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Conditions of Subcontract for Construction

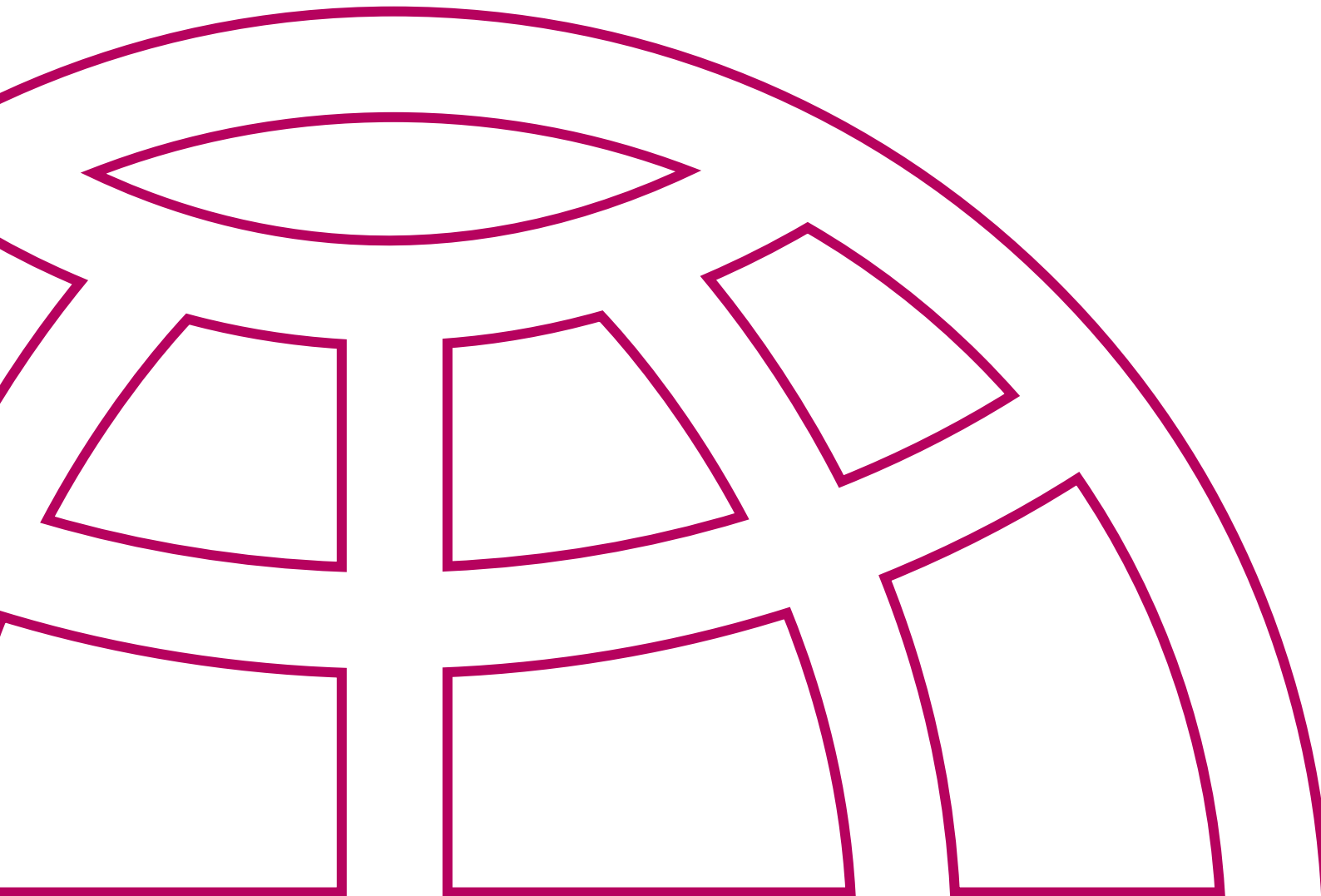
FOR BUILDING AND ENGINEERING WORKS DESIGNED BY THE EMPLOYER

GENERAL CONDITIONS

GUIDANCE FOR THE PREPARATION OF PARTICULAR CONDITIONS
OF SUBCONTRACT

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

TRAFFIC USE





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

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FIDIC publications and details about events are available from the Secretariat in Switzerland.

Specific activities are detailed in an annual business plan, and the FIDIC website, www.fidic.org, gives extensive background information.

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OF SUBCONTRACT

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CONTRACTOR'S LETTER
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FIDIC® Conditions of Subcontract
for **CONSTRUCTION**

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First Edition 2011
ISBN 978 - 2 - 88432 - 068 - 9

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



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ACKNOWLEDGEMENTS

In preparing the *FIDIC Conditions of Subcontract for Construction*, special thanks are extended to members of the Subcontract Task Group of the FIDIC Contracts Committee. The task group comprised Richard Appuhun, Civil Engineer, Italy, Nael Bunni, Chartered Engineer, Ireland, Edward Corbett, Corbett & Co., UK, Siobhan Fahey, Consulting Engineer, Ireland, and Zoltan Záhonyi, Consulting Engineer, Hungary.

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

Drafts were reviewed by many persons and organisations, including those listed below. Their valuable comments were reviewed by the Subcontract Task Group and, where considered appropriate, have influenced the wording of the clauses. Romano Allione of the Dispute Review Board Foundation, USA; Des Barry, JB Barry & Partners, Ireland; Brian Bond, Consulting Engineer, Ireland; Pieter de Bruijn, Ballast Nedam Infra B.V., Netherlands; Gerlando Butera, Nabarro LLP Solicitors, UK; Salvatore Castro on behalf of the Council of Engineering Consultants of the Philippines; Donald Charrett, Melbourne TEC Chambers, Australia; Peer Dalland, Dalland Associates Pty Ltd, Australia; European International Contractors; William Godwin, 3 Harecourt Chambers, UK; Mark Goodrich, White & Case LLP, Japan; Leo Grutters, Gibconsult GmbH, Germany; Yukinobo Hayashi, Nippon Koei, Japan; Dr Götz-Sebastian Hök, Dr Hök Stieglmeier & Kollegen, Germany; Anthony Hussey, Hussey Fraser Solicitors, Ireland on behalf of the Chartered Institute of Arbitrators (Irish Branch); Levent Irmak, GTZ Bosphorus, Turkey; Izhar bin Ismail, Tenaga Nasional, Malaysia; Emmanuel Jolivet, General Counsel, ICC International Court of Arbitration; Professor Rudi Klein, Specialist Engineering Contractors' Group, UK; Wolf-Rainer Kruska, KfW Bankengruppe, Germany; Patrick MM Lane SC, Maisels Group, South Africa; HH Humphrey Lloyd QC, Atkin Chambers, UK; Smore Mushtaq, Mushtaq Contracts, Pakistan; Waleed El Nemr, Hill International (North Africa) Ltd., Egypt; Mark Olive, Davis Langdon & Seah, Vietnam; Darko Plamenac, Construction and Geodesy Advanced School, Serbia; Siemens A.G., Germany; Svend Poulsen, Atkins, Denmark; Robin Schonfeld, SMEC International Pty Ltd, Australia; George Rosenberg, Corbett & Co., UK; Derek Ross, Layng Ross, UK; Christopher Seppala, White & Case, France; Olivier Wolters, Simed Health Care Group B.V., Netherlands; Professor Shuibo Zhang, Tianjin University, China and all other persons who gave comments and feedback.

FIDIC wishes to record its appreciation of the time and effort devoted by all the above.

FIDIC also wishes to thank Geoff French, Executive Committee member responsible

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for the FIDIC Contracts Committee, Enrico Vink, Managing Director, FIDIC, and Peter Boswell, formerly General Manager, FIDIC, for their support in producing this document.

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

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FOREWORD

The Conditions of Subcontract for Construction have been prepared by the Fédération Internationale des Ingénieurs-Conseils (FIDIC) for use in conjunction with the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*, First Edition 1999, and with the Multilateral Development Bank Harmonised Edition of the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*, but only if the necessary amendments are made to reflect the significant differences between this harmonised edition and the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*, First Edition 1999. They replace the terms of the *FIDIC Conditions of Subcontract for Works of Civil Engineering Construction*, 1st Edition 1994, that were recommended for use in conjunction with the *FIDIC Conditions of Contract for Works of Civil Engineering Construction* (4th Edition 1987, Reprinted 1992 with Further Amendments).

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

These flow charts cover:

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

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

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

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

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

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

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

- (a) Where the wording in General Conditions specifically requires that further information is to be included in Particular Conditions and the Conditions of Subcontract would not be complete without that information, namely in Sub-Clauses 1.1.8, 1.1.9, 1.1.11, 1.1.18, 1.1.27, 1.9, 2.1, 8.3, 18.1, and 18.2.
- (b) Where the wording in the General Conditions indicates that supplementary information may be included in the Particular Conditions, but the Conditions of Subcontract would still be complete without any such information, namely in Sub-Clauses 1.11, 2.1, 2.2, 4.1, 7.1, 7.2, 9.1, 10.2, 10.3, 14.6, and 18.2.
- (c) Where the type, circumstances or locality of the Subcontract Works necessitate additional clauses or sub-clauses (for example, when the Subcontractor has been nominated by the Employer).
- (d) Where the governing law or exceptional circumstances necessitate an alteration in the General Conditions. Such alterations should be effected by stating in the Particular Conditions that a particular clause, or part of a clause, in the General Conditions is deleted and giving the substitute clause, or part, as applicable.

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

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

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

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

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



FLOW CHARTS

Typical sequence of Principal Events during Subcontracts for Construction

Typical sequence of Payment Events envisaged in Clause 14

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

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

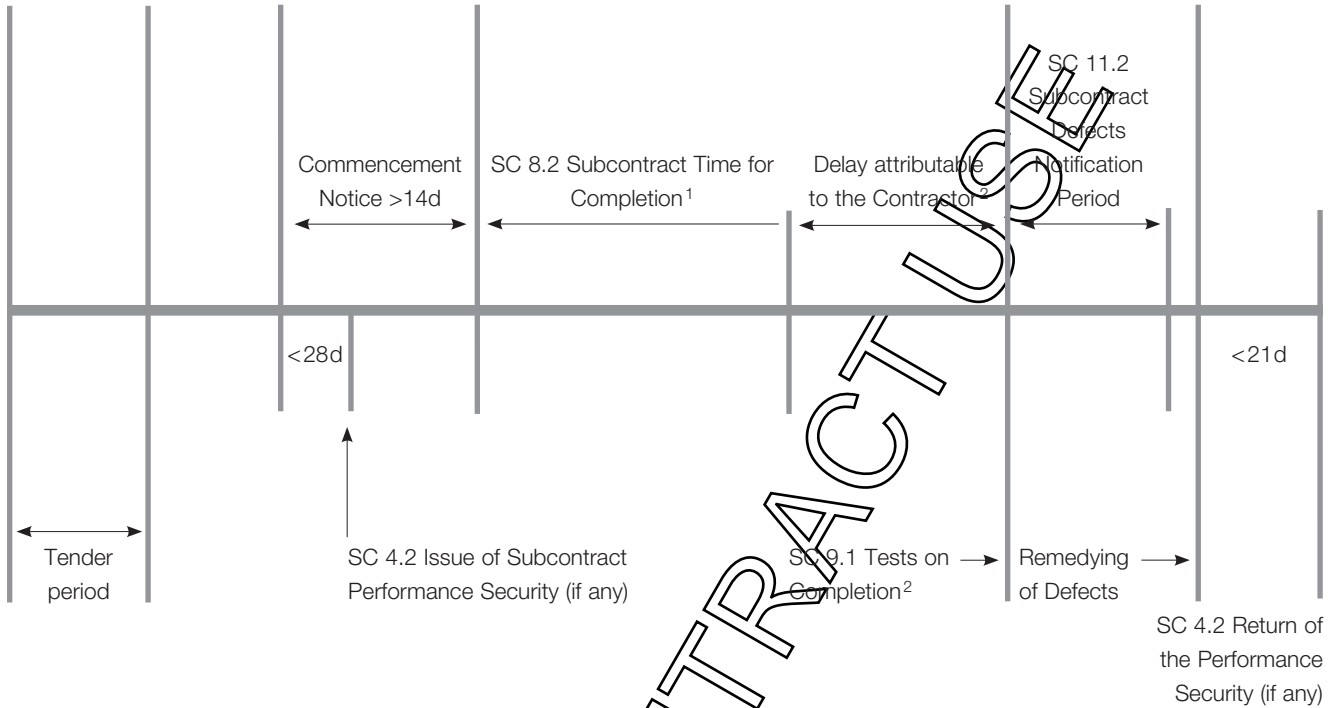
Sequence of Subcontractor Claims envisaged in Second Alternative Clause 20 given in the Guidance for the Preparation of Particular Conditions of Subcontract

