

FOR USE WHERE THE SUB-CONTRACTOR IS NOMINATED UNDER  
SUB-CLAUSE 31.2 OF THE NATIONAL CONSTRUCTION COUNCIL  
AGREEMENT AND SCHEDULE OF CONDITIONS OF BUILDING CONTRACT  
(WITH QUANTITIES), 2000 EDITION



**AGREEMENT AND SCHEDULE OF  
CONDITIONS OF BUILDING SUB-CONTRACT**  
(with Quantities)

Between .....

.....

and .....

.....

**Published by:**  
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2005 Edition  
Reprinted in 2014



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**(Baraza la Taifa la Ujenzi)**

**P.O. Box 70039, Tel. 255-22-2131321, 2110869, 2110301**

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**Dar es Salaam**

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## PREFACE

In 1995, National Construction Council (NCC) published the first edition of Agreement and Schedule of Conditions of Building Contract (with Qualities). Since then two more editions have been published. The second and the third editions were published in the year 1998 and 2000 respectively. The 1995 edition was based on the Agreement and Schedule of Conditions of Building Contract (with Quantities) 1977 edition which was published by then, the East African Institute of Architects.

The East African Agreement and Schedule of Conditions of Contract (with Quantities) 1977 edition – had its corresponding standard Sub-Contract Agreement. However, the NCC Agreement and Schedule of Conditions of contract were being used without corresponding Sub-contract Agreement. This situation has led to difficulties in managing sub-contract agreements under the NCC form of contract. It is this need that prompted NCC to collaborate with the Tanzania Institute of Quantity Surveyors (TIQS) in drafting a sub-contract agreement which would be used in conjunction with the NCC Form of Contract. The East African Agreement and Schedule of Building Sub-Contract was agreed to be used as a base for the proposed new document.

The actual drafting has been carried out through a technical committee consisting of: Architectural Association of Tanzania (AAT), Association of Consulting Engineers Tanzania (ACET), Contractors Association of Tanzania (CATA), National Construction Council (NCC), National Social Security Fund (NSSF), Tanzania Building Agency (TBA) and Tanzania Institute of Quantity Surveyors (TIQS),

The National Construction Council and Tanzania Institute of Quantity Surveyors acknowledge and commend all those who in one way or the other assisted in the preparation of this Agreement.

---

**ARTICLES OF AGREEMENT**

*This Agreement* made the ..... day of .....

**BETWEEN**

.....  
.....  
of (or whose registered office is situated at) .....

.....  
.....  
(hereinafter called “The Main-Contractor”) of the one part **AND** .....

.....  
.....  
of (or whose registered office is situated at) .....

.....  
.....  
(hereinafter called the “Sub-Contractor”) of the other part.

SUPPLEMENTAL to an Agreement (hereinafter referred to as “the Main Contract”) made the..... day of .....

**BETWEEN**

.....  
..... of  
(or whose registered office is situated at) .....

.....  
.....  
(hereinafter called “the Employer”) of the one part and the Main-Contractor  
..... of the other part **AND WHEREAS** the  
Main-Contractor is desirous of .....

.....  
.....  
(hereinafter called “the Sub-Contract Works”) and which form part of the Works (hereinafter called “the Main -contract works”) comprised in and to be executed in accordance with the Main-Contract.

**AND WHEREAS** the Sub-Contractor is deemed to have clear understanding of the Main Contract or a copy thereof except the detailed prices of the Main Contractor included in schedule and Bills of Quantities.

---

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. For the consideration hereinafter mentioned, the Sub Contractor will upon and subject to the Conditions annexed hereto carry out and complete the Sub-Contract Works shown upon the Sub-Contract Drawings and described by or referred to in the Sub Contract Bills and in the said Conditions.

2. The Main Contractor will pay the Sub-Contractor the sum of TShs. ....(In words TShillings .....  
.....(hereinafter referred to as 'the Sub-Contract Sum') or such other sum as shall become payable hereunder at the time and in the manner specified in the said Conditions.

3. The term 'the Architect' in the said Conditions shall mean .....  
.....  
of.....  
.....

or, in the event of his death or ceasing to be the Architect for the purpose of this Sub Contract such other person as shall be nominated as per *the* provisions of the Main Contract.

4. The term 'the Quantity Surveyor' in the said Conditions shall mean .....  
.....  
of.....

.....or,  
in the event of his death or ceasing to be the Quantity Surveyor for the purpose of this Sub-Contract such other person as shall be nominated as per *the* provisions of the Main Contract.

---

**\*AS WITNESS** the hands of the said parties.

Signed and sealed by the said parties.

**Signed by the said Main-Contractor**

.....  
.....  
.....

In the presence of:

Name: .....

Address: .....

Description: .....

**SIGNED by the said Sub-Contractor**

.....  
.....

in the presence of

Name: .....

Address: .....

Description .....

*\*Footnote*

a) *The Sub-Contract shall be under seal only:  
When the Main-Contract is under seal*

b) *If the Sub-Contract is to be executed under seal delete “As witness the hands of” the  
said parties and insert: Signed and sealed by”.*



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**THE CONDITIONS HEREIN BEFORE REFERRED TO;**

**1.0 GENERAL OBLIGATIONS OF THE SUB-CONTRACTOR**

- 1.1 The Sub-Contractor shall execute and complete the Sub-Contract works subject to and in accordance with this Sub-Contract in all respects to the reasonable satisfaction of the Main-Contractor and of the Architect for the time being under the Main-Contract (hereinafter called “the Architect”) and in conformity with all reasonable directions, rules and requirements of the Main - Contractor (so far as they may apply) for the time being regulating the due carrying out of the Main - Contract works.
- 1.2 If the Sub-Contractor shall find any discrepancy in or divergence between any two or more of the following documents, including a divergence between parts of any one of them or between documents of the same description, namely:
- a) The Sub-Contract Drawings,
  - b) The Sub-Contract Bills of Quantities
  - c) Any instruction issued by the Main Contractor and/or the Architect under these Conditions (save insofar as any such instruction requires a variation in accordance with the provisions of sub-clause 13.3, of the Main Contract).
  - d) Any Drawings or documents issued by the Architect, and
  - e) Any other documents forming part of the Sub-Contract.

