

# Draft STANDARD FORM OF DOMESTIC SUB-CONTRACT<sup>1</sup>

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<sup>1</sup> This Standard Form is intended for use on major sub-contracts, i.e. not only for 1st tier sub-contracts but also for 2nd or lower tier sub-contracts, except for the less sophisticated trade sub-contracts.  
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**SUB-CONTRACT AGREEMENT****This Sub-Contract Agreement**

(which terms shall be read in conjunction with the Sub-Contract Particulars annexed hereto) is made between the Client-Contractor of the one part and the Sub-Contractor of the other part.

**Recitals****Whereas:**

Recital 1: The Client-Contractor has secured a contract to execute the whole or part of the Project at the Project Address ("Client-Contract Works") commissioned by the Ultimate Client.

Recital 2: The Client-Contractor wishes to sub-contract out part of the Client-Contract Works ("the Sub-Contract Works").

Recital 3: The Client-Contractor has provided the Sub-Contractor with the Tender Documents showing and describing the whole of the Sub-Contract Works to be done.

Recital 4: The Sub-Contractor has submitted a tender ("the Tender") based on the Tender Documents (as may be modified by any tender addenda issued by the Client-Contractor to the Sub-Contractor before the submission of the Tender).

Recital 5: To the extent that the Client-Contractor and the Sub-Contractor (collectively "the Contract Parties") have after the submission of and before the acceptance of the Tender further clarified or adjusted the requirements of the Tender Documents and the proposals in the Tender, such clarifications or adjustments have been exchanged between them in writing.

**Now**

the Contract Parties hereby agree as follows:

**Article 1: Object of this Sub-Contract**

The Sub-Contractor will carry out and complete the Sub-Contract Works shown or described in the Sub-Contract Documents defined in Article 4.1 hereof for the consideration hereinafter provided.

**Article 2: Sub-Contract Price**

The Client-Contractor will pay to the Sub-Contractor the Sub-Contract Price stated in the Sub-Contract Particulars, or such other sum as shall become payable at the times and in the manner stated in this Sub-Contract.

**Article 3: Sub-Contract Periods**

The Sub-Contractor will complete the Sub-Contract Works Sections within the respective Sub-Contract Period or Periods or such extended period or periods as may be authorized under this Sub-Contract.

**Article 4: Sub-Contract Documents**

- 4.1 The documents constituting this Sub-Contract (“the Sub-Contract Documents”) consist of the following:
  - (a) this Sub-Contract Agreement;
  - (b) the Sub-Contract Particulars annexed hereto and superseding the one included in the Tender Documents;
  - (c) the Tender Correspondence;
  - (d) the Sub-Contract Conditions annexed hereto as may be modified by the Special Sub-Contract Conditions included in the Tender Documents; and
  - (e) the Tender Documents as completed by the Sub-Contractor when submitting the Tender.

4.2 This Sub-Contract shall be deemed to have taken effect from the Sub-Contract Award Date.<sup>2</sup>

**Attestation**

This Sub-Contract Agreement is dated \_\_\_\_\_ and signed by both of the Contract Parties before witnesses:

The Client-Contractor \_\_\_\_\_

Company Chop (if company) \_\_\_\_\_

Signature of legal or authorized representative \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

Signature of witness \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

The Sub-Contractor \_\_\_\_\_

Company Chop (if company) \_\_\_\_\_

Signature of legal or authorized representative \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

Signature of witness \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

<sup>2</sup> It is not recommended to proceed with the Sub-Contract Works before a formal contract award. The contractual implications of work or services done before the Sub-Contract Award Date should be recorded in writing in advance and covered eventually by the Sub-Contract Documents.

## SUB-CONTRACT PARTICULARS

(Note: When completing the Particulars, text added shall be shown in italics, and text deleted shall be shown as struck through.)

Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)
	<b>Project</b>	
1	Project Title	
2	Project Address	
3	Ultimate Client <sup>3</sup>	
4	Main Contractor <sup>4</sup>	
5	Client-Contract Works (Brief Description)	
	<b>Sub-Contract</b>	
6	Sub-Contract Award Date (being the date of the letter issued by or on behalf of the Client-Contractor awarding this Sub-Contract to the Sub-Contractor)	
7	Sub-Contract Title	
8	Sub-Contract Works (Brief Description)	
9	Locations of Site (same as the Project Address if not stated)	
	<b>Contract Parties</b>	The Client-Contractor and the Sub-Contractor
10	Name of the Client-Contractor	
11	Address of the Client-Contractor	Registered / Business / Correspondence (delete as appropriate):
12	Name of the Sub-Contractor	
13	Address of the Sub-Contractor	Registered / Business / Correspondence (delete as appropriate):
	<b>Ultimate Client's Consultants</b>	
14	Name of the Contract Administrator	
15	Name of the Quantity Surveyor	

<sup>3</sup> This would normally mean "the Employer" under the usual forms of Main Contract.

<sup>4</sup> This would normally mean "the Main Contractor" under the usual forms of Main Contract, and may or may not be the same as the Client-Contractor depending on the position of the Client-Contractor on the tiers of contracting and sub-contracting.

Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)	
<b>Contract Type and Price</b>			
16	Contract Type (select only one choice by entering a tick or "yes" in the box against the chosen choice)	(a)	Lump Sum Contract
		(b)	Remeasurement Contract
		(c)	Rates Only Contract
17	Sub-Contract Price (for Lump Sum Contract or Remeasurement Contract only, leave it blank for Rates Only Contract, Sub-Contract Price for Rates Only Contract to be determined from time to time according to the Sub-Contract Conditions)	(HK\$ _____ )	
18	Approach to remeasurement for Remeasurement Contract or Rates Only Contract (select only one choice by entering a tick or "yes" in the box against the chosen choice)	(a)	By remeasuring the first set of working drawings issued by the Client-Contractor for construction and treating subsequent changes as Variations
		(b)	By remeasuring the final set of working drawings compiled from these issued from time to time by the Client-Contractor for construction
		(c)	By remeasuring the as-built drawings approved by _____ (insert the name of a third party)
		(d)	By remeasuring the as-built drawings mutually agreed
		(e)	By actual site remeasurement
		For authorized work properly carried out only, including abortive work caused by the Client-Contractor.	
19	Price treatment if, based on the final quantities, the value represented by all actual unit costs deviates from the value represented by all the prime cost rates beyond the extent stated here	<p>In lieu of the adjustment for the net difference only between the actual unit cost and the prime cost rate as described in Clause 6.11.4, if:</p> $\frac{\text{sum of all [actual unit cost x final quantity]}}{\text{sum all [prime cost rate x final quantity]}} - 1$ <p>&gt; + or - _____%, then: sum of all [(actual unit cost - prime cost rate) x (1 + _____% other costs, if the prime cost is for supply only) x (1 + _____% profits and overheads) x final quantity] shall be added or subtracted from the final Sub-Contract Price as the case may be.</p>	
20	Percentage mark-up on costs for profits	(a)	Materials %

Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)	
	and overheads when calculating fair rates or daywork rates based on actual costs (to be agreed if none stated)	(b)	Direct labour %
		(c)	Construction plant %
		(d)	Sub-sub-contract prices %
21	Labour rates for carrying out work on daywork basis (exclusive of mark-up for profits and overheads) <sup>5</sup>	Working for a full normal working day	
		(a)	Skilled labour \$ / day
		(b)	Semi-skilled labour \$ / day
		(c)	General workers \$ / day
		Working overtime after a full normal working day:	
		(d)	Every 2 hours up to 4 hours = ____ normal day
		(e)	Every 2 hours beyond 4 hours overtime = ____ normal day
		Rates for working on shift or on holidays shall be agreed.	
22	Percentage addition for administrative charge on payment on behalf of the defaulting party		
	<b>Time</b>		
23	Dates for Access to the Site		
	Portion of the Site	Date	
	(a)		
	(b)		
	(c)		
	(d)		
	(e)		
24	Names of Sub-Contract Works Sections (Whole = whole of the Sub-Contract Works)		
	Phase / Section / Stage / Whole	Description	
	(a)		
	(b)		
	(c)		
	(d)		
	(e)		

<sup>5</sup> Refer to a separate sheet if more classification is required.  
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Item	Entities or Defined Terms		Particulars or Definitions (stated on the right of or under each item)			
25	Periods of Sub-Contract Works Sections					
		Phase / Section / Stage / Whole	Commencement Date (or a mechanism to determine the Commencement Date)	Date for Completion (or a mechanism to determine the Date for Completion, e.g. number of calendar days or working days commencing from a certain commencement date)	Durations in Calendar Days	Rate of Liquidated Damages for each Calendar Day's Delay to Completion (If none or "N/A" stated, general damages apply)
	(a)					HK\$
	(b)					HK\$
	(c)					HK\$
	(d)					HK\$
(e)					HK\$	
26	Maximum amount of liquidated damages payable for the whole Sub-Contract		HK\$			
27	Normal daily working hours					
28	Defects Liability Period		Commencing on the day following the Substantial Completion of the relevant Sub-Contract Works Section (or the whole if not divided into sections) until :			
<b>Documents</b>						
29	Tender Documents comprising (delete "Yes" if not applicable)			Attached hereto	Bound separately and signed	Not provided
	(a)	Conditions of Tendering		Yes	Yes	Yes
	(b)	Form of Tender		Yes	Yes	Yes
	(c)	Sub-Contract Particulars (partially completed by the Client-Contractor for tendering)		Yes	Yes	Yes
	(d)	Special Sub-Contract Conditions		Yes	Yes	Yes
	(e)	Tender Specification		Yes	Yes	Yes
	(f)	Pricing Schedules		Yes	Yes	Yes
	(g)	Schedule of Tender Drawings		Yes	Yes	Yes
	(h)	Tender Drawings		Yes	Yes	Yes

Item	Entities or Defined Terms		Particulars or Definitions (stated on the right of or under each item)					
	(i)	Other documents (e.g. tender addenda, which are listed separately here but should be regarded as part of one of the above documents):						
30	Tender Correspondence (being documents submitted by the Sub-Contractor with the Tender mentioned in Recital 4 in addition to the Tender Documents and further written exchanges mentioned in Recital 5, and accepted by the Contract Parties to form part of this Sub-Contract)							
		Date	Ref.	Media (e.g. letter / fax / email)	From	To	Title	With Attach- ments
	(a)							Yes / No
	(b)							Yes / No
	(c)							Yes / No
	(d)							Yes / No
	(e)							Yes / No
	Abbreviations:							
31	Order of precedence for interpretation of Sub-Contract Documents (higher priority given first, original order followed if Numerical Order not stated)							Numerical Order
	(a)	Sub-Contract Agreement						
	(b)	Sub-Contract Particulars						
	(c)	Tender Correspondence						
	(d)	Form of Tender or the Tender						
	(e)	Special Sub-Contract Conditions						
	(f)	Sub-Contract Conditions						
	(g)	Pricing Schedules						
	(h)	The Preliminaries section of the Sub-Contract Specification						
	(i)	Sub-Contract Drawings						
	(j)	Sections of the Sub-Contract Specification other than the Preliminaries section						

Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)		
	If the Pricing Schedules, Sub-Contract Specification and Sub-Contract Drawings are referring to the tender / contract documents for the Client-Contract Works, then the order of precedence of the referred parts shall follow that stated in the tender / contract documents of the Client-Contract Works <sup>6</sup>	Yes / No		
<b>Payments</b>				
32	Retention Percentage	10%		
33	Maximum Retention (not applicable to Rates Only Contract)	5% of the original Sub-Contract Price stated in item 17 above		
34	Payment Application Due Date			
35	Payment Advice Due Date			
36	Payment Invoice Due Date			
37	Payment Due Date			
( Periodical dates, e.g. the 15th and 30th of each month, the 25th of each month, for items 34 to 37 or, if falling on holidays, the next working day)				
<b>Excusable Events and Compensable Events</b>				
38	Delays or disruptions by reason of <sup>7</sup>		Excusable Events	Compensable Events
	(a)	force majeure	Yes	No
	(b)	inclement weather conditions and/or their adverse consequences	Yes	No
	(c)	the issuance of tropical cyclone warning signal No. 8 or above or of a Black Rainstorm Warning, and/or the adverse consequences of cyclone or rainstorm	Yes	No
	(d)	an Excepted Risk	Yes	Yes
	(e)	fire, lightning, explosion, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them, not caused by the Sub-Contractor or any person for whom the Sub-Contractor is responsible	Yes	No
	(f)	late provision by the Client-Contractor of instructions or information expressly specified by this Sub-Contract to be provided by a specific time	Yes	Yes

<sup>6</sup> To avoid doubt, it is preferred to specify the exact order of precedence instead of referring to elsewhere.

<sup>7</sup> Adjust the list and descriptions as appropriate.

Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)		
(g)		late provision by the Client-Contractor of instructions or information (including clarification of any contradictions, discrepancies, divergences or uncertainties in or between documents provided by the Client-Contractor, and including outstanding or new information) required for the progressing of the Sub-Contract Works, after taking into account any mitigating effect which could have been afforded if the Sub-Contractor had requested for such instructions or information reasonably in advance of the occurrence of the delays or disruptions	Yes	Yes
(h)		such opening up for inspection of work covered up or such testing of materials or work and the consequential making good which are additional to the contract requirements, were instructed by the Client-Contractor, and proved that the materials and work are according to this Sub-Contract	Yes	Yes
(i)		the carrying out of a Variation or the happening of an event deemed to be a Variation	Yes	Yes
(j)		increase in the work to be carried out pursuant to provisional items in this Sub-Contract of sufficient magnitude that the increase could not have been apparent from this Sub-Contract	Yes	Yes
(k)		a postponement of the Date for Access to any portion of the Site unless this Sub-Contract has provided for such occurrence	Yes	Yes
(l)		a postponement of the Commencement Date of a Sub-Contract Works Section unless this Sub-Contract has provided for such occurrence	Yes	Yes
(m)		a suspension of the provision of the whole or a portion of the Site as instructed by the Client-Contractor beyond that anticipated and specified by this Sub-Contract and not being due to a breach of contract or other default by the Sub-Contractor or any person for whom the Sub-Contractor is responsible	Yes	Yes
(n)		a suspension of the progress of the whole or a part of a Sub-Contract Works Section as instructed by the Client-Contractor beyond that anticipated and specified by this Sub-Contract and not being due to a breach of contract or other default by the Sub-Contractor or any person for whom the Sub-Contractor is responsible	Yes	Yes
(o)		a postponement or suspension of the Sub-Contractor's work on site due to a lack of effective Employees' Compensation Insurance or Contractors' All Risks and Third Party Liability Insurance to be maintained by the Client-Contractor to cover the Sub-Contractor's people or activities on site	Yes	Yes
(p)		a delay or disruption caused by a Separate Contractor	Yes	Yes

Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)		
	(q)	a delay caused by a statutory undertaker or utility company carrying out work in pursuance of its statutory obligations rather than a commercial contract, and failing to commence or to carry out its work in due time provided that the Sub-Contractor has taken all practicable measures to cause it to commence, carry out and complete its work on time	Yes	No
	(r)	a failure of the Client-Contractor to supply or supply on time materials that he agreed to provide for the Sub-Contract Works	Yes	Yes
	(s)	a delay by a Government department in giving an approval or a consent which is not the Sub-Contractor's responsibility to obtain	Yes	Yes
	(t)	an unreasonable delay by a Government department in giving an approval or a consent which is the Sub-Contractor's responsibility to obtain, provided that any disallowance of approval or consent attributable to the Sub-Contractor's lack of adequate submission shall not be considered as unreasonable	Yes	No
	(u)	a special circumstance considered by the Client-Contractor as sufficient grounds to fairly entitle the Sub-Contractor to an extension of time	Yes	No
	(v)	an act of prevention, a breach of contract or other default by the Client-Contractor or any person for whom the Client-Contractor is responsible	Yes	Yes
	<b>Other terms and conditions</b>			
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**APPENDIX A TO SUB-CONTRACT PARTICULARS –  
Contractors' All Risks and Third Party Liability Insurance Policy or Synopsis**

(Note: When completing the particulars, text added shall be shown in italics, and text deleted shall be shown as struck through.)

		(delete "Yes" if not applicable)
1	The policy or synopsis is attached hereto	Yes
2	The policy or synopsis is the same as those described in the following part and clause of the Tender Documents or Tender Correspondence  _____	Yes
3	The synopsis is as described below	Yes
(a)	Percentage of professional fees in case of reinstatement	Not less than ___ %
(b)	Amount for the removal of debris	Not less than \$ _____
(c)	Percentage for escalation clause	Not less than ___ %
(d)	Material damage insurance excess in respect of each and every occurrence of loss or damage	Amount or % of loss or damage not more than
(1)	Generally	\$ _____
(2)	Loss of or damage to scaffolding, shuttering, formwork, timbering, screens, fencing and hoardings	___ % or \$ _____ , whichever is the greater
(3)	Loss of or damage to the Insured Property caused by water	___ % or \$ _____ , whichever is the greater
(e)	Third party liability insurance's limit of indemnity for any one occurrence (but unlimited in the aggregate amount for the period of insurance)	Amount not less than
(1)	Generally	\$ _____
(2)	Loss or damage arising from subsidence, collapse, vibration, or the weakening or removal of support to any property, land or building	\$ _____
(3)	Loss or damage to Principals' properties which are not covered by the Materials Damage section of the insurance	\$ _____
(f)	Third party liability insurance excess in respect of each and every occurrence of loss or damage	Amount or % of loss or damage not more than
(1)	Generally	\$ _____
(2)	Loss or damage arising from subsidence, collapse, vibration, or the weakening or removal of support to any property, land or building	___ % or \$ _____ , whichever is the greater

			(delete "Yes" if not applicable)
	(3)	Loss or damage to Principals' properties which are not covered by the Materials Damage section of the insurance	___ % or \$ _____ , whichever is the greater
	(4)	Loss of or damage caused by water	___ % or \$ _____ , whichever is the greater
	(5)	Loss of or damage to existing underground services	___ % or \$ _____ , whichever is the greater
	(6)	Loss of or damage to oil filled cable, fibre-optic cable or telephone cable of 4,000 pairs or more	___ % or \$ _____ , whichever is the greater

**SUB-CONTRACT CONDITIONS****1. INTERPRETATIONS****1.1 Client-Contractor**

"the Client-Contractor" means the person named in the Sub-Contract Particulars who has appointed the Sub-Contractor to carry out and complete the Sub-Contract Works specified by this Sub-Contract and who has undertaken to pay the Sub-Contractor for executing the Sub-Contract Works.

**1.2 Sub-Contractor**

"the Sub-Contractor" means the person named in the Sub-Contract Particulars who has been appointed by the Client-Contractor to carry out and complete the Sub-Contract Works specified by this Sub-Contract.

**1.3 Ultimate Client**

"the Ultimate Client" means the person named in the Sub-Contract Particulars who commissioned and desires to have the Project carried out and completed at the Project Address.

**1.4 Contract Administrator**

"the Contract Administrator" means the person appointed by the Ultimate Client and named in the Sub-Contract Particulars, or if he ceases to have authority or capability to act, such other person as may be appointed by the Ultimate Client to administer, on behalf of the Ultimate Client, the execution of the Main Contract between the Main Contractor and the Ultimate Client.

**1.5 Quantity Surveyor<sup>8</sup>**

"the Quantity Surveyor" means the person appointed by the Ultimate Client and named in the Sub-Contract Particulars, or if he ceases to have authority or capability to act, such other person as may be appointed by the Ultimate Client to value the Main Contract Works.

**1.6 Clerk of Works<sup>9</sup>**

"the Clerk of Works" means the person or persons appointed by the Ultimate Client or the Contract Administrator on site and acting under the direction of the Contract Administrator to watch, inspect, check, and record the Main Contract Works, any resources, facilities and activities on the Site.

**1.7 Main Contractor**

"the Main Contractor" means the person named in the Sub-Contract Particulars who has been appointed directly by the Ultimate Client to carry out and complete the majority and main portion of the Project.

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<sup>8</sup> The Standard Form does not refer to "Quantity Surveyor" elsewhere except in the Sub-Contract Particulars but the term is retained here because it may be used in other parts of the Sub-Contract Documents.

<sup>9</sup> The Standard Form does not refer to "Clerk of Works" elsewhere but the term is retained here because it may be used in other parts of the Sub-Contract Documents.

**1.8 Upper-tier Contractors**

"Upper-tier Contractors" means contractors at the various tiers of contracting above the Client-Contractor up to and including the Main Contractor.

**1.9 Sub-sub-contractors**

"sub-sub-contractors" means contractors at the various tiers of contracting below the Sub-Contractor.

**1.10 Separate Contractors**

"Separate Contractor" means persons appointed by the Ultimate Client or Upper-tier Contractors to carry out work, supply materials or provide services in connection with but not forming part of the Client-Contract Works, but excludes any statutory undertaker or utility company carrying out work in pursuance of its statutory obligations and not having a commercial contractual relationship with the Ultimate Client, Upper-tier Contractors or any person for whom they are responsible.

**1.11 Property Manager**

"the Property Manager" means the person providing estate, property or facility management services to the premises where the Site is.

**1.12 Headings and clause references**

1.12.1 Headings to articles in the Sub-Contract Agreement or headings to clauses in the Sub-Contract Conditions shall be for identification purposes only and shall not be read to restrict or enlarge the scope of application of the articles or clauses under the headings.

1.12.2 The method of referring to the clauses here is like this: Clause 1, Clause 1.1, Clause 1.1.1, Clause 1.1.1(a), Clause 1.1.1(a)(1), paragraph (a), item (1).

**1.13 Day and counting of periods**

A day means a calendar day unless otherwise stated. When counting days, **1 day** means **24 hours**. Within **1 day** means within **24 hours**, not within the same day. "Commencing or starting from a certain day" means that certain day is **day 1** for counting. "Commencing or starting after a certain day" means the day following that certain day is **day 1** for counting.

**1.14 Site**

"the Site" means one or more areas or spaces, whether continuous or not, on plan or on elevation, as stated in the Sub-Contract Particulars to be made available by the Client-Contractor to the Sub-Contractor for the Sub-Contractor to carry out and complete the permanent portion of the Sub-Contract Works or for the Sub-Contractor to place his materials and temporary site facilities.

**1.15 Materials**

"materials" means materials and goods, and includes equipment or machinery for incorporation into the Sub-Contract Works.

**1.16 Construction plant**

"construction plant" means construction plant, equipment or machinery used for carrying out the Sub-Contract Works.

**1.17 Temporary site facilities**

"temporary site facilities" includes construction plant (including cranes, materials hoists, workmen lifts, gondolas), tools, implements, safety belts, safety helmets, safety appliances, access routes, roads, footpaths, gangways, ladders, working platforms, scaffolding, catch fans, hoardings, covered walkways, screens, gates, gantries, enclosures, barriers, tarpaulins, safety nets, safety screens, site offices, mess rooms, workshops and stores, sanitary convenience, drainage, telephone, water and electricity supply, lighting, directory and warning signs, planking and strutting, shoring, props, falsework, formwork, refuse bins, etc. all as may be provided on site temporarily.

**1.18 Sub-Contract Drawings**

"the Sub-Contract Drawings" means the Tender Drawings included in the Tender Documents, and any other drawings as may be prepared by the Sub-Contractor and submitted with his Tender and expressly accepted in the Tender Correspondence by the Client-Contractor to form part of this Sub-Contract.

**1.19 Sub-Contract Specification**

"the Sub-Contract Specification" means the Tender Specification included in the Tender Documents, and any other specification as may be prepared by the Sub-Contractor and submitted with his Tender and expressly accepted in the Tender Correspondence by the Client-Contractor to form part of this Sub-Contract.

**1.20 Pricing Schedules**

"the Pricing Schedules" means a document (whether it may be called schedule of works, bills of quantities, schedule of quantities and rates, schedule of rates, quotations or other similar names) included in the Sub-Contract Documents and showing the Sub-Contractor's rates and prices for the execution of the Sub-Contract.

**1.21 Sub-Contract Price Build-up**

"the Sub-Contract Price Build-up" means the build-up of the Sub-Contract Price for Lump Sum Contract or Remeasurement Contract as given in the Pricing Schedules and/or the Tender Correspondence.

**1.22 Sub-Contract Rates**

1.22.1 "Sub-Contract Rates" means the rates inserted in the Pricing Schedules as may be modified by the Tender Correspondence.

1.22.2 A Sub-Contract Rate shall be deemed to include for all labour costs, material costs, construction plant and tool costs, indirect costs, overheads, profits, taxes, and costs of all ancillary work and liability indispensably necessary for the item of work to which the Sub-Contract Rate applies, and shall not be adjusted for error made by the Sub-Contractor in building up the Sub-Contract Rate.

**1.23 Variation**

A "Variation" means a change (addition, omission, substitution, alteration, modification, etc.) as instructed by the Client-Contractor to the design, quality or quantity of the Sub-Contract Works or to the time or manner for carrying out the Sub-Contract Works from that provided for in this Sub-Contract, and includes other events deemed by the Sub-Contract Conditions to be a Variation.

**1.24 Substantial Completion**

"Substantial Completion" may be called "Practical Completion" depending on the term used in the Main Contract. In that case, the terms "Substantial Completion", "Substantial Completion Certificate" and "substantially completed" in this Sub-Contract shall be read as "Practical Completion", "Practical Completion Certificate" and "practically completed" respectively.

**1.25 Defects Liability Period and Maintenance Period**

"Defects Liability Period" means the period after Substantial Completion during which defects arising are to be rectified. "Maintenance Period" means the period after Substantial Completion during which periodical service and maintenance beyond defects rectification are to be carried out. Some Main Contracts and insurance policies use the term "Maintenance Period" to mean "Defects Liability Period" used here.

**1.26 Defects Rectification Certificate<sup>10</sup>**

"Defects Rectification Certificate" may be called "Certificate of Completion of Making Good Defects" or "Maintenance Certificate" depending on the term used in the Main Contract. In that case, the term "Defects Rectification Certificate" in this Sub-Contract shall be read as "Certificate of Completion of Making Good Defects" or "Maintenance Certificate", as the case may be.

**1.27 Excepted Risks**

"Excepted Risks" means:

- (a) war (whether war be declared or not) in which Hong Kong is actively engaged, the invasion of Hong Kong, acts of terrorists in Hong Kong, civil war, rebellion, revolution or military or usurped power in Hong Kong, riot, commotion or disorder in Hong Kong other than amongst the employees of the Sub-Contractor or any person for whom the Sub-Contractor is responsible;
- (b) any direct consequence of the faulty design provided by the Contract Administrator or other designers engaged by the Ultimate Client or the Client-Contractor;
- (c) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; and
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

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<sup>10</sup> The Standard Form does not refer to "Defects Rectification Certificate" elsewhere but the term is retained here because it may be used in other parts of the Sub-Contract Documents.

**1.28 Excusable and Compensable Events**

- 1.28.1 "Excusable Events" listed in the Sub-Contract Particulars are events the occurrence of which are at the risk of the Client-Contractor in so far as the time to complete the Sub-Contract Works is concerned. "Compensable Events" listed in the Sub-Contract Particulars are events the occurrence of which are at the risks of the Client-Contractor in so far as the price of the Sub-Contract Works is concerned.
- 1.28.2 The scope of each of the event definitions is mutually exclusive. Any deletion or scope reduction of an event definition shall not expand the scope of the remaining unchanged event definitions.

**1.29 Money recoverable from Client-Contractor**

When money is stated herein to be recoverable from the Client-Contractor by the Sub-Contractor, the amount shall be added to the Sub-Contract Price and added to the next periodical payment issued after the amount is ascertained, unless the Client-Contractor requests to settle and settles the payment separately without adjustment to the Sub-Contract Price.

