

REDIS CONSTRUCTION AFRIKA (PTY) LTD

AGREEMENT

AND

SCHEDULE OF CONDITIONS
OF SUBCONTRACT

NAME OF CONTRACT:

CONTRACT NO:

SUBCONTRACT WORKS:

CONTRACTOR:

REDIS CONSTRUCTION AFRIKA (PTY) LTD

SUBCONTRACTOR :

DATE:

ARTICLES OF AGREEMENT

Made on this (DAY) _____ of (MONTH) _____ 200_____.

Between: Redis Construction Afrika (Pty) Ltd

of: PO Box 223, Modderfontein, South Africa. 1645

(Hereinafter called "the Contractor") of the one part

and:

of:

(Hereinafter called the "Subcontractor") of the other part.

WHEREAS this agreement is supplemental to an agreement
(Hereinafter referred to as the "Main Contract")

Between:

(Hereinafter called "the Employer") of the one part, and the Contractor of the other part.

AND WHEREAS the Contractor desires to have executed the works of which particulars are set out in the attached schedules (hereinafter referred to as the "Subcontract Works") and which form part of the works comprised in and to be executed in accordance with the Main Contract (hereinafter referred to as "the Contract Works") and any authorised variations of the Subcontract Works:

AND WHEREAS the Contractor, prior to the signing hereof, has given the Subcontractor reasonable opportunity of inspecting all the provisions of the Main Contract except the detailed prices of the Contractor included in schedules and bills of quantities.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions of Subcontract, any Special Conditions of Subcontract and General Conditions of Main Contract hereinafter referred to:
2. The several documents forming the Subcontract are to be taken as mutually explanatory of one another, but in the case of ambiguities or discrepancies, any Special Conditions of Subcontract shall take precedence over these Conditions of Subcontract.
3. For the considerations hereinafter mentioned, the Subcontractor will execute and complete the Subcontract Works upon and subject to the conditions of this Subcontract.

4. The Contractor will pay the Subcontractor the sum of (in words) _____

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(Hereinafter referred to as "the Subcontract Sum") or such other sum as shall become payable hereunder subject to and at the times and in the manner specified in the conditions of this Subcontract, and shall be payable to the Subcontractor at.

5. The CONTRACTOR chooses "**domicilium citandi et executandi**" for all purposes of this Subcontract at:
3 Hamburg Road, Bayhead, Durban, South Africa

6. The SUBCONTRACTOR chooses "**domicilium citandi et executandi**" for all purposes of this Subcontract at:

Signed by the **CONTRACTOR**, who by signature hereof warrants authorisation hereto

In the presence of:

(FULL NAME IN BLOCK LETTERS) _____

SIGNATURE _____

ADDRESS _____

Signed by the **SUBCONTRACTOR**, who by signature hereof warrants authorisation hereto

In the presence of:

(FULL NAME IN BLOCK LETTERS) _____

SIGNATURE _____

ADDRESS _____

PART 1 - GENERAL CONDITIONS OF SUBCONTRACT

1. DEFINITIONS AND INTERPRETATION

1.1. The Definitions given in the Articles of Agreement, these General Conditions, any Special Conditions and the Main Contract shall apply equally to this Subcontract. The following words and expressions shall have the meaning hereby assigned to them for the purpose of this Subcontract:

1.1.1. "Employer" means "Employer" as defined in the terms and conditions of the Main Contract.

1.1.2. "Main Contract" means the contract between the Employer and the Contractor.

1.1.3. "Subcontract" means the Subcontract Agreement together with the documents listed in the Subcontract Agreement.

1.1.4. "Subcontractor" means the person whose offer has been accepted by the Contractor and the legal successors in title to such person, and permitted assigns.

1.1.5. "Worksite" or "project site" means the site as defined by the Employer.

1.2. The headings of clauses herein are for reference purposes only and shall not be deemed part of, or be taken into consideration in, the interpretation or construction of the Subcontract. Words importing persons or parties shall include firms, corporations and any organisations having legal capacity. Words importing the singular only shall also include the plural and vice versa where the context requires.

