



Fédération Internationale des Ingénieurs-Conseils
International Federation of Consulting Engineers
Internationale Vereinigung Beratender Ingenieure
Federación Internacional de Ingenieros Consultores

Sub-Consultancy **Agreement**

FORM OF AGREEMENT
PARTICULAR CONDITIONS
GENERAL CONDITIONS

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

FIDIC was founded in 1913 by three national associations of consulting engineers within Europe. The objectives of forming the Federation were to promote in common the professional interests of the Member Associations and to disseminate information of interest to their members. Today, FIDIC membership covers some 99 countries from all parts of the globe, encompassing most of the private practice consulting engineers.

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

FIDIC arranges seminars, conferences and other events in the furtherance of its goals: maintenance of high ethical and professional standards; exchange of views and information; discussion of problems of mutual concern among Member Associations and representatives of the international financial institutions; and development of the consulting engineering industry in developing countries.

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FIDIC organises an extensive programme of seminars, conferences, capacity building workshops, and training courses.

FIDIC aims to maintain high ethical and professional standards throughout the consulting engineering industry through the exchange of views and information, with discussion of problems of mutual concern among Member Associations and representatives of the multilateral development banks and other international financial institutions.

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Second Edition, 2017

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FEDERACION INTERNACIONAL DE INGENIEROS CONSULTORES



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The preparation was carried out under the general direction of the FIDIC Contracts Committee which comprised Philip Jenkinson (past chair), Christoph Theune (past member), Kaj Möller, Siobhan Fahey, José Amorim Faria (past EFCA liaison), Mike Roberts, Des Barry, Vincent Leloup, William Howard, Pawel Zejer and Zoltán Záhonyi.

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The ultimate decision on the form and content of the Sub-Consultancy Agreement rests with FIDIC.

COMPLETION OF THE SUB-CONSULTANCY AGREEMENT

This Sub-Consultancy Agreement represents the basic form of a contract of appointment between a Consultant and its Sub-Consultant. It is intended to cover the minimum requirements of a typical appointment contract. Additional or amended clauses may be required in the Particular Conditions to address particular project and commercial issues between the Parties.

Where other material is to be incorporated into a contract of appointment, care must be taken to ensure consistency both in the use of terminology and the allocation of duties and obligations. The parties to the contract may wish to take independent legal advice in connection with the preparation of this agreement. Independent legal advice may also help the parties understand their legal liabilities, duties and obligations arising under the Sub-Consultancy Agreement.

Neither FIDIC nor any committee or individual connected with FIDIC can be held liable for project or commercial losses suffered as a result of adopting the Sub-Consultancy Agreement as the basis of a contractual arrangement.

FOREWORD

The Sub-Consultancy Agreement has been developed from the Fifth Edition 2017 of the Client/Consultant Model Services Agreement “White Book” and is intended for use where a Consultant appointed under the White Book desires to engage a Sub-Consultant to undertake part of the Services. The Sub-Consultancy Agreement therefore incorporates many of the terms and conditions of the White Book such that the obligations and rights of the Sub-Consultant are largely consistent with those of the Consultant under the White Book.

It is intended that the head contract («the Client / Consultant Agreement») is appended at Annexure A such that the Sub-Consultant will have its own copy of the Client / Consultant Agreement and can see the obligations therein undertaken by the Consultant and for which the Sub-Consultant is now engaged. The Client / Consultant Agreement appended at Annexure A need not include matters that do not concern the Sub-Consultancy Agreement and need not include commercial matters as between the Consultant and the Client. Annexure A does not form part of the Sub-Consultancy Agreement but is a document referred to therein that must be complied with in the same way as a code of practice or a building regulation. Whilst the Sub-Consultancy Agreement has been written specifically to facilitate the appointment of a Sub-Consultant where the Consultant is appointed under the FIDIC form of a Client / Consultant Agreement (the White Book) it may equally be used, with minimal amendments, where the head contract is not the White Book. Guidance on such usage will be published by FIDIC.

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Form of Sub-Consultancy Agreement

Between [Name of Consultant] _____

of [Address of Consultant] _____

(hereinafter called "the Consultant")

and [Name of Sub-Consultant] _____

of [Address of Sub-Consultant] _____

(hereinafter called "the Sub-Consultant")

WHEREAS:

A: The Client [Name of Client] _____ desires that certain Services should be performed by the Consultant in respect to the Project [Name of Project] _____ and has appointed the Consultant under the Agreement to perform those Services in relation to the Project; and

B: The Consultant now wishes to appoint the Sub-Consultant to perform certain Sub-Consultancy Services in relation to the Services namely:
[Brief description of Sub-Consultancy Services]

and the Consultant has accepted an offer/proposal by the Sub-Consultant for the performance of such Sub-Consultancy Services.

THE CONSULTANT AND THE SUB-CONSULTANT AGREE AS FOLLOWS:

- 1 In this Sub-Consultancy Agreement words and expressions shall have the same meanings as are respectively assigned to them in Clause 1.1 [Definitions] of the General Conditions of the Sub-Consultancy Agreement.
- 2 The following documents shall be deemed to form and be read and construed as part of the Sub-Consultancy Agreement and shall be given the order of precedence as below:
 - (a) This Form of Sub-Consultancy Agreement
 - (b) The Sub-Consultancy Agreement
Particular Conditions then:
General Conditions
 - (c) Appendices 1 to 5 (read in conjunction with each other)
 - (d) Any letter of acceptance by the Consultant incorporated under Sub-Clause 1.1.22 of the Sub-Consultancy Agreement; and
 - (e) Any letter of offer/proposal by the Sub-Consultant incorporated under Sub-Clause 1.1.22 of the Sub-Consultancy Agreement
- 3 In consideration of the payments to be made by the Consultant to the Sub-Consultant under the Sub-Consultancy Agreement, the Sub-Consultant hereby agrees with the Consultant to perform the Sub-Consultancy Services in conformity with the provisions of the Sub-Consultancy Agreement.
- 4 The Consultant hereby agrees to pay the Sub-Consultant in consideration of the performance of the Sub-Consultancy Services such amounts as may become payable under the provisions of the Sub-Consultancy Agreement at the times and in the manner prescribed by the Sub-Consultancy Agreement.

AUTHORISED SIGNATURE(S) OF CONSULTANT:

Signature _____

Name _____

Position _____

Date _____

AUTHORISED SIGNATURE(S) OF SUB-CONSULTANT:

Signature _____

Name _____

Position _____

Date _____

Particular Conditions

Part A. References from Clauses in the General Conditions

1.1 Definitions

- 1.1.4 Commencement Date [Date] _____
- 1.1.6 Consultant's Representative [Name of Representative] _____
- 1.1.9 Country [Country] _____
- 1.1.19 Project [Name of Project] _____
- 1.1.25 Sub-Consultant's Representative [Name of Representative] _____
- 1.1.26 Time for Completion
[Time in days, calendar months or years] _____

1.3 Notices and other Communications

- 1.3.1(c) Communication
[System of electronic communication accepted] _____
- 1.3.1(d) Address for communications
Consultant's address: [Address] _____
- Email: (only when e-mail is accepted as a valid system for electronic communications)
[Email] _____
- Facsimile number: [Number] _____
- Sub-Consultant's address [Address] _____
- Email: (only when e-mail is accepted as a valid system for electronic communications)
[Email] _____
- Facsimile number: [Number] _____

1.4 Law and Language

- 1.4.1 Law governing the Sub-Consultancy Agreement [Law] _____
- 1.4.2 Ruling language of the Sub-Consultancy Agreement [Language] _____
- 1.4.3 Language for communications [Language] _____

1.8 Confidentiality

- 1.8.3 Period for expiry of confidentiality [Years if different than Two] _____

1.9 Publication

1.9.1 Publication restrictions [State restrictions on publication, if any]

8.2 Duration of Liability

8.2.1 Period of Liability [Period] _____

8.3 Limit of Liability

8.3.1 Limit of Liability [Amount] _____

9 Insurance

9.1.1 Insurances to be taken out by Sub-Consultant
Professional Indemnity Insurance [Amount] _____
Public Liability Insurance [Amount] _____

10 Disputes and Arbitration

10.4.1 Arbitration rules
[International Chamber of Commerce (or as stated below):]

10.4.1(c). Language of arbitration [Language] _____

Part B Additional or Amended Clauses

The Parties are to include in this section any variations, omissions and/or additions to the General Conditions.

APPENDICES

These Appendices form part of the Sub-Consultancy Agreement.

1 **Scope of Sub-Consultancy Services**

The following guidance is given to assist the parties to complete this Appendix:

Specify the scope of the Sub-Consultancy Services as finally negotiated and agreed – the description should be as comprehensive as reasonably practicable and, where beneficial to the understanding of the scope, should identify matters excluded from the scope.

