

**AGREEMENT**

**AND**

**CONDITIONS OF SUB-CONTRACT (Named/Novated/Nominated)**

**FOR USE IN CONJUNCTION WITH THE  
CONDITIONS OF CONTRACT FOR PRIVATE SECTOR BUILDING AND  
ENGINEERING WORKS DESIGNED BY THE EMPLOYER  
WHERE THE SUB-CONTRACTOR IS A SPECIALIST WHO HAS BEEN NAMED,  
NOVATED OR NOMINATED BY THE EMPLOYER  
("NN SUB-CONTRACTOR")**

This form of sub-contract is issued by the  
Construction Industry Federation,  
Construction House, Canal Road, Dublin

***This form of sub-contract is agreed by  
ASCA, CECA, MBCA and M&ECA  
for un-amended use.***

**FIRST EDITION**

**2021**

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**THIS AGREEMENT is made on .....(date)**

**BETWEEN:-** .....

of .....

.....

(the Contractor)

and .....

of .....

.....

(the NN Sub-Contractor)

**WHEREAS:-**

- A. The Contractor has entered or will enter into a Contract (which is defined in the Appendix Part 1) with the Employer for the Works described in the Main Contract.
- B. The NN Sub-Contractor has been named by the Employer in the Main Contract or the Employer has novated its contract with the NN Sub-Contractor or the NN Sub-Contractor has been nominated by the Employer and as a result the Contractor is obliged to engage the NN Sub-Contractor to complete the Sub-Contract Works.
- C. The Contractor and the NN Sub-Contractor agree to enter into this Sub-Contract under the terms and conditions herein agreed.

**THE CONTRACTOR AND THE NN SUB-CONTRACTOR AGREE AS FOLLOWS:-**

**Article 1:**

The NN Sub-Contractor shall execute and complete the Sub-Contract Works and otherwise comply with its obligations in accordance with the Sub-Contract Conditions.

**Article 2:**

The Contractor shall pay the NN Sub-Contractor the Sub-Contract Sum subject to and in accordance with the Sub-Contract and shall comply with its other obligations in the Sub-Contract.

**Article 3:**

The Initial Sub-Contract Sum excluding VAT is € ( ). The Initial Sub-Contract Sum is a lump sum and shall only be adjusted when the Sub-Contract says so.

**Article 4:**

The NN Sub-Contractor has satisfied itself before entering into the Sub-Contract of all the circumstances that may affect the cost of executing and completing the Sub-Contract Works and of the correctness and sufficiency of the Initial Sub-Contract Sum to cover the cost of performing the Sub-Contract. The NN Sub-Contractor has included in the Initial Sub-Contract Sum for the performance of all of its obligations under the Sub-Contract, except for events for which the Sub-Contract provides for adjustment of the Initial Sub-Contract Sum.

**Article 5:**

The Sub-Contract consists of the following documents:-

- This Agreement;
- The attached Conditions of Sub-Contract and completed Appendix Parts 1 and 2;
- The Main Contract Documents in so far as these relate to the Sub-Contract Works;
- The additional documents identified in the Appendix Part 1 hereto as relating specifically to the Sub-Contract Works;
- Any Novated Design Documents;

**Article 6:**

The Contract takes effect from the Contract Date.

Present when the Common Seal of THE CONTRACTOR was affixed hereto:

.....

Present when the Common Seal of the NN SUB-CONTRACTOR was affixed hereto:

.....

**OR**

Signed by an Authorised Representative of the CONTRACTOR

.....

in the presence of ..... (Witness)

Address of Witness .....

.....

Signed by an Authorised Representative of the NN SUB-CONTRACTOR

.....

in the presence of ..... (Witness)

Address of Witness .....

.....

## CONDITIONS

### 1. THE SUB-CONTRACT

#### 1(a) Definitions

In this Sub-Contract unless the context otherwise requires:-

**Commencement Date** is the date notified by the Contractor under Clause 9.

**Compensation Event** means an event which is so designated in the table in Section K of the Schedule Part 1 of the Main Contract.

**Contractor** is the “other party” for the purposes of the Construction Contracts Act 2013 only.

**Initial Sub-Contract Sum** means the sum tendered by the NN Sub-Contractor and accepted by the Contractor.

**Named Specialist** means a Sub-Contractor or supplier of a Works Item, named in the Contract by the Employer

**NN Sub-Contractor** means a Specialist who has been named by the Employer; whose contract with the Employer has been novated to the Contractor; or who has been proposed by the Employer’s Representative as a Nominated Specialist. The NN Sub-Contractor is the “executing party” under the Construction Contracts Act 2013.

**NN Sub-Contractor’s Personnel** means the employees and other persons, including sub-contractors to the NN Sub-Contractor, working on or adjacent to the Site for the NN Sub-Contractor or subcontractors to the NN Sub-Contractor and other persons assisting the NN Sub-Contractor to perform the Sub-Contract.

**NN Sub-Contractor’s Things** means equipment, facilities and other things the NN Sub-Contractor [or NN Sub-Contractor’s Personnel] uses on or adjacent to the Site to execute the Sub-Contract Works, except Sub-Contract Works Items

**Nominated Specialist** means a Sub-Contractor or supplier of a Works Item, selected by the Employer and proposed after the Designated Date

**Novated Specialist** means a Sub-Contractor or supplier of a Works Item, to be engaged by the Contractor in accordance with sub-clause 5.4.3 of the Main Contract.

**Novated Design Documents** means specifications, drawings and other documents identified in the Appendix Part 1B or in the Schedule to the Main Contract, Part 1B that have been designed by the Employer and adopted by the NN Sub-Contractor.

**Payment Claim Date** is the last day of each period in respect of which the Sub-Contractor issues an Interim Payment Claim or a Final Payment Claim and the date by which the Sub-Contractor is required to submit an Interim Payment Claim or a Final Payment Claim.

**Payment Disputes** are disputes relating to payment.

**Sub-Contract Documents** means the documents so identified in Article 5 of the Sub-Contract Agreement.

**Sub-Contract Sum** means the value of the Sub-Contract works calculated in accordance with these Conditions of Sub-Contract.

**Sub-Contract Works** means that portion of the Works which are to be constructed by the NN Sub-Contractor including, where applicable, any design to be carried out by the NN Sub-Contractor

**Sub-Contract Works Item** means a part of the Sub-Contract Works, anything that the NN Sub-Contractor intends will become part of the Sub-Contract Works, or temporary works for the Sub-Contract Works.

**Unfixed Sub-Contract Works Items** means items of work which have not yet been incorporated in the Works

**Works** means the works which are to be constructed under and in accordance with the Main Contract

#### **1(b) Interpretation**

- (1) The parties intend the Sub-Contract to be given purposeful meaning for efficiency and public benefit generally and as particularly identified in the Sub-Contract.
- (2) Words which are defined in clause 1.1 (“Definitions”) of the Main Contract will have the same meaning when used in this Sub-Contract as in the Main Contract. The fact that a word is being used in its defined meaning will be indicated by the use of upper case printing in relation to the initial letters, irrespective of whether the words are defined in the Main Contract or the Sub-Contract.
- (3) The words and phrases to which interpretations are ascribed by clause 1.2.2 of the Main Contract have, unless the context indicates otherwise, the same interpretations in this Sub-Contract.
- (4) If the Sub-Contract includes a requirement for the NN Sub-Contractor to carry out design, the words “execute” and “execution” in respect of the Sub-Contract Works shall be deemed to include design irrespective of whether design is expressly stated or not.
- (5) Reference to any Act of the Oireachtas shall include any Act replacing that Act or amending it, and any Order, Regulation, Instrument, Directions, Scheme or Permission made under it or deriving validity from it.
- (6) The headings and index (including its references to the Main Contract) appearing in this Sub-Contract are for reference purposes only and shall not affect the construction or interpretation of this Sub-Contract.

#### **1(c) Assignment**

Neither party may assign the benefit of the Sub-Contract, or any part of it, without the written consent of the other party; such consent shall not be unreasonably withheld.

#### **1(d) Period of Liability**

If the Main Contract is executed under seal, the period of liability of the NN Sub-Contractor shall be twelve years.

#### **1(e) Execution of the Sub-Contract Works**

The NN Sub-Contractor shall design (to the extent that this is the NN Sub-Contractor’s responsibility), execute and complete the Sub-Contract Works to the reasonable satisfaction of the Contractor and in conformity with the reasonable directions and requirements of the Contractor.

#### **1(f) NN Sub-Contractor’s Obligations**

- (1) The NN Sub-Contractor will observe, perform and comply with all of the provisions of the Main Contract in so far as they relate and apply to the Sub-Contract Works (or any portion of the same) and are not repugnant to or inconsistent with the express provisions of this Sub-Contract as if all the same were severally set out herein.
- (2) The NN Sub-Contractor shall avoid through any neglect, omission or act on its part occasioning the Contractor to be in breach of any of the terms and provisions of the Main Contract. The NN Sub-Contractor is entitled to a copy of the documents comprising the Main Contract (the **Contract Documents**) in so far as these relate to the Sub-Contract Works. The NN Sub-Contractor however is not entitled to particulars relating to the Contractor's prices and these may be deleted from any documents to which the NN Sub-Contractor is entitled.
- (3) The NN Sub-Contractor will deliver to the Contractor any notice, information or other requirement relating to the Sub-Contract Works, which the Contractor is entitled to or is required to furnish to the Employer's Representative, in sufficient time and detail as to enable the Contractor to meet the time requirements and other obligations of the Main Contract.

**1(g) Damages for breach of the Sub-Contract**

In the event that either party is in breach of the Sub-Contract the other party will be entitled to damages suffered as a consequence, provided due notification is given to the other party in accordance with the terms of the Sub-Contract.

**1(h) Rights and Benefits under the Main Contract**

So far as is lawfully permissible, the Contractor will, at the request and cost of the NN Sub-Contractor, obtain for the NN Sub-Contractor any rights or benefits of the Main Contract, only in so far as the same are applicable to the Sub-Contract.

**1(i) Performance Bond**

If the Appendix Part 1E requires a Performance Bond, the following shall apply, Before commencement on site, the NN Sub-Contractor will procure a bond from an insurance company or a bank authorised to do guarantee business in Ireland<sup>1</sup> guaranteeing the due performance of the Sub-Contract by the NN Sub-Contractor. The form of bond shall be as specified in the Appendix Part 1E. The initial amount of the performance bond will be that stated in the Appendix Part 1E and will be in place up to certification by the Employer's Representative of Substantial Completion of the Works. Thereafter the bond value shall reduce to half of this amount to be in place for the subsequent 15 months.

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<sup>1</sup> Insurance Undertakings and Banks authorised to do business in Ireland must be licensed to provide Class 15\* Insurance (i.e. non-life insurance). Class 15 Insurance relates to the writing of guarantee business, or more generally referred to as the issuing of Bonds. \*Note: Class 15 is one of the classes of Insurance listed in Annex I of SI No 359 of 1994 – European Communities (Non-Life Insurance) Framework Regulations, 1994.