The Sub-contractor shall forthwith give to the Main-Contractor with a copy to the Architect a written notice specifying the discrepancy or divergence, and the Main-Contractor shall issue instructions with a copy to the Architect, in regard thereto as soon as is practicable.

- 1.3 If the Sub Contractor shall fail to get materials and/or goods of the respective kinds and standards described in the Sub Contract Drawings and/or Bills of Quantities he shall forthwith give to the Main-Contractor a written notice specifying the unavailability and the Main Contractor shall within 7 days of receipt of such written notice issue instructions with a copy to the Architect in regard thereto.
- 1.4 The Sub-Contractor shall, throughout the execution and completion of the Sub Contract Works and the remedying of any defects therein:

- 
- a) have full regard for the safety of all persons entitled to be upon the site and keep the Site (so far as the same is under his control) and the Sub Contract Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons,
  - b) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation.

## **2.0 UNDERSTANDING OF THE MAIN CONTRACT BY THE SUB-CONTRACTOR**

- 2.1 The Sub-Contractor shall be deemed to have clear understanding of all the provisions of the Main Contract except the detailed prices of the Main-Contractor included in Schedules of Rates and Bills of Quantities.
- 2.2 Immediately after the execution of this Sub-Contract, the Main-Contractor shall furnish the Sub-Contractor with certified copies of the documents relevant to this sub-Contract Works in the manner described and outlined in relevant clauses in the Main-Contract.

## **3.0 PROGRAMME OF WORKS**

- 3.1 The Sub-Contractor shall, within the time stated in the Appendix after the date of the Letter of Acceptance, submit to the Main-Contractor with a copy to the Architect for their consent without charge to the Main-Contractor two copies of his Sub-Contract programme, in such form and detail which matches the Master programme submitted by the Main-Contractor for the execution of the Main-Contract Works. The Sub-Contractor shall, whenever required by the Main Contractor, also provide in writing for the Main-Contractor's information, general description of the arrangements and methods which the Sub-Contractor proposes to adopt for the execution of the Sub-Contract Works and within 14 days of any decision by the Main Contractor with two copies of any amendments and revisions to take account of that decision.
- 3.2 If at any time it will appear to the Main-Contractor that the actual progress of the Sub-Contract Works does not conform to the programme to which consent has been given under sub-clause 3.1 of this clause the Sub-Contractor shall produce at the request of the Main-Contractor a revised programme showing the modifications to such programme necessary to ensure completion of the Sub-Contract Works within the time for completion.

- 
- 3.3 Provided that if the Sub-Contractor shall not submit or amend a programme or an updated programme within the specified period the Main-Contractor may withhold any amount due from the next payment certificate or request the Employer to withhold the payment (if paid directly by the Employer) and continue to withhold the amount until the next payment after the date on which the overdue programme has been submitted.
- 3.4 The submission for any consent by the Main-Contractor and/or Architect of such programmes or the provision of such general descriptions shall not relieve the Sub-Contractor of any of his duties or responsibilities under the Sub-Contract.

#### **4.0 STAFF**

- 4.1 The Sub-Contractor shall constantly keep upon the Works a competent Foreman-in charge and any instructions given to him by the Main-Contractor and/or Architect shall be deemed to have been issued to the Sub-Contractor. The Foreman-incharge shall be capable of interpreting Sub-Contract Documents and instructions which are narrated in English.
- 4.2 The Sub-Contractor shall make his own arrangements for the engagement of all labour, being local or otherwise.
- 4.3 The Main Contractor and/or Architect may (but not unreasonably and/or vexatiously) issue instructions requiring the dismissal from the site where Sub-Contract Works is being carried out, of any person indicated by the Main-Contractor and/or Architect as likely to jeopardize the satisfactory execution of the Sub-Contract Works.

#### **5.0 RIGHT OF ACCESS OF THE MAIN-CONTRACTOR AND THE ARCHITECT - TO THE SUB-CONTRACT WORKS**

The Main-Contractor and the Architect and all persons duly authorized by them or either of them shall at all reasonable time have access to *any* work which is being prepared for or will be utilized in the Sub-Contract works, unless the Architect shall certify in writing that the Sub-Contractor has reasonable grounds for refusing such access.

#### **6.0 COMMENCEMENT AND COMPLETION OF THE WORKS**

- 6.1 The Sub-Contractor shall commence the Sub-Contract Works within an agreed time specified in the Appendix to this Sub-Contract or, within seven days after receipt by him of an order in writing from the Main-Contractor to that effect and shall proceed with the same with due expedition.

---

6.2 The Sub-Contractor shall complete the Sub-Contract Works and each section thereof within the period specified in the Appendix to this Sub-Contract or within such extended period or periods as may be granted pursuant to the provisions hereinafter contained.

6.3 If the Sub-Contractor fails to complete the Sub-Contract works or any section thereof within the period specified or any extended period or periods as hereinafter provided, the Sub-Contractor shall pay or allow to the Main-Contractor a sum equivalent to any loss or damage suffered or incurred by the Main-Contractor and caused by the failure of the Sub-Contractor as aforesaid. The Main-Contractor shall within thirty days of occurrence of that loss or damage give notice in writing to the Sub-Contractor with a copy to the Architect that loss or damage as aforesaid is being or has been suffered or incurred.

PROVIDED that the Main-Contractor shall not be entitled to claim any loss or damage under this Sub-clause unless the Architect shall have issued to the Main-Contractor (with a copy to the Sub-Contractor) a certificate in writing stating that in his opinion the Sub-Contract works or the relevant section thereof ought reasonably to have been completed within the specified period or within any extended period or periods as the case may be and that the delay by the Sub-Contractor has caused such loss and or expenses as claimed by the Main-Contractor.

## **7.0 DEFECTS, SHRINKAGES, ETC TO SUB-CONTRACT WORKS**

7.1 The Sub-Contractor (whether at his own cost or not) shall be liable to make good under the Sub-Contract all defects, shrinkage or other faults in the Sub-Contract Works which shall appear either during the construction period or within the defects liability period referred in the appendix to these conditions within a reasonable time after the receipt by him from the Main-Contractor of the Architect's written instructions or a copy thereof relating to the same.