The Sub-Consultancy Services should be a copy of the relevant part of the Services under the Consultant's Agreement amended as necessary.

Describe the function and purpose of the Sub-Consultancy Services. Ensure that the function and purpose are consistent with the scope of Services and that such is described in terms that can be measured and verified. The Sub-Consultant must satisfy itself that the function and purpose is achievable using the standard of care in Sub-Clause 3.3 [Standard of Care].

2 Equipment and Facilities to be provided by the Consultant

The following guidance is given to assist the parties to complete this Appendix:

List as completely and in as much detail as possible the equipment and facilities to be provided by the Consultant to the Sub-Consultant. If the equipment and facilities are not provided free of cost then Sub-Clause 2.4.1 must be amended.

List and describe as completely and in as much detail as possible the services of others (if any) to be provided on behalf of the Consultant in respect to the Sub-Consultancy Services.

3 Remuneration and Payment

The following guidance is given to assist the parties to complete this Appendix:

Appendix 3 should cover, as applicable:

- agreed remuneration, whether lump sum or schedule of rates or any combination thereof, to be paid to the Sub-Consultant for the performance of the Sub-Consultancy Services;
- terms of payment, percentage fees, timescale, lump sums;
- rates and prices for Variations;
- times for payment if not 35 days (Clause 7.2.1);
- process for submission of invoices and methods of payment;
- price changes, inflation etc. if applicable;
- currencies of payment (Clause 7.3.1);
- financing charge (Clause 7.2.2);
- taxation additional to payments (if any);
- allowable expenses.

The Parties should ensure that time periods for submissions of invoices, receipt of payment, notification of variations etc. is consistent with the Client/Consultant Agreement and allows time for processing by the Consultant.

4 Consultant's Programme

The following guidance is given to assist the parties to complete this Appendix:

The Consultant's Programme should be appended here.

The Sub-Consultant's Services should be integrated with the Consultant's Programme and should be clearly identifiable in the Consultant's Programme.

The Sub-Consultant's Programme may be shown separately for monitoring and reporting purposes but must at all times comply with the Consultant's Programme.

The notice periods for submission of design data and other information must be coordinated between the two programmes allowing time for the Consultant to process the data etc.

5 Rules for Adjudication

General

- 1 Any reference in the Agreement to the Rules for Adjudication shall be deemed to be a reference to these Rules.
- 2 Definitions in the Agreement shall apply in these Rules.

Appointment of Adjudicator

- 3 The Parties shall jointly ensure the appointment of the Adjudicator. The Adjudicator shall be a suitably qualified person.
- 4 If for any reason the appointment of the Adjudicator is not agreed at the latest within 14 days of the reference of a dispute in accordance with these Rules, then either Party may apply, with a copy of the application to the other Party, to any appointing authority named in the Agreement or, if none, to the President of FIDIC or his nominee, to appoint an Adjudicator, and such appointment shall be final and conclusive.
- 5 The Adjudicator's appointment may be terminated by mutual agreement of the Parties. The Adjudicator's appointment shall expire when the Services have been completed or when any disputes referred to the Adjudicator shall have been withdrawn or decided, whichever is the later.

Terms of Appointment

- 6 The Adjudicator is to be, and is to remain throughout his appointment, impartial and independent of the Parties and shall immediately disclose in writing to the Parties anything of which he becomes aware which could affect his impartiality or independence.
- 7 The Adjudicator shall not give advice to the Parties or their representatives concerning the conduct of the project of which the Services form part other than in accordance with these Rules.
- 8 The Adjudicator shall not be called as a witness by the Parties to give evidence concerning any dispute in connection with, or arising out of, the Agreement.
- 9 The Adjudicator shall treat the details of the Agreement and all activities and hearings of the Adjudicator as confidential and shall not disclose the same without the prior written consent of the Parties. The Adjudicator shall not, without the consent of the Parties, assign or delegate any of his work under these Rules or engage legal or technical assistance.
- 10 The Adjudicator may resign by giving 28 days' notice to the Parties. In the event of resignation, death or incapacity, termination or a failure or refusal to perform the duties of Adjudicator under these Rules, the Parties shall agree upon a replacement Adjudicator within 14 days or Rule 4 shall apply.
- 11 The Adjudicator shall in no circumstances be liable for any claims for anything done or omitted in the discharge of the Adjudicator's duties unless the act or omission is shown to have been in bad faith.
- 12 If the Adjudicator shall knowingly breach any of the provisions of Rule 6 or act in bad faith, he shall not be entitled to any fees or expenses hereunder and shall reimburse each of the Parties for any fees and expenses properly paid to him if, as a consequence of such breach any proceedings or decisions of the Adjudicator are rendered void or ineffective.

Payment

- 13 The Adjudicator shall be paid the fees and expenses set out in the Adjudicator's Agreement.
- 14 The retainer fee, if applicable, shall be payment in full for:
 - (a) being available, on 28 days' notice, for all hearings and visits;
 - (b) all office overhead expenses such as secretarial services, photocopying and office supplies incurred in connection with his duties;
 - (c) all services performed hereunder except those performed during the days referred to in Rule 15.
- 15 The daily fee shall be payable for each working day preparing for or attending visits or hearings or preparing decisions including any associated travelling time.
- 16 The retainer and daily fees shall remain fixed for the period of tenure of the Adjudicator.
- 17 All payments to the Adjudicator shall be made by the Parties as determined by the Adjudicator. The Adjudicator's invoices for any monthly retainer shall be submitted quarterly in advance and invoices for daily fees and expenses shall be submitted following the conclusion of a visit or hearing. All invoices shall contain a brief description of the activities performed during the relevant period. The Adjudicator may suspend work if any invoice remains unpaid at the expiry of the period for payment, provided that 7 days prior notice has been given to both Parties.
- 18 If a Party fails to pay an invoice addressed to it, the other Party shall be entitled to pay the sum due to the Adjudicator and recover the sum paid from the defaulting Party.

Procedure for Obtaining Adjudicator's Decision

- 19 A dispute between the Parties may be referred in writing by either Party to the Adjudicator for his decision, with a copy to the other Party. If the Adjudicator has not been agreed or appointed, the dispute shall be referred in writing to the other Party, together with a proposal for the appointment of an Adjudicator. A reference shall identify the dispute and refer to these Rules.
- 20 The Adjudicator may decide to conduct a hearing in which event he shall decide on the date, place and duration for the hearing. The Adjudicator may request that written statements from the Parties be presented to him prior to, at or after the hearing. The Parties shall promptly provide the Adjudicator with sufficient copies of any documentation and information relevant to the Agreement that he may request.
- 21 The Adjudicator shall act as an impartial expert, not as an arbitrator, and shall have full authority to conduct any hearing as he thinks fit, not being bound by any rules or procedures other than those set out herein. Without limiting the foregoing, the Adjudicator shall have power to:
 - (a) decide upon the Adjudicator's own jurisdiction, and as to the scope of any dispute referred to him,
 - (b) make use of his own specialist knowledge, if any,
 - (c) adopt an inquisitorial procedure,
 - (d) decide upon the payment of interest in accordance with the Agreement,
 - (e) open up, review and revise any opinion, instruction, determination, certificate or valuation, related to the dispute,

- (f) refuse admission to hearings to any persons other than the Consultant, the Sub-Consultant and their respective representatives, and to proceed in the absence of any Party who the Adjudicator is satisfied received notice of the hearing.
- 22 All communications between either of the Parties and the Adjudicator and all hearings shall be in the language of the Adjudicator's Agreement. All such communications shall be copied to the other Party.
- 23 No later than the fifty-sixth day after the day on which the Adjudicator received a reference or, if later, the day on which the Adjudicator's Agreement came into effect, the Adjudicator shall give written notice of his decision to the Parties. Such decision shall include reasons and state that it is given under these Rules.

Annexes

A Client / Consultant Agreement [excluding commercial matters]

Include a copy of the Client / Consultant Agreement in so far as the Agreement must be complied with by the Sub-Consultant. This will normally include all the terms and conditions and the scope of services from the Client / Consultant's Agreement but may exclude any commercially sensitive information such as the Consultant's pricing.

The Client/Consultant Agreement does not form part of the Sub-Consultancy agreement but is a document that must be complied with by the Sub-Consultant in accordance with Clause 3.2.