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

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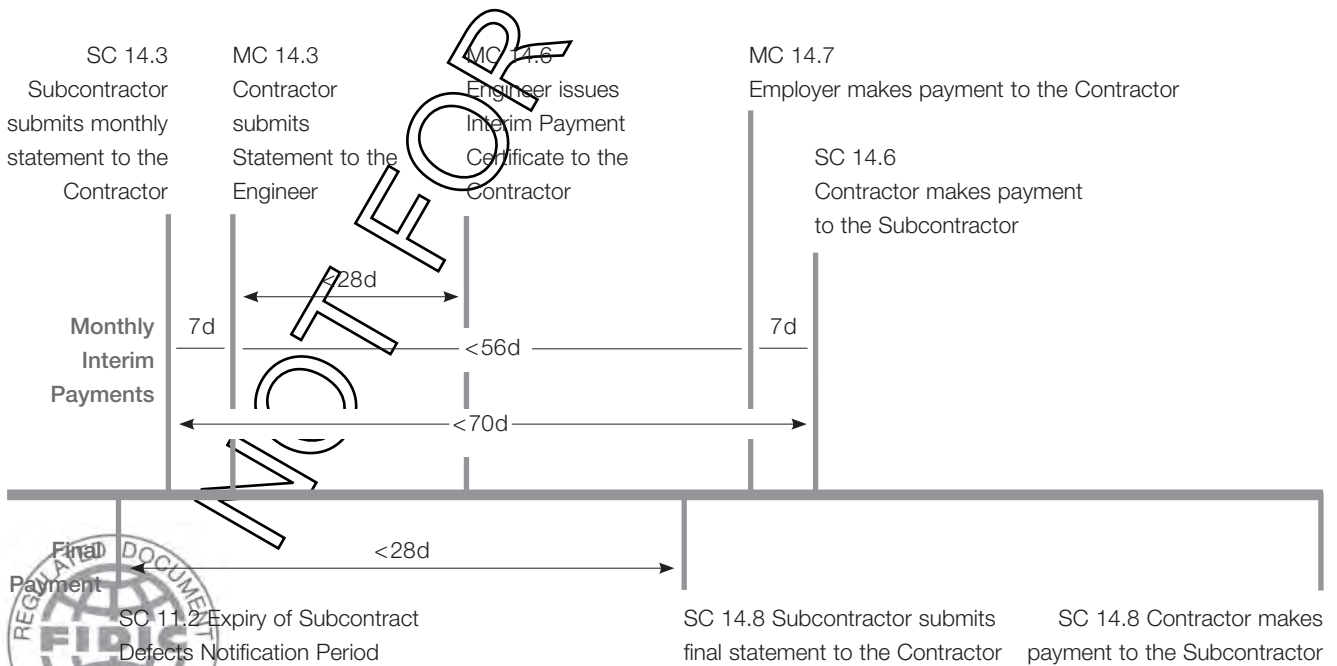
Legend: The abbreviation SC is a reference to the Subcontract and MC is a reference to the Main Contract.

Issue of the Subcontract Tender Documents	Submission of the Subcontract Offer	Issue of the Contractor's Letter of Acceptance	SC 8.1 Commencement Date for the Subcontract Works	SC 10.1 Issue of the Taking-Over Certificate	SC 11.3 Issue of the Performance Certificate
---	-------------------------------------	--	--	--	--



Typical sequence of Principal Events during Subcontracts for Construction

1. The Subcontract Time for Completion is to be stated (in the Appendix to the Subcontractor's Offer) as a number of days, to which is added any extensions of time under Sub-Clause 8.4.
2. In order to indicate the sequence of events, the above diagram is based upon the example of the Subcontractor failing to comply with Sub-Clause 8.2.



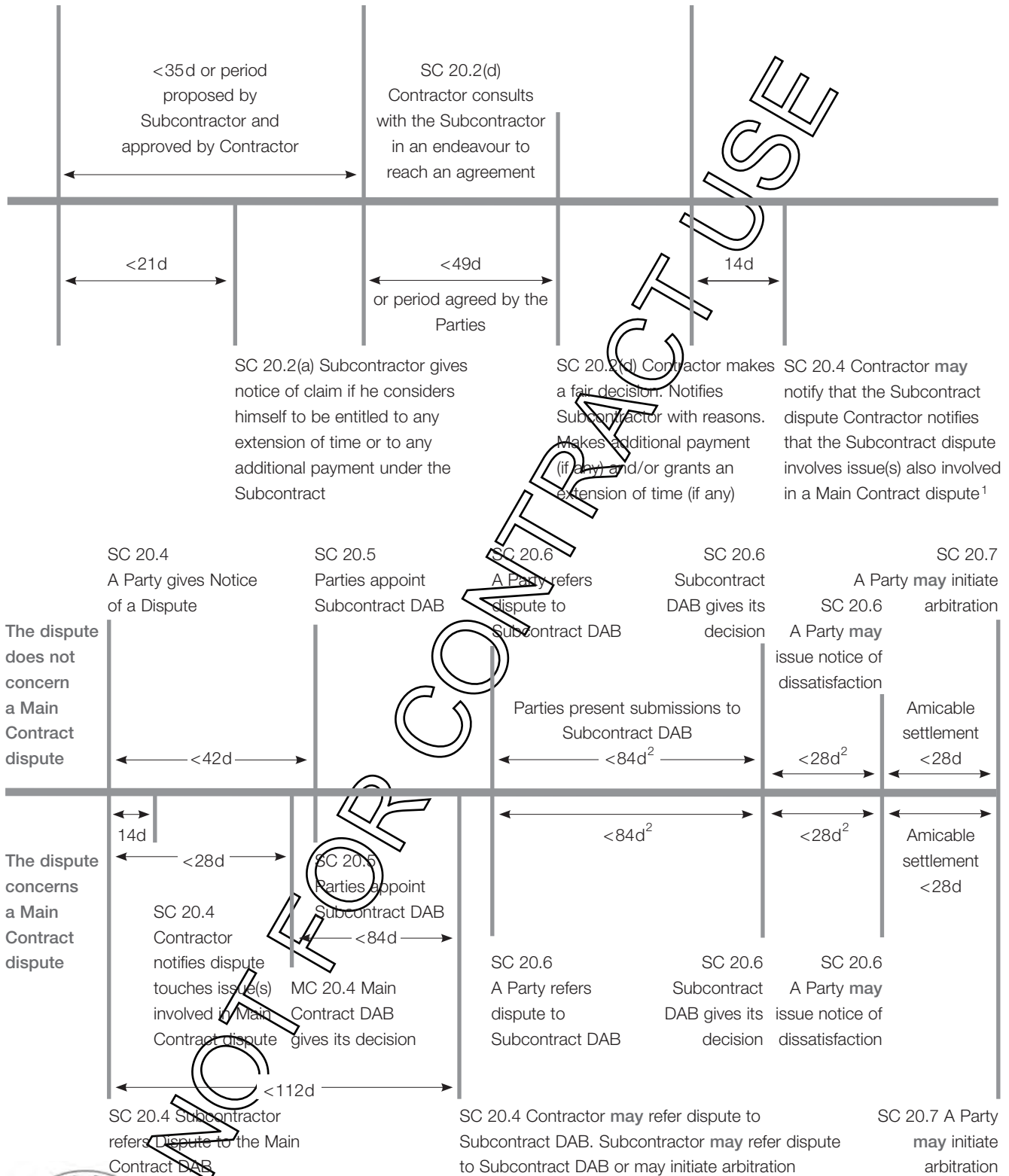
Typical sequence of Payment Events envisaged in Clause 14



The Subcontractor became aware or should have become aware of the event or circumstance giving rise to the Subcontractor's claim

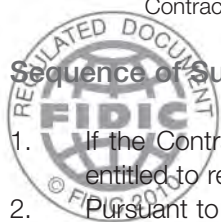
SC 20.2(b) Subcontractor submits fully detailed claim

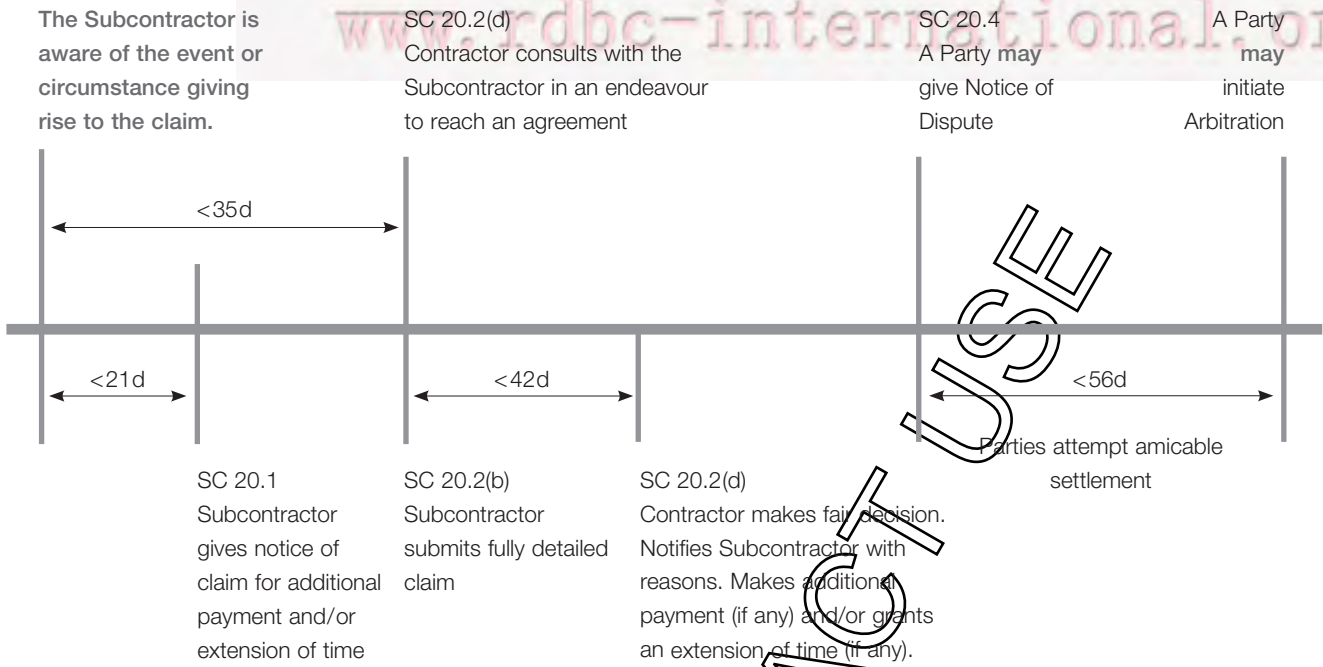
SC 20.4 A Party gives Notice of Dispute



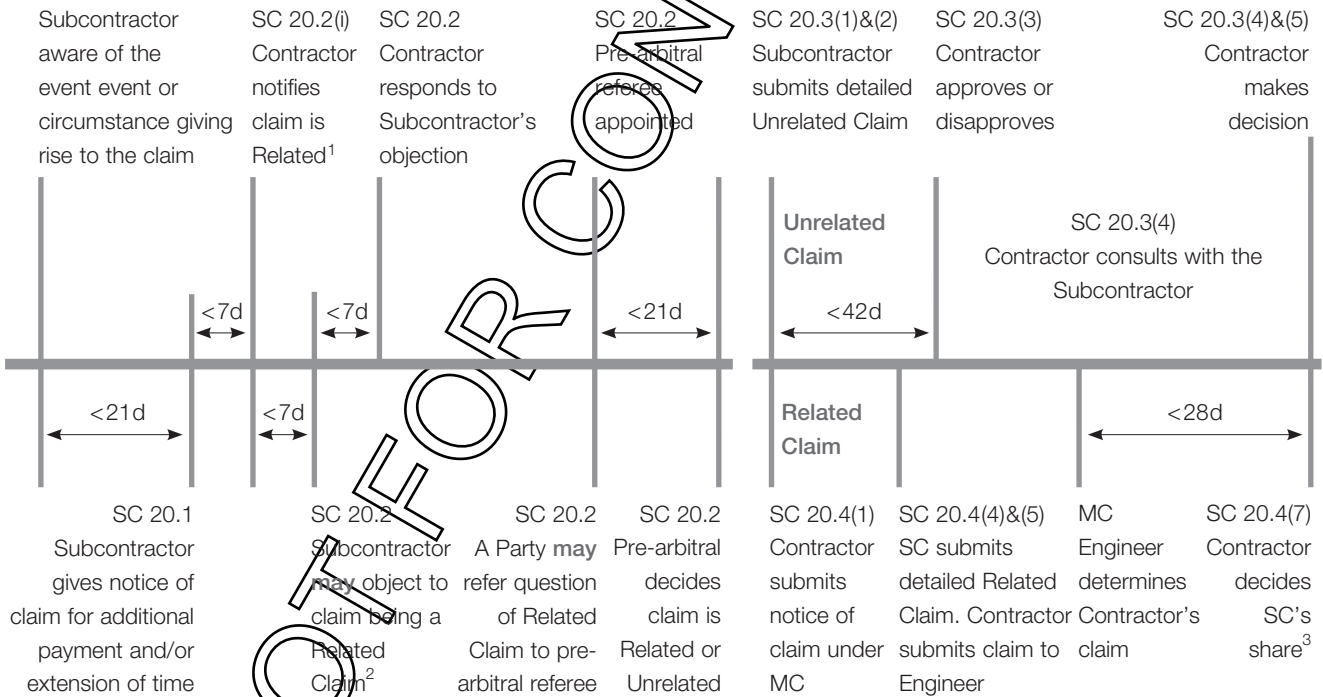
Sequence of Subcontractor's Claims and Disputes envisaged in Clause 20

