

AGREEMENT

AND

CONDITIONS OF SUB-CONTRACT (NOMINATED)

FOR USE IN CONJUNCTION WITH THE

RIAI CONSTRUCTION CONTRACT

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

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THIS AGREEMENT is made on

BETWEEN:-

of

.....

(the Contractor)

and

of

.....

(the 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 Sub-Contractor has been nominated by the Employer in the Main Contract and as a result the Contractor is obliged to engage the Sub-Contractor to complete the Sub-Contract Works.
- C. The Contractor and the Sub-Contractor agree to enter into this Sub-Contract under the terms and conditions herein agreed.

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

Article 1:

The 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 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 shall only be adjusted when the Sub-Contract says so.

Article 4:

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 Design Documents;

Hereinafter referred to as the "Contract Documents"

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

.....

Present when the Common Seal of the 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 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.

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

Design Documents means specifications, drawings and other documents identified in the Appendix Part 1B that have been designed by the Employer.

Initial Sub-Contract Sum means the sum tendered by the Sub-Contractor and accepted by the 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 4 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 Sub-Contractor including, where applicable, any design to be carried out by the Sub-Contractor

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

Sub-Contractor means a Specialist who has been nominated by the Employer. The Sub-Contractor is the “executing party” under the Construction Contracts Act 2013.

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

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

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) NOT USED

1(c) Assignment

The 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 Sub-Contract shall be executed under seal (as it applies to the Main Contractor)

1(e) Execution of the Sub-Contract Works

The Sub-Contractor shall design (to the extent that this is the Sub-Contractor's responsibility as set out in Appendix Part1B), 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 in accordance with the Main Contract programme insofar as it applies to the Sub-Contract works.

1(f) Sub-Contractor's Obligations

- (1) The 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 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 Sub-Contractor shall, upon request, be provided with a copy of the documents comprising the Main Contract (the **Contract Documents**) in so far as these relate to the Sub-Contract Works. The 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 Sub-Contractor is entitled.
- (3) The 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 Architect/Engineer, 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 Sub-Contractor, obtain for the Sub-Contractor any rights or benefits of the Main Contract, only in so far as the same are applicable to the Sub-Contract Works.

1(i) Performance Bond [if required]

Before commencement on site, the 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 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 Architect/Engineer of Practical Completion of the Works. Thereafter the bond value shall reduce to half of this amount to be in place for the subsequent, 12 months, or whatever is stated in the Appendix Part 1H

1(j) NOT USED

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 Sub-Contractor shall in performing the Sub-Contract comply with all Legal Requirements.
- (2) The 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 Contract Documents 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 Sub-Contractor on a fair and reasonable basis.

2(c) Consents

The Employer has obtained or shall obtain the Consents the Contract Documents 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 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 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 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 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 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 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 (to the extent that they are designed by the Sub-Contractor or the 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 Sub-Contractor represents and warrants to the Contractor that the 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.

- (1) Within 5 days of the Commencement Date the Sub-Contractor will provide to the Contractor completed and signed Ancillary Form of Certificate of Compliance (Undertaking by Sub-Contractor) in respect of the sub-contract works, in the form CIF SC03, and any other requirements of the Main Contract as set out in the Appendix Part 1D(ii).
- (2) The Sub-Contractor undertakes to cooperate with and facilitate the Inspection Plan prepared with the Assigned Certifier.
- (3) The 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, and any other certificates as required by the Main Contract as set out in the Appendix Part 1D(ii)

3. LOSS, DAMAGE AND INJURY

3(a) Sub-Contractor's Indemnities

- (1) Subject to Clause 1(f)(1), the Sub-Contractor is liable for and will indemnify the Contractor against:-
- (i) Any claim, breach or non-observance or non-performance of the said provisions of the Main Contract or any of them due to any act, neglect or the default on the part of the Sub-Contractor only; and
 - (ii) Any act or omission of the Sub-Contractor, his servants or agents which involves the Contractor in any liability to the Employer under the Main Contract; and
 - (iii) Any damage, loss or expense due to or resulting from any negligence or breach of duty on the part of the Sub-Contractor, his servants or agents (inclusively of any wrongful use by him or them of the Contractor's property); and
 - (iv) Any claim by an employee of the Sub-Contractor under the Employer's Liability Acts or other Acts of the Oireachtas of a like nature, in force for the time being.
- (2) The Sub-Contractor is liable for and will indemnify the Contractor against any loss or expense incurred by the Contractor due to any failure on the part of the 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 the Contractor is obliged to pay to the Employer as a result of such failure, as set out in the Appendix Part 1K.
- (3) The Sub-Contractor is liable for and will indemnify the Contractor and the Employer in relation to any damage to the Works or to any property of the Contractor or of the Employer arising from or in the course of the Sub-Contractor's performance or non-performance of the Sub-Contract. The Sub-Contractor's liability under this sub-clause will not apply to the extent that the loss or damage was caused by the negligence or default of the Contractor. Nor will the Sub-Contractor be liable for any loss and damage to the extent that it is occasioned by a risk which is that of the Employer under the Main Contract.
- (4) The Sub-Contractor is liable for and will indemnify the Contractor and the Employer in respect of any loss arising as a result of:-
- (i) Death, injury or illness of any person including Sub-Contractor's Personnel but otherwise excluding Contractor's Personnel; and
 - (ii) Destruction of or damage to any physical property (other than the Works); and
 - (iii) Obstruction, loss of amenities, nuisance, trespass, stoppage of traffic and infringement of light, easement or quasi easement;

arising from or in the course of the performance or non-performance of the Sub-Contract. The Sub-Contractor's indemnity in relation to the death, injury or illness of 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 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 assumed by the Employer under Clauses 20 ("Independent Contractors, Artists and Tradesmen"), 24 ("Damage due to Excluded Risks"), 25("Damage due to Design") 26 ("Responsibility for Existing Structures"), 32A("Partial or Phased Possession") and 32B("Damage due to Use, Occupation or Possession by the Employer").

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 Sub-Contractor, including any loss or damage due to defective design by the Sub-Contractor, the Sub-Contractor shall proceed with due diligence to rectify such loss or damage at its own expense.

3(c) Insurance of the Works and Sub-Contract Ancillary Items

- (1) In this Clause "Sub-Contract Ancillary Items" shall mean temporary works and all unfixed materials and goods delivered to and placed on or adjacent to and intended for the Sub-Contract Works except temporary buildings, plant, tools or equipment owned or hired by the Sub-Contractor or any of its Sub-Contractors.
- (2) The Contractor shall for the benefit of itself and its Sub-Contractors (including the 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.
- (3) The 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 Sub-Contractor's Things against destruction, loss and damage to their full reinstatement value.
- (4) The 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 Sub-Contractor shall be entitled to inspect the said policy upon reasonable notice. The 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 Sub-Contractor. The Sub-Contractor will indemnify the Contractor in relation to any act or omission on the Sub-Contractor's part which causes the Contractor's said policy to become invalid or ineffective in whole or in part.
- (5) The Sub-Contractor shall notify the Contractor by means of a notice in writing of at least 10 working days before commencing any operation that would constitute an abnormal hazard in building operations and that in the absence of notice to and acceptance by insurers renders void or voidable any of the policies of insurance under Clauses 3(c) or 3(d). The Sub-Contractor shall be liable for any additional insurance costs of the Contractor, or for which the Contractor is liable to the Employer due to any such operation, and if due to any such operation insurers will not accept any risk which the Contractor is required to insure the risk shall be insured by the Sub-Contractor at his own cost.
- (6) The Sub-Contract shall be entitled to the benefit of Clauses 26 & 32 (b) of the R.I.A.I Conditions. The Contractor shall ensure that the Employer under the Main Contract complies with those clauses where applicable.

