

Project Title: Urban Water for Darfur Project (UW4D);
Sustainable and more equitable access to water, and improved
sanitation and hygiene behavior in targeted state capitals in Darfur

**Installation of HDPE Pipe Laying and Jointing Works in El-Fasher,
North Darfur; Republic of Sudan**

**(1) UNITED NATIONS OFFICE FOR PROJECT SERVICES (“UNOPS”)
- and -**

(2) [INSERT CONTRACTOR LEGAL NAME HERE]

Contract No.: ETOH/SDN/ITB/2019/[insert here]

[insert here], 2019

Measured Price Construction Contract

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ANNEXURES:**Annexure A – ITB Scope of Works (SoW) - Pipe Extension Works in EI-Fasher****Annexure B – General Technical Specs for Pipe Water Works in EI-Fasher****Annexure C – Completed Set of Drawings for EI-Fasher and Zalengei**

INSTRUMENT OF AGREEMENT

THIS CONTRACT is made on the _____ day of _____ 200[*insert*].

BETWEEN

- (1) **United Nations Office for Project Services (“UNOPS”)**, an organ of the United Nations, having its postal address at **PETRONAS SUDAN COMPLEX, No. 13, Block 7 East Wing, Nile Avenue, Ground floor- Ethiopia Operational Hub, Sudan, Khartoum Office (“Employer”)**; and
- (2) [*insert name*], a [*insert type of company i.e. limited liability*] company incorporated under the laws of [*insert*] and having its registered address at [*insert address*], [*insert name of city and country*] (“Contractor”).

BACKGROUND

- A Employer is in the process of implementing the Urban Water for Darfur Project (UW4D); Sustainable and more equitable access to water, and improved sanitation and hygiene behavior in targeted state capitals in Darfur
- B The Employer intends to undertake the Project. The Works are an integral part of the Project.
- C The Contractor has represented to the Employer that it has the appropriate experience, expertise, licences and resources to undertake the Works and has agreed to undertake the Works in accordance with the Contract.
- D In reliance on the Contractor's representations the Employer has entered into the Contract.
- E The Contract sets out the terms and conditions upon which the Contractor will undertake the Works.

THIS CONTRACT:

1. The Employer agrees to pay the Contractor the Contract Price, at the times and in the manner prescribed by the Contract, in consideration for the Contractor executing and completing the Works and remedying all defects in accordance with the Contract and otherwise performing all of its obligations in accordance with the Contract.
2. In the Contract words and expressions will have the same meanings as are respectively assigned to them in the General Conditions.
3. The following documents, listed in the order of priority, are deemed to form and be read and construed as part of the Contract:
 - 3.1 this Instrument of Agreement;
 - 3.2 the Schedule of Details;
 - 3.3 the Particular Conditions;
 - 3.4 the General Conditions;

- 3.5 the Specification;
- 3.6 the Drawings; and
- 3.7 the remaining Schedules.

SIGNING PAGE

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their respective duly authorised representatives as of the date first written above:

SIGNED BY _____

[insert name of authorised signatory of UNOPS]

Duly authorised to sign this Contract for and on behalf of the Employer, UNOPS:

In the presence of:

Signature _____ (witness)

Address _____

Occupation _____

SIGNED BY _____

[insert name of authorised signatory of the Contractor]

Duly authorised to sign this Contract for and on behalf of the Contractor, **[insert]**:

In the presence of:

Signature _____ (witness)

Address _____

Occupation _____

GENERAL CONDITIONS

1. GENERAL PROVISIONS

1.1

Definitions

In the Contract the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

"Accepted Contract Amount" means the amount stated in the Schedule of Details and recorded in the Schedule of Contract Price, based on the estimated quantities and fixed unit rates and prices and Provisional Sums, (if any), inserted in the Bill of Quantities, for the execution and completion of the Works and the remedying of any defects.

"Affiliate" means:

- (a) the ultimate parent company of a Party; or
- (b) any company controlled by that ultimate holding company; or
- (c) any company controlling a Party; or
- (d) any company controlled by a Party.

"Approved Preliminary Programme" means the programme included in the Schedule of Programme under the heading "Approved Preliminary Programme".

