

AGREEMENT

AND

CONDITIONS OF SUB-CONTRACT (NN)

**FOR USE IN CONJUNCTION WITH THE
FORMS OF MAIN CONTRACT FOR PUBLIC WORKS ISSUED BY THE OFFICE
OF GOVERNMENT PROCUREMENT, DEPARTMENT OF PUBLIC EXPENDITURE
AND REFORM
WHERE THE SUB-CONTRACTOR IS A SPECIALIST WHO HAS BEEN NAMED
BY THE EMPLOYER
("NN SUB-CONTRACTOR")**

This form of sub-contract is issued by the
Construction Industry Federation,
Construction House, Canal Road, Dublin 6

FOURTH EDITION

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CONTENTS

AGREEMENT	3
CONDITIONS	5
1. THE SUB-CONTRACT	5
(a) Definitions	
(b) Interpretation	
(c) Assignment	
(d) Period of Liability	
(e) Execution of the Sub-Contract Works	
(f) NN Sub-Contractor's Obligations	
(g) Damages for breach of the sub-contract	
(h) Rights and Benefits under the Main Contract	
(i) Performance Bond	
(j) Works Requirements	
2. THE LAW	8
(a) Law Governing the Contract	
(b) Compliance with Legal Requirements	
(c) Consents	
(d) Safety, Health and Welfare Statutory Requirements	
(e) Building Regulations	
3. LOSS, DAMAGE AND INJURY	9
(a) NN Sub-Contractor's Indemnities	
(b) Obligation to Repair	
(c) Insurance of the Works and NN Sub-Contractor's Things	
(d) Public Liability and Employer's Liability Insurance	
(e) Professional Indemnity Insurance	
(f) Evidence of Insurance Cover	
(g) Owner Controlled Insurance Programme	
4. MANAGEMENT	12
(a) Co-Operation	
(b) Instructions	
(c) Works Proposals and Required Contractor Submissions	
(d) Programme and Progress Reports	
(e) Notice and Time for Contractors Obligations	
(f) Documents	
(g) Meetings	
(h) Proposed Instructions	
(i) NN Sub-Contractor's Things Not to be Removed	
5. NN SUB-CONTRACTOR'S PERSONNEL	15
(a) Liability	
(b) Qualifications and Competence	
(c) Pay and Conditions of Employment of NN Sub-Contractor's Personnel	
(d) Sub-Sub-Contractors	
(e) Collateral Warranties	
(f) Removal of Work Persons	
(g) Weekly Labour Records	
6. PROPERTY	16
(a) Ownership of Work Items and Infringement of Property Rights	
(b) Works Requirements	
(c) Property and Rights in NN Sub-Contractor's Documents	

7. THE SITE	17
(a) Lands Made Available for the Works	
(b) Scaffolding	
(c) Attendances	
(d) Security and Safety of the Site and Nuisance	
(e) Access and Traffic Control	
(f) Setting Out the Works	
(g) Archaeological Objects and Human Remains	
(h) Condition of Site on Completion	
(i) Working Times	
8. QUALITY, TESTING AND DEFECTS	18
(a) Standards of Workmanship and Works Items	
(b) Quality Assurance	
(c) Inspection and Tests	
(d) Defects	
(e) Defects Period and Defects Certificate	
9. TIME AND COMPLETION	20
(a) Commencement Date	
(b) Suspension	
(c) Notification of Delay	
(d) Programme Contingency	
10. CLAIMS AND ADJUSTMENTS	22
(a) Notification and Procedure	
(b) Adjustments to the Sub-Contract Sum	
(c) Delay Cost	
(d) Price Variation	
11. PAYMENT	25
(a) Payment Claims	
(b) Deductions	
(c) Interim Payments	
(d) Enforcement	
(e) Payment for Unfixed Works Items	
(f) Retention	
(g) Final Payment Claim	
(h) Payment following Final Payment Claim	
(i) Additional Work Instructed after Substantial Completion	
(j) Final Payment	
(k) Taxes	
(l) Monies Held in Trust	
12. TERMINATION	30
(a) Termination on NN Sub-Contractor Default	
(b) Consequences of Termination for NN Sub-Contractor Default	
(c) Termination of the Contractor's Employment Under Clause 12.1 ("Termination on Contract Default") of the Main Contract	
(d) Termination by the NN Sub-Contractor	
(e) Consequences of Termination by NN Sub-Contractor or at Employer's Election	
(f) Survival	
13. DISPUTES	33
(a) Method of Resolution	
(b) Adjudication of Payment Disputes	
(c) Notice to Refer all disputes other than disputes relating to payment and, at the choice of the parties, disputes relating to payment	
(d) Conciliation	
(e) Joint Disputes	
(f) Arbitration	