**1.30 Money recoverable from Sub-Contractor**

When money is stated herein to be recoverable from the Sub-Contractor by the Client-Contractor, the amount shall be deducted from the Sub-Contract Price and deducted from the next or further payments issued after the amount is ascertained until the amount is fully deducted. If the balance of the final Sub-Contract Price less retention fund is inadequate to cover the amount not yet deducted, the residue amount may be recovered from the Sub-Contractor by the Client-Contractor as a debt.<sup>11</sup>

**1.31 Approval**

All submissions ~~specified by this Sub-Contract to be submitted by the Sub-Contractor for comment or approval~~ by the Client-Contractor shall be submitted by the Sub-Contractor in good time before use. The Client-Contractor shall reply in writing within a reasonable time. No approval, disapproval or comment made by the Client-Contractor shall in any way ~~relieve or reduce the Sub-Contractor's obligations and liabilities~~ under this Sub-Contract.

**2. SITE****2.1 Provision of Site**

- 2.1.1 The Client-Contractor shall provide such portions of the Site to the Sub-Contractor on such access dates stated in the Sub-Contract Particulars. Provision of the Site shall entail the sustained use (but not exclusive possession) of the portions of the Site by the Sub-Contractor for the carrying out and completion of the Sub-Contract Works. The Sub-Contractor shall allow legitimate occupiers and users for the time being on the Site to have continued use of such portions of the Site not immediately required by the Sub-Contractor for carrying out the Sub-Contract Works. The security of the Site shall be the responsibility of the Client-Contractor.
- 2.1.2 Where exclusive possession of any portion of the Site is stated in this Sub-Contract, the Sub-Contractor shall take over the relevant portion of the Site upon the respective access date and take responsibility for the reasonable care thereof. The security of such portion of the Site shall be the responsibility of the Sub-Contractor.

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<sup>11</sup> This clause does not specify set-off under other contracts.  
Standard Form of Domestic Sub-Contract - English (Clean Draft 20140114a).doc

**2.2 Site access**

- 2.2.1 Entry and exit points to the Site shall be at locations shown or described in this Sub-Contract or, when no specific locations are shown or described, at such locations to be determined by the Main Contractor, and such locations may be subject to subsequent re-location and re-sizing as directed by the Main Contractor from time to time to suit the sequence and progress of the Main Contract Works.
- 2.2.2 The Sub-Contractor shall comply with all relevant regulations or restrictions of the Police, other Government authorities, and the Property Manager regarding access, usage of roads and parking. The Client-Contractor shall submit all necessary applications and pay any necessary fees and charges, unless otherwise specified by this Sub-Contract. The Sub-Contractor shall submit early requests for the applications together with his documents in support of the applications.

**2.3 House rules of Property Manager**

- 2.3.1 The Sub-Contractor shall comply with the house rules of the Property Manager in regard to the day to day operation and use of the premises in which the Site is situated and in regard to any special restrictions on works of any nature within the premises.
- 2.3.2 If the House Rules become more stringent than those announced by the Property Manager before the award of this Sub-Contract and this affects the Sub-Contract Works, this shall be deemed to be a Variation.
- 2.3.3 The Client-Contractor shall pay any security deposit which may be demanded by the Property Manager to permit the carrying out of the Sub-Contract Works, and arrange for the eventual release of the deposit.

**2.4 Site visit**

- 2.4.1 The Sub-Contractor is deemed to have visited the Site and thoroughly acquainted himself with the location, general site conditions, type of soil where underground work is required, accessibility, storage space, restrictions for loading and off-loading materials, and any other conditions which may affect his carrying out of the Sub-Contract Works before entering into this Sub-Contract and is deemed to have made due allowance for all such restrictions and factors in the Sub-Contract Price.
- 2.4.2 Any claim for extra payment or extension of the completion times shall not be allowed on the grounds of ignorance or misinterpretation of the site conditions.

**2.5 Site investigation and condition survey reports**

Any site investigation or condition survey reports or other information which may be made available to the Sub-Contractor before the award of this Sub-Contract shall be the whole record of such investigation or survey as has been carried out. Other than this, any such reports are given in good faith without any warranty on the part of the Client-Contractor as to their accuracy or completeness, and they shall be deemed to be supplied for the Sub-Contractor's information only.

## 2.6 Access during Defects Liability Period

- 2.6.1 The Client-Contractor shall provide the Sub-Contractor with a right of access to specific locations on the Site for the specific purpose of rectifying defects arising during the Defects Liability Period at those locations. The Sub-Contractor shall restrict himself to the specific locations and shall leave the Site as soon as the defects have been rectified.
- 2.6.2 When existing facilities such as gondolas or lifting platforms are available for day to day use by the Ultimate Client or the Property Manager, and such existing facilities are useful for rectifying defects, the Client-Contractor shall assist to apply for the use of such existing facilities by the Sub-Contractor subject to payment by the Sub-Contractor of reasonable amounts for consumables and other costs due to the use of the facilities. In other cases, the Sub-Contractor shall provide his own temporary facilities required for rectifying defects.

## 2.7 Objects of antiquity

Any object of antiquity found on the Site shall be deemed to be the property of the Ultimate Client. Upon discovery, the Sub-Contractor shall immediately report to the Client-Contractor who shall issue instructions to deal with the issue. The Sub-Contractor shall permit others appointed by the Ultimate Client to carry out examination, excavation or removal of the object of antiquity. Compliance with the Client-Contractor's instructions in this regard shall be deemed to be a Variation.

## 3. WORKS

### 3.1 Definitions

3.1.1 The Sub-Contract Works include:

- (a) permanent work required to be carried out and completed by the Sub-Contractor under this Sub-Contract;
- (b) temporary work required for the carrying out and completion of the permanent work, excluding those specifically excluded from this Sub-Contract;
- (c) services required to be carried out and completed by the Sub-Contractor under this Sub-Contract;
- (d) care and custody of materials supplied by the Client-Contractor for incorporation by the Sub-Contractor into the Sub-Contract Works after they are handed over to the Sub-Contractor;
- (e) design of any part of the permanent work if this is specified to be part of the Sub-Contract Works;
- (f) service and maintenance specified by this Sub-Contract to be carried out after Substantial Completion of the Sub-Contract Works; and
- (g) provision of warranties and guarantees specified by this Sub-Contract.

3.1.2 The Sub-Contract Works exclude:

- (a) materials supplied by the Client-Contractor for incorporation by the Sub-Contractor into the Sub-Contract Works before they are handed over to the Sub-Contractor;
- (b) materials or workmanship or method or work which is not according to this Sub-Contract; and
- (c) work or services carried out by the Sub-Contractor without authority under this Sub-Contract.
- (d) work or services stated in this Sub-Contract to be carried out, provided, procured, given, issued, etc. by the Client-Contractor, which shall be deemed to be free of charge.

### **3.2 Design of permanent work**

Unless otherwise specified **by** this Sub-Contract or unless the Sub-Contractor has provided the design for whatever reasons, and subject to Clause 3.3 below, the design of permanent work required for the Sub-Contract Works shall be the responsibility of the Client-Contractor who shall obtain the design from the Contract Administrator or engage other designers to carry out the design work. The Client-Contractor shall be responsible for issuing the design to the Sub-Contractor.

### **3.3 Development of design**

Where any Sub-Contract Drawings are described as “design intent drawings” and the Sub-Contractor is required to develop the design, such drawings shall be understood as indicating only the performance requirements, materials of the major components, layout, positions, configurations, controlling dimensions, and size limitations required for the finished work. The Sub-Contractor shall be responsible for the detailed design of the components making up the complete system, installation or fitting, and the selection of materials in compliance with the Sub-Contract Drawings as may be varied by Variations.

### **3.4 Preparation of shop drawings**

The Sub-Contract Drawings or further drawings issued by the Client-Contractor after the award of this Sub-Contract for the building services installations (deemed to include also plumbing and drainage) shall be understood as schematic and layout design drawings indicating only the performance requirements, materials of the major components, layout, positions, configurations, controlling dimensions and sizes required for the finished work. The Sub-Contractor shall be responsible for the selection and fixing details of the system components, and the exact and co-ordinated routing of pipework, ducting, cable and wiring in compliance with the Sub-Contract Drawings and the further drawings.

### **3.5 Design of temporary work**

Unless otherwise specified **by** this Sub-Contract, the design of temporary work required for the Sub-Contract Works (no matter whether it has been shown on the Sub-Contract Drawings or not) shall be the responsibility of the Sub-Contractor.

**3.6 Sub-Contractor's design to be approved**

- 3.6.1 Any design for which the Sub-Contractor is responsible under this Sub-Contract shall be submitted to the Client-Contractor for comment and approval before implementation.
- 3.6.2 The Sub-Contractor's design shall be fit for the purpose for which it is intended. Approval by the Client-Contractor shall not be taken as acceptance that the design is so fit for the purpose.

**3.7 Testing and commissioning**

All mechanically, hydraulically, electrically or electronically operated parts of the Sub-Contract Works and any parts of the Sub-Contract Works connected by and including pipes, ducts, conduits, trunking, wiring or cables shall be tested and commissioned according to the requirements of this Sub-Contract to the extent of being capable of reasonable beneficial use with minor defects before substantial completion of the Sub-Contract Works.

**3.8 General attendance**

- 3.8.1 Unless otherwise specified **by** this Sub-Contract, the Client-Contractor shall procure for the Sub-Contractor's use in a proper manner of all temporary site facilities which may be established on the Site by the Client-Contractor or the Upper-tier Contractors for shared use by various trades.
- 3.8.2 The Client-Contractor shall be responsible for providing working platform or scaffolding complete with catch fans for work higher than 2 m above the supporting surface below.
- 3.8.3 The Client-Contractor shall also allocate spaces on the Site for the erection of the Sub-Contractor's offices, workshops and stores.

**4. TIME****4.1 Contract commencement**

This Sub-Contract shall be deemed to take effect and commence on the date of a letter issued by or on behalf of the Client-Contractor awarding this Sub-Contract to the Sub-Contractor, irrespective of when the Sub-Contract Agreement is signed.

**4.2 Consent to commencement**

The Sub-Contractor shall submit all applications required by law to be submitted by him and shall pay all associated charges before the commencement of work on site or when the same fall due, as the case may be.

**4.3 Commencement and completion of Works**

The Sub-Contractor shall commence each Sub-Contract Works Section on its Commencement Date stated in the Sub-Contract Particulars, and shall substantially complete each Sub-Contract Works Section on or before its Date for Completion stated in the Sub-Contract Particulars or its current Date for Completion fixed under this Sub-Contract.

**4.4 Working time**

- 4.4.1 The Sub-Contractor shall observe the normal daily working hours as stated in the Sub-Contract Particulars, and any working days and working hours restrictions which may be imposed under this Sub-Contract or at law.
- 4.4.2 When requested by the Sub-Contractor, the Client-Contractor shall at the Sub-Contractor's expense but without extra charge apply to the relevant party or Government authority for working outside the restricted time which may be imposed under this Sub-Contract or at law.

**4.5 Notices and claims**

- 4.5.1 As soon as practicable within **14 days** after the commencement of an event causing or likely to cause delay or disruption to the regular progress of the Sub-Contract Works or delay to the completion of any Sub-Contract Works Section beyond its current Date for Completion becoming apparent, the Sub-Contractor shall give notice to the Client-Contractor of such a delay or disruption.
- 4.5.2 The notice shall state in detail the event and relevant circumstances causing or likely to cause the delay or disruption, the estimated extent of the delay or disruption to the progress, the estimated length of the delay to the completion, and whether the Sub-Contractor considers that he is or may become entitled to an extension of time due to the event being an Excusable Event listed in the Sub-Contract Particulars and to reimbursement for direct loss and/or expense due to the event being an Compensable Event listed in the Sub-Contract Particulars. If direct loss and/or expense is expected to be incurred, the notice shall give an estimate of the likely amount. If the delay or disruption is of continuing or repetitive nature, the Sub-Contractor shall submit updated notices at **monthly** intervals.
- 4.5.3 The Sub-Contractor shall submit his monetary claim for reimbursement for direct loss and/or expense with evidence of the amounts claimed as soon as the amounts are fully known and reasonably calculable.
- 4.5.4 In any case, the notice under Clause 4.5.1 and the updated notices under Clause 4.5.2 shall not be submitted later than the current Date for Completion of the relevant Sub-Contract Works Section and its extended Date for Completion previously claimed by the Sub-Contractor and its Date of Substantial Completion, and the Sub-Contractor's monetary claim under Clause 4.5.3 shall not be submitted later than **3 months** after the direct loss and/or expense having been incurred, progressive submission permitted.
- 4.5.5 The Client-Contractor is entitled not to form his opinion as to the extent of delays or disruptions before the Sub-Contractor submits a notice of delay or disruption under Clause 4.5.1 or in respect of a notice submitted later than the latest time specified by Clause 4.5.4. The Client-Contractor is entitled not to certify payment for reimbursement of direct loss and/or expense if the monetary claim is submitted later than the time specified by Clause 4.5.4. When considering the time or cost effect, the Client-Contractor is entitled to take into account only of the information currently submitted by the Sub-Contractor without an obligation to demand for further information from the Sub-Contractor. The Sub-Contractor shall bear the consequence of his own non-submission, late submission or insufficient submission of notices or information.

#### 4.6 Mitigation of delay or disruption

The Sub-Contractor shall continuously use his best endeavours to prevent or mitigate delay or disruption to the progress of the Sub-Contract Works however caused, and to prevent the completion of the Sub-Contract Works from being delayed or further delayed. The use of best endeavours by the Sub-Contractor shall not require the Sub-Contractor to accelerate the carrying out of the Sub-Contract Works to recover delay caused by an Excusable Event. The Sub-Contractor shall however do all that may reasonably be required to proceed with the Sub-Contract Works expeditiously.