AGREEMENT

PARTICULAR
CONDITIONS

GENERAL
CONDITIONS

FORM OF AGREEMENT

PARTICULAR CONDITIONS

SUB-CONSULTANCY AGREEMENT

GENERAL CONDITIONS

General Conditions

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



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General Conditions

1 General Provisions

1.1

Definitions

The following words and expressions shall have the meanings assigned to them except where the context otherwise requires:

- 1.1.1 “**Agreement**” or “**Client / Consultant Agreement**” means the agreement entered into between the Client and the Consultant for the performance of Services in relation to the Project.
- 1.1.2 “**Background Intellectual Property**” means, in respect of each Party, the Intellectual Property owned by or otherwise in the possession of that Party at the Commencement Date.
- 1.1.3 “**Client**” means the entity named in the Form of Sub-Consultancy Agreement and legal successors to the Client and permitted assignees, who has engaged the Consultant to carry out Services in respect to the Project.
- 1.1.4 “**Commencement Date**” means the date stated in the Particular Conditions or where no date is identified then the Commencement Date shall be 14 days after the Effective Date.
- 1.1.5 “**Consultant**” means the professional firm or individual named in the Form of Sub-Consultancy Agreement and legal successors to the Consultant and permitted assignees.
- 1.1.6 “**Consultant’s Representative**” means the person referred to in the Particular Conditions, or appointed from time to time by the Consultant, and communicated by Notice to the Sub-Consultant to be its representative for the administration of the Sub-Consultancy Agreement.
- 1.1.7 “**Confidential Information**” means all information, specifically identified by the disclosing Party (or the Client under the Agreement) as confidential at the time of disclosure or information that a reasonable person would consider from the nature of the said information and circumstances to be confidential, including without limitation confidential or proprietary information, trade secrets, data, documents, communications, plans, know-how, formulas, designs, calculations, test results, specimens, drawings, studies, specifications, surveys, photographs, software, processes, programmes, reports, maps, models, agreements, ideas, methods, discoveries, inventions, patents, concepts, research, development, and business and financial information.
- 1.1.8 “**Consultant’s Programme**” means the Consultant’s Programme submitted to the Client under the Client / Consultant Agreement.
- 1.1.9 “**Country**” means the country named in the Particular Conditions or, where no country is mentioned, the country where the Project site, or the main project site as the case may be, is located.
- 1.1.10 “**Day**” means a calendar day.

- 1.1.11 “**Effective Date**” means the date on which the Sub-Consultancy Agreement comes into force and effect pursuant to Clause 4.1 [*Sub-Consultancy Agreement Effective*]
- 1.1.12 “**Exceptional Costs**” means the costs, not otherwise compensated under the Sub-Consultancy Agreement, arising out of any necessary work, cost, expense or delay incurred by the Sub-Consultant which is additional to the Sub-Consultancy Services (or Variations) and which is necessarily and unavoidably performed under the Sub-Consultancy Agreement and in each case identified as such in the Sub-Consultancy Agreement.
- 1.1.13 “**Exceptional Event**” means an event or circumstance which is (a) beyond a Party’s control; (b) which such Party could not reasonably have provided against before entering into the Sub-Consultancy Agreement; (c) which having arisen, such Party could not reasonably have avoided or overcome; and (d) which is not substantially attributable to the other Party. An Exceptional Event may include, but is not limited to, events or circumstances of the kind listed below, subject to (a) to (d) above:
- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power or civil war;
 - (iii) riot, commotion, disorder, strike or lockout by persons other than the Sub-Consultant’s personnel and other employees/consultants for which the Sub-Consultant is responsible;
 - (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity except as may be attributable to the Sub-Consultant’s actions; or
 - (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.
- An Exceptional Event shall not arise or be constituted under the Sub-Consultancy Agreement unless the same circumstances also give rise to an Exceptional Event under the Agreement.
- 1.1.12 “**Foreground Intellectual Property**” means all Intellectual Property created as a result of the Sub-Consultancy Services performed by the Sub-Consultant.
- 1.1.13 “**Form of Sub-Consultancy Agreement**” means the document entitled Form of Sub-Consultancy Agreement which forms part of the Sub-Consultancy Agreement
- 1.1.14 “**FIDIC**” means the Fédération Internationale des Ingénieurs-Conseils, the International Federation of Consulting Engineers.
- 1.1.15 “**Intellectual Property**” means all intellectual property rights including, without limitation, any patents, patent application, trademarks, trade secrets, registered designs, registered design application, copyrights, design rights, moral rights, process, formula, specification, drawing, including rights in computer software and data bases howsoever arising in any part of the world.
- 1.1.16 “**Local Currency**” means the currency of the Country and «Foreign Currency» means any other currency.

- 1.1.17 “**Notice**” means a written communication identified as a Notice and issued in accordance with the provisions of Clause 1.3 [*Notices and other Communications*].
- 1.1.18 “**Party**” and “**Parties**” means the Consultant and/or the Sub-Consultant as the context requires.
- 1.1.19 “**Project**” means the project named in the Particular Conditions for which the Services are to be provided.
- 1.1.20 “**Services**” means the services to be provided by the Consultant under the Client / Consultant Agreement.
- 1.1.21 “**Sub-Consultant**” means the professional firm or individual named in the Form of Sub-Consultancy Agreement and legal successors to the Sub-Consultant and permitted assignees.
- 1.1.22 “**Sub-Consultancy Agreement**” means the Form of Sub-Consultancy Agreement together with the Sub-Consultancy Agreement (General Conditions and Particular Conditions), Appendix 1 [*Scope of Sub-Consultancy Services*], Appendix 2 [*Equipment and Facilities to be provided by the Consultant*], Appendix 3 [*Remuneration and Payment*], Appendix 4 [*Consultant’s Programme*], Appendix 5 [*Rules for Adjudication*], and any letters of offer and acceptance attached to any of the above.
- 1.1.23 “**Sub-Consultant’s Programme**” means the programme referred to in Sub-Clause 4.3.2.
- 1.1.24 “**Sub-Consultancy Services**” means the services defined in Appendix 1 [*Scope of Sub-Consultancy Services*] to be performed by the Sub-Consultant in accordance with the Sub-Consultancy Agreement which includes any Variations to the Sub-Consultancy Services instructed or arising in accordance with the Sub-Consultancy Agreement and which form part of the Services to be provided by the Consultant under the Agreement.
- 1.1.25 “**Sub-Consultant’s Representative**” means the person referred to in the Particular Conditions or appointed from time to time by the Sub-Consultant, and communicated by Notice to the Consultant to be its representative for the administration of the Sub-Consultancy Agreement.
- 1.1.26 “**Time for Completion**” means the time for completing the Sub-Consultancy Services as stated in the Particular Conditions, or as may be amended in accordance with the Sub-Consultancy Agreement, calculated from the Commencement Date.
- 1.1.27 “**Variation**” or “**Variation to the Sub-Consultancy Services**” means any change to the Sub-Consultancy Services instructed or approved as a Variation under Clause 5.1 [*Variations*].
- 1.1.28 “**Variation Notice**” means a written communication identified as a Variation Notice and issued in accordance with the provisions of Clause 1.3 [*Notices and other Communications*].
- 1.1.29 “**Works Contract**” means a contract for the performance of permanent and temporary works (if any) to be carried out by a contractor appointed by the Client for the achievement of the Project.
- 1.1.30 “**Year**” means a calendar year.

1.2

Interpretation

- 1.2.1 Words indicating the singular include the plural, and vice-versa where the context requires.
- 1.2.2 Words indicating one gender include all genders.
- 1.2.3 Provisions including the word “**agree**”, “**agreed**” or “**agreement**” require the agreement to be recorded in writing, and signed by both Parties.
- 1.2.4 “**shall**” means that the Party or person referred to has the obligation under the Sub-Consultancy Agreement to perform the duty referred to, and
- 1.2.5 “**may**” means that the Party or person referred to has the choice of whether to act or not in the matter referred to.
- 1.2.6 “**written**” or “**in writing**” means hand written, type written, printed or electronically made and resulting in a permanent un-editable record.
- 1.2.7 Any reference to “**price**”, “**rates**”, “**costs**”, “**expenses**”, “**damages**” and the like shall be a reference to the value of such item net of any applicable taxes unless specified otherwise.

1.3

Notices and other Communications

- 1.3.1. Wherever the Sub-Consultancy Agreement provides for the giving or issuing of a Notice, a Variation Notice or other form of communication including without limitation approvals, consents, instructions and decisions then such Notice, Variation Notice or communication shall be:
 - (a) where it is a Notice or Variation Notice, identified as such with reference to the Clause or Sub-Clause under which it is issued;
 - (b) where it is another form of communication, identified as such with reference to the Clause or Sub-Clause under which it is issued where appropriate;
 - (c) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted by any form of agreed system of electronic transmission stated in the Particular Conditions; and
 - (d) delivered, sent or transmitted to the address for the recipient's communications as stated in the Particular Conditions. However:
 - (i) If the recipient gives Notice of another address, Notices and other forms of communication shall thereafter be delivered accordingly; and
 - (ii) If the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Notices and other form of communications shall not be unreasonably withheld or delayed.

1.4

Law and Language

- 1.4.1 The Sub-Consultancy Agreement shall be governed by the law stated in the Particular Conditions or, if no governing law is stated in the Particular Conditions, by the law of the Country.
- 1.4.2 If any part of the Sub-Consultancy Agreement is written in more than one language then the ruling language shall be that stated in the Particular Conditions.