## **THE LAW**

### **2(a) Law Governing the Contract**

Irish Law governs the Sub-Contract and its interpretation.

### **2(b) Compliance with Legal Requirements**

- (1) The NN Sub-Contractor shall in performing the Sub-Contract comply with all Legal Requirements.
- (2) The NN Sub-Contractor shall give and comply with all notices and pay all taxes, fees and charges required under Legal Requirements in connection with performing the Sub-Contract unless the Works Requirements say otherwise. Where such taxes, fees and charges relate in part to the Sub-Contract Works and in part to other works the same will be apportioned proportionately between the Contractor and the NN Sub-Contractor on a fair and reasonable basis.

### **2(c) Consents**

The Employer has obtained, or shall obtain the Consents that are necessary, or become necessary to enable the Works to be carried out in accordance with the Works Requirements. The Contractor shall obtain such Consents as are necessary to enable it complete the Works by its chosen methods. In so far as such Consents relate to the Sub-Contract Works, the NN Sub-Contractor shall obtain those Consents.

### **2(d) Safety, Health and Welfare Statutory Requirements**

- (1) The NN Sub-Contractor will comply with all current health and safety legislation and with the current Safety, Health and Welfare at Work (Construction) Regulations and will provide to the Contractor all documents required for the Safety File (as defined in the current Safety, Health and Welfare at Work (Construction) Regulations) relevant to the Sub-Contract Works in sufficient time as to enable the Contractor meet its obligations under the Main Contract.
- (2) The NN Sub-Contractor (without limiting its other obligations) shall ensure, so far as is reasonably practicable, that the Sub-Contract Works:-
  - (i) are designed (to the extent that they are designed by the NN Sub-Contractor or the NN Sub-Contractor's Personnel) to be safe and are capable of being constructed safely and without risk to health and
  - (ii) are constructed in a safe manner and
  - (iii) are constructed to be safe and without risk to health and
  - (iv) can be maintained safely and without risk to health during use and
  - (v) comply in all respects, as appropriate, with the relevant statutory provisions;
- (3) The NN Sub-Contractor represents and warrants to the Contractor that the NN Sub-Contractor is, and will be, while performing this Sub-Contract, a competent person for the purpose of ensuring, so far as is reasonably practicable, that the Sub-Contract Works are as stated in sub-clause 2(d)(1).

### **2(e) Building Control Regulations 1997 - 2015**

This Clause only applies where the Main Contract Works are works to which the Building Control Regulations 1997 – 2015 and any amendments thereto, including the Building Control (Amendment) Regulations 2014, apply.

Within 5 days of the Commencement Date the NN Sub-Contractor will provide to the Contractor completed and signed Ancillary Form of Certificate of Compliance (Undertaking by NN Sub-Contractor) in respect of the sub-contract works, in the form CIF SC01 as set out at Appendix XX of this Sub-Contract.

- (1) The NN Sub-Contractor undertakes to cooperate with and facilitate the Inspection Plan prepared with the Assigned Certifier.
- (2) The NN Sub-Contractor will provide for the Contractor such Certificates of Compliance in respect of the sub-contract works to allow the Contractor to comply with the Building Control Regulations. The provision of such Certificates shall form part of the Works Requirements.

### **3. LOSS, DAMAGE AND INJURY**

#### **3(a) NN Sub-Contractor's Indemnities**

- (1) The NN Sub-Contractor shall indemnify the Contractor against and from any loss or expense incurred by the Contractor due to any failure on the part of the NN Sub-Contractor to observe the terms of this Sub-Contract or the terms of the Main Contract insofar as they apply to this Sub-Contract, including, where applicable, any liquidated damages (or charges made under Clause 7.12 of the Main Contract if applicable) the Contractor is obliged to pay to the Employer as a result of such failure.
- (2) The NN Sub-Contractor shall indemnify the Contractor and the Employer in relation to any damage to the Works or to any property of the Contractor or of the Employer arising from or in the course of the NN Sub-Contractor's performance or non-performance of the Sub-Contract. The NN Sub-Contractor's liability under this sub-clause will not apply to the extent that the loss or damage arises from circumstances to which the Employer's indemnity under clause 3.5 ("Employer's Indemnity") of the Main Contract applies or to the extent that the same was caused by the negligence or default of the Contractor. Nor will the NN Sub-Contractor be liable for such loss and damage to the extent that it is occasioned by a risk which is that of the Employer under the Main Contract.
- (3) The NN Sub-Contractor shall indemnify the Contractor and the Employer in respect of any loss arising as a result of:-
  - (i) Death, injury or illness of any person including Sub-Contractor's Personnel but otherwise excluding Contractor's Personnel; and
  - (ii) Destruction of or damage to any physical property (other than the Works); and
  - (iii) Obstruction, loss of amenities, nuisance, trespass, stoppage of traffic and infringement of light, easement or quasi easement;

arising from or in the course of the performance or non-performance of the Sub-Contract. The NN Sub-Contractor will not be liable to indemnify the Contractor or the Employer in respect of the risks identified in sub-clauses (i), (ii) and (iii) above to the extent that the loss is caused by the negligence of the Contractor or the Employer or as a result of the risks in relation to which the Employer has indemnified the Contractor under clause 3.5 ("Employer's Indemnity") of the Main Contract or the risks assumed by the Employer under clauses 3.1 ("Employer's Risks of Loss and Damage to the Works") and 3.8 ("Existing Facilities and Use or Occupation by the Employer") thereof.

#### **3(b) Obligation to Repair**

In case of any loss or damage to the Sub-Contract Works, including any Sub-Contract Works Items, due to any event which is at the risk of the NN Sub-Contractor, including any loss or damage due to defective design by the NN Sub-Contractor, the NN Sub-Contractor shall proceed with due diligence to rectify such loss or damage at its own expense.

**3(c) Insurance of the Works and NN Sub-Contractor's Things**

- (1) The Contractor shall for the benefit of itself and its Sub-Contractors (including the NN Sub-Contractor), as co-insured, keep in force in accordance with the requirements of the Main Contract a policy of insurance covering the Works and Works Items.
- (2) The NN Sub-Contractor shall take out insurance on terms and with an insurer approved by the Contractor (such approval not to be unreasonably withheld) of the NN Sub-Contractor's Things against destruction, loss and damage to their full reinstatement value.
- (3) The NN Sub-Contractor shall be deemed to have knowledge of all terms and conditions in the Contractor's policy of insurance covering the Works and the NN Sub-Contractor shall be entitled to inspect the said policy upon reasonable notice. The NN Sub-Contractor shall observe and comply with the conditions contained in the Contractor's policy of insurance covering the Works in so far as compliance is within the control of the NN Sub-Contractor. The NN Sub-Contractor will indemnify the Contractor in relation to any act or omission on the NN Sub-Contractor's part which causes the Contractor's said policy to become invalid or ineffective in whole or in part.

**3(d) Public Liability and Employer's Liability Insurance**

- (1) Before commencing the Sub-Contract Works, the NN Sub-Contractor shall take out with an insurer approved by the Contractor (such approval not to be unreasonably withheld) Public Liability and Employer's Liability policies of insurance as provided herein. The NN Sub-Contractor will maintain such insurance until the Defects Certificate is issued by the Employer's Representative.
- (2) The minimum indemnity limits of these policies shall be the sums stated in the Appendix Part 1C hereto or, if no sums are so stated, shall be those sums stated in the Schedule Part 1D of the Main Contract.
- (3) The excesses in the NN Sub-Contractor's policies of insurance shall not exceed the sums stated in the Appendix Part 1C hereto or, if no sums are so stated shall not exceed the sums stated in the Schedule Part 1D of the Main Contract.
- (4) The said policies shall cover the NN Sub-Contractor's liability under statute and at common law and its liability to indemnify the Contractor under clause 3(a)(3) of this Sub-Contract.
- (5) The NN Sub-Contractor's public liability policy shall be issued in the joint names of the NN Sub-Contractor, the Contractor and the Employer. If under the Main Contract the Contractor's public liability insurance is required to include as joint insured another party named by the Employer that party will also be a joint insured in the NN Sub-Contractor public liability insurance policy.
- (6) The NN Sub-Contractor's employer's liability policy shall include a provision by which in the event of any claim in respect of which the NN Sub-Contractor would be entitled to receive indemnity under the policy being made against the Contractor or the Employer the insurer will indemnify the Contractor and the Employer against such claims and any costs, charges and expenses in respect thereof.

- (7) The NN Sub-Contractor may only include in its policies under this clause the exclusions permitted by the Main Contract in relation to the insurances taken out by the Main Contractor in so far as the same apply, *mutatis mutandis*, to the NN Sub-Contractor and / or to the Sub-Contract Work.

**3(e) Professional Indemnity Insurance**

If the Appendix Part 1C hereto states that professional indemnity insurance is required in relation to the design of the Sub-Contract Works by the NN Sub-Contractor, the NN Sub-Contractor shall arrange such cover for the sum indicated by that Appendix Part 1C to commence with the commencement of the design of the Sub-Contract Works and to remain effective for a period of six years from substantial completion of the Works, unless otherwise stated in the Appendix Part 1C hereto. This insurance shall include retroactive cover to when the NN Sub-Contractor's design of the Sub-Contract Works and Sub-Contract Works Items started. If the NN Sub-Contractor is required to provide a Collateral Warranty the minimum indemnity limit and maximum excess professional indemnity insurance requirements in relation thereto in the Schedule part 1 F are deemed not to exceed those stated in the Appendix Part 1C.

**3(f) Evidence of Insurance Cover**

The NN Sub-Contractor shall provide written confirmation to the reasonable satisfaction of the Contractor of the existence of the insurance policies as required under this Sub-Contract and that the premium for each policy has been paid. Furthermore the NN Sub-Contractor shall obtain written confirmation from its insurers that the said insurers will notify the Contractor in the event of any amendment or cancellation of the said insurance policies (including the amount of any excess deductible therein contained).

**3(g) Owner Controlled Insurance Programme**

If the Works Requirements include provision for an owner controlled insurance programme, the parties hereto shall comply with those provisions and this clause 3 shall be amended, as reasonably required, to give effect to such programme.

**3(h) Limitation of Liability**

- (1) The total liability of the Sub-Contractor to the Contractor and/or the Employer under or in connection with the Sub-Contract, other than under Clause 3(a)(1), shall not exceed the initial Sub-Contract Sum or such other figure which may be agreed in writing by the parties.
- (2) Where the Sub-Contractor's liability is covered by a policy of insurance, the limitation of liability shall be the initial Sub-Contract sum, (or such other figure which may be agreed in writing by the parties) or the limitation of the insurers liability under the policy, whichever is the greater.
- (3) This sub-clause shall not limit liability in any case of fraud, gross negligence, deliberate default or reckless misconduct by the Sub-Contractor.

**4. MANAGEMENT**

**4(a) Co-operation**

The Contractor and the NN Sub-Contractor shall provide reciprocal co-operation and support for the Sub-Contract purposes. The provisions of clause 4.1. ("Co-operation") of the Main Contract shall apply as between the Contractor and NN Sub-Contractor in that regard.



