

# **ASIAN INTERNATIONAL ARBITRATION CENTRE**

## **STANDARD FORM OF SUB-CONTRACT FOR DESIGN AND BUILD CONTRACTS (2018 EDITION)**

# STANDARD FORM OF SUB-CONTRACT FOR DESIGN AND BUILD CONTRACT (2018 EDITION)

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**ARTICLES OF AGREEMENT**

**THIS SUB-CONTRACT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

**BETWEEN**

1. \_\_\_\_\_ (Company No. \_\_\_\_\_) having its registered office or business address at \_\_\_\_\_ (called "*the Contractor*") of the one part;

**AND**

2. \_\_\_\_\_ (Company No. \_\_\_\_\_) having its registered office or business address at \_\_\_\_\_ (called the "*Sub-Contractor*") of the other part.

**WHEREAS**

- A. The Contractor has entered into a Contract No: \_\_\_\_\_ made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_ (called "*the Contract*") between \_\_\_\_\_ (Company No. \_\_\_\_\_) having its registered office or business address at \_\_\_\_\_ (called "*the Employer*") of the one part and the Contractor of the other part for the \_\_\_\_\_ (called "*the Contract Works*") and particulars of which are set out in Part I of the Appendix to this Sub-Contract.
- B. The Contractor is desirous of having the design (to the extent required by the Sub-Contract), execution and completion of the \_\_\_\_\_ (called "*the Sub-Contract Works*") which form part of the Contract Works, in accordance with the Contract.
- C. The Sub-Contractor has had reasonable opportunity to examine and have full knowledge of all the provisions of the Contract (except the details of the price included therein).

- D. The Contractor has issued to the Sub-Contractor its requirements (called the “*Contractor’s Requirements*”) and thereupon requested the Sub-Contractor to submit proposals including the design (where applicable), drawings, specifications and pricing for the undertaking of the Sub-Contract Works.
- E. The Contractor has examined the Site, the Contractor’s Requirements and the invitation to tender documents and has submitted its Tender including the design (where applicable), drawings, specifications and pricing for the carrying out of the Works (called the “*Sub-Contractor’s Proposals*”).
- F. The Sub-Contractor in furtherance of the above and as part of its Sub-Contractor’s Proposals has submitted a sum of money which it will require for the undertaking of the complete Sub-Contract Works in accordance with the Contractor’s Requirements and the Conditions of Sub-Contract (called the “*Sub-Contract Sum*”) and has submitted a breakdown of the said Sum.
- G. The Contractor will pay the Sub-Contractor the sum of.....  
 (RM.....) or such other sum as shall become payable hereunder at the times and manner prescribed in the Sub-Contract (called the “*Sub-Contract Sum*”).

**IN WITNESS WHEREOF**

The hand of the Contractor has been hereunto set the day and year ) Signature of Contractor .....  
 )  
 ) Name .....  
 )  
 ) NRIC No. ....

Signature of Witness .....

Name.....

NRIC No. ....

**IN WITNESS WHEREOF**

The hand of the Sub-Contractor has been  
hereunto set the day and year first above written in  
the presence of:

) Signature of Sub-Contractor .....  
)  
) Name .....  
)  
) NRIC No. ....

Signature of Witness .....

Name.....

NRIC No. ....



## CONDITIONS OF SUB-CONTRACT

### PART I: DEFINITIONS AND GENERAL PROVISIONS

#### 1.0 Definitions and Interpretation

#### 1.1 Definition

Unless the context otherwise requires and/or the Sub-Contract, or an item, or entry in the particular Appendix specifically provides for otherwise, the following words and phrases in the Sub-Contract and the said Appendix shall have the meaning given below, or ascribed in the Clauses, or Appendix item to which reference is made:

- (a) "Appendix" means the Appendix appearing at the end of these Sub-Contract Conditions comprising Appendix I, II and II (as applicable);
- (b) "Contract" means the Design & Build Contract entered into between the Employer and the Contractor, particular details of which are set out in Appendix I;
- (c) "Contractor" means the person, or persons, sole proprietor, partnership, firm or company named in the first part of the Articles of Agreement whose tender for the Contract Works has been accepted by the Employer and who has signed this Sub-Contract and includes the Contractor's personal representatives, successors, executors, administrators, servants and agents;
- (d) "Contract Conditions" means the Conditions of Contract defined and included in the Contract;
- (e) "C.R." means the Contractor's Representative as stated in Appendix II and/or its successors in office and is the person appointed by the Contractor to act as its representative for the purposes of the Sub-Contract; being designated as such in the said Appendix

- (f) "C.R.'s Assistants" means any person, or persons delegated, or authorized in writing by the C.R. to perform any of the duties of the C.R. as may be from time to time notified in writing to the Sub-Contractor by the C.R. pursuant to Clause 8.2 of the Sub-Contract Conditions;
- (g) "Contractor's Requirements" means all the performance requirements and/or design, specifications, drawings, documents and data/information (as applicable) given/issued by the Contractor to the Sub-Contractor as part of the Sub-Contract tender documents and thereafter during the currency of the Sub-Contract relating to the Sub-Contract Works.
- (h) "Contract Works" means the works defined by the Contract, the salient particulars of which are set out in Appendix I;
- (i) "Date of Commencement" means the date(s) fixed and stated in Appendix II or any other date(s) provided for Clause 19.0.
- (j) "Date for Completion" means the date fixed and stated in Appendix II, or any other date provided for in Clause 22.0.
- (k) "Date for Possession" means the date stated in the Letter of Acceptance and/or Clause 4.0 and Appendix II.
- (l) "Date of Practical Completion" means the date stated in the Certificate of Practical Completion Issued pursuant to Clause 22.0;
- (m) "Drawings" means the drawings contained in the Sub-Contract including modifications or addition to the same as may from time to time be issued or approved in writing by the Contractor/C.R.;
- (n) "Employer" means the party named in the Articles of Agreement and the Conditions of Contract as the Employer and includes the Employer's legal successors or personal representatives or permitted assigns;

- (o) "Equipment" means the machinery, apparatus and the like intended to form or forming part of the Sub-Contract Works;
- (p) "E.R." means the Employer's Representative as stated in the Appendix I and the Conditions of Contract and/or its successors in office;
- (q) "E.R.'s Assistants" means any person, or persons delegated, or authorized in writing by the E.R. to perform any of the duties of the E.R. as may be from time to time notified in writing to the Contractor by the E.R.;
- (r) "Letter of Acceptance" means the Contractor's formal written acceptance of the Sub-Contractor's Tender;
- (s) "Party" or "Parties" means the Contractor and the Sub-Contractor as the Sub-Contract requires.
- (t) "Rates for the Sub-Contract Works" means those rates (as applicable) in the Schedule of Rates for the Sub-Contract Works or the rates and prices contained in the Sub-Contract Bills of Quantities, whichever is applicable, including any modifications or additions to the same as agreed to in writing by the Contractor/C.R. and the Sub-Contractor;
- (u) "Schedule of Sub-Contract Works" means the schedule comprising items (as applicable) of the Sub-Contract Works in elemental form or according to type of works including the prices which form the basis of the Sub-Contract Sum;
- (v) "Schedule of Rates for the Sub-Contract Works" means the schedule comprising rates for the Sub-Contract Works as to be applied, if applicable for the valuation of variations under Clause 28.0;

- (w) "Site" means the Site designated as such in this Sub-Contract and includes the land or other places on, under, in, or through which the Sub-Contract Works are to be carried out and any other land or places provided by the Contractor as may be specifically stated in the Sub-Contract Documents as forming part of the Site;
- (x) "Specifications" means all specifications contained in the Sub-Contract including modifications or addition as to the same as may from time to time be issued or approved in writing by the Contractor/C.R.;
- (y) "Sub-Contract" means the agreement between the Contractor and the Sub-Contractor as represented by the Sub-Contract Documents.
- (z) "Sub-Contractor" means the person, or persons, sole proprietor, partnership, firm, or company named in the second part of Articles of Agreement whose tender for the Sub-Contract Works has been accepted by the Contractor and who has signed this Sub-Contract and includes the Sub-Contractor's personal representatives, successors, executors, administrators, servants and agents;
- (aa) "Sub-Contract Bills of Quantities" means the Bills of Quantities as defined in sub-clause 27.2(a) prepared by the Contractor using the recognized methods of measurement and forming part of the Sub-Contract.
- (ab) "Sub-Contract Conditions" means these standard conditions of Sub-Contract;
- (ac) "Sub-Contract Documents" means the contract between the Contractor and the Sub-Contractor for the design (if applicable) and the execution of the Sub-Contract Works incorporating the documents listed in sub-clause 3.8.

- (ad) "Sub-Contract Period" means the time frame for the Sub-Contractor to complete the Sub-Contract as stated in the Sub-Contract Documents.
- (ae) "Sub-Contractor's Personnel" means the Sub-Contractor's Representative ("SC.R.") and all personnel whom the Sub-Contractor utilizes for the purposes of the design (if applicable) and execution of the Sub-contract Works, be this on-site or off-site, who may include the Sub-Contractor and each Sub-Subcontractor, and any other personnel assisting the Sub-Contractor in the design (if applicable) and execution of the Sub-Contract Works.
- (af) "Sub-Contractor's Proposals" means the document entitled Sub-Contractor's Proposals as defined in the Articles of Agreement and the Sub-Contract, submitted with the Sub-Contractor's Tender, and as included in the Sub-Contract.
- (ag) "Sub-Contractor's Representative" or "SC.R." means the person named by the Sub-Contractor in the Sub-Contract or appointed from time to time by the Sub-Contractor under Clause 8.0 who acts for and on behalf of the Sub-Contractor for the purposes of the Sub-Contract.
- (ah) "Sub-Contract Sum" means the Sum stipulated in the Articles of Agreement and the Appendix II or such other sum as shall become payable under and at the times and in the manner specified in the Sub-Contract;
- (ai) "Sub-Subcontractor" means any sub-contractor and other supplier employed by the Sub-Contractor for the purposes of the Sub-Contract Works including any specialist, designer or consultant.
- (aj) "Sub-Contractor's Tender" means the Sub-Contractor's offer to the Contractor to design (if applicable), execute and complete the Sub-Contract Works inclusive of but not limited to the Sub-Contractor's Proposals and the form of tender;

- (ak) "Sub- Contract Works" means the Works specified in the Sub-Contract Documents and shall comprise the whole of design (if applicable), materials, labour, plant, equipment and other resources for the proper execution of the Sub-Contract and any changes made to these works in accordance with the Sub-Contract;
- (al) "Variation" means any change in the original Sub-Contract as defined in Clause 28.0.

## **1.2 Definitions and Interpretation of Contract to apply**

For the avoidance of doubt, save for the above, the definitions and interpretation stipulations in Clauses 1.1 and 1.2 respectively of the Contract Conditions shall apply *mutatis mutandis* in the same manner in the Sub-Contract in so far as they are used or applicable to, or referred to in the Sub-Contract and are not provided for in the Sub-Contract.

## **1.3 Notice of Contract**

- (a) Within 14 Days of the issuance of the Letter of Acceptance of the Sub-Contract to the Sub-Contractor, the Contractor shall provide the Sub-Contractor with a copy of the Contract Conditions and such other parts of the Contract which are relevant and applicable to the Sub-Contract Works except for the details of prices included in the Contract.
- (b) The Sub-Contractor shall be deemed to have examined and to have full knowledge of all the provisions of the Contract, except the details of prices included in the said Contract.

## **2.0 SCOPE OF SUB-CONTRACT**

### **2.1 Scope of Sub-Contract**

The Sub-Contractor shall, upon and subject to the Sub-Contract design (if applicable and to the extent required by the Sub-Contract), construct/fabricate and complete the Sub-Contract Works using materials, goods, plant, equipment and workmanship of the quality and standards therein specified.

## **2.2 Incidental/Consequential Work**

- (a) Unless expressly stipulated in the Sub-Contract to the contrary, the Sub-Contractor must also undertake any incidental/consequential work in relation to the design (if applicable and to the extent required by the Sub-Contract), execution and completion of the Sub-Contract Works on the Site i.e. removal/diversion of utilities such as water mains, electrical mains, gas mains, telephone mains, sewers, drains and the installation of permanent connections thereto.
- (b) The above work shall also include all necessary temporary connections required for the purposes of the Sub-Contract Works under the Sub-Contract.
- (c) All costs involved for such work as stated in sub-clauses 2.2(a) and (b) above, shall be included in the Sub-Contract Sum unless it is separately stipulated to be part of the Provisional Sum (if any).

## **2.3 Scope during Defects Liability Period and Maintenance Period**

The Sub-contractor shall also make good any Defects which may appear during the Defects Liability Period and undertake the servicing and maintenance during the Maintenance Period in accordance with Clause 26.0.

## **3.0 SUB-CONTRACT DOCUMENTS**

### **3.1 Original Copies**

- (a) The Sub-Contract shall be prepared in 2 original copies.
- (b) Immediately after the execution of the Sub-Contract, each party shall be given an original copy which it shall retain in its custody.

### **3.2 Further Documents**

- (a) The Contractor shall, in addition to the original copy of the Sub-Contract Document referred to in sub-clause 3.1 above, provide to the Sub-Contractor without any charge (unless the Sub-Contractor has been previously furnished) with:
  - (i) 1 electronic (soft) copy and 2 hard copies each of the Sub-Contract Drawings (if any); and

- (ii) 1 electronic (soft) copy and 2 hard copies of the unpriced Bills of Quantities or Schedule of Sub-Contract Works (as applicable); and
  - (iii) if requested by the Sub-Contractor, 1 electronic (soft) copy and 2 hard copies of the priced Bills of Quantities or Schedule of Sub-Contract Works (as applicable); and
  - (iv) 1 electronic (soft) copy and 2 hard copies of the Specifications and any other document relevant to the Sub-Contract inclusive of the Contractor's programme of Work.
- (b) The further documents stipulated in sub-clause 3.2(a) shall be provided by the Contractor to the Sub-Contractor within 14 days of the Date of Possession or Date of Commencement of the Sub-Contract Period (whichever is earlier).
  - (c) The Sub-Contractor may obtain from the Contractor at its own cost any further copies of the said documents required by it.

### **3.3 Further Documents and/or Details**

- (a) The Contractor/C.R. shall, as and when necessary and without charge to the Sub-Contractor furnish the latter with 2 hard copies of such further working documents and/or details as are reasonably necessary either to:
  - (i) explain and amplify the Contractor's Requirements, and/or the Sub-Contract Documents; or
  - (ii) enable the Sub-Contractor to plan, design (if applicable), construct/fabricate and complete the works in accordance with the Sub-Contract.
- (b) Sub-clause 3.3(a) is subject to the proviso that nothing contained in the above documents and/or details shall impose any obligation beyond that imposed by the Sub-Contract Documents.

### **3.4 Documents to be kept on Site**

- (a) The Sub-contractor shall keep one set of the documents stated in sub-clause 3.2(a) above and a set of working or construction drawings on the site.



- (b) The said documents shall at all reasonable time be available for inspection and use by the Contractor/C.R., the C.R.'s Assistants and any other person, or persons authorized by the Contractor/C.R. in writing.

### **3.5 Need for Further Documents and/or Details**

- (a) The Sub-Contractor shall give adequate notice in writing to the Contractor/C.R.:
  - (i) of any further document(s) and/or details which the Contractor/C.R. is required to provide to the Sub-Contractor under the Sub-Contract; or
  - (ii) of any document and/or details which is required by any specific time, whenever the planning or execution of the Sub-Contract Works is likely to be delayed or disrupted by its non-availability where its need is shown on any programme consented to under Clause 20.0;
- (b) The Contractor/C.R. shall, on receipt of the above-mentioned notice comply with its requirement, provided that it is given in sufficient time for the Contractor/C.R. reasonably to prepare and issue the document(s) and/or details required.

### **3.6 Default in supplying Further Documents and/or Details**

If:

- (a) the Sub-contractor has duly given the notice pursuant to sub-clause 3.5 above and if the Contractor/C.R. shall not have complied with its requirements; or
- (b) the Contractor/C.R. has not issued any further or revised document(s) and/or details as required by sub-clause 3.5.

and if the progress, or completion of the Sub-Contract Works, or any part of the Sub-Contract Works has been materially affected by such failure, then the Sub-contractor shall be entitled to claim a commensurate extension of time and/or loss and expense under the relevant provisions of the Sub-Contract.

### **3.7 Confidentiality and limitation of use of Documents**

- (a) Further to Clause 51.0, the Sub-Contractor shall treat the Sub-Contract and everything contained in it as private and confidential.

- (b) None of the Sub-Contract Documents mentioned in the Sub-Contract and in particular in sub-clause 1.1(ac) shall be used by the Sub-Contractor for any purpose other than that for the Sub-Contract.
- (c) In particular, the Sub-Contractor shall not divulge (unless otherwise required at law and/or as stipulated in Clause 51.0) any information, drawing or photograph concerning the Sub-Contract Works and shall not use the Sub-Contract Works or the Site for the purpose of advertisement except with the written consent of the Contractor/C.R. and subject to such conditions as the Contractor/C.R. may prescribe.
- (d) Upon final payment being made pursuant to the issuance of the Final Account and Final Certificate under Clause 32.0, the Sub-contractor, if so requested to in writing by the Contractor/C.R., return to the Contractor within 21 Days of receipt of such request, all documents, drawings, details, specifications, priced and unpriced copy (if any) of the Sub-Contract Bill of Quantities/Schedule of Sub-Contract Works (as applicable).

**3.8 Contents and Sufficiency of Sub-Contract Documents**

- (a) The following documents shall be deemed to form, and be read and construed as part of the Sub-Contract Documents:
  - (i) the Letter of Acceptance;
  - (ii) the Articles of Agreement;
  - (iii) the Conditions of Sub-Contract and Appendix I to III;
  - (iv) the Sub-Contractor's Tender including the Sub-Contractor's Proposals;
  - (v) the Contractor's Requirements;
  - (vi) the Bills of Quantities/ Schedule of Sub-Contract Works \*;  
 (\* *Delete if not applicable*);
  - (vii) .....
  - (vii) Any other documents(s) listed under Appendix III and/or incorporated in the Sub-Contract Documents, unless expressly stated to be excluded in any of the provisions of the Sub-Contract.

- (b) The Sub-Contract Documents are to be taken as read/mutually explanatory of one another. In the event of any conflict or inconsistency between any of the above-mentioned documents, the priority in the interpretation of such documents shall be in the descending order as listed above. The Sub-Contractor shall provide everything necessary for the proper execution of the Sub-Contract Works until its completion according to the true intent and meaning of the Sub-Contract Documents taken together whether the true intent and meaning may or may not be particularly shown or described provided that it can be reasonably inferred therefrom.
- (c) If the Sub-Contractor shall find any ambiguity, discrepancy in, divergence, conflict, inconsistency, error or omission (called “the discrepancy”) between any two, or more of the Sub-Contract Documents including a discrepancy between parts of any one of them, it shall immediately give to the Contractor/C.R. a written notice specifying the discrepancy or divergence and the Contractor/C.R. shall issue instructions in regard thereto. This shall be subject to the proviso that such discrepancy, or divergence shall not vitiate the Sub-Contract.
- (d) The Contractor/C.R. shall within 7 Days of receipt of the Sub-Contractor’s said notification, then clarify and adjust the discrepancy and issue an instruction to the Sub-contractor to resolve the discrepancy. If such instruction issued by the Contractor/C.R. results in an addition or omission from the Sub-Contract Works, such addition or omission shall be deemed a Variation under Clause 28.0.

## **PART II: THE CONTRACTOR**

### **4.0 SITE POSSESSION AND ACCESS**

#### **4.1 The Contractor’s duties**

- (a) The Contractor shall, as stated in the Letter of Acceptance and/or elsewhere in the Sub-Contract, and within such time as may be required to enable the Sub-Contractor to proceed in accordance with the programme submitted under Clause 20.0, make available to the latter such part or parts of the Site and the Contract Works and such means of access to such part or parts of the same as shall be reasonably necessary to enable the Sub-Contractor to execute the Sub-Contract Works in accordance with the Sub-Contract.

- (b) Notwithstanding the above, the Contractor shall not be bound to give to the Sub-Contractor full possession or exclusive control of any part of the Site and the Contract Works. The Contractor may withhold any such possession or access until the Performance Security under Clause 10.0 has been received.

#### **4.2 Consequences of Contractor's Default**

- (a) If the Sub-Contractor suffers delay and/or incurs cost as a result of the failure of the Contractor to give possession and/or access within such time or times as stated in Clause 4.1 above, the Sub-Contractor shall give notice to the Contractor/C.R. and shall be entitled, subject to Clause 44.0 to:
  - (i) an extension of time for any such delay, if completion is or will be delayed, under Clause 21.0; and
  - (ii) payment for any direct loss and/or expense incurred.
- (b) After receiving the notice under sub-clause 4.2(a) above, the Contractor/C.R. shall proceed to agree or determine these matters pursuant to the relevant/applicable provisions of the Sub-Contract.
- (c) For the avoidance of doubt, the Sub-Contractor shall not be entitled to such extension of time, direct loss and/or expense if, and to the extent that the Contractor's failure was caused by any act, default, error, omission or neglect of the Sub-Contractor itself, including an error in, or delay in the submission of any of the Sub-Contractor's documents.

### **5.0 CONTRACTOR'S GENERAL OBLIGATIONS**

#### **5.1 Contractor to Cooperate**

- (a) The Contractor shall, at all times during the currency of the Sub-Contract positively cooperate with the Sub-Contractor in ensuring that the Sub-Contract Works can be completed as agreed and not hinder the Sub-Contractor in any way in satisfying its obligations under the Sub-Contract.
- (b) The Contractor shall, in so far as it lawfully can, at the request and cost of the Sub-contractor, obtain for it any rights or benefit of the Contract so far as the same are applicable to the Sub-Contract but no further or otherwise.

## **5.2 Permits, Licences or Approvals**

The Contractor shall (where it is in a position to do so) provide reasonable assistance to the Sub-Contractor at the request of the latter; which request shall be in writing for the Sub-Contractor's applications for any permits, licences or approvals required by the governing laws:

- (a) which the Sub-Contractor is required to obtain under Clause 9.0;
- (b) for the delivery of Materials and/or Goods, including clearance through customs; and
- (c) for the export of the Sub-Contractor's Plant and/or Equipment when it is removed from the Site.

## **5.3 Contractor's Personnel**

In amplification of clause 5.1 above, the Contractor shall be responsible for ensuring that its personnel and its other sub-contractors whether on-site or off-site:

- (a) co-operate with the Sub-Contractor's discharging its obligations under the Contract; and
- (b) take actions similar to those which the Sub-Contractor is required to take vis-à-vis health and safety Procedures and the protection of the environment.

## **6.0 UTILITIES AND FACILITIES PROVIDED BY CONTRACTOR**

### **6.1 Utilities Provided by the Contractor**

(a) In so far as is so provided in the Contract and/or in the Appendix I of the Sub-Contract (but not otherwise), the Contractor shall at its own cost, make available the following utilities for connection by the Sub-Contractor inclusive of attendance for the purpose of the Sub-Contract Works:

- (i) water supply;
- (ii) general lighting;
- (iii) temporary power supply; and
- (iv) telephone facilities

- (b) Where such facilities are supplied by the Contractor, then the Sub-Contractor shall pay the Contractor for the consumption of the same in connection with the Sub-Contract Works. Notwithstanding the above, the Sub-Contractor shall make all necessary provisions in regard to the said matters if such provisions are specifically stated in this Sub-Contract and are necessary for the proper execution of the Sub-Contract Works.
- (c) It is the duty of the Sub-Contractor to thoroughly check the tender documents (including the Contractor's Requirements) especially in regard to the Contractor's obligation to provide the said utilities and where these are missing or not provided for expressly, to include and allow for the same in its Sub-Contract Sum and the Sub-Contract Period as no additional costs and/or time will be permitted upon the issue of the Letter of Acceptance for any omission of the same.

## **6.2 Storage Accommodation**

- (a) Unless otherwise expressly provided in the Sub-Contract, the Contractor shall provide a reasonably suitable place(s) at the Site for the proper storage of all Materials, Goods, Plant and Equipment for use in the Sub-Contract Works.
- (b) The Sub-Contractor shall, at its own expense, erect all reasonably suitable storage accommodation at the place(s) provided by the Contractor for the same.

## **6.3 Temporary Workshops and Hygiene Facilities**

- (a) Unless expressly stipulated to the contrary in the Sub-Contract, the Contractor shall provide a reasonably suitable place(s) for all temporary workshops, sheds or other buildings necessary for the proper execution of the Sub-Contract Works.
- (b) The Sub-Contractor shall, at its own expense, erect all such temporary workshops, sheds or other buildings for its employees or workmen at the place(s) provided by the Contractor.
- (c) In addition to the above, the Contractor shall, without charge to the Sub-contractor, allow for reasonable use by the Sub-Contractor and its workmen, such hygiene facilities provided by the Contractor on the Site.

#### **6.4 Scaffolding and Hoisting Facilities**

- (a) The Contractor shall provide and maintain such scaffolding, hoisting facilities and other means of access which are necessary for the execution of the Contract Works as well as the Sub-Contract Works. The Sub-Contractor, its personnel, employees and workmen shall, in common with the Contractor and all other sub-contractors or persons having the like right, for the purpose of the Sub-Contract Works (but not further or otherwise) be entitled to use any scaffolding, hoisting facilities or other means of access belonging to or provided by the Contractor while they remain in operation on the Site.
- (b) The use of such scaffolding, hoisting facilities or other means of access shall be subject to the rules and requirements which may be notified by the Contractor/C.R. to the Sub-Contractor from time to time subject to these being reasonable under the circumstances. The Contractor/C.R. shall give written notice to the Sub-Contractor not less than 14 Days prior to the removal of any scaffolding, hoisting facilities and other means of access. The Sub-Contractor shall be liable for any extra cost and/or time incurred by the Contractor for the extended use of such scaffolding, hoisting facilities and other means of access arising from any default of the Sub-Contractor.
- (c) The Contractor shall not be liable to the Sub-Contractor in regard to the fitness, condition or suitability of the said scaffolding, hoisting facilities or other means of access where the Sub-Contractor, its servants or agents misuse the same or fail to comply with the rules and requirements specified by the Contractor.
- (d) If the nature and extent of the Sub-Contract Works requires the Contractor to reinforce the said hoisting facilities, or other means of access or to provide additional facilities to the same, then the extra cost incurred by the Contractor in connection with such reinforcement shall be borne by the Sub-contractor.

#### **6.5 Clearance of Rubbish and Debris**

- (a) The Sub-Contractor shall regularly clear away all rubbish and debris arising from the execution of the Sub-Contract Works to any suitable place(s) designated or allotted by the Contractor within the Site.
- (b) The Contractor shall, at its own expense, regularly remove all such rubbish and debris off the Site from the said designated or allotted place(s) at the Site.

- (c) If the Sub-Contractor fails and/or neglects to undertake its above-mentioned obligations, the C.R. may, pursuant to sub-clause 8.5, instruct the Sub-Contractor to do so; failing which the Contractor shall undertake the same itself or through the use of third parties and may deduct all costs incurred thereby under Clause 43.0.

## **6.6 Security and Safety at the Site**

- (a) The Contractor shall be fully responsible for the overall security of the Site and the safety requirements of the complete Works. If the Sub-Contractor finds any inadequacy in the safety and security measures of the Contractor on the Site which could adversely affect the execution of the Sub-Contract Works in accordance with the Sub-Contract, the Sub-Contractor shall immediately notify the Contractor/C.R. of the same in writing. Upon such notification, the Contractor shall forthwith take appropriate and reasonable measures at its own cost and time to rectify such inadequacy.
- (b) Notwithstanding the above, the Sub-Contractor shall, throughout the progress of the Sub-Contract Works, comply with such safety requirements of the Contract Works in so far as they relate to the Sub-Contract Works and be fully responsible for the adequacy, stability, security and safety of the Sub-Contract Works and its operation on and off Site. The Sub-Contractor shall have full regard for the safety and security of all persons on the Site in the execution of the Sub-Contract Works. The Sub-Contractor shall at all times, keep and maintain appropriate safety measures to ensure that the Sub-Contract Works are executed in an orderly and safe manner.

## **6.7 Interference with the Property of the Others**

The Contractor and the Sub-Contractor and their respective servants or agents shall not misuse or interfere with the construction plant, construction equipment, ways, scaffolding, hoisting facilities, Temporary Works or other property belonging to or provided by the other or other parties and shall not breach or infringe any written laws or by-laws, regulations, order or rules made by any competent and/or lawful authority.

## **PART III: THE E.R., THE C.R. AND INSTRUCTIONS**

### **7.0 E.R. OF THE CONTRACT AND THE SUB-CONTRACT**

#### **7.1 E.R. and the Sub-Contract**



- (a) The Sub-Contractor acknowledges that the Employer's Representative (E.R.) of the Contract may, in the course of the Contract Works issue instructions/directions (including consents, approvals, etc.) under the relevant provisions of the Contract to the Contractor which may affect the Sub-Contract.
- (b) The Contractor and the Sub-contractor therefore acknowledge and agree that the owing to the lack of privity of contract between the Employer and the Sub-Contractor, the E.R. may not give instructions/directions (including consents, approvals, etc) directly to the Sub-Contractor on any matters relating to the Sub-Contract but may do so only through the Contractor/C.R.
- (c) Any such instruction/direction (including consent, approval, etc) of the E.R. under the Contract that relates to and/or affects the Sub-Contract works and is issued/given by the Contractor/C.R. to the Sub-Contractor or subsequently sanctioned by it, shall be deemed to be an instruction/direction (or consent, approval, as applicable) of the Contractor. It is the duty of the Contractor/C.R. to check and satisfy itself that the particular instruction/direction (or consent, approval, as applicable) thus received from the E.R. actually relates to, and is within the scope of the Sub-Contract before it is officially given/issued to the Sub-Contractor by the Contractor/C.R.; failing which the Sub-Contractor has a right not to proceed with the same, or having proceeded with it, pursue a claim under Clauses 21, and/or Clause 28, and/or Clause 44.0.

## **7.2 Delegation by the E.R.**

- (a) The Sub-Contractor acknowledges that the Employer, or the E.R. may from time to time appoint such number of E.R.'s Representatives as it deems fit.
- (b) Such representatives shall be responsible to the E.R. and shall carry out such duties and exercise such authority as may be delegated to them by the E.R. and notified to the Contractor and through the Contractor/C.R. to the Sub-Contractor in so far as these affect the latter, in writing.
- (c) The Sub-Contractor may request in writing from the Contractor/C.R. a copy of such written delegation. Upon such request, the Contractor/C.R. shall within 14 Days furnish the Sub-Contractor with a copy of such written delegation; failing which it shall be deemed that there is no such delegation.
- (d) The E.R. may at any time also revoke such delegation; the revocation to be communicated to the Contractor and through the Contractor/C.R. to the Sub-Contractor in writing.

### **7.3 Effect of E.R.'s Certificate**

Subject to the Final Certificate issued under Clause 43.0 of the Contract Conditions, no certificate of the E.R. which relates to any provision of the Sub-Contract and/or of the Sub-Contract Works itself, shall be considered as conclusive evidence as to the sufficiency of any design (to the extent required by the Sub-Contract), works executed, or any Materials, Goods, Plant and Equipment to which it relates nor shall it relieve the Sub-Contractor from its liability to rectify or make goods Defects under the Sub-Contract.

## **8.0 THE CONTRACTOR'S REPRESENTATIVE AND INSTRUCTIONS**

### **8.1 C.R.'s Duties and Authority**

- (a) The duties and authority of the C.R. shall be those stated in, or necessarily implied from the Sub-Contract. However, unless as stated expressly to the contrary in the Sub-Contract, the C.R. shall have no authority to relieve the Sub-Contractor of any of the latter's duties and/or obligations under the Sub-Contract;
- (b) Without derogating from the generality of the above sub-clause, the C.R. shall be responsible for the overall administration of the Sub-Contract including planning, supervision, the management of the design (if any) and the execution of the Sub-Contract Works, for and on behalf of the Contractor.;
- (c) In undertaking its said obligations, the C.R. is responsible, either on its own or together with the Contractor, for approving and/or accepting the Sub-Contractor's design (if any) and other obligations for compliance with the Sub-Contract insofar as the Contractor's/C.R.'s approval/acceptance obligations under the Sub-Contract are concerned notwithstanding the fact that such Sub-Contract Works/obligations may need the Employer's/E.R.'s approval/acceptance under the Contract. In undertaking the said role, the C.R. shall be main point of contact between the SC.R/Sub-Contractor and the Contractor; and
- (c) Unless otherwise stipulated, all matters regarding the Sub-Contract Works shall be dealt with by the Sub-Contractor with the C.R. and in its absence, with the Contractor itself.

## **8.2 C.R.'s Assistants**

- (a) The Contractor, or the C.R. may from time to time appoint such number of C.R.'s Assistants as it deems fit;
- (b) The C.R.'s Assistants shall be responsible to the C.R. and shall carry out such duties and exercise such authority as may be delegated to them by the C.R. under sub-clause 8.3;
- (c) References to the C.R. in the Sub-Contract shall include references to the C.R.'s Assistants duly appointed pursuant to this clause.

## **8.3 C.R.'s Authority to Delegate**

- (a) The C.R. may from time to time delegate to the C.R.'s Assistants any of the powers, duties or authority vested in the C.R.;
- (b) The C.R. may also at any time revoke all or part of such delegation as is deemed necessary in its opinion;
- (c) Any such delegation or revocation as mentioned in the above Clauses shall be in writing and shall not take effect until a copy of such delegation or revocation has been formally delivered to the Sub-Contractor;
- (d) The delegation under this Clause shall not preclude the C.R. from itself exercising or performing at any time any of the delegated powers, duties and authority;
- (e) Any act done, or instruction, or approval given/issued by the C.R.'s Assistants to the Sub-Contractor within the terms of such delegation shall have the same effect as though it had been effected by the C.R.;
- (f) Sub-clause 8.3(e) above shall be subject to the following provisos:
  - (i) any failure of the C.R.'s Assistants to disprove any work, or material shall not prejudice the power and authority of the C.R. thereafter to disprove, or issue instructions for the rectification of such work or material; and

- (ii) if the Sub-Contractor disputes any act, decision, or instruction of the C.R.'s Assistants, the Sub-Contractor shall refer the matter within 7 Days to the C.R. who shall either confirm, reverse, or vary (as the case may be) the act, decision or instruction of the C.R.'s Assistants accordingly; and
- (iii) if the Sub-Contractor does not formally dispute such act, decision or instruction of the C.R.'s Assistants within 7 Days of its occurrence or official communication to it, then the Sub-Contractor shall be deemed to have accepted the same.

#### **8.4 No Waiver of Rights**

The Sub-Contractor agrees that no act, omission, verification, approval, monitoring or supervision by the C.R., the C.R. Assistants and/or any further persons shall relieve the Sub-Contractor from its obligations and responsibilities under the Sub-Contract.

#### **8.5 The Contractor/C.R.'s power to issue instructions**

- (a) The Contractor/C.R. may issue at any time, instructions, directions, consents, approvals and additional or modified documents/details (in short "instructions") which may be under the:
  - (i) Sub-Contract itself; or
  - (ii) Main Contract but relate to the Sub-Contract Works.

For the avoidance of doubt, the words "C.R." and "Contractor/C.R." wherever used in these Sub-Contract shall mean the same.

- (b) Such instructions under sub-clause 8.2(a)(ii) above may be issued by the E.R. to the Contractor, and shall be officially given/issued by the Contractor/C.R. to the Sub-Contractor. Unless and until the Contractor/C.R. does so, any instruction so given/issued by the E.R. directly to the Sub-Contractor and/or received by the latter from the E.R. shall not be considered as a valid instruction under the Sub-Contract.

#### **8.6 Meaning of "Contractor's/C.R.'s Instruction"**

For the avoidance of doubt, the term "Contractor's/C.R.'s Instruction" shall also include any instruction issued by the C.R.'s Representative to whom such authority has been delegated by the C.R. in the letter of delegation of authority.

## **8.7 Duty of Compliance**

The Sub-Contractor shall comply with all instructions issued directly by the Contractor/C.R. or given by the E.R. officially through the Contractor/C.R.

## **PART IV: THE SUB-CONTRACTOR – OBLIGATIONS AND LIABILITIES**

### **9.0 SUB-CONTRACTOR'S OBLIGATIONS AND LIABILITIES**

#### **9.1 Sub-Contractor's General Obligations**

- (a) The Sub-Contractor shall plan, design (to the extent required by the Sub-Contract), execute and complete the Sub-Contract Works so as to enable the Contractor to discharge its obligations under the Contract in so far as they relate and apply to the Sub-Contract Works or to any part of the Sub-Contract Works, in accordance with this Sub-Contract. These shall be in all respect to the reasonable satisfaction of the Contractor/C.R. and in conformity with all the reasonable requirements of the Contractor (so far as they may apply to the Sub-Contract Works) in the execution and completion of the Contract Works.
- (b) The Sub-Contractor shall provide the Sub-Contractor's documents specified in the Sub-Contract and all the Sub-Contractor's plant, personnel, goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for the design (if, and to the extent applicable), execution, completion of the Sub-Contract Works, remedying/rectification of defects and undertaking the servicing and maintenance of the completed works as required under the Sub-Contract..
- (c) The Sub-Contractor shall be responsible for the adequacy, stability and safety of all site operations and of all methods of fabrication/construction. Except to the extent specified in the Sub-Contract, the Sub-Contractor:
  - (i) shall be responsible for all the Sub-Contractor's documents, Sub-Contract Works, and such design (if applicable) as is required for the completed Sub-Contract Works to be in accordance with the Sub-Contract, and
  - (ii) shall not otherwise be responsible for the design or specification of the Contract Works.

- (d) The Sub-Contractor shall, whenever required by the Contractor/C.R., submit details of the arrangements and methods which the Sub-Contractor proposes to adopt for the execution of the Sub-Contract Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Contractor/C.R.
- (e) If the Sub-Contract specifies that the Sub-Contractor shall design any part of the Permanent Works, then unless otherwise stated elsewhere in the Sub-Contract:
  - (i) the Sub-Contractor shall submit to the Contractor/C.R., the Sub-Contractor's documents for this part in accordance with the procedures specified in the Sub-Contract;
  - (ii) these Sub-Contractor's Documents shall be in accordance with the Contractor's Requirements, written in the language for communication defined in the Sub-Contract (if any), and shall include additional information required by the Contractor/C.R. to add to the documents for coordination of each Party's designs (as applicable);
  - (iii) the Sub-Contractor shall be responsible for this part of the Works, and it shall, when the Sub-Contract Works are completed, be fit for such purposes for which the part is intended as are specified in the Sub-Contract; and
  - (iv) during the currency of the Sub-Contract works as required by the specific provisions of the Sub-Contract in line with the Contractor's programme/schedule for the same and prior to the commencement of the tests on completion under the Sub-Contract, the Sub-Contractor shall submit to the Contractor/C.R., the "as-built" documents and operation and maintenance manuals in accordance with the Sub-Contract and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair such part of the Works. The said part shall not be considered to be completed for the purpose of completion under Clause 22.0 until these documents and manuals have been submitted to the Contractor/C.R and accepted/approved by the latter.

## **9.2 Compliance with the Provisions of the Contract**

The Sub-Contractor shall observe, perform and comply with all the provisions of the Contract on the part of the Contractor to observe, perform and comply with in so far as they relate and apply to the Sub-Contract Works or any part of the Sub-Contract Works and which are not repugnant to, or inconsistent with the provisions of the Sub-Contract.

