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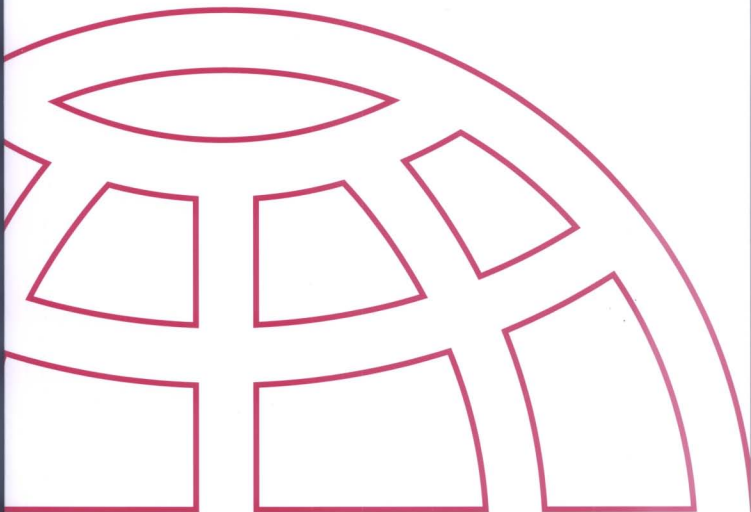
Conditions of Subcontract for **Construction**

FOR BUILDING AND ENGINEERING WORKS DESIGNED BY THE EMPLOYER

GENERAL CONDITIONS

**GUIDANCE FOR THE PREPARATION OF PARTICULAR CONDITIONS
OF SUBCONTRACT**

**FORMS OF LETTER OF SUBCONTRACTOR'S OFFER, CONTRACTOR'S
LETTER OF ACCEPTANCE AND SUBCONTRACT AGREEMENT**





FIDIC

is an international federation of national Member Associations of consulting engineers.

FIDIC was founded in 1913 by three national associations of consulting engineers within Europe. The objectives of forming the Federation were to promote in common the professional interests of the Member Associations, and to disseminate information of interest to their members. Today, FIDIC membership covers more than 70 countries from all parts of the globe and encompassing most of the private practice consulting engineers.

FIDIC is charged with promoting and implementing the consulting engineering industry's strategic goals on behalf of Member Associations. Its strategic objectives are to: represent world-wide the majority of firms providing technology-based intellectual services for the built and natural environment; assist members with issues relating to business practice; define and actively promote conformance to a code of ethics; enhance the image of consulting engineers as leaders and wealth creators in society; promote the commitment to sustainability.

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FIDIC publications and details about events are available from the Secretariat in Switzerland. Specific activities are detailed in an annual business plan, and the FIDIC website, www.fidic.org, gives extensive background information.

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SUBCONTRACT

GUIDANCE FOR THE
PREPARATION OF
PARTICULAR CONDITIONS
OF SUBCONTRACT

FIDIC® Conditions of Subcontract
for **CONSTRUCTION**

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DESIGNED BY THE EMPLOYER

FORMS OF LETTER OF
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CONTRACTOR'S LETTER OF
ACCEPTANCE AND
SUBCONTRACT AGREEMENT

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FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



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The preparation was carried out under the general direction of the FIDIC Contracts Committee which comprised until September 2009: Axel-Volkmar Jaeger, Consulting Engineer, Germany (Chair); Christopher Wade, Consulting Engineer, UK (Former Chair); Philip Jenkinson, Atkins, UK; Nael Bunni, Chartered Engineer, Ireland; Legal Adviser Christopher Seppala, White and Case LLP, France; Special Adviser Michael Mortimer-Hawkins, Consulting Engineer, UK and Sweden. From September 2009, the committee comprised Philip Jenkinson, Atkins, UK (Chair), Christoph Theune, Pöyry Environment GmbH, Germany, and Zoltan Záhonyi, Consulting Engineer, Hungary, with Axel-Volkmar Jaeger, Christopher Wade, Nael Bunni, Christopher Seppala, and Michael Mortimer-Hawkins as Special Advisers.

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The ultimate decision regarding the wording of the clauses and format of the document rests with FIDIC, and acknowledgement of reviewers does not mean that they concur with or approve the wording of all clauses.

FOREWORD

The terms of the Conditions of Subcontract for Construction have been prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) and are recommended for use in conjunction with the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*, 1st Edition 1999, and with the Multilateral Development Bank Harmonised Edition of the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*. They replace the terms of the *FIDIC Conditions of Subcontract for Works of Civil Engineering Construction*, 1st Edition 1994, that were recommended for use in conjunction with the *FIDIC Conditions of Contract for Works of Civil Engineering Construction* (4th Edition 1987, Reprinted 1992 with Further Amendments).

The document begins with a series of flow charts which show, in visual form, the critical sequences of activities which are specific and unique to the subcontract form of contract. These have been included by the drafting task group to facilitate an understanding of the procedures and terminology found in these *FIDIC Conditions of Subcontract for Construction*.

These flow charts cover:

- Typical sequence of Principal Events during Subcontracts for Construction
- Typical sequence of Subcontract Payment Events envisaged in Clause 14
- Typical sequence of Subcontract Dispute Events envisaged in Clause 20.

These charts are illustrative and must not be taken into consideration in the interpretation of the Conditions of Subcontract.

In the preparation of the *FIDIC Conditions of Subcontract* it was recognised that while there are numerous Clauses which will be generally applicable there are some clauses which must necessarily vary to take account of the circumstances and locality of the Subcontract Works.

The causes of general application have been grouped together in the first part of this document and are referred to as General Conditions of Subcontract. They have been published in a form which will facilitate their inclusion as printed in the subcontract documents normally prepared.

The Particular Conditions of Subcontract are linked with the General Conditions of Subcontract: by the corresponding numbering of the clauses, so that the General Conditions and the Particular Conditions together comprise the Conditions of Subcontract governing the rights and obligations of the parties.

The Special Conditions of Subcontract must be specially drafted to suit each individual Subcontract. The guidance in the second part of this document – Guidance for the Preparation of Particular Conditions of Subcontract – is intended to aid in this task by giving options for various clauses, where appropriate.

The use of clauses or sub-clauses in the Particular Conditions of Subcontract may be necessary or appropriate for one or more reasons, of which the following are examples:

- (a) Where the wording in General Conditions specifically requires that further information is to be included in Particular Conditions and the Conditions of Subcontract would not be complete without that information, namely in Sub-Clauses 1.1.8, 1.1.9, 1.1.11, 1.1.18, 1.1.27, 1.9, 2.1, 8.4, 18.1, and 18.2.
- (b) Where the wording in the General Conditions indicates that supplementary information may be included in the Particular Conditions, but the Conditions of Subcontract would still be complete without any such information, namely in Sub-Clauses 1.11, 2.1, 2.2, 4.1, 7.1, 7.2, 9.1, 10.2, 10.3, 14.6, and 18.2.
- (c) Where the type, circumstances or locality of the Subcontract Works necessitate additional clauses or sub-clauses (for example, when the Subcontractor has been nominated by the Employer).
- (d) Where the governing law or exceptional circumstances necessitate an alteration in the General Conditions. Such alterations should be effected by stating in the Particular Conditions that a particular clause, or part of a clause, in the General Conditions is deleted and giving the substitute clause, or part, as applicable.

In other cases, however, only guidance for drafting purposes is given. Before incorporating any example wording it must be checked to ensure that it is wholly suitable for the particular circumstances and, if not, it must be varied. Where example wording is varied and in all cases where additional material is included in the Particular Conditions of Subcontract, care must be taken to ensure that no ambiguity is created with the General Conditions of Subcontract or between the clauses in the Particular Conditions of Subcontract.

The Guidance for the Preparation of Particular Conditions of Subcontract include sample forms, with some guidance, of annexes that are to be attached to the Particular Conditions of Subcontract:

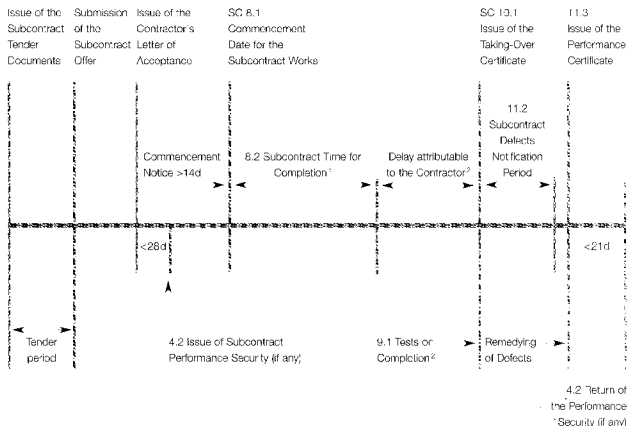
- Annex A: Particulars of the Main Contract
- Annex B: Scope of Subcontract Works and Schedule of Subcontract Documents
- Annex C: Incentive(s) for Early Completion, Taking-Over by the Contractor and Subcontract Bill of Quantities
- Annex D: Equipment, Temporary Works, Facilities, and Free-Issue Materials to be provided by the Contractor
- Annex E: Equipment, Temporary Works, Facilities, and Free-Issue Materials to be Provided by the Contractor
- Annex F: Insurances
- Annex G: Subcontract Programme
- Annex H: Other Items

Sample forms of offer, acceptance and agreement at the end of the document are:

- Letter of Subcontractor's Offer
- Contractor's Letter of Acceptance
- Appendix to the Subcontractor's Offer
- Subcontract Agreement

FLOW CHARTS

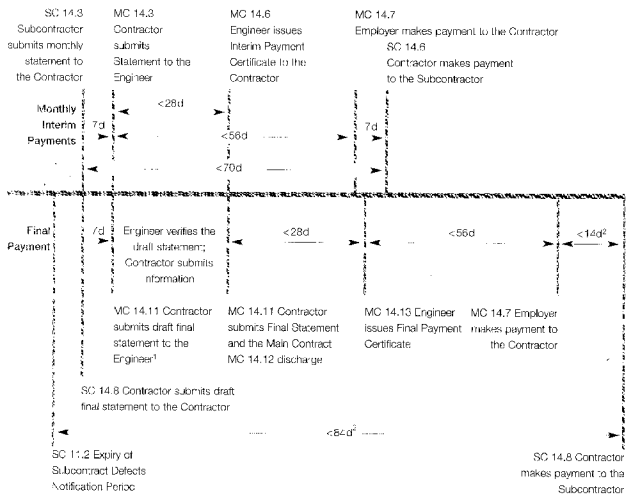
Typical sequence of Principal Events during Subcontracts for Construction
 Typical sequence of Subcontract Payment Events envisaged in Clause 14
 Sequence of Subcontractor's Claims and Disputes envisaged in Clause 20
 Sequence of Subcontractor Claims and Disputes envisaged in First Alternative Clause 20 given in the Guidance for the Preparation of Particular Conditions of Subcontract
 Sequence of Subcontractor Claims envisaged in Second Alternative Clause 20 given in the Guidance for the Preparation of Particular Conditions of Subcontract
 Sequence of Subcontract Disputes envisaged in Second Alternative Clause 20 given in the Guidance for the Preparation of Particular Conditions of Subcontract



Typical sequence of Principal Events during Subcontracts for Construction

1. The Subcontract Time for Completion is to be stated (in the Appendix to the Subcontractor's Offer) as a number of days, to which is added any extensions of time under Sub-Clause 8.3.
2. In order to indicate the sequence of events, the above diagram is based upon the example of the Subcontractor failing to comply with Sub-Clause 8.2.

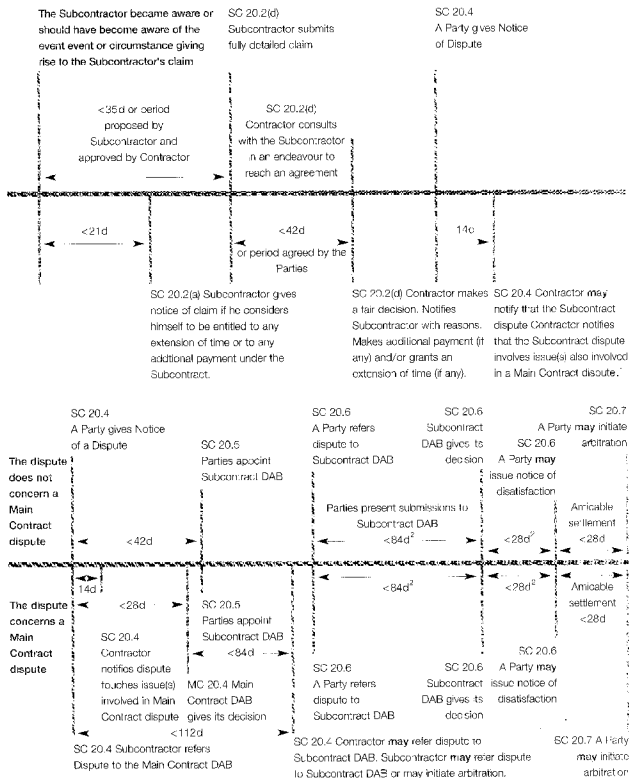
Legend: The abbreviation SC is a reference to the Subcontract and MC is a reference to the Main Contract.



Typical sequence of Payment Events envisaged in Clause 14

1. The draft final statement is due to be submitted under the Main Contract to the Engineer within 56 days of the issue of the Performance Certificate.
2. 14 days after Employer makes payment to the Contractor or 84 days after expiry of the Subcontract Defects Notification Period, whichever is earlier.

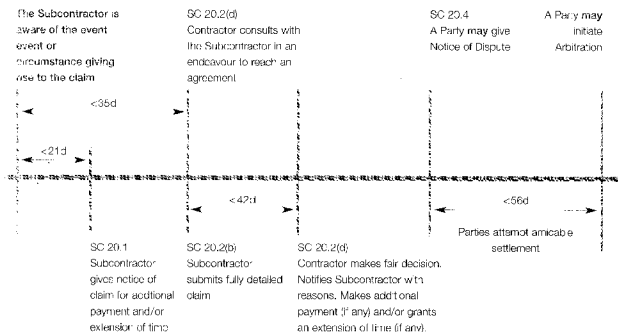
Legend: The abbreviation SC is a reference to the Subcontract and MC is a reference to the Main Contract.



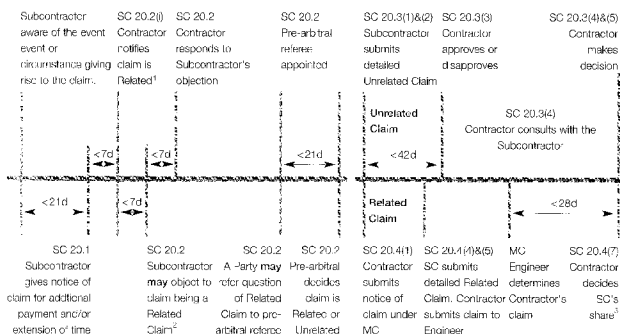
Sequence of Subcontractor's Claims and Disputes envisaged in Clause 20

1. If the Contractor does not so notify the Subcontractor with reasons within 14 days, either Party shall be entitled to refer the Subcontract dispute to the Subcontract DAB.
2. Pursuant to the provisions of Main Contract Clause 20.4, referred to in Subcontract Sub-Clause 20.6.

Legend: The abbreviation SC is a reference to the Subcontract and MC is a reference to the Main Contract.



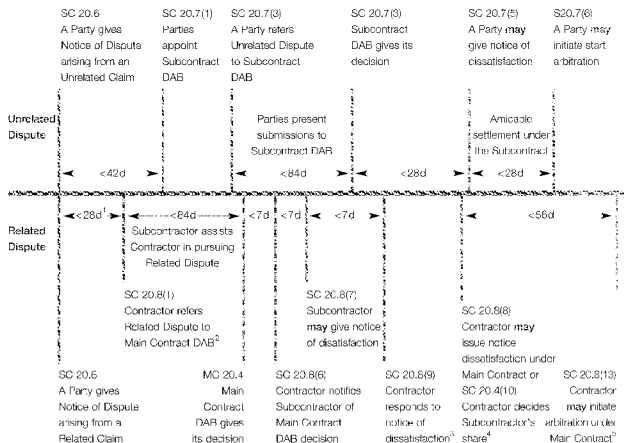
Sequence of Subcontractor Claims and Disputes envisaged in First Alternative Clause 20 given in the Guidance for the Preparation of Particular Conditions of Subcontract



Sequence of Subcontractor Claims envisaged in Second Alternative Clause 20 given in the Guidance for the Preparation of Particular Conditions of Subcontract

1. If Contractor does not notify within 7 days of Subcontractor's notice, the claim to be considered an Unrelated Claim.
2. If Subcontractor does not object within 7 days, the claim considered accepted as a Related Claim.
3. Contractor's decision to follow consultation with Subcontractor in an endeavour to reach agreement. Subcontractor may notify dissatisfaction with decided share within 28 days of decision. Contractor to respond to notice of dissatisfaction within 7 days.

Legend: The abbreviation SC is a reference to the Subcontract and MC is a reference to the Main Contract.



Sequence of Subcontractor Disputes envisaged in Second Alternative Clause 20 given in the Guidance for the Preparation of Particular Conditions of Subcontract

- 56 days if Main Contract DAB not in place at time of Notice of Dispute.
- If Contractor does not refer Related Dispute to Main Contract DAB within less than 28 days (or 56 days), dispute to be considered an Unrelated Dispute.
- If Contractor does not respond, dispute to be considered an Unrelated Dispute.
- Within less than 14 days of receiving benefit from Employer. Within less than 28 days, Subcontractor may notify dissatisfaction with decided share. Within less than 7 days, Contractor to respond.
- If the Contractor does not refer the Related Dispute to arbitration <63 days after notice of dissatisfaction under Main Contract, dispute to be considered an Unrelated Dispute.

Legend: The abbreviation SC is a reference to the Subcontract and MC is a reference to the Main Contract.

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SUBCONTRACT

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for **CONSTRUCTION**

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DESIGNED BY THE EMPLOYER

FORM OF LETTER OF
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CONTRACTORS LETTER OF
ACCEPTANCE AND
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General Conditions

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INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
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FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



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General Conditions of Subcontract

Definitions and Interpretation

1.1

Subcontract Definitions

In the Conditions of Subcontract, which include Particular Conditions of Subcontract, Annexes to the Particular Conditions of Subcontract and these General Conditions of Subcontract, all words and expressions shall have the same meanings as are respectively assigned to them in the Main Contract, except where the context otherwise requires and except that the following words and expressions shall have the meanings hereby assigned to them:

- 1.1.1 **"Accepted Subcontract Amount"** means the amount accepted in the Contractor's Letter of Acceptance for the execution and completion of the Subcontract Works and the remedying of any defects.
- 1.1.2 **"Annex"** means the document entitled annex attached to the Particular Conditions of Subcontract, completed by the Contractor and/or the Subcontractor, as included in the Subcontract. **"Annex A"** means the document entitled Annex A attached to the Particular Conditions of Subcontract, and similarly for **"Annex B"**, **"Annex C"**, and so on. All the annexes attached to the Particular Conditions of Subcontract are referred to jointly as the **"Annexes"**.
- 1.1.3 **"Appendix to the Subcontractor's Offer"** means the completed pages entitled appendix to the subcontractor's offer which are appended to and form part of the Subcontractor's Offer.
- 1.1.4 **"Contractor"** means the person named as contractor in the Appendix to Subcontractor's Offer and the legal successors in title to such person, but not (except with the consent of the Subcontractor) any assignee of such person.
- 1.1.5 **"Contractor's Instruction"** means an instruction given by the Contractor's Subcontract Representative in accordance with Sub-Clause 3.1 [*Contractor's Instructions*].
- 1.1.6 **"Contractor's Letter of Acceptance"** means the letter of formal acceptance signed by the Contractor of the Subcontractor's Offer, including any appended memoranda comprising agreements between and signed by both Parties.
- 1.1.7 **"Contractor's Subcontract Representative"** means the person named by the Contractor in the Appendix to the Subcontractor's Offer or appointed from time to time by the Contractor under Sub-Clause 6.2 [*Contractor's Subcontract Representative*], who acts on behalf of the Contractor.
- 1.1.8 **"Employer"** means the person named as employer in Part A of Annex A and the legal successors in title to, or assignees of such person.

- 1.1.9 "Engineer" means the person appointed by the Employer to act as the Engineer for the purposes of the Main Contract and named in Part A of Annex A, or other person as appointed from time to time by the Employer and notified to the Contractor under the Main Contract, and notified thereafter to the Subcontractor by the Contractor.
- 1.1.10 "Letter of Subcontractor's Offer" means the document entitled letter of subcontractor's offer, which was completed by the Subcontractor and includes the signed offer to the Contractor for the execution of the Subcontract Works.
- 1.1.11 "Main Contract" means the contract entered into between the Employer and the Contractor in respect of the Main Works, brief particulars of which are given in Part A of Annex A.
- 1.1.12 "Main Contract DAB" means the DAB as defined under the Main Contract.
- 1.1.13 "Main Contract Tests on Completion" means the tests which the Subcontractor is to carry out on completion of the Subcontract Works in accordance with Sub-Clause 9.1 [Subcontract Tests on Completion] which constitute Tests on Completion under the Main Contract.
- 1.1.14 "Main Works" means the Works as defined in the Main Contract.
- 1.1.15 "Party" means the Contractor or the Subcontractor, as the context requires. The Contractor and the Subcontractor are referred to jointly as 'the Parties'.
- 1.1.16 "Subcontract" means the agreement between the Parties comprising the documents listed at Sub-Clause 1.5 [Priority of Subcontract Documents].
- 1.1.17 "Subcontract Agreement" means the subcontract agreement referred to in Sub-Clause 1.9 [Subcontract Agreement].
- 1.1.18 "Subcontract Bill of Quantities" means the document entitled bill of quantities, completed by the Subcontractor and submitted with the Subcontractor's Offer, as included in Annex C.
- 1.1.19 "Subcontract Commencement Date" means the date notified under Sub-Clause 8.1 [Commencement of Subcontract Works].
- 1.1.20 "Subcontract DAB" means either one or three persons as stated in the Appendix to the Subcontractor's Offer, or other person(s) appointed under Sub-Clause 20.5 [Appointment of the Subcontract DAB].
- 1.1.21 "Subcontract Defects Notification Period" means the period for notifying defects in accordance with Sub-Clause 11.2 [Subcontract Defects Notification Period].
- 1.1.22 "Subcontract Drawings" means the drawings of the Subcontract Works and any additional and/or modified drawings issued by the Contractor in accordance with the Subcontract.
- 1.1.23 "Subcontract Goods" means the Subcontractor's Equipment, Subcontract Plant, the materials intended to form or forming part of the Subcontract Works (including supply only materials (if any) to be supplied by the Subcontractor under the Subcontract) and the Subcontractor's temporary works, or any of them as appropriate.

- 1.1.24 "Subcontract Performance Security" means the security (or securities, if any) under Sub-Clause 4.2 [*Subcontract Performance Security*].
- 1.1.25 "Subcontract Plant" means the apparatus, machinery and vehicles intended to form or forming part of the permanent works to be executed by the Subcontractor under the Subcontract.
- 1.1.26 "Subcontract Price" means the price defined in Sub-Clause 14.1 [*The Subcontract Price*], and includes adjustments in accordance with the Subcontract.
- 1.1.27 "Subcontract Programme" means the programme defined in Sub-Clause 8.4 [*Subcontract Programme*] and Annex F.
- 1.1.28 "Subcontract Section" means a part of the Subcontract Works as defined in the Appendix to the Subcontractor's Offer.
- 1.1.29 "Subcontract Specification" means the document entitled specification, as included in the Subcontract, and any additions and/or modifications made in accordance with the Subcontract. This document specifies the Subcontract Works and may include calculations and technical information of a like nature.
- 1.1.30 "Subcontract Tests on Completion" means the tests which are specified in the Subcontract or agreed by the Parties which the Subcontractor is to carry out on completion of the Subcontract Works in accordance with Sub-Clause 9.1 [*Subcontract Tests on Completion*] which do not constitute any Main Contract Tests on Completion.
- 1.1.31 "Subcontract Time for Completion" means the time for completion of the Subcontract Works under Sub-Clause 8.2 [*Subcontract Time for Completion*], as stated in the Appendix to the Subcontractor's Offer (with any extension under Sub-Clause 8.3 [*Extension of Subcontract Time for Completion*]), calculated from the Subcontract Commencement Date.
- 1.1.32 "Subcontract Variation" means any change to the Subcontract Works which is instructed or approved as a variation under Clause 13 [*Subcontract Variations and Adjustments*].
- 1.1.33 "Subcontract Works" means the permanent works to be executed and completed by the Subcontractor under the Subcontract, and the Subcontractor's temporary works required for the execution and completion of these permanent works and the remedying of any defects, or either these permanent works or temporary works as appropriate.
- 1.1.34 "Subcontractor" means the person named as subcontractor in the Appendix to Subcontractor's Offer accepted by the Contractor and the legal successors in title to that person, but not (except with the consent of the Contractor) any assignee of that person.
- 1.1.35 "Subcontractor's Documents" means the calculations, computer programmes and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Subcontractor under the Subcontract.