#### **4(b) Instructions**

- (1) The Contractor may issue instructions to the NN Sub-Contractor in relation to any matter connected with the Sub-Contract Works (whether or not mentioned elsewhere in the Sub-Contract) at any time up to the date of issue of the Defects Certificate. The NN Sub-Contractor shall comply with the instructions of the Contractor.
- (2) Instructions of the Contractor may vary the Sub-Contract Works (including by adding to, omitting and changing the Sub-Contract Works and imposing, removing and changing restrictions on how they are to be executed).
- (3) Instructions by the Contractor shall be given in writing except when there is imminent danger to safety or health or of damage to property, in which case the Contractor may give oral instructions and shall confirm them in writing as soon as is practicable.

#### **4(c) Works Proposals and Required Contractor Submissions**

To enable the Contractor fully to meet its obligations under clauses 4.6 ("Works Proposals") and 4.7 ("Required Contractor Submissions") of the Main Contract, the NN Sub-Contractor shall provide any required documents, information, design data or other data and will take all steps necessary in relation to the Sub-Contract Works. The NN Sub-Contractor is fully responsible for the accuracy and adequacy of the Novated Design Documents (if any) and fully indemnifies the Contractor for any loss sustained by it by reason of any defect in the design of the Sub-Contract Works undertaken by the NN Sub-Contractor.

#### **4(d) Programme and Progress Reports**

- (1) The NN Sub-Contractor shall carry out and complete the Sub-Contract Works to meet the requirements of the Main Contract programme (which may be revised from time to time) in compliance with sub-clause 4(d)(5) hereof.
- (2) The NN Sub-Contractor shall liaise and cooperate with the Contractor and other sub-contractors (including NN Sub-Contractors) of the Contractor and / or other contractors of the Employer engaged on or in connection with the Works and shall so programme and order the Sub-Contract Works so that the Contractor and / or its sub-contractors and / or other contractors of the Employer are not delayed or disrupted.
- (3) The Contractor shall give reasonable notice of any information it requires from the NN Sub-Contractor in respect of programming and progress of the Sub-Contract Works to enable the Contractor to meet its obligations under the Main Contract, including those set out at clauses 4.9 ("Programme") and 4.10 ("Progress Reports") and the NN Sub-Contractor shall provide the required information in such detail and in such time as will enable the Contractor to avoid being in breach of its obligations under the Main Contract.
- (4) If required by the Contractor, the NN Sub-Contractor shall provide information for the Contractor's programme including the details of the following:-
  - (i) when the NN Sub-Contractor will require any instructions, Works Items or any other things to be given by the Employer or the Contractor
  - (ii) a programme showing the order in which the NN Sub-Contractor proposes to execute the Sub-Contract Works and the duration of the various Sub-Contract activities
  - (iii) Details of procurement, manufacture, delivery, construction, testing and commissioning of the Sub-Contract Works Items and the sequence and timing of inspections and tests.

- (iv) Where the Main Contract is a contract for civil engineering works, the methods by which the NN Sub-Contractor proposes to execute the Sub-Contract Works and any temporary works.
- (5) (i) The NN Sub-Contractor's programme shall allow reasonable periods of time for the Employer, the Employer's Personnel or the Contractor to comply with their respective obligations under the Main Contract and under the Sub-Contract
- (ii) The NN Sub-Contractor's programme shall comply with the Contractor's programme at all times and shall be revised from time to time, as necessary, to do so. The Contractor shall not revise its programme unreasonably or to an unreasonable extent.
- (iii) If at any time the NN Sub-Contractor's then applicable programme does not comply with the actual progress of the Sub-Contract Works or with the NN Sub-Contractor's obligations or the Contractor's obligations, the NN Sub-Contractor, if so directed by the Contractor, shall submit a revised programme which complies with this Sub-Contract and reflects the actual progress position at that time.
- (6) The NN Sub-Contractor shall provide to the Contractor monthly progress reports from the commencement of the Sub-Contract Works until the completion thereof. The first report shall relate to the period from the commencement date up to the end of the month in which it occurs and each subsequent report shall relate to each subsequent month. The NN Sub-Contractor shall provide each progress report within four working days after the end of the month to which it relates. Each progress report shall be in the format required by the Contractor to meet its obligations under the Main Contract.
- (7) Each progress report shall include in relation to the Sub-Contract Works such detail as is reasonably required by the Contractor to meet its obligations under clause 4.10 ("Progress Reports"), sub-clause 4.10.2 of the Main Contract and shall include a detailed description of progress of each stage of the Works against the Sub-Contractor's current programme and anything else relevant to a progress report that the Contractor reasonably directs
- (8) If, provided reasonable notice has been given by the Contractor of the requirement for programme or progress report information, due to the NN Sub-Contractor's failure to submit such information to the Contractor in accordance with this clause, the Contractor suffers a payment reduction under clauses 4.9.3 or 11.4.2 of the Main Contract, the Contractor shall, subject to clause 11(b) hereof, be entitled to deduct the same amount from the next payment to the NN Sub-Contractor. To the extent that the deduction is partially caused by default of the NN Sub-Contractor, a fair and reasonable proportion of the sum withheld by the Employer shall be withheld from the NN Sub-Contractor.

**4(e) Notice and Time for Contractors Obligations**

- (1) The NN Sub-Contractor shall give the Contractor at least 12 working days advance notice of the date by which the NN Sub-Contractor requires any instructions or any other thing that the Contractor is to provide.
- (2) To the extent that the NN Sub-Contractor requires any instructions or other thing from the Contractor to enable it proceed with the Sub-Contract Works, the same will be provided by the Contractor within a reasonable time. However, to the extent that such instructions or other thing are to be provided by the Employer or Employer's Representative to the Contractor under the Main Contract, the Contractor's only obligation to the NN Sub-Contractor will be to pass on such instructions or other thing to the NN Sub-Contractor within a reasonable time of receipt from the Employer or the Employer's Representative.

**4(f) Not Used**

**4(g) Meetings**

The NN Sub-Contractor shall attend meetings with the Contractor and with the Employer's Representative or other relevant parties at such times and venues as the Contractor may reasonably require. If the NN Sub-Contractor is provided with minutes of any such meeting, the NN Sub-Contractor shall notify the Contractor of any objection to the minutes within 3 working days of receipt. Otherwise, unless clearly wrong, the minutes shall be considered correct.

**4(h) Proposed Instructions**

If any request is made by the Employer's Representative under clause 10.4 ("Proposed Instructions") of the Main Contract for proposals for a Proposed Instruction, the NN Sub-Contractor shall provide such calculations and information (including design details if appropriate) as is necessary for the Contractor to comply with that request in so far as the request relates to the Sub-Contract Works and will do so in sufficient time to enable the Contractor meet the time requirements of that provision

**4(i) NN Sub-Contractor's Things not to be removed**

The NN Sub-Contractor shall submit details to the Contractor before removing any NN Sub-Contractor's Things from the Site prior to the issue by the Employer's Representative of the Certificate of Substantial Completion of the whole of the Works or of a Section of the Works.

**5. NN SUB-CONTRACTOR'S PERSONNEL**

**5(a) Liability**

The NN Sub-Contractor is liable for the acts and omissions of NN Sub-Contractor's Personnel [including any design carried out] as if they were the NN Sub-Contractor's own acts and omissions.

**5(b) Qualifications and Competence**

The NN Sub-Contractor shall ensure that the NN Sub-Contractor's Personnel are suitably qualified and experienced and competent to carry out their respective tasks.

**5(c) Pay and Conditions of Employment of NN Sub-Contractor's Personnel**

The Nominated Sub-Contractor shall ensure that the rates of pay and conditions of employment comply with all applicable law in force during the currency of the contract.

**5(d) Sub-Sub-Contractors**

The NN Sub-Contractor shall not subcontract the Sub-Contract Works, in whole or in part, without the consent in writing of the Contractor.

**5(e) Collateral Warranties**

If the Appendix Part 1F) to this Contract or the Schedule to the Main Contract (part 1F) states that a collateral warranty is required from the NN Sub-Contractor, the NN Sub-Contractor shall provide to the Contractor a collateral warranty in the form included in the Works Requirements executed by the NN Sub-Contractor on or before the date it is required under the terms of the Main Contract.

**5(f) Removal of Work Persons**

The NN Sub-Contractor shall remove from the site any NN Sub-Contractor Personnel where the Employer's Representative so directs under the terms of the Main Contract. The NN Sub-Contractor will also remove from the site any NN Sub-Contractor Personnel where the Contractor so directs because of the NN Sub-Contractor Personnel's negligence or incompetence or on the basis that the NN Sub-Contractor Personnel's presence on the site is not conducive to safety, health or good order.

**6. PROPERTY**

**6(a) Ownership of Work Items and Infringement of Property Rights**

The NN Sub-Contractor will ensure that in so far as sub-clauses 6.1 and 6.2 of the Main Contract relate to Sub-Contract Works Items, NN Sub-Contractor Things or otherwise relate to the Sub-Contract Works, that the Contractor is not in breach of those provisions.

**6(b) Works Requirements**

The Works Requirements shall remain the property of the Employer and the NN Sub-Contractor shall not use them (and shall ensure that the NN Sub-Contractor's Personnel do not use them) for any purpose other than to perform the Sub-Contract or to prosecute or defend a dispute under the Sub-Contract.

**6(c) Intellectual Property Rights**

The entitlements of the Employer in relation to the Contractor's Documents under clause 6.4 of the Main Contract will apply in relation to the Sub-Contract Documents and the obligations of the Contractor under that clause will apply *mutatis mutandis* to the NN Sub-Contractor in relation to the NN Sub-Contractor's Documents.

## **7. THE SITE**

### **7(a) Lands Made Available for the Works**

The Contractor shall from time to time make available to the NN Sub-Contractor such part or parts of the Site and such means of access thereto within the Site as shall be necessary to enable the NN Sub-Contractor to execute the Sub-Contract Works in accordance with the NN Sub-Contract, but the Contractor shall not be bound to give the NN Sub-Contractor exclusive possession or exclusive control of any part of the Site, save as expressly provided for otherwise in the Sub-Contract Documents.

### **7(b) Scaffolding**

The Contractor shall permit the NN Sub-Contractor for the purpose of executing and completing the Sub-Contract Works to use such standing scaffolding as is from time to time provided by the Contractor in connection with the Works, but the Contractor shall not be bound to provide or retain such scaffolding for the NN Sub-Contractor's use unless otherwise stated in the Sub-Contract Documents.

### **7(c) Attendances**

- (1) The Contractor shall provide general attendances as stated in the Method of Measurement identified in the Appendix Part 1D. Special attendances listed in the Appendix Part 1D will be provided by the Contractor. Otherwise the NN Sub-Contractor shall provide everything necessary for the execution of the Sub-Contract Works. The Contractor will provide all attendances required by this clause in a timely manner so as not to cause delay or disrupt progress of the Sub-Contract Works.
- (2) The NN Sub-Contractor will be responsible for and bear the cost (to the extent that this cost is not recoverable as Compensation Event under the Main Contract) of removal from site and disposal of hazardous waste (as defined by Section 4(2)(a) of the Waste Act 1996) arising from the execution of the Sub-Contract Works.