### **9.3 Indemnity to the Contractor**

The Sub-Contractor shall indemnify the Contractor against and from:

- (a) Any breach of sub-clause 9.2 by the Sub-Contractor, its servants or agents; and
- (b) Any act or omission of the Sub-Contractor, its servants or agents, which results in the Contractor incurring liability to the Employer under the Contract; and
- (c) Any loss, expense, cost, damage, liability or claim due to or resulting from any negligence or breach of duty on the part of the Sub-Contractor, its servants or agents; and
- (d) Any loss or damage resulting from any claim at law by a personnel and/or workman of the Sub-Contractor in respect of personal injury arising out of or in the course of its employment,

arising in the course of or in connection with the execution of the Sub-Contract Works.

### **9.4 Giving of Particulars or Notices**

Whenever the Contractor is required by the terms of the Contract to give any particulars or notices to the E.R. or the Employer in so far as these relate to and are directly/indirectly incorporated into the Sub-Contract, the Sub-Contractor shall, in relation to this Sub-Contract, give such particulars or notices or such other information in writing to the Contractor/C.R. as will enable the Contractor to comply with such terms of the Contract. The Sub-Contractor shall do so in sufficient time to enable the Contractor to comply with such terms punctually.

### **9.5 Compliance with Instructions**

Further and in addition to Clauses 8.1 and 8.5 above, the Sub-Contractor shall comply with all instructions of:

- (a) the E.R. under the Contract in so far as they relate to the Sub-Contract Works and which are given/issued officially in writing to the Sub-Contractor by the Contractor/C.R.; and
- (b) the Contractor/C.R. itself to the Sub-Contractor on matters relating to the Sub-Contract.

All such instructions shall be in writing and a copy of which may be given to the E.R. by the Contractor/C.R. at the same time if the latter deems this to be necessary for the former's information only.

## **9.6 Co-operation**

(a) The Sub-Contractor shall, as specified in the Sub-Contract or as instructed by the Contractor/C.R. allow appropriate opportunities for the carrying out of work by:

- (i) the Employer's personnel;
- (ii) the Contractor's Personnel;
- (iii) any other contractors employed by the Employer;
- (iv) any sub-contractors employed by the Contractor; and
- (v) the personnel of any legally constituted public authority or body,

who may be employed in the execution on or near the Site of any work not included in the Sub-Contract.

(b) Any such instruction of the Contractor/C.R. shall constitute a Variation under Clause 28.0 if and to the extent that it causes the Sub-Contractor to incur unforeseeable costs. Services of these personnel and other contractors and sub-contractors may include use of the Sub-Contractor's equipment, plant, Temporary Works or access arrangements which are the responsibility of the Sub-Contractor.

## **10.0 PERFORMANCE SECURITY**

### **10.1 Purpose**

The Performance Security shall be for the purpose of ensuring the Sub-Contractor's duties and performance of its obligations under the Sub-Contract.

### **10.2 Form of Security**

(a) Unless stipulated to the contrary in the Sub-Contract, the Performance Security shall be in the form of:



- (i) Letter of Credit (L.C.); or
- (ii) Banker's draft; or
- (iii) Performance bond; or
- (iv) Parent Company Performance Guarantee (where applicable).

The form of the Performance Security shall be as stated in Appendix II.

- (b) The Performance bond if used, shall be:
  - (i) an irrevocable and unconditional, on-demand bond; and
  - (ii) substantially in the form required by the Sub-Contract or otherwise approved by the Contractor/C.R.; and
  - (iii) issued by an approved licenced bank, or financial institution incorporated as approved by the Contractor/C.R. in favour of the Contractor.
- (c) The Parent Company / Performance Guarantee (called "the Performance Guarantee") shall be:
  - (i) substantially in the form required by the Sub-Contract or otherwise approved by the Contractor/C.R.; and
  - (ii) issued by the parent and/or principal company of the Sub-Contractor (if any).

### **10.3 Value of Performance Security**

Unless otherwise stated in Appendix II, the Performance Security shall be for an amount equivalent to 5% of the Sub-Contract Sum (excluding any subsequent variation/adjustment).

### **10.4 Validity of the Performance Bond and Guarantee**

- (a) Unless otherwise stated in Appendix II, the Performance bond and Performance Guarantee (if any) shall remain valid and effective for a period until 12 months after:
  - (i) the expiry of the Defects Liability Period; or
  - (ii) the date of the issuance of the Certificate of Completion of Making Good of Defects,whichever is the later.

- (b) The Sub-Contractor shall be obliged to keep the Performance bond and Performance Guarantee (if any) specified in sub-clause 10.2 valid, in full force, effectively renewed and extended for the duration as stipulated above. The Sub-Contractor shall submit all such renewals and extensions to the Contractor with a copy to the Contractor/C.R. not later than 1 month before its expiry.
- (c) If the Sub-Contractor shall fail to keep the Performance bond or Performance Guarantee (if any) valid, in full force and effectively renewed and extended, then without prejudice to any other rights and remedies the Contractor may possess, the Contractor/C.R. shall be entitled to withhold an amount equal to the amount of the Performance Bond stated in Appendix II from any payment due or becoming due to the Sub-Contractor under the Sub-Contract until the Sub-Contractor ensures that such bond and/or guarantee is made valid, is in full force or is effectively renewed or extended.

#### **10.5 Time for Lodgment of Security**

- (a) The Performance Security shall be deposited with the Contractor/C.R.:
  - (i) within 14 Days of the Contractor's issue of the Letter of Acceptance to the Sub-Contractor; or
  - (ii) as otherwise agreed between the parties
- (b) Notwithstanding the stipulations of sub-clause 10.5(a), the Performance Security shall in any event be submitted before the commencement of Sub-Contract Works.

#### **10.6 Default in submitting Performance Security**

- (a) If the Performance Security is not provided by the Sub-Contractor either in the stipulated form (sub-clause 10.2) and/or within the time stated (sub-clause 10.5), the Contractor shall subject to sub-clause 10.6(b), without prejudice to any other rights or remedies that it may possess be:
  - (i) entitled to determine the Sub-Contractor's employment under the Sub-Contract pursuant to Clause 40.0A; or
  - (ii) be entitled to withhold an amount equal to the amount of the Performance Security stated Appendix II from any payment due or becoming due to the Sub-Contractor under the Sub-Contract until the Sub-Contractor submits such Performance Security.

- (b) The Contractor shall not be entitled to exercise the provisions of sub-clause 10.6(a) above unless the Contractor/C.R. shall have confirmed/established that the Sub-Contractor has been in default as aforesaid.
- (c) For the purposes of the Sub-Contract, the requirement of the Performance Security shall be agreed to be a condition and not a warranty.

#### **10.7 Costs incurred**

All costs whatsoever and howsoever related to or arising out of or in connection with the obtaining, preparing, extending, renewal and stamping of any Performance Security Instrument i.e. the bond and guarantee specified under this Clause 10.0 shall be borne wholly by the Sub-Contractor and shall be deemed to be included in the Sub-Contract Sum.

#### **10.8 Recourse to Performance Security**

- (a) Notwithstanding anything contained in the Sub-Contract, the Contractor shall be entitled at any time to call upon the Performance Security, wholly or partially, in the event that the Sub-Contractor fails to perform or fulfill its obligations under the Sub-Contract and such failure is not remedied in accordance with the Sub-Contract.
- (b) In addition to the above, the Contractor is entitled to call upon any other Performance Security inclusive of but not limited to the Performance Guarantee (where applicable), in order to satisfy any entitlement that the Contractor may have to seek or claim compensation from the Sub-Contractor.
- (c) The Contractor shall not be entitled to exercise the provisions of sub-clause 10.8(a) and (b) above unless the Contractor/C.R. shall have confirmed/established that the Sub-Contractor has been in default as aforesaid.
- (d) If the Contractor calls upon any Performance Security and if payment is made to the Contractor pursuant to such a claim, the Contractor/C.A. may, by notice in writing directed to the Sub-Contractor, require the Sub-Contractor to provide to the Contractor further Performance Security. The total aggregate Performance Security that the Sub-Contractor may be required to provide shall be for an amount not less than the amount so paid to the Contractor on or prior to the date of such payment so that the total sum of the Performance Security shall be maintained at all times at the value specified in sub-clause 10.3.

- (e) Upon being served with a written notice under sub-clause 10.8(e), the Sub-Contractor shall within 7 Days provide the further Performance Security. Should the Sub-Contractor fail to comply with the written notice within the stated time period, the provisions of sub-clause 10.6 shall apply *mutatis mutandis*.
- (F) Notwithstanding the above, in the event the Sub-Contractor's employment under the Sub-Contract is determined under Clause 40.0A hereof, the Performance Security or any balance thereof shall be forfeited.

## **10.9 Release of the Performance Security**

- (a) Any Performance Security provided by the Sub-Contractor shall be released in accordance with the Sub-Contract.
- (b) Subject to the prior consent of the Contractor/C.R., the Performance Security (or any balance thereof remaining for the credit of the Sub-Contractor) may be released or refunded to the Sub-Contractor at the earliest:
  - (i) upon the completion of making good of all Defects and servicing and maintenance; and
  - (ii) upon the issue to the Contractor of the Certificate of Completion and Making Good Defects and Maintenance Certificate for the whole of the Works under Clause 36.0 under the Contract.

## **11.0 WORKS DESIGNED BY THE SUB-CONTRACTOR**

### **11.1 Scope of the Clause**

- (a) This Clause shall be applicable where the Sub-Contract expressly provides that a part or the whole of the Sub-Contract Works shall be designed by the Sub-Contractor.
- (b) If the Sub-Contractor is responsible for the design of only part of the Sub-Contract Works, such part or part of the Sub-Contract Works shall be a "stand alone" design as determined by the Contractor/C.R.

- (c) Any references to the design which the Sub-Contractor has prepared or shall prepare or issue for the Sub-Contract Works shall include a reference to any design which the Sub-Contractor has caused or shall cause to be prepared or issued by others on its behalf.

## **11.2 Design Obligations and Liability**

- (a) Insofar as the Sub-Contractor is responsible for the design of any part or the whole of the Sub-Contract Works, it shall ensure that the design shall be suitable, functional, safe and compatible with the design and specifications of the Sub-Contract Works and that it shall be undertaken, approved and endorsed by a competent and registered professional employed by the Sub-Contractor and as approved by the Contractor/C.R..
- (b) The Sub-Contractor shall be fully responsible for the design, execution and maintenance of the Sub-Contract Works or part thereof for which its design has been reviewed by the Contractor/C.R. (and the E.R., as applicable).
- (c) The Sub-Contractor shall absolutely guarantee the Contractor independent of fault, that the design, materials and workmanship for the Sub-Contract Works or part of the Sub-Contract Works (as applicable) are suitable for the intended purposes and functional, safe and compatible with the Contractor's Requirements and the Sub-Contract.
- (d) Further to sub-clause 11.7, the review by the Contractor/C.R (and the E.R., as applicable) under this Clause shall not relieve the Sub-Contractor of any of its responsibilities under the Sub-Contract.

## **11.3 Design Guarantee Bond**

- (a) The Sub-Contractor shall provide a Design Guarantee Bond for the said designed portion of the Sub-Contract Works issued by an approved licenced bank or financial institution amounting to 5% of the value of the said part of the Sub-Contract Works, substantially in the form provided by the Contractor/C.R. (and/or the Employer as applicable).
- (b) The Design Guarantee Bond shall be submitted to the Contractor/C.R. and/or through the Contractor/C.R. to the Employer (as applicable) upon, or before the issuance of the Certificate of Practical Completion of the Sub-Contract Works.

- (c) Such Design Guarantee Bond shall remain valid for a period of 5 years from the Date of Practical Completion of the Sub-Contract Works as stated in the Certificate of Practical Completion.
- (d) If the Sub-Contractor fails and/or neglects to deposit within 14 Days of the issue of the Certificate of Practical Completion, the said Design Guarantee Bond with the Contractor/C.R. as stipulated in sub-clauses 11.3(a) to (c) above, the Contractor shall have a right to claim the total value of the said amount:
  - (i) from any money due or to become due to the Sub-Contractor; or
  - (ii) from the Performance Security; or
  - (iii) as a claim for debt due to the Contractor.
- (e) If any defect or damage shall occur to that particular part of the Sub-Contract Works as a result of any defect, fault, insufficiency or inadequacy in the design including workmanship, materials or equipment which have become defective arising directly or indirectly from design fault or omission, then a written demand will be made by the Contractor to the bank or institution that has issued the Design Guarantee Bond.
- (f) Upon the making of the demand by the Contractor, the said issuer of the Design Guarantee Bond shall pay and indemnify the Contractor notwithstanding any objection by the Sub-Contractor or any third party, equal to 5% of the value of the said part of the Sub-Contract Works.

#### **11.4 Contractor's Obligations**

- (a) In respect of the Sub-Contract Works to be designed by the Sub-Contractor, the Contractor shall clearly set out the requirements for which the design is intended. For the purposes of this Clause, such requirements shall be called the "Contractor's Requirements" and shall include such matters as the design criteria, performance specifications, and/or drawings. The Contractor's Requirements may include such parts of the Employer's Requirements of the Contract which relate to the Sub-Contract Works and form part of and/or incorporated into the Contractor's Requirements.

- (b) The Sub-Contractor shall be deemed to have scrutinized, prior to the submission of its Tender, the Contractor's Requirements including any Employer's Requirements that form part of or are incorporated into the Contractor's Requirements as adverted to above. The Sub-Contractor shall be responsible for the design of the Sub-Contract Works stipulated and for the accuracy of such Contractor's Requirements except as otherwise provided for in the Sub-Contract, or as mutually agreed to by the parties.
- (c) The Contractor shall, be responsible for the correctness of the following portions of the Contractor's Requirements and of the following data and information provided by or on behalf of the Contractor:
  - (i) portions, data and information which are stated in the Sub-Contract as being the risk or the responsibility of the Contractor (and the Employer as applicable);
  - (ii) definitions of the intended purposes of the Sub-Contract Works or any parts thereof;
  - (iii) criteria for the testing and performance of the Sub-Contract Works (if any); and
  - (iv) portions, data and information that cannot be reasonably verified by a reasonably experienced Sub-Contractor, except as otherwise stated in the Sub-Contract.
- (f) For audit purposes, the Contractor/C.R. (and the E.R., as applicable) shall review and comment on the Sub-Contractor's documents as submitted in accordance with the process set out in sub-clause 11.7.
- (g) The Contractor/C.R. is neither obliged under the Sub-Contract to get the E.R. to audit the Sub-Contractor's design/Documents nor accept in whole or in part any such audit if the E.R. is called upon to undertake the same by the Contractor.
- (h) If the E.R nevertheless is required by the Contractor to audit, and/or the E.R. however audits the Sub-Contractor's design/documents as part of the Contractor's design audit process under the relevant provision of the Contract, it shall be of no effect on the Sub-Contractor and/or the latter may not act on it until such audit is confirmed (with or without amendments, if and as necessary for the purposes of the Sub-Contract and no other) in writing by the Contractor/C.R.; in which case the audit shall be deemed under the Sub-Contract to be for all intents and purposes to be the Contractor's/C.R's audit.

- (i) For the avoidance doubt, the Contractor/C.R. is not bound to accept the E.R.'s audit of the Sub-Contractor's design/Documents in whole or in part but may be amended as necessary by the Contractor/C.R. to ensure compliance with the Sub-Contractor's scope of work under the Sub-Contract before it is formally issued to the Sub-Contractor by the Contractor/C.R.
- (j) Any such review, acceptance or approval by the Contractor/C.R. of the Sub-Contractor's design/documents shall not relieve the Sub-Contractor of any of its obligations or liabilities under the Sub-Contract.

#### **11.5 Sub-Contractor's documents**

- (a) The Sub-Contractor's documents for the purposes of this Clause shall comprise the following:
  - (i) all the technical documents specified in the Contractor's Requirements generated by the Sub-Contractor pursuant the relevant stipulations contained therein ; and
  - (ii) all such documents required to satisfy all statutory requirements and/or requirements of the Appropriate Authorities; and
  - (iii) all as-built documents and operation and maintenance manuals; and
  - (iv) all other documents necessary for the fulfillment of the Sub-Contractor's obligations under this Clause and the Sub-Contract.
- (b) The Sub-Contractor shall prepare all the Sub-Contractor's documents and also:
  - (i) any other documents necessary to instruct the Sub-Contractor's Personnel; and/or
  - (ii) any additional documents or information in relation to the Sub-Contractor's documents as may be reasonably required by the Contractor/C.R. in order to facilitate design review.



## **11.6 The Design Development Process**

- (a) In respect of any part of the Sub-Contract Work designed by the Sub-Contractor, the Sub-Contractor shall proceed with the design to meet the Contractor's Requirements and the Sub-Contract.
  
- (b) The Sub-Contractor shall prepare, develop and submit the Sub-Contractor's documents in accordance with the procedure as set out in this Clause. In particular, the Sub-Contractor shall prepare and progressively submit to the Contractor/C.R.
  - (i) the design concept (unless this is included in the Contractor's Requirements);
  - (ii) the preliminary design (unless this is included in the Contractor's Requirements); and
  - (iii) the final design.in accordance with the requirements of this Clause.
  
- (c) The Sub-Contractor's documents shall be submitted with a notice as described in sub-clause 11.7 (c) to the Contractor/C.R. for review.
  
- (d) For each part of the Sub-Contract Works, and except to the extent that the Parties otherwise agree, execution of such part of the Sub-Contract Works shall not commence unless and until either:
  - (i) the Contractor/C.R. has reviewed the relevant Sub-contractor's documents in accordance to sub-clause 11.7; or
  - (ii) the default provision of sub-clause 11.7(g) applies.

## **11.7 The Review Procedure**

- (a) All the Sub-contractor's Documents shall be submitted to the Contractor/C.R. for review prior to any work being commenced.
  
- (b) The purpose of the review is to enable the Contractor/C.R. to audit the submitted documents for conformance with the Contractor's Requirements and the particular provisions of the Sub-Contract. It shall in no way relieve or limit the obligations and/or liabilities of the Sub-Contractor under the Sub-Contract.

- (c) The Sub-Contractor shall submit its documents to the Contractor/C.R. for review with a notice (the "Sub-Contractor's Notice"). This notice shall state that:
  - (i) the document is considered ready, both for review in accordance with this Clause and for use; and
  - (ii) the document complies with the Sub-Contract, or
  - (iii) the extent to which it does not comply; and
  - (iv) the scheduled date of work for that document is to commence.
- (d) The Contractor/C.R. shall review the Sub-Contractor's Document submitted within a mutually agreed period (the "review period"); such period being not more than 21 Days from the date of receipt of the Sub-Contractor's document and Notice.
- (e) Within or at the expiry of the review period, the Contractor/C.R. shall notify the Sub-Contractor in writing that:
  - (i) the Sub-contractor's document has passed the review; or
  - (ii) the Sub-Contractor's document has failed (to the extent stated) to comply with the Sub-Contract.
- (f) If a Sub-Contractor's document so fails to comply with the Sub-Contract, it shall be rectified, resubmitted and reviewed in accordance with this sub-clause, at the Sub-Contractor's expense both cost-wise and time-wise.
- (g) If the Contractor/C.R. fails to give the relevant notice upon the expiry of the review period, the Sub-contractor's document so submitted shall be deemed to comply with the Sub-Contract.
- (h) For each part of the Sub-Contract Works, and except to the extent that the Parties otherwise agree, the execution of such part of the Sub-Contract Works shall be in accordance with these Sub-contractor's documents, as submitted and reviewed.

#### **11.8 Amendment to, or Modification of Reviewed Documents**

- (a) If the Sub-Contractor wishes to amend or modify any design or document which has been previously submitted for review, the Sub-Contractor shall:

- (i) immediately give notice of the same to the Contractor/C..R. stipulating the reason/reasons for such modification and its impact on the work progress and costs; and
  - (ii) submit revised documents to the Contractor/C.R. in accordance with the above procedure.
- (b) If the Contractor/C.R. wishes to amend or modify any design or document which has been previously reviewed and passed by it, then:
  - (i) the Contractor/C.R. shall instruct the Sub-Contractor accordingly with full details of the amendments or modifications required;
  - (ii) the Sub-Contractor shall prepare and submit for the Contractor's/C.R.'s review the amended or modified documents in accordance with the above procedure;
  - (iii) the Sub-Contractor shall also submit the likely cost and/or time impact of the Contractor's/C.R.'s Instruction.
- (c) Provided that pursuant to sub-clauses 11.8(a) and (b) above if such amendment or modification involves a Variation, the following provisions shall apply:
  - (i) the Variation shall be valued and the Sub-Contract Sum adjusted pursuant to Clause 28.0 ;
  - (ii) any extension of time shall be determined pursuant to Clause 21.0.
- (d) If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Sub-Contractor's documents, these and the related works shall be corrected at the Sub-Contractor's expense both cost-wise and time-wise, notwithstanding any review, consent or approval by the Contractor/C.R. under this Clause.

## **12.0 EMPLOYMENT OF WORKMEN AND PERSONNEL**

### **12.1 Employment of local citizens**

The Sub-Contractor shall employ, in the execution of the Sub-Contract, only local citizens as workmen and personnel.

## **12.2 Employment of non-local citizens**

- (a) If in any particular trade or skill required to complete the Sub-Contract Works, the Sub-Contractor can show to the satisfaction of the Contractor/C.R. that local citizens are not available, then the Sub-Contractor may employ non-local citizens to the extent permitted by the applicable law.
- (b) In case such workmen and/or personnel are engaged, the Sub-Contractor shall be responsible.
  - (i) to obtain their work permits in compliance with the relevant laws and regulations; and
  - (ii) for their remuneration, housing, welfare, transport, insurance cover, and contributions required under the law.
- (c) For the avoidance of doubt, the employment of illegal foreign workmen and/or personnel is strictly prohibited.

## **12.3 Particulars of Workmen and Personnel**

The Sub-Contractor shall, on the commencement of the Sub-Contract Works, furnish to the relevant authorities (if required under the applicable laws), all particulars connected with the Sub-Contract and such returns as may be called for from time to time in respect of workmen and personnel employed by the Sub-Contractor for the execution of the Sub-Contract.

## **12.4 Register of Workmen and Personnel**

The Sub-Contractor shall maintain on the Site at all times during the performance of the Sub-Contract Works an up-to-date register containing particulars of all workmen and personnel employed by it.

## **12.5 Obligations of Sub-Contractor's sub-contractors**

The Sub-Contractor shall cause all its sub-contractors (including "labour only" sub-contractors) to comply with the provisions of this Clause 12.0.

**12.6 Compliance with the Law**

- (a) In the employment of workmen and personnel for the execution of the Sub-Contract, the Sub-Contractor shall comply, and shall cause its sub-contractors (including "labour only" sub-contractors) to comply with all the relevant requirements of any governing laws relating to the employment of workmen and personnel
- (b) The Sub-Contractor shall not be entitled to any claim for additional costs and/or payments whatsoever in respect of its compliance with this Clause.

**12.7 Days and Hours of Working**

- (a) Subject to the Contractor's/ C.R.'s written permission to the contrary, no work shall be undertaken by the Sub-Contractor under the Sub-Contract on:
  - (i) the weekly day of rest;
  - (ii) any public holiday which is recognized in the state where the Sub-Contract Works are being carried out; or
  - (iii) between the hours of six in the evening and six in the following morning;
- (b) If the Sub-Contractor's written application to work as otherwise provided for in sub-clause 12.7(a) is approved by the Contractor/C.R., the Sub-Contractor shall comply fully with all the requirements of the relevant laws in regard thereto.
- (c) Notwithstanding the grant by the Contractor/C.R. of any permission pursuant to the Sub-Contractor's application of sub-clause 12.7(b), the Sub-Contractor shall fully bear:
  - (i) any costs incurred by the Sub-Contractor for compliance; and
  - (ii) any extra costs incurred by the Contractor/C.R. in connection with the supervision of the Sub-Contract Works.

**12.8 Wages Books and Time Sheets**

- (a) The Sub-Contractor shall keep and shall cause its sub-contractors (including "labour only" sub-contractors) to keep proper wages books and time sheets showing:
  - (i) wages paid to; and

(ii) the time worked

by all workmen and personnel employed by the Sub-Contractor and its sub-contractors as aforesaid in and for the performance of the Sub-Contract.

- (b) The Sub-Contractor shall produce such wages books and time sheets on demand for inspection by any person or persons duly authorized by the Contractor/C.R. and/or under the applicable laws.
- (c) The Sub-Contractor shall furnish to the Contractor/C.R. or the C.R.'s Assistants such information relating to the wages and conditions of employment of such workmen and personnel as the Contractor/C.R. may from time to time require.
- (d) In any event, the Sub-Contractor shall provide to the Contractor/C.R. a daily record (pursuant to sub-clause 15.5) of the number of workmen and personnel employed on the Site, broken down in accordance with the Contractor's/C.R.'s requirements.

#### **12.9 Default in Payment of Wages**

(a) In the event of default in the payment of:

- (i) any money in respect of wages; and/or
- (ii) payment in respect of any contributions mandated by the applicable laws,

of any workmen and/or personnel employed by the Sub-Contractor or its sub-contractors (including "labour only" sub-contractors), in and for the performance of the Sub-Contract, which a claim has been filed with the Appropriate Authorities, then the Contractor shall make payment to the said Authorities out of:

1. any monies at any time due to the Sub-Contractor under the Sub-Contract; and/or
2. the Performance Security.

(b) Such payment made pursuant to sub-clause 12.9(a) shall be deemed to be a payment made to the Sub-Contractor by virtue of the Sub-Contract.

#### **12.10 Discharge of Workmen and Personnel**

- (a) The Sub-contractor shall only employ such workmen and personnel on the Sub-Contract Works as are of good character, experienced and thoroughly efficient in their various vocations and trades (as determined by the Contractor/C.R.).
- (b) If in the reasonable opinion of the Contractor/C.R., any person employed by the Sub-Contractor:
  - (i) is culpable of misconduct; and/or
  - (ii) is incompetent; and/or
  - (iii) is negligent; and/or
  - (iv) has caused inordinate delays

the Contractor/C.R. shall be at liberty to object to and require the Sub-Contractor in writing to remove from Site such person.

- (c) The person removed at the direction of the Contractor/C.R. pursuant to sub-clause 12.10(b) shall not again be employed upon the Sub-Contract Works, whether by the Sub-Contractor or any of its sub-contractors without the prior written permission of the Contractor/C.R.(which permission shall not be unreasonably withheld).
- (d) Any person so removed from the Sub-Contract Works shall be replaced without delay by a competent substitute approved by the Contractor/C.R.
- (e) The Sub-Contractor shall not be entitled to any claim for:
  - (i) any extension of time; or
  - (ii) any expense incurred whatsoever by it

in respect of any direction given by the Contractor/C.R. under this Clause.

### **13.0 SUB-CONTRACTOR'S REPRESENTATIVES**

### 13.1 Sub-Contractor's Representative appointment

- (a) The Sub-Contractor shall appoint, as a condition precedent to commencement of any work under the Sub-Contract, a competent person who shall be referred to as the "Sub-Contractor's Representative" (or SC.R.).
- (b) For the avoidance of any doubt the competency of such a person shall be determined by the Contractor/C.R. and shall be based on the following minimum criteria:
  - (i) technical and/or professional qualifications as stipulated in the Appendix II;
  - (ii) language competency as stipulated in the Appendix II;
  - (iii) previous experience of at least 10 years in similar Sub-Contract Works; and
  - (iv) express authority necessary to act on the Sub-Contractor's behalf under, and for the purposes of the Sub-Contract.
- (c) Unless the Sub-Contractor's Representative is named in the Sub-Contract, the Sub-contractor shall within 14 Days of the receipt and acknowledgement of the Letter of Acceptance, submit to the Contractor/C.R. for its consent:
  - (i) the name; and
  - (ii) full particulars, inclusive of those stipulated in sub-clause 13.1(b).

of the person the Sub-Contractor proposes to appoint as the Sub-Contractor's Representative.
- (d) The Contractor/C.R. shall, within 14 Days of receipt of the Sub-Contractor's proposal of sub-clause 13.1(c):
  - (i) consent to the said appointment; or
  - (ii) request for further particulars; or
  - (iii) withhold consent with reasons



- (e) In the event that option ii) in sub-clause 13.1(d) is adopted, the Sub-Contractor must respond to the Contractor's/C.R.'s request within a further 14 Days.
- (f) Should the Contractor/C.R. withhold consent pursuant to sub-clause 13.1(d)(iii), the Sub-Contractor must act within a further 14 Days by submitting the name and particulars of another suitable person for such appointment.
- (g) If the Contractor/C.R fails and/or neglects to respond to the Sub-Contractor's initial proposal under sub-clause 13.1(d) or resubmission under sub-clause 13.1(f) above, then upon the expiry of the stipulated periods of 14 Days, it shall be deemed that the Contractor/C.R. has no objections to the said proposal or resubmission, as applicable

### **13.2 Default in appointment**

- (a) Should the Sub-Contractor fail to:
  - (i) name the SC.R. in the Sub-Contract; or
  - (ii) propose a suitable candidate pursuant to sub-clauses 13.1(c), (e) and (f); or
  - (iii) get the Contractor's/C.R.'s consent for the proposed candidate.

then the provisions of sub-clause 13.2(b) shall apply.
- (b) Pursuant to the default of the Sub-Contractor as specified in sub-clause 13.2(a), the following sanctions shall apply:
  - (i) the Sub-Contractor shall not be allowed to commence with any work under the Sub-contract without any liability on the Contractor's part; and
  - (ii) if such default should continue for 30 Days after the date of the commencement of the Sub-contract, the Contractor may suspend the Sub-Contract and claim all losses/damages due from the Sub-Contractor.

### **13.3 Duties and Powers of the SC.R.**

- (a) The SC.R. shall constantly attend to the Sub-Contract Works during the Sub-Contractor's working hours and shall give its whole time to the undertaking of the design (if any) and the supervision of the execution and administration of the Sub-Contract including the remedying of the Defects during the Defects Liability Period

and the undertaking of the necessary servicing and maintenance of the completed Sub-Contract works in the Maintenance Period.

- (b) For the purposes of the Sub-Contract, notwithstanding the provision of sub-clause 13.1(b)(iv), the SC.R. shall be deemed to be the Sub-Contractor's authorized agent. In furtherance to the above:
  - (i) any directions, explanations, instructions or notices given to the SC.R. by the Contractor/C.R. shall be deemed to have been given to the Sub-Contractor under the Sub-Contract; and
  - (ii) any explanations, notices, undertakings and/or representations made by the SC.R. to the C.R. and/or the Contractor shall be deemed to be given by the Sub-Contractor.

#### **13.4 Delegation by SC.R.**

- (a) The SC.R. may delegate any powers, functions and authority to any competent person and may at any time revoke the delegation.
- (b) Any such delegation or revocation shall not take effect until the Contractor/C.R. has received and consented to a prior notice signed by the SC.R.:
  - (i) naming the person or persons; and
  - (ii) specifying the powers, functions and authority being delegated or revoked.
- (c) The competent person stipulated in sub-clauses 13.4(a) and (b) shall be referred to as the SC.R.'s Assistant (the "SC.R.A.").

#### **13.5 Revocation/Replacement of the SC.R.**

- (a) The Sub-Contractor shall not, without the prior written consent of the Contractor/C.R., either:
  - (i) revoke the appointment of the SC.R.; or
  - (ii) appoint a replacement
- (b) In the event the SC.R. is to be replaced, the Sub-Contractor must satisfy the requirements and procedure of sub-clause 13.1.

### **13.6 Default in SC.R.'s performance of Duties**

- (a) Further to sub-clause 13.3(a), should the SC.R. be temporarily absent from the Sub-contract Works, the SC.R. may designate the SC.R.A. to act for and on its behalf. The SC.R. shall accordingly inform the Contractor/C.R. in writing prior to such designation:
  - (i) the duration for which the SC.R. would be absent from Site;
  - (ii) the reason(s) for such absence;
  - (iii) the anticipated date and/or time for resumption of duties; and
  - (iv) any other relevant information.
- (b) For the avoidance of doubt, the phrase "temporary absence" shall mean a period of more than 7 continuous Days unless the parties mutually agree to otherwise.
- (c) In the event, the SC.R. does not comply with sub-clause 13.6(a) and is absent from Site for more than 7 continuous Days, the Contractor/C.R. may:
  - (i) issue a notice to the Sub-Contractor to suspend all work on Sub-Contract pursuant to Clause 39.0; and/or
  - (ii) deduct an amount of money as stipulated in the Appendix II for the period of time the SC.R. is absent from the Sub-Contract Works.
- (d) Should the SC.R.'s absence from the Sub-Contract Works continue for more than 30 Days, the Contractor/C.R. may either:
  - (i) extend the suspension order and continue the deduction of monies stipulated in sub-clause 13.6(c), or
  - (ii) appoint a competent person to act as the SC.R and deduct all monies so incurred including the salary/fees of such person from monies due and/or payable to the Sub-Contractor.

### **13.7 Removal of SC.R. and/or other Personnel**

- (a) The Contractor/C.R. may at any time expressly object to, and:

- (i) withdraw its consent to the SC.R. and/or the SC.R.A; or
  - (ii) require the Sub-Contractor to immediately remove from the Sub-Contract Works any person employed by the Sub-Contractor in or about the execution of the Sub-Contract Works.
- (b) The Contractor/C.R. shall not exercise its discretion unreasonably or vexatiously but shall only do so if in its considered opinion, such person is:
- (i) culpable of misconduct; and/or
  - (ii) is negligent; and/or
  - (iii) is incompetent in the proper performance of its duties; and/or
  - (iv) whose continued presence is undesirable or unacceptable.
- (c) Pursuant to sub-clause 13.7(a), the Sub-Contractor shall, upon receiving the notice in writing from the Contractor/C.R., immediately (but not later than 7 Days):
- (i) remove the said person from the Sub-Contract Works and shall not without the Contractor's/C.R.'s consent thereafter employ it again in connection with the Sub-Contract Works in any capacity; and
  - (ii) replace it by another person with proper competence and experience who shall be consented to by the Contractor/C.R.
- (d) The Sub-Contractor shall not be entitled to any claim for extension of time and/or expense whatsoever incurred by it in respect of any direction, notice or instruction given to it by the Contractor/C.R. under this sub-clause 13.7.

## **14.0 ASSIGNMENT, SUB-CONTRACTING AND NOVATION**

### **14.1 Assignment by Sub-Contractor**

- (a) The Sub-Contractor shall not, without the prior written consent of the Contractor (which consent shall not be unreasonably withheld), assign the whole or any part of the Sub-Contract, or any benefit or interest in, or under the Sub-Contract, otherwise than by:

- (i) a security in favour of the Sub-Contractor's bankers or any financial institution, or corporation of any payment due, or to become due under the Sub-Contract, or
  - (ii) assignment to the Sub-Contractor's insurance cover operators (in cases where the insurance cover operators have discharged the Sub-Contractor's loss or liability) of the Sub-Contractor's right to obtain relief from any other party liable.
- (b) The Sub-Contractor shall, within 14 Days following the written request by the Contractor/C.R., or any third party execute those documents necessary to effect such assignment pursuant to sub-clause 14.1(a).

## **14.2 Sub-Contracting**

- (a) The Sub-contractor shall not sub-contract the whole, or any substantial part of the Sub-Contract Works.
- (b) Except where otherwise provided for in the Sub-Contract, the Sub-contractor shall not sub-contract any part of the Sub-Contract Works without the prior written consent of the Contractor (which consent shall not be unreasonably delayed or withheld).
- (c) Where the Contractor consents to any sub-contract under sub-clause 14.2(b), such consent shall not:
- (i) in any way absolve the obligations of the Sub-contractor under Sub-Contract; or
  - (ii) relieve the Sub-Contractor from any liability, or obligation under the Sub-Contract.

and the Sub-Contractor shall be fully responsible for:

1. the due observance by such Sub-Subcontractors of all the terms, stipulations and conditions under the Sub-Contract; and
2. for the acts, defaults or neglects of any Sub-Subcontractor (including 'labour only' Sub-Subcontractor), its agents, servants or workmen as if they were the acts, defaults or neglects of the Sub-Contractor, it's agents, servants or workmen.

- (d) In amplification of sub-clause 14.2(b), the Sub-Contractor shall not be required to obtain such consent for:
  - (i) the provision of labour on a 'piecework' basis; or
  - (ii) the purchase of Materials, Goods, Plant and Equipment which are in accordance with the standards specified in the Sub-Contract.
- (e) It shall be a condition in any sub-contract which has been consented to by the Contractor pursuant to this sub-clause 14.2, that upon the determination of the Sub-Contractor's employment under the Sub-Contract:
  - (i) the employment of the Sub-Subcontractor under the Sub-Subcontract shall determine immediately unless the Contractor exercises its right for the assignment of the benefits of the Sub-Subcontract to it under the Sub-Contract; and
  - (ii) no claim whatsoever by the Sub-Contractor and/or Sub-Subcontractor against the Contractor for any work done, or Materials or Goods, Plant or Equipment supplied will be entertained or given effect to by the Contractor.

### **14.3 Consequences of Default**

- (a) If the Sub-Contractor defaults in that:
  - (i) it assigns the whole, or any part of the Sub-Contract without prior written consent of the Contractor in contravention of sub-clause 14.1; or
  - (ii) sub-contracts the whole or any substantial part of the Sub-Contract Works in contravention of sub-clause 14.2(a); or
  - (iii) sub-contracts any part of the Sub-Contract Works without the prior written consent of the Contractor in contravention of sub-clause 14.2(b).

then the Contractor may exercise the rights and remedies as stipulated in sub-clause 14.3(b).

- (b) Upon the occurrence of the Sub-Contractor's default as specified in sub-clause 14.3(a), the Contractor may, either:
  - (i) determine the Sub-Contractor's employment pursuant to Clause 40.0A; or

- (ii) pursue any other right, or remedy they are entitled to under the Sub-Contract, or the applicable law.

#### **14.4 Assignment or Novation by Contractor**

- (a) The Contractor may, with the prior written consent of the Employer assign; or novate to any third party in whole, or in part, the Sub-Contract Works under the Sub-Contract.
- (b) The Sub-Contractor irrevocably consents to such assignment or novation and undertakes to execute within a reasonable time following written demand by the Contractor or any such third party, all documents necessary to effect such assignment or novation.

#### **15.0 SUB-CONTRACTOR'S SUBMITTALS**

##### **15.1 Scope**

- (a) Further to the submittals as specified elsewhere in the Sub-Contract, the Sub-Contractor shall, as part of its obligations under Sub-Contract, undertake the following submittals:
  - (i) Supply of drawings by the Sub-Contractor;
  - (ii) Cash flow estimates;
  - (iii) Methods of construction and Temporary Works for the Sub-Contract;
  - (iv) Sub-Contractor's records;
  - (v) Progress reports;
  - (vi) As-built records; and
  - (vii) any other document, or submittal deemed necessary by the Contractor/C.R. for the purposes of the Sub-Contract.
- (b) The above submittals shall not preclude the Contractor/C.R. from requesting any other information, or details which it considers necessary for the purposes of the Sub-Contractor meeting its obligations under the Sub-Contract.

## **15.2 Supply of Drawings by the Sub-Contractor**

- (a) Unless otherwise stipulated elsewhere in the Sub-Contract Documents, the Sub-Contractor shall supply to the Contractor/C.R., 6 copies of all drawings (other than as-built drawings under sub-clause 15.7) including design drawings (if applicable) and/or shop drawings detailing any work, specifications and other documents necessary for the completion of the Sub-Contract Works.
- (b) The form, content, timing for submission and acceptance of such drawings shall be to the Contractor's/C.R.'s directions.
- (c) The Sub-Contractor shall supply at the Contractor's cost any further copies of such drawings, specifications and other documents as the Contractor/C.R. may request for in writing.