THIS AGREEMENT is made on

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 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 allowances for all risks, customs, policies, practices, and other circumstances that may affect its performance of the Sub-Contract, whether they could or could not have been foreseen, 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;

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.

NN Sub-Contractor means a Specialist who has been named by the Employer or whose contract with the Employer has been novated to the Contractor. 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

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

The NN Sub-Contractor may not assign the benefit of the Sub-Contract, or any part of it, without the Contractor’s consent.

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

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 Ireland¹ 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 1H. The initial amount of the performance bond will be that stated in the Appendix Part 1H 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.

1(j) Works Requirements

Where the Main Contract is a public works contract for works designed by the Contractor, the NN Sub-Contractor is deemed to have satisfied itself before entering the sub-contract of the adequacy of the Works Requirements in so far as they relate to the Sub-Contract Works. The Contractor will not be liable to the NN Sub-Contractor for any deficiency in the Works Requirements and the NN Sub-Contractor is fully responsible for the adequacy of the works Requirements in so far as they relate to the Sub-Contract Works. The NN Sub-Contractor however will not be liable to the Contractor for either of the following:-

- (i) Statements in the Works Requirements of intended purpose of the Works or parts of them;
- (ii) Criteria in the Works Requirements for testing or performance of the completed Works or part of them;

¹ 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.

2. 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 the Works Requirements specify that the Employer is to obtain. The Contractor is obliged under the Main Contract to obtain all other Consents. In so far as such other Consents relate to the Sub-Contract Works, the NN Sub-Contractor shall obtain those Consents. If the Contractor is obliged to obtain Consents under the Main Contract which are required partly but not exclusively in relation to the Sub-Contract Works or to enable the NN Sub-Contractor to meet its obligations under this Sub-Contract, the cost of obtaining such Consents will be borne as between the Contractor and the NN Sub-Contractor on the basis of what is fair and reasonable having regard to the extent to which the Consents relate to the Sub-Contract Works and other works respectively. Any delay, loss or expense incurred by the Contractor and the NN Sub-Contractor in obtaining or failing to obtain such Consents will be borne in similar proportions respectively.

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.

- (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 will indemnify and save harmless 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 will indemnify and save harmless 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 will indemnify and save harmless 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's indemnity in relation to the death, injury or illness of NN Sub-Contractor's Personnel will apply regardless of whether the death, illness, or injury was caused wholly or in part by the negligence of any third party including the Contractor, the Contractor's Personnel or the Employer or the Employer's Personnel. Subject to the foregoing 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 and will contain cross liability clauses such that the policy shall operate as if a separate policy had been issued to each. 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. On or before the date of renewal of any insurance policy, and in any event, within 10 working days of being requested to do so, the NN-Subcontractor shall give the Contractor evidence to the Contractor's satisfaction that the Insurances are in effect, including copies of policies and receipts for premiums. 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.