### **7(d) Security and Safety of the Site and Nuisance**

The NN Sub-Contractor will ensure that neither it nor the NN Sub-Contractor's Personnel will cause the Contractor to be in breach of clause 7.5 ("Security and Safety of the Site and Nuisance") of the Main Contract.

### **7(e) Access and Traffic Control**

The NN Sub-Contractor shall provide at its own cost for any necessary traffic control and access to the Sub-Contract Works, and shall take all reasonable steps to ensure that its traffic and that of the NN Sub-Contractor Personnel:-

- (i) complies with the restrictions concerning laden weight and dimensions in the Law; and
- (ii) does not damage roads (except for ordinary wear) bridges or other property.

### **7(f) Setting Out the Works**

Unless otherwise agreed between the parties, the NN Sub-Contractor will set out the Sub-Contract Works in compliance with clause 7.7 ("Setting Out the Works") of the Main Contract.

**7(g) Archaeological Objects and Human Remains**

If any fossils, coins, antiquities, monuments or other items of value or of archaeological or geological interest or human remains are discovered on or adjacent to the Site, unless the Works Requirements says otherwise, the NN Sub-Contractor shall not disturb them, but shall take all necessary steps to preserve them, and shall promptly notify the Contractor and comply with any instructions. As between the parties, these items shall be the Contractor's property.

**7(h) Condition of Site on Completion**

At Substantial Completion of the Works or of any Section of the Works, of which the Sub-Contract Works form the whole or part, the NN Sub-Contractor shall remove from the Site (or section of the Site, as the case may be) the NN Sub-Contractor's Things not required to perform the NN Sub-Contractor's remaining obligations, and leave the Works or Section in an orderly manner. At the end of the Defects Period, the NN Sub-Contractor shall remove from the Site any remaining NN Sub-Contractor's Things.

**7(i) Working Times**

The NN Sub-Contractor shall ensure that the NN Sub-Contractor's Personnel work on the Site only during the working times set out in the Works Requirements, if any, unless agreed otherwise with the Contractor or there is imminent danger to safety or health or damage to the Works or other property

**8. QUALITY, TESTING AND DEFECTS**

**8(a) Standards of Workmanship and Works Items**

- (1) The NN Sub-Contractor shall execute and complete the Sub-Contract Works in accordance with all the requirements in, and reasonably inferred from, the Main Contract, the Contractor's Documents, the Sub-Contract and the NN Sub-Contractor's Documents in a proper and workmanlike manner and using good practice. The Main Contractor will make available to the NN Sub-Contractor on request a full copy of the contract documents insofar as they relate to the Sub-Contract Works.
- (2) The NN Sub-Contractor shall design any part of the Works listed as its responsibility in the Appendix Part 1B and Appendix 4.
- (3) The NN Sub-Contractor shall design and provide any temporary works necessary for the completion of the Sub-Contract Works.
- (4) Design carried out by the NN Sub-Contractor shall be carried out with the skill, care and diligence reasonably to be expected of a person with the qualifications and experience to perform such service.
- (5) All Works Items provided by the NN Sub-Contractor for incorporation in the Sub-Contract Works shall comply with the NN Sub-Contract and Legal Requirements and shall be of good quality, and unless the NN Sub-Contract provides otherwise, new. They shall also be fit for the purpose for which they are to be used in the Works.

**8(b) Quality Assurance**

The NN Sub-Contractor shall establish and implement quality assurance procedures as required by the Main Contract Works Requirements in so far as they relate to the Sub-Contract Works, including procedures for establishing quality assurance systems for itself and any sub-sub-contractors. The quality assurance procedures shall be reflected in appropriate quality plans submitted to the Contractor. The NN Sub-Contractor shall give to the Contractor copies of all reports prepared in accordance with the NN Sub-Contractor quality assurance procedures. The Employer's Representative or the Contractor may monitor, spot check and audit the NN Sub-Contractor's quality assurance procedures and the NN Sub-Contractor will cooperate with the Employer's Representative and with the Contractor in the conduct of any such spot check.

#### **8(c) Inspection and Tests**

- (1) The NN Sub-Contractor will have the same rights and obligations in relation to the Sub-Contract Works, *mutatis mutandis*, as the Contractor has under clause 8.4 ("Inspection") of the Main Contract in relation to the Works.
- (2) The NN Sub-Contractor will have the same rights and obligations in relation to the Sub-Contract Works, *mutatis mutandis*, as the Contractor has under clause 8.5 ("Tests") of the Main Contract in relation to the Works. The Employer's Representative, Assigned Certifier, others authorised by the Employer and the Contractor may attend and observe the tests and the NN Sub-Contractor shall facilitate such attendance and observation.

#### **8(d) Defects**

- (1) The Contractor may direct the NN Sub-Contractor to search for a Defect or suspected Defect or its cause. This may include uncovering, dismantling, re-covering and re-erecting work, providing facilities for tests, testing and inspecting. If, through searching or otherwise, the NN Sub-Contractor discovers a Defect, the NN Sub-Contractor shall notify the Contractor as soon as practicable.
- (2) If, through notification or otherwise, the Contractor becomes aware of a Defect, the Contractor may direct the NN Sub-Contractor to do any or all of the following:-
  - (i) to remove the defective Sub-Contract Works Item from the Site
  - (ii) to demolish the defective Sub-Contract Works Item, if incorporated in the Works.
  - (iii) to reconstruct, replace or correct the defective Sub-Contract Works Item
  - (iv) not to deliver the defective Sub-Contract Works Item to the Site
- (3) The NN Sub-Contractor shall comply with any direction under this sub-clause 8(d) within the reasonable times (if any) the Contractor directs and in any event within any time limit imposed by the Employer's Representative. If the NN Sub-Contractor fails to begin the work required to comply with the direction within the reasonable time directed (if any) or fails to complete it as soon as practicable, the Contractor may have the work done by others and the NN Sub-Contractor shall on request pay the Contractor the cost thereby incurred.
- (4) Alternatively, the Employer may accept the Defect, either in whole or in part and subject to a possible change in the Works Requirements, and shall do so where the cost of remedying the defect is grossly disproportionate to the impact of the defect. In this case, the Sub-Contract Sum shall be reduced by the amount that, in the opinion of the Employer's Representative, is the resulting decrease in the value of the Works to the Employer.

- (5) If a Defect in the Sub-Contract Works deprives the Employer of substantially the whole benefit of the Works or any Section or other material part of the Works, the Employer's Representative may reject the Works or the relevant part of the Works. In this event, the NN Sub-Contractor will indemnify the Contractor in relation to any loss incurred by the Contractor under clause 8.5 ("Defects") of the Main Contract or otherwise.

#### **8(e) Defects Period and Defects Certificate**

- (1) As soon as practicable, the NN Sub-Contractor shall complete any outstanding works and rectify any Defects brought to his attention by the Contractor either prior to Substantial Completion or during the Defects Period and shall complete the rectification of such defects before the end of the Defects Period or before such extended date as may be allowed by the Employer's Representative. In so doing, and in conducting any tests after Substantial Completion, the NN Sub-Contractor shall cause as little disruption as possible to occupants and users of the Works.
- (2) The NN Sub-Contractor will indemnify the Contractor in relation to any reduction to the Contract Sum made under clause 8.6 ("Defects") of the Main Contract in so far as that reduction relates to a Defect in the Sub-Contract Works.
- (3) Nothing in this clause nor any exercise or non-exercise by the Employer, the Employer's Representative or the Contractor of their rights under this clause 8(e), nor the Defects Certificate, relieves the NN Sub-Contractor of any obligation in relation to any Defect in the Sub-Contract Works, except to the extent that a Defect is accepted under sub-clause 8(d)(4) hereof.

### **9. TIME AND COMPLETION**

#### **9(a) Commencement Date**

The Contractor shall issue a written instruction to the NN Sub-Contractor specifying the Commencement Date for the Sub-Contract and the NN Sub-Contractor shall commence work within ten working days, or such other period as may be entered in the Appendix Part 1G, of the specified Commencement Date. In the same instruction the Contractor shall specify the first Payment Claim Date for the Sub-Contract which shall be not more than 30 days after the Commencement Date and may also provide a list of subsequent Payment Claim Dates which shall be not more than 30 days apart [see Clause 11(a)]. The NN Sub-Contractor shall proceed with due diligence with the execution and completion of the Sub-Contract Works in compliance with the Main Contract Programme, as required by Clause 4(d). If the Sub-Contract provides that the NN Sub-Contractor may start work on site at a later date, the NN Sub-Contractor will start work on site as required by the Main Contract Programme. The Contractor shall ensure that the Sub-Contractor has sufficient information to enable it to commence the Sub-Contract Works and to proceed with them diligently.

#### **9(b) Suspension**

- (1) The Contractor may instruct the NN Sub-Contractor to suspend all or part of the Sub-Contract Works if the Contractor has been instructed to suspend work by the Employer / Employer's Representative or the Contractor has suspended the Works by reason of not being paid by the Employer. The NN Sub-Contractor shall comply with the instruction and, during the suspension, shall protect, store and secure the affected Sub-Contract Works Items against deterioration, loss and damage and maintain the Sub-Contract Insurances. The NN Sub-Contractor shall take all reasonable steps to mitigate any loss suffered as a consequence of the suspension.

- (2) Unless the suspension is because the Contractor has unjustifiably suspended work for non-payment by the Employer, the Contractor will have no liability to the NN Sub-Contractor for any loss or delay suffered by the NN Sub-Contractor by reason of any such suspension except to the extent that the Contractor actually recovers payment from the Employer in relation thereto. If payment is made by the Employer to the Contractor in relation to losses sustained by reason of such suspension in relation thereto, the NN Sub-Contractor will be entitled to such proportion thereof as is fair and reasonable in all the circumstances. If the suspension of the sub-contract works has been because the Contractor has suspended work unjustifiably this will be deemed to be a breach of the sub-contract by the Contractor.

**9(c) Notification of Delay**

If the NN Sub-Contractor becomes aware or should have become aware that the Sub-Contract Works are being or are likely to be delayed for any reason, it shall notify the Contractor of the delay and its cause as soon as practicable. The NN Sub-Contractor will promptly provide any further information in relation to the delay which either the Contractor or the Employer's Representative requests.