1.1.36 **"Subcontractor's Equipment"** means all apparatus, machinery, vehicles and other things required for the execution and completion of the Subcontract Works and the remedying of any defects. Subcontractor's Equipment excludes the Subcontractor's temporary works, the Contractor's Equipment (if any), the Employer's Equipment (if any), the Subcontract Plant, materials and any other things intended to form or forming part of the Permanent Works.

1.1.37 **"Subcontractor's Offer"** means the Letter of Subcontractor's Offer and all other documents which the Subcontractor submitted with this offer including the Appendix to the Subcontractor's Offer, as accepted by the Contractor's Letter of Acceptance.

1.1.38 **"Subcontractor's Personnel"** means the Subcontractor's Representative and all personnel whom the Subcontractor utilises on Site, who may include the staff, labour, and other employees of the Subcontractor and of the Subcontractor's subcontractors (if any), and any other personnel assisting the Subcontractor in the execution of the Subcontract Works.

1.1.39 **"Subcontractor's Representative"** means the person named by the Subcontractor in the Appendix to Subcontractor's Offer or appointed from time to time by the Subcontractor under Sub-Clause 6.4 [Subcontractor's Representative], who acts on behalf of the Subcontractor.

1.2

Headings and Marginal Notes

The headings and marginal notes in the Conditions of Subcontract shall not be taken into consideration in the interpretation or construction of the Subcontract.

1.3

Subcontract Interpretation

In the Subcontract, except where the context requires otherwise:

- (a) if it is stated that a sub-clause or provision of the Main Contract shall apply then that sub-clause or provision of the Main Contract shall be read with necessary changes, including that any reference to the Employer and/or Engineer shall be read as a reference to the Contractor, any reference to the Contractor shall be read as a reference to the Subcontractor, and any reference to another Main Contract Clause or defined term therein shall be read as a reference to the equivalent clause or sub-clause or defined term of these Conditions;
- (b) words indicating one gender include all genders;
- (c) words indicating the singular also include the plural and vice versa where the context requires;
- (d) words indicating persons or parties shall include corporations and other legal entities;
- (e) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (f) "written" or "in writing" means hand-written, type written, printed or electronically made, and resulting in or being capable of resulting in a permanent record;
- (g) any reference to 'Main Contract Clause' shall be read as a reference to the clause or sub-clause of the Conditions of the Main Contract. Unless expressly stated to be a Main Contract Clause, any reference to a clause or sub-clause shall be read as a reference to the clause or sub-clause of these Conditions.

1.4

Subcontract Communications

All communications under the Subcontract shall be delivered, sent or transmitted to the address for the recipient's communications as stated in the Appendix to the

Subcontractor's Offer. However, if the recipient gives written notice of another address for the purpose of this Sub-Clause, communications shall thereafter be delivered accordingly.

1.5

Priority of Subcontract Documents

The several documents forming the Subcontract are to be taken as mutually explanatory of one another. For the purposes of interpretation the priority of the documents forming the Subcontract shall be as follows:

- (1) The Subcontract Agreement (if any);
- (2) The Contractor's Letter of Acceptance (if any);
- (3) The Letter of Subcontractor's Offer;
- (4) The Particular Conditions of Subcontract and Annexes;
- (5) The General Conditions of Subcontract;
- (6) The Subcontract Specification;
- (7) The Subcontract Drawings;
- (8) The Subcontract Bill of Quantities and other schedules of rates and prices in the Subcontract, including the daywork schedule (if any) and schedule of payments (if any); and
- (9) Any other document forming part of the Subcontractor's Offer as accepted by the Contractor.

If an ambiguity or discrepancy is found in the Subcontract documents, the Contractor shall issue any necessary clarification or Contractor's Instruction.

If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Subcontract Works, the Party shall promptly give notice to the other Party of this error or defect.

1.6

Notices, Consents, Approvals, Certificates, Confirmations, Decisions, and Determinations

Wherever in the Subcontract provision is made for the giving or issuing of any notice, consent, approval, request, certificate, confirmation, decision or determination by any person, unless otherwise specified such notice, consent, approval, request, certificate, confirmation, decision, or determination shall be in writing and the words "notify", "consent", "approve", "request", "certify", "confirm", "decide", or "determine" shall be construed accordingly.

Any notice, consent, approval, request, certificate, confirmation, decision, or determination under the Subcontract shall not be unreasonably withheld or delayed.

1.7

Joint and Several Liability under the Subcontract

If one Party constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons:

- (a) these persons shall be deemed to be jointly and severally liable to the other Party for the performance of the Subcontract;
- (b) these persons shall notify the other Party of their leader who shall have authority to bind that other Party and each of these persons; and
- (c) neither Party shall alter its composition or legal status without the prior consent of the other Party.

1.8

Subcontract Law and Language

The law of the country (or other jurisdiction) which governs the Main Contract shall govern the Subcontract.

The ruling language and the language for communications under the Subcontract shall be the ruling language and the language for communications of the Main Contract.

If a Subcontract document is written in a language other than the ruling language under this Sub-Clause:

- (a) that Subcontract Document shall be interpreted according to the ruling language; and
- (b) if there is any ambiguity or discrepancy in interpretation between the language of the document and the ruling language, the Contractor shall issue any necessary clarification or Contractor's Instruction.

If the Subcontract documents are drawn up in more than one language, the Subcontract shall be construed and interpreted according to the ruling language of the Main Contract.

1.9

Subcontract Agreement

The Parties shall enter into and execute a Subcontract Agreement within 28 days after the Subcontractor receives the Contractor's Letter of Acceptance, unless they agree otherwise. The Subcontract Agreement shall be based on the form annexed to the Particular Conditions of Subcontract. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Subcontract Agreement shall be borne by the Contractor.

1.10

No Privity of Contract with Employer

Nothing stated in the Subcontract shall be construed as creating any privity of contract between the Subcontractor and the Employer.

1.11

Subcontract Sections

Where Subcontract Section(s) are defined in Annex C, any reference to "the Subcontract Works" in the following sub-clauses shall be read as referring also to a Subcontract Section.

The Main Contract

2.1

Subcontractor's Knowledge of Main Contract

The Contractor shall make the Main Contract (other than the confidential details of the Contractor's prices as stated in two Bills of Quantities or schedules of rates and prices, and the confidential parts of the Main Contract listed in Part A of Annex A) available for inspection to the Subcontractor. The Contractor shall provide the Subcontractor with a copy of the Appendix to Tender of the Main Contract together with the Particular Conditions of the Main Contract and details of any other contractual provisions which apply to the Main Contract and differ from the General Conditions of the Main Contract. If so requested by the Subcontractor, the Contractor shall provide the Subcontractor with a true copy of the Main Contract (less the confidential details), at the cost of the Subcontractor who may make or request further copies at his own cost. The Subcontractor shall be deemed to have full knowledge of the relevant provisions of the Main Contract (save the confidential details).

The Subcontractor shall promptly give notice to the Contractor of any ambiguity or discrepancy which he discovers when reviewing the Subcontract and the Main Contract or executing the Subcontract Works.

2.2

Compliance with Main Contract

The Subcontractor shall, in relation to the Subcontract Works, perform and assume all the obligations and liabilities of the Contractor under the Main Contract save that the Subcontractor shall have no obligations in respect of:

- (i) Main Contract Clause 4.7 [Setting Out];
- (ii) sub-paragraphs (d) and (e) of Main Contract Clause 4.8 [Safety Procedures];
- (iii) Main Contract Clause 4.9 [Quality Assurance];
- (iv) Main Contract Clause 4.13 [Rights of Way and Facilities];
- (v) sub-paragraphs (a) and (b) of Main Contract Clause 4.15 [Access Route];
- (vi) Main Contract Clause 4.19 [Electricity, Water and Gas];
- (vii) sub-paragraph (a) of Main Contract Clause 4.22 [Security of the Site];
- (viii) Main Contract Clause 7.8 [Royalties];
- (ix) overall co-ordination and project management of the Main Works; and
- (x) those exclusions (if any) expressly set out in Part B of Annex A.

Save where the provisions of the Subcontract otherwise require, the Subcontractor shall design (to the extent provided for by the Subcontract), execute and complete the Subcontract Works and remedy any defects in such good time and in such a manner that no act or omission of his shall constitute, cause or contribute to any breach by the Contractor of any of his obligations under the Main Contract.

Subject to Sub-Clause 8.7 [Subcontract Damages for Delay] and Sub-Clause 17.3 [Subcontract Limitation of Liability], if the Subcontractor commits any breach(es) of the Subcontract he shall indemnify and hold the Contractor harmless against and from all damages for which the Contractor becomes liable under the Main Contract as a result of such breach(es). Without prejudice to any other remedy of the Contractor for such breach(es) but subject to Sub-Clause 3.3 [Contractor's Claims], the Contractor may recover these damages from monies otherwise due to the Subcontractor under the Subcontract.

2.3

Instructions and Determinations under Main Contract

The Subcontractor shall, in relation to the Subcontract Works, comply with all instructions and determinations of the Engineer which are notified to him as a Contractor's Instruction, irrespective of whether the instructions and determinations were validly given under the Main Contract. This obligation shall be subject to Sub-Clause 3.1 [Contractor's Instructions]. If the Subcontractor shall receive any direct instruction from the Employer or the Engineer:

- (i) he shall immediately inform the Contractor's Subcontract Representative and shall supply him with a copy of the direct instruction if given in writing; and
- (ii) he shall have no obligation to comply with any such direct instruction unless and until it has been confirmed in writing as a Contractor's Instruction.

If any instruction or determination of the Engineer notified by the Contractor constitutes a Subcontract Variation, Clause 13 [Subcontract Variations and Adjustments] shall apply.

2.4

Rights, Entitlements and Remedies under Main Contract

The Contractor shall take all reasonable steps to secure from the Employer (including the Engineer) for the Subcontractor's benefit the like rights, entitlements and remedies that the Contractor has under the Main Contract with respect to the Subcontract Works. This obligation shall be subject to the Subcontractor's obligations under Sub-Clause 20.1 [Notices] and Sub-Clause 20.2 [Subcontractor's Claims].

2.5

Main Contract Documents

If any document of the Subcontract was made by (or on behalf of) the Employer, Main Contract Clause 1.11 [Contractor's Use of Employer's Documents] shall apply.

The Contractor

3.1

Contractor's Instructions

The Subcontractor shall take instructions only from the Contractor's Subcontract Representative who shall have the like authority in relation to the Subcontract Works to give instructions as the Engineer has under Main Contract Clause 3.3 [*Instructions of the Engineer*]. The Subcontractor shall comply with all instructions, given or confirmed in writing, of the Contractor's Subcontract Representative on any matter related to the Subcontract.

3.2

Access to the Site

The Contractor shall give the Subcontractor right of access to and possession of so much of the Site within the times that shall be required to enable the Subcontractor to proceed with execution of the Subcontract Works in accordance with the Subcontract Programme pursuant to Sub-Clause 8.4 [*Subcontract Programme*].

The Contractor shall not be bound to make any part of the Site available exclusively to the Subcontractor.

3.3

Contractor's Claims in connection with the Subcontract

If the Contractor considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Subcontract, the Contractor shall give notice to the Subcontractor describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable after the Contractor became aware of the event or circumstance giving rise to the claim and shall specify the basis of the claim.

As soon as practicable after giving notice, the Contractor shall send to the Subcontractor detailed particulars of the claim which includes substantiation of the amount to which the Contractor considers himself to be entitled. The Contractor shall consult with the Subcontractor in an endeavour to reach agreement on this amount. If agreement is not reached, the Contractor shall make a fair decision as to the appropriate and applicable amount, taking due account of the Subcontractor's views, the extent to which the claim has been reasonably substantiated, and all other relevant circumstances. The Contractor shall give notice, with reasons and supporting particulars, to the Subcontractor of this decision.

This amount may be deducted from sums otherwise due to the Subcontractor. The Contractor shall only be entitled to make a deduction or otherwise to claim against the Subcontractor, in accordance with this Sub-Clause.

3.4

Employer's Claims in connection with the Main Contract

If the Contractor receives from the Employer or the Engineer any notice and particulars of an Employer's claim which concerns the Subcontractor, the Contractor shall immediately send a copy to the Subcontractor. The Subcontractor shall then provide all reasonable assistance to the Contractor in relation to the Employer's claim. To the extent that the Contractor considers himself entitled to pass on the claim to the Subcontractor, Sub-Clause 3.3 [*Contractor's Claims in connection with the Subcontract*] shall apply.

3.5

Co-ordination of Main Works

The Contractor shall be responsible for overall co-ordination and project management of the Main Works. Subject to Sub-Clause 6.1 [*Co-operation under the Subcontract*], the Contractor shall be responsible for co-ordination of the Subcontract Works with

the works of the Contractor and the works of any other subcontractors employed by the Contractor.

The Subcontractor shall, whenever required by a Contractor's Instruction, submit details of the arrangements and methods which the Subcontractor proposes to adopt for the execution of the Subcontract Works, and no significant alteration to these arrangements and methods shall be made without the Contractor's prior consent.

The Subcontractor

4.1

Subcontractor's General Obligations

The Subcontractor shall, with due care and diligence, design (to the extent provided for by the Subcontract), execute and complete the Subcontract Works and remedy any defects in accordance with the Subcontract and with the Contractor's Instructions. If design by the Subcontractor of any part of the Subcontract Works is necessary for the Subcontractor's execution, completion and/or remedying of any defects under the Subcontract, then the Subcontractor shall be responsible for this part and this part shall, when the Subcontract Works are completed, be fit for the purposes for which the part is intended as are indicated by or reasonably to be inferred from the Subcontract.

Save as specified in the Annex D, the Subcontractor shall provide all personnel, superintendence, labour, Subcontract Plant, Subcontractor's Equipment, Subcontractor's Documents, and all other things, whether of a temporary or permanent nature, required in and for the design, execution, completion, and remedying of any defects.

The Subcontractor shall be responsible for the adequacy, stability and safety of all his Site operations and methods of construction.

4.2

Subcontract Performance Security

Where an amount in respect of a Subcontract Performance Security is stated in the Appendix to the Subcontractor's Offer, the Subcontractor shall obtain (at his cost) a Subcontract Performance Security for proper performance in the amount and currencies stated in the Appendix to the Subcontractor's Offer. The Subcontract Performance Security shall be in a similar form to that of the Performance Security under the Main Contract or in the form that may be agreed between the Contractor and the Subcontractor, and shall be issued by an entity and from within a country (or other jurisdiction) approved by the Contractor. In all other respects, Main Contract Clause 4.2 [Performance Security] shall apply to this performance security.

4.3

Access to the Subcontract Works

The Subcontractor shall permit the Employer's Personnel and the Contractor's Personnel to have full access at all reasonable times to examine, inspect, measure, and test the materials and workmanship, and to check the progress of the Subcontract Works whether within the Site or elsewhere, and to the places where any of the materials or Subcontract Plant for the Subcontract Works are manufactured, produced, used, or stored.

4.4

Subcontractor's Documents

The Subcontractor's Documents shall become part of the Contractor's Documents, save that the Subcontractor shall retain the copyright and other intellectual property rights in the Subcontractor's Documents. In all other respects, Main Contract Clause 1.10 [Employer's Use of Contractor's Documents] shall apply to the Subcontractor's Documents.

Assignment of the Subcontract and Subcontracting

5.1

Assignment of Subcontract

Neither Party shall, without the prior consent of the other Party (which consent, notwithstanding Sub-Clause 1.6 [*Notices, Consents, Approvals, Certificates, Confirmations, Decisions, and Determinations*]), shall be at the sole discretion of the other Party), assign the whole or any part of the Subcontract, or any benefit or interest in or under the Subcontract. However no prior consent shall be required in the following instances:

- (a) either Party may, as security in favour of a bank or financial institution, assign its right to any monies due or to become due under the Subcontract; and/or
- (b) if the Engineer instructs the assignment of the Subcontract under Main Contract Clause 4.5 [*Assignment of Benefit of Subcontract*], or if the Employer terminates the Main Contract under Main Contract Clause 15.2 [*Termination by Employer*] and if required by the Employer to do so, then the Contractor shall be entitled to assign the Subcontract to the Employer.

5.2

Subcontracting

The Subcontractor shall not subcontract the whole or any part of the Subcontract without the prior consent of the Contractor. Any consent shall not relieve the Subcontractor from any liability or obligation under the Subcontract and the Subcontractor shall be responsible for the acts, defaults and neglects of any of his subcontractors, his agents or employees as fully as if they were the acts, defaults or neglects of the Subcontractor.

Provided that the Subcontractor shall not be required to obtain consent for:

- (a) the provision of labour;
- (b) suppliers of materials named in the Subcontract; or
- (b) a subcontract for which the subcontractor is named in the Subcontract.

The Subcontractor shall give the Contractor not less than 28 days' notice of the intended date of the commencement of each of his subcontractor's work, and of the commencement of that work on the Site.

Each of the Subcontractor's subcontracts shall include provisions which would entitle the Contractor to require that the benefits of the subcontractor's obligations under the subcontract be assigned to the Contractor:

- (i) if these obligations extend beyond the expiry date of the Defects Notification Period and the Contractor requests the Subcontractor prior to this date to so do; or
- (ii) if the Subcontract is terminated under Sub-Clause 15.6 [*Termination of Subcontract by the Contractor*].

Co-operation, Staff and Labour

5.1

Co-operation under the Subcontract

The Subcontractor shall, as specified in the Subcontract or as required by a Contractor's Instruction, co-operate with and allow appropriate opportunities for carrying out work to:

- (a) the Employer's Personnel;
- (b) any other contractors employed by the Employer;
- (c) the Contractor and the Contractor's Personnel;
- (d) any other subcontractors employed by the Contractor; and
- (e) the personnel of any legally constituted public authorities,

who may be employed in the execution on or near the Site of any work not included in the Subcontract, provided that nothing in this Sub-Clause shall prejudice the Contractor's responsibilities under Sub-Clause 3.5 [Co-ordination of Main Works].

The Contractor shall ensure that the Contractor's Personnel and any other subcontractors employed by the Contractor co-operate with and allow appropriate opportunities for carrying out work to the Subcontractor.

If any of the above persons do not co-operate with the Subcontractor and this non-cooperation affects execution of the Subcontract Works, then the Subcontractor shall immediately notify the Contractor of this non-cooperation. If the Subcontractor is delayed, impeded or prevented from performing any of his obligations under the Subcontract by the non-cooperation of any of the above persons and suffers delay and/or incurs Cost, the Subcontractor shall give notice to the Contractor. Provided that the Subcontractor has used all reasonable endeavours to facilitate co-operation by that person, the Subcontractor shall be entitled, subject to Sub-Clause 20.2 [Subcontractor's Claims], to an extension of time under Sub-Clause 8.3 [Extension of Subcontract Time for Completion] and payment of such Cost which shall be included in the Subcontract Price.

6.2

Persons in the Service of Others

The Subcontractor shall not recruit, or attempt to recruit, staff and labour from amongst the Contractor's Personnel or the Employer's Personnel.

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Subcontractor's Personnel.

6.3

Contractor's Subcontract Representative

The Contractor shall appoint the Contractor's Subcontract Representative and shall give him all authority necessary to act on the Contractor's behalf under the Subcontract. The Contractor shall, prior to the Subcontract Commencement Date, notify the Subcontractor of the name and particulars of the person the Contractor has appointed as Contractor's Subcontract Representative.

If the Contractor's Subcontract Representative is to be temporarily absent from the Site during the execution of the Subcontract Works, a suitable replacement person shall be appointed and the Subcontractor shall be notified accordingly.

The Contractor's Subcontract Representative shall, on behalf of the Contractor, issue any Contractor's Instructions.

The Contractor's Subcontract Representative shall be fluent in the language for communications defined in Sub-Clause 1.8 [Subcontract Law and Language].

6.4

Subcontractor's Representative

The Subcontractor shall appoint the Subcontractor's Representative and shall give him all authority necessary to act on the Subcontractor's behalf under the Subcontract.

The Subcontractor's Representative shall reside continuously on the Site while the Subcontract Works are being carried out. However, if the Subcontractor's

Representative is to be temporarily absent from the Site during the execution of the Subcontract Works, the Subcontractor shall, subject to the Contractor's prior consent, appoint a suitable replacement person.

The Subcontractor's Representative shall, on behalf of the Subcontractor, receive the Contractor's Instructions.

The Subcontractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.8 [*Subcontract Law and Language*].

Equipment, Temporary Works, Other Facilities, Plant, and Materials

7.1

Subcontractor's Use of Equipment, Temporary Works, and/or Other Facilities

The Contractor shall make the Employer's Equipment, the Contractor's Equipment, Equipment, the Temporary Works and/or other facilities (if any) specified in Annex D available to the Subcontractor within the times that shall be required to enable the Subcontractor to proceed with execution and completion of the Subcontract Works in accordance with the Subcontract Programme.

The availability of such equipment, temporary works and/or other facilities shall be in accordance with the details and arrangements and upon the terms and conditions (if any), stated in Annex D and, unless expressly stated therein, they shall not be provided for the exclusive use of the Subcontractor.

When made available by the Contractor the Subcontractor shall visually inspect such equipment, temporary works and/or other facilities and shall promptly give notice to the Contractor of any shortage, defect or default in them. Unless the Parties agree or the Contractor instructs otherwise, the Contractor shall immediately rectify the notified shortage, defect or default.

The Contractor shall be responsible for the Employer's Equipment (while in his possession and/or under his control), the Contractor's Equipment, the Temporary Works, and/or other facilities (if any), except that the Subcontractor shall be responsible for each item whilst any of the Subcontractor's Personnel is operating it, driving it, directing it, using it, or in control of it.

7.2

Free-Issue Materials

The Contractor shall supply to the Subcontractor, free of charge, the free-issue materials (if any) specified in Annex D, at the place(s) specified in Annex D and within the times that shall be required to enable the Subcontractor to proceed with execution and completion of the Subcontract Works in accordance with the Subcontract Programme. The supply of such free-issue materials shall be in accordance with the details and arrangements and upon the terms and conditions (if any), stated in Annex D.

When made available by the Contractor, the Subcontractor shall visually inspect the free-issue materials and shall promptly give notice to the Contractor of any shortage, defect or default in them. Unless the Parties agree or the Contractor instructs otherwise, the Contractor shall immediately rectify the notified shortage, defect or default. After this visual inspection, the free-issue materials shall come under the care, custody and control of the Subcontractor. The Subcontractor's obligations of inspection, care, custody, and control shall not relieve the Contractor of liability for any shortage, defect or default not apparent from a visual inspection.

7.3 Indemnity for Misuse

The Subcontractor shall indemnify and hold the Contractor harmless against and from all damages to or loss of any property, real or personal, arising from the misuse by the Subcontractor of the Employer's Equipment, the Contractor's Equipment, the Temporary Works, the free-issue materials (if any), and/or other facilities made available by the Contractor.

7.4 Ownership of Subcontract Plant and Materials

Each item of Subcontract Plant and of the materials intended to form or forming part of the Permanent Works shall, to the extent consistent with the Laws of the Country, become the property of the Contractor at whichever is the earlier of the following times, free from liens and other encumbrances:

- (a) when it is delivered to the Site;
- (b) when the Contractor is entitled to payment of the value of the Plant and Materials under Main Contract Clause 8.10 [*Payment for Plant and Materials in Event of Suspension*].

7.5 Subcontractor's Equipment and Subcontract Plant

The Subcontractor shall be responsible for all Subcontractor's Equipment. When brought on to the Site, the Subcontractor's Equipment shall be deemed to be exclusively intended for the execution of the Subcontract Works. The Subcontractor shall not remove from the Site any major items of Subcontractor's Equipment without the consent of the Contractor. However, consent shall not be required for vehicles transporting Subcontractor Goods or Subcontractor's Personnel off Site.

The Subcontract Plant shall be taken to be included in the definition of Plant under the Main Contract and the provisions of the Main Contract concerning the Plant shall apply to the Subcontract Plant.

8 Commencement and Completion

8.1 Commencement of Subcontract Works

The Contractor shall give the Subcontractor not less than 14 days' notice of the Subcontract Commencement Date.

The Subcontractor shall commence the execution of the Subcontract Works as soon as is reasonably practicable after the Subcontract Commencement Date, and shall proceed with the Subcontract Works with due diligence and without delay in accordance with the current Subcontract Programme.

8.2 Subcontract Time for Completion

The Subcontractor shall complete the Subcontract Works in accordance with Sub-Clause 10.1 [*Completion of Subcontract Works*] within the Subcontract Time for Completion, or the extended time that may be allowed under Sub-Clause 8.3 [*Extension of Subcontract Time for Completion*].

8.3 Extension of Subcontract Time for Completion

The Subcontractor shall be entitled subject to Sub-Clause 20.2 [*Subcontractor's Claims*], to an extension of the Subcontract Time for Completion if and to the extent that completion of the Subcontract Works is delayed by any of the following causes:

- (a) a Subcontract Variation or other substantial change in the quantity of any item

- of work included in the Subcontract;
- (b) a cause of delay giving an entitlement to an extension of the Subcontract Time for Completion under a Sub-Clause of these conditions;
- (c) any delay, impediment or prevention caused by or attributable to the Contractor, the Contractor's Personnel, or the Contractor's other subcontractors, or
- (d) a cause of delay which would give the Contractor an entitlement to extension of time under the Main Contract.