## **15.3 Cash Flow Estimates**

- (a) Within 28 Days of the issue of the Letter of Acceptance by the Contractor to the Sub-Contractor, or such other time as may be specified in the Sub-Contract, the Sub-Contractor shall submit to the Contractor/C.R. for their information, a detailed cash flow estimate, in quarterly periods, of all payments to which the Sub-Contractor considers it will be entitled to under the Sub-Contract.
- (b) The Sub-Contractor shall subsequently submit such revised cash flow estimates at quarterly intervals based on the updated programme, if required by the Contractor/C.R.

## **15.4 Methods of Construction and Temporary Works**

- (a) At the same as the Sub-Contractor submits the programme in Clause 20.0, or such other time as may be specified in the Sub-Contract, the Sub-contractor shall submit to the Contractor/C.R. for their acceptance, a general description of the arrangements and methods of construction, Temporary Works and designs (if applicable) the Sub-Contractor proposes to adopt for the carrying out of the Sub-Contract Works (called "the Method Statement"). Thereafter, the Sub-Contractor shall submit further Method Statements as stated in the accepted programme and/or as required by the Contractor/C.R.



- (b) Each Method Statement shall be fully cross-referenced to the activities in the programme as accepted by the Contractor/C.R.
- (c) The Sub-Contractor shall submit to the Contractor/C.R. sufficient information as may be considered reasonably necessary by the Contractor/C.R. to interpret, evaluate and give acceptance to the Method Statement submitted by the Sub-Contractor.
- (d) The Sub-Contractor shall, whenever required in writing by the Contractor/C.R., furnish for their information further detailed particulars of the Sub-Contractor's Method Statement.
- (e) Should the Sub-Contractor wish to change a Method Statement, or should the Contractor/C.R. subsequently consider to change a Method Statement to which acceptance has been previously been given, then the Sub-Contractor shall submit within the stipulated time, a revised Method Statement to the Contractor/C.R. for their acceptance. If there are time and/or cost implications arising out of the said changes, these shall be pursued by the affected Party in accordance with Clauses 21, 28.0, 43.0 and/or 44.0, as applicable
- (f) Acceptance by the Contractor/C.R. of the Sub-Contractor's Method Statement shall not make the Method Statement a Sub-Contract document, nor mandate that the Sub-Contract Works shall be constructed strictly in accordance with the Method Statement. The Sub-Contractor at all times remains responsible for the execution of the Sub-Contract Works in accordance with Clause 9.0 and other relevant provisions of the Sub-Contract.

#### **15.5 Sub-Contractor's Records**

- (a) In addition to sub-clause 44.3, the Sub-Contractor shall maintain and submit contemporary records of activities, including the work of its Sub-Subcontractors.
- (b) The records shall be in a form as agreed between the Contractor/C.R. and the Sub-Contractor and shall include (but be not limited) to the following:
  - (i) identification of the Sub-Contractor's work activities, and its area of responsibility;
  - (ii) operating Plant/Equipment with hours worked, idle, or downtime for repair;

- (iii) work performed to date giving the location, description and by whom, and reference to the Sub-Contract programme as accepted by the Contractor/C.R.;
  - (iv) test results and references to particular Sub-Contract provision(s), Contractor's Requirements, list of deficiencies identified together with the proposed corrective action;
  - (v) Materials, Goods, Plant and/or Equipment received on Site with a statement as to their acceptability and storage;
  - (vi) information, or drawings reviewed with reference to the Sub-Contract, by whom and action taken;
  - (vii) job safety evaluations and/or accidents;
  - (viii) progress photographs;
  - (ix) a list of instructions given and received and any discrepancies, conflicts, or ambiguities in drawings, plans and/or specifications;
  - (x) weather conditions encountered on Site;
  - (xi) the number of personnel/workmen working on Site by trade, activity and location;
  - (xii) information requested from, and given by the Contractor/C.R.;
  - (xiii) any delays encountered; and
  - (xiv) any other relevant information.
- (c) The daily reports shall be delivered to the Contractor/C.R. by electronic transmission followed with 'hard' copies at the close of business for each working day, or by the beginning of the following day, unless otherwise instructed by the Contractor/C.R. and shall comply with the following requirements:
- (i) Each report shall be prepared in duplicate, signed by the Sub-Contractor's Representative (SC.R.), numbered sequentially and submitted for each day of work performed;

- (ii) The report shall be acknowledged, signed and dated by the Contractor/C.R.;
  - (iii) Any deficiency in the work and/or the report shall be identified. As deficiencies are progressively corrected, these shall be recorded on the subsequent daily reports;
  - (iv) The Contractor/C.R. shall notify the Sub-Contractor of any non-compliance with the reporting requirements. All the deficiencies cited and verbal instructions given to the Sub-Contractor by the Contractor/C.R. shall be entered on the daily report.
- (d) A weekly report shall be delivered by the Sub-Contractor to the Contractor/C.R. within 2 Days at the end of the week to which it relates, or as otherwise directed by the Contractor/C.R. The weekly report shall be in a form as agreed between the Contractor/C.R and SC.R. and shall include (but be not limited to) the following:
- (i) Summary of the work performed for that week;
  - (ii) Summary of the works performed as referenced on the accepted, or upgraded programme;
  - (iii) Summary of the list of deficiencies;
  - (iv) Summary of any delays encountered; and
  - (v) any other relevant information.
- (e) A monthly report to sub-clause 15.6 shall be delivered by the Sub-Contractor to the Contractor/C.R. in the form, content and within the time specified in the said sub-clause.

## **15.6 Progress Reports**

- (a) Unless otherwise stated in the Sub-Contract, monthly progress reports shall be prepared by the Sub-Contractor and submitted to the Contractor/C.R. in triplicate.
- (b) The first progress report shall cover the period up to the end of the first calendar month following the date of commencement of the Sub-Contract. Reports shall be submitted monthly thereafter, each within 7 Days after the last day of the period to which it relates.

- (c) Reporting shall continue until the Sub-Contractor has completed all work which is known to be outstanding at the particular completion date(s) stated in Clauses 22.0, 23.0 or 24.0 (as applicable).
- (d) Unless otherwise instructed by the Contractor/C.R., each report shall include the following as a minimum:
  - (i) charts, programme of work (under Clause 20.0) and detailed descriptions of progress, including each stage of design (if any), Sub-Contractor's documents covering procurement, manufacture, delivery to Site, construction, erection and testing.
  - (ii) photographs showing the status of manufacture, and of progress of work on the Site;
  - (iii) for the manufacture of each main item of Plant, Equipment, Materials/Goods (if applicable) the name of the manufacturer, manufacturing location, percentage progress and the actual, or expected dates of:
    - 1. commencement of manufacture;
    - 2. Sub-Contractor's inspections;
    - 3. tests, and
    - 4. shipment and arrival at the Site.
  - (iv) the full details of the record of the Sub-Contractor's personnel, workmen, Plant and Equipment on the Site;
  - (v) copies of all relevant quality assurance documents, test results and certificates of Materials, Goods, Plant and Equipment;
  - (vi) list of notices, RFIS, or instructions given by the Contractor/C.R. to the Sub-Contractor;
  - (vii) list of notices and/or RFIs given by the Sub-Contractor to the Contractor/C.R.;
  - (viii) safety report, including details of any accidents, hazardous incidents and activities relating to environmental aspects and public relations;

- (ix) comparisons of actual and planned physical progress, with details of any events, or circumstances which may jeopardize the completion in accordance with the Sub-Contract, and the measures being (or, to be) adopted to overcome and/or mitigate the delays;
- (x) comparison of actual and planned financial progress, with all relevant details on the status of payments, variations, and claims; and
- (xi) any other information requested by the Contractor/C.R. and/or deemed necessary by the Sub-Contractor so as to render the progress report complete, sufficient and accurate.

#### 15.7 **As-Built Documentation**

- (a) Unless otherwise stipulated elsewhere in the Sub-Contract, the Sub-Contractor shall submit progressively to the Contractor/C.R., as a condition precedent to the certification of payment under Clauses 29.0 and 31.0; and the completion of the Sub-Contract Works under Clause 22.0, 23.0 or 24.0 (as applicable), without additional charge 6 copies of:
  - (i) such drawings describing the Sub-Contract Works, or any Section of the Sub-Contract Works as-built, or as-installed; and
  - (ii) technical manuals concerning the operation and maintenance of the Sub-Contract Works, or any Section of the Sub-Contract Works including any installation comprised in the Sub-Contract Works, or Section of the Sub-Contract Works.
- (b) The contents of the documents stipulated in sub-clause 15.7(a) shall be to the approval of the Contractor/C.R.; which approval shall be sought by the Sub-Contractor within such time as is not unreasonably distant for the Sub-Contractor to meet its obligations under the Sub-Contract.
- (c) The form of the said documents shall be as follows:
  - (i) hardcopies and a “soft” copy of all drawings under sub-clause 15.7(a)(i); and
  - (ii) hardcopies and where applicable, a “soft” copy of all manuals under sub-clause 15.7(a)(ii).

- (d) If required by the Contractor/C.R., the Sub-Contractor shall submit draft copies of the above documents to the Contractor/C.R. for approval in such form and within such times as instructed by the latter prior to the preparation and handing over of the final documents under this sub-clause.

## **16.0 MATERIALS, GOODS, EQUIPMENT AND WORKMANSHIP**

### **16.1 Provision of Materials, Goods, Plant, Equipment and Workmanship**

Except to the extent that the Sub-Contract stipulates to the contrary:

- (a) the Sub-Contractor shall provide all Materials, Goods, Plant, Equipment and workmanship necessary for the proper performance of the Sub-Contractor's obligations and discharge of the Sub-Contractor's liabilities under the Sub-Contract; and
- (b) incidental items not expressly mentioned in the Sub-Contract but which are necessary for the satisfactory completion and performance of the Sub-Contract Works under the Sub-Contract shall be supplied and executed by the Sub-Contractor without adjustment to the Sub-Contract Sum and/or time for completion of the Sub-Contract.

### **16.2 Materials, Goods, Plant, Equipment and Workmanship Requirements**

- (a) All Materials, Goods., Plant, Equipment, and workmanship shall be:
  - (i) of the respective kinds and standards described in the Sub-Contract; and
  - (ii) of good quality; and
  - (iii) in accordance with the prevailing standard of workmanship in the industry.
- (b) All Materials, Goods, Plant, Equipment and workmanship shall be subjected to such tests in accordance with the provisions of the Sub-Contract:
  - (i) at their respective places of manufacture, or fabrication; or
  - (ii) on the Site; or
  - (iii) at such other places described in the Sub-Contract; or

- (iv) at such other places required by the Contractor/C.R..
- (c) The Sub-Contractor shall upon the request of the Contractor/C.R. furnish the Contractor/C.R. with the relevant certificates and/or vouchers to prove that the Materials, Goods, Plant, Equipment and workmanship comply with the Sub-Contract.

## **16.2 Information to be furnished**

- (a) In respect of any, or all of the Materials, Goods, Plant and Equipment to be supplied by the Sub-Contractor under, or used in connection with the Sub-Contract, the Contractor/C.R. may instruct the Sub-Contractor in writing to supply particulars of, or information as to:
  - (i) the mode and place of manufacture/fabrication;
  - (ii) the source of supply;
  - (iii) the performance capacities; and
  - (iv) any other information deemed necessary by the Contractor/C.R.
- (b) Upon receipt of the Contractor's/C.R.'s instruction, the Sub-Contractor shall furnish the particulars or information requested by the former pursuant to sub-clause 16.2(a) within either:
  - (i) 7 Days; or
  - (ii) such other time approved by the Contractor/C.R.

## **16.3 Removal from the Site**

- (a) From time to time, the Contractor/C.R. may by written notice instruct the Sub-contractor not to remove from the Site the:
  - (i) Materials and Goods; and/or
  - (ii) constructional plant, equipment, vehicles and machineries
- (b) Thereafter, the Sub-Contractor shall not remove the items referred to in sub-clause 16.3(a) above without the prior written approval of the Contractor/C.R., which approval shall not be unreasonably withheld.

## 16.4 Warranties/Guarantees

- (a) Where either:
- (i) the Sub-Contract expressly requires; or
  - (ii) the Contractor/C.R. instructs in writing.
- the Sub-Contractor shall procure from the relevant Sub-Subcontractors (including designers, where applicable), all necessary warranties/guarantees (as applicable).
- (b) These warranties/guarantees shall be in the name of the Employer and to the effect as stated either in:
- (i) the applicable provisions of the Sub-Contract; or
  - (ii) in the Contractor's/C.R.'s instruction of sub-clause 16.4(a) above.
- (c) Such warranties/guarantees shall:
- (i) be in a form directly exercisable for the benefit of the Employer; and
  - (ii) be capable of being assigned by the Employer to third parties; and
  - (iii) be as approved by the Employer/E.R. and the Contractor/C.R..
- (d) The warranties/guarantees shall be submitted to the Contractor/C.R. in accordance with the particular requirements of the Sub-Contract, before the issue of:
- (i) the Certificate of Practical Completion for the whole Sub-Contract Works; or
  - (ii) the applicable Sectional Completion Certificate; or
  - (iii) the relevant Certificate of Partial Occupation,
- unless the Contractor/C.R. expressly instructs to the contrary.
- (e) To the extent that the Sub-Contractor, in breach of this sub-clause 16.4, does not procure warranties in the name of the Employer, to the effect as stipulated in sub-clause 16.4(b), then, without prejudice to the Contractor's other rights in relation to that breach, the Sub-Contractor must:



- (i) assign to the Employer, or its nominee (at no cost to the Contractor/Employer) all manufacturer's, supplier's, or Sub-Subcontractor's warranties / guarantees which are issued, or given in respect of the Sub-Contract Works and any Materials, Goods, Plant and Equipment incorporated into the Sub-Contract Works; and
  - (ii) ensure that such warranties/guarantees are assigned as from their effective dates and in any case no later than the dates of completion stipulated in sub-clause 16.4(d) above.
- (f) To the extent that the assignment contemplated in the preceding sub-clause 16.4(e) is not effected, then, without prejudice to any of the Contractor's other rights in relation to that matter, the Sub-Contractor shall be deemed to hold the relevant warranties/guarantees on trust for the Contractor/Employer and will exercise the rights under those warranties and/or guarantees as directed by the Contractor/Employer.

## **16.5 Quality Assurance and Quality Control**

- (a) Within 14 Days of the receipt of the Letter of Acceptance, the Sub-Contractor shall submit to the Contractor/C.R., a quality plan to ensure that the Sub-Contract Works are designed (to the extent required by the Sub-Contract), executed and completed in accordance with the Sub-Contract.
- (b) Within 21 Days of receipt of the Quality Plan from the Sub-Contractor, the Contractor/C.R. shall either:
  - (i) accept the plan; or
  - (ii) reject it with reasons and require the Sub-contractor to resubmit the same within a reasonable time.

The Contractor/C.R. has a similar time period to respond to the Sub-Contractor's said resubmission of the quality plan following the rejection of the initial submission.
- (c) The submission to, and acceptance by the Contractor/C.R. of the Quality Plan shall not relieve the Sub-Contractor of any of its obligations under the Sub-Contract. Any such quality plan shall be used only as an aid to achieving compliance with the Sub-Contract and to document such compliance and to enable monitoring and quality auditing.

- (d) Should the Sub-Contractor fail to submit, or resubmit within the stipulated time after rejection of the quality plan, the Contractor/C.R. shall:
  - (i) be entitled to reduce by one quarter the amount due to the Sub-Contractor in the Interim Certificates until the Sub-Contractor has satisfactorily complied with its Sub-Contractor's obligations in respect of the quality plan; and
  - (ii) take the Sub-Contractor's default in the assessment of any claims from the Sub-Contractor as to extension of time and/or loss and expense under Clauses 21.0 and 44.0 respectively; and
  - (iii) should the default be serious and/or of a continuing nature invoke Clauses 39.0 and/or 40.0A as appropriate.
- (e) If the Contractor/C.R. fails and/or neglects to respond within the time periods stated in sub-clause 16.5 (b), upon the lapse of the said time, it shall be deemed that the Contractor/C.R. has no objections to the same.
- (f) For the avoidance of any doubt, reference to the Sub-Contractor's quality plan shall also include the corresponding quality plans of all the Sub-Subcontractors.

#### **16.6 Samples and Mock-Ups**

- (a) The Sub-Contractor shall supply at its own cost, samples of Materials, Goods, Plant and Equipment to the Contractor/C.R. for consent prior to selection and ordering the bulk or remainder; and/or incorporation into the Sub-Contract Works and testing, as described and/or stipulated in the Sub-Contract.
- (b) The Sub-Contractor shall also supply at its own cost, samples of Materials, Goods, Plant and Equipment to the Contractor/C.R. for consent as required by the Contractor/C.R. in accordance with the relevant provisions of the Sub-Contract.
- (c) Unless otherwise stipulated in the Sub-Contract, or directed by the Contractor/C.R., each sample shall:
  - (i) be labeled as to its origin and intended use in the Sub-Contract Works;
  - (ii) be accompanied with all relevant information i.e. technical data, test certificates, and quality accreditation;

- (iii) be submitted timeously bearing in mind the period for review and the giving of the consent by the Contractor/C.R. and the need for the Sub-Contractor to initiate and complete its procurement in time to meet the applicable time for completion.
- (d) The samples shall be submitted on a sample board, or where the sample is bulky or not capable of being mounted on a sample board, alternative arrangements shall be made for the Contractor's/C.R.'s inspection and verification.
- (e) In the alternative, the Contractor/C.R. may instruct the Sub-Contractor to prepare a "mock-up" where:
  - (i) such "mock-up" is stipulated in the Sub-Contract, or
  - (ii) due to the nature of the Sub-Contract Works, the Contractor/C.R. is of the opinion that a "mock-up" is desirable for review and consent before further Sub-Contract Works are undertaken.

The requirements of sub-clauses 16.6(a) to (c) above shall apply mutatis mutandis.

- (f) Unless otherwise provided in the Sub-Contract, all samples and "mock-ups" shall be supplied and/or prepared by the Sub-Contractor at its own cost and sufficient time shall be allocated in the Sub-Contractor's accepted programme under Clause 20.0 for all activities connected with their preparation, submission, review and consent by the Contractor/C.R. and their subsequent procurement by the Sub-Contractor. The review process inclusive of the time periods, the duties of the Sub-Contractor and the reviewer (i.e. the Contractor/C.R.) and the sanctions for default by either or both sides shall be generally in line with those stated in sub-clause 16.5
- (g) Following the review process, any consent given by the Contractor/C.R. shall not absolve the Sub-Contractor of its obligations, duties, responsibilities and liabilities under the Sub-Contract for the same.

#### **16.7 Non-compliances during progress of the Sub-Contract Works**

- (a) If the Contractor/C.R. discovers:
  - (i) non-compliances or breaches of the Sub-Contractor's reviewed samples, or mock-ups, or quality plan; and/or

- (ii) Materials, Goods, Plant, Equipment or workmanship provided by the Sub-Contractor which are not in accordance with the Sub-Contract; and/or
- (iii) any other Defects whatsoever,

Then notwithstanding any previous consent, approval or interim payment for the Sub-Contract Works, or part of the Sub-Contract Works, the Contractor/C.R. shall as soon as practicable undertake the options as stated in sub-clause 16.7(b) to (d) below.

- (b) Pursuant to sub-clause 16.7(a), the Contractor/C.R. may instruct the Sub-Contractor to do any, or all of the following:
  - (i) to remove the non-compliant Materials, Goods, Plant, Equipment from the Site and replace these with compliant ones;
  - (ii) not to deliver the non-compliant Materials, Goods, Plant, Equipment to the Site;
  - (iii) to demolish the non-compliant Works;
  - (iv) to redesign (if necessary), reconstruct, replace or correct the non-compliant Materials, Goods, Plant, Equipment and Works.
- (c) The Contractor's/C.R.'s instruction of sub-clause 16.7(b) must specify the time within which the Sub-Contractor is required to comply with the instruction. If the Sub-Contractor fails to comply with the said instruction within the time specified by the Contractor/C.R., or any other time extended/approved by the Contractor/C.R., the Contractor/C.R. may be entitled to:
  - (i) employ and pay other persons to carry out the same; or
  - (ii) permit the Contractor itself to undertake on its own; or
  - (iii) issue an omission Variation Order under Clause 28.0 for a diminution in value if the Contractor/C.R. is of the opinion that it will be impracticable or improper to have the Sub-Contractor to undertake the same.
- (d) Following the Sub-Contractor's failure to comply with the Contractor's/C.R.'s instruction, should the Contractor/C.R. exercise the default options as stipulated in sub-clause 16.7(c) above, the amount of any loss, expense, costs (including "On-Cost Charges") or damages suffered or incurred by the Contractor shall be fully recoverable from the Sub-Contractor:

- (i) from any monies due or to become due to the Sub-Contractor; and/or
- (ii) from the Performance Security; and/or
- (iii) as a claim for a debt due.

The Contractor shall pursue its said claim under Clause 43.0

#### **16.8 Payment of Duties, Taxes, etc.**

- (a) The Sub-Contractor shall pay all duties and taxes, which may be imposed by law, such as GST (if applicable), customs duties and sales tax, on all Materials, Goods Plant and Equipment, whether purchased or imported in the Sub-Contractor's name or its agents, which are incorporated in the Sub-Contract Works or used directly in the design (if applicable), construction, completion or maintenance of the Sub-Contract Works.
- (b) Except where otherwise specified in the Sub-Contract, the Sub-Contractor shall pay all tonnage and other royalties, rent, fees and other payments or compensation (if any) for getting stone, sand, clay or other materials for the Sub-Contract Works.

#### **16.9 Inspection and Testing**

- (a) At any time prior to the issue of the relevant Certificate of Practical Completion (i.e. of the whole Sub-Contract, or of a Section), the Contractor/C.R. may instruct that the Sub-Contractor shall submit to the Contractor/C.R. for its consent or approval any Material, Goods, Plant, Equipment or Works under the Sub-Contract for inspection and/or testing to ensure that the Sub-Contractor's particular obligations in regard to the same under the Sub-Contract are fulfilled.
- (b) The Sub-Contractor shall, when so instructed carry out, or permit to be carried out the relevant inspections and tests at:
  - (i) the Site; or
  - (ii) "off-Site" (if applicable),and such further inspections and tests as the Contractor/C.R. may reasonably require, including:
  - (i) to open up for inspection any work covered up; or

- (ii) to carry out any test on any Materials, Goods, Plant and/or Equipment whether or not already incorporated in the Works, or any executed Works.
- (c) The Sub-Contractor shall provide all apparatus, assistance, documents and other information, utilities (water, electricity), equipment, fuel, consumables, instruments, labour, materials and suitably qualified and experienced staff/personnel, as are necessary to carry out the specified inspections and tests effectively and efficiently. The Sub-Contractor shall mutually agree, with the Contractor/C.R. as to the time and place for the specified inspections and/or testing of any Materials, Goods, Plant, Equipment and other parts of the Works.

#### **16.10 Results of Inspection and/or Testing**

- (a) The Sub-Contractor shall promptly forward to the Contractor/C.R. duly certified reports of the inspections and/or tests. When the specified inspections and/or tests have been satisfactorily undertaken, the Contractor/C.R. shall endorse the Sub-Contractor's inspection and/or test certificates, or issue the relevant certificates to that effect. If the Contractor/C.R. has not attended the inspection and/or test despite being officially notified by the Sub-Contractor, the Contractor/C.R. shall be deemed to have accepted the results or readings as accurate.
- (b) If, as a result of an inspection or testing, any Material, Goods, Plant, Equipment or workmanship is found to be:
  - (i) defective; or
  - (ii) otherwise not in accordance with the Sub-Contract,the Contractor/C.R. may reject the same by giving a written notice to the Sub-Contractor, with reasons. The Sub-Contractor shall then promptly make good the Defects or non-compliances and ensure that the rejected item(s) complies with the Sub-Contract.
- (c) If the Contractor/C.R. requires the said item(s) to be re-inspected and/or re-tested, the inspections and/or tests shall be repeated under the same terms and conditions as before. If the rejection and retesting causes the Contractor to incur additional costs, the Sub-Contractor shall pay these costs directly to the Contractor.

#### **16.11 Cost of Inspection and Testing**

- (a) The costs of carrying out any inspection and/or test shall be borne by the Sub-Contractor if such inspection and/or test is:
  - (i) intended by, or provided for in the Sub-Contract, or
  - (ii) additional inspections and/or tests required by the Contractor/C.R. in consequence of some prior failure, or breach of contract, or other default of the Sub-Contractor.
- (b) The costs of carrying out any inspection and/or test shall be borne by the Contractor if such inspection and/or test is:
  - (i) not so intended by, or provided for in the Sub-Contract, and
  - (ii) the Sub-Contractor is instructed to undertake the same through a Variation Order issued pursuant to Clause 28.0.

#### **16.12 Sub-Contractor remains liable**

The Sub-Contractor remains liable for the quality of the Works carried out under the Sub-Contract even though the Contractor/C.R. may have had such work (inclusive of any Materials, Goods, Plant and Equipment) inspected and/or tested, or otherwise indicated that such work (inclusive of any Materials, Goods, Plant and Equipment) is in accordance with the Sub-Contract, or otherwise acceptable.

#### **16.13 Examination/Inspection of Works before Covering Up**

- (a) No part of the Sub-Contract Works shall be covered up, or put out of view without the prior written approval of the Contractor/C.R. and the Sub-Contractor shall afford full opportunity for the Contractor/C.R. to examine/inspect such part of the Works which is about to be covered up, or put out of view.
- (b) The Sub-Contractor shall give due and sufficient written notice to the Contractor/C.R. in the form of a Request for Information (RFI) whenever any part of the Works is ready, or about to be ready for inspection/examination and the Contractor/C.R. shall without unreasonable delay (unless the Contractor/C.R. considers it unnecessary and advises the Sub-Contractor in writing accordingly) attend such examination/inspection of such part of the Works.

- (c) If the Sub-Contractor fails and/or neglects to comply with the provisions of sub-clauses 16.13(a) and (b):
- (i) the Contractor/C.R. may require the Sub-Contractor to uncover, or make openings in, or through any part or parts of the affected Works, or do all such things as are necessary for the Contractor/C.R. to inspect such part, or parts of the Works as executed; and
  - (ii) the cost of such uncovering, or making openings and subsequent reinstating and making good of the same shall be borne by the Sub-Contractor whether or not such part or parts uncovered are found to be executed in accordance with the Sub-Contract; and
  - (iii) the Sub-Contractor shall not be entitled to any extension of time, loss and/or expense for any delay caused by such failure and/or neglect; and
  - (iv) the additional costs of any necessary measures or requirements carried out by or instructed by the Contractor/C.R. shall be solely and fully borne by the Sub-Contractor.

#### **16.14 Uncovering and making openings**

- (a) The Sub-Contractor shall uncover any part of the Works, or make openings in, or through the same as the Contractor/C.R. may from time to time instruct and shall reinstate and make good such part of the Works to the satisfaction of the Contractor/C.R.
- (b) If any such part of the Works has been covered up, or put out of view after compliance with the requirements of sub-clauses 16.13(a) and (b) and is found to be executed in accordance with the Sub-Contract, then, such work carried out by the Sub-Contractor shall be deemed a Variation under Clause 28.0.

### **17.0 SAFETY MANAGEMENT**

#### **17.1 Sub-Contractor's safety management**

The Sub-Contractor's obligations and entitlements in relation to safety management systems, and safety management documentation are as set out in this Clause 17.0.



## 17.2 Sub-Contractor's obligations and entitlements

- (a) In carrying out all its obligations in relation to the Sub-Contract Works, the Sub-Contractor shall ensure that it meets the standards specified:
- (i) in the Sub-Contract; and/or
  - (ii) the applicable laws
- in order to prepare and implement its safety management documentation.
- (b) The Sub-Contractor shall do all things necessary to ensure that there is a timely preparation and submission to the Contractor/C.R. for consent of the safety management documentation incorporating the relevant safety management systems.
- (c) Upon the Contractor's/C.R.'s consent, the Sub-Contractor shall make available all relevant personnel responsible for the safety management documentation prepared by the Sub-Contractor to attend safety management systems workshops/course arranged by the Sub-Contractor and/or the Contractor/C.R.
- (d) Further to sub-clause 17.2(c), the Sub-contractor shall provide any additional documentation or information in relation to the safety management documentation as may be reasonably required by the Contractor/C.R. or as updates.
- (e) Once the safety management documentation has been consented to by the Contractor/C.R., the Sub-Contractor shall immediately put in place all relevant safety management systems contained therein inclusive of but not limited to the following:
- (i) the relevant personnel to implement and oversee such systems including a competent designated safety officer;
  - (ii) the relevant procedures inclusive of regular reporting, investigation of breaches, and the implementation of the necessary measures.;
- (f) For the avoidance of doubt:
- (i) any consent by the Contractor/C.R. to the Sub-contractor's safety management documentation shall not absolve the Sub-Contractor of its obligations, duties and liabilities for the same under the Sub-Contract and/or the law;

(ii) the Sub-Contractor's obligations in respect of the safety management systems as set out above shall continue until the issue of the Certificate of Completion and Making Good Defects.

(iii) the Sub-Contractor shall not be entitled to any:

1. extension of time to the Date for Completion (or any extended date under Clause 21.0); and/or
2. adjustment to the Sub-Contract Sum.

from, or in connection with the preparation and submission of its safety management documentation or its other obligations under this Clause 17.0; and

(iv) the Sub-Contractor acknowledges that it has made full allowance in the Sub-Contract Sum under the Sub-Contract for all activities, obligations, duties and liabilities arising from, or in connection with the preparation, submission and implementation of its safety management documentation, or its other obligation under this Clause 17.0.

## **18.0 ENVIRONMENTAL MATTERS**

### **18.1 Compliance with Environmental Laws**

The Sub-Contractor shall fully comply with all relevant laws relating to the protection and preservation of the environment.

### **18.2 Measures to be taken by Sub-Contractor**

The Sub-contractor shall give due consideration to the preservation and social implications of water and air quality, soil, flora and fauna (if any) within the Site during execution of the Sub-Contract Works.

### **18.3 Sums deemed included**

All measures taken by the Sub-Contractor in compliance with this Clause 18.0 shall be deemed to be included in the Sub-Contract Sum under the Sub-Contract.

## **PART V: COMMENCEMENT, DELAYS AND CONSEQUENCES**

### **19.0 COMMENCEMENT OF WORK AND CONDITIONS PRECEDENT**

#### **19.1 Commencement of Work**

- (a) The Sub-contractor shall, subject to the fulfillment of the conditions precedents stipulated in Clause 19.2 commence the Sub-Contract Works, or such sections of the Sub-Contract Works, on the Date of Commencement, that is:
  - (i) the date stipulated in the Letter of Acceptance, or
  - (ii) on the date stipulated in Appendix II, or
  - (iii) where no date is stipulated in the Letter of Acceptance, or the Sub-Contract, on the date specified in an instruction for commencement (which, unless otherwise agreed, shall not be less than 14 Days after the date of the instruction) from the Contractor /C.R.
  
- (b) Thereafter the Sub-Contractor shall proceed with due diligence and expedition and without delay in accordance with:
  - (i) the Sub-Contract; and
  - (ii) by reference to the Sub-Contract programme and/or Method Statement, accepted by the Contractor/C.R. or
  - (iii) any revised or modified Sub-Contract programme and/or Method Statement accepted by the Contractor/C.R.

#### **19.2 Time for Completion**

- (a) The Time for Completion shall run from the Date of Commencement which is fixed pursuant to Clause 19.1 above.
  
- (b) Without derogating from the generality of sub-clause 19.2(a) above, the Sub-Contractor shall complete the Sub-Contract Works and any Section or part of the Sub-Contract Works (as the case may be) including:

- (i) satisfactorily passing of the tests on completion; and
- (ii) completing all work which is stated in the Sub-Contract as required for the Sub-Contract Works or Section or part of the Works (as the case may be) to be considered to be completed for the purposes of taking over under Clauses 22.0 or 23.0, as applicable.

within the time or times for completion stated in the Sub-Contract (including in Appendix II) or within such time as may be granted by the Contractor/C.R. pursuant to Clause 21.0.

### **19.3 Conditions Precedent to Commencement**

- (a) The conditions precedent to the commencement of the Sub-Contract Works, or such sections of the Sub-Contract Works as adverted to in sub-clause 19.1(a) are:
  - (i) the submission of the Performance Security stipulated under Clause 10.0; and
  - (ii) the deposition of insurance cover policies as specified under Clauses 36.0 and 37.0; and
  - (iii) the submission of Code Numbers and Social Security Numbers for all personnel/workmen registered under SOCSO pursuant to Clause 38.0 (if applicable); and
  - (iv) any other conditions precedent as expressly stipulated under any other provisions of the Sub-Contract.
- (b) For the purposes of sub-clause 19.3(a)(ii) only but for no other, the submission of the original:
  - (i) cover notes of the said insurance cover policies; and
  - (ii) receipts of premiums paid for the said insurance cover policies.

shall be a sufficient discharge of the Sub-Contractor's obligations under the said sub-clause. This shall be subject to the Sub-Contractor's submission of the original copies of such policies to the Contractor/C.R. within 30 Days of the Date of Commencement as aforesaid failing which the Sub-Contractor shall be deemed to be in default.

#### **19.4 Possession of Site**

(a) Unless the Sub-Contract Documents shall otherwise provide, the Sub-Contractor shall be entitled on:

- (i) the Date of Possession stipulated in Appendix II, or
- (ii) the Date of Commencement stipulated in sub-clause 19.1(a),

access to, and possession of the Site, or such part of the Site to enable the Sub-Contractor to commence the Sub-Contract Works.

(b) The Sub-Contractor's access to, and possession of the Site, or such part of the Site:

- (i) shall not constitute a tenancy; and
- (ii) shall not be exclusive

but shall be subject to the Contractor's and the Employer's other rights inclusive of (but not limited) to in respect of other sub-contractors and third parties.

#### **19.5 Possession of Site in Sections, etc.**

(a) The Sub-Contractor may be given access to and possession of the Site in sections, phases, stages or in parts (called "the Sections") as:

- (i) stated in the Sub-Contract Documents; or
- (ii) stipulated in Appendix II; or
- (iii) instructed by the Contractor/C.R.

(b) Any other restrictions upon the access to and possession of Site and the Date of Commencement of any such Sections shall be as:

- (i) stated in the Sub-Contract Documents; or
- (ii) stipulated in Appendix II; or
- (iii) instructed by the Contractor/C.R.

## **19.6 No Date of Commencement**

- (a) Where no Date of Commencement is specified in accordance with sub-clause 19.1(a)(i) or (ii) or (iii), then the Sub-Contractor shall notify the Contractor/C.R. in writing requiring the Contractor/C.R. to stipulate the Date of Commencement concerned.
- (b) If the Contractor/C.R. fails to stipulate such date within 14 Days as calculated from the date of the Sub-Contractor's notification, then the Sub-Contractor shall be entitled to deem the Sub-Contract Works as having been suspended pursuant to Clause 39.0.

## **19.7 Failure to give Access and Possession**

- (a) In the event of any delay in giving access to, and possession of:
  - (i) the Site as stipulated in sub-clause 19.4(a); or
  - (ii) any Section of the Site as stipulated in sub-clause 19.5(a),

the Contractor/C.R. may issue instructions in regard to the revision of the respective date, or dates of access and possession.
- (b) The Date or Dates for Completion shall be appropriately revised under Clause 21.0 hereof and the Sub-Contractor shall be entitled to claim for any loss and/or expense incurred by reason of such delay under Clause 44.0 but not entitled to determine its employment pursuant to Clause 40.0B the Sub-Contract.
- (c) Pursuant to sub-clause 19.7(a)(i), should the delay in giving access to and possession of the whole Site be more than 90 Days, the Contractor/C.R. shall give written notice to the Sub-Contractor of the cause or causes of the delay. Upon the receipt of the said written notice from the Contractor/C.R., the Sub-Contractor shall inform the Contractor/C.R. in writing within a further 14 Days, of its decision either to:
  - (i) agree to proceed with the Sub-Contract Works when the Site is subsequently made available and accessible, in which case sub-clause 19.7(b)(i) shall apply in particular; or
  - (ii) determine its employment under the Sub-Contract pursuant to Clause 40.0B without prejudice to any other rights or remedies that the Contractor and the Sub-Contractor may have as a result of such determination.

- (d) Further to sub-clause 19.7(a)(ii), should the delay giving access to and possession of any Section of the Site be more than 90 Days, the Contractor/C.R. shall give written notice to the Sub-Contractor of the cause or causes of the delay. Upon receipt of the said written notice from the Contractor/C.R., the Sub-Contractor shall inform the Contractor/C.R. in writing within a further 14 Days, of its decision either to:
- (i) agree to proceed with the Sub-Contract Works when the relevant Section of the Site is subsequently made available and accessible, in which case sub-clause 19.7(b)(i) shall apply in particular; or
  - (ii) request the Contractor's/C.R.'s instruction to omit the relevant Section from the Sub-Contract. If the Contractor/C.R. so agrees to such a request, then the relevant Section shall be duly omitted and deemed to be a Variation to the Sub-Contract under Clause 28.0. If the Contractor/C.R. do not agree to such a request, then the Sub-contractor shall be entitled to claim for any loss and/or expense caused by, and in respect of such delay beyond the 90 Days as aforesaid pursuant to Clause 44.0.

#### **19.8 Rights of Way or Access**

- (a) In amplification of the foregoing provisions, the Contractor shall provide the Sub-Contractor with the permanent right of way or access to the Site.
- (b) The Sub-Contractor shall at its own expense (which expense shall be deemed to be included in the Sub-Contract Sum) be responsible for obtaining any right of way, or access (including rights of easement) that may be required by the Sub-Contractor for the purposes of the execution and completion of the Sub-Contract Works.
- (c) The Sub-Contractor shall also provide as its own expense (which expense shall be deemed to be included in the Sub-Contract Sum) any additional accommodation, land or facilities outside the Site required by the Sub-Contractor for the purposes of the execution and completion of the Sub-Contract Works.

#### **19.9 Consents and Wayleaves**

- (a) Unless the Sub-Contract Documents shall otherwise provide, the Contractor and/or the Employer shall in due time obtain all consents, wayleaves and approvals which the Contractor and/or the Employer are responsible for, in connection with the regulations and by-laws of any local or other Appropriate Authority which shall be applicable for the execution and completion of the Sub-Contract Works on the Site.

- (b) If the Sub-Contractor is required to undertake the above, all costs and expenses in respect to conformance to sub-clause 19.9(a) shall be deemed to be excluded from the Sub-Contract Sum and shall constitute a Variation to the Sub-Contract under Clause 28.0.

## **20.0 SUB-CONTRACT PROGRAMME OF WORK**

### **20.1 General Requirements**

- (a) The requirements for the preparation, submittal, updating and the revision of the Sub-Contractor's programme (called "the Sub-Contract programme") are set out in this Clause. The requirements are in addition to or expand upon the requirements set out in Clause 9.0 of the Sub-Contract.
- (b) The Sub-Contract programme shall be used by the Sub-Contractor to plan and execute the Sub-Contract Works. The Sub-Contract programme will also be used by the Contractor/C.R. to monitor progress and be the basis for the assessment of extensions of time (if any) and the effect of the delay (if any) on the progress of the Sub-Contract Works.