**9(d) Not used**

**10. CLAIMS AND ADJUSTMENTS**

**10(a) Notification and Procedure**

- (1) If the NN Sub-Contractor considers that it is entitled to an adjustment to the Sub-Contract Sum or that it has any other entitlement under or in relation to the Sub-Contract (including damages for breach of contract on the part of the Contractor), the NN Sub-Contractor shall, as soon as practicable and in any event within 12 working days after it became aware or should have become aware of such entitlement, give notice of this to the Contractor. The notice must prominently state that it is being given under this sub-clause 10(a)(1). Within a further 20 working days after giving the notice, the NN Sub-Contractor will give to the Contractor details of the following:-
- (i) all relevant facts about the claim
  - (ii) a detailed calculation and (so far as practicable) a proposal, based on that calculation, of any adjustment to be made to the Sub-Contract Sum and of the amount of any other entitlement claimed by the NN Sub-Contractor
  - (iii) if the total number of Site Working Days required for completion of the Sub-Contract works is increased by the delay, full details of the extent of the delay and the effect it is likely to have on the completion of the Sub-Contract works.
- (2) The NN Sub-Contractor shall provide any further information requested by the Contractor in relation to the event or circumstance.
- (3) If the NN Sub-Contractor does not give notice and details in accordance with and within the time provided in sub-clause 10(a)(1) notwithstanding anything else in the Sub-Contract the NN Sub-Contractor shall not be entitled to an increase to the Sub-Contract Sum and the Contractor shall be released from all liability to the NN Sub-Contractor in relation to the matter, except to the extent that the Contractor recovers additional payment from the Employer in respect of the Sub-Contract Works notwithstanding the failure of the NN Sub-Contractor to give such notice, in which case the NN Sub-Contractor will be entitled to corresponding payment valued in accordance with the Sub-Contract.

- (4) If the cause of the claim has a continuing effect, the NN Sub-Contractor shall update the above information at monthly intervals.
- (5) The NN Sub-Contractor shall keep detailed contemporary records to substantiate any aspect of an event or circumstance in relation to which it has, or is entitled to, give notice under this sub-clause 10(a) and its resulting costs. These shall include any records the Contractor directs the NN Sub-Contractor to keep. The NN Sub-Contractor shall provide the records to the Contractor if so directed.

If the Sub-Contractor gives notice in accordance with this sub-clause 10(a) but fails to give the details required within the time stipulated, the entitlement of the Contractor, if any, shall be reduced by the extent to which the Contractor has been prejudiced by the Sub-Contractor's failure to provide such details. After the period of 20 working days for the provision of such details has expired, the Contractor may at any time demand that those details are provided within 10 working days of the demand. If the details are not provided within that period, the Sub-Contractor shall not be entitled to an increase in the Contract Sum or extension of time and the Contractor shall be released from all liability to the Sub-Contractor in connection with the matter. Such a demand for details shall prominently stated that it is being given under this sub-clause 10(a)(6).

#### **10(b) Adjustments to the Sub-Contract Sum**

- (1) Adjustments to the Sub-Contract Sum for a Compensation Event (as defined in the Schedule Part 1K of the Main Contract and provided it is not a Sub-Contractor's Risk Event) shall only be for the value of any additional, substituted and omitted work required as a result of the Compensation Event under sub-clause 10(b)(2) and any delay cost under sub-clause 10(c).
- (2) Additional, substituted and omitted work arising from a Compensation Event shall be valued by the Contractor, following consultation with the Employer's Representative and the Sub-Contractor in an effort to reach agreement. If agreement is not reached the Contractor shall make a determination as follows:
  - i. If the Compensation Event requires additional, substituted or omitted work, similar to work for which there are rates in the Sub-Contractor's tender, to be executed under similar conditions, the determination shall use those rates.
  - ii. If the Compensation requires additional, substituted or omitted work that is not similar to work for which there are rates in the Sub-Contractor's tender, or is not to be executed under similar conditions, the determination shall be on the basis of the rates in the Sub-Contractor's tender when that is reasonable.
  - iii. If the adjustment cannot be determined under the above rules, the Contractor shall make a fair valuation. Any such valuation shall be based on rates for similar work in the locality, if available.
- (2) Adjustments for delay cost shall be in accordance with sub-clause 10 (c) below

#### **10(c) Delay Cost**

- (1) To the extent that the Sub-Contractor incurs delay because of a Compensation Event [and not otherwise], there shall be added to the Contract Sum an amount for delay cost, either (whichever it says in the Schedule, part 1K of the Main Contract)
  - a. For each Site Working Day for which the Sub-Contractor incurs delay because of the Compensation Event, the daily rate of delay costs stated in the Appendix, Part 2
  - b. The expenses unavoidably incurred by the Sub-Contractor as a result of the delay caused by the Compensation Event in respect of which that date has been extended under the Contract. The Sub-Contractor will in addition be entitled to 10% of the expenses to compensate it fully for all entitlements by way of profit, loss of profit and contribution to off-site overheads.

- (2) If the Appendix states more than one rate for delay costs, the rate for the period when the delay occurred or delayed part of the Sub-Contract Works shall be used. This shall be determined by the Contractor.

(i) Sub-Contractor as a result of the delay caused by the Compensation Event.

## 11. PAYMENT

### 11(a) Payment Claims

- (1) The Contractor is required under Clause 9(a) to notify the NN Sub-Contractor of the first Payment Claim Date. Subsequent Payment Claim Dates will be 30 calendar days or such shorter time as is entered in the Appendix Part 1H after the previous Payment Claim Date. Alternatively the Contractor, when notifying the first Payment Claim Date may provide to the NN Sub-Contractor a list of subsequent Payment Claim Dates which shall be not more than 30 days apart.
- (2) On or before each Payment Claim Date, the NN Sub-Contractor shall submit to the Contractor a Payment Claim<sup>2</sup> which will include a detailed breakdown of the sum it considers to be the value of the Sub-Contract Works completed up to the Payment Claim Date and indicating the amount it considers payable, which amount will be calculated as follows:-
- (i) the cumulative value of the Sub-Contract Works properly designed (to the extent that this is the NN Sub-Contractor's responsibility) and executed, valued in accordance with the rates and prices used in the calculation of the Sub-Contract Sum, plus
  - (ii) where the NN Sub-Contractor is required to carry out design of the Sub-Contract Works, the value of design completed to date, plus
  - (iii) if applicable [as provided for below in sub-clause 11(e)] the value of unfixed Sub-Contract Works Items, plus
  - (iv) amounts due by the Contractor in respect of Compensation Events under the Main Contract as provided for in clause 10 hereof, plus
  - (v) other sums claimed by the NN Sub-Contractor in accordance with clause 10 hereof, plus
  - (vi) Other adjustments in accordance with Clause 10 hereof, plus
  - (vii) If applicable, any sum payable in relation to price variation under clause 10(d) hereof, less
  - (viii) retention in accordance with this clause, less
  - (ix) the total amount of previous payments
- (3) The Payment Claim shall state the period, stage of work or activity to which it relates and the subject matter of the Payment Claim.

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<sup>2</sup> A Payment Claim submitted in accordance with this clause is deemed to be a payment claim notice pursuant to Section 4 of the Construction Contracts Act 2013

- (4) The NN Sub-Contractor's Payment Claims shall be accompanied by sufficient information in relation to progress of the Sub-Contract Works, together with any other supporting evidence required by the Employer's Representative (of which the Contractor will give reasonable notice to the NN Sub-Contractor), to enable the Contractor to meet the requirements of clause 11.1 ("Interim Payment") of the Main Contract.
  
- (5) If the NN Sub-Contractor fails to submit a Payment Claim as and at the time required, the Contractor may include in its Payment Claim its own estimate of the sum due in respect of the Sub-Contract Works but shall not be obliged to do so. In this event, any payment to the NN Sub-Contractor will be based on that estimate and will be subject to the NN Sub-Contractor providing a Payment Claim showing that at least this amount is due.

## **11(b) Deductions**

- (1) The Contractor may make equivalent pro-rata deductions from sums otherwise due to the NN Sub-Contractor as the Employer may make from sums due to the Contractor under clause 11.4 ("Full Payment") of the Main Contract, to the extent that the Contractor's default arises from a failure on the part of the NN Sub-Contractor to abide by the terms of this Sub-Contract. The Contractor shall notify the NN Sub-Contractor of the deduction not later than 21 days after the relevant claim date, giving particulars of how it arises and of its computation. It shall be taken into account in the next NN Sub-Contractor's Payment Claim or included in the Contractor's response to an Payment Claim in accordance with Clause 11(c)(1).
- (2) If the Employer's Representative in any certificate, issued in accordance with Clause 11.1.3 of the Main Contract, makes a reduction in the quantity of any item which is part of the Sub-Contract Works, the Contractor may make a corresponding reduction in the sum due to the NN Sub-Contractor, provided the reduction by the Employer's Representative was not caused by the Contractor's negligence or breach of contract. The Contractor shall notify the NN Sub-Contractor of any such deduction, not later than 21 days after the relevant Payment Claim Date, giving full particulars of how the reduction in the sum due has been calculated. It shall be taken into account in the next NN Sub-Contractor's Payment Claim or included in the Contractor's response to a Payment Claim in accordance with Clause 11(c)(1).
- (3) If the Employer's Representative in any certificate, issued in accordance with Clause 11.1.3 of the Main Contract, makes a deduction in the sum claimed by the Contractor for the Sub-Contract Works in respect of any Compensation Event, the Contractor may make a corresponding deduction in the sum due to the NN Sub-Contractor. The Contractor shall notify the NN Sub-Contractor of any such deduction, not later than 21 days after the relevant Payment Claim Date giving full particulars of how the deduction in the sum due has been calculated. It shall be taken into account in the next NN Sub-Contractor's Payment Claim or included in the Contractor's response to a Payment Claim in accordance with Clause 11(c)(1).
- (4) The Contractor may deduct from any sum otherwise due to the NN Sub-Contractor any sum to which the Contractor is entitled by reason of contra-charge in respect of this Sub-Contract or arising as a consequence of any breach by the NN Sub-Contractor of the terms of this Sub-Contract. The Contractor shall notify the NN Sub-Contractor of any deduction [other than deductions covered by sub-clauses 11(b)(1), (2) and (3) above] not later than 21 days after the relevant Payment Claim Date , giving the reasons for it. The Contractor shall reasonably take into account any representations by the NN Sub-Contractor in respect of any deductions from interim payments. Such deductions shall be taken into account in the next NN Sub-Contractor's Payment Claim or included in the Contractor's response to a Payment Claim in accordance with Clause 11(c)(1)
- (5) The Contractor will not be entitled to make any deduction or withhold payment under this clause unless the NN Sub-Contractor has first been notified in accordance with sub-clauses (1), (2), (3), and (4).

## **11(c) Interim Payments**

- (1) The Contractor shall make each interim payment of the sum due to the NN Sub-Contractor not later than 30 days after Payment Claim Date. If the sum to be paid by the Contractor to the NN Sub-Contractor is less than shown on the NN Sub-Contractor's Payment Claim the Contractor, shall not later than 15 working days after the Payment Claim Date, deliver a written response to the NN Sub-Contractor stating the amount the Contractor proposes to pay and providing a statement showing how the sum to be paid has been computed, giving reasons for the difference between the sum to be paid and the sum claimed in the Payment Claim. Where a deduction is made because of a claim

for loss or damage arising from an alleged breach of contract or other obligation of the NN Sub-Contractor (under the sub-contract or otherwise), or any other claim that the Contractor alleges against the NN Sub-Contractor, the response shall also specify-

- (a) when the loss was incurred or the damage occurred, or how the other claim arose
- (b) the particulars of the loss, damage or claim, and
- (c) the portion of the difference that is attributable to each such particular.