When deciding each extension of time under Sub-Clause 20.2 [*Subcontractor's Claims*], the Contractor may review previous decisions and may increase, but shall not decrease, the total extension of time.

8.4

Subcontract Programme

The provisions of Annex F shall apply to programming of the Subcontract Works and the Subcontract Programme shall be the programme defined therein.

The Subcontractor shall submit a detailed programme for the execution of the Subcontract Works to the Contractor within 14 days of receipt of the Contractor's Letter of Acceptance or the Contractor's programme submitted under Main Contract Clause 8.3 [*Programme*], whichever is the later. The form and detail of this initial programme shall fully comply with:

- (a) the programming and reporting requirements of the Main Contract; and
- (b) the requirements set out Part A of Annex F.

If a Contractor's Instruction regarding the programming and/or sequencing of the Subcontract Works constitutes a Subcontract Variation, Clause 13 [*Subcontract Variations and Adjustments*] shall apply.

Provided that if, at any time:

- (i) actual progress is too slow to complete within the Subcontract Time for Completion, and/or
- (ii) progress has fallen (or will fall) behind the Subcontract Programme,

other than as a result of a cause listed in Sub-Clause 8.3 [*Extension of Subcontract Time for Completion*], then the Contractor may issue a Contractor's Instruction requiring the Subcontractor to submit an updated programme and supporting report describing the revised methods which the Subcontractor proposes to adopt in order to expedite progress and complete the Subcontract Works within the Subcontract Time for Completion. Unless the Contractor notifies otherwise, the Subcontractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Subcontractor's Personnel and/or Subcontract Goods, at the risk and cost of the Subcontractor. If these revised methods cause the Contractor to incur any additional Cost, the Contractor shall, subject to Sub-Clause 3.3 [*Contractor's Claims under the Subcontract*], be entitled to deduct this Cost from the Subcontract Price.

The Contractor shall be entitled to rely upon the current Subcontract Programme when co-ordinating the Main Works and/or planning his activities and those of other subcontractors employed by the Contractor in respect of the Main Works.

The Contractor shall give the Subcontractor all reasonable co-operation and assistance in order that he may progress the Subcontract Works as required by the Subcontract Programme.

8.5 Subcontract Progress Reports

If required by the Contractor, the Subcontractor shall prepare and submit monthly progress reports to the Contractor. Each report shall be submitted no later than 7 days before the due date for submission of the Contractor's progress report under the Main Contract, which due date shall be notified to the Subcontractor by the Contractor. Each Subcontractor's progress report shall include the details as set out in subparagraphs (a) to (h) inclusive of Main Contract Clause 4.21 [Progress Reports].

8.6 Suspension of Subcontract Works by the Contractor

The Contractor may at any time issue a Contractor's Instruction requiring the Subcontractor to suspend progress of part or all of the Subcontract Works. In his notice, the Contractor shall state the reason or reasons for the suspension. Main Contract Clause 8.9 [Consequences of Suspension], Main Contract Clause 8.10 [Payment for Plant and Materials in Event of Suspension] and Main Contract Clause 8.11 [Prolonged Suspension] shall apply to the suspended Subcontract Works unless the cause of the suspension is the responsibility of the Subcontractor. Main Contract Clause 8.12 [Resumption of Work] shall apply to any suspended Subcontract Works unless the cause of the suspension is the responsibility of the Subcontractor.

Subject to Sub-Clause 16.1 [Subcontractor's Entitlement to Suspend Work], the Subcontractor shall not suspend progress of part or all of the Subcontract Works unless and until required to do so by a Contractor's Instruction.

8.7 Subcontract Damages for Delay

The liability of the Subcontractor to the Contractor for delay to the Subcontract Works shall be limited to the amount stated in the Appendix to the Subcontractor's Offer.

If no amount is stated in the Appendix to the Subcontractor's Offer, the liability of the Subcontractor to the Contractor for delay to the Subcontract Works shall be limited to 10% of the Accepted Subcontract Amount.

Tests on Completion

9.1 Subcontract Tests on Completion

Insofar as the Subcontract specifies Subcontract Tests on Completion, the Subcontractor shall give reasonable notice to the Contractor of the date after which he shall be ready to carry out each of these tests. If the Subcontract Works fail to pass the Subcontract Tests on Completion, the Subcontractor shall as soon as practicable repeat the tests under the same terms and conditions as specified in the Subcontract until the tests are passed.

9.2 Main Contract Tests on Completion

Insofar as the Subcontract specifies or makes express reference to Main Contract Tests on Completion, Main Contract Clause 9 [Tests on Completion] shall apply. Save that the Subcontractor shall comply with this Sub-Clause in good time to enable the Contractor to comply with his obligations in respect of the Tests on Completion under the Main Contract.

Completion and Taking-Over the Subcontract Works

10.1 Completion of Subcontract Works

Completion of the Subcontract Works shall be achieved when:

- (a) these works have been completed in accordance with the Subcontract except

- for any minor outstanding work and defects which will not substantially affect the use of the Subcontract Works for their intended purpose;
- (b) those works have passed the tests on completion specified in the Subcontract (if any); and
 - (c) if required by the Subcontract Specification, the "as-built" documents and operation and maintenance manuals in respect of the Subcontract Works have been submitted by the Subcontractor.

Not earlier than 7 days before the Subcontract Works will, in the Subcontractor's opinion, be complete the Subcontractor shall notify the Contractor. The Contractor shall, within 21 days after receipt of this notice:

- (i) notify the Subcontractor that completion of the Subcontract Works has been achieved, stating the date of completion; or
- (ii) notify the Subcontractor of his opinion that completion of the Subcontract Works has not been achieved, giving reasons and specifying the work required to be done by the Subcontractor to achieve completion. The Subcontractor shall then complete this work before issuing a further notice under this Sub-Clause.

10.2

Taking-Over Subcontract Works

Where:

- (a) completion of the Subcontract Works has been achieved in accordance with Sub-Clause 10.1 [*Completion of the Subcontract Works*]; and
- (b) there is no provision in Annex C for the taking-over of the Subcontract Works by the Contractor before taking-over by the Employer,

the Subcontract Works shall be deemed to have been taken-over when a Taking-Over Certificate in respect of the Main Works, or a Section or part of the Main Works of which the Subcontract Works are part has been issued or deemed to have been issued under Main Contract Clause 10.1 [*Taking-Over of the Works and Sections*]. The date of taking-over of the Subcontract Works shall be the date stated in this Taking-Over Certificate and the Subcontractor shall cease to be liable for the care of the Subcontract Works in accordance with Sub-Clause 17.1 [*Subcontractor's Risks and Indemnities*] as from this date.

If taking-over of the Subcontract Works is delayed by causes which entitle the Contractor to claim additional payment under the Main Contract, the Subcontractor shall subject to Sub-Clause 20.2 [*Subcontractor's Claims*] be entitled to recover any Cost incurred by the Subcontractor within 14 days after the Contractor has received such additional payment under the Main Contract or within 84 days after the expiry of the Subcontract Defects Notification Period, whichever is earlier.

If the delay to taking over of the Subcontract Works is the Contractor's responsibility, any Cost incurred by the Subcontractor shall subject to Sub-Clause 20.2 [*Subcontractor's Claims*] be recoverable from the Contractor.

10.3

Taking-Over by the Contractor

If there is a requirement for the Contractor to take over the Subcontract Works before taking-over of the Main Works by the Employer, this shall be as stated in and shall be in accordance with Annex C.

Defects Liability

11.1

Subcontractor's Obligations after Taking-Over

Following taking-over of the Subcontract Works in accordance with Clause 10 [Completion of and Taking-Over the Subcontract Works], the provisions of Main Contract Clause 11.1 [Completion of Outstanding Work and Remedying Defects], Main Contract Clause 11.4 [Failure to Remedy Defects], Main Contract Clause 11.5 [Removal of Defective Work], Main Contract Clause 11.6 [Further Tests], Main Contract Clause 11.7 [Right of Access], and Main Contract Clause 11.8 [Contractor to Search] shall apply, subject to:

- (a) Sub-Clause 11.2 [Subcontract Defects Notification Period]; and
- (b) Sub-Clause 11.3 [Performance Certificate].

All work referred to in sub-paragraph (b) of Main Contract Clause 11.1 [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Subcontractor, if and to the extent that the work is attributable to:

- (i) Subcontract Plant, the materials or workmanship of the Subcontract Works not being in accordance with the Subcontract; or
- (ii) failure by the Subcontractor to comply with any other obligation under the Subcontract.

Insofar as a defect or damage in the Subcontract Works which is the responsibility of the Subcontractor causes the Contractor to incur any additional Cost in complying with Main Contract Clauses 11.5 [Removal of Defective Work], 11.6 [Further Tests] and 11.8 [Contractor to Search], the Contractor shall, subject to Sub-Clause 3.3 [Contractor's Claims under the Subcontract], be entitled to deduct this Cost from the Subcontract Price.

If and to the extent that the work referred to in sub paragraph (b) of Main Contract Clause 11.1 [Completion of Outstanding Work and Remedying Defects] is attributable to any other cause, the Subcontractor shall be notified promptly by the Contractor, and this work shall be valued as a Subcontract Variation in accordance with Sub-Clause 13.2 [Valuation of Subcontract Variations].

11.2

Subcontract Defects Notification Period

The Subcontract Defects Notification Period shall be the period for notifying defects in the Subcontract Works under Sub-Clause 11.1 [Subcontractor's Obligations after Taking-Over], which period shall be from the date on which the whole of the Subcontract Works have been taken-over under Clause 10 [Completion of and Taking-Over the Subcontract Works] to the date of expiry of the Defects Notification Period applicable to the Main Works or Section or part of the Main Works of which the whole of the Subcontract Works are part.

Insofar as a defect or damage in the Subcontract Works attributable to a Subcontractor default gives rise to an extension of any Defects Notification Period under Main Contract Clause 11.3 [Extension of Defects Notification Period], and this extension causes the Contractor to incur any additional Cost, the Contractor shall, subject to Sub-Clause 3.3 [Contractor's Claims in connection with the Subcontract], be entitled to deduct this Cost from the Subcontract Price.

11.3

Performance Certificate

The Performance Certificate applicable to the Subcontract Works shall be that which



is issued by the Engineer under the Main Contract. Performance of the Subcontractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, and the date stated in the Performance Certificate on which the Contractor's obligations under the Main Contract were completed shall be the date upon which the Subcontractor's obligations under the Subcontract were completed. Immediately upon receipt of the Performance Certificate from the Engineer, the Contractor shall forward a copy to the Subcontractor.

After the Performance Certificate has been issued, the provisions of Main Contract Clauses 11.10 [*Unfulfilled Obligations*] and 11.11 [*Clearance of Site*] shall apply.

Measurement and Evaluation

12.1

Measurement of Subcontract Works

The Subcontract Works shall be measured in accordance with Main Contract Clauses 12.1 [*Works to be Measured*] and 12.2 [*Method of Measurement*].

The Contractor shall permit the Subcontractor to attend to assist the Engineer and the Contractor in making the measurement in relation to the Subcontract Works, and shall supply the Contractor with any particulars requested by the Contractor and/or the Engineer. If the Subcontractor has been given reasonable notice to attend and does not attend, the measurement made by (or on behalf of) the Engineer shall be deemed to be accurate and to be accepted by the Subcontractor.

Wherever the Subcontract Works are to be measured by records, the Contractor shall permit the Subcontractor to attend with the Contractor to examine and agree the records with the Engineer. If the Subcontractor has been given reasonable notice to attend by the Contractor and does not attend, the records as agreed between the Contractor and the Engineer, or accepted by non-attendance or failure by the Contractor in accordance with Main Contract Clause 12.1 [*Works to be Measured*] shall be deemed to be accurate and to be accepted by the Subcontractor. If the Subcontractor examines and disagrees with the records, then he shall give notice to the Contractor within 7 days of the date of the examination of the respects in which the records are asserted to be inaccurate, which the Contractor shall then notify to the Engineer. If the Subcontractor does not give notice within the 7 days, the records shall be deemed to be accurate and to be accepted by the Subcontractor. The Contractor shall without delay notify the Subcontractor of any determination made by the Engineer in respect of disagreed records.

Notwithstanding local practice, the measurement shall be made on the net actual quantity of each item of the Subcontract Works, and the method of measurement shall be that which applies under the Main Contract.

If the Contractor does not give notice to the Subcontractor in accordance with this Sub-Clause, and/or if notice is given but it is not reasonable having regard to the notice given by the Engineer under Main Contract Clause 12.1 [*Works to be Measured*] and all relevant circumstances, the Contractor shall consult with the Subcontractor in an endeavour to reach agreement on the measurement of the Subcontract Works. If agreement is not reached, the Contractor shall decide the appropriate and applicable measurement, having due regard to the Subcontractor's views and all relevant circumstances. The Contractor shall give notice, with supporting particulars, to the Subcontractor of this decision.

12.2 Quantity Estimated and Quantity Executed

Any quantities set out in the Subcontract Bill of Quantities or other schedule of rates and prices in the Subcontract are the estimated quantities for the Subcontract Works, and they are not to be taken as the actual and correct quantities of the Subcontract Works which the Subcontractor is required to execute.

No Contractor's instruction shall be required for any increase or decrease in the quantity of any work where the increase or decrease is not the result of an instruction given under Sub-Clause 13.1 [Variation of Subcontract Works] but is the result of the quantities exceeding or being less than those stated in the Subcontract Bill of Quantities or other schedule of rates and prices in the Subcontract.

12.3 Evaluation under the Subcontract

The Contractor shall consult with the Subcontractor in an endeavour to reach agreement on the Subcontract Price by evaluating each item of the Subcontract Works applying:

- (a) the measurement agreed or determined in accordance with Sub-Clause 12.1 [Measurement of the Subcontract Works]; and
- (b) the provisions of the second and third paragraphs of Main Contract Clause 12.3 [Evaluation]

to the Subcontract. Provided that sub-paragraph (a) of Main Contract Clause 12.3 [Evaluation] shall not apply unless a new rate or price for the item is determined by the Engineer under the Main Contract.

If agreement is not reached, the Contractor shall make a fair evaluation having due regard to the Subcontractor's views and all relevant circumstances and shall promptly notify the Subcontractor of this evaluation with supporting particulars.

Each Party shall give effect to each agreement reached or evaluation made under this Sub-Clause unless and until revised under Clause 20 [Claims and Disputes].

Whenever the omission of any part of the Subcontract Works forms part (or all) of a Subcontract Variation, the value of which has not been agreed, Main Contract Clause 12.4 [Omissions] shall apply.

Subcontract Variations and Adjustments

13.1 Variation of Subcontract Works

The Subcontract Works shall be varied only by way of a Contractor's instruction. Subcontract Variations may be initiated by the Contractor at any time prior to the date the Taking-Over Certificate is issued by the Engineer for the whole of the Main Works, either by a Contractor's instruction or by a request for the Subcontractor to submit a proposal.

The Subcontractor shall execute and be bound by each Subcontract Variation whether instructed by:

- (a) the Engineer, provided the instruction is notified to the Subcontractor as a Contractor's instruction; or
- (b) the Contractor's Subcontract Representative, as a Contractor's instruction.

If the Subcontractor cannot readily obtain the Subcontract Goods required for the Subcontract Variation, he shall promptly give notice (with supporting particulars) to the Contractor who shall cancel, confirm or vary the Contractor's instruction.



A Subcontract Variation may include any of the matters described in sub-paragraphs (a) to (f) of Main Contract Clause 13.1 [*Right to Vary*].

13.2

Valuation of Subcontract Variations

Each Subcontract Variation shall be evaluated in accordance with Sub-Clause 12.3 [*Evaluation under the Subcontract*], unless agreed otherwise by the Parties. The value of each Subcontract Variation shall then be added to or deducted from the Subcontract Price, as appropriate.

Provided that, if the Contractor instructs a Subcontract Variation at any time after the date upon which the Subcontract Works have been completed in accordance with Clause 10.1 [*Completion of the Subcontract Works*], the value of this Subcontract Variation shall take account of any additional Cost or liability which in the circumstances was reasonably incurred by the Subcontractor in remobilising his resources to the Site and/or in maintaining a presence on the Site in order to execute the Subcontract Variation.

13.3

Request for Proposal for Subcontract Variation

If the Contractor requests a proposal, or if the Contractor notifies the Subcontractor that the Engineer has requested a proposal, prior to instructing a Subcontract Variation, the Subcontractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting the Subcontractor's proposal:

- (a) giving a description of the proposed work to be performed and a programme for its execution;
- (b) stating any necessary modifications to the Subcontract Programme pursuant to Sub-Clause 8.4 [*Subcontract Programme*] and to the Subcontract Time for Completion; and
- (c) evaluation of the Subcontract Variation.

The Contractor shall, as soon as practicable after receiving this proposal respond with approval, disapproval or comments.

The Subcontractor shall not delay any work whilst awaiting a response in respect of any proposal submitted under this Sub-Clause.

13.4

Subcontract Adjustments for Changes in Legislation

The Subcontract Price shall be adjusted to take account of any increase or decrease in the Cost incurred by the Subcontractor under the Subcontract resulting from a change in the Laws of the Country, or in the judicial or official governmental interpretation of the Laws, made after the date of submission of the Subcontractor's Offer which affects the Subcontractor's performance of his obligations under the Subcontract. If the Subcontractor suffers delay and/or incurs Cost as a result of such a change in the Laws, the Subcontractor shall give notice to the Contractor and shall be entitled, subject to Sub-Clause 20.2 [*Subcontractor's Claims*] to an extension of time under Sub-Clause 8.3 [*Extension of Subcontract Time for Completion*] and payment of any Cost which shall be included in the Subcontract Price.

13.5

Subcontract Adjustments for Changes in Cost

Where Main Contract Clause 13.8 [*Adjustments for Changes in Cost*] applies to the Main Contract, the Subcontract Price shall be adjusted for rises or falls in the cost of labour, Subcontract Goods, materials, and any inputs to the Subcontract Works. The adjustment shall be calculated using the formula set out in the third paragraph of Main Contract Clause 13.8 [*Adjustments for Changes in Cost*] and the data contained in the completed table of adjustment data included in the Appendix to Subcontractor's Offer.

if there is no table of adjustment data included in the Appendix to the Subcontractor's Offer, then the Subcontract Price shall be adjusted by the same adjustment multiplier as applies to adjustment of the Contract Price under Main Contract Clause 13.8 [Adjustments for Changes in Cost].

13.6

Subcontract Daywork

Where a daywork schedule is included in the Subcontract, the Contractor may instruct that a Subcontract Variation shall be executed on a daywork basis. The work shall then be evaluated in accordance with the daywork schedule included in the Subcontract, and the procedure set out in Main Contract Clause 13.6 [Daywork].

Subcontract Price and Payment

14.1

The Subcontract Price

The Subcontract Price shall be agreed or decided in accordance with Sub-Clause 12.3 [Evaluation under the Subcontract] and be subject to adjustments in accordance with the Subcontract. The Subcontractor shall pay all taxes, duties and fees required to be paid by him under the Subcontract, and the Subcontract Price shall not be adjusted for any of these costs unless there is provision for the Contract Price to be so adjusted under the Main Contract, in which case the Subcontract Price shall be adjusted to the like extent that the Contract Price shall be adjusted under the Main Contract.

The Subcontractor shall submit to the Contractor, within 7 days of the Contractor's request to do so, a breakdown of each lump-sum price in the Subcontract.

14.2

Subcontract Advance Payment

Where there is an amount for advance payment stated in the Appendix to the Subcontractor's Offer, the Contractor shall have no obligation to make an advance payment to the Subcontractor unless and until the Subcontractor submits an advance payment guarantee in accordance with this Sub-Clause. The advance payment shall be made in the instalments and in the applicable currencies and proportions stated in the Appendix to the Subcontractor's Offer.

The advance payment guarantee shall be in the amounts and currencies corresponding to the advance payment, shall be in a similar form to that of the guarantee approved by the Engineer under Main Contract Clause 14.2 [Advance Payment], or in the form that may be agreed between the Contractor and the Subcontractor, and shall be issued by an entity and from within a country (or other jurisdiction) approved by the Contractor. The Subcontractor shall ensure that this guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Subcontractor as deductions in payments otherwise due.

The advance payment shall be repaid through percentage deductions in interim payments made to the Subcontractor under Sub-Clause 14.6 [Interim Subcontract Payments] at the amortisation rate of one-quarter (25%) of the amount of each interim payment (excluding the advance payment and deductions and repayments of retention) in the currencies and proportions of the advance payment, until such time as the advance payment has been repaid. Deductions shall commence when the total of all interim payments made to the Subcontractor (excluding the advance payment and deductions and repayments of retention) exceeds ten percent (10%) of the Accepted Subcontract Amount.

If the advance payment has not been repaid prior to the taking-over of the Subcontract Works or prior to termination of the Subcontract, the whole of the balance then outstanding shall immediately become due and payable by the Subcontractor to the Contractor.

14.3

Subcontractor's Monthly Statements

The Subcontractor shall prepare and submit monthly statements to the Contractor showing in detail the amounts to which the Subcontractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 8.5 [*Subcontract Progress Reports*]. Each statement shall be submitted no later than 7 days before the due date for submission of the Contractor's Statement under Main Contract Clause 14.3 [*Application for Interim Payment Certificates*], which due date shall be notified to the Subcontractor by the Contractor.

Each Subcontractor's monthly statement shall include the items as set out in sub-paragraphs (a) to (d) inclusive and sub-paragraphs (f) and (g) of Main Contract Clause 14.3 [*Application for Interim Payment Certificates*].

14.4

Subcontractor's Statement at Completion

The Subcontractor shall submit a statement no later than 7 days before the due date for submission of the Contractor's Statement at Completion under Main Contract Clause 14.10 [*Statement at Completion*]. Provided that, if Sub-Clause 10.3 [*Taking-Over by the Contractor*] applies, the Subcontractor shall submit a statement no later than 28 days after the whole of the Subcontract Works have been taken-over by the Contractor. The Subcontractor's statement shall show the information relevant to the Subcontract as set out in sub-paragraphs (a) to (c) inclusive of Main Contract Clause 14.10 [*Statement at Completion*].

14.5

Contractor's Application for Interim Payment Certificate

The Contractor shall make appropriate provision for the amounts set out in each Subcontractor's monthly statement in the Contractor's next Statement under Main Contract Clause 14.3 [*Application for Interim Payment Certificates*]. This obligation shall be subject to the Subcontractor having submitted his monthly statement to the Contractor in accordance with Sub-Clause 14.3 [*Subcontractor's Monthly Statements*].

14.6

Interim Subcontract Payments

Within 70 days of receipt by the Contractor of the Subcontractor's monthly statement the amounts included in that statement and any other sums to which the Subcontractor is entitled in the opinion of the Contractor, shall be due and payable to the Subcontractor. If a percentage of retention is stated in Annex C, the Contractor shall be entitled to deduct an amount for retention, calculated by applying the percentage of retention stated in the Appendix to the Subcontractor's Offer to the payment; otherwise due to the Subcontractor, until the amount so retained by the Contractor reaches the limit of retention money (if any) stated in the Appendix to the Subcontractor's Offer.

Provided that, subject to the obligation to pay pursuant to the last paragraph of Sub-Clause 14.8 [*Final Subcontract Payment*], the Contractor shall be entitled to withhold or defer payment of any sums in a Subcontractor's monthly statement to the extent that he notifies the Subcontractor within 70 days of his receipt of that monthly statement with reasons that:

- (a) where a minimum amount is stated in the Appendix to the Subcontractor's Offer, the amounts included in the Subcontractor's monthly statement together

with any sums to which the Subcontractor might otherwise be entitled in the opinion of the Contractor, but after all retentions (if any) and deductions, are less in the aggregate than this minimum amount. Save that the aforesaid shall not apply to the amounts in the Subcontractor's monthly statement which are included in the Contractor's final statement under Main Contract Clause 14.11 [*Application for Final Payment Certificate*];

- (b) the amounts included in the Subcontractor's monthly statement are not certified by the Engineer and only to the extent that the sum is not certified by the Engineer, provided that such failure to certify is not due to any act or default of the Contractor under the Main Contract;
- (c) the amounts included in the Subcontractor's monthly statement have been certified by the Engineer but the Employer has failed to make payment in full to the Contractor in respect of these amounts and only to the extent that the Employer has failed to make payment. Provided that such failure to pay is not due to:
 - (i) any act or default of the Contractor under the Main Contract; and/or
 - (ii) the Employer's bankruptcy or insolvency, going into liquidation, having a receiving or administration order made against him, compounding with his creditors, or carrying on business under a receiver, trustee or manager for the benefit of his creditors, or by any act which (under applicable Laws) has a similar effect to any of these acts or events; or
- (d) the Contractor fairly considers that any sum in the Subcontractor's monthly statement is not due in accordance with the Subcontract and/or the Contractor is entitled to deduct any sum pursuant to Sub-Clause 3.3 [*Contractor's Claims in connection with the Subcontract*].

