



# TOCO General Conditions of Contract - Major Services

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## 1. DEFINITIONS

The following definitions shall be used for the purpose of interpreting the SUBCONTRACT. Further definitions not contained in this Clause shall apply to the Section in which they are stated and subsequent Sections thereafter.

- 1.1 "ABC PROGRAMME" means an anti-bribery and corruption policy and any related procedures as amended, varied or supplemented from time to time, which (without limitation) may include policies, procedures and controls relating to recording of financial transactions; anti-bribery and corruption risk assessment and mitigation; training of personnel; whistle blowing facilities; due diligence on third party engagements/SUBCONTRACTS; gifts and hospitality; promotional expenditures; sponsorship and charitable donations; and promoting and monitoring compliance.
- 1.2 "ADDITIONAL CONDITIONS" shall mean any Special Conditions, SUBCONTACT clauses or a GCC APPENDIX, contained within, attached, or appended to the SUBCONTRACT and which forms an integral part of the SUBCONTRACT. ADDITIONAL CONDITIONS shall, in the event of any conflict or ambiguity arising, take precedence over these General Conditions of Contract.
- 1.3 "AFFILIATE" means any subsidiary or parent or holding company of any company or any other subsidiary of such parent or holding company.
- 1.4 "APPLICABLE ANTI-BRIBERY LAWS" means any laws, regulations and other legally binding measures relating to bribery, corruption or similar activities of (i) the United Kingdom, including without limitation the Bribery Act 2010; (ii) the United States of America including, to the extent applicable to either PARTY, the Foreign Corrupt Practices Act 1977; and (iii) any country or countries in which any of the obligations of the SUBCONTRACT are to be or are performed.
- 1.5 "CLIENT" shall mean the party to which the COMPANY has entered into a separate contractual relationship for which the requirements of the SUBCONTRACT are destined.
- 1.6 "COMPANY" shall mean the person, persons, firm or company named in the SUBCONTRACT to receive the SERVICES hereinafter defined and shall include the COMPANY's legal personal representatives, successors and assigns.
- 1.7 "COMPANY GROUP" means the COMPANY, its AFFILIATES and their respective directors, officers and employees (including agency personnel), but shall not include any member of the SUBCONTRACTOR GROUP.
- 1.8 "COMPANY REPRESENTATIVE" means that person referred to in Clause 3.2.
- 1.9 "COMPETENT AUTHORITY" means (i) any person having legal, executive and/or regulatory authority and/or enforcement powers (including any public body or authority responsible for the investigation and/or prosecution of criminal offences) over either or both of the PARTIES or any of their AFFILIATES providing services in connection with this SUBCONTRACT; and/or (ii) any court of law or tribunal with jurisdiction over either or both of the PARTIES or any of their AFFILIATES providing services in connection with the SUBCONTRACT.
- 1.10 "COMPLETION" means completion of the whole of the SERVICES in accordance with Clause 26.
- 1.11 "COMPLETION CERTIFICATE" means the certificate issued pursuant to Clause 26 in respect of the whole or the relevant part of the SERVICES.
- 1.12 "COMPLETION DATE" means the date shown on the COMPLETION CERTIFICATE on which the whole or the relevant part of the SERVICES was actually completed.
- 1.13 "DELIVERY DATE" shall mean the periods or date(s) upon which the SERVICES shall be delivered as specified in the SUBCONTRACT.
- 1.14 "GCC APPENDIX" shall mean the document so titled and attached to the SUBCONTRACT and which forms an integral part of the SUBCONTRACT. The GCC APPENDIX contains specific information as may be required to supplement these General Conditions of Contract to provide more specific meaning and precision.
- 1.15 "HANDOVER CERTIFICATE" means the certificate which is issued by the COMPANY pursuant to Clause 26. in respect of the handover of the relevant part of the PERMANENT WORK by the SUBCONTRACTOR to the care, custody and control of the COMPANY.
- 1.16 "INSPECTION AND TEST PLAN" shall mean the detailed schedule of events related to the Quality Assurance and Quality Control activities performed by the SUBCONTRACTOR necessary to ensure that the GOODS are produced in accordance with the SCOPE and the TECHNICAL INFORMATION, submitted to the COMPANY to allow its personnel to witness such events as may be required from time to time.
- 1.17 "LOCAL LAW" means the laws of the country in which the COMPANY is located as derived from the COMPANY address in the SUBCONTRACT.
- 1.18 "PARTY" shall mean either of the COMPANY or the SUBCONTRACTOR or if used in the plural, both.
- 1.19 "PERMANENT WORK" means the property of the CLIENT arising from the delivery of the SERVICES.
- 1.20 "PRICE" means the agreed monetary value(s) for the delivery of the SERVICES as detailed in the SUBCONTRACT. Unless specified otherwise in the SUBCONTRACT the PRICE is fixed and firm for the duration of the SUBCONTRACT, is exclusive of applicable Value Added Tax ("VAT") but subject to applicable VAT, and includes all other taxes, duties, fees or any other fiscal charges as may be applicable.
- 1.21 "PROGRAMME" means the detailed work plan for carrying out the entire requirements including the supply of SERVICES as applicable, which shall be prepared by the SUBCONTRACTOR and which the COMPANY has approved as the current



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detailed work plan that the SUBCONTRACTOR shall use in the execution of the SUBCONTRACT in accordance with Clause 10.

- 1.22 "SCHEDULED COMPLETION DATE" means the date by which the SUBCONTRACTOR is required to achieve COMPLETION.
- 1.23 "SCOPE" means the technical description for the performance of the SERVICES as found in the TECHNICAL INFORMATION and the SUBCONTRACT.
- 1.24 "SERVICES" means all work, services and labour that the SUBCONTRACTOR is required to carry out in accordance with the provisions of the SUBCONTRACT.
- 1.25 "SUBCONTRACT" shall mean the contract formed by the acceptance of this SUBCONTRACT and shall incorporate these General Conditions of Contract as may be amended by any ADDITIONAL CONDITIONS referred to in this SUBCONTRACT or attached to it.
- 1.26 "SUBCONTRACTOR" shall mean the person, persons, firm or company named in the SUBCONTRACT to supply SERVICES hereinafter defined and shall include their legal personal representatives, successors and assigns.
- 1.27 "SUBCONTRACTOR GROUP" means the SUBCONTRACTOR, its SUB- SUBCONTRACTORS, its AFFILIATES, and their respective directors, officers and employers (including agency personnel), but shall not include any member of the COMPANY GROUP.
- 1.28 "SUBCONTRACTOR REPRESENTATIVE" means that person referred to in Clause 3.3.
- 1.29 "SUB-SUBCONTRACTOR" means any party in contractual relationship with the SUBCONTRACTOR (other than the COMPANY or any employees of the SUBCONTRACTOR) for the performance of any part of the SERVICES.
- 1.30 "TECHNICAL INFORMATION" means all such information provided by or caused to be provided by the COMPANY pursuant to the SUBCONTRACT including but not limited to the SCOPE, data sheets, standards, charts, tables, schedules, scope of supply, drawings and the such like.
- 1.31 "VARIATION" means both:
  - (a) an instruction to the SUBCONTRACTOR in accordance with Clause 13.1; and
  - (b) an adjustment to the COMPLETION DATE and/or PRICE to which the SUBCONTRACTOR is entitled under the SUBCONTRACT.
- 1.32 "VAT" means the Value-Added Tax applicable to the supply of the SERVICES under the relevant taxation regime.
- 1.33 "WORKER WELFARE PROCEDURE" means the COMPANY procedure as updated by the COMPANY from time to time which defines the requirements for the promotion of worker welfare and the eradication of modern slavery, as found in the TECHNICAL INFORMATION or accessible in the COMPANY main office and available to the SUBCONTRACTOR on demand.
- 1.34 "WORKPOINT" means an offshore location, vessel, barge or ship from which exploration, extraction or exploitation of hydrocarbons is carried out.
- 1.35 "WORKSITE" means the lands, waters and other places on, under, in or through which any SERVICES are to be performed including offshore installations, design offices, workshops and places where equipment, materials or supplies are being obtained, stored or used for the purposes of the SUBCONTRACT.

## 2. INTERPRETATION

- 2.1 All instructions, notices, agreements, authorisations, approvals and acknowledgements shall be in writing. All such documentation together with all correspondence and other documents shall be in the English language.

Nevertheless, if for any reason it is considered necessary by the COMPANY to give an instruction to the SUBCONTRACTOR orally in the first instance, the SUBCONTRACTOR shall comply with such instruction. Any such oral instruction shall be confirmed in writing as soon as is possible under the circumstances, provided that, if the SUBCONTRACTOR confirms in writing any such oral instruction which is not contradicted in writing by the COMPANY without undue delay, it shall be deemed to be an instruction in writing by the COMPANY.
- 2.2 Any reference to statute, statutory provision or statutory instrument shall include any re-enactment or amendment thereof for the time being in force.
- 2.3 Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa.

## 3. REPRESENTATIVES

### 3.1 General

- (a) The COMPANY REPRESENTATIVE and the SUBCONTRACTOR REPRESENTATIVE are the respectively nominated persons from the PARTIES, as advised by the PARTIES to each other, to represent their interests in the delivery of any SERVICES under the SUBCONTRACT.
- (b) Such representatives, or delegates appointed in accordance with the provisions of this Clause, shall be readily available to enable both PARTIES to discharge their obligations under the SUBCONTRACT.



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- (c) The COMPANY REPRESENTATIVE and any formally delegated alternative shall have access at all reasonable times to the premises of the SUBCONTRACTOR, and the WORKSITE, and the SUBCONTRACTOR shall afford every facility for and every assistance in obtaining the right of access.

## 3.2 Company Representative

- (a) The COMPANY REPRESENTATIVE has the authority to commit the COMPANY in all matters relating to the delivery of SERVICES under the SUBCONTRACT and, subject to any delegation of such authority which shall be notified to the SUBCONTRACTOR in writing, shall be responsible for issuing to and receiving from the SUBCONTRACTOR all notices, information, instructions and decisions.
- (b) By notice to the SUBCONTRACTOR, the COMPANY REPRESENTATIVE may at any time delegate any of his authority to any nominated deputy. Such notice shall specify the precise authority of any such deputy and shall be sent to the SUBCONTRACTOR REPRESENTATIVE.
- (c) The COMPANY may change the COMPANY REPRESENTATIVE at any time and shall notify the SUBCONTRACTOR of any change.
- (d) Except as expressly stated otherwise in the SUBCONTRACT, the COMPANY REPRESENTATIVE has no powers to amend the SUBCONTRACT or to relieve the SUBCONTRACTOR from any of its obligations under the SUBCONTRACT.

## 3.3 Subcontractor Representative

- (a) The SUBCONTRACTOR REPRESENTATIVE has the authority to commit the SUBCONTRACTOR to any course of action within the rights and obligations of the SUBCONTRACTOR for the delivery of SERVICES under the SUBCONTRACT and, subject to any delegation of such authority, shall be responsible for issuing to and receiving from the COMPANY all relevant notices, information, instructions and decisions.
- (b) The SUBCONTRACTOR REPRESENTATIVE may delegate any of his authority to any nominated deputy, the terms of such delegation being subject to the prior approval of the COMPANY which shall not be unreasonably withheld or delayed.
- (c) The SUBCONTRACTOR shall not change the SUBCONTRACTOR REPRESENTATIVE or any nominated deputy without cause without the prior approval of the COMPANY which shall not unreasonably be withheld or delayed.
- (d) The SUBCONTRACTOR REPRESENTATIVE has no powers to amend the SUBCONTRACT.

## 4. SUBCONTRACTORS GENERAL OBLIGATIONS

- 4.1 The SUBCONTRACTOR must acknowledge receipt and acceptance of the SUBCONTRACT without reservation within 10 days from the date of issuance of the SUBCONTRACT. In the event that the SUBCONTRACTOR does not formally acknowledge receipt or acceptance of the SUBCONTRACT, but commences performance of the SUBCONTRACT requirements, it is deemed and agreed that the SUBCONTRACTOR consents and accepts the SUBCONTRACT on the terms contained therein.
- 4.2 The SUBCONTRACTOR shall provide all management, supervision, personnel, materials and equipment, (except materials and equipment specified to be provided by the COMPANY), plant, consumables, facilities and all other things whether of a temporary or permanent nature, so far as the necessity for providing the same is specified in or reasonably to be inferred from the SUBCONTRACT.
- 4.3 The SUBCONTRACTOR shall carry out all of its obligations under the SUBCONTRACT and shall deliver the SERVICES with all due care and diligence and with the skill to be expected of a reputable SUBCONTRACTOR experienced in the supply of the types of SERVICES to be carried out under the SUBCONTRACT.
- 4.4 The materials and equipment or parts thereof provided by the SUBCONTRACTOR shall be new, or, subject to the COMPANY's approval, as new, of good quality and workmanship, fit for the purposes specified in the SUBCONTRACT or may be reasonably inferred from it, or where no such purpose is specified, fit for its ordinary purpose.
- 4.5 Except to the extent that it may be legally or physically impossible or create a hazard to safety the SUBCONTRACTOR shall comply with the COMPANY's instructions and directions on all matters relating to the delivery of the SERVICES.
- 4.6 In order to ensure that delivery of the SERVICES are not delayed or impeded the SUBCONTRACTOR shall be responsible for the timely provision of all matters referred to in Clause 4. and, where provided for elsewhere in the SUBCONTRACT, for the timely request of COMPANY provided materials and equipment.
- 4.7 During the delivery of the SERVICES the COMPANY may engage third parties to provide other services in connection with its operations at the WORKSITE. The SUBCONTRACTOR where required to do so shall permit free access to the WORKSITE to such third parties and shall co-operate with them and afford all reasonable facilities to them.