- (2) If the Contractor does not issue a response to a NN Sub-Contractor's Payment Claim in accordance with Clause 11(c)(1) the Contractor shall pay to the NN Sub-Contractor the full amount claimed in the NN Sub-Contractor's Payment Claim without any deduction other than Retention (if not already allowed for in the Payment Claim).
- (3) If the Contractor issues a response to a NN Sub-Contractor's Payment Claim and the amount due is not agreed by the date payment is due the Contractor shall pay, on that date, the sum stated as due in the Contractor's response.
- (4) In the event that the sum properly deductible by the Contractor exceeds the sum which would otherwise be payable to the NN Sub-Contractor, there shall be a debt due from the NN Sub-Contractor to the Contractor which shall be payable by the NN Sub-Contractor within 7 working days of either the date when payment would otherwise have been due to the NN Sub-Contractor or of the notification by the Contractor of the debt, whichever is the later.
- (5) If, due to default by the Contractor, payment to the NN Sub-Contractor is delayed beyond the time limit in sub-clause 11 (c) (1) above, the NN Sub-Contractor will be entitled to be paid interest for the period of the delay at the rate applicable under S.I. No. 580 of 2012 European Communities (Late Payment in Commercial Transactions) Regulations 2012 (amended by S.I. No. 74 of 2013) or any subsequent superseding Statutory Instrument(s).

**11(d) Enforcement**

- (1) Where any amount due in accordance with Clause 11(c) is not paid in full by the day on which the amount is due, the NN Sub-Contractor may suspend work under the sub-contract by giving notice in writing under sub-clause (2) below.
- (2) The NN Sub-Contractor shall give written notice that it intends to suspend work for non-payment
  - (a) not earlier than the day after the day on which the amount concerned is due,
  - and
  - (b) at least 7 days before the proposed suspension is to begin.
- (3) Work may not be suspended under this clause
  - (a) after payment by the Contractor of the amount due, or
  - (b) after a Notice of Adjudication or a Notice to Refer relating to the payment has been served by either party in accordance with Clause 13.
- (4) If the NN Sub-Contractor justifiably and validly suspends work under this Clause it shall be deemed to have been a consequence of a breach of contract by the Contractor.
- (5) If another Tier 1 sub-contractor suspends work for non-payment and this causes delay to the NN Sub-Contractor's progress it shall be deemed to have been caused by the Main Contractor.

#### **11(e) Payment for Unfixed Works Items**

The NN Sub-Contractor will be entitled to seek payment for unfixed Sub-Contract Work Items if payment for them may be claimed under the Main Contract. Payment will be subject to full compliance by the NN Sub-Contractor with the provisions of clause 11.2 (“Unfixed Works Items”) of the Main Contract and to the title vesting in the Employer to the NN Sub-Contractor’s Unfixed Work Items. The NN Sub-Contractor’s entitlement to payment will be dependent upon the Employer’s Representative including for such payment in a certificate for payment issued under the Main Contract.

#### **11(f) Retention**

- (1) Retention will be deducted from all interim sums due to the NN Sub-contractor at the rate stated in the Schedule to the Main Contract (Part 1L). 20 working days after the issue by the Employer’s Representative of the Certificate of Substantial Completion, half the sum so deducted will be payable to the NN Sub-Contractor and the remaining half (the second moiety) will be payable 20 working days after the issue by the Employer’s Representative of the Defects Certificate. If, within 10 working days of the issue of the Certificate of Substantial Completion of the Works (or another date agreed between the Contractor and the NN Sub-Contractor) the NN Sub-Contractor provides to the Contractor a retention bond in or equivalent to the form incorporated in the Main Contract Works Requirements or, if there is none, a form approved by the Contractor (which approval is not to be unreasonably withheld) for the amount of the second moiety of retention and executed by a surety approved by the Contractor (approval not to be unreasonably withheld), the NN Sub-Contractor shall be entitled to be paid the second moiety.
- (2) Should the Sub-Contractor so request, the Main Contractor shall ask that the Employer’s Representative issue a Certificate of Substantial Completion for a Section of the Works. If by reason of the Employer’s Representative issuing a Certificate of Substantial Completion for a Section of the Works, the Contractor becomes entitled to the release of the retention relating to the Sub-Contract Works earlier than would otherwise be the case, the Contractor shall pay to the NN Sub-Contractor the sum due by way of released retention in respect of the Sub-Contract within 20 working days of the date of the said Certificate of Substantial Completion.

#### **11(g) Final Payment Claim**

The NN Sub-Contractor shall submit to the Contractor its Final Payment Claim of all sums due to the NN Sub-Contractor under the Sub-Contract, computed in the manner prescribed in sub-clause 11(a)(2) hereof, after the NN Sub-Contractor has completed all the Sub-Contract Works and, in any event, not later than 30 days after the date of the Certificate of Substantial Completion of the Works issued by the Employer’s Representative (which date is to be promptly advised to the NN Sub-Contractor by the Contractor). The Payment Claim Date for the Final Payment Claim shall be either 30 days after the date of the Certificate of Substantial Completion or the date of submission of the Final Payment Claim if earlier. If the NN Sub-Contractor fails to provide its Final Payment Claim in accordance with this clause, the Contractor may but is not obliged to make its own estimate of the final value of the Sub-Contract Works and the final payment due to the NN Sub-Contractor will be based on that estimate irrespective of whether the NN Sub-Contractor considers that estimate was too low. In the event that the NN Sub-Contractor has failed to provide a Final Payment Claim in accordance with this clause and the Contractor does not make an estimate of the final value of the sub-contract, the Contractor shall be released from liability to pay for items not included in previous Payment Claims.

#### **11(h) Payment following Final Payment Claim**

Within 30 days of the applicable Payment Claim Date the Contractor will pay to the NN Sub-Contractor the amount due in respect of the Final Payment Claim. The provisions relating to Interim Payments in Clause 11(b) in respect of deductions and Clause 11(c) in respect of payment also apply to the payment following the Final Payment Claim.

**11(i) Additional Work instructed after Substantial Completion**

- (1) If, after the date of Substantial Completion has been certified, the Contractor instructs the NN Sub-Contractor to carry out additional work, either as a consequence of a Compensation Event under the Main Contract or otherwise, in order to obtain payment for it the NN Sub-Contractor will submit a supplemental account not later than one month after the end of the Defects Period (defined in the Schedule Part 11 of the Main Contract). Payment for this additional work will be included in the final payment to the NN Sub-Contractor or, in the event that no other payment is due to the NN Sub-Contractor, payment for the additional work will be not later than four months after the date of the Defects Certificate issued by the Employer's Representative.
- (2) The Contractor shall have no liability to the NN Sub-Contractor under or in relation to the Sub-Contract for any matter not detailed in the NN Sub-Contractor's Final Payment Claim except in respect of additional work arising from an instruction from the Contractor issued after Substantial Completion of the Works was certified.

**11(j) Final Payment**

The Employer's Representative is required, by the Main Contract, to issue the Defects Certificate within 20 working days of the end of the Defects Period (which may have been extended in accordance with clause 8.7 ("Defects Period") of the Main Contract). The Employer's Representative is required, by the Main Contract, to issue the final payment certificate within three months of the issue of the Defects Certificate. Within 20 working days of the issue by the Employer's Representative of the final payment certificate the Contractor shall pay the NN Sub-Contractor its final payment which shall be the sum due under this Sub-Contract and will include the final payment of retention (if not previously paid), any amount due for additional works instructed after Substantial Completion, any amounts which were withheld from the penultimate payment and are now due and deduction of any sums due from the NN Sub-Contractor to the Contractor. The Final Payment may include other amounts that, according to the sub-contract, are to be paid after Substantial Completion of the Works [such as payments for testing after Substantial Completion]. The Contractor shall provide the NN Sub-Contractor with a statement with the final payment showing how the final payment sum has been computed.

**11(k) Taxes**

The provisions in relation to Valued Added Tax and Withholding Tax in clauses 11.7 ("Value Added Tax") and 11.8 ("Withholding Tax") of the Main Contract shall apply mutatis mutandis to the Sub-Contract.

**11(l) Monies held in trust**

The sums paid by the Employer to the Contractor in accordance with the provisions of the Main Contract insofar as they are payable to the NN Sub-Contractor under this Sub-Contract are held in trust by the Contractor for the NN Sub-Contractor.

**12. TERMINATION**

## **12(a) Termination on NN Sub-Contractor Default**

The Contractor may, without limiting any other rights or remedies, terminate the Sub-Contract if any of the following occurs. In the case of 12(a)(i) to (viii) inclusive, where the failure can be rectified, the termination notice may only be issued where the Sub-Contractor has failed to put the matter right within a period of 7 days of receipt of a direction from the Contractor to do so. The Contractor may terminate immediately in the case of 12(a)(ix) or 12(a)(x):-

- (i) the NN Sub-Contractor in breach of contract fails to comply with its obligations under the Sub-Contract;
- (ii) the NN Sub-Contractor abandons or, except where required or permitted by the Sub-Contract, suspends the execution of the Sub-Contract Works;
- (iii) the NN Sub-Contractor fails to proceed regularly and diligently with the execution of the Sub-Contract Works;
- (iv) the NN Sub-Contractor fails to provide or maintain the required insurances or performance bond;
- (v) the NN Sub-Contractor or NN Sub-Contractor's Personnel has committed or caused the Employer or the Contractor to commit a serious breach of Legal Requirements;
- (vi) the NN Sub-Contractor or NN Sub-Contractor's Personnel have committed a breach of the Safety, Health and Welfare at Work Act 2005 or any regulations or code of practice made under it;
- (vii) the NN Sub-Contractor or NN Sub-Contractor's Personnel has not complied with the requirements of clause 5(c) hereof either (a) within 10 days after notice from the Contractor requiring a failure to be put right or (b) persistently;
- (viii) the NN Sub-Contractor has sub-contracted all or any part of the Sub-Contract Works without the consent in writing of the Contractor;
- (ix) if any of the insolvency events referred to in clause 12.1 ("Termination on Contractor Default") of the Main Contract occur in relation to the NN Sub-Contractor. In this case, the Contractor will have the same rights and entitlements *mutatis mutandis* in relation to the NN Sub-Contractor as the Employer has in relation to the Contractor under clauses 12.1.2 and 12.1.3 of the Main Contract.
- (x) The Sub-Contractor, if an individual, dies or becomes incapable of performing the Sub-Contract.