PROVIDED that where the Main-Contractor is liable to make good such defects, shrinkages or other faults but not at his own cost, then the Main-Contractor shall secure a similar benefit to the Sub-Contractor and shall account to the Sub-Contractor for any money actually received by him in respect of the same.

7.2 If the Main-Contractor (whether by himself or any other Sub-Contractor) shall execute any work (whether permanent or temporary) to the Main Contract or to any part of the same required by the Architect or rendered necessary by reason of defects, shrinkages or other faults in the Sub-Contract works due to materials or workmanship not being in accordance with this Sub-Contract, the Sub-Contractor shall pay to the Main-Contractor the cost of the execution of such work.

---

PROVIDED that if the Main Contractor shall pay or allow to the Employer the value of or other agreed sum (not exceeding such cost as aforesaid) in respect of such work instead and in satisfaction of executing the same, then the Sub-Contractor shall pay to the Main Contractor such value or other agreed sum as *referred to in this Sub-Clause*.

- 7.3 If the Sub-Contractor shall execute any work to or in connection with the Sub-Contract Works (whether permanent or temporary) required by the Architect or rendered necessary by reason of any defects, shrinkages or other faults in the Main Contract Works due to materials or workmanship not being in accordance with the Main Contract, then the Main-Contractor shall pay to the Sub-Contractor the cost of the execution of such work.

PROVIDED that if instead of the Sub-Contractor actually executing such work and in satisfaction of the same the Main-Contractor shall pay or allow to the Employer the value of or other agreed sum (not exceeding such cost as aforesaid) in respect of such work, then the Main-Contractor shall indemnify the Sub-Contractor against any claim, damage or loss in respect of failure to execute such work.

#### **8.0 RIGHT OF SUB-CONTRACTOR TO SUSPEND EXECUTION OF SUB-CONTRACT WORKS**

If the Main-Contractor shall fail to make any payment to the Sub-Contractor as provided hereinafter and such failures shall continue for fourteen days after the Sub-Contractor shall have given the Main-Contractor written notice of the same and has not opted to claim interest for delayed payment, then the Sub-Contractor may (but without prejudice to any other right or remedy) suspend the further execution of the Sub-Contract works until such payment has been made and such period of suspension as aforesaid shall be deemed to be an extension of time and be added to the period or periods for completion (as the case may be) as provided in the Appendix to this Sub-Contract or to any extended period or periods authorized under clause 15 hereinafter and shall not be deemed to be a delay for which the Sub-Contractor is liable under this Sub-Contract.

#### **9.0 VARIATION OF SUB-CONTRACT WORK**

- 9.1 In the event of the Main-Contractor issuing in writing to the Sub-Contractor a copy of any instructions of the Architect (whether written or, oral and subsequently confirmed in writing either by the Architect or by the Main-Contractor and, in the later case, not dissented from by the Architect within seven days) in relation to the Sub-Contract Works (whether in regard to variations or in regard to any other matter in respect of which the Architect is expressly empowered by the conditions of the Main-Contract to issue instructions), then the Sub-Contractor shall forthwith comply with and carry out the same in all respects accordingly.

---

Save as aforesaid no variation of the Sub-Contract Works shall be made or allowed by the Sub-Contractor without the knowledge and approval of the Main-Contractor.

The expression “variation” shall have the same meaning assigned to it as in the Main Contract.

- 9.2 Upon receipt of what purports to be an instruction *or copy of instruction* from the Architect *submitted* in writing to the Sub-Contractor *by the Main-Contractor*, in *any* matter related to Sub-Contract works the Sub-Contractor may require the Main-Contractor to request the Architect to specify in writing the provision of the Main Contract, which empowers the issue of the said instruction. The Main-Contractor shall forthwith comply with any such requirement and deliver to the Sub-Contractor a copy of the Architect’s answer to the Main-Contractor’s request. If the Sub-Contractor shall thereafter comply with the said instructions, then the issue of the same shall be deemed for all purposes of this Sub-Contract to have been empowered by the provisions of the Main-Contract specified by the Architect in answer to the Main-Contractor’s request.

PROVIDED always that if before such compliance the Sub-Contractor shall have made a written request to the Main-Contractor to request the Employer to concur in the appointment of an Arbitrator under the Main Contract in order that it may be decided whether the provision specified by the Architect empowers the issue of the said instruction, then, subject to the Sub-Contractor giving the Main Contractor such indemnity and security as the Main-Contractor may reasonably require, the Main-Contractor shall allow the Sub-Contractor to use the Contractor’s name and if necessary will join with the Sub-Contractor in arbitration proceedings by the sub-Contractor to decide the matter as aforesaid.

- 9.3 The Sub-Contract Sum shall be the sum named in Article of Agreement of this Sub-Contract or such other sum as shall become payable by reason of any authorized variations, fluctuations, duties or amounts ascertained under clause 16.0 hereof. The value of all authorized variations shall be determined by the Quantity Surveyor for the time being under the Main-Contract and in accordance with the applicable provisions relating to the ascertainment of prices for authorized variations laid down in the Agreement and Schedule of Conditions of Building Contract in use published by the National Construction Council;

Save that where the Sub-Contractor’s schedule of prices for measured work and/or a schedule of daywork prices, such prices shall be allowed to the Sub-Contractor in determining the value of authorized variations in substitution for any prices which would otherwise be applicable under this Sub-Clause.



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## **10.0 ASSIGNMENT AND SUB-LETTING**

- 10.1 Neither the Main-Contractor nor the Sub-Contractor shall, without the written consent of the other, assign this Sub-Contract. Provided that the approval of assignment shall not relieve either party of his/her obligations for the part of the Sub-Contract already performed or the part not assigned.
- 10.2 The Sub-Contractor shall not without the written consent of the Main-Contractor and Architect (which consent shall not be unreasonably withheld to the prejudice of the Sub-Contractor) sub-let any portion of the Sub-Contract Works. Provided that it shall be a condition in any sub-letting which may occur that the employment of the domestic Sub-Contractor under the sub-contract shall determine immediately upon the determination (for any reason) of the Sub-Contractor's employment under this Sub-Contract.