## 5. COMPANY PROVIDED MATERIALS AND SERVICES

- 5.1 The COMPANY shall provide the materials and equipment as specified in the SUBCONTRACT for SUBCONTRACTORS specified use.
- 5.2 Notwithstanding the provisions of Clause 21.2, the SUBCONTRACTOR shall be responsible for receiving, unloading and handling such items when delivered to the SUBCONTRACTOR. The SUBCONTRACTOR shall visually inspect all such items and check all supporting documentation and shall notify the COMPANY of any discrepancy or damage within 3 working



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days of receipt or such other period as may from time to time be agreed. Receipt of all such items shall be recorded in writing. In the absence of any notification of discrepancy or damage such items shall be deemed to have been delivered in a complete and undamaged state to the extent that any discrepancy or damage could have been discovered by a visual inspection. The SUBCONTRACTOR shall not however be liable for any latent defects in any such items.

- 5.3 The SUBCONTRACTOR shall carry out all special tests and inspections on materials and equipment supplied by the COMPANY which are detailed in the SCOPE or any TECHNICAL INFORMATION and shall notify the COMPANY of the results of such tests and inspections.
- 5.4 The SUBCONTRACTOR shall maintain in a form agreed by the PARTIES adequate records of materials and equipment provided by the COMPANY and provide a regular monthly inventory to show the use of all materials and equipment received and the balance of materials and equipment unused at all times, in accordance with any relevant provisions of the SUBCONTRACT.
- 5.5 The SUBCONTRACTOR shall be responsible for providing suitable and safe storage for materials and equipment provided by the COMPANY to the SUBCONTRACTOR for the delivery of the SERVICES and shall comply with any particular storage requirements set out in the TECHNICAL INFORMATION. Notwithstanding the provisions of Clause 21.2 the SUBCONTRACTOR shall make good any loss or damage to such materials and equipment which may occur whilst in the possession or control of the SUBCONTRACTOR and, to the extent that it results from any non-compliance with the SCOPE, any deterioration that may occur.
- 5.6 The SUBCONTRACTOR shall notify the COMPANY of all unused or surplus materials or equipment provided by the COMPANY in accordance with any relevant provisions of the SUBCONTRACT.
- 5.7 Where SERVICES are to be performed offshore the COMPANY shall arrange, at no cost to the SUBCONTRACTOR, routine, scheduled CLIENT transportation for SUBCONTRACTOR personnel and transportation for SUBCONTRACTOR provided equipment and materials which are capable of transportation by helicopter or supply boat between the designated heliport and supply base as can be found in the TECHNICAL INFORMATION.
- 5.8 The cost of non-routine, unscheduled CLIENT transportation for SUBCONTRACTOR personnel and transportation for SUBCONTRACTOR provided equipment and materials caused by SUBCONTRACTOR will be recoverable from the SUBCONTRACTOR.

## 6. SUBCONTRACTOR TO INFORM ITSELF

- 6.1 The SUBCONTRACTOR shall be deemed to have satisfied itself, before entering into the SUBCONTRACT, as to the extent and nature of the SERVICES including but not limited to the services, personnel, materials and equipment, plant, consumables and facilities required, the correctness and sufficiency of the rates and prices quoted, the TECHNICAL INFORMATION provided, general and local conditions including climatic, sea, other water and weather conditions, and all other matters which could affect efficient delivery and execution of the SUBCONTRACT.
- 6.2 Any failure by the SUBCONTRACTOR to take account of matters which affect delivery will not relieve the SUBCONTRACTOR from its obligations under the SUBCONTRACT.

## 7. DUTY TO INFORM

- 7.1 The SUBCONTRACTOR shall notify the COMPANY without undue delay of all things which in the opinion of the SUBCONTRACTOR appear to be deficiencies, omissions, contradictions or ambiguities in the SUBCONTRACT or conflicts with applicable law. The COMPANY shall review these items and issue the necessary instructions before the SUBCONTRACTOR proceeds with any part of the affected SERVICES.
- 7.2 In addition to any Health, Safety and Environment requirements of the TECHNICAL INFORMATION and the provisions of Clause 38, the SUBCONTRACTOR shall notify the COMPANY without delay of any accidents which occur in connection with the carrying out of the requirements of the SUBCONTRACT.  
The SUBCONTRACTOR shall also notify the COMPANY of any other incidents which occur which might affect the carrying out of the SUBCONTRACT requirements or may pose a risk to the delivery of the SERVICES.
- 7.3 The SUBCONTRACTOR shall notify the COMPANY immediately of any proposed or actual stoppages of work, industrial disputes or other matters affecting or likely to affect the delivery or completion of the SERVICES.  
When requested by the COMPANY the SUBCONTRACTOR shall also supply to the COMPANY information relating to industrial relations including but not limited to minimum rates of pay, allowances, amenities, working hours, periods of unpaid leave and overtime.
- 7.4 The COMPANY shall without delay provide to the SUBCONTRACTOR all information affecting delivery which the SUBCONTRACTOR reasonably requires and requests from the COMPANY in order to properly deliver in accordance with the SUBCONTRACT.



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## 8. ASSIGNMENT AND SUB-SUBCONTRACTORS

### 8.1 Assignment

- (a) The COMPANY is entitled to assign the SUBCONTRACT or any part of it or any benefit or interest in or under it to any AFFILIATE of the COMPANY. In addition, the COMPANY may make any such assignment to any other third party at its sole discretion.
- (b) The SUBCONTRACTOR undertakes that, in the event of any assignment described above, it will execute without delay a formal assignment of interest in the SUBCONTRACT to the relevant party, to be effective upon the written assumption by the assignee of all obligations of the COMPANY under the SUBCONTRACT.
- (c) The SUBCONTRACTOR shall assign neither the SUBCONTRACT nor any part of it nor any benefit or interest in or under it without the prior approval of the COMPANY which shall not unreasonably be withheld or delayed.

### 8.2 Sub-Subcontractors

- (a) The SUBCONTRACTOR shall not place any significant portion of the SERVICES with a SUB-SUBCONTRACTOR without the prior approval of the COMPANY.
- (b) Before entering into any contractual arrangement with SUB-SUBCONTRACTOR for the delivery of any element of the SERVICES, whether provided for in the SUBCONTRACT or not, the COMPANY shall be given an opportunity to review the form of contract, the basis of choice for the SUB-SUBCONTRACTOR, the part of the SERVICES affected and any other relevant details requested by the COMPANY.  

Where the COMPANY will be required to reimburse to the SUBCONTRACTOR the sum paid to the SUB-SUBCONTRACTOR, any procedure for award of such business included in the TECHNICAL INFORMATION shall be followed and the COMPANY shall be entitled to review all the relevant aspects of the arrangement.
- (c) No SUB-SUBCONTRACTOR subcontract shall bind or purport to bind the COMPANY in any respect. Nevertheless, the SUBCONTRACTOR shall ensure that any SUB-SUBCONTRACTOR shall be bound by and observe the provisions of the SUBCONTRACT in so far as they apply to the SUB-SUBCONTRACTOR.  

Each SUB-SUBCONTRACTOR subcontract shall expressly provide for the SUBCONTRACTORS unconditional right of assignment of the SUB-SUBCONTRACTOR subcontract to the COMPANY in the event that the COMPANY terminates the SUBCONTRACT.
- (d) The SUBCONTRACTOR shall be responsible for all work, acts, omissions and defaults of any SUB-SUBCONTRACTOR as fully as if they were work, acts, omissions or defaults of the SUBCONTRACTOR.

## 9. SUBCONTRACTOR PERSONNEL

- 9.1 The SUBCONTRACTOR undertakes to provide sufficient personnel at all times to ensure proper delivery and completion of the SERVICES in accordance with the provisions of the SUBCONTRACT.
- 9.2 All personnel engaged in the delivery of the SERVICES shall, for the work which they are required to perform, be competent, properly qualified, skilled and experienced in accordance with good industry practice. The SUBCONTRACTOR shall verify all relevant qualifications of such personnel.
- 9.3 The SUBCONTRACTOR shall ensure that the supervisory personnel of the SUBCONTRACTOR for the delivery of SERVICES shall read, write and speak fluent English.
- 9.4 The SUBCONTRACTOR shall make its own arrangements for the engagement of personnel, local or otherwise, and, save in so far as the SUBCONTRACT otherwise provides, for their payment and onshore transport, housing, maintenance and board and lodging.
- 9.5 The SUBCONTRACTOR shall be as responsible for any SERVICES performed by any agency personnel and by any other person provided by the SUBCONTRACTOR as if the SERVICES were performed by the employees of the SUBCONTRACTOR.
- 9.6 The SUBCONTRACTOR shall ensure that all employees of the SUBCONTRACTOR and any SUB-SUBCONTRACTOR engaged in the performance of the SERVICES comply with applicable laws including immigration laws and, where required are in possession of a valid work permit for the duration of the SUBCONTRACT. When requested details of such work permits shall be submitted to the COMPANY prior to the employee being engaged in the SERVICES.
- 9.7 The COMPANY may instruct the SUBCONTRACTOR to remove from the WORKSITE any person engaged in any part of the SERVICES who in the reasonable opinion of the COMPANY is either:
  - (a) incompetent or negligent in the performance of their duties; or
  - (b) engaged in activities which are contrary or detrimental to the interests of the COMPANY; or
  - (c) not conforming with relevant safety procedures or persists in any conduct likely to be prejudicial to safety, health or the environment.

Any such person shall be removed forthwith from the WORKSITE. Any person removed for any of the above reasons shall not be engaged again in the delivery of the SERVICES or on any other work of the COMPANY without the prior approval of the COMPANY.

The SUBCONTRACTOR shall provide a suitable replacement for any such person within 24 hours or such longer time as may be agreed by the COMPANY.





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## 10. PROGRAMME

- 10.1 The SUBCONTRACTOR shall be responsible for the programming of the SERVICES and for independently controlling its progress.
- 10.2 The SUBCONTRACTOR shall produce a detailed work plan which complies with any requirements set out in the SUBCONTRACT, providing for performance and completion of the requirements in accordance with the COMPLETION and DELIVERY dates.
- 10.3 The SUBCONTRACTOR shall submit the detailed work plan referred to in Clause 10.2, together with full supporting details to the COMPANY for review. When approved by the COMPANY such work plan shall become the PROGRAMME.
- 10.4 The SUBCONTRACTOR shall use the PROGRAMME as the basis for progress reporting, scheduling, forecasting and controlling the proper delivery and completion of the SERVICES.
- 10.5 In order to take account of VARIATIONS and actual delivery progress, the SUBCONTRACTOR shall continually update its detailed work plan and supporting details and regularly submit them to the COMPANY for review. Once a revised work plan has been approved by the COMPANY it shall become the PROGRAMME, there being only one PROGRAMME at any particular time.
- 10.6 If the rate of progress is at any time in the opinion of the COMPANY too slow to ensure performance and completion in accordance with the SUBCONTRACT, the COMPANY shall notify the SUBCONTRACTOR and the SUBCONTRACTOR shall thereupon inform the COMPANY of its proposals and take such steps as are necessary to expedite progress so as to complete delivery of the SERVICES to the satisfaction of the COMPANY.