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

- (1) Before commencing the Sub-Contract Works, the 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 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 Appendix to the Main Contract.

- (3) The excesses in the 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 Appendix to the Main Contract.
- (4) The said policies shall cover the 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 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 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 Sub-Contractor, the 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. If the Sub-Contractor is required to provide a Collateral Warranty the minimum indemnity limit and maximum excess professional indemnity insurance requirements are deemed not to exceed those stated in the Appendix Part 1C.

3(f) Evidence of Insurance Cover

The Sub-Contractor shall provide written confirmation to the reasonable satisfaction of the Contractor of the existence of the insurance policies as required under this Sub-Contract and that the premium for each policy has been paid. Furthermore, the 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) NOT USED

4. MANAGEMENT

4(a) Co-operation

The Contractor and the Sub-Contractor shall provide reciprocal co-operation and support for the Sub-Contract purposes.

4(b) Instructions

- (1) The Contractor may issue instructions to the 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 twenty working days after the expiration of the Defects Liability Period. The 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) NOT USED

4(d) Programme and Progress Reports

- (1) The Sub-Contractor Contractor shall carry out and complete the Sub-Contract Works to meet the requirements of the Main Contract programme which shall be included in the Appendix Part 1I (which may be revised from time to time) in compliance with sub-clause 4(d)(4) hereof.
- (2) The Sub-Contractor shall liaise and cooperate with the Contractor and other sub-contractors (including 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) If required by the Contractor, the Sub-Contractor shall provide information for the Contractor's programme including the details of the following:-
 - (i) When the 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 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) Details of when any inspections will be required.
- (4) (i) The 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 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 Sub-Contractor's then applicable programme does not comply with the actual progress of the Sub-Contract Works or with the Sub-Contractor's obligations or the Contractor's obligations, the 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.
- (5) The 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 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.
- (6) Each progress report shall include in relation to the Sub-Contract Works 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 Sub-Contractor's Personnel and Sub-Contractor's Works Items 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 Architect/Engineer 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 Sub-Contractor is taking or proposed to take to reduce those risks, and any steps that the Sub-Contractor proposes that the Contractor or Employer should take to reduce those risks
 - (xi) anything else that the Sub-Contractor considers relevant to a progress report
 - (xii) anything else relevant to a progress report that the Contractor reasonably directs.

4(e) Notice and Time for Contractors Obligations

- (1) The Sub-Contractor shall give the Contractor at least 12 working days advance notice of the date by which the Sub-Contractor requires any instructions or any other thing that the Contractor is to provide.
- (2) To the extent that the 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 Architect/Engineer to the Contractor under the Main Contract, the Contractor's only obligation to the Sub-Contractor will be to pass on such instructions or other thing to the Sub-Contractor within a reasonable time of receipt from the Employer or the Architect/Engineer.

4(f) Documents

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

4(g) Meetings

The Sub-Contractor shall attend meetings with the Contractor and with the Architect/Engineer or other relevant parties at such times and venues as the Contractor may reasonably require. If the Sub-Contractor is provided with minutes of any such meeting, the 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) NOT USED

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

The Sub-Contractor shall submit details to the Contractor before removing any Sub-Contractor's Things from the Site prior to the issue by the Architect/Engineer of the Certificate of Practical Completion of the whole of the Works or of a Section of the Works.

5. SUB-CONTRACTOR'S PERSONNEL

5(a) Liability

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

5(b) Qualifications and Competence

The Sub-Contractor shall ensure that the 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 Sub-Contractor's Personnel

The Sub-Contractor shall give to the Contractor with each 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 Sub-Contractor and the Sub-Contractor's Personnel have complied in full with this clause. 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.

- (1) This Sub-Contract is upon this express condition that during its continuance the wages and conditions of employment of the employees of the Contractor and the Sub-Contractor respectively engaged on the Main Contract Works and the Sub-Contract Works shall be such as may from time to time be prescribed by competent authority in the industry or trade to which such employees belong, and the Contractor observe the same accordingly.
- (2) If either party shall commit a breach of this clause, then the other party shall be entitled (without prejudice to any other right or remedy) to be indemnified by the party so in breach against any loss or damage accruing from or arising out of or connected with such breach.

5(d) Sub-Sub-Contractors

The Sub-Contractor shall not assign this Sub-Contract nor sub-let the Sub-Contract Works or any portion of the same without the written consent of both the Contractor and the Architect/Engineer provided that the consent of the Contractor shall not be unreasonable withheld, and that in case of any difference of opinion between the contractor and the Architect/Engineer the opinion of the Architect/Engineer shall prevail.

5(e) Collateral Agreements

If the Appendix Part 1D(i) to this Contract or the Appendix to the Main Contract states that a collateral warranty is required from the Sub-Contractor, the Sub-Contractor shall provide to the Contractor a collateral agreement in the form published by the Royal Institute of the Architects of Ireland; following consultation with the Construction Industry Federation and following consultation with the Society of Chartered Surveyors Ireland, and current at the "Designated Date", executed by the Sub-Contractor on or before the date it is required under the terms of the Main Contract. In the event the Employer makes any deduction from payments otherwise due to the Contractor because any such collateral agreement has not been provided, the Contractor will be entitled, subject to Clause 11(b) hereof, to withhold payment from any sum due to the Sub-Contractor until the collateral agreement is provided.

5(f) Removal of Work Persons

The Sub-Contractor shall remove from the site any Sub-Contractor Personnel where the Architect/Engineer so directs under the terms of the Main Contract. The Sub-Contractor will also remove from the site any Sub-Contractor Personnel where the Contractor so directs because of the Sub-Contractor Personnel's negligence or incompetence or on the basis that the 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 Sub-Contractor shall give the Contractor a list of the names of all 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. NOT USED

7. THE SITE

7(a) Lands Made Available for the Works

The Contractor shall from time to time make available to the 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 Sub-Contractor to execute the Sub-Contract Works in accordance with the Sub-Contract, but the Contractor shall not be bound to give the 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 Sub-Contractor, his employees and workmen in common with all other persons having the like right shall for the purposes of the Sub-Contract Works (but not further or otherwise) be entitled to use any properly labelled scaffolding belonging to or provided by the Contractor, while it remains so erected upon the site.

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 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 Sub-Contractor will be responsible for and bear the cost (to the extent that this cost is not recoverable 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) NOT USED

7(e) Access and Traffic Control

Any special access requirements for works are to be outlined by the Sub-Contractor in the Appendix Part 2D.