## **12(b) Consequences of Termination for NN Sub-Contractor Default**

If the NN Sub-Contractor's obligation to complete the Sub-Contract Works is terminated under clause 12(a) hereof, the provisions of clause 12.2 ("Consequences of Default Termination") of the Main Contract will apply, *mutatis mutandis*, as between the Contractor and the NN Sub-Contractor as if all references to the Contractor therein were to the NN Sub-Contractor and all references to the Employer, or the Employer's Representative were to the Contractor. For the avoidance of doubt it is confirmed that references to Contractor's Things, Contractor's Documents, Works Items and Works shall be read as referring to NN Sub-Contractor's Things, NN Sub-Contractor's Documents, Sub-Contract Works Items and Sub-Contract Works respectively and that like terms applicable to the Main Contract will be changed, where the context admits or requires, to meet the purpose and intent of this Sub-Contract.

**12(c) Termination of the Contractor's Employment under clause 12.1 ("Termination on Contractor Default") of the Main Contract**

- (1) If the Contractor's employment is terminated by the Employer under clause 12.1 ("Termination on Contractor Default") of the Main Contract, the NN Sub-Contractor's employment under this Sub-Contract will automatically terminate.
- (2) If the validity of such termination is not disputed by the Contractor under the disputes resolution provisions of the Main Contract, or if it is disputed but the right of termination is upheld by a binding decision of a conciliator or arbitrator or court, the Contractor will indemnify the NN Sub-Contractor in relation to all loss and damage incurred by it by reason of the termination.
- (3) If the validity of the termination is successfully disputed by the Contractor with the effect that the Employer is held by a binding decision of a conciliator, arbitrator or court not to have been entitled to terminate, the Contractor shall take whatever steps are reasonable to recover any losses sustained by the NN Sub-Contractor on foot of the termination and will pay to the NN Sub-Contractor the proportion of any sum recovered from the Employer in relation to the termination as is referable to the NN Sub-Contractor's losses or, in the event of a settlement or outcome to the dispute does not clearly define the sum payable in relation to the NN Sub-Contractor's losses, such proportion of the sum recovered by the Contractor as is just and reasonable in all the circumstances. In assessing what is just and reasonable, regard will be had to any reduction in the amount which might have been otherwise recoverable by the Contractor against the Employer as a result of clause 12.9 ("Reference to Conciliation") of the Main Contract. The Contractor shall provide such information as is reasonably required by the NN Sub-Contractor to demonstrate the Contractor's compliance with this clause.

**12(d) Termination by the NN Sub-Contractor**

The NN Sub-Contractor shall be entitled to terminate the NN Sub-Contractor's obligation to complete the Sub-Contract Works by notice to the Contractor in writing if any of the following occur:-

- (i) the NN Sub-Contractor has suspended the execution of the Sub-Contract Works for 15 working days in accordance with clause 11(d) hereof and the Contractor has still not paid.
- (ii) work has been suspended by direction of the Employer's Representative under sub-clause 9.2 ("Suspension") of the Main Contract and a right to terminate has arisen in favour of the Contractor under that sub-clause
- (iii) the execution of the Sub-Contract Works or a substantial part of the Sub-Contract Works has been suspended for a period of at least three months as a consequence of loss or damage that is at the Employer's risk under clause 3.1 ("Employer's Risks of Loss and Damage to the Works") of the Main Contract
- (iv) an event or circumstances outside the control of the parties makes it physically impossible or contrary to Law for the NN Sub-Contractor to fulfil its obligations under the Sub-Contract for a period of at least six months.
- (v) If the Contractor becomes insolvent as defined in clause 12.1.1 (9) of the Main Contract and the Employer has not terminated the Main Contract under clause 12.1 ("Termination on Contractor Default") thereof.

**12(e) Consequences of Termination by NN Sub-Contractor or at Employer's Election**

(1) If the Employer terminates the Main Contract under clause 12.5 (“Termination at Employer’s Election”) of the Main Contract that termination will automatically terminate the employment of the NN Sub-Contractor. In that event, or in the event of the NN Sub-Contractor terminating the Sub-Contract under clause 12(d)(i), (ii), (iii) or (iv) hereof, the following shall apply:-

- (i) The NN Sub-Contractor shall leave the site in an orderly manner and remove any NN Sub-Contractor’s Things
- (ii) The NN Sub-Contractor shall give the Contractor all Works Requirements and all NN Sub-Contractor’s Documents
- (iii) The NN Sub-Contractor shall as soon as practicable provide to the Contractor a statement of the total of the following (the **termination sum**):-
  - the unpaid value of the Sub-Contract Works completed to the date of termination and valued in accordance with clause 11(a) hereof
  - the NN Sub-Contractor’s reasonable costs of removal from the Site as a consequence of the termination
  - all other amounts due to the NN Sub-Contractor under the Sub-Contract (but not damages)

The Contractor will take all reasonable measures to recover for the NN Sub-Contractor from the Employer payment in respect of the Sub-Contract Works and shall pay to the NN Sub-Contractor a fair and reasonable proportion of any sum recovered by the Contractor from the Employer in relation to the termination. If the termination sum indicates that money is due by the NN Sub-Contractor to the Contractor, the same will be paid forthwith by the NN Sub-Contractor to the Contractor. The Contractor shall provide such information as is reasonably required by the NN Sub-Contractor to demonstrate the Contractor’s compliance with this sub-clause.

(2) Termination by the NN Sub-Contractor under clause 12(d)(i) or (v) constitutes a termination by reason of the Contractor’s default or breach of contract and the NN Sub-Contractor will be entitled to be compensated in accordance with 10(c)(1) hereof.

## **12(f) Survival**

Termination of the NN Sub-Contractor’s obligation to complete the Sub-Contract Works shall not affect the NN Sub-Contractor’s obligations under the Sub-Contract, (other than the obligation to complete the Sub-Contract Works, after termination) and in particular the obligations of the Contractor which survive the termination of the Main Contract under clause 12.7 (“Survival”) thereof shall continue to apply to the NN Sub-Contractor, in so far as they relate to the Sub-Contract, after termination.

## **13. DISPUTES**

### **13(a) Method of Resolution**

- (1) The parties agree to use their best endeavours to resolve any disputes that may arise between them in a speedy and proportionate manner
- (2) Both parties have a statutory right under the Construction Contracts Act 2013 to refer a dispute relating to payment (a Payment Dispute) to adjudication at any time.

### **13(b) Adjudication of Payment Disputes**

- (1) Either party may commence the adjudication of a Payment Dispute by serving on the other party at any time a notice of intention to refer the payment dispute to adjudication (a "Notice of Adjudication"). The Notice of Adjudication may be in the form of Annex 1 of the Code of Practice.
- (2) If either party serves a Notice of Adjudication, the parties should then attempt to appoint an adjudicator of their choice who is competent to adjudicate the payment dispute in accordance with the Code of Practice published by the Minister for Jobs, Enterprise and Innovation.
- (3) If the parties fail to appoint an adjudicator of their choice within 5 days of the serving of the Notice of Adjudication, the referring party may submit a written request to the Chair of the panel appointed by the Minister to appoint an adjudicator. This request shall be copied to the other party. The request shall include
  - (a) a copy of the Notice of Adjudication
  - (b) a statement of when the Notice of Adjudication was served on the Responding Party and how this was done
  - (c) any information which it is considered will assist the chair in appointing an adjudicator with the appropriate expertise to deal with a payment dispute.
- (4) The adjudication shall be conducted in accordance with the Code of Practice published by the Minister. Within 7 days of the adjudicator's appointment the Referring Party shall refer the Payment Dispute to the Adjudicator. The referral may be in the form of Annex 2 of the Code of Practice. At the same time the referring party shall send a copy of the Referral and all accompanying documents to the other party. The date on which the referral is made is the start of the adjudication. The Adjudicator shall reach his decision within 28 days which he may extend to 42 days with the consent of the referring party or within such longer period as may be agreed by the parties.
- (5) In the event that a Payment Dispute is referred to adjudication and the adjudicator's decision does not finally resolve the Payment Dispute either party is entitled to refer the payment dispute to arbitration in accordance with the sub-clause (f) below. The adjudicator's decision shall be binding until overturned by an arbitrator's award.

### **13(c) Notice to Refer**

- (1) If a dispute arises between the parties in connection with or arising out of the Sub-Contract, either party may, by notice to the other, refer the dispute for arbitration by serving on the other a Notice to Refer. The Notice to Refer shall state the issues in dispute. The service of the Notice to Refer will be deemed to be the commencement of arbitration proceedings. Either party may within a period of 14 days of the Notice to Refer give notice to the other of further disputes and, if such notice is given, those further disputes will be deemed to be included in the reference to arbitration.
- (2) If the Notice to Refer is served by the Sub-Contractor, and the Contractor is of the view that the issues in dispute relate in whole or in part to a dispute between the Contractor and the Employer, provided the Contractor so indicates by notice to the Sub-Contractor in writing within 10 days of service of the Notice to Refer, the dispute, as between the Contractor and the Sub-Contractor in respect of those issues will be dealt with under sub-clause 13(e) hereof.
- (3) Except to the extent that the disputes which are the subject matter of the Notice to Refer have been the subject of notice served by the Contractor under the preceding sub-clause 13(c)(2) hereof, no step will be taken in the arbitration after the Notice to Refer has been served until the disputes have first been referred to conciliation.

### **13(d) Conciliation**

- (1) Except to the extent that the disputes which are the subject matter of the Notice to Refer have been the subject of notice served by the Contractor under the preceding sub-clause 13(c)(2) hereof, no step will be taken in the arbitration after the Notice to Refer has been served until the disputes have first been referred to conciliation. Either party may activate the conciliation process by seeking the appointment of a conciliator at any time after the expiry of 10 days from service of the Notice to Refer. During that period of 10 days either party may give notice to the other of further disputes and, if such notice is given, those further disputes will be deemed to be included in the reference to arbitration.
- (2) The parties shall try to agree the appointment of a conciliator. If the parties are unable to agree a conciliator within 10 working days of the Notice to Refer, either party may apply to the President for the time being of the Construction Industry Federation who shall appoint a Conciliator. If there is a fee for making the appointment, the parties shall share it equally. Once a Conciliator has been appointed to a dispute between the parties, unless the parties agree otherwise, the same Conciliator shall deal with all other disputes between the parties, provided he/she is agreeable to do so.
- (3) The Conciliation shall be conducted in accordance with the Conciliation Procedure 2013 published by Engineers Ireland except for Section 1.3 (the appointment of the Conciliator) which is not applicable.
- (4) The provisions of sub-clauses 13.2.2 and 13.2.3 of clause 13.2 ("Adjudication and Conciliation"), of the Main Contract shall apply to the conciliation between the Contractor and NN Sub-Contractor (changing the word Employer to Contractor, the word Contractor to NN Sub-Contractor and the word Contract to Sub-Contract)..
- (5) If notice of dissatisfaction has been given as provided for in clause 13.2.2 (of the Main Contract), either party may proceed to have the issues the subject matter of the Notice to Refer resolved through arbitration.
- (6) If a party fails to comply with a conciliator's recommendation which is binding, the other party may take such court proceedings as are appropriate to force compliance with the conciliator's recommendation without availing further of the conciliation or arbitration processes.