## 11. TECHNICAL INFORMATION

- 11.1 The COMPANY shall provide the TECHNICAL INFORMATION to the SUBCONTRACTOR and may during the execution of the PROGRAMME issue to the SUBCONTRACTOR such modified or additional TECHNICAL INFORMATION as may be necessary for the proper delivery of the SERVICES and the SUBCONTRACTOR shall comply with the same.
- 11.2 Where the SUBCONTRACTOR is required to produce sketches, drawings, plans, calculations, reports, recommendations and the like, or the preparation of such is necessary for the delivery of the SERVICES, the SUBCONTRACTOR shall submit all such documents to the COMPANY as may be requested by the COMPANY, for review and comment. The COMPANY shall be afforded the time specified in the SUBCONTRACT (or if no time is specified a reasonable time) to carry out such review so that delivery is not delayed.
- 11.3 The SUBCONTRACTOR shall maintain at the WORKSITE a complete set of all relevant TECHNICAL INFORMATION together with all relevant documents and drawings provided by the SUBCONTRACTOR for the purposes of delivering the SERVICES. Such information shall be made available to the COMPANY REPRESENTATIVE or any other person authorised by him at all reasonable times.
- 11.4 The SUBCONTRACTOR shall carry out checks on TECHNICAL INFORMATION and the COMPANY shall not be responsible for any additional cost and/or delay that results from the SUBCONTRACTOR's omission to complete such checks promptly and properly.
- 11.5 When requested by the COMPANY the SUBCONTRACTOR shall, following COMPLETION or termination of all of the requirements of the SUBCONTRACT, return all copies of TECHNICAL INFORMATION to the COMPANY.
- 11.6 The SUBCONTRACTOR will ensure that the SERVICES will meet the COMPANY's requirements as set out in the TECHNICAL INFORMATION or the SUBCONTRACT with regard to any quality, fitness for purpose, quantity or SCOPE requirements.

## 12. INSPECTION AND TESTING

- 12.1 The SUBCONTRACTOR shall carry out all tests and inspections detailed in the SUBCONTRACT. If the COMPANY so requires, the SUBCONTRACTOR shall inspect, test or retest the products of the SERVICES in order to confirm that the requirements of the SUBCONTRACT are met. The SUBCONTRACTOR shall supply the COMPANY with certified copies of all test records and inspection reports as soon as they become available.
- 12.3 The COMPANY has the right, but not the obligation, to witness any test or inspection carried out by the SUBCONTRACTOR. The SUBCONTRACTOR shall notify the COMPANY in adequate time in order that the COMPANY may exercise this right.
- 12.4 If the COMPANY fails to attend such test or inspection at the time notified by the SUBCONTRACTOR the SUBCONTRACTOR may proceed with such test or inspection in the absence of the COMPANY.
- 12.5 In order to confirm that the requirements of the SUBCONTRACT are met, the COMPANY has the right, but not the obligation, to inspect, test and examine all things provided by the SUBCONTRACTOR against the SUBCONTRACT at all times, together with all documentation relating thereto, and to reject any item which does not comply with the requirements of the SUBCONTRACT.
- 12.6 No part of the SERVICES shall be put out of view or covered up or otherwise have access restricted or made difficult without the consent of the COMPANY. The SUBCONTRACTOR shall provide reasonable notice to the COMPANY in order to permit the inspection of any part of the SERVICES which is about to be put out of view or covered up or have access restricted. The COMPANY shall give its consent without undue delay.



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Notwithstanding the foregoing, the COMPANY shall have the right at any time to require the SUBCONTRACTOR to uncover or open up any part of the SERVICES and to reinstate such uncovered or open part following inspection and testing by the COMPANY.

- 12.7 The COMPANY shall have the right to reject any part of the SERVICES or rework which does not comply with any requirement or requirements of the SUBCONTRACT, including but not limited to, faulty workmanship, services, materials or equipment. Upon receiving notice of rejection the SUBCONTRACTOR shall immediately commence to reperform, repair or replace the defective part of the SERVICES and shall carry out such inspections and/or tests on other parts as the COMPANY may require to ensure that there are no similar parts that fail to comply with the requirements of the SUBCONTRACT.
- 12.8 Where reperformance, repair, replacement, uncovering, reinstating, testing and inspection are additional to the requirements of the SUBCONTRACT and are not the result of failure by the SUBCONTRACTOR to conform with the SUBCONTRACT on some other similar part of the SERVICES and do not reveal failure to comply with the SUBCONTRACT, such activities may be at the expense of the COMPANY. In such cases SUBCONTRACTOR shall notify the COMPANY of the potential expense in good time before the expense is incurred.
- 12.9 Neither failure on the part of the COMPANY to inspect the SERVICES or witness or test or to discover defects nor failure to reject work performed by the SUBCONTRACTOR which is not in accordance with the SUBCONTRACT shall relieve the SUBCONTRACTOR from any liability or obligation under the SUBCONTRACT.
- 12.10 In case of default on the part of the SUBCONTRACTOR in carrying out its obligations under Clause 12.7, the COMPANY, having given prior notice to the SUBCONTRACTOR, shall be entitled to undertake the SUBCONTRACTOR's responsibilities in this respect. The COMPANY shall be entitled to recover from the SUBCONTRACTOR all costs reasonably incurred by the COMPANY in carrying out such responsibilities.

## 13. VARIATIONS

### 13.1 Right to Issue Instructions

- (a) The COMPANY has the right to issue instructions to the SUBCONTRACTOR at any time to make any revision to the SERVICES which may include additions, omissions, substitutions and changes in quality, form, character, kind, position or dimension.
- (b) An instruction under Clause 13.1 (a) may constitute a VARIATION, nevertheless when required by the COMPANY, on receipt of any such instruction, the SUBCONTRACTOR shall proceed immediately as instructed even though the potential affect upon the PRICE and/or COMPLETION and DELIVERY DATES may not have been determined.

### 13.2 Variation Basis

- (a) Prior to instructing or authorising any VARIATION, the COMPANY may require the SUBCONTRACTOR to submit estimates as requested by the COMPANY.
- (b) The PRICE and/or COMPLETION and DELIVERY DATES shall be subject to adjustment only as a result of a VARIATION.
- (c) The SUBCONTRACTOR shall not be entitled to receive a VARIATION to cover any instruction, decision or act of the COMPANY which may be made or given in order to ensure that the SUBCONTRACTOR complies with any of its obligations under the SUBCONTRACT.
- (d) A VARIATION shall in no way affect the rights or obligations of the PARTIES except as expressly provided in that VARIATION. Any VARIATION shall be governed by all the provisions of the SUBCONTRACT.

### 13.3 Right to Request a Variation

- (a) If the SUBCONTRACTOR considers that an occurrence has taken place for which it is entitled to receive a VARIATION, the SUBCONTRACTOR, before proceeding with any work affected by such occurrence, shall request without delay in writing that the COMPANY issue a VARIATION. Any such request shall include details of the occurrence including any relevant dates and the Clause or Clauses of the SUBCONTRACT under which the SUBCONTRACTOR considers itself to be entitled to a VARIATION.
- (b) If the SUBCONTRACTOR fails to submit requests for VARIATIONS in accordance with Clause 13.3 (a) when it considers or should reasonably have considered that an occurrence has taken place for which it is entitled to receive a VARIATION and/or fails to provide supporting estimates in accordance with Clause 13.2 (a), the SUBCONTRACTOR shall, at the sole discretion of the COMPANY, forfeit any right to receive such VARIATIONS and any rights concerning adjustment to the PRICE and/or SCHEDULE OF KEY DATES.
- (c) The COMPANY shall within a reasonable time of having received a request for a VARIATION and the supporting estimates give notice to the SUBCONTRACTOR stating either:
- (i) that the proposed VARIATION or part thereof is accepted in principle in which case the COMPANY will issue such VARIATION; and/or
  - (ii) that what is requested or part thereof is included in the obligations undertaken by the SUBCONTRACTOR under the terms of the SUBCONTRACT and that the request is accordingly rejected; and/or
  - (iii) that the request or part thereof is rejected for other stated reasons.



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Should the SUBCONTRACTOR wish to pursue any request for a VARIATION or part thereof which has been rejected by the COMPANY it shall proceed in accordance with the provisions of Clause 13.5.

## 13.4 Adjustments

Adjustments to the PRICE and COMPLETION and DELIVERY DATES relating to any VARIATION shall be made as follows:

Wherever possible the effect (if any) of a VARIATION on PRICE and COMPLETION and DELIVERY DATES shall be agreed before the instruction is issued or before work starts, using the estimates prepared by the SUBCONTRACTOR in accordance with Clause 13.2 (a).

Failing agreement on the basis of the SUBCONTRACTOR's estimate, the COMPANY shall determine the effects of VARIATIONS in accordance with the following principles:

- (a) where work is of a similar nature and carried out under similar conditions to activities priced in the SUBCONTRACT it shall be valued at the appropriate rates and prices included in the SUBCONTRACT;
- (b) where work is not of a similar nature or is not carried out under similar conditions to work priced in the SUBCONTRACT or there are no appropriate rates or prices in the SUBCONTRACT then a fair valuation shall be made;
- (c) with respect to effect on the COMPLETION and DELIVERY DATES a fair and reasonable adjustment shall be made taking into account all relevant factors including any acceleration instructed under Clause 13.1 (a).

## 13.5 Disputed Variations

- (a) If at any time the SUBCONTRACTOR intends to claim any adjustment to the PRICE and/or COMPLETION and DELIVERY DATES additional to that previously determined by the COMPANY for a VARIATION issued by the COMPANY or requested by the SUBCONTRACTOR, the SUBCONTRACTOR shall give notice in writing of such intention without delay after the happening of the events giving rise to such claim.

Such events shall include but not be limited to the following:

- (i) rejection by the COMPANY of a request for a VARIATION made by the SUBCONTRACTOR;
- (ii) any VARIATION where effect on PRICE and/or COMPLETION and DELIVERY DATES cannot be determined at the time.

Upon the happening of such events the SUBCONTRACTOR shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make.

- (b) The SUBCONTRACTOR shall send to the COMPANY at the end of every month an account giving particulars, as full and detailed as possible, of all such claims.
- (c) If the SUBCONTRACTOR does not give notices and/or does not submit records and accounts in accordance with the provisions of Clauses 13.5 (a) and 13.5 (b) the SUBCONTRACTOR shall, at the sole discretion of the COMPANY, forfeit any right to receive any adjustment to the PRICE and/or COMPLETION and DELIVERY DATES in respect of any such claims.
- (d) Where any matter in respect to adjustments to the PRICE and/or COMPLETION and DELIVERY DATES has not been finalised and without prejudice to the rights of either PARTY, the COMPANY having taken into account the relevant provisions of the SUBCONTRACT and all other relevant factors, will make such adjustments as it considers to be fair and reasonable. The COMPANY will inform the SUBCONTRACTOR of decisions reached in this respect and will make appropriate payments in accordance with such decisions.

## 13.6 Discretionary Provision

If the SUBCONTRACTOR has forfeited the right to receive any VARIATION under the provisions of Clause 13.3 (b) and/or 13.5 (c) in respect of any occurrence which it considers would otherwise have entitled it to receive a VARIATION, the SUBCONTRACTOR shall nevertheless have the option at any time to discuss such matters with the COMPANY. The COMPANY shall, at its sole discretion, decide whether to issue a VARIATION in respect of any such matters.

## 14. FORCE MAJEURE

- 14.1 Neither PARTY shall be responsible for any failure to fulfil any term or condition of the SUBCONTRACT if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure occurrence, as hereunder defined, which has been notified in accordance with this Clause and which is beyond the control and without the fault or negligence of the PARTY affected and which, by the exercise of reasonable diligence, the said PARTY is unable to provide against.

- 14.2 For the purpose of this SUBCONTRACT only the following occurrences shall be force majeure.

- (a) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
- (b) Ionizing radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;



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- (d) Earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;
  - (e) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected PARTY and which affect a substantial or essential portion of the delivery and completion of the SERVICES;
  - (f) Maritime or aviation disasters;
- 14.3 In the event of a force majeure occurrence, the PARTY that is or may be delayed in performing the SUBCONTRACT shall notify the other PARTY without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.
- 14.4 If either PARTY is delayed in performing the SUBCONTRACT by a force majeure occurrence, the COMPLETION and DELIVERY DATES but not the PRICE, except as otherwise expressly provided in the SUBCONTRACT, shall be adjusted in accordance with Clause 13 and Clause 14.5.
- 14.5 Upon cessation of any force majeure occurrence the SUBCONTRACTOR shall prepare a revised PROGRAMME to include for rescheduling of the delivery and completion of the SERVICES so as to minimise the effects of the delay. Having made due allowance for any instruction to accelerate delivery given in accordance with Clause 13, the COMPANY shall authorise a VARIATION to adjust the COMPLETION and DELIVERY DATES in order to take into account any remaining effects of such delay.
- 14.6 Following notification of a force majeure occurrence in accordance with Clause 14.3, the PARTIES shall meet without delay with a view to agreeing a mutually acceptable course of action to minimise any effects of such occurrence.