7(f) Setting Out the Works

Unless otherwise agreed between the parties, the Sub-Contractor will set out the Sub-Contract Works in compliance with clause 7 ("Setting out of 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 Contract Documents says otherwise, the 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 Practical Completion of the Works or of any Section of the Works, of which the Sub-Contract Works form the whole or part, the Sub-Contractor shall remove from the Site (or section of the Site, as the case may be) the Sub-Contractor's Things not required to perform the Sub-Contractor's remaining obligations, and leave the Works or Section in an orderly manner. At the end of the Defects Liability Period, the Sub-Contractor shall remove from the Site any remaining Sub-Contractor's Things.

7(i) Working Times

The Sub-Contractor shall ensure that the 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.

7(j) Right of Access of Contractor and Architect/Engineer

The Contractor and the Architect/Engineer or his Agent (and all persons duly authorised by them or either of them) shall at all reasonable times have a right of access to any work which is being prepared for or will be utilised in the Sub-Contract Works, unless the Architect/Engineer shall certify in writing that the Sub-Contractor has reasonable grounds for refusing such access.

8. QUALITY, TESTING AND DEFECTS

8(a) Standards of Workmanship and Works Items

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

- (1) that the Sub-Contract Works are designed (to the extent that this is the 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 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 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 of the respective kinds described in the Contract Documents

8(b) Quality Assurance

The Sub-Contractor shall establish and implement quality assurance procedures as required by the Main Contract 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 Sub-Contractor shall give to the Contractor copies of all reports prepared in accordance with the Sub-Contractor quality assurance procedures. The Architect/Engineer or the Contractor may monitor, spot check and audit the Sub-Contractor's quality assurance procedures and the Sub-Contractor will cooperate with the Architect/Engineer and with the Contractor in the conduct of any such spot check.

8(c) Inspection and Tests

- (1) The Sub-Contractor will have the same rights and obligations in relation to the Sub-Contract Works, *mutatis mutandis*, as the Contractor has under clause 11 ("Access for Architect to Works") of the Main Contract in relation to the Works.
- (2) The 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 ("Materials and Workmanship to Conform to Description") and clause 9 ("Work to be Opened Up") of the Main Contract in relation to the Works. The Architect/Engineer, others authorised by the Employer and the Contractor may attend and observe the tests and the Sub-Contractor shall facilitate such attendance and observation.

8(d) Defects

The Sub-Contractor shall within a reasonable time after receipt by him from the Contractor of the Architect's/Engineer's or agent's instructions or a copy thereof relating to the same, make good all defects, shrinkages or other faults in the Sub-Contract Works, due to materials or workmanship not in accordance with the Contract as determined by the Architect/Engineer

which the Contractor (whether at his own cost or not) shall be liable to make good under the Main Contract.

Where the Contractor is liable to make good such defects, shrinkages or other faults, but not at his own cost, then the Contractor shall secure a similar benefit to the Sub-Contractor and shall account to the Sub-Contractor for any money actually received by him in respect of same.

8(e) Defects Liability Period

- (1) As soon as practicable, the Sub-Contractor shall complete any outstanding works and rectify any Defects brought to his attention by the Contractor either prior to Practical Completion or up to twenty working days after the expiration of the Defects Liability Period and shall complete the rectification of such defects within a reasonable time. In so doing, and in conducting any tests after Practical Completion, the Sub-Contractor shall cause as little disruption as possible to occupants and users of the Works.
- (2) The Sub-Contractor will indemnify the Contractor in relation to any cost incurred for the making good of defects under clause 31 ("Practical Completion and Defects Liability") of the Main Contract in so far as that cost relates to a Defect in the Sub-Contract Works.
- (3) Nothing in this clause nor any exercise or non-exercise by the Employer, the Architect/Engineer or the Contractor of their rights under this clause 8(e), nor expiration of the Defects Liability Period, relieves the Sub-Contractor of any obligation in relation to any Defect in the Sub-Contract Works.

8(f) Consequential Damage to the Contractor

If the Contractor (whether by himself or any other Sub-Contractor) shall execute any work (whether permanent or temporary) to the Main Contract Works or to any part of the same required by the Architect/Engineer or rendered necessary by reason of defects, shrinkages or other faults in the Sub-Contract Works due to materials or workmanship not being in accordance with this Sub-Contract or to frost occurring during, but before the completion of the Sub-Contract Works, then the Sub-Contractor shall pay to the Contractor the cost of the execution of such work.

If the Contractor shall pay or allow to the Employer the value of, or other agreed sum (not exceeding such cost as aforesaid) in respect of, such work instead and in satisfaction of executing the same, then the Sub-Contractor shall pay to the Contractor such value or other agreed sum as aforesaid.

The Sub-Contractor shall not be required to pay the cost of any works to make good damage by frost which may appear after completion unless the Architect shall decide that such damage is due to injury which occurred before completion or of which the Contractor before commencing the same has not given reasonable notice to the Sub-Contractor.

8(g) Consequential Damage to the Sub-Contractor

If the Sub-Contractor shall execute any work to or in connection with the Sub-Contract Works (whether permanent or temporary) required by the Architect/Engineer or rendered necessary by reason of any defects, shrinkages or other faults in the Main Contract Works due to materials or workmanship not being in accordance with the Main Contract or to frost occurring before the completion of the Main Contract Works, then the contractor shall pay to the Sub-Contractor the cost of the execution of such work provided that nothing contained in this Clause shall exclude the liability of the Sub-Contractor under Clause 8(f) above.

If instead of the Sub-Contractor actually executing such work and in satisfaction of the same the Contractor shall pay or allow to the Employer the value of, or other agreed sum (not

exceeding such cost as aforesaid) in respect of, such work, then the Contractor shall indemnify the Sub-Contractor against any claim, damage or loss in respect of failure to execute such work.

The Contractor shall not be required to pay the cost of any work to make good damage by frost which may appear after completion unless the Architect/Engineer shall decide that such damage was due to injury which took place before completion or of which the Sub-Contractor before commencing the same has not given reasonable notice to the Contractor.

9. TIME AND COMPLETION

9(a) Commencement Date

- (1) The Contractor shall issue a written instruction to the Sub-Contractor specifying the Commencement Date for the Sub-Contract and the 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 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 Sub-Contractor may start work on site at a later date, the Sub-Contractor will start work on site as required by the Main Contract Programme.
- (2) In the absence of such written instructing specifying the Commencement Date, the Sub-Contractor may confirm the Commencement Date to the Contractor, within 5 working days after commencing work on site.

9(b) Suspension

- (1) The Contractor may instruct the Sub-Contractor to suspend all or part of the Sub-Contract Works if the Contractor has been instructed to suspend work by the Employer / Architect/Engineer or the Contractor has suspended the Works by reason of not being paid by the Employer. The 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 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 Sub-Contractor for any loss or delay suffered by the 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 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 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 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 Sub-Contractor will promptly provide any further information in relation to the delay which either the Contractor or the Architect/Engineer requests.