## **11.0 SUB-CONTRACTOR'S LIABILITY UNDER INCORPORATED PROVISIONS OF MAIN-CONTRACT**

The Sub-Contractor shall:-

- 11.1 Observe, perform and comply with all the provisions of the Main-Contract to be observed, performed and complied with so far as they relate and apply to the Sub-Contract Works (or any portion of the same) and are not repugnant to or inconsistent with the express provisions of this Sub-Contract as if all the same were severally set out herein;
- 11.2 Indemnify and save harmless the Main-Contractor against and from:-
- a) Any breach, non-observance or non-performance by the Sub-Contractor, his servants or agents of the said provisions of the Main-Contract or any of them;
  - b) Any act or omission of the Sub-Contractor, his servants or Agents which involves the Main-Contractor in any liability to the Employer under the Main-Contract.
  - c) Any claim, damage, loss or expense due to or resulting from any negligence or breach of duty on the part of the Sub-Contractor, his servants or agents including any wrongful use by him or them of the scaffolding referred to in clause 27 of this Sub-Contract or other property belonging to or provided by the Main-Contractor;
  - d) Any loss or damage resulting from any claim under any statute in force for the time being by an employee of the Sub-Contractor in respect of personal injury arising out of or in the course of his employment.

---

PROVIDED that nothing contained in this Sub-Contract shall impose any liability on the Sub-Contractor in respect of any negligence or breach of duty on the part of the Main-Contractor, his other Sub-Contractors or their respective servants or agents nor create any privity of contract between the Sub-Contractor and the Main-Contractor or any other Sub-Contractor.

## **12.0 INSURANCE AGAINST INJURY TO PERSONS AND PROPERTY**

The Main-Contractor and Sub-Contractor respectively shall, so far as is reasonably practicable, effect and keep in force during all material times, policies of Insurance with such insurers and of such an amount as shall be approved by each other and accepted by the Architect against their respective liabilities under any statute in force for the time being in respect of injuries to persons at Common Law and in respect of injuries to persons or property arising out of and in the course of the execution of the Main Contract Works and the Sub-Contract Works and/or arising out of and in the course of the employment of any workmen employed by them respectively or caused thereby or due thereto respectively;

PROVIDED always that loss or damage by fire, storm, tempest, lightning, flood, earthquake, fire following earthquake, aircraft or anything dropped there from, aerial objects, riot and civil commotion shall be dealt with in accordance to the provisions of clause 13 of this Sub-Contract.

## **13.0 DAMAGE BY FIRE OR OTHER CALAMITIES**

- 13.1 The Sub-Contract works (including materials and goods of the Sub-Contractor properly placed on the site for use in the Sub-Contract Works) shall as regards loss or damage by fire (whether such fire be caused by the negligence of the Sub-Contractor or those for whose actions the Sub-Contractor is responsible or otherwise), storm, tempest, lightning, flood, earthquake, fire following earthquake, aircraft or anything dropped there from, aerial objects, riot and civil commotion be at the sole risk of the Main-Contractor.
- 13.2 In the event of any loss or damage by fire, storm tempest, lightning, flood, earthquake, fire following earthquake, aircraft or anything dropped there from, aerial objects, riot and civil commotion being caused to the Sub-Contract Works (including any of the materials and goods of the Sub-Contractor placed properly on the site for use in the Sub-Contract works) the Main-Contractor with the approval of the Architect, shall make fair estimate of such loss or damage and pay or allow for payment to the Sub-Contractor the full value of the same, such value to be calculated in accordance with Clause 15 of this Sub-Contract.

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13.3 The Main Contractor shall for the benefit of himself and the Sub-Contractor at all times insure for the materials and goods of the Sub-Contractor properly placed on the site for use in the Sub-contract Works or procure their insurance by the name of the Employer and keep them or have them kept insured against loss or damage by fire, storm, tempest, lightning, flood, earthquake, fire following earthquake, aircraft or anything dropped there from, aerial objects, riot and civil commotion.

13.4 The Sub-Contractor shall observe and comply with the conditions contained in the policy or policies of insurance of the Main-Contractor or of the Employer, as the case may be against loss or damage by fire, storm, tempest, lightning, earthquakes, fire following earthquake, aircraft or anything dropped there from, aerial objects riot and civil commotion.

**14.0 INSPECTION OF POLICIES OF INSURANCE BY EACH PARTY**

The Main-Contractor and the Sub-Contractor shall each respectively at all reasonable times at request of the other, produce for inspection the policy or policies of insurance referred to in clauses 12 and 13 of this Sub-Contract and the receipts for the premiums paid.

PROVIDED always that the production by either the Main-Contractor or the Sub-Contractor, as the case may be, of a current certificate for insurance from the company or firm which shall have issued the policy or policies as aforesaid, shall be a good discharge of the Main-Contractor's or the Sub-Contractor's obligation to produce the policy or policies and receipt in respect of premiums paid. Such Insurance shall as much as can practicable be with Insurers approved by Architect in the Main-Contract.

PROVIDED that the Sub-Contractor shall deposit with the Main-Contractor the policy or policies and the receipt in respect of premiums paid; and should the Sub-Contractor make default in insuring or continuing to insure as aforesaid the Main-Contractor may himself insure against any risk with respect of which the default shall have occurred and deduct a sum equivalent to the amount paid by him in respect of premiums from any monies due or to become due to the Sub-Contractor.

**15.0 VARIATION OF TIME**

15.1 Upon it becoming reasonably apparent that the progress of the Sub-Contract Works is delayed, or likely to be delayed the Sub-Contractor shall forthwith give written notice of the cause of the delay in the progress or completion of the Sub-Contract Works or any section thereof to the Main-Contractor, who shall subsequently inform the Architect thereof and of any representations made to him by the Sub-Contractor as to such cause as aforesaid.