## 15. SUSPENSION

- 15.1 The COMPANY shall have the right, by notice to the SUBCONTRACTOR, to suspend the delivery of the SERVICES or any part thereof to the extent detailed in the notice, for any of the following reasons:
- (a) subject only to Clause 15.3, in the event of some default on the part of the SUBCONTRACTOR; or
  - (b) in the event that suspension is necessary for the proper execution or safety of the SUBCONTRACT, or persons; or
  - (c) to suit the convenience of the COMPANY.
- 15.2 Upon receipt of any such notice, the SUBCONTRACTOR shall, unless instructed otherwise:
- (a) discontinue delivery of the SERVICES or the part of the SERVICES detailed in the notice, on the date and to the extent specified; and
  - (b) properly protect and secure work in progress as required by the COMPANY.
- 15.3 In the event of default on the part of the SUBCONTRACTOR and before the issue by the COMPANY of a notice to suspend the delivery of the SERVICES or any part thereof the COMPANY shall give notice of default to the SUBCONTRACTOR giving details of such default. If the SUBCONTRACTOR, upon receipt of such notice, does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of suspension in accordance with the provisions of Clause 15.1.
- 15.4 Unless the suspension arises as a result of default on the part of the SUBCONTRACTOR, the PRICE and COMPLETION and DELIVERY DATES shall be adjusted in accordance with the relevant provisions of the SUBCONTRACT or in the absence of such provisions, in accordance with Clause 13.
- 15.5 If suspension results from default on the part of the SUBCONTRACTOR, any additional costs reasonably incurred by the COMPANY as a direct result shall be recoverable by the COMPANY from the SUBCONTRACTOR.
- 15.6 The COMPANY may, by further notice, instruct the SUBCONTRACTOR to resume work to the extent specified.
- 15.7 In the event of any suspension, PARTIES shall meet at not more than 7 day intervals with a view to agreeing a mutually acceptable course of action during the suspension.
- 15.8 If the period of any suspension not arising as a result of default on the part of the SUBCONTRACTOR exceeds the longer of 8 weeks, or the period stated in the GCC APPENDIX or elsewhere in the SUBCONTRACT, the SUBCONTRACTOR may serve a notice on the COMPANY requiring permission within 2 weeks from the receipt of such notice to proceed with delivery or that part thereof subject to suspension. If within the said 2 weeks the COMPANY does not grant such permission the SUBCONTRACTOR, by a further notice, may (but is not bound to) elect to treat the suspension as either:
- (a) where it affects part only of the SUBCONTRACT, an omission of such part under Clause 13; or
  - (b) where it affects the whole of the SUBCONTRACT, termination in accordance with Clause 28.1 (a).

## 16. TERMS OF PAYMENT

- 16.1 For the performance and completion of the SERVICES, the COMPANY shall pay or cause to be paid to the SUBCONTRACTOR the amounts detailed in the SUBCONTRACT, in the manner specified in this Clause and within 90 days of receipt of a valid invoice in accordance with Clause 16.6, or alternatively the period specified in the GCC APPENDIX or in the body of the SUBCONTRACT as appropriate.



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- 16.2 Except where it is expressly provided that the COMPANY shall carry out an obligation under the SUBCONTRACT at its own cost, all things to be supplied or performed by the SUBCONTRACTOR under the SUBCONTRACT shall be deemed to be included in the SUBCONTRACT.
- 16.3 The SUBCONTRACTOR shall submit to the COMPANY an invoice within 1 month after the end of such stages as are specified in the SUBCONTRACT.
- 16.4 All prices quoted in the SUBCONTRACT are exclusive of VAT, but subject to it as applicable, and which shall be charged by, paid and accounted to the relevant tax authority by the relevant PARTY as is required under prevailing VAT legislation. Furthermore, the SUBCONTRACTOR will comply with all applicable invoicing requirements regarding the charging and accounting of VAT
- 16.5 Accompanying any invoice submitted by the SUBCONTRACTOR after COMPLETION shall be a schedule of all items for which, in the opinion of the SUBCONTRACTOR, payment is due under the SUBCONTRACT but for which, at the date of issue of the said invoice, payment in part or in full has not been received. Such items shall be limited to those for which previous notification has been given by the SUBCONTRACTOR to the COMPANY pursuant to Clauses 13.3 and 13.5. The schedule shall include estimates of cost against each item fully supported by necessary documentation as described in Clause 13.5.
- Following COMPLETION the SUBCONTRACTOR shall not be entitled to receive any payment on any invoice received by the COMPANY for the longer of, 3 months after COMPLETION or the time period specified in the GCC APPENDIX, as the latest time for receipt of invoices. Nevertheless, the COMPANY may, at its sole discretion, make payment against any such invoice.
- 16.6 Each invoice shall be correctly prepared and adequately supported and shall show separately the individual amounts rightly due and shall quote the SUBCONTRACT Number, Title and such other details as may be specified in the SUBCONTRACT.
- 16.7 Each invoice shall be forwarded to the address given in the SUBCONTRACT header or body, or that contained in the GCC APPENDIX if given.
- 16.8 Upon receipt of a correctly prepared and adequately supported invoice by the COMPANY at the address determined by the SUBCONTRACT, the COMPANY shall make payment in respect of such invoices in the currency detailed in the SUBCONTRACT to the nominated bank account of the SUBCONTRACTOR.
- 16.9 If the COMPANY disputes any items on any invoice in whole or in part or if the invoice is prepared or submitted incorrectly in any respect, the COMPANY shall notify the SUBCONTRACTOR of the reasons and request the SUBCONTRACTOR to issue a credit note for the unaccepted part or whole of the invoice as applicable. Upon receipt of such credit note the COMPANY shall be obliged to pay the undisputed part of a disputed invoice.
- If any other dispute connected with the SUBCONTRACT exists between the PARTIES the COMPANY may withhold from any money which becomes payable under the SUBCONTRACT the amount which is the subject of the dispute. The COMPANY shall not be entitled to withhold monies due to the SUBCONTRACTOR under any other SUBCONTRACT S with the COMPANY as set off against disputes under the SUBCONTRACT, nor shall it be entitled to withhold monies due under the SUBCONTRACT as set off against disputes under any other SUBCONTRACT.
- On settlement of any dispute the SUBCONTRACTOR shall submit an invoice for sums due and the COMPANY shall make the appropriate payment in accordance with the provisions of Clause 16.8 and Clause 16.11 where applicable.
- 16.10 Neither the presentation nor payment or non-payment of an individual invoice shall constitute a settlement of a dispute, an accord and satisfaction, a remedy of account stated, or otherwise waive or affect the rights of the PARTIES hereunder.
- In particular the COMPANY may correct or modify any sum previously paid in any or all of the following circumstances:
- any such sum was incorrect;
  - any such sum was not properly payable to the SUBCONTRACTOR;
  - any work in respect of which payment has been made and which does not comply with the terms of the SUBCONTRACT.
- 16.11 If the COMPANY at any time incurs costs which, under the provisions of the SUBCONTRACT, the COMPANY is entitled to recover from the SUBCONTRACTOR, the COMPANY may invoice the SUBCONTRACTOR for such costs, provided always that the COMPANY may deduct the amount of such costs from any amount due, or that may become due to the SUBCONTRACTOR under the SUBCONTRACT.
- The SUBCONTRACTOR shall pay the COMPANY within 30 days of receipt of invoice any sums outstanding after such deduction.
- 16.12 For the purposes of Clause 16.10, and elsewhere in the SUBCONTRACT, wherever a PARTY is entitled to recover from the other PARTY, any costs incurred, then the amount of such costs shall be the amount of all claims, losses, damages, charges, disbursements, costs (including amounts paid to third parties), overheads and expenses directly resulting from the matter in question, but no element of profit.



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## 17. TAXATION

- 17.1 The SUBCONTRACTOR shall, in accordance with the provisions of Clause 20, except as may otherwise be provided for elsewhere in the SUBCONTRACT, be responsible for:
- the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) for which the SUBCONTRACTOR is liable as imposed by any appropriate governmental authority, whether or not they are calculated by reference to the wages, salaries, benefits or expenses and other remuneration paid directly or indirectly to persons engaged or employed by the SUBCONTRACTOR; and
  - the payment of all taxes, duties, levies, charges and contributions (and any interest or penalties thereon) including but not limited to income, profits, corporation taxes and taxes on capital gains, turnover and added value taxes for which the SUBCONTRACTOR is liable, now or hereafter levied or imposed by any appropriate governmental authority, arising from this SUBCONTRACT; and
  - compliance with all statutory obligations to make deductions on account of tax and remit the required amounts to any appropriate governmental authority, including, but not limited to income tax, PAYE, national insurance, employee taxes, charges, social security costs, levies and contributions whether or not they are measured by the wages, salaries or other remuneration or benefits paid to persons employed by the SUBCONTRACTOR, or persons providing services in connection with the SUBCONTRACT to the SUBCONTRACTOR, and the imposition of a similar obligation upon all SUB-SUBCONTRACTORS or any other persons employed by them or providing services to them in connection with the SUBCONTRACT; and
  - ensuring that any SUB-SUBCONTRACTORS or any other person employed, or providing services on or in connection with the SUBCONTRACT shall comply with this Clause.
- 17.2 The SUBCONTRACTOR shall supply to the COMPANY all such information, in connection with activities under the SUBCONTRACT, as is necessary to enable the COMPANY to comply with the lawful demands for such information by any appropriate governmental authority.
- 17.3 The SUBCONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY against all levies, charges, contributions and taxes and any interest or penalty thereon which may be assessed, by any appropriate governmental authority, on the SUBCONTRACTOR GROUP in connection with the SUBCONTRACT and from all costs reasonably incurred in connection therewith.
- 17.4 If the COMPANY receives a notice requiring it to pay any levies, charges, contributions or taxes and/or any interest or penalty thereon whether with respect to the SUBCONTRACTOR, any SUB-SUBCONTRACTOR, their respective AFFILIATES or any other person employed by the SUBCONTRACTOR or any SUB-SUBCONTRACTOR or providing any services to the SUBCONTRACTOR or any SUB-SUBCONTRACTOR on or in connection with the SUBCONTRACT, the COMPANY shall forthwith notify the SUBCONTRACTOR who shall work with the COMPANY to make all reasonable endeavours to make any valid appeal against such payment. If the COMPANY is ultimately required to make such payment, the COMPANY may recover from the SUBCONTRACTOR any such sums and all costs reasonably incurred in connection therewith and the SUBCONTRACTOR shall within 14 days of receiving written notice from the COMPANY pay to the COMPANY any such sum or the COMPANY shall be entitled to deduct such sums from any monies due, or which may become due, to the SUBCONTRACTOR.
- 17.5 The COMPANY shall save, indemnify, defend and hold harmless the SUBCONTRACTOR against all levies, charges, contributions and taxes of the type referred to in this Clause and any interest or penalty thereon which may be assessed, by any appropriate governmental authority, on the COMPANY in connection with the SUBCONTRACT and from all costs incurred in connection therewith, other than those taxes and other matters referred to above which the provisions of this Clause allow the COMPANY to recover from the SUBCONTRACTOR.

## 18. OWNERSHIP

- 18.1 Subject to Clauses 18.2 and 18.3, the rights of possession of and right of use for the purpose of the SUBCONTRACT and the operation and maintenance of the PERMANENT WORK, and title to, copyright in and ownership of all things created under or arising out of the SUBCONTRACT, including but not limited to, drawings, specifications, calculations, other documents, computer tapes, discs and other essential recording matter, materials and work shall vest in the COMPANY as soon as the preparation, production or creation thereof commences.
- 18.2 All rights of title to, copyright in and ownership of any such items developed by the SUBCONTRACTOR outside the SUBCONTRACT shall remain with the SUBCONTRACTOR.
- 18.3 Except as provided in Clause 18.6, all rights of title to, copyright in and ownership of any such items which the SUBCONTRACTOR provides in relation to the SERVICES and which is merely supplemented, enhanced, modified or adapted in the course of executing the SUBCONTRACT shall remain with the SUBCONTRACTOR.
- 18.4 Notwithstanding Clauses 18.2 and 18.3 the SUBCONTRACTOR, from the acceptance of the SUBCONTRACT, grants the COMPANY the non-exclusive and irrevocable right to use any technical information, including software, provided by the SUBCONTRACTOR, for the life of the PERMANENT WORK for the purposes of its operation and maintenance and for no other purpose. Such right shall be non-transferable with the exception that the COMPANY may transfer such right to any successor.



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- 18.5 The COMPANY shall retain title to COMPANY provided items and information, including but not limited to, TECHNICAL INFORMATION and materials and equipment.  
The PERMANENT WORK shall be and shall remain the property of the CLIENT.
- 18.6 Subject to the provisions of Clause 19, all equipment, materials and supplies provided by the SUBCONTRACTOR for incorporation into the PERMANENT WORK shall become the property of the COMPANY upon delivery to the WORKSITE or payment by the COMPANY whichever is the earlier.  
The SUBCONTRACTOR shall ensure that all SUBCONTRACTOR provided items are free from all liens and/or retention of title claims from any third party.
- 18.7 Title to any equipment, materials and supplies provided by the SUBCONTRACTOR which do not comply with the requirements of the SUBCONTRACT and which are rejected by the COMPANY, shall re-vest immediately in the SUBCONTRACTOR.  
Title to such items provided by the SUBCONTRACTOR for which no payment has been made by the COMPANY and which are no longer required for the purposes of the SUBCONTRACT, shall re-vest in the SUBCONTRACTOR.
- 18.8 All items of COMPANY property in the possession of the SUBCONTRACTOR shall be suitably marked or clearly identified as the property of the COMPANY. As far as possible all such items shall be segregated from other property.

