**General Conditions of Contract**

## Definitions

In these General Conditions of Contract (the **Conditions**), the following words and expressions shall (unless the context requires otherwise) have the meanings as stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

### **Abandon** means that the Subcontractor abandons the whole or any part(s) of the Works, other than where this is due to a Force Majeure Event.

### **Affiliate** means in respect of either Party, any person, which directly or indirectly is controlled by such Party; or controls such Party; or is controlled by a person who directly or indirectly controls such Party. For the purposes of this definition:

#### a person is directly controlled by another person if the latter person holds shares, quotas or voting rights carrying in the aggregate the majority (more than fifty per cent) of the votes exercisable at shareholders’ meetings of the former person; and

#### a particular person is indirectly controlled by a person, hereinafter called the **parent company** or **parent companies**, if a series of companies can be specified, beginning with the parent company or parent companies and ending with the particular person, so related that each company of the series, except the parent company or parent companies, is directly controlled by one or more of the companies earlier in the series.

### **Anti-Corruption Laws** means any applicable Laws relating to the prevention of bribery, corruption, fraud or similar or related activities, as amended from time to time (including the United Kingdom Bribery Act 2010, the United States Foreign Corrupt Practices Act and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (signed in Paris on 17 December 1997)).

### **Base Date** means the date of Subcontract or Work Order.

### **Change in Law** means any of the following events occurring after the Base Date:

#### the enactment, promulgation, issue or commencement of a new Law of the Republic of Sierra Leone;

#### an amendment, modification, extension, replacement, re-enactment or repeal of an existing Law of the Republic of Sierra Leone;

#### a change having the force of law in the application or interpretation of a Law of the Republic of Sierra Leone; and

#### the enactment, promulgation or issue of a grid code and, thereafter, any amendment, modification, extension, replacement, re-enactment or repeal of an existing grid code and/or a change in the application or interpretation of an existing grid code.

### **Not Used**

### **Subcontract** or Work Order (WO) means the contract entered into between the Contractor and the Subcontractor together with all schedules, key terms and conditions, scope of works, technical specifications, technical documents, these Conditions and attachments hereto as may be amended, supplemented or modified in accordance with the provisions hereof, together with any and all, appendices, schedules, addendums and amendments hereto.

### **Subcontract Price** means the agreed amount as set out in the Work Order, as such amount may be amended from time to time in accordance with the Subcontract.

### **Contractor** means SP-EPC Shapoorji Pallonji and Company having registered office at 5, Lightfoot Boston Street, Freetown, Republic of Sierra Leone.

### **Subcontractor’s Documents** means the calculations, drawings, manuals, models and other documents relating to the Works supplied by the Subcontractor under the Subcontract, including as described in Sub‑Clause 5.1 (*Subcontractor’s Documents*).

### **Subcontractor’s Equipment** means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any Defects, but excluding temporary works, Contractor’s equipment (if any), Materials and any other things intended to form or forming part of the Works.

### **Subcontractor’s Personnel** means all its personnel or its subcontractor’s personnel, and any other personnel assisting the Subcontractor in the execution of the Works.

### **Cost** means expenditure reasonably incurred by the Subcontractor in relation to the Works.

### **Day** means each period of twenty four (24) hours beginning and ending at 00:00 and **Year** means three hundred and sixty five (365) Days.

### **Defect** means any defect, error, failure, imperfection or fault in or to the Materials and/or Works and/or any failure of the Works to comply with the Subcontract, together with any damage to the Works arising from such defect, as notified by the Contractor to the Subcontractor prior to the expiry of the relevant Defects Notification Period. A Defect does not include defects or damage arising due to:

#### normal wear and tear; or

#### faulty or negligent handling by persons other than Subcontractor or its Personnel;

and **Defective** shall be construed accordingly.

### **Defects Notification Period** means the periods for notifying Defects in the Works under Sub‑Clause 11.1 which period shall be as specified in the Work Order and such period may be extended from time to time in accordance with Clause 11.

### **Delay LDs Cap** means the maximum amount of Delay Liquidated Damages which shall be as specified in the Work Order.

### **Employer** means CECA SL Generation Limited, Top Floor, 9 Liverpool Street, Freetown, Republic of Sierra Leone.

### **Environmental Regulations** means any Law of the Republic of Sierra Leone which has as its purpose or effect the protection of, or the prevention of harm or damage to, the environment or to provide remedies in relation to harm or damage to the environment.

### **Expropriation** means the expropriation, nationalisation, confiscation, forced sale, seizure, annulment or compulsory acquisition of the whole or any part of the right, title and interest of the Employer in the project by the Government or a Government authority of Sierra Leone.

### **Force Majeure Event** means any event or circumstance (and the effects thereof):

#### the occurrence or existence of which is beyond the reasonable control of the affected Party;

#### which could not have been reasonably prevented, avoided or overcome by the affected Party through the exercise of reasonable care, skill or due diligence, acting in accordance with Good Industry Practice;

#### which prevents, delays or hinders the affected Party from performing its obligations, or enjoying or benefitting from any of its rights, under the Subcontract;

#### which is not the direct or indirect result of the affected Party’s breach of the Subcontract; and

#### which is not excluded from this definition by Sub-Clause ‎18.3.4 (*Exclusions from Force Majeure Events*),

including, if and to the extent paragraphs ‎(a) to ‎(e) are satisfied: (I) acts of God (including lightning, fire, earthquake, flood, storm, hurricane, cyclone, typhoon, tornado, epidemic or plague); (ii) any events occurring after the Base Date that would have constituted a Change in Law, but for the application of paragraph (b) of the definition of Force Majeure Events; (iii) the termination of the Key Project Document not attributable to acts, omissions or default by the Parties; (iv) Expropriation; (v) acts of war (whether declared or not), invasion, armed conflict, act of foreign enemy or blockade; and (vi) acts of rebellion, riot, insurrection, revolution, civil commotion, political violence, public disorder, act or campaign of terrorism, sabotage of a political nature or political violence.

### **Good Industry Practice** means the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from skilled and experienced subcontractors of similar Works, which is consistent with best practices, methods that are generally accepted internationally from time to time for similar facilities operating in conditions comparable to those applicable to the power station, consistent with Laws and taking into account factors such as (a) the use of the latest technology, (ii) the specifications, relative size, performance, age and technology of the physical components of the power station and (iii) the safe, efficient and economic design, construction, commissioning and testing of the power station.

### **Government** means the government of the Republic of Sierra Leone.

### **Hazardous Substance** means any solid, liquid or gaseous material, substance, constituent, chemical, mixture, raw material, intermediate product or by-product including waste oil (including, for the avoidance of doubt, waste heavy fuel oil and waste light fuel oil/diesel oil, other forms of petroleum and fractions thereof) which is defined as a **hazardous substance**, **hazardous waste**, **hazardous material**, **toxic substance** or **toxic pollutant** under, or is otherwise regulated by, Environmental Regulations.

### Head Contract means the contract entered into between the Contractor and the Employer relating to the Works and the project.

### **Insolvency Event**, in relation to any person, means:

#### the passing of a resolution for the bankruptcy, insolvency, winding up, liquidation or other similar proceeding relating to that person;

#### that person admitting in writing that is unable to pay its debts as they fall due;

#### a liquidator, receiver, administrator or other similar person being appointed in respect of that person or any of his assets;

#### any government authority with jurisdiction over that person making an order for the winding up of that person or otherwise confirming the bankruptcy or insolvency of that person;

#### the voluntary filing by that person of a petition of bankruptcy, moratorium or other similar relief; and/or

#### any other event occurring in any jurisdiction which has an effect analogous to any of the events referred to above

except where any of the procedures set out above is instituted by that person for the purpose of a fully solvent reorganisation.

### Intellectual Property Rights means any intellectual and industrial property rights including, without limitation, patents, designs, utility models, copyright, database rights, trade marks, rights in know-how, trade secrets and confidential information and any other rights of similar or equivalent effect anywhere in the world whether registered or not and including pending applications to register such rights.

### **Key Project Document** means (a) the Power Purchase Agreement; and/or (b) the Head Contract.

### Latent Defect means any Defect inherently lying within the Works and/or Materials, which a reasonable examination by the Contractor in accordance with Good Industry Practices would not have discovered prior to expiry of the applicable Defects Notification Period.

### Latent Defect Period means in respect of the Works, the period as mentioned in the Work Order.

### **Laws** includes any constitution or provision, treaty, decree, convention, statute, act of parliament, instrument, regulation, code, certificates, decision, memorandum, circular, resolution, directive, approval, licence, rule, order, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment, rule of common law or equity, rule, ruling, interpretation or guideline by a competent entity exercising jurisdiction in the relevant matter, including a rule, ruling, interpretation or guideline of any governmental authority, and includes, for the avoidance of doubt, the Laws of the Republic of Sierra Leone.

### **Lender Requirements** means the statutory and policy requirement document of Lenders as already provided to the Subcontractorto the extent the same are applicable to the Subcontractor in undertaking the Works and/or its performance of its obligations pursuant to the Subcontract.

### **Lender(s)** means any providers of finance, re-finance or credit support for the project including any agent or trustee for the lenders.

### Lien means any mortgage, lien, pledge, claim, charge, lease, easement, security interest or encumbrance of any kind.

### Liquidated Damages means the Delay Liquidated Damages.

### **Longstop Date** means the date upon which the Subcontractor’s liability for Delay Liquidated Damages reaches the Delay LDs Cap.

### **Materials** means things or goods or equipment of all kinds intended to form or forming part of the Works.

### **Necessary Consents** means all consents, licences, permissions and approvals, whether of a public or private nature, which are necessary for the carrying out and completion of the project and the remedying of Defects therein.

### **Offtaker** means the Government and Electricity Distribution and Supply Authority (EDSA).

### **Parties** means the Contractor and the Subcontractor.

### **Party** means the Contractor or the Subcontractor, as the context requires.

### **Performance Security** means any and all bank guarantees or corporate guarantees or insurance bonds as appliable under the Subcontract.

### **Power Purchase Agreement** or **PPA** means the power purchase entered into between (I) The Government, (ii) Electricity Distribution and Supply Authority (iii) CEC Africa (Sierra Leone) Limited and (iv) the Employer, including any amendments.

### **Punch List** means the list of works related to the Works and/or the Materials to be prepared by the Contractor requiring rectification due to Defect or non-compliance with the Subcontract or which are incomplete and which shall be rectified or completed by the Subcontractor within three (3) months after the Taking-Over Date and (a) that are not material to the operation of the Works and (b) do not impair the performance, operability, reliability, safety or mechanical or electrical integrity of the Works.

### **Sierra Leone** means the Republic of Sierra Leone.

### **Site Safety Representative** means the person appointed by the Subcontractor as referred to in Sub-Clause 6.7.2

### **Site** means the land at which the Power Station is to be constructed, located in Freetown, Sierra Leone with a Global Positioning System coordinates of approximately 8°28’33.6144” N, 13°11’27.9816” W.

### **Statement** means a statement submitted by the Subcontractor as part of an application for payment under Clause 13.

### **Take Over** means where a Taking Over Certificate in respect of the Works has been issued by the Contractor to the Subcontractor and “**Taken Over**” and “**Taking-Over**” shall be construed accordingly.

### **Taking‑Over Certificate** means a certificate issued under Clause 10 (Contractor’s *Taking Over*).

### **Temporary Services** means all temporary services of every kind (other than Subcontractor's Equipment) required on Site for the execution and completion of the Works and the remedying of any Defects.

### **Tests on Completion** means the tests for the project and which are carried out under Clause 9 before the Works are Taken Over by the Contractor.

### **Time for Completion** means the time for completing all the Works as mentioned in the Work Order.

### **Variation** means any change to the Works with respect to the Subcontract, which is instructed or approved as a variation under Clause 12.

### **Works** mean all the works to be performed by the Subcontractor as per the Subcontract to the satisfaction of the Contractor and in accordance with the Subcontract.

## Interpretation

### In the Subcontract, except where the context requires otherwise:

#### words indicating one gender include all genders;

#### words indicating the singular also include the plural and words indicating the plural also include the singular;

#### provisions including the word **agree**, **agreed** or **agreement** require to be recorded in writing;

#### **written** or **in writing** means hand‑written, type‑written, printed or electronically made, and resulting in a permanent record;

#### any reference to this Subcontract or to any other document or agreement shall include any permitted variation, amendment or supplement to this Subcontract or to such document or agreement;

#### any reference to a person shall include individuals, firms, partnerships and any entity having legal capacity;

#### any reference to a person shall include its successors in title, permitted assignees and permitted transferees; and

#### the terms **include**, **including**, **in particular** or any similar expression shall be construed as illustrative and without limitation to the words that precede such terms.