1.3. Instructions issued by the Contractor shall be in writing, provided that if for any reason the Contractor considers it necessary to issue any instruction orally, the Subcontractor shall comply with such instruction. Provided that the Subcontractor confirms in writing to the Contractor, within 7 days, any oral instruction issued by the Contractor and such confirmation is not contradicted in writing within 7 days by the Contractor, it shall be deemed to be an instruction of the Contractor

2. ENTIRE AGREEMENT

2.1. This Subcontract embodies the entire agreement between the Contractor and the Subcontractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments or modifications of any of the terms and conditions hereof shall be valid unless reduced to writing and signed by both parties

2.2. It is clearly understood that the award of this Subcontract does not imply acceptance of systems, plant, equipment or material proposed by the Subcontractor's offer which shall remain subject to the conditions of acceptance specified elsewhere in the conditions of Subcontract and Main Contract.

3. GENERAL

3.1. SUBCONTRACTOR'S QUALIFICATIONS AND GENERAL OBLIGATIONS

- 3.1.1. The Subcontractor represents that it is fully experienced and properly qualified to perform the class of work provided for herein, and that it is properly licensed, equipped, organised and financed to perform such work.
- 3.1.2. The Subcontractor shall, with due care and diligence, design (to the extent provided in the Subcontract), execute and complete the Subcontract Works and remedy any defects therein in accordance with the provisions of the Subcontract. The Subcontractor shall provide all superintendence, labour, materials, plant, Subcontractor's equipment required for such design, execution, completion and remedying of any defects, except as otherwise provided herein.

3.2. PERFORMANCE GUARANTEE

- 3.2.1. The Subcontractor shall furnish a Performance Guarantee in accordance with the Form of Performance Guarantee annexed to the Conditions of Subcontract, and unless otherwise agreed by the Contractor, provided through a South African registered Bank or Insurance Company acceptable to the Contractor, for the amount of 10% of the Subcontract Sum.
- 3.2.2. The Performance Guarantee shall be furnished before the Subcontract is signed by both parties and it shall be valid for its full value until the satisfactory completion of the Subcontract Works and the remedying of any defects therein in accordance with the Subcontract, and until release of the Performance Guarantee provided by the Contractor to the Employer under the Main Contract, unless a Taking Over Certificate is issued by the Employer with respect to the Subcontract Works, in which case the Subcontractor's Performance Guarantee will be released upon expiry of the Defects Liability Period in respect of such works.

3.3. PROGRAMME TO BE SUBMITTED BY SUBCONTRACTOR

- 3.3.1. The Subcontract Works shall be programmed and carried out in accordance with the Contractor's overall programme for the Project as revised from time to time.
- 3.3.2. Within fourteen (14) days of receiving from the Contractor the programme showing the intended sequence and timing of the operations comprising the Contract Works, the Subcontractor shall submit to the Contractor for its approval a Subcontract programme showing in a form satisfactory to the Contractor information relating to the Subcontract Works, which shall fit to the reasonable satisfaction of the Contractor within the Main Contract programme and be compatible therewith.
- 3.3.3. If at any time it should appear to the Contractor that the actual progress of the Subcontract Works does not conform to the approved Subcontract programme the Subcontractor shall produce, within seven (7) days of being so requested by the Contractor, a revised Subcontract programme for approval by the Contractor showing the modifications to the approved Subcontract programme necessary to ensure completion of the Subcontract Works in accordance with the Main Contract programme.

3.4. ASSIGNMENT AND SUB-LETTING

- 3.4.1. The Subcontractor shall not without the written consent of the Contractor cede, assign,

sub-let or delegate its obligations or part thereof under this subcontract, provided that such consent shall not be unreasonably withheld to the prejudice of the Subcontractor and provided further that any consent given to the Subcontractor in terms of this clause shall not relieve it of its obligations in respect of the Subcontract Works as a whole.

4. THE SUBCONTRACT

4.1. LANGUAGE AND INTERPRETATION

4.1.1. All matters concerning this Subcontract shall be in the English language. This Subcontract shall be construed and interpreted according to the law of the country which applies to the Main Contract.