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



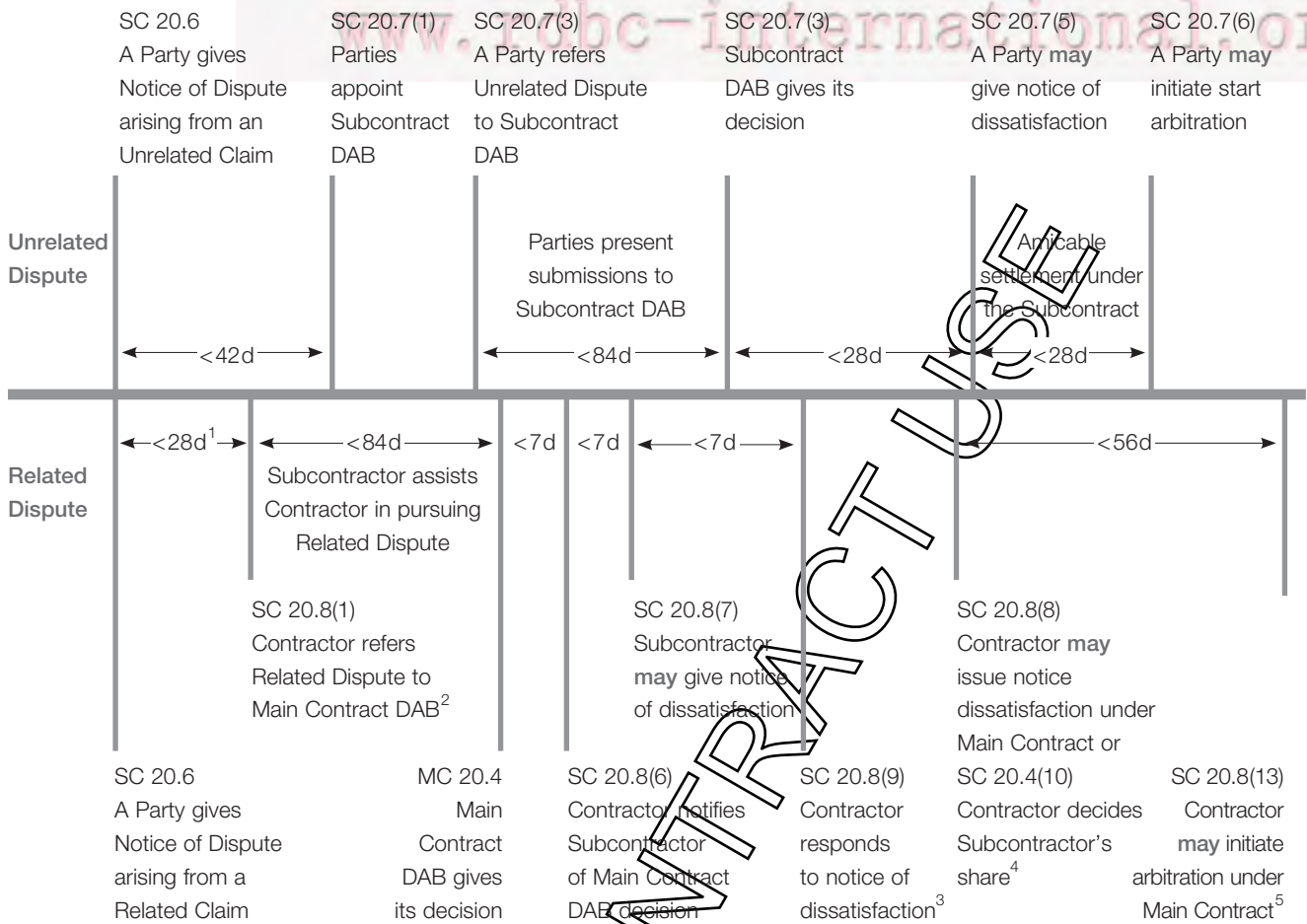


Sequence of Subcontractor Claims and Disputes envisaged in First Alternative Clause 20 given in the Guidance for the Preparation of Particular Conditions of Subcontract



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

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



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

1. 56 days if Main Contract DAB not in place at time of Notice of Dispute.
2. If Contractor does not refer Related Dispute to Main Contract DAB within less than 28 days (or 56 days), dispute to be considered an Unrelated Dispute.
3. If Contractor does not respond, dispute to be considered an Unrelated Dispute.
4. Within less than 14 days of receiving benefit from Employer. Within less than 28 days, Subcontractor may notify dissatisfaction with decided share. Within less than 7 days, Contractor to respond.
5. If the Contractor does not refer the Related Dispute to arbitration <63 days after notice of dissatisfaction under Main Contract, dispute to be considered an Unrelated Dispute.



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General Conditions - SEE SEPARATE DOCUMENT

First Edition 2011
ISBN 978 - 2 - 88432 - 068 - 9

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Guidance for the Preparation of Particular Conditions of Subcontract of Subcontract

INTRODUCTION

The *FIDIC Conditions of Subcontract for Construction* have been prepared by the Fédération Internationale des Ingénieurs-Conseil (FIDIC) for use in conjunction with the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*, First Edition 1999. (These Conditions of Subcontract may also be used with the Multilateral Development Bank Harmonised Edition of the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer* but only if the necessary amendments are made to reflect the significant differences between this harmonised edition and the *FIDIC Conditions of Contract for Construction Building and Engineering Works Designed by the Employer*, First Edition 1999). Modifications to the Conditions may be required in some legal jurisdictions, particularly if they are to be used on domestic contracts.

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

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

Before incorporating any example wording, it must be checked to ensure that it is wholly suitable for the particular circumstances of the intended subcontract. Unless it is considered suitable, example wording should be amended before use. Where example wording is amended, and in all cases where other amendments or additions are made, care must be taken to ensure that no ambiguity is created, either with the General Conditions of Subcontract or between the clauses in the Particular Conditions of Subcontract.

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

The Conditions of Subcontract comprise the "General Conditions of Subcontract", which form part of the "FIDIC Conditions of Subcontract for Construction", First Edition 2011, published by the Fédération Internationale des Ingénieurs-Conseil (FIDIC), and the following "Particular Conditions of Subcontract", which include amendments and additions to these General Conditions of Subcontract.

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

NOTES ON THE PREPARATION OF TENDER DOCUMENTS

The subcontract tender documents should be prepared by suitably-qualified engineers who are familiar with the terms and the provisions of the Main Contract, the technical aspects of the Works of which the Subcontract Works are to be part, and the technical aspects of the Subcontract Works; and a review by suitably-qualified lawyers may be advisable. The tender documents issued to tenderers will consist of the Conditions of Subcontract, the Annexes to the Particular Conditions of Subcontract, the Subcontract Specification, the Subcontract Drawings, and the Letter of Subcontractor's Offer, and the Appendix to the Subcontractor's Offer. The Subcontract Specification and/or Subcontract Drawings may comprise in part or in full the Specification and/or Drawings of the Main Contract.

For this type of subcontract, where the Subcontract Works are valued by measurement, Annex C in which the Subcontract Bill of Quantities is included will usually be the most important annex. A daywork schedule may also be necessary, to allow for the valuation of any Subcontract Variation that is to be executed on dayworks. In addition, each of the tenderers should receive any Site Data provided by the Employer to the Contractor under the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*, First Edition 1999, Main Contract Sub-Clause 4.10 [Site Data] that is pertinent to the Subcontract Works, to advise them of any special matters which the Contractor wishes them to take into account when pricing the Subcontract Bill of Quantities but which are not to form part of the Subcontract.

Many sub-clauses in the General Conditions of Subcontract make reference to data and/or documents being contained in the Annexes to the Particular Conditions of Subcontract and/or in the Appendix to the Subcontractor's Offer, which provide a convenient location for the data and/or documents which are usually required. Each example form of Annex and of the Appendix to the Subcontractor's Offer given in this publication provides a check-list of the data and/or documents required; but there is no indication, either in the General Conditions of Subcontract or in the example forms, that this data is to be prescribed by the Contractor or inserted by the tenderer. The Contractor should prepare the Annexes to the Particular Conditions of Subcontract and the Appendix to the Subcontractor's Offer based on these example forms, with the elements completed to the extent of his requirements. The instructions to tenderers for the Subcontract may need to specify any constraints on the completion of the Annexes to the Particular Conditions of Subcontract and/or the Appendix to the Subcontractor's Offer, and/or specify the extent of other information which each tenderer is to include with his tender.

The Contractor may require that each tenderer produce a parent company guarantee where the tendering company may not have sufficient resources of its own, and is a subsidiary or affiliate of another company which is believed to have the necessary resources and which can provide a guarantee. If the Contractor requires that each tenderer is to produce a parent company guarantee (where the tenderer is not a parent company) and/or a tender security, these requirements (which apply prior to the Subcontract becoming effective) should be included in the instructions to tenderers: the example forms annexed to the Guidance for the Preparation of Particular Conditions of the *FIDIC Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*, First Edition 1999, may be used as guidance.

Clause 1 Definitions and Interpretation

Sub-Clause 1.1 Subcontract Definitions

The opening words of this Sub-Clause should be noted, namely that all words and expressions used in the Subcontract shall have the same meanings as assigned to them under the Main Contract, unless the context otherwise requires and except as stated in this Sub-Clause.

For example, since the term 'Cost' is not stated in this Sub-Clause, this term as used in the Subcontract has the meaning as stated under Main Contract Clause 1.1.4.3.

Sub-Clause 1.7 Joint and Several Liability under the Subcontract

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

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

EXAMPLE	At the beginning of sub-paragraph (b) of Sub-Clause 1.7, insert: No later than 10 days after the date of the Contractor's Letter of Acceptance.
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Sub-Clause 1.8 Subcontract Law and Language

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

EXAMPLE	After the first paragraph of Sub-Clause 1.9, insert: If no country (or other jurisdiction) is stated in the Appendix to Tender of the Main Contract, the law governing the Subcontract shall be the law of the country (or other jurisdiction) in which the Subcontract Works (or most of the Subcontract Works) are executed.
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Sub-Clause 1.9 Subcontract Agreement

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

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

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

EXAMPLE

At the end of Sub-Clause 1.9 insert:

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

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

Sub-Clause 1.10

No Privity of Contract with Employer

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

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

EXAMPLE

In Sub-Clause 1.10 delete all text and substitute:

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

Additional Sub-Clause

Details to be Confidential

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

EXAMPLE SUB-CLAUSE

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

Clause 2

The Main Contract

Sub-Clause 2.2

Compliance with Main Contract

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

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

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

Amend Sub-clause 1.10 to read:

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

At the end of Sub-Clause 2.2 insert:

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

Clause 3

The Contractor

Sub-Clause 3.2

Access to the Site

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

EXAMPLE

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

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

Sub-Clause 3.3

Contractor's Claims in connection with the Subcontract

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

Clause 4

The Subcontractor

Sub-Clause 4.1

Subcontractor's General Obligations

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

EXAMPLE

At the end of Sub-Clause 4.1 insert:

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

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

Sub-Clause 4.2 Subcontract Performance Security

For this Sub-Clause to apply, an amount in respect of the Subcontract Performance Security must be stated in the Appendix to the Subcontractor's Offer. It should be noted that the last sentence of this Sub-Clause makes reference to the provisions of Main Contract Clause 4.2 [*Performance Security*]. The effect of this reference, read together with Sub-Clause 1.3 [*Subcontract Interpretation*], is that the Subcontractor is required to maintain the Subcontract Performance Security as valid and enforceable until he receives the Subcontract Performance Certificate; and, under Sub-Clause 11.3 [*Subcontract Performance Certificate*], the date of the Subcontract Performance Certificate shall be the date stated in the Performance Certificate issued by the Engineer under the Main Contract.

If the date corresponding to the Subcontract Time for Completion is considerably earlier than the date corresponding to the Time for Completion under the Main Contract, such that it is appropriate that the allowed expiry date for the Subcontract Performance Certificate may be earlier than that for the Performance Certificate under the Main Contract, then this Sub-Clause should be varied accordingly.

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

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

EXAMPLE

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

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

Additional Sub-Clause Subcontract Permits, Licences or Approvals

If the Subcontractor is to be responsible for obtaining any permit, licence or approval that is required by the law that governs the Subcontract, an additional Sub-Clause 4.5 may be added:

EXAMPLE SUB-CLAUSE

The provisions of Main Contract Clause 2.2 [*Permits, Licences or Approvals*] shall apply to the Subcontract.