Payment by the Contractor to the Subcontractor of any amount in a Subcontractor's monthly statement which has previously been withheld or deferred by the Contractor shall be due 7 days after receipt by the Contractor of any payment from the Employer which includes a sum in respect of this amount.

If the Subcontractor is under obligation to provide a Subcontract Performance Security under the Subcontract, notwithstanding the terms of this Sub-Clause or any other term of the Subcontract, no amount shall become due and payable to the Subcontractor until the security in accordance with Sub-Clause 4.2 [*Subcontract Performance Security*] has been delivered to the Contractor.

14.7

Payment of Retention Money under the Subcontract

Where a percentage of retention is stated in the Appendix to the Subcontractor's Offer, the Contractor shall pay to the Subcontractor the retention money under the Subcontract in the same proportions that apply to the Retention Money in accordance with Main Contract of the Retention Money in accordance with Main Contract Clause 14.9 [*Payment of Retention Money*], no later than 14 days after the Contractor has received payment from the Employer.

Provided that if Sub-Clause 10.3 [*Taking-Over by the Contractor*] applies:

- (a) to the whole of the Subcontract Works, the Contractor shall pay the Subcontractor the first half of the retention money under the Subcontract no later than 28 days after the whole of the Subcontract Works have been (or are deemed to have been) taken-over by the Contractor; or
- (b) to a part of the Subcontract Works, the Contractor shall pay the Subcontractor a proportion of the retention money under the Subcontract no later than 28 days after that part has been (or is deemed to have been) taken-over by the

- Contractor. This proportion shall be 40% of the proportion calculated by dividing the estimated subcontract value of the part by the estimated final Subcontract Price; and
- (c) the Contractor shall pay the Subcontractor the outstanding balance of the retention money under the Subcontract no later than 70 days after the expiry of the Subcontract Defects Notification Period. However, if any work remains to be executed under Clause 11 [Defects Liability], the Contractor shall be entitled to withhold payment of the estimated cost of this work until it has been executed.

14.8 Final Subcontract Payment

The Subcontractor shall prepare and submit a draft final statement to the Contractor stating the sum which in the Subcontractor's opinion is the Subcontract Price finally due, showing in detail the value of all work done in accordance with the Subcontract, and any further sums which the Subcontractor considers to be due to him, together with supporting documents. This draft final statement shall take no account of any of the matters described in sub-paragraphs (a) to (d) of Sub-Clause 14.6 [Interim Subcontract Payments] and shall be submitted no later than:

- (a) 7 days before the due date for submission of the Contractor's draft final statement under Sub-Main Contract Clause 14.11 [Application for Final Payment Certificate] of the Main Contract, which due date shall be notified to the Subcontractor by the Contractor; or
- (b) 28 days after the expiry of the Subcontract Defects Notification Period, if Sub-Clause 10.3 [Taking-Over by the Contractor] applies to the whole of the Subcontract Works.

If the Contractor disagrees with or cannot verify any part of the Subcontractor's draft final statement, the Subcontractor shall submit the further information that the Contractor may reasonably require and shall make the changes in this draft statement that may be agreed between the Contractor and the Subcontractor. The Subcontractor shall then prepare and submit to the Contractor a final statement as agreed no later than 7 days before the due date for submission of the Contractor's Final Statement under Main Contract Clause 14.11 [Application for Final Payment Certificate], which due date shall be notified to the Subcontractor by the Contractor. This agreed final statement shall be "the Subcontractor's Final Statement".

However if, following discussions between the Contractor and the Subcontractor and any revision to the Subcontractor's draft final statement, it becomes evident that a dispute exists, the Contractor shall make a payment to the Subcontractor in respect of the undisputed parts of the Subcontractor's draft final statement no later than 35 days after receiving this statement.

Within 84 days after the expiry of the Subcontract Defects Notification Period or within 14 days after the Contractor has received full payment under the Main Contract in respect of the Subcontract Works, whichever is the sooner, the Contractor shall pay to the Subcontractor balance of the Subcontract Price finally due.

14.9 Delayed Payment under the Subcontract

If the Contractor fails to make payment of any sum properly due and payable to the Subcontractor in accordance with this Clause 14 [Subcontract Price and Payment], then Main Contract Clause 14.8 [Delayed Payment] shall apply provided that the period of delay shall be deemed to commence on the date for payment specified in this Clause 14 [Subcontract Price and Payment].

If payment is withheld or deferred pursuant to sub-paragraphs (b) and/or (c) of Sub-

Clause 14.5 [*Interim Subcontract Payment*], then the Contractor shall pay the Subcontractor the amount of financing charges applicable to the overdue sum at the at the rate payable by the Employer to the Contractor under Main Contract Clause 14.8 [*Delayed Payment*], provided that the period of delay shall be deemed to commence on the date for payment specified in Sub-Clause 14.5 [*Interim Subcontract Payments*]. Payment by the Contractor to the Subcontractor of this amount of financing charges for withheld or deferred payment shall be due within 14 days of payment by the Contractor to the Subcontractor of the amount which was previously withheld or deferred, or within 7 days after receipt by the Contractor of any payment from the Employer in accordance with Main Contract Clause 14.8 [*Delayed Payment*] which includes a sum in respect of this amount, whichever is the sooner.

14.10

Cessation of the Contractor's Liability

The Contractor shall not be liable to the Subcontractor for any matter or thing arising out of or in connection with the Subcontract or execution of the Subcontract Works as from the date stated in the Performance Certificate issued under the Main Contract, which date shall be promptly notified to the Subcontractor by the Contractor, except to the extent that the Subcontractor has given a notice of claim in accordance with Sub-Clause 20.2 [*Subcontractor's Claims*] prior to that date.

The Subcontractor shall remain entitled to payment for the fulfilment of any obligation which remains unperformed after the date stated in the Performance Certificate under the Main Contract.

14.11

Subcontract Currencies of Payment

The Subcontract Price and any amount due under this Clause 14 [*Subcontract Price and Payment*] shall be paid in the currency or currencies stated in the Appendix to the Subcontractor's Offer.

Termination of the Main Contract and Termination of the Subcontract by the Contractor

15.1

Termination of Main Contract

If the Main Contract is terminated or the Contractor and/or the Employer is released from performance of the Main Contract under Main Contract Clause 19.7 [*Release from Performance under the Law*], then the Contractor may by notice to the Subcontractor terminate the Subcontract immediately, save where he is required to assign the Subcontract to the Employer in accordance with sub-paragraph (b) of Sub-Clause 5.1 [*Assignment of Subcontract*].

Within 7 days after the date the Employer returns the Performance Security under the Main Contract, which date shall be promptly notified to the Subcontractor by the Contractor, or within 28 days after a notice of termination under this Sub-Clause has taken effect, whichever is earlier, the Contractor shall return the Subcontract Performance Security to the Subcontractor, unless the Main Contract has been terminated as a consequence of any breach of the Subcontract by the Subcontractor.

15.2

Valuation at Date of Subcontract Termination

As soon as practicable after a notice of termination under Sub-Clause 15.1 [*Termination of Main Contract*] or Sub-Clause 15.6 [*Termination of Subcontract by the Contractor*] has taken effect, the Contractor shall promptly evaluate the Subcontract Works, Subcontract Goods and Subcontractor's Documents, and any other sums due to the Subcontractor for work executed in accordance with the Subcontract whether on or off the Site.

If the Subcontract is terminated under Sub-Clause 15.1 [*Termination of Main Contract*], then the Contractor's evaluation shall have regard to the Engineer's valuation under Main Contract Clause 15.3 [*Valuation at Date of Termination*].

If the Subcontract is terminated under Sub-Clause 15.6 [*Termination of Subcontract by the Contractor*] then the Contractor's evaluation shall have regard to Sub-Clause 12.3 [*Evaluation under the Subcontract*].

The Contractor shall give notice, with supporting particulars, to the Subcontractor of this evaluation.

15.3

Payment after Termination of Main Contract

If the termination of the Subcontract arises from termination of the Main Contract or from the release of performance by the Contractor and/or Employer of the Main Contract under Main Contract Clause 19.7 [*Release from Performance under the Law*], the following shall be due and payable to the Subcontractor, insofar as these amounts or Costs have not been covered by payments already made to the Subcontractor:

- (a) the value of the Subcontract Works, Subcontract Goods and Subcontractor's Documents, and any other sums due to the Subcontractor for work executed in accordance with the Subcontract, as evaluated in accordance with Sub-Clause 15.2 [*Valuation at Date of Subcontract Termination*];
- (b) the Cost of removal of the Subcontractor's Equipment and temporary works from the Site and, if required by the Subcontractor, return thereof to the Subcontractor in his country, or to any other destination at no greater cost;
- (c) the reasonable Cost of repatriation of all the Subcontractor's staff and labour employed wholly in connection with the Subcontract Works at the date of termination;
- (d) any other Cost or liability which in the circumstances was reasonably incurred by the Subcontractor in the expectation of completing the Subcontract Works; and
- (e) any loss of profit or other loss or damage sustained by the Subcontractor as a result of this termination.

If the Main Contract has been terminated under Main Contract Clause 15.2 [*Termination by Employer*], unless the Main Contract has been terminated as a consequence of any breach of the Subcontract by the Subcontractor, then payment by the Contractor of any of those amounts or Costs shall be due immediately after termination of the Subcontract.

If Main Contract Clause 19.7 [*Release from Performance under the Law*] applies to the Main Contract or the Main Contract has been terminated under Main Contract Clause 16.2 [*Termination by Contractor*] or Main Contract Clause 19.6 [*Optional Termination, Payment and Release*], then payment by the Contractor to the Subcontractor of any of these amounts or Costs shall be due 7 days after receipt by the Contractor of any payment from the Employer which includes a sum in respect of this amount or 112 days after termination of the Subcontract, whichever is earlier. Any Subcontract Plant or materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer and the Subcontractor shall place the same at the Employer's disposal.

Provided that:

- (i) If the Main Contract has been terminated as a consequence of any breach of the Subcontract by the Subcontractor, no payment shall become due under

this Sub-Clause and Sub-Clause 15.4 [Termination of the Main Contract in Consequence of Subcontractor Breach] shall apply;

- (ii) if the Main Contract has been terminated under Main Contract Clause 15.5 [Employer's Entitlement to Termination] or under Main Contract Clause 19.6 [Optional Termination, Payment and Release], or under Main Contract Clause 19.7 [Release from Performance under the Law] then the Subcontractor shall have no entitlement to payment of any loss of profit; and
- (iii) nothing in this Sub-Clause shall affect any right of either Party to receive payment in respect of any breach of the Subcontract committed by the other Party prior to the termination, or any other right to payment under Subcontract.

15.4

Termination of Main Contract in Consequence of Subcontractor Breach

If the Main Contract is terminated as a consequence of any breach of the Subcontract by the Subcontractor, the Subcontractor shall be entitled to payment of:

- (a) the value of the Subcontract Works, Subcontract Goods and Subcontractor's Documents, and any other sums due to the Subcontractor for work executed in accordance with the Subcontract, as evaluated in accordance with Sub-Clause 15.2 [Valuation at Date of Subcontract Termination], insofar as this value has not already been covered by payments made to the Subcontractor;

less

- (b) any amounts recovered by the Employer from the Contractor under Main Contract Clause 15.4 [Payment after Termination] in respect of any extra Cost in executing, completing and remedying of any defects, damages for delay, and all other costs incurred by the Employer in completion of the Subcontract Works;

and less

- (c) any losses and damages incurred by the Contractor and/or any of his other subcontractors as a result of termination of the Main Contract.

Provided that this payment by the Contractor shall not become due until after the amounts under sub-paragraph (b) above have been ascertained under the Main Contract, which amounts shall be promptly notified to the Subcontractor by the Contractor.

If the amount of sub paragraph (a) above is less than the aggregate sum of the amounts of sub-paragraphs (b) and (c) above, the Contractor shall be entitled to recover the balance from the Subcontractor.

15.5

Notice to Correct under the Subcontract

If the Subcontractor fails to carry out any obligation under the Subcontract, the Contractor may by notice require the Subcontractor to make good the failure and to remedy it within a reasonable time specified by the Contractor.

15.6

Termination of Subcontract by the Contractor

The Contractor shall be entitled to terminate the Subcontract, without prejudice to any other rights or remedies under the Subcontract or otherwise, if any one or more of the events or circumstances set out in sub-paragraphs (a) to (f) inclusive of Main Contract Clause 15.2 [Termination by Employer] are applicable to the Subcontractor's performance under the Subcontract.

In any of these events or circumstances the Contractor may, upon giving 14 days'

notice to the Subcontractor, terminate the Subcontract and expel the Subcontractor from the Site, except in the case of sub-paragraph (e) or (f) of Main Contract Clause 15.2 [*Termination by Employer*] when the Contractor may by notice terminate the Subcontract immediately. In lieu of terminating the Subcontract, the Contractor may take part only of the Subcontract Works out of the hands of the Subcontractor and may execute and complete, or have executed and completed by others, this part of the Subcontract Works. In this event the Contractor may recover his Cost of so doing from the Subcontractor.

If the Contractor terminates the Subcontract in accordance with this Sub-Clause, the provisions of the last three paragraphs of Main Contract Clause 15.2 [*Termination by Employer*] shall apply.

If the Contractor terminates the Subcontract in accordance with this Sub-Clause the Subcontractor shall be entitled to payment of:

- (i) the value of the Subcontract Works, Subcontract Goods and Subcontractor's Documents, and any other sums due to the Subcontractor for work executed in accordance with the Subcontract, as evaluated in accordance with Sub-Clause 15.2 [*Valuation at Date of Subcontract Termination*], insofar as this value has not already been covered by payments made to the Subcontractor;

less

- (ii) the amount of any losses and damages incurred by the Contractor and any extra Cost in executing, completing and remedying of any defects, damages for delay, and all other costs incurred by the Contractor in completion of the Subcontract Works.

Provided that this payment by the Contractor shall not become due until after the amount under sub-paragraph (ii) above has been ascertained.

If the amount of sub-paragraph (i) above is less than the amount of sub-paragraph (ii) above, the Contractor shall be entitled to recover the balance from the Subcontractor.

Provided that nothing in this Sub-Clause shall affect the right of either Party to receive payment in respect of any breach of the Subcontract committed by the other Party prior to the termination, or any other right to payment specified under the Subcontract.

Suspension and Termination by the Subcontractor

16.1

Subcontractor's Entitlement to Suspend Work

If the Contractor fails to pay any amount which is due to the Subcontractor pursuant to:

- (i) Clause 14 [*Subcontract Price and Payment*] but subject to sub-paragraphs (a) to (d) of Sub-Clause 14.5 [*Interim Subcontract Payments*]; or
- (ii) a Subcontract DAB's decision,

the Subcontractor may, after giving not less than 21 days' notice to the Contractor, describing such failure of payment, suspend work (or reduce the rate of work) unless and until the Subcontractor receives payment.

If the Subcontractor subsequently receives the payment described in the above notice before giving a notice of termination, the Subcontractor shall resume normal working as soon as is reasonably practicable.

If the Subcontractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Subcontractor shall give notice to the Contractor and shall be entitled, subject to Sub-Clause 20.2 [*Subcontractor's Claims*], to an extension of time under Sub-Clause 8.3 [*Extension of Subcontract Time for Completion*] and payment of any Cost plus reasonable profit which shall be included in the Subcontract Price.

16.2

Termination by Subcontractor

If:

- (a) within 28 days after giving notice in accordance with Sub-Clause 16.1 [*Subcontractor's Entitlement to Suspend Work*] the Subcontractor does not receive the payment described in that notice;
- (b) the Contractor or the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or
- (c) the Contractor substantially fails to perform his obligations under the Subcontract,

then the Subcontractor may upon giving notice to the Contractor, without prejudice to any other rights or remedies under the Subcontract or otherwise, terminate the Subcontract. In the case of sub-paragraphs (a) and (c) of this Sub-Clause, the Subcontractor shall give not less than 14 days notice, and in the case of sub-paragraph (b) of this Sub-Clause the Subcontractor may by notice terminate the Subcontract immediately.

16.3

Payment on Termination by Subcontractor

After a notice of termination under Sub-Clause 16.2 [*Termination by Subcontractor*] has taken effect, the Contractor shall promptly:

- (a) return the Subcontract Performance Security to the Subcontractor; and
- (b) pay the Subcontractor the amounts and Costs set out in sub-paragraphs (a) to (e) of Sub-Clause 15.3 [*Payment after Termination of Main Contract*] insofar as these amounts or Costs have not been covered by payments already made to the Subcontractor.

Provided that nothing in this Sub-Clause shall affect the right of either Party to receive payment in respect of any breach of the Subcontract committed by the other Party prior to the termination, or any other right to payment under the Subcontract.

Risk and Indemnities

17.1

Subcontractor's Risks and Indemnities

The Subcontractor shall have full responsibility for the care of the Subcontract Works from the Subcontract Commencement Date until the Subcontract Works have been taken over under Sub-Clause 10.2 [*Taking-Over the Subcontract Works*] or Sub-Clause 10.3 [*Taking-Over by the Contractor*] when responsibility for the Subcontract

Works shall pass to the Employer or the Contractor, respectively. Provided that, after responsibility has so passed to the Employer or the Contractor, the Subcontractor shall:

- (a) take responsibility for the care of any work which is outstanding on the date of taking-over until this outstanding work has been completed;
- (b) be liable for any loss or damage caused by any actions performed by the Subcontractor; and
- (c) be liable for any loss or damage which occurs and which arose from a previous event for which the Subcontractor was liable.

If any loss or damage happens to the Subcontract Works during the period when the Subcontractor is responsible for their care, from any cause which is the responsibility of the Subcontractor, the Subcontractor shall without delay rectify the loss or damage at his risk and cost, so that the Subcontract Works conform with the Subcontract. Provided that, if any such loss or damage arises from a cause which is not the responsibility of the Subcontractor, the Subcontractor shall:

- (i) without delay, rectify the loss or damage so that the Subcontract Works conform with the Subcontract; and
- (ii) subject to Sub-Clause 20.2 [Subcontractor's Claims], be entitled to recover from the Contractor any Cost so incurred.

The Subcontractor shall indemnify and hold harmless the Contractor against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of those matters set out in sub-paragraphs (a) and (b) of Main Contract Clause 17.1 [Indemnities].

17.2

Contractor's Indemnities

The Contractor shall indemnify and hold harmless the Subcontractor against and from all claims, damages, losses, and expenses (including legal fees and expenses) in respect of:

- (a) the matters as described in sub-paragraphs (d)(i), (ii) and (iii) of Main Contract Clause 18.3 [Insurance against Injury to Persons and Damage to Property];
- (b) fault, error, defect, or omission in any element of the design of the Permanent Works other than design carried out by the Subcontractor pursuant to its obligations under the Subcontract;
- (c) bodily injury, sickness, disease, or death, which is attributable to any negligence, wilful act or neglect by the Employer, the Employer's Personnel, or any of their respective agents; and
- (d) those matters set out in (a) of Main Contract Clause 17.1 [Indemnities].

17.3

Subcontract Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Subcontract Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Subcontract, other than under Clause 15 [Termination of the Main Contract and Termination of the Subcontract by the Contractor], Sub-Clause 17.1 [The Subcontractor's Risks and Indemnities] and/or Sub-Clause 17.2 [The Contractor's Indemnities].

The total liability of the Subcontractor to the Contractor under or in connection with the Subcontract, other than under Sub-Clause 7.1 [Subcontractor's Use of Equipment, Temporary Works, and/or Other Facilities], Sub-Clause 7.2 [Free-Issue Materials], Sub-Clause 8.7 [Subcontract Damages for Delay] and Sub-Clause 17.1

[*Subcontractor's Risks and Indemnities*], shall not exceed the sum stated in the Particular Conditions of Subcontract or (if a sum is not so stated) the Accepted Subcontract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

18 Subcontract Insurances

18.1

Subcontractor's Obligation to Insure

The Subcontractor shall effect and maintain insurance against the risks and in the sums and in the names specified in Annex E. The Subcontractor shall maintain these insurances from the Subcontract Commencement Date until the Subcontract Works have been taken-over in accordance with Sub-Clause 10.2 [*Taking-Over of the Subcontract Works*] or Sub-Clause 10.3 [*Taking-Over by the Contractor*].

Provided always that the Subcontractor shall insure the Subcontractor's Personnel in the like manner that the Contractor is required to insure the Contractor's Personnel under Main Contract Clause 18.4 [*Insurance for Contractor's Personnel*], and the Contractor shall also be indemnified under the policy of insurance except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Contractor or of the Contractor's Personnel.

18.2

insurance arranged by the Contractor and/or the Employer

The Contractor shall effect and maintain the insurances for which he is responsible under the Main Contract, the details of which are set out in Annex E.

The details of insurances (if any) to be arranged by the Employer under the Main Contract are as set out in Annex E.

Where the Subcontractor discovers any inadequacy in these insurances or duplication with these insurances when reviewing the insurance coverage of the Subcontract Works or executing the Subcontract Works, he shall immediately notify the Contractor.

If:

- (a) the Contractor and/or the Employer is the insuring Party under Main Contract Clause 18.2 [*Insurance for Works and Contractor's Equipment*];
- (b) the Subcontract Works, Subcontract Goods, or other things belonging to the Subcontractor are destroyed or damaged during the period that the Contractor is required to maintain insurance under the Main Contract; and
- (c) a claim is established in respect of that which was destroyed or damaged under the relevant policy of insurance,

then, assuming that this claim is paid by the relevant insurer(s), the Subcontractor shall be paid the amount of this claim less any deductible(s), or the amount of his loss, whichever is less, and shall apply this sum in replacing or repairing that which was destroyed or damaged.

18.3

Evidence of Insurance and Failure to Insure

Where by virtue of this Clause 18 [*Subcontract Insurances*] either Party is required to effect and maintain insurance, he shall if so requested by the other Party promptly provide evidence of that insurance and the receipt for the payment of the current premium.

If either Party fails to effect and maintain any insurance it is required to effect and maintain under the Subcontract, or fails to provide satisfactory evidence of any insurance and the receipt for the payment of the current premium, without delay following a request for this evidence by the other Party, then the other Party may (at its option and without prejudice to any other right or remedy) effect and maintain insurance for the relevant coverage and pay the premiums due. The Party in default shall then pay the amount of these premiums plus any extra expense incurred in effecting this insurance to the other Party as an adjustment to the Subcontract Price.

Subcontract Force Majeure

19.1

Subcontract Force Majeure

The provisions of Main Contract Clause 19 [*Force Majeure*] shall apply to the Subcontract.

Notices, Subcontractor's Claims and Disputes

20.1

Notices

Without prejudice to the generality of Clause 4 [*The Subcontractor*], whenever the Contractor is required by the terms of the Main Contract to give any notice or other information to the Engineer or to the Employer, or to keep contemporary records (whether in relation to a claim or otherwise), to the extent that these terms apply to the Subcontract Works the Subcontractor shall give a similar notice or other information in writing to the Contractor and keep the contemporary records that will enable the Contractor to comply with these terms of the Main Contract. The Subcontractor shall do so in good time to enable the Contractor to comply with these terms. Provided always that the Subcontractor shall be excused from any non-compliance with this requirement for so long as he could not have reasonably known of the Contractor's need of the notice or information from him or the contemporary records.

Notwithstanding Sub-Clause 20.2 [*Subcontractor's Claims*] and Sub-Clause 3.3 [*Contractor's Claims in connection with the Subcontract*], each Party shall immediately give notice to the other Party of any delay event which has occurred, or specific probable future event(s) or circumstance(s), which may adversely affect the other Party's activities, or delay the execution of the Subcontract Works and/or the Main Works. The Subcontractor shall immediately give notice to the Contractor of any event which has occurred, or specific probable future event(s) or circumstance(s), which may increase the Subcontract Price and/or the Contract Price.

20.2

Subcontractor's Claims

If the Subcontractor considers himself to be entitled to any extension of the Subcontract Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Subcontract, Main Contract Clause 20.1 [*Contractor's Claims*] shall apply to Subcontractor's claims. Save that:

- (a) the period of notice applicable to Subcontractor's claims shall be not later than 21 days after the Subcontractor became aware (or should have become aware) of the event or circumstance giving rise to the claim;
- (b) the period for submission by the Subcontractor of a full detailed claim shall be not later than 35 days after the Subcontractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within

- such other period as may be proposed by the Subcontractor and approved by the Contractor;
- (c) the reference to "Payment Certificate" shall be replaced by "interim payment made to the Subcontractor under Sub-Clause 14.6 [*Interim Subcontract Payments*]"; and
 - (d) the following shall replace the penultimate paragraph of Main Contract Clause 20.1 [*Contractor's Claims*]:

The Contractor shall consult with the Subcontractor in an endeavour to reach agreement on the extension of the Subcontract Time for Completion and/or additional payment to which the Subcontractor may be entitled for his claim. If agreement is not reached, the Contractor shall within 42 days after receiving from the Subcontractor a fully detailed claim or any further particulars requested by the Contractor, or within such other time period agreed between the Parties:

- (i) make a fair decision, having due regard to the Subcontractor's submissions, the extent to which his claim for additional payment and/or extension of time has been substantiated, and all other relevant circumstances;
- (ii) notify the Subcontractor, with reasons and making reference to this sub-paragraph, of the appropriate and applicable additional payment (if any) and/or extension (if any) of the Subcontract Time for Completion; and
- (iii) make the additional payment (if any) to the Subcontractor, and grant the extension (if any) of the Subcontract Time for Completion.