4.2. ORDER OF PRECEDENCE OF DOCUMENTS

4.2.1. The documents defined in the Subcontract Agreement as forming this Subcontract shall be read and construed in the following order of precedence.

4.2.1.1. The Subcontract Agreement.

4.2.1.2. Any Special Conditions of Subcontract including annexure attached thereto.

4.2.1.3. The General Conditions of Subcontract.

4.2.1.4. The Subcontractor's Tender Submission (if included).

4.2.1.5. The Main Contract Conditions (other than the details of the Contractor's rates and prices and particular commercial terms).

5. MAIN CONTRACT

5.1. This Subcontract shall be supplemental to the Main Contract. The Subcontractor shall observe, perform and comply with the provisions of the Main Contract insofar as they relate or apply to this Subcontract and are not repugnant to or inconsistent with the express provisions of this Subcontract as if the same were severally set out therein.

5.2. The Subcontractor shall at all times be entitled to reasonable opportunity of inspecting, and acknowledges that he has inspected, all the provisions of the Main Contract and shall be deemed for the purpose of the requirements of this Subcontract to be fully informed regarding all such provisions except the detailed prices of the Contractor included in the schedules and bills of quantities.

5.3. Save where the provisions of the Subcontract otherwise require, the Subcontractor shall so execute, complete and maintain the Subcontract Works that no act or omission in relation thereto shall constitute cause for any breach by the Contractor of any of its obligations under the Main Contract and the Subcontractor shall, save as aforesaid, assume and perform hereunder all the obligations and liabilities of the Contractor under the Main Contract in relation to the Subcontract Works.

5.4. Nothing herein shall be construed as creating any privity of contract between the Subcontractor and Employer.

5.5. The Subcontractor hereby indemnifies the Contractor against any damages for which the Contractor becomes liable under the Main Contract resulting from any breach by the Subcontractor of the Subcontract. In such event, the Contractor may, without prejudice to any other method of recovery, deduct such damages from monies otherwise due to the Contractor.

6. TEMPORARY WORKS, CONTRACTOR'S EQUIPMENT AND/OR OTHER FACILITIES.

6.1. Unless otherwise stated in Part II of the Conditions of Subcontract, the Contractor shall not be required to provide any temporary works, equipment or other facilities for the Subcontractor. The Contractor shall however permit the Subcontractor, in common with the Contractor and other subcontractors as the Contractor may allow, to use such temporary works, equipment and other facilities provided by the Contractor in connection with the Main Works, for the purpose of executing the Subcontract Works.

6.2. The Subcontractor shall indemnify the Contractor against any damages arising from misuse by the Subcontractor of any construction equipment, temporary works, facilities or materials provided by the Contractor for the purposes of the Subcontract.

7. SITE WORKING AND ACCESS

7.1. Unless otherwise agreed, the Subcontractor shall observe the working hours of the Contractor as contained in Part II of the Conditions of Subcontract, and shall comply with all rules and regulations governing the execution of the work, the delivery and removal from the Site of materials and Subcontractor's equipment, and the storage of materials and Subcontractor's equipment on site.

7.2. The Contractor shall, from time to time, make available to the Subcontractor so much of the Site and such access as may be required to enable the Subcontractor to execute the Subcontract Works in accordance with the Subcontract. The Contractor shall not be bound to make any part of the Site exclusively available to the Subcontractor, unless otherwise provided in Part II of the Conditions of Subcontract.

7.3. The Contractor and the Engineer (and any authorised representative of the Contractor and the Engineer) shall, at all reasonable times, have access to the Subcontract Works and/or to the workshops or other places under the control of the Subcontractor where work is being executed or prepared for the Subcontract.

8. COMMENCEMENT, COMPLETION AND DELAYS

8.1. Within fourteen (14) days, or such other period as may be agreed in writing between the parties, of receipt of the Contractor's written instructions so to do, the Subcontractor shall commence the Subcontract Works and shall thereafter proceed with the same with due diligence and without delay, except as may be expressly sanctioned or ordered by the Contractor. Subject to the provisions of this clause, the Subcontractor shall complete the Subcontract Works within the time for completion specified in the Main Contract and in accordance with the provisions of the Contractor's overall programme, and the Subcontractor's programme submitted in terms of clause 3.3 hereof.