- 
- 15.2 The Main-Contractor shall within 14 days of his receipt of such notice or and representations as aforesaid, and where the Main-Contractor is of the opinion that, the completion of the Sub-Contract Works is likely to be or has been delayed beyond the period or periods stated in the Appendix hereto or beyond any extended periods previously fixed under this clause;
- a) By reason of any of the matters specified in *Sub Clause 9(1)* of this Sub-Contract or by any act or omission of the Main-Contractor, his other Sub-Contractors, his or their respective servants or agents; or
  - b) For any reason except delay on the part of the Sub-Contractor for which the Main-Contractor could obtain an extension of time for completion under the Main-Contract. Then the Main-Contractor shall, but not without the written consent of the Architect, grant a fair and reasonable extension of the said period or periods for completion of the Sub-Contract Works or each section thereof (as the case may require) and such extended period or periods shall be the period or periods for completion of the same respectively and this clause shall be read and construed accordingly.
- 15.3 If the Main-Contractor shall fail to give a decision on the Sub-Contractors application for extension of time within stipulated period of 14 days then the time applied for by the Sub-Contractor shall be deemed to have been accepted by the Main-Contractor and approved by the Architect as being fair extension of time for the completion of sub-Contract works.

PROVIDED always that if the Sub-Contractor shall feel aggrieved by a failure of the Architect to give his written consent to the Main-Contractor granting a fair reasonable extension of the said period or periods for completion of the Sub-Contract Works, then subject to the Sub-Contractor giving to the Main-Contractor such indemnity and security as the Main-Contractor may reasonably require, the Main-Contractor shall allow the Sub-Contractor to use the Main-Contractor's name and if necessary will join with the Sub-Contractor as Claimant in any Arbitration proceedings by the Sub-Contractor in respect of the said complaint of the Sub-Contractor.

## **16.0 LOSS AND EXPENSES**

- 16.1 If upon written application being made to the Main-Contractor by the Sub-Contractor with a copy to the Architect, and both the Main-Contractor and the Architect are of the opinion that the Sub-Contractor has been involved in direct loss and/or expense for which the Sub-Contractor would not have been reimbursed by a payment made under any other provision in this Sub-Contract by reason of the regular progress of the Sub-Contract Works or any part thereof having been materially affected by any of the circumstances

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in which the Main-Contractor would under the Main-Contract be entitled to recover such direct loss and/or expense as aforesaid, then the Main-Contractor shall request the Architect to ascertain or cause to be ascertained the amount of such direct loss and/or expense. Any amount from time to time so ascertained shall be added to the Sub-Contract sum and if an interim certificate is issued after the date of ascertainment, the Main-Contractor shall request the Architect to add any such amount to the amount which would otherwise be stated as due in such certificate.

- 16.2 The Main-Contractor will *so far as the lawfully can* at the request and cost of the Sub-Contractor obtain for Sub-Contractor any rights or benefits of the Main-Contract so far as the same *are* applicable to the Sub-Contract Works but not further or otherwise.

## **17.0 DETERMINATION BY THE MAIN CONTRACTOR**

- 17.1 If the Sub-Contractor shall make default in any of the following respect viz.:
- a) If without reasonable cause he wholly suspends the carrying out of the Sub-Contract Works before completion thereof;
  - b) If he fails to proceed regularly and diligently with the Sub-Contract Works;
  - c) If he refuses or persistently neglects after notice in writing from the Main-Contractor to remove defective work or improper materials;

Then, if such default shall continue for fourteen days after a notice by registered post or recorded delivery specifying the default has been given to him by the Main-Contractor, with the consent of the Architect the Main-Contractor may without prejudice to any other rights or remedies thereupon by notice by registered post or recorded delivery determine the employment of the Sub-Contractor under this Sub-Contract; provided that notice in pursuance of this clause shall not be given unreasonably or vexatiously and shall be void if the Main-Contractor is at the time of the notice in breach of this Sub-Contract.

- 17.2 If the Sub-Contractor commits an act of bankruptcy or makes or enters into any deed or arrangement or composition with his creditors or being a company enters into liquidation, whether compulsory or voluntary, except liquidation for purposes of reconstruction, or suffers or allows any execution, reconstruction, or equitable, to be levied on his property or obtained against him, or established guilty of corruption as stated under clause 33 of this Sub-Contract; then the Main-Contractor may without prejudice to any other rights or remedies by written notice forthwith determine the employment of the Sub-Contractor under this Sub-Contract.

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17.3 In case of the employment of the Sub-Contractor under this Sub-Contract being determined under 17.1(a) or (b) of this clause, then the Sub-Contractor shall be deemed to be in breach of this Sub-Contract and the Main-Contractor shall only be liable for the value of the work actually and properly executed and not paid for at the date of such determination, such value to be calculated in accordance with clause 19 of this Sub-Contract, for the value of any unfixed materials and goods delivered upon the site for use in the Sub-Contract Works the property of which has passed to the Employer under the terms of the Main Contract and for no other sum or sums whatsoever; and the Main-Contractor shall have the right to recover, or to deduct from or set off against any such amount, the amount of damage suffered and/or of loss and expense incurred by him by reason of the determination of the employment of the Sub-Contractor under this Sub-Contract.

## **18.0 DETERMINATION BY THE SUB-CONTRACTOR**

18.1 Without prejudice to any other rights and remedies which the Sub-Contractor may possess, if:

- a) For any reason the Main-Contractor's employment under the Main-Contract is determined (whether by the Main-Contractor or by the Employer and whether due to any default of the Main-Contractor or otherwise), then the employment of the Sub-Contractor under this Sub-Contract shall automatically become determined.
- b) The carrying out of whole or substantially the whole of the uncompleted Sub-Contract Works is suspended for a continuous period named in the Appendix to this Sub-Contract.
- c) The Employer does not pay the amount properly due to the Sub-Contractor whether after being notified of non-payment by the Main-Contractor or as an obligation under Sub-Contract within the time span allowed in the Main-Contract and the Main-Contractor has opted not to claim interest.
- d) The Main-Contractor interferes with or refuses to include Sub-Contractors work, properly done and/or materials on site or obstructs the issue of any interim certificate.