Each Party shall give effect to each agreement reached or decision made under this Sub-Clause unless and until revised under Clause 20 [*Claims and Disputes*].

20.3

Failure to Comply

If by reason of any failure by the Subcontractor to comply with the first paragraph of Sub-Clause 20.1 [*Notices*] and/or the provisions of Sub-Clause 20.2 [*Subcontractor's Claims*] the Contractor is prevented from recovering any sum other than in respect of Subcontractor's claims from the Employer under the Main Contract in respect of the Subcontract Works, then, without prejudice to any other remedy of the Contractor for this failure the Contractor shall, subject to Sub-Clause 3.3 [*Contractor's Claims*], be entitled to deduct this sum from the Subcontract Price.

20.4

Subcontract Disputes

If a dispute (of any kind whatsoever) arises between the Contractor and the Subcontractor in connection with, or arising out of, the Subcontract or the execution of the Subcontract Works, then either Party may give a notice of this dispute to the other Party (the "Notice of Dispute").

In any Notice of Dispute given by the Contractor or within 14 days of receiving a Notice of Dispute from the Subcontractor, the Contractor may notify the Subcontractor, with reasons, of his opinion that the dispute involves an issue or issues which is/are also involved in a dispute between the Contractor and the Employer under the Main Contract. If the Contractor so notifies the Subcontractor:

- (a) the Parties shall defer any referral of the dispute to the Subcontract DAB until a date that is no earlier than 12 days, or other period as may be agreed between the Parties, after the date of the Notice of Dispute;
- (b) if the subject of the Subcontract dispute has not previously been referred to the Main Contract DAB, the Contractor shall refer the Subcontract dispute to the Main Contract DAB, with a copy to the Subcontractor, in accordance with Main

Contract Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] within 28 days, or other period as may be agreed between the Parties, of the Notice of Dispute. If Main Contract Clause 20.8 [Expiry of Dispute Adjudication Board's Appointment] applies under the Main Contract, the Contractor shall immediately give notice to the Subcontractor; and

- (c) the Subcontractor shall, in good time, afford the Contractor all information and assistance that may reasonably be required to enable the Contractor to diligently pursue the Subcontract dispute under the Main Contract

Provided that, if the Subcontract dispute is not referred to the Main Contract DAB within the time stated in sub-paragraph (b) of this Sub-Clause, or if Main Contract Clause 20.8 [Expiry of Dispute Adjudication Board's Appointment] applies under the Main Contract, either Party shall immediately after that be entitled to refer the Subcontract dispute to the Subcontract DAB and sub paragraph (a) of this Sub-Clause shall no longer apply.

At any time after the expiry of the time stated or otherwise agreed in sub-paragraph (a) of this Sub-Clause:

- (i) the Contractor shall be entitled to refer the Subcontract dispute to the Subcontract DAB; or
- (ii) the Subcontractor shall, at his option, be entitled to refer the Subcontract dispute to the Subcontract DAB or to arbitration under Sub-Clause 20.7 [Subcontract Arbitration].

If the Contractor does not notify the Subcontractor that the Subcontract dispute involves an issue or issues which is/are also involved in a dispute between the Contractor and the Employer under the Main Contract in any Notice of Dispute given by the Contractor, or within 14 days of receiving a Notice of Dispute from the Subcontractor, either Party shall be entitled to refer the Subcontract dispute to the Subcontract DAB.

Unless the Subcontract has already been abandoned, repudiated or terminated, the Subcontractor shall proceed with the Subcontract Works in accordance with the Subcontract.

20.5

Appointment of the Subcontract DAB

Disputes between the Contractor and the Subcontractor shall be decided by a Subcontract DAB, which shall be jointly appointed by the Parties within 42 days after the date of a Notice of Dispute or, where applicable, within 42 days after the date of expiry of the time stated or otherwise agreed in sub-paragraph (a) of Sub-Clause 20.4 [Subcontract Disputes]. The Subcontract DAB shall comprise, as stated in the Appendix to the Subcontractor's Offer, either one or three suitably qualified persons. If the Parties fail to agree upon the appointment of the sole member, or any of the three members, of the Subcontract DAB within 42 days after the date of a Notice of Dispute, then the appointing entity or official named in the Appendix to Tender of the Main Contract shall, upon the request of either or both Parties and after due consultation with both Parties, appoint the member(s) to complete the Subcontract DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Contractor or the Subcontractor acting alone. Unless otherwise agreed by both Parties, the appointment of the Subcontract DAB (including each member) shall expire when the Subcontract DAB has given its decision on the dispute referred to it under Sub-Clause 20.6 [Obtaining Subcontract DAB's Decision].

unless other disputes have been referred to the Subcontract DAB by that time under Sub-Clause 20.6 [Obtaining Subcontract DAB's Decision], in which event the relevant date shall be when the Subcontract DAB has also given decisions on those disputes.

In all other respects Main Contract Clause 20.2 [Appointment of the Dispute Adjudication Board] shall apply to the appointment of the Subcontract DAB, except that Rules 1 to 4 of the Procedural Rules annexed to the General Conditions of Dispute Adjudication Agreement shall not apply.

20.6

Obtaining Subcontract DAB's Decision

Either Party may, subject to Sub-Clause 20.4 [Subcontract Disputes], refer a Subcontract dispute in writing to the Subcontract DAB for its decision with a copy to the other Party. The reference shall state that it is given under this Sub-Clause. In all respects, other than as stated in this Sub-Clause, Main Contract Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] shall apply to the resolution of the Subcontract dispute. The reference to Main Contract Clause 20.8 [Expiry of Dispute Adjudication Board's Appointment] shall not apply.

The Subcontract DAB's decision shall be binding on both Parties unless and until it shall be revised in an amicable settlement as described below, or an arbitral award in accordance with Sub-Clause 20.7 [Subcontract Arbitration].

If either Party serves a notice of dissatisfaction with the Subcontract DAB's decision within 28 days of that decision, both Parties shall attempt to settle the Subcontract dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on the twenty-eighth day after notice of dissatisfaction was given even if no attempt at amicable settlement has been made.

In the event that a Party fails to comply with any decision of the Subcontract DAB, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.7 [Subcontract Arbitration] for the purpose of obtaining an award (whether interim or other) to enforce that decision. There shall be no requirement to obtain a Subcontract DAB's decision or to attempt to reach amicable settlement in respect of this reference.

20.7

Subcontract Arbitration

Unless settled amicably, any Subcontract dispute in respect of which the Subcontract DAB's decision has not become final and binding shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce and Main Contract Clause 20.6 [Arbitration] shall apply.

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GENERAL CONDITIONS OF
SUBCONTRACT

GUIDANCE FOR THE
PREPARATION OF
PARTICULAR CONDITIONS OF
SUBCONTRACT

FIDIC® Conditions of Subcontract
for **CONSTRUCTION**

FOR BUILDING AND ENGINEERING WORKS
DESIGNED BY THE EMPLOYER

FORMS OF LETTER OF
SUBCONTRACTOR'S GENERAL
CONDITIONS LETTER OF
ACCEPTANCE AND
SUBCONTRACT AGREEMENT

Guidance for the Preparation of Particular
Conditions of Subcontract

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INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



Guidance for the Preparation of Particular Conditions of Subcontract

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Guidance for the Preparation of Particular Conditions of Subcontract of Subcontract

INTRODUCTION

The terms of the *FIDIC Conditions of Subcontract for Construction* have been prepared by the Fédération Internationale des Ingénieurs-Consultants (FIDIC) for use in conjunction with the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*, 1st Edition 1999, and with the Multilateral Development Bank Harmonised Edition of the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*. Modifications to the Conditions may be required in some legal jurisdictions, particularly if they are to be used on domestic contracts.

Under the usual arrangements for this type of subcontract, the Subcontractor is employed by the Contractor in the construction of the Subcontract Works in accordance with design details provided by the Employer or his representative, the Engineer. Although these conditions allow for the possibility that the Subcontractor may be required to design parts of the Permanent Works, they are not intended for use where most of the Main Works are designed by the Contractor. For these works, it would be more appropriate to use Conditions of Subcontract for use in conjunction with either the *FIDIC Conditions of Contract for Plant and Design-Build*, 1st Edition 1999, or the *FIDIC Conditions of Contract for EPC/Turnkey Projects*, 1st Edition 1999.

The guidance given hereafter is intended to assist writers of the Particular Conditions of Subcontract by giving options for various sub-clauses where appropriate. As far as possible, example wording is included, between lines. In some cases, however, only an aide-memoire is given.

Before incorporating any example wording, it must be checked to ensure that it is wholly suitable for the particular circumstances of the intended subcontract. Unless it is considered suitable, example wording should be amended before use.

Where example wording is amended, and in all cases where other amendments or additions are made, care must be taken to ensure that no ambiguity is created, either with the General Conditions of Subcontract or between the clauses in the Particular Conditions of Subcontract.

In the preparation of the Conditions of Subcontract to be included in the tender documents for a subcontract, the following text can be used:

The Conditions of Subcontract comprise the "General Conditions of Subcontract", which form part of the "FIDIC Conditions of Subcontract for Construction", First Edition 1999, published by the Fédération Internationale des Ingénieurs-Consultants (FIDIC), and the following "Particular Conditions of Subcontract", which include amendments and additions to these General Conditions of Subcontract.

There are no Sub-Clauses in the General Conditions of Subcontract which require data to be included in the clauses of the Particular Conditions of Subcontract. As noted in the Foreword, the General Conditions of Subcontract refer to any necessary data being contained in the Annexes to the Particular Conditions of Subcontract, the Appendix to the Subcontractor's Offer, or (for technical matters) in the Subcontract Specification.

EXAMPLE

At the end of Sub-Clause 1.9 insert:

If under the law governing the Subcontract, or under the Main Contract, the Employer does not consent to the Subcontract, upon notice from the Contractor of such non-consent:

- (a) the Parties shall be discharged from further performance of the Subcontract, without prejudice to the rights of either Party in respect of any previous breach of the Subcontract;
- (b) the Contractor shall immediately return the Subcontract Performance Guarantee to the Subcontractor; and
- (c) payment by the Contractor of the amounts and/or Costs as described in (a) to (d) of Sub-Clause 15.3 [*Payment after Termination of the Main Contract*] shall be due 28 days after the Parties' discharge from the Subcontract.*

Sub-Clause 1.10**No Privilege of Contract with Employer**

Before inviting tenders, the Contractor should verify that the wording of this Sub-Clause is consistent with the law governing the Subcontract.

If, for example, under applicable law the Employer and the Contractor are jointly and severally liable for payment of monies due to the Subcontractor, this Sub-Clause may be varied:

EXAMPLE

In Sub-Clause 1.10 delete all text and substitute:

Save to the extent that under the law governing the Subcontract the Employer is jointly and severally liable with the Contractor for payment of sums due to be paid to the Subcontractor under the Subcontract, nothing stated in the Subcontract shall be construed as creating any privity of contract between the Subcontractor and the Employer.

Additional Sub-Clause Details to be Confidential

If confidentiality is required, an additional Sub-Clause 1.12 may be added:

EXAMPLE SUB-CLAUSE

The Subcontractor shall treat the details of the Subcontract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws. The Subcontractor shall not publish, permit to be published, or disclose any particulars of the Subcontract Works or the Main Works in any trade or technical paper or elsewhere without the previous agreement of the Contractor.

Clause 2**The Main Contract****Sub-Clause 2.2****Compliance with Main Contract**

If any of the matters referred to in sub-paragraphs (i) to (viii) are to form part of the Subcontract Works then the relevant sub-paragraph(s) may be deleted in this Sub-Clause.

If under the Main Contract the Contractor is required to deliver to the Employer a collateral warranty from the Subcontractor, Sub-Clause 1.10 and this Sub-Clause should be varied:

Clause 1

Definitions and Interpretation

Sub-Clause 1.7

Joint and Several Liability under the Subcontract

If one Party constitutes a joint venture then the other Party may wish the leader of the joint venture to be identified at an early stage, providing a single point of contact thereafter.

Accordingly, sub-paragraph (b) of the Sub-Clause may be varied:

EXAMPLE

At the beginning of sub-paragraph (b) of Sub-Clause 1.7, insert:

No later than 10 days after the date of the Contractor's Letter of Acceptance,

Sub-Clause 1.8

Subcontract Law and Language

If the governing law of the Subcontract is that of a Member State of the European Union and/or the Subcontract Works are to be executed in a Member State of the European Union, before inviting tenders the Contractor should verify that the provisions of this Sub-Clause are consistent with Regulation (EC) No. 593/2008 of the European Parliament and of the Council, or any re-enactment or amendment of this Regulation which is in force at the time of tender. If there is no country (or other jurisdiction) stated in the Appendix to Tender of the Main Contract, this Sub-Clause may be varied:

EXAMPLE

After the first paragraph of Sub-Clause 1.9, insert:

If no country (or other jurisdiction) is stated in the Appendix to Tender of the Main Contract, the law governing the Subcontract shall be the law of the country (or other jurisdiction) in which the Subcontract Works (or most of the Subcontract Works) are executed.

Sub-Clause 1.9

Subcontract Agreement

The form of Subcontract Agreement should be included in the subcontract tender documents, appended to the Particular Conditions of Subcontract: an example form is included at the end of this publication.

If lengthy tender negotiations were necessary, or the time between submission of the tender and acceptance was prolonged, it may be considered advisable for the Subcontract Agreement to be amended to record the Accepted Subcontract Amount, and the Subcontract Time for Completion. Entry into a Subcontract Agreement may be necessary under applicable law.

If under applicable law, or under the Main Contract, the validity of the Subcontract is subject to the Employer's consent, this Sub-Clause may be varied:

EXAMPLE

At the end of Sub-Clause 1.9 insert:

If under the law governing the Subcontract, or under the Main Contract, the Employer does not consent to the Subcontract, upon notice from the Contractor of such non-consent:

- (a) the Parties shall be discharged from further performance of the Subcontract, without prejudice to the rights of either Party in respect of any previous breach of the Subcontract;
- (b) the Contractor shall immediately return the Subcontract Performance Guarantee to the Subcontractor; and
- (c) payment by the Contractor of the amounts and/or Costs as described in (a) to (d) of Sub-Clause 15.3 [*Payment after Termination of the Main Contract*] shall be due 28 days after the Parties' discharge from the Subcontract.*

Sub-Clause 1.10**No Privy of Contract with Employer**

Before inviting tenders, the Contractor should verify that the wording of this Sub-Clause is consistent with the law governing the Subcontract.

If, for example, under applicable law the Employer and the Contractor are jointly and severally liable for payment of monies due to the Subcontractor, this Sub-Clause may be varied:

EXAMPLE

In Sub-Clause 1.10 delete all text and substitute:

Save to the extent that under the law governing the Subcontract the Employer is jointly and severally liable with the Contractor for payment of sums due to be paid to the Subcontractor under the Subcontract, nothing stated in the Subcontract shall be construed as creating any privity of contract between the Subcontractor and the Employer.

Additional Sub-Clause Details to be Confidential

If confidentiality is required, an additional Sub-Clause 1.12 may be added:

EXAMPLE SUB-CLAUSE

The Subcontractor shall treat the details of the Subcontract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws. The Subcontractor shall not publish, permit to be published, or disclose any particulars of the Subcontract Works or the Main Works in any trade or technical paper or elsewhere without the previous agreement of the Contractor.

Clause 2**The Main Contract****Sub-Clause 2.2****Compliance with Main Contract**

If any of the matters referred to in sub-paragraphs (i) to (vii) are to form part of the Subcontract Works then the relevant sub-paragraph(s) may be deleted in this Sub-Clause.

If under the Main Contract the Contractor is required to deliver to the Employer a collateral warranty from the Subcontractor, Sub-Clause 1.10 and this Sub-Clause should be varied:

EXAMPLE:**PROVISIONS WHERE COLLATERAL WARRANTY FROM THE SUBCONTRACTOR IS REQUIRED UNDER THE MAIN CONTRACT**

Amend Sub-clause 1.10 to read:

Save in relation to any collateral warranty given by the Subcontractor to the Employer, nothing stated in the Subcontract shall be construed as creating any privity of contract between the Subcontractor and the Employer.

At the end of Sub-Clause 2.2 insert:

The Subcontractor shall deliver to the Contractor a signed collateral warranty in favour of the Employer in the form as annexed to the Particular Conditions of the Main Contract (or as otherwise approved by the Employer), in sufficient time to enable the Contractor to comply with his obligation(s) under the Main Contract to deliver the Subcontractor's collateral warranty.

Clause 3**The Contractor****Sub-Clause 3.2****Access to the Site**

If any part of the Site is to be made available exclusively to the Subcontractor, then details of each part of the Site and the time during which it will be made available exclusively to the Subcontractor should be given in the Subcontract Specification. Accordingly, this Sub-Clause may be varied:

EXAMPLE

Delete the second paragraph of Sub-Clause 3.2 and substitute:

The Contractor shall not be bound to make any part of the Site available exclusively to the Subcontractor except those parts of the Site for those periods as expressly detailed in the Subcontract Specification.

Sub-Clause 3.3**Contractor's Claims in connection with the Subcontract**

The words "or otherwise in connection with the Subcontract" on the second line of this Sub-Clause may be taken to include entitlement as a result of the Subcontractor's breach of contract, the Subcontractor's negligence or other default of the Subcontractor in connection with the Subcontract.

Clause 4**The Subcontractor****Sub-Clause 4.1****Subcontractor's General Obligations**

If the Subcontractor is required to undertake any design of the Subcontract Works, the Subcontractor's design obligation(s) should be expressly referred to in Annex B, and this Sub-Clause may be varied:

EXAMPLE

At the end of Sub-Clause 4.1 insert:

The Subcontractor's obligations to design any part of the Permanent Works are as expressly referred to in Annex B. The Subcontractor shall submit to the Contractor the Subcontractor's Documents for this part in

accordance with the procedures specified in the Subcontract. These Subcontractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.8 [Law and Language], and shall include additional information required by the Contractor for coordination of designs with other subcontractors. This part of the Permanent Works shall, when the Main Works are completed, be fit for the purposes for which the part is intended.

Sub-Clause 4.2

Subcontract Performance Security

For this Sub-Clause to apply, an amount in respect of the Subcontract Performance Security must be stated in the Appendix to the Subcontractor's Offer.

If the form of the Subcontract Performance Security is not to be similar to that of the Performance Security under the Main Contract, then the acceptable form of Subcontract Performance Security should be included in the tender documents annexed to the Particular Conditions, and this Sub-Clause should be amended accordingly.

The example forms and the wording of this Sub-Clause may have to be amended to comply with the applicable law:

EXAMPLE

At the end of the second paragraph of Sub-Clause 4.2 insert:

If the Subcontract Performance Guarantee is in the form of a bank guarantee, it shall be issued either (a) by a bank located in the Country, or (b) directly by a foreign bank acceptable to the Contractor. If the Subcontract Performance Security is not in the form of a bank guarantee, it shall be furnished by a financial entity registered or licensed to do business in the Country.

Clause 5

Assignment of the Subcontract & Subcontracting

Sub-Clause 5.2

Subcontracting

The wording in the General Conditions of Subcontract includes the conditions which will usually be applicable. If less (or no) consent is required for subcontracting, the wording of this Sub-Clause may be varied:

EXAMPLE

In Sub-Clause 5.2 delete "or" at the end of sub-paragraph (b), replace the full-stop at the end of sub-paragraph (c) with "; or" and insert additional sub-paragraph (d):

- (d) any subcontract whose value is less than 0.1% of the Accepted Subcontract Amount.

If greater consent is required for subcontracting, a sentence may be added:

EXAMPLE

At the end of the first paragraph of Sub-Clause 5.2 insert:

The prior consent of the Contractor shall be obtained to the suppliers of the following Subcontract materials:

(insert details: for example, specific manufactured or prefabricated items)

A sentence may be added to encourage the Subcontractor to use local contractors:

EXAMPLE

At the end of Sub-Clause 5.2 insert:

Where practicable, the Subcontractor shall give a fair and reasonable opportunity for contractors from the Country to be appointed as subcontractors.

Before inviting tenders, the Contractor should verify that the wording of this Sub-Clause is consistent with the law governing the Subcontract.

If, under applicable law, consent to any Subcontractor's subcontract is required from both the Employer and the Contractor, Sub-Clause 5.2 may be varied in the Particular Conditions:

EXAMPLE

In Sub-Clause 5.2 at the end of the first sentence of the first paragraph delete:

"of the Contractor" and substitute: "of both the Contractor and the Employer".

If under applicable law the Subcontractor is relieved of liability for work carried out by his subcontractor from the date his subcontractor was aware of the assignment, if earlier than the date the assignment takes effect, this Sub-Clause may be varied:

EXAMPLE

In Sub-Clause 5.2 delete the text of the last paragraph and substitute:

The Subcontractor shall have no liability to the Contractor for the work carried out by his subcontractor after the earlier of the dates on which the assignment takes effect, or the assignment was notified by the Subcontractor to his subcontractor.

Additional Sub-Clause Payment to the Subcontractor's subcontractor

If under applicable law the Contractor and the Subcontractor are jointly and severally liable for payments to the Subcontractor's subcontractors, a new sub-clause may be added in the Particular Conditions:

EXAMPLE SUB-CLAUSE

The Subcontractor shall be liable for all payments due and payable under each of the Subcontractor's subcontracts, in accordance with the terms of payment set out therein. If:

- (a) the Subcontractor fails to make any payment which is due and payable under any of his subcontracts according to the terms of payment set out therein;
- (b) the Subcontractor's subcontractor demands such payment from the Contractor; and
- (c) the Subcontractor's subcontractor substantiates his entitlement to such payment the Contractor shall make such payment to the Subcontractor's subcontractor. Thereafter, the Subcontractor shall subject to Sub Clause 3.3 [Contractor's Claims in connection with the Subcontract] pay the amount of this payment to the Contractor.

Clause 6

Co-operation, Staff and Labour

Sub-Clause 6.1

Co-operation under the Subcontract

These provisions should be reflected in the Contractor's subcontracts with other subcontractors on the Site.

Sub-Clause 6.4

Subcontractor's Representative

If the ruling language is not the same as a language for communications defined in Sub-Clause 1.8 [Subcontract Law and Language] of the General Conditions of Subcontract, or if for any other reason it is necessary to stipulate that the Subcontractor's Representative shall be fluent in a particular language, one of the following sentences may be added:

EXAMPLE

At the end of Sub-Clause 6.4 insert:

The Subcontractor's Representative shall also be fluent in
(insert name of language).

or

EXAMPLE

At the end of Sub-Clause 6.4 insert:

If the Subcontractor's Representative is not fluent in
(insert name of language) the Subcontractor shall make a competent
interpreter available during all working hours.

If the Contractor requires the Subcontractor's Representative to attend progress and/or contractual meetings with the Employer and/or the Engineer, this Sub Clause may be varied:

EXAMPLE

At the end of Sub-Clause 6.4 insert:

The Contractor may require the Subcontractor's Representative to attend progress and/or contractual meetings with the Employer and/or the Engineer. If the Subcontractor's Representative attends any of these meetings, he shall be permitted to review the record of the meeting and, if he has not objected to this record within 7 days of its receipt, those minutes shall be deemed to be accurate and to be accepted by the Subcontractor's Representative.

Clause 7

Equipment, Temporary Works, Other Facilities, Plant, and Materials

Sub-Clause 7.1

Subcontractor's Use of Contractor's Equipment, Temporary Works, and/or Other Facilities

For this Sub-Clause to apply, Annex D of the Particular Conditions of Subcontract should describe each item of equipment, temporary works and/or other facilities which the Contractor will make available and should specify all necessary details and arrangements of this availability.

If any item of equipment, temporary works and/or other facilities is to be made available upon certain terms and conditions (for example, liability and insurance) each term and condition should be clearly specified in Annex D. If any item of equipment, temporary works and/or other facilities is to be provided for the exclusive use of the Subcontractor, it should be clearly identified in Annex D.

This Sub Clause may be varied to make express provision as regards the liabilities and obligations of the Parties in relation to the Subcontractor's use of equipment, temporary works and/or other facilities.

EXAMPLE

At the end of Sub-Clause 7.1 insert:

Unless otherwise expressly stated in the Subcontract, nothing in this Sub-Clause shall:

- (a) impose any liability upon the Contractor in respect of the Subcontractor's use of such equipment, temporary works and/or other facilities made available by the Contractor;
- (b) relieve the Subcontractor of any statutory or other obligation to test or inspect such equipment, temporary works and/or other facilities made available by the Contractor; or
- (c) relieve the Subcontractor of any statutory or other obligation to provide suitable equipment, temporary works and/or other facilities for use by the Subcontractor's Personnel

However, the Contractor should verify that the wording of (a) of this Example amendment is consistent with the law governing the Subcontract. If, under applicable law, such exclusion of liability may not be enforceable, this Example amendment may be varied by the deletion of (a).