8.2. If the Subcontractor shall be delayed in the execution of the Subcontract Works:

- 8.2.1. by any circumstances or occurrence (other than breach of this Subcontract by the Subcontractor), entitling the Contractor to an extension of its time for completion of the Main Works under the Main Contract; or
- 8.2.2. by the ordering of any variation of the Subcontract Works to which paragraph 8.2.1 of this sub clause does not apply; or
- 8.2.3. by any breach of this Subcontract by the Contractor for which the Contractor is responsible,

then in any such event the Subcontractor shall be entitled to such extension of the Subcontractor's time for completion as may in all the circumstances be fair and reasonable.

Provided that the Subcontractor shall not be entitled to such extension of time unless it has submitted written notice to the Contractor of the circumstances or occurrence which are delaying it within fourteen (14) days of such circumstances or occurrence having first arisen. In any case to which sub clause 8.2.1 applies, the extension shall not in any event exceed the extension of time to which the Contractor is granted under the Main Contract.

8.3. The Contractor shall promptly notify the Subcontractor of all extensions of time obtained under the provisions of the Main Contract which affect the Subcontract.

9. INSTRUCTIONS, VARIATIONS AND VALUATION OF VARIATIONS

9.1. INSTRUCTIONS

- 9.1.1. Subject to Sub-Clause 9.2 (Variations), the Subcontractor shall, in relation to the Subcontract Works, comply with all instructions and decisions of the Engineer which are notified and confirmed in writing to it by the Contractor. The Subcontractor shall have the like rights, (if any), to payment from the Contractor in respect of such compliance as the Contractor has against the Employer under the Main Contract.
- 9.1.2. The Contractor shall have the like authority in relation to the Subcontract Works to give instructions and decisions as the Engineer has in relation to the Main Works under the Main Contract. The Subcontractor shall have the like obligations to abide by and comply therewith and the like rights in relations thereto as the Contractor has under the Main Contract. The said authority of the Contractor shall be exercisable in any case irrespective of whether the Engineer has exercised like authority in relation thereto under the Main Contract.

9.2. VARIATIONS

- 9.2.1. The Subcontractor shall only make such variations of the Subcontract Works, whether by way of addition, modification or omission, as may be:
 - 9.2.1.1. instructed by the Engineer under the Main Contract and confirmed in writing to the Subcontractor by the Contractor; or
 - 9.2.1.2. instructed in writing by the Contractor.

- 9.2.2. The Subcontractor shall not act upon an unconfirmed instruction for the variation of the Subcontract Works which is directly received by it from the Employer or the Engineer. If the Subcontractor shall receive any such direct instruction, it shall forthwith inform the Contractor thereof and shall supply it with a copy of such direct instruction, if given in writing. The Subcontractor shall only act upon such instruction as directed in writing by the Contractor, but the Contractor shall give its directions thereon with all reasonable speed.

Save as aforesaid the Sub-Contractor shall not make any alteration in or modification of the Sub-Contract Works.

9.3. VALUATION OF VARIATIONS

- 9.3.1. Variations of the Subcontract Works shall be valued in terms of this clause and the value thereof shall be added to or deducted from the Subcontract Price, as appropriate.
- 9.3.2. The value of all variations shall be assessed by reference to the rates and prices (if any) specified in the Subcontract for the like or similar work. Where the Subcontract contains no rates or prices applicable to the works involved in the variation, then such value shall be such as is fair and reasonable.
- 9.3.3. Where a variation of the Subcontract Works, which also constitutes a variation in terms of the Main Contract, is measured by the Engineer thereunder, then provided that the rates and prices in the Subcontract permit such variation to be valued by reference to measurement the Contractor shall permit the Subcontractor to attend any measurement made on behalf of the Engineer. Such measurement under the Main Contract shall also constitute the measurement of the variation in terms of the Subcontract which shall be valued accordingly.
- 9.3.4. The quantities set out in the Subcontract Bill of Quantities (if any) are the estimated quantities for the Subcontract Works, and are not to be considered the actual and correct quantities of the Subcontract Works to be executed by the Subcontractor in terms of the Subcontract. No instruction shall be required for increase or decrease in the quantity of work as a result of the quantities exceeding or being less than those stated in the Subcontract Bill of Quantities.
- 9.3.5. Where the Subcontractor has been instructed, in writing, by the Contractor to execute work on a daywork basis the Subcontractor shall be paid for such work at the rates and prices specified in the daywork schedule included in the Subcontract.