### Each of the provisions of the Subcontract is severable and distinct from the others and if for any reason any one or more of such provisions is found to be ineffective, inoperable or unenforceable it shall be severed and deemed to be deleted from the Subcontract, and in such event the remaining provisions of the Subcontract shall continue to have full force and effect.

### In the event that any provision of the Subcontract is found to be ineffective, inoperable or unenforceable, the Parties agree to negotiate in good faith to reach an equitable agreement as to how to give effect to the intention of the Parties as set out in the Subcontract.

### The provisions of the Subcontract that by their nature are intended to survive the termination, cancellation, completion or expiry of the Subcontract (including any provision limiting or releasing liability) shall continue as valid and enforceable provisions notwithstanding any such termination, cancellation, completion and expiry.

### Any failure to exercise or delay in exercising a right or remedy under or in relation to the Subcontract shall not constitute a waiver of such right or remedy nor a waiver of any other right or remedy. No waiver of a breach of or default under the Subcontract shall constitute a waiver of any other breach of or default under the Subcontract or affect the terms of the Subcontract. Any waiver by a Party of any of its rights or remedies under or in relation to the Subcontract shall be received in writing by the other Party.

## Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be in writing and delivered by hand or courier, sent by pre-paid mail or email to the address for the recipient's communications. Such address shall be notified by Parties to each other during the kick-off meeting after signing of the Subcontract.

## Law and Language

### The Subcontract and any non-contractual obligations connected to it shall be governed by and construed in accordance with the laws of India.

### The language of the Subcontract shall be English and if there are versions of any part of the Subcontract which are written in more than one language, the version which is in English shall prevail.

### The language for written and oral communications under the Subcontract shall be English, save where required otherwise by any applicable Law.

## Priority of Documents

### The documents forming the Subcontract are to be taken as mutually explanatory of one another. If the Subcontractor finds any discrepancy, ambiguity or inconsistency in or between any of the documents forming the Subcontract, the Subcontractor shall immediately notify the Contractor giving details of such discrepancy, ambiguity or inconsistency and the Contractor shall determine and inform the Subcontractor how to proceed with the same.

## Subcontract Agreement and Prior Agreements

### The Subcontract shall come into full force and effect on the date of issue of the Letter of Award or Work Order to the Subcontractor.

## Assignment

### The Subcontractor shall not assign or transfer the whole or any part of the Subcontract or any benefit or interest or burden or obligation in or under the Subcontract without the prior written consent of the Contractor.

### The Contractor shall be entitled to assign any benefit or interest in or under the Subcontract to any Affiliate or party providing financing (or the nominee of any party providing financing provided such nominee shall not be a direct competitor to the Subcontractor or otherwise involved in formal dispute proceedings with the Subcontractor) for or in connection with the Works or the completed Works (or their security agent), without the consent of the Subcontractor. Subject to the foregoing, the Contractor shall not assign or transfer the whole or any part of the Subcontract or any benefit or burden or obligation in or under the Subcontract without the prior written consent of the Subcontractor (such consent not to be unreasonably withheld or delayed).

## Confidentiality

### Subject to Sub-Clause 1.8.2, each Party shall and shall procure that its officers, employees, consultants, shareholders, Affiliates and subcontractors shall safeguard and treat as confidential all information, documents and materials which it acquires in the course of negotiations or during the term of the Subcontract and which concern the other Party and/or any transactions for the exploitation of the Works entered into or to be entered into between the Contractor and any other party (the “**Confidential Information**”) and shall not use the Confidential Information for its own purposes (except to the extent necessary to carry out obligations under the Subcontract) without in any such case (and only to the extent permitted by) the prior written consent of the Party concerned.

### Each Party shall be permitted to disclose all or part of the Confidential Information:

#### as required by any applicable Laws or by the rules of any relevant stock exchange or by any relevant national or supranational regulatory authority;

#### to any subcontractor for the furtherance of the performance of that party's obligations in respect of the Subcontract;

provided always that the recipients referred to in paragraph (b) above have a reasonable need to know the Confidential Information and have entered into an agreement relating to the Confidential Information on no less onerous terms than those set out in Sub-Clause 1.8.1.

### The obligations of confidentiality in Sub-Clause 1.8.1 shall survive the termination of the Subcontract and shall continue until all or any part, as the case may be, of the Confidential Information enters the public domain through no fault of the relevant party or its agents whereupon the obligation of confidentiality will cease only in respect of the Confidential Information which has so entered the public domain.

## Contractor’s Use of Intellectual Property Rights and Subcontractor’s Documents

### As between the Parties, the Subcontractor shall retain the copyright and other Intellectual Property Rights in the Subcontractor’s Documents (which includes any design documents made by (or on behalf of) the Subcontractor).

### The Subcontractor shall be deemed (by signing the Subcontract) to grant to the Contractor an irrevocable, non‑exclusive, royalty‑free, licence to copy, use and communicate the Subcontractor’s Documents, including making and using modifications of them. This licence shall:

#### apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works;

#### entitle the Contractor (or its nominees) to copy, use and communicate the Subcontractor’s Documents for the purpose of completing, operating, maintaining, adjusting, repairing, and demolishing of the Works; and

#### in the case that the Subcontractor’s Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Subcontract, including replacements of any computers supplied by the Subcontractor.

## Subcontractor’s Use of Contractor’s Documents

### As between the Parties, the Contractor shall retain the copyright and other Intellectual Property Rights in the Subcontract and other documents made by (or on behalf of) the Contractor (the “**Contractor’s Copyright Works”**). The Subcontractor may, at his cost, copy, use, and obtain communication of the Contractor’s Copyright Works for the purposes of the Subcontract.

### The Contractor shall not be liable for any use of the Contractor’s Copyright Works for any purpose other than that for which they were prepared.

## Compliance with Laws and the Subcontract

### The Subcontractor shall, in performing the Subcontract,

#### comply with all applicable Laws,

#### obtain the required Necessary Consents for the Works and comply with all the Necessary Consents, and

#### carry out and complete the Works and remedy any Defects therein so as to comply with and not to cause the Contractor to breach any Necessary Consents, applicable Laws, Key Project Documents and Subcontract and so that the Works can be operated and maintained in compliance with, all requirements of such Necessary Consents, applicable Laws, Key Project Documents and the Subcontract.

### The Subcontractor shall give all notices, pay all taxes, duties and fees relating to its Necessary Consents and obtain all such Necessary Consents in order for the Subcontractor to carry out the Works in accordance with the Work Order.

### The Subcontractor shall indemnify and hold the Contractor harmless against and from the consequences of any failure by it to comply with Sub-Clause 1.11.1

## Tax Liability

### The Subcontractor shall be responsible and shall be deemed to have acquainted itself of all taxes, duties, laws, statute, regulations, levies and other charges relating to the Works within the Republic of Sierra Leone and the Subcontractor shall indemnify the Contractor against any such taxes, duties, laws, statute, regulations, levies and other charges.

### The Subcontractor shall follow the tax exemption document already provided by the Contractor and accordingly consider the relevant taxes. Subcontractor shall indemnify the Contractor against any liability incurred by the Contractor due to failure of the Subcontractor to follow the tax exemption document.

## Compliance with Subcontract

### Subject to Sub-Clause 1.8 (*Confidentiality*), the Subcontractor shall disclose any information which the Contractor may reasonably require in order to verify the Subcontractor’s compliance with the Subcontract.

## Independent Subcontractor

### The Subcontractor shall be an independent subcontractor performing the Subcontract. The Subcontract does not create any partnership, joint venture or other joint relationship between the Contractor on the one hand and the Subcontractor on the other hand.

# The Contractor

## Right of Access to the Site

The Contractor shall give the Subcontractor right of access to such parts of the Site as the Subcontractor may reasonably require to comply with its obligations under the Subcontract.

## The Parties acknowledge and agree that:

the Employer shall be the consignee and importer of the Materials and/or Works;

without prejudice to its obligations or liabilities under the Subcontract, the Subcontractor shall ensure that the Employer is clearly identified as the consignee of all the Materials and/or Works and all supporting information shall also clearly indicate the Employer as the consignee;

the Subcontractor shall be responsible for other taxes, stamp charges, other official charges in connection with the importation of the Subcontractor’s Equipment for the purposes of this Subcontract.

## The Parties acknowledge and agree that:

#### the tax exemption document issued by the appropriate governmental authorities of Republic of Sierra Leone has been provided to the Subcontractor.

#### the Subcontractor undertakes not to put the Contractor/Employer in breach of the tax exemption and will assist the Contractor in complying with the same.

#### If the Subcontractor fails to comply with the provisions of the tax exemption and due to such failure the Contractor becomes liable for customs and other taxes for importation of the Materials, the Subcontractor shall be responsible for such customs and other taxes.

#### If and to the extent that the Subcontractor has failed to comply with the provisions of the tax exemption or fails to provide the information reasonably required by the Contractor in order to enable the Contractor to secure the benefits of the tax exemption, and the Subcontractor is liable for tax for which it would not otherwise have been liable or the Contractor is obliged to make a withholding from any payment otherwise due to the Subcontractor, the Subcontractor shall be responsible for and shall not be entitled to claim payment from the Contractor and shall indemnify the Contractor in respect of any such tax or withholding incurred by the Contractor.

#### If by reason of the Subcontractor’s failure to comply with the tax exemption or to provide the Contractor with the information reasonably required by the Contractor to obtain the benefits of the tax exemption, the Contractor becomes liable to pay any amount in respect of import duties and taxes, the Subcontractor shall be responsible for payment of such import duties and taxes and shall indemnify the Contractor in respect of any import duties and taxes incurred by the Contractor as a consequence of the Subcontractor’s failure.

# The Contractor’s Administration

## Delegated Persons

### Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a authorized person of the Contractor, in accordance with the delegation, shall have the same effect as though the act had been an act of the Contractor. However:

#### no expression of satisfaction, comment, review, approval, check, examination, inspection or test by or on behalf of the Contractor shall relieve the Subcontractor from any responsibility, obligation, risk or liability under the Subcontract, including responsibility for errors, omissions, discrepancies and non‑compliances; and

#### no failure to comment, review, disapprove, check, examine, inspect or test any work shall constitute approval, and no such failure shall therefore prejudice the right of the Contractor to reject the Works;

## Instructions

### The Contractor may issue to the Subcontractor instructions which the Contractor considers to be necessary or expedient in connection with the Subcontractor’s performance of his obligations under the Subcontract. Each instruction shall be given in writing. If any such instruction constitutes a Variation, Clause 12 (*Variations and Adjustments*) shall apply.

## Determinations

### Whenever these Conditions provide that the Contractor shall proceed in accordance with this Sub‑Clause 3.3 to agree or determine any matter, the Contractor shall consult with the Subcontractor in an endeavour to reach agreement. If agreement is not achieved within fourteen (14) days, the Contractor shall make a fair determination in accordance with the Subcontract, taking due regard of all relevant circumstances and relevant documents.

### The Contractor shall give notice to the Subcontractor of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless the Subcontractor gives notice to the Contractor, of his dissatisfaction with a determination within fourteen (14) days of receiving it. Either Party may then refer the dispute to dispute resolution in accordance with Clause 19 (*Claims and Disputes*) (but the performance of the Subcontract shall continue in accordance with the Subcontract until the outcome of the dispute resolution process).

# The Subcontractor

## Subcontractor’s General Obligations

### The Subcontractor shall execute and complete the Works in accordance with the Subcontract, and shall remedy any Defects and when completed, the Works shall be fit for purpose in relation to the purposes for which the Works are intended as set out in the Subcontract.

### For purposes of this Sub-Clause 4.1.1, the term “fit for the purpose” shall mean that:

#### when completed, the Works shall comply in all material respects with the Subcontract;

#### all Works shall be new, with no inherent defect. All Works, materials and equipment shall be in the care, custody, and control of the Subcontractor and properly preserved and maintained at all times until delivery to the Contractor; and

#### the Contractor shall be able to operate the completed Works in accordance with the Subcontract, Necessary Consents and all applicable Laws.

### The Subcontractor shall provide the Subcontractor’s Documents specified in the Subcontract, and all Subcontractor’s Personnel, consumables, Materials and other things and services, whether of a temporary or permanent nature, required for the Subcontractor to perform its obligations under and in accordance with the Subcontract.

### The Works shall include any work which is necessary to satisfy the Subcontract, or is implied by the Subcontract, and all works which (although not mentioned in the Subcontract) are necessary for stability or for the completion, or safe and proper operation of the Works.

### The Subcontractor shall be responsible for the adequacy, stability, security and safety of all Site operations, of all methods of construction and of all the Works.

### The Subcontractor shall, whenever required by the Contractor, submit details of the arrangements and methods which the Subcontractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Contractor.

## Performance Security

### The Subcontractor shall obtain (at its own cost) and provide to the Contractor irrevocable and unconditional bank guarantees as per the Subcontract from banks agreed by the Contractor.

