application

- 24.2 24.2(a) The amount claimed in the Sub-Contractor's payment application shall, subject to any agreement between the Parties as to stage payments, be for the total value of the work properly executed and which shall include the percentage of the value of any unfixed materials and goods materials and goods delivered to or adjacent to the Sub-Contract Works which are intended for incorporation into the Sub-Contract Works according to the terms of the Sub-Contract as stated in the Appendix up to the date of the Sub-Contractor's payment application.
- 24.2(b) The materials and goods must be for incorporation into the permanent works and have been delivered to and properly stored at the Site and be protected against loss, damage or deterioration, and they must be in accordance with the Sub-Contract. The payment application shall only include the value of the said materials and goods which are reasonably, properly and not prematurely brought to or placed adjacent to the Site.

Payment and Set-Off

- 24.3 When issuing any payment certificates under Clause 30.1 of the Main Contract Conditions, the CA shall also indicate separately any amount due to the Sub-Contractor under the Sub-Contract. The payment by the Contractor to the Sub-Contractor shall be within seven (7) Days after the Period of Honouring Certificates (the "Payment Period"), less any Retention Fund which may be retained by the Employer in accordance with the Main Contract Conditions, and less the amount previously certified under the Sub-Contract Conditions. The Payment Period shall commence as follows:
- 24.3(a) If the Sub-Contractor is a taxable person under the relevant applicable tax legislation currently in force, from the date of presentation of such certificate together with a tax invoice which is issued in accordance with the said legislation; or
- 24.3(b) If the Sub-Contractor is not a taxable person under the relevant applicable tax legislation currently in force, from the date of issuance of such certificate.

For the avoidance of doubt, the submission of the tax invoice under the relevant tax legislation currently in force shall be a condition precedent to payment under this Clause, provided that the Sub-Contractor is a taxable person under the tax legislation.

Retention Fund and Release Thereof

- 24.4 24.4(a) The Contractor is entitled to retain the percentage of the total value of the work, materials and goods referred to in Clause 24.2 which is stated in the Appendix as Percentage of Certified Value Retained. When the sum of the amounts so retained equals the amount stated in the Appendix as Limit of Retention Fund, then no further amounts shall be retained by virtue of this Clause.
- 24.4(b) Pursuant to Clause 30.6(e) of the Main Contract Conditions, the CA shall within fourteen (14) Days after the issuance of the Certificate of Practical Completion of Main Contract Works, issue a certificate for the release of one half of the Contractor's Retention Fund to the Contractor under the Main Contract, and the Contractor shall thereafter within seven (7) Days after the Period of Honouring Certificates, release the first half of the Sub-Contractor's Retention Fund to the Sub-Contractor.
- 24.4(c) Pursuant to Clause 30.6(f) of the Main Contract Conditions, the CA shall within fourteen (14) Days after the issuance of the Certificate of Making Good Defects under the Main Contract, issue a certificate for the release of residue amount of the Contractor's Retention Fund to the Contractor under the Main Contract, and the Contractor shall thereafter within seven (7) Days after the Period of Honouring Certificates, release the residue amount of the Sub-Contractor's Retention Fund to the Sub-Contractor.
- 24.4(d) The condition precedent to payment provided in Clause 24.3 shall also apply for the purposes of payment under Clause 24.4(b) and Clause 24.4(c).

Direct Payment to Sub-Contractor by Employer

- 24.5 The Contractor shall provide the CA within fourteen (14) Days of the CA's request, reasonable proof that all amounts stated as due and included in the previous payment certificates to the Sub-Contractor have been discharged. If the Contractor fails to discharge his payment obligations, the Sub-Contractor may make a written request to the CA to issue a certificate pursuant to Clause 27.6 of the Main Contract Conditions. If the CA is satisfied that the Contractor has failed to provide reasonable proof that all amounts stated as due to the Sub-Contractor have been paid, the CA may issue a certificate to that effect. Where the CA has so certified, the Employer may pay such amounts directly to the Sub-Contractor pursuant to Clause 27.6(c) of the Main Contract Conditions, subject to the necessary Tax Invoice under the relevant applicable tax legislation having been issued by the Sub-Contractor to the Employer (if applicable). The Sub-Contractor accepts that such direct payment made by the Employer shall not create a privity of contract between the Employer and the Sub-Contractor.