Clause 5 Assignment of the Subcontract & Subcontracting

Sub-Clause 5.2 Subcontracting

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

EXAMPLE

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

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

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

EXAMPLE

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

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

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

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

EXAMPLE

At the end of Sub-Clause 5.2 insert:

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

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

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

EXAMPLE

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

“of the Contractor” and substitute: “of both the Contractor and the Employer”.

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

EXAMPLE

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

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

Additional Sub-Clause Payment to the Subcontractor's subcontractor

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

EXAMPLE SUB-CLAUSE

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

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

Clause 6

Co-operation, Staff and Labour

Sub-Clause 6.1

Co-operation under the Subcontract

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

Sub-Clause 6.4

Subcontractor's Representative

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

EXAMPLE

At the end of Sub-Clause 6.4 insert:

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

or

EXAMPLE

At the end of Sub-Clause 6.4 insert:

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

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

EXAMPLE

At the end of Sub-Clause 6.4 insert:

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

Clause 7

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

Sub-Clause 7.1

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

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

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

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

EXAMPLE

At the end of Sub-Clause 7.1 insert:

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

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

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

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

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

being executed but, during the Defects Notification Period, the availability of certain items of such Contractor's Equipment, temporary works and/or facilities is contingent on it/them being at the Site at the time(s) required by the Subcontractor.

Sub-Clause 7.2 Free-Issue Materials

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

Sub-Clause 7.5 Subcontractor's Equipment and Subcontract Plant

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

EXAMPLE

Delete the text of this Sub-Clause and substitute:

Each item of Subcontract Plant and of the materials intended to form or forming part of the permanent works to be executed by the Subcontractor under the Subcontract shall become the property of the Contractor, free from liens and other encumbrances, when the Subcontractor receives payment of the value of such item of Subcontract Plant and materials from the Contractor.

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

EXAMPLE

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

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

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

Clause 8

Commencement and Completion

Sub-Clause 8.1

Commencement of Subcontract Works

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

EXAMPLE

At the end of Sub-Clause 8.1 insert:

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

Sub-Clause 8.2

Subcontract Time for Completion

If the Subcontract Works are to be completed in stages, each stage should be defined as a Subcontract Section in the Appendix to the Subcontractor's Offer. Precise geographical definitions are advisable.

Sub-Clause 8.3

Subcontract Programme

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

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

Sub-Clause 8.7

Subcontract Damages for Delay

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

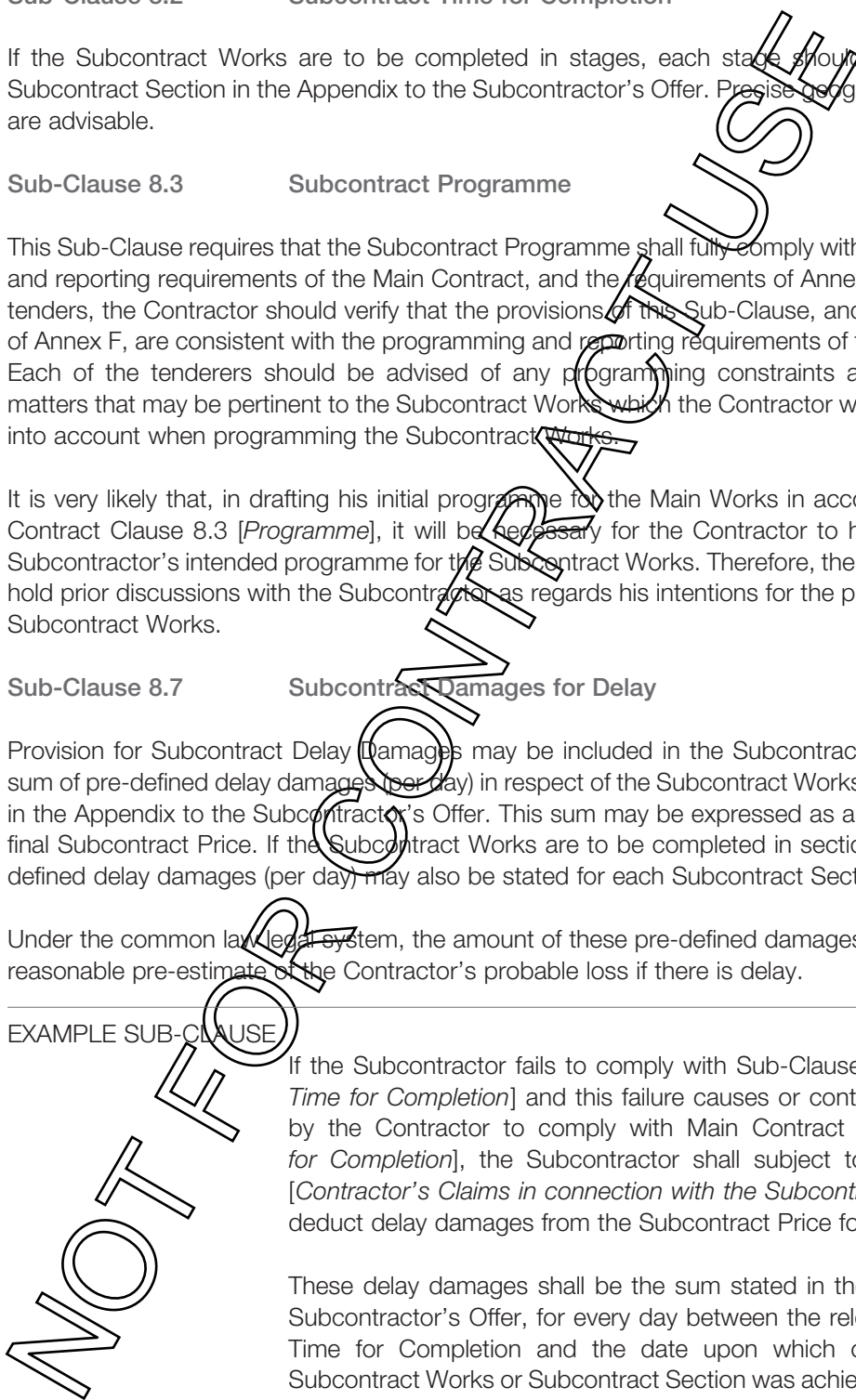
Under the common law legal system, the amount of these pre-defined damages must represent a reasonable pre-estimate of the Contractor's probable loss if there is delay.

EXAMPLE SUB-CLAUSE

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

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

These delay damages shall be the only damages due from the



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

Additional Sub-Clause Incentive for early Subcontract Completion

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

EXAMPLE SUB-CLAUSE

Each Subcontract Section is required to be completed within the applicable Time for Completion stated in the Appendix to the Subcontractor's Offer. The Subcontractor shall be entitled to a bonus payment if a Subcontract Section is completed earlier than the applicable Time for Completion. The amount of bonus for each Subcontract Section is stated in Annex C. For the purposes of calculating any bonus payment, the applicable Time for Completion stated in the Appendix to the Subcontractor's Offer is fixed and no adjustments of this time by reason of granting an extension of the Time for Completion will be allowed.

Clause 9

Tests on Completion

Sub-Clause 9.1 Subcontract Tests on Completion

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

Sub-Clause 9.2 Main Contract Tests on Completion

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

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

Clause 10

Completion of and Taking-Over the Subcontract Works

Sub-Clause 10.3 Taking-Over by the Contractor

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

Clause 11 Defects Liability

Sub-Clause 11.2 Subcontract Defects Notification Period

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

Sub-Clause 11.3 Performance Certificate

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

It should be noted that under this Sub-Clause the date of the Subcontract Performance Certificate shall be the date stated in the Performance Certificate issued by the Engineer under the Main Contract.

If the date corresponding to the Subcontract Time for Completion is considerably earlier than the date corresponding to the Time for Completion under the Main Contract, such that it is not appropriate that the Subcontractor's obligations continue until the Contractor has fulfilled all his obligations under the Main Contract, then this Sub-Clause may be varied:

EXAMPLE

Performance of the Subcontractor's obligations shall not be considered to have been completed until the Contractor has issued the Subcontract Performance Certificate to the Contractor, stating the date on which the Subcontractor has completed his obligations under the Subcontract. The Contractor shall issue the Subcontract Performance Certificate within 28 days of the expiry of the Subcontract Defects Notification Period, or as soon thereafter as the Subcontractor has supplied all the Subcontractor's Documents and completed and tested all the Subcontract Works, including remedying any defects.

Clause 12 Measurement and Evaluation

Sub-Clause 12.1 Measurement of the Subcontract Works

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

EXAMPLE

Delete Sub-Clause 12.1 and substitute:

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

by the Contractor with the Engineer under the Main Contract shall be deemed to be accurate and to be accepted by the Subcontractor.

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

EXAMPLE

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

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

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

EXAMPLE

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

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

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

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

Clause 14

Contract Price and Payment

Sub-Clause 14.1

The Subcontract Price

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

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

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

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

For a lump-sum subcontract, the tender documents should include a schedule of payments specifying the instalments in which the Subcontract Price will be paid. These instalments may be

defined by reference to the actual progress achieved in executing the Subcontract Works, typically known as 'milestone payments'.

EXAMPLE PROVISIONS FOR A LUMP-SUM CONTRACT

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

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

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

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

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

Add the following Sub-Clause to Clause 14:

14.12 Subcontract Schedule of Payments

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

- (a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Main Contract Clause 14.3 [*Application for Interim Payment Certificates*], referred to in Sub-Clause 14.3 [*Subcontractor's Monthly Statements*]; and
- (b) if these instalments are not defined by reference to the actual progress achieved in executing the Subcontract Works, and if actual progress is found to be less than that on which this schedule of payments was based, then the Contractor may consult with the Subcontractor in an endeavour to reach agreement on the revised instalments, which shall take account of the extent to which progress is less than that on which the instalments were previously based. If agreement is not reached, the Contractor shall decide the revised instalments, taking due regard of the Subcontractor's views and all relevant circumstances. The Contractor shall give notice, with supporting particulars, to the Subcontractor of this decision.

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

Sub-Clause 14.2 Subcontract Advance Payment

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

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

Sub-Clause 14.6 Interim Subcontract Payments

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

EXAMPLE

In the first line of Sub-Clause 14.6, delete "70" and insert "42".

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

The wording of this Sub-Clause provides that the Subcontractor shall be paid under the Subcontract only when payment to the Contractor is certified/made under the Main Contract, commonly known as a 'pay-when-paid' provision. This means that, under certain circumstances, interim payments to the Subcontractor can be delayed until such time as the Contractor is paid by the Employer. However, it should be noted that this is not a 'pay-if-paid' provision. The Contractor can only withhold or defer payment to the Subcontractor until the date that is 84 days after the expiry of the Subcontract Defects Notification Period, regardless of whether or not the Contractor is paid by the Employer, as provided by the last paragraph of Sub-Clause 14.8 [Final Subcontract Payment] of the General Conditions.

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

EXAMPLE PROVISIONS WHERE PAY-WHEN-PAID TERMS ARE UNENFORCEABLE

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

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

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

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

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

No later than 7 days after expiry of the Subcontract Defects Notification Period, the Contractor shall pay the Subcontractor the remaining portion of the retention money under the Subcontract. However, if any work remains to be executed under Clause 11 [*Defects Liability*], the Contractor shall be entitled to withhold payment of the estimated cost of this work until it has been executed.

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

Within 7 days after the Subcontractor has finally performed his obligations under the Subcontract, provided that 35 days have expired since submission by the Subcontractor of the Subcontractor's Final Statement, the Contractor shall pay to the Subcontractor the balance of the Subcontract Price finally due.

In Sub-Clause 15.3 [*Payment after Termination of the Main Contract*]

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delete the two paragraphs after sub-paragraph (e) and substitute:

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

Sub-Clause 14.7 Payment of Retention Money under the Subcontract

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

EXAMPLE PROVISIONS FOR RELEASE OF RETENTION UNDER GUARANTEE

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

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

If the limit of retention money is stated in the Appendix to the Subcontractor's Offer then:

- (a) these provisions shall apply when the retention money under the Subcontract has reached the amount which is three-fifths (60%) of the sum calculated by applying the percentage of retention stated in the Appendix to the Subcontractor's Offer to the Accepted Subcontract Amount; and
- (b) the Contractor shall make payment of one-half of the sum calculated by applying the percentage of retention stated in the Appendix to the Subcontractor's Offer to the Accepted Subcontract Amount.

The retention money guarantee shall be valid and enforceable until the Performance Certificate has been issued by the Engineer under the Main Contract for the Main Works. If the terms of the guarantee specify its expiry date, and the Contractor under the Main Contract has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Subcontractor shall extend the validity of the guarantee until the Contractor has completed the Main Works under the Main Contract and any defects in the Main Works have been

remedied. No claim shall be made against the retention money guarantee after the date of issue of the Performance Certificate under the Main Contract, which date shall be promptly notified to the Subcontractor by the Contractor, and this guarantee shall be returned to the Subcontractor within 28 days of the issue of this Performance Certificate.