### Notwithstanding any other provision of this Subcontract, the Contractor shall not be obliged to make any payment to the Subcontractor until the Subcontractor has provided the documents required under this Sub-Clause, the Contractor may retain monies payable to the Subcontractor in an amount equal to the required value(s) of the Performance Securities that have not been provided, in its absolute discretion.

### If the Subcontractor is required to replace or extend any bond or guarantee in order to ensure that the Performance Security is in full force and effect for the period required as per the Subcontract, the Subcontractor shall provide to the Contractor a replacement bond or guarantee or an extension of the term of such bond or guarantee, in each case complying with the requirements of the Subcontract , at least thirty (30) days prior to its expiry. If the Subcontractor fails to comply with such obligation to extend any of the Performance Securities, then (without prejudice to any other rights of the Contractor to call on the bonds or guarantee) the Contractor shall be entitled to hold such monies as cash collateral for the Subcontractor’s obligations and liabilities under or in relation to this Subcontract, until the Subcontractor provides replacement Performance Securities that complies with the requirements of this Subcontract.

## Subcontractor’s Representative

### The Subcontractor shall appoint a Subcontractor's Representative and give him all authority necessary to act on the Subcontractor's behalf under the Subcontract. The Subcontractor shall, within 15 days of the Base Date, notify the Contractor of the person it intends to designate as the Subcontractor’s Representative. For the avoidance of doubt, the Subcontractor’s Representative has authority to act on behalf of all of the persons forming the Subcontractor.

### If the appointed person fails to act as Subcontractor's Representative in accordance with the Subcontract, the Subcontractor shall submit to the Contractor for its consent (which cannot be unreasonably withheld) the name and particulars of another suitable person for such appointment.

### The Subcontractor's Representative shall, on behalf of the Subcontractor, receive instructions under Sub‑Clause 3.2 (*Instructions*).

### The Subcontractor's Representative and all these persons shall be fluent in the language for communications defined in Sub‑Clause 1.4 (*Law and Language*).

## Subcontractor’s subcontractors :

### The Subcontractor shall not subcontract the whole of the Works.

### The Subcontractor shall be responsible for the acts, omissions or defaults of any of its subcontractor, his agents or employees, as if they were the acts, omissions or defaults of the Subcontractor.

### The Parties acknowledge and agree that Subcontractor, shall be required to obtain the consent of the Contractor to subcontract parts of the Works prior to engaging any such subcontractors.

## Cooperation and Interface

### Without prejudice to Sub-Clauses 4.4.3, the Subcontractor shall, as specified in the Subcontract or as instructed by the Contractor allow appropriate opportunities for carrying out work to:

#### the Contractor’s or Employer's personnel,

#### any other subcontractors working at Site, and

#### the personnel of any legally constituted public authorities,

## who may be employed in the execution on or near the Site of any work not included in the Subcontract and the Subcontractor shall co-ordinate with such persons in the performance of their activities.

### The Subcontractor acknowledges that the obligations under this Sub-Clause 4.5 are accounted for in the Subcontract Price and it shall not, by complying with such requirements, become entitled to a Variation, adjustment to the Subcontract Price or other payment, extension of time or any other relief.

## Setting Out

## The Subcontractor shall set out the Works in relation to original points, lines and levels of reference specified by the Contractor. The Subcontractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

## Safety Procedures

### The Subcontractor shall:

#### provide a safety program including HSSE policy, plan, procedures, and site training program for approval by the Contractor,

The safety program shall address:

##### regular site audits,

##### third party audits,

##### safety performance incentives,

##### minimum standard and special PPE, including eye and hand protection,

##### daily and weekly reporting, and

##### HSE committee meetings.

#### comply with all applicable safety regulations and Laws,

#### take care for the safety of all persons entitled to be on the Site,

#### keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,

#### provide any Temporary Services (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

## Quality Assurance

The Subcontractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Subcontract. The system shall be in accordance with the details stated in the Subcontract*.* The quality assurance system shall include:

#### inspection and test plans for all types of work, approved by the Contractor, and

#### notice of inspections

### Details of all procedures and compliance documents shall be submitted to the Contractor for information before each execution stage is commenced and the same shall be in accordance with quality control plan. When any document of a technical nature is issued to the Contractor, evidence of the prior approval by the Subcontractor himself shall be apparent on the document itself.

### Compliance with the quality assurance system shall not relieve the Subcontractor of any of his duties, obligations or responsibilities under the Subcontract.

## Sufficiency of the Subcontract Price

### The Subcontractor is satisfied as to the correctness and sufficiency of the Subcontract Price.

### Unless otherwise stated in the Subcontract, the Subcontract Price covers all the Subcontractor’s obligations under the Subcontract and all things necessary for the execution and completion of the Works and the remedying of any Defects.

## Unforeseeable Difficulties

### Except as otherwise expressly stated in the Subcontract:

#### the Subcontractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works;

#### by signing the Subcontract, the Subcontractor accepts total responsibility for having foreseen all difficulties and costs of successfully completing the Works; and

#### the Subcontractor shall not be entitled to any additional payment, extension of time or other relief in respect of the performance of its obligations under this Subcontract as a result of any unforeseen difficulties or costs.

## Subcontractor’s Equipment

The Subcontractor shall be responsible for all Subcontractor’s Equipment. When brought on to the Site, Subcontractor’s Equipment shall be deemed to be exclusively intended for the execution of the Works.

The Subcontractor’s Equipment shall have adequate health and safety certification as required by Applicable Law.

## Avoidance of Interference

### The Subcontractor shall not interfere unnecessarily or improperly with:

#### the convenience of the public, or

#### the access to and use and occupation of all roads and footpaths or other property, irrespective of whether they are public or in the possession of the Contractor or of others.

### The Subcontractor shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

## Access Route

### The Subcontractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site provided that the Contractor shall be responsible for obtaining permissions and/or unrestricted access in respect of the publicly owned land which constitutes the access route between the Site and the main road to the extent required to enable the Subcontractor to undertake the Works. The Subcontractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Subcontractor's traffic or by the Subcontractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

### Except as otherwise stated in these Conditions:

#### the Subcontractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;

#### the Subcontractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;

#### the Subcontractor shall provide a traffic management plan required for his use of access routes;

#### the Contractor shall not be responsible for any claims which may arise from the use or otherwise of any access route;

#### the Contractor does not guarantee the suitability or availability of particular access routes, and

#### Costs due to non suitability or non availability, for the use required by the Subcontractor, of access routes shall be borne by the Subcontractor.

## Transport of Materials

### Unless otherwise stated in these Conditions:

#### the Subcontractor shall give the Contractor not less than thirty (30) days' notice of the date on which any part of the Works will be delivered to the port of delivery as per agreed Incoterms; and

#### the Subcontractor shall be responsible for packing, loading, transporting to as per the Subcontract and protecting all Materials and/or the Works;

### The Subcontractor shall be responsible for the damages and losses incurred, and shall indemnify and hold the Contractor harmless against and from all damages, losses and or expenses (including legal fees and expenses) resulting from the transport of Materials, and shall negotiate and pay all claims arising from their transport.

### The Subcontractor shall ensure sufficient seaworthy packaging of the Materials with proper packaging and lashing arrangement to protect the Materials. This packaging should be internationally accepted for industrial machinery by insurance companies. The Subcontractor shall ensure (at its own cost) that the packages are fit for sea voyage and shall have necessary documents / certificates required by shipping line and insurance company. The Subcontractor shall be solely responsible for packing, loading, transporting and protecting all the Materials and other things required for the Works at its sole cost as per the agreed Incoterms.

### If, as a result of the Subcontractor’s failure to comply with Sub-Clauses 2.2 (b) and/or 4.14.2, 4.14.3, any policy of insurance taken out by the Employer/Contractor is vitiated or the proceeds payable thereunder are reduced, the Subcontractor shall indemnify the Contractor against all and any losses or claims it thereby suffers.

### Notwithstanding anything to the contrary, prior to dispatch of the Materials the Subcontractor must obtain written dispatch clearance from the Contractor.

### Before dispatch of the Materials by the Subcontractor, the Subcontractor shall submit to the Contractor the following documents for review:

#### Invoice

#### Final and correct packing list containing details of weight, dimensions, HS codes, container numbers & container stuffing details (in case of containerized consignments);

#### Dispatch clearance certificate

#### Certificate of origin issued by Chamber of Commerce or equivalent authority;

#### Packing conformity as of ISPM 15 regulation i.e. all boxes and crates to be with ISPM 15 marking/stamps as norms along with ISPM certificates (ISPM certificates to be provided by the Supplier if required by authorities in Sierra Leone);

#### Dangerous goods declaration as per dangerous goods regulations (required only in case of any dangerous goods);

#### MSDS – required, only in case of any dangerous goods

#### Electronic cargo tracking note (if applicable);

#### And any other document required by the Contractor.

## Subcontractor’s Equipment

### The Subcontractor shall be responsible for all Subcontractor’s Equipment. When brought on to the Site, Subcontractor’s Equipment shall be deemed to be exclusively intended for the execution of the Works.

### The Subcontractor’s Equipment, shall have adequate health and safety certification as required by Applicable Law.

### All rigging and lifting equipment shall be properly inspected, and certified before bringing to Site and once every three months thereafter.

## Protection of the Environment

### The Subcontractor shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise, and other results of his operations.

### The Subcontractor shall ensure that emissions, surface discharges and effluent from the Subcontractor’s activities shall not exceed the values indicated by the Contractor, and shall not exceed the values prescribed by applicable Laws.

### The Subcontractor shall indemnify and hold harmless the Contractor against any environmental or other liability (including clean-up costs) associated with the Subcontractor bringing onto the Site or otherwise using hazardous substances or from any environmental damage otherwise caused by the Subcontractor’s act, omission or performance of the Works.

## Contractor’s Equipment and Free Issue Material

### The Contractor may make the Contractor's equipment (if any) available for the use of Subcontractor in the execution of the Works. The Contractor shall be responsible for the Contractor's equipment, except that the Subcontractor shall be responsible for each item of Contractor's equipment whilst any of the Subcontractor's personnel/representative is operating it, driving it, directing it or in possession or control of it.

### The Contractor shall supply, free of charge, the "free issue materials" (if any) in accordance with the Subcontract. The Subcontractor shall visually inspect such free issue materials, and shall promptly give notice to the Contractor of any shortage, Defect or default in these materials. From the time of their supply by the Contractor, the Subcontractor shall be responsible for the storage of such free-issue materials.

### After this visual inspection, the free-issue materials shall come under the care, custody and control of the Subcontractor and the Subcontractor shall be responsible for the installation of such materials into the Works as part of the Works being performed under and in accordance with this Subcontract and the Subcontractor shall be responsible for such materials as if such materials formed part of the Works.

## Progress Reports

### The Subcontractor shall submit monthly progress reports to the Contractor in a format agreed with the Contractor. The progress reports shall be prepared by the Subcontractor and submitted to the Contractor by email to an agreed distribution list and via a document transmittal system.

### The first monthly report shall cover the period up to the end of the first calendar month following the Base Date. Reports shall be submitted monthly thereafter, each within five (5) days after the last day of the period to which it relates.

### Reporting shall continue until the Subcontractor has completed all work which is known to be outstanding at the Taking‑Over Date.

## Subcontractor's Operations on Site

### The Subcontractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Subcontractor and agreed by the Contractor as working areas. The Subcontractor shall take all necessary precautions to keep Subcontractor's Equipment and Subcontractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

### During the execution of the Works, the Subcontractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Subcontractor's Equipment or surplus materials. The Subcontractor shall clear away and remove from the Site any wreckage, rubbish and temporary works which are no longer required. The Subcontractor shall be responsible for segregating all recyclable waste generated from the works, and shall promote a waste recycling program in conjunction with the local community.

### Upon the issue of the Taking Over certificate for the Works, the Subcontractor shall clear away and remove all Subcontractor's Equipment, surplus material, wreckage, rubbish and temporary works, remove and properly dispose of any hazardous substances which the Subcontractor has brought onto the Site and remediate any contamination caused to the Site or neighboring areas by the Works. The Subcontractor shall leave the Site and the Works in a clean and safe condition. However, the Subcontractor may retain on Site, during the Defects Notification Period, such Materials as are required for the Subcontractor to fulfil obligations under the Subcontract.

## Prevention of Corruption

### The Subcontractor agrees that it shall (and shall procure that all Subcontractor’s Personnel shall), in respect of the Works, conduct its business in compliance with (i) Anti-Corruption Laws; (ii) Lender Requirements; and (iii) internationally accepted standards of business conduct and ethics. In performing its obligations under the Subcontract, the Subcontractor shall conduct its business in compliance with the Anti-Corruption Laws and the Lender Requirements at all times.