## 19. PATENTS AND OTHER PROPRIETARY RIGHTS

- 19.1 Neither PARTY shall have the right of use, other than for the purposes of the SUBCONTRACT, whether directly or indirectly, of any patent, copyright, proprietary right or confidential know how, trademark or process provided by the other PARTY and the intellectual property rights in such shall remain with the PARTY providing such patent, copyright, proprietary right or confidential know how, trademark or process.
- 19.2 Where any potential patent or registrable right in any country in the world results from:
- developments by the SUBCONTRACTOR GROUP which are based wholly on data, equipment, processes, substances and the like in the possession of the SUBCONTRACTOR GROUP upon the acceptance of the SUBCONTRACT or otherwise produced outside the SUBCONTRACT; or
  - enhancements of or in the existing intellectual property rights of the SUBCONTRACTOR GROUP, such rights shall vest in the SUBCONTRACTOR or another company within the SUBCONTRACTOR GROUP as the case may be.
- 19.3 Where any potential patent or registrable right in any country in the world results from:
- developments by the COMPANY GROUP which are based wholly on data, equipment, processes, substances and the like in the possession of the COMPANY GROUP at the acceptance of the SUBCONTRACT or otherwise produced outside of the SUBCONTRACT; or
  - enhancements of or in the existing intellectual property rights of the COMPANY GROUP, such rights shall vest in the COMPANY and its AFFILIATES as the case may be.
- 19.4 Except as provided in Clause 19.1, Clause 19.2 and Clause 19.3, where any potential patent or registrable right in any country in the world arises out of the SUBCONTRACT and is invented during the term of the SUBCONTRACT, such rights shall vest in the COMPANY or alternatively the party or parties specified in the GCC APPENDIX if applicable.
- 19.5 Where under Clause 19.4 a right vests in one of the PARTIES absolutely, such PARTY may at its sole discretion give the other PARTY and its AFFILIATES a royalty free, irrevocable, non-exclusive, non-transferable, world-wide license to use such right which shall not be sub-licensed.
- 19.6 Where under Clause 19.4 a right vests in the PARTIES jointly, then the PARTIES shall unless otherwise agreed in writing jointly file a patent or other registration application in that joint right.
- 19.7 The SUBCONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right arising out of or in connection with the performance of the obligations of the SUBCONTRACTOR under the SUBCONTRACT except where such infringement necessarily arises from the TECHNICAL INFORMATION and/or the COMPANY's instructions. However, the SUBCONTRACTOR shall use its reasonable endeavours to identify any infringement in the TECHNICAL INFORMATION and/or the COMPANY's instructions of any patent or proprietary or protected right, and should the SUBCONTRACTOR become aware of such infringement or possible infringement then the SUBCONTRACTOR shall inform the COMPANY immediately.
- 19.8 The COMPANY shall save, indemnify, defend and hold harmless the SUBCONTRACTOR GROUP from all claims, losses, damages, costs (including legal costs), expenses, and liabilities of every kind and nature for, or arising out of, any alleged infringement of any patent or proprietary or protected right arising out of or in connection with the performance of the obligations of the COMPANY under the SUBCONTRACT or the use by the SUBCONTRACTOR of TECHNICAL INFORMATION or materials or equipment supplied by the COMPANY.

## 20. COMPLIANCE WITH LAWS AND REGULATIONS

- 20.1 The SUBCONTRACTOR shall comply with all applicable laws, rules and regulations of any governmental or regulatory body having jurisdiction over the delivery of the SERVICES or the WORKSITE.



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20.2 The SUBCONTRACTOR shall obtain all licenses, permits, temporary permits and authorisations required by the applicable laws, rules and regulations for the performance of the SUBCONTRACT requirements, save to the extent that the same can only be legally obtained by the COMPANY.

## 21. INDEMNITIES

21.1 The SUBCONTRACTOR shall be responsible for and shall save, indemnify, defend and hold harmless the COMPANY GROUP from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) loss of or damage to property of the SUBCONTRACTOR GROUP whether owned, hired, leased or otherwise provided by the SUBCONTRACTOR GROUP arising from, relating to or in connection with the performance or non-performance of the SUBCONTRACT; and
- (b) personal injury including death or disease to any personnel of the SUBCONTRACTOR GROUP arising from, relating to or in connection with the performance or non-performance of the SUBCONTRACT; and
- (c) subject to any other express provisions of the SUBCONTRACT, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the SUBCONTRACTOR GROUP. For the purposes of this Clause 21.1 (c) "third party" means any party which is not a member of the COMPANY GROUP or SUBCONTRACTOR GROUP.

21.2 The COMPANY shall be responsible for and shall save, indemnify, defend and hold harmless the SUBCONTRACTOR GROUP from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:

- (a) loss of or damage to property of the COMPANY GROUP whether
  - (i) owned by the COMPANY GROUP, or
  - (ii) Leased or otherwise obtained under arrangements with financial institutions by the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the SUBCONTRACT, but excluding the PERMANENT WORK; and
- (b) personal injury including death or disease to any personnel of the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the SUBCONTRACT; and
- (c) subject to any other express provisions of the SUBCONTRACT, personal injury including death or disease or loss of or damage to the property of any third party to the extent that any such injury, loss or damage is caused by the negligence or breach of duty (whether statutory or otherwise) of the COMPANY GROUP. For the purposes of this Clause 21.2 (c) "third party" means any party which is not a member of the SUBCONTRACTOR GROUP or COMPANY GROUP.

21.3 Without limitation to the SUBCONTRACTOR's other obligations under the SUBCONTRACT and at law, the SUBCONTRACTOR shall be responsible for any portion of the PERMANENT WORK that they are performing activities on from the acceptance of the SUBCONTRACT until the date of the HANDOVER CERTIFICATE or the COMPLETION CERTIFICATE, whichever is the earlier, in respect of the whole or the relevant part of the PERMANENT WORK, at which date or dates responsibility shall pass to the COMPANY. Before the date of any such HANDOVER CERTIFICATE or COMPLETION CERTIFICATE as applicable, in the event of loss or damage to the PERMANENT WORK, the SUBCONTRACTOR shall, if instructed by the COMPANY, reconstruct, repair or replace the same. Where the necessity for such reconstruction, repair or replacement activities was solely caused by the COMPANY GROUP, such activities shall be at the expense of the COMPANY.

21.4 Except as provided by Clause 21.1 (a), Clause 21.1 (b) and Clause 21.5, the COMPANY shall save, indemnify, defend and hold harmless the SUBCONTRACTOR GROUP from and against any claim of whatsoever nature arising from pollution originating from the property of the COMPANY GROUP arising from, relating to or in connection with the performance or non-performance of the SUBCONTRACT.

21.5 Except as provided by Clause 21.2 (a) and Clause 21.2 (b), the SUBCONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from and against any claim of whatsoever nature arising from pollution occurring on the premises of the SUBCONTRACTOR GROUP or originating from the property and equipment of the SUBCONTRACTOR GROUP arising from, relating to or in connection with the performance or non-performance of the SUBCONTRACT.

21.6 All exclusions and indemnities given under this Clause (save for those under Clauses 21.1 (c) and 21.2 (c)) shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under SUBCONTRACT or otherwise at law.

21.7 If either PARTY becomes aware of any incident likely to give rise to a claim under the above indemnities it shall notify the other and both PARTIES shall co-operate fully in investigating the incident.





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- 21.8 The indemnities given by the PARTIES under this SUBCONTRACT are full and primary, and shall apply irrespective of whether the indemnified party has, or has not insurance in place relating to any claims, losses, damages or costs in respect of the subject matter of any indemnity given under this SUBCONTRACT.
- 21.9 Each PARTY expressly agrees that the indemnities set out in this Clause do not extend to criminal sanctions imposed upon it, arising from, relating to or in connection with the performance or non-performance of the SUBCONTRACT.

## 22. INSURANCE

- 22.1 The SUBCONTRACTOR shall arrange as a minimum the insurances set out in this Clause and those required under LOCAL LAW, and shall ensure that they are in full force and effect throughout the life of the SUBCONTRACT. All such insurances shall be placed with reputable and substantial insurers, satisfactory to the COMPANY, and shall for all insurances (including insurances provided by SUB-SUBCONTRACTORS) other than Employers Liability / Workmen's Compensation types of Insurance to the extent of the liabilities assumed by the SUBCONTRACTOR under the SUBCONTRACT, include the COMPANY, and its AFFILIATES as additional assureds. All insurances required under this Clause shall be endorsed to provide that underwriters waive any rights of recourse, including in particular subrogation rights against the COMPANY and its AFFILIATES in relation to the SUBCONTRACT to the extent of the liabilities assumed by the SUBCONTRACTOR under the SUBCONTRACT. Such insurances shall also where possible, provide that the COMPANY shall be given not less than 30 days' notice of cancellation of or material change to cover. The provisions of this Clause shall in no way limit the liability of the SUBCONTRACTOR under the SUBCONTRACT.
- 22.2 The insurances required to be effected under Clause 22.1 shall be as follows (to the extent that they are relevant to the delivery and completion of the SERVICES):
- Employers Liability and/or (where the jurisdiction of where the work is to be performed or under which the employees are employed requires the same) Workmen's Compensation insurance covering personal injury to or death of the employees of the SUBCONTRACTOR engaged in the delivery of the SERVICES to the greater of,
    - the minimum value required by any applicable legislation including extended cover (where required) for working offshore; or
    - the sum as set out the GCC APPENDIX if any.
  - General Third Party Liability insurance for any incident or series of incidents covering the operations of the SUBCONTRACTOR in the performance of the SUBCONTRACT, in an amount not less than US\$2,000,000 or as otherwise set out in the GCC APPENDIX or elsewhere in the SUBCONTRACT;
  - Third Party and Passenger Liability insurance and other motor insurance as required by applicable jurisdiction;
  - such further insurances (if any) as set out in the GCC APPENDIX.
- 22.3 The SUBCONTRACTOR shall supply the COMPANY with evidence of such insurance on demand.
- 22.4 The SUBCONTRACTOR shall procure that SUB-SUBCONTRACTORS are insured to appropriate levels as may be relevant to their work.

## 23. CONSEQUENTIAL LOSS

- 23.1 For the purposes of this Clause the expression "Consequential Loss" means consequential or indirect loss, loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit, in each case whether direct or indirect and whether or not foreseeable at the acceptance of the SUBCONTRACT.
- 23.2 Notwithstanding any provision to the contrary elsewhere in the SUBCONTRACT and except to the extent of any agreed liquidated damages (including without limitation any predetermined termination fees) provided for in the SUBCONTRACT, the COMPANY shall save, indemnify, defend and hold harmless the SUBCONTRACTOR GROUP from the COMPANY GROUP's own Consequential Loss and the SUBCONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from the SUBCONTRACTOR GROUP's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the SUBCONTRACT.
- 23.3 All exclusions and indemnities given under this Clause shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the indemnified party or any other entity or party and shall apply irrespective of any claim in tort, under SUBCONTRACT or otherwise at law.

## 24. CONFIDENTIALITY

- 24.1 The SUBCONTRACTOR shall at no time without the prior written agreement of the COMPANY either:
- make any publicity releases or announcements concerning the subject matter of the SUBCONTRACT, or
  - except as may be necessary to enable the SUBCONTRACTOR to perform its obligations under the SUBCONTRACT, use, reproduce, copy, disclose to, place at the disposal of or use on behalf of any third party or enable any third party to use, peruse or copy any information including but not limited to drawings, data, and computer software which:
    - is provided to the SUBCONTRACTOR by or on behalf of the COMPANY, its CLIENTS or its or their AFFILIATES in or in relation to the SUBCONTRACT; or
    - vest in the COMPANY in accordance with the SUBCONTRACT; or



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(iii) the SUBCONTRACTOR prepares in connection with the delivery of the SERVICES.

24.2 The provisions of Clause 24.1 shall not apply to information which:

- (a) is part of the public domain; or
- (b) was in the possession of the SUBCONTRACTOR prior to award of the SUBCONTRACT and which was not subject to any obligation of confidentiality owed to the COMPANY; or
- (c) was received from a third party whose possession is lawful and who is under no obligation not to disclose; or
- (d) is required to be disclosed in order to comply with the requirements of any law, rule or regulation of any governmental or regulatory body having jurisdiction over the delivery of the SERVICES or the SUBCONTRACTOR, or of any relevant stock exchange.