- 1.4.3 The language for all communications shall be the ruling language stated in the Particular Conditions or where no language is stated then all communications shall be in the language in which the Sub-Consultancy Agreement (or most of it) is written.

1.5

Changes in Legislation

- 1.5.1 If, after the date of the Sub-Consultant's offer/proposal in relation to the Sub-Consultancy Agreement the scope, extent, nature or type of Sub-Consultant Services is affected by any change to national (or state) legislation, any statute, statutory instrument, order, regulation, bylaw, code or other legislation having application to the Sub-Consultant Services, then such change to the Sub-Consultant Services shall be treated as a Variation to the Sub-Consultant Services under Clause 5.1 [*Variations*].
- 1.5.2 If, after the date of the Sub-Consultant's offer/proposal in relation to the Sub-Consultancy Agreement any change to national (or state) legislation, any statute, statutory instrument, order, regulation, bylaw, code or other legislation in any country in which the services are required by the Consultant or the Client, causes the Sub-Consultant to incur Exceptional Costs, then the agreed remuneration shall be adjusted in accordance with Clause 7.2.1 [Time for *Payment*], and the Time for Completion amended in accordance with Clause 4.4 [*Delays*]. As soon as reasonably practicable the Sub-Consultant shall inform the Consultant by issue of a Notice of the occurrence of the Exceptional Costs. Either Party may by a separate Notice to the other require that the provisions of the Sub-Consultancy Agreement be amended to comply with the change in legislation where applicable.

1.6

Assignments and Sub-Contracts

- 1.6.1 The Sub-Consultant shall not at any time assign the benefit of the Sub-Consultancy Agreement without the prior written consent of the Consultant, which consent shall not be unreasonably withheld or delayed.
- 1.6.2 The Sub-Consultant shall not sub-contract performance of all or part of the Sub-Consultancy Services without the written consent of the Consultant.
- 1.6.3 The Consultant's consent to any sub-contract arrangement shall not relieve the Sub-Consultant of any of the Sub-Consultant's obligations under the Sub-Consultancy Agreement. The Sub-Consultant shall remain responsible and liable to the Consultant for the acts, omissions and defaults of sub-consultants of any tier appointed by the Sub-Consultant in relation to the Sub-Consultancy Agreement as if they were acts, omissions and defaults of the Sub-Consultant.
- 1.6.4 Where the Client exercises any right of refusal or consent under the Agreement in respect to these matters then the Consultant shall be entitled to exercise its rights under the Sub-Consultancy Agreement in like manner.

1.7

Intellectual Property

- 1.7.1 All Intellectual Property held in any medium, whether electronic or otherwise, created by the Sub-Consultant during the performance of the Sub-Consultancy Services (Foreground Intellectual Property) shall be vested in the Sub-Consultant. The Sub-Consultant shall grant to the Consultant a royalty free worldwide licence to use and copy the Foreground Intellectual Property for any purpose in connection with the Project.

- 1.7.2 All Background Intellectual Property shall remain the property of the original owner. The Sub-Consultant hereby grants to the Consultant, or agrees to procure the grant to the Consultant of an unrestricted royalty free licence to use and copy the Sub-Consultant's Background Intellectual Property to the extent reasonably required to enable the Consultant to complete the Services for the Project. The Consultant hereby grants to the Sub-Consultant an unrestricted royalty free licence to use and copy the Consultant's Background Intellectual Property provided to the Sub-Consultant to the extent reasonably required to enable the Sub-Consultant to provide the Sub-Consultancy Services.
- 1.7.3 The Sub-Consultant shall ensure (except in respect of any of the Consultant's Background Intellectual Property) that the Foreground Intellectual Property and the Sub-Consultant's Background Intellectual Property to the extent incorporated into the Sub-Consultancy Services will not infringe any Intellectual Property or other rights of any third party.
- 1.7.4 The Sub-Consultant shall not be liable for the use by any person of the Sub-Consultant's Background Intellectual Property or the Sub-Consultant's Foreground Intellectual Property for any purpose other than the purpose for which it was originally intended.
- 1.7.5 The Sub-Consultant agrees to do all that is necessary in respect to intellectual property rights to enable the Consultant to comply with the intellectual property requirements of the Agreement. Further the Sub-Consultant agrees that the intellectual property provisions of the Agreement are deemed to be incorporated herein to extent necessary to give full effect to this Sub-Clause 1.7.5.

1.8

Confidentiality

- 1.8.1 Except with the prior written consent of the other Party, neither Party shall disclose or cause or permit their employees, professional advisers, agents or sub-consultants to disclose to third parties any Confidential Information.
- 1.8.2 The restrictions on use and disclosure set forth in Sub-Clause 1.8.1 shall not apply to any information:
- (a) which at the date of its disclosure is public knowledge or which subsequently becomes public knowledge other than by any act or failure to act on the part of the receiving Party or persons for whom the receiving Party has assumed responsibility under the Sub-Consultancy Agreement;
 - (b) which the receiving Party can establish by written proof was already in its possession at the time of disclosure by the disclosing Party and was not acquired directly or indirectly from the disclosing Party;
 - (c) which at any time after the Commencement Date has been acquired from any third party who did not acquire such information directly or indirectly from the disclosing Party or any of the disclosing Party's employees or professional advisers;
 - (d) which by proof in writing has been independently developed by the receiving Party without the use of Confidential Information; or
 - (e) which is required to be disclosed by law or order of a court of competent jurisdiction or government, department, agency or other public authority.
- 1.8.3 The obligations set forth in Sub-Clause 1.8.1 shall expire two years after completion of the Services or the termination of the Sub-Consultancy Agreement (whichever is the earlier) unless stated otherwise in the Particular Conditions.

- 1.8.4 The Sub-Consultant agrees that where the provisions in respect to confidentiality in the Agreement are more onerous or restrictive than those in the Sub-Consultancy Agreement then the provisions in the Agreement shall be deemed to be incorporated herein with the necessary amendments to give full effect to this Sub-Clause.

1.9

Publication

- 1.9.1 Subject to Clause 1.8 [*Confidentiality*] and unless otherwise specified in the Particular Conditions or the Agreement, the Sub-Consultant, either alone or jointly with others, may publish material relating to the Sub-Consultancy Services. Publication shall be subject to approval of the Client and the Consultant if it is within two years of completion of the Project.
- 1.9.2 The Sub-Consultant may use material and information relating to the Sub-Consultancy Services and the Project for commercial tendering purposes unless stated otherwise in the Agreement.

1.10

Anti-Corruption

- 1.10.1 In the performance of their obligations under the Sub-Consultancy Agreement, the Sub-Consultant and the Consultant, their agents and employees shall comply with all applicable laws, rules, regulations and orders of any applicable jurisdiction including without limitation those relating to corruption and bribery. The Parties shall also comply with the standards provided in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The Sub-Consultant hereby represents, warrants and covenants that:

- a) it will not participate, directly or indirectly in bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money laundering, use of insider information, the possession of illegally obtained information or any other criminal activity; and
- b) it will neither receive nor offer, pay or promise to pay either directly or indirectly, anything of value to a "public official" (as defined below) in connection with any business opportunities which are the subject of the Sub-Consultancy Agreement. Furthermore, the Sub-Consultant shall immediately give Notice to the Consultant with full particulars in the event that the Sub-Consultant receives a request from any public official requesting illicit payments.

- 1.10.2 A public official is:

- (a) any official or employee of any government agency or government owned or controlled enterprise;
- (b) any person performing a public function;
- (c) any official or employee of a public international organization including without limitation donor or funding agencies or the Client;
- (d) any candidate for political office; or
- (e) any political party or an official of a political party.

- 1.10.3 In conjunction with the requirements of this Clause 1.10 the Sub-Consultant shall at the Consultant's request demonstrate that it adheres to a documented code of conduct in respect to the prevention of corruption and bribery. As a minimum the Sub-Consultant shall comply with the FIDIC Code of Ethics and the FIDIC Integrity Management System available at www.fidic.org

1.11

- Relationship of Parties**
- 1.11.1 Nothing contained in the Sub-Consultancy Agreement shall be construed as creating a partnership or joint venture between the Parties.
- 1.11.2 Where either Party consists of a joint venture or consortium then members of such joint venture or consortium shall be jointly and severally liable under the Sub-Consultancy Agreement

1.12**Sub-Consultancy**

- Agreement Amendment**
- 1.12.1 The Sub-Consultancy Agreement can only be amended by the written agreement of the Parties or in accordance with its terms.

1.13**Severability**

- 1.13.1 If any term or provision under the Sub-Consultancy Agreement is held to be illegal or unenforceable in whole or in part then such term or provision shall be disregarded without affecting the enforceability of the remainder of the Sub-Consultancy Agreement. Where either Party cannot rely on any term or provision, the Parties will negotiate in good faith for an alternative term or provision with similar contractual effect for both Parties.