### Without prejudice to the Subcontractor’s obligation to comply with Sub-Clause 4.20.1, the Subcontractor warrants that it has in place, and that it shall maintain, adequate procedures designed to prevent incidences of corruption, including but not limited to a comprehensive code of conduct, internal training and maintenance of complete and accurate books and records and an effective system of internal accounting controls necessary to ensure proper recording and authorisation of the Subcontractor’s expenditures and dispositions. If not already in place, the Subcontractor shall appoint a senior manager or working committee tasked with monitoring the adequacy of, and adherence to, such procedures.

### The Subcontractor shall ensure that every contract with a subcontractor contains terms equivalent to those imposed on the Subcontractor in this Sub-Clause and any other person associated with the Subcontractor who is performing services in connection with this Subcontract does so only on the basis of a contract which imposes on such person terms equivalent to those imposed on the Subcontractor in this Sub-Clause.

### Without prejudice to the Subcontractor’s obligation to comply with Sub-Clause 4.20.3, the Subcontractor shall procure that its subcontractors shall also have in place and shall maintain adequate procedures designed to prevent incidences of corruption and/or other matters set out in the Lender Requirements. Such procedures shall include a comprehensive code of conduct, internal training and maintenance of complete and accurate books and records and an effective system of internal accounting controls necessary to ensure proper recording and authorisation of the subcontractor’s expenditures and dispositions.

### The Contractor shall be entitled to audit compliance with the provisions of this Sub-Clause and to inspect the Subcontractor’s accounts, and the Subcontractor shall provide such supporting evidence of compliance as the Contractor may reasonably request.

### The procedures described in Sub-Clause 4.20.2 and Sub-Clause 4.20.4 shall prohibit:

#### the offering or providing, directly or indirectly, of anything of value, including cash, bribes or kickbacks to any employee, representative, customer or official in connection with any transaction or business dealing connected with the project;

#### the offering or providing of gifts, other than gifts of nominal value to commemorate a particular business transaction or activity, to any employee or representative connected with the project and shall require the seeking of the Contractor’s management approval to give significant gifts or provide extravagant entertainment in connection with the project transaction or business dealing to anyone else;

#### the offering of business entertainment to any employee or representative connected with the project under circumstances that create the appearance of an impropriety;

#### the sharing or exchanging of any price, cost or other competitive information or the undertaking of any other collusive conduct with any other third party subcontractor/bidder with respect to any proposed, pending or current procurement connected with the project; and

#### the matters detailed in paragraph1 of the Lender Requirements.

### The Subcontractor shall notify the Contractor without delay of any breach or potential breach of the Anti-Corruption Laws and/or Lender Requirements it becomes aware of, and shall co-operate with the Contractor and provide to the Contractor all information that is reasonably requested by the Contractor for the purpose of assessing the Contractor’s own potential liability under the Anti-Corruption Laws and/or Lender Requirements arising in connection with any such breach or potential breach.

### The Subcontractor shall, to the extent permitted by any applicable Laws, indemnify and hold harmless the Contractor from and against any and all losses, liabilities, damages, costs, charges or expenses (including reasonable professional fees incurred in investigating or defending any claim or proceeding whether such claim or proceeding is successfully defended or not), fines or penalties incurred in connection with any breach or potential breach by the Subcontractor of this Sub-Clause.

### The Contractor reserves the right to terminate by written notice and with immediate effect, this Subcontract if the Subcontractor or its subcontractors commits a breach of this Sub-Clause.

## After execution of the Contract, if either Party becomes aware that the Works do not materially comply with the relevant requirements of the Subcontract then, unless the relevant conflict or inaccuracy was notified to the Contractor in writing prior to the execution of the Subcontract, the Subcontractor shall bear responsibility for dealing with or overcoming the inaccuracy or conflict and shall otherwise ensure that the Works materially comply with the relevant requirements of the Subcontract without being entitled to an extension of time, adjustment to the Subcontract Price or any other relief.

## The Subcontractor agrees and acknowledges that:

(i) Upon Employer's request or upon termination of the main EPC Contract between the Employer and the Contractor, the Subcontract shall be novated to the Employer.

(ii) Subcontract can be assigned to the Employer without Subcontractor's consent.

(iii) Employer (acting in its sole discretion) may make direct payments to the Subcontractor in respect of any amounts due and payable for any works undertaken or goods or services provided under any such Subcontract (as indicated in an invoice submitted by the Subcontractor);

(iv) Subcontractor shall not be entitled to any relief, extension of time, additional cost, and/or compensation under the relevant Subcontract by virtue of providing notices to the Employer and/or by reason of the Employer having elected to make any direct payments to the relevant Subcontractor.

(v) Employer shall not be deemed to have approved (either directly or indirectly) any carrying out and/or completion of any works of services undertaken in accordance with the terms of the Subcontract by virtue of the Employer having elected to make any direct payments.

(vi) any direct payments made by the Employer to a Subcontractor shall unconditionally discharge liability for the relevant amounts under such Subcontract.

(vii) Employer shall not assume any liability (whether directly or indirectly) to the Contractor and/or Subcontractor in respect of the Subcontract by virtue of having elected to make any direct payments.

(viii) Employer shall not be deemed to have exercised any rights of step-in or novation (as the case may be) pursuant to a Subcontract or (if applicable) a Collateral Warranty by virtue of the Employer having elected to make direct payments to the Subcontractor; and

(ix) Title to any works undertaken, or goods or services provided under, pursuant to any such Subcontract shall pass to the Employer upon any direct payments having been made by the Employer to the Subcontractor.

# Design

## Subcontractor’s Documents

### The Subcontractor’s Documents shall include the documents specified in the Subcontract, and/or documents required to satisfy all regulatory approvals, and the documents described in Sub‑Clause 5.3 (*As‑Built Documents*). The Subcontractor’s Documents shall be written in the language for communications defined in Sub‑Clause 1.4 (*Law and Language*).

### The Subcontractor shall prepare all Subcontractor’s Documents, and shall also prepare any other documents necessary to instruct the Subcontractor’s Personnel.

### No review, approval or comment, or failure to review, approve or comment in relation to any Subcontractor’s Document shall relieve the Subcontractor from or otherwise prejudice or diminish any obligation, responsibility or liability of the Subcontractor.

## Subcontractor’s Undertaking

### The Subcontractor undertakes that the design, the Subcontractor’s Documents, the execution of the Works and the completed Works, and the remedying of Defects therein will be in accordance with:

#### Laws in the Republic of Sierra Leone,

#### the Subcontract, as altered or modified by Variations,

#### Good Industry Practice, and

#### all Necessary Consents

## provided that where more than one set of standards are applicable, the Subcontractor shall comply with the standards as agreed by the Contractor.

## As‑Built Documents

### The Subcontractor shall prepare, and provide a complete set of final as‑built records of the execution of the Works, showing the exact as‑built locations, sizes and details of the work as executed. Such records shall be supplied to the Contractor prior to the Taking Over of the Works.

## Design Error

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Subcontract or the Subcontractor’s Documents, they and the Works shall be corrected at the Subcontractor’s cost, (notwithstanding any consent or approval given by or on behalf of the Contractor under this Subcontract) and the Subcontractor shall not be entitled to an extension of time or other relief under this Subcontract accordingly.

# Staff and Labour

## Engagement of Staff and Labour

### The Subcontractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

## Rates of Wages and Conditions of Labour

### The Subcontractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Subcontractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Subcontractor. The Subcontractor shall inform the Subcontractor’s Personnel about their liability in respect of income taxes or statutory deductions in respect of salaries, wages, allowances, bonuses and any other benefit as are subject to deduction under the Laws of the Republic of Sierra Leone for the time being in force and the Subcontractor shall perform such duties in regard to such deductions thereof as may be imposed on it by applicable Laws.

## Persons in the Service of Others

### The Subcontractor shall not recruit, or attempt to recruit, staff and labour from amongst the Contractor's Personnel.

## Labour Laws

### The Subcontractor shall comply with all the relevant labour Laws applicable to the Subcontractor’s Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

### The Subcontractor shall:

#### give preference to the use of equipment, materials and products manufactured or produced in the Republic of Sierra Leone, or services provided by Sierra Leoneans, where they are of better, equal or comparable value to those available from other sources, taking into account price, quality, reliability, timing and availability;

#### within thirty (30) days of the Base Date, provide the Contractor with a detailed report on potential Sierra Leonean supply, employment or contracting opportunities in relation to the Works, including opportunities which could reasonably be created with the provision of training;

#### within seven (7) days of the Base Date, appoint an officer responsible for:

##### liaising with Sierra Leoneans in relation to supply and contracting opportunities in relation to the Works;

##### the facilitation of supply, employment or contracting opportunities for Sierra Leoneans in relation to the Works; and

##### monitoring and reporting to the Contractor, the Subcontractor’s compliance with the obligations set out in this Sub-Clause 6.4.2;

#### give preference to the employment of Sierra Leoneans where they have the necessary skills in relation to the Works;

#### ensure that:

##### at least eighty per cent (80%) of the Civil Works are provided by Sierra Leoneans; or

##### at least thirty five per cent (35%) of the total Contract Price is spent on procuring subcontracts with Sierra Leoneans,

##### in each case to the extent that they are of better, equal or comparable value to those available from other sources than Sierra Leone, taking into account price, quality, reliability, timing and availability.

### The Subcontractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

## Working Hours

### No work shall be carried out on the Site on locally recognized days of rest, or outside normal working hours, unless:

#### otherwise stated in the Subcontract,

#### the Contractor gives consent, or

#### the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Subcontractor shall immediately advise the Contractor; and

#### in accordance with the relevant terms of the relevant Necessary Consents.

For purposes of this Sub-Clause 6.5, it is acknowledged by both Parties that unless otherwise expressly prohibited by Laws, there shall be no restrictions on working hours.

## Facilities for Staff and Labour

### The Subcontractor shall provide and maintain all necessary accommodation and welfare facilities for the Subcontractor's Personnel.

### The Subcontractor shall not permit any of the Subcontractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Works. The Subcontractor shall not provide accommodation for any of the Subcontractor’s Personnel anywhere on the Site.

## Health and Safety

### The Subcontractor shall at all times take all reasonable precautions to maintain the health and safety of the Subcontractor’s Personnel and shall comply with the requirements of the Contractor on health and safety.

### The Subcontractor shall appoint a Site Safety Representative responsible for advising on safety and protection against accidents. This person shall be qualified for this responsibility, and shall have a direct reporting line to the Subcontractor’s Representative who will, acting on the advice of the Site Safety Representative, issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Subcontractor shall provide whatever is required by the Subcontractor’s Representative to exercise this responsibility and authority.

### The Subcontractor shall promptly send to the Contractor details of any accident as soon as practicable after its occurrence. The Subcontractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Contractor may reasonably require.

## Subcontractor's Personnel

### The Subcontractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Contractor may require the Subcontractor to remove (or cause to be removed) any person employed on the Site or Works, including the Subcontractor's Representative if applicable, who:

#### persists in any misconduct or lack of care,

#### carries out duties incompetently or negligently,

#### fails to conform with any provisions of the Subcontract, or

#### persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

### If appropriate, the Subcontractor shall then appoint (or cause to be appointed) a suitable replacement person in accordance with the requirements of this Clause 6.

## Records of Subcontractor's Personnel and Equipment

### The Subcontractor shall submit to the Contractor details showing the number of each class of Subcontractor's Personnel and of each type of Subcontractor's Equipment on the Site. Details shall be submitted in each monthly report, in a form approved by the Contractor, until the Subcontractor has completed all work which is known to be outstanding at the completion date stated in the Taking‑Over certificate for the Works.

## Disorderly Conduct

### The Subcontractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Subcontractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.

### The Subcontractor shall prevent any alcoholic beverages, non-prescription drugs forbidden by Law, firearms or other weapons being brought onto the Site.

# Materials and Workmanship

## Manner of Execution

### The Subcontractor shall carry out the execution of the Works:

#### in the manner (if any) specified in the Subcontract and so that all Works shall be new and unused, and of good quality,

#### in a proper workmanlike and careful manner, in accordance with Good Industry Practices, and

#### with properly equipped facilities and non‑hazardous Materials, which are fit for their purpose.

## Inspection

### The Subcontractor shall implement a quality management system (QMS) to demonstrate compliance with the requirements of the Subcontract, ISO 9001 and Subcontract Documents as applicable. The Subcontractor shall produce an overall Quality Assurance Plan detailing the organisation and method of executing the Subcontractor’s QMS.

### The Contractor’s personnel, the Employer, Employer’s personnel, the Offtaker, the Lenders, the Government, any Government authority of Sierra Leone and any person authorised in writing by any of them for this purpose, shall at all reasonable times, in compliance with the HSE guidelines:

#### have access to all parts of the Site and

#### during construction (at the Site and, to the extent specified in the Subcontract, elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of the Works.