Then the Sub-Contractor may there upon by notice, by registered post or recorded delivery to the Main-Contractor with a copy to the Architect forthwith determine his employment under this Sub-Contract provided that such notice shall not be given unreasonable or vexatiously.

18.2 Upon such determination and without prejudice to the accrued rights and liabilities of the other party the rights of Sub-Contractor under this Sub-Contract shall be:

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- a) The value of the sub-Contract Works completed at the date of such determination.
  - b) The value of work begun and executed but not completed at the date of such determination.
  - c) The value of any unfixed materials and good delivered upon the site for use in the Sub-Contract Works the property of which has passed to the Employer under the terms of the Main-Contract.
  - d) The cost of materials, goods or services properly ordered for the Sub- Contract Works for which the Sub-Contractor shall have paid or of which he is legally bound to accept delivery. On such payment by the Main Contractor any materials or goods so paid for shall become the property of the Main Contractor.
  - e) Any reasonable cost of removal from the site of his temporary buildings, plant, machinery, appliances, goods and materials.
  - f) Any other direct loss and or expenses incurred by the Sub-Contractor which he cannot recover under any other clause of this *Sub Contract*.

## **19.0 CERTIFICATES**

19.1 The Main-Contractor shall from time to time make application (of which prior thereto the Main-Contractor shall give to the Sub-Contractor at least seven days notice unless otherwise agreed between the Main-Contractor and the Sub-Contractor) to the Architect for certificates of payment and for the inclusion therein of the amount which at the date thereof fairly represents the total value of the sub-Contract Works and of any *authorized and executed* variations, fluctuations in duties or amounts ascertained under Clause 30 hereof and of materials and goods required for use in the Sub-Contract works which have either been delivered to or are adjacent to the Works or have with the Main-Contractor and Architect's approval been stored elsewhere in safe custody by the Sub-Contractor or his agent. The Architect shall indicate in the interim Certificate an amount payable to the Sub-Contractor.

PROVIDED that such application shall only include the value of such materials and goods as and from such time as they are reasonably, properly and not prematurely brought to or placed adjacent to the Works or stored as aforesaid and are adequately stored and protected against weather and other casualties. AND PROVIDED that nothing in this sub-Contract shall prevent the Main-Contractor to request the Employer to make direct payment to the Sub-Contractor.

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19.2 If the Sub-Contractor shall feel aggrieved by the amount certified by the Architect or by his failure to certify, by failure of the Main-Contractor to include Sub-Contract work in the monthly valuation as referred to in Sub-Clause 19.1 of this Clause then, subject to the Sub-Contractor giving to the Main-Contractor such indemnity and security as the Main-Contractor shall reasonably require the Main-Contractor shall allow the Sub-Contractor to use the Main-Contractor's name and if necessary will join with the Sub-Contractor as claimant in any arbitration proceedings by the Sub-Contractor in respect of the said matters complained of by the Sub-Contractor.

## **20.0 PAYMENTS TO THE SUB CONTRACTOR**

20.1 Immediately after receipt by the Main-Contractor of any interim payments from the Employer *the main-Contractor* shall notify the Sub-Contractor with a copy to the Architect and within fourteen (14) days shall pay to the Sub-Contractor (if not directly paid by the Employer as aforesaid) the total value certified therein in respect of the Sub-Contract works, any authorized variations thereof and in respect of any fluctuations in duties or amounts ascertained under Sub-Clause 19.1 hereof less:-

- a) Retention Money named in the Appendix to these conditions as percentage of certified value of Retention, that is to say the proportion attributable to the Sub-Contract Works of the amount retained by the Employer in accordance with the Main Contract; and provided always that the sum of amount so retained equals the amount named in the said Appendix as Limit of Retention, no further amounts shall be retained by virtue of this clause.
- b) The amounts previously paid.
- c) Proportional amount of interest accrued under the Main-Contract, if payment to the Main-Contractor is delayed beyond 30 days.

PROVIDED that all monies payable by the Main-Contractor to the Sub-Contractor after the expiry of fourteen days after *The* Main-Contractor has received payment from the Employer shall earn interest at a rate specified in the corresponding clause of the Main-Contract.

AND PROVIDED that if the Main-Contractor has requested for the Employer to make direct payment to the Sub-Contractor time allowable for payments by the Employer to the Main-Contractor and that for claim of interest incase of delayed payments in the Main-Contract shall also apply to this Sub-Contract.



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- 20.2 If after the issue of the last Interim certificate but before the issue of the Final Certificate in accordance with the Main-Contract the Sub-Contractor shall have completed any work upon the Sub-Contract Works, he may request the Main-Contractor in writing to make application to the Architect for Certificates certifying the value of the work executed upon the Sub-Contract Works, and the Main-Contractor shall make such application.

The provisions of this clause shall apply to such certificates as if they were certificates of payment expressly provided for in the Main Contract.

- 20.3 If before the issue of a Final Certificate to the Main-Contractor under the Main-Contract the Architect so desires to secure final payment to the Sub-Contractor on completion of the Sub-Contract Works and in accordance with and subject to the provisions of the Main-Contract relating to prime cost sums issues a certificate to the Main-Contractor including an amount to cover such final payment, then the Main-Contractor shall pay to the Sub-Contractor the amount so certified by the Architect as aforesaid: but such payment shall only be made if the Sub-Contractor indemnifies and secures the Main-Contractor to the reasonable satisfaction against all apparent defects in the Sub-Contract Works and if by such final payment the Main-Contractor be discharged under the Main-Contract from all liabilities in respect of the Sub-Contract works except for any latent defects.

- 20.4 The Main-Contractor shall notwithstanding anything in this Sub-Contract with the approval of Architect be entitled to deduct from or set off against any money due to the Sub-Contractor (including any Retention Money) any sum or sums which the Sub-Contractor is liable to pay to the Main Contractor under this Sub-Contract. Provided that, if payment to the Sub-Contractor shall be made directly by the Employer such deduction from or set off against shall be done during the preparation of certificate.