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

Sub-Clause 14.9 Delayed Payment under the Subcontract

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

Clause 15 Termination of the Main Contract & Termination of the Subcontract by the Contractor

Sub-Clause 15.6 Termination of Subcontract by the Contractor

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

Clause 16 Suspension and Termination by the Subcontractor

Sub-Clause 16.1 Subcontractor's Entitlement to Suspend Work

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

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

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

Sub-Clause 16.2 Termination by Subcontractor

Before inviting tenders, the Contractor should verify that the wording of this Sub-Clause is consistent with the law governing the Subcontract. The Subcontractor should verify that each anticipated ground for termination is consistent with this law.

Clause 17 Risk and Indemnities

Sub-Clause 17.1 Subcontractor's Risks and Indemnities

This Sub-Clause has been drafted so that the Subcontractor remains responsible and liable for the Subcontract Works in the period between his completion of the Subcontract Works and taking-over of the Subcontract Works under Clause 10 [*Completion and Taking-Over the Subcontract Works*] of the General Conditions of Subcontract. If it is the case that the period between completion of the Subcontract Works and taking-over of the Main Works by the Employer is envisaged to be a

long one, in order to avoid otherwise unnecessary presence of the Subcontractor on the Site and/or unnecessary costs and liability on the part of the Subcontractor, consideration should be given to the alternative by which the Contractor takes over the Subcontract Works before taking-over of the Main Works by the Employer, in which case this should be as stated in and in accordance with Annex C as provided by Sub-Clause 10.3 [Taking-Over by the Contractor].

Sub-Clause 17.3 Subcontract Limitation of Liability

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

EXAMPLE

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

Additional Sub-Clause Subcontract Intellectual and Industrial Property Rights

If it is appropriate in the context of the Subcontract, an additional Sub-Clause may be added to Clause 17:

EXAMPLE SUB-CLAUSE

The provisions of Main Contract Clause 17.5 [Intellectual and Industrial Property Rights] shall apply to the Subcontract.

Clause 18 Subcontract Insurances

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

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

Clause 19 Subcontract Force Majeure

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

Clause 20 Notices, Subcontractor's Claims and Disputes

This Clause has been drafted to allow for resolution of Subcontract disputes by a Subcontract DAB, followed by arbitration of the Subcontract dispute if either Party is dissatisfied with the Subcontract

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

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

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

If the Parties choose to have arbitration of their dispute conducted in a language other than the ruling language under the Subcontract, then this different language should be specified in the Particular Conditions of the Subcontract.

Sub-Clause 20.5 Appointment of the Subcontract DAB

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

The adjudication procedure depends for its success on, amongst other things, the Parties' confidence in the individuals who will serve on the Subcontract DAB. Therefore, it is essential that candidates for this position are not imposed by either Party on the other Party.

Under this Sub-Clause, a Subcontract DAB is to be appointed if and when a Subcontract dispute has arisen. The Subcontract DAB's appointment terminates when its decision is given as to the matter in dispute, unless other disputes have been referred to the Subcontract DAB by that time in which event its appointment terminates when the Subcontract DAB has given its decisions on those disputes.

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

Sub-Clause 20.6 Obtaining Subcontract DAB's Decision

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

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

EXAMPLE PROVISIONS FOR SUBCONTRACT ARBITRATION ONLY

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

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

Any dispute which has not been amicably settled within 56 days after the date of the Notice of Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce, even if no attempt at amicable settlement has been made, and the provisions of Main Contract Clause 20.6 [*Arbitration*] shall apply to the Subcontract dispute except that the dispute may be settled by one arbitrator appointed in accordance with the Rules.

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

SECOND ALTERNATIVE

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

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

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

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

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Also, the example Clause 20 set out below includes provisions (under Sub-Clause 20.9) where an Employer's claim under the Main Contract may arise from a matter for which the Subcontractor is responsible under the Subcontract, and where any determination, decision and/or arbitral award concerning such Employer's claim under the Main Contract shall be binding on the Subcontractor under the Subcontract.

Contractors and Subcontractors considering this Second Alternative will note the length and complexity of the clauses. This is necessary because of the number of issues that need to be catered for, beginning with the question of whether the Subcontract disputes are or are not related to Main Contract disputes. The following example provisions are suggested by FIDIC on a trial basis only, after which they will be re-evaluated. Feed-back from users and all suggestions for improvements would be welcomed. Users are advised to consult an arbitration specialist before using these alternative provisions in a subcontract to ensure that they will operate successfully.

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

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

20 Notices, Claims and Disputes

20.1 Notices

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

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

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

shall be discharged from all liability in connection with the claim.

20.2 Subcontractor's Claims

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

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

(a 'Related Claim').

Unless the Contractor so notifies the Subcontractor, the claim shall thereafter be considered an Unrelated Claim for the purposes of Sub-Clause 20.3 [Unrelated Claims]. If the Contractor does so notify the Subcontractor the claim shall thereafter be considered a Related Claim for the purposes of Sub-Clause 20.4 [Related Claims] and the Subcontractor shall have no right to pursue this claim under Sub-Clause 20.3 [Unrelated Claims] save:

- (a) where it is decided by the pre-Arbitral Referee in accordance with this Sub-Clause that this claim is an Unrelated Claim, or
- (b) to the extent expressly provided for under Sub-Clause 20.4 [Related Claims].

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

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

With reference to Article 2.1.1 of the ICC Rules for a Pre-Arbitral Referee Procedure, the Referee's sole power shall be to decide the question of whether the Subcontractor's claim is a Related Claim or an Unrelated Claim. The Referee shall issue his Order within 21 days from the date on which he receives the file from the Secretariat (as defined in the ICC Rules for a Pre-Arbitral Referee Procedure) and

- (i) the costs arising out of the Pre-Arbitral Referee Procedure shall be borne in equal shares by the Parties;
- (ii) the Order of the Referee (who shall not be considered to be an arbitrator and whose decision shall not be considered as an arbitral award) shall be binding on both Parties, and Articles 6.3 and 6.4 of the ICC Rules for a Pre-Arbitral Referee Procedure shall not apply.

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

20.3 Unrelated Claims

If a Subcontractor's claim is an Unrelated Claim in accordance with Sub-Clause 20.2 [*Subcontractor's Claims*]:

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

20.4 Related Claims

If a Subcontractor's claim is a Related Claim in accordance with Sub-Clause 20.2 [*Subcontractor's Claims*]:

- (1) The Contractor shall submit a notice of claim, including the subject of the claim which the Contractor considers to be a Related Claim, to the Engineer in accordance with Main Contract Clause 20.1 [*Contractor's Claims*] and in good time to ensure compliance with such provision, regardless of any objection or referral by the Subcontractor under Sub-Clause 20.2 [*Subcontractor's Claims*];
- (2) The Contractor shall use all reasonable endeavours to secure from the Employer and the Engineer), for both the Contractor's and the Subcontractor's benefit, any additional payment and/or extension of time as may be claimable in accordance with the Main Contract in

respect of the Subcontract Works and shall regularly keep the Subcontractor informed of the progress of these endeavours;

- (3) The Subcontractor shall have no right to pursue this claim under Sub-Clause 20.3 [*Unrelated Claims*] save as expressly provided under this Sub-Clause 20.4. The Subcontractor shall comply with any Contractor's Instruction regarding the keeping of contemporary records relevant to the event or circumstance giving rise to the Related Claim. The Subcontractor shall permit the Contractor and the Engineer to inspect all these records.
- (4) The Subcontractor shall submit the Related Claim to the Contractor, which shall include full supporting particulars of:
 - (a) the contractual or other basis of claim, and
 - (b) additional payment claimed, and/or
 - (c) the extension of time

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

- (5) The Contractor shall submit a claim to the Engineer, which includes the supporting particulars and any interim claims of the Related Claim provided by the Subcontractor, in accordance with Main Contract Clause 20.1 [*Contractor's Claims*] and in good time to ensure compliance with such provision, regardless of any objection or referral by the Subcontractor under Sub-Clause 20.2 [*Subcontractor's Claims*].
- (6) The Contractor shall give the Subcontractor all reasonable opportunity to be involved in any consultation with, and to attend any meeting convened by, the Engineer which concerns the Related Claim. Unless the Subcontractor is permitted by the Engineer to be involved in consultation and/or to attend a meeting but the Subcontractor refuses or fails to do so, the Contractor shall not reach any agreement with the Engineer concerning the Related Claim without prior consultation with the Subcontractor. Where an agreement is reached under the Main Contract or the Engineer makes a determination concerning the Related Claim, the Contractor shall as soon as practicable but not later than 7 days of its receipt, notify the Subcontractor of this agreement or determination. If the agreement or determination insofar as it concerns the Related Claim is such that the Contractor has no entitlement to additional payment and/or extension of time, unless the Subcontractor notifies the Contractor of dissatisfaction with the agreement or determination within 7 days of his receipt of the Contractor's notice, this agreement or determination shall be deemed to be accepted by the Subcontractor and, as between them, shall be binding on the Parties. If the Subcontractor notifies his dissatisfaction with the agreement or determination within 7 days of his receipt of Contractor's notice, the Subcontractor's notice shall be deemed to be a Notice of Dispute and Sub-Clause 20.6 [*Subcontract Disputes*] shall apply.
- (7) If it is agreed under the Main Contract or the Engineer determines under the Main Contract that the Contractor is entitled to additional payment and/or extension of time, within 28 days of receiving this contractual benefit from the Employer, the Contractor shall pass on to the Subcontractor a share of the benefit as may be appropriate and applicable to the Related Claim. In the case of a Related Claim concerning additional payment, the receipt of payment by the Contractor from the Employer that includes a sum in respect of the claimed amount shall be a condition precedent to the Contractor's liability to the Subcontractor in respect of this share. The Contractor shall consult with the Subcontractor in an endeavour to reach agreement as to this share. If agreement is not reached, the Contractor shall promptly and with due diligence make a fair decision as to the appropriate and applicable share, taking due account of the Subcontractor's views and all other relevant circumstances. The Contractor shall, making reference to this sub-paragraph, give notice to the Subcontractor of his decision with reasons and supporting particulars. Unless the Subcontractor notifies

the Contractor of his dissatisfaction with this decision within 28 days of receipt of the Contractor's notice, the share decided by the Contractor shall be taken as accepted by the Subcontractor in full and final settlement of the Related Claim; and

- (8) If the Subcontractor notifies the Contractor of his dissatisfaction with this decided share within 28 days of receipt of the Contractor's notice, the Contractor shall give all due consideration to this dissatisfaction and shall give his written response within 7 days of its receipt. If the Contractor fails to so respond to the Subcontractor's notice of dissatisfaction, the Subcontractor shall be entitled to treat this non-response as if the Contractor maintains that the decided share is appropriate and applicable. Any dispute concerning this share shall thereafter be considered an Unrelated Dispute which shall be finally settled as between the Parties under the Rules of Arbitration of the International Chamber of Commerce, and Main Contract Clause 20.6 [Arbitration] shall apply to Unrelated Dispute except that the dispute may be settled by one arbitrator appointed in accordance with the Rules.

20.5 Failure to Comply

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

20.6 Subcontract Disputes

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

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

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

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

- (a) within 14 days of receiving or giving a Notice of Dispute, the Contractor may notify the Subcontractor, with reasons, of his opinion that the Subcontract dispute involves issue(s) which are also involved in a dispute between the Contractor and the Employer under the Main Contract. If the Contractor so notifies the Subcontractor within such period of 14 days then, subject to sub-paragraphs (b) and (c) of this Sub-Clause, the Subcontract dispute shall be considered to be a 'Related Dispute' and Sub-Clause 20.8 [Related Disputes] shall apply. If the Contractor does not so notify the Subcontractor within such period of 14 days, then the Subcontract dispute shall be considered to be an 'Unrelated Dispute' and Sub-Clause 20.7 [Unrelated Disputes] shall apply;
- (b) upon receipt of the Contractor's notice, unless the Subcontractor raises a written objection, to the Contractor's opinion that the Subcontract dispute is a Related Dispute within 7 days, this opinion shall be deemed to be accepted by the Subcontractor. If the Subcontractor raises an objection the Contractor shall give all due consideration to this objection and shall give his written response, with reasons, within 7 days of its receipt; and

(c) if the Subcontractor is dissatisfied with this response then, by notice in writing, he may refer the question of whether the Subcontract dispute is a Related Dispute or an Unrelated Dispute to a pre-arbitral referee for an order. Save where the provisions of this sub-paragraph require, the ICC Rules for a Pre-Arbitral Referee Procedure shall apply. With reference to Article 2.1.1 of the ICC Rules for a Pre-Arbitral Referee Procedure, the Referee's sole power shall be to decide the question of whether the Subcontract dispute is a Related Dispute or an Unrelated Dispute. The Referee shall issue his Order within 21 days from the date on which he receives the file from the Secretariat (as defined in the ICC Rules for a Pre-Arbitral Referee Procedure) and:

- (i) the costs arising out of the Pre-arbitral Referee Procedure shall be borne in equal shares by the Parties; and
- (ii) the Order of the Referee (who shall not be considered to be an arbitrator and whose decision shall not be considered as an arbitral award) shall be final and binding on both Parties, and Articles 6.3 and 6.4 of the Rules for a Pre-arbitral Referee Procedure shall not apply.