24.3 The SUBCONTRACTOR shall ensure that the provisions of this Clause are incorporated in any SUB-SUBCONTRACTOR SUBCONTRACT and that the officers, employees and agents of the SUBCONTRACTOR and of the SUB-SUBCONTRACTORS comply with the same.

## 25. CUSTOMS PROCEDURES

25.1 When applicable the COMPANY and the SUBCONTRACTOR shall each apply to any government entity for any relief from customs duties for their respective import, export and re-import of materials, goods, tools, equipment and supplies required for the SUBCONTRACT.

25.2 The SUBCONTRACTOR undertakes to import, export and re-import any items required for the delivery of the SERVICES which are subject to customs control in such a way as to enable maximum advantage to be taken of Customs procedures.

25.3 The PARTIES shall each develop with government authorities, customs procedures for their respective export to the WORKPOINT and re-import from the WORKPOINT of all materials, goods, tools, equipment and supplies to be provided under the SUBCONTRACT.

25.4 The PARTIES shall each respectively be accountable and liable for compliance with customs procedures based on each PARTY being a customs authorised trader and who is in possession (not ownership) of the items subject to customs control at any given time.

25.5 The SUBCONTRACTOR shall pay and make payment at such times when due and payable, all import/export taxes and duties on materials, goods, tools, equipment and supplies required for the SUBCONTRACT and imported or exported by the SUBCONTRACTOR. The SUBCONTRACTOR will be responsible for ensuring that it holds the necessary import/export licenses issued by the relevant authorities prior to the delivery of the SERVICES.

25.6 Where equipment and materials are sold to the COMPANY under the SUBCONTRACT the SUBCONTRACTOR shall:

- (a) prepare and provide to the COMPANY full documentation to show and certify all information regarding items subject to customs control, including the origin, customs status and customs commodity code number as may be necessary for the COMPANY to minimise or nullify the effect of customs duty on such items; and
- (b) make available on a confidential basis to the relevant Customs authorities all data reasonably necessary to enable the SUBCONTRACTOR to obtain the maximum benefits in terms of reliefs and shall pass all such benefits in full to the COMPANY; and
- (c) inform the COMPANY without delay in the event that the SUBCONTRACTOR is unsuccessful in any application for reliefs. In such event, the COMPANY shall have the option to import or export or re-import any items affected under its own authorised procedure.

## 26. ACCEPTANCE, HANDOVER AND COMPLETION

26.1 Acceptance of the SERVICES shall be from the time when a duly authorised employee or representative of the COMPANY accepts the SERVICES, delivered or collected, and where such SERVICES are not defective or damaged in any way and comply with the SUBCONTRACT. If a defect in the SERVICES, latent or otherwise, or any damage to the PERMANENT WORK, or any breach of the SUBCONTRACT is identified by the COMPANY, it shall be deemed not to have accepted the SERVICES until such defect, damage or breach is remedied by the SUBCONTRACTOR.

Such acceptance shall be within a reasonable time of delivery or collection or first use, but shall be without prejudice to the SUBCONTRACTORS liability for any defect or any damage, or any breach of the SUBCONTRACT which is not identified by such duly authorised employee or representative of the COMPANY at the time of acceptance.

26.2 When the SUBCONTRACTOR considers the whole or the relevant part of the SERVICES to be in a condition for handover to the care, custody and control of the COMPANY, the SUBCONTRACTOR shall so notify the COMPANY and shall request the issue of a HANDOVER CERTIFICATE.

26.3 If the COMPANY satisfied that the whole or the relevant part of the SERVICES is to be handed over by the SUBCONTRACTOR to the care, custody and control of the COMPANY then the COMPANY shall issue a HANDOVER CERTIFICATE in respect of the whole or the relevant part of the SERVICES, and the whole or the relevant part of any PERMANENT WORK shall be handed over by the SUBCONTRACTOR to the COMPANY as of the date specified in the HANDOVER CERTIFICATE.

26.4 When the SUBCONTRACTOR considers that:



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- (a) the whole of the work (including where the COMPANY has terminated the whole of the SERVICES under Clause 28.1 (a); or
  - (b) any part of the SERVICES for which a separate time for completion is included in the PROGRAMME;
- has been completed and has satisfactorily passed any final test that may be prescribed in the SUBCONTRACT, the SUBCONTRACTOR shall so notify the COMPANY and request the issue of a COMPLETION CERTIFICATE.

26.5 The COMPANY shall, as soon as reasonably practicable either:

- (a) issue to the SUBCONTRACTOR a COMPLETION CERTIFICATE in respect of the whole or the relevant part of the delivery of the SERVICES; or
- (b) notify the SUBCONTRACTOR of any defects in the delivery of the SERVICES or the relevant part of same, arising from any default of the SUBCONTRACTOR.

Should the COMPANY fail to either issue a COMPLETION CERTIFICATE or notify the SUBCONTRACTOR of any defects within 30 days of receipt of such notice, then it shall be deemed as if a COMPLETION CERTIFICATE was issued by the COMPANY, such deemed completion to be effective as of the expiry of said 30 day period

26.6 Any notice issued under Clause 26.5 (b) shall include details of the specific nature of each defect and shall specify the part or parts of the SUBCONTRACT containing the obligations which the SUBCONTRACTOR has failed to meet.

The SUBCONTRACTOR shall on receipt of any such notice, promptly correct all defects. When it has completed such correction it shall notify the COMPANY in accordance with Clause 26.3.

26.7 In the event that the SUBCONTRACTOR fails to correct any defects in accordance with Clause 26.6, the COMPANY may undertake the SUBCONTRACTOR's responsibilities in respect of such defects. In this event the COMPANY shall be entitled to recover from the SUBCONTRACTOR all costs incurred by the COMPANY in carrying out such responsibilities.

26.8 On completion of the SERVICES or any portion thereof, the SUBCONTRACTOR shall without delay clear and remove all equipment and materials provided by the SUBCONTRACTOR together with any debris, thereby leaving the WORKSITE in a clean, clear, safe and tidy condition.

## 27. DEFECTS CORRECTION

27.1 The SUBCONTRACTOR warrants and guarantees that it has performed and shall deliver the SERVICES in accordance with the provisions of the SUBCONTRACT, and that the PERMANENT WORK will be free from defects.

27.2 In the event that the COMPANY notifies the SUBCONTRACTOR of any defect in the SERVICES prior to or subsequent to the COMPLETION DATE in accordance with Clause 26 and within a 12 month period following the COMPLETION DATE, or any alternative period specified in the GCC APPENDIX or elsewhere, the SUBCONTRACTOR shall, subject to the operational requirements of the COMPANY and to the provisions of Clause 27.3, carry out all work necessary to correct any defects arising from any default of the SUBCONTRACTOR GROUP.

In the event that any of the work is re-performed, rectified or replaced by the SUBCONTRACTOR under the provisions of this Clause 27.2, this Clause 27.2 shall apply to the portion so re-performed, rectified or replaced. A further defects correction period of 12 months or any alternative period specified in the GCC APPENDIX or elsewhere in respect of such work, shall commence on the date upon which such re-performance, rectification or replacement was completed in accordance with the SUBCONTRACT provided that the cumulative defects correction period shall not exceed 24 months or alternatively any period stated in the GCC APPENDIX or elsewhere.

27.3 The COMPANY may decide that the carrying out by the SUBCONTRACTOR of work necessary to correct defects will be prejudicial to its interests. In such cases the COMPANY may undertake the SUBCONTRACTOR's responsibilities described in Clause 27.2. The COMPANY shall notify the SUBCONTRACTOR in such cases and shall be entitled to recover from the SUBCONTRACTOR all additional costs reasonably incurred by the COMPANY as a direct result of carrying out such responsibilities.

For the purpose of Clauses 27.2 and 27.3 the SUBCONTRACTOR shall not be liable to the COMPANY for the costs of helicopter transport of personnel between the shore-based heliport and offshore or for the costs of offshore accommodation and messing.

## 28. TERMINATION

28.1 The COMPANY shall have the right by giving notice to terminate all or any part of the content or the entirety of the SUBCONTRACT at such time or times as the COMPANY may consider necessary for any or all of the following reasons:

- (a) to suit the convenience of the COMPANY; or
- (b) subject only to Clause 28.2 in the event of any default on the part of the SUBCONTRACTOR; or
- (c) in the event of the SUBCONTRACTOR becoming bankrupt or making a composition or arrangement with its creditors or a winding-up order of the SUBCONTRACTOR being made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up being passed or a provisional Liquidator, Receiver, Administrator or Manager of its business or undertaking being appointed or presenting a petition or having a petition presented applying for an administration order to be made or possession being taken by or on behalf of the holders of any debenture secured by a Floating Charge of any property comprised



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in or subject to the Floating Charge, or any equivalent act or thing being done or suffered under any applicable law.

- 28.2 In the event of default on the part of the SUBCONTRACTOR and before the issue by the COMPANY of an order of termination of all or any part of the SUBCONTRACT, the COMPANY shall give notice of default to the SUBCONTRACTOR giving the details of such default. If the SUBCONTRACTOR upon receipt of such notice does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of termination in accordance with the provisions of Clause 28.1.
- 28.3 In the event of the COMPANY giving the SUBCONTRACTOR notice of termination of all or any part of the SUBCONTRACT, such notice shall become effective on the date specified therein (or in the absence of any specified date at the date of receipt of the notice) whereupon the SUBCONTRACTOR shall immediately:
- cease performance of the delivery of the SERVICES or such part thereof as may be specified in the notice;
  - allow the COMPANY or its nominee full right of access to the WORKSITE to remove and/or take over delivery or the relevant part of the SERVICES so far completed together with all materials and equipment which are the property of the COMPANY;
  - assign to the COMPANY, or its nominee, to the extent desired by the COMPANY all or the relevant parts of the rights, titles, liabilities and third party SUBCONTRACTS relating to delivery of the SERVICES which the SUBCONTRACTOR may have acquired or entered into;
  - except as required under Clause 28.3 (b), remove all the equipment or materials, of the SUBCONTRACTOR from the WORKSITE or the relevant part thereof is being performed unless otherwise instructed by the COMPANY.

Within 30 days of the effective date of termination the SUBCONTRACTOR shall deliver to the COMPANY all the relevant parts respectively of the TECHNICAL INFORMATION and originals, copies and reproductions of all drawings, specifications, requisitions, calculations, programme listings, erection plans, schedules, computer tapes, discs and other essential recording matter and all other data and documents prepared by the SUBCONTRACTOR or any SUB-SUBCONTRACTOR.

In the event of termination under Clause 28.1 (b) or Clause 28.1 (c) the COMPANY shall have the right to obtain completion of the SUBCONTRACT or any relevant part by other sources of supply.

- 28.4 In the event of termination under Clause 28.1 (a) the SUBCONTRACTOR shall be entitled to payment for the part of the SERVICES performed in accordance with the SUBCONTRACT together with such other payments and fees as may be set out in there or, in the absence of such provisions, such reasonable costs as agreed between the PARTIES at the time of termination.
- 28.5 In the event of termination in accordance with Clause 28.1 (b) the SUBCONTRACTOR shall be entitled to payment only or the part of the SERVICES performed in accordance with the SUBCONTRACT. Any additional costs reasonably incurred by the COMPANY as a direct result of such termination shall be recoverable from the SUBCONTRACTOR.
- 28.6 In the event of termination of all of the requirements of the SUBCONTRACT in accordance with Clause 28.1 (b) or Clause 28.1(c) the following conditions shall apply:
- the SUBCONTRACTOR shall cease to be entitled to receive any money or monies on account of the SUBCONTRACT until the expiration of the Defects Correction Period specified in Clause 27 (assuming that the COMPLETION DATE in respect of the whole of the requirements would have been the date specified in the PROGRAMME) and thereafter until the costs of COMPLETION and all other costs arising as a result of the SUBCONTRACTOR's default or other events giving rise to the termination have been finally ascertained;
  - thereafter and subject to any deductions that may be made under the provisions of the SUBCONTRACT the SUBCONTRACTOR shall be entitled to payment only for the part of the SERVICES delivered in accordance with the SUBCONTRACT up to the date of termination; and
  - any additional costs reasonably incurred by the COMPANY as a direct result of the SUBCONTRACTORS default or other events giving rise to termination shall be recoverable from the SUBCONTRACTOR.
- 28.7 (a) In the event of termination of the SUBCONTRACT the rights and obligations of the PARTIES included in the following Sections and Clauses shall remain in full force and effect:
- Section I - Form of Agreement;
  - Section II (a) - Conditions of SUBCONTRACT Clauses 4, 5, 8, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38 and 39;
  - Such additional Clauses and Special Conditions of SUBCONTRACT (if any) as are set out in the ADDITIONAL CONDITIONS, the GCC APPENDIX or the body of the SUBCONTRACT.
- (b) In the event of termination of all or any part of the SUBCONTRACT the following will apply:
- the whole of the SUBCONTRACT shall remain in full force and effect in connection with the performance of the portion of the SUBCONTRACT which has not been terminated.
  - The provisions of Clause 28.7 (a) shall apply to confirm the Sections and Clauses which will remain in full force and effect in connection with the portion of the SUBCONTRACT which has been terminated.