If the availability of equipment, temporary works and/or facilities is to be curtailed during the Defects Notification Period, then this should be expressly stated in Annex D. Also, the particular items of equipment, temporary works and/or facilities that are so affected should be clearly identified, and the extent to which availability is restricted during this period should be clearly specified, in Annex D.

It may be the case, for example, that Employer's Equipment is to be made available while the Main Works are being executed but, during the Defects Notification Period, its availability (in part or in whole) is only at the Employer's sole discretion. Or, it may be the case that Contractor's Equipment, temporary works and/or facilities is/are to be made available while the Subcontract Works are being executed but, during the Defects Notification Period, the availability of certain items of such Contractor's Equipment, temporary works and/or facilities is contingent on it/them being at the Site at the time(s) required by the Subcontractor.

Sub-Clause 7.2

Free-Issue Materials

For this Sub-Cause to apply, Annex D of the Particular Conditions of Subcontract should describe each item of free-issue materials which the Contractor will supply and should specify all necessary details and arrangements of this supply. If any item of free-issue materials is to be supplied upon certain terms and conditions (for example, liability and insurance) each term and condition should be clearly specified in Annex D.

Sub-Clause 7.5

Subcontractor's Equipment and Subcontract Plant

Before inviting tenders, the Contractor should verify that the provisions of this Sub-Clause are consistent with the law governing the Subcontract. If, under applicable law, payment to the Subcontractor for the Subcontract Plant and Materials is a condition precedent for the transfer of ownership, this Sub-Clause may be varied:

EXAMPLE

Delete the text of this Sub-Clause and substitute:

Each item of Subcontract Plant and of the materials intended to form or forming part of the permanent works to be executed by the Subcontractor under the Subcontract shall become the property of the

Contractor, free from liens and other encumbrances, when the Subcontractor receives payment of the value of such item of Subcontract Plant and materials from the Contractor.

If vesting of the Contractor's Equipment is not required under the Main Contract but vesting of the Sub-contractor's Equipment is required under the Subcontract, further paragraphs may be added subject to their being consistent with applicable law:

EXAMPLE

Subcontractor's Equipment which is owned by the Subcontractor (either directly or indirectly) shall be deemed to be the property of the Contractor with effect from its arrival on the Site. This vesting of property shall not:

- (a) affect the responsibility or the liability of the Contractor,
- (b) prejudice the right of the Subcontractor to the sole use of the vested Subcontractor's Equipment for the purpose of the Subcontract Works,
- (c) affect the Subcontractor's responsibility to operate and maintain the Subcontractor's Equipment.

The property in each item shall be deemed to vest in the Subcontractor either when he is entitled to remove it from the Site or when the Subcontract Works shall have been taken over or be deemed to have been taken over in accordance with Clause 10 (*Completion and Taking-Over the Subcontract Works*), whichever occurs first.

Clause 8

Commencement and Completion

Sub-Clause 8.1

Commencement of Subcontract Works

If the Subcontract Commencement Date is to occur within a certain time after the Subcontractor receives the Contractor's Letter of Acceptance, then this Sub-Clause may be varied:

EXAMPLE

At the end of Sub-Clause 8.1 insert:

The Subcontract Commencement Date shall be within 42 days after the Subcontractor receives the Contractor's Letter of Acceptance.

Sub-Clause 8.2

Subcontract Time for Completion

If the Subcontract Works are to be completed in stages, each stage should be defined as a Subcontract Section in Annex C of the Particular Conditions of Subcontract. Precise geographical definitions are advisable.

Sub-Clause 8.4

Subcontract Programme

This Sub-Clause requires that the Subcontract Programme shall fully comply with the programming and reporting requirements of the Main Contract, and the requirements of Annex F. Before inviting tenders, the Contractor should verify that the provisions of this Sub-Clause, and the requirements of Annex F, are consistent with the programming and reporting requirements of the Main Contract. Each of the tenderers should be advised of any programming constraints and/or any special matters that may be pertinent to the Subcontract Works which the Contractor wishes them to take into account when programming the Subcontract Works.

It is very likely that, in drafting his initial programme for the Main Works in accordance with Main Contract Clause 8.3 [Programme], it will be necessary for the Contractor to have regard to the Subcontractor's intended programme for the Subcontract Works. Therefore, the Contractor should hold prior discussions with the Subcontractor as regards his intentions for the programming of the Subcontract Works.

Sub-Clause 8.7

Subcontract Damages for Delay

Provision for Subcontract Delay Damages may be included in the Subcontract, in which case a sum of pre-defined delay damages (per day) in respect of the Subcontract Works, should be stated in Annex C. This sum may be expressed as a percentage of the final Subcontract Price. If the Subcontract Works are to be completed in sections, a sum of pre-defined delay damages (per day) may also be stated for each Subcontract Section.

Under the common law legal system, the amount of these pre-defined damages must represent a reasonable pre-estimate of the Contractor's probable loss if there is delay.

EXAMPLE SUB-CLAUSE

If the Subcontractor fails to comply with Sub-Clause 8.2 [Subcontract Time for Completion] and this failure causes or contributes to a failure by the Contractor to comply with Main Contract Clause 8.2 [Time for Completion], the Subcontractor shall be subject to Sub-Clause 3.3 [Contractor's Claims in connection with the Subcontract] be entitled to deduct delay damages from the Subcontract Price for this default.

These delay damages shall be the sum stated in the Appendix to the Subcontractor's Offer, for every day between the relevant Subcontract Time for Completion and the date upon which completion of the Subcontract Works or Subcontract Section was achieved in accordance with Sub-Clause 10.1 [Completion of Subcontract Works]. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Appendix to the Subcontractor's Offer.

These delay damages shall be the only damages due from the Subcontractor for this default other than those recoverable in the event of termination under Sub-Clause 15.3 [Payment after Termination by Contractor] or Sub-Clause 15.4 [Termination of the Main Contract as a Consequence of Breach of Subcontract]. These damages shall not relieve the Subcontractor from his obligation to complete the Subcontract Works or Subcontract Section, or from any other duties, obligations or responsibilities which he may have under the Subcontract.

Additional Sub-Clause Incentive for early Subcontract Completion

Incentives for early completion of Subcontract Sections may be included in the Subcontract tender documents.

EXAMPLE SUB-CLAUSE

Each Subcontract Section is required to be completed within the applicable Time for Completion stated in the Appendix to the Subcontractor's Offer. The Subcontractor shall be entitled to a bonus payment if a Subcontract Section is completed earlier than the applicable Time for Completion. The amount of bonus for each Subcontract Section is stated in Annex C. For the purposes of calculating any bonus payment, the applicable Time for Completion

stated in the Appendix to the Subcontractor's Offer is fixed and no adjustments of this time by reason of granting an extension of the Time for Completion will be allowed.

Clause 9 Tests on Completion

Sub-Clause 9.1 Subcontract Tests on Completion

For this Sub-Clause to apply, the Subcontract Specification should describe the tests which the Subcontractor is to carry out on completion the Subcontract Works or Subcontract Section (if applicable) which do not constitute any Tests on Completion under the Main Contract.

Sub-Clause 9.2 Main Contract Tests on Completion

For this Sub-Clause to apply, the Subcontract Specification should either:

- (a) describe the tests which the Subcontractor is to carry out on completion the Subcontract Works or Subcontract Section (if applicable) which constitute any Tests on Completion under the Main Contract; or
- (b) make express reference to the Tests on Completion described in the Specification under the Main Contract.

Clause 10 Completion of and Taking-Over the Subcontract Works

Sub-Clause 10.3 Taking-Over by the Contractor

For this Sub-Clause to apply, Annex C should provide for the taking-over, and for the procedure of taking-over, of the Subcontract Works and/or each Subcontract Section that is required to be taken over by the Contractor before taking-over by the Employer of the part or section of the Main Works of which the Subcontract Works or Subcontract Section are/is part.

Clause 11 Defects Liability

Sub-Clause 11.2 Subcontract Defects Notification Period

It should be noted that, if the Subcontract Works are to be taken-over by the Contractor before the Main Works are taken-over by the Employer in accordance with Sub-Clause 10.3 [*Taking-Over by the Contractor*] of the General Conditions, by virtue of this Sub-Clause the Subcontract Defects Notification Period may be significantly longer than the Defects Notification Period under the Main Contract.

Sub-Clause 11.3 Performance Certificate

Before inviting tenders, the Contractor should verify that the provisions of this Sub-Clause are consistent with the law governing the Subcontract.

Clause 12 Measurement and Evaluation

Sub-Clause 12.1 Measurement of the Subcontract Works

If the Subcontractor is not to participate in the measurement of the Subcontract Works, whether by actual measurement or by records, this Sub-Clause may be varied:

EXAMPLE

Delete Sub-Clause 12.1 and substitute:

The Subcontract Works shall be measured in accordance with Main Contract Clauses 12.1 [*Works to be Measured*] and 12.2 [*Method of Measurement*]. Notwithstanding local practice, the measurement shall be made on the net value actual quantity of each item of the Subcontract Works, and the method of measurement shall be that which applies under the Main Contract. The measurement of the Subcontract Works made by (or on behalf of) the Engineer under the Main Contract shall be deemed to be accurate and to be accepted by the Subcontractor. Wherever the Subcontract Works are to be measured by records, the records agreed by the Contractor with the Engineer under the Main Contract shall be deemed to be accurate and to be accepted by the Subcontractor.

If the Subcontractor is not to participate in the measurement of the Subcontract Works, but is to be permitted to participate wherever the Subcontract Works are to be measured by records, this Sub-Clause may be varied:

EXAMPLE

Delete sub-paragraph (a) in Sub-Clause 12.1 and substitute:

The measurement of the Subcontract Works made by (or on behalf of) the Engineer under the Main Contract shall be deemed to be accurate and to be accepted by the Subcontractor.

If the method of measurement of the Subcontract Works is not to be that which applies under the Main Contract, this Sub-Clause may be varied:

EXAMPLE

Delete sub-paragraph (c) in Sub-Clause 12.1 and substitute:

The Subcontract Works shall be measured in accordance with Main Contract Clause 12.1 [*Works to be Measured*].

Delete the third paragraph of Sub-Clause 12.1 and substitute:

Notwithstanding local practice, the measurement shall be made on the net value actual quantity of each item of the Subcontract Works, and the method of measurement shall be (enter method of measurement to be used).

Clause 14**Contract Price and Payment****Sub-Clause 14.1****The Subcontract Price**

When writing the Particular Conditions of Subcontract, consideration should be given to the amount and timing of payment(s) to the Subcontractor. A positive cash flow is clearly of benefit to any contractor, and tenders will take account of the interim payment procedures when preparing their tenders.

If the Subcontractor is to be paid on a cost-plus basis, namely the actual Costs of executing the Subcontract Works, in part or in whole, are determined and paid, then Clause 12 [*Measurement and Evaluation*] of the General Conditions of Subcontract should be replaced by provisions describing the method of determining the Costs and the Subcontract Price. Also, any of the provisions in the General Conditions of Subcontract, and any of the provisions in the Conditions of Contract of the Main Contract which are applicable to the Subcontract, which entitle the Subcontractor to payment of additional Costs will generally be of no effect.

The reference to agreeing or evaluating the Subcontract Price in the first paragraph of Sub-Clause 14.1 [*The Subcontract Price*] of the General Conditions would not apply if payment under the Subcontract is to be made on a lump-sum basis. A lump-sum subcontract may be suitable if:

- (a) tender documents include details which are sufficiently complete for construction and for Subcontract Variations to be unlikely, and/or
- (b) the Main Contract is a lump-sum contract.

For a lump sum subcontract, the tender documents should include a schedule of payments specifying the instalments in which the Subcontract Price will be paid. These instalments may be defined by reference to the actual progress achieved in executing the Subcontract Works, typically known as 'milestone payments'.

EXAMPLE PROVISIONS FOR A LUMP-SUM CONTRACT

Delete Clause 12 [*Measurement and Evaluation*] of the General Conditions of Subcontract.

Delete the last sentence of Sub-Clause 13.3 [*Request for Proposal for Subcontract Variation*] of the General Conditions of Subcontract and substitute:

Upon issuing a Contractor's Instruction for a Subcontract Variation in accordance with Sub-Clause 13.1 [*Variation of the Subcontract Works*] the Contractor shall consult with the Subcontractor in an endeavour to reach agreement on the adjustments to the Subcontract Price and to the schedule of payments under Sub-Clause 14.12 [*Subcontract Schedule of Payments*]. These adjustments shall include reasonable profit. If agreement is not reached, the Contractor shall make a fair decision as to the appropriate and applicable adjustments, taking due account of the Subcontractor's views and all other relevant circumstances. The Contractor shall give notice, with supporting particulars, to the Subcontractor of its decision.

Delete the first paragraph of Sub-Clause 14.1 [*The Subcontract Price*] of the General Conditions and substitute:

The Subcontract Price shall be the lump-sum Accepted Subcontract Amount and be subject to adjustments in accordance with the Subcontract;

Add the following Sub-Clause to Clause 14:

14.12 Subcontract Schedule of Payments

If the Subcontract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- (a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Main Contract Clause 14.3 [*Application for Interim Payment Certificates*], referred to in Sub-Clause 14.3 [*Subcontractor's Monthly Statements*]; and
- (b) if these instalments are not defined by reference to the actual

progress achieved in executing the Subcontract Works, and if actual progress is found to be less than that on which this schedule of payments was based, then the Contractor may consult with the Subcontractor in an endeavour to reach agreement on the revised instalments, which shall take account of the extent to which progress is less than that on which the instalments were previously based. If agreement is not reached, the Contractor shall decide the revised instalments, taking due regard of the Subcontractor's views and all relevant circumstances. The Contractor shall give notice, with supporting particulars, to the Subcontractor of this decision.

If the Subcontract does not include a schedule of payments, the Subcontractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Subcontract Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Subcontract Works shall have been taken-over or be deemed to have been taken-over in accordance with Clause 10 [Completion and Taking-Over the Subcontract Works], whichever occurs first.

Sub-Clause 14.2 Subcontract Advance Payment

For this Sub-Clause to apply, the amount of the advance payment, representing a percentage of the Accepted Subcontract Amount, should be stated in the Appendix to the Subcontractor's Offer. If the Accepted Subcontract Amount is in more than one currency, then the applicable currencies and proportions of the advance payment should also be stated in the Appendix to the Subcontractor's Offer. If the number and timing of instalments of the advance payment are to differ from those stated in the Appendix to Tender of the Main Contract, then these should also be stated in the Appendix to the Subcontractor's Offer.

If the form of the Subcontract advance payment guarantee is not to be similar to that of the Advance Payment Guarantee under the Main Contract, then the acceptable form of Subcontract advance payment guarantee should be included in the tender documents annexed to the Particular Conditions, and this Sub-Clause should be amended accordingly. The example form of advance payment guarantee annexed at Annex E to the Guidance for the Preparation of Particular Conditions published with the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*, 1st Edition 1999, may be used as a basis for the acceptable form of Subcontract advance payment guarantee.

Sub-Clause 14.6 Interim Subcontract Payments

If a different period for payment is to apply, the sub-clause may be amended:

EXAMPLE

In the first line of Sub-Clause 14.5, delete "70" and insert "42".

If the country/countries of payment need to be specified, details may be included in Annex C.

The wording of this Sub-Clause provides that the Subcontractor shall be paid under the Subcontract only when payment to the Contractor is certified/made under the Main Contract, commonly known as a 'pay-when-paid' provision. This means that, under certain circumstances, interim payments to the Subcontractor can be delayed until such time as the Contractor is paid by the Employer. However, it should be noted that this is not a 'pay-if-paid' provision. The Contractor can only withhold or defer payment to the Subcontractor until the date that is 84 days after the expiry of the Subcontract Defects Notification Period, regardless of whether or not the Contractor

is paid by the Employer, as provided by the last paragraph of Sub-Clause 14.8 [Final Subcontract Payment] of the General Conditions.

In those legal jurisdictions where pay-when-paid terms are unenforceable, this Sub-Clause, and Sub-Clause 14.7 [Payment of Retention Money under the Subcontract], Sub-Clause 14.8 [Final Subcontract Payment], Sub-Clause 14.9 [Delayed Payment under the Subcontract] and Sub-Clause 15.3 [Payment after Termination of Main Contract] should be varied:

EXAMPLE PROVISIONS WHERE PAY-WHEN-PAID TERMS ARE UNENFORCEABLE

In Sub-Clause 14.6 [Interim Subcontract Payments] delete all text save that of the first paragraph and substitute:

Provided that the Contractor shall be entitled to withhold or defer payment of all or part of any sums otherwise due in respect of a Subcontractor's monthly statement if a dispute arises or has arisen between the Subcontractor and the Contractor involving any question of measurement or quantities or any other matter included in the Subcontractor's monthly statement. Any payment so withheld or deferred shall be limited to the extent that the amounts in the Subcontractor's monthly statement are the subject of a dispute. If the Contractor withholds or defers payment of any amount in a Subcontractor's monthly statement, then he shall notify the Subcontractor of his reasons for doing so as soon as is reasonably practicable but not later than the date when this payment would otherwise have become due. The Contractor's withholding or deferring payment of any amount in a Subcontractor's monthly statement shall not preclude the Subcontractor from including that amount in following Subcontractor's monthly statements.

If the Subcontractor is under obligation to provide a Subcontract Performance Security under the Subcontract, notwithstanding the terms of this Sub-Clause or any other term of the Subcontract, no amount shall become due and payable to the Subcontractor until the security in accordance with Sub-Clause 4.2 [Subcontract Performance Security] has been delivered to the Contractor.

Delete the text of Sub-Clause 14.7 [Payment of Retention Money under the Subcontract] and substitute:

If the whole or the Subcontract Works have been taken-over under Sub-Clause 10.2 [Taking-Over the Subcontract Works] or Sub-Clause 10.3 [Taking-Over by the Contractor], the Contractor shall pay the Subcontractor the first half of the retention money under the Subcontract no later than 28 days after the whole of the Subcontract Works have been taken-over. If a part of the Subcontract Works has been taken-over under Sub-Clause 10.2 [Taking-Over the Subcontract Works] or Sub-Clause 10.3 [Taking-Over by the Contractor], the Contractor shall pay the Subcontractor a proportion of the retention money under the Subcontract no later than 28 days after that part has been taken-over by the Contractor. This proportion shall be 40% of the proportion calculated by dividing the estimated subcontract value of the part by the estimated final Subcontract Price.

No later than 70 days after expiry of the Subcontract Defects Notification Period, the Contractor shall pay the Subcontractor the remaining portion

of the retention money under the Subcontract. However, if any work remains to be executed under Clause 11 [Defects Liability], the Contractor shall be entitled to withhold payment of the estimated cost of this work until it has been executed.

In Sub-Clause 14.8 [Final Payment] delete the last paragraph and substitute:

Within 84 days after the Subcontractor has finally performed his obligations under the Subcontract, provided that 35 days have expired since submission by the Subcontractor of the Subcontractor's Final Statement, the Contractor shall pay to the Subcontractor the balance of the Subcontract Price finally due.

In Sub-Clause 15.3 [Payment after Termination of the Main Contract] delete the two paragraphs after sub-paragraph (e) and substitute:

Payment by the Contractor of any of these amounts or Costs shall be due as soon as practicable after termination of the Subcontract. If Main Contract Clause 19.7 [Release from Performance under the Law] applies to the Main Contract or the Main Contract has been terminated under Main Contract Clause 16.2 [Termination by Contractor] or Main Contract Clause 19.6 [Optional Termination, Payment and Release], and the Contractor receives payment from the Employer for any Subcontract Plant and/or materials, then this Subcontract Plant and/or materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Subcontractor shall place the same at the Employer's disposal.

Sub-Clause 14.7

Payment of Retention Money under the Subcontract

If part of the retention money under the Subcontract is to be released and substituted by an appropriate guarantee, an additional sub-clause may be added. The example form of retention money guarantee annexed at Annex F to the Guidance for the Preparation of Particular Conditions published with the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*, 1st Edition 1999, may be used as a basis for the acceptable form of Subcontract retention money guarantee.

EXAMPLE PROVISIONS FOR RELEASE OF RETENTION UNDER GUARANTEE

At the end of Sub-Clause 14.7 [Payment of Retention Money under the Subcontract] add the following:

When the retention money under the Subcontract has reached three-fifths (60%) of the limit of retention money stated in Annex C, the Contractor shall make payment of one-half of this limit of retention money to the Subcontractor if he provides to the Contractor a guarantee, in a form and provided by an entity approved by the Contractor, in amounts and currencies equal to the payment.

If no limit of retention money is stated in the Appendix to the Contractor's Offer then:

- (a) these provisions shall apply when the retention money under the Subcontract has reached the amount which is three-fifths (60%) of the sum calculated by applying the percentage of retention stated in Annex C to the Accepted Subcontract Amount; and

- (b) the Contractor shall make payment of one-half of the sum calculated by applying the percentage of retention stated in Annex C to the Accepted Subcontract Amount.

The retention money guarantee shall be valid and enforceable until the Performance Certificate has been issued by the Engineer under the Main Contract for the Main Works. If the terms of the guarantee specify its expiry date, and the Contractor under the Main Contract has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Subcontractor shall extend the validity of the guarantee until the Contractor has completed the Main Works under the Main Contract and any defects in the Main Works have been remedied. No claim shall be made against the retention money guarantee after the date of issue of the Performance Certificate under the Main Contract, which date shall be promptly notified to the Subcontractor by the Contractor, and this guarantee shall be returned to the Subcontractor within 28 days of the issue of this Performance Certificate.

This release of retention money, upon receipt of the retention money guarantee, shall be in lieu of the release of the second half or the outstanding balance (as the case may be) of the retention money under the Subcontract under this Sub-Clause.

Sub-Clause 14.9

Delayed Payment under the Subcontract

If the rate of financing charges as per the provisions of Main Contract Clause 14.8 [Delayed Payment] is not a reasonable basis for assessing the Subcontractor's financing costs, a new rate may have to be defined. Alternatively, the Subcontractor's actual financing Costs could be paid, taking account of local financing arrangements.

Clause 15

Termination of the Main Contract & Termination of the Subcontract by the Contractor

Sub-Clause 15.6

Termination of Subcontract by the Contractor

Before inviting tenders, the Contractor should verify that the wording of this Sub-Clause is consistent with the law governing the Subcontract.

Clause 16

Suspension and Termination by the Subcontractor

Sub-Clause 16.1

Subcontractor's Entitlement to Suspend Work

If under applicable law the Employer may, in certain circumstances, be liable for payment of monies due to the Subcontractor, this Sub-Clause may be varied:

EXAMPLE

In sub-paragraph (f) after "Sub-Clause 14.6 [Interim Subcontract Payments]" add:

and the Subcontractor does not receive such outstanding payment from the Employer

Sub-Clause 16.2

Termination by Subcontractor

Before inviting tenders, the Contractor should verify that the wording of this Sub-Clause is

consistent with the law governing the Subcontract. The Subcontractor should verify that each anticipated ground for termination is consistent with this law.

Clause 17

Risk and Indemnities

Sub-Clause 17.1

Subcontractor's Risks and Indemnities

This sub-clause has been drafted so that the Subcontractor remains responsible and liable for the Subcontract Works in the period between his completion of the Subcontract Works and taking-over of the Subcontract Works under Clause 10 [*Completion and Taking-Over the Subcontract Works*] of the General Conditions of Subcontract. If it is the case that the period between completion of the Subcontract Works and taking-over of the Main Works by the Employer is envisaged to be a long one, in order to avoid otherwise unnecessary presence of the Subcontractor on the Site and/or unnecessary costs and liability on the part of the Subcontractor, consideration should be given to the alternative by which the Contractor takes over the Subcontract Works before taking-over of the Main Works by the Employer, in which case this should be as stated in and in accordance with Annex C as provided by Sub-Clause 10.3 [*Taking-Over by the Contractor*].

Sub-Clause 17.3

Subcontractor Limitation of Liability

Before inviting tenders, the Contractor should verify that the wording of this Sub-Clause is consistent with the law governing the Subcontract.

EXAMPLE

Clause 17.3, the sum referred to in the penultimate sentence shall be

Additional Sub-Clause Unidentified and Unallocated Risks

An additional sub-clause may be added:

EXAMPLE SUB-CLAUSE

If an event occurs which results in either Party incurring loss and/or delay, other than any cause which is the responsibility of the Subcontractor in accordance with Sub-Clause 17.1 [*Subcontractor's Risks and Indemnities*] or other provision of the Subcontract or a matter for which the Subcontractor is indemnified in accordance with Sub-Clause 17.2 [*Contractor's Risks and Indemnities*], the Parties shall consult with each other in an endeavour to reach agreement on which Party is liable and to what extent for the risk of the event occurring and its consequences. If agreement is not reached, the Contractor shall make a fair decision as to the appropriate and applicable liability, taking due account of the Subcontractor's views, all other relevant circumstances, and the following factors:

- (a) which Party could best have foreseen the risk and consequences,
- (b) which Party could best carry the risk and consequences, and
- (c) which Party could best control the risk and consequences.