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

20.7 Unrelated Disputes

If a Subcontract dispute is an Unrelated Dispute:

- (1) It shall be decided by a Subcontract DAB, which shall be jointly appointed by the Parties within 42 days after the date of the Notice of Dispute or any other time as may be agreed in writing. Unless it is stated in the Appendix to the Subcontractor's Offer that it shall comprise three members, the Subcontract DAB shall comprise one suitably qualified person. In all respects other than as stated in this Sub-Clause, Main Contract Clause 20.2 [*Appointment of the Dispute Adjudication Board*] shall apply to the appointment of the Subcontract DAB, save that Rules 1 to 4 of the Procedural Rules annexed to the General Conditions of Dispute Adjudication Agreement shall not apply;
- (2) If the Parties fail to agree upon the appointment of the Subcontract DAB within 42 days after the date of the Notice of Dispute, or upon the appointment of a replacement person within 42 days after the appointed person declines or is unable to act, then the President of FIDIC or a person appointed by the President shall, upon the request of either or both Parties and after due consultation with both Parties, appoint the Subcontract DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing official;
- (3) Either Party may refer the Unrelated Dispute in writing to the Subcontract DAB for its decision, with a copy to the other Party. The referral shall state that it is given under this Sub-Clause. In all respects other than as stated in this Sub-Clause, Main Contract Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] shall apply to the resolution of the Unrelated Dispute, save that Main Contract Clause 20.8 [*Expiry of Dispute Adjudication Board's Appointment*] shall not apply;
- (4) The Subcontract DAB's decision shall be binding on both Parties unless and until it shall be revised in an amicable settlement or an arbitral award, as described in this Sub-Clause below;
- (5) If either Party serves a notice of dissatisfaction with the Subcontract DAB's decision within 28 days after receiving the Subcontract DAB's decision, both Parties shall attempt to settle the Unrelated Dispute amicably before the commencement of arbitration. However, unless

both Parties agree otherwise, arbitration may be commenced on the twenty-eighth day after notice of dissatisfaction was given, even if no attempt at amicable settlement has been made;

- (6) Unless settled amicably, any Unrelated Dispute in respect of which the Subcontract DAB's decision has not become final and binding in accordance with Main Contract Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce and Main Contract Clause 20.6 [*Arbitration*] shall apply to the Unrelated Dispute except that the dispute may be settled by one arbitrator appointed in accordance with the Rules;
- (7) In the event that a Party fails to comply with any decision of the Subcontract DAB whether binding, or final and binding in accordance with Main Contract Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*], then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under the Rules of Arbitration of the International Chamber of Commerce for the purpose of obtaining an award (whether interim or other) to enforce that Decision, and in all other respects Main Contract Clause 20.6 [*Arbitration*] shall apply to the obtaining of such an award except that the award may be rendered by one arbitrator appointed in accordance with the Rules. There shall be no requirement to obtain a Subcontract DAB's decision or to attempt to reach amicable settlement in respect of this reference.

20.8 Related Disputes

If a Subcontract dispute is a Related Dispute:

- (1) The subject of the Related Dispute shall be referred by the Contractor to the Main Contract DAB in accordance with Main Contract Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*], with a copy to the Subcontractor, within 28 days of the Notice of Dispute. If, on the date of the Notice of Dispute, there is no Main Contract DAB in place, the Contractor shall refer the subject of the Related Dispute to the Main Contract DAB in accordance with Main Contract Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*], with a copy to the Subcontractor, within 56 days of the Notice of Dispute. If the Contractor fails to refer the subject of the Related Dispute to the Main Contract DAB within the period of 28 days or 56 days, whichever is applicable, the Subcontract dispute shall thereafter be considered an Unrelated Dispute and Sub-Clause 20.7 [*Unrelated Disputes*] shall apply;
- (2) Where the subject of the Related Dispute is referred to the Main Contract DAB, the Contractor shall use all reasonable endeavours to pursue the dispute on the Contractor's and the Subcontractor's behalf and for both the Contractor's and the Subcontractor's benefit, and shall regularly keep the Subcontractor informed of the progress of these endeavours;
- (3) The Subcontractor shall, in good time, afford the Contractor all information and assistance that may be required to enable the Contractor to diligently pursue his dispute which includes the subject of the Related Dispute on the Contractor's and the Subcontractor's behalf;
- (4) If the Main Contract DAB proposes a period other than 84 days for giving its decision in respect of the subject of the Related Dispute, in accordance with Main Contract Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*], then the Contractor shall not give its approval to another period without prior consultation with the Subcontractor;
- (5) In any adjudication under the Main Contract which concerns the subject of the Related Dispute, unless the Employer or the Main Contract DAB objects, the Contractor shall give the Subcontractor all reasonable opportunity to:
 - (a) be involved in the preparation of any written submission to the Main Contract DAB,

- (b) attend any site visit or hearing convened by the Main Contract DAB,
- (c) make any oral submission to the Main Contract DAB,
- (d) receive copies of all submissions and other documents submitted in the adjudication which concern or relate to the Related Dispute, and
- (e) be involved in any discussions about the general strategy to be adopted in the adjudication which concern or relate to the Related Dispute including, but not limited to, choice of legal representation (if any), experts (if any) and witnesses.

If the Subcontractor is given such opportunity by the Employer of the Main Contract DAB, the Contractor shall not reach any settlement with the Employer concerning the Related Dispute without prior consultation with the Subcontractor;

- (6) Where the Main Contract DAB gives a decision which concerns the Related Dispute, the Contractor shall as soon as practicable but not later than 7 days of its receipt from the Main Contract DAB, notify the Subcontractor of this decision
- (7) Unless the Subcontractor notifies the Contractor of his dissatisfaction with the Main Contract DAB's decision within 7 days of his receipt of the Contractor's notice, this decision shall be deemed to be accepted by the Subcontractor insofar as it concerns the Related Dispute. Whether or not a notice of dissatisfaction has been given, this decision shall be binding on both Parties unless and until it shall be revised by an amicable settlement or an arbitral award as described below;
- (8) If the Subcontractor so notifies the Contractor of his dissatisfaction and the Contractor responds by concurring with this dissatisfaction, the Contractor shall serve a notice of dissatisfaction with the Main Contract DAB's decision to the Employer in good time to prevent the Main Contract DAB's decision from becoming final and binding under Main Contract Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*];
- (9) If the Subcontractor so notifies the Contractor of his dissatisfaction but the Contractor responds by not concurring with this dissatisfaction, or fails to respond to this notice of dissatisfaction within 7 days of its receipt or fails to serve a notice of dissatisfaction with the Main Contract DAB's decision to the Employer in good time to prevent the Main Contract DAB's decision from becoming final and binding under Main Contract Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*], the Subcontract dispute shall thereafter be considered an Unrelated Dispute and Sub-Clause 20.7 [*Unrelated Disputes*] shall apply;
- (10) If the Main Contract DAB's decision entitles the Contractor to any contractual benefit, the Contractor shall use all reasonable endeavours on the Contractor's and the Subcontractor's behalf to obtain this contractual benefit, and shall regularly keep the Subcontractor informed of the progress of these endeavours. Within 14 days of receiving this contractual benefit from the Employer the Contractor shall pass on to the Subcontractor a share of the benefit as may be appropriate and applicable to the Related Dispute. In the case of a Related Dispute concerning additional payment, the Contractor's receipt of payment from the Employer which includes a sum in respect of the disputed amount shall be a condition precedent to the Contractor's liability to the Subcontractor in respect of this share. The Contractor shall consult with the Subcontractor in an endeavour to reach agreement as to this share. If agreement is not reached, the Contractor shall promptly and with due diligence make a fair decision as to the appropriate and applicable share, taking due account of the Subcontractor's submissions concerning the Related Dispute and all other relevant circumstances. The Contractor shall, making reference to this sub-paragraph, give notice to the Subcontractor of his decision with reasons and supporting particulars. Unless the Subcontractor notifies the Contractor of his dissatisfaction with this decision within 28 days of receipt of the Contractor's notice, the share decided by the Contractor shall be taken as accepted by the Subcontractor in full and final settlement of the Related Dispute;

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- (11) If the Subcontractor notifies the Contractor of his dissatisfaction with this decided share within 28 days of receipt of the Contractor's notice, the Contractor shall give all due consideration to this dissatisfaction and shall give his written response within 7 days of its receipt. If the Contractor fails to so respond to the Subcontractor's notice of dissatisfaction within 7 days of its receipt, the Subcontractor shall be entitled to treat this non-response as if the Contractor maintains that the decided share is appropriate and applicable. Any dispute concerning this share shall thereafter be considered an Unrelated Dispute which shall be finally settled as between the Contractor and the Subcontractor under the Rules of Arbitration of the International Chamber of Commerce, and Main Contract Clause 20.6 [Arbitration] shall apply to the Unrelated Dispute except that the dispute may be settled by one arbitrator appointed in accordance with the Rules;
- (12) If the Main Contract DAB's decision has not become final and binding under the Main Contract, unless the Employer objects, the Contractor shall give the Subcontractor all reasonable opportunity to be involved in the attempts, if any, to settle the Related Dispute amicably under the Main Contract before the commencement of arbitration. If the Subcontractor is not given such opportunity by the Employer, the Contractor shall not reach any amicable settlement with the Employer concerning the Related Dispute without prior consultation with the Subcontractor;
- (13) If the Contractor shall reach such an amicable settlement with the Employer, he shall immediately notify the Subcontractor. Within 28 days of the date of this settlement, the Contractor shall consult with the Subcontractor in an endeavour to reach agreement as to the Subcontractor's entitlement to contractual benefit in connection with the Related Dispute. If no agreement is reached within 56 days of the date of the settlement, the Parties' disagreement shall thereafter be considered an Unrelated Dispute which shall be finally settled as between the Contractor and the Subcontractor under the Rules of Arbitration of the International Chamber of Commerce, and Main Contract Clause 20.6 [Arbitration] shall apply to the Unrelated Dispute except that the dispute may be settled by one arbitrator appointed in accordance with the Rules;
- (14) If no amicable settlement is reached between the Contractor and the Employer under the Main Contract concerning the subject of the Related Dispute, the Contractor shall refer the Related Dispute to arbitration under Main Contract Clause 20.6 [Arbitration]. If the Contractor or the Employer does not refer the subject of the Related Dispute to arbitration within 63 days, or any other time as may be agreed, after the day on which either the Contractor or the Employer has served a notice of dissatisfaction with the Main Contract DAB's decision, the dispute shall thereafter be considered an Unrelated Dispute which shall be finally settled as between the Contractor and the Subcontractor under the Rules of Arbitration of the International Chamber of Commerce, and Main Contract Clause 20.6 [Arbitration] shall apply to this dispute except that the dispute may be settled by one arbitrator appointed in accordance with the Rules;
- (15) In any arbitration under the Main Contract which concerns the Related Dispute, the Contractor shall use all reasonable endeavours to pursue his dispute which includes the subject of the Related Dispute on the Contractor's and the Subcontractor's behalf and for both the Contractor's and the Subcontractor's benefit, and shall regularly keep the Subcontractor informed of the progress of these endeavours. Unless the Employer or the Arbitral Tribunal objects, the Contractor shall give the Subcontractor all reasonable opportunity to:
- (a) be involved in the preparation of any written submission to the Arbitral Tribunal,
 - (b) attend any site visit or hearing convened by the Arbitral Tribunal,
 - (c) make any oral submission to the Arbitral Tribunal,
 - (d) receive copies of all submissions and other documents submitted in the arbitration which concern or relate to the Related Dispute, and
 - (e) be involved in any discussions about the general strategy to be adopted in the

If the Subcontractor is not given such opportunity by the Employer or the Arbitral Tribunal, the Contractor shall not reach any settlement with the Employer concerning the Related Dispute without prior consultation with the Subcontractor;

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

20.9 Employer's Claims under the Subcontract

If the Contractor notifies the Subcontractor that the Employer or the Engineer has given notice of claim under Main Contract Clause 2.5 [Employer's Claims] and that the subject of such a claim concerns the Subcontractor's performance of the Subcontract:

- (1) the Contractor shall provide a copy of this notice, and of all particulars given by the Employer or the Engineer in connection with the Employer's claim, to the Subcontractor;
- (2) the Subcontractor shall comply with any Contractor's Instruction regarding the keeping of contemporary records relevant to the event or circumstance giving rise to the Employer's claim. The Subcontractor shall permit the Contractor and the Engineer to inspect these records;