### **20.2 Contractor's Obligation**

The Contractor/C.R. shall within 14 Days of issue of the Letter of Acceptance of the Sub-Contract, provide the Sub-Contractor with the latest or current accepted programme for the Contract which shall indicate the time or times for the commencement and completion of the Sub-Contract Works or any Section or part of the Sub-Contract Works (as applicable).

### **20.3 Submission and Format**

- (a) The Sub-Contractor shall, within 14 Days of the receipt of the programme from the Contractor/C.R., submit to the Contractor/C.R., a Sub-Contract programme and Method Statement in such format as the Contractor/C.R. may require.
- (b) The Sub-Contract programme and Method Statement shall indicate and describe the execution and completion of the Sub-Contract Works in compliance with the programme for the Contract received from the Contractor/C.R.

### **20.4 Contractor's/C.R.'s Response**



- (a) Within 14 Days of receiving the Sub-Contract programme and Method Statement, the Contractor/C.R. shall accordingly notify the Sub-Contractor in writing:
  - (i) whether it accepts the said programme; or
  - (ii) to the extent to which it does not comply with the Sub-Contract; in which case the Contractor/C.R. may require the Sub-Contractor to undertake the necessary revisions.
- (b) Unless the Contractor/C.R., within 14 Days after receiving the Sub-Contract programme and Method Statement gives notice to the Sub-Contractor stating the extent to which it does not comply with the Sub-Contract, the Sub-Contractor shall proceed in accordance with the Sub-Contract programme and Method Statement, subject to its other obligations under the Sub-Contract.

#### **20.5 Default in submission of Sub-Contract programme**

- (a) Should the Sub-Contractor either fails to:
  - (i) submit a Sub-Contract programme for acceptance in accordance with this Clause, or
  - (ii) not regularly update the accepted Sub-Contract programme as an updated/revised Sub-Contract programme,then the Contractor/C.R. shall be entitled to enforce the necessary sanctions as listed in sub-clause 20.5(b) below.
- (b) The sanctions shall be:
  - (i) the Contractor/C.R. shall be entitled to reduce by the percentage stipulated in Appendix II the amount due to the Sub-Contractor in the Interim Certificates until the Sub-Contractor has complied with its contractual obligations in respect of the Sub-Contract programme; and
  - (ii) the Contractor shall not be obliged to comply with any of the Sub-Contractor's requirements as to the order or timing for the giving of possession of site, or for the Contractor/C.R. to supply supplementary drawings or documents, details or information or instruction; and

- (iii) the Contractor/C.R. shall take the Sub-Contractor's defaults in the assessment of any claims of the Sub-Contractor as to extension of time and/or loss and expense.

## **20.6 Modification or Revision**

- (a) The Contractor/C.R. shall provide the Sub-Contractor with all revisions to the accepted programme for the Contract. The Sub-contractor shall upon receipt of the said revised programme from the Contractor/C.R., submit a revised/updated Sub-Contract programme and Method Statement which shall conform to the revised/updated programme for the Contract.
- (b) Should it appear to the Contractor/C.R. that the design (to the extent required by the Sub-Contract) and the execution of the Sub-Contract Works does not conform to the accepted Sub-Contract programme, then the Contractor/C.R. may in writing require the Sub-Contractor to submit a revised/updated Sub-Contract programme and/or Method Statement. The revised/updated Sub-Contract programme shall conform to the latest revision of the programme for the Contract.
- (c) Unless otherwise agreed between the Contractor/C.R. and the Sub-Contractor and instructed by the former by way of a Variation under the Sub-Contract, no revision of the programme for the Contract shall reduce the time or times for the completion of the Sub-Contract Works Appendix II or any extended time or times granted, as the case may be.

## **20.7 Programme and Method Statement not part of Sub-Contract**

The Sub-Contract programme and Method Statement shall not form part of the Sub-Contract. The submission to and acceptance by the Contractor/C.R. of the Sub-Contract programme or Method Statement shall not relieve the Sub-Contractor of its obligations or responsibilities under the Sub-Contract.

## **21.0 DELAYS AND CONSEQUENCES**

### **21.1 Scope of Clause**

- (a) This Clause shall cover the situations where there is a material delay to the regular progress of the Sub-Contract Works or any part thereof caused by:

- (i) an event or cause of delay which under the Sub-Contract is at the risk or responsibility of the Contractor (called the “Contractor Risk Event”); which Contractor Risk Event may or may not be an Employer Risk Event under the Contract between the Employer and the Contractor but for which the Contractor has assumed the risk or responsibility under the Sub-Contract; and/or
  - (ii) an event beyond either Parties’ control (called the “Neutral Event”).
- (b) The rights and entitlements of the parties shall be exclusively governed by the provisions of this Clause 21.0 and any other applicable clause in the Sub-Contract.

## **21.2 Notification of Delay**

- (a) Where the regular progress of the Sub-Contract Works or any part thereof is materially delayed by any cause or causes (called “time impacted event(s)”) stated in Clause 21.4 (and no other) in such a manner which might reasonably be expected to result in delay in the Sub-Contract Works (or any part thereof) reaching the Date for Completion referred to in Clause 22.0 or beyond any extended Completion Date previously fixed under this Clause 21.0, the Sub-Contractor may give a notice to Contractor/C.R. (called “the notice of delay”) as specified in sub-clause 21.2(b).
- (b) The notice of delay shall:
- (i) be in writing;
  - (ii) be given not later than 7 Days after the cause of the delay first arose;
  - (iii) stipulate the particular Sub-Contract reference;
  - (iv) state with as much detail as is possible, the nature of the cause or causes of the delay;
  - (v) specify, where applicable, the extent of the delay;
  - (vi) state the steps being taken to mitigate/alleviate or otherwise deal with the delay and its cause or causes; and
  - (vii) include any other information or detail that might be relevant to the said notice.
- (c) Should the Sub-Contractor be seeking an extension of time under sub-clause 21.3, the giving of the said notice of delay shall be a condition precedent to the Sub-Contractor’s entitlement of an extension of time under this Clause.

### 21.3 Extension of Time: Application

- (a) In the event that the Sub-Contractor is seeking an extension of time to the Sub-Contract pursuant to sub-clauses 21.1(a)(i) and (ii), the Sub-Contractor shall not later than 30 Days after giving the notice of delay under sub-clause 21.2 give the Contractor/C.R. necessary documents and/or information to substantiate its claim.
- (b) The contents of the Sub-Contractor's substantiation under sub-clause 21.3(a) shall include but be not necessarily limited to the following:
  - (i) the exact cause, or causes of the alleged delay;
  - (ii) the appropriate Sub-Contract reference to such cause of alleged delay;
  - (iii) full details of the effect of the alleged delay to the critical path of the Works as set out in the Sub-Contractor's programme accepted under Clause 15.0.
  - (iv) steps taken or being taken by the Sub-Contractor to minimize, mitigate or avoid the delay;
  - (v) the estimated length of the delay and the extension of time required;
  - (vi) all relevant scheduling and rescheduling documents consequent to the alleged delay and mitigation of it; and
  - (vii) all other supporting records, data, evidence and information that will help the Sub-Contractor to prove its claim for an extension of time.
- (c) Where a delaying event has a continuing effect such that it is not practicable for the Sub-Contractor to submit all particulars and further information in accordance with sub-clauses 21.3(a) and (b), the Sub-Contractor shall nevertheless submit to the Contractor/C.R. interim particulars at intervals of not more than 30 Days and the final particulars within 30 Days of the event causing the delay ceasing to operate.
- (d) For the avoidance of doubt, the requirements of sub-clause 21.3(a) to (c) shall, in addition to sub-clause 21.2 be a condition precedent to the Sub-Contractor's entitlement for an extension of time under this Clause.
- (e) The Sub-Contractor shall, before making any application for extension of time, consult and come to a mutual agreement with the Contractor/C.R. on the appropriate method of delay analysis that should be employed for the application in question. Failure of the Sub-Contractor to consult the Contractor/C.R. on the delay analysis methodology

will be a matter that the Contractor/C.R. might take into account in granting/allowing any consequential time and/or costs entitlements that may be due to the Sub-Contractor.

- (f) The Sub-Contractor shall keep such contemporary records as may be necessary to substantiate any claim, on the Site or at another location acceptable and accessible to the Contractor/C.R. Without admitting the Contractor's liability, the Contractor/C.R. may, after receiving any notice under Clause 21.2, monitor the record-keeping and/ or instruct the Sub-Contractor to keep further contemporary records. The Sub-Contractor shall permit the Contractor/C.R. to inspect all these records, and shall (if instructed) submit copies to the Contractor/C.R. For the avoidance of doubt, the provisions of Clause 44.4 shall equally apply to the said contemporary records.

#### **21.4 Extension of Time Causes/Time Impacted Events**

- (a) The Sub-Contractor shall only be entitled to an extension of time where the completion of the Sub-Contract Works or any Section is likely to be delayed, or has been delayed beyond the Date for Completion stated in Appendix II or beyond any extended Date for Completion previously fixed under this Clause where the provisions of sub-clauses 21.2 and 21.3 and, in particular, the conditions precedent satisfied.
- (b) The cause or causes of the delay/time impacted events entitling the Sub-Contractor to an extension of time shall be one, or more of the following:
  - 1. Neutral Events mean:
    - (i) Force Majeure as defined in Clause 42.0;
    - (ii) Exceptionally adverse weather conditions as defined in Clause 21.4 (d) below. The Sub-Contractor is required to show that the exceptionally adverse weather conditions occurred at the time when the Sub-Contract 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 Sub-Contract Works in progress; and it has caused delay to the completion of the said Works.
    - (iii) loss and/or damage occasioned by one or more of the contingencies referred to in Clause 36.0 as the case may be, provided always that the same is not due to any negligence, omission, default and/or breach of contract by the Sub-Contractor.

- (iv) compliance with any changes to any law, regulations, bylaw or terms and conditions of any Appropriate Authority and/or service provider;
- (v) delay caused by any Appropriate Authority and/or 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/or service provider; the delay was unforeseeable; and such delay is not due to any negligence, omission, default and/or breach of contract by the Sub-Contractor; and
- (vi) any other neutral ground for extension of time expressly mentioned in the Sub-Contract.

2. Contractor's Risk Events mean:

- (i) the Sub-Contractor not having received in due time necessary Contractor's/C.R.'s Instruction (including those for or in regard to the expenditure of Contingent Sums and Provisional Sums, if any) for which it had specifically applied in writing to the Contractor/C.R.. The Sub-Contractor's application must be submitted to the Contractor/C.R. in sufficient time before the commencement of construction of the affected Sub-Contract Works, to enable the latter to issue the necessary Contractor's/C.R.'s Instruction within a period which would not materially affect the progress of the affected works, having regard to the Date for Completion of the whole or Section of the Sub-Contract. Provided always that the Contractor's/C.R.'s Instruction was not required as a result of any negligence, omission, default and/or breach of contract by the Sub-Contractor;
- (ii) delay by the Contractor in giving access to, and possession of the Site or any Section of the Site in accordance with sub-clause 19.1 ;
- (iii) compliance with Contractor's/C.R.'s Instructions under sub-clauses 3.8, 28.2, or 39.4, unless the said 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;

- (iv) delay on the part of craftsmen, tradesmen or others employed or engaged by the Contractor/Employer in executing work not forming part of this Sub-Contract or their failure to execute such work, provided always that the Sub-Contractor has given reasonable access to enable such craftsmen, tradesmen or others employed or engaged by the Contractor/Employer to execute their works and has provided true and accurate Site conditions and reasonable timelines for such works to be completed by them.
- (v) delay or failure in the supply of Materials, Goods, Plant and/or Equipment which the Contractor had agreed to supply for the Sub-Contract Works.
- (vi) the opening up for inspection of any work covered up, the testing of any work, materials or goods in accordance with sub-clause 16.14 (including making good in consequence of such opening up or testing) unless the inspection or test is provided for in the Sub-Contract, show that the Works, Material, Goods were not in accordance with the Sub-Contract, or is required by the Contractor/C.R. in consequence of prior negligence, omission, default and/or breach of contract by the Sub-Contractor.
- (vii) compliance with Contractor's/C.R.'s instructions 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 Sub-Contractor.
- (viii) delay as a result of the execution of work for which a Contingency Sum or Provisional Sum/Quantity(if any) is included in the Sub-Contract for which the Contractor's/C.R.'s instruction is issued under Clause 27.0.
- (ix) failure of the Contractor under Clause 4.0 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 Contractor, provided always that it is the duty and responsibility of the Contractor to give such passage under the Sub-Contract.
- (x) suspension by the Sub-Contractor of its obligations under the Sub-Contract for which it is not in default and/or breach under the Sub-Contract nor caused by its negligence, and

- (xi) suspension of the whole or part of the Sub-Contract Works by the Contractor/C.R or order of an Appropriate Authority provided that the same is not due to any negligence, omission, default and/or breach of contract by the Sub-Contractor; and
  - (xii) any act of prevention or breach of contract by the Contractor as expressly stipulated in the Sub-Contract..
- (c) In amplification of the foregoing, the Sub-Contractor's entitlement shall be subject to the conditions that:
- (i) the delay is not due to, or concurrent with any act, negligence, default or breach of Sub-Contract by Sub-Contractor, its servants or agents and, other than that related to exceptionally adverse weather under sub-clause 21.4(b)(ii) above, occurs during the approved working hours as defined in Clause 5.0.
  - (ii) the Sub-Contractor has:
    1. complied strictly with the provisions of sub-clauses 21.2 and 21.3, and in particular has given the necessary notices and substantiations strictly in the manner and within the times stipulated therein, unless otherwise decided by the Contractor/C.R.;
    2. complied with any reasonable instructions of the Contractor/C.R. with respect to the cause of the delay;
    3. extended all relevant insurance covers and the Performance Security by an amount commensurate with the extension being sought and provided adequate proof or evidence of the same to the Contractor/C.R.;
    4. taken all proper and reasonable steps necessary and within its control both to preclude the occurrence of the cause of the delay and/or to avoid, or minimize the consequences thereof and shall have demonstrated this to the reasonable satisfaction of the Contractor/C.R.;
    5. demonstrated to the reasonable satisfaction of the Contractor/C.R. that the delay has occurred to critical activities on the critical path of the Sub-Contract Works and will cause or have caused the Sub-Contractor to be delayed as claimed; and



6. the delay is not concurrent with any other extension of time already granted or being granted.

(d) For the avoidance of doubt:

- (i) extension of time for exceptionally adverse weather shall, subject to the requirement of sub-clause 21.4(b)(ii) mean, any weather conditions which are materially unfavourable/unsafe to the carrying out of the construction works/activities on the Site and shall include unusual/exceptional wind conditions, precipitation, temperature, lightning, air pollution levels (smog/haze) and/or temperature as determined by the Contractor/C.R. based on evidence/records submitted from the nearest meteorological department. For precipitation, it shall be limited to the increase in “unworkable days” for each month, when compared with the “normal average unworkable days” computed from the last 10 years rainfall data of the specified meteorological department’s rainfall station (or nearest to the Site, if not specified) for the same month, with such increase in the “unworkable days” for the month being the entitlement for an extension of the Sub-Contract period in calendar days;
- (ii) An “unworkable day” as adverted to above shall be one where more than 10mm rainfall was recorded for that day;
- (iii) the Sub-Contractor shall be deemed to have allowed in its tender and in the programming of the Sub-Contract Works under Clause 20.0 for all other delays relating to non-exceptionally adverse weather and its effect, and no claims additional to that permitted in this Clause shall be entertained;
- (iv) Any Float Time within the Sub-Contract programme under Clause 20.0 shall belong to the parties in the quantum/proportion as per mutual agreement and the Contractor/C.R. may direct that the Float Time be utilized by the Sub-Contractor to advance the performance of the Sub-Contract Works and the Sub-Contractor shall immediately comply with such direction; with any consequent cost and/or time impact to be assessed by the Contractor/C.R. in accordance with the relevant provisions of this Sub-Contract.
- (v) an extension of time that may be granted in respect of one Section of the Sub-Contract Works shall not of itself entitle the Sub-Contractor to an extension of time for any other Section; and

- (vi) in this Clause 21.0, any reference to delay or extension of time includes further delay, further notice or further extension of time.

## **21.5 Extension of Time Certification**

- (a) Within 30 Days of receipt of the Sub-Contractor's substantiations under sub-clause 31.3, the Contractor/C.R. shall notify the Sub-Contractor in writing whether:
  - (i) the notice and substantiations provided by the Sub-Contractor under sub-clauses 21.2 and 21.3 are insufficient to enable it to decide on the Sub-Contractor's application; or
  - (ii) the cause of delay is one which in principle entitles the Sub-Contractor to an extension of time; or
  - (iii) the Sub-Contractor's claim for extension of time is rejected.

If the Contractor/C.R. fails to respond as stated above, upon the expiry of the said 30 Day period, it shall be deemed that the Contractor/C.R. has no objections to the Sub-Contractor's particular application for time extension and effect shall be accordingly given to the same by both Parties.

- (b) If sub-clause 21.5(a)(i) is applicable, the Contractor/C.R. may require the Sub-Contractor to provide within:
  - (i) 14 Days, or
  - (ii) such period as may be specified by the Contractor/C.R.

such further information, or details which the Contractor/C.R. may reasonably require including particulars concerning any cause and/or the circumstances of the delay, the details/results of the delay analysis, and the measures planned and/or taken to avoid or reduce the delay.

- (c) Should the Contractor/C.R. adopt the option contained in sub-clause 21.5(a)(ii), the Contractor/C.R. may either:
  - (i) proceed to assess and certify the commensurate extension of time under sub-clause 21.5(e) to (j); or
  - (ii) instruct the Sub-Contractor to accelerate the Works under sub-clause 21.6.

- (d) In the event the Contractor/C.R. rejects the Sub-Contractor's claim pursuant to sub-clause 21.5(a)(iii), the Contractor/C.R. must furnish the reasons for the said rejection and the Sub-Contractor may thereafter either:
- (i) make a fresh application whereby the provisions of sub-clauses 21.2 and 21.3 shall equally apply; or
  - (ii) refer the matter for arbitration under Clause 45.0.
- (e) Within a further 30 Days after the decision in sub-clause 21.5(a)(ii) but in any event prior to the expiry of:
- (i) the Date for Completion stated in Appendix II; or
  - (ii) the date of any extended Date for Completion previously granted under this Clause.
- (unless sub-clauses 21.5(b) and 21.6 applies), the Contractor/C.R. shall grant a commensurate extension of time if:
1. any of the Whole of the Sub-Contract Works; or
  2. any Section of the Sub-Contract Works
- (as the case may be), as may in the Contractor's/C.R.'s opinion be fair, reasonable and necessary for the completion of the Sub-Contract Works or any Section thereof. Any failure or delay by the Contractor/C.R. to grant a reasonable extension of time or to grant an extension of time within the stipulated time shall not cause the Date for Completion to be set a large but nothing contained in this paragraph shall prejudice the right of the Sub-Contractor to make claims under Clause 44.0.
- (f) Where the Contractor/CR. considers that it does not have sufficient information to enable it to decide on the Sub-Contractor's application in accordance with sub-clause 21.5(e), the Contractor/C.R. may nevertheless grant such extension of time as may in its opinion appear to be fair, reasonable and necessary on the information available, taking into account all the matters as set out in sub-clause 21.5(g) below.
- (g) The Contractor/C.R. when deciding on any extension of time under this sub-clause 21.5, shall take into account the following:
- (i) extension of time previously granted, if any;

- (ii) the effect of any work omitted or decrease in the quantity of any work as a result of the re-measurement of provisional quantities (if any) stated in the Sub-Contract provided that the Contractor/C.R. shall not fix a Date for Completion earlier than the Date for Completion stated in Appendix II; and
  - (iii) any delays which may operate concurrently with the delay due to the cause or causes in question including those that are due to the acts or defaults of the Sub-Contractor.
- (h) For a delaying event having a continuing effect, provided that the Sub-Contractor has complied with the provisions of sub-clause 21.3(c), on receipt of such interim particulars from the Sub-Contractor, the Contractor/C.R. shall, without undue delay, make an interim decision on extension of time and within 30 Days of the receipt of the final particulars, and shall subject to sub-clause 21.5(g) review all the circumstances and shall decide an overall extension of time in regard to the event.
- (i) Notwithstanding any other provisions of this Clause 21.0, the Contractor/C.R. may, in its discretion (but is not obliged to) grant a fair, reasonable and necessary extension of time notwithstanding that the Sub-Contractor has failed to comply with the provisions of this Clause 21.0.
- (j) Where the delaying even under sub-clause 21.4 occurs after the issuance of the Certificate of Non-Completion under Clause 25.0, the Contractor/C.R. shall grant an extension of time provided all the relevant requirements of this Clause 21.0 have been satisfied. The extension of time so granted shall be added to the Completion Date of the whole of the Sub-Contract Works or any Section of the said Works (as applicable).
- (k) Any decision of the Contractor/C.R. in granting extension of time under the Clause 21.0 shall be notified by the Contractor/C.R. to the Sub-Contractor in a Certificate (called "the Certificate of Extension of Time").
- (l) At any time prior to the issuance of the Final Certificate under Clause 32.0 the Contractor/C.R. may review any previous extension of time granted and either:
- (i) fix a Date for Completion later than that previously granted if in the Contractor's/C.R.'s opinion the granting of such longer time for completion is fair and reasonable; or
  - (ii) confirm to the Sub-Contractor the Date for Completion previously fixed.

- (m) No such final review of extension of time undertaken pursuant to sub-clause 21.5(l) shall result in a decrease in any extension of time previously granted by the Contractor/C.R. In the event the fixing of such later Date for Completion affects the amount of Liquidated Damages the Contractor is entitled to retain, the Contractor shall repay any surplus amount free of interest to the Sub-Contractor within the corresponding period of honouring certificates; and
- (n) For the avoidance of doubt, where the Sub-Contract specifies that a separable part of the Sub-Contract Works shall be executed to completion within a period or by a date different from the period or date provided for completion of the whole Sub-Contract Works, the provisions of this Clause shall apply to, and with respect to, the extension of time for completion of that separable part of the Sub-Contract Works; and for that purpose reference in this Clause to the Sub-Contract Works shall be read as references to that separable part of the said Works.

## **21.6 Acceleration of Works**

- (a) As an alternative to the granting of an extension of time to the Sub-Contractor pursuant to sub-clause 21.5(a)(ii), the Contractor/C.R. may, within 30 Days of receipt of the Sub-Contractor's substantiations under sub-clause 21.3, or at any time at its discretion, instruct the Sub-Contractor in writing to accelerate the Work (called "the instruction to accelerate") to recover the period of delay specified in such instruction.
- (b) The instruction to accelerate issued by the Contractor/C.R. pursuant to sub-clause 21.6(a) may be either:
  - (i) Partial; or
  - (ii) Totalin its nature and/or extent (as the case may be).
- (c) If the Contractor/C.R. issues an instruction to the Sub-Contractor pursuant to sub-clause 21.6(a) requiring the Sub-Contractor to accelerate the work under the Sub-Contract and it only applies to part of the delay, the Sub-Contractor's entitlement to any extension of time, which it otherwise would have had, will be reduced to the extent to which the instruction to accelerate requires the Sub-Contractor to accelerate to overcome that part of the delay.

- (d) Should the Contractor/C.R. issues an instruction to accelerate to the Sub-Contractor under sub-clause 21.6(a):
  - (i) the Sub-Contractor shall thereupon immediately comply with, and give effect to such instruction by the implementation of such measures as the Contractor/C.R. shall direct or approve in writing (such approval not to be unreasonably withheld);
  - (ii) the Sub-Contractor shall submit all relevant documents such as the revised/updated Sub-Contract programme, Method Statements, incorporating the accelerative measures adopted, to the Contractor/C.R. for its consent; and
  - (iii) any such instruction shall be treated as a Variation under and valued in accordance with Clause 26.0.

#### **21.7 Expediting progress of Works, etc.**

- (a) If, at any time:
  - (i) the Contractor/C.R. is of the opinion that:
    1. the Sub-Contractor's actual progress is too slow to complete the Sub-Contract Works and/or the Sections thereof by the Date or Dates for Completion; or
    2. the Sub-Contractor's actual progress has fallen or will fall behind the accepted programme under Clause 20.0.

other than as a result of a cause listed in sub-clause 21.4, or
  - (ii) if for any reason which does not entitle the Sub-Contractor to an extension of time, the Sub-Contractor's actual progress of the Sub-Contract Works, or any Section thereof is too slow to complete the said Works, or any such Section by the Date or Dates of Completion (including any revised date granted previously under this Clause).

the Contractor/C.R. shall so notify the Sub-Contractor in writing (called "the notice to expedite").

- (b) The Contractor/C.R. in its notice to expedite may instruct the Sub-Contractor to:
  - (i) expedite the work involved;
  - (ii) submit, under Clause 20.0 a revised/updated programme;
  - (iii) submit all supporting documents describing the revised methods or steps which the Sub-Contractor proposes to adopt in order to expedite progress and complete by the Date for Completion; and
  - (iv) stipulate a period not exceeding 14 Days for the Sub-Contractor to comply with the instruction,
  
- (c) Immediately and within the time stipulated in the notice to expedite the Sub-Contractor shall:
  - (i) comply with the Contractor's/C.R.'s instruction; and
  - (ii) take such steps or measures as are necessary and to which the Contractor/C.R. may consent, to expedite progress of the Sub-Contract Works.
  
- (d) In amplification of sub-clause 21.7(c), the Sub-Contractor shall adopt these revised methods, which may require:
  - (i) increases in the working hours (even working at night); and/or
  - (ii) working on public holidays; and/or
  - (iii) increases in the numbers of the Sub-Contractor's Personnel, Materials, Goods, Plant, and/or Equipment.
  
- (e) The Sub-Contractor shall not be entitled to any additional time and/or any further payment whatsoever for, or in respect of, or arising out of:
  - (i) taking such steps, or revised methods, and/or
  - (ii) complying

with the provisions of sub-clause 21.7(b) to (d).

- (f) If the Contractor has incurred additional, or other costs as a result of any order or instruction given under this sub-clause, it may pursue its claim against the Sub-Contractor pursuant to Clause 43.0

**21.8 EOT Pursuant to Section 29 of CIPAA (if applicable)**

- (a) 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:
  - (i) as soon as practicable, but not later than 28 Days after the date of resumption of performance or the rate of progress performance of the Sub-Contract Works under Section 29(4)(d) of CIPAA, the Sub-Contractor shall send to the Contractor/C.R. the relevant particulars of its claim for extension of time together with all necessary calculations and documents to substantiate its claims,
  - (ii) if the Sub-Contractor fails to submit the required particulars within the stipulated 28 Days under Clause 31.3 or such other period as approved by the Contractor/C.R., the latter is not obliged (until after the practical completion of the Sub-Contract Works) to assess and grant any extension of time in respect of the Sub-Contractor's application for the same. In that event, subject to the Contractor's/C.R.'s review under Clause 21.6, the Sub-Contractor shall not be entitled to any extension of time, and the non-assessment and non-granting of the extension of time 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/C.R., or any deduction or claim for Liquidated Damages made by the Contractor under Clause 25.0,
  - (iii) if the Contractor/C.R. is of the opinion that the particulars submitted by the Sub-Contractor pursuant to Clause 21.3 are insufficient for its assessment of the extension of time applied, the Contractor/C.R. shall within fourteen 14 Days from the date of receipt of Sub-Contractor's particulars, inform it of any deficiency in its submission and require the Sub-Contractor to provide such further particulars within such period of time as may be stated by the Contractor/C.R. in writing. If the Sub-Contractor fails to submit the required further particulars within the time as instructed by the Contractor/C.R., the latter may determine the Sub-Contractor's claim for such extension of time based on whatever information which is available to it, and shall either reject the Sub-



Contractor's application or issue a Certificate of Extension of Time within 28 Days from the last date of the period for the provision of further particulars by the Sub-Contractor. The Contractor's/C.R.'s determination shall be binding on the Parties until and unless it is revised by the Contractor/C.R. under Clause 21.6,

- (iv) Clauses 21.3 to 21.6 shall apply to an application for extension of time under this Clause 21.8.
  
- (b) 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 extension of time and any extension of time previously granted by the Contractor/C.R. pursuant to this Clause 21.8 shall be deemed automatically cancelled. The Contractor/C.R. may (but is not obliged to) issue a revised Certificate of Non-Completion, but the failure of the Contractor/C.R. to issue a revised Certificate of Non-Completion shall not affect or invalidate the Contractor's right to its 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.

## **PART VI: COMPLETION, DEFECTS LIABILITY AND MAINTENANCE**

### **22.0 COMPLETION OF SUB-CONTRACT WORKS**

#### **22.1 Sub-Contractor to complete on time**

Subject to Clauses 23.0 and 24.0, the Sub-Contractor shall complete the whole of the Sub-Contract Works on or before:

- (a) the Date for Completion as stated in Appendix II; or
- (b) such extended time as may be allowed under Clause 21.0 hereof.

#### **22.2 Application and Certification procedure**

- (a) If the Sub-Contractor is of the opinion that the whole of the Sub-Contract Works have achieved practical completion, the Sub-Contractor shall immediately notify the Contractor/C.R. in writing to that effect.

- (b) Within 14 Days of receipt of such written notice from the Sub-Contractor, the Contractor/C.R. shall carry out the relevant inspection and/or testing of the Sub-Contract Works jointly with the Sub-Contractor so as to verify whether the whole of the Sub-Contract Works have achieved practical completion within the ambit of this Clause.
- (c) Pursuant to such inspection and/or testing, the Contractor/C.R. shall within 28 Days after receipt of the Sub-Contractor's notification/application of sub-clause 22.2(a) above do either one of the following:
  - (i) accept and agree with the application, if in the Contractor's/C.R.'s opinion the whole of the Sub-Contract Works have reached practical completion; or
  - (ii) reject the application, if in the Contractor's/C.R.'s opinion the whole of Sub-Contract Works have not reached practical completion.

Should the Contractor/C.R. fail to respond at all to the Sub-Contractor's notification/application either way, then upon the expiry of the said 28 Days period, it shall be deemed that the Sub-Contract Works have achieved practical completion and the Parties shall give due effect to the same and the consequential rights/obligations arising thereof under the Sub-Contract shall immediately crystallize.

- (d) If the Contractor/C.R. decides that pursuant to sub-clause 22.2(c)(i) the whole of the Sub-Contract Works have reached practical completion, the following shall ensue:
  - (i) the Contractor/C.R. shall issue a Certificate of Practical Completion for the whole of the Sub-Contract Works to the Sub-Contractor;
  - (ii) the Certificate of Practical Completion shall be accompanied with a list of outstanding and/or defective Sub-Contract Works together with a stipulated period not exceeding 30 Days for the Sub-Contractor to complete the same;
  - (iii) the Contractor/C.R. shall state in the said Certificate of Practical Completion the date on which the Sub-Contract Works have achieved Practical Completion and handed over to the Contractor;
  - (iv) the Sub-Contractor shall, as of the date of Practical Completion return Site possession to the Contractor;

- (v) the date of such Certification of Practical Completion shall be date of the commencement of the Defects Liability Period and Maintenance Period as provided in Clause 26.0 hereof; and
  - (vi) all other consequential entitlements as stipulated in the relevant provisions of the Sub-Contract shall crystallize as of the date of Certificate of Practical Completion.
- (e) If the Contractor/C.R. decides that pursuant to sub-clause 22.2(c)(ii), the whole of the Sub-Contract Works have not reached practical completion, the following shall ensue:
- (i) the Contractor/C.R. shall give written notice to the Sub-Contractor stating the reasons for its opinion; and
  - (ii) the said notice of rejection shall be accompanied with a list of outstanding and/or defective Works to be undertaken by the Sub-Contractor before applying once again for Practical Completion;
  - (iii) the Sub-Contractor shall not be entitled to the Certificate of Practical Completion until the items specified in the said list of outstanding and/or defective Works have been completed to the satisfaction of the Contractor/C.R.
- (f) In the event that a Certificate of Practical Completion has been issued to the Sub-Contractor together with a list of outstanding and/or defective Works pursuant to sub-clause 22.2(d)(ii) above, the Sub-Contractor shall comply with the instruction to complete the same to the satisfaction of the Contractor/C.R. within the prescribed time period. In the event the Sub-Contractor fails to comply with the said instruction, the Contractor/C.R. may without prejudice to any other rights or remedies which the Contractor may possess under the Sub-Contract and the law, do any one of the following:
- (i) grant the Sub-contractor additional time not exceeding 30 Days to enable the Sub-Contractor to comply with the said instruction; or
  - (ii) employ or pay other persons to execute any work which may be necessary to give effect to the said instruction. All costs incurred including any loss and/or expense shall be set-off by the Contractor under Clause 33.0; or

- (iii) accept to leave all or any such work and Defects of a minor nature in the Sub-Contract Works subject to an appropriate omission for diminution in value under Clause 28.0.

### **22.3 Basis of certifying Practical Completion**

- (a) For the avoidance of doubt, the Sub-Contract Works shall not be regarded as practically completed unless in the Contractor's/C.R.'s opinion, the Sub-Contract Works have fulfilled the requirements as set-out in sub-clause 22.3(b).
- (b) The requirements to be considered by the Contractor/C.R. in reaching its decision shall include but be not necessarily limited to the following:
  - (i) the Sub-Contract Works have been completed in accordance with the terms and conditions of the Sub-Contract;
  - (ii) the Employer can have full, proper, beneficial and safe use of the Sub-Contract Works for their intended purpose, notwithstanding that there may be Works of a minor nature still to be fully executed and/or rectified, provided that such Works do not prevent, or diminish the full, proper, beneficial and safe use as aforesaid;
  - (iii) the Sub-Contract Works have passed all testing and commissioning tests required in the Sub-Contract;
  - (iv) all the relevant training as stipulated in the Sub-Contract has been satisfactorily completed;
  - (v) all technical manuals and 'as-built' drawings required by the Sub-Contract to be prepared before the completion of the Sub-Contract Works have been satisfactorily completed and handed over to the Contractor/C.R.;
  - (vi) all the relevant design and/or supplier's/manufacture's warranties for all designs (if applicable), Materials, Goods, Plant and/or Equipment incorporated into the Sub-Contract Works have been duly and properly assigned to the Employer and handed over to the Contractor/C.R. for onwards transmission by the latter to the Employer/E.R.;

- (vii) if expressly required by the particular Sub-Contract, the Sub-Contract Works are in a condition to render the complete Sub-Contract Works fit for occupation and/or use by the Employer, and the Sub-Contractor has obtained the necessary approvals, clearances from the Appropriate Authorities and submitted all relevant forms, clearances and/or certificates to enable the Contractor (through its principal submitting person) to issue the Certificate of Completion and Compliance (CCC) and/or for the relevant authorities to issue the Certificate of Fitness (C.F.), as applicable;
- (viii) for building Sub-Contract Works (if and to the extent as applicable), all essential services, including access roads, landscape, carparks, drains, sanitary, water and electricity installations, fire hydrants, sewerage and refuse disposal equipment and fire lifts specified in the Sub-Contract have been provided;
- (ix) all relevant spare parts and tools specified in the Sub-Contract have been satisfactorily delivered to the Contractor/C.R.; and
- (x) all relevant approvals, consents, permissions and licences and all documentation relating thereto as required by the Sub-Contract have been satisfactorily delivered to the Contractor/C.R.

#### **22.4 Effects of Certification of Completion**

- (a) The Certificate of Practical Completion of the Sub-Contract Works issued under this Clause 22.0 shall be for the following purposes only and no other:
  - (i) the release of the first half of Retention Monies under the Sub-Contract pursuant to Clause 31.0; and
  - (ii) the discharge of the Sub-Contractor's further liability in respect of delay to the completion of the Sub-Contract Works.
- (b) The issuance of the Certificate of Practical Completion of the Sub-Contract Works shall not affect any other provisions of this Sub-Contract whatsoever, including the following:
  - (i) the release of the remaining half of the Retention Monies pursuant to Clause 31.0; and

- (ii) the obligations of the Sub-Contractor for Defects in the Sub-Contract Works and servicing and maintenance pursuant to Clause 26.0; and
- (iii) the release of the Performance Security pursuant to Clause 10.0.

## **22.5 Access for Remedial and Maintenance Work**

- (a) The Sub-contractor's right to possession of the Site shall cease on the Date of Practical Completion and handing over to the Contractor and/or the Employer.
- (b) Notwithstanding the above, the Sub-Contractor shall, upon giving reasonable notice in writing to the Contractor/C.R., be permitted to enter the Site to carry out any outstanding work and the rectification of Defects during the Defects Liability Period and the servicing and maintenance during the Maintenance Period.

## **23.0 SECTIONAL COMPLETION**

### **23.1 Meaning/Application**

This Clause shall apply where different completion dates are envisaged for different sections, stages, phases or parts of the Sub-Contract Work collectively called "Sections".

### **23.2 Completion in Sections**

- (a) Where different Sections are stated and identified in Appendix II, or elsewhere in the Sub-Contract Documents and different and separate Liquidated Damages are provided for each such Section, the provisions of the Sub-Contract in regard to:
  - (i) Certificate of Practical Completion (Clause 22.0);
  - (ii) Delays and Consequences (Clause 21.0);
  - (iii) Damages for Non-Completion (Clause 25.0); and
  - (iv) Defects Liability Period and Maintenance Period (Clause 26.0)

but not:

1. Insurances taken by the Sub-Contractor (Clause 36.0 & 37.0)
2. Performance Security (Clause 10.0);
3. Retention Money (Clause 31.0); and
4. Final Account and Final Certificate (Clause 32.0)

shall, in the absence of any express provisions to the contrary elsewhere in any part of the Sub-Contract Documents apply as if each such Section was the subject of a separate and distinct contract between the Sub-Contractor and the Contractor.

- (b) For the avoidance of doubt, nothing contained in this sub-clause 23.2 shall entitle the Sub-Contractor upon the completion of each Section, to the release of the whole or any part of the Performance Security deposited by it pursuant to Clause 10.0. The Performance Security shall be released, or refunded only upon the issue of the certificate of making good of the whole of the Sub-Contract Works, or in respect of the last Section of the Sub-Contract Works, or as otherwise provided for to the contrary elsewhere in the Sub-Contract Documents, as the case may be.
- (c) The application and certification procedure as stipulated in sub-clause 22.2 shall apply *mutatis mutandis* for each Section of the Sub-Contract Works.

### **23.3 Basis of certifying Practical Completion**

- (a) In relation to any Section of the Sub-Contract Works, the Section shall not be regarded as having reached practical completion unless it has reached the stage where the requirements as stipulated in sub-clause 23.3(b) have been satisfied in the Contractor's/C.R.'s opinion.
- (b) The requirements adverted to in sub-clause 23.3(a) shall include, but be not necessarily limited to the following:
  - (i) the relevant Section of the Sub-Contract Works has been completed in accordance with the terms and conditions of the Sub-Contract;

- (ii) the Employer can have full, proper, beneficial and safe use of the relevant Section for its intended purpose (save only in so far as such use is limited by reason of any other Section not having been completed), notwithstanding that there may be Sub-Contract Works of a minor nature still to be fully executed and/or rectified, provided such Sub-Contract Works do not prevent or diminish the full, proper beneficial and safe use as aforesaid;
- (iii) the relevant Section of the Sub-Contract Works has passed all testing and commissioning tests required in the Sub-Contract;
- (iv) all the relevant training in regard to the relevant Section as stipulated in the Sub-Contract has been satisfactorily completed;
- (v) in relation to the relevant Section, all technical manuals and “as-built” drawings required by the Sub-Contract to be prepared before the completion of that Section have been satisfactorily completed and handed over to the Contractor/C.R.;
- (vi) in relation to the relevant Section, all the relevant design (if applicable) and/or supplier’s/manufacturer’s warranties and/or guarantees for all designs, equipment, materials and goods incorporated into that Section of the Sub-Contract Works have been duly and properly assigned to the Employer and handed over to the Contractor/C.R. for onwards transmission by the latter to the Employer/E.R.;
- (vii) if expressly required by the Sub-Contract, in relation to the relevant Section, the Sub-Contract Works are in a condition fit for occupation and/or use by the Employer and the Sub-Contractor has obtained the necessary approvals, clearances from the relevant authorities and submitted all relevant forms, clearances and/or certificates to enable the Contractor (through its principal submitting person) to issue the relevant CCC or CF, as applicable;
- (viii) for building Sub-Contract Works(if and to the extent as applicable), in relation to the relevant Section, all essential services, including access roads, landscape, carparks, drains, sanitary, water and electricity installations, fire hydrants, sewerage and refuse disposal equipment and fire lifts specified in the Sub-Contract have been provided;



- (ix) in relation to the relevant Section, all spare parts and tools specified in the Sub-Contract have been satisfactorily delivered to the Contractor/C.R.; and
- (x) in relation to the relevant Section, all approvals, consents, permissions and licences and all documents relating thereto as required by the Sub-Contract have been satisfactorily delivered to the Contractor/C.R.