#### and the Subcontractor shall, at its cost and expense, do all things reasonably necessary to facilitate and give effect to the terms of this Sub-Clause.

### The Subcontractor shall give the Contractor’s personnel and any other persons referred to in Sub-Clause 7.2.2 full opportunity to carry out these activities, including providing access, and facilities. No such activity shall relieve the Subcontractor from any obligation or responsibility.

### In respect of the work which Contractor’s personnel are entitled to examine, inspect, measure and/or test, the Subcontractor shall give notice to the Contractor whenever any such work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Contractor shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Subcontractor that the Contractor does not require to do so. If the Subcontractor fails to give the notice, he shall, if and when required by the Contractor, uncover the work and thereafter reinstate and make good such work, all at the Subcontractor’s cost.

## Testing

### This Sub‑Clause shall apply to all tests related to Subcontract.

### No part of the Works shall be covered up on the Site without the carrying out of any test or inspection of such part which is required under the Subcontract. If such covering up occurs, the Contractor may instruct the Subcontractor to uncover that part of the Works and carry out the required test or inspection.

### The Subcontractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Subcontractor shall agree with the Contractor for the time and place for the specified testing of any Materials and other parts of the Works.

### The Contractor may, under Clause 12, vary the location or details of specified tests, or instruct the Subcontractor to carry out additional tests. If these varied or additional tests show that the tested Materials or workmanship is not in accordance with the Subcontract the cost of carrying out this Variation shall be borne by the Subcontractor and the Subcontractor shall not be entitled to any extension of time in respect of such Variation, notwithstanding other provisions of the Subcontract.

### The Subcontractor shall promptly forward to the Contractor duly certified reports of the tests.

## Rejection

### If, as a result of an examination, inspection, measurement or testing performed prior to the issue of the Taking Over Certificate, any part of the Works, any Materials, or workmanship is found to be Defective or otherwise not in accordance with the Subcontract, the Subcontractor shall then promptly make good such Defect and ensure that the Works, any Materials, or workmanship complies with the Subcontract. In the event the Subcontractor fails to rectify such Defect, the Contractor may reject the Works, or Materials and the rejection remedies as per Subclause 9.2 shall apply.

### If the Contractor requires this Material or Works, or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Contractor to incur additional costs, the Subcontractor shall pay these costs to the Contractor.

## Remedial Work

### Notwithstanding any previous test or certification, the Contractor may instruct the Subcontractor to:

#### replace (only in case repair is not possible within a reasonable period of time) or repair any Works or Materials which is defective or not in accordance with the Subcontract,

#### remove and re‑execute any other work which is not in accordance with the Subcontract, and

#### execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

### If the Subcontractor fails to comply with any such instruction, which complies with Sub‑Clause 3.2, the Contractor shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Subcontractor would have been entitled to payment for the work, the Subcontractor shall pay to the Contractor all costs arising from this failure.

## Ownership of Materials

### Each item of Materials or Works shall become the property of the Contractor, free from Liens upon the date such Materials or Works are received at Site.

### If any Lien over any item of the Materials or Works is filed, claimed or registered, the Subcontractor shall immediately upon becoming aware of same notify the Contractor and shall promptly discharge, such Lien. The Subcontractor shall indemnify the Contractor against any loss, damage, cost or expense (including legal fees and the cost and expense of the Contractor discharging any Lien itself where the Subcontractor has failed to do so) to the extent arising out of or in connection with any Lien being filed, claimed or registered.

## Consumables and Construction Facilities

### The Subcontractor will arrange and pay for all supplies of consumables in sufficient quantities to enable the Subcontractor to perform the Works, including all construction, and testing requirements, and for the disposal thereof.

# Commencement, Delays and Suspension

## Commencement of Works

### The Subcontractor shall commence execution of the Works promptly after the Base Date has occurred in accordance with this Subcontract, and shall proceed with the Works with due expedition and without delay.

## Programme

### The Subcontractor shall submit a programme at the kick off meeting for Contractor’s review and thereafter shall submit a revised programme whenever the agreed programme is inconsistent with actual progress or with the Subcontractor’s obligations. Each programme shall include:

#### the order in which the Subcontractor intends to carry out the Works, including the anticipated timing of each major stage of the Works,

#### a supporting report which includes a general description of the methods which the Subcontractor intends to adopt for the execution of each major stage of the Works and number of each class of Subcontractor’s Personnel and each type of Subcontractor’s Equipment for each major stage.

### The Contractor’s personnel shall be entitled to rely upon the programme when planning their activities.

### The Subcontractor shall promptly give notice to the Contractor of specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In this event, or if the Contractor gives notice to the Subcontractor that a programme fails (to the extent stated) to comply with the Subcontract or to be consistent with actual progress and the Subcontractor’s stated intentions, the Subcontractor shall submit a revised programme to the Contractor in accordance with this Sub‑Clause 8.2.

### The furnishing of a programme (or any revised programme) by the Subcontractor or any review, comment or approval of it (or failure to do so) by the Contractor shall not relieve the Subcontractor from or alter any of its warranties, obligations or liabilities (including its liability for Delay Liquidated Damages) under this Subcontract and shall not constitute the granting of any extension of time or an approval of any variation.

## Extension of Time for Completion

### The Subcontractor shall be entitled, to an extension of the Time for Completion if and to the extent that such Time for Completion is or will be delayed by any of the following causes:

#### a Variation

#### a cause of delay giving an entitlement to extension of time under a Sub‑Clause of these Conditions,

#### provided always that the Subcontractor shall not be entitled to an extension of time to the extent that the cause of the relevant delay is due to any breach, default or negligence of the Subcontractor (or any person for whom the Subcontractor is responsible in accordance with the Subcontract).

### If the Subcontractor considers himself to be entitled to an extension of the Time for Completion, the Subcontractor shall give notice to the Contractor in accordance with Sub‑Clause 19.1 (*Subcontractor’s Claims*).

### Notwithstanding anything stated in this Subcontract to the contrary, the Subcontractor’s entitlement to an extension to the Time for Completion shall be determined in accordance with the provisions of this Subcontract and such entitlement shall be reduced to the extent that any negligent act or omission, breach of Subcontract, other default or delay by the Subcontractor, its Personnel and their officers, agents or employees has caused or contributed to such delay.

### The Subcontractor agrees that it shall use best endeavours to eliminate or minimise any delay in attaining the Time for Completion.

### The Contractor shall be entitled at its discretion to unilaterally extend any Time for Completion by written notice to the Subcontractor subject to provisions Clause 12 (*Variations and Adjustment*).

### Extensions to the Time for Completion may be granted by the Contractor to the Subcontractor either prospectively or retrospectively.

## Rate of Progress

### If, at any time:

#### actual progress is too slow to complete the Works by the Time for Completion, and/or

#### progress has fallen (or will fall) behind the current programme under Sub‑Clause 8.2 (*Programme*),

other than as a result of a cause listed in Sub‑Clause 8.3 (*Extension of Time for Completion*), then the Contractor may instruct the Subcontractor to submit, under Sub‑Clause 8.2 (*Programme*), a revised programme and supporting report describing the revised methods which the Subcontractor proposes to adopt in order to expedite progress and complete the Works by the Time for Completion.

### Unless the Contractor notifies otherwise, the Subcontractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Subcontractor’s Personnel and/or resources , at the risk and cost of the Subcontractor. If these revised methods cause the Contractor to incur additional costs, the Subcontractor shall pay these costs to the Contractor, in addition to Delay Liquidated Damages (if any) under Sub‑Clause 8.5.

## Delay Liquidated Damages

### If the Subcontractor fails to complete the Works within the Time for Completion, the Subcontractor shall pay or allow liquidated damages for delay to the Contractor (“**Delay Liquidated Damages**”). Such Delay Liquidated Damages shall be calculated on a daily basis for each day by which the completion of the Works falls after the relevant Time for Completion for the Works. Such calculation shall be in accordance with the rate as set out in the Work Order. The Subcontractor shall pay to the Contractor such liquidated damages or allow the Contractor to deduct such liquidated damages from sums otherwise payable to the Subcontractor within ten (10) days of the end of each week in which the relevant delay event occurs.

### The Delay Liquidated Damages shall not relieve the Subcontractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Subcontract.

### The Parties agree that the Delay Liquidated Damages represent an agreed genuine pre-estimate of losses likely to be suffered by the Contractor in the event of a delay to the completion of the Works beyond the relevant Time for Completion and are not a penalty.

### In the event that the Delay Liquidated Damages payable or allowed under this Sub-Clause 8.5 (*Delay Liquidated Damages*) are found to be void as a result of a claim, or proceedings raised by either Party , the Subcontractor shall be liable to the Contractor for any losses and/or expenses suffered or incurred by the Contractor as a result of the failure to achieve the completion of the Works on or before the Time for Completion, provided the amount of damages payable in such event does not exceed the amount that would have been payable had the Delay Liquidated Damages not been void.

## Suspension of Work

### The Contractor may at any time instruct the Subcontractor to suspend progress of part or all of the Works. During such suspension, the Subcontractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

### If and to the extent that the cause for the suspension is the responsibility of the Subcontractor, the following Sub‑Clauses 8.7 (*Consequences of Suspension*), shall not apply.

## Consequences of Suspension

### If the Subcontractor suffers delay and/or incurs Cost from complying with the Contractor’s instructions under Sub‑Clause 8.6 (*Suspension of Work*), the Subcontractor shall give notice to the Contractor and shall be entitled subject to Sub‑Clause 19.1 (*Subcontractor’s Claims*) to:

#### an extension of time for any such delay, if completion is delayed, under Sub‑Clause 8.3 (*Extension of Time for Completion*), and

#### payment of any such Cost, which shall be added to the Subcontract Price.

### After receiving this notice, the Contractor shall proceed in accordance with Sub‑Clause 3.3 (*Determinations*) to agree or determine these matters.

### The Subcontractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Subcontractor’s failure, workmanship or materials, or of the Subcontractor’s failure to protect, store or secure in accordance with Sub‑Clause 8.6 (*Suspension of Work*).

# Tests on Completion

## Subcontractor’s Obligations

### The Contractor shall carry out the Tests on Completion for the project and the Subcontractor shall provide the required services as per the Subcontract to enable the Contractor to complete the Tests on Completion without any delay.

### The Tests on Completion for the project shall be carried out in the following sequence:

#### pre‑commissioning tests,

#### commissioning tests,

#### trial operation,

#### performance tests,

#### reliability run tests.

## Rejection Remedies

### Where in this Subcontract it is stated that the Contractor shall have the remedies set out in this Sub-Clause 9.2, the following shall apply:

#### if instructed by the Contractor, the Subcontractor shall, at its cost, dismantle and remove the Works from the Site and title in the Works shall revert to the Subcontractor. In addition and as a separate entitlement, the Contractor shall be entitled to recover:

##### all sums paid for the Works, plus

##### other substantiated costs and liabilities.

#### if no dismantling is instructed by the Contractor, the Contractor shall be entitled to a reasonable reduction in the Subcontract Price at the discretion of the Contractor.

# Contractor’s Taking Over

## Taking Over of the Works

### Except as otherwise provided in this Subcontract, the Works shall be Taken Over by the Contractor when:

#### the Works have been completed in accordance with the Subcontract,

#### the Subcontractor has paid or the Contractor has set off any and all undisputed Delay Liquidated Damages (and for the purposes of this Sub-Clause, “undisputed” shall be deemed to refer to any claim for Delay Liquidated Damages that have not been referred to or are the subject of a formal dispute resolution process pursuant to this Subcontract or otherwise).

#### any spare parts and tools referred to in the Subcontract have been delivered to the Contractor;

#### the Subcontractor has delivered the as-built drawings in accordance with Sub-Clause 5.3 (*As‑Built Documents*).

#### the Subcontractor has provided the written discharge in accordance with Sub‑Clause 13.6.4 and the Subcontractor has provided lien waivers releasing the Contractor;

#### the Subcontractor has provided the Warranty Bond and;

#### the Subcontractor has returned all equipment and parts borrowed from the Contractor.

### The Subcontractor shall apply by notice to the Contractor for a Taking‑Over Certificate after the Works in the Subcontractor’s opinion, are complete and ready for Taking Over and the conditions in Sub-Clause 10.1.1 have been satisfied.

### The Contractor shall, within twenty eight (28) days after receiving the Subcontractor’s application:

#### issue the Taking‑Over Certificate to the Subcontractor, stating the date (the “**Taking-Over Date**”) on which the Works achieved Taking Over in accordance with the Subcontract, except for the items on the Punch List (the “**Outstanding Works**”); or

#### reject the application, giving reasons and specifying the work required to be done by the Subcontractor to enable the Taking‑Over Certificate to be issued. The Subcontractor shall then complete this work before issuing a further notice under this Sub‑Clause.

