

then such dispute or difference shall be referred to arbitration within forty-five (45) days to an arbitrator to be agreed between the Parties and failing such agreement, to be appointed by the Director of the Regional Centre for Arbitration in Kuala Lumpur on the application of either Party hereto. Such arbitration shall be heard at the Kuala Lumpur Regional Centre for Arbitration and shall be conducted in accordance with the rules for arbitration of the Kuala Lumpur Regional Centre for Arbitration using the facilities and the system available at the Centre.

- (d) Such reference, except on the question of payments shall not be commenced until after the completion or alleged completion of the Sub-Contract Works or determination or alleged determination of the Nominated Sub-Contractor's employment under this Sub-Contract, or abandonment of the Sub-Contract Works, unless with the written consent of the Contractor and the Nominated Sub-Contractor.
- (e) In the event that such consent has been obtained in accordance with clause 39(d), the reference of any matter, dispute or difference to arbitration pursuant to this clause and/or the continuance of any arbitration proceedings consequent thereto shall in no way operate as a waiver of the obligations of the parties to perform their respective obligations under this Sub-Contract.
- (f) In any arbitration proceedings conducted pursuant to clause 39(c) above, the Parties may make any counter claim in relation to any dispute or difference arising from this Sub-Contract.
- (g) The arbitrator shall have power to review and revise any certificate, opinion, decision, requisition or notice and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given in accordance with clause 39(c) aforesaid, in the same manner as if no such certificate, opinion, decision, requisition or notice had been given.
- (h) Upon every or any such reference the costs of such incidental to the reference and award shall be in the discretion of the arbitrator who may determine the amount thereof, or direct the amount to be taxed as between solicitor and client or as between party and party, and shall direct by whom and to whom and in what manner the same be borne, award and paid.
- (i) The award of the arbitrator shall be final and binding on the parties.
- (j) In the event of the death of the arbitrator or his unwillingness or inability to act, then the Contractor and the Nominated Sub-Contractor, upon agreement, shall appoint another person to act as the arbitrator, and in the event the Contractor and the Nominated Sub-Contractor fail to agree on the appointment of an arbitrator, an arbitrator shall be appointed by the Director of the Regional Centre for Arbitration in Kuala Lumpur.
- (k) In this clause, "reference" shall be deemed to be reference to arbitration within the meaning of the Arbitration Act 2005.
- (l) The arbitration shall be governed by the Arbitration Act 2005 and the laws of Malaysia.

40.0 STAMP DUTY

The Nominated Sub-Contractor shall solely bear the stamp duties and anything incidental thereto.