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## 29. AUDIT AND RECORD KEEPING

29.1 During the course of delivery and for a period ending 2 years after the SCHEDULED COMPLETION DATE, the COMPANY or its duly authorised representative shall have the right to audit at all reasonable times and, upon request, take copies of all of the SUBCONTRACTOR's records (howsoever stored), books, personnel records, accounts, correspondence, memoranda, receipts, vouchers and other papers of every kind relating to:

- (a) all invoiced charges made by the SUBCONTRACTOR on the COMPANY; and
- (b) any provision of this SUBCONTRACT under which the SUBCONTRACTOR has obligations the performance of which is capable of being verified by audit.

In this respect the COMPANY shall not be entitled to investigate the make-up of rates and lump sums included in the SUBCONTRACT except to the extent necessary for the proper evaluation of any VARIATIONS.

29.2 The SUBCONTRACTOR shall co-operate fully with the COMPANY and/or its representatives in the carrying out of any audit required by the COMPANY. The COMPANY will conduct any audit in a manner which will keep to a reasonable minimum any inconvenience to the SUBCONTRACTOR.

29.3 The SUBCONTRACTOR shall obtain equivalent rights of audit to those specified above from all SUB-SUBCONTRACTORS and will cause such rights to extend to the COMPANY.

29.4 The PARTIES shall keep all documents and data, howsoever stored, related to this SUBCONTRACT for a period of 6 years after the SCHEDULED COMPLETION DATE.

## 30. LIENS

30.1 The SUBCONTRACTOR shall not claim any lien or attachment on the GOODS or on any property of the COMPANY in the possession of the SUBCONTRACTOR or at the WORKSITE.

30.2 Without prejudice to any other provisions of this Clause, the SUBCONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY from and against all liens or attachments by any SUB-SUBCONTRACTOR in connection with or arising out of the SUBCONTRACT.

30.3 The SUBCONTRACTOR shall immediately notify the COMPANY of any possible lien or attachment which may affect proper delivery and completion of the SERVICES or any part thereof.

30.4 If at any time there is evidence of any lien or attachment to which, if established, the COMPANY or its property might be subjected, whether made by any persons against the SUBCONTRACTOR or made by any SUB-SUBCONTRACTOR against the COMPANY, then the COMPANY shall have the right to withhold and/or set off or otherwise recover from the SUBCONTRACTOR such sum of money as will fully indemnify the COMPANY against any such lien or attachment.

30.5 Before withholding any payment due to the SUBCONTRACTOR in accordance with Clause 30.4, the COMPANY shall give the SUBCONTRACTOR a reasonable opportunity to demonstrate that the purported lien or attachment is either unenforceable or is covered by the provisions of a security to the reasonable satisfaction of the COMPANY.

30.6 For the purpose of this Clause reference to the COMPANY shall include its AFFILIATES and references to the SUBCONTRACTOR shall include its AFFILIATES.

## 31. BUSINESS ETHICS

31.1 Both PARTIES shall uphold the highest standards of business ethics in the performance of the SUBCONTRACT. Honesty, fairness and integrity shall be paramount principles in the dealings between the PARTIES.

31.2 Neither PARTY shall knowingly involve itself in any business in connection with, or use information arising from, the SUBCONTRACT, in any manner which conflicts with the interests of the other PARTY.

## 32. ANTI-BRIBERY AND CORRUPTION

32.1 Each PARTY warrants and represents that in negotiating and concluding the SUBCONTRACT it has complied, and in performing its obligations under the SUBCONTRACT it has complied and shall comply, with all APPLICABLE ANTI-BRIBERY LAWS.

32.2 The SUBCONTRACTOR warrants that it has an ABC PROGRAMME setting out adequate procedures to comply with APPLICABLE ANTI-BRIBERY LAWS and that it will comply with such ABC PROGRAMME in respect of the SUBCONTRACT.

32.3 In addition and subject to Clause 29, on provision of no less than 30 days' formal notice, the COMPANY or its duly authorised representatives shall have the right to audit, at its own cost, the existence, content and implementation of the SUBCONTRACTORS ABC PROGRAMME, but such right shall not include access to only those documents that are legally privileged or which enjoy statutory protection.

32.4 Where it is legally able to do so, and subject to a request by a COMPETENT AUTHORITY not to notify, each PARTY shall notify the other in writing immediately upon whichever is the earlier of:

- (a) becoming aware of any investigation or proceedings initiated by a COMPETENT AUTHORITY relating to an alleged breach of APPLICABLE ANTI-BRIBERY LAWS by either PARTY or any member of its GROUP in connection with the SUBCONTRACT; or



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- (b) having a reasonable belief that either PARTY or any member of its GROUP may have breached APPLICABLE ANTI-BRIBERY LAWS in connection with the SUBCONTRACT.

The affected PARTY shall use reasonable efforts to keep the other PARTY informed as to the progress and findings of such investigation or proceedings, the details of any measures being undertaken by the affected PARTY to respond to the alleged or potential breach and the remedial measures that are being or will be implemented to prevent such conduct in the future.

- 32.5 (a) Subject to the remaining provisions of this Clause 32.5, in the event that the COMPANY has a reasonable belief that the SUBCONTRACTOR has breached Clause 32.1, the COMPANY may give formal notice of its intention to suspend payments under the SUBCONTRACT to the SUBCONTRACTOR giving the basis of such reasonable belief. If within 7 days of receipt of such formal notice the SUBCONTRACTOR neither responds with information reasonably satisfactory to the COMPANY to refute such belief nor commences and continues with action reasonably satisfactory to the COMPANY to remedy such suspected breach of Clause 32.1, the COMPANY may, by the provision of formal notice, suspend with immediate effect any payments due to the SUBCONTRACTOR.
- (b) The COMPANY shall not be entitled to suspend payment for sums due and are in accordance with the SUBCONTRACT that the SUBCONTRACTOR can reasonably substantiate as not being connected with the suspected breach.
- (c) In the event of any such suspension, the COMPANY and the SUBCONTRACTOR shall meet at not more than 7 day intervals with a view to agreeing an appropriate course of action during the period of suspension.
- (d) On expiration of the longer of a 3 month period or the period stated in the GCC APPENDIX or elsewhere, the COMPANY shall, unless otherwise agreed, either:
- (i) within 30 days make full payment of any sums retained pursuant to this Clause 32.5 which are otherwise due; or
  - (ii) if its reasonable belief remains, within 30 days serve formal notice that the SUBCONTRACT is terminated pursuant to this provision.
- 32.6 In the event of termination in accordance with Clause 32.5 (d) (ii) the following conditions shall apply:
- (a) subject to the remaining provisions of this Clause 32.6, the SUBCONTRACT is deemed to have been terminated in accordance with Clause 28.1(b), but Clause 28.2 is not applicable;
  - (b) subject to paragraph Clause 32.6 (c), the SUBCONTRACTOR shall be entitled to payment only for SERVICES completed in accordance with the SUBCONTRACT up to the date of termination;
  - (c) the SUBCONTRACTOR shall not be entitled to payment for any sums connected with the possible breach of APPLICABLE ANTI-BRIBERY LAWS (including those retained under Clause 32.5(a));
  - (d) subject to the COMPANY being able to evidence that a breach of Clause 32.1 has occurred, the COMPANY shall be entitled to receive from SUBCONTRACTOR any additional costs reasonably incurred by the COMPANY as a result of a breach by the SUBCONTRACTOR;
  - (e) payment shall be made to the SUBCONTRACTOR within 30 days of the date of termination of the SUBCONTRACT;
  - (f) provided that the COMPANY had a reasonable belief at the time of issuing the termination notice that the SUBCONTRACTOR breached APPLICABLE ANTI-BRIBERY LAWS, the COMPANY shall not be in breach of the SUBCONTRACT in issuing a termination notice even if it transpires that the SUBCONTRACTOR is not in breach of APPLICABLE ANTI-BRIBERY LAWS; and
  - (g) notwithstanding any other provision of the SUBCONTRACT, if at a subsequent date it is determined or agreed that the SUBCONTRACTOR did not breach Clause 32.1, the SUBCONTRACTOR shall be entitled to payment for all sums retained under Clause 32.6(c) (including those retained under Clause 32.5(a)).
- 32.7 SUBCONTRACTOR hereby confirms its no-objection to any compliance, risk and/or sanction review which may be conducted by COMPANY from time to time, using a third party. Such review may also include SUBCONTRACTOR's principals and shall at all times remain confidential.

## 33. GENERAL LEGAL PROVISIONS

### 33.1 Waiver

None of the terms and conditions of the SUBCONTRACT shall be considered to be waived by either PARTY unless a waiver is given in writing by one PARTY to the other. No failure on the part of either PARTY to enforce any of the terms and conditions of the SUBCONTRACT shall constitute a waiver of such terms.

### 33.2 Retention of Rights

Subjects to the provisions of Clauses 21 and 35, unless otherwise specifically stated in the SUBCONTRACT, both PARTIES shall retain all rights and remedies, both under the SUBCONTRACT and at law, which either may have against the other.

The SUBCONTRACTOR shall not be relieved from any liability or obligation under the SUBCONTRACT by any review, approval, authorisation, acknowledgement or the like, by the COMPANY.



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### 33.3 Subcontractors Affiliates

Any limitation of liability given by the COMPANY to the SUBCONTRACTOR under the SUBCONTRACT shall include the AFFILIATES of the SUBCONTRACTOR.

### 33.4 Independence

The SUBCONTRACTOR shall act as an independent SUBCONTRACTOR with respect to delivery of the SERVICES and shall exercise control, supervision, management and direction as to the method and manner of obtaining the results required by the COMPANY.

### 33.5 Law and Language

The SUBCONTRACT, and any non-contractual rights and obligations arising out of or in connection with it and its subject matter, shall be governed and construed in accordance with LOCAL LAW. The SUBCONTRACT, and any non-contractual rights and obligations arising out of or in connection with it and its subject matter and subject to the provisions of Clause 36, shall be subject to the exclusive jurisdiction of LOCAL LAW Courts.

The ruling language of the SUBCONTRACT shall be the English Language.

### 33.6 Notices

All formal notices in respect of the SUBCONTRACT shall be given in writing and delivered by hand, by fax, by courier or by first class post to the relevant address specified in the SUBCONTRACT and copied to such other office or offices of the PARTIES as shall from time to time be nominated by them in writing to the other.

Such notices shall be effective:

- (a) if delivered by hand, at the time of delivery;
- (b) If sent by fax, on the first working day at the recipient address following the date of sending;
- (c) if sent by first class post or courier, 48 hours after the time of posting.

Subject to any specific administrative instructions agreed between the PARTIES, any standard business correspondence associated with the SUBCONTRACT and/or the SERVICES can be made by either e-mail, fax or letter.

### 33.7 Status of Company

The COMPANY enters into the SUBCONTRACT for itself and notwithstanding the above:

- (a) the SUBCONTRACTOR agrees to look only to the COMPANY for the due performance of the SUBCONTRACT and nothing contained in the SUBCONTRACT will impose any liability upon, or entitle the SUBCONTRACTOR to commence any proceedings against any party other than the COMPANY; and
- (b) the COMPANY is entitled to enforce the SUBCONTRACT on behalf of the COMPANY GROUP as well as for itself. For that purpose the COMPANY may commence proceedings in its own name to enforce all obligations and liabilities of the SUBCONTRACTOR and to make any claim which any member of the COMPANY GROUP may have against the SUBCONTRACTOR; and
- (c) All losses, damages, costs (including legal costs) and expenses recoverable by the COMPANY pursuant to the SUBCONTRACT or otherwise shall include the losses, damages, costs (including legal costs) and expenses of the COMPANY and its AFFILIATES except that such losses, damages, costs (including legal costs) and expenses shall be subject to the same limitations or exclusions of liability as are applicable to either PARTY under the SUBCONTRACT. For the avoidance of doubt any and all limitations of the SUBCONTRACTOR's liability set out in the SUBCONTRACT shall represent the aggregate cumulative limitation of the liability of the SUBCONTRACTOR to the COMPANY and its AFFILIATES.

### 33.8 Entire Agreement

The SUBCONTRACT constitutes the entire agreement between the PARTIES hereto with respect to the delivery and completion of the SERVICES and supersedes all prior negotiations, representations or agreements related to the SUBCONTRACT, either written or oral. No amendments to the SUBCONTRACT shall be effective unless evidenced in writing and signed by the PARTIES to the SUBCONTRACT.

### 33.9 Mitigation of Loss

Both PARTIES shall take all reasonable steps to mitigate any losses resulting from any breach of SUBCONTRACT by the other PARTY.