## **21.0 RETENTION MONEY**

The Retention Money referred to Sub-Clause 20(1)a of this Sub-Contract shall be dealt with in the following manner:

- 21.1 On the issue by the Architect to the Main-Contractor of any certificate or copy thereof which includes in accordance with the Main Contract the amount or any part thereof retained by the Employer under the Main Contract the Main-Contractor shall pay to the Sub-Contractor such part of the Retention Money as is included in the certificate or copy thereof *as payable to the Sub-Contractor*.

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21.2 The Main-Contractor's interest in the Retention Money, whether it is included in the amounts retained by the Employer under the Main Contract and held by him or whether it is held by the Main-Contractor, is fiduciary as trustee for the Sub-Contractor (without obligation to invest) and if the Main-Contractor attempts or purports to mortgage or otherwise charge such interest or his interest in the whole of the amount retained as aforesaid (otherwise than by floating charge if the Main-Contractor is a limited company), the Main-Contractor shall thereupon immediately set aside and become a trustee for the Sub-Contractor of a sum equivalent to the Retention Money and shall pay the same to the Sub-Contractor on demand.

PROVIDED that upon payment of the same to the Sub-Contractor the amount due to the Sub-Contractor upon final payment under this Sub-Contract shall be reduced accordingly by the amount so paid.

## **22.0 ADVANCE PAYMENT**

22.1 An advance payment of the amount stated in the Appendix to this Sub-Contract shall, following the presentation by the Sub-Contractor to the Main-Contractor of an approved performance *guarantee* in accordance with clause 29.0 of these Conditions and an advance payment guarantee to be of similar terms as are in the Main-Contract for the full value of advance payment, be certified by the Architect for payment within 30 days from the date of presentation of the Architects certificate to the Main-Contractor. Provided also that the advance payment guarantee shall be progressively reduced by the amount repaid by the Sub-Contractor as indicated in interim certificates of the Architect issued in accordance with this Sub-Clause.

22.2 The Sub-Contractor shall use the advance payment only to pay for mobilisation expenses and/or other activities required specifically for the execution of the Sub-Contract. The Sub-Contractor may be required by the Main-Contractor to demonstrate that the advance payment has been used this way through submission of documentary evidence.

22.3 The advance payment shall not be subject to retention.

22.4 The advance payment shall be repaid by way of reduction in interim payment certificates commencing with the next certificate as a fraction of the difference between the total certified value of the permanent Sub-Contract Works and any other items in the Bills of Quantities (excluding the deduction of retention) due for certification in such interim payment certificate and the said value in the last preceding interim payment certificate until the advance payment has been repaid in full.

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PROVIDED that upon the issue of a certificate of completion for the whole Works or upon the happening of the events in clause 17.0 of these Conditions or termination, the whole of the balance then outstanding shall immediately become due and payable by the Sub-Contractor to the Main-Contractor.

### **23.0 WAGES AND CONDITIONS**

23.1 During the continuance of this Sub-Contract the wages and conditions of employment of the employees and workmen of the Main-Contractor and Sub-Contractor engaged on the Main-Contract Works and the Sub-Contract Works respectively shall be such as may from time to time be prescribed by the competent authority in the industry or trade to which such employees or workmen belong and the Main-Contractor and Sub-Contractor hereby mutually agree respectively to pay and observe the same accordingly.

PROVIDED that in default of such wages and/or conditions of employment being prescribed as aforesaid the Main-Contractor and Sub-Contractor as a condition of this Sub-Contract shall pay such wages and/ or observe such conditions of employment as may be generally from time to time prevailing in industries or trades of a similar or comparable nature in the districts in which their respective employees and workmen are engaged.

23.2 If either party *to this Sub-Contract*, shall commit a breach of this clause then the other party shall be entitled (without prejudice to any other right or remedy) to be indemnified by the party so in breach against any loss or damage accruing from or arising out of or connected with such breach.

### **24.0 PROVISIONS OF WATER, ETC. FOR SUB-CONTRACT WORKS**

If and so far as it is so provided in the Main Contract (but not otherwise) the Main-Contractor shall supply at his own cost all necessary water, lighting, watching and attendance for the purpose of the Sub-Contract Works, subject as aforesaid otherwise Sub-Contractor shall make all necessary provision in regard to the said matters and each of them.

### **25.0 TEMPORARY WORKSHOPS, ETC.**

Save as otherwise provided in the Main-Contract the Sub-Contractor at his own expense shall provide and erect all necessary workshops, sheds or other buildings for his employees and workmen at such places on the site as *shall be directed by* the Main-Contractor *who shall subsequently* give all reasonable facilities to the Sub-Contractor for such erection.

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**26.0 SUB-CONTRACTOR'S USE OF SCAFFOLDING OF THE MAIN CONTRACTOR**

The Sub-Contractor, his employees and workmen in common with all other persons having the like right shall for the purposes of the Sub-Contract Works (but not further or otherwise) be entitled to use any scaffolding belonging to or provided by the Main-Contractor, while it remains so erected upon the site.

**27.0 MAIN CONTRACTOR AND SUB-CONTRACTOR NOT TO MAKE WRONGFUL USE OF OR INTERFERENCE WITH THE PROPERTY OF THE OTHER**

The Main-Contractor and the Sub-Contractor and their respective servants or agents shall not interfere with the plant, ways, scaffolding, temporary works, appliances, or other property respectively belonging to or provided by the other or be guilty of any breach or infringement of any enactment or regulation of any central, regional or local authority or of any public service company or authority which has jurisdiction with regard to the Works or with whose system the same are or will be connected; PROVIDED that nothing herein contained shall prejudice or limit the rights of Main-Contractor or of the Sub-Contractor in the carrying out of their respective statutory duties or contractual duties under this Sub-Contract or under the Main Contract.

**28.0 PLANT AND TOOLS OF SUB-CONTRACTOR**

The plant, tools, equipment, or other property belonging to or provided by the Sub-Contractor, his servants or agents (other than materials and goods properly on the site for use in the Sub-Contract Works) shall, subject to the provisions of clause 7.0 hereof, be at the sole risk of the Sub-Contractor, and any loss or damage to the same or caused by the same shall be the sole liability of the Sub-Contractor who shall indemnify the Main-Contractor against loss, claim or proceedings in respect thereof. Any insurance against any such loss or claim shall be the sole concern of the Sub-Contractor.