"Author" means any person, including a relevant employee of the Contractor or a subcontractor or any other contributing person, who is an author of any Contractor's Documents, which are assigned or licensed to the Employer under the Contract.

"Authority(ies)" means all local, regional, territorial, free zone, municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, judicial or administrative body, recognised by the United Nations and having jurisdiction over the Works and the Contractor as well as its affiliates.

"Auxiliary Works" means those works forming, or to form, part of the Project set out in the Schedule of Auxiliary Works which are connected to, or otherwise interface with, the Works, and which are to be designed, supplied, constructed, commissioned and/or tested by third parties under separate contractual arrangements with the Employer.

"Bank Guarantee for advance payment" means the security (or securities) to be provided under Sub-Clause 14.2 [*Advance Payment*].

"Bank Guarantee for performance" means the security (or securities) to be provided under Sub-Clause 4.2 [*Bank Guarantee for Performance*].

"Bill of Quantities" means the document entitled Bill of Quantities set out in the Schedule of Contract Price.

"Claim Notice" means a notice to be issued under and in accordance with Clause 20.1.

"Contract" means the Instrument of Agreement, these General and Particular Conditions, the Schedules and the further documents (if any) which are listed in the Instrument of Agreement.

"Contract Documents" means the documents comprising the Contract.

"Contract Price" means the price defined in Sub-Clause 14.1 [*The Contract Price*] and includes any adjustments to the price made in accordance with the Contract.

"Contract Programme" means the fully detailed programme to be provided by the Contractor to the Employer's Representative for its approval and certification in accordance with Sub-Clause 8.3 [*Contract Programme*] and any update to such Contract Programme approved and certified by the Employer's Representative in accordance with the Contract.

"Contractor" means the entity named as the "Contractor" in the Instrument of Agreement and the legal successors in title and assigns to this entity.

"Contractor Background IP" means Intellectual Property Rights owned or licensed to the Contractor which exist prior to the Date of the Contract or the commencement of the Works and which are used by the Contractor in carrying out the Works or otherwise made available to the Employer under or in connection with this Contract.

"Contractor's Documents" include all documents, drawings and sketches, maps, plans, photographs, specifications, calculations, reports, computer software, databases, manuals, as built documents, models, three-dimensional works pertaining to geography or topography or other architectural works, technical documents and any other Copyright Works prepared by or on behalf of the Contractor for the benefit of the Employer pursuant to the Contract.

"Contractor's Equipment" means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects excluding the Temporary Works, Employer's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

"Contractor's Personnel" means the Contractor's Representative and all personnel the Contractor utilises on the Site, which may include the staff, labour, agents and other employees of the Contractor and of each Subcontractor and any other personnel assisting the Contractor in the execution of the Works.

"Contractor's Representative" means the person named as such in the Schedule of Details or appointed from time to time by the Contractor under Sub-Clause 4.3 [*Contractor's Representative*], who acts on behalf of the Contractor.

"Copyright Works" means any copyright works forming part of the Contractor's Documents or any other documentation which the Contractor is required to provide to the Employer or the Employer's Representative under the Contract.

"Costs" means all direct and reasonable expenditure necessarily incurred in connection with the execution of the Works, but does not include non-Project specific overheads, profit or loss of profit.

"Country" means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.

"Date of the Contract" means the date of execution of the Contract as stated in the Instrument of Agreement.

"day" means a calendar day, unless provided otherwise.

"Defects Notification Period" means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*], as stated in the Schedule of Details (with any extension under Sub-Clause 11.3 [*Extension of Defects Notification Period*]), calculated from the date on which the Works or Section is Taken Over as certified under Sub-Clause 10.1 [*Taking Over of the Works and Sections*].

"Delay Damages" means the delay damages payable by the Contractor under Sub-Clause 8.7 [*Delay Damages*].

"Drawings" means the drawings of the Works, as included in the Schedule of Drawings and any additional or modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.

"Employer" means the entity named as the "Employer" in the Instrument of Agreement, and the legal successors in title and assigns and novatees to this entity.