#### **23.4 Access for Remedial and Maintenance Work**

- (a) In relation to the relevant Section, the Sub-Contractor's right to possession of Site shall cease on the Date of Practical Completion and handing over to the Contractor and/or the Employer of that particular Section of the Sub-Contract Works.
- (b) Notwithstanding the above, the Sub-Contractor shall, upon giving reasonable notice in writing to the Contractor/C.R., be permitted to enter the Site to carry out any outstanding Work and rectification of Defects during the Defects Liability Period and the servicing and maintenance in the Maintenance Period for the relevant Section.

#### **24.0 PREMATURE/PARTIAL POSSESSION BY CONTRACTOR/EMPLOYER**

##### **24.0 Meaning/Application**

- (a) This Clause shall apply when the Contractor and/or the Employer occupies, or takes over the possession of either:
  - (i) the whole of the Sub-Contract Works; or
  - (ii) part or parts of the Sub-Contract Workbefore the whole of the Sub-Contract Works have reached practical completion pursuant to Clause 22.0.
- (b) Such occupation/possession may be:
  - (i) With the Sub-Contractor's consent; or
  - (ii) Without the Sub-Contractor's consent.

## 24.2 Premature/Partial Possession with Consent

- (a) The Contractor and/or the Employer may, with the written consent of the Sub-Contractor (which consent shall not be unreasonably withheld or delayed), before the practical completion of the Sub-Contract Works in accordance with Clause 22.0, and notwithstanding anything expressed or implied elsewhere in the Sub-Contract, take possession and/or occupy the whole of any part or parts of the Sub-Contract Works (called “the Occupied Part”). In the event the Employer take over such possession, it can only do so after obtaining both the Contractor’s and the Sub-Contractor’s written consent (which consent shall not be unreasonably withheld).
- (b) Within 14 Days from the date the Contractor and/or the Employer has taken possession and/or occupied the whole or part or parts of the Sub-Contract Works, the Contractor/C.R. shall issue to the Sub-Contractor:
  - (i) a Certificate of Practical Completion in accordance with sub-clause 22.2(d) in respect of whole of the Sub-Contract Works; or
  - (ii) a Certificate of Partial Occupation in accordance with sub-clause 24.2(c) in respect of the Occupied Part.
- (c) The Certificate of Partial Occupation stipulated in sub-clause 24.2(b)(ii) shall:
  - (i) clearly identify the Occupied Part; and
  - (ii) state the Contractor’s/C.R.’s estimated value of the Occupied Part (which value for the purposes of this Clause 24.0 shall be deemed to be the total value of the Occupied Part); and
  - (iii) be accompanied with a list of outstanding and/or defective work together with a stipulated period not exceeding 30 Days for the Sub-Contractor to complete the same.
- (d) Should the Sub-Contract Works prematurely occupied by the Contractor and/or the Employer and certified accordingly pursuant to sub-clause 24.2(b)(i) above be for the whole of the Sub-Contract Works, then the consequential effects as stipulated in sub-clause 22.2(d)(v) and (vi) shall be applicable.

- (e) In the case of the Occupied Part for which a Certificate of Partial Occupation has been issued pursuant to sub-clause 24.2(b)(ii), the following provisions shall apply to the Occupied Part as of the date of the issue of the certificate until the completion of the remainder of the Sub-Contract Works:
- (i) for the purposes of Clauses 22.0 and 26.0, the Occupied Part shall be deemed to have reached practical completion and the Defects Liability Period in respect of the Occupied Part shall be deemed to have commenced on the date the Contractor and/or the Employer shall have taken possession and occupied the same;
  - (ii) at the end of the Defects Liability Period of the Occupied Part, the Contractor/C.R. shall issue a Certificate of Completion and Making Good Defects in accordance with the provisions of Clause 26.0 when in its opinion all Defects in the Occupied Part which it may have required to be made good under the said clause and sub-clause 24.2(c)(iii) have been satisfactorily undertaken by the Sub-Contractor;
  - (iii) the Liquidated Damages under Clause 25.0 for the remaining Sub-Contract Works shall be reduced by the ratio of the estimated value of the Occupied Part to the Sub-Contract Sum;
  - (iv) within 30 Days of the issue of the Certificate of Partial Occupation, the Contractor/C.R. shall issue an Interim Certificate under Clause 29.0 certifying the release of half the amount of the Retention Money in the ratio of the estimated value of the Occupied Part to the Sub-Contract Sum. The amount of the limit of the Retention Money shall then be reduced by the same amount; and
  - (v) upon the issuance of the Certificate of Completion and Making Good Defects of the Occupied Part, the Contractor/C.R. shall, within 14 Days, issue a certificate for the release of the remaining half of the Retention Money in respect of the Occupied Part.
- (d) (i) Notwithstanding the premature occupation by the Contractor and/or the Employer of the Occupied Part and the subsequent issue of the Certificate of Partial Occupation for the same by the Contractor/C.R., the Sub-Contractor shall insure and keep insured in the manner as stipulated under the relevant insurance cover provisions in the Sub-Contract (in particular under Clause 36.0) the remaining Sub-Contract Works and the Sub-contractor shall give notice to

the insurer cover operator (with copies to the Contractor/C.R.) of such partial occupation; and

- (ii) for the avoidance of doubt, nothing contained in the preceding sub-clauses shall entitle the Sub-Contractor to the release of either the whole, or any part of the Performance Security deposited by it under Clause 10.0. The Performance Security, or any part of it shall be released or refunded only upon the issue of the Certificate of Completion and Making Good Defects of the whole of the Sub-Contract Works under Clause 26.0, or as expressly provided for otherwise in the Sub-Contract.

### **24.3 Premature/Partial Possession without Consent**

- (a) The Contractor may without prejudice to any other rights or remedies which it may possess under the Sub-Contract, enter and occupy such part or parts of the Works (called the "Occupied Part") prior to the completion of the whole of the Sub-Contract Works or Sectional Completion of the Works without the consent of the Sub-contractor pursuant to sub-clause 24.2 provided that:
  - (i) the completion of the Sub-Contract Works has been delayed and a Certificate of Non-Completion has been issued by the Contractor/C.R. under Clause 25.0; which certificate is still operative; and
  - (ii) such entry and occupation of the Occupied Part can be effected safely and without any unreasonable disturbance to the Sub-Contractor's arrangements for completing the remainder of the Sub-Contract Works.
  - (iii) the Contractor/C.R. has issued a written notification to the Sub-Contractor of the Contractor's intention to possess the Occupied Part stipulating the date and time for such action and an instruction to accordingly remove all its construction plant/equipment and Temporary Works for the said part
- (b) The Sub-Contractor shall within 7 Days of receipt of the instruction of the Contractor/C.R., remove its site facilities, Temporary Works, construction plant or equipment, materials or goods from the Occupied Part. The provisions of sub-clause 24.2 shall apply in the same manner as if the Sub-Contractor has consented to the Contractor and/or the Employer taking possession of such Occupied Part.

## **25.0 DAMAGES FOR NON-COMPLETION**

### **25.1 Consequence of Delayed Completion**

If the Sub-Contractor fails to complete the Sub-Contract Works (or any Section of the Sub-Contract Works) by the stipulated Date for Completion or by the date as mutually agreed to by the Parties, the Contractor/C.R. shall issue a Certificate of Non-Completion stating that in its 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 Appendix II as Liquidated Damages for the period from the Date for Completion, 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 Appendix II 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 Security.

### **25.2 Liquidated Damages Amount Deemed as Agreed**

- (a) The Liquidated Damages stated in Appendix II is deemed to be the reasonable loss and/or damage which the Contractor will suffer in the event that the Sub-Contractor is in breach of the Clause hereof. 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/C.R., forthwith pay or allow to the Contractor the said amount of Liquidated Damages due without the need of the Contractor to prove its actual damage or loss.
- (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 Appendix II 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 it will not, whether by legal proceedings or otherwise, contend that such sums and the limits thereon in Appendix II are not reasonable nor will it put the Contractor to the proof thereof, nor further contend that its agreement to such sum

and undertaking as aforesaid were arrived at by force, duress, coercion, mistake or misrepresentation on the part of the Contractor.

- (c) For the avoidance of doubt, the Liquidated Damages imposed or deducted by the Contractor shall not relieve the Sub-Contractor from its obligation to complete the Sub-Contract Works, or from any other duties, obligations or responsibilities which it may have under the Sub-Contract.

### **25.3 Effect of the fixing of a later Time for Completion**

- (a) If, pursuant to Clause 21.0, the Contractor/C.R. issues a Certificate of Extension of Time and fixes a later Date for Completion, then any Certificate of Non-Completion previously issued shall cease to be of effect and the Contractor/C.R. shall issue such further Certificate of Non-Completion (if any) as may be necessary.
- (b) The Contractor shall then pay or repay the Sub-Contractor free of interest any amounts recovered or allowed or paid under sub-clause 25.1 for the period up to such later Date for Completion.

### **25.4 Apportionment of Liability**

If the events (or reasons) causing the delays to the completion of the Contract Works are caused by more than one party apart from the Sub-Contractor (including the Contractor and other persons/parties), the Contractor/C.R. shall in the certificate referred to in sub-clause 25.1 apportion the liability of the defaulting parties in respect of such delays.

## **26.0 DEFECTS LIABILITY PERIOD AND MAINTENANCE PERIOD**

### **26.1 Meaning of Defects**

- (a) The term 'Defect' as used in the Sub-Contract shall include, but be not limited to the following:
  - (i) any work executed (including design work, if applicable), or material supplied which is not in accordance with the Sub-Contract;
  - (ii) any failure to execute and complete the Works under the Sub-Contract;
  - (iii) any failure to fulfill the Contractor's Requirements;

- (iv) any failure to execute and complete the Sub-Contractor's design obligations (if applicable).
- (b) For the avoidance of doubt and without limiting the generality of the expression, the term shall be taken to include:
  - (i) any imperfection, shrinkage, or other fault whatsoever; and
  - (ii) any item of Materials, or Goods, or Plant or Equipment or work incorporated, or used in the Sub-Contract Works which does not:
    1. conform to the relevant quality standards, or
    2. pass the tests prescribed in, or to be inferred from the Sub-Contract.

## **26.2 Defects Liability**

- (a) The Sub-Contractor shall be liable for all patent and latent defects as defined in sub-clause 26.1 which are within the Sub-contractor's scope under the Sub-Contract, namely encompassing the following broad categories:
  - (i) as to quality of Materials, Goods, Plant or Equipment; and
  - (ii) standard of workmanship; and
  - (iii) standard of design (if applicable)
- (b) Unless otherwise stipulated to the contrary in the Sub-Contract, the Sub-Contractor shall not be liable for the following categories of defects:
  - (i) defects arising from "fair wear and tear";
  - (ii) defects arising from misuse, or abuse by the Employer and/or the Contractor;
  - (iii) defects arising from work for which the Sub-Contractor is not responsible under the Sub-Contract;
  - (iv) defects that are out of time, or statute barred; and

- (v) defects expressly waived by the Employer and/or the Contractor; and
- (vi) defects having a number of causes with the Sub-Contractor's default being a minor one.

### **26.3 Duration of Liability**

- (a) The Sub-Contractor shall be contractually liable for all Defects during:
  - (i) the currency of the Sub-Contract up to the certification of practical completion; and
  - (ii) the Defects Liability Period.

For the Defects prior to the certification of practical completion, these shall be directed by the Contractor/C.R. to be rectified by the Sub-Contractor pursuant to sub-clause 8.5. The instant Clause addresses only the Defects arising during the Defects Liability Period.

- (b) The Defects Liability Period:
  - (i) shall be for a period as stated in Appendix II; or
  - (ii) if none is stated it shall be for a period of 24 months; and
  - (iii) shall commence from the date of:
    1. Certificate of Practical Completion (CPC) for the whole of the Sub-Contract Works under Clause 22.0; or
    2. Certificate of Practical Completion (CPC) of each Section under Clause 23.0; or
    3. Certificate of Partial Occupation (CPO) under Clause 24.0.
- (c) The Defects Liability Period shall also include any extension under sub-clauses 26.5(f) and 26.9(h).



- (d) The Sub-Contractor shall, during the said Defects Liability Period:
  - (i) complete any work that is outstanding, or defective on the date stated in the Certificate of Practical Completion, within the period as instructed by the Contractor/C.R. pursuant to Clauses 22.0, 23.0 and 24.0; and
  - (ii) execute all work required to remedy Defects as may be notified by the Contractor/C.R. under sub-clause 26.4.

#### **26.4 Defects rectification reporting procedure**

- (a) At any time during the Defects Liability Period as specified in sub-clause 26.3, or within 14 Days of its expiration, the Contractor/C.R. may instruct the Sub-Contractor to rectify any Defects in the Sub-Contract Works under the Sub-Contract for which the Sub-Contractor is responsible.
- (b) The Contractor's/C.R. instruction issued pursuant to sub-clause 26.4(a) shall:
  - (i) be in writing;
  - (ii) properly identify the alleged Defects;
  - (iii) stipulate a definite period for the Sub-Contractor to make good the same; and
  - (iv) include any other information, or details to enable the Sub-Contractor to expedite the remedial Sub-Contract Works.
- (c) The Contractor's/C.R.'s instruction may provide in respect of the rectification work, that there shall be a separate Defects Liability Period of a stated duration not exceeding the period stipulated in sub-clause 26.5(f). The separate Defects Liability Period shall commence on the date the rectification work is completed and certified by the Contractor/C.R.
- (d) Under sub-clause 26.4(b), the Contractor/C.R. may, if necessary, specify the particulars of the work envisaged, including but not limited to the following:
  - (i) Sub-Contractor to search for the cause(s) of the Defects;
  - (ii) undertaking of rectification Works; or

- (iii) demolishing and reconstructing; or
  - (iv) undertaking the rectification “off-site”, etc.
- (e) In prescribing the time for the Sub-Contractor to complete the rectification Works pursuant to sub-clause 26.4(b)(iii), the Contractor/C.R. shall take into consideration whether the Defects are of an urgent/emergency nature, or are of the normal type.
- (f) If the defects are of an urgent/emergency nature, meaning, these are Defects which:
- (i) render the Sub-Contract Works liable to damage by the elements of weather; and/or
  - (ii) will further deteriorate if not made good immediately; and/or
  - (iii) will impair the safe functioning and use of the Sub-Contract Works; and/or
  - (iv) will critically deny the proper operation and/or beneficial use of the Sub-Contract Works

then the Contractor/C.R. may, based on its discretion, prescribe a reasonably short period varying from 2 hours up to a maximum of 24 hours, as the case may be.

- (g) Should the Defects be of the normal type i.e. not fulfilling the criteria in sub-clause 26.4(f), the Contractor/E.R. may, based on its discretion, prescribe a reasonable period of between 7 days up to 21 Days depending on factors such as:
- (i) the relative seriousness and extent of the Defects involved;
  - (ii) whether materials, parts, or labour from “off-site” and/or foreign sources are necessary to remedy the Defects;
  - (iii) the locality of the Sub-Contract Works; and/or
  - (iv) the availability of competent and skilled local, or “on-site” personnel

## 26.5 Defects Rectification: Sub-Contractor's responsibility

- (a) Upon the receipt of the Contractor's/C.R.'s Instruction under sub-clause 26.4, the Sub-Contractor:
  - (i) may seek clarifications and/or further and better particulars, especially if the scope and content of the instruction is unclear, or does not comply with sub-clause 26.4; or
  - (ii) may seek a review, or an extension to the time prescribed with necessary justification should the said time in the Instruction not comply with the relevant Sub-Contract provisions, or is not, in the Sub-Contractor's opinion, reasonable under the circumstances; or
  - (iii) shall immediately comply with the Instruction.
- (b) In the event the Sub-Contractor adopts either one of the options stated in sub-clause 26.5(a)(i) and (ii), the Sub-Contractor must respond within a reasonable time before the expiry of the prescribed time in the Contractor's/C.R.'s particular Instruction. Should the Sub-Contractor fail to respond within the said time and upon the lapse of the prescribed time in the Instruction, the Sub-Contractor shall be deemed to have defaulted to comply with the Contractor's/E.R.'s instruction and the provisions of sub-clause 26.7 shall apply.
- (c) Upon the receipt of the Sub-Contractor's official response pursuant to sub-clause 26.5(a)(i) and (ii), the Contractor/C.R. may:
  - (i) modify its instruction; and/or
  - (ii) issue further and better particulars requested; or
  - (iii) extend time as requested; or
  - (iv) maintain its earlier instruction.

This decision shall be communicated in writing to the Sub-Contractor and shall for the purposes of the Sub-Contract be considered as a valid Contractor's/C.R.'s Instruction with duty of compliance on the Sub-Contractor.

- (d) Should the Sub-Contractor exercise the option under sub-clause 26.5(a)(iii), the Sub-Contractor shall undertake the following activities (but not limited to), as applicable, within the prescribed period:
- (i) mobilize all necessary resources;
  - (ii) seek the necessary access to the Works to be rectified;
  - (iii) search for the cause(s) of the Defects;
  - (iv) undertake the necessary remedial and incidental Sub-Contract Works;
  - (v) carry out the relevant testing/retesting on the rectified work/item;
  - (vi) put the rectified Sub-Contract Works back into normal service;
  - (vii) prepare a detailed report on all the work undertaken in response to the instruction;
  - (viii) have the report signed-off/certified by the Contractor/C.R.; and
  - (ix) carry out any other necessary and/or incidental work e.g. updating the 'as-built' drawings, and operation and maintenance manuals.
- (e) All work referred to in sub-clause 26.5(d) shall be executed by the Sub-Contractor at its own cost, time and risk.
- (f) The Contractor shall be entitled, subject to the Contractor's/C.R.'s written notification to the Sub-Contractor, to an extension of the Defects Liability Period for the whole of the Sub-Contract Works, or a Section or part of the Sub-Contract Works, if and to the extent that the Sub-Contract Works, Section or major item of Plant/Equipment (as the case may be, and after handing over) cannot be used for the purposes for which they are intended by reason of the Defects. However, the Defects Liability Period shall not be extended for more than 1 year.
- (g) If the Defects, or damage cannot be rectified expeditiously on the Site and the Contractor/C.R. give written consent, the Sub-Contractor may remove from the Site for the purposes of Defect rectification, such items of Plant or Equipment as are reported to be defective. The said consent:

- (i) may require the amount of the Performance Security to be increased by the full replacement cost of these items, or
  - (ii) may require the Sub-contractor to provide other appropriate security, and
  - (iii) shall stipulate a maximum time for the Sub-Contractor to complete and return the Plant or Equipment back to the Site, and
  - (iv) may require the Sub-Contractor to provide a suitable replacement in the interim.
- (h) If the rectification work undertaken by the Sub-Contractor pursuant to the Contractor's/C.R.'s instruction of sub-clause 26.4, is in the opinion of the Contractor/C.R. affecting the performance of the Sub-Contract Works and the Contract Works, the following shall apply:
- (i) The Contractor/C.R. may require the repetition of any of the relevant tests described in the Sub-Contract;
  - (ii) The requirement shall be made by a written notice to the Sub-Contractor within 14 Days after the Defects have been certified to be remedied; and
  - (iii) These tests shall be carried out in accordance with the terms and conditions applicable to the previous tests, except that they shall be undertaken at the risk, cost and time of the Sub-Contractor.

## **26.6 Defects rectification: Certification**

- (a) It shall be the Contractor's/C.R.'s duty to:
- (i) provide all assistance necessary to enable the Sub-Contractor to satisfactorily comply with the Contractor's/C.R. Instruction within the prescribed period; and
  - (ii) monitor the Sub-Contractor's rectification work; and
  - (iii) sign-off/certify the satisfactory completion of the remedial works instructed.

- (b) For the avoidance of doubt, the Defects shall not be considered as satisfactorily rectified until the Contractor/C.R. has officially certified the same. To this effect the Contractor/C.R. shall undertake the certification within 14 Days of the Sub-Contractor's submission of the detailed report specified in sub-clause 26.5(d)(viii); failing which the Defects shall be deemed to have been satisfactorily rectified.

## **26.7 Failure to remedy Defects**

- (a) If the Sub-Contractor shall fail to satisfactorily comply with the Contractor's/C.R.'s Instruction of sub-clause 26.4 i.e. in that the Sub-Contractor either fails:
  - (i) to satisfactorily remedy the Defects; or
  - (ii) to satisfactorily remedy the Defects within the prescribed time.

the Contractor may at its discretion be entitled to the remedies as stipulated in sub-clause 26.7(b).

- (b) Pursuant to sub-clause 26.7(a), the Contractor:
  - (i) may carry out the remedial work itself, or by others as it deems fit, in which case all costs (including "On-Cost Charges) thereby incurred shall be deducted from any money due, or to become due to the Sub-Contractor under the Sub-Contract and failing which such costs shall be recovered from the Performance Security, or as a debt due from the Sub-Contractor; or
  - (ii) if any Defects are such that in the opinion of the Contractor/C.R. it shall be impracticable, or inconvenient to the Contractor and/or the Employer to have the Sub-Contractor to remedy the same:
    1. the Contractor/C.R. shall ascertain the diminution in value of the Sub-Contract Works pursuant to Clause 28.0 due to the existence of such Defects (including but not limited to the loss of functionality and/or deterioration in performance) and
    2. deduct the amount of such diminution pursuant to Clause 28.0 from any money due, or to become due to the Sub-Contractor under the Sub-Contract and failing which such costs shall be recovered from the Performance Security, or as a debt due from the Sub-Contractor; or

- (iii) if the Defects deprive the Contractor and/or the Employer of substantially the benefit of the Sub-Contract Works or any major part of the Sub-Contract Works, the Contractor to may determine the employment of the Sub-Contractor under the Sub-Contract as a whole pursuant to Clause 40.0A, or in respect of such major part which cannot be put to its intended use, omit the same as a Variation under Clause 28.0. Without prejudice to any other rights under the Sub-Contract, or otherwise, the Contractor and/or the Employer shall then be entitled to pursue its remedies as provided for in Clauses 40.0A or 28.0 respectively.
  
- (c) Should the Contractor exercise the remedy in sub-clause 26.7(b)(i), the Sub-Contractor shall have full liability for the remedial Sub-Contract Works undertaken notwithstanding by the Contractor, or other persons.

**26.8 Recurrence of Defects, etc.**

- (a) If during the Defects Liability Period:
  - (i) Defects rectified recur repeatedly, or at least 3 times; or
  - (ii) part, or parts of Equipment, or Plant or Sub-Contract Works are found, or observed to break down repeatedly, or at least 3 times despite repairs;then the provisions of sub-clause 26.8(b) shall apply.
  
- (b) In the case of recurring Defects under sub-clause 26.8(a)(i) the Contractor/C.R. may:
  - (i) require the Sub-Contractor to completely demolish, reconstruct, or replace the work involved; or
  - (ii) exercise the remedy pursuant to sub-clause 26.7(b)(iii)
  
- (c) In the case of sub-clause 26.8(a)(ii), the Contractor/C.R. may require the Sub-Contractor to replace the affected part, or parts immediately and in any event not later than the period specified in Appendix II at no cost and time liability to the Contractor.
  
- (d) A full report pertaining to:
  - (i) the recurring Defects; and/or
  - (ii) the repeated breakdowns.

shall be submitted to the Contractor/C.R. by the Sub-Contractor within 14 Days from the date of notice given by the Contractor/C.R..

- (e) Any defective:
  - (i) work rectified; or
  - (ii) part repaired, or replaced

shall itself be subject to a further 6 month Defects Liability Period from the date of such rectification, repair or replacement. Further the part of the Sub-Contract Works containing such Defects shall also be subject to a further 12 month Defects Liability Period from the date of such rectification, repair, or replacement provided that the Defects Liability Period of the Sub-Contract Works had not expired at the date of such rectification, repair or replacement.

## **26.9 Expiry of Defects Liability Period**

- (a) On the last day of the expiry of the:
  - (i) Defects Liability Period; or
  - (ii) any extension to the Defects Liability Period under this Clause 26.0;

The Contractor/C.R. shall hold a joint inspection with the Sub-Contractor's Representative (SC.R.) and/or the Employer at the Site to establish:

1. any Defects reported previously under sub-clause 26.4 that are still not rectified, or are outstanding; and
2. any new defects observed, or identified at the said joint inspection.

- (b) Following the above joint inspection, the Contractor/C.R. shall:
  - (i) prepare a consolidated schedule of Defects which the Contractor/C.R. shall issue to the Sub-Contractor not later than 14 Days of the said joint inspection; and
  - (ii) prescribe a period of not more than 3 months from the date of issue of the said schedule of Defects for the Sub-Contractor to remedy, or make good the same at its own cost.



- (c) The Contractor/C.R. shall not be allowed to issue:
- (i) any further schedule(s) of Defects; and/or
  - (ii) any further instructions to the Sub-Contractor to make good any new Defects after the 14<sup>th</sup> day following the joint inspection as specified in sub-clause 26.9(b)(i).
- (d) Upon receipt of the schedule of Defects specified in sub-clause 26.9(b), the Sub-Contractor shall proceed to remedy or make good the reported Defects within the period of time stipulated in the Contractor's/C.R.'s Instruction but not exceeding the same.
- (e) On the last day of the period prescribed in sub-clause 26.9(b)(ii), the Contractor/C.R. shall hold another joint inspection with the SC.R. and/or the Employer to establish if the Sub-Contractor has satisfactorily completed all the reported Defects in the schedule of Defects issued further to sub-clause 26.9(b).
- (f) (i) If, following the joint inspection of sub-clause 26.9(e), the Contractor/C.R. are of the opinion that the Sub-Contractor has satisfactorily rectified, or made good all the reported Defects in the schedule of Defects (of sub-clause 26.9(b)), the following shall apply:
1. the Contractor/C.R. shall issue a Certificate of Completion and Making Good Defects to the Sub-Contractor;
  2. the said Certificate shall be issued within 14 Days of the date of the joint inspection; and
  3. the date specified in such certificate shall be the date on which the Sub-Contractor shall be considered for the purposes of the Sub-Contract to have satisfactorily rectified, or made good such Defects.
- (ii) should the Contractor/C.R. fail and/or neglect to issue the said certificate within the period stipulated in sub-clause 26.9(f)(i), it shall be deemed that the Sub-Contractor has rectified, or made good all the reported Defects and the date of the joint inspection of sub-clause 26.9(e) shall be considered to be the date when the Sub-Contractor has discharged its obligations for the same.

- (g) In the event, following the joint inspection of sub-clause 26.9(e), the Contractor/C.R. are of the opinion that there are still Defects remaining outstanding and unrectified and that these Defects are either:
- (i) minor in nature; or
  - (ii) not material; and
  - (iii) it would be impracticable, or inconvenient for the Sub-Contractor to rectify or make good.

the Contractor/C.R. shall with the Employer's written consent then:

- 1. prepare and carry out an assessment of the diminution in value pursuant to sub-clause 26.7(b)(ii) for the said Defects; and
- 2. the Contractor/C.R. shall issue a Certificate of Completion and Making Good Defects in accordance with sub-clause 26.9(f) for the whole of the Sub-Contract Works.

- (h) (i) If, following the joint inspection of sub-clause 26.9(e), the Contractor/C.R. are of the opinion that there are still Defects remaining outstanding and unrectified and that these defects are:
- 1. serious, and/or
  - 2. material,

the Contractor/C.R. may exercise the following options:

- 1. carry out the remedial works pursuant to sub-clause 26.7(b)(i) and issue the Certificate of Completion and Making Good Defects for the remaining Sub-Contract Works in accordance with sub-clause 26.9(f); or
  - 2. subject to sub-clause 26.5(f), extend the Defects Liability Period by another 3 months for the Defects outstanding, or still unrectified but issue the Certificate of Completion and Making Good Defects for the remaining Sub-Contract Works in accordance with sub-clause 26.9(f).
- (ii) In the event the Defects Liability Period is extended under sub-clause 26.9(h)(i), the relevant insurances covers and Performance Security shall be increased by a corresponding amount for the said period of extension.

- (i) The Contractor/C.R. shall issue the Certificate of Completion and Making Good Defects under this sub-clause to the Sub-Contractor.

#### **26.10 Effect of the Certificate**

- (a) The Certificate of Completion and Making Good Defects shall finally discharge the Sub-Contractor from any physical attendance upon the Sub-Contract Works for the purpose of remedying the Defects, but shall not prejudice any other rights of the Contractor and/or the Employer in regard to latent defects, or other breaches of the Sub-Contract.
- (b) Notwithstanding the issue of the said certificate, the Sub-Contractor and the Contractor shall remain liable for the fulfillment of any obligations incurred under the provisions of the Sub-Contract prior to the issue of such certificate, which remain unfulfilled at the time the certificate is issued, and for the purpose of determining the nature and extent of any such obligation, the Sub-Contract shall be deemed to remain in force between the Parties hereto.
- (c) The provisions of sub-clauses 26.1 to 26.9 shall not derogate in any way whatsoever from the Sub-Contractor's liability under the Sub-Contract, or otherwise for defective work at law.

#### **26.11 Sub-Contractor's remaining obligations**

- (a) Upon receiving the Certificate of Completion and Making Good Defects under sub-clause 26.9 from the Contractor/C.R., the Sub-Contractor shall immediately remove any:
  - (i) of its remaining Plant and Equipment,
  - (ii) surplus material,
  - (iii) wreckage/rubbish and
  - (iv) Temporary Worksfrom the Site.
- (b) If all these items have not been removed from the Site by the Sub-Contractor within 28 Days after the Sub-contractor receives the said certificate from the Contractor/C.R.:

- (i) the Contractor with the Employer's consent may sell, or otherwise dispose of any remaining items as and when it deems fit; and
  - (ii) the Contractor shall be entitled to be paid all costs incurred in connection with, or attributable to such sale, or disposal and restoring the Site; and
  - (iii) any balance of the monies from the sale shall be paid to the Sub-Contractor.
- (c) If these monies are less than the Contractor's cost, the Contractor shall be entitled to recover such cost from:
- (i) any money due, or to become due to the Sub-Contractor under the Sub-Contract; and
  - (ii) failing which such cost shall be recovered from the Performance Security, or as a debt due from the Sub-Contractor.

#### **26.12 Overriding Obligations**

- (a) Without derogating from the requirements of the above-mentioned provisions, the following requirements in sub-clauses 26.12(b) to (g) below vis-à-vis the issue of the Sub-Contractor's liabilities and responsibilities for Defects apply equally.
- (b) All Defects in the Sub-Contract Works which the Contractor (whether or not at its own cost) is liable to make good under the Contract, shall be made good by the Sub-contractor. The Sub-Contractor shall make good such Defects with due expedition or within such times as may be instructed in writing by the Contractor/C.R.
- (c) Provided that if the Contractor is liable to make good such Defects but not at its cost, then the Contractor shall secure similar benefits for the Sub-Contractor and shall account to the Sub-Contractor for any money or credit actually received by it in respect of the same.
- (d) If the Contractor (whether by itself or any other person/party) executes any remedial work (whether permanent or temporary) to the Contract Works or to any part of the same as required by the Employer/E.R. or rendered necessary by reason of Defects in the Sub-Contract Works which are due to Materials, Goods, Plant, Equipment, design (if applicable) and/or workmanship not being in accordance with the Sub-Contract, then the Sub-Contractor shall pay or allow to the Contractor the cost of execution of such remedial work.

- (e) Provided that if the Contractor shall pay or allow the Employer the value of, or other agreed sum in respect of such work in lieu of executing the same, then the Sub-Contractor shall pay or allow the Contractor such value or other agreed sum as aforesaid.
- (f) 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 by the Employer/E.R. or rendered necessary by reason of Defects in the Contract Works which are due to Materials, Goods, Plant, Equipment, design (if applicable) and/or workmanship not being in accordance with the Contract, then the Contractor shall pay or allow the Sub-Contractor the cost of execution of such remedial work.
- (g) Provided that if instead of the Sub-Contractor actually executing such remedial work and in lieu of the same the Contractor shall pay or allow the Employer the value of or other agreed sum in respect of such remedial work, then the Contractor shall release the Sub-Contractor from the obligations to carry out the remedial work. Provided the Employer indemnifies the Contractor against any claim in respect of such remedial work, the Contractor shall likewise indemnify the Sub-Contractor.

#### **26.13 Servicing and Maintenance**

- (a) Following the issue of the relevant completion/handling over certificate for either the whole or particular Section(s) of the Sub-Contract Works, the Sub-Contractor shall be responsible for undertaking of the servicing and maintenance of all Works stated in the Sub-Contract documents for those Sub-Contract Works certified as being so completed/handed over.
- (b) The period of this servicing and maintenance (“the Maintenance Period”) obligation shall be for a duration as stipulated in Appendix II.
- (c) The extent and frequency of the servicing and maintenance shall be as stated in the Sub-Contract Documents and/or the relevant operation and maintenance manuals and/or the applicable manufacturer’s warranties/recommendations. The Sub-Contractor shall finalize the same with the Contractor/C.R. within 7 Days of the issue of the relevant completion certificate by the latter. It is hereby agreed that the Employer will undertake daily and weekly servicing and maintenance, with the Sub-Contractor expected to do the same on a monthly, quarterly, half-yearly and on a yearly basis unless expressly stipulated to the contrary in the Sub-Contract documents.

- (d) All costs incurred in such servicing and maintenance such as consumables, spares/replacement items, utilities, labour, handling, and transport shall be borne by the Sub-Contractor and shall be accordingly priced for in the Sub-Contract Sum. On no account will any claims over and above what has been so priced will be entertained by the Contractor/C.R.
- (e) It is the Sub-Contractor's express duty to keep proper records in the form of a maintenance register, of the various servicing and maintenance activities that it undertakes over the duration of the Maintenance Period. Each such record shall be signed off by the authorized representative(s) of the Sub-Contractor on each occasion and presented to the Contractor/C.R. and/or the Employer/E.R. for the latter's approval/endorsement. Unless and until all such records are so processed and approved/endorsed by the latter, the particular servicing and maintenance activity shall not be considered to be completed and the Sub-Contractor shall be deemed to be in default.
- (f) It is the Sub-Contractor's express obligation to notify the Contractor /C.R. and/or the Employer/E.R. in advance of each servicing and maintenance activity on details such as the date and time for undertaking the same, the nature and extent of access to the completed work required, the expected duration of the activity and other material information to enable the latter to ensure that such request can be satisfactorily and timeously met.
- (g) Should the Sub-Contractor fail to undertake the servicing and maintenance at all, or should it undertake the same erroneously and/or negligently, the Sub-Contractor shall be responsible for all the adverse ramifications of the same i.e. loss or damage to the works, and breach/nullification of the manufacturer's warranties. The Contractor/C.R. may employ third parties or the Contractor and/or the Employer may undertake the same themselves on the Sub-Contractor's behalf and deduct the costs incurred from any monies owing to the Sub-Contractor and/or as a claim for a debt due. For more serious defaults/breaches in the said obligation, the Contractor/C.R. may refuse or postpone the issuing of the Maintenance Certificate and may extend the said Period by not more than 6 months in total.

## **PART VII: PAYMENTS, VARIATIONS AND ADJUSTMENTS**

### **27.0 BASIS OF SUB-CONTRACT SUM**

#### **27.1 Alternative Adopted**

The basis of the Sub-Contract Sum shall be either:

- (a) the Sub-Contract Bills of Quantities; or
- (b) the Schedule of the Sub-Contract Works,

as stipulated in Appendix II.

#### **27.2 Sub-Contract Bills of Quantities**

- (a) The term "Sub-Contract Bills of Quantities" as used in these Conditions shall mean the priced bills of quantities included in the Sub-Contract subject to modifications and additions to the same by the Contractor/C.R. which form part of the Sub-Contract.
- (b) For the avoidance of doubt, the Sub-Contract Bills of Quantities shall form part of the Sub-Contract. The quantity of the works to be executed under the Sub-Contract shall be deemed to be that set out in the Sub-Contract Bills of Quantities which shall, pursuant to sub-clause 27.1(a), be the basis of the Sub-Contract Sum.
- (c) Any error in description or in quantity or in omission of items from the Sub-Contract Bills of Quantities shall not vitiate the Sub-Contract but shall be corrected by the Contractor/C.R. and such correction shall be deemed a Variation under Clause 28.0.
- (d) Where quantities set out in the Sub-Contract Bills of Quantities are indicated as "provisional", such quantities are the estimated quantities of the work and shall be subject to re-measurement upon the completion of the Sub-Contract Works. For the avoidance of doubt, no instruction shall be required for the increase or decrease in the quantity of any work where such increase or decrease is the result of the re-measurement of the provisional quantities stated in the Sub-Contract Bills of Quantities but shall be deemed to be a Variation.

- (e) Where any of the Sub-Contract Works measured are as described in the Sub-Contract Bills of Quantities, the valuation of such Sub-Contract Works shall, subject to Clause 28.0, be at the rates for the Sub-Contract Works stated in the Sub-Contract Bills of Quantities irrespective of the actual re-measurement quantities.
- (f) Unless otherwise stated in the Sub-Contract, the Sub-Contract Bills of Quantities shall be prepared in accordance with the method of measurement as stipulated in the Sub-Contract and/or as mutually agreed to by the Parties. Any deviation from the said standard method of measurement shall be specified in the Sub-Contract Bills of Quantities or elsewhere in the Sub-Contract Documents.

### **27.3 Schedule of Sub-Contract Works**

- (a) Where the basis of the Sub-Contract Sum is as stipulated in sub-clause 27.1(b), the quality and quantity of the Sub-Contract Works included in the Sub-Contract Sum shall be that:
  - (i) shown in the Sub-Contract Drawings, and/or
  - (ii) described in the Sub-Contract Specifications, and/or
  - (iii) stipulated in the Contractor's Requirements; and/or
  - (iv) stated in the Schedule of Sub-Contract Works; and/or
  - (v) any necessary and incidental work required to complete the Sub-Contract Works whether mentioned in sub-clauses 27.3(a)(i) to(iv) above or not.
- (b) Where quantities of work are given in the Sub-Contract Drawings and/or the Specifications and/or the Contractor's Requirements and/or the Schedule of Sub-Contract Works for the purpose of Sub-Contractor arriving at the Sub-Contract Sum, unless otherwise stated to the contrary, these shall be deemed to form part of this Sub-Contract and the method of measurement (if any) of, and payment for the same shall be made in accordance with the rules (if any) as stated in the Sub-Contract Documents. For the purposes of payment, these shall not be conclusive but only indicative and the risk of any error in using these to arrive at the Contract Sum shall be borne by the Sub-Contractor.