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 public works 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, unless the NN Sub-Contractor is informed otherwise in writing, the following;-
- (i) a detailed description of progress of each stage of the Sub-Contract Works
 - (ii) the names of off-site suppliers in relation to the Sub-Contract Works, and the progress and location of the design, manufacture, fabrication, delivery, installation, testing and commissioning of Sub-Contract Works Items
 - (iii) details of the NN Sub-Contractor's Personnel and NN Sub-Contractor's Things on the Site
 - (iv) status of preparation and review of Sub-Contract Documents
 - (v) copies of quality assurance documents and tests results and certificates
 - (vi) details of when any instructions to be provided by the Contractor or by the Employer's Representative will be required, and any that are outstanding
 - (vii) details of when any Sub-Contract Works Items or other things to be provided by the Employer or the Contractor will be required and any that are outstanding
 - (viii) details of any Delay Events and Compensation Events relating to the Sub-Contract Works that have occurred during the period, or are unresolved
 - (ix) details of any accidents, injuries, hazardous incidents, environmental incidents, labour relations problems and public relations problems arising in relation to or affecting the Sub-Contract Works
 - (x) details of anything that might have an adverse effect on the execution of the Sub-Contract Works, the steps the NN Sub-Contractor is taking or proposed to

take to reduce those risks, and any steps that the NN Sub-Contractor proposes that the Contractor or Employer should take to reduce those risks

- (xi) anything else that the NN Sub-Contractor considers relevant to a progress report
 - (xii) 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) Documents

The NN Sub-Contractor shall keep wage records (including time sheets and copies of all pay slips) applicable to NN Sub-Contractor's Personnel and the Employer's Representative, and any person authorised by the Employer's Representative, shall have a right of access at all reasonable times.

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

- (1) The provisions of clause 5.3 ("Pay and Conditions of Employment") of the Main Contract will apply, *mutatis mutandis*, to the NN Sub-Contractor in respect of the NN Sub-Contractor's Personnel.
- (2) Sub-clause 5.3.3A(2) of the Main Contract shall only be included as a term of the Sub-Contract if the Schedule to the Main Contract Part 1J says so, and if not, neither sub-clause 5.3.3A(2) nor its omission shall be taken into account. In the event of 5.3.3A(2) applying, the NN Sub-Contractor will grant to the Employer and to the Contractor every facility and co-operation and will ensure that the NN Sub-Contractor's Personnel does likewise in that regard.
- (3) If the NN Sub-Contractor has not complied with this clause 5(c), the Contractor shall (without limiting its other rights or remedies) be entitled to estimate the amount that should have been paid to work persons (and contributions that should have been made on their behalf), and the Contractor may deduct the estimated amount from any payment due to the NN Sub-Contractor, until the Contractor is satisfied that all proper amounts have been paid.
- (4) The NN Sub-Contractor shall give to the Contractor with each NN Sub-Contractor's Payment Claim under clause 11(a), a certificate in respect of the work to which the Payment Claim relates to the effect that the NN Sub-Contractor and the NN Sub-Contractor's Personnel have complied in full with this clause 5(c). The certificate will be in similar form to that required of the Contractor under the terms of the Main Contract subject to such modifications as the Contractor may reasonably require.

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 1D(i) 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

(or if there is none a form approved by the Employer) executed by the NN Sub-Contractor on or before the date it is required under the terms of the Main Contract. If the Employer makes any deduction from payments otherwise due to the Contractor under the terms of the Main Contract because any such collateral warranty has not been provided, the Contractor will be entitled, subject to clause 11(b) hereof, to withhold payment of the sum specified in the Main Contract Schedule Part 1 F from any sum due to the NN Sub-Contractor until the collateral warranty is provided.

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.

5(g) Weekly Labour Records

Each Monday (or the next working day if Monday is not a working day) the NN Sub-Contractor shall give the Contractor a list of the names of all NN Sub-Contractor's Personnel who worked the week ending the previous Sunday and details of the category of and hours worked by each worker on the list.

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) Property and Rights in NN Sub-Contractor's Documents

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 1B. Special attendances listed in the Appendix Part 1E 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 permitted under the terms of the Main Contract unless:-

- (i) there is imminent danger to safety or health or of damage to the Works or other property or
- (ii) otherwise agreed with the Contractor.