### 33.10 Invalidity and Severability

If any provision of this SUBCONTRACT shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this SUBCONTRACT and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The PARTIES agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.



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## 34. LIQUIDATED DAMAGES

- 34.1 If the SUBCONTRACTOR fails to meet the SCHEDULED COMPLETION DATE or complete any of the other significant events listed in the GCC APPENDIX or in the body of the SUBCONTRACT as appropriate in the time specified and/or fails to achieve the requirements of the SUBCONTRACT in respect of any other time-based items, the SUBCONTRACTOR shall be liable to the COMPANY for Liquidated Damages. The amounts of such Liquidated Damages shall be 1% of the PRICE per week up to a limit of 10% of the PRICE, or alternatively the value given in the GCC APPENDIX or in the body of the SUBCONTRACT as appropriate.
- 34.2 Payment of such Liquidated Damages shall be the sole and exclusive financial remedy of the COMPANY in the event of SUBCONTRACTOR's failure under Clause 34.1 above. However, payment of Liquidated Damages shall not relieve SUBCONTRACTOR of its obligation to perform the SUBCONTRACT and shall not limit SUBCONTRACTOR's liability with respect to any other provision of this SUBCONTRACT.

## 35. LIMITATIONS OF LIABILITY

### 35.1 Limitation of Liability

- (a) Limitation of Liability before the COMPLETION DATE

Before the COMPLETION DATE, the SUBCONTRACTOR's total cumulative liability to the COMPANY arising out of or related to the performance of the SUBCONTRACT shall be limited to the sum specified in the GCC APPENDIX or elsewhere, or in the absence of such sum the PRICE.

- (b) Limitation of Liability after the COMPLETION DATE

After the COMPLETION DATE, the SUBCONTRACTOR's total cumulative liability to the COMPANY arising out of or related to the performance of the SUBCONTRACT shall be limited to the sum specified in the GCC APPENDIX or elsewhere, or in the absence of such sum the PRICE.

Provided however, that: -

- (i) the above limitation under Clause 35.1(a) shall not apply to any liabilities assumed by the SUBCONTRACTOR under Clause 27;
- (ii) the above limitations under Clause 35.1(a) and Clause 35.1(b) shall not apply to any liabilities assumed by the SUBCONTRACTOR under Clauses 17, 19, 22, 25 and 30 or to any indemnity given by the SUBCONTRACTOR under Clause 21; and
- (iii) the limitation under Clause 35.1(b) shall not apply to any costs arising from any cause of action of the COMPANY notified to the SUBCONTRACTOR before the COMPLETION DATE.

### 35.2 Limitation Period

The SUBCONTRACTOR's liability under the SUBCONTRACT shall cease at the end of the cumulative defects correction period given in Clause 27 or alternatively the period described in the GCC APPENDIX or elsewhere, provided, however, that the provisions of this Clause 35.2 shall not apply to any liabilities assumed by the SUBCONTRACTOR under Clauses 17, 19, 22, 25 and 30 or any indemnity given by the SUBCONTRACTOR under Clause 21.

### 35.3 Extent of Exclusion or Limitation of Liability

Any exclusion or limitation of liability under the SUBCONTRACT shall exclude or limit such liability not only in SUBCONTRACT but also in tort or otherwise at law.

### 35.4 Precedence

Subject to the provisions of Clause 23, this Clause 35 shall apply notwithstanding any provisions to the contrary elsewhere in the SUBCONTRACT.

## 36. RESOLUTION OF DISPUTES

- 36.1 Any dispute between the PARTIES in connection with or arising out of the SUBCONTRACT or the delivery of the SERVICES shall be resolved by means of the following procedure:
- (a) the dispute shall initially be referred, by means of a formal notice containing the information set out in Clause 36.5 and served in accordance with Clause 33.6, to the COMPANY REPRESENTATIVE and SUBCONTRACTOR REPRESENTATIVE who shall discuss the matter in dispute and make all reasonable efforts to reach an agreement;
- (b) if no agreement is reached within 4 weeks of the service of such formal notice under Clause 36.1(a), the dispute may be referred to two nominated Senior Managers of the PARTIES by formal notice from either PARTY, with one such person being nominated by the COMPANY and one by the SUBCONTRACTOR, who shall meet to discuss the matter in dispute within 2 weeks of the service of the notice under this Clause 36.1 (b);
- (c) if no agreement is reached within 4 weeks of the service of such formal notice under Clause 36.1(b), the dispute may be referred to two nominated Senior Executives of the PARTIES by formal notice from either PARTY, with one such person being nominated by the COMPANY and one by the SUBCONTRACTOR, who shall meet to discuss the matter in dispute within 2 weeks of the service of the notice under in this Clause 36.1 (c).





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- 36.2 If no agreement is reached within 4 weeks of the serving of the notice under Clause 36.1 (c), the PARTIES may attempt to settle the dispute by a form of Alternative Dispute Resolution to be agreed between the PARTIES.
- 36.3 In the absence of any agreement being reached on a particular dispute within 4 weeks of the serving of a notice under Clause 36.1 (c), either PARTY may, subject to Clause 36.4, take appropriate action in the Courts to resolve the dispute at any time.
- 36.4 It shall be a condition precedent to the referral of a dispute to the Courts under Clause 36.3 that the PARTY which intends to commence proceedings in relation to the dispute has used its reasonable endeavours to follow and complete the procedures set out in Clauses 36.1 (a), (b) and (c).
- 36.5 Where any claim or counter claim in connection with or arising out of the SUBCONTRACT is made, the PARTY making the claim or counter claim shall ensure that such claim or counter claim contains, without limitation, the following information:
- (a) a clear summary of the facts on which the claim or counter claim is based; and
  - (b) the basis on which the claim or counter claim is made, including the principal contractual terms and/or statutory terms relied on; and
  - (c) the nature of the relief claimed; and
  - (d) where a claim or counter claim has been made previously and rejected by the other PARTY, and the PARTY making the claim or counter claim is able to identify the reason(s) for such rejection, the grounds of belief as to why the claim or counter-claim was wrongly rejected.
- 36.6 Whilst any matter or matters are in dispute, the SUBCONTRACTOR shall proceed with the delivery of the SERVICES and both PARTIES shall comply with all the provisions of the SUBCONTRACT.

## 37. HEALTH, SAFETY AND ENVIRONMENT

- 37.1 The COMPANY places prime importance on health, safety and environment (hereinafter "HS&E") issues and requires that the SUBCONTRACTOR GROUP subscribes to and actively pursues the highest standards of HS&E performance.
- 37.2 The SUBCONTRACTOR shall take full responsibility for the adequacy, stability and safety of all its operations and methods necessary for the performance of the SUBCONTRACT and shall keep strictly to any HSE requirements contained within the TECHNICAL INFORMATION or the SUBCONTRACT.
- 37.3 Failure to meet the HSE requirements in the SUBCONTRACT or in the TECHNICAL INFORMATION or to satisfy the COMPANY's reasonable requirements with regard to the control of HS&E risks in any material respect will be regarded as due cause for the COMPANY giving notice to terminate all or any part of the SUBCONTRACT in accordance with Clause 28.1 (b).
- 37.4 The SUBCONTRACTOR shall co-operate with the COMPANY in providing an appropriate response to any emergency occurring at the WORKSITE and shall immediately take such action as may be necessary to protect life and make safe property where such is in imminent peril.
- 37.5 The SUBCONTRACTOR will ensure that the GOODS will comply with the requirements of all applicable law and, to the extent that they contain toxic, corrosive or hazardous materials, the SUBCONTRACTOR will ensure that a notice to that effect accompanies each consignment, together with appropriate care and handling instructions.
- 37.6 GOODS supplied under the SUBCONTRACT, which are contaminated, at the time of delivery, shall be regenerated or disposed of by the SUBCONTRACTOR at their expense.
- 37.7 When making delivery of the GOODS to COMPANY premises, the SUBCONTRACTOR shall do so in a safe, prudent and responsible manner consistent with its duty of care to its personnel, or those of its delivery agent, and shall obey all COMPANY site safety instructions without exception.
- 37.8 The SUBCONTRACTOR must comply at all times with COMPANY directions, procedures and policies relating to occupational health, safety and security when performing any part of the SERVICES and/or delivery of the GOODS on premises owned, leased, controlled by, occupied by or under the direction of COMPANY.
- 37.9 SUBCONTRACTOR personnel and vehicles shall not be mobilized or deployed unless they are in full compliance with any applicable COMPANY safety standards and procedures.
- 37.10 All required Personal Protection Equipment including but not limited to hard hat, safety boots, safety glasses and work gloves to perform activities required under the SUBCONTRACT or as required by the COMPANY shall be provided by the SUBCONTRACTOR at its own expense for all their personnel.
- 37.11 The SUBCONTRACTOR acknowledges that any SUBCONTRACTOR driver/operator of any SUBCONTRACTOR vehicle is responsible for the safety of vehicle, the required lashing/load restraining belts as well as general load safety. The SUPPLIER driver/operator is required to carry out a mandatory full inspection of their vehicle and any load to ensure that it is safe and secure before beginning any journey.
- 37.12 The SUBCONTRACTOR must have written permission from the COMPANY prior to mobilising personnel and or vehicles to or from Site.
- 37.13 Any fines or warnings handed down to the SUBCONTRACTOR as a result of a CLIENT or regulatory non-compliance or road safety infringement will solely be the responsibility of the SUBCONTRACTOR.



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## 38. WORKER WELFARE

### 38.1. Compliance

- (a) The SUBCONTRACTOR undertakes, warrants and represents that in the performance of its obligations under the SUBCONTRACT that it and each member of its own supply chain shall comply without limitation with all applicable laws, statutes, regulations and codes from time to time in force and where there is no conflict shall as a minimum comply with the WORKER WELFARE PROCEDURE.
- (c) Any breach of clause by the SUBCONTRACTOR shall be deemed a fundamental breach of the SUBCONTRACT and shall entitle the COMPANY to terminate and SUBCONTRACT as applicable.

### 38.2. Due Diligence

- (a) The SUBCONTRACTOR represents and warrants that its responses to any COMPANY due diligence questionnaire is complete and accurate.
- (b) The SUBCONTRACTOR further represents and warrants that none of its officers, employees (or other persons associated with it) has been convicted or is in the process of being investigated for any offence involving slavery and human trafficking, bribery or any breach of competition law.
- (c) The SUBCONTRACTOR undertakes to implement due diligence procedures for its own SUBCONTRACTORS, subcontractors and other participants in its supply chains to ensure that there is no slavery or human trafficking, bribery or breach of competition law within its own supply chains.

### 38.3. Reporting

The SUBCONTRACTOR shall notify the COMPANY as soon as it becomes aware of any breach, or potential breach, of Clause 38.1 (a) by it or any member of its own supply chain.

### 38.4. Audit

The SUBCONTRACTOR shall:

- (a) allow the COMPANY a general right of audit, and for the avoidance of doubt, a particular right to audit any employee accommodation facility upon demand and to COMPANY access to their employees to be interviewed where deemed appropriate.
- (b) demonstrate they have taken reasonable and appropriate steps to ensure that their own supply chain meet the requirements of the WORKER WELFARE PROCEDURE.

### 38.5. Training

The SUBCONTRACTOR shall conduct a programme of regular training for its officers, employees, agents, subcontractors and other members of its supply chain to ensure compliance with the policies as set out in the WORKER WELFARE PROCEDURE.

### 38.6. Indemnity

The SUBCONTRACTOR shall indemnify and hold harmless the COMPANY, its Shareholders, Directors, officers and employees in full and on demand from and against any and all liabilities, claims, fines, demands, damages, losses, costs or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by them howsoever arising whether wholly or in part resulting from a breach of the policies as set out in the WORKER WELFARE PROCEDURE.

### 38.7. Warranties

The SUBCONTRACTOR represents, warrants and undertakes that it conducts its business in a manner that is consistent with the policies as set out in the WORKER WELFARE PROCEDURE.

### 38.8 Precedence

This Clause 38 shall apply notwithstanding any provisions to the contrary elsewhere in the SUBCONTRACT.

## 39. ADDITIONAL CONDITIONS

- 39.1 The SUBCONTRACTOR and the COMPANY agree that any ADDITIONAL CONDITIONS set out in or appended to the SUBCONTRACT will be treated as an integral part of the SUBCONTRACT and that they shall, in the event of any conflict or ambiguity arising, take precedence over any General Terms and Conditions.
- 39.2 The SUBCONTRACTOR and the COMPANY also agree that the terms and conditions of any CLIENT contract referred to in the SUBCONTRACT or in the GCC APPENDIX they will also be treated as an integral part of the SUBCONTRACT and that in the event of any conflict or ambiguity arising, shall take precedence over any applicable General or Special Terms and Conditions.