1.14**Non Waiver**

- 1.14.1 No failure or delay by either Party in exercising any of its rights under the Sub-Consultancy Agreement shall operate as a waiver of such rights. Any waiver given by either Party in connection with the Sub-Consultancy Agreement is binding only if it is served as a Notice and then strictly in accordance with the terms of the Notice.

1.15**Priority of Documents**

- 1.15.1 The documents forming the Sub-Consultancy Agreement are to be taken as mutually explanatory of one another. If there is a conflict between these documents then the documents shall be interpreted and construed in accordance with the order of precedence of documents given in Clause 2 of the Form of Sub-Consultancy Agreement.

1.16**Good faith**

- 1.16.1 In all dealings under the Sub-Consultancy Agreement the Consultant and the Sub-Consultant shall act in good faith and in a spirit of mutual trust.

2 The Consultant

2.1**Information**

- 2.1.1 In order not to delay the Sub-Consultant in the performance of the Sub-Consultancy Services, the Consultant shall within a reasonable time and with due regard to the Consultant's Programme, give to the Sub-Consultant free of cost all information, and any further information reasonably requested by the Sub-Consultant, which may pertain to the Sub-Consultancy Services and which the Consultant is able to obtain.
- 2.1.2 The Sub-Consultant shall use reasonable endeavours to review all significant information provided to him by the Consultant within a reasonable time of receipt and to the extent achievable using the standard of care in Clause 3.3 [*Standard of Care*] shall ensure that it does not contain any manifest error, omission or ambiguity. The Sub-Consultant shall give Notice to the Consultant promptly of any adverse findings.

2.1.3 If the Consultant receives a Notice from the Sub-Consultant in respect to any adverse findings the Consultant shall promptly seek instruction from the Client in respect to the same. To the extent that the Consultant is entitled to a Variation to the Services or other relief under the Agreement, the same shall be afforded to the Sub-Consultant as may be proportionate to the Sub-Consultancy Agreement.

2.2

Decisions

2.2.1 On all matters properly referred to the Consultant in writing by the Sub-Consultant, the Consultant shall give its decision, approval, consent, instruction or Variation, as the case may be, in writing within a reasonable time and with regard to the Consultant's Programme so as not to delay the Sub-Consultancy Services.

2.3

Assistance

2.3.1 If under the Client/Consultant Agreement the Consultant is entitled to assistance from the Client in respect to the provision of documents or assistance for entry, residency, working, exit and other similar related matters then the Sub-consultant may, by Notice to the Consultant, request similar assistance to that provided to the Consultant. This provision shall not impose any liability on the Consultant towards the Sub-consultant for the adequacy of such assistance.

2.4

Supply of Consultant's

Equipment and Facilities

2.4.1 The Consultant shall make the equipment and facilities described in Appendix 2 [*Equipment and Facilities to be provided by Consultant*] available to the Sub-Consultant for the purpose of the Sub-Consultancy Services with due regard to the Sub-Consultant's Programme and free of cost. The Sub-Consultant shall take reasonable care of any equipment and facilities and shall return the same to the Consultant in an undamaged condition, save for fair wear and tear, upon completion of the Sub-Consultancy Agreement.

2.5

Consultant's

Representative

2.5.1 The Consultant shall notify the Sub-Consultant of the extent of powers and authority delegated to the Consultant's Representative.

3 The Sub-Consultant

3.1

Scope of

Sub-Consultancy Services

3.1.1 The Sub-Consultant shall perform the Sub-Consultancy Services as stated in Appendix 1 [*Scope of Sub-Consultancy Services*].

3.1.2 The Sub-Consultant shall perform the Sub-Consultancy Services in accordance with the Consultant's Programme as may be amended from time to time by the Consultant.

3.1.3 The Sub-Consultant declares that as at the date of signature of the Sub-Consultancy Agreement there are no circumstances or matters that may give rise to a conflict of interest in the performance of its obligations under the Sub-Consultancy Agreement. The Sub-Consultant shall inform the Consultant immediately if it becomes aware of any such circumstances or matters that may give rise to a conflict of interest in the performance of

its obligations under the Sub-Consultancy Agreement. If a conflict of interest arises then the Parties shall agree, in good faith, on measures to manage such conflict.

3.2

Performance of the

Sub-Consultancy Services 3.2.1

The Sub-Consultant shall be deemed to have full knowledge of the provisions of the Agreement as are attached at Annexure A [*Client / Consultant Agreement*] and the Consultant shall if requested by the Sub-Consultant provide the Sub-Consultant with Annexure A without delay to the extent it is not incorporated herein the Sub-Consultancy Agreement.

3.2.2 The Sub-Consultant shall perform its obligations under the Sub-Consultancy Agreement so that no act or omission of the Sub-Consultant shall constitute, cause or contribute to any breach of the Agreement by the Consultant of any of the Consultant's obligations under the Agreement.

3.2.3 The Sub-Consultant shall observe and perform all the Consultant's obligations under the Agreement in so far as they relate to the Sub-Consultancy Services.

3.2.4 The Sub-Consultant acknowledges that the Consultant will rely upon the skill and judgement of the Sub-Consultant in the discharge of its obligations under the Sub-Consultancy Agreement

3.3

Standard of Care

3.3.1 Notwithstanding any term or condition to the contrary in the Sub-Consultancy Agreement or any related document or any legal requirement of the Country or any other relevant jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Sub-Consultant), in the performance of the Sub-Consultancy Services the Sub-Consultant shall have no other responsibility than to exercise the reasonable skill, care and diligence to be expected from a consultant experienced in the provision of such services for projects of similar size, nature and complexity.

3.3.2 To the extent achievable using the standard of care in Sub-Clause 3.3.1 and without extending the obligation of the Sub-Consultant beyond that required under Sub-Clause 3.3.1, the Sub-Consultant shall perform the Sub-Consultancy Services with a view to satisfying the function and purpose that may be specified in the Agreement.

3.3.3 The Sub-Consultant shall comply with all regulations, statutes, ordinances and other forms of standards, codes of practice and legislation applicable to the Sub-Consultancy Services and the Sub-Consultancy Agreement.

3.4

Sub-Consultant's Personnel

3.4.1 The key personnel who are proposed by the Sub-Consultant to work in the Country shall be subject to acceptance by the Client and the Consultant with regard to their qualifications and experience.

3.4.2 The Sub-Consultant shall only take instructions from the Consultant in relation to the Sub-Consultancy Agreement.

3.5

Sub-Consultant's Representative

3.5.1 The Sub-Consultant shall notify the Consultant of the extent of powers and authority delegated to the Sub-Consultant's Representative.

- 3.5.2 If required by the Consultant, the Sub-Consultant shall designate an individual to liaise with the Consultant's Representative in the Country.

3.6

Changes in Sub-Consultant's Personnel

- 3.6.1 If it is necessary for any reason to replace any of the personnel provided by the Sub-Consultant, the Sub-Consultant shall arrange for replacement by a person(s) of suitable qualification and experience in the provision of the Sub-Consultancy Services as soon as reasonably possible.
- 3.6.2 The Consultant may require the Sub-Consultant to replace any personnel where in the reasonable opinion of the Consultant such personnel are not competent or capable of performing the Sub-Consultancy Services satisfactorily. The cost of such replacement shall be borne by the Sub-Consultant.

3.7

Safety and Security of Sub-Consultant's Personnel

- 3.7.1 If in the reasonable opinion of the Consultant and the Sub-Consultant the health, safety or security of the Sub-Consultant's personnel whilst in the Country is compromised by an Exceptional Event then the Sub-Consultant shall be entitled to suspend all or part of the Sub-Consultancy Services in accordance with Clause 6.1 [*Suspension of Sub-Consultancy Services*] and remove such personnel from the Country until such time as the Exceptional Event has ceased.

4 Commencement and Completion

4.1

Sub-Consultancy Agreement Effective

- 4.1.1 The Sub-Consultancy Agreement shall be effective from the date of the latest signature necessary to complete the formal Sub-Consultancy Agreement (the "Effective Date").

4.2

Commencement and Completion of Sub-Consultancy Services

- 4.2.1 The Sub-Consultant shall commence the performance of the Sub-Consultancy Services as soon as is reasonably practicable after the Commencement Date and in any event no later than fourteen (14) days therefrom. The Sub-Consultant shall complete the whole of the Sub-Consultancy Services within the Time for Completion.

4.3

Compliance with Consultant's Programme

- 4.3.1 The Sub-Consultant shall perform the Sub-Consultancy Services in accordance with the Consultant's Programme under the Agreement as may be amended from time to time.
- 4.3.2 The Sub-Consultant shall produce a Sub-Consultant's Programme for the Sub-Consultancy Services for monitoring and recording purposes. Notwithstanding the Sub-Consultant's Programme, the Sub-Consultant shall be bound by and shall comply at all times with the Consultant's Programme

under the Agreement.