8. QUALITY, TESTING AND DEFECTS

8(a) Standards of Workmanship and Works Items

The NN Sub-Contractor shall ensure all of the following:-

- (1) that the Sub-Contract Works are designed (to the extent that this is the NN Sub-Contractor's responsibility), executed and completed:
 - (i) 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.
 - (ii) In a proper and workmanlike manner and using good practice.
- (2) that all Sub-Contract Works Items (whether or not the NN Sub-Contractor is required to select them):-
 - (i) comply with the Sub-Contract and the Legal Requirements
 - (ii) are (unless the Sub-Contract provides otherwise) new and of good quality
- (3) that all materials and goods that are Sub-Contract Works Items are fit for their intended purpose in the Works
- (4) that the completed Sub-Contract Works are fit for their intended purpose as stated in or to be inferred from the Works Requirements or from the Sub-Contract.

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 8.3 ("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 8.4 ("Tests") of the Main Contract in relation to the Works. The Employer's Representative, 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 Contractor and the Employer's Representative may, with the Employer's and NN Sub-Contractor's agreement, agree that the Employer will accept the Defect, either in whole or subject to any change to the Works Requirements that the Employer's Representative directs. 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. If the Contractor notifies the NN Sub-Contractor that the Employer will not accept a Defect, this shall be conclusive. Notwithstanding this provision, the NN Sub-Contractor shall be entitled in any case to make good any Defect in the Sub-Contract Works and thus avoid a deduction from the Sub-Contract Sum in respect of the Defect.
- (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 8.5 ("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 by agreement 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.

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 but in any event within ten working days. Within a further 20 working days the NN Sub-Contractor shall give the Contractor full details of the delay in writing and its effect on the progress of the Sub-Contract Works. 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) Programme Contingency

- (1) In this clause, references to the first threshold and second threshold are to the first and second threshold periods set out in the Schedule Part 1 K to the Main Contract.
- (2) The NN Sub-Contractor has included in the Initial Sub-Contract Sum a contingency for unrecovered costs incurred due to delays in completing the Sub-Contract Works caused by Compensation Events.
- (3) If the total number of Site Working Days required for the completion of the Sub-Contract Works is increased as a result of Compensation Events by a number of days which is less than or equal to the first threshold, the NN Sub-Contractor will not be entitled to any compensation for such delay.
- (4) If the total number of Site Working Days' required for the completion of the Subcontract Works is increased as a result of Compensation Events by a number of days which exceeds the first threshold, compensation shall be payable in respect of that number of Site Working Days delay less:
 - (i) the number of Site Working Days stated as the first threshold; and less
 - (ii) half the number of Site Working Days delay caused by the Compensation Events after deducting the first threshold, but the total deduction under this sub-paragraph (ii) shall not exceed the second threshold.

[For example, if the first threshold is 20 Site Working Days, and the second threshold is 30 Site Working Days:-

- If the NN Sub-Contractor suffers a delay of 28 Site Working Days due to Compensation Events, the Compensation payable would be for 4 Site Working Days, calculated as follows:

$$28-20-(28-20)/2 = 4.$$

- If the NN Sub-Contractor suffers a delay of 90 Site Working Days due to Compensation Events, Compensation would be payable in respect of 40 Site Working Days, calculated as follows:-

$$90-20-30 = 40.$$

In this case, the deduction under sub-paragraph (ii) would have been

$$(90-20)/2 = 35$$

but this is higher than the second threshold, so the second threshold (30) is substituted].

- (5) If the Main Contract is the public works contract for minor civil engineering and building works sub-paragraphs (1) and (4) of this sub-clause shall not apply and the reference in sub-paragraph (3) to the first threshold will be construed as referring to the threshold period provided for at sub-clause 9.4.2 of the Main Contract. In those circumstances, if the number of Site Working Days required for the completion of the Sub-Contract Works is increased as a result of Compensation Events by a number of days which is in excess of that threshold, the NN Sub-Contractor will be entitled to be compensated, as provided herein, only for the Site Working Days in excess of the threshold.