The Contractor shall give notice, with reasons and supporting particulars, to the Subcontractor of this decision.

Clause 18

Subcontract Insurances

Before inviting tenders, the Contractor should in Annex E set out in detail the insurances for which he and/or the Employer is responsible under the Main Contract, including the conditions, limits,

exceptions, and deductibles; preferably in the form of a copy of each policy where available. The Contractor should review the insurance coverage of the Subcontract Works arising from the insurances for which he and/or the Employer is responsible under the Main Contract and, with a view to minimising duplicative insurance coverage, specify in Annex E:

- (a) those risks against which the Subcontractor is required to effect and maintain insurances;
- (b) the sums in which the insurances are to be effected and maintained;
- (c) those persons for which the insurances are to be effected and maintained; and
- (d) an alternative period, if the insurances are to be maintained other than for the period from when so much of the Site and access is made available to the Subcontractor as may be required to enable him to commence and proceed with the execution of the Subcontract Works in accordance with the Subcontract until he has finally performed his obligations under the Subcontract

Clause 19

Subcontract Force Majeure

Before inviting tenders, the Contractor should verify that the provisions of this cause are consistent with the law governing the Subcontract.

Clause 20

Notices, Subcontractor's Claims and Disputes

This Clause has been drafted to allow for resolution of Subcontract disputes by a Subcontract DAB, followed by arbitration of the Subcontract dispute if either Party is dissatisfied with the Subcontract DAB's decision. This Clause is also drafted so that, in circumstances where the Contractor is of the opinion that a Subcontract dispute involves issue(s) that is/are the subject of a dispute under the Main Contract, either Party's entitlement to refer the Subcontract dispute to the Subcontract DAB is deferred by a period of 112 days or as otherwise agreed. This suspension period gives the Contractor time to pursue resolution of his dispute under the Main Contract, and attempt to settle the Subcontract dispute with the Subcontractor, before the resolution procedure under the Subcontract is initiated for the Subcontract dispute.

It takes account of 84 days for the Main Contract DAB's decision plus 28 days for the serving of a notice of dissatisfaction (if any) (making a total of 112 days), which periods are specified under Main Contract Clause 20.4 (*Obtaining Dispute Adjudication Board's Decision*). It should be noted that, unless this Clause is amended by Particular Conditions to expressly provide for such, the Subcontractor is not bound by any decision of the Main Contract DAB and/or any arbitral award under the Main Contract.

If it is preferred that the Subcontractor is to be bound by any decision of the Main Contract DAB and/or any arbitral award under the Main Contract, consideration may be given to adopting the amendments as set out in the Second Alternative below.

Sub-Clause 20.5

Appointment of the Subcontract DAB

At tender stage, consideration should be given as to whether a one-person or a three-person Subcontract DAB is preferable for the Subcontract, taking account of its size, complexity, duration, and the fields of expertise which will be involved.

The adjudication procedure depends for its success on, amongst other things, the Parties' confidence in the agreed individual(s) who will serve on the Subcontract DAB. Therefore, it is essential that candidates for this position are not imposed by either Party on the other Party. If it is the case that the Parties cannot agree upon the appointment of the sole member, or any of the three members, of the Subcontract DAB and no appointing entity or official is named in the Appendix to

Tender of the Main Contract, then it is essential that the appointing entity or official is wholly impartial, and FIDIC is prepared to perform this role if delegated by the agreement of the Parties.

Under this Sub-Clause, a Subcontract DAB is to be appointed if and when a Subcontract dispute has arisen. The Subcontract DAB's appointment terminates when its decision is given as to the matter in dispute, unless the Parties and the Subcontract DAB agree for it to continue.

Alternatively, due to the size, complexity and duration of the Subcontract, the Parties may prefer to have the Subcontract DAB appointed at the commencement of the Subcontract, as a full-term board to decide all disputes that arise under the Subcontract, in which case the wording of this Sub-Clause should be amended to comply with the wording of Main Contract Clauses 20.2 [Appointment of the Dispute Adjudication Board] and 20.3 [Failure to Agree Dispute Adjudication Board].

Sub-Clause 20.6 Obtaining Subcontract DAB's Decision

The third paragraph of this Sub-Clause is intended to encourage the Parties to settle a Subcontract dispute amicably, without the need for arbitration: for example, by direct negotiation, conciliation, mediation, or other forms of dispute resolution. Amicable settlement procedures often depend, for their success, on confidentiality and on both Parties' acceptance of the procedure. Therefore, neither Party should seek to impose the procedure on the other Party.

FIRST ALTERNATIVE If the size, complexity and duration of the Subcontract is such that the Parties prefer a simpler dispute resolution process, involving just arbitration, then:

EXAMPLE PROVISIONS FOR SUBCONTRACT ARBITRATION ONLY

Delete Sub-Clause 20.4 [Subcontract Disputes], Sub-Clause 20.5 [Appointment of the Subcontract DAB], Sub-Clause 20.6 [Obtaining Subcontract DAB's Decision], and Sub-Clause 20.7 [Subcontract Arbitration] of the General Conditions of Subcontract and substitute:

If a dispute (of any kind whatsoever) arises between the Contractor and the Subcontractor in connection with, or arising out of, the Subcontract or the execution of the Subcontract Works, then either Party may give a notice of the dispute to the other Party (the "Notice of Dispute"), in which case the Parties shall at-tempt for the next 56 days to settle the dispute amicably before the commencement of arbitration.

Any dispute which has not been amicably settled within 56 days after the date of the Notice of Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, even if no attempt at amicable settlement has been made, and the provisions of Main Contract Clause 20.6 [Arbitration] shall apply.

If the Contractor is of the opinion that a dispute (of any kind whatsoever) between the Contractor and the Employer in connection with or arising out of the Main Contract or the execution of the Main Works touches or concerns the Subcontract Works, then the Contractor may by notice require that the Subcontractor provide the information and attend the meetings in connection with that dispute that the Contractor may reasonably request.

SECOND ALTERNATIVE

If the Subcontract and the Main Contract are such that it is very likely that the anticipated subject matters of Subcontractor's claims and Subcontract disputes are related to the anticipated subject matters of Contractor's claims and disputes under the Main Contract, the Parties may prefer that any determination, decision and/or arbitral award under the Main Contract shall be final and binding on the Parties under the Subcontract.

In the example Clause 20 set out below as a second alternative, it is essential to understand that a Subcontractor's claim may arise out of the Subcontract itself (an Unrelated Claim) or out of an event or events that may also give rise to additional payment and/or an extension of time which is/are claimable under the Main Contract or may concern the same issue(s) as a Contractor's claim or a dispute under the Main Contract (a Related Claim).

Both Parties should be acutely aware that, when the Subcontractor serves a notice of claim, it will be necessary at that time to establish whether the Subcontractor's claim is a Related Claim or an Unrelated Claim.

Should a disagreement arise between the Contractor and the Subcontractor as to whether a Subcontractor's claim is an Unrelated Claim or a Related Claim, the example Clause 20 below provides for a single fork-in-the-road process to decide the issue by a pre-arbitral referee in accordance with ICC Rules for Pre-Arbitral Referee Procedure. Both the Contractor and the Subcontractor should give serious consideration to agreeing the name of the Referee at the time of entering into the Subcontract.

EXAMPLE PROVISIONS WHERE A DETERMINATION, DECISION AND/OR ARBITRAL AWARD UNDER THE MAIN CONTRACT CONCERNING A SUBCONTRACTOR'S CLAIM SHALL BE FINAL AND BINDING UNDER THE SUBCONTRACT:

Delete Clause 20 [*Notices, Subcontractor's Claims and Disputes*] of the General Conditions of Subcontract and substitute:

20 Notices, Subcontractor's Claims and Disputes

20.1 Notices

Without prejudice to the generality of Clause 4 [*The Subcontractor*], whenever the Contractor is required by the terms of the Main Contract to give any notice or other information to the Engineer or to the Employer, or to keep contemporary records (whether in relation to a claim or otherwise), to the extent that these terms apply to the Subcontract Works, the Subcontractor shall give a similar notice or other information in writing to the Contractor and keep contemporary records that will enable the Contractor to comply with these terms of the Main Contract. The Subcontractor shall do so in good time to enable the Contractor to comply with these terms. Provided always that the Subcontractor shall be excused from any non-compliance with this requirement for so long as he could not have reasonably known of the Contractor's need of the notice or information from him or the contemporary records.

Notwithstanding this Sub-Clause and Sub-Clause 3.3 [*Contractor's Claims in connection with the Subcontract*], each Party shall immediately give notice to the other Party of any delay event which has occurred, or specific probable future events or circumstances, which may adversely affect the other Party's activities or delay the execution of the Subcontract Works and/or the Main Works. The Subcontractor shall immediately give notice to the Contractor of any event which has occurred, or specific probable future events or circumstances, which may increase the Subcontract Price and/or the Contract Price.

If the Subcontractor considers himself to be entitled to any extension of the Subcontract Time for Completion and/or any additional payment, under or in connection with the Subcontract, the Subcontractor shall give notice to the Contractor describing the event or circumstance giving rise to the claim, and setting out the contractual basis for the claim. Notice shall be given as soon as practicable but in any case not later than 21 days after the Subcontractor became aware for should

have become aware) of the event or circumstance. If the Subcontractor fails to give notice of a claim within the period of 21 days referred to above, the Subcontract Time for Completion shall not be extended, the Subcontractor shall not be entitled to additional payment, and the Contractor shall be discharged from all liability in connection with the claim.

20.2 Subcontractor's Claims

Within 7 days of receipt of the Subcontractor's notice of claim in accordance with Sub-Clause 20.1 [Notices], the Contractor may notify the Subcontractor, with reasons, that the Subcontractor's claim:

- (a) arises from an event or events that may also give rise to additional payment and/or an extension of time as may be claimable in accordance with the Main Contract;
- (b) concerns issue(s) which is/are the subject of a Contractor's claim in accordance with Main Contract Clause 20.1 [Contractor's Claims]; or
- (c) involves issue(s) which is/are also involved in a dispute between the Contractor and the Employer under the Main Contract (a "Related Claim").

Unless the Contractor so notifies the Subcontractor, the claim shall thereafter be considered an Unrelated Claim for the purposes of Sub-Clause 20.3 [Unrelated Claims]. If the Contractor does so notify the Subcontractor the claim shall thereafter be considered a Related Claim for the purposes of Sub-Clause 20.4 [Related Claims] unless otherwise decided by the Pre-Arbitral Referee in accordance with this Sub-Clause.

Upon receipt of the Contractor's notice, unless the Subcontractor raises a written objection to the Contractor's opinion that the claim is a Related Claim within 7 days, this opinion shall be deemed to be accepted by the Subcontractor. If the Subcontractor raises an objection the Contractor shall give all due consideration to this objection and shall give his written response, with reasons, within 7 days of its receipt.

If the Subcontractor is dissatisfied with this response then, by notice in writing, he may refer the question of whether the Subcontractor's claim is a Related Claim or an Unrelated Claim to a pre-arbitral referee for an order. Save where the provisions of this Sub-Clause require, the ICC Rules for Pre-arbitral Referee Procedure shall apply.

The Referee (as defined in the ICC Rules for a Pre-arbitral Referee Procedure) shall be appointed by the appointing entity or official named in the Appendix to Tender of the Main Contract and shall have the power to decide the question of whether the Subcontractor's claim is a Related Claim or an Unrelated Claim. The Referee shall issue his Order within 21 days of his appointment and

- (i) the costs arising out of the Pre-arbitral Referee procedure shall be borne in equal shares by the Parties;
- (ii) the Order of the Referee shall be final and binding on both Parties.

Whether the Subcontractor's claim is a Related Claim or an Unrelated Claim, the Subcontractor shall keep the contemporary records that may be necessary to substantiate the claim, shall comply with any Contractor's Instruction to keep further contemporary records, shall permit the Contractor to inspect all these records, and shall (if instructed) submit copies to the Contractor. Unless the Subcontract has already been abandoned, repudiated or terminated, the Subcontractor shall continue to proceed with the Subcontract Works in accordance with the Subcontract.

20.3 Unrelated Claims

If a Subcontractor's claim is an Unrelated Claim:

- (1) Within 42 days after the Subcontractor became aware (or should have become aware) of the event or circumstance giving rise to the Unrelated Claim, or within such other period as may

be proposed by the Subcontractor and approved by the Contractor; the Subcontractor shall send to the Contractor a fully detailed claim which includes full supporting particulars of the basis of the claim and of the additional payment and/or extension of time claimed;

- (2) If the event or circumstance giving rise to the Unrelated Claim has a continuing effect:
 - (a) this fully detailed claim shall be considered as interim;
 - (b) the Subcontractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and the further particulars that the Contractor may reasonably require; and
 - (c) the Subcontractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within the other period that may be proposed by the Subcontractor and approved by the Contractor;
- (3) Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within the other period that may be proposed by the Contractor and approved by the Subcontractor, the Contractor shall respond with approval or disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the issue of the Subcontractor's entitlement to the Unrelated Claim within this time;
- (4) The Contractor shall consult with the Subcontractor in an endeavour to reach agreement on the additional payment and/or extension of the Subcontract Time for Completion to which the Subcontractor may be entitled for this Unrelated Claim. If agreement is not reached, the Contractor shall make a fair decision as to the appropriate and applicable additional payment (if any) and/or extension of the Subcontract Time for Completion (if any), taking due account of the Subcontractor's submissions, the extent to which his claim for additional payment and/or extension of time has been substantiated, and all other relevant circumstances; and
- (5) The Contractor shall make the additional payment (if any) and/or grant the extension of the Subcontract Time for Completion (if any) to the Subcontractor that he has decided is appropriate and applicable. Unless and until the particulars supplied for the Unrelated Claim are sufficient to substantiate the whole of this claim, the Subcontractor shall be entitled to additional payment and/or extension of time only for the part that has been substantiated.

20.4 Related Claims

If a Subcontractor's claim is a Related Claim:

- (1) The Contractor shall submit a notice of claim, including the claim which the Contractor considers to be a Related Claim, to the Engineer in accordance with Main Contract Clause 20.1 [*Contractor's Claims*] and in good time to ensure compliance with such provision, regardless of any objection or referral by the Subcontractor under Sub-Clause 20.2 [*Subcontractor's Claims*];
- (2) The Contractor shall use all reasonable endeavours to secure from the Employer and the Engineer, for both the Contractor's and the Subcontractor's benefit, any additional payment and/or extension of time as may be claimable in accordance with the Main Contract in respect of the Subcontract Works and shall regularly keep the Subcontractor informed of the progress of these endeavours;
- (3) The Subcontractor shall comply with any Contractor's Instruction regarding the keeping of contemporary records relevant to the event or circumstance giving rise to the Related Claim. The Subcontractor shall permit the Contractor and the Engineer to inspect all these records;
- (4) The Subcontractor shall submit the Related Claim to the Contractor, which shall include full supporting particulars of:

- (a) the contractual or other basis of claim, and
- (b) additional payment claimed, and/or
- (c) the extension of time

and any interim claims in accordance with Main Contract Clause 20.1 [*Contractor's Claims*] and in good time to enable the Contractor to comply with such provision;

- (5) The Contractor shall submit a claim to the Engineer, which includes the supporting particulars and any interim claims of the Related Claim provided by the Subcontractor, in accordance with the terms of Main Contract Clause 20.1 [*Contractor's Claims*] and in good time to ensure compliance with such provision, regardless of any objection or referral by the Subcontractor under Sub-Clause 20.2 [*Subcontractor's Claims*];
- (6) The Contractor shall give the Subcontractor all reasonable opportunity to be involved in any consultation with, and to attend any meeting convened by, the Engineer which concerns the Related Claim. Unless the Subcontractor is permitted by the Engineer to be involved in consultation and/or to attend a meeting but the Subcontractor refuses or fails to do so, the Contractor shall not reach any agreement with the Engineer concerning the Related Claim without prior consultation with the Subcontractor;
- (7) If it is agreed under the Main Contract or the Engineer determines under the Main Contract that the Contractor is entitled to additional payment and/or extension of time, within 28 days of receiving this contractual benefit from the Employer, the Contractor shall pass on to the Subcontractor a share of the benefit as may be appropriate and applicable to the Related Claim. In the case of a Related Claim concerning additional payment, the receipt of payment by the Contractor from the Employer that includes a sum in respect of the claimed amount shall be a condition precedent to the Contractor's liability to the Subcontractor in respect of this share. The Contractor shall consult with the Subcontractor in an endeavour to reach agreement as to this share. If agreement is not reached, the Contractor shall promptly and with due diligence make a fair decision as to the appropriate and applicable share, taking due account of the Subcontractor's views and all other relevant circumstances. The Contractor shall, making reference to this sub-paragraph, give notice to the Subcontractor of his decision with reasons and supporting particulars. Unless the Subcontractor notifies the Contractor of his dissatisfaction with this decision within 28 days of receipt of the Contractor's notice, the share decided by the Contractor shall be taken as accepted by the Subcontractor in full and final settlement of the Related Claim; and
- (8) If the Subcontractor notifies the Contractor of his dissatisfaction with this decided share within 28 days of receipt of the Contractor's notice, the Contractor shall give all due consideration to this dissatisfaction and shall give his written response within 7 days of its receipt. If the Contractor fails to so respond to the Subcontractor's notice of dissatisfaction, the Subcontractor shall be entitled to treat this non-response as if the Contractor maintains that the decided share is appropriate and applicable.

20.5 Failure to Comply

If, by reason of any failure by the Subcontractor to comply with the first and third paragraphs of Sub-Clause 20.1 [*Notices*] and/or the provisions of Sub-Clause 20.2 [*Subcontractor's Claims*], the Contractor is prevented from recovering any sum other than in respect of Subcontractor's claims from the Employer under the Main Contract in respect of the Subcontract Works, then without prejudice to any other remedy of the Contractor for this failure the Contractor shall, subject to Sub-Clause 3.3 [*Contractor's Claims in connection with the Subcontract*], be entitled to deduct this sum from the Subcontract Price.

20.6 Subcontract Disputes

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Subcontract or the execution of the Subcontract Works, then either Party may give a notice of the dispute to the other Party (the "Notice of Dispute").

If the Subcontract dispute arises from an Unrelated Claim (as referred to in Sub-Clause 20.2 [Subcontractor's Claims]), then it shall be considered to be an "Unrelated Dispute" and Sub-Clause 20.7 [Unrelated Disputes] shall apply.

If the Subcontract dispute arises from a Related Claim (as referred to in Sub-Clause 20.2 [Subcontractor's Claims]), then it shall be considered to be a "Related Dispute" and Sub-Clause 20.8 [Related Disputes] shall apply.

If the Subcontract dispute does not arise out of an Unrelated Claim or a Related Claim:

- (a) within 14 days of receiving or giving a Notice of Dispute, the Contractor may notify the Subcontractor, with reasons, of his opinion that the Subcontract dispute involves issue(s) which are also involved in a dispute between the Contractor and the Employer under the Main Contract. If the Contractor so notifies the Subcontractor within such period of 14 days then, subject to sub-paragraphs (b) and (c) of this Sub-Clause, the Subcontract dispute shall be considered to be a "Related Dispute" and Sub-Clause 20.8 [Related Disputes] shall apply. If the Contractor does not so notify the Subcontractor within such period of 14 days, then the Subcontract dispute shall be considered to be an "Unrelated Dispute" and Sub-Clause 20.7 [Unrelated Disputes] shall apply;
- (b) upon receipt of the Contractor's notice, unless the Subcontractor raises a written objection to the Contractor's opinion that the Subcontract dispute is a Related Dispute within 7 days, this opinion shall be deemed to be accepted by the Subcontractor. If the Subcontractor raises an objection the Contractor shall give all due consideration to this objection and shall give his written response, with reasons, within 7 days of its receipt; and
- (c) if the Subcontractor is dissatisfied with this response then, by notice in writing, he may refer the question of whether the Subcontract dispute is a Related Dispute or an Unrelated Dispute to a pre-arbitral referee for an order, in accordance with the ICC Rules for a Pre-Arbitral Referee Procedure and the provisions concerning this procedure in Sub-Clause 20.2 [Subcontractor's Claims] shall apply.

Whether the Subcontract dispute is an Unrelated Dispute or a Related Dispute, unless the Subcontract has already been abandoned, repudiated or terminated, the Subcontractor shall continue to proceed with the Subcontract Works in accordance with the Subcontract.

20.7 Unrelated Disputes

If a Subcontract dispute is an Unrelated Dispute:

- (1) It shall be decided by a Subcontract DAB, which shall be jointly appointed by the Parties within 42 days after the date of the Notice of Dispute or any other time as may be agreed in writing. The Subcontract DAB shall comprise, as stated in the Appendix to the Subcontractor's Offer, either one or three suitably qualified persons. In all respects other than as stated in this Sub-Clause, Main Contract Clause 20.2 [Appointment of the Dispute Adjudication Board] shall apply to the appointment of the Subcontract DAB, save that Rules 1 to 4 of the Procedural Rules annexed to the General Conditions of Dispute Adjudication Agreement shall not apply;
- (2) If the Parties fail to agree upon the appointment of the sole member, or any of the three

members, of the Subcontract DAB then the appointing entity or official named in the Appendix to Tender of the Main Contract shall, upon the request of either or both Parties and after due consultation with both Parties, appoint the member(s) to complete the Subcontract DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official;

- (3) Either Party may refer the Unrelated Dispute in writing to the Subcontract DAB for its decision, with a copy to the other Party. The referral shall state that it is given under this Sub-Clause. In all respects other than as stated in this Sub-Clause, Main Contract Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] shall apply to the resolution of the Unrelated Dispute, save that Main Contract Clause 20.8 [Expiry of Dispute Adjudication Board's Appointment] shall not apply;
- (4) The Subcontract DAB's decision shall be binding on both Parties unless and until it shall be revised in an amicable settlement or an arbitral award, as described in this Sub-Clause below;
- (5) If either Party serves a notice of dissatisfaction with the Subcontract DAB's decision within 28 days after receiving the Subcontract DAB's decision, both Parties shall attempt to settle the Unrelated Dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on the twenty-eighth day after notice of dissatisfaction was given, even if no attempt at amicable settlement has been made;
- (6) Unless settled amicably, any Unrelated Dispute in respect of which the Subcontract DAB's decision has not become final and binding in accordance with Main Contract Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce and Main Contract Clause 20.6 [Arbitration] shall apply;
- (7) In the event that a Party fails to comply with any decision of the Subcontract DAB whether binding, or final and binding in accordance with Main Contract Clause 20.4 [Obtaining Dispute Adjudication Board's Decision], then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under the Rules of Arbitration of the International Chamber of Commerce for the purpose of obtaining an award (whether interim or other) to enforce that Decision, and in all other respects Main Contract Clause 20.6 [Arbitration] shall apply. There shall be no requirement to obtain a Subcontract DAB's decision or to attempt to reach amicable settlement in respect of this reference.