"Employer's Documents" include documents, drawings and sketches, maps, plans, photographs, specifications, calculations, reports, computer software, databases, manuals, as built documents, models, three-dimensional works pertaining to geography or topography or other architectural works, technical documents and any other Copyright Works owned by or licensed to the Employer and provided to the Contractor by or on behalf of the Employer pursuant to the Contract.

"Employer's Equipment" means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Specification but does not include Plant which has not been Taken Over by the Employer.

"Employer's Personnel" means the Employer's Representative, the Employer's Representative's Assistant, any Employer's Representative's Consultant(s) and all other staff, labour and other employees of the Employer, and any other personnel notified to the Contractor, by the Employer or the Employer's Representative, as Employer's Personnel.

"Employer's Representative" means the person named as such in the Schedule of Details or appointed from time to time by the Employer under Sub-Clause 3.1 [*The Employer's Representative*], who acts on behalf of the Employer.

"Employer's Representative's Assistant" means the person(s) appointed to assist the Employer's Representative, in accordance with Sub-Clause 3.2 [*Employer's Representative's Assistant and Employer's Representative's Consultant*] as notified to the Contractor by the Employer or the Employer's Representative.

"Employer's Representative's Consultant" means the person(s) appointed to assist the Employer's Representative and/or the Employer's Representative's Assistant as notified to the Contractor by the Employer's Representative or the Employer's Representative's Assistant.

"Final Completion Certificate" means the certificate issued under Sub-Clause 11.9 [*Final Completion Certificate*].

"Final Payment Certificate" means the payment certificate issued under Sub-Clause 14.13 [*Issue of Final Payment Certificate*].

"Final Statement" means the statement defined in Sub-Clause 14.11 [*Application for Final Payment Certificate*].

"Force Majeure" is defined in Sub-Clause 19.1 [*Definition of Force Majeure*].

"General Conditions" means these general conditions of Contract.

"Goods" means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

"Indemnified Parties" are the Employer and its personnel, officers, directors, shareholders, contractors, representatives, agents, and banks, funders, purchasers or an affiliate of the Employer.

"Industry Best Practices" means the practices which are generally engaged in or observed by international construction industries with respect to works of a similar size, type, nature, scope and complexity to the Works and which, with respect to any objective, may be expected, in the exercise of reasonable judgment, to accomplish that objective in a manner consistent with applicable Laws, reliability, safety, environmental protection, economy and expediency.

"Instrument of Agreement" means the document signed by the Parties and forming part of the Contract.

"Intellectual Property Rights" includes patents, inventions, copyright and related rights, trademarks, trade names, service marks and domain names, goodwill, rights to sue for passing off, design rights, database rights, rights in know-how and confidential information, trade secrets, Moral Rights, proprietary rights and any other intellectual property rights, in each case whether registered or unregistered, and including all applications or rights to apply for such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Interim Payment Certificate" means a payment certificate issued under Clause 14 [*Contract Price and Payment*], other than the Final Payment Certificate.

"Key Personnel" means the Contractor's Personnel named in nominated positions included in the Schedule of Key Personnel.

"Latent Defect" means any defect in the Works attributable to: (i) the design and/or construction of the Works for which the Contractor is responsible; (ii) Plant, Materials or workmanship not being in accordance with the Contract; or (iii) failure of the Contractor to comply with any other obligation under the Contract, which a reasonable examination by the Employer prior to expiry of the last Defects Notification Period would not have disclosed, and such defect results in the Works or part of the Works not being able to be used for the purposes for which they are intended by the Employer, and/or causes the full or partial collapse of the Works, and/or threatens the stability or safety of the Works.

"Latent Defect Period" means the period as stated in the Schedule of Details, commencing from the date on which the Final Completion Certificate is issued by the Employer.

"Law(s)" means:

- (a) all legislation, including, decrees, resolutions, acts, statutes, ordinances, rules, regulations, directives and other orders, treaties, by-laws, codes of practice and other subordinate legislation, of the Country;
- (b) the requirements, rules and regulations of any Authority, including legislation and regulations covering the registration and licensing of the Contractor necessary for the proper execution of the Works in accordance with the Contract; and
- (c) the guidelines of the Country and of all relevant Authorities, with which the Contractor is legally required to comply.