#### 4.7 Determining time effect

- 4.7.1 Within **30 days** after the receipt of the Sub-Contractor's notice of delay or disruption under Clause 4.5 and subject to Clause 4.5.5, the Client-Contractor shall notify the Sub-Contractor his opinion on the extent of delay or disruption to progress or delay to completion that the Excusable Event or Compensable Event specified by the Sub-Contractor in his notice has caused or is likely to cause to the relevant Sub-Contract Works Section. If there is a delay to completion due to an Excusable Event, the Client-Contractor shall grant an extension of time by fixing a later Date for Completion for the relevant Sub-Contract Works Section to compensate the working time lost.
- 4.7.2 Extension of time shall be granted for any Excusable Event that occurs in the period of delay after the relevant current Date for Completion but before the Substantial Completion of a Sub-Contract Works Section. If the Excusable Event commences after the relevant current Date for Completion, the extension of time so granted shall be added to the total of extensions of time previously granted when fixing a new Date for Completion, even though the date so fixed may still be earlier than the end of the Excusable Event.
- 4.7.3 The Client-Contractor may review his opinion on the time effect under Clause 4.7.1 and adjust any extension of time previously granted in light of further evidence at any time before settling the Final Account, but shall not reduce the extension of time previously granted unless any previous extension has been based upon incorrect information provided by the Sub-Contractor.

#### 4.8 Valuing cost effect

- 4.8.1 Within **30 days** after the receipt of the Sub-Contractor's monetary claim, and taking into account his own opinion on the time effect under Clause 4.7.1, the Client-Contractor shall assess and certify the amount of any direct loss and/or expense compensable to the Sub-Contractor. Any such amount which may be assessed from time to time shall be added to the Sub-Contract Price and included in the next periodical payment to the Sub-Contractor according to Clause 6.14.
- 4.8.2 The Client-Contractor may review and adjust his valuation of the cost effect under Clause 4.8.1 in light of further evidence at any time before settling the Final Account. Any adjustment so resulted shall be accounted for in the next periodical payment to the Sub-Contractor according to Clause 6.14.

**4.9 Damages for delayed completion**

- 4.9.1 If a Sub-Contract Works Section is not completed by its current Date for Completion, the Client-Contractor may recover from the Sub-Contractor liquidated damages calculated at the respective Rate of Liquidated Damages for delayed completion stated in the Sub-Contract Particulars for the period during which the Sub-Contract Works Section remains incomplete. Where no rate is specifically stated, the Client-Contractor may claim for general damages for delayed completion. The damages calculated and already recovered shall be reviewed and adjusted, if there is any adjustment to the period remaining incomplete according to Clause 4.7.
- 4.9.2 If a part of a Sub-Contract Works Section is certified to be substantially completed according to Clause 4.10, the rate of liquidated damages for the remainder of the Works Section shall be = original rate of liquidated damages for the Works Section x (1 - estimated value of the part completed / the estimated value of the Works Section).

**4.10 Substantial Completion**

- 4.10.1 A Sub-Contract Works Section shall be considered as substantially completed, when all the work within it have been completed, its places are clean and tidy with the Sub-Contractor's temporary site facilities demobilized from the places to the satisfaction of the Client-Contractor, and it is ready for handover to the Client-Contractor, excluding only work or services specifically specified by this Sub-Contract to be carried out after Substantial Completion, and minor work which is not essential for the occupation, use or functioning of the Sub-Contract Works.
- 4.10.2 If the Sub-Contractor considers that Substantial Completion of a Sub-Contract Works Section is imminent, he shall invite by giving reasonable advance written notice to the Client-Contractor to carry out a completion inspection. The Client-Contractor shall carry out the inspection and notify the Sub-Contractor whether there is any outstanding work essential to Substantial Completion within **7 days** of the completion inspection. The Sub-Contractor shall complete the outstanding work, invite the Client-Contractor to re-inspect as appropriate, demobilize from the locations of the Sub-Contract Works Section (subject to Clause 4.10.3), and make the place clean, tidy and ready for handover to the Client-Contractor.
- 4.10.3 If the Client-Contractor is satisfied that the state of Substantial Completion has been achieved, he shall issue a Substantial Completion Certificate to the Sub-Contractor to confirm the fact and the date.
- 4.10.4 If the Contract Administrator certifies Substantial Completion of any part of the Client-Contract Works without specifically excluding the Sub-Contract Works, any part of the Sub-Contract Works included in that part of the Client-Contract Works shall be deemed to have been substantially completed on the date certified.
- 4.10.5 The Client-Contractor shall take over the relevant Section or part of the Sub-Contract Works not later than **14 days** after the state of Substantial Completion is reached and be responsible for the care and custody of the relevant Section or part thereafter.
- 4.10.6 The Sub-Contractor may stay after Substantial Completion at such portion of the Site which has been designated for his placement of temporary site facilities and which are not immediately required for the occupation or use by others for a longer time until **7 days** after the Client-Contractor's instruction to demobilize from such portion of the Site.

## 5. CONTRACT BASIS

### 5.1 Interpretation of Sub-Contract Documents

- 5.1.1 The various parts of the Sub-Contract Documents are mutually explanatory to each other and shall be interpreted as a whole as far as possible.
- 5.1.2 In case of any contradiction between the various parts of the Sub-Contract Documents, the order of precedence for interpretation shall follow that stated in the Sub-Contract Particulars.
- 5.1.3 Subject to Clause 5.1.2, documents issued later in time shall take precedence, particular specification shall take precedence over general specification, detailed drawings shall take precedence over general drawings, specification and drawings specially prepared for the Sub-Contract Works shall take precedence over standard specification and drawings.
- 5.1.4 No other documents exchanged before the award of this Sub-Contract shall form part of this Sub-Contract, or affect the meaning and interpretation of the Sub-Contract Documents, unless otherwise agreed in writing by ~~both~~ the Contract Parties.
- 5.1.5 Any contradiction or discrepancies between the various parts of the Sub-Contract Documents shall be corrected according to the Sub-Contract and shall not vitiate the Sub-Contract nor release the Contract Parties' obligations under the Sub-Contract.
- 5.1.6 The Sub-Contract Documents shall be prepared by the Client-Contractor for signing by the Contract Parties. The original set shall be kept by the Client-Contractor. The Sub-Contractor shall be entitled to one signed duplicate.

### 5.2 Checking of Sub-Contract Documents

Within **21 days** after the award of this Sub-Contract, and even though the Sub-Contract Documents may not have been prepared for signing, the Sub-Contractor shall endeavour to complete a comprehensive check of those parts of the Sub-Contract Documents available upon the award of this Sub-Contract to identify any contradictions, discrepancies, divergences or uncertainties in or between the various parts of the documents, and report in writing to the Client-Contractor immediately after discovery of any problem.

### 5.3 Supplementary information

The Client-Contractor shall if so requested by the Sub-Contractor, or may on his own initiative, issue supplementary drawings or specifications to clarify or amplify the Sub-Contract Documents but not changing the Sub-Contract Works. If the Sub-Contractor considers that the supplementary information should be issued under an instruction, he shall make a request as soon as possible after the receipt of the supplementary information, and the Client-Contractor shall issue the instruction.

## 5.4 Instructions

- 5.4.1 The Client-Contractor may issue instructions in regard to any matter in connection with the Sub-Contract Works to the Sub-Contractor before the completion of defects rectification. The Sub-Contractor shall forthwith comply with all instructions issued to him by the Client-Contractor.
- 5.4.2 If an instruction states that it should have no price or time implications, but the Sub-Contractor disagrees, then he shall notify the Client-Contractor his disagreement in writing within **6 working days** after receipt so that the Client-Contractor may revise or withdraw the instruction. If the instruction is not revised or withdrawn, it shall still be valid but the price and time implications shall be determined according to this Sub-Contract.
- 5.4.3 If the Sub-Contractor fails to comply with an instruction of the Client-Contractor within a reasonable time, then the Client-Contractor may issue a notice in writing requiring the Sub-Contractor to comply with the instruction. If the Sub-Contractor does not comply with the instruction within **3 working days** after the receipt of the said notice, then the Client-Contractor may without further notice employ and pay other persons to carry out any work whatsoever to give effect to such instruction, and all extra financial implications incurred in connection with such employment shall be recoverable from the Sub-Contractor by the Client-Contractor.
- 5.4.4 All instructions issued by the Client-Contractor shall be issued in writing.<sup>12</sup>

## 6. PRICES

### 6.1 Lump Sum Contract

- 6.1.1 Where the Contract Type stated in the Sub-Contract Particulars is a "Lump Sum Contract": the Sub-Contract Price stated in the Sub-Contract Particulars shall be deemed to be inclusive of all costs, profits and overheads necessary for the completion of the Sub-Contract Works originally described in this Sub-Contract. The Sub-Contract Price shall not be adjusted except for Variations or adjustments of provisional quantities or provisional sums and other adjustments permitted under or specified by this Sub-Contract.
- 6.1.2 Any arithmetical errors made by the Sub-Contractor when calculating the Sub-Contract Price stated in the Sub-Contract Particulars shall be corrected to give an aggregate error which shall be deemed to have been accepted by the Contract Parties with no adjustment to the Sub-Contract Price.

### 6.2 Remeasurement Contract

- 6.2.1 Where the Contract Type stated in the Sub-Contract Particulars is a "Remeasurement Contract": the Sub-Contract Price stated in the Sub-Contract Agreement and the quantities building up the Sub-Contract Price shall be deemed to be provisional and shall finally be recalculated by remeasuring the authorized work properly carried out and valuing the same at the Sub-Contract Rates, subject only to other adjustments permitted under or specified by this Sub-Contract.
- 6.2.2 Unless otherwise specified by this Sub-Contract, any arithmetical errors made by the Sub-Contractor when calculating the Sub-Contract Price stated in the Sub-Contract Particulars shall be disregarded when finally calculated.

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<sup>12</sup> There is no express provision on oral instructions, verbal instructions, or confirmation of oral / verbal instructions, etc.

**6.3 Rates Only Contract**

Where the Contract Type stated in the Sub-Contract Particulars is a "Rates Only Contract": the Sub-Contract Price shall finally be calculated by measuring the authorized work properly carried out and valuing the same at the Sub-Contract Rates, subject only to other adjustments permitted under or specified by this Sub-Contract.

**6.4 Adjustment for rises or falls in costs of labour and materials**

Unless otherwise specified by this Sub-Contract, the Sub-Contract Price shall not be adjusted for rises or falls in the costs of labour and materials or exchange rates of currencies.

**6.5 Firm quantities**

6.5.1 Quantities set out by the Client-Contractor in the Sub-Contract Price Build-up shall be taken as firm quantities unless otherwise described as provisional or for reference only.

6.5.2 For work represented by firm quantities, the quantities included in the Sub-Contract Price shall be the firm quantities, notwithstanding any discrepancies between such quantities and the Sub-Contract Drawings or the Sub-Contract Specification.

6.5.3 Firm quantities are not subject to remeasurement when settling the Final Account, and are only varied by Variations.

6.5.4 If a firm quantity or its description does not, according to the specified method of measurement, match the Sub-Contract Drawings or the Sub-Contract Specification and the Client-Contractor confirms in writing that correction of the same is necessary for the actual carrying out of the work, the correction shall be deemed to be a Variation.

**6.6 Reference quantities**

6.6.1 Quantities estimated by the Sub-Contractor in the Sub-Contract Price Build-up shall be taken as for reference only unless otherwise described as firm or provisional.

6.6.2 Where quantities set out by the Client-Contractor in the Sub-Contract Price Build-up are described as for reference only, the Sub-Contractor shall be deemed to have verified the accuracy of the quantities and make necessary correction of the quantities when submitting the Tender.

6.6.3 The Sub-Contractor shall be deemed to have estimated all reference quantities based on the Sub-Contract Drawings and the Sub-Contract Specification when submitting the Tender.

6.6.4 For work represented by reference quantities, the quantities as included in the Sub-Contract Price shall be those based on the Sub-Contract Drawings and the Sub-Contract Specification, notwithstanding any discrepancies between the reference quantities and the Sub-Contract Drawings or the Sub-Contract Specification and notwithstanding any deviations from the specified method of measurement.

**6.7 Provisional quantities**

- 6.7.1 Quantities described as "provisional" in the Sub-Contract Price Build-up shall be remeasured on completion of the relevant work based on the as-built records or, if mutually agreed, site measurement (excluding work done without authority) and shall be valued at the Sub-Contract Rates.
- 6.7.2 Provisional quantities shall be considered as estimates only, and the Client-Contractor shall not bear any responsibility for their accuracy. The Sub-Contract Rates shall not be adjusted because the final quantities differ from the provisional quantities.<sup>13</sup>

**6.8 Lump sum priced items**

In the case of preliminaries items or measured items whose units are "Item" or "Sum" or "Lot" or the like, i.e. items where the prices against them are lump sum prices, if there is no change to the scope of work as given in the item description after execution, the whole lump sum price shall be included in the final price. If the work is not executed, the lump sum price shall not be included in the final price. Unless otherwise specified **by** this Sub-Contract, if there is a significant change to the scope of work as given in the item description, the lump sum price shall be adjusted in proportion to the change in scope on a fair and reasonable basis.

**6.9 Method of measurement**

- 6.9.1 The quantities in the Sub-Contract Price Build-up shall be deemed to have been measured according to the method of measurement referred to or stated in the Sub-Contract Documents. The same method of measurement shall be used in the settlement of the Final Account.
- 6.9.2 In case of discrepancies between different methods of measurement stated in various parts of the Sub-Contract Documents, the order of precedence for interpretation shall be: the method described in the item descriptions, special method, and standard method.
- 6.9.3 If more number of (but not duplicating) detailed items than those specifically required by the method of measurement have been measured in the Sub-Contract Price Build-up for the same work, the same method as was adopted shall be used in the settlement of the Final Account.
- 6.9.4 If fewer number of items than those specifically required by the method of measurement have been measured in the Sub-Contract Price Build-up for the work represented by firm or provisional quantities, the missing measurement shall be corrected and the correction shall be deemed to be a Variation.
- 6.9.5 If fewer number of items than those specifically required by the method of measurement have been measured in the Sub-Contract Price Build-up for the work represented by reference quantities, the cost of the items not measured shall be deemed to have been allowed for in the other Sub-Contract Rates, the missing measurement shall be deemed to be a modification of the method of measurement and such modified method of measurement shall be used in the settlement of the Final Account.

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<sup>13</sup> If it is considered necessary to do so, separate Sub-Contract Rates should be inserted in the Sub-Contract Price Build-up for valuation when the final quantities differ from the provisional quantities beyond a certain extent. The extent may be judged by individual quantity or by value of a group of related items. This principle should also be adopted for firm quantities which are originally very small but may be increased many times due to Variations.