9(d) NOT USED

9(e) Completion

- (1) If the Sub-Contractor fails to progress or complete the Sub-Contract works or any section thereof within the period specified or any extended period as hereinafter provided, he shall pay to the Contractor any loss or damage suffered or incurred by the Contractor and caused by the failure of the Sub-Contractor as aforesaid of which loss or damage the Contractor shall at the earliest opportunity give reasonable notice to the Sub-Contractor that the same is being or has been suffered or incurred.
- (2) If the completion of the Sub-Contract Works or any section thereof be delayed and such delay:
 - (i) Shall be caused by or be due to any of the matters specified in Clause 10(a) of this Sub-Contract or by or to any act or omission of the Contractor, his other Sub-Contractors, his or their respective servants or agents; or
 - (ii) Shall be within any of the cases in which the Contractor could obtain an extension of the period or periods for completion under the Main Contract: (See NOTE).

Then the Sub-Contractor shall immediately give notice thereof in writing to the Contractor and the Contractor shall grant or (where the Contractor has to apply to the Architect) he shall apply for a fair and reasonable extension of the said period or periods for completion of the Sub-Contract Works or each section thereof (as the case may require) and such extended period or periods shall be the period or periods for completion of the same respectively and this clause shall be read and construed accordingly.

If the Sub-Contractor be delayed in the commencement or completion of the Sub-Contract Works due to circumstances beyond his control he shall so inform the Contractor and he shall then be entitled to make a claim for any loss or damage incurred..

NOTE:- Users of this Form of Sub-Contract should ascertain the provisions relating to Delay and Extension of Time contained in the Main Contract whatever its form. These provisions will, under Clause 9e(2)(ii) insure to the benefit of the parties to the Sub-Contract. In the R.I.A.I. Construction Contract these provisions are set out in Clause 30.

10. CLAIMS AND ADJUSTMENTS

10(a) Notification and Procedure

In the event of the Contractor:-

- (1) Requiring or authorising in writing any variations of or omissions from the Sub-Contract Works; or
- (2) Issuing in writing to the Sub-Contractor any instructions of the Architect/Engineer in relation to the Sub-Contract Works (whether in regard to variations or otherwise howsoever); or
- (3) Issuing to the Sub-Contractor any verbal instructions or directions involving a variation, such instructions shall be confirmed in writing by the Sub-Contractor to the Contractor within five days and if not dissented from in writing by the Contractor to the Sub-Contractor within a further five days, shall be deemed to be a variation of the Sub-Contractor Works;

Then the Sub-Contractor shall forthwith comply with and carry out the same in all respects accordingly.

If compliance with such instructions or directions involves the Sub-Contractor in loss or expense beyond that provided for in or reasonably contemplated by this Sub-Contract, then the Sub-Contractor shall forthwith notify the Contractor and the amount of such loss or expense shall be ascertained and added to the Contract Sum. Where a variation by way of omission is, as compared with the works included in the Sub-Contract in a character so extensive that in the opinion of the Architect the Sub-Contractor has sustained a loss by reason of, prior to the notification to him of such variation, having properly incurred expenses which in consequence of the variation have become wholly or in part unnecessary, there shall be added to the Sub-Contract Sum a sum to be ascertained by the Architect as being in all circumstance reasonable compensation for such loss.

If through variation and/or omission the final measurement shows a credit on the Sub-Contract Sum the Sub-Contractor shall be entitled, if agreed by the Architect, to an allowance of 10% on this credit. P.C. Sums, Provisional Sums, Provisional Works and Contingency Sums and the amount of any adjustment under Clause 10(b)(2) of this Sub-Contract are not to be taken into account in arriving at the credit on which this allowance is based.

Save as aforesaid no variation or omission from or other alteration or modification of the Sub-Contract shall be made or allowed by the Sub-Contractor.

10(b) Adjustments to the Sub-Contract

- (1) The price of the Sub-Contract Works (herein referred to as "the Sub-Contract Sum") shall be the sum named in the Appendix Part 2C or such other sums as shall become payable by reason of any authorised variation including any loss or expense incurred as outlined in Clause 10(a)x. The value of all authorised variations shall be determined by the Surveyor for the time being under the Main Contract (or if none the Architect/Engineer) in accordance with the applicable provisions (relating to the ascertainment of prices for authorised variations) laid down in the current RIAI Construction Contract ; save that where the Sub-Contractor has with the agreement of the Contractor annexed to this Sub-Contract a schedule of prices for measured work and/or a schedule of daywork prices, such prices shall be allowed to the Sub-Contractor in determining the value of authorised variations in substitution for any prices which would otherwise be applicable under this clause (See NOTE) .

NOTE: The Sub-Contractor should ascertain whether the Bills of Quantities (if any) prepared in connection with the Main Contract have been prepared in accordance with the principles of the current Agreed Rules of Measurement applicable to work in Ireland last approved by the Society of Chartered Surveyors Ireland and the Construction Industry Federation.

(2) Variations arising from Legislative Enactments

Where after the Designated Date the cost of the performance of this Sub-Contract has been increased or decreased as the result of any legislative enactments, instruments, rules or orders or the exercise by the Government of powers vested in it, whether by way of the imposition of new duties or tariffs or the alteration of existing duties or tariffs, or restriction of licences for the importation of any commodity, or by way of affecting the cost of labour, or otherwise, the amount of such increase or decrease as certified by the Architect shall be borne by or shall accrue to the Contractor, as the case may be, and the Sub-Contract sum shall be varied accordingly.

10(c) NOT USED

10(d) Wage and Price Variation

The Sub-Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.

- (1)
 - (i) The Sub- Contract Sum is based upon the rate of wages and other emoluments and expenses (including the cost of insurances or other premiums dependent thereon) payable by the Sub-Contractor to work people engaged upon or in connection with the Sub-Contract Works in accordance with any rules or decisions of the recognised wage fixing body of the trade concerned applicable to the Sub-Contract Work and current at the Designated Date. In this clause, wages, emoluments and expenses of work people engaged upon or in connection with the Works include wages, emoluments and expenses of only such members of the Sub-Contractor's administrative and supervisory staff who individually spend more than 15 hours from Monday to Friday of any week on the site of the Works and only in respect of or attributable to such a week or such weeks so spent.
 - (ii) In the said rates of wages and other emoluments and expenses (including the cost of insurance or other premiums dependent thereon) shall be increased or decreased by reason of any alteration in any such rules or decisions made after the said Designated Date, the amount of such increase or decrease of such rates of wages, other emoluments and expenses (including the cost of insurance or other premiums dependent thereon) together with the percentage addition specified in the Appendix Part 2D on any increase shall be an addition to or a deduction from the Sub-Contract Sum as the case may be and shall be paid to or allowed by the Sub-Contractor accordingly.
- (2)
 - (i) The value of the Sub-Contract Works is based on the market prices of materials and good current at the Designated Date and the Sub-Contractor shall, if required, submit to the Contractor a list of basic prices of such materials and good.
 - (ii) If after the Designated Date market price of any of the materials or goods specified as aforesaid varies from the basic price thereof, then the difference between the basic price and the market price payable by the Sub-Contractor and current when any such goods or materials are bought together with the percentage addition specified in the Appendix Part 2D on any increase in price shall be an addition to or a deduction from the Sub-Contract sum as the case may be and shall be paid to or allowed by the Sub-Contractor accordingly.
- (3)
 - (i) If the Sub-Contractor shall decide subject to Clause 15 of this Sub-Contract to sub-let any portion of the Sub-Contract Works he shall incorporate in any such agreement for sub-letting the provisions contained in Sub-Clauses (1) and (2) of this Clause if and so far as the same may be relevant and applicable.