- 4.3.2 Within fourteen (14) days of the Commencement Date the Sub-Consultant shall submit a Sub-Consultant's Programme with the following information in order to demonstrate compliance with the Consultant's Programme:
- a) the order and timing in which the Sub-Consultant intends to carry out the Sub-Consultancy Services in order to complete the Sub-Consultancy Services within the Time for Completion; and
 - b) key dates for the delivery of any part of the Sub-Consultancy Services to the Consultant.
- 4.3.3 The Sub-Consultant shall promptly give Notice to the Consultant of any specific, actual or probable future events or circumstances which may adversely affect or delay the Sub-Consultancy Services.

4.4

Delays

- 4.4.1 The Sub-Consultant shall be entitled to an extension of the Time for Completion if and to the extent that completion of the Sub-Consultancy Services is or will be delayed by any of the following causes:
- a) a Variation to the Sub-Consultancy Services;
 - b) any delay, impediment or prevention caused by or attributable to the Consultant;
 - c) an Exceptional Event; or
 - c) any other event or circumstance giving an entitlement to extension of the Time for Completion under the Sub-Consultancy Agreement.
- 4.4.2 Any extension of the Time for Completion shall have due regard to the Consultant's Programme and any constraints therein.
- 4.4.3 Where any circumstance referred to in Sub-Clause 4.4.1 causes the Sub-Consultant to incur Exceptional Costs, then the agreed remuneration shall be adjusted in accordance with Sub-Clause 7.1.2. As soon as reasonably practicable the Sub-Consultant shall inform the Consultant of the occurrence of the Exceptional Costs by issue of a Notice.

4.5

Rate of Progress of Services

- 4.5.1 If, for any reasons a delay under Clause 4.4 [Delays] does not entitle the Sub-Consultant to an extension of the Time for Completion, the rate of progress of the Sub-Consultancy Services is, in the reasonable opinion of the Consultant, likely to delay the Consultant's Programme, then the Consultant may give Notice to that effect to the Sub-Consultant. Upon receipt of such Notice the Sub-Consultant shall issue a Notice to the Consultant describing the measures the Sub-Consultant intends to put in place in order to complete the Sub-Consultancy Services in accordance with the Consultant's Programme.

4.6

Exceptional Event

- 4.6.1 If a Party is prevented from performing any of its obligations under the Sub-Consultancy Agreement by or due to an Exceptional Event then it shall give a Notice to the other Party providing a description of the Exceptional Event together with an assessment of its effects on the Party's ability to comply with its obligations under the Sub-Consultancy Agreement. The Notice shall be given within fourteen (14) days after the Party becomes aware,

or should have become aware, of the event or circumstance constituting an Exceptional Event.

The Party having given Notice, shall be excused from performance of such obligations for so long as the effects of the Exceptional Event prevent such performance.

- 4.6.2 Where an Exceptional Event gives rise to an unavoidable change in the scope of Sub-Consultancy Services then the Consultant shall issue a Variation to the Sub-Consultancy Services in accordance with Clause 5.1 [Variations]. Where an Exceptional Event gives rise to a delay in the completion of the Sub-Consultancy Services then the Sub-Consultant shall be entitled to an extension of the Time for Completion in accordance with Clause 4.4 [Delays]
- 4.6.3 Notwithstanding any other provision of this Clause 4.6, the obligations of either Party to make payments to the other Party under the Agreement shall not be excused by an Exceptional Event.
- 4.6.4 Notwithstanding any other provision in the Sub-Consultancy Agreement the Sub-Consultant agrees that an Exceptional Event shall not arise or be constituted under the Sub-Consultancy Agreement unless the same circumstances also give rise to an Exceptional Event under the Agreement.

5 Variations to Sub-Consultancy Services

5.1 Variations

- 5.1.1 A Variation to the Sub-Consultancy Services may be initiated by the Consultant by issue of a Variation Notice at any time prior to completion of the Services. The Consultant may request the Sub-Consultant to submit a proposal in respect to a proposed Variation. If the proposal is accepted by the Consultant then the Variation shall be confirmed by the Consultant by issue of a Variation Notice. Any such Variation shall not substantially change the extent or nature of the Sub-Consultancy Services.
- 5.1.2 A Variation to the Sub-Consultancy Services may be issued in respect to any:
 - a) amendment to Appendix 1 [*Scope of Sub-Consultancy Services*] or to Appendix 2 [*Equipment and Facilities to be Provided by the Consultant*];
 - b) omission of part of the Sub-Consultancy Services but only where such omitted services are no longer required by the Consultant;
 - c) changes in the specified sequence or timing of the execution of the Sub-Consultancy Services including acceleration of the Sub-Consultancy Services;
 - d) changes in the method of implementation of the Sub-Consultancy Services;
 - e) provision of the Sub-Consultancy Agreement requiring the issue of a Variation; or
 - f) proposal submitted by the Sub-Consultant (at the Consultant's request or otherwise) and accepted in writing by the Consultant.
- 5.1.3 The Sub-Consultant shall give Notice to the Consultant as soon as reasonably practicable where the Sub-Consultant considers that any instruction or direction from the Consultant or any other circumstance constitutes a Variation to the Sub-Consultancy Services. The Sub-Consultant shall include

in the Notice details of the estimated impact upon the Sub-Consultant's Programme and cost of the Sub-Consultancy Services of such matters. Within twenty one (21) days of receipt of the Notice the Consultant shall either issue a Variation Notice or cancel the instruction or direction or state by issue of a further Notice why the Consultant considers the instruction, direction or circumstance does not constitute a Variation to the Sub-Consultancy Services. In such case the Sub-Consultant shall comply with and be bound by such further Notice unless the Sub-Consultant refers the matter as a dispute under Clause 10 [*Disputes and Arbitration*] within seven (7) days of receipt of such further Notice.

- 5.1.4 Unless the Sub-Consultant promptly gives Notice to the Consultant (with supporting evidence) that
- a) it does not possess the relevant skills or resources to carry out the Variation; or
 - b) the Sub-Consultant considers that the Variation will substantially change the extent or nature of the Sub-Consultancy Services; then
- the Sub-Consultant shall execute and be bound by each Variation. The Sub-Consultant shall not otherwise make any changes to the Sub-Consultancy Services.

5.2

Agreement of Variation

Value and Impact

- 5.2.1 The Consultant and the Sub-Consultant shall agree the value of any Variation including its impact (if any) upon other parts of the Sub-Consultancy Services, the Sub-Consultant's Programme and the Time for Completion.
- 5.2.2 The value of any Variation shall be determined in accordance with or based upon the rates and/or prices in Appendix 3 [*Remuneration and Payment*]. Where the rates and/or prices are not applicable to the Variation then new rates shall be agreed by the Parties. If agreement is not reached within twenty one (21) days of the relevant Variation Notice then reasonable rates and prices shall be applied.
- 5.2.3 Where the matter giving rise to the Variation is a matter for which the Consultant is entitled to seek payment, relief or remedy under the Agreement then the Sub-Consultant agrees that any payment relief or remedy under the Sub-Consultancy Agreement shall be contingent upon the payment relief or remedy obtained by the Consultant under the Agreement. The Consultant agrees to pursue diligently the interests of the Sub-Consultant subject always to receiving the full cooperation of the Sub-Consultant.

6

Suspension of Sub-Consultancy Services and Termination of Sub-Consultancy Agreement

6.1

Suspension of Sub-Consultancy Services

- 6.1.1 The Consultant may suspend all or part of the Sub-Consultancy Services at his sole discretion and for any reason by giving fourteen (14) days Notice to the Sub-Consultant.
- 6.1.2 The Consultant may suspend the Sub-Consultancy Services immediately if the Services under the Agreement are suspended.

- 6.1.3 If the Sub-Consultant considers that an Exceptional Event has arisen, including that contemplated under Clause 3.7 [*Safety and Security of Sub-Consultant's Personnel*], it shall give Notice immediately to the Consultant with full supporting particulars. If the Consultant agrees that an Exceptional Event has arisen, then the Sub-Consultant may suspend all or part of the Sub-Consultancy Services. The Sub-Consultant shall take reasonable endeavours to avoid or minimise such suspension of all or part of the Sub-Consultancy Services.

6.2

Resumption of Suspended Sub-Consultancy Services

- 6.2.1 When the Services have been suspended under Sub-Clause 6.1 [*Suspension of Sub-Consultancy Services*] the Sub-Consultant shall resume the Sub-Consultancy Services or part thereof, as the case may be, within fourteen (14) days of receipt of Notice from the Consultant to resume the Sub-Consultancy Services or part thereof. If the suspension was in relation to an Exceptional Event and the Sub-Consultant is not satisfied that the Exceptional Event has ceased, it shall immediately give a Notice to the Consultant with full supporting particulars.