- 6.9.6 If the Sub-Contract Documents are silent as to the method of measurement used, the method of measurement which is reasonably apparent from the Sub-Contract Documents shall be used in the settlement of the Final Account, subject to the conditions that:
- (a) all quantities shall be measured the net quantities as fixed in position with no allowance for wastage and, for work measured superficially, for laps; and
  - (b) ancillary items shown on the Sub-Contract Drawings or described in the Sub-Contract Specification but not measured separately in the Sub-Contract Price Build-up shall not be measured separately when valuing Variations, unless the proportion of the ancillary items to the principal items have been significantly varied by Variations.

#### 6.10 Provisional sums

The Client-Contractor may issue instructions with regard to the expenditure of any sum described as "provisional sum" in the Sub-Contract Price Build-up. The relevant work shall be valued based on the Valuation Rules stated in Clause 6.13. In the settlement of the Final Account, the provisional sum shall be deducted from and the said value shall be added to the Sub-Contract Price.

#### 6.11 Prime cost rates

- 6.11.1 Where a prime cost rate ("PC Rate") is included in the description of an item in the Pricing Schedules or the Sub-Contract Price Build-up for materials delivered to a designated place, the prime cost rate is a provisional allowance for the unit supply cost delivered to the designated place only of such materials qualified by the PC Rate, and the Sub-Contract Rate for the item shall be deemed to have allowed in addition for all wastage, all other materials required for the item, taking delivery at the designated place, delivery to fixing locations, fixing, profits and overheads.
- 6.11.2 Where the prime cost rate is described as for supply and fix / install / apply, the provisional allowance is for the unit supply and fixing cost charged by a sub-sub-contractor for the item, and the Sub-Contract Rate for the item shall be deemed to have allowed in addition for the Sub-Contractor's other costs, profits and overheads.
- 6.11.3 The Sub-Contractor shall not be obliged to enter into a contract with a supplier or sub-sub-contractor selected by the Client-Contractor for the purposes of supplying materials or carrying out work covered by a PC Rate if the supplier or sub-sub-contractor requires unreasonable payment terms, or has poor financial standing or poor track records.
- 6.11.4 Subject to Clause 6.11.5, in the settlement of the Final Account, the Sub-Contract Rate shall be adjusted by the net difference between the prime cost rate and the actual unit cost and shall be applied to the net quantity of the item measured as fixed, installed or applied in position, exclusive of wastage.
- 6.11.5 If, based on the final quantities, the value represented by all the actual unit costs deviates from the value represented by all the prime cost rates beyond the extent stated in the Sub-Contract Particulars, a reasonable adjustment shall be made for the corresponding increase or decrease in delivering, fixing and wastage costs, profits and overheads so caused beyond the said extent.

**6.12 Variations**

- 6.12.1 The Client-Contractor may issue instructions from time to time requiring a Variation.
- 6.12.2 All Variations shall be valued based on the Valuation Rules stated in Clause 6.13, and the Sub-Contract Price shall be adjusted accordingly. Valuation of work is not a condition precedent to its execution by the Sub-Contractor.

**6.13 Valuation Rules**

The "Valuation Rules" are:

- (a) The Sub-Contract Rates shall be used for valuing work added to or omitted from the Sub-Contract and of the same or similar character to and carried out under the same or similar conditions to the work to which the Sub-Contract Rates apply.
- (b) If the work is not of the same or similar character to or not carried out under the same or similar conditions to the work to which the Sub-Contract Rates apply, the Sub-Contract Rates for comparable work shall be used as the base with adjustment for the difference in character or conditions.
- (c) If the work is an omission which substantially varies the character of or the conditions under which any remaining items of work are carried out, such that the corresponding Sub-Contract Rates are no longer reasonable, then such remaining items of work shall be valued according to paragraph (b) above.
- (d) If there are no Sub-Contract Rates which can reasonably form a basis for valuing the work, fair rates shall be used. Fair rates shall be derived from market rates, including rates used on other comparable projects, fairly adjusted to take into consideration the nature and conditions under which the work is carried out under this Sub-Contract or, in the absence of market rates, based on actual costs plus the percentage for profits and overheads as stated in the Sub-Contract Particulars.
- (e) If it is foreseen that the work to be carried out cannot be properly measured and valued to reflect the costs, the Contract Parties may pre-agree that the work shall be valued on a daywork basis. The time of labour and construction plant engaged or properly left idling and the quantities of materials used or properly wasted shall be recorded by the Sub-Contractor and endorsed by an authorized representative of the Client-Contractor. The materials, labour and construction plant involved shall be valued at daywork rates stated in this Sub-Contract or, in the absence of such rates, based on reasonable actual costs plus the percentage for profits and overheads as stated in the Sub-Contract Particulars.
- (f) If the work is instructed to be carried out after Substantial Completion of the relevant Sub-Contract Works Section through no fault of the Sub-Contractor, fair rates shall be used, with appropriate reimbursement for extra costs incurred by the Sub-Contractor including preliminaries not recovered elsewhere.

**6.14 Payment timeline**

- 6.14.1 On or before each Payment Application Due Date stated in the Sub-Contract Particulars until the release of final payment, the Sub-Contractor shall submit to the Client-Contractor applications for payment with supporting computation and documents.
- 6.14.2 On or before the next Payment Advice Due Date stated in the Sub-Contract Particulars, the Client-Contractor may check and amend the payment application, may make appropriate deductions for work or materials not according to this Sub-Contract subject to the Client-Contractor complying with Clause 6.15.5, and shall issue a Payment Advice to the Sub-Contractor to notify him the net amount payable and the details of its computation.
- 6.14.3 On or before the next Payment Invoice Due Date stated in the Sub-Contract Particulars, the Contract Parties shall discuss and agree any adjustments to the Payment Advice as may reasonably be requested by the Sub-Contractor, and the Sub-Contractor shall submit an invoice to the Client-Contractor for the net amount payable as stated in the Payment Advice subject to any agreed adjustments.
- 6.14.4 On or before the next Payment Due Date stated in the Sub-Contract Particulars, the Client-Contractor shall pay to the Sub-Contractor the net amount payable as stated in the Payment Advice subject to any agreed adjustments.
- 6.14.5** If the Client-Contractor does not pay the amount payable as stated in Clause 6.14.4 on or before the next Payment Due Date, without prejudice to the Sub-Contractor's other rights and remedies, the Sub-Contractor:
- (a) shall be entitled to, in addition to the amount payable, interest at 1% below the judgment debt rate prescribed from time to time by the Rules of the High Court for the period from the next Payment Due Date until full payment of the amount payable;
  - (b) may suspend the carrying out of the Sub-Contract Works, if the Client-Contractor continues to fail to pay the full amount payable to the Sub-Contractor within the period prescribed in the Sub-Contractor's written notice to the Client-Contractor specifying the Client-Contractor's failure to pay, the amount payable and the Sub-Contractor's intention to suspend the carrying out of the Sub-Contract Works if the amount payable remains not fully paid within a prescribed period of not less than **14 days** after the receipt by the Client-Contractor of the notice; and
  - (c) shall, after suspension as aforesaid, resume the carrying out of the Sub-Contract Works as soon as practicable within **14 days** after the receipt of the full amount payable from the Client-Contractor.

**6.15 Payment valuation**

6.15.1 The net amount payable to the Sub-Contractor under each payment shall be computed by calculating the gross valuation at paragraph (a) below and then making the deductions or additions at paragraphs (b) to (d) below:

- (a) the gross valuation of the Sub-Contract Works, being the estimated total value of (1) *materials* not pre-maturely delivered to site, (2) off-site materials which are specified by this Sub-Contract or agreed by the Client-Contractor to be paid for, which are properly stored, protected and insured against loss or damage, and properly labelled as for the Sub-Contract Works, and (3) work partly or fully completed up to the relevant Payment Application Due Date, excluding those materials supplied by the Client-Contractor and those materials or work which are not according to this Sub-Contract, but taking into account the effect of the items stated in Clause 6.16.1, whether or not the cost effects have been finally agreed;
- (b) deduction for retention fund according to Clause 6.15.2;
- (c) subject to the Client-Contractor complying with Clause 6.15.5, deduction for any other sums including damages for delayed completion due from the Sub-Contractor to the Client-Contractor under this Sub-Contract or otherwise; and
- (d) deduction for the total amount previously paid to the Sub-Contractor under this Sub-Contract.

6.15.2 The retention fund mentioned in Clause 6.15.1(b) shall be dealt with in the following manner:

- (a) The retention fund shall be calculated by applying the Retention Percentage stated in the Sub-Contract Particulars on the gross valuation mentioned in Clause 6.15.1(a), subject to a maximum equal to the Maximum Retention stated in the Sub-Contract Particulars.
- (b) Upon the Substantial Completion of a Sub-Contract Works Section and the submission of any warranties and guarantees required under this Sub-Contract for that Sub-Contract Works Section, one half of the retention fund held in respect of the Sub-Contract Works Section shall be released to the Sub-Contractor without interest in the next periodical payment.
- (c) After **14 days** after the expiry of the Defects Liability Period of a Sub-Contract Works Section, the balance of the retention fund held in respect of the Sub-Contract Works Section shall be released to the Sub-Contractor in the next periodical payment. A sum may be retained for the estimated cost of rectification of defects listed by the Client-Contractor but not yet rectified, and the sum shall be released progressively based on the progress of the rectification of defects.
- (d) Provided always that until the full release of the retention, the Client-Contractor's interest in the retention fund shall be fiduciary as trustee for the Sub-Contractor (but without obligation to invest), and the Client-Contractor may have recourse to the retention fund otherwise due to the Sub-Contractor to recover sums due to the Client-Contractor from the Sub-Contractor.

- 6.15.3 The inclusion of materials or work in any payment valuation shall not be regarded as evidence that the materials and work are according to the requirements of this Sub-Contract.
- 6.15.4 A payment valuation shall be an estimate only, based every time on the latest information available at the time of the valuation with corrections permissible for errors made in previous payment valuations.
- 6.15.5 As a condition precedent to the Client-Contractor exercising his right to make any deduction against payment due to the Sub-Contractor under Clause 6.14.2 or 6.15.1(c), the Client-Contractor shall issue to the Sub-Contractor a written notice of intention to deduct which shall state that:
- (a) it is a notice issued under this clause;
  - (b) the factual and contractual basis for the intended deduction; and
  - (c) the amount of the intended deduction with detailed breakdown.

#### **6.16 Settlement of Final Account**

- 6.16.1 The "Final Account" is a statement of the computation of the final Sub-Contract Price payable to the Sub-Contractor taking into account the following:
- (a) using the Sub-Contract Price stated in the Sub-Contract Particulars in the case of a Lump Sum Contract or Remeasurement Contract as the base figure for further adjustments according to paragraphs (c) to (n) below;
  - (b) measurement and valuation of final quantities according to Clause 6.3 in the case of a Rate Only Contract to obtain the base figure for further adjustments according to paragraphs (c) to (n) below;
  - (c) adjustment of provisional quantities according to Clause 6.7 in the case of a Lump Sum Contract or Remeasurement Contract;
  - (d) adjustment of lump sum priced items according to Clause 6.8;
  - (e) adjustment of provisional sums according to Clause 6.10;
  - (f) adjustment of prime cost rates according to Clause 6.11;
  - (g) adjustment for Variations according to Clause 6.12;
  - (h) addition for the value of any direct loss and/or expense according to Clause 4.8;
  - (i) deduction for failure to rectify defects according to Clauses 7.6.3 and 7.6.4;
  - (j) adjustment due to either Contract Party's failure to pay statutory fees, charges or taxes according to Clause 9.1.2;
  - (k) addition due to the Client-Contractor's failure to insure according to Clause 10.3.2;
  - (l) adjustment for rises or falls in costs of labour and materials if so stated in this Sub-Contract;

- (m) deduction for damages for delayed completion according to Clause 4.9; and
  - (n) other additions to or deductions from the Sub-Contract Price specified by this Sub-Contract.
- 616.2 Within **3 months** after the completion of the whole of the Sub-Contract Works, the Sub-Contractor shall submit his proposed Final Account calculated according to this Sub-Contract with all factual evidence and relevant calculation details to the Client-Contractor for checking. The Client-Contractor shall send his draft Final Account to the Sub-Contractor for agreement as soon as practicable.
- 616.3 In the absence of a submission by the Sub-Contractor, the Client-Contractor may compute the Final Account based on the information available to him and send it to the Sub-Contractor for agreement.
- 616.4 The Sub-Contractor and the Client-Contractor shall discuss and agree the details of the Final Account from time to time and shall agree the whole Final Account as soon as possible not later than **12 months** after Substantial Completion.
- 616.5 If the Client-Contractor considers that he has taken into account all the representation of the Sub-Contractor but still fails to obtain the Sub-Contractor's agreement, he may issue a unilateral Final Account by registered post or recorded delivery to the Sub-Contractor and declare it as such in writing.
- 616.6 If within **3 months** after the receipt of the unilateral Final Account, the Sub-Contractor makes no written objection to the unilateral Final Account by registered post or recorded delivery to the Client-Contractor, the unilateral Final Account shall be deemed to have been agreed by the Sub-Contractor. If the Sub-Contractor raises written objection within the said period, the unilateral Final Account shall become void. Any further unilateral Final Account shall still be governed by this clause.
- 616.7 The agreed or deemed agreed Final Account shall be deemed to have taken into account all factors affecting the computation of the final Sub-Contract Price and known at the time of agreement, but shall not prejudice the Sub-Contractor's liability for rectifying defects not considered in Clause 6.16.1(i) and the Sub-Contractor's responsibility to complete work valued in the Final Account but not yet done at the time of Final Account, and shall not release the liabilities of the Contract Parties in respect of matters affected by any bribery offence, fraud, dishonesty or fraudulent concealment.
- 616.8 The cost incurred by the Sub-Contractor in preparing the Final Account shall be deemed to have been included in the Sub-Contract Price.