Final Account

- 24.6 24.6(a) Within three (3) Months after Practical Completion of the Sub-Contract Works, the Sub-Contractor shall submit to the Contractor with copies to the CA and Consultant, all documents necessary for preparing the

Final Account. Such documents shall contain all the latest construction drawings and details (bound together), details of all quantities, operation manuals, rates and prices and any adjustment of the Sub-Contract Sum and any additional payment or compensation claimed by the Sub-Contractor under the Sub-Contract together with any explanation and supporting vouchers, documents and calculations, which may be necessary to enable the Final Account to be prepared by the CA.

- 24.6(b) If the CA is of the opinion that the documents and particulars submitted by the Sub-Contractor pursuant to Clause 24.6(a) are insufficient for his evaluation and preparation of the Final Account, the CA shall within thirty (30) Days from the date of receipt of the Sub-Contractor's said documents and particulars, notify the Contractor and the Sub-Contractor of any deficiency or insufficiency in the Sub-Contractor's submission and require such further documents and particulars within thirty (30) Days thereof or such further time as may be stated by the CA in writing.
- 24.6(c) In the event the Sub-Contractor fails to submit the requested documents and particulars under Clause 24.6(b), the CA shall nevertheless complete and issue the Final Account based on the information available to him within the period to complete the Final Account as stated in the Appendix.
- 24.6(d) On completion of the Final Account, the CA shall then send a copy of the document to the Contractor and Sub-Contractor.
- 24.6(e) If the Parties agree with the Final Account presented by the CA, then the Final Account shall become conclusive (other than any outstanding items to be resolved separately between the Contractor and the Sub-Contractor under Clause 24.7(b)) except where the Final Account is erroneous by reason of:
- (i) fraud, dishonesty or fraudulent concealment relating to the Sub-Contract Works; or
 - (ii) any arithmetical errors in any computation.
- 24.6(f) If either Party disputes the Final Account, then the following provisions shall apply:
- (i) the party disputing the final account shall by written notice to the other Party (with a copy to the CA) set out any disagreement thereof complete with particulars within thirty (30) Days of the date of receipt of the Final Account from the CA;
 - (ii) within thirty (30) Days from the date of receipt of the notice of dispute, the CA shall decide either to amend or not to amend the Final Account, and provide reasons for his decision. The CA may also request any necessary further particulars, but shall nevertheless give his decision within the stipulated thirty (30) Days period;
 - (iii) if the Parties agree with the CA's decision under Clause 24.6(f) (ii) then the Final Account or amended Final Account (as the case

may be) shall become conclusive within the meaning of Clause 24.6(e);

- (iv) any Party disagreeing with the CA's decision under Clause 24.6(f)(ii) shall refer the dispute to arbitration under Clause 25.0.

Items in Final Account

- 24.7 24.7(a) The Final Account of the Sub-Contract Works shall include:
- (i) any adjustment made to the Sub-Contract Sum;
 - (ii) the amounts to which the CA considers that the Sub-Contractor is entitled under the express provisions of the Sub-Contract;
 - (iii) the omission of all P.C. Sums and the related profit provided by the Sub-Contractor in the Sub-Contract Documents and the substitution of the amounts payable to the Sub-Contractor together with the pro-rata amount for profit; and
 - (iv) the adjustment of Provisional Sums and omission of any Provisional Sums if not expended.
- 24.7(b) The following items shall not be included in the Final Account and are matters to be resolved separately between the Contractor and Sub-Contractor.
- (i) Liquidated Damages (if any) imposed by the Contractor under Clause 15.0;
 - (ii) such remedial cost and/or loss and expense under Clauses 13.7, 13.8, 20.5 and 20.6;
 - (iii) any other claims, set-off or deductions by the Contractor under the Sub-Contract.

Early Final Payment to Sub-Contractor

- 24.8 If on completion of the Final Account, the CA wishes to certify the final payment to the Sub-Contractor before the issuance of the Final Certificate to the Contractor under the Main Contract Conditions, the Sub-Contractor shall provide an indemnity acceptable to the Contractor against all of his liabilities under the Sub-Contract, and provided always that all As-Built Drawings and/or operation and maintenance manuals as specified in the Sub-Contract and any warranties required to be provided under the Sub-Contract had been submitted, the CA shall then in accordance with and subject to the provision of Clause 27.7 of the Main Contract Conditions, issue a certificate to the Contractor which includes an amount to cover such final payment to the Sub-Contractor. The Contractor shall pay to the Sub-Contractor the amount so certified taking into consideration any outstanding claims between the Contractor and the Sub-Contractor under Clause 24.7. The payment shall be made within seven (7) Days after the Period of Honouring Certificates. For the avoidance of doubt, the condition precedent to payment provided in Clause 24.3 shall also apply for the purposes of payment under this Clause.