- (ii) If the price payable under any agreement for sub-letting which includes the provisions contained in Sub-Clauses (1) and (2) of this Clause is decreased below the price stated in that agreement by reason of the operation of the provisions of this Clause, then the net amount of such decrease shall be deducted from the Sub-Contract Sum and if the price payable under that agreement shall be increased above that stated in that agreement by reason of the operation of the provisions of this Clause, then the net amount of the increases shall be added to the Sub-Contract Sum.

The Sub-Contractor shall within a reasonable time give written notice to the Contractor of the happening of any of the events referred to in paragraph (b) of Sub-Clause (1) of this Clause and of any increase or decrease in the basic prices of any of the material or goods specified under paragraph (b) of Sub-Clause (2) of this Clause and of any reduction or increase in the prices payable under any agreement for sub-letting any portion of the Sub-Contract Works.

No addition to or deduction from the Sub-Contract Sum made by virtue of this Clause shall alter in any way the amount of profit of the Sub-Contractor included in the Sub-Contract Sum.

The Contractor shall at the request of the Sub-Contractor include in any Progress Statement as provided for by Clause 35 of the Main Contract or alternatively in the Contractor's Memorandum of Variations, a detailed statement of any increases or decreases in the rates of wages and other emoluments and expenses, as defined in paragraph (a) of Sub-Clause (1) of this Clause, in the prices of goods and materials necessary for the execution of the work, or in the price payable under any agreement for sub-letting which includes the provisions contained in Sub-Clauses (1) and (2) of this Clause and the Architect/Engineer, having satisfied himself as to the correctness of the said amounts, shall add or deduct to the amount of the next Certificate to which the Contractor may be entitled under the Main Contract a sum equal to the amount of such increases or decreases and he shall specify and show separately the amount allowed in respect of the Sub-Contract Works.

- (4) The "Designated Date" for the purpose of this Clause shall mean the date ten days prior to the latest date set for receipt of tenders or the latest revision of such date. Where no date is set for receipt of tenders the Designated Date shall mean the date of receipt of the tender.

The Designated Date for the tender of the Sub-Contractor is set out in Part 1G of the Appendix.

11. PAYMENT

11(a) Payment Claims

- (1) The Contractor shall, subject to and in accordance with the Main Contract, on each of its Payment Claim Dates, make application to the Architect for Certificates of Payment and for inclusion therein of the amount which at the date thereof fairly represents the value of the Sub-Contract Works and any variations authorised under this Sub-Contract then executed and of the materials and goods delivered upon the site or materials vested for use in the Sub-Contract Works.
- (2) The Contractor is required under Clause 9(a) to notify the 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 Sub-Contractor a list of subsequent Payment Claim Dates which shall be not more than 30 days apart.
- (3) On or before each Payment Claim Date, the 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 Sub-Contractor's responsibility) and executed, valued in accordance with the rates and prices used in the calculation of the Sub-Contract Sum, plus
 - (ii) where the 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 variations under the Main Contract as provided for in clause 10 hereof, plus
 - (v) other sums claimed by the 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
- (4) The Payment Claim shall state the period, stage of work or activity to which it relates and the subject matter of the Payment Claim.
- (5) The 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 Architect/Engineer (of which the Contractor will give reasonable notice to the Sub-Contractor), to enable the Contractor to meet the requirements of Clause 35(b) of the Main Contract.

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

- (6) If the 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 Sub-Contractor will be based on that estimate and will be subject to the 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)(1) hereof.

11(b) Deductions

- (1) If the Architect/Engineer in any certificate, issued in accordance with Clause 35(b) 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 Sub-Contractor, provided the reduction by the Architect/Engineer was not caused by the Contractor's negligence or breach of contract. The Contractor shall notify the 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 Sub-Contractor's Payment Claim or included in the Contractor's response to a Payment Claim in accordance with Clause 11(c)(1).
- (2) If the Architect/Engineer in any certificate, issued in accordance with Clause 35(b) of the Main Contract, makes a deduction in the sum claimed by the Contractor for the Sub-Contract Works in respect of a variation, the Contractor may make a corresponding deduction in the sum due to the Sub-Contractor. The Contractor shall notify the 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 Sub-Contractor's Payment Claim or included in the Contractor's response to a Payment Claim in accordance with Clause 11(c)(1).
- (3) The Contractor may deduct from any sum otherwise due to the 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 Sub-Contractor of the terms of this Sub-Contract. The Contractor shall notify the Sub-Contractor of any deduction [other than deductions covered by sub-clauses 11(b)(1) and (2) 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 Sub-Contractor in respect of any deductions from interim payments. Such deductions shall be taken into account in the next 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 will not be entitled to make any deduction or withhold payment under this clause unless the Sub-Contractor has first been notified in accordance with sub-clauses (1), (2), and (3).

11(c) Interim Payments

- (1) The Contractor shall make each interim payment of the sum due to the Sub-Contractor not later than 30 days after Payment Claim Date and shall notify the Sub-Contractor of the amount certified by the Architect/Engineer. If the Contractor fails to notify the Sub-Contractor of the details of the monies certified, the Sub-Contractor shall be entitled to receive this information from the Architect/Engineer. If the sum to be paid by the Contractor to the Sub-Contractor is less than shown on the Sub-Contractor's Payment Claim the Contractor, shall not later than 21 days after the Payment Claim Date, deliver a written response to the 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 Sub-Contractor (under the sub-contract or otherwise), or any other claim that the Contractor alleges against the Sub-Contractor, the response shall also specify: -

- (i) When the loss was incurred or the damage occurred, or how the other claim arose
 - (ii) The particulars of the loss, damage or claim, and
 - (iii) The portion of the difference that is attributable to each such particular
- (2) If the Contractor does not issue a response to a Sub-Contractor's Payment Claim in accordance with Clause 11(c)(1) the Contractor shall pay to the Sub-Contractor the full amount claimed in the 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 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 Sub-Contractor, there shall be a debt due from the Sub-Contractor to the Contractor which shall be payable by the Sub-Contractor within 7 working days of either the date when payment would otherwise have been due to the 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 Sub-Contractor is delayed beyond the time limit in sub-clause 11 (c) (1) above, the 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) /or be entitled to charge interest to the Contractor on the amount included in such Certificate at current bank rate of interest on over-drafts until such time as payment is made
 - (6) Dispute as to Certificate - If the Sub-Contractor shall feel aggrieved by the amount certified by the Architect/Engineer or by his failure to certify or failure by the Employer to honour his certificate in whole or in part within the time period stipulated in the main contract document, then, subject to the Sub-Contractor giving to the Contractor such indemnity and security as the Contractor shall reasonably require, the Contractor shall allow the Sub-Contractor to use the Contractor's name and if necessary will join the Sub-Contractor as claimant in any legal proceedings by the Sub-Contractor in respect of the said matters complained of by the Sub-Contractor.