## Deduction

### Where any part of the Works is not completed as at the Taking-Over Date (including any Outstanding Works) the Contractor may deduct from any amount payable to the Subcontractor an amount equal to the value of such part or parts of the Works (and the Contractor shall proceed in accordance with Sub-Clause 3.3 (*Determination*) to agree or determine such amount). Any such deduction shall be released to the Subcontractor once the Outstanding Works have been completed.

# Defects Liability

## Completion of Outstanding Works and Remedying Defects

### The Subcontractor guarantees and warrants that the Works and Subcontractor’s Documents shall be free from all Defects and shall be in the condition required by the Subcontract (fair wear and tear excepted) for the duration of the Defects Notification Period.

### From the Taking Over Date in respect of the Works the Contractor shall, subject to access limitations imposed by the Employer’s operation of the Works and the Employer’s reasonable commercial requirements, allow the Subcontractor to have such access to the Works as is reasonably necessary to complete the Outstanding Works (which the Subcontractor must complete within such reasonable time as is instructed by the Contractor).

### The Subcontractor shall (in co-operation with the Contractor and the Employer):

#### minimise disruption to the operation of the Works; and

#### complete such work at the earliest practical opportunity.

### If during the Defects Notification Period any part of the Works to which such Defects Notification Period relates is not in accordance with Sub-Clause 11.1.1, the Contractor shall notify the Subcontractor in writing, giving such supporting data as the Contractor has readily available. The Subcontractor shall at its option, promptly procure the repair, replacement and correction of such part of the Works (including any Defect and damage arising from such a Defect) so as to ensure that it complies with the warranties in Sub-Clause 11.1.1. The Subcontractor shall to the extent practicable carry out its obligations under this Sub-Clause 11.1 so as not to interfere with the use of the Works by the Employer and any contractor engaged by the Employer.

## Cost of Remedying Defects

### All work referred to in Sub‑Clause 11.1 shall be executed at the risk and cost of the Subcontractor, as soon as practicable, in consultation with the Contractor and at such time as the Contractor may instruct.

### Extension of Defects Notification Period

### The Defects Notification Period for the Works or part of the Works which are not in itself defective shall be extended if and to the extent that the Works or such part of the Works (as the case may be) cannot be used for the purposes for which they are intended by reason of a Defect or damage attributable to the Subcontractor.

### The Defects Notification Period in respect of any part of the Works that is repaired, replaced, converted, altered, added to or modified under Sub-Clause 11.1 shall be as per the Work Order.

## Failure to Remedy Defects

### If the Subcontractor fails to remedy any Defect or damage under Sub-Clause 11.1.3 within a reasonable time, a date may be fixed by (or on behalf of) the Contractor, on or by which the Defect or damage is to be remedied. The Subcontractor shall be given reasonable notice of this date.

### If the Subcontractor fails to remedy the Defect or damage by this notified date and this remedial work was to be executed at the cost of the Subcontractor under Sub‑Clause 11.2 (*Cost of Remedying Defects*), the Contractor may (at his option):

#### carry out the work himself or by others, in a reasonable manner and at the Subcontractor’s cost, and the Subcontractor shall pay to the Contractor the costs reasonably incurred by the Contractor in remedying the Defect or damage;

## Performance Certificate

### Performance of the Subcontractor’s obligations under this Clause 11 shall not be considered to have been completed until the Contractor has issued the Performance Certificate to the Subcontractor, stating the date on which the Subcontractor completed his obligations under this Clause 11.

### The Contractor shall issue the Performance Certificate within thirty five (35) days after the expiry of the Defects Notification Periods, or as soon thereafter as the Subcontractor has supplied all the Subcontractor’s Documents and completed the Works, including remedying any Defects and damage required under this Clause 11.

### After the issuance of the Performance Certificate, the Subcontractor shall, to the extent possible assign to the Contractor all warranties from any subcontractor, vendor or manufacturer or subcontractor which extend beyond the Defects Notification Period and/or the Latent Defect Period.

## Unfulfilled Obligations

### After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation and discharge of any liability which remains unperformed or undischarged at the time such Performance Certificate is issued. For the purposes of determining the nature and extent of unperformed obligations, the Subcontract shall be deemed to remain in force.

## Clearance of Site

### Upon receiving the Performance Certificate, the Subcontractor shall remove any remaining Subcontractor's Equipment, surplus material, wreckage, rubbish and Temporary Services from the Site.

### If all these items have not been removed within twenty eight (28) days after the Contractor issues the Performance Certificate, the Contractor may sell or otherwise dispose of any remaining items. The Contractor shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

## Exclusive Warranty

### To the extent permitted by applicable Laws, the contractual warranties set out in the Subcontract will be the exclusive contractual warranties provided by the Subcontractor in relation to the Works and in lieu of all other contractual warranties (including any other patent or latent) in relation to the same that may be implied by statute or otherwise.

## Latent Defects

### If a Latent Defect occurs during the relevant Latent Defect Period, the Subcontractor shall execute all work required to remedy such Latent Defect as well as any damage to the Works caused by such Latent Defect on or before the expiry date of the Latent Defects Period.

### The Contractor shall provide the Subcontractor such reasonable access to the Works as the Subcontractor requires to carry out such remedial work.

### The Parties agree that the provisions of Sub-Clauses 11.3.2 (a) (*Failure to Remedy Defects*), shall apply *mutatis mutandis* to Latent Defects.

# Variations and Adjustments

## Right to Vary

### Variations may be initiated by the Contractor at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Subcontractor to submit a proposal.

### The Subcontractor shall execute and, save as provided herein, be bound by each Variation instructed by the Contractor.

### The Subcontractor shall only perform a Variation as directed in writing by the Contractor.

## Value Addition

### The Subcontractor may, at any time, submit to the Contractor a written proposal which (in the Subcontractor’s opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Contractor of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Contractor of the Works, or (iv) otherwise be of benefit to the Contractor.

### The proposal shall be prepared at the cost of the Subcontractor and shall include the items listed in Sub‑Clause 12.3 (*Variation Procedure*). The Contractor shall be entitled to accept or reject any such proposal in its absolute discretion without any liability. Where the Contractor approves a Variation proposed by the Subcontractor it shall issue a Variation in accordance with Sub-Clause 12.3 (*Variation Procedure*). Implementation of such Variation shall not derogate from the Subcontractor’s obligations under the Subcontract and in particular its obligations to timely attain Taking Over.

## Variation Procedure

### If the Contractor requests a proposal, prior to instructing a Variation, the Subcontractor shall respond in writing as soon as practicable by submitting (either within Fourteen (14) days or such other time limit as may be mutually agreed between the Parties):

#### a description of the proposed work to be performed and a programme for its execution;

#### the Subcontractor’s proposal for any necessary modifications to the programme according to Sub‑Clause 8.2.2 (*Programme*) and to the Time for Completion;

#### the Subcontractor’s proposal for adjustment to the Subcontract Price, and

#### all information in support of the above which is reasonably required in order for the Contractor to assess the Subcontractor’s submissions and obtain any approvals from the Employer or lenders.

### The Contractor shall, as soon as practicable after receiving such proposal (under Sub‑Clause 12.2 or otherwise), respond with an instruction to execute the Variation, approval, disapproval or comments. The Subcontractor shall not delay any work other than work relating to the variation proposal under discussion, whilst awaiting a response. Upon instruction or approval by the Contractor of the Variation, the Subcontractor shall immediately proceed with the Works without any delay.

### Each instruction to execute a Variation, shall be issued by the Contractor to the Subcontractor, who shall acknowledge receipt.

### Upon instructing or approving a Variation, the Contractor shall proceed in accordance with Sub‑Clause 3.3 (*Determinations*) to agree or determine adjustments to the Subcontract Price, and/or extension of time. These adjustments shall include (as appropriate) any associated delay costs imposed upon the Works, and shall take account of the Subcontractor’s submissions under Sub‑Clause 12.2if applicable.

# Subcontract Price and Payment

## The Subcontract Price

### Payment for the Works shall be made as per the payment terms mentioned in the Subcontract.

### The Subcontractor shall pay all taxes, duties and fees required to be paid by him under the Subcontract, and the Subcontract Price shall not be adjusted for any of these taxes, duties and fees.

## Advance Payment

### The Contractor shall make an advance payment (the **Advance Payment**) to the Subcontractor if any as per the payment terms mentioned in the Subcontract. The Subcontractor shall obtain (at its own cost) and provide to the Contractor a duly executed on demand Advance Payment bank guarantee in an amount equal to the Advance payment.

### The Advance Payment shall be repaid through proportional deductions in interim payments of the Subcontract Price until such time as the Advance Payment has been repaid in full.

### If the Advance Payment has not been repaid prior to the issue of the Taking‑Over Certificate for the Works or prior to termination of this Subcontract, the whole of the balance then outstanding shall immediately become due and payable by the Subcontractor to the Contractor.

## Application for Interim Payments

### The Subcontractor shall submit a Statement together with invoice(s) in one original and two copies to the Contractor after the Subcontractor becomes eligible for payment as per the Work Order, showing in detail the Works completed and the sum that the Subcontractor considers to be due, together with invoice(s) and other supporting documents to demonstrate the accomplishments of the relevant payment. The due date for payment shall be as mentioned in the Work Order.

### The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Subcontract Price is payable, in the sequence listed:

#### any instalment of the Subcontract Price payable, by reference to the payment milestone achieved up to the end of the month (excluding items described in paragraphs (b) to (c) below);

#### any amounts to be added and/or deducted for the Advance Payment and repayment;

#### any amounts paid by way of direct payment by the Employer to Subcontractors;

#### any other additions or deductions which may have become due under the Subcontract or otherwise, including those under Clause 19 (*Claims and Disputes*); and

#### the deduction of amounts included in previous Statements.

### Statements shall be accompanied by:

### (a) the relevant invoices and

### (b) supporting documents and other information as may reasonably be requested by the Contractor.

## Interim Payments

### No amount will be paid until the Contractor has received and approved the Performance Security required under Sub-Clause 4.2 (*Performance Security*).

### Without prejudice to any other right of set-off the Contractor may have recourse to:

#### if anything supplied or work done by the Subcontractor is not in accordance with the Subcontract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or

#### if the Subcontractor was or is failing to perform any work or obligation in accordance with the Subcontract, and had been so notified by the Contractor, the value of this work or obligation may be withheld until the work or obligation has been performed.

### The Contractor may, by any payment, make any correction or modification that should properly be made to any amount previously considered due. Payment shall not be deemed to indicate the Contractor’s acceptance, approval, consent or satisfaction.

### Notwithstanding Sub-Clause 13.5.1, and without prejudice to Sub-Clause 14.2.1(f), if the Subcontractor becomes insolvent, the Contractor shall not be required to pay to the Subcontractor.

## Timing of Payments

### The Contractor shall pay to the Subcontractor:

#### the amount which is due in respect of each Statement, other than the Final Statement, within the period as specified in the Work Order after its receipt of the respective Statement; and

#### the final amount due, within sixty (60) days after receiving the Final Statement and written discharge in accordance with Sub‑Clause 13.6 (Statement at Completion).

## Statement at Completion

### Within twenty-eight (28) days after receiving the Taking‑Over Certificate for the Works, the Subcontractor shall submit to the Contractor a final statement at completion with supporting documents.

### If the Contractor disagrees with or cannot verify any part of the draft final statement, the Subcontractor shall submit such further information as the Contractor may reasonably require and shall make such changes in the draft as may be agreed between them. The Subcontractor shall then prepare and submit to the Contractor the final statement as agreed. This agreed statement is referred to in these Conditions as the “**Final Statement**”.

### If, following discussions between the Parties and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Contractor shall pay the agreed parts of the draft final statement in accordance with Sub‑Clause 13.4 (*Interim Payments*) and Sub‑Clause 13.5 (*Timing of Payments*). Thereafter, when the dispute is finally resolved the Subcontractor shall then prepare and submit to the Contractor a Final Statement.

### When submitting the Final Statement, the Subcontractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys (including any claims of the Subcontractor) due to the Subcontractor under or in connection with the Subcontract.

### In accordance with Sub‑Clause 13.5.1 (*Timing of Payments*), the Contractor shall pay to the Subcontractor the amount which is finally due, less all amounts previously paid by the Contractor and any deductions in accordance with Sub‑Clause 3.3 (Determinations).

## Cessation of Contractor’s Liability

### The Contractor shall not be liable to the Subcontractor for any matter or thing under or in connection with the Subcontract or execution of the Works, except to the extent for the mutually agreed amount expressly mentioned in the Final Statement.

# Termination by Contractor

## Notice to Correct

### If the Subcontractor fails to carry out any material obligation under the Subcontract, the Contractor may by notice specify the breach in reasonable detail and require the Subcontractor to make good the failure and to remedy it within a specified reasonable time.