## **27.4 Inclusion of Contingency and Provisional Sums**

- (a) For the particular purposes of the Contractor/Employer, the Sub-Contract may include express provisions covering Contingency Sums and/or Provisional Sums; which Sums shall be shown in the Sub-Contract Sum as separate Items.
- (b) Further and in amplification of the meanings as provided for in the relevant provisions of the Contract Conditions,, the said terms shall carry the following particular meaning in the context of the instant Sub-Contract:
  - (i) Contingency Sums shall mean the sums provided for work or expenditure which cannot be foreseen at the time the tender documents are issued by the Contractor to the Sub-Contractor; and
  - (ii) Provisional Sums shall mean a sums provided for work or expenditure which has not been quantified or detailed at the time the tender documents are issued by the Contractor to the Sub-Contractor.
- (c) The Contingency and/or Provisional Sums may be expended at such times and in such amounts as the Contractor/C.R. may direct in the form of written instructions to the Sub-Contractor.
- (d) Such sums if not used either wholly or in part shall be deducted from the Sub-Contract Sum pursuant to Clause 32.0 and/or 33.0.
- (e) If instructed by the Contractor/C.R., the value of such work executed by the Sub-Contractor shall be set-off against all such Contingency and/or Provisional Sums and the balance shall be added to or deducted from the Sub-Contract Sum pursuant to Clause 33.0 as the case may be.

## **28.0 VARIATIONS AND VALUATION**

### **28.1 Meaning of the term “Variation”**

- (a) The term ‘Variation’ as used in the Sub-Contract shall mean a change in the Sub-Contract Documents which necessitates the alteration or modification of the design (if any), quality or quantity of the Sub-Contract Works as described by or referred therein and affects the Sub-Contract Sum and/or the time for completion.

- (b) It shall include, inter alia, the following:
  - (i) the addition, omission, or substitution of any work;
  - (ii) the alteration of the kind or standard of any of the Materials, Goods, Plant and/or Equipment to be used in the Sub-Contract Works; or
  - (iii) the removal from the Site of any work executed or Materials or Goods or Plant or Equipment brought thereon by the Sub-Contractor for the purposes of the Sub-Contract Works other than Materials or Goods or Plant or Equipment which are not in accordance with the Sub-Contract.
  - (iv) changes to the levels, positions and/or dimensions of any item of the Sub-Contract Works;
  - (v) changes to the sequence, method of working or timing of the execution of the Sub-Contract Works; and
  - (vi) omission of any work unless it is to be carried out by others.
  
- (c) It shall exclude:
  - (i) any changes intended to rectify any negligence, omission, default and/or breach of contract by the Sub-Contractor; which changes shall be executed by the Sub-Contractor at its own cost and/or time; and
  - (ii) the omission of any work which is to be carried out by others.

## **28.2 Right to Vary**

- (a) Variations may be initiated or authorized in writing by the Contractor/C.R. at any time prior to the issuing of the Certificate of Practical Completion for the Sub-Contract Works.
  
- (b) The Contractor/C.R. may also issue to the Sub-Contractor any written instruction from the Employer/E.R. given under the Contract affecting the Sub-Contract Works including the ordering of any Variation to the Sub-Contract Works. If so undertaken, the Employer's/E.R.'s said instructions shall be deemed to instructions and/or Variations issued by the Contractor/C.R. for the purposes of the Sub-Contract and this Clause.

- (c) In amplification of the foregoing, the Contractor/C.R. may issue written instructions to the Sub-Contractor requiring a Variation to the Sub-Contract Works and the Contractor/C.R. may sanction in writing any Variation to the Sub-Contract Works instructed by the Contractor/C.R. otherwise than pursuant to an instruction of the Contractor/C.R.

### **28.3 Sub-Contractor to Comply**

The Sub-Contractor shall comply with and carry out any Variations issued pursuant to sub-clause 28.2 and shall adhere strictly to and fully comply with the procedures set out in the Sub-Contract. Save as aforesaid, no Variation of the Sub-Contract Works shall be made or allowed by the Sub-Contractor.

### **28.4 Sub-Contractor not to Vary**

The Sub-Contractor shall not make any alteration and/or modification of the Sub-Contract Works, unless and until the Contractor/C.R. instructs or sanctions a Variation.

### **28.5 No Variation shall vitiate this Sub-Contract**

No variation required or subsequently sanctioned by the Contractor/C.R. shall vitiate this Sub-Contract.

### **28.6 Valuation of Variations**

- (a) The valuation of all variations issued under this Clause 28.0 shall be determined by the Contractor/C.R. in accordance with the applicable provisions laid down in the Contract; which provisions shall apply *mutatis mutandis*.
- (b) Where this Sub-Contract contains a schedule of rates for Variation purposes ("Schedule of Rates for the Sub-Contract Works"), such rates shall be allowed to the Sub-Contractor in determining the value of the said Variations in substitution for any other rates which would otherwise be applicable under this Sub-Contract.

### **28.7 Adjustment and Payment**

The Sub-Contract Sum shall be accordingly adjusted consequent to the valuation under sub-clause 28.6 and the Sub-Contractor shall be paid in accordance with Clause 29.0 and 32.0 of the Sub-Contract.

## **29.0 PAYMENT TO SUB-CONTRACTOR AND INTERIM CERTIFICATES**

### **29.1 General**

Subject to the Contractor's rights of set-off and/or abatement under the Sub-Contract, or the common law or any written law, payment for the supply of Materials, Goods, Plant and Equipment and the performance of the Works under the Sub-Contract (inclusive of all design work) shall be made to the Sub-Contractor in the manner as set out in this Clause and the Appendix II.

### **29.2 Application for Payment**

- (a) The Sub-Contractor shall submit to the Contractor/C.R., at such times and such intervals as may be specified in Appendix II and/or as mutually agreed to by the parties, an application for payment referred to as the "Statement of Work Done" in such form and quantity as the Contractor/C.R. directs, showing in detail the amounts to which the Sub-Contractor considers itself to be entitled together with all necessary supporting documents.
- (b) The purpose of the application adverted to in sub-clause 29.1(a) shall be to enable the Contractor/C.R. to undertake the necessary valuation of the work done and to issue the relevant Interim Certificate.
- (c) If the Sub-Contractor fails to make an application for payment under sub-clause 29.1(a), it shall be deemed that the Sub-Contractor has waived its contractual entitlement for that Interim Certificate but the Contractor/C.R. may, (but is not obliged to) nevertheless proceed to undertake the necessary valuation and certification on its own volition and the sum so certified shall not be subject to dispute by the Sub-Contractor. However, the Contractor/C.R. may not proceed to undertake any certification at all without being in default.
- (d) After the issue of the Certificate of Practical Completion, the Contractor/C.R. is contractually obliged to issue only two further types of payment certificates i.e. the Penultimate Certificate and Final Certificate. However, the Contractor/C.R. may issue such further payment certificates during the Defects Liability Period which may not fall under the said types of payment certificates if the Contractor/C.R. deems necessary under the particular circumstances and/or if necessitated by the provisions of Section 30 (3) of CIPAA 2012 and/or other applicable express provisions of the Sub-Contract.

- (e) The Parties hereby agree that total payment due to the Sub-Contractor for work done under the Sub-Contract shall be paid such through the Interim, Penultimate and Final Certificates (and/or other further payment certificates), that the finalization of the amount due shall be undertaken progressively on a “stage”/”milestone, or “elemental” basis. To this effect, the parties together with the C.R. shall endeavor to make all relevant adjustments to the Sub-Contract Sum as stated in Clause 33.0 in the respective Interim Certificates and the Penultimate Certificates, with any outstanding/residual adjustments to be undertaken only in the Final Account/Final Certificate.

### **29.3 Statement of work done**

- (a) Unless otherwise approved by the Contractor/C.R., the Statement of Work Done shall clearly stipulate and particularize the amounts to which the Sub-Contractor considers itself to be entitled to up to the last day of the relevant interval in respect of:
  - (i) the value of the Sub-Contract Works properly executed (including Works executed pursuant to the Contractor’s/C.R.’s instructions under Clauses 27.0 for Provisional Quantities, and 28.0 for Variations) subject to any agreement between the parties as to stage/milestone payments for the Sub-Contract Works, or any part of the Works stipulated in the Appendix II;
  - (ii) any other items shown and separately priced in the Sub-Contract including those for constructional Plant/Equipment, Temporary Works, preliminaries, etc.;
  - (iii) the percentage (as stated in Appendix II) of any Materials, Goods, Plant and/or Equipment delivered by the Sub-Contractor on Site for incorporation into the Sub-Contract Works;
  - (iv) the percentage (as stated in Appendix II) of any Materials, Goods, Plant and/ or equipment stored off-site (if permitted under the Sub-Contract);
  - (v) the value of any other sum expressly permitted as claimable under the Sub-Contract; and
  - (vi) any other sum to which the Sub-Contractor may consider itself to be properly entitled to under the Sub-Contract with full itemization of such sums cross-referenced with the relevant provisions of the Sub-Contract.

- (b) Unless otherwise approved by the Contractor/C.R., the Sub-Contractor shall submit all necessary supporting documents, including, but not limited to the following as applicable:
- (i) Delivery orders for Materials, Goods, Plant and Equipment;
  - (ii) Purchase Orders and/or invoices;
  - (iii) Installation manuals for Plant, Equipment, and proprietary systems;
  - (iv) Factory test certificates (as applicable) for Materials, Goods, Plant, Equipment and/or proprietary systems;
  - (v) Certificates of quality (as applicable);
  - (vi) Documents evidencing ownership of the Materials, Goods, Plant, Equipment, and proprietary systems ;
  - (vii) Certificates on waiver of retention of title clauses (as applicable);
  - (viii) Calculations, computations, quantification, data, information and measurements; and
  - (viii) Any other document mutually agreed to by the Parties and /or deemed necessary by the Contractor/C.R.
- (c) The Statement of Work done and the supporting documents stipulated in sub-clause 29.3(b) shall be submitted in triplicate; each and every statement and document being suitably identified, paged (continuously), dated and signed by the Sub-Contractor's Representative (SC.R.) or any other authorized representative. Except for the Statement of Work done which shall also be submitted in a soft copy, the other documents shall be in hard copy unless mutually agreed to the contrary by the Parties.

#### **29.4 Valuation of Work**

- (a) The measurement (if applicable) and valuation of the Sub-Contract Works properly executed by the Sub-Contractor shall be carried out by the Contractor/C.R. on a date as mutually agreed to by the Parties but not later than 21 Days of the Contractor's/C.R.'s receipt of the Sub-Contractor's complete application for payment under sub-clause 41.2(a).

- (b) The pre-conditions to the Contractor's/C.R.'s valuation shall be:
- (i) execution of sufficient work by the Sub-Contractor; and
  - (ii) formal application for payment by the Sub-Contractor; and
  - (iii) the reaching of the stipulated or agreed stage/milestone and/or date for valuation;
  - (iv) for stage/milestone payment, the satisfactory handing over of the relevant deliverables for that stage/milestone e.g. design drawings/calculations, as-built drawings, technical manuals; and
  - (v) the fulfillment of any other requirements stipulated in the Sub-Contract, or agreed to by the Parties.
- (c) For the first interim valuation, the Sub-Contractor must have reached the minimum value of work executed inclusive of unfixed Materials, Goods, Plant and/ or Equipment delivered to Site (and/or "off-site", if permitted) up to the sum as stipulated in Appendix II. In addition, unless otherwise agreed to by the Contractor/C.R., the Sub-Contractor shall have delivered to the Contractor/C.R., the following documents:
- (i) Letter of Acceptance duly acknowledged, signed and witnessed; and
  - (ii) All relevant insurance cover policies stipulated in the Sub-Contract and/or the official premium receipts of the same; and
  - (iii) The relevant Performance Security as stipulated in the Sub-Contract; and
  - (iv) The relevant programme stipulated in the Sub-Contract; and
  - (v) All relevant indemnities to the Contractor in respect of personal injuries, damage to property, etc. as stipulated in the Sub-Contract; and
  - (vi) All other documents as expressly stipulated in the relevant provisions of the Sub-Contract.

- (d) For the subsequent valuations, the Sub-Contractor must have reached the minimum value of work executed inclusive of unfixed Materials, Goods, Plant and/or Equipment delivered to Site (and/or “off-site”, if permitted) up to the sum stipulated in Appendix II.
- (e) Valuation shall be undertaken in line with recognized/mutually agreed valuation principles and the relevant stipulations of the Sub-Contract. The pre-requisite shall be that all design (if any) and/or physical Works executed inclusive of any varied work carried out, must have been, in the opinion of the Contractor/C.R. “properly executed” i.e. satisfactorily comply with the Sub-Contract.
- (f) Unfixed Materials, Goods, Plant and/or Equipment delivered to Site shall be valued according to the formula stipulated in the Appendix II provided the following conditions precedent are met:
  - (i) the Materials, Goods, Plant and/or Equipment must be for incorporation into the Sub-Contract Works; and
  - (ii) these must be delivered to, or adjacent to the Site of the Sub-Contract Works; and
  - (iii) the Materials, Goods, Plant and/or Equipment must not, in relation to the accepted programme (in Clause 20.0), be prematurely delivered to the Site; and
  - (iv) these must be properly protected against the elements of the weather, deterioration, theft and/or other loss or damage; and
  - (v) title in such items must rest in the Sub-Contractor, or the Sub-Contractor must either get the relevant waivers/dispensations of the rightful owners, or must be able and willing to pass good title to the Contractor upon payment of the sums certified; and
  - (vi) submission of all other relevant technical documents as expressly stipulated in the particular provisions of the Sub-Contract.
- (g) Where the Sub-Contract expressly permits, payment for unfixed Materials, Good, Plant and/or Equipment stored “off-Site”, the valuation shall be according to the formula stipulated in the Appendix II and subject to the conditions as stated in such express provisions applicable to this subject matter.



## 29.5 Certification

- (a) The Contractor/C.R. shall issue an Interim Certificate to the Sub-Contractor not later than 14 Days of the completion of the valuation of the Works in sub-clause 29.4 above.
- (b) The conditions precedent to the Contractor's/C.R.'s certification shall be:
  - (i) the stipulated period and/or stage/milestone (as applicable) for certification must have been reached;
  - (ii) the valuation must have been satisfactorily undertaken;
  - (iii) the stipulated minimum value of work permitting certification must have been achieved; and
  - (iv) all other pre-conditions as expressly stipulated in the Sub-Contract must have been satisfied; and
  - (v) the certifier is satisfied, based on its opinion, that taking all circumstances into consideration, a certificate should be issued.
- (c) Any Interim Certificate issued shall state the sums to which the Sub-Contractor is in the opinion of the Contractor/C.R. entitled in respect of each of the amounts claimed in the Statement of Work Done less:
  - (i) Retention Monies under Clause 31.0;
  - (ii) any amount or amounts previously certified under this Clause 29.0;
  - (iii) any sum to be deducted under the relevant express provisions of the Sub-Contract.
- (d) Pursuant to sub-clause 29.5 (c), or in the event that sub-clause 29.2 (c) is applicable, the Contractor/C.R. may at its discretion but is not obliged to, issue an Interim Certificate if either:
  - (i) the total amounts to which the Sub-Contractor considers itself entitled to in the Statement of Work Done; or

- (ii) the total amounts which the Contractor/C.R. in its opinion considers the Sub-Contractor to be entitled to,

is less than the minimum amount stated in Appendix II.

- (e) If the Contractor/C.R. decides not to issue an Interim Certificate, the Contractor/C.R. shall notify the Sub-Contractor in writing within 21 Days of receiving the Statement of Work Done stating the reason(s) for its decision.
- (f) Without prejudice to the Contractor's other rights and remedies, the Contractor/C.R. may certify that the Contractor withhold payments to the Sub-Contractor at any time, if, in the Contractor's/C.R.'s opinion the Sub-Contractor's work performance fails to comply in any respect to the provisions of the Sub-Contract.

#### **29.6 Correction of Certificates**

- (a) The Contractor/C.R. may by any Interim Certificate make any correction or modification in respect of any error whether arithmetical or otherwise in any previous Interim Certificate which has been issued by it, and make such adjustments as may be necessary in the amount of payment due and payable to the Sub-Contractor to take into account any overvaluation or undervaluation in any previous Interim Certificate.
- (b) Further to and in amplification of sub-clause 29.6(a), the Contractor/C.R. may withdraw or reserve any Interim Certificate that is defective and/or contains patent errors on the face of it.
- (c) Where the amount paid by the Contractor pursuant to any error in a previous Interim Certificate exceeds any amount due and payable to the Sub-Contractor under any subsequent Interim Certificates or the Final Certificate (under Clause 32.0), such excess shall be recoverable by the Contractor from the Sub-Contractor.

#### **29.7 Honouring of Certificates**

- (a) The Contractor shall pay the amount certified to the Sub-Contractor within the period of honouring certificates from the date of issuance of the Interim Certificate (less any Liquidated Damages and other sums which the Contractor is expressly entitled to deduct from the certified sum under the Sub-Contract). The period of honouring certificates shall be as stated in Appendix II and shall commence as follows:

- (i) if the Sub-Contractor is a taxable person under the Goods and Services Act 2014 (if applicable), from the date of presentation of such certificate together with a tax invoice which is issued in accordance with the said Act; or
- (ii) if the Sub-Contractor is not a taxable person under the Goods and Services Act 2014 (if applicable), from the date of issuance of the Interim Certificate.

For the avoidance of doubt, the submission of the tax invoice under the Goods and Services Act 2014 (if applicable) shall be a condition precedent to payment under this Clause, provided that the Sub-Contractor is a taxable person under the Goods and Services Act 2014 (if applicable).

- (b) In the event, the Contractor exercises its right of recovery in respect of any payment due to the Sub-Contractor in accordance with this Clause 29.0, the amount so recovered or deducted by the Contractor shall be deemed as payment made by the Contractor to the Sub-Contractor under this Clause 29.0.

#### **29.8 Suspension of Works Due to Non-Payment**

- (a) Without prejudice to the Sub-Contractor's other rights and remedies which he may possess, 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 certified sum under the Sub-Contract) and such default shall continue for 14 Days from the receipt of a written notice delivered in accordance with Clause 53.0 from the Sub-Contractor stating that if payment is not made within the 14 Days, the Sub-Contractor may by a further written notice delivered as hereinbefore, forthwith suspend the execution of the Sub-Contract Works until such time payment is made. Provided always that such notice shall not be given unreasonably or vexatiously.
- (b) For the avoidance of doubt, the Sub-Contractor in exercising its right to suspend under Clause 29.8(a):
  - (i) is not treated to be in breach of contract, and
  - (ii) is entitled to a reasonable extension of time under Clause 21.0 and/or any direct loss and/or expense incurred under Clause 44.0 as a result of the suspension.

- (c) The Sub-Contractor shall as soon as practicable, but not later than 14 Days after having been paid the said amount due, resume performance of the Sub-Contract Works in accordance with the Sub-Contract

If the Sub-Contractor suspends the Sub-Contract Works in accordance with the provisions of Clauses 29.8, it shall secure and protect the said Works during the period of suspension and ensure that there is separate cessation insurance cover for all the risks specified in the relevant Clauses, for the whole period of suspension. The cost incurred for such protection and cessation insurance cover shall be added to the Sub-Contract Sum.

## **29.9 Direct Payment Pursuant to Section 30(3) of CIPAA (if applicable)**

- (a) 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 Security.
- (b) 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.

## **29A.0 ADVANCE PAYMENT (OPTIONAL)**

### **29A.1 Quantum of Advance Payment**

- (a) The Contractor shall make an advance payment, as an interest-free loan for mobilization, when the Sub-Contractor satisfactorily complies with the pre-conditions stipulated in sub-clause 29A.2 below.
- (b) The quantum of the advance payment shall be a percentage of the Builder's Work (defined as the Sub-Contract Sum less Provisional Sums) as stated in Appendix II.
- (c) The quantum of the advance payment shall be subject to a maximum limit as stipulated in Appendix II.

## **29A.2 Pre-Conditions to Advance Payment**

- (a) The Sub-Contractor shall be entitled to an advance payment as stipulated in sub-clause 29A.1 on satisfactory compliance with the following conditions:
  - (i) on return of the Letter of Acceptance duly signed by the Sub-Contractor together with the Performance Security, insurance cover policies, confirmation from SOCSO Authorities(if applicable) and the receipts of all premiums paid; and
  - (ii) production of a Banker's Guarantee in the Contractor approved format equal in value to the advance proposal to be paid; and
  - (iii) submission of the above-mentioned Banker's Guarantee not later than 1 month from the date of possession of Site.
- (b) Unless the conditions stipulated in sub-clause 29A.2(a) above are complied with, or the Contractor grants a waiver in writing to the same, the Sub-Contractor shall not be entitled to the said advance payment.

## **29A.3 Validity of Banker's Guarantee**

- (a) The Sub-Contractor shall ensure that the Banker's Guarantee is valid and enforceable until the advance payment has been repaid in full to the Contractor.
- (b) If the terms of the Banker's Guarantee specify its expiry date, and the advance payment has not been repaid by a date 30 Days prior to the stated expiry date, the Sub-Contractor shall extend the validity of the Banker's Guarantee until the advance payment has been repaid in full.
- (c) If the Sub-Contractor fails to extend the Banker's Guarantee in default of sub-clause 29A.3(b), the Contractor shall be entitled, at any time, to call upon the Banker's Guarantee wholly or partially as it deems fit in order to satisfy any entitlement that the Contractor may have to compensation from the Sub-Contractor.
- (d) The provisions of sub-clause 10.8 shall apply *mutatis mutandis* to the Banker's Guarantee in the event a call is made by the Contractor pursuant to sub-clause 29A.3(c).

#### **29A.4 Recoupment of the Advance Payment**

- (a) The advance payment shall be recouped when the cumulative value of the Builder's Work (as defined in sub-clause 29A.1(b)) executed and certified (including the amount certified for materials on site) reaches the percentage stated in Appendix II.
- (b) The recoupment shall be made from each Interim Certificate by way of a fixed percentage deduction from the total certified value of the Builder's Work executed (including the amount certified for materials on site) during the period covered by an Interim Certificate, in all the subsequent Interim Certificates on the basis that the advance payment made shall be fully recovered in the Interim Certificate in which the cumulative total certified value of the Builder's Work executed (including the amount certified for materials on site) reaches 75% of the total Sub-Contract value of the Builder's Work.
- (c) The deduction shall be calculated as follows:

$$RM D = 200 \times \frac{RM A}{RM B} \text{ percent of } RM P$$

Where:

- (i) RM D = cumulative deduction to be made in Interim Certificate
- (ii) RM A = total amount of advance paid
- (iii) RM B = total Sub-Contract value of Builder's Work
- (iv) RM P = gross certified value of Builder's Work executed (including the amount certified for materials on Site) or cumulative scheduled payments in excess of the percentage stipulated in Appendix II of RM B.

#### **29A.4. Termination of liability for Banker's Guarantee**

- (a) The liability under the Banker's Guarantee given pursuant to this Clause for the securing of the advance payment shall be terminated upon the realization by the Contractor of the full sum of the advance payment made to the Sub-Contractor.
- (b) However, if the full sum of the advance payment made to the Sub-Contractor cannot be realized before:

- (i) the completion date of the Sub-Contract or any authorized extension thereof; or
- (ii) the determination of the Sub-Contractor's employment; or
- (iii) the termination of the Sub-Contract.

as the case may be, then the whole of the balance still outstanding and repayable to the Contractor, shall be immediately recovered from the Banker's Guarantee for advance payment and/or from any monies due or to become due to the Sub-Contractor, and/or as a debt due and payable by the Sub-Contractor to the Contractor.

### **30.0 UNFIXED MATERIALS, GOODS, PLANT AND EQUIPMENT**

#### **30.1 Payment for Materials, Goods, Plant or Equipment delivered to Site**

Unfixed Materials, Goods, Plant or Equipment delivered to Site shall be valued according to the formula stipulated in Appendix II provided the following conditions precedent are met:

- (a) the Materials, Goods, Plant or Equipment must be for incorporation into the Sub-Contract Works; and
- (b) these must be delivered to, or adjacent to the Site of the Sub-Contract Works; and
- (c) the Materials, Goods, Plant or Equipment must not, in relation to the accepted programme of Sub-Contract Works (in Clause 20.0), be prematurely delivered to the Site; and
- (d) these must be properly protected against the elements of the weather, deterioration, theft and/or other loss or damage; and
- (e) title in such Materials, Goods, Plant and/or Equipment must rest in the Sub-Contractor, or the Sub-Contractor must either get the relevant waivers/dispensations of the lawful owners, or must be able and willing to pass good title to the Contractor upon payment of the sums certified; and
- (f) submission of all other relevant documents as expressly stipulated in the particular provisions of the Sub-Contract.

#### **30.2 Payment for Materials, Goods or Equipment stored "off-Site"**

- (a) The Contractor may, but is not obliged to pay the Sub-Contractor for Materials, Goods., Plant and/or Equipment stored off -Site. Such payment shall be subject to any conditions precedent that the Contractor may impose on the Sub-Contractor and the percentage value shall be as shown in Appendix II.
  
- (b) The conditions precedent referred to in sub-clause (a) shall be (but not limited) to the following:
  - (i) The documents stipulated in sub-clause (c) are submitted;
  
  - (ii) The Materials, Goods, Plant and/or Equipment are intended for incorporation into the Sub-Contract Works;
  
  - (iii) The said items are in accordance with the Sub-Contract;
  
  - (iv) The Materials, Goods, Plant and/or Equipment are located in the country where the Sub-Contract Works are being undertaken and have been and are either set apart at the premises where they have been manufactured, or assembled, or are suitably stored and in any case visibly marked or identified in a manner directed by the Contractor/C.R. and properly protected from loss and damage and the weather;
  
  - (v) The progress of the Sub-Contract is such that the Contractor/C.R. is satisfied that the said Materials, Goods, Plant and/or Equipment cannot at the time of certification be fully and properly incorporated into the Sub-Contract Works;
  
  - (vi) The Contractor/C.R. is satisfied that the Materials, Goods, Plant and/or Equipment are not prematurely delivered and there is inadequate storage space at the Site or such items if brought to the Site cannot be adequately protected against theft, damage, loss or injury.
  
  - (vii) The Sub-Contractor provides the Contractor/C.R. with reasonable proof that the said items are properly insured against theft, damages, loss or injury for their full value under a policy of insurance cover protecting the interests of the Contractor and the Sub-Contractor in respect of all risks (save only the excepted risks) referred to in the relevant insurance cover Clause during the period commencing with the transfer of the property in the said items to the Sub-Contractor until they are delivered to the Site;



- (viii) Property in the said Materials, Goods, Plant and/or Equipment shall pass to the Contractor and/or the Employer when payment is made for the same in accordance with Clause 29.0;
  - (ix) The Contractor shall not at any time be liable for damage, loss or injury to any of the said items except and to the extent that the same is due to any excepted risks or any act or neglect of the Contractor or of any person for whom the Contractor is responsible; and
  - (x) If the Materials, Goods, Plant and/or Equipment for which payment has been made by the Contractor have been removed from the place of manufacture, assembly or storage to another destination other than the Site or should the Sub-Contractor fail to deliver any such item for which payment has been made by the Contractor to the Site as and when directed by the Contractor/C.R. without reasonable cause or have an intent to deceive or defraud the Contractor, such amount paid by the Contractor for any such Materials, Goods, Plant and/or Equipment moved or delivered shall be fully recoverable from the Sub-Contractor.
- (c) Unless otherwise stipulated or directed by the Contractor/C.R., when making claims for payment under Clause 29.0, the Sub-Contractor shall submit all documents as may be necessary or requested by the Contractor/C.R., including (but not limited to the following):
- (i) Delivery orders;
  - (ii) Invoices (where applicable)
  - (iii) Certificates of quality;
  - (iv) Statements on waiver of retention of title clauses;
  - (v) Installation manuals (for Plant/Equipment); and
  - (vi) Test certificates (where applicable)
- (d) The certificate of quality shall certify to the effect that the Materials, Goods, Plant and/or Equipment supplied are new and in all respects are in accordance with the provisions of the Sub-Contract.
- (e) The statement under sub-clause (d) above shall state unequivocally that the said items supplied to the Contractor by the Sub-Contractor under the Sub-Contract are

not subject to any retention of title by any third party. The Sub-Contractor shall also produce letters of undertaking substantially in the form provided by the Contractor from its Sub-Subcontractors that:

- (i) they will not bring any claim, action or proceedings in connection with or arising from any issues or disputes on the ownership, title, interests and rights that they may have in relation to the Materials Goods, Plant and/or Equipment which may affect the interest of the Contractor/Employer in any way whatsoever; and/or
- (ii) they will take over and complete the remaining works under the Sub-Contract (including maintenance and support services) in the event of any failure or default of the Sub-Contractor in performing its obligations under the Sub-Contract in respect to these items.

### **30.3 Unfixed Materials, Goods, Plant and Equipment on Site**

Unfixed Materials, Goods, Plant and/or Equipment whether stored on the Site or off-Site and intended for incorporation into the Sub-Contract Works therein, shall not be removed except for use upon the Sub-Contract Works, unless the Contractor/C.R. has consented in writing to such removal. Where the Contractor/C.R. has included the value of such items in any Interim Certificate in accordance with Clause 29.0, under which the Sub-Contractor has received payment, such items shall become the property of the Contractor, but the Sub-Contractor shall remain responsible for any loss or damage to the same until the issue of the relevant completion certificate for the Sub-Contract Works.

## **31.0 RETENTION MONEY**

### **31.1 General**

- (a) Subject to the relevant provisions of the Contract Conditions which shall apply mutatis mutandis provided that they are not repugnant to Clause 31.0, the stipulations of Clause 31.0 shall apply in regard to the Retention Money under the Sub-Contract. Accordingly, retention monies shall be deducted for each payment due under this Sub-Contract at the same percentage as the retention percentage under the Contract. This shall be deducted until the sum of the amounts so retained equals the Sub-Contract limit of retention. The Sub-Contract limit of retention shall be the amount calculated by applying the same percentage as the limit of Retention Money stated under the Contract to the Sub-Contract Sum.

- (b) Provided that the Contractor's interest in such Retention Money, whether:
- (i) it is included in the amounts retained by the Employer under the Contract and held by it, or
  - (ii) it is held by the Contractor,

is fiduciary as trustee for the Sub-Contractor (without obligation to invest) in the same manner as provided under the particular provisions of the Contract Conditions. The certificate of payment to Sub-Contractor pursuant to Clause 29.0 may show deduction of Retention Money in accordance with this sub-clause.

- (c) Upon the issuance of the Certificate of Practical Completion of the Sub-Contract Works under Clause 22.0 and subject to the Contractor's right of deduction under Clause 33.0, the Sub-Contractor shall be entitled to the release of one half of the Retention Money under the Sub-Contract. The Contractor/C.R. shall, following the issuance of the Certificate of Practical Completion of the Sub-Contract Works, include such release of the Retention Money in the next certificate of payment to the Sub-Contractor.
- (d) Upon the expiry of the Defects Liability Period or the issuance of the Certificate Making Good of Defects, whichever is later, and subject to the Contractor's right of deduction under Clause 33.0, the Sub-Contractor shall be entitled to the release of the residual amount of the Retention Money under the Sub-Contract. The Contractor/C.R. shall, following the issuance of the said Certificate of Making Good of Defects, include such release of the Retention Money in the next certificate of payment to the Sub-Contractor.

## **32.0 FINAL ACCOUNT AND FINAL CERTIFICATE**

### **32.1 Final Claim Statement for Sub-Contract Works**

- (a) The Sub-Contractor shall make an application to the Contractor/C.R. for the Final Certificate within 14 Days after the issue of either:
- (i) the Certificate of Completion of Making Good Defects for the whole Sub-Contract Works; or

- (ii) the last Certificate of Completion of Making Good Defects in the event of Sectional Completion.
- (b) The application for the Final Certificate shall be accompanied by a statement (called the "Final Claim Statement for the Sub-Contract Works") in the quantity, form and content as may be prescribed by the Contractor /C.R.

### **32.2 Sub-Contract Final Account and Final Certificate to Sub-Contractor**

- (a) The Contractor/C.R. shall not later than 3 months after the issue of the Certificate of Completion and Making Good Defects of either the:
  - (i) whole Sub-Contract Works; or
  - (ii) the last section of the Sub-Contract Works, in the case of completion in Sections.

prepare and issue to the Sub-Contractor with the Final Account (called "the Sub-Contract Final Account")

- (b) The Sub-Contract Final Account shall state:
  - (i) the adjustments which the Contractor/C.R. considers should be made to the Sub-Contract Sum;
  - (ii) the amounts to which the Contractor/C.R. considers that the Sub-Contractor is entitled under the express provisions of the Sub-Contract;
  - (iii) the amounts to which the Contractor/C.R. considers that the Contractor is entitled under the express provisions of the Sub-Contract.

provided always that the Contractor/C.R. shall be required to state in the Sub-Contract Final Account any amount which the Contractor is entitled to set-off pursuant to Clause 33.0.

- (c) Within the period of honouring certificate stated in Clause 29.0 of the Sub-Contract Conditions, the Contractor shall pay to the Sub-Contractor such sum due as stated in the Final Certificate to the Sub-Contractor.
- (d) Provided always that no final payment shall be made to the Sub-Contractor unless and until the Sub-Contractor has given:

- (i) an undertaking to complete the making good of any latent Defects,
- (ii) a written discharge which confirms that the total of the Final Claim Statement represents full and final settlement of all monies due to the Sub-Contractor under or in connection with the Sub-Contractor.
- (iii) any warranty of the Sub-Contract Works which the Contractor is required to give to the Employer or to procure from the Sub-Contractor and to give to the Employer under the terms of the Contract, and
- (iv) any warranty/guarantee under Clause 16.0 which the Sub-Contractor is required to give to the Employer under the Sub-Contract.

### **32.3 Application of the provisions of the Contract**

The provisions of Clauses 43.0 and 44.0 of the Contract Conditions shall apply *mutatis mutandis* in respect of the Final Account and Final Certificate as well as the Adjustments to be undertaken in respect of the Sub-Contract. However, owing to the particular nature of the Sub-Contract being a domestic one, the Final Certificate to the Sub-Contractor by the Contractor shall be distinct from, and not conditional on the Employer issuing the Final Certificate under the Contract to the Contractor. So long as the Sub-Contractor has reasonably satisfied the requirements of the Sub-Contract and Clause 32.0 itself, the Contractor is obliged to make the issue the Final Certificate and make necessary payment thereupon to the Sub-Contractor.

### **32.4 Time limit of Final Certificate**

Any claim under the Sub-Contract for work done or any other entitlements shall be made by the Sub-Contractor within the time period or periods stipulated in this Clause. The Parties acknowledge and agree that unless the provisions of any written or unwritten law apply, no claim thereafter from the Sub-contractor will be entertained by the Contractor.

## **33.0 DEDUCTION OF MONEY DUE TO SUB-CONTRACTOR**

### **33.1 Right of Deduction**

- (a) The Contractor/C.R. on its behalf, shall be entitled to deduct any money owing from the Sub-contractor to the Contractor under the Sub-Contract from any sum which may become due or is payable by the Contractor to the Sub-Contractor under:
  - (i) the Sub-Contract; or
  - (ii) any other Contract or Contracts to which the Contractor and the Sub-Contractor are parties thereto.
- (b) The Contractor/C.R. in issuing any certificate under Clauses 29.0 and 32.0 shall have regard to any sum so chargeable against the Sub-Contractor.

### **33.2 Contractor's other rights unaffected**

Notwithstanding the above, this provision shall not affect any right or remedy to which the Contractor may be entitled under the governing law for the recovery of such sums.

### **33.3 Application of the Provisions of the Contract**

The provisions of Clause 44.0 of the Contract Conditions shall apply *mutatis mutandis* so long as they are not repugnant to any provision of the Sub-Contract.

## **PART VIII: INDEMNITIES AND INSURANCES**

### **34.0 Indemnities**

#### **34.1 Scope**

- (a) The Sub-Contractor shall indemnify the Contractor against any liability of the Contractor to indemnify the Employer under the relevant provisions of the Contract Conditions in so far as the liability may arise out of, or in the course of, or by reason of the carrying out of the Sub-Contract Works and is not due to any act, negligence, omission, breach of contract on the part of the Contractor, its other sub-contractors, or their respective servants or agents.
- (b) The indemnities given by the Sub-Contractor under this sub-clause shall not be defeated by reason of any failure on the part of the Contractor/C.R. to supervise or

control the Sub-Contract Works, Temporary Works or working methods of the Sub-contractor. Notwithstanding the above, the Sub-Contractor's liability to indemnify the Contractor under this sub-clause shall be reduced in proportion to the extent of the act or neglect of the Contractor or its sub-contractors, or their respective servants or agents.

### **34.2 Indemnification**

- (a) Without derogating from the generality of sub-clause 34.1, the Sub-Contractor shall indemnify, protect and defend, at its own cost and expense, both the Contractor and the Employer and their agents and servants from and against all actions, claims and liabilities arising out of acts done and/or defaults of the Sub-Contractor in the performance of the Sub-Contract.
- (b) The obligations under this Clause 34.0 shall continue after the expiry or earlier determination of the Sub-Contractor's employment under the Sub-Contract in respect of any act, deed, matter or thing happening before such expiration or determination.

## **35.0 INSURANCE TAKEN BY CONTRACTOR**

### **35.1 Taking of Insurance**

- (a) The Contractor shall within 7 Days of the date of issue of the Letter of Acceptance to the Sub-Contractor, but in any case before the commencement of any work by the Sub-Contractor under the Sub-Contract, furnish the Sub-Contractor with a copy of the insurance policy or policies cover taken out in accordance with Clauses 46.0 and 49.0 of the Contract Conditions.
- (b) The Sub-Contractor shall observe, perform and fulfill all terms, conditions, undertakings and obligations on behalf of the insured contained in such insurance policies cover as the Contractor may have taken pursuant to the said Clauses 46.0 and 49.0 of the Contract Conditions as far as the same concern the Sub-Contractor.

### **35.2 Loss and Damage to Sub-Contract Work**

- (a) If any loss or damage to the Sub-Contract Works (including any Materials, Goods, Plant and/or Equipment of the Sub-Contractor properly delivered to the Site) is caused by any of the risks covered by the said policy or policies, the Contractor shall pay to the Sub-Contractor such amounts calculated from the date of receipt of monies from the insurers in proportion to the extent of such restoration, replacement or repair works carried out by the Sub-Contractor. Any monies, if and when received shall be released to the Sub-Contractor by installments on the Interim Certificates issued by the Contractor/C.R.
- (b) Provided always that the Sub-Contractor shall not be entitled to any payment in respect of such restoration, replacement or repair works and the removal and disposal of debris other than the monies received under the said insurance policy or policies in respect of the Sub-Contract Works.

### **35A.0 INSURANCE OF WORKS BY THE EMPLOYER (OPTIONAL)**

#### **35A.1 Taking of Insurance**

- (a) Without prejudice to the Sub-Contractor's liability to indemnify the Contractor under Clause 34.0 hereof, if the insurance cover in particular the Contractor's All Risk Policy ("CAR Insurance") is to be taken by the Employer under Optional Clause 49A.0 of the Contract Conditions, the provisions of this Clause shall apply.
- (b) Pursuant to sub-clause 35A.1(a) above, the Contractor, after having obtained a certified copy of all insurance cover policies from the Employer, shall within 28 Days of the issuance of the Letter of Acceptance to the Sub-Contractor, but in any case before the commencement of any work by the Sub-Contractor, furnish to the Sub-Contractor a certified true copy of such insurance cover policy.