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- (3) The Contractor shall use all reasonable endeavours to defend against the Employer's claim on the Contractor's and the Subcontractor's behalf, and shall regularly keep the Subcontractor informed of the progress of these endeavours;
 - (4) The Subcontractor shall, in good time, afford the Contractor all information and assistance that may be required to enable the Contractor to diligently defend the Employer's claim on the Contractor's and the Subcontractor's behalf;
 - (5) The Contractor shall give the Subcontractor all reasonable opportunity to be involved in any consultation with, and to attend any meeting convened by, the Engineer which concerns the Employer's claim. Unless the Subcontractor is permitted by the Engineer to be involved in consultation and/or to attend a meeting but the Subcontractor refuses or fails to do so, the Contractor shall not reach any agreement with the Engineer and/or the Employer concerning the Employer's claim without prior consultation with the Subcontractor;
 - (6) If it is agreed under the Main Contract, or the Engineer determines under the Main Contract, that the Employer is entitled to be paid an amount by the Contractor, the Contractor shall consult with the Subcontractor in an endeavour to reach agreement as to the share of such amount that shall be paid by the Subcontractor to the Contractor. Receipt by the Subcontractor of evidence of the amount paid by the Contractor to the Employer in respect of the Employer's claim shall be a condition precedent to the Subcontractor's liability to the Contractor in respect of this share;
 - (7) If agreement is not reached as to the share referred to in sub-paragraph (6) above, the Contractor shall promptly and with due diligence make a fair decision as to the appropriate and applicable share, taking due account of the Subcontractor's views and all relevant circumstances. The Contractor shall, making reference to this sub-paragraph, give notice to the Subcontractor of his decision with reasons and supporting particulars. Unless the Subcontractor notifies the Contractor of his dissatisfaction with this decision within 28 days of receipt of the Contractor's notice, the share decided by the Contractor shall be taken as accepted by the Subcontractor;
 - (8) If the Subcontractor notifies the Contractor of his dissatisfaction with this decided share within 28 days of the Contractor's notice, the Contractor shall give all due consideration to this dissatisfaction and shall give his written response within 7 days of its receipt. If the Contractor fails to so respond to the Subcontractor's notice of dissatisfaction, the Subcontractor shall be entitled to treat this non-response as if the Contractor maintains that the decided share is appropriate and applicable.
 - (9) If a dispute between the Employer and the Contractor arises from the Employer's claim and is referred to the Main Contract DAB under Main Contract Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*], the Contractor shall provide to the Subcontractor a copy of the reference to the Main Contract DAB, and of all additional information provided to the Main Contract DAB;
 - (10) Sub-paragraphs (2) to (17) of Sub-Clause 20.8 [*Related Disputes*] shall apply to the dispute and:
 - (i) any reference to "the Related Dispute" shall be read as a reference to this dispute;
 - (ii) sub-paragraph (10) of Sub-Clause 20.8 [*Related Disputes*] shall be amended to read: "If the Main Contract DAB's decision required the Contractor to make payment to the Employer, and the Contractor makes such payment, the Contractor shall consult with the Subcontractor in an endeavour to reach agreement as to the share of such payment to be paid by the Subcontractor to the Contractor. Receipt by the Subcontractor of evidence of such payment by the Contractor to the Employer shall be a condition precedent to the Subcontractor's liability to the Contractor in respect

of this share. If agreement is not reached, the Contractor shall promptly and with due diligence make a fair decision as to the appropriate and applicable share, taking due account of the Subcontractor's submissions concerning this dispute and all relevant circumstances. The Contractor shall, making reference to this sub-paragraph, give notice to the Subcontractor of his decision with reasons and supporting particulars. Unless the Subcontractor notifies the Contractor of his dissatisfaction with this decision within 28 days of receipt of the Contractor's notice, the share decided by the Contractor shall be taken as accepted by the Subcontractor and the Subcontractor shall immediately make payment of such share to the Contractor.”;

- (iii) sub-paragraph (13) of Sub-Clause 20.8 [*Related Disputes*] shall be deleted; and
- (iv) sub-paragraph (17) of Sub-Clause 20.8 [*Related Disputes*] shall be amended to read: “If the Arbitral Tribunal's award requires the Contractor to make a payment to the Employer, and the Contractor makes such payment, the Contractor shall consult with the Subcontractor in an endeavour to reach agreement as to the share of such payment to be paid by the Subcontractor to the Contractor. Receipt by the Subcontractor of evidence of such payment by the Contractor to the Employer shall be a condition precedent to the Subcontractor's liability to the Contractor in respect of this share. If agreement is not reached, the Contractor shall promptly and with due diligence make a fair decision as to the appropriate and applicable share, taking due account of the Subcontractor's submissions concerning this dispute and all relevant circumstances. The Contractor shall, making reference to this sub-paragraph, give notice to the Subcontractor of his decision with reasons and supporting particulars. Unless the Subcontractor notifies the Contractor of his dissatisfaction with this decision within 28 days of receipt of the Contractor's notice, the share decided by the Contractor shall be taken as accepted by the Subcontractor and the Subcontractor shall immediately make payment of such share to the Contractor.”.

NOT FOR CONTRACT

Annexes

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

NOT FOR CONTRACT USE

PART A

1 Parties

Name and address of Employer: _____

Legal form of Employer: _____
(for example, company, partnership, individual, proprietorship)

Name and address of Engineer: _____

Legal form of Engineer: _____
(for example, company, partnership, individual, proprietorship)

Name and address of Contractor: _____

Legal form of Contractor: _____
(for example, company, partnership, individual, proprietorship)

2 Main Contract Commencement Date

Contract Commencement Date: _____

3 Time for Completion

Times for Completion under the Main Contract

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

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

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

4 Description of Works under the Main Contract

Times for Completion under the Main Contract

(a) The Site is located: _____
(Enter a description of the location of the Site.)

(b) The Main Works comprise: _____
(Enter a description of the Main Works.)

5 Conditions of the Main Contract

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

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

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

6 Confidential Parts of the Main Contract

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

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

PART B

Exclusions

NOT FOR CONTRACT USE

Annex B **SCOPE OF SUBCONTRACT WORKS AND
SCHEDULE OF SUBCONTRACT DOCUMENTS**

1 Scope of Subcontract Works

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

2 Schedule of technical documents for the Subcontract Works

(List the Subcontract drawings, the particular documents making up the Subcontract Specification, the Main Contract drawings that are applicable to the Subcontract Works, and the parts of the Main Contract Specification that are applicable to the Subcontract Works.)

NOT FOR CONTRACT USE

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

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

Bonus Payment:

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

2 Taking-Over by the Contractor

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

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

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

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

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

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

Annex D **EQUIPMENT, TEMPORARY WORKS, FACILITIES, AND FREE-ISSUE MATERIALS TO BE PROVIDED BY THE CONTRACTOR**

1 Equipment, Temporary Works, Facilities, and Free-Issue Materials

The Equipment, Temporary Works, facilities, and Free-Issue Materials listed below shall be provided by the Contractor to the Subcontractor:

2 Common Use of Facilities

(Enter the details and arrangements, and the terms and conditions, of the Subcontractor's use of each facility.)

Access to the work areas within the Site: _____

Inland transport, including customs clearance and payment of any taxes, duties and fees, in accordance with the Conditions of the Main Contract: _____

Transport of local labour to work areas within the Site: _____

Common camp facilities, including messing, medical, security, safety, recreation, laundry, house-keeping, electricity, water, sewage, waste disposal, and other general camp services: _____

3 Use of Temporary Works, Equipment and Facilities by Subcontractor at no charge

(Enter the details and arrangements, and the terms and conditions, of the Subcontractor's use of each item. If any item is to be provided for the exclusive use of the Subcontractor, this should be expressly stated herein.)

Temporary Works: _____
Employer's Equipment (if any): _____
Contractor's Equipment and vehicles: _____
Facilities: _____

4 Use of Temporary Works, Equipment and Facilities by Subcontractor to be charged

(Enter the details and arrangements, and the terms and conditions, of the Subcontractor's use of each item. If any item is to be provided for the exclusive use of the Subcontractor, this should be expressly stated herein.)

Temporary Works: _____
Employer's Equipment (if any): _____
Contractor's Equipment and vehicles: _____
Facilities: _____

5 Free-Issue Materials

(Enter the details and arrangements, the place(s) for delivery, and the terms and conditions, of the supply of each item.)

1 Insurances to be effected and maintained by the Subcontractor

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

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

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

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

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

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A Initial Subcontract Programme

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

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

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

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

B Updating the Subcontract Programme

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

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

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

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

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

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

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

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

Annex G OTHER ITEMS

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

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

NOT FOR CONTRACT USE

Conditions of Contract
for **CONSTRUCTION**

FOR BUILDING AND ENGINEERING WORKS
DESIGNED BY THE EMPLOYER

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

First Edition 2011
ISBN 978 – 2– 88432 – 068 – 9

GUIDANCE FOR THE
PREPARATION OF
PARTICULAR CONDITIONS
OF SUBCONTRACT

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

NOT FOR CONTRACT USE

LETTER OF SUBCONTRACTOR'S OFFER www.rdbchina.com/international.org

NAME OF SUBCONTRACT*:

TO*:

Gentlemen,

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

Signed by: _____
(signature)

(name in full in block capitals)

in the capacity of _____
(title)

duly authorized to sign offers for and on behalf of _____
(in block capitals)

Address: _____

Date: _____

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

Item	Sub-Clause	Data
Contractor's name and address	1.1.4, 1.4 . . .	_____
Subcontractor's name and address . .	1.1.34, 1.4 . .	_____
Contractor's Subcontract Representative	1.1.17	_____
		(name of the person to act as Contractor's Representative)

If there are Subcontract Sections:

Definition of Subcontract Sections	Description (Sub-Clause 1.1.28)	Time for Completion (Sub-Clause 1.1.31)
Subcontract Time for Completion	1.1.37	_____ Days
Subcontractor's Representative	1.1.39	_____
		(name of the person to act as Subcontractor's Representative)

Amount of Performance Security	4.2.	_____ % of the Accepted Subcontract Amount, in the currency and proportions in which the Subcontract Price is payable
--	--------------	---

Maximum amount of Subcontract delay damages	8.7.	_____ % of the Accepted Contract Amount
---	--------------	---

Adjustments for Changes in Cost; Table of Adjustment Data	13.8	for payments each month in _____ (enter currency)
---	----------------	---

Coefficient: scope of index	Country of Origin; currency of index	Source of index; Title/definition	Value on stated date(s)	
			Value	Date
a = 0.10 Fixed				
b = _____ Labour				
c =				
d =				
e =				

"Ln", "En", "Mn", ... are the current cost indices or reference prices for period "n", expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on a date 49 days prior to the last day of the period (to which the Interim Subcontract Payment or Final Subcontract Payment relates).

"Lo", "Eo", "Mo", ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 28 days prior to the latest date for submission of the Subcontractor's Offer.

Total Subcontract Advance Payment	14.2.	_____ % of Accepted Contract Amount
Number and Timing of instalments of advance payment	14.2.	_____
Currencies and proportions of advance payment	14.2.	_____ % _____ %
Minimum amount of interim subcontract payment	14.6.	_____ % of Accepted Contract Amount
Percentage of Retention	14.7.	_____ %
Limit of Retention Money	14.7.	_____ % of Accepted Subcontract Amount
The Subcontract DAB shall be	20.4.	Either: _____ One sole Member/adjudicator Or: _____ A DAB of three Members

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

NOT FOR CONTRACT USE

NAME OF SUBCONTRACT: _____

TO: _____

YOUR REFERENCE: _____

OUR REFERENCE: _____

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

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

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

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

Signed by: _____
(signature)

(name in full in block capitals)

in the capacity of _____
(title)

duly authorised to sign offers for and on behalf of _____
(in block capitals)

Address: _____

Date: _____

NOT FOR CONTRACT USE

SUBCONTRACT AGREEMENT

This Subcontract Agreement made the _____ day of _____ 20 _____

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

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

Now this Subcontract Agreement witnesseth as follows:

- 1 In this Subcontract Agreements words and expression shall have the same meanings as are respectively assigned to them in the Conditions of Subcontract.
2 The following documents shall be deemed to form and be read and construed as part of this Subcontract Agreement:
(a) The Contractor's Letter of Acceptance dated _____;
(b) The Letter of Subcontractor's Offer dated _____;
(c) The Particular Conditions of Subcontract and Annexes;
(d) The General Conditions of Subcontract;
(e) The Subcontract Specification;
(f) The Subcontract Drawings;
(g) The Subcontract Bill of Quantities and other schedules of rates and prices in the Subcontract (if any); and
(h) Any other document forming part of the Subcontractor's Offer.

For the purposes of interpretation, the priority of these documents shall be as set out in Sub-Clause 1.5 [Priority of Subcontract Documents] of the Conditions of Contract of the Subcontract.