Final Payment and Final Certificate Not Conclusive

- 24.9 The final payment under Clause 24.8 or the issuance of the Final Certificate under the Main Contract Conditions shall not be conclusive evidence that any work, materials or goods to which it relates and/or designs executed or supplied by the Sub-Contractor are in accordance with the Sub-Contract.

Suspension of Sub-Contract Works for Non-Payment

- 24.10 24.10(a) Without prejudice to the Sub-Contractor's right to determine his own employment under Clause 22.0, if the Contractor fails or neglects to pay the Sub-Contractor the amount due as shown in the payment certificate (less any Liquidated Damages and other sums which the Contractor is expressly entitled to deduct from the payment due under the payment certificate under the Sub-Contract) and such default shall continue for fourteen (14) Days from the receipt of a written notice delivered by hand or by registered post from the Sub-Contractor stating that if payment is not made within the fourteen (14) Days, the Sub-Contractor may by a further written notice delivered by hand or by registered post, forthwith suspend the execution of the Sub-Contract Works until such time payment is made.
- 24.10(b) For the avoidance of doubt, the Sub-Contractor in exercising his right to suspend under Clause 24.10(a):
- (i) is not treated to be in breach of contract; and
 - (ii) is entitled to a reasonable EOT under Clause 19.7 and/or any loss and/or expense incurred under Clause 20.5 as a result of the suspension.
- 24.10(c) The Sub-Contractor shall as soon as practicable, but not later than fourteen (14) Days after having been paid the said amount due, resume performance of the Sub-Contract Works in accordance with the Sub-Contract.

Suspension of Main Contract Works by the Contractor under the Main Contract

- 24.11 Where under the Main Contract or under Section 29 of CIPAA, the Contractor exercises his right to suspend performance of his obligations, the Contractor shall notify the Sub-Contractor in writing and may direct the Sub-Contractor to suspend performance of the Sub-Contract Works. The Sub-Contractor shall be entitled to an appropriate extension of time under Clause 19.0 and loss and/or expense under Clause 20.0.

24A.0 DIRECT PAYMENT UNDER SECTION 30 OF CIPAA

Direct Payment Pursuant to Section 30(3) of CIPAA

- 24A.1 In the event the Contractor makes any payment, or is ordered by the Court to make any payment, in the capacity as the Principal, to the Person who obtained

an adjudication decision under CIPAA against the Sub-Contractor pursuant to Section 30(3) of CIPAA, the Contractor may recover the amount paid from the Sub-Contractor as a debt or by deducting from any monies due or to become due to the Sub-Contractor under this Sub-Contract, or from the Performance Bond in accordance with the terms under Clause 28.5.

No Recourse Against the Contractor

- 24A.2 The Sub-Contractor shall have no recourse against the Contractor in respect of the payment made under Section 30 of CIPAA, notwithstanding that the adjudication decision upon which the payment is made, is subsequently set aside by the Court or superseded by a final decision of the Court or arbitration.

25.0 ARBITRATION

Agreement to Refer Disputes or Differences to Arbitration

- 25.1 25.1(a) Any dispute, controversy or claim arising out of or relating to this Sub-Contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the AIAC Arbitration Rules.
- 25.1(b) The seat of arbitration shall be Malaysia.

Powers of Arbitrator

- 25.2 The Arbitrator shall, without prejudice to the generality of his powers, have the power as provided in the AIAC Arbitration Rules and the Arbitration Act 2005, including any amendments thereto currently in place at the time of commencement of the arbitration proceeding.

Commencement of Arbitration

- 25.3 Unless otherwise agreed in writing by the Parties, such arbitration shall not commence until after practical completion or alleged Practical Completion of the Main Contract Works, or determination or alleged determination of the Sub-Contractor's employment or abandonment of the Sub-Contract Works or the Main Contract Works.