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 10 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.

10(b) Adjustments to the Sub-Contract Sum

- (1) Adjustments (upward or downward) to the Sub-Contract Sum may arise in respect of additional work, substituted work or omitted work as a consequence of a Compensation Event (as defined in the Schedule Part 1 K of the Main Contract) or as a consequence of complying with an instruction from the Contractor in relation to a matter which could not reasonably have been anticipated by the NN Sub-Contractor at the time of tendering.
- (2) If the additional work, substituted work or omitted work is the same as or similar to work for which there are rates in the NN Sub-Contractor's tender and is to be executed under similar conditions, the adjustment of the Sub-Contract Sum shall be determined using those rates
- (3) If the additional work, substituted work or omitted work is not similar to work for which there are rates in the NN Sub-Contractor's tender and is not to be executed under similar conditions, the adjustment of the Sub-Contract Sum shall be determined on the basis of the rates in the NN Sub-Contractor's tender when that is reasonable
- (4) If the adjustment can not be determined under the above rules, the Contractor shall make a fair valuation based on rates for similar work in the locality, if available.
- (5) The Contractor may direct that adjustment to the Sub-Contract Sum in respect of additional work or substituted work will be determined on the basis of the cost of performing the additional or substituted work, compared with the NN Sub-Contractor's cost without the Compensation Event or Contractor's instruction (as the case may be), as follows:-
 - (i) The number of hours worked or to be worked by each category of work person stated in the Appendix Part 2C and engaged on the work to which the Compensation Event or Contractor's Instruction (as the case may be) relates, on or off the Site, multiplied in each case by the tendered hourly rate for that category stated in the Appendix Part 2C, subject to the tests and possible adjustments in Clause 10.6.4 (1) of the main contract.
 - (ii) The cost of materials used in that work, taking into account discounts and excluding VAT, plus the percentage adjustment tendered by the NN Sub-Contractor and stated in the Appendix Part 2C (but if the percentage adjustment tendered is negative or blank it will be read as 0%).
 - (iii) The cost of plant reasonably used for that work whether hired or owned by the NN Sub-Contractor, at the rates in the document listed in the Schedule Part 1 K of the Main Contract plus or minus the percentage adjustment tendered by the NN Sub-Contractor and stated in the Appendix Part 2C (but if the percentage adjustment tendered is a deduction of more than 100% it will be read as a deduction of 100% or if the entry is blank it will be read as 0%). If the document listed in the Schedule to the Main Contract does not give a rate for a plant item, a market rental rate shall be used, plus or minus the percentage adjustment.
 - (iv) The cost of design (if any) at the tendered rate. If the Sub-Contract Documents include a Pricing Document, the cost of design will be ascertained by reference to that document.
- (6) Where the adjustment to the Sub-Contract Sum arises as a consequence of a Compensation Event, the method of its determination shall correspond to that being applied by the Employer's Representative under Clause 10.6 of the Main Contract, unless otherwise agreed between the Contractor and the NN Sub-Contractor.
- (7) The NN Sub-Contractor shall not be at a loss because the Contractor has been time barred due to failure to notify a dispute under Clause 10 of the Main Contract subject to the NN Sub-Contractor having complied with conditions of this Clause.
- (8) Adjustments for delay cost shall be in accordance with sub-clause 10 (c) below

10(c) Delay Cost

- (1) To the extent that the NN Sub-Contractor is delayed or incurs loss by reason of a Compensation Event, subject to clauses 10(a) and 9(d) hereof, the NN Sub-Contractor will be entitled to be compensated.
- (2) To the extent that the NN Sub-Contractor incurs delay or loss by reason of any event other than as provided for in sub-clauses 10(c)(1) or 1(g), the NN Sub-Contractor will have no entitlement to be compensated.
- (3) If a delay has more than one cause, and one or more of the causes is not an event for which there is an entitlement to additional payment or recovery of costs incurred, there shall be no increase to the Sub-Contract Sum in respect of the delay cost for the period of concurrent delay.
- (4) To the extent that the NN Sub-Contractor is entitled to compensation for delay caused by Compensation Events under sub-clause 10(c)(1), there shall be added to the Sub-Contract Sum for each Site Working Day for which compensation is payable (calculated in accordance with clause 9(d) above) either of the following (depending on which option has been selected in the Schedule to the Main Contract Part 1 (K):-
 - (i) the daily rate of delay cost tendered by the NN Sub-Contractor in the Appendix Part C2 hereto, or
 - (ii) the expenses (excluding profit and loss of profit) unavoidably incurred by the NN Sub-Contractor as a result of the delay caused by the Compensation Event.