11(d) Enforcement

- (1) If the Contractor does not pay to the Sub-Contractor the amounts certified by any Certificate issued by the Architect/Engineer to be due to the Sub-Contractor within the period mentioned in clause 11(c)(1) hereof, then the Sub-Contractor may (but without prejudice to any other right or remedy) apply directly to the Employer for and the Employer may make payment of the amounts certified to be due to the Sub-Contractor direct to the Sub-Contractor and the Employer may set off the amount of any payment or payments made by him to the Sub-Contractor against any moneys due or to become due to the Contractor. Payment by the Employer to the Sub-Contractor direct shall be regarded as payment by the Contractor to the Sub-Contractor and shall annul the right of suspension under sub-clause 11(d)(2).
- (2) 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 Sub-Contractor may suspend work under the sub-contract by giving notice in writing under sub-clause (3) below.

- (3) The Sub-Contractor shall give written notice that it intends to suspend work for non-payment: -
 - (i) Not earlier than the day after the day on which the amount concerned is due, and
 - (ii) At least 7 days before the proposed suspension is to begin.
- (4) Work may not be suspended under this clause: -
 - (i) After payment by the Contractor of the amount due, or
 - (ii) 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.
- (5) If the 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. When work is suspended under this provision, the time for completion shall be extended by two days for each day of such suspension which shall not be deemed a delay for which the Sub-Contractor is liable under this Sub-Contract
- (6) If another Tier 1 sub-contractor suspends work for non-payment and this causes delay to the Sub-Contractor's progress it shall be deemed to have been caused by the Main Contractor.
- (7) Nothing in this sub-contract shall interfere with the rights of the parties under the Construction Contracts Act 2013.

11(e) Payment for Unfixed Works Items

The 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 Sub-Contractor with the provisions of Clause 35(d) of the Main Contract and to the title vesting in the Employer to the Sub-Contractor's Unfixed Work Items. The Sub-Contractor's entitlement to payment will be dependent upon the Architect including for such payment in a certificate for payment issued under the Main Contract.

11(f) Retention

- (1) Retention will be deducted from all interim sums due to the Sub-Contractor at the rate stated in the Appendix to the Main Contract (Percentage of Certified Value Retained). 20 working days after the issue by the Architect/Engineer of the Certificate of Practical Completion, half the sum so deducted will be payable to the Sub-Contractor and the remaining half (the second moiety) will be payable 10 working days after the issue by the Architect/Engineer of the Final Certificate. If, within 10 working days of the issue of the Certificate of Practical Completion of the Works (or another date agreed between the Contractor and the Sub-Contractor) the Sub-Contractor provides to the Contractor a retention bond in or equivalent to the form incorporated in the Main Contract 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 Sub-Contractor shall be entitled to be paid the second moiety.
- (2) If by reason of the Architect/Engineer issuing a Certificate of Practical 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 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 Practical Completion.

11(g) Final Payment Claim

The Sub-Contractor shall submit to the Contractor its Final Payment Claim of all sums due to the Sub-Contractor under the Sub-Contract, computed in the manner prescribed in sub-clause 11(a)(2) hereof, after the 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 Practical Completion of the Works issued by the Architect/Engineer (which date is to be promptly advised to the 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 Practical Completion or the date of submission of the Final Payment Claim if earlier. If the 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 Sub-Contractor will be based on that estimate irrespective of whether the Sub-Contractor considers that estimate was too low. In the event that the 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

- (1) Within 30 days of the applicable Payment Claim Date the Contractor will pay to the 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.
- (2) Special Interim Payment - If before the issue of a Final Certificate to the Contractor under the Main Contract a period of time equal to the Retention Period of the Main Contract has elapsed since practical completion of the Sub-Contract Works the subject of this Agreement then the Sub-Contractor may request the Contractor in writing to make application to the Architect/Engineer for Certificates certifying the value of the work executed upon the Sub-Contract Works, and the Contractor shall make such application. The provisions of this clause shall apply to such Certificates as if they were Certificates of Payment expressly provided for in the Main Contract.

11(i) Additional Work instructed after Practical Completion

- (1) If, after the date of Practical Completion has been certified, the Contractor instructs the Sub-Contractor to carry out additional work, either as a consequence of a variation under the Main Contract or otherwise, in order to obtain payment for it the Sub-Contractor will submit a supplemental account not later than one month after the end of the Defects Liability Period (as stated in the Appendix to the Main Contract). Payment for this additional work will be included in the final payment to the Sub-Contractor or, in the event that no other payment is due to the Sub-Contractor, payment for the additional work will be not later than 30 days after the date of the Final Certificate issued by the Architect.
- (2) The Contractor shall have no liability to the Sub-Contractor under or in relation to the Sub-Contract for any matter not detailed in the Sub-Contractor's Final Payment Claim except in respect of additional work arising from an instruction from the Contractor issued after Practical Completion of the Works was certified.

11(j) Final Payment

- (1) The Architect is required to issue the Final Certificate in accordance with Clause 35(i) of the Main Contract. Within 30 days of the issue by the Architect/Engineer of the final payment certificate the Contractor shall pay the 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 Practical

Completion, any amounts which were withheld from the penultimate payment and are now due and deduction of any sums due from the Sub-Contractor to the Contractor. The Final Payment may include other amounts that, according to the sub-contract, are to be paid after Practical Completion of the Works [such as payments for testing after Practical Completion]. The Contractor shall provide the Sub-Contractor with a statement with the final payment showing how the final payment sum has been computed.

- (2) Final Payment to Sub-Contractor - If before the issue of a Final Certificate to the Contractor under the Main Contract the Sub-Contractor desires to secure final payment on completion of the Sub-Contract Works, the Sub-Contractor may request the Contractor to seek that the Architect/Engineer issues a Certificate in accordance with and subject to the provisions of the Main Contract relating to Prime Costs and Provision Sums to the Contractor including an amount to cover such final payment. Then the Contractor shall, within 30 days of receipt of such certificate from the Employer pay to the Sub-Contractor the amount so certified by the Architect/Engineer as aforesaid, but such payment shall be made only if the Sub-Contractor indemnifies and secures the Contractor to the reasonable satisfaction of the Contractor against all latent defects in the Sub-Contract Works and if by such final payment the Contractor will be discharged under the Main Contract from all liabilities in respect of the Sub-Contract Works except for any latent defects.
- (3) If and to the extent that the amount retained by the Employer in accordance with the Main Contract includes any Retention Money the Contractor's interest in such money shall be fiduciary as trustee without obligation to invest for the Sub-Contractor and if the Contractor attempts or purports to mortgage or otherwise charge such interest or his interest in the whole of the amount retained as aforesaid such mortgage or charge shall in so far as it relates to the Retention Money be void.