**29.0 PERFORMANCE GUARANTEE**

The Sub-Contractor shall provide One Surety of the type and at a rate provided in the Main-Contract, to be bound to the Main-Contractor for the due performance of the Sub-Contract until the expiry of the Defects Liability Period or on the issue of the Certificate of Completion of Making Good Defects, whichever is the later.

**30.0 FLUCTUATIONS IN DUTIES**

This Sub-Contract shall have the same status as the Main-Contract as indicated to the Appendix of this Sub-Contract and that all rights the Main-Contractor has from the Employer under the similar clause in the Main-Contract shall apply in this Sub-Contract between the Sub-Contractor and the Main-Contractor.

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### **31.0 SETTLEMENT OF DISPUTES**

In the event of any dispute or difference between the Main-Contractor and the Sub-Contractor, whether arising during the execution or after the completion or abandonment of the Sub-Contract Works or after the determination of the employment of the Sub-Contractor under this Sub-Contract (whether by breach or in any other manner), in regard to any matter or thing of whatsoever nature arising out of this Sub-Contract or in connection therewith, then either party shall give to the other notice in writing of such dispute or difference and such dispute or difference shall be and is hereby referred to the arbitration of such person as the parties hereto may agree to appoint as Arbitrator or failing such agreement as may be appointed on the request of either party by the Executive Secretary of the National Construction Council, and in either case Award of the Arbitrator shall be final and binding on the parties.

PROVIDED that such Arbitrator shall not without the written consent of the Architect or the Main-Contractor and in any case of the Sub-Contractor enter on the arbitration until after the completion or abandonment of the Main Contract Works, except to arbitrate upon the question whether or not a certificate has been improperly withheld or is not in accordance with the terms of the Main Contract.

AND PROVIDED that arbitration of such dispute shall not be commenced unless an attempt has been made by the parties to settle such dispute amicably.

AND PROVIDED further that in any such arbitration as is provided for in this clause any decision of the Arbitrator which is final and binding on the Main -Contractor under the Main Contract shall also be and be deemed to be final and binding between and upon the Main-Contractor and the Sub-Contractor.

### **32.0 NOTICES**

- 32.1 All certificates, notices or instructions to be given to the Sub Contractor by the Main - Contractor or the Architect under the terms of the Sub Contract shall be sent by post, cable, telex or facsimile transmission to or left at the Sub Contractor's principal place of business or such other address as the Sub Contractor shall nominate for that purpose.
- 32.2 Any notice to be given to the Sub Contractor or to the Main-Contractor under the terms of the Sub Contract shall be sent by registered post, cable, telex or facsimile transmission to or delivered by dispatch at the Sub Contractor's registered office.

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32.3 Either party may change a nominated address by prior notice to the other party with a copy to the Architect, and the Architect may do so by prior notice to both parties.

### **33.0 CORRUPTION**

If the Sub-Contractor or any of his, agents or servants offers to give or agrees to offer or give to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Sub-Contract or any other contract with the Main-Contractor or for showing or forbearing to show favour or disfavour to any person in relation to the Sub-Contract or any other contract with the Main-Contractor, then the Main-Contractor shall enter upon the Site for Sub-Contract and terminate the employment of the Sub-Contractor and the provisions of Clause 17.0 shall apply as if such entry and termination had been made pursuant to that Clause.

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**APPENDIX TO THE GENERAL CONDITIONS OF SUB-CONTRACT WORKS**

**Clause**

- |   |   |
|---|---|
| 1. Sub-Contractor Works Programme         |   |
| Submission Date                           | Sub-Clause 3.1  |
| 2. Defects Liability period               | Sub-Clause 7.1.                                       |
| 3. Date for Possession of Site            | Sub-Clause 6.1  |
| 4. Liquidated and Ascertained damages     | At the rate Tshs.....<br>per calendar or part thereof |
| 5. Completion Date                        | Sub-Clause 6.2  |
| 6. Limit of Suspension Period             | Clause 18(i)b   |
| 7. Percentage of certified value retained | Sub-Clause 20.1(a)                                    |
| 8. Limit of Retention Fund                | Sub-Clause 20.1(a)                                    |
| 9. Advance payment (optional)             | Sub-Clause 22.1                                       |
| 10. Status of the Sub-Contract            | Clause 30   |

**Signed by the said:**

..... **Main-Contractor**

..... **Sub-Contractor**

**Name of Contract** .....

.....

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**FORM OF PERFORMANCE GUARANTEE**

To be used with Agreement and Schedule of Conditions of Building **Sub-Contract**

**KNOW ALL MEN BY THESE PRESENTS** that we .....(SURETY)  
of .....

**ARE BOUND** to .....(MAIN-CONTRACTOR)  
of .....

in the sum of (Amount in words) .....  
..... (Amount in figures .....

to be paid by us to the said .....(MAIN – CONTRACTOR)

**WHEREAS** by an agreement in writing dated .....  
..... (SUB-CONTRACTOR)

of .....  
contracted with the said .....(MAIN CONTRACTOR)

to (description of Sub-Contract Works) .....  
.....

in the said agreement: particular described and conformable thereto.

**NOW THE** condition of the above written bond is such that if the said .....  
..... (SUB-CONTRACTOR)

his/their executors, administrators, successors or assigns shall conform to the said agreement then  
the above-written bond to be void otherwise to remain in full force. Provide always and it hereby  
agreed and declared that the liability of us the said .....

..... (SURETY)

under the above-written bond shall not in any way be discharged or impaired by reason of any  
breach or breaches (wilful or otherwise) of the said agreement committed with or without the  
knowledge or consent of the said:.....

.....(SUB-CONTRACTOR)

his/their executors, administrators, successors or assigns shall conform to the said agreement then  
the above-written bond to be void otherwise to remain in full force. Provided always and it thereby  
agreed and declared that the liability of us the said .....