#### **35A.2 Additional Insurance Cover**

If the Sub-Contractor having regard to its indemnity to the Contractor under Clause 34.0 of the Sub-Contract Conditions, desires to have additional insurance cover in addition to the risks already covered by the Employer, the Sub-Contractor shall do so at its own cost.

### **36.0 INSURANCE TAKEN BY SUB-CONTRACTOR**



### **36.1 Scope of Responsibility**

- (a) The Sub-Contractor shall take out and maintain such insurance policy or policies cover to cover its liabilities under the Sub-Contract other than those covered under the insurance policy or policies cover taken out by the Contractor under Clause 35.0 and if such policy or policies cover are inadequate or contain uninsured risk.
- (b) The Sub-Contractor shall procure the said policy or policies cover at its own expense and maintain these in full force from the date of this Sub-Contract for a period as stipulated in Appendix II and shall cause the Contractor and the Employer and other parties stated herein to be co-insured. It is the responsibility of the Sub-Contractor to ensure that the insurances cover herein are adequate to cover all the risks inherent in performing the Sub-Contract Works.

### **36.2 Insurance Obligations**

- (a) Further to the above, without limiting or reducing the Sub-Contractor's liability and obligations under the Sub-Contract, the Sub-Contractor shall, as a condition precedent to the commencement of the Sub-Contract Works, procure and maintain at its own cost and expense at all material time for the period stipulated in Appendix II, the relevant insurances cover for its carrying out of the Sub-Contract Works, the nature, coverage and limits of which are more specifically set out in the various parts of the Sub-Contract:
- (b) The Sub-Contractor shall ensure that all its Sub-Subcontractors, agents or representatives shall take out and maintain at their cost similar insurances cover. Any deficiencies in the coverage or policy limits of such insurances cover shall be the sole responsibility of the Sub-Contractor.

### **36.3 General Requirements for Insurance taken By Sub-Contractor**

- (a) The Sub-Contractor shall ensure that:
  - (i) the insurance cover under this sub-clause shall be purchased from reputable insurers providers acceptable to the Contractor and/or the Employer(as applicable) according to the governing law; and
  - (ii) the terms of the policies cover so obtained by the Sub-Contractor shall reflect terms broadly in the insurance markets and according to the general practice of

the insurance laws in the jurisdiction of the Sub-Contract Works and the insurance industry and acceptable to the Contractor and/or the Employer (as applicable).

- (b) The Sub-Contractor shall name the Contractor and the Employer and/or any other persons nominated by the Contractor as additional insured in the insurances covers and shall cause the insurers of all policies covers stipulated in this sub-clause to waive all expressed or implied rights of subrogation or recoveries against the Contractor or Employer (as applicable). All claim proceeds shall be made payable to the Contractor, and shall be applied by the Contractor, to make good the loss or damage to the Sub-Contract Works suffered or reimburse the person who has made good or pay any person to make good the loss or damage as the case may be.
- (c) For any insurances covers provided by the Sub-Contractor under the Sub-Contract, the Sub-Contractor shall provide the Contractor/C.R. copies of the policy or policies of insurances covers and receipts for payment of the current premium, undertaken by the Sub-Contractor in accordance with the requirements of this sub-clause for detailed scrutiny and approval. The Contractor/C.R. may accept or reject any policy or section thereof which in the Contractor's/C.R.'s opinion does not meet the intent of this sub-clause. The Sub-Contractor shall provide copies of the insurance policies covers within 14 Days before the commencement of the Sub-Contract Works.
- (d) For the avoidance of doubt:
  - (i) all deductibles, exceptions and exclusions applicable to the insurances/ covers shall be for the account of and paid by the Sub-Contractor;
  - (ii) the Sub-Contractor shall cause the insurer provider to endorse on the insurance policies cover to provide the Contractor with not less than 30 Days' notice of any cancellation or amendments thereof;
  - (iii) the Sub-Contractor shall make no material alterations to the terms of the insurances cover without the Contractor's/C.R.'s express consent. If an insurer provider makes any material alteration to the terms, the Sub-Contractor shall forthwith notify the Contractor/C.R.;

- (iv) the Sub-Contractor shall automatically extend the coverage period of the insurance cover by a commensurate amount every time the time for completion is extended pursuant to Clause 21.0;
- (e) notwithstanding the above, the Sub-Contractor shall observe, perform and comply with Part VIII: Indemnities and Insurance Covers of the Contract, in so far as they relate and apply to this sub-clause and which are not repugnant to or inconsistent with the said provisions of this Sub-Contract.

#### **36.4 Consequences of Sub- Contractor's Default**

- (a) If the Sub-Contractor:
  - (i) shall fail to effect and keep in force the insurances covers referred to in this clause or any other insurances covers which may be required to effect under the terms of the Sub-Contract; or
  - (ii) should fail to provide satisfactory evidence of these insurances covers being kept in effect,

then in such case, the Contractor may effect and keep in force such insurances covers but shall not be obliged to do so.

- (b) Premiums paid by the Contractor for this purpose shall be deducted from the Sub-Contract Sum. It is expressly provided that any action on the part of the Contractor in this respect shall in no way change or reduce the Sub-Contractor's liabilities and obligations under the Sub-Contract. The Sub-Contractor shall be liable to the Contractor for the full consequences of this failure to insure.

#### **37.0 WORKMEN COMPENSATION**

##### **37.1 General Scope**

The Sub-Contractor shall be liable for and shall indemnify and keep indemnified both the Contractor and the Employer and its agents or servants from all liabilities arising out of claims by any workman employed by the Sub-Contractor in and for the performance of the Sub-Contract for payment of compensation under, or by virtue of the governing laws and from all costs and expenses incidental and consequential thereto.

### **37.2 Workmen Compensation Insurance cover**

The Sub-Contractor shall effect and maintain throughout the Sub-Contract Period a "Workmen Compensation Insurance cover" or any other applicable insurance cover for its personnel, servants, agents or employees required under the governing laws.

### **37.3 Insurance cover for local workmen not subject to SOCSO (if applicable)**

- (a) Without prejudice to its liability to indemnify the Contractor and the Employer under Clauses 34.0 and 36.0, the Sub-Contractor shall, as a condition precedent to the commencement of any work under the Sub-Contract, take out and maintain in the joint names of the Contractor., Employer and the Sub-Contractor and shall cause all sub-contractors to take out and maintain a similar insurance cover policy for local workmen who are not subject to registration under SOCSO (if applicable).
- (b) Such insurance cover policy shall be effected and maintained as necessary to cover all liabilities including common law liability in respect of any claim which may arise in the execution of the Sub-Contract Works.
- (c) The insurance cover policy shall be valid up to the end of the Defects Liability Period plus a further 6 months. If the Sub-Contractor is unable to complete by the making good of the Defects within such insured period, the Sub-Contractor shall ensure that the insurance cover is accordingly extended for the same period of delay. The Sub-Contractor shall effect the said extension of the insurance cover not less than 1 month before the expiry of the insurance cover then in force.

### **37.4 Workmen's Compensation insurance cover for foreign workers**

- (a) Without prejudice to its liability to indemnify both the Contractor and the Employer under Clauses 34.0 and 36.0, the Sub-Contractor shall, as a condition precedent to the commencement of any work under the Sub-Contract, take out and maintain in the joint name of the Sub-Contractor, Contractor and the Employer and shall cause all Sub-Subcontractors to take out and maintain a similar insurance cover policy for all foreign workers employed on the works as required by the governing laws (if any).
- (b) Such insurance cover policy shall be effected and maintained as necessary to cover all liabilities including common law liability in respect of any claim which may arise in the course of the execution of the Sub-Contract Works.

- (c) The insurance cover policy shall be valid up to the end of the Defects Liability Period plus a further 6 months. If the Sub-Contractor is unable to complete by the making good of the Defects within such insured period, the Sub-Contractor shall ensure that the insurance cover is accordingly extended for the same period of delay. The Sub-Contractor shall effect the said extension of the insurance cover not less than 1 month before the expiry of the insurance cover then in force.

### **37.5 Production of policies**

- (a) For all insurances covers taken under this Clause, it shall be the duty of the Sub-Contractor to produce and shall deposit the original copy or copies of the relevant policy or copies of the original receipts in respect of the premiums paid to the Contractor/C.R. and/or the E.R. (as applicable) whether demanded or not and subject to all the conditions detailed in the Sub-Contract relating thereto. This shall be satisfactorily completed within 30 Days of the date of commencement of the Sub-Contract, failing which the Sub-Contractor shall be deemed to be in default.
- (b) The requirements as contained in sub-clauses 37.5(a) above shall equally apply to any extensions and/or endorsements to such policy or policies undertaken pursuant to any other provision or provisions of the Sub-Contract.

### **37.6 Default in insuring**

If the Sub-Contractor fails to effect or renew such insurance covers as are required to be effected and maintained under the Sub-Contract , the Contractor may effect or renew such insurance cover and shall be entitled to deduct a sum equivalent to the amount in respect of the premiums paid and 'On-Cost' Charges (calculated by applying the 'Percentage for On-cost Charges' stated in Appendix II hereto to the premiums paid), from any money due, or to become due to the Sub-Contractor under the Sub-Contract , or to recover the same from the Performance Security, or as a debt due from the Sub-Contractor.

### **37.7 Cancellation of insurance cover**

The Sub-Contractor shall ensure that any insurance cover policy effected shall only be cancelled by the insurer cover operator after the expiry of the period stated in Appendix II from the date of receipt by the Contractor of a written notice from the insurer cover operator advising of such impending cancellation provided that the Sub-Contractor has been issued with the Certificate of Completion and Making Good Defects in accordance with Clause 26.0.

## **38.0 EMPLOYEES SOCIAL SECURITY ACT 1969 (if applicable)**

### **38.1 Registration with SOCSO**

Without prejudice to its liability to indemnify the Contractor and/or the Employer under Clause 37.0, the Sub-Contractor shall register or cause to register all local workmen employed in the execution of the Sub-Contract Works and who are subject to registration under the Employee's Social Security Scheme ("the SOCSO Scheme") in accordance with the Employee's Social Security Act 1969 or any subsequent modification or re-enactment of the said Act. For the purpose of this sub-clause, the term "local workmen" shall include workmen who are Malaysian citizens and those who have permanent resident status.

### **38.2 Contribution to SOCSO**

The Sub-Contractor shall submit the Code Number and Social Security Numbers of all the workmen registered under the SOCSO scheme to the E.R. for verification. The Sub-Contractor shall make payment of all contribution from time to time on the first day on which the same ought to be paid and until the completion of the Sub-Contract and it shall be the duty of the Sub-Contractor to produce to the Contractor/C.R., contribution statements or payment vouchers as evidence of payment of such contribution, whether demanded by the latter or not.

### **38.3 Default in complying with SOCSO**

If the Sub-Contractor fails to comply with the terms of this clause, the Contractor, may without prejudice to any other remedy available to the Contractor for breach of any terms of the Sub-Contract:

- (a) withhold an amount from any money which would otherwise be due to the Sub-Contractor under the Sub-Contract and which in the opinion of the Contractor/C.R will satisfy any claims for compensation by workmen that would have been borne by SOCSO Scheme had the Sub-Contractor not made default in maintaining the contribution; and/or
- (b) pay such contributions as have become due and remain unpaid and deduct the amount of such contributions including 'On-Cost' Charges (calculated by applying the percentage of 'On-Cost' Charges stated in Appendix II to the contributions paid), from any money due or become due to the Sub-Contractor under the Sub-Contract, and failing which such contributions shall be recovered from the Performance Security or as a debt due from the Sub-Contractor.

## **PART IX: SUSPENSION, DETERMINATION, ETC.**

### **39.0 SUSPENSION OF SUB-CONTRACT WORKS**

#### **39.1 Suspension of Sub-Contract Works**

- (a) The parties agree that the E.R. may at any time instruct the Contractor pursuant to Clause 50.0 of the Contract Conditions to suspend part or all of the Works inclusive of the Sub-Contract Works; this being termed an Employer Ordered Suspension. Upon receipt of such written instruction, the Contractor/C.R. shall immediately instruct the Sub-Contractor to suspend part or all of the Sub-Contract Works for such time and in such manner as specified in the Instruction.
- (b) The Contractor may on its own volition and/or for its own reasons, require part or all of the Sub-Contract Work to be suspended for such time and in such manner as it deems fit; this being called a Contractor Ordered Suspension. In this case, the Contractor/C.R. shall issue a written instruction to this effect to the Sub-Contractor to suspend that particular part or all of the Sub-Contract Works (as the case may be).
- (c) Upon receipt of the Contractor's/C.R.'s instruction (be it for an Employer Ordered Suspension or a Contractor Ordered Suspension), the Sub-Contractor shall immediately comply with it and duly protect, store and secure the Sub-Contract Works or such part of the Sub-Contract Works against any deterioration, loss or damage.
- (d) During the suspension period, the Sub-Contractor shall continue to perform its obligations under the Sub-Contract which are not affected by the said instruction to suspend, including the obligation to effect and maintain all relevant insurances and the performance security.

#### **39.2 Resumption of Sub-Contract Works**

- (a) Further to Clause 39.1 above:
  - (i) in the case of an Employer Ordered Suspension under Clause 39.1(a), the E.R. may instruct the Contractor under Clause 50.0 of the Contract Conditions to resume the Works at any time thereafter. Upon the receipt of such written instruction, the Contractor/C.R. shall immediately instruct the Sub-Contractor the resume the Sub-contract Works involved;

- (ii) for a Contractor Ordered Suspension pursuant to Clause 39.1(b) above, the Contractor/C.R. may also instruct the Sub-Contractor to resume the Sub-Contract Works involved
- (b) Upon receipt of such written instruction by the Sub-Contractor, the Parties shall jointly inspect the said Sub-Contract Works affected by the suspension.
- (c) The Sub-contractor shall make good any deterioration or defect in or loss of the Sub-Contract Works which has occurred during the suspension period and take all reasonable steps or actions to mitigate the expenses incurred.

### **39.3 Omission of relevant works**

- (a) The Sub-Contractor upon receipt of the Contractor's/E.R.'s written instruction under sub-clause 39.2 above may request for the Contractor's/C.R.'s instruction to omit the relevant Section or part of the Works from the Sub-Contract.
- (b) If the Contractor/C.R. agrees to such a request, then the relevant Section or part of the Sub-contract Works shall be duly omitted and deemed to be a Variation to the Sub-Contract under Clause 28.0. Such Variation shall not vitiate this Sub-Contract.
- (c) If the Contractor/C.R. however does not agree to such request as aforesaid, then the Sub-Contractor shall be entitled to claim for the entitlements as stipulated in sub-clause 39.4 below.

### **39.4 Sub-Contractor's entitlements**

- (a) If the Sub-Contractor suffers delay and/or incurs expenses in complying with the instruction(s) given under sub-clauses 39.1 to 39.3 above, and if such delay and/or expenses were not reasonably foreseeable by the Sub-Contractor, the Sub-Contractor shall be entitled to the following:
  - (i) a commensurate extension of time to the Sub-Contract under Clause 21.0; and/or
  - (ii) reimbursement for the extra cost incurred in giving effect to the suspension ordered pursuant to Clause 44.0.



- (b) For the procedural and substantive requirements pertaining to the said entitlements the provisions of the relevant provisions, namely:
  - (i) Clauses 21.0 and 44.0 have to be fulfilled; and
  - (ii) Sub-clause 50.10 apply mutatis mutandis

### **39.5 Mutual Termination**

- (a) In the event such suspension shall continue for a period exceeding 6 months, the Sub-Contractor and the Contractor/C.R. shall then by mutual agreement decide whether to:
  - (i) Mutually terminate the Sub-Contract; or
  - (ii) Suspend the Sub-Contract for a further fixed period.
- (b) If sub-clause 39.5(a) is implemented, it shall be undertaken through a Supplementary Agreement and the provisions of Clause 41.0 in terms of the procedure and entitlements shall apply.
- (c) Should no mutual agreement be reached by the Parties for either option in sub-clause 39.5(a) above, the Sub-Contractor may then elect to determine its employment pursuant to Clause 40B.0 of the Sub-Contract.

## **40.0 DETERMINATION OF SUB-CONTRACTOR'S EMPLOYMENT**

### **40A.0 DETERMINATION BY CONTRACTOR**

#### **40A.1 Contractor's Right to Determination**

The Contractor shall be entitled to determine the Sub-Contractor's employment if the Sub-Contractor:

- (a) is culpable of one or more of the performance defaults under sub-clause 40A.2; or
- (b) becomes bankrupt or insolvent under sub-clause 40A.3.

#### **40A.2 Determination Due To Performance Defaults**

- (a) If the Sub-Contractor defaults in one or more of the following
- (i) without reasonable cause fails to commence the Sub-Contract Works in accordance with this Sub-Contract within 14 Days after receipt by it of an order in writing from the Contractor/C.R. to that effect;
  - (ii) fails to provide the Performance Security deposit in accordance with Clause 10.0;
  - (iii) without reasonable cause wholly suspends or abandons the carrying out of the Sub-Contract Works or any material part thereof before the completion of the Sub-Contract Works;
  - (iv) fails to proceed regularly and diligently with the performance of its obligations under this Sub-Contract;
  - (v) persistently refuses or neglects or fails to comply with a written instruction from the Contractor/C.R. issued in accordance with the provisions of this Sub-Contract;
  - (vi) persistently refuses or neglects to comply with a written notice or instruction from the Contractor/C.R. requiring it to remove work or improper equipment, materials which are defective or do not meet the requirements of this Sub-Contract;
  - (vii) sub-lets or assigns the Sub-Contract without the prior written consent of the Contractor.;
  - (viii) fails to comply with any material terms and conditions of this Sub-Contract;

then without prejudice to any other rights or remedies which it may possess, the Contractor/C.R. give a written notice in accordance with sub-clause 40B.3(a) to the Sub-Contractor specifying the default and requiring the Sub-Contractor to make good and/or to remedy the same within a specified reasonable time, not exceeding 14 Days.

- (b) If the Sub-Contractor continues with the specified Sub-Contractor's default beyond the stipulated period in the Contractor's/C.R.'s notice, then the Contractor may, within 14 Days from the expiry of the said stipulated period without prejudice to any other rights or remedies by further notice to the Sub-Contractor (the "determination notice") determine the Sub-Contractor's employment and expel the Sub-Contractor from the Site. Such determination shall take effect on the date of receipt of the determination notice by the Sub-Contractor.
- (c) If the Sub-Contractor ends the specified Sub-Contractor's default or the Contractor/C.R. does not give the determination notice adverted to above, and the Sub-Contractor repeats a specified Sub-Contractor's default (whether previously repeated or not) then, upon or within a reasonable time (not exceeding 14 Days) after such repetition, the Contractor may, without prejudice to any other rights or remedies, by a determination notice determine the Sub-Contractor's employment. Such determination shall take effect on the date of receipt of the determination notice by the Sub-contractor.
- (d) The form, content and mode of service of the determination notice shall generally be in accordance with sub-clause 40B.3(c) of the Sub-Contract.

#### **40A.3 Determination Due to Bankruptcy or Insolvency**

- (a) If at any time during the Sub-Contract period, the Sub-Contractor:
  - (i) commits an act of bankruptcy or becomes bankrupt; or
  - (ii) becomes insolvent or compounds with or makes arrangement with its creditors; or
  - (iii) being a company, is having a winding up order (other than for the purpose of amalgamation or reconstruction with the written consent of the Contractor) made against it; or
  - (iv) is having a provisional liquidator, receiver or manager of its business or undertaking duly appointed, or possession taken by or on behalf of creditors or debenture holders secured by a floating charge of any property comprised in or subject to the said floating charge;

then the Contractor may without prejudice to any other rights or remedies, by notice ("the determination notice") determine the Sub-Contractor's employment. The said notice shall generally comply with sub-clause 40B.3(c) of the Sub-Contract.

#### 40A.4 Consequences of Determination

- (a) In the event of the determination of the Sub-Contractor's employment under sub-clause 40A.2 or 40A.3, whether or not the validity of such determination is contested by the Sub-Contractor, the respective rights and duties of the parties shall be as stipulated in sub-clauses 40A.4(b) to (g).
- (b) The Contractor shall be entitled to repossess the Site and call upon the Performance Security or forfeit the Performance Guarantee Sum. The Sub-Contractor shall, pursuant to sub-clauses 40A.4(a) immediately:
  - i) cease all operations on the Sub-Contract Works, and
  - ii) remove all its personnel and workmen from the Site, and
  - iii) return possession of Site to the Contractor.

leaving any construction Plant/Equipment, Temporary Works, temporary buildings, structures, tools and all unfixed Materials, Goods, Plant , and/or Equipment left on Site, except only such as the Sub-Contractor may at anytime be specifically instructed by the Contractor/C.R. to remove from the Site.

- (c) If the Sub-Contractor fails to comply with the Contractor's/C.R.'s Instruction to remove the:
  - i) Construction Plant/Equipment, Temporary Works, temporary buildings, structures, and tools; and
  - ii) all unfixed Materials, Goods, Plant and/or Equipment .

that are not subject to the provisions of sub-clause 40A.4(d) within 21 Days after such instruction has been issued by the Contractor/C.R. pursuant to sub-clause 40A.4(b), the Contractor may without liability:

1. remove and sell any of the same which are deemed the property of the Contractor under the Sub-Contract; and
2. apply the proceeds of the sale in, or towards the satisfaction of any sums due or becoming due to the Contractor from the Sub-Contractor under the Sub-Contract.

(d) The Contractor may carry out and complete the remaining Sub-Contract Works itself or through the employment of any other Person(s). The Contractor or such other Person(s) may use any Construction Plant/Equipment, Temporary Works, temporary buildings, structures, tools and any unfixed Materials, Goods, Plant and/or Equipment left on the Site:

- i) which are deemed the property of the Contractor under the Sub-Contract; and/or
- ii) in respect of which the Contractor has exercised its rights under the Sub-Contract to take over the hire of such Construction Plant/Equipment and/or Temporary Works.

and may purchase all other Materials, Goods, Plant and/or Equipment necessary for the carrying out and completion of the Sub-Contract Works.

(e) i) The Sub-Contractor, if so required by the Contractor/C.R., shall within 21 Days of the date of determination, assign to the Contractor without payment, the benefit of any agreement for the:

- 1. supply of any Materials, Goods, Plant and/or Equipment; and/or
- 2. execution of any work for the purposes of the Sub-Contract

to the extent that the same is assignable.

ii) In any event, the Contractor shall have the power, but shall not be obliged to pay any Sub-Subcontractor, engaged by the Sub-Contractor, for any:

- 1. Materials, Goods, Plant and/or Equipment; and/or
- 2. work executed

for the purpose of the Sub-Contract (whether before or after the date of the determination) for which the Sub-Contractor has failed to make payment. The Sub-Contractor shall allow or pay to the Contractor all such payments made under this sub-clause 40A.4(e).

- (f) The Contractor/C.R. shall, as soon as may be practicable but not more than 120 Days after such repossession of the Site by the Contractor pursuant to this sub-clause 40A.4, ascertain what amounts (if any) has at the time of such repossession been reasonably earned by or would reasonably accrue to the Sub-Contractor in respect of:
- (i) work then properly done by the Sub-Contractor under the Sub-Contract;
  - (ii) the value of any unfixed or partially fixed Materials, Goods, Plant and/or Equipment.
  - (iii) the value of any Construction Plant/Equipment, Temporary Works, temporary buildings, structures and/or tools which have been deemed to become the property of the Contractor under the Sub-Contract; and
  - (iv) the amount received from any proceeds of sale under sub-clause 40A.4(c).
- (g) (i) Until after the completion of the Sub-Contract Works under sub-clause 40A.4(d), the Contractor shall not be liable and/or bound by any provision in the Sub-Contract to make any further payment to the Sub-Contractor, excluding payments which have been certified and were due for payment under the Sub-Contract but not yet paid when the employment of the Sub-Contractor was determined (after taking into account any set-offs and/or deductions to which the Contractor was entitled under the Sub-Contract).
- (ii) Upon the completion of the whole of the Sub-Contract Works (inclusive of the issue of the Certificate of Completion and Making Good Defects and/or the Maintenance Certificate), an account taking into consideration:
1. the value of the Sub-Contract Works carried out by the Sub-Contractor until the date of determination; and
  2. all costs incurred by the Contractor to complete the remaining Sub-Contract Works including loss and/or expense suffered by the Contractor.
- shall be incorporated in a final account.

#### **40B.0 DETERMINATION BY SUB-CONTRACTOR**

#### **40B.1 Determination by Sub-Contractor**

- (a) Without prejudice to any other rights or remedies which the Sub-Contractor may possess, the Sub-Contractor may determine its employment in the event of:
  - (i) the Contractor's default in performing its obligations under the Sub-Contract;  
and/or
  - (ii) the Contractor's bankruptcy or insolvency.

#### **40B.2 Determination due to Contractor's performance defaults**

The Sub-Contractor may determine its own employment under the Sub-Contract if:

- (a) the Contractor fails or neglects to pay the Sub-Contractor the amount due on any Interim or Penultimate Certificate (less any deduction, set off and/or Liquidated Damages to which the Contractor is entitled to make under the Sub-Contract), within the period of honouring certificates;
- (b) before the Date of Practical Completion or Sectional Completion (as applicable), the carrying out of the whole or substantially the whole of the uncompleted Sub-Works is suspended for a continuous period of time exceeding the period of Suspension stated in Clause 39.0 by virtue of sub-clause 39.5 (c); and
- (c) the Employer fails to give the Contractor access to and possession of the whole or Sections of the Site (as applicable) beyond the date(s) or period(s) of revision of the same as stated in sub-clause 19.7(a) by virtue of sub-clause 19.7(c)(ii);
- (d) without reasonable cause, the Contractor fails to proceed with the Contract with due diligence so that the reasonable progress of the Sub-Contract Works is seriously affected;
- (e) the Contractor commits breach of any material term or condition of the Sub-Contract;  
or
- (f) permitted under any other Clause(s) of the Sub-Contract.

### **40B.3 Determination of Own Employment**

- (a) Upon occurrence of any default under Clause 40B.2, and if the Sub-Contractor decides to determine its own employment, then the Sub-Contractor shall give to the Contractor a written notice specifying the default; (called the “default notice”). The form, and content of the said default notice shall be in accordance with those stated in sub-clause 51.3 of the Contract with suitable modifications to cater for the nature and requirements of the instant determination; and shall be served in compliance with sub-clause 53.1 of the Sub-Contract; and
- (b) If the Contractor shall continue with such default for 14 Days from the receipt of such written notice, then the Contractor may, within 14 Days from the expiry of the said 14 Days, by a further written notice to the Contractor (called the “determination notice”), and forthwith determine its own employment under the Sub-Contract. Provided always that such notice shall not be given unreasonably or vexatiously.
- (c) The requirements of sub-clause 51.7 of the Contract vis-à-vis the determination notice shall apply mutatis mutandis.

### **40B.4 Determination due to bankruptcy or insolvency**

- (a) In the event of the Contractor:
  - (i) commits an act of bankruptcy or becomes bankrupt; or
  - (ii) becomes insolvent; or
  - (iii) compounds with or makes a composition or arrangement with its creditors, or
  - (iv) being a company, having a winding up order made or (except for purposes of reconstruction or amalgamation) a resolution for voluntary winding up passed, or
  - (v) having a liquidator or receiver or manager of its business or undertaking duly appointed, or
  - (vi) having possession taken by or on behalf of creditors, or the holders of any debentures secured by a floating charge or of any property comprised in or subject to the floating charge,



the Sub-Contractor may immediately determine its employment under this Sub-Contract by issuing a determination notice to the Contractor.

- (b) Where the Sub-Contractor shall issue a determination notice under sub-clause 40B.4(a), the provisions of sub-clauses 40B.3(c), 40B.5 to 40B.7 shall apply.

#### **40B.5 Rights and Duties of Parties upon Determination**

Upon such determination under Clause 40B.3 or 40B.4, the following shall be the respective rights and duties of the Parties:

- (a) the Sub-Contractor shall within 14 Days or within such longer period as may be agreed in writing by the Contractor/C.R., demobilize and remove from the Site all its temporary buildings, and tools, workmen, personnel, Plant, Equipment, Materials and Goods and those of its Sub-Subcontractors ; and
- (b) the Sub-Contractor shall, within 14 Days or within such longer period as may be agreed in writing by the Contractor/C.R., vacate the Site and return possession of the Site to the Contractor. If so required by the Contractor/C.R., the Sub-Contractor shall within 14 Days of the date of determination, assign to the Contractor or such other Person as the Contractor may instruct, the benefit of any agreement for the continuation of the hire of any of the Sub-Contractor's 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; and
- (c) If so required by the Contractor/C.R., the Sub-Contractor shall, within 14 Days of the date of determination, assign to the Contractor or such other Person as the Contractor may instruct, the benefit of any agreement for the supply of Materials, Goods, Plant or Equipment and/or for the execution of any work for the purposes of this Sub-Contract to the extent that the same is assignable. In this regard, the Sub-Contractor shall, before entering into such agreement, ensure that such agreement is assignable.
- (d) The Sub-Contractor shall submit to the Contractor/C.R. all plans, drawings, designs, calculations, specifications, manuals, records, reports, documents, latest as-built drawing (if any), and any other information as the Contractor/C.R. may require in relation to the Sub-Works as at the date of the determination, and

- (e) The Contractor shall allow or pay to the Sub-Contractor the total value of work properly executed and the value of Materials, Goods, Plant and/or Equipment supplied including any direct loss and/or expense reasonably suffered by the Sub-Contractor arising from and/or caused by such determination.

#### **40B.6 Joint Inspection and Records of Works**

- (a) Within fourteen 14 Days of the determination of its own employment, the Sub-Contractor shall give a written notice to the Contractor/C.R., or the Contractor/C.R. may give notice fixing the time and date of inspection on Site to jointly record the extent of the Sub-Works executed and the Materials, Goods, Plant and Equipment delivered to the Site. The Sub-Contractor shall provide all necessary assistance to the Contractor/C.R. to perform their task.
- (b) If the Sub-Contractor fails to give a notice under sub-clause 40B.6(a) within the stipulated time, or fails to attend the joint inspection at the time and date as instructed by the Contractor/C.R., or the Sub-Contractor refuses or fails to cooperate with the Contractor/C.R. for the purposes of conducting the site inspection, the Contractor/C.R. shall nevertheless proceed to carry out the joint inspection on Site to record the extent of the Sub-Contract Works executed and the Materials, Goods, Plant and Equipment delivered to the Site by the Sub-Contractor.
- (c) Within 28 Days of the completion of the joint inspection under sub-clauses 40B.6(a) or (b), the Contractor/C.R. shall complete the record and forward a copy thereof to the Sub-Contractor. Such record shall form the basis for the evaluation of the value of the Sub- Contract Works properly executed and Materials, Goods, Plant and Equipment delivered to the Site by the Sub-Contractor up to the date of determination.

#### **40B.7 Settlement of Account upon Determination**

- (a) The Sub-Contractor shall within 120 Days after the determination of its own employment, submit to the Contactor/C.R. pursuant to Clause 44.0, its final claim containing the total value of work properly executed, the value of Materials, Goods, Plant and Equipment supplied and any direct loss and/or expense reasonably suffered by the Sub-Contractor caused by such determination.

- (b) Within 120 Days after receiving the said final claim from the Sub-Contractor, the Contractor/C.R. 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.
- (c) If the Parties agree with the final cost account presented by the Contractor/C.R., then 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 the period of honouring certificates 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.
- (d) 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 C.R.) set out any disagreement thereof complete with particulars within 30 Days of the date of receipt of the final cost account from the C.R.,
  - (ii) within 30 Days from the date of receipt of the notice of dispute, the C.R. shall decide either to amend or not to amend the final account, and provide reasons for its decision. The C.R. may also request any necessary further particulars, but the C.R. shall nevertheless give its decision within the stipulated 30 Days period,
  - (iii) any Party disagreeing with the C.R.'s decision under Clause 40B.7(d)(ii) shall refer the dispute to arbitration under Clause 45.0.

#### **40B.8 Sub-Contractor's other Rights and Remedies Not Prejudiced**

The provisions of Clause 40B.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.

#### **41.0 DETERMINATION BY EMPLOYER/TERMINATION OF SUB-CONTRACT**

##### **41.1 Determination/Termination**

If for any reason the

- (a) Contractor's employment is determined by the Employer by virtue of the relevant provisions of the Contract, or
- (b) The Sub-Contract is terminated by mutual agreement or by either Party or both Parties under any express provision of the Sub-Contract

then this Sub-Contractor's employment or the Sub-Contract ( as applicable) shall thereupon also be determined or terminated forthwith. Upon such determination/termination, the Sub-Contractor shall be entitled to be paid as provided in sub-clause 41.2.

##### **41.2 Effects of Determination/Termination**

- (a) In the event of the determination/termination of the Sub-Contractor's employment/Sub-Contract under sub-clause 41.1, the following shall be the respective rights and liabilities of the Sub-Contractor and Contractor:
  - (i) The Sub-Contractor shall, with reasonable dispatch remove from the Site all its Construction Plant/Equipment, Temporary Work, temporary buildings, structures, and tools;
  - (ii) The Sub-Contractor shall expediently prepare and submit to the Contractor an account setting out the sum of the amounts payable to it in respect of the following items:
    1. The value of the Sub-Contract Works properly completed as at the date of such determination/termination.

2. The value of Sub-Contract Works begun but not completed as at the date of such determination/termination, such value to be calculated in accordance with Clause 28.0.
  3. The value of any unfixed Materials, Goods, Plant and Equipment delivered on Site for use in the Sub-Contract Works, the property of which has passed to the Contractor.
  4. The cost of any Materials, Goods, Plant and/or Equipment properly ordered for the Sub-Contract Works for which the Sub-Contractor has paid or for which it is legally bound to accept delivery and/or make payment.
  5. Any reasonable cost of removal from the Site of its Construction Plant/Equipment, Temporary Works, temporary buildings, structures, and tools in respect of which payment to the Sub-Contractor has not otherwise been made or allowed for under the Sub-Contract.
- (b) The Contractor shall, taking into account the amounts previously paid, pay to the Sub-Contractor the amount properly due under sub-clause 41.2(b)(ii) within 30 Days of submission of the said account by the Sub-Contractor.

## **42.0 FORCE MAJEURE**

### **42.1 Definition of Force Majeure**

- (a) In this clause, "Force Majeure" means, an exceptional event or circumstance:
- (i) which is beyond a Party's control;
  - (ii) which such Party could not reasonably have provided against before entering into the Sub-Contract;
  - (iii) which, having arisen, such Party could not reasonably have avoided or overcome; and
  - (iv) which is not substantially attributable to the other Party.

- (b) Force Majeure may include, but is not limited to exceptional events or circumstances of the kind listed below so long as conditions in sub-clause 42.1(a) are satisfied:
- (i) war (whether declared or not), hostilities, invasion, act of foreign enemies;
  - (ii) insurrection, revolution, rebellion, military or usurped power, civil war, terrorism;
  - (iii) riot, commotion, disorder, strike or lockout by persons other than the Sub-Contractor's personnel and other employees of the Sub-Contractor and its Sub-Subcontractors; and
  - (iv) munitions of war, explosive materials, nuclear explosion, ionizing radiation or contamination by radioactivity or chemical contamination unless caused by the negligence, act, omission or default of the Sub-Contractor, its agents or personnel;
  - (v) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds; and
  - (vi) natural catastrophic including but not limited to earthquakes, typhoons, tsunami, volcanic activity or any operation of the forces of nature.

#### **42.2 Effect of Force Majeure**

Neither the Sub-Contractor, nor the Contractor shall be considered to be in default, or in breach of its obligations under the Sub-Contract (or any part thereof) to the extent that the performance of such obligations is prevented by any circumstance which arises after:

- (a) the date of Letter of Acceptance; or
- (b) the date when the Sub-Contract becomes effective,

whichever is the earlier.

#### **42.3 Notice of Force Majeure**

- (a) If either party considers that any circumstance of Force Majeure as stipulated in sub-clause 42.1 has occurred which has affected or may affect performance of its obligations under the Sub-Contract, the Party shall immediately notify the other Party.

- (b) The notice adverted to in sub-clause 42.3(a) shall:
  - (i) be in writing; and
  - (ii) be given within 14 Days after the Party becomes aware, or should have become aware, of the relevant circumstance constituting Force Majeure.
  
- (c) The notice shall stipulate the following contents as a minimum:
  - (i) the relevant circumstance or circumstances constituting Force Majeure; and
  - (ii) the particular obligation, or obligations the performance of which is, or will be prevented; and
  - (iii) the full particulars of the consequences; and
  - (iv) any other details/information that may be relevant to the issue.

#### **42.4 Duty to minimize delay**

- (a) Each Party shall at all times use all reasonable endeavours to minimize any delay in the performance of the Sub-Contract as a result of Force Majeure.
  
- (b) If the Sub-Contractor considers that it can take reasonable steps pursuant to its duty to minimize delay, the Sub-Contractor shall not take such steps unless instructed to do so by the Contractor/C.R.
  
- (c) If the Sub-Contractor incurs additional costs in complying with the Contractor's/C.R.'s instructions pursuant to sub-clause 42.4(b), the amount involved shall be certified by the Contractor/C.R. and added to the Sub-Contract Sum.

#### **42.5 Cessation of Force Majeure**

A Party shall give notice to the other Party when it ceases to be affected by Force Majeure.

#### **42.6 Post Notification procedures**

- (a) Upon receipt of the Notice pursuant to sub-clause 42.3 above, both Parties shall within a further 14 Days come to a mutual agreement as to whether a Force Majeure circumstance has occurred.

- (b) If such mutual agreement is not reached, the Contractor/C.R. shall then after a further 7 Days determine if a Force Majeure circumstance has occurred or not. The Contractor's/C.R.'s decision shall be communicated to the Sub-Contractor in writing.
- (c) Upon receipt of the Contractor's/C.R.'s decision further to sub-clause 42.6(b), the Sub-Contractor shall within 7 Days either:
  - (i) accept the decision, in which case it shall be bound by and give effect to the decision; or
  - (ii) disagree with the decision.
- (d) Failure of the Sub-Contractor to respond within the time period stipulated in sub-clause 42.6(c) above shall mean that the Sub-Contractor has accepted the decision.
- (e) Should the Sub-Contractor disagree with the decision, the Contractor's/C.R.'s decision shall prevail and the Sub-Contractor shall nevertheless be entitled to pursue the matter pursuant to Clause 45.0.

#### **42.7 Consequence of Force Majeure**

- (a) The consequences of Force Majeure may be:
  - (i) of a temporary nature; or
  - (ii) severe, or a continuing nature
- (b) If the consequences of Force Majeure are of a temporary nature and:
  - (i) of which notice has been given pursuant to sub-clause 42.3; and
  - (ii) which either has been mutually agreed to be a Force Majeure circumstance further to sub-clause 42.6(a), or has been decided by the Contractor/C.R. to constitute such a circumstance pursuant to sub-clause 42.6(c) to (e).

and the Sub-Contractor suffers delay, and/or additional costs.



by reason of such circumstance, the Sub-Contractor shall be entitled to:

1. an extension of time for any such delay, if completion is, or will be delayed under Clause 21.0 ; and/or
  2. additional costs under Clause 44.0.
- (c) If the consequences of Force Majeure are severe or of a continuing nature, meaning:
- (i) if the execution of substantially all the Sub-Contract Works in progress is prevented for a continuous period of 90 Days by reason of Force Majeure of which notice has been given under sub-clause 42.3, or
  - (ii) for multiple periods which total more than 120 Days due to the same notified Force Majeure circumstance,

then either Party may give to the other party, a notice of termination of the Sub-Contract. In this event, the termination shall take effect 7 Days after the notice is received by the other party and the Sub-Contractor shall proceed in accordance with sub-clause 41.2. Upon such termination, the Sub-contractor shall be paid in accordance with sub-clause 41.2.