6.3

Effects of Suspension of the Sub-Consultancy Services

- 6.3.1 The Sub-Consultant shall be paid for Sub-Consultancy Services performed in accordance with the Sub-Consultancy Agreement up to the date of suspension of the Sub-Consultancy Services or part thereof as the case maybe.
- 6.3.2 During the period of suspension the Sub-Consultant shall not perform the Sub-Consultancy Services or part thereof as the case may be, but shall ensure so far as is reasonably practicable the security, maintenance and custody of the Sub-Consultancy Services so as to prevent spoilage or loss.
- 6.3.3 If during the suspension and resumption of Sub-Consultancy Services or part thereof the Sub-Consultant incurs Exceptional Costs, then
- a) the agreed remuneration shall be adjusted in accordance with Clause 7.2 [*Payment to the Sub-Consultant*];
 - b) the Time for Completion shall be amended in accordance with Clause 4.4 [*Delays*] to reflect the effect of the suspension on the Sub-Consultant's Programme; and
 - c) as soon as reasonably practicable the Sub-Consultant shall inform the Consultant by issue of a Notice of the occurrence of these Exceptional Costs.

6.4

Termination of Sub-Consultancy Agreement

- 6.4.1 The Consultant may terminate the Sub-Consultancy Agreement in the following circumstances:
- a) If the Sub-Consultant without good reason is in breach of a material term or condition of the Sub-Consultancy Agreement, the Consultant may give Notice to the Sub-Consultant outlining the breach and the remedy required under the Sub-Consultancy Agreement. If the Sub-Consultant has not proceeded to remedy the breach within

fourteen (14) days after the issue of the Notice then the Consultant may terminate the Sub-Consultancy Agreement upon giving fourteen (14) days Notice to the Sub-Consultant;

- b) Notwithstanding the notice periods in Sub-Clause 6.4.1, sub-paragraphs (a), if the Sub-Consultant becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events, the Consultant may in so far as the applicable laws permit terminate the Sub-Consultancy Agreement with immediate effect upon service of an appropriate Notice;
- c) Notwithstanding the notice periods in Sub-Clause 6.4.1 (a), if the Sub-Consultant is in breach of Clause 1.10 [*Anti-Corruption*], the Consultant may terminate the Sub-Consultancy Agreement with immediate effect upon service of an appropriate Notice;
- d) At its sole discretion upon giving the Sub-Consultant fifty six (56) days Notice provided always that the Consultant shall not be entitled to use this provision in order to obtain the Sub-Consultancy Services from others; or
- e) Immediately upon termination of the Agreement.

6.4.2 The Sub-Consultant may terminate the Sub-Consultancy Agreement in the following circumstances:

- a) If the Sub-Consultancy Services have been suspended under Clause 6.1 [*Suspension of Sub-Consultancy Services*] for more than one hundred and sixty eight (168) days the Sub-Consultant may terminate the Sub-Consultancy Agreement upon giving fourteen (14) days Notice to the Consultant; or
- b) If the Consultant becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events, the Sub-Consultant may in so far as the applicable laws permit terminate the Sub-Consultancy Agreement with immediate effect upon service of an appropriate Notice.

6.5

Effects of Termination

- 6.5.1. The Sub-Consultant shall be paid for Services performed in accordance with the Sub-Consultancy Agreement up to the date of termination of the Sub-Consultancy Agreement.
- 6.5.2 If the Sub-Consultancy Agreement is terminated in accordance with Sub-Clause 6.4.1 sub-paragraph (a) or (b) or (c), the Consultant shall, without prejudice to any other rights the Consultant may have under the Sub-Consultancy Agreement, be entitled to:
 - (a) take over from the Sub-Consultant all documents, information, calculations and other deliverables, whether in editable electronic format if so available pertaining to the Sub-Consultancy Services performed up to the date of termination, necessary to enable the Consultant to complete the Sub-Consultancy Services either by itself or with the assistance of another sub-consultant;
 - (b) claim compensation for reasonable costs directly incurred as a

consequence of the termination, including but not limited to additional costs incurred in arranging for the Sub-Consultancy Services to be completed by another consultant; and

- (c) withhold payments due to the Sub-Consultant until all the costs incurred by the Consultant under Sub-Clause 6.5.2, sub-paragraphs (b) above have been established and all documents, information, calculations and other deliverables necessary to enable the Consultant to complete the Sub-Consultancy Services have been received. The Consultant shall act expeditiously and without delay in establishing its own costs under Sub-Clause 6.5.2, sub-paragraphs (b).

The Consultant shall take all reasonable steps to mitigate such costs. The Consultant's entitlement under this Sub-Clause 6.5.2 shall be limited to those costs that are reasonably foreseeable at the time of signature of the Sub-Consultancy Agreement.

- 6.5.3 If the Sub-Consultancy Agreement is terminated under Sub-Clause 6.4.1, sub-paragraphs (d) or Sub-Clause 6.4.2 and the Sub-Consultant incurs Exceptional Costs then, without prejudice to any other rights the Sub-Consultant may have under the Sub-Consultancy Agreement, the agreed remuneration shall be adjusted in accordance with Sub-Clause 7.1.2. The Sub-Consultant shall inform the Consultant as soon as reasonably practicable by issue of a Notice of the occurrence of the Exceptional Costs.

6.6

Rights and Liabilities of the Parties

- 6.6.1 Termination of the Sub-Consultancy Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

7

Payment to the Sub-Consultant

7.1

Payment to the Sub-Consultant

- 7.1.1 The Consultant shall pay the Sub-Consultant for the Sub-Consultancy Services (including Variations to the Sub-Consultancy Services) in accordance with the details stated in Appendix 3 [*Remuneration and Payment*].
- 7.1.2 Unless otherwise agreed in writing, the Consultant shall pay the Sub-Consultant in respect of Exceptional Costs:
 - (a) for the extra time spent by the Sub-Consultant's personnel in the performance of the Sub-Consultancy Services at the rates and prices stated in Appendix 3 [*Remuneration and Payment*]. Where the rates and prices are not applicable then new rates and prices shall be agreed by the Parties. If agreement is not reached within twenty one (21) days of the issue of the relevant Notice then reasonable rates and prices shall be applied; and
 - (b) the cost of all other expenses reasonably incurred by the Sub-Consultant
- 7.1.3 The Consultant shall pay any other amounts that become due under the Sub-Consultancy Agreement.

7.2

Time for Payment

- 7.2.1 Amounts due to the Sub-Consultant shall be paid within thirty five (35) days of the date of issue of the Sub-Consultant's invoice unless otherwise stated

in Appendix 3 [*Remuneration and Payment*].

- 7.2.2 If the Sub-Consultant does not receive payment within the time stated in Sub-Clause 7.2.1 it shall be paid financing charges at the rate(s) stated in Appendix 3 [*Remuneration and Payment*] compounded monthly on the amount overdue and in its currency calculated from the due date for payment of the invoice to the actual date payment is received from the Consultant.

7.3

Currencies of Payment

- 7.3.1 The currencies applicable to the Sub-Consultancy Agreement are those stated in Appendix 3 [*Remuneration and Payment*].

7.4

Disputed Invoices

- 7.4.1 If any item or part of an item in an invoice submitted by the Sub-Consultant is contested by the Consultant as not properly due under the Sub-Consultancy Agreement, the Consultant shall, within seven (7) days following the date of receipt of the invoice, give a Notice of its intention to withhold payment with reasons but shall not delay payment of the remainder of the invoice. Clause 7.2 [*Time for Payment*] shall apply to all contested amounts which are finally determined to have been payable to the Sub-Consultant.

7.5

Independent Audit

- 7.5.1 The Sub-Consultant shall maintain up-to-date records which clearly identify relevant time and expense and shall make these available to the Consultant on reasonable request.
- 7.5.2 Except where the Sub-Consultancy Agreement provides for lump sum payments, not later than one year after the completion or termination of the Sub-Consultancy Services, the Consultant may, by Notice of not less than fourteen (14) days to the Sub-Consultant, require that an independent reputable firm of professionally qualified accountants nominated by him audit any time and expense records claimed by the Sub-Consultant. The audit shall be conducted by attending during normal working hours at the office where the records are kept and the Sub-Consultant shall afford all reasonable assistance to the auditors. Any such audit shall be at the Consultant's cost.

8 Liabilities

8.1

Liability for Breach

- 8.1.1 The Sub-Consultant shall be liable to the Consultant for a breach by the Sub-Consultant of any provision of the Sub-Consultancy Agreement.
- 8.1.2 The Consultant shall be liable to the Sub-Consultant for any breach by the Consultant of any provision of the Sub-Consultancy Agreement.
- 8.1.3 If either Party is liable to the other, damages shall be payable only on the following terms:
- (a) such damages shall be limited to the amount of reasonably foreseeable loss and damage suffered as a direct result of such breach;
 - (b) in any event, the amount of such damages shall be limited to the amount stated in Clause 8.3 [*Limit of Liability*];
 - (c) if either Party is considered to be liable jointly with third parties to the

other Party, the proportion of damages payable by that Party shall be limited to that proportion of liability which is attributable to its breach.