11(k) NOT USED

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 Sub-Contractor under this Sub-Contract are held in trust by the Contractor for the Sub-Contractor.

12. TERMINATION

12(a) Termination on 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 Sub-Contractor in breach of contract fails to comply with its obligations under the Sub-Contract and, if the failure can be cured, the Sub-Contractor has failed to cure it within 10 days of being requested to do so by the Contractor;
- (ii) the Sub-Contractor abandons or suspends the execution of the Sub-Contract Works;
- (iii) the Sub-Contractor fails to proceed regularly and diligently with the execution of the Sub-Contract Works;
- (iv) the Sub-Contractor fails to provide or maintain the required insurances or performance bond;
- (v) the Sub-Contractor or Sub-Contractor's Personnel has committed or caused the Employer or the Contractor to commit a serious breach of Legal Requirements;
- (vi) the Sub-Contractor or Sub-Contractor's Personnel have committed a breach of the Safety, Health and Welfare at Work Act 2005 or any regulations or code of practice made under it;
- (vii) the Sub-Contractor or Sub-Contractor's Personnel has not complied with the requirements of clause 5(c) hereof either (a) within 10 days after notice from the Contractor requiring a failure to be put right or (b) persistently;
- (viii) the Sub-Contractor has sub-contracted all or any part of the Sub-Contract Works without the consent in writing of the Contractor;
- (ix) if any of the insolvency events referred to in sub-clause 33(b) ("Determination of Contract by Employer") of the Main Contract occur in relation to the Sub-Contractor. In this case, the Contractor will have the same rights and entitlements *mutatis mutandis* in relation to the Sub-Contractor as the Employer has in relation to the Contractor under clauses 33(b) and 33(c) of the Main Contract.

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

If the Sub-Contractor's obligation to complete the Sub-Contract Works is terminated under clause 12(a) hereof, the provisions of clause 33(b) ("Determination of Contract by Employer") of the Main Contract will apply, *mutatis mutandis*, as between the Contractor and the Sub-Contractor as if all references to the Contractor therein were to the Sub-Contractor and all references to the Employer, or the Architect/Engineer 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 Sub-Contractor's Things, 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 24(b) ("Damage due to Excluded Risks") or Clause 33 ("Determination of Contract by Employer") of the Main Contract

- (1) If the Main Contract is validly determined under Clause 24(b) ("Damage due to Excluded Risks") of the R.I.A.I Conditions the Contractor may determine the Sub-Contract by

written notice to the Sub-Contractor. The provisions of Clause 24(b) as to payment shall then apply mutatis mutandis to payment to the Sub-Contractor.

- (2) If the Contractor's employment is terminated by the Employer under clause 33(b) ("Determination of Contract by Employer") of the Main Contract, the Sub-Contractor's employment under this Sub-Contract will automatically terminate.
- (3) 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 Sub-Contractor in relation to all loss and damage incurred by it by reason of the termination.
- (4) 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 Sub-Contractor on foot of the termination and will pay to the Sub-Contractor the proportion of any sum recovered from the Employer in relation to the termination as is referable to the 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 Sub-Contractor's losses, such proportion of the sum recovered by the Contractor as is just and reasonable in all the circumstances. The Contractor shall provide such information as is reasonably required by the Sub-Contractor to demonstrate the Contractor's compliance with this clause.

12(d) Termination by the Sub-Contractor

The Sub-Contractor shall be entitled to terminate the 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 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 the Contractor under sub-clause 34 (a) ("Determination of Contract by Contractor") 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 clauses 23(d) (insurance policy exclusions), 27 ("War Damage") and 32B ("Damage due to Use, Occupation or Possession by the Employer") 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 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 33(b) of the Main Contract and the Employer has not terminated the Main Contract.

12(e) Consequences of Termination by Sub-Contractor

- (1) In the event of the Sub-Contractor terminating the Sub-Contract under Clause 12(d)(i), (ii), (iii) or (iv) hereof, the following shall apply: -
 - (i) The Sub-Contractor shall leave the site in an orderly manner and remove any Sub-Contractor's things

(ii) The Sub-Contractor shall give the Contractor all Contract Documents and all Sub-Contractor's Documents

(iii) The 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 Sub-Contractor's reasonable costs of removal from the Site as a consequence of the termination
- all other amounts due to the Sub-Contractor under the Sub-Contract (but not damages)

The Contractor will take all reasonable measures to recover for the Sub-Contractor from the Employer payment in respect of the Sub-Contract Works and shall pay to the 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 Sub-Contractor to the Contractor, the same will be paid forthwith by the Sub-Contractor to the Contractor. The Contractor shall provide such information as is reasonably required by the Sub-Contractor to demonstrate the Contractor's compliance with this sub-clause.

(2) Termination by the 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 Sub-Contractor will be entitled to compensation.

12(f) NOT USED

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 panel appointed by the Minister to appoint an adjudicator. This request shall be copied to the other party. The request shall include:
 - (i) A copy of the Notice of Adjudication
 - (ii) a statement of when the Notice of Adjudication was served on the Responding Party and how this was done
 - (iii) 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

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.

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-clause 38(a)(ii) ("Conciliation"), of the Main Contract shall apply to the conciliation between the Contractor and Sub-Contractor.
- (4) 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

- (i) The Contractor shall pursue the issue or issues in dispute under the Main Contract diligently
- (ii) The 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 Sub-Contractor's failure to do so
- (iii) the Contractor shall consult with the Sub-Contractor in regard to all pleadings and procedural matters in pursuing the dispute

- (iv) the Contractor shall ensure that the views of the 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 Sub-Contractor
- (v) the 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 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 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 Sub-Contractor will be governed by the Arbitration Procedure 2011 published by Engineers Ireland and will be subject to the Arbitration Act 2010.

APPENDIX PART 1

Completed by Employer before tenders are invited

A *The Main Contract Conditions are:*

The Main Contract Conditions are: RIAI Construction Contract with quantities/without quantities
(delete as appropriate)

B *Sub-Contract Documents (Agreement Article 4)*

The **Contract Documents** are:

As scheduled hereunder/attached

The **Pricing Document** is:

A Bill of Quantities to the Agreed Rules of Measurement 4 as amended by Supplement 1, Mechanical & Electrical works are measured in accordance with the Agreed Rules of Measurement 4, Supplement 2 as scheduled hereunder/attached

The **Works Proposals (including any Design Documents)** are:

As scheduled hereunder/attached

C *Insurance (Sub-Contract conditions sub-clauses 3(d) and 3(e))*

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

- public liability insurance: €..... for any one event, but this limit may be on an annual aggregate basis for products liability, collapse, vibration, subsidence, removal and weakening of supports and sudden and accidental pollution. (If not stated, €3,000,000).
- Employer's liability insurance: €..... for any one event. (If not stated, €13,000,000).

Maximum excess permitted for public liability and employer's liability insurance:

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

Professional indemnity insurance is/is not (*delete one*) required. If required, the professional indemnity insurance is to be kept in place for Years (*if not stated, 6 years*) after Substantial Completion of the Works is certified by the Employer's Representative. If required, the minimum indemnity limit for professional indemnity insurance shall be €..... (If not stated, €6,500,000) for each and every claim or series of claims arising from the same originating cause/annual aggregate limit (*delete one*). The maximum excess shall be €..... (If none stated, €50,000).