10. NOTICES AND CLAIMS

10.1. NOTICES.

- 10.1.1. Without prejudice to the generality of Clause 5, and unless otherwise provided in the Subcontract, whenever the Contractor is required in terms of the Main Contract to give any notice or other information to the Engineer or to the Employer, or to keep contemporary records, the Subcontractor shall in relation to the Subcontract Works, give a similar notice or such other information in writing to the Contractor and keep contemporary records enabling the Contractor to comply with such terms of the Main Contract, in sufficient time to enable

the Contractor to comply with such terms punctually.

10.2. CLAIMS

10.2.1. Subject to compliance by the Subcontractor with the provisions of this sub-clause, the Contractor shall take all reasonable steps to secure from the Employer (including the Engineer) such contractual benefits (including extensions of time, additional payments, or both), if any, as may be claimable in terms of the Main Contract and related to the execution of the Subcontract Works. The Subcontractor shall, in sufficient time, afford the Contractor all information and assistance necessary to enable the Contractor to claim such contractual benefits. On receipt of any such contractual benefits from the Employer, the Contractor shall pass on to the Subcontractor such proportion thereof as may in all circumstances be fair and reasonable, it being understood that, in the case of any claim for additional payment, the Contractor's receipt of payment therefor from the Employer shall be a condition precedent to the Contractor's liability to the Subcontractor in respect of such claim. Save as provided in this sub-clause, or in sub-clause 8.2, the Contractor shall have no liability to the Subcontractor in respect of any obstruction, condition or circumstance that may be encountered during the execution of the Subcontract Works. The Subcontractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Subcontract Price to carry out the Subcontract Works in accordance with its obligations in terms of the Subcontract, provided that nothing in this sub-clause shall prevent the Subcontractor from claiming against the Contractor for delays in executing the Subcontract Works caused by any act or default by the Contractor.

10.3. FAILURE TO ISSUE NOTICE

10.3.1. If by reason of any failure by the Subcontractor to comply with the provisions of sub-clause 10.1 the Contractor is prevented from recovering any sum from the Employer in terms of the Main Contract in respect of the Main Works, then, without prejudice to any other remedy of the Contractor for such failure, the Contractor may deduct such sum from monies otherwise due to the Subcontractor under the Subcontract.

11. SUBCONTRACTOR'S EQUIPMENT, TEMPORARY WORKS AND MATERIALS

11.1. The ownership of, and the risks relating to the, equipment, temporary works, and materials to be supplied under this Subcontract shall pass from the Subcontractor to the Employer via the Contractor at the time and in accordance with the conditions set forth in the Main Contract.

12. INDEMNITIES

12.1. The Subcontractor shall, except if and so far as the Subcontract provides otherwise, indemnify the Contractor against all losses and claims in respect of;

12.1.1. death or bodily injury to any person, or

12.1.2. loss or damage to any property (other than the Subcontract Works).

which may arise out of or in consequence of the execution and completion of the Subcontract Works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the provisions of sub-clause 12.2.