#### **6.17 Final payment**

Within **30 days** after the completion of all defects rectification according to Clauses 7.6.1 to 7.6.4 or **30 days** after the agreement or deemed agreement of the Final Account, whichever is the later, the balance of the final Sub-Contract Price after deducting the amount previously paid to the Sub-Contractor shall be paid to the Sub-Contractor or, in the case of a negative balance, refunded to the Client-Contractor, subject only to appropriate adjustments for all further factors affecting the computation of the final Sub-Contract Price and arising or known after the agreement of the Final Account.

**7. QUALITY****7.1 Quality liability**

The Sub-Contractor shall be fully liable for the site operations, construction methods and the stability, safety and quality of all of his work, whether completed or not, except for loss or damage arising from the Excepted Risks.

**7.2 Materials, workmanship and methods to comply with this Sub-Contract**

7.2.1 The Sub-Contract Works shall be carried out, tested and inspected using the materials, workmanship and methods shown on the Drawings or described in the Specification or the Pricing Schedules, in conformity with the whole of this Sub-Contract.

7.2.2 If any of the specified materials (other than those custom made for this Sub-Contract) is no longer available from the market due to cessation of production, then the Sub-Contractor shall propose alternatives of equivalent standard for the approval by the Client-Contractor. This shall be deemed to be a Variation only if the cessation of production occurs after the award of this Sub-Contract. No adjustment to any Date for Completion shall be made.

7.2.3 Alternatively, if the specified materials ceased to be produced after the award of this Sub-Contract are forming a substantial part of this Sub-Contract, the Contract Parties may agree to omit them from this Sub-Contract or terminate this Sub-Contract with no compensation.

7.2.4 Alternatives not due to cessation of production shall not be used unless otherwise approved by the Client-Contractor with the price and time implications agreed.

**7.3 Material samples**

The Sub-Contractor shall submit material samples and/or catalogues for approval before ordering materials or commencing work. Approved material samples shall be kept on site to serve as the standard for subsequent acceptance of the materials or workmanship.<sup>14</sup>

**7.4 Mock-up construction and performance testing**

The type and number of mock-up construction and performance testing, and the extent and number of re-modelling of the mock-ups shall be as those specified by this Sub-Contract. Any deviation shall be deemed to be a Variation.

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<sup>14</sup> If it is intended that material samples submitted before the award of this Sub-Contract should not be substituted, the specific items should be specified in the Tender Correspondence.

**7.5 Testing and inspection**

- 7.5.1 The Sub-Contractor shall carry out all tests and inspections specified by this Sub-Contract to be carried out or, if so specified, arrange for them to be carried out by independent parties approved by the Client-Contractor, all at the Sub-Contractor's expense unless the tests and inspections are covered by provisional quantities or provisional sums. The testing and inspection report shall be completed as soon as possible after the tests and inspections, and submitted to the Client-Contractor immediately after the completion of the report.
- 7.5.2 The Client-Contractor may issue instructions requiring the Sub-Contractor to carry out tests and inspections additional to those specified by this Sub-Contract on work already carried out, and the relevant costs (including the cost of subsequent making good) shall be borne by the Client-Contractor. Provided that if the additional testing or inspection shows that the work is not according to the requirements of this Sub-Contract, then the relevant costs (including the cost of subsequent making good and cost of rectification of other work) shall be borne by the Sub-Contractor. Where provisional quantities or provisional sums are included for such testing or inspection, the first round of testing or inspection shall not be considered as additional for the purposes of this clause but shall be included in the adjustments of provisional quantities or provisional sums.
- 7.5.3 The Sub-Contractor shall inform the Client-Contractor in writing at such mutually pre-agreed time before work is to be covered up to allow the Client-Contractor to inspect such work. If the Client-Contractor fails to inspect, the Sub-Contractor may carry out his own inspection and cover up. If the Client-Contractor requires work to be uncovered for inspection after it has been covered up, the Sub-Contractor shall so uncover the work. All costs of such an inspection and subsequent making good shall be borne by the Client-Contractor, unless the inspection reveals that the work is not according to this Sub-Contract, in which case the costs shall be borne by the Sub-Contractor.
- 7.5.4 If the Sub-Contractor fails to give the notice required by Clause 7.5.3, then the Client-Contractor may nevertheless require the inspection of any relevant work, and the costs of such an inspection and subsequent making good shall be borne by the Sub-Contractor.

**7.6 Defects liability**

- 7.6.1 The Sub-Contractor shall replace or rectify any item of materials or work which is found, at any time before the expiry of the Defects Liability Period stated in the Sub-Contract Particulars of the Sub-Contract Works Section it belongs to, to be not according to this Sub-Contract at his own cost on his own initiative or as and when instructed by the Client-Contractor to do so.
- 7.6.2 At any time not later than **14 days** after the expiry of the Defects Liability Period, the Client-Contractor may issue one or more lists of defects to the Sub-Contractor for the Sub-Contractor to rectify. The Sub-Contractor shall rectify all defects on the lists of defects within such reasonable times as directed by the Client-Contractor or, if not so directed, within a reasonable time of receipt of a list.

- 7.6.3 If the Sub-Contractor fails to rectify defects within the aforesaid reasonable time, then the Client-Contractor may issue a written notice to the Sub-Contractor informing him of the Client-Contractor's intention to employ others to rectify the defects specified in the notice at the expense of the Sub-Contractor. If the Sub-Contractor continues to fail to proceed to rectify the defects for a further period of **7 days** or if the Sub-Contractor fails to carry on diligently thereafter, then the Client-Contractor shall be entitled to employ others to rectify the defects, and to recover the extra cost of so doing from the Sub-Contractor.
- 7.6.4 The Contract Parties may agree payment in lieu of rectification.
- 7.6.5 The expiry of the Defects Liability Period of any Sub-Contract Works Section shall discharge the Sub-Contractor from any further obligation to carry out the work of rectifying defects in that Sub-Contract Works Section which reasonable inspection could have found before the expiry, but it shall not prejudice the Sub-Contractor's obligations under a warranty or guarantee or the Client-Contractor's other rights and remedies either under this Sub-Contract or at law regarding defective work or latent defects or other breaches of contract.

## **7.7 Warranties and guarantees**

- 7.7.1 The Sub-Contractor shall submit such warranties or guarantees as may be specified by this Sub-Contract in the form as specified.
- 7.7.2 The Sub-Contractor shall (so far as he is lawfully able to do so) assign to the Client-Contractor the benefits of all manufacturers', suppliers' and sub-sub-contractors' warranties or guarantees for materials or work insofar as they are standard sales ancillary benefits of the suppliers or sub-sub-contractors or they are specified by this Sub-Contract.
- 7.7.3 The submission of the aforesaid warranties and guarantees satisfactorily in full compliance with this Sub-Contract shall be a pre-requisite to the release of the retention fund releasable upon Substantial Completion of the relevant Sub-Contract Works Section.

## **8. SUB-CONTRACTOR'S DOCUMENTS**

### **8.1 Shop drawings, calculations and method statements**

- 8.1.1 The Sub-Contractor shall submit all such shop drawings and other drawings, calculations and method statements as he is required to prepare under this Sub-Contract to the Client-Contractor for approval in sufficient time as to ensure that no delay to the Sub-Contract Works will be caused.
- 8.1.2 If any Variation is introduced during the approval process, the Client-Contractor shall, on his own initiative or when requested by the Sub-Contractor, issue an Instruction for the Variation.

## 8.2 Programmes

- 8.2.1 The Client-Contractor shall provide the Sub-Contractor with his current master programme as soon as possible after the award of this Sub-Contract, and when the master programme is revised.
- 8.2.2 After the Client-Contractor's request with or without a current master programme, the Sub-Contractor shall submit his programme, within **14 days** for the first programme or within **7 days** for revised programmes updated as necessary, to show his intended tasks, sequence and time for proceeding with the Sub-Contract Works to suit so far as practicable the master programme or the Client-Contractor's request for the Client-Contractor's reference and comments as necessary, and proceed according to the programme, unless otherwise commented by the Client-Contractor.

## 8.3 Progress reports

If so required by the Client-Contractor, the Sub-Contractor shall submit the following progress reports in reasonable number of copies in the pre-approved format to the Client-Contractor regularly until **14 days** after Substantial Completion of the whole of the Sub-Contract Works and when work is carried out during the Defects Liability Period:

- (a) **daily** reports to be submitted on the working day following the day recorded and showing a record of the number, names, major activities and locations of labour employed on site under each trade, and the weather throughout the day, and other information as may be instructed by the Client-Contractor;
- (b) **weekly** reports to be submitted on the first working day following the week recorded and describing in detail the progress of the Sub-Contract Works, any deviations from programme, reasons for actual or expected delays or disruptions, proposed actions to overcome the delays or disruptions, any claim for extension of time, testing and inspection carried out, list of Client-Contractor's instructions received, list of confirmations of oral instructions issued, outstanding information required, and other information as may be instructed by the Client-Contractor;
- (c) progress photographs attached to the weekly reports; and
- (d) records of delivery of construction plant and materials to site and removal from site upon delivery or removal (with advance notice to be given).

## 8.4 As-built drawings and records

Within **30 days** after the Substantial Completion of a Sub-Contract Works Section, the Sub-Contractor shall submit as-built drawings and records for the relevant Sub-Contract Works Section in the specified number of copies of prints (minimum 2) and electronic files stored on suitable media to the Client-Contractor, and shall additionally submit as-built records according to any relevant statutory requirements.

## 8.5 Operating instructions and maintenance manuals

Within **14 days** after the Substantial Completion of a Sub-Contract Works Section, the Sub-Contractor shall submit operating instructions and maintenance manuals for the relevant Sub-Contract Works Section in the specified number of copies of prints (minimum 2) and electronic files stored on suitable media to the Client-Contractor.

**9. GENERAL OBLIGATIONS****9.1 Statutory obligations**

- 9.1.1 The Sub-Contractor shall comply with, give all notices and make all applications required by, any ordinance, regulation, rule or order of the Government or statutory undertakers or utility companies (not falling within the meaning of Specialist Sub-Contractors) applicable to the Sub-Contract Works and shall pay any fees, charges, levies or taxes legally demandable upon the Sub-Contractor, except that fees, charges, levies or taxes in connection with submissions to the Government or statutory undertakers or utility companies specifically for the Sub-Contract Works shall be restricted to those listed in this Sub-Contract.
- 9.1.2 If either of the Contract Parties pay fees, charges, levies or taxes on behalf of the other party, then the paying party may recover from the liable party the amount paid plus administrative charges at the percentage stated in the Sub-Contract Particulars, without further adjustment to the prices allowed in this Sub-Contract for the original liability not fulfilled.
- 9.1.3 If the Sub-Contractor considers that a change to the Sub-Contract Works is necessary to comply with any statutory requirement, he shall give a written notice specifying the change to the Client-Contractor, and wait for the Client-Contractor's instruction before proceeding further with the affected work.

**9.2 Intellectual property**

- 9.2.1 The prices for all work shall be deemed to include for all royalties, license fees or other sums legally demandable for the use of intellectual property in respect of the design or design development for which the Sub-Contractor is responsible, materials, construction plant, methods or anything whatsoever used in carrying out the Sub-Contract Works.
- 9.2.2 The Sub-Contractor shall indemnify the Client-Contractor against any claim involving an infringement or alleged infringement of intellectual property rights.

**9.3 Assignment and Subletting**

- 9.3.1 The Client-Contractor or the Sub-Contractor shall not assign this Sub-Contract without the written consent of the other Contract Party.
- 9.3.2 The Sub-Contractor shall not sublet the whole or substantially the whole of this Sub-Contract to the same person, without the written consent of the Client-Contractor, except that the Sub-Contractor may, after giving advance notice to the Client-Contractor, assign the benefits but not obligations under this Sub-Contract to a bank for the sole purpose of obtaining financing, as long as the Client-Contractor does not reasonably object.

**9.4 Care of Works**

- 9.4.1 The Sub-Contractor shall take responsibility for the care of the work included in any Sub-Contract Works Section, materials supplied by him or persons for whom he is responsible for incorporation into the work, and materials supplied by the Client-Contractor and handed over to the Sub-Contractor or persons for whom his is responsible for incorporation into the work, except for loss or damage arising from vandalism in such portion of the Site for which the Client-Contractor is responsible for security or arising from the Excepted Risks, from commencement of the Sub-Contract Works Section until **14 days** after the Substantial Completion of the Sub-Contract Works Section, or until the determination of the employment of the Sub-Contractor or termination of the Sub-Contract (once invoked, whether validly or not), whichever is the earlier.
- 9.4.2 The Client-Contractor shall carry out acceptance inspections at appropriate times agreed with the Sub-Contractor.

**9.5 Injury to persons and property and indemnity**

Without prejudice to Clause 9.4, the Sub-Contractor shall be liable for and shall indemnify the Ultimate Client, Upper-tier Contractors, Client-Contractor and their respective sub-contractors against any damage, expense, liability or loss in respect of any claims or proceedings for:

- (a) bodily injury to, disease contracted by or the death of any person arising out of, or in the course of, or by reason of the carrying out of the Sub-Contract Works and whether arising on or off the Site, except for those due to any act or neglect of the Ultimate Client, Upper-tier Contractors, Client-Contractor or their respective sub-contractors or any person for whom these parties are responsible; and
- (b) loss or damage to real or personal property arising out of, or in the course of, or by reason of the carrying out of the Sub-Contract Works and whether arising on or off the Site, due to a breach of contract or other default of the Sub-Contractor or any person for whom the Sub-Contractor is responsible.

**9.6 Provision of all things necessary**

Unless otherwise specified by this Sub-Contract, the Sub-Contractor shall provide all labour, materials, temporary site facilities, site and head office management necessary for the completion of the Sub-Contract Works.

**9.7 Workforce**

- 9.7.1 The labour and supervisors provided by the Sub-Contractor upon the Sub-Contract Works shall be legally employable, adequate in number, of the appropriate trades, competent in their respective callings, properly equipped with tools, safety belts, safety helmets and safety appliances, shall wear proper attire and bear identification cards, and shall not live on the Site. The Sub-Contractor shall bear all consequences of employing those not legally employable so caused to himself, the Client-Contractor, the Upper-tier Contractors, the Ultimate Client and his consultants.
- 9.7.2 The Client-Contractor may require the replacement of any person provided upon the Sub-Contract Works who in the opinion of the Client-Contractor misconducts himself or is incompetent or negligent in the proper performance of his duties with a suitable substitute at no extra price and time to this Sub-Contract.