## Termination by Contractor

### The Contractor shall be entitled to terminate the Subcontract if:

#### the Subcontractor repeatedly fails to comply with the Lender Requirements, HSE requirements at Site including fatality on site and excessive loss time injuries;

#### the Subcontractor fails to comply with a notice under Sub‑Clause 14.1 (*Notice to Correct*) either because the Subcontractor is not capable of rectifying the relevant breach or where the breach is capable of remedy but the Subcontractor fails to remedy such breach without reasonable and valid reason within the time specified in the notice provided pursuant to Sub-Clause 14.1;

#### the Subcontractor Abandons the Works or otherwise demonstrates the intention not to continue performance of his obligations under the Subcontract;

#### the Subcontractor fails to proceed with the Works in accordance with Clause 8 (*Commencement, Delays and Suspension*);

#### the Subcontractor subcontracts the whole of the Works or assigns the Subcontract otherwise than in accordance with the provisions of the Subcontract;

#### the occurrences of Insolvency Event in relation to the respect of the Subcontractor; or

#### the Subcontractor gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

##### for doing or forbearing to do any action in relation to the Subcontract, or

##### for showing or forbearing to show favour or disfavour to any person in relation to the Subcontract,

or if any of the Subcontractor’s Personnel, agents or vendors gives or offers to give (directly or indirectly) to any person any such inducement or reward (save that lawful inducements and rewards to Subcontractor’s Personnel shall not entitle termination), or if the Subcontractor is otherwise in breach of Sub-Clause 4.20 (*Prevention of Corruption*);

#### fails in the reasonable opinion of the Contractor to maintain satisfactory progress so that the Subcontractor shall not (or in all likelihood shall not) be able to achieve the Time for Completion by the Longstop Date;

#### the Taking-Over Date has not been achieved by the Longstop Date;

#### the Subcontractor fails to provide, maintain and/or replace any Performance Security as required by the Subcontract;

#### the Subcontractor’s failure to pay Liquidated Damages or other amounts which are due to the Contractor (provided that in the case of a dispute relating to Delay Liquidated Damages, the failure to pay shall not apply to those liquidated damages that have been referred to or the subject of formal dispute resolution process pursuant to this Subcontract or otherwise) , within the time periods specified in the Subcontract or, if a time is not specified, within sixty (60) days of Contractors notice for payment of such amounts, save and except where the Contractor is able to or has set-off such amounts under this Subcontract;

#### any representation or warranty given by the Subcontractor proves to have been incorrect or misleading in any respect when made or repeated or deemed to have been made or repeated;

#### any of the insurance policies taken out by the Subcontractor ceases to be effective and the Subcontractor fails to replace it within thirty (30) days;

#### the Subcontractor incurs liability which reaches or exceeds the Subcontract Liability Limit;

#### the Subcontractor causes a Policy Non-Compliance (as detailed in the Lender Requirements), and the Subcontractor fails to cure such Policy Non-Compliance within seventy-five (75) days of occurrence or any other additional period as decided by the Contractor; or

#### the Key Project Document is/are terminated, cancelled, or revoked (as the case may be) as a result of any breach by, or default of the Subcontractor.

In any of these events or circumstances, the Contractor may, upon giving notice of termination to the Subcontractor, terminate the Subcontract with effect from thirty (30) days after the date of the notice of termination.

### The Contractor’s election to terminate the Subcontract shall not prejudice any other rights of the Contractor, under the Subcontract or otherwise.

### Upon termination under this Clause 14.2 (*Termination by Contractor*) the Subcontractor shall:

### (i) cease all further work, and deliver to the Contractor the parts of the Works and the Subcontractor's Documents, that has been executed up to the date of termination;

### (ii) comply immediately with any reasonable instructions for the protection of life or property or for the safety of the Works; and

### (iii) if required by the Contractor, use his best efforts to novate any vendor subcontract to the Contractor.

### (iv) assign all warranties and/or guarantees in respect of the Works (or part thereof) to the Employer.

### After termination under this Clause 14.2, the Contractor may complete the Works and/or arrange for any other entities to do so.

## Valuation at Date of Termination

### As soon as practicable after termination under Clause 14.2 (*Termination by Contractor*) has taken effect, the Contractor shall proceed in accordance with Sub‑Clause 3.3 (*Determinations*) to agree or determine the value of the Works, Materials and Subcontractor’s Documents, and any other sums due and payable to the Subcontractor for work executed or liabilities incurred in accordance with the Subcontract up to the date of termination. The Subcontractor shall not be entitled to receive any further payment or compensation for any Works, activities undertaken and/or liabilities incurred pursuant to this Subcontract to the extent the same have occurred after the date of termination.

## Payment after Termination

### After termination under Clause 14.2 (*Termination by Contractor*) has taken effect, the Contractor may:

#### withhold further payments to the Subcontractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Contractor, have been established; and/or

#### recover from the Subcontractor reasonable additional costs incurred by the Contractor in relation to completing the Works,

#### After recovering any such losses, damages and extra costs, and provided that all Subcontracts and/or warranties and/or guarantees have been assigned or novated to the Employer in accordance with this Subcontract the Contractor shall pay any balance to the Subcontractor (if any).

#### 14.4A Loss of Key Project Document

#### Following termination of this Subcontract under Sub-Clause 14.2.1(p), the consequences of such termination shall be dealt with in accordance with Sub-Clause 9.2 (*Rejection Remedies*).

## Contractor’s Entitlement to Termination

### The Contractor shall be entitled to terminate the Subcontract at any time for the Contractor’s convenience by giving a notice of such termination to the Subcontractor. The termination shall take effect twenty eight (28) days after the later of the dates on which the Subcontractor receives this notice.

### If the Subcontract is terminated under Sub-Clause 14.5.1, the Subcontractor shall proceed in accordance with Sub‑Clause 15.2 (*Cessation of Work*) and shall be paid in accordance with Sub‑Clause 18.4 (*Optional Termination, Payment and Release*).

# Termination by Subcontractor

## Termination by Subcontractor

### The Subcontractor shall be entitled to terminate the Subcontract if:

#### the Contractor goes bankrupt;

#### the Contractor gives or offer to give to any person any bribe, gift gratuity, commission or other thing of value or otherwise is in breach of Clause 4.20 (*Prevention of Corruption*); or

#### the Contractor fails to comply with Sub-Clause 1.7 (*Assignment*).

### In the case of any of these events described in Sub-Clause 15.1.1, the Subcontractor may, upon giving thirty (30) days' notice to the Contractor and if the event or circumstance is continuing at the expiry of such thirty (30) day period, terminate the Subcontract.

## Cessation of Work

### After a notice of termination under Sub‑Clause 14.5 (*Contractor’s Entitlement to Termination*), Sub‑Clause 15.1 (*Termination by Subcontractor*) or Sub‑Clause 18.4.1 (*Optional Termination, Payment and Release*) has taken effect, the Subcontractor shall promptly:

#### cease all further work, except for such work as may have been instructed by the Contractor for the protection of life or property or for the safety of the Works, and

#### hand over Subcontractor’s Documents, Materials and other work, for which the Subcontractor has received payment.

#### (at the Employer’s option) agrees to assign or novate the Subcontract to the Employer; and

#### assign all warranties and/or guarantees in respect of the Works (or part thereof) to the Employer.

## Payment on Termination

### After a notice of termination under Sub‑Clause 15.1 (*Termination by Subcontractor*) has taken effect, the Contractor shall pay the Subcontractor in accordance with Sub-Clause 18.4 (*Optional Termination, Payment and Release*).

## Suspension of the Works

### Subcontractor’s Entitlement to Suspend Work

#### If the Contractor fails to comply with Sub-Clause 13.5 (*Timing of Payments*), the Subcontractor may, after giving not less than thirty (30) days' notice to the Contractor, suspend work (or reduce the rate of work) unless and until the Subcontractor has received the payment as described in the notice. If the Subcontractor subsequently receives such payment, the Subcontractor shall immediately resume normal working.

#### If the Subcontractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause 15.4.1 (*Subcontractor’s Entitlement to Suspend Work*), the Subcontractor shall give notice to the Contractor and shall be entitled subject to Sub-Clause 19.1 (*Subcontractor’s Claims*) to:

##### an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.3 (*Extension of Time for Completion*), and/or

##### payment of any such Cost, which shall be added to the Subcontract Price.

#### After receiving this notice, the Contractor shall proceed in accordance with Sub-Clause 3.3 (*Determinations*) to agree or determine these matters.

## Termination Rights Exclusive

### Clause 15 (Termination by Subcontractor) and Clause 18 (*Force Majeure Event*) set out the Subcontractor’s exclusive rights to terminate the Subcontract after the Base Date and the Subcontractor’s exhaustive rights and remedies in respect of such termination. The Subcontract shall not be terminated by the Subcontractor for any other reason, and any other such rights or remedies (whether for breach of subcontract or under any other legal theory) are hereby excluded.

# Risk and Responsibility

## Indemnities

### The Subcontractor shall indemnify and hold harmless the Contractor, the Contractor’s Personnel, and their respective officers, employees, agents and representatives against and from all claims, damages, losses and expenses in respect of:

#### bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the execution and completion of the Works and/or the remedying of any Defects, and

#### damage to or loss of any property , to the extent that such damage or loss arises out of or in the course of or by reason of the design, execution and completion of the Works and/or the remedying of any Defects.

### The Contractor shall indemnify and hold harmless the Subcontractor, and its Personnel against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of bodily injury, sickness, disease or death of any person whatsoever, which is attributable to any negligence, wilful act or breach of the Subcontract by the Contractor.

## Subcontractor’s Care of the Works

### The Subcontractor shall take full responsibility for the care of the Works and Materials from the Base Date until the Taking‑Over Certificate is issued (or is deemed to be issued under Sub‑Clause 10.1) for the Works, or until any earlier date on which the Subcontractor's engagement under this Subcontract is terminated, as the case may be, when responsibility for the care of the Works shall pass to the Contractor. For the avoidance of doubt, responsibility for the care of the Works or any part of the Works that is rejected under Sub‑Clause 9.2 or Sub-Clause 11.3.2 shall remain with the Subcontractor.

### After responsibility has accordingly passed to the Contractor, the Subcontractor shall take responsibility for the care of any Outstanding Work, until such Outstanding Work has been completed and for the care of any part of the Works in relation to which the Subcontractor is performing its obligations under Clause 11 (*Defects Liability*) until such obligations have been completed.

### If any loss or damage happens to the Works, Materials or Subcontractor’s Documents during the period when the Subcontractor is responsible for their care the Subcontractor shall rectify the loss or damage at the Subcontractor’s risk and cost, so that the Works, Materials and Subcontractor’s Documents conform with the Subcontract. To the extent that any insurance policies are procured by the Contractor (and to the extent that such insurances name the Subcontractor as a co-insured) or in the case of assignment of the insurance proceeds to the Lenders or the Employer or the Contractor, such obligation to make good or restore shall not be conditional on the Subcontractor receiving such insurance proceeds.

### The Subcontractor shall be liable for any loss or damage caused by any actions performed by the Subcontractor after a Taking‑Over Certificate has been issued in accordance with Clause 11 (*Defects Liability*).

## Intellectual Property Rights

### In this Sub-Clause 16.3 (*Intellectual Property Rights*), "**infringement**" means an infringement (or alleged infringement) of any Intellectual Property Right relating to the Works, and / or Materials and "**claim**" means a claim (or proceedings pursuing a claim) alleging an infringement. Subject to any provisions in this Subcontract that grant the Contractor a right to a licence, the Subcontractor and its Personnel shall retain their rights in their Intellectual Property Rights. All rights to intellectual property developed, utilized or modified in the performance of the Work shall remain the property of the Subcontractor and /or its Vendors.

### Whenever a Party does not give notice to the other Party of any claim within twenty eight (28) days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause 16.3 (*Intellectual Property Rights*).

### The Contractor shall indemnify and hold the Subcontractor harmless against and from any claim alleging an infringement which is or was:

#### a result of the Subcontractor’s compliance with the technical specification or

#### a result of any Works being used by the Contractor for a purpose other than that indicated by, or reasonably to be inferred from, this Subcontract.

### The Subcontractor shall indemnify and hold the Contractor harmless against and from any other infringement or claim which arises out of or in relation to (i) the Subcontractor’s construction or execution of the Works and/or Materials, or (ii) the use of the Works and/or Materials.