10(d) Price Variation

Clause 15 of the Main Contract shall apply to the Sub-Contract mutatis mutandis.

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 1F 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 Claim² 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

² 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

- (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.
 - (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) The NN Sub-Contractor will provide with each of the NN Sub-Contractor's Payment Claims the certificate required by clause 5(c)(4) (Pay and Conditions of Employment of NN Sub-Contractor's Personnel) hereof. The provision of this certificate is a condition precedent to payment by the Contractor to the NN Sub-Contractor in respect of that period.
 - (6) 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 and providing the certificate (in respect of Pay and Conditions of Employment) required by clause 5(c)(4) hereof.

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 21 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. In the case of Work Items not delivered to the site, the NN Sub-Contractor will provide a bond for the benefit of the Contractor equivalent to that required by the Employer under clause 11.2 (2) (f) of the Main Contract and the NN Sub-Contractor will also bear the reasonable cost incurred by the Contractor in providing such a bond for the Employer, or if the bond relates only in part to Sub-Contract Work Items, the NN Sub-Contractor will bear a reasonable proportion of that cost.

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) 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 8.6 ("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:-

- (i) the NN Sub-Contractor in breach of contract fails to comply with its obligations under the Sub-Contract and, if the failure can be cured, the NN Sub-Contractor has failed to cure it within 10 days of being requested to do so by the Contractor;
- (ii) the NN Sub-Contractor abandons or 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 or displays a level of incompetence such that the warranty given by the Contractor in clause 2.5 ("Safety,

Health and Welfare at Work Act 2005 and Safety, Health and Welfare at Work (Construction) Regulations 2013”) of the Main Contract is rendered untrue or the NN Sub-Contractor’s conduct is or has been such as to render the Contractor’s warranty under clause 2.6 (“Ethics in Public Office”) of the Main Contract untrue;

- (vi) 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;
- (vii) 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;
- (viii) 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;
- (ix) the NN Sub-Contractor has sub-contracted all or any part of the Sub-Contract Works without the consent in writing of the Contractor;
- (x) 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.

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 (11) 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

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. Other disputes must be resolved in accordance with Sub-Clauses (c) to (f) below. The parties may agree to try to resolve Payment Disputes in accordance with Sub-Clauses (c) to (f) below instead of by reference to adjudication without affecting their statutory right to refer Payment Disputes to adjudication at any time³.

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

³ It is advised that while the parties attempt to resolve a payment dispute in accordance with Clauses 13(c) to 13(f) neither party should issue a notice of intention to refer the payment dispute for adjudication.

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 all disputes other than disputes relating to payment and, at the choice of the parties, disputes relating to payment.

- (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 provisions of sub-clauses 13.1.3 to 13.1.12 of clause 13.1 ("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) with the exception of the final sentence of clause 13.1.9 (referral to arbitration following notice of dissatisfaction) and the second sentence of clause 13.1.10 (referral to arbitration of failure by one party to comply with a Conciliator's recommendation in respect of which neither party gave notice of dissatisfaction). Also, sub-clause 13.1.11 of the Main Contract will only apply if either or both of the parties has given notice of dissatisfaction.
- (4) If notice of dissatisfaction has been given as provided for in clause 13.1.9 (of the Main Contract), either party may proceed to have the issues the subject matter of the Notice to Refer resolved through arbitration.
- (5) 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(c) 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.