8.2

Duration of Liability

8.2.1 Notwithstanding any term or condition to the contrary in the Sub-Consultancy Agreement or any legal requirement of the Country or any other relevant jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Sub-Consultant), neither the Consultant nor the Sub-Consultant shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on one Party by the other Party before the expiry of the relevant period stated in the Particular Conditions, such period to commence upon completion of the Sub-Consultancy Services or termination of the Sub-Consultancy Agreement (whichever is earlier). Each Party agrees to waive all claims against the other in so far as such claims are not formally made in accordance with this Sub-Clause 8.2.1.

8.3

Limit of Liability

8.3.1 The maximum amount of damages payable by either Party to the other in respect of any and all liability, including liability arising from negligence, under the Sub-Consultancy Agreement shall not exceed the amount stated in the Particular Conditions. This limit is without prejudice to any financing charges specified under Clause 7.2 [Time for Payment] and without prejudice to Clause 8.4 [Exceptions].

8.3.2 Each Party agrees to waive all claims against the other in so far as the aggregate of compensation which might otherwise be payable exceeds the maximum amount payable under Sub-Clause 8.3.1.

8.3.3 Neither Party shall be liable in contract, tort, under any law or in any statutory private right of action or otherwise, for any loss of revenue, loss of profit, loss of production, loss of contracts, loss of use, loss of business, third party punitive damages or loss of business opportunity or for any indirect, special or consequential loss or damage.

8.4

Exceptions

8.4.1 Clause 8.1 [Liability for Breach], Clause 8.2 [Duration of Liability], and Clause 8.3 [Limit of Liability] shall not apply to claims arising out of deliberate manifest and reckless default, fraud, fraudulent misrepresentation or reckless misconduct by the defaulting Party.

9 Insurance

9.1

Insurances to be taken out by Sub-Consultant

9.1.1 The Sub-Consultant shall take out and maintain professional indemnity insurance and public liability insurance in amounts sufficient to cover its liabilities under the Sub-Consultancy Agreement, provided always in each case that such insurance is available at commercially reasonable rates and on terms (including normal exclusions) commonly included in such insurances at the time the insurances were taken out or renewed as the case may be. Such insurances shall be placed with insurers of international repute and standing.

The Sub-Consultant shall ensure that the minimum amount of cover under the policies is not less than the amount specified in the Particular Conditions.

The Sub-Consultant shall ensure that its professional indemnity insurance is maintained for the period of liability stated in the Particular Conditions in accordance with Clause 8.2 [*Duration of Liability*].

- 9.1.2 The Sub-Consultant shall take out and maintain Workers Compensation insurance or Employer's Liability insurance and any other insurances as may be required by the applicable law for the duration of the Sub-Consultancy Services.
- 9.1.3 When requested to do so by the Consultant, the Sub-Consultant shall produce brokers'/insurers' certificates to show that the insurance cover required by this Clause 9.1 is being maintained.
- 9.1.4 The Sub-Consultant shall notify the Consultant immediately should any of the insurance required by this Clause 9.1 [*Insurance to be taken out by Sub-Consultant*] be cancelled by the insurers or underwriters.

10 Disputes and Arbitration

10.1

Amicable Dispute Resolution

- 10.1.1 If any dispute arises out of or in connection with the Sub-Consultancy Agreement then senior representatives of the Parties with authority to settle the dispute shall, within twenty eight (28) days of a written request from one Party to the other, meet in order to resolve the dispute amicably.
- 10.1.2 If the dispute is not resolved within fifty six (56) days of receipt of the written request, then either Party may refer the dispute to adjudication in accordance with Clause 10.2 [*Adjudication*], even if the meeting referred to in Sub-Clause 10.1.1 has not taken place.

10.2

Adjudication

- 10.2.1 Unless settled amicably, any dispute arising out of or in connection with the Sub-Consultancy Agreement may be referred by either Party to adjudication in accordance with the Rules for Adjudication in Appendix 5 [*Rules for Adjudication*]. The adjudicator shall be agreed between the Parties or failing agreement shall be appointed in accordance with the said Rules for Adjudication.
- 10.2.2 The Parties shall bear their own costs arising out of the adjudication and the adjudicator shall not be empowered to award costs to either Party. Without prejudice to the above, the adjudicator may decide which Party shall bear the adjudicator's fees and in what proportion.
- 10.2.3 If either Party is dissatisfied with the adjudicator's decision:
- (a) the dissatisfied Party may give a notice of dissatisfaction to the other Party, with a copy to the adjudicator;
 - (b) this notice shall state that it is a "Notice of Dissatisfaction with the Adjudicator's Decision" and shall set out the matter in dispute and the reason(s) for dissatisfaction; and

- (c) this notice shall be given within twenty eight (28) days of receiving the adjudicator's decision.
- 10.2.4 If the adjudicator fails to give its decision within the period stated in the Rules for Adjudication, then either Party may, within twenty eight (28) days of this period expiring, give a notice to the other Party in accordance with Sub-Clause 10.2.3, sub-paragraphs (a) and (b), above.
- 10.2.5 Except as stated in Clause 10.5 [*Failure to Comply with Adjudicator's Decision*], neither Party shall be entitled to commence arbitration of a dispute unless a notice in respect of that dispute has been given in accordance with Sub-Clause 10.2.3 or 10.2.4. If such a notice has been given, and neither Party commences arbitration of the dispute within one hundred and eighty two (182) days of giving or receiving the notice, such notice shall be deemed to have lapsed and no longer be valid.
- 10.2.6 Whether a Notice of Dissatisfaction with the adjudicator's decision has been issued or not by either Party, any adjudicator's decision shall become binding on both Parties upon its release.
- 10.2.7 If the adjudicator has given its decision as to a matter in dispute to both Parties, and no notice under Sub-Clause 10.2.3 has been given by either Party within twenty eight (28) days of receiving the adjudicator's decision, then the decision shall become final and binding on both Parties.
- 10.2.8 Adjudication may be commenced before or after completion of the Sub-Consultancy Services. The obligations of the Parties shall not be altered by reason of any adjudication being conducted during the progress of the Sub-Consultancy Services.

10.3

Amicable Settlement

- 10.3.1 Where a notice has been given under Sub-Clause 10.2.3 or 10.2.4, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the twenty-eighth (28th) day after the day on which this notice was given, even if no attempt at amicable settlement has been made.

10.4

Arbitration

- 10.4.1 Unless settled amicably, subject to Clause 10.2 [*Adjudication*] and Clause 10.5 [*Failure to Comply with Adjudicator's Decision*], any dispute in respect of which the adjudicator's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:
- (a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce;
 - (b) the dispute shall be settled by one or three arbitrators appointed in accordance with these Rules; and
 - (c) the arbitration shall be conducted in the ruling language defined in the Particular Conditions.
- 10.4.2 The arbitrator(s) shall have full power to open up, review and revise any ruling or decision of the Adjudicator.
- 10.4.3 In any award dealing with costs of the arbitration, the arbitrator(s) may take account of the extent (if any) to which a Party failed to cooperate with the other Party in appointing the adjudicator under Clause 10.2 [*Adjudication*].

- 10.4.4 Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the adjudicator to obtain its decision, or to the reasons for dissatisfaction given in the Party's notice under Sub-Clause 10.2 [Adjudication]. Any decision of the adjudicator shall be admissible in evidence in the arbitration.
- 10.4.5 Arbitration may be commenced before or after completion of the Sub-Consultancy Services. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the Sub-Consultancy Services.

10.5

Failure to Comply with Adjudicator's Decision

- 10.5.1 In the event that a Party fails to comply with any decision of the adjudicator, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Clause 10.4 [Arbitration] and Clause 10.1 [Amicable Dispute Resolution], Clause 10.2 [Adjudication] and Clause 10.3 [Amicable Settlement] shall not apply to this reference. The arbitral tribunal (constituted under Clause 10.4 [Arbitration]) shall have the power, by way of summary or other expedited procedure, to order, whether by an interim or provisional measure or an award (as may be appropriate under the applicable law or otherwise), the enforcement of that decision.
- 10.5.2 In the case of a binding but not final decision of the adjudicator, such interim or provisional measure or award shall be subject to the express reservation that the rights of the Parties as to the merits of the dispute are reserved until they are resolved by an award.
- 10.5.3 Any interim or provisional measure or award enforcing a decision of the adjudicator which has not been complied with, whether such decision is binding or final and binding, may also order or award damages or other relief.



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