**9.8 Payment management to employees of all tiers**

- 9.8.1 The Sub-Contractor shall himself and ensure his sub-sub-contractors of all tiers pay to the employees all wages, subsidies and reimbursable according to the employment contracts, and require both parties to the employment contracts to contribute to mandatory provident funds. If the Sub-Contractor fails to comply with these requirements, the Client-Contractor is entitled to pay on his behalf the amounts in arrear and recover the same from the Sub-Contractor, plus administrative charges at the percentage stated in the Sub-Contract Particulars.
- 9.8.2 The Sub-Contractor shall comply with the requirements of the Client-Contractor in connection with the keeping and submission of daily labour records, wage payment records, mandatory provident fund contribution records, etc.

**9.9 Temporary site facilities**

The temporary site facilities provided by the Sub-Contractor shall be adequate and appropriate for the intended purposes, safe and secured, causing minimum nuisance, placed at positions approved by the Client-Contractor, up-kept and maintained regularly in good conditions with minimum downtime, relocated as necessary, and removed from the Site when no longer required.

**9.10 Checking of documents and site conditions**

- 9.10.1 Before ordering a material or carrying out an item of work, the Sub-Contractor shall check the latest set of documents and, if available for access, the latest site dimensions and conditions to identify any documentary or physical contradictions, discrepancies, divergences, uncertainties, conflict between various trades, non-buildability, and obvious non-compliance with statutory requirements, co-ordinate and resolve those resolvable by himself, and notify those to be resolved by the Client-Contractor or amounting to a Variation for his resolution or instruction.
- 9.10.2 Drawings to be used shall be those drawings issued by the Client-Contractor for construction or the shop drawings prepared by the Sub-Contractor and approved by the Client-Contractor for construction, whichever is the latest at the time of use.
- 9.10.3 Figured dimensions on drawings shall be taken in preference to scaled in all cases.
- 9.10.4 The Sub-Contractor shall counter-check the scale of any drawing transmitted electronically for the accuracy of the stated scale and make appropriate adjustments when scaling.

**9.11 Setting out**

- 9.11.1 The Sub-Contractor shall ensure that the Sub-Contract Works are constructed at the correct positions.
- 9.11.2 The Client-Contractor shall provide adequate and accurate principal setting out points and levels to the Sub-Contractor such that the Sub-Contractor can properly set out his own lines and levels for the Sub-Contract Works.
- 9.11.3 The Client-Contractor or the Sub-Contractor shall respectively be responsible for all the consequences of inaccurate setting out and as-constructed positions caused by himself notwithstanding any verification by the other party.

**9.12 Cleanliness and tidiness**

The Sub-Contractor shall keep his working areas and the Sub-Contract Works clean and tidy at all times, and free from accumulation of rubbish.

**9.13 Protection**

Without prejudice to Clauses 9.4 and 9.5, the Sub-Contractor shall take every care and safety precaution necessary to protect all persons and properties, including but not limited to the following, from injury, disease, death, loss, damage, nuisance, fire hazard, etc. caused by or arising out of the carrying out of the Sub-Contract Works:

- (a) all workers or other persons on the Site;
- (b) all occupiers or users in the vicinity of the Site;
- (c) the public;
- (d) the Sub-Contract Works, materials for incorporation into the Sub-Contract Works, construction plant or temporary buildings used for the Sub-Contract Works;
- (e) existing building construction, finishes, fittings, services within the Site which are not to be modified under this Sub-Contract;
- (f) access routes, roads, loading and unloading points, temporary parking spaces, footpaths, corridors, staircases and lifts;
- (g) the premises where the Site is situated;
- (h) adjoining properties;
- (i) public properties, public roads and footpaths;
- (j) properties of statutory undertakers and utility companies; and
- (k) existing trees and shrubs.

**9.14 Safety measures**

The Sub-Contractor shall implement safety measures in compliance with statutory requirements and any other requirements as may be specified by this Sub-Contract.

**9.15 Environmental protection measures**

The Sub-Contractor shall implement environmental protection measures in compliance with statutory requirements and any other requirements as may be specified by this Sub-Contract.

**10. INSURANCES****10.1 Employees' Compensation Insurance**

- 10.1.1 The Client-Contractor shall, either by himself or cause others to, take out and maintain an employees' compensation insurance to indemnify the Sub-Contractor and his sub-sub-contractors of all tiers against their legal liabilities under and independent of the Employees' Compensation Ordinance to pay compensation, damages and claimant's costs and expenses and also indemnify them against their own costs and claims in that connection, all in respect of bodily injury or death sustained by any employees employed by any of them by accident occurring or occupational disease contracted during the period of insurance and arising out of and in the course of the employees' employment on the Sub-Contract Works or in connection with this Sub-Contract.
- 10.1.2 The period of insurance shall be for the full period of construction, defects liability and/or maintenance.
- 10.1.3 Without lowering the limit of indemnity, and at the discretion of the Client-Contractor, the insurance may also cover other parties like the Ultimate Client, Upper-tier Contractors, the Client-Contractor, their respective other contractors or sub-contractors, etc. as the joint-insured.
- 10.1.4 As soon as the Sub-Contractor becomes aware of any employees employed by him or his sub-sub-contractors of all tiers sustaining death or total or partial incapacity by accident or occupational disease arising out of and in the course of the employees' employment on the Sub-Contract Works or in connection with this Sub-Contract, he shall notify the Client-Contractor within **24 hours** after his awareness for the Client-Contractor to serve notice to the Commissioner for Labour on his behalf. In any cases, fatal accidents shall be reported to the Client-Contractor immediately.

**10.2 Contractors' All Risks and Third Party Liability Insurance**

- 10.2.1 The Client-Contractor shall, either by himself or cause others to, take out and maintain a Contractors' All Risks and Third Party Liability Insurance according to the insurance policy or synopsis in Appendix A hereto (containing terms not inferior to those made known in writing to the Sub-Contractor before the award of this Sub-Contract), include the Sub-Contractor and his sub-sub-contractors of all tiers (whether or not they are self-employed persons or sole proprietors or partners) as one of the insured, and include the Sub-Contract Works, relevant temporary work and unfixed materials as part of the insured properties to enjoy the same coverage.
- 10.2.2 The period of insurance shall be for the full period of construction, defects liability and/or maintenance. It is permissible that the insured properties under the Materials Damage section of the insurance policy are covered for a shorter period until some limited time after Substantial Completion.
- 10.2.3 The Third Party Liability section of the insurance shall have a clause to cover any and all of the insured as separate and distinct parties as if a separate policy had been issued to each of them to cover their mutual claims with stipulation that the insurers agree to waive all subrogation rights which the insurers may have against any of the insured.

- 10.2.4 If the Sub-Contractor considers that the insurance coverage is inadequate to cover his contractual or legal liabilities and requires that the coverage be increased or the amounts of excesses be reduced then the additional premium so payable shall be solely for the account of the Sub-Contractor.
- 10.2.5 In the event of the occurrence of the perils covered by the insurance, the Sub-Contractor shall notify the insurers and the Client-Contractor of the details of the incident immediately upon he becomes aware of it.
- 10.2.6 In the event of loss or damage covered by the Material Damage section of the insurance, the Sub-Contractor shall, immediately after any inspection required by the insurers has been carried out, remove and dispose of any debris, repair or replace any materials damaged, destroyed, lost or stolen, restore work damaged, destroyed or lost, and continue with the carrying out and completion of the Sub-Contract Works with due diligence.

### **10.3 Maintaining insurances**

- 10.3.1 The Client-Contractor shall, either by himself or cause others to, maintain and extend as necessary the aforesaid insurances to be in full force for the required periods of insurance. Copies of the cover notes, policies and their schedules and endorsements of the aforesaid insurances shall be made available for inspection by the Sub-Contractor upon request.
- 10.3.2 If the Client-Contractor at any time fails upon request to produce evidence showing that any of the aforesaid insurances is effectively maintained then, without prejudice to his other rights and remedies, the Sub-Contractor may postpone or suspend his work on site until the insurance policy is effective and may in the joint name and on behalf of both parties insure against any risk, loss or damage with respect to which the default shall have occurred, and shall be entitled to recover from the Client-Contractor the premium paid plus administrative charges at the percentage stated in the Sub-Contract Particulars. This shall be deemed to be a Variation.

### **10.4 Compliance with insurance conditions**

The Sub-Contractor shall, with all due diligence and at his own cost, conform to the terms and conditions of the aforesaid insurances and all reasonable requirements of the insurers in connection with the prevention of accidents, the submission and settlement of claims, the recovery of losses, and shall bear at his own cost the consequences of any failure to do so.

### **10.5 Insurances not affecting liability**

- 10.5.1 The presence of the aforesaid insurances shall not prejudice or reduce the Sub-Contractor's liability or responsibility under this Sub-Contract.
- 10.5.2 The party who would have been liable in the absence of the insurance cover shall be responsible for the amounts of excesses, losses, damage, fees, costs and expenses not compensated by the insurances.
- 10.5.3 Administrative charges incurred by a Contract Party in connection with handling insurance claims shall be charged against the insure`rs rather than the other Contract Party.

**10.6 Insurances of materials before delivery**

Unless covered by the insurance in Appendix A hereto, the taking out of insurances against risks of loss or damage to materials occurring before their delivery to the Site shall be the Sub-Contractor's own concern.

**10.7 Insurances of construction plant and temporary buildings**

Unless covered by the insurance in Appendix A hereto, the taking out of insurances against risks of loss or damage to construction plant and temporary buildings owned or hired by the Sub-Contractor or persons for whom he is responsible shall be the Sub-Contractor's own concern.

**11. TERMINATION****11.1 Determination by Client-Contractor**

11.1.1 In any one or more of the following events, without prejudice to any other rights or remedies which the Client-Contractor may possess, the Client-Contractor may by notice by registered post or recorded delivery to the Sub-Contractor forthwith determine the employment of the Sub-Contractor under this Sub-Contract:

- (a) before the Substantial Completion of the whole of the Sub-Contract Works, the Sub-Contractor, having given consideration of the effects of Excusable Events:
  - (1) fails to proceed regularly and diligently with the Sub-Contract Works (including rectifying defects); or
  - (2) completely or substantially suspends the carrying out of the Sub-Contract Works (including rectifying defects);
- (b) the Sub-Contractor is in breach of Clause 9.3 regarding assignment and subletting; or
- (c) the Sub-Contractor becomes bankrupt, or makes a composition or arrangement with his creditors, or has a petition for compulsory winding-up presented against him, or enters into compulsory or voluntary liquidation (except for the purpose of reconstruction), or has a provisional liquidator or receiver appointed, unless the Client-Contractor, the Sub-Contractor and his trustee in bankruptcy, liquidator or receiver, as the case may be, agree in writing before or after the notice of determination to the continuation or reinstatement of the Sub-Contractor's employment.

Provided that in the case of Clause 11.1.1(a) or (b), the Client-Contractor has previously issued a notice of default specifying the event under this clause to the Sub-Contractor, and then a warning notice of determination by registered post or recorded delivery later than **7 days** but not later than **2 months** after the receipt of the notice of default when the event had been continued or repeated, and the event has continued for not less than **7 days** after the receipt of the warning notice of determination up to the time when the notice of determination is issued.

11.1.2 The Sub-Contractor shall reimburse the Client-Contractor all the direct loss and/or expense caused to the Client-Contractor by the determination.

## 11.2 Determination by Sub-Contractor

11.2.1 In any one or more of the following events, without prejudice to any other rights or remedies which the Sub-Contractor may possess, the Sub-Contractor may by notice by registered post or recorded delivery to the Client-Contractor forthwith determine the employment of the Sub-Contractor under this Sub-Contract:

- (a) the Client-Contractor is in breach of Clause 9.3 regarding assignment;
- (b) the Client-Contractor fails to issue a payment advice by the Payment Advice Due Date in respect of a payment application received from the Sub-Contractor before the relevant Payment Application Due Date; or the Client-Contractor fails to make the payment stated as due under the Payment Advice by the relevant Payment Due Date;
- (c) the commencement or carrying out of the whole or substantially the whole of the Sub-Contract Works has been postponed or suspended as instructed by the Client-Contractor due to no breach or default of the Sub-Contractor or postponed or suspended due to any combination of the Compensable Events, for a continuous period of more than **3 months** beyond any periods of postponement or suspension anticipated and specified by this Sub-Contract; or
- (d) the Client-Contractor becomes bankrupt, or makes a composition or arrangement with his creditors, or has a petition for compulsory winding-up presented or made against him, or enters into compulsory or voluntary liquidation except for the purpose of reconstruction, or has a provisional liquidator or receiver appointed, unless the Sub-Contractor, the Client-Contractor and his trustee in bankruptcy, liquidator or receiver, as the case may be, agree in writing before or after the notice of determination to the continuation or reinstatement of the Sub-Contractor's employment.

Provided that in the case of Clause 11.2.1(a) or (b), the Sub-Contractor has previously issued a notice of default specifying the event under this clause to the Client-Contractor, and then a warning notice of determination by registered post or recorded delivery later than **7 days** but not later than **2 months** after the receipt of the notice of default when the event had been continued or repeated, and the event has continued for not less than **7 days** after the receipt of the warning notice of determination up to the time when the notice of determination is issued.

11.2.2 The Client-Contractor shall reimburse the Sub-Contractor all the direct loss and/or expense caused to the Sub-Contractor by the determination.

## 11.3 Termination of Client-Contractor's Contract by himself

If for any reason the Client-Contractor's contract for the Client-Contract Works is terminated by himself or his employment under the contract is determined by himself, then the employment of the Sub-Contractor under this Sub-Contract shall also determine at the same time. This shall be without prejudice to any other rights or remedies which the Contract Parties may possess.