20.8 Related Disputes

If a Subcontract dispute is a Related Dispute:

- (1) It shall be referred by the Contractor to the Main Contract DAB in accordance with Main Contract Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] within 28 days of the Notice of Dispute. If, on the date of the Notice of Dispute, there is no Main Contract DAB in place, the Contractor shall refer the Related Dispute to the Main Contract DAB in accordance with Main Contract Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] within 56 days of the Notice of Dispute. If the Contractor fails to refer the Related Dispute to the Main Contract DAB within the period of 28 days or 56 days, whichever is applicable, the Subcontract dispute shall thereafter be considered an Unrelated Dispute and Sub-Clause 20.7 [Unrelated Disputes] shall apply;
- (2) Where the Related Dispute is referred to the Main Contract DAB, the Contractor shall use all reasonable endeavours to pursue the dispute on the Contractor's and the Subcontractor's behalf and for both the Contractor's and the Subcontractor's benefit, and shall regularly keep the Subcontractor informed of the progress of these endeavours;

- (3) The Subcontractor shall, in good time, afford the Contractor all information and assistance that may be required to enable the Contractor to diligently pursue the Related Dispute on the Contractor's and the Subcontractor's behalf;
- (4) If the Main Contract DAB proposes a period other than 84 days for giving its decision in respect of the Related Dispute, in accordance with Main Contract Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*], then the Contractor shall not give its approval to another period without prior consultation with the Subcontractor;
- (5) In any adjudication under the Main Contract which concerns the Related Dispute, unless the Employer or the Main Contract DAB objects, the Contractor shall give the Subcontractor all reasonable opportunity to:
- (a) be involved in the preparation of any written submission to,
 - (b) attend any site visit or hearing convened by, and
 - (c) make any oral submission to,

the Main Contract DAB. If the Subcontractor is not permitted by the Employer or the Main Contract DAB to avail of such opportunity himself, the Contractor shall not reach any settlement with the Employer concerning the Related Dispute without prior consultation with the Subcontractor;

- (6) Where the Main Contract DAB gives a decision which concerns the Related Dispute, the Contractor shall as soon as practicable but not later than 7 days of its receipt from the Main Contract DAB, notify the Subcontractor of this decision;
- (7) Unless the Subcontractor notifies the Contractor of his dissatisfaction with the Main Contract DAB's decision within 7 days of his receipt of the Contractor's notice, this decision shall be deemed to be accepted by the Subcontractor insofar as it concerns the Related Dispute and, as between them, shall be binding on both Parties unless and until it shall be revised in an amicable settlement or an arbitral award as described below;
- (8) If the Subcontractor so notifies the Contractor of his dissatisfaction and the Contractor responds by concurring with this dissatisfaction, the Contractor shall serve a notice of dissatisfaction with the Main Contract DAB's decision to the Employer in good time to comply with Main Contract Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*];
- (9) If the Subcontractor so notifies the Contractor of his dissatisfaction but the Contractor responds by not concurring with this dissatisfaction, or fails to respond to this notice of dissatisfaction within 7 days of its receipt, the Subcontract dispute shall thereafter be considered an Unrelated Dispute and Sub-Clause 20.7 [*Unrelated Disputes*] shall apply;
- (10) If the Main Contract DAB's decision entitles the Contractor to any contractual benefit, the Contractor shall use all reasonable endeavours on the Contractor's and the Subcontractor's behalf to obtain this contractual benefit, and shall regularly keep the Subcontractor informed of the progress of these endeavours. Within 14 days of receiving this contractual benefit from the Employer the Contractor shall pass on to the Subcontractor a share of the benefit as may be appropriate and applicable to the Related Dispute. In the case of a Related Dispute concerning additional payment, the Contractor's receipt of payment from the Employer which includes a sum in respect of the disputed amount shall be a condition precedent to the Contractor's liability to the Subcontractor in respect of this share. The Contractor shall consult with the Subcontractor in an endeavour to reach agreement as to this share. If agreement is not reached, the Contractor shall promptly and with due diligence make a fair decision as to the appropriate and applicable share, taking due account of the

Subcontractor's submissions concerning the Related Dispute and all other relevant circumstances. The Contractor shall, making reference to this sub-paragraph, give notice to the Subcontractor of his decision with reasons and supporting particulars. Unless the Subcontractor notifies the Contractor of his dissatisfaction with this decision within 28 days of receipt of the Contractor's notice, the share decided by the Contractor shall be taken as accepted by the Subcontractor in full and final settlement of the Related Dispute;

- (11) If the Subcontractor notifies the Contractor of his dissatisfaction with this decided share within 28 days of receipt of the Contractor's notice, the Contractor shall give all due consideration to this dissatisfaction and shall give his written response within 7 days of its receipt. If the Contractor fails to so respond to the Subcontractor's notice of dissatisfaction within 7 days of its receipt, the Subcontractor shall be entitled to treat this non-response as if the Contractor maintains that the decided share is appropriate and applicable. Any dispute concerning this share shall thereafter be considered an Unrelated Dispute which shall be finally settled as between the Contractor and the Subcontractor under the Rules of Arbitration of the International Chamber of Commerce, and Main Contract Clause 20.6 [Arbitration] shall apply;
- (12) If the Main Contract DAB's decision has not become final and binding under the Main Contract, and either the Contractor or the Employer has served a notice of dissatisfaction, unless the Employer objects, the Contractor shall give the Subcontractor all reasonable opportunity to be involved in the attempts, if any, to settle the Related Dispute amicably under the Main Contract before the commencement of arbitration. If the Subcontractor is not permitted by the Employer to avail of such opportunity himself, the Contractor shall not reach any amicable settlement with the Employer concerning the Related Dispute without prior consultation with the Subcontractor;
- (13) If no amicable settlement is reached between the Contractor and the Employer under the Main Contract concerning the Related Dispute, the Contractor shall refer the Related Dispute to arbitration under Main Contract Clause 20.6 [Arbitration]. If the Contractor does not refer the Related Dispute to arbitration within 63 days, or any other time as may be agreed, after the day on which either the Contractor or the Employer has served a notice of dissatisfaction with the Main Contract DAB's decision, the dispute shall thereafter be considered an Unrelated Dispute which shall be finally settled as between the Contractor and the Subcontractor under the Rules of Arbitration of the International Chamber of Commerce, and Main Contract Clause 20.6 [Arbitration] shall apply;
- (14) In any arbitration under the Main Contract which concerns the Related Dispute, the Contractor shall use all reasonable endeavours to pursue the dispute on the Contractor's and the Subcontractor's behalf and for both the Contractor's and the Subcontractor's benefit, and shall regularly keep the Subcontractor informed of the progress of these endeavours. Unless the Employer or the Arbitral Tribunal objects, the Contractor shall give the Subcontractor all reasonable opportunity to:
 - (a) be involved in the preparation of any written submission to,
 - (c) attend any site visit or hearing convened by, and
 - (c) make any oral submission to

the Arbitral Tribunal. If the Subcontractor is not permitted by the Employer or the Arbitral Tribunal to avail of such opportunity himself, the Contractor shall not reach any settlement with the Employer concerning the Related Dispute without prior consultation with the Subcontractor:

- (15) Where the Arbitral Tribunal makes an award which concerns the Related Dispute, the Contractor shall as soon as practicable but not later than 7 days of its receipt, notify the

Subcontractor of this award. Insofar as it concerns the Related Dispute, this award shall be deemed to be final and binding on the Subcontractor to the same extent as it is final and binding on the Contractor;

- (16) If the Arbitral Tribunal's award entitles the Contractor to any contractual benefit, the Contractor shall use all reasonable endeavours on the Contractor's and the Subcontractor's behalf to obtain this contractual benefit, and shall regularly keep the Subcontractor informed of the progress of these endeavours. Within 14 days of receiving this contractual benefit from the Employer the Contractor shall pass on to the Subcontractor a share of the benefit as may be appropriate and applicable to the Related Dispute. In the case of a Related Dispute concerning additional payment, the Contractor's receipt of payment from the Employer which includes a sum in respect of the disputed amount shall be a condition precedent to the Contractor's liability to the Subcontractor in respect of this share. The Contractor shall consult with the Subcontractor in an endeavour to reach agreement as to this share. If agreement is not reached, the Contractor shall promptly and with due diligence make a fair decision as to the appropriate and applicable share, taking due account of the Subcontractor's submissions concerning the Related Dispute and all other relevant circumstances. The Contractor shall give notice to the Subcontractor of his decision with reasons and supporting particulars. Unless the Subcontractor notifies the Contractor of his dissatisfaction with this decision within 28 days of receipt of the Contractor's notice, the share decided by the Contractor shall be taken as accepted by the Subcontractor in full and final settlement of the Related Dispute;
- (17) If the Subcontractor notifies the Contractor of his dissatisfaction with this decided share within 28 days of receipt of the Contractor's notice, the Contractor shall give all due consideration to this dissatisfaction and shall give his written response within 7 days of its receipt. If the Contractor fails to so respond to the Subcontractor's notice of dissatisfaction within 7 days of its receipt, the Subcontractor shall be entitled to treat this non-response as if the Contractor maintains that the decided share is appropriate and applicable. The dispute concerning this share shall thereafter be considered an Unrelated Dispute which shall be finally settled as between the Contractor and the Subcontractor under the Rules of Arbitration of the International Chamber of Commerce, and Main Contract Clause 20.6 [Arbitration] shall apply.

Annexes

Annexes are attached to the Particular Conditions of Subcontract. They are completed by the Contractor and/or the Subcontractor, and are to be included in the Conditions of Subcontract, which comprise Particular Conditions of Subcontract, Annexes to the Particular Conditions of Subcontract and the General Conditions of Subcontract. The annexes attached to the Particular Conditions of Subcontract are referred to jointly as "the Annexes": they are designated Annex A, Annex B, etc.

Annex A PARTICULARS OF THE MAIN CONTRACT

PART A

1 Parties

Name and address of Employer:

Legal form of Employer:

(for example, company, partnership, individual, proprietorship)

Name and address of Engineer:

Legal form of Engineer:

(for example, company, partnership, individual, proprietorship)

Name and address of Contractor:

Legal form of Contractor:

(for example, company, partnership, individual, proprietorship)

2 Main Contract Commencement Date

Contract Commencement Date:

3 Contract Duration and Completion Dates

Times for Completion under the Main Contract

(a) Section Times for Completion:

(Enter the description of and the Times for Completion of any Section of the Main Works pursuant to Main Contract Clause 8.2 [Time for Completion].)

(b) Time for Completion:

(Enter the Time for Completion of the Main Works pursuant to Main Contract Clause 8.2 [Time for Completion].)

A copy of the Contractor's tender programme, or the latest programme prepared and submitted to the Engineer in accordance with Main Contract Clause 8.3 [Programme], whichever is the later, should be attached to this Annex A.

4 Description of Works under the Main Contract

Times for Completion under the Main Contract

(a) The Site is located:

(Enter a description of the location of the Site.)

(b) The Main Works comprise:

(Enter a description of the Main Works.)

5 Conditions of the Main Contract

The Conditions of the Main Contract are based on the FIDIC Conditions of Contract for

Construction for Building and Engineering Works Designed by the Employer, 1st Edition 1999, published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) together with the Particular Conditions of the Main Contract.

The Particular Conditions of the Main Contract shall be attached to this Annex A.

6 Confidential Parts of the Main Contract

The following parts of the Main Contract are declared to be confidential between the Employer and the Contractor, and shall not be made available for inspection to the Subcontractor:

(List the parts if declared confidential as between the Employer and the Contractor, if none are to be treated as confidential then enter "none" here.)

PART B

Exclusions

Annex B SCOPE OF SUBCONTRACT WORK AND SCHEDULE OF SUBCONTRACT DOCUMENTS

1 Scope of Subcontract Work

(Enter a detailed description of the Subcontract Works. The Contractor should consider listing the Subcontract Works and making reference to the Subcontract Drawings, the Subcontract Specification, and to the Drawings and the Specification of the Main Contract insofar as they are applicable to the Subcontract Works.)

2 Schedule of Subcontractor documents

The Subcontract Agreement, if any, dated _____
The Contractor's Letter of Acceptance dated: _____
The Letter of Subcontractor's Offer dated: _____
The Particular Conditions of Subcontract and Annexes;
The General Conditions of Subcontract;
The Subcontract Specification;
The Subcontract Drawings;
The Subcontract Bill of Quantities and other schedules of rates and prices in the Subcontract: (if any);
Any other document forming part of the Subcontractor's Offer.

(Consideration may be given to listing the documents comprising the Subcontractor's Offer.)

Annex C INCENTIVE(S) FOR EARLY COMPLETION, TAKING-OVER BY THE CONTRACTOR AND SUBCONTRACT BILL OF QUANTITIES

1 Incentive(s), if any, for early completion of Subcontract Section(s)

Bonus Payment:

(If an additional Sub-Clause is to be added to Clause 8 of the Conditions of Subcontract to provide incentives for early completion of Sections of the Subcontract Works, enter the sum of bonus payment to be paid to the Subcontractor for early completion of each Subcontract Section.)

2 Taking-Over by the Contractor

(If the Subcontract Works or any Subcontract Section are to be taken-over by the Contractor before taking-over of the Main Works by the Employer, this requirement should be expressly stated herein, and the following may be added:)

Provided completion of the Subcontract Works or a Subcontract Section has been achieved in accordance with Sub-Clause 10.1 (*Completion of the Subcontract Works*), the Subcontractor may apply by notice to the Contractor for the Contractor to take-over the Subcontract Works or that Subcontract Section. The Contractor shall, within 7 days after receiving the Subcontractor's application:

- (i) issue a certificate to the Subcontractor verifying the taking-over of the Subcontract Works or that Subcontract Section, and stating the date of such taking-over; or
- (ii) reject the application, giving reasons and specifying the work required to be done by the Subcontractor to enable a taking-over certificate to be issued. The Subcontractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Contractor fails either to issue a taking-over certificate or to reject the Subcontractor's application within the period of 7 days, and if the Subcontract Works or Subcontract Section have been completed in accordance with the Subcontract, these works shall be deemed to have been taken-over on the last day of the period of 7 days.

3 Subcontract Bill of Quantities and/or schedule of prices (if any)

(The finally agreed Subcontract Bill of Quantities and/or schedule of prices (if any) should be attached to this Annex C.)

Annex E INSURANCES

1 Insurances to be effected and maintained by the Subcontractor

(Enter details of the required insurances to be effected and maintained by the Subcontractor.)

2 Insurances to be effected and maintained by the Contractor under the Main Contract that relate to the Subcontract Works

(Enter details of insurances to be effected and maintained by the Contractor under the Main Contract, or attach a copy of each insurance policy.)

3 Insurances to be effected and maintained by the Employer under the Main Contract that relate to the Subcontract Works

(Enter details of insurances to be effected and maintained by the Employer under the Main Contract, or attach a copy of each insurance policy.)

Annex F SUBCONTRACT PROGRAMME

A Initial Subcontract Programme

The form and detail of the programme for the execution of the Subcontract Works shall fully comply with the programming and reporting requirements of the Main Contract and, in any case, shall:

- a be prepared in sufficient detail to ensure the adequate planning, execution and monitoring of the Subcontract Works;
- b use the programming software specified in the Main Contract;
- c take due account of to the Subcontract Time for Completion;
- d identify all relevant activities including those that relate to design, manufacture, procurement, and on Site works;
- e show earliest and latest start and finish dates for each work activity;
- f identify when and what information, drawings, materials, equipment, facilities, and/or temporary works are required from the Contractor, the Engineer and/or the Employer;
- g identify when and what approvals, consents, and/or certificates are required from the Contractor, the Engineer and/or the Employer;
- h identify the date(s) and location(s) within the Site that access is required to execute (parts of) the Subcontract Works;
- i identify holiday periods;
- j identify key delivery dates of Subcontract Plant and materials;
- k identify dates by which work will be ready for inspection and/or testing;
- l logically link all activities;
- m identify where the critical path(s) lie(s);
- n identify all float;
- o include sufficient flexibility in order to make adequate adjustments to allow for interfacing the Subcontractor's activities with the Contractor and other contractors working on the Site;
- p allow for weather conditions which are at the Subcontractor's risk (if any), and other Subcontractor's time risks; and
- q be supported by a schedule giving sufficient details of the Subcontractor's resource requirements in terms of manpower, work rates, items of plant, equipment and materials for each work activity to justify the activity duration shown in the programme.

The Contractor shall, within 14 days of receiving this initial programme, respond by either stating that this initial programme complies with the Subcontract, in which case it shall become the Subcontract Programme; or rejecting this initial programme, giving sufficiently detailed and cogent reasons to enable the Subcontractor to revise the initial programme in a timely manner. If the Subcontractor receives no response from the Contractor within 14 days of submitting the initial programme, it shall become the Subcontract Programme.

If the Contractor responds stating that the initial programme fails (to the extent stated) to comply with the Subcontract, the Subcontractor shall submit a revised initial programme within 7 days of receipt of the Contractor's response, taking due account of the reasons given by the Contractor. The Contractor shall, within 7 days of receiving this revised initial programme, respond by either stating that it complies with the Subcontract in which case it shall become the Subcontract Programme; or stating that the initial programme fails (to the extent stated) to comply with the Subcontract, giving sufficiently detailed and cogent reasons to enable the Subcontractor to further revise the initial programme in a timely manner.

B Updating the Subcontract Programme

The Subcontract Programme shall be updated and submitted to the Contractor no later than 28 days from the date that the Subcontractor's initial programme became the Subcontract

Programme and, in any case, within 7 days of the occurrence of any of the following:

- a the Subcontractor changing his method(s) and/or sequencing of work and/or duration of activities and/or allocation of resources;
- b any delay event experienced by the Subcontractor in his execution of the Subcontract Works of whatsoever cause which impacts the critical path or, if there is more than one critical path, any of the critical paths;
- c notification from the Contractor of any delay event which has occurred, or specific probable future events or circumstances, which may adversely affect the Subcontractor's work, increase the Subcontract Price or delay the execution of the Subcontract Works;
- d the grant by the Contractor of an extension of the Subcontract Time for Completion;
- e receipt of a Contractor's Instruction regarding the programming and/or sequencing of the Subcontract Works; and
- f receipt of notification from the Contractor that the actual progress of the Subcontract Works is too slow to complete within the Subcontract Time for Completion and/or does not conform to the current Subcontract Programme.

This updated programme shall show the modifications to the Subcontract Programme necessary to ensure completion of the Subcontract Works within the Subcontract Time for Completion. The Contractor shall, within 7 days of receiving this updated programme, respond by either stating that it complies with the Subcontract, in which case it shall become the Subcontract Programme; or stating that it fails (to the extent stated) to comply with the Subcontract, giving sufficiently detailed and cogent reasons to enable the Subcontractor to revise it in a timely manner. If the Subcontractor receives no response from the Contractor within 7 days of submitting the updated programme, it shall become the Subcontract Programme.

If the Contractor responds stating that the updated programme fails (to the extent stated) to comply with the Subcontract, the Subcontractor shall submit a revised updated programme within 7 days of receipt of the Contractor's response, taking due account of the reasons given by the Contractor. The Contractor shall, within 7 days of receiving this revised updated programme, respond by either stating that it complies with the Subcontract, in which case it shall become the Subcontract Programme; or stating that it fails (to the extent stated) to comply with the Subcontract, giving sufficiently detailed and cogent reasons to enable the Subcontractor to further revise the updated programme in a timely manner.

Thereafter, for the duration of the Subcontract Works, the Subcontractor shall update this programme and each updated programme shall be subject to the requirements of this Annex. The Subcontractor shall not delay any work whilst awaiting a response from the Contractor in respect of any updated or revised updated Subcontract programme.

Provided that any response by the Contractor in respect of any programme submitted by the Subcontractor that relates to the Subcontract Works shall not be taken as:

- i conferring any right on the Subcontractor other than those set out in the Subcontract, or
- ii any waiver of the Contractor's rights or the Subcontractor's obligations under the Subcontract.

Annex G OTHER ITEMS

Consideration may be given to the use of this Annex G for reasons such as:

- a List of equipment resources that the Subcontractor undertakes to mobilise and maintain on Site for the duration of the Subcontract Works or any other specified period.
- b Memorandum of understanding to record agreements reached during tender clarifications and Subcontract negotiations as an expedient to redrafting Particular Conditions of Subcontract or other schedules that formed part of the Subcontractor's Offer.

GENERAL CONDITIONS OF
SUBCONTRACT

GUIDANCE FOR THE
PREPARATION OF
PARTICULAR CONDITIONS
OF SUBCONTRACT

Conditions of Contract
for **CONSTRUCTION**

FOR BUILDING AND ENGINEERING WORKS
DESIGNED BY THE EMPLOYER

FORMS OF LETTER OF
SUBCONTRACTOR'S OFFER,
CONTRACTOR'S LETTER OF
ACCEPTANCE AND
SUBCONTRACT AGREEMENT

Forms of Letter of Subcontractor's Offer,
Contractor's Letter of Acceptance and
Subcontract Agreement

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FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



LETTER OF SUBCONTRACTOR'S OFFER

NAME OF SUBCONTRACT: _____

TO: _____

Gentlemen,

- 1 Having examined the Conditions of Subcontract, the Subcontract Specification, the Subcontract Drawings, and the Subcontract Bill of Quantities and Addenda Nos. _____ for the execution of the above named Subcontract Works, we, the undersigned, offer to execute and complete the Subcontract Works and remedy any defects in conformity with the Conditions of Subcontract, the Subcontract Specification, the Subcontract Drawings, the Subcontract Bill of Quantities and Addenda for the sum of _____
(in words)
or the other sum that may be ascertained in accordance with the said Conditions.
- 2 We acknowledge that the Appendix hereto forms part of our Offer.
- 3 We undertake, if our Offer is accepted, to commence the Subcontract Works within 14 days, or the other period that may be agreed in writing, after the receipt of your notice to commence, and to complete the whole of the Subcontract Works comprised in the Subcontract within the time stated in the Appendix hereto.
- 4 We agree to abide by this Offer for the period of _____ days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- 5 Unless and until a formal Subcontract Agreement is prepared and executed this Offer, together with your written acceptance thereof, shall constitute a binding contract between us.
- 6 We understand that you are not bound to accept the lowest or any offer you may receive.

Signed by: _____

(signature)

(name in full in block capitals)

in the capacity of _____

(title)

duly authorised to sign offers for and on behalf of _____

(in block capitals)

Address: _____

Date: _____

Note: all Details marked * shall be inserted before the issue of the Subcontractor's Offer.

APPENDIX TO THE SUBCONTRACTOR'S OFFER

Item	Sub-Clause	Data
Contractor's name and address	1.1.4, 1.4
Subcontractor's name and address ..	1.1.34, 1.4
Contractor's Subcontract Representative	1.1.17 (name of the person to act as Contractor's Representative)
Subcontractor's Representative	1.1.39 (name of the person to act as Subcontractor's Representative)
Amount of Performance Security	4.2 % of the Accepted Subcontract Amount, in the currency and proportions in which the Subcontract Price is payable
Maximum amount of Subcontract delay damages	8.7 % of the Accepted Contract Amount
Adjustments for Changes in Cost; Table of Adjustment Data	13.8 for payments each month in (enter currency)

Coefficient: scope of index	Country of Origin; currency of index	Source of Index; Title/definition	Value on stated date(s)	
			Value	Date
a = 0.10 Fixed				
b = Labour				
c =				
d =				
e =				
"Ln", "En", "Mr", ... are the current cost indices or reference prices for period "n", expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on a date 49 days prior to the last day of the period (to which the Interim Subcontract Payment or Final Subcontract Payment relates).				
"Lo", "Eo", "Mo", ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 28 days prior to the latest date for submission of the Subcontractor's Offer.				

Total Subcontract Advance Payment ..	14.2 % of Accepted Contract Amount
Number and Timing of instalments of advance payment	14.2
Currencies and proportions of advance payment	14.2 % %

Minimum amount of interim subcontract payment 14.6 % of Accepted Contract Amount

The Subcontract DAB shall be 20.4 *Either:*
 One solo Member/adjudicator
Or:
 A DAB of three Members

Note: It is advisable that all details, except the name of the Subcontractor and the Subcontractor's Representative, in this Appendix be inserted before the issue of the Subcontract tender documents. In any case, all details in this Appendix must be completed before the Subcontract tender is submitted.

CONTRACTOR'S LETTER OF ACCEPTANCE

NAME OF SUBCONTRACT: _____

TO: _____

YOUR REFERENCE: _____

OUR REFERENCE: _____

We acknowledge receipt of your Offer dated _____ for the execution and completion of the Works comprising the above-named Subcontract and remedying defects in conformity with the Conditions of Subcontract, the Subcontract Specification, the Subcontract Drawings, the Subcontract Bill of Quantities and Addenda.

We accept your Offer of: _____ [currency and amount in figures and words] (the "Accepted Subcontract Amount").

In consideration of your properly performing the Subcontract, we agree to pay you the Accepted Subcontract Amount or such other sum to which you may become entitled under the Subcontract at such times and as prescribed by the Subcontract.

We acknowledge that this Letter of Acceptance creates a binding contract between us, and we undertake to fulfil all our obligations and duties in accordance with this Subcontract.

Signed by: _____

(signature)

(name in full in block capitals)

in the capacity of _____

(title)

duly authorised to sign offers for and on behalf of _____

(in block capitals)

Address: _____

Date: _____

SUBCONTRACT AGREEMENT

This Subcontract Agreement made the

day of

20

Between _____ of _____
(the "Contractor") of the one part,
and _____ of _____
(the "Subcontractor") of the other part

Whereas the Contractor is desirous that certain Subcontract Works should be executed by the Subcontractor, known as _____ and has accepted a Subcontractor's Offer for the execution and completion of these Subcontract Works and the remedying of any defects.

Now this Subcontract Agreement witnesseth as follows:

- 1 In this Subcontract Agreements works and expression shall have the same meanings as are respectively assigned to them in the Conditions of Subcontract.
- 2 The following documents shall be deemed to form and be read and construed as part of this Subcontract Agreement:
 - (a) The Contractor's Letter of Acceptance dated _____;
 - (b) The Letter of Subcontractor's Offer dated _____;
 - (c) The Particular Conditions of Subcontract and Annexes;
 - (d) The General Conditions of Subcontract;
 - (e) The Subcontract Specification;
 - (f) The Subcontract Drawings;
 - (g) The Subcontract Bill of Quantities and other schedules of rates and prices in the Subcontract (if any); and
 - (h) Any other document forming part of the Subcontractor's Offer.
- 3 In consideration of the payments to be made by the Contractor to the Subcontractor as below the Subcontractor hereby covenants with the Contractor to execute and complete the Subcontract Works and remedy any defects in conformity in all respects with the provisions of the Subcontract.
- 4 The Contractor hereby covenants to pay the Subcontractor in consideration of the execution and completion of the Subcontract Works and the remedying of any defects, the Subcontract Price at the times and in the manner prescribed by the Subcontract.

Signed by: _____ Name _____
(signature) (name in full in block capitals)
for and on behalf of the Contractor in the presence of
Witness:
Name: _____
Address:
Date:

Signed by: _____ Name _____
(signature) (name in full in block capitals)
for and on behalf of the Subcontractor in the presence of
Witness:
Name: _____
Address:
Date:



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