- 12.2. The Contractor shall indemnify the Subcontractor against all claims, proceedings, damages, costs, charges and expenses in respect of the following matters to the like extent that the Contractor shall be indemnified by the Employer in terms of the Main Contract, but no further;
- 12.2.1. the permanent use or occupation of land by the Subcontract Works, or any part thereof,
 - 12.2.2. the right of the Employer and/or the Contractor to execute the Subcontract Works, or any part thereof, on, over, under, in or through any land,
 - 12.2.3. damage to property which is the unavoidable result of the execution and completion of the Subcontract Works, or the remedying of any defects therein, in accordance with Subcontract, and
 - 12.2.4. death or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, its agents, workmen or servants or other contractors, not employed by the Contractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.
- 12.3. The Contractor shall indemnify the Subcontractor against all claims, proceedings, damages, costs, charges and expenses in respect of death or injury to persons or loss of or damage to property resulting from any act or neglect of the Contractor, its agents, workmen or servants or other subcontractors, not employed by the Subcontractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto or where the said death, injury, loss or damage was contributed to by the Subcontractor, its agents, workmen or servants, such part of the said death, injury, loss or damage as may be just and equitable having regard to the extent of responsibility of the Contractor, its agents, workmen or servants or other subcontractors for the said death, injury, loss or damage.

13. OUTSTANDING WORK AND DEFECTS

- 13.1. If the Subcontractor shall complete the Subcontract Works as required by sub-clause 3.1.2, before the issue of a Taking Over Certificate in respect of the Main Works, or, where under the Main Contract a Taking Over Certificate is issued in respect of the Section or part of the Main Works, before a Taking Over Certificate is issued in respect of a Section or Sections or part or parts of the Main Works which includes the Subcontract Works, the Subcontractor shall continue to maintain the Subcontract Works in the condition required by the Main Contract to the satisfaction of the Contractor. The Subcontractor shall remedy every defect therein from whatever cause arising until a Taking Over Certificate is issued in terms of the Main Contract or such Section or Sections or parts or parts. Subject to clause 14, the Subcontractor shall not be entitled to any additional payment for so doing unless such defect is caused by the act or default of the Employer, its agents, servants or workmen under the Main Contract or of the Contractor, its agents, servants or workmen under the Subcontract.
- 13.2. After a Taking Over Certificate is issued in terms of the Main Works or of a Section or Sections or part or parts thereof which includes the Subcontract Works, the Subcontractor shall remedy such defects in the Subcontract Works as the Contractor is liable to remedy in terms of the Main Contract for the like period.
- 13.3. Provided always that if any defect remedied by the Subcontractor in terms of sub-clauses 13.1 or 13.2 is caused by the act or default of the Contractor, its agents, servants or workmen, then,

notwithstanding that the Contractor may have no corresponding right in terms of the Main Contract, the Contractor shall be entitled to payment by the Contractor of its costs for remedying such defect.

14. INSURANCES

14.1. The Subcontractor shall effect insurance against such risks as are specified in Part II of the Conditions of Subcontract and in such sums and for the benefit of such persons as are specified therein. Unless otherwise stated in Part II of the Conditions of Subcontract, the Subcontractor shall keep in force such insurance from the time that so much of the Site and such access is made available to it as may be required to enable it to commence and proceed with the Subcontract Works until it has finally performed its obligations in terms of the Subcontract.

Provided that the Subcontractor shall insure against the liability in respect of any person employed by it on the Subcontract Works in such manner that the Employer and/or the Contractor is indemnified under the policy.

14.2. The Contractor shall keep in force, until such time as a Taking Over Certificate is issued in respect of the Main Works or the Main Works have ceased to be at the Contractor's risk in terms of the Main Contract, the policy of insurance specified in Part II of the Conditions of Subcontract.

The Subcontract Works shall be at the risk of the Subcontractor until a Taking Over Certificate is issued in respect of the Main Works, or, if a Taking Over Certificate is issued in respect of a Section or Sections or part or parts of the Main Works, until a Taking Over Certificate is issued in respect of the last of the Sections or parts of the Main Works including the Subcontract Works.

14.3. Where either party is required to effect and keep in force insurance, in terms of this clause, it shall if so required by the other party provide evidence of insurance and proof of payment of the current premium.

14.4. If either party fails to effect and keep in force any of the insurances required in terms of the Subcontract, or fails to provide proof of the required insurance, the other party may effect and keep in force any such insurance and pay any necessary premium and may from time to time deduct the amount so paid from any monies due to the defaulting party or recover same as a debt due from the defaulting party, as the case may be.