Consolidation of Arbitration Proceedings

- 25.4 If any dispute arises in connection with the Main Contract and such dispute concerns the Sub-Contract Works, the Contractor may by written notice to the Sub-Contractor require that any such dispute under the Sub-Contract be referred to the appointed arbitrator under the Main Contract subject to the agreement of the Employer. Where the arbitrator is willing to act, and has no conflict of interest in so acting, and the Sub-Contractor has no valid grounds why the arbitrator should not act, such dispute shall be referred to the same arbitrator. In such event, the arbitrator may consolidate the arbitration proceedings.

Arbitration Award to Be Final and Binding

- 25.5 The arbitration award shall be final and binding on the Parties.

26.0 MEDIATION

Mediation Under AIAC Mediation Rules

- 26.1 Notwithstanding Clause 25.0, the Contractor and the Sub-Contractor, or either of them, may refer their dispute as to any matter arising under or out of or in connection with the carrying out of the Sub-Contract Works and whether in contract or in tort, for mediation in accordance with the AIAC Mediation Rules.

Prior Reference to Mediation Does Not Prejudice the Parties Rights to Arbitration

- 26.2 For the avoidance of doubt, prior reference of the dispute to mediation under Clause 26.1 shall not be a condition precedent for its reference to arbitration by either the Contractor or the Sub-Contractor, nor shall any of their rights to refer the dispute to arbitration pursuant to Clause 25.0 be in any way prejudiced or affected by this Clause.

Reference of Disputes to Mediation at Any Time

- 26.3 The Party may refer any dispute for Mediation pursuant to Clause 26.1 at any time, whether before or during any arbitration proceeding under Clause 25.0, or any litigation or other proceeding in relation to any dispute between the Parties arising from and/or in connection with the Sub-Contract Works and/or the Sub-Contract.

27.0 SERVICE OF NOTICES OR DOCUMENTS UNDER SUB-CONTRACT AND CIPAA

Service of Notices or Documents Under Sub-Contract

- 27.1 Unless otherwise specifically provided under these Sub-Contract Conditions, any written notice or other document to be given under the Sub-Contract shall be given or sent by:
- 27.1(a) hand, in which case, the notice or document shall be deemed to have been duly served at the time of delivery;
 - 27.1(b) ordinary mail or registered post, in which case, the notice or document shall be deemed to have been duly served after three (3) Days of Posting;
 - 27.1(c) facsimile transmission, in which case, it shall be deemed to have been duly transmitted at the time of successful transmission; or
 - 27.1(d) any other means as agreed by the Parties.

Service of Notices or Documents under CIPAA

- 27.2 Unless otherwise expressly agreed by the Parties in the Sub-Contract, service of any notices or documents under CIPAA shall only be effected in accordance with any of the modes provided in Sections 38(a), 38(b) and 38(c) of CIPAA.

Written Communication

- 27.3 All written communication shall be sent to the address stated in the Articles of Agreement unless otherwise notified in writing.

28.0 PERFORMANCE BOND/PERFORMANCE GUARANTEE SUM

Submission of Performance Bond

- 28.1 28.1(a) The Sub-Contractor shall before the Date of Commencement of the Sub Contract Works, submit to the Contractor a Performance Bond for a sum equivalent to the percentage stated in the Appendix as a security for the due performance and observance by the Sub-Contractor of his obligations under the Sub-Contract.
- 28.1(b) If the Sub-Contractor fails to submit the said Performance Bond as specified in Clause 28.1(a) by the Date of Commencement of the Sub-Contract Works, then the Sub-Contractor shall be deemed to have opted for Performance Bond in the form of Performance Guarantee Sum as provided for under Clause 28.7 hereof and in which case, all provisions set out in the Sub-Contract in relation to the Contractor's rights with regard to the use of and recovery from the proceeds of the Performance Bond shall equally apply to the Performance Guarantee Sum.

Form of the Performance Bond

- 28.2 The Performance Bond shall be in the form issued in the terms and conditions specified in the Sub-Contract or otherwise approved by the Contractor, and issued by an approved licensed bank, insurance company or financial institution incorporated in Malaysia.