- (d) Neither Party shall be entitled to rely upon this Clause 42.0 if both Parties reasonably determine or in the event such determination is not reached, if the E.R. decides pursuant to sub-clause 42.6 that a circumstance of Force Majeure has not occurred.
- (e) For the avoidance of doubt, the Parties shall continue to perform those parts of their obligations not affected, delayed or interrupted by a circumstance of Force Majeure and such obligations shall, pending the outcome of this clause continue in full force and effect.

#### **42.8 Release from performance**

If the Sub-Contract is terminated by a circumstance of Force Majeure pursuant to this Clause:

- (a) all rights and obligations of the Parties under the Sub-Contract shall immediately terminate; and
- (b) neither Party shall have any claim against the other Party; and

- (c) neither Party shall be liable to each other except for:
  - (i) any rights and liabilities accruing prior to the circumstance of the Force Majeure;  
and
  - (ii) any rights and liabilities stipulated in this Clause and/or elsewhere in the Sub-Contract.

## **PART X: CLAIMS AND DISPUTE RESOLUTION**

### **43.0 CONTRACTOR'S CLAIMS**

#### **43.1 Notification**

- (a) If the Contractor considers itself to be entitled to any claim against the Sub-Contractor under any provisions of these Sub-Contract Conditions or otherwise in connection with the Sub-Contract, the Contractor/C.R. shall give written notice with full particulars to the Sub-Contractor/SC.R.
- (b) The said notice shall be given as soon as practicable after the Contractor/C.R. becomes aware or should have become aware of the event or circumstances giving rise to the claim.
- (c) For the avoidance of doubt, the giving of the said notice is a condition precedent to the Contractor's right to any claim against the Sub-Contractor.

#### **43.2 Settlement of Claim**

- (a) Upon receipt of the Contractor's notice under sub-clause 43.1 above, the Parties shall then proceed to enter into negotiations and reach an amicable settlement of the Contractor's claim.
- (b) The above negotiations and settlement shall be accordingly be made not later than 30 Days after receipt by the Sub-Contractor/SC.R of the notice under sub-clause 43.1.
- (c) If the Parties fail to reach an amicable settlement within the period stated above or any extension mutually made with regard to the same thereto, the C.R. shall make an interim decision in regard to the Claim which shall be given effect to by both Parties

subject to their rights to refer it to Arbitration under Clause 45.0 and/or any other dispute resolution forum under the governing laws.

### **43.3 Payment of Claim**

- (a) Any amount so agreed by the Parties or determined by the C.R. pursuant to sub-clause 43.2 shall be set-off against or deducted from any monies due or to become due to the Sub-Contractor.
- (b) For the avoidance of doubt, the Contractor shall only be entitled to exercise any set-off against or make any deduction from an amount certified in a payment certificate (whether Interim, Penultimate or Final), or to otherwise claim against the Sub-Contractor, strictly in accordance with this Clause 43.0.

### **44.0 SUB-CONTRACTOR'S CLAIMS**

#### **44.1 Sub-Contractor's right to claim**

- (a) If the Sub-Contractor considers itself to be entitled to any additional payment inclusive of any loss and/or expense (direct and/or consequential, as applicable) that the Sub-Contractor has incurred and which could not be reimbursed by a payment under any other provision in the Sub-Contract, the Sub-Contractor may make a claim for the same provided the provisions of this Clause 44.0 are fulfilled to the reasonable satisfaction of the Contractor/C.R.
- (b) For the avoidance of doubt, for a claim for loss and/or expense, the corresponding provisions under Clause 57.0 of the Contract Conditions in terms of the meaning to be ascribed to the phrase, the heads of entitlements, etc. shall apply *mutatis mutandis*. As to the grounds giving rise to the Sub-Contractor's right to claim for loss and expense, these shall be limited to only those grounds listed in Clause 21.4 (b) 2. (Contractor Risk Events) for direct loss and expense and Clause 44.6 for any loss and expense.
- (c) Nothing in this Clause 44.0 shall oblige the Contractor to pay extra costs for delay and/or loss and/or expense which have already been included in the valuation of a Variation under Clause 28.0 or any other payment under the Sub-Contract.

- (d) The Sub-Contractor shall not be entitled to any additional payment under this Clause 44.0 where the event arises from, or is necessitated by, or is intended to cure any default or breach of contract by the Sub-Contractor, its agents, servants or Sub-Subcontractors.

#### **44.2 Notice of Claim**

- (a) The Sub-Contractor may make a claim additional payment provided the Sub-Contractor complies with the provision of this sub-clause and Clauses 44.3 and 44.4;
- (b) The Sub-Contractor shall give written notice to the Contractor/C.R. of its intention to claim for such additional payment within 30 Days after the event giving rise to its claim has first arisen;
- (c) The notice shall:
  - (i) specify the event relied upon and its consequence;
  - (ii) the appropriate Sub-Contract references to such event which are relevant to the claim;
  - (iii) an estimated value of its claim duly supported with all relevant calculations, and documents.;
  - (iv) any other information, or details which will enable the Contractor/C.R. to make a considered decision under Clause 44.5.
- (d) The giving of such written notice shall be a condition precedent to any entitlement to any additional payment that the Sub-Contractor may have under the Sub-Contract and/or common law;
- (e) The fact that the Sub-Contractor does not, or may not know whether the valuation of a Variation has been agreed, or whether the Contractor/C.R. has decided to include in any certificate any amount in respect of any claim shall not excuse the Sub-Contractor from the requirement to give a notice under this sub-clause.

#### **44.3 Contemporary Records**

- (a) The Sub-Contractor shall keep such contemporary records as may be reasonably necessary to support any claim for additional payment that it may subsequently wish to make;
- (b) For the purpose of this clause, the term “contemporary records” shall include all books, reports, papers, records, vouchers and information relevant to the claim being pursued;
- (c) Without necessarily admitting the Contractor’s liability, the Contractor/C.R. may, on receipt of a notice under sub-clause 44.2:
  - (i) inspect such contemporary records; and
  - (ii) instruct the Sub-Contractor to keep such further records which the Contractor/C.R. considers to be material to the claim of which notice has been given.
- (d) The Sub-Contractor shall provide unrestricted access to, and permit the Contractor/C.R. to inspect such contemporary records and shall supply the Contractor/C.R. with copies of those records as and when the Contractor/C.R. so request. All such contemporary records shall remain available in accordance with this sub-clause until all claims have been satisfactorily resolved through Arbitration under Clause 45.0;
- (e) The Sub-Contractor shall use all reasonable means to ensure that all such contemporary records in the possession, custody, or control of Sub-Subcontractors that are material to the claim are similarly available.

#### **44.4 Substantiation of Claim**

- (a) Within 30 Days, or such other time as may be expressly agreed to by the Contractor/C.R., of the Sub-Contractor giving written notice under sub-clause 44.2, the Sub-Contractor shall submit to the Contractor/C.R.:
  - (i) complete particulars of its claim for additional payment together with all necessary calculations to substantiate the claim;

- (ii) all contemporary records relevant to substantiate the claim; and
  - (iii) any other information, or record necessary to enable the Contractor/C.R. to properly evaluate the submitted claim.
- (b) For the avoidance of doubt, the detailed particulars submitted by the Sub-Contractor pursuant to sub-clause 44.4(a) shall adequately substantiate the Sub-Contractor's claim including showing the nexus between the event relied on and the amount of additional payment so claimed.
- (c) Where the event giving rise to the claim has a continuing effect:
  - (i) such submission and account shall be considered to be interim; and
  - (ii) the Sub-Contractor shall, at such intervals as the Contractor/C.R. may expressly require, submit such further interim submissions and accounts giving the accumulated amount of the claims and any further grounds upon which they are based.
- (d) Further to sub-clause 44.4(c), within 30 Days of the end of the effects resulting from the event, the Sub-Contractor shall submit to the Contractor/C.R. a final account of the claim supported with the details stipulated in sub-clause 44.4(a).
- (e) If the Sub-Contractor fails to substantiate its claims (as stipulated in this sub-clause) to the reasonable satisfaction of the Contractor/C.R. within:
  - (i) the stated time; or
  - (ii) such longer period as may be agreed in writing by the Contractor/C.R.,

it shall be considered that the Sub-Contractor has waived its rights for direct loss and/or expense.

#### **44.5 Ascertainment/Payment of the Claim**

- (a) Subject to the Sub-Contractor complying with sub-clauses 44.2 to 44.4, the Contractor/C.R. shall proceed with the ascertainment of the Sub-Contractor's claim in line with the provisions of this sub-clause.

- (b) If the Sub-Contractor shall have complied with sub-clause 44.2, but fails to supply the Contractor/C.R. with adequate substantiation of the whole amount claimed:
  - (i) the Contractor/C.R. shall be entitled to make such assessment, valuation, or opinion as shall be fair and reasonable on the basis of the information made available to it; and
  - (ii) the Sub-Contractor shall only be entitled to payment in respect of such part of the amount as may have been substantiated to the satisfaction of the Contractor/C.R.
  
- (c) The Contractor/C.R. in ascertaining the tenability of the Sub-Contractor's claim for loss and/or expense shall be bound by the following principles:
  - (i) liability for compensation must first be established showing the nexus between the event relied on and the delay, or prolongation suffered by the Sub-Contractor; and
  - (ii) once it is established that compensation for the delay or prolongation is due, the evaluation of the sum due shall be made by reference to the period when the effect of the event was felt and not by reference to the extended period at the end of the Sub-Contract.
  
- (d) Within 30 Days, or such other time as may be mutually agreed to by the parties, of the receipt by the Contractor/C.R. of the Sub-Contractor's substantiations under sub-clause 44.4(a), (c) or (d) (as applicable), the Contractor/C.R. shall:
  - (i) certify such amount in respect of any claim for additional payment as the Contractor/C.R. may consider due to the Sub-Contractor; or
  - (ii) reject the Sub-Contractor's claim in writing with reasons.

If the Contractor/C.R. fails to respond either way within the time period as stated above, then upon its lapse, it shall be deemed that it has no objections to the Sub-Contractor's said claim as submitted and due effect shall be given to the same by the Parties.

- (e) Pursuant to sub-clause 44.5(d)(i), any amount so ascertained shall be added to the Sub-Contract Sum, and if a payment certificate (i.e. Interim, Penultimate or Final) is issued after the date of ascertainment and certification, such amount shall be included in the said certificate. The inclusion by the Contractor/C.R. in any such certificate of any amount in respect of any claim for any additional payment by the Contractor in respect of any such amount shall not:
- (i) prejudice the Contractor's right to dispute the Sub-Contractor's entitlement to the amount certified either:
    - 1. in principle, or
    - 2. as to its quantification, or
    - 3. from referring such dispute for decision pursuant to Clause 45.0; or
  - (ii) be taken into account by the Contractor/C.R. or any arbitration (or other tribunal) in deciding whether the Sub-Contractor shall repay to the Contractor the whole or any part of such amount.
- (f) Further to sub-clause 44.5(d)(ii), if the Sub-Contractor is not satisfied with the Contractor's/C.R.'s decision to reject its claim, the Sub-Contractor, may if it so desires proceed to have the dispute resolved under Clause 45.0.

#### **44.6 Loss and/or Expense incurred pursuant to Section 29 of CIPAA (if applicable)**

- (a) If the Sub-Contractor has incurred loss and/or expense through exercising its 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:
- (i) the Sub-Contractor shall, as soon as practicable but not later than 28 Days after the date of resumption of performance or the rate of progress performance of the works under Section 29(4)(d) of CIPAA, send to the Contractor/C.R. relevant particulars of its claim for its loss and/or expense together with all necessary calculations and particulars to substantiate its claims,
  - (ii) if the Sub-Contractor fails to submit the required particulars in Clause 44.6 (a)(i), or within such longer period as may be agreed in writing by the Contractor/C.R., it shall be deemed that the Sub-Contractor has waived its rights under this Sub-Contract and/or the law to any such loss and/or expense;



- (b) if the Contactor/C.R. is of the opinion that the particulars submitted by the Sub-Contractor are insufficient to enable the Contractor/C.R. to decide on the claim for such loss and/or expense, the Contractor/C.R. shall within 14 Days from the date of receipt of Sub-Contractor's particulars, inform it of any deficiency in its submission and require the Sub-Contractor to provide such further particulars within such period of time as may be stated by the Contractor/C.R. in writing. If the Sub-Contractor fails to submit the required further particulars within the time as instructed by the Contractor/C.R., the Contractor/C.R. shall 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 42 Days thereof.
- (c) Clause 44.3 on Contemporary Records shall equally apply to any claim by the Sub-Contractor under this Clause 44.6.
- (d) If the Contractor/C.R. is of the opinion that the Sub-Contractor has submitted sufficient particulars for their determination, the Contractor/C.R. shall determine and ascertain the amount (if any) of such loss and/or expense within 42 Days of receipt of the particulars from the Sub-Contractor under Clause 44.6 a). The Contractor/C.R. shall set out the details of his determination. Any amount so ascertained shall be added to the Sub-Contract Sum, and if an Interim or Penultimate Certificate is issued after the date of ascertainment, such amount shall be included in the certificate.
- (e) 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 Security.

## **45.0 ARBITRATION**

### **45.1 Agreement to refer Disputes or Differences to Arbitration**

- (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 by a sole arbitrator agreed between the parties and in default of agreement, to be appointed by

the appointing authority named in Appendix II in accordance with the Arbitration Rules prevailing at that material time as stated in Appendix II.

- (b) The seat of arbitration shall be as stipulated in Appendix II.

#### **45.2 Powers of Arbitrator**

The Arbitrator shall, without prejudice to the generality of its powers, have power:

- (a) to rectify the Sub-Contract so that it accurately reflects the true agreement made by the Contractor and the Sub-contractor,
- (b) to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties,
- (c) to ascertain and award any sum which ought to have been the subject of or included in any certificate,
- (d) to open up, review and revise any certificate, opinion, decision, requirement, or notice,
- (e) to determine all matters in dispute submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given, and
- (f) to award interest (including pre-award interest) from such dates at such rates and with such rests as it thinks fit:
  - (i) on the whole or part of any amount awarded by it in respect of any period up to the date of the award;
  - (ii) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.

#### **45.3 Commencement of Arbitration**

- (a) Unless otherwise agreed in writing by the Parties, such arbitration shall be commenced after the Practical Completion or alleged Practical Completion of the Sub-Contract Works, or determination or alleged determination of the Sub-contractor's employment under the Sub-Contract, or termination or alleged termination of the Sub-Contract under the law, or abandonment or alleged abandonment of the Works except on:

- (i) the question of whether or not the issuance of an instruction is empowered by these Conditions,
  - (ii) any dispute or difference under Clause 45.0,
  - (iii) whether or not a certificate has been improperly withheld or otherwise not in accordance with these Conditions, or
  - (iv) whether or not a payment to which the Sub--contractor may claim to be entitled has been properly withheld in accordance with these Conditions.
- (b) The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the Works.

#### **45.4 C.R. as Witness**

Nothing shall disqualify the C.R. from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute referred to arbitration.

#### **45.5 Arbitrator's Award to Be Final and Binding**

The award of such arbitrator shall be final and binding on the Parties.

### **46.0 MEDIATION**

#### **46.1 Right to Mediate**

Notwithstanding Clause 45.1, 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, or as to any direction or instruction or certificate of the Contractor/C.R. or as to contents of or granting or refusal of or reasons for any such direction, instruction or certificate, for mediation in accordance with the Rules for Mediation as stated in Appendix II.

#### **46.2 Prior Reference to Mediation Does Not Prejudice the Parties Rights to Arbitration**

For the avoidance of doubt, prior reference of the dispute to mediation under Clause 46.1 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 45.0 be in any way prejudiced or affected by this Clause.

#### **46.3 Reference of Disputes to Mediation at any time**

Either Party may refer any dispute for Mediation pursuant to Clause 46.1 at any time, whether before or during any arbitration proceeding under Clause 45.0, 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.

### **PART XI: MISCELLANEOUS**

#### **47.0 AMENDMENT**

##### **47.1 Formalities**

No modification, amendment, variation, or waiver of any of the provisions of the Sub-Contract shall be effected unless:

- (a) made by mutual consent; and
- (b) made in writing by way of supplementary agreement specifically referring to the Sub-Contract; and
- (c) duly signed by both Parties.

##### **47.2 Effect of amendment**

The provisions in respect of such modification, amendment, or variation under sub-clause 47.1 shall:

- (a) be supplemental to; and
- (b) be read,

as an integral part of the Sub-Contract which shall remain in full force and effect as between both Parties.

## **48.0 SEVERABILITY**

### **48.1 Extent of Clause**

If any provision of the Sub-Contract:

- (a) is held to be illegal, or
- (b) is invalid,

under any laws or regulations effective and applicable during the term of the Sub-Contract, then the stipulations of sub-clause 48.2 shall apply.

### **48.2 Effect of invalidity/illegality**

The effect of sub-clause 48.1 shall be:

- (a) such provision shall be fully severable; and
- (b) the Sub-Contract shall be construed as if such illegal, or invalid provision had never comprised as part of the Sub-Contract; and
- (c) the remaining provisions in the Sub-Contract shall remain in full force and effect and shall not be affected by the illegal, or invalid provision, or by its severance from the Sub-Contract.

## **49.0 STAMP DUTY AND COSTS**

The Sub-Contractor shall bear:

- (a) the proper Stamp Duty (if any); and
- (b) all legal costs and fees; and
- (c) all other incidental costs and fees

in the preparation and execution of the Sub-Contract.

## **50.0 SUCCESSORS BOUND**

The Sub-Contract shall be binding upon the respective successors in title of the Parties.

## **51.0 CONFIDENTIALITY**

### **51.1 Duty not to disclose**

- (a) The Sub-Contract inclusive of all drawings, records, data, books, reports and all matters pertaining hereto shall be considered as confidential matter and shall not be disclosed to any third party without the Contractor's prior written agreement except as provided for in sub-clause 51.1(b).
- (b) The exceptions to sub-clause 51.1(a) are:
  - (i) where the disclosure of such information is necessary for the purpose of raising finance to undertake the obligations of the Sub-Contractor under the Sub-Contract; or
  - (ii) where the disclosure of such information is made to the Sub-Contractor's consultants, auditors, or advisors; or
  - (iii) where disclosure of such information is required by law, or by any government agency, or for the performance of any obligations under the Sub-Contract; or
  - (iv) where the information has entered public domain.

### **51.2 Disclosure to third parties**

Where information has been disclosed to third parties pursuant to sub-clause 51.1, the Sub-Contractor undertakes to ensure that such third parties shall not disclose the information to any other third party.

### **51.3 Surviving Rights**

The restrictions contained in this Clause 51.0 shall survive the termination of the Sub-Contract and shall continue to bind the Sub--contractor without limit in point of time.

## **52.0 COMPLIANCE WITH THE LAW**

### **52.1 Laws Applicable**

- (a) The Sub-Contract shall be governed by and construed in accordance with the laws as stated in Appendix II;
- (b) The Parties irrevocably agree to submit to the exclusive jurisdiction of the courts of the country stipulated in Appendix II

### **52.2 Statutory Requirements**

- (a) In the context of this Clause, the phrase “statutory requirements” shall mean any law, regulation, or by-law, or any order, or directive issued by any Appropriate Authority, public authority or public services company relating to the Sub-Contract Works or, in the case of public authority or public service company, with those systems the same are, or will be connected.
- (b) The Sub-Contractor shall comply in all respects including the giving of all notices and paying of all fees required by the statutory requirements defined in sub-clause 52.1(a) above.

### **52.3 Documents evidencing approvals of Authorities**

- (a) The Sub-Contractor shall submit to the Contractor/C.R. copies of documents issued to the Sub-Contractor by all relevant municipal, public authorities, public services companies or other statutory authorities in respect of the Sub-Contract Works under the Sub-Contract, in particular, any approvals of Works.
- (b) The copies of documents shall be in the form and quantity as directed by the Contractor/C.R.
- (c) All such documents shall be submitted to the Contractor/C.R. at least 7 Days prior to the commencement of the particular work involved, unless the Contractor/C.R. has expressly agreed to a different time for submission.

### **52.4 Default in submitting copies of Approvals**

- (a) Should the Sub-Contractor fail to comply with the provisions of sub-clause 51.3 above, the following sanctions may be imposed on it:

- (i) The Sub-Contractor shall not be permitted to commence with the relevant portion of the Sub-Contract Works or the whole of the Sub-Contract Works involved (as applicable); or
  - (ii) The Contractor/C.R. may exercise its powers under Clause 39.0; and/or
  - (iii) The Contractor/C.R. shall seek indemnification under sub-clause 52.5 for all penalties and/or liabilities imposed on the Contractor due to the Sub-Contractor's breach of any statutory requirements.
- (b) The sanctions stipulated in sub-clause 52.4(a) above shall be in addition to any other rights or remedies the Contractor may have against the Sub-Contractor under the law.

#### **52.5 Indemnification of the Contractor**

The Sub-Contractor shall keep the Contractor fully indemnified against all penalties and/or liabilities of every kind for the Sub--contractor's breach of any such Statutory Requirements.

#### **52.6 Delay in granting of Approvals**

- (a) The Sub-Contractor is fully responsible for the obtaining of all relevant approvals in respect of the Sub-Contract Works to be undertaken under the Sub-Contract.
- (b) The Contractor shall not be liable in any way whatsoever for any delay or default by any authority to grant the relevant approvals in respect of the Sub-Contract Works to be taken under the Sub-Contract.
- (c) Consequent to the above, the Sub-Contractor acknowledges that, except as provided elsewhere in the Sub-Contract, the Sub-Contractor shall not be entitled to make any claim in respect of:
  - (i) failure to comply with this Clause 52.0; and/or
  - (ii) default or delay by any authority to grant the necessary licenses, consents or approvals.
- (d) The scope of the claim referred to in sub-clause 52.6 (c) above shall include, but be not limited to:



- (i) a Variation; and/or
- (ii) an extension of time; and/or
- (iii) direct loss and/or expense.

## **52.7 Changes in Statutory Requirements**

(a) If a statutory requirement relating to the Sub-Contract Works is imposed or changed and necessitates:

- (i) a Variation to the Sub-Contract Works;
- (ii) a change to the Temporary Works, Constructional Plant/Equipment or method or sequence of work as may be specified in the Sub-Contract;
- (iii) a change, being the provision or expansion of services of a municipal, public or statutory authority in connection with the Sub-Contract Works or Temporary Works; or
- (iv) an increase or decrease in a fee, or charge, or payment of a new fee, premium, or charge,

and has effect after the 14<sup>th</sup> day prior to the issue of the Letter of Acceptance, and could not have been reasonably anticipated by the Sub-Contractor at that prior date, then to the extent that such change caused the Sub-Contractor to incur more or less cost than otherwise would have been incurred, the provisions of sub-clause 52.7(b) below will apply.

(b) Further to sub-clause 52.7 (a)

- (i) the difference shall be valued under Clause 28.0; and
- (ii) if there is any delay caused to the Sub-Contractor, the provisions of Clause 21.0 shall apply.

(c) The pre-conditions to the exercise of sub-clause 52.7 (b) shall be:

- (i) The Sub-Contractor's notification to the Contractor/C.R. in writing of the relevant change or changes in statutory requirements; and

- (ii) The Contractor's/C.R.'s issuance of a written instruction in relation thereto within 7 Days of receipt of the Sub-Contractor's notification; and
- (iii) satisfaction by the Sub-Contractor of the relevant requirements of the applicable clauses i.e. Clause 21.0 and 28.0.

## **52.8 Inconsistencies with Statutory Requirements**

- (a) The Sub-contractor shall so soon as is practicable but not later than 14 Days after the date of issue of:
  - (i) the Letter of Acceptance; or
  - (ii) any subsequent documents (including drawings) by the Contractor/C.R.; or
  - (iii) any Contractor's/C.R.'s instruction.give a written notice of any inconsistency or inconsistencies between the Sub-Contract Documents or subsequent documents or Contractor's/C.R.'s instructions and any statutory requirements.
- (b) The Sub-Contractor's notice given under sub-clause 52.8(a) shall be issued to the Contractor/C.R. at least 14 Days before the commencement of the execution of the affected Sub-Contract Works.

## **52.9 Sub-Contractor's Notice**

- (a) All Sub-Contractor's notices issued under this Clause inclusive of sub-clauses 52.7(c) and 52.8(a) shall:
  - (i) be in writing; and
  - (ii) be in a form as specified by the Contractor/C.R.
- (b) For the notice given pursuant to sub-clause 52.7(c) it shall state:
  - (i) the change involved; and
  - (ii) the reason for the change.

- (c) For the notice given in furtherance to sub-clause 52.8(a), it shall stipulate:
  - (i) the inconsistency or inconsistencies discovered;
  - (ii) the contractual effects (if any) of the above.

#### **52.10 Default in instructing Sub-Contractor**

- (a) If the Contractor/C.R. does not issue any instruction to the Sub-Contractor within 7 Days from receipt of the Sub-Contractor's Notice, the Sub-Contractor shall proceed with the Works required to conform to the statutory requirements.
- (e) Any changes so necessitated shall be deemed to be a Variation required by the Contractor/C.R.

### **53.0 NOTICES**

#### **53.1 Service of Notices or Documents under Sub-Contract**

Unless otherwise specifically provided under these Conditions, any written notice or other document to be given under the Sub-Contract shall be given or sent by:

- (a) hand, in which case, the notice or document shall be deemed to have been duly served at the time of delivery,
- (b) ordinary mail or registered post, in which case, the notice or document shall be deemed to have been duly served after 3 Days of posting,
- (c) electronic transmission, in which case, it shall be deemed to have been duly transmitted at the time of successful transmission, or
- (d) any other means as agreed to in writing by the Parties.

#### **53.2 Service of Notices or Documents under CIPAA (if applicable)**

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.

### **53.3 Written Communication**

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

## **54.0 INTELLECTUAL PROPERTY RIGHTS**

### **54.1 Inclusion in the Sub-Contract Sum**

Unless otherwise stipulated in the Sub-Contract, all royalties, or other sums payable in respect of the supply and use in executing the Sub-Contract Works of any articles, designs, processes, inventions, drawings, or other copyrights shall be deemed to have been included in the Sub-Contract Sum.

### **54.2 Indemnity to Employer and Contractor**

- (a) The Sub-Contractor shall indemnify the Employer and the Contractor against:
  - (i) any claim for the infringement of any letters patent, copyright, or registered designs by the use of any equipment, or of information supplied under the Sub-Contract; and
  - (ii) all costs and damages the Employer and/or the Contractor may incur in any action, or proceeding for which such infringements, or for which the Employer and/or the Contractor may become liable.
  
- (b) If the Employer's and/or the Contractor's use, or possession of any equipment, or work is likely to constitute an infringement, then the Sub-Contractor shall promptly and its own expense, procure for the Employer and/or the Contractor the right to continue using and possessing the same, or modify, or replace the same so as to avoid the infringement (in which event, the Sub-Contractor shall compensate the Employer and/or the Contractor for the amount of any direct loss or damage sustained or incurred by the Employer and/or the Contractor during such modification, or replacement).

### **54.3 Vesting of Copyright, etc**

- (a) The copyright and all other proprietary rights whatsoever in the Sub-Contract Works and other material developed and supplied by the Sub-Contractor to, or under the Sub-Contract shall vest in, and shall be the sole property of the Contractor and/or Employer (as applicable).
  
- (b) The Sub-Contractor shall not:
  - (i) during, or at any time after completion of the Sub-Contract Works; or
  - (ii) after the expiry of the Sub-Contract, or
  - (iii) after the determination of the Sub-Contractor's employment; or
  - (iv) after the termination of the Sub-Contract, or
  - (v) abandonment of the Sub-Contract Works,

in any way question, or dispute such ownership of the Contractor and/or Employer.
  
- (c) For the avoidance of doubt, the proprietary rights in the Sub-Contract Works shall vest in the Contractor and/or the Employer free and clear of all liens, claims and encumbrances on the Sub-Contract Works.

### **55.0 WAIVER**

#### **55.1 Condonation of Breaches**

The condonation by the Contractor/C.R. of any breach or breaches by the Sub-Contractor, or any of its Sub-Subcontractors, of any of the provisions of the Sub-Contract, shall in no way prejudice, or affect, or be considered as a waiver of the Contractor's rights, powers and remedies under the Sub-Contract in respect of such and/or any other breach or breaches.

#### **55.2 Failure to Enforce**

Any failure by the Contractor to enforce at any time, any of the provisions of the Sub-Contract shall not be construed as a waiver of its right to enforce the breach of such provision, or any other provision in the Sub-Contract, or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of the Sub-Contract.

**APPENDIX I: EXTRACT OF CONTRACT PARTICULARS**

**(A) RECITAL A.                      General Information**

<b>Clause/ Sub-clause</b>	<b>Item</b>		<b>Data/Particulars</b>
1.	Location of Site	:	.....
2.	Access to Site	:	.....
3.	Approximate date of Commencement of Sub-Contract	:	.....
4.	Unloading of material, etc:	:by	.....
5.	Storage accommodation	:by	.....
6.	Standing scaffolding	:by	.....
7.	Plant and Hoisting	:by	.....
8.	Materials to be provided free by the Contractor for the purpose of the Sub-Contract Works	:	..... ..... ..... .....
9.	Water	:by	.....
10.	General lighting	:by	.....
11.	Temporary power supply	:by	.....
12.	Caring and protection of Sub- Contract Works	:by	.....
13.	Works programme for Contract Work	:	.....

**(B) Appendix I to Contract  
Conditions**

**Information on Contract**

<i>Clause/ Sub-clause</i>	<i>Item</i>	<i>Data/Particulars</i>
	Place for inspection of Contract (except the details of the prices)	: ..... ..... .....
Recitals	Date of Contract	: .....
	Contract No.	: .....
	Contract for	: ..... ..... ..... .....
1.1(aj)	Details of the E.R.	: ..... .....
2.1	Contract Period	: ..... (days/weeks/months)
2.2	Date of Commencement of Contract Period	: .....
	Date of Ending of Contract Period	: .....
13.3	Value of Performance Security	: RM.....
13.4	Duration of the Performance Security	: ..... months
23.11(c)(i)	Total Amount Insured for Third Party Property Damage	: RM.....
	(i) Total Amount of Third Party Vehicle Insurance cover	: RM.....

**Clause/  
Sub-clause**

- 29.2(a)(ii) Date of Commencement : .....
- 29.3(a)(i) Date of Site Possession : .....
- 32.1 Date for Completion : .....
- 33.2 Sectional Completion

Identification of Section or Part	Date of Commencement (sub-clause 29.2(a)(ii))	Date of Possession (sub-clause 29.4)(a)(ii))	Date for Completion (sub-clause 33.2)	Liquidated and Damages (sub-clause 35.1(a))

- 35.1(a)(i) Liquidated Damages  
at the rate of : RM.....per.....
- 36.3(b)(i) Defects Liability Period (if none  
stated, then the period is 24 months) : .....months
- 41.2(a) Intervals at which Contractor  
to submit application for payment : .....
- 41.3(a)(i) Details on Stage Payment for the  
Works, or any part of the Works  
(if applicable) : .....
- 41.3(a)(iii) Percentage of value of unfixed  
& Materials, Goods, Plant or Equipment
- 41.4(f) "on Site" included in the Certificate : .....%



**Clause/  
Sub-clause**

- 41.3(a)(iv) Percentage of value of unfixed  
& Materials, Goods, Plant or Equipment  
41.4(g) "off-Site" included in the Certificate  
(if applicable) : .....%
- 41.4(c) Minimum value of work to be executed  
including unfixed Materials  
, Goods, etc  
delivered to Site (and/or "off-Site"  
if permitted) before First Interim  
Certificate will be issued : RM.....
- 41.4(d) Minimum value of work to be executed  
including unfixed Materials  
, Goods, etc  
delivered to Site (and/or "off-Site"  
if permitted) before subsequent Interim  
Certificates will be issued : RM.....
- 41.7(a) Period of honouring payment certificate  
(if none stated, then within 60 Days) : .....days
- 41.9(a) Percentage of certified value  
retained (if none stated is 10% of  
the value of work executed and  
unfixed Materials, Goods, Plant,  
Equipment on Site (or "off-Site" if  
permitted) included in the certificate  
subject to the limit of the Retention  
Money) : .....%
- (c) Limit of Retention Money (if none  
Stated is 5% of the Contract Sum) : .....%
- 46.1(a) Minimum Insurance cover for any  
one accident or series of  
accidents arising out of one event : RM.....

**Clause/  
Sub-clause**

46.1(b)	Amount of excess	:	RM.....
46.1(c)	Duration of cover	:	.....
47.3(c)	Duration of cover	:	.....
47.4(c)	Duration of cover	:	.....
48.2	SOCSSO Scheme registration number	:	.....
49.1(a)	Percentage to cover professional fees for reinstatement (if none stated is a sum equivalent to 1% of the Contract Sum)	:	RM.....
	Amount for removal of debris (if none stated is a sum not less than the equivalent of 1% of the Contract Sum)	:	RM.....
	Total Amount Insured	:	RM.....
	Duration of cover	:	.....
49.1(b)	Amount of excess	:	RM.....
50.3(a)(i)	Officer Named to order	:	.....
	Suspension (Authorized Person)	:	.....
50.8(b)	Number of days for E.R. to respond to Contractor's request (if none stated, then the period shall be 14 Days)	:	.....days
66.7(a)	Date of Issue of Letter of Acceptance:	:	.....

67.1(a) Language to be used : .....  
.....

**Clause/  
Sub-clause**

67.3 Employer's address for Notices under  
Clause 67.0 : .....  
.....  
.....

Contractor's address for Notices under  
Clause 67.0 : .....  
.....  
.....

**APPENDIX II: PARTICULARS OF SUB-CONTRACT**

<i>Clause/ Sub-clause</i>	<i>Item</i>	<i>Data/Particulars</i>
<b>Recital (B): More detailed description of Sub- Contract Work</b>		
1.1(e)	Details of the C.R.	: .....
1.1(ah)	Sub-Contract Sum	: RM.....
4.1 & 19.4(a)(i)	Date for Possession	: .....
6.1	Utilities to be provided by Sub-Contractor (if any)	: ..... ..... ..... .....
10.2	Form of Performance Security	: .....
10.3	Amount of Performance Security	: RM.....
10.4	Duration of Performance Security	: .....months

11.3(a)	Value of Design Guarantee Bond (if applicable)	:	RM.....
13.1(b)(i)	Technical & professional qualifications Required of Sub-Contractor's Representative (SC.R)	:	.....
13.1(b)(ii)	Language competency of SC.R	:	.....
13.6(c)(ii)	Amount to be deducted for the period the SC.R is absent from Site	:	RM..... per day

<b>Clause/ Sub-clause</b>	<b>Item</b>		<b>Data/Particulars</b>
15.3(a)	Time for the submission of cash flow estimates	:	..... weeks after award of Sub-Contract
15.4(a)	Time for the submission of Method Statements & Temporary Works	:	..... weeks after award of Sub-Contract
16.7(d)	Percentage of On-Cost Charges	:	.....%
19.1(a)(ii)	Date of Commencement of Sub- Contract	:	.....
19.2(b)	Time for Completion of Sub-Contract	:	..... weeks/months
19.4(a)(i)	Date for Possession	:	.....
20.5(b)(i)	Amount to be deducted from Interim Payment Certificates for default in submitting Sub-Contract programme	:	.....% of amount due to Sub-Contractor

23.2 Sectional Completion

Identification of Section or Part	Date of Commencement (sub-clause 19.1(a)(ii))	Date for Possession (sub-clause 19.5)(a)(ii))	Date for Completion (sub-clause 19.2(a))	Liquidated Damages (sub-clause 25.1)

25.1 Liquidated Damages  
 at the rate of : RM.....per.....

**Clause/  
Sub-clause/Item**

**Data/Particulars**

26.3(b)(i) Defects Liability Period (if none stated, then the period is 24 months) : .....months

26.7(b)(i) Percentage of "On-Cost" Charges : .....%

26.8(c) Period for Sub-Contractor to replace affected part or parts (if none stated, then the period is 14 Days) : .....Days

26.13 (b) Maintenance Period (if none stated then the period is 24 months) .....months

29.2(a) Intervals at which Sub-Contractor to submit application for payment : .....

29.3(a)(iii) Percentage of value of unfixed & Materials, Goods, Plant or Equipment  
 30.1/30.2 "on/off Site" included in the certificate : .....%

29.4(c) Minimum value of work to be executed & including unfixed Materials

, Goods, etc

30.1/30..2 delivered to Site (and/or "off-Site"  
if permitted) before First Interim  
Certificate will be issued : RM.....

Minimum value of work to be executed  
including unfixed Materials, Goods, etc  
delivered to Site (and/or "off-Site"  
if permitted) before subsequent Interim  
Certificates will be issued : RM.....

29A.0 Advance Payment : Applicable/Not Applicable \*

<b>Clause/ Sub-clause</b>	<b>Item</b>	<b>Data/Particulars</b>
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29A.1(b)	Percentage of Builder's Work	: .....%
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29A.1(c)	Maximum Limit of Advance payment	: RM.....
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31.1(a)	Percentage of certified value retained (if none stated is 10% of the value of work executed and unfixed Materials, Goods, Plant or Equipment on Site (or "off-Site" if permitted) included in the certificate subject to the limit of the Retention Money)	: .....%
---------	---	----------

	Limit of Retention Money (if none stated is 5% of the Sub-Contract Sum)	: .....%
--	---	----------

35A.0	Insurance of Works by the Employer	: Applicable/Not Applicable *
-------	---------------------------------------	-------------------------------

35A.1	Total amount Insured	: RM.....
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Insurance cover deductible

amount (if none stated, shall not be less than RM50,000.00) : RM.....

Percentage to cover professional fees for reinstatement (if none stated is a sum equivalent to 1% of the Contract Sum) : RM.....

Amount for removal of debris (if none stated is a sum not less than the equivalent of 1% of the Contract Sum) : RM.....

Duration of cover : .....

<b>Clause/ Sub-clause</b>	<b>Item</b>	<b>Data/Particulars</b>
-------------------------------	-------------	-------------------------

36.0 Insurances Taken By Sub-Contractor  
& 37.0

Type of Insurance	Amount (RM)	Period of Cover	Details

38.2 SOCSO Scheme registration number : .....

38.3(b) Percentage of On-Cost Charges : .....%

45.1(a) Default appointing authority :

.....

Rules of Arbitration :

.....

(c) Seat of Arbitration: : .....



46.1	Rules for Mediation	:	.....
52.1(a)	Governing Laws	:	.....
(b)	Courts having jurisdiction	:	.....
52.7	Date of Issue of Letter of Acceptance	:	.....
53.3	Contractor's address for Notices under Clause 53.0	:	..... .....
	Sub-Contractor's address for Notices under Clause 53.0	:	..... .....

*(\* delete as appropriate)*

**APPENDIX III: OTHER DOCUMENTS FORMING PART OF SUB-CONTRACT**

Sub-clause

- |         |     |  |
|---------|-----|--|
| 1.1(ac) | 1.  |  |
|         | 2.  |  |
|         | 3.  |  |
|         | 4.  |  |
|         | 5.  |  |
|         | 6.  |  |
|         | 7.  |  |
|         | 8.  |  |
|         | 9.  |  |
|         | 10. |  |
|         | 11. |  |
|         | 12. |  |