- 3 In consideration of the payments to be made by the Contractor to the Subcontractor as below the Subcontractor hereby covenants with the Contractor to execute and complete the Subcontract Works and remedy any defects in conformity in all respects with the provisions of the Subcontract.
4 The Contractor hereby covenants to pay the Subcontractor in consideration of the execution and completion of the Subcontract Works and the remedying of any defects, the Subcontract Price at the times and in the manner prescribed by the Subcontract.

Signed by: _____ Name _____ (signature) (name in full in block capitals)

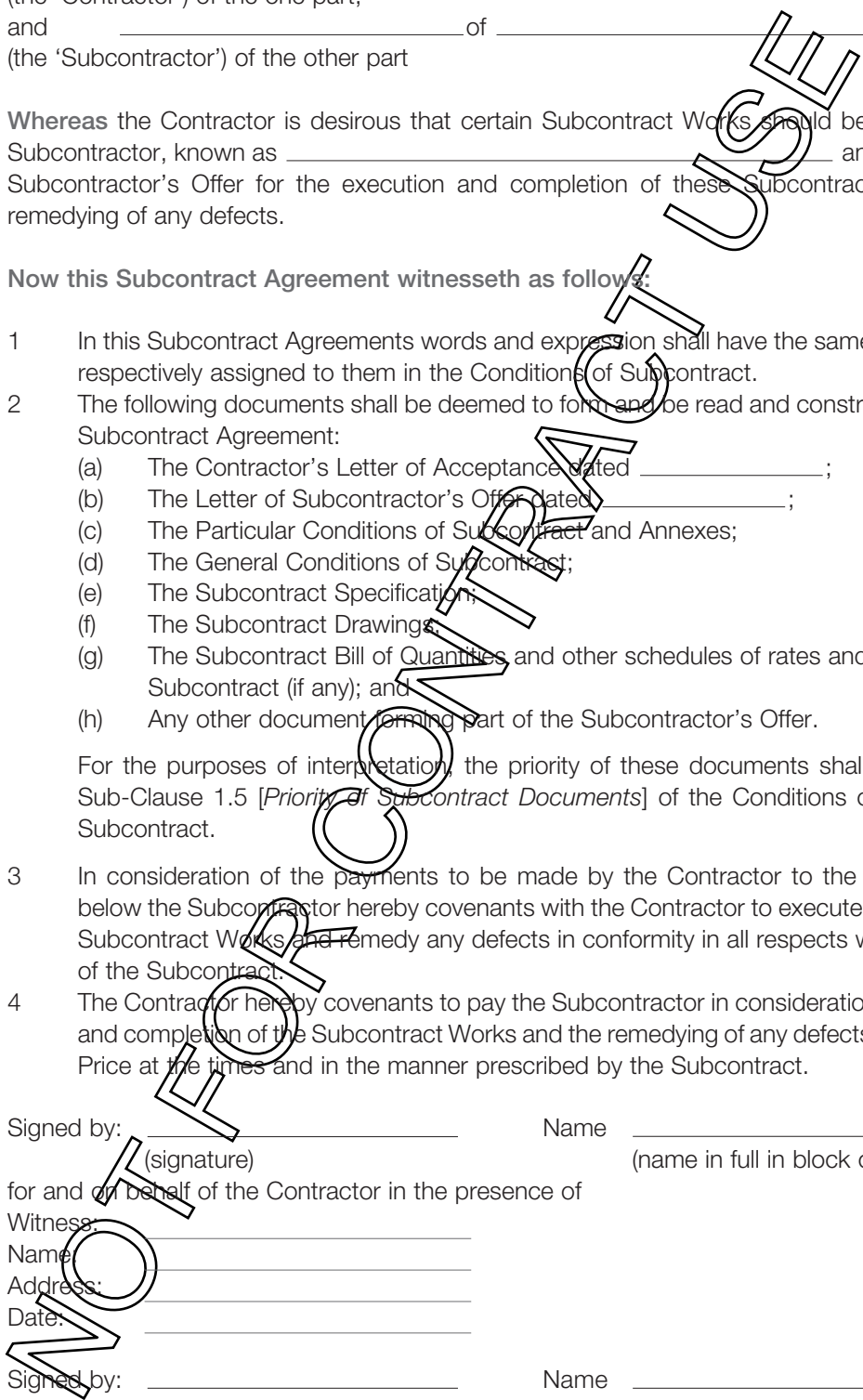
for and on behalf of the Contractor in the presence of

Witness: _____ Name: _____ Address: _____ Date: _____

Signed by: _____ Name _____ (signature) (name in full in block capitals)

for and on behalf of the Subcontractor in the presence of

Witness: _____ Name: _____ Address: _____ Date: _____



LETTER OF SUBCONTRACTOR'S OFFER www.rdbchina.com/international.org

NAME OF SUBCONTRACT*:

TO*:

Gentlemen,

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

Signed by: _____
(signature)

(name in full in block capitals)

in the capacity of _____
(title)

duly authorized to sign offers for and on behalf of _____
(in block capitals)

Address: _____

Date: _____

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

Item	Sub-Clause	Data
Contractor's name and address	1.1.4, 1.4 . . .	_____
Subcontractor's name and address . .	1.1.34, 1.4 . .	_____
Contractor's Subcontract Representative	1.1.17	_____
		(name of the person to act as Contractor's Representative)

If there are Subcontract Sections:

Definition of Subcontract Sections	Description (Sub-Clause 1.1.28)	Time for Completion (Sub-Clause 1.1.31)
Subcontract Time for Completion	1.1.37	_____ Days
Subcontractor's Representative	1.1.39	_____
		(name of the person to act as Subcontractor's Representative)

Amount of Performance Security	4.2.	_____ % of the Accepted Subcontract Amount, in the currency and proportions in which the Subcontract Price is payable
Maximum amount of Subcontract delay damages	8.7.	_____ % of the Accepted Contract Amount

Adjustments for Changes in Cost;
 Table of Adjustment Data 13.8 for payments each month in _____ (enter currency)

Coefficient: scope of index	Country of Origin; currency of index	Source of index; Title/definition	Value on stated date(s)	
			Value	Date
a = 0.10 Fixed				
b = _____ Labour				
c =				
d =				
e =				

"Ln", "En", "Mn", ... are the current cost indices or reference prices for period "n", expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on a date 49 days prior to the last day of the period (to which the Interim Subcontract Payment or Final Subcontract Payment relates).

"Lo", "Eo", "Mo", ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 28 days prior to the latest date for submission of the Subcontractor's Offer.

Total Subcontract Advance Payment	14.2	_____ % of Accepted Contract Amount
Number and Timing of instalments of advance payment	14.2	_____
Currencies and proportions of advance payment	14.2	_____ % _____ %
Minimum amount of interim subcontract payment	14.6	_____ % of Accepted Contract Amount
Percentage of Retention	14.7	_____ %
Limit of Retention Money	14.7	_____ % of Accepted Subcontract Amount
The Subcontract DAB shall be	20.4	Either: _____ One sole Member/adjudicator Or: _____ A DAB of three Members

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

NOT FOR CONTRACT USE

NAME OF SUBCONTRACT: _____

TO: _____

YOUR REFERENCE: _____

OUR REFERENCE: _____

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

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

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

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

Signed by: _____
(signature)

(name in full in block capitals)

in the capacity of _____
(title)

duly authorised to sign offers for and on behalf of _____
(in block capitals)

Address: _____

Date: _____

NOT FOR CONTRACT USE

SUBCONTRACT AGREEMENT

This Subcontract Agreement made the _____ day of _____ 20 _____

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

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

Now this Subcontract Agreement witnesseth as follows:

- 1 In this Subcontract Agreements words and expression shall have the same meanings as are respectively assigned to them in the Conditions of Subcontract.
2 The following documents shall be deemed to form and be read and construed as part of this Subcontract Agreement:
(a) The Contractor's Letter of Acceptance dated _____;
(b) The Letter of Subcontractor's Offer dated _____;
(c) The Particular Conditions of Subcontract and Annexes;
(d) The General Conditions of Subcontract;
(e) The Subcontract Specification;
(f) The Subcontract Drawings;
(g) The Subcontract Bill of Quantities and other schedules of rates and prices in the Subcontract (if any); and
(h) Any other document forming part of the Subcontractor's Offer.

For the purposes of interpretation, the priority of these documents shall be as set out in Sub-Clause 1.5 [Priority of Subcontract Documents] of the Conditions of Contract of the Subcontract.

- 3 In consideration of the payments to be made by the Contractor to the Subcontractor as below the Subcontractor hereby covenants with the Contractor to execute and complete the Subcontract Works and remedy any defects in conformity in all respects with the provisions of the Subcontract.
4 The Contractor hereby covenants to pay the Subcontractor in consideration of the execution and completion of the Subcontract Works and the remedying of any defects, the Subcontract Price at the times and in the manner prescribed by the Subcontract.

Signed by: _____ Name _____ (signature) (name in full in block capitals)

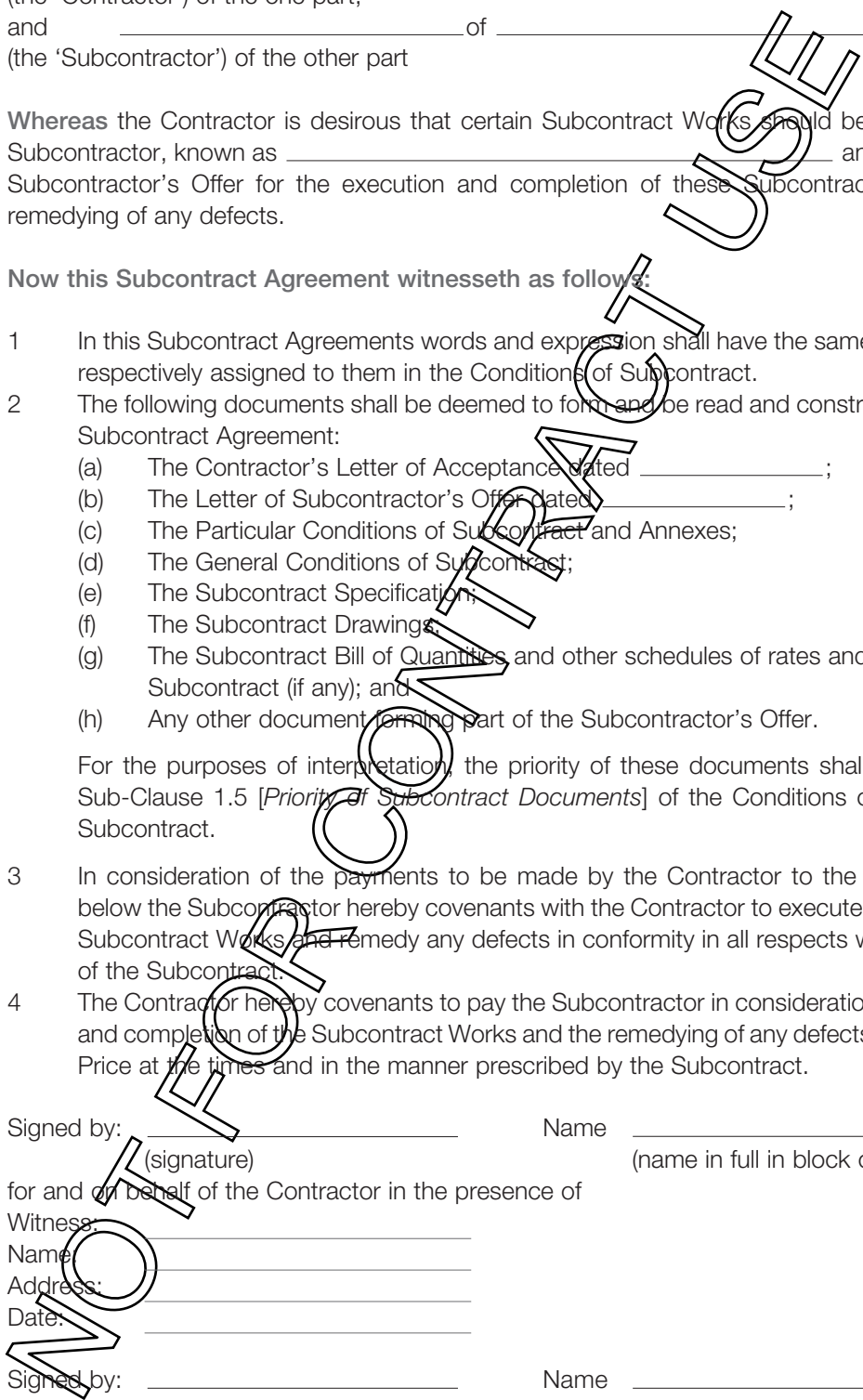
for and on behalf of the Contractor in the presence of

Witness: _____ Name: _____ Address: _____ Date: _____

Signed by: _____ Name _____ (signature) (name in full in block capitals)

for and on behalf of the Subcontractor in the presence of

Witness: _____ Name: _____ Address: _____ Date: _____



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