Validity of the Performance Bond

- 28.3 The Performance Bond submitted by the Sub-Contractor shall remain valid until three (3) Months after the Completion Date. Where the Sub-Contract Works would not be completed by the Completion Date for the Main Contract Works, whether or not an EOT has been granted, the Sub-Contractor shall, before two (2) Months prior to the expiry of the Performance Bond, extend the duration of the Performance Bond to expire three (3) Months after the projected date of Practical Completion of the Main Contract Works, or such further date as may be instructed by the CA and informed to him by the Contractor.

Failure to Extend the Validity

- 28.4 If the Sub-Contractor fails to provide or maintain the validity of the Performance Bond in accordance with this Clause, then without prejudice to any other rights and remedies, which the Contractor may possess, the Contractor shall be entitled to withhold or deduct an amount equal to the Performance Bond for the said remaining required period is provided, or the Performance Bond is no longer required by the provisions of the Sub-Contract.

Payments from the Performance Bond

- 28.5 The Contractor may, in addition to the rights and remedies which he may possess, call on the Performance Bond and utilise any payments from the Performance Bond:
- 28.5(a) under any express provision in the Sub-Contract Conditions which allows the Contractor to utilise payments from the Performance Bond, provided always that there is no or insufficient certified sum due and payable to the Sub-Contractor under the Sub-Contract from which the Contractor is able to deduct; and/or
 - 28.5(b) upon determination of the Sub-Contractor's employment under the Sub-Contract under Clause 21.0. In which event, the Contractor may utilise payments from the Performance Bond for the completion of and/or rectification of the Sub-Contract Works and reimbursement of loss and/or expense suffered by the Contractor. On completion of the Sub-Contract Works, any balance of monies remaining from the Performance Bond shall be refunded to the Sub-Contractor without interest.

Return of Performance Bond

- 28.6 If the Sub-Contractor determines his own employment under Clause 22.0, the Contractor shall within twenty-eight (28) Days thereof return the Performance Bond to the Sub-Contractor for cancellation.

Performance Guarantee Sum

- 28.7 The Sub-Contractor may opt for a Performance Bond in the form of Performance Guarantee Sum, whereby deductions of ten percent (10%) shall be made from the first interim payment and subsequent interim payments until the total amount deducted aggregate to a sum equivalent to the amount as set out in the Appendix. The amount deducted shall be retained by the Contractor until three (3) Months after the issuance of the Certificate of Practical Completion of the Main Contract Works.

29.0 GOVERNING LAW

Laws of Malaysia Shall Apply

- 29.1 Unless otherwise agreed in writing by the Parties, the law governing the Sub-Contract shall be the Laws of Malaysia.

30.0 WAIVER

Waiver

- 30.1 Unless otherwise provided, no failure or delay on the part of either Party to exercise any right or remedy under this Sub-Contract shall be construed or operate as a waiver thereto nor shall any single or partial exercise of any right or remedy be construed as waiver of any other rights or remedies provided in this Sub-Contract. Such rights and remedies are cumulative and not exclusive of any rights or remedies provided by the law.

Appendix

	Clause	
Sub-Contract Date of Commencement [if none stated is fourteen (14) Days from the date of the Letter of Appointment]	14.1
Sub-Contract Completion Date	14.1
Liquidated Damages	15.0
Limit of Liquidated Damages [if none stated means there is no cap on the amount of Liquidated Damages]	15.2	RM
Interim Claim Interval	24.1(a)
Percentage of Value of materials and goods included in the payment application	24.2	The same percentage as applied to the Percentage of Value of Materials and Goods included in the interim certificate under the Main Contract Conditions
Percentage of Certified Value Retained	24.4	The same percentage as applied to the Percentage of Certified Value Retained in respect of the same subject matter under the Main Contract Conditions
Limit of Retention Fund [if none stated is 5% of the Sub-Contract Sum]	24.4	RM
Period to complete the Final Account [if none stated shall be between twelve (12) Months from the date of Practical Completion of the Sub-Contract Works]	24.6(c)
Amount of Performance Bond/Performance Guarantee Sum [if none stated is 5% of the Sub-Contract Sum]	28.0	RM

Sub-Contract Sectional Completion (*)

Brief Description of Section of the Sub-Contract Works	Date of Commencement (14.0)	Completion Date (14.0)	Liquidated Damages at the rate of (15.0)
1	RM (per Day)
2	RM (per Day)
3	RM (per Day)

(*) This is to be used when there are different Completion Dates for identified Sections.