### **13(e) Joint Disputes**

Any disputes the subject matter of the Contractor's notice under sub-clause 13(c)(2), hereof will be dealt with jointly with the dispute under the Main Contract on the following basis:-

- (i) the Contractor shall pursue the issue or issues in dispute under the Main Contract diligently
- (ii) The NN Sub-Contractor shall furnish the Contractor with all necessary information and documents in its possession in a timely manner and shall participate in and provide all necessary assistance for the preparation of submissions and pleadings and will indemnify the Contractor in respect of any loss or expense incurred as a result of the NN Sub-Contractor's failure to do so
- (iii) the Contractor shall consult with the NN Sub-Contractor in regard to all pleadings and procedural matters in pursuing the dispute
- (iv) the Contractor shall ensure that the views of the NN Sub-Contractor in relation to the disputes, in so far as they relate to the Sub-Contract, are transmitted to any conciliator or arbitrator appointed in relation to the dispute and will, as far as practicable, safeguard the interests of the NN Sub-Contractor
- (v) the NN Sub-Contractor shall indemnify the Contractor in relation to any costs incurred in any such conciliation or arbitration to the extent that this is fair and reasonable having regard to the respective financial interests of the parties in relation to the issues in dispute and any provisions in the main contract or form of tender concerning the liability for the Employer's costs and recovery of the Contractor's costs and all other relevant circumstances. The NN Sub-Contractor will make such payments on account as the conciliation or arbitration proceeds as are reasonably sought by the Contractor
- (vi) the Contractor and the NN Sub-Contractor will be bound by the outcome of any such binding conciliation or arbitration between the Employer and Contractor in so far as it relates to disputes connected with the Sub-Contract

### **13(f) Arbitration**

- (1) Except in the case of a dispute to which sub-clause 13(e) hereof applies, the parties shall jointly appoint the arbitrator and, if the parties are unable to agree an arbitrator to be appointed under this clause, the arbitrator will be appointed by the President for the time being of the Construction Industry Federation. The appointment of a conciliator or arbitrator when Clause 13(e) applies will be made in accordance with the Main Contract.
- (2) Any arbitration [other than under clause 13(e) hereof] between the Contractor and the NN Sub-Contractor will be governed by the Arbitration Procedure 2011 published by Engineers Ireland and will be subject to the Arbitration Act 2010.

# APPENDIX

## PART 1

to be completed by Employer before tenders are invited

### A MAIN CONTRACT

The Main Contract Conditions are *Conditions of Contract for Private Sector Building and Engineering Works Designed by the Employer*

### B SUB-CONTRACT DOCUMENTS

Additional Documents relating to the Sub-Contract Works including design responsibility  
*Article 5 of Agreement*

NOTE: If there are any Novated Design Documents which pertain to the Sub-Contract Works, they should be listed here.

1. ....
2. ....
3. ....
4. ....
5. ....

### C INSURANCES

#### Public Liability and Employer's Liability Insurance

*Clauses 3 (d) (2) and 3 (d) (3)*

Minimum indemnity limits for public liability and employers' liability insurance:

- public liability insurance: €..... for any one event, but this limit may be on an annual aggregate basis for products liability, collapse, vibration, subsidence, removal and weakening of supports and sudden and accidental pollution. (If not stated, €6,500,000).
- Employer's liability insurance: €..... for any one event. (If not stated, €13,000,000).

Maximum excess for Insurance:

- public liability: €..... in respect of property damage only (If not stated, €10,000). There shall be no excess for death, injury or illness.
- employer's liability: no excess.

Permitted exclusions from the Insurances:

The NN Sub-Contractor's insurance policies may include only the exclusions permitted Under the Main Contract as detailed in the Schedule Part 1 D thereof.

**Professional Indemnity Insurance**

*Clause 3 (e)*

Professional indemnity insurance is/is not (*delete one*) required. (If neither deleted, professional indemnity insurance is not required). If required, the professional indemnity insurance is to be kept in place for ..... years after Substantial Completion of the Works is certified by the Employer’s Representative (If not stated, 6 years). If Professional Indemnity Insurance is required, the minimum indemnity limit for professional indemnity insurance shall be €..... for each and every claim or series of claims arising from the same originating cause/annual aggregate limit (*delete one. If none deleted, read as “annual aggregate limit”*). The maximum excess shall be €..... (If none stated, €50,000).

**D THE SITE.**

*Clause 7 (c)*

**Method of Measurement:**

The Method of Measurement defining the general attendances is

.....<sup>3</sup>

(if left blank, the Method of Measurement (if any) defined in the Schedule part 1 B of the Main Contract will apply or (if none so defined) the Method of Measurement most commonly used in Ireland for the type of work being constructed in this case.

**Special Attendances to be provided by the Contractor:-**

- 1. ....
- 2. ....
- 3. ....
- 4. ....
- 5. ....

**E PERFORMANCE BOND**

*Clause 1(i)*

A Performance Bond is / is not (DELETE ONE) required. If neither is deleted a Performance Bond is not required.

<sup>3</sup> This should be the same as the Method of Measurement (if any) specified in the Schedule Part 1 B of the Main Contract

Initial value of the Performance Bond to be ..... % of the Initial Sub-Contract Sum. [If left blank 10%]

**F COLLATERAL WARRANTY**

*Clause 5(e)*

A Collateral Warranty is / is not (DELETE ONE) required from the Sub-Contractor. If neither is deleted a Collateral Warranty is not required

**G TIME AND COMPLETION**

**Commencement Date**

*Clause 9(a)*

Period following receipt of a written instruction from the Contractor within which the Sub-Contractor must commence work on site ..... working days (if left blank the period is 10 working days)

**K FREQUENCY OF PAYMENT CLAIM DATES**

*Clause 11(a)*

Payment Claim Dates (if more frequent than every 30 days) shall be every ..... days or on the dates (not more than 30 days apart) to be advised by the Contractor when notifying the first Payment Claim Date.

**VERY IMPORTANT NOTE**

The Employer must also provide to tendering NN Sub-Contractors a copy of the completed Schedule Part 1 to the Main Contract.

## APPENDIX PART 2

to be completed by NN Sub-Contractor and submitted with tender

### ADJUSTMENTS TO THE NN SUB-CONTRACT SUM INCLUDING DELAY COSTS

Clause 10 (b) (5)

The NN Sub-Contractor's tendered hourly rates for labour and related costs [including PRSI, benefits, tool money, travelling time and country money]:

- Craftspersons €.....per hour
- General Operatives €.....per hour
- Apprentices €.....per hour

(If left blank, or stated as a negative value, read as zero)

The NN Sub-Contractor's tendered percentage addition for costs of materials.....%

The NN Sub-Contractor's tendered percentage addition/deduction for costs of plant..... %

All of the above shall include on-costs, overheads and profit, and exclude VAT. (If either of the above is left blank, read as zero.)

The NN Sub-Contractor's tendered rate of delay costs is €..... excluding VAT per Site Working Day. (If left blank, or stated as a negative value, read as zero.)

If part 1K of the Schedule to the Main Contract states that separate rates are to be tendered for separate periods or parts of the Works, the NN Sub-Contractor's tendered rates are as follows:

Period or part of the Works (part 1K of Main Contract)      Tendered Rate

- ..... €.....per site working day
- ..... €..... per site working day
- ..... €..... per site working day

## APPENDIX PART 3

### PAYMENT GUARANTEE

**WHEREAS** [ ] hereinafter called the “NN Sub-Contractor” has entered or will enter into a sub-contract with [ ] hereinafter called the Contractor for the completion of certain sub-contract works relating to [*Brief Description of Works*] **AND WHEREAS** it is a condition of the said sub-contract that the Contractor provides a guarantee to the value of 25% of the initial sub-contract sum.

At the request of the Contractor we, [ ] hereby guarantee to pay to the NN Sub-Contractor any sum due under the said sub-contract to the NN Sub-Contractor by the Contractor in the event of the Contractor failing to make payment thereof within a period of 30 working days after the issue by the Employer’s Representative of a certificate under Clause 11.1.3 of the Main Contract or 50 working days after the due date for submission of the Contractor’s Interim Statement under Clause 11.1.1 of the Main Contract (whichever is the sooner) and no claim shall be made under this guarantee until after fifteen have elapsed since the NN Sub-Contractor has served on the Contractor notice in writing of its intention to seek payment under this guarantee of the sum due. For the purpose of this Guarantee a sum will be deemed to be due if it is payable under the terms of the Sub-Contract over and above any valid deductions the Contractor is entitled to make. If the allegedly due debt is disputed by the Contractor the issue must be resolved through the disputes resolution procedure under Clause 13 of the NN Sub-Contract before any payment will be made under this Guarantee.

The Guarantor agrees that no event or circumstance whatsoever, including, without limitation, any variation or alteration to the terms of the sub-contract or any allowance of time thereunder, or any waiver, forbearance or forgiveness by the NN Sub-Contractor of or in respect of a payment by the Contractor shall in any way release the Guarantor from or reduce or effect its liability hereunder.

This Guarantee is a continuing security and shall secure the ultimate balance from time to time owing to the NN Sub-Contractor by the Contractor notwithstanding the bankruptcy, liquidation, amalgamation, reconstruction or other incapacity or any change in the Constitution or name of the Contractor **PROVIDED HOWEVER** this Guarantee will terminate three calendar months after the Final Payment Certificate has been issued by the Employer’s Representative under the Main Contract except in relation to claims made prior to that date.





## Appendix 5

CIF SC01

### UNDERTAKING BY NN SUB-CONTRACTOR ANCILLARY FORM OF CERTIFICATE OF COMPLIANCE

Building Control Authority:

Unique Identifier: \_\_\_\_\_  
(for official use only)

1. This certificate relates to the following building or works:

\_\_\_\_\_  
\_\_\_\_\_

2. I confirm that I have been commissioned by the Contractor to undertake the works described above and that I am competent to undertake the works concerned. I further undertake to ensure that any persons employed or engaged by me to undertake any of the works involved will be competent to undertake such works.
3. I undertake to construct the building or works in accordance with the plans, calculations, specifications, ancillary certificates and particulars listed in the schedule to the Commencement Notice to which this undertaking refers and certified under the Form of Certificate of Compliance (Design) and certified and submitted to the Building Control Authority as subsequently issued to me, and such other documents relevant to compliance with the requirements of the Second Schedule to the Building Regulations as shall be retained by me as outlined in the Code of Practice for Inspecting and Certifying Buildings and Works.
4. Having regard to the Code of Practice for Inspecting and Certifying Buildings and Works, or equivalent, I further undertake to cooperate with the inspections set out in the inspection plan prepared by the Assigned Certifier and to take all reasonable steps so as to ensure that I shall certify that the building or works to which this undertaking refers is in compliance with the requirements of the Second Schedule to the Building Regulations insofar as they apply to the building or works concerned.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(to be signed by a Principal or Director of the NN Sub-Contractor only)

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Construction Industry Register Ireland registration number (where applicable): \_\_\_\_\_