## Limitation of Liability

### Neither Party shall be liable to the other Party under any theory of recovery, whether based in Subcontract, tort (including negligence and strict liability), warranty, indemnity, defects liability or otherwise, for loss of use of any Works, loss of profit or revenue, loss of any Subcontract, cost of capital, financing cost, loss of electric power, cost of purchased or replacement electric power, loss of information or data, and interest charges, financial losses, loss of any sub-contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Subcontract. This exclusion of liability shall not apply to liability for losses and costs for which the Subcontractor or the Contractor (as applicable) is liable pursuant to Sub-Clause 1.9 (*Contractor’s Use of Intellectual Property Rights and Subcontractor’s Documents*), Sub-Clause 4.20 (*Prevention of Corruption*), Sub-Clause 8.5 (*Delay Liquidated Damages*) (or damages in lieu of Delay Liquidated Damages as the case may be), Sub-Clause 9.2 *(Rejection Remedies),* Sub-Clause 11.3 (*Failure to Remedy Defects*), Sub-Clause 14.4 (*Payment after Termination*), Sub Clause 16.1 (*Indemnities*), Sub-Clause 16.3 (*Intellectual Property Rights*), Sub-Clause 1.8 (Confidentiality) and the Subcontractor’s liability in the case of fraud, fraudulent misrepresentation, wilful misconduct, or violation of any applicable Laws;

### The total liability of the Subcontractor to the Contractor, under or in connection with the Subcontract shall not exceed an amount equal to one hundred per cent (100%) of the Subcontract Price (the “**Subcontract Liability Limit**”), provided that the Subcontract Liability Limit shall not apply to or be diminished by:

#### the Subcontractor’s liability to indemnify the Contractor pursuant to this Subcontract and

#### the Subcontractor’s liability in the case of fraud, fraudulent misrepresentation, wilful misconduct, or violation of any applicable Laws.

### To the extent that any liability of the Subcontractor is recovered under any insurance policy taken out by the Contractor or the Employer, such proceeds shall not count towards the Subcontract Liability Limit.

### To the extent permitted by any applicable Law, the total liability of the Contractor to the Subcontractor, shall not exceed an amount equal to the Subcontract Price, provided that this shall not limit the Contractor’s liability in the case of indemnities given by Contractor to the Subcontractor under the Subcontract, fraud, fraudulent misrepresentation, deliberate default, wilful or reckless misconduct.

### It is acknowledged and agreed by the Parties that the Liquidated Damages set out in this Subcontract are a genuine pre-estimate of (and proportional to) the loss the Contractor will sustain as a result of the failure to which such Liquidated Damages relate.

# Insurance

## General Requirements for Insurances

### Each Party shall at its own expense take out and maintain in effect the insurances specified in the insurance schedule of this Subcontract in accordance with the requirements set out therein (including as to level of cover, duration, deductibles, exclusions, extensions and other conditions).

### The Subcontractor shall ensure that, where applicable, its vendor take out and maintain in effect adequate insurance policies for the vendors’ own personnel and vehicles and all work executed by them under this Subcontract unless the vendors are covered by the policies taken out by the Employer or the Contractor or the Subcontractor.

### The Parties shall provide reasonable assistance to each other as may be appropriate in connection with any claims that may be made under the policies of insurance effected pursuant to this Clause 17 (Insurance).

# Force Majeure Event

## Notice of Force Majeure Event

### A Party that is prevented, hindered or delayed in performing any of its obligations under the Subcontract by a Force Majeure Event shall deliver a notice to the other Party within seven (7) Days of the date on which it became aware of the effect of such event, or within seven (7) Days of the date on which it ought reasonably to have known its performance would be so impacted, specifying:

#### the event or circumstance that constitutes the Force Majeure Event in reasonable detail;

#### the impact or anticipated impact of the Force Majeure Event on the affected Party’s performance of its obligations under the Subcontract;

#### the affected Party’s reasonable estimate of the duration of the impact of the Force Majeure Event on the affected Party’s performance of its obligations under the Subcontract; and

#### the steps that the affected Party has taken, is taking or intends to take under Sub-Clause 18.2 (*Duty to Minimise Delay*).

### If a Party does not deliver a notice when required under Sub-Clause 18.1.1 (*Notice of Force Majeure Event*), the protections available to that Party under this Sub-Clause 18 in relation to that Force Majeure Event shall apply only from the time when such a notice is delivered.

### For so long as a Party continues to claim to be affected by a Force Majeure Event, it shall provide monthly progress reports to the other Party in relation to:

#### the affected Party’s reasonable estimate of the length of time its performance will continue to be affected by such Force Majeure Event; and

#### the actions taken and actions proposed to be taken by the affected Party in order to mitigate the impact of the Force Majeure Event.

### The Party shall, having given notice, be excused from performance of its obligations under the Subcontract for so long as such Force Majeure Event prevents it from performing them, to the extent that its failure to perform those obligations is caused by a Force Majeure Event. Notwithstanding any other provision of this Subcontract, a Party shall be entitled to the protections available to it under this Subcontract in relation to a Force Majeure Event only to the extent that it has complied with its obligations under Sub-Clause 18.2 (*Duty to Minimise Delay*) in relation to that Force Majeure Event.

### The suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure Event, plus a reasonable additional period to enable the affected Party to remobilise following the date on which the Force Majeure Event ceases to render the affected Party unable to perform its obligations under the Subcontract.

### Notwithstanding any other provision of this Clause, Force Majeure shall not apply to:

#### obligations of either Party to make payments to the other Party under the Subcontract; or

#### any failure or delay to the extent that such failure or delay would nevertheless have been experienced by that Party had the Force Majeure Event not occurred.

## Duty to Minimise Delay

### A Party that is prevented, hindered or delayed in performing its obligations under the Subcontract by a Force Majeure Event shall:

#### use its reasonable efforts to mitigate the effects of that Force Majeure Event;

#### perform such of its obligations as are not prevented, delayed, or hindered by that Force Majeure Event; and

#### resume full performance of its obligations under the Subcontract as soon as reasonably practicable after that Force Majeure Event ceases to prevent, delay or hinder such performance.

#### Notwithstanding any other provision of the Subcontract, a Party shall be entitled to the protections available to it under this Subcontract in relation to a Force Majeure Event only to the extent that it has complied with its obligations under Sub-Clause 18.2.1 (a), (b) and (c) in relation to that Force Majeure Event.

### A Party shall immediately give notice to the other Party when it ceases to be affected by the Force Majeure Event.

## Consequences of Force Majeure

### If the Subcontractor is prevented from performing any of his obligations under the Subcontract by Force Majeure Event of which notice has been given under Sub‑Clause 18.1 (*Notice of Force Majeure*), and suffers delay by reason of such Force Majeure Event, the Subcontractor shall be entitled subject to Sub‑Clause 19.1 (*Subcontractor’s Claims*), to an extension of time for any such delay equivalent to the duration of the Force Majeure Event, if completion is or will be delayed, under Sub-Clause 8.3 (*Extension of Time for Completion*).

### After receiving this notice, the Contractor shall proceed in accordance with Sub‑Clause 3.3 (*Determinations*) to agree or determine these matters.

### Each Party shall bear any cost incurred by it as a result of any Force Majeure Event.

### Exclusions from Force Majeure Events

### The following events, circumstances or conditions shall not constitute a Force Majeure Event:

#### strikes, lock-outs, industrial disputes, industrial difficulties, work bans, blockages, picketing or other industrial action solely or primarily by employees of the affected Party;

#### any failure to take into account prevailing ground conditions (including geological conditions) that should have been foreseen by the use of Good Industry Practice based on the information actually available to the Subcontractor as at the Base Date;

#### lack of funds due to any commercial, economic, or financial reason, including the Subcontractor’s inability to achieve a satisfactory rate of return;

#### failure or delay of performance by any vendors of any tier, except to the extent that such failure or delay is itself caused by an event that is analogous to a Force Majeure Event or, the failure to comply by the Subcontractor and/or its sub-contractors or any of their respective representatives, with any Law or necessary consents (other than where such Law has been subject to a relevant or related Change in Law).

### Exclusion of general law force majeure principles

### No Party shall be excused from performing its obligations under the Subcontract by any unforeseen event or circumstance, nor any event or circumstance beyond its control except as expressly set out in the Subcontract.

## Optional Termination, Payment and Release

### If the execution of part of or substantially all the Works in progress is prevented for a continuous period of(i) two hundred and ten (210) days or (ii) an aggregate of two hundred and ten (210) days in any rolling fourteen (14) month period, by reason of a Force Majeure Event of which notice has been given under Sub‑Clause 18.1 (*Notice of Force Majeure Event*), then the Contractor shall be entitled to extend such (i) two hundred and ten (210) days or (ii) an aggregate of two hundred and ten (210) days in any rolling fourteen (14) month period referred to in this Sub-Clause 18.8.1 provided that the Subcontractor is compensated for any reasonable additional Costs that the Subcontractor incurs as a direct result of any such extension. Where the Contractor elects not to extend the (i) two hundred and ten (210) days or (ii) an aggregate of two hundred and ten (210) days in any rolling fourteen (14) month period referred to in this Sub-Clause 18.8.1 (or any subsequent period) then either Party may give to the other Party a notice of termination of the Subcontract. In this event, the termination shall take effect seven (7) days after the notice is given, and the Subcontractor shall proceed in accordance with Sub‑Clause 15.2 (*Cessation of Work*).

### Upon such termination, the Contractor shall pay to the Subcontractor:

#### the amounts payable for any work carried out up to the date of termination;

#### any other Cost which in the circumstances was reasonably incurred by the Subcontractor in the expectation of completing the Works;

### The Subcontractor shall provide the Contractor with proof of the Costs claimed in Clause 18.4.2 within two (2) months, following such termination.

# Claims and Disputes

## Subcontractor’s Claims

### If the Subcontractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, in connection with the Subcontract, the Subcontractor shall give notice to the Contractor, describing the event or circumstance giving rise to the claim. The notice shall be given not later than twenty-one (21) days after the Subcontractor became aware of the event or circumstance.

### If the Subcontractor fails to give notice of a claim within such period of twenty one (21) days, the Time for Completion shall not be extended, the Subcontractor shall not be entitled to additional payment or claims, and the Contractor shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub‑Clause shall apply.

### The Subcontractor shall also submit any other notices which are required by the Subcontract, and supporting particulars for the claim, all as relevant to such event or circumstance and such supporting particulars shall be provided as soon as reasonably practicable (taking into account the nature of the claim) after the notice provided by the Subcontractor pursuant to Sub-Clause 19.1.1.

### The Subcontractor shall keep such contemporary records as may be necessary to substantiate any claim. Without admitting liability, the Contractor may, after receiving any notice under this Sub‑Clause, monitor the record‑keeping and/or instruct the Subcontractor to keep further contemporary records. The Subcontractor shall permit the Contractor to inspect all these records, and shall (if instructed) submit copies to the Contractor.

### Within twenty-eight (28) days after the Subcontractor has sent notice under Clause 19.1.1, or within such other period as may be proposed by the Subcontractor and approved by the Contractor, the Subcontractor shall send to the Contractor a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

#### this fully detailed claim shall be considered as interim;

#### the Subcontractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Contractor may reasonably require; and

#### the Subcontractor shall send a final claim within twenty eight (28) days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Subcontractor and approved by the Contractor.

#### If the Subcontractor fails to give a fully detailed claim within such period of twenty-eight (28) days the Time for Completion shall not be extended, the Subcontractor shall not be entitled to additional payment, and the Contractor shall be discharged from all liability in connection with the claim.

### Within twenty eight (28) days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Contractor and approved by the Subcontractor, the Contractor shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

### The Contractor shall proceed in accordance with Sub‑Clause 3.3 (*Determinations*) to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub‑Clause 8.3 (*Extension of Time for Completion*), and/or (ii) the additional payment (if any) to which the Subcontractor is entitled under the Subcontract.

### The requirements of this Sub‑Clause are in addition to those of any other Sub‑Clause which may apply to a claim. If the Subcontractor fails to comply with this or another Sub‑Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub‑Clause.

### For the avoidance of doubt and notwithstanding anything else in the Subcontract:

#### the Subcontractor shall have no entitlement under this Subcontract or otherwise at law to additional payment in respect of claims except where it is has complied with its obligations under this Sub-Clause 19.1; and

#### this Sub-Clause 19.1 may operate to exclude liabilities which would otherwise have arisen in respect of the Contractor for its breach of the Subcontract or for negligence by the Contractor or any person for whom the Contractor is responsible.

## Disputes

### Any dispute arising out of or in connection with this Subcontract, including any question regarding its existence, validity or termination, shall first be attempted to be settled by an amicable effort on the part of the parties. An attempt to arrive at a settlement shall be deemed to have failed as soon as one of the parties so notifies the other party in writing.

### Any dispute which cannot be resolved within sixty (60) days pursuant to Sub-Clause 19.2.1 shall be referred to and finally resolved by arbitration administered by the Mumbai Centre for International Arbitration (“MCIA”) in accordance with the arbitration rules of the Mumbai Centre for International Arbitration (“MCIA Rules”) for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Mumbai. The Tribunal shall consist of three (3) arbitrators. The language of the arbitration shall be English. The governing law of this Clause 19.2 (Disputes) shall be Indian law.