Permitted exclusions from all Insurances

- War, invasion, act of foreign enemies, hostilities [whether war is declared or not], civil way, rebellion, revolution, insurrection or military or usurped power
- Pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic speeds
- Contamination by radioactivity or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components, in each case not caused by the Sub-Contractor or the Sub-Contractor's Personnel
- Terrorism
- Asbestos
-
-

Permitted exclusions from public liability insurance

- Persons under a contract of service or apprenticeship with the insured
- Property of the insured or in the insured's custody or control other than existing premises and their contents temporarily occupied for the purposes of the Works
- Defective workmanship or materials but not resulting in damage
- Mechanically propelled vehicles within the meaning of the Road Traffic Acts
- Loss or damage due to design for a fee or for which a fee would normally be charged/design/defective workmanship, materials or design, but including its consequences (*delete two. If none deleted, permitted exclusion is 'loss or damage due to design for a fee, or for which a fee would normally be charged'*)
- Gradual pollution or contamination
- Territorial limits
- Unless otherwise specified in the Works Requirements, aircraft and waterborne craft
- Fines, penalties and liquidated damages
-
-

Permitted exclusions from employer's liability insurance

- Offshore work
- Liability compulsorily insurable under the Road Traffic Acts
-
-

Permitted exclusions from professional indemnity insurance

- Persons under a contract of service or apprenticeship with the insured
- Ownership, use, occupation or leasing of mobile or immobile property
- Effecting or maintenance of insurance of or in connection with the provision of finance or advice on financial matters
- Dishonest, malicious, criminal or deliberate illegal acts
- Libel and slander
- Insolvency
- Fines, penalties, liquidated damages or any penal, punitive exemplary, non-compensatory or aggravated damages
- Failure of information technology
- Contractual liability that would not apply in the absence of the sub-contract
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D (i) Collateral Warranties (Sub-Contract conditions sub-clause 5(e))

A collateral warranty is/is not (delete as appropriate) required in the form set out in the Works Requirements

(ii) Ancillary Certificates (Sub-Contract conditions sub-clause 2(e)(2;))

The Sub-Contractor is required to provide the CIF SC03 Ancillary Certificate(as attached in the Appendix Part 3) and the CIF01 Ancillary Certificate as prescribed by the Construction Industry Council. The CIF01 Ancillary Certificate must state that the works undertaken by the Sub-Contractor were designed and constructed in accordance with the Building Regulations.

E. The Site (Sub-Contract conditions Clause 7)

Special Attendances to be provided by the Contractor (Sub-Contract conditions sub-clause 7(c)):-

1.
2.
3.

4.
5.
6.
7.
8.

F *Frequency of Payment Claim Dates (Sub-Contract conditions clause 11(a))*

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

G *Time and Completion (Sub-Contract conditions clauses 9 & 10)*

Designated Date

The designated date for the tender of the Sub-Contractor shall be:

Starting Date (Sub-Contract conditions sub-clause 9(a))

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

H. *Performance Bond (Clause 1(i))*

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

The form of Performance Bond shall be

I. *Main Contractor's Programme (Clause 4(d))*

Details to be included of Main Contractor's programme to allow Sub-Contractor to meet these requirements

J. *Inspection Matrix*

Inspections shall be carried out at the following stages of the contract:

1.
 2.
 3.
 4.
 5.
 6.
 7.
 8.
- Etc.

K. *Liquidated and Ascertained Damages*

At the rate of € _____ per _____

APPENDIX PART 2

Completed by Sub-Contractor and submitted with Tender

A *Communications* (Article 5 of the Main Contract)

Details for sending notices under clauses 12 and 13 to the Sub-Contractor are:

For the attention of:

Address:

Details for sending other notices to the Sub-Contractor are:

For the attention of:

Address:

Fax:

Email:

The Sub-Contractor's agent⁴ in the Republic of Ireland for service of legal process is:

Name

Address

B *Parent Company Guarantee*

The Sub-Contractor shall provide a parent company guarantee in the form in the Contract Documents from:

*Name of Parent Company*⁵:

Postal Address:

Registered Address:

Place where incorporated or organised:

⁴ An agent in the State must be named if the Sub-Contractor's registered office or other principal place of business is outside the State

⁵ Tenderers must name a guarantor if parent company has been identified for purposes of suitability assessment. If none named, no parent company guarantee required

C *The Sub-Contract Sum*

The price of the Sub-Contract Works is:

D *Adjustments to the Contract Sum (Sub-clauses 10(b)(5) and 10(c))*

Sub-Contractor's tendered percentage additions/deductions:

- **Percentage addition to costs of labour:**%

(If negative or blank, read as 0%)

The above shall include all costs incurred by the Sub-Contractor (excluding VAT) for those workers engaged on additional or substituted work required as a result of a variation, that are additional to the basic hourly rate of pay for the relevant category of worker in an applicable sectoral employment order made under the Industrial Relations Acts 1946–2015. It shall include (but not be limited to) the following components of cost:

- All costs incurred with meeting legal requirements (including but not limited to PRSI), pension contributions, death in service contributions, sick pay contributions; and
- Plus Rates; and
- Allowances; and
- Overheads; and
- Profit and loss of profit

Plus Rates

A Plus Rate is the balance remaining when the basic hourly rate of pay for the relevant category of worker under an applicable sectoral employment order made under the Industrial Relations Acts 1946-2015 is deducted from the basic hourly rate of pay paid to a worker in accordance with the workers terms and conditions of employment. It does not include allowances.

Allowances

Allowances are payments made to workers that are additional to the basic rate of pay paid to a worker and may include (but not limited to):

- (a) Any bonuses, productivity, incentive or other bonus;
- (b) Any special allowances particular to the category of worker (such as tool money);
- (c) Overtime;
- (d) Unsocial hours working and Sunday working;
- (e) Sick pay and public holiday and annual holiday pay;
- (f) Absences due to training;
- (g) Travelling time;
- (h) Subsistence (such as country money);
- (i) Any other payments not included in the foregoing.

- **Percentage addition for costs of materials:**%

(If negative or blank, read as 0%)

The above shall include on-costs, overheads and profit, and exclude VAT.

- **Percentage addition/deduction for costs of plant:** %

(A deduction of more than 100% will be read as a deduction of 100%. If the entry is blank it will be read as 0%)

The above shall include on-costs, overheads and profit, and exclude VAT.

APPENDIX PART 3

CIF SC03

UNDERTAKING BY NOMINATED SUB-CONTRACTOR ANCILLARY FORM OF CERTIFICATE OF COMPLIANCE

Building Control Authority:

Unique Identifier: _____
(for official use only)

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

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

Signature: _____ Date: _____
(to be signed by a Principal or Director of the Nominated Sub-Contractor only)

Name: _____

Address: _____

Tel: _____ Fax: _____ Email: _____

Construction Industry Register Ireland registration number (where applicable): _____