15. PAYMENT

15.1. The Subcontractor agrees to accept the Subcontract Sum as full compensation for performing all services, supplies and equipment necessary for satisfactorily executing and completing the Subcontract Works and remedying any defects.

15.2. Applications for Payment, Monthly Statements and Payment Certificates shall be treated in accordance with the Conditions of the Main Contract except that the value of works and materials eligible to be included in the monthly payment certificates shall be detailed by the Subcontractor each month in sufficient advance time as decided by the Contractor for processing by the Contractor. Payment to the Subcontractor shall be due within twenty-one (21) days following the due date for payment given in terms of the Main Contract. However, the Subcontractor shall not receive payment until twenty-one (21) days after receipt by the Contractor of equivalent payment by the Employer unless otherwise agreed in writing.

15.3. Payments otherwise payable in terms of this sub-clause may be withheld, in whole or in part, as is reasonable under the specific circumstances, on account of:

- 15.3.1. delay in the provision of guarantees required under this Subcontract by the Subcontractor or should the same prove to be unenforceable at any time for any reason,
- 15.3.2. claims filed by third parties which would become the Contractor's responsibility,
- 15.3.3. the failure of the Subcontractor to correct defective workmanship or materials,
- 15.3.4. the failure of the Subcontractor to rectify any default in any of the conditions hereof committed by the Subcontractor,
- 15.3.5. the amount of quantities included in the Subcontractor's statement are not certified in full by the Employer, except for amounts or quantities for work done on the Contractor's direct instruction for its benefit.

If the foregoing causes are removed to the satisfaction of the Contractor, the withheld payments shall promptly be made. If the said causes are not promptly removed after written notice, the Contractor may rectify the same at the Subcontractor's expense and deduct all costs and expense incurred thereby from such withheld payments.

15.4. Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontract Works are fully performed in accordance with the requirements of the Subcontract, the Engineer has issued a Certificate for Payment covering the Subcontractor's completed work and the Contractor has received payment from the Employer. If, for any cause which is not the fault of the Subcontractor, a Certificate for Final Payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within twenty-one (21) days after receipt of payment from the Employer, final payment to the Sub-Contractor shall be made upon demand. Notwithstanding the foregoing, payment by the Employer to the Contractor shall be a condition precedent to the Subcontractor's right to final payment, unless failure of payment is due to the Contractor's default.

16. SUSPENSION

16.1. The Contractor may, upon the Employer's instruction, by notice in writing to the Subcontractor, suspend at any time the performance of all or any portion of work to be performed under the Subcontract.

Upon such notice of suspension of work, the Subcontractor agrees to permit the Contractor to designate the amount and type of the Subcontractor's construction plant, equipment and labour that shall remain on the site, or in other areas where work is being carried out, in readiness to immediately resume work at the Contractor's request in such a manner as to minimise costs associated with suspension.

16.2. Upon receipt of any such notice, the Subcontractor shall, unless the notice requires otherwise:

- 16.2.1. immediately discontinue work on the date and to the extent specified in the notice,
- 16.2.2. place no further orders or subcontracts for material, services or facilities with respect to suspended work other than to the extent required in the notice,

- 16.2.3. promptly make every reasonable effort to obtain suspension, upon terms satisfactory to the Contractor of all orders, subcontracts and rental agreements to the extent they relate to performance of work suspended; and
- 16.2.4. unless otherwise specifically stated in the notice, the Subcontractor shall continue to protect and maintain the work completed including those portions on which work has been suspended.
- 16.3. Upon receipt of notice to resume suspended work, the Subcontractor shall, as soon as reasonably possible, resume work on the suspended work to the extent required in the notice. Any claim on the part of the Subcontractor for extension of time shall be made in accordance with the appropriate provisions of the Subcontract. Within ten (10) days after receipt of notice to resume work, the Subcontractor shall submit for review a revised construction schedule. No compensation or extension of time shall be granted if suspension results from the Subcontractor's breach of the Subcontract.
- 16.4. Where suspension of the Subcontract Works results from any decision taken or direction issued by the Employer, then the amount of reimbursable costs or extension of time defined under Sub clause 16.3 above shall be calculated and paid in accordance with the Main Contract and shall not exceed those awarded to the Contractor by the Employer in relation to the Subcontract Works involved in the suspension, except when such suspension was caused by default of the Contractor.