## 11.4 Termination of Client-Contractor's Contract by Upper-tier Contractor

If for any reason the Client-Contractor's contract for the Client-Contract Works is terminated by the Upper-tier Contractor or his employment under the contract is determined by the Upper-tier Contractor, then the employment of the Sub-Contractor under this Sub-Contract shall also determine at the same time. This shall be without prejudice to any other rights or remedies which the Contract Parties may possess.

**11.5 Consequences after determination or termination**

- 11.5.1 Clauses 11.5 to 11.8 shall apply, only when Clause 11.1, 11.2, 11.3 or 11.4 is invoked.
- 11.5.2 The Sub-Contractor shall immediately give up any possession of the Site and demobilize his people (and hand tools normally carried by the workers without transportation aid) from the Site except those necessary to attend to site security, site survey and handover but only for the time specified by the Client-Contractor as being reasonably required for that purpose.
- 11.5.3A If Clause 11.1 or 11.4 is invoked, all materials or the Sub-Contractor's self-owned temporary site facilities (except hand tools as aforesaid) shall not be removed from the Site (unless instructed or agreed by the Client-Contractor), may be used by others for the completion of the Sub-Contract Works, and may be sold or disposed of when no longer required. Temporary site facilities not owned by the Sub-Contractor shall not be removed from the Site until **7 days** after the date of determination so as to provide an opportunity for agreeing arrangements for their continued use on the Site, shall be removed from the Site by their owners or the Sub-Contractor after this period after giving advance notice (unless agreements have been reached), may be used by others for the completion of the Sub-Contract Works before their removal from the Site, and may be sold or disposed of by others when their owners or the Sub-Contractor fail to remove them from the Site within **7 days** after being instructed to do so.
- 11.5.3B If Clause 11.2 or 11.3 is invoked, all materials and temporary site facilities (except hand tools as aforesaid) provided by the Sub-Contractor shall not be used by others (except for safety or stability purposes) on the Site until **7 days** after the date of determination so as to provide an opportunity for agreeing arrangements for their continued use on the Site, and shall be removed from the Site by their owners or the Sub-Contractor after this period after giving advance notice (unless agreements for their use have been reached), and may be sold or disposed of when their owners or the Sub-Contractor fail to remove them from the Site within **7 days** after being instructed to do so.
- 11.5.4 When removing materials or temporary site facilities, the Sub-Contractor and aforesaid owners shall exercise due care and provide suitable safety provisions so as not to affect the safety and stability of work and other objects remaining on site or endanger personal safety.
- 11.5.5 The Client-Contractor shall so far as practicable provide or cause the Ultimate Client or any Upper-tier Contractors to provide site security to prevent improper removal and unauthorised access and provide safety measures to protect the Sub-Contract Works, people and adjoining properties.
- 11.5.6 The Client-Contractor and the Sub-Contractor shall as soon as practicable jointly take records of the status and quantities of the work done and materials and temporary site facilities on site.
- 11.5.7 Mutual agreements shall be made as far as possible to assign the contracts with the Sub-Contractor's suppliers and sub-sub-contractors to enable them to be employed and paid to continue to provide their service, warranties, guarantees on similar terms to their existing contracts.
- 11.5.8 The additional costs incurred in implementing the above procedures and measures shall be part of the direct loss and/or expense due to determination.

11.5.9A If Clause 11.1 is invoked, the Client-Contractor shall as soon as practicable employ and pay other persons or his own workers (collectively called "others" under this Clause 11) to carry out and complete the Sub-Contract Works. If the Client-Contractor does not employ others within **6 months** after determination to carry out the Sub-Contract Works left outstanding, the employment shall be deemed to have been effected by the end of the said **6 months**.

11.5.9B If Clause 11.2 or 11.3 or 11.4 is invoked, the Sub-Contract Works may be carried out by others.

## 11.6 Computation of balance of payment

11.6.1A In case Clause 11.1 is invoked:

- (a) The following shall be computed, and the Sub-Contractor shall be entitled to recover a positive balance or be liable for a negative balance:

Amount payable to the Sub-Contractor:

- (1) the total amount that would have been payable to the Sub-Contractor for completing the Sub-Contract Works calculated according to this Sub-Contract if the determination had not occurred.

Less deductions for:

- (2) the expenses incurred by the Client-Contractor in completing the Sub-Contract Works, excluding the costs of Variations instructed after determination;
- (3) the total amount previously paid to the Sub-Contractor; and
- (4) the direct loss and/or expense caused to the Client-Contractor by the determination, including damages for delayed completion of the Sub-Contract Works calculated up to the original completion date of the completion sub-contract.

- (b) The Client-Contractor and the Sub-Contractor shall exchange their computations of the balance of payment with supporting documentation as soon as practicable within **2 months** after the Client-Contractor employs other person to carry out the Sub-Contract Works.

11.6.1B In case Clause 11.2 or 11.3 is invoked:

- (a) The following shall be computed, and the Sub-Contractor shall be entitled to recover a positive balance or be liable for a negative balance:

Amount payable to the Sub-Contractor:

- (1) the gross valuation of the Sub-Contract Works according to Clause 6.15.1(a), excluding materials removed by the Sub-Contractor after determination or termination, but including materials that the Sub-Contractor has paid for, or is legally bound to pay for, and has transferred or will transfer the ownership title to these materials to the Client-Contractor;
- (2) the direct loss and/or expense caused to the Sub-Contractor by the determination or termination;

Less deductions for:

- (3) damages for delayed completion of the Sub-Contract Works according to Clause 4.9 which may accrue up to the date of determination or termination; and
  - (4) the total amount previously paid to the Sub-Contractor.
- (b) The Client-Contractor and the Sub-Contractor shall exchange their computations of the balance of payment with supporting documentation as soon as practicable within **2 months** after the determination or termination.

11.6.1C In case Clause 11.4 is invoked:

- (a) The following shall be computed, and the Sub-Contractor shall be entitled to recover a positive balance or be liable for a negative balance:

Amount payable to the Sub-Contractor:

- (1) the gross valuation of the Sub-Contract Works according to Clause 6.15.1(a), excluding materials removed by the Sub-Contractor after termination, but including materials that the Sub-Contractor has paid for, or is legally bound to pay for, and has transferred or will transfer the ownership title to these materials to the Client-Contractor;
- (2) the direct loss and/or expense caused to the Sub-Contractor by the termination, if Clause 11.4 is invoked not principally due to some breach of contract or other default by the Sub-Contractor;

Less deductions for:

- (3) damages for delayed completion of the Sub-Contract Works according to Clause 4.9 which may accrue up to the date of termination;
  - (4) the direct loss and/or expense caused to the Client-Contractor by the termination, if Clause 11.4 is invoked principally due to some breach of contract or other default by the Sub-Contractor; and
  - (5) the total amount previously paid to the Sub-Contractor.
- (b) The Client-Contractor and the Sub-Contractor shall exchange their computations of the balance of payment with supporting documentation as soon as practicable within **2 months** after the termination, except that the deduction for direct loss and/or expense caused to the Client-Contractor may be raised later but within **1 month** after the receipt of direct loss and/or expense claim from the Upper-tier Contractor.

**11.7 Final Account after determination or termination**

- 11.7.1 In lieu of Clauses 6.16 and 6.17, the Client-Contractor and the Sub-Contractor shall discuss and agree the balance of payment as soon as practicable. Response with agreement or counter-offer to the other party's submission shall be made within **1 month** after receipt. Upon agreement, the Client-Contractor shall issue a Final Account showing a summary computation of the balance of payment for signing by the Contract Parties.
- 11.7.2 If the Client-Contractor considers that he has taken into account all the representation of the Sub-Contractor but still fails to obtain the Sub-Contractor's agreement, he shall issue a unilateral Final Account by registered post or recorded delivery to the Sub-Contractor and declare it as such.
- 11.7.3 If within **1 month** after the receipt of the unilateral Final Account, the Sub-Contractor makes no written objection to the unilateral Final Account by registered post or recorded delivery to the Client-Contractor, the unilateral Final Account shall be deemed to have been agreed by the Sub-Contractor. If the Sub-Contractor raises written objection within the said period, the unilateral Final Account shall become void. Any further unilateral Final Account shall still be governed by this clause.
- 11.7.4 The agreed or deemed agreed Final Account shall be deemed to have taken into account all factors affecting the computation of the final Sub-Contract Price and known at the time of agreement, but shall not prejudice the Sub-Contractor's liability for latent defects, and shall not release the liabilities of the Contract Parties in respect of matters affected by any bribery offence, fraud, dishonesty or fraudulent concealment.

**11.8 Payments after determination or termination**

- 11.8.1 Before the agreement of the Final Account, the Contract Party liable for payment shall pay the other party once every **2 months** any outstanding balance of payment calculated by him at that time.
- 11.8.2 The final balance of payment due from one Contract Party to the other shall be paid within **14 days** after the signing of the Final Account or after the deemed agreement of the unilateral Final Account.

**12. DISPUTE RESOLUTION****12.1 Appointment of dispute resolution advisor**

The Contract Parties may agree to jointly appoint a dispute resolution advisor based on a mutually agreed terms of reference on a regular basis during the course of this Sub-Contract to help resolve any disputes (including differences) between them that may arise under or in connection with this Sub-Contract. The Contract Parties shall equally share the payment to the dispute resolution advisor.

## 12.2 Procedures

Any disputes between the Contract Parties, including disagreement between them over any act or omission of the types stated in Clause 12.6.1(d) of the Client-Contractor, which cannot be resolved with or without the appointment of a dispute resolution advisor shall be resolved according to Clauses 12.3 to 12.6. This clause does not preclude the Contract Parties from using other dispute resolution methods mutually agreed between themselves.

## 12.3 Reference to Designated Representatives

12.3.1 Each of the Contract Parties shall designate one of his own senior executives not involved in the daily operations of this Sub-Contract as his representative (called "the Designated Representative") within **14 days** after the Sub-Contract Award Date.

12.3.2 The dispute shall first be referred to the Designated Representatives who shall forthwith meet, discuss and endeavour to settle the dispute.

## 12.4 Reference to third-party neutral

12.4.1 If the dispute is not resolved by the Designated Representatives within **28 days** after the dispute being referred to them, before resorting to arbitration, the Contract Parties shall resolve the dispute using a mutually agreed more expedient and less costly method whereby a mutually agreed and appointed third-party neutral, being an expert in conducting the process or an expert in the matter in dispute, will, depending on the method selected, impartially advise, mediate, conciliate, adjudicate, certify, determine, adopt a shorter form of arbitration, or use other means to resolve the dispute such that the share of liabilities and costs between the Contract Parties can be established.

12.4.2 The Contract Parties shall equally share the payment to the third-party neutral.

12.4.3 When proposing and agreeing on the dispute resolution method, the Contract Parties shall state whether the method resorts to a settlement agreement mutually agreed between the Contract Parties or a decision of the third-party neutral and, in the latter case, whether the decision is for reference only, or temporarily binding unless otherwise overruled by arbitration, or final and binding.

12.4.4 Within **5 days** (excluding Saturdays, Sundays and public holidays) after either Contract Party notifies the other in writing to resolve disputes according to this Clause 12.4, the Contract Parties shall exchange their own proposed lists of dispute resolution methods. Within the next **5 days** (excluding Saturdays, Sundays and public holidays), they shall select one method from the combined list by progressive elimination of those having the greater difference in preferences. If no agreement is reached within the latter **5 days**, facilitative mediation resorting to a settlement agreement mutually agreed between the Contract Parties shall be used.

12.4.5 Within **5 days** (excluding Saturdays, Sundays and public holidays) after the selection of the dispute resolution method, the Contract Parties shall propose and exchange their own lists of persons to be appointed as the third-party neutral. Within the next **5 days** (excluding Saturdays, Sundays and public holidays), they shall select one person from the combined list by progressive elimination of those having the greater difference in preferences. If no agreement is reached after the latter **5 days**, the person shall be the one nominated by the Hong Kong International Arbitration Centre upon the request of either Contract Party. The appointment shall be concluded within **5 days** (excluding Saturdays, Sundays and public holidays) after agreement or nomination.

12.4.6 Before or upon the appointment of the third-party neutral, the following shall be stated in writing by the Contract Parties, preferably with the assistance of the third-party neutral:

- (a) The scope of the dispute to be resolved and the terms of reference of the third-party neutral.
- (b) The rules to be followed for conducting the process.
- (c) The extent to which the information exchanged during the process is confidential, privileged and not be disclosed by the recipients of the information outside the process.

## 12.5 Reference to arbitration

12.5.1 If the dispute is not settled according to Clause 12.4 within **2 months** after the appointment of the third-party neutral or within such other time as agreed between the Contract Parties, either Contract Party may notify the other in writing to refer the dispute to arbitration.

12.5.2 The person to act as the arbitrator shall be agreed between the Contract Parties. If the Contract Parties are unable to agree on the person to act as the arbitrator within **14 days** after a written request by either Contract Party to do so, the arbitrator shall be the one appointed by the Hong Kong International Arbitration Centre upon the request of either Contract Party.

12.5.3 The arbitration shall be a domestic arbitration conducted according to the Arbitration Ordinance (Chapter 609, Laws of Hong Kong) and, unless otherwise agreed by the Contract Parties, according to the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre.

## 12.6 Arbitrator's powers

12.6.1 The arbitrator's powers include:

- (a) rectifying this Sub-Contract to accurately reflect the true agreement made by the Contract Parties;
- (b) directing measurements or valuations to determine the rights of the Contract Parties;
- (c) assessing and awarding any sum which ought to have been the subject of or included in a payment; and
- (d) opening up, reviewing and revising, without limitation, the giving, submitting or issuing of any agreement, approval, assessment, authorisation, certificate, confirmation, consent, decision, delegation, direction, dissent, determination, endorsement, instruction, notice, notification, opinion, request, requirement, statement, termination or valuation.

12.6.2 The place of arbitration shall be Hong Kong.

## 12.7 Sub-Contractor to continue to proceed diligently

The Sub-Contractor shall continue to proceed regularly and diligently with the Sub-Contract Works despite a dispute having arisen, and shall continue to give effect to all instructions from the Client-Contractor unless and until they are revised by dispute resolution under this Clause 12.

## 12.8 Governing law

This Sub-Contract shall be governed by and construed according to the laws for the time being in force in Hong Kong.