17. SUBCONTRACTOR'S DEFAULT AND TERMINATION

- 17.1. If the Subcontractor fails to execute the Subcontract Works or neglects to perform its obligations in accordance with the Subcontract so as seriously to affect the carrying out of the Subcontract Works, the Contractor may give notice to the Subcontractor requiring it to make good such failure or neglect.
 - 17.2. If the Subcontractor:
 - 17.2.1. fails to comply within a reasonable time with a notice under Sub-Clause 17.1, or
 - 17.2.2. assigns the Subcontract Works without the Contractor's written consent, or
 - 17.2.3. becomes bankrupt or insolvent, has a receiving order made against it or compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors or goes into liquidation,
- the contractor may, after having given seven (7) days notice to the Subcontractor, terminate the Subcontract and expel the Subcontractor from the Site.
- 17.3. Any such expulsion and termination shall be without prejudice to any other rights or powers of the Contractor under the Subcontract. The Contractor may upon such termination complete the Subcontract Works itself or by the employment of any other Subcontractor.
 - 17.4. The Contractor shall, as soon as possible after such termination, value the Subcontract Works and all amounts due to the Subcontractor as at the date of termination in accordance with Clause 15.

- 17.5. The Contractor shall not be liable to make any further payments to the Subcontractor until the Subcontract Works have been completed. When the Subcontract Works are so complete, the Contractor shall be entitled to recover from the Subcontractor the extra costs, if any, of completing the Subcontract Works after allowing for any sum due to the Subcontractor under Sub-Clause 17.4, and the Contractor shall pay any balance due to the Subcontractor.
- 17.6. Should the Contractor's employment under the Main Contract be determined for whatsoever reason, the Subcontractor's employment under this Subcontract shall thereupon also determine, following which the value of work completed shall be prepared in accordance with the provisions of Clause 17.4

18. SETTLEMENT OF DISPUTES

- 18.1. Should any disagreement between the Contractor and the Subcontractor arise consequent upon a decision, action or inaction of the Employer or its agents, then the Contractor shall allow the Subcontractor, if the Subcontractor so requires, to use the Contractor's name and to institute whatever proceedings are provided for in the Main Contract for the settlement of disagreements and disputes.
- 18.2. If the Subcontractor elects to proceed in terms of Clause 18.1, the Subcontractor shall provide the Contractor with indemnity and security as required by the Contractor.
- 18.3. If any dispute or difference should arise between the Contractor and the Subcontractor not related to decisions by the Employer, for which mutual agreement cannot be reached either during the progress or after the completion of the Works or after the determination of the employment of the Contractor or Subcontractor under the Main Contract or the Subcontract as the case may be, or after the abandonment or breach of the Subcontract, as to the construction of this Subcontract, or as to any matter or thing arising thereof, then either party shall forthwith give to the other, notice of such dispute or difference. Such dispute or difference shall be and is hereby referred to the arbitration and the final decision of a person to be agreed upon between the parties or, failing agreement, to a person to be appointed on a request of either party by the Chairman for the time being of the Association of Arbitrators (Southern Africa). The award of such Arbitrator shall be final and binding on the parties. The venue for the arbitration shall be at a location as may be agreed by the parties or as may be designated by the Arbitrator. Such reference, except on the question of certificates and/or payments, shall not be opened until after the completion or alleged completion of the Contract Works, unless by mutual agreement between the Contractor and Subcontractor. Such reference shall not affect the obligation as to payment of certified amounts by the Contractor to the Subcontractor in terms of Clause 15. The arbitration shall be conducted in accordance with the "Rules for the Conduct of Arbitrations" as published by the Association of Arbitrators (Southern Africa).