"Materials" means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

"Milestone Dates" means the dates for completing the Milestones set out in the Schedule of Programme.

"Milestones" means the milestones for the completion of a Section of part of the Works by the Contractor, as identified and further described in the Schedule of Programme.

"Moral Rights" means any of the rights described in Article 6b of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any law, that exist, or that may come to exist, anywhere in the world.

"Nominated Subcontractor(s)" has the meaning given to it in Sub-Clause 5.1 [*Definition of "Nominated Subcontractor"*].

"Particular Conditions" means the particular conditions specified immediately before the Schedules (if any) to the Contract.

"Party" means the Employer or the Contractor, as the context requires.

"Payment Certificate" means a payment certificate issued under Clause 14 [*Contract Price and Payment*].

"Permanent Works" means the permanent works to be supplied, constructed, commissioned, tested and handed over to the Employer by the Contractor when the Works are Taken Over under the Contract.

"Permitted Subcontractor" means the Subcontractor(s), supplier(s) or categories of Subcontractors or suppliers listed in the Schedule of Permitted Subcontractors.

"Plant" means the apparatus, machinery and vehicles (other than Materials) intended to form or forming part of the Permanent Works.

"Project" means the project described in the Schedule of Details.

"Provisional Sum" means a sum (if any) which is specified in the Schedule of Contract Price as a provisional sum, for the execution of any part of the Works, a Section or for the supply of Plant, Materials or services under Sub-Clause 13.5 [*Provisional Sums*].

"Punch List" has the meaning given to it at Sub-Clause 10.1 [*Taking Over the Works and Sections*].

"Retention Money" means the accumulated retention monies which the Employer retains under Sub-Clause 14.3 [*Application for Interim Payment Certificates*] and pays under Sub-Clause 14.9 [*Payment of Retention Money*].

"Schedule of Auxiliary Works" is Schedule 17.

"Schedule of Contract Price" is Schedule 7.

"Schedule of Details" is Schedule 1.

"Schedule of Drawings" is Schedule 4.

"Schedule of Environmental Requirements" is Schedule 19.

"Schedule of Forms of Collateral Warranty" is Schedule 11.

"Schedule of Form of Subcontractor Side Agreement" is Schedule 12.

"Schedule of Forms of Certificates" is Schedule 13.

"Schedule of Forms of Security" is Schedule 6.

"Schedule of Health and Safety Requirements" is Schedule 18.

"Schedule of Insurance Requirements" is Schedule 14.

"**Schedule of Key Personnel**" is Schedule 10.

"**Schedule of Nominated Subcontractors**" is Schedule 16.

"**Schedule of Payments**" is Schedule 8.

"**Schedule of Permitted Subcontractors**" is Schedule 15.

"**Schedule of Programme**" is Schedule 9.

"**Schedule of Specification**" is Schedule 3.

"**Schedule of Sections**" is Schedule 5.

"**Schedule of Site Plan**" is Schedule 2.

"**Schedules**" means Schedules 1 to 19 to this Contract, including any further documents which are annexed or attached to, or incorporated by reference into Schedules 1 to 19.

"**Section**" means a part of the Works (if any) specified in the Contract as a Section as identified in the Schedule of Sections or which the Employer's Representative nominates as a Section under Sub-Clause 1.15 [*Sections*].

"**Security Interest**" includes any bill of sale, as defined in any law, mortgage, charge, lien, pledge, assignment, hypothecation, title retention arrangement, trust or power, as, or having effect as, a security for the payment of any monetary obligation or the observance of any other obligation.

"**Senior Representatives**" means the senior representatives of the Parties set out in the Schedule of Details.

"**Site**" means the places where the Temporary Works and Permanent Works are to be executed and to which Plant and Materials are to be delivered as shown on the Schedule of Site Plan, and any other places as may be specified in the Contract as forming part of the Site.

"**Site Conditions**" means any conditions in relation to the Site including:

- (a) the form and nature of the Site, including ground surface conditions, sub-surface geology and conditions and all other physical conditions and characteristics on, above or below the surface which may affect the performance by the Contractor of its obligations under this Contract;
- (b) the general and local conditions for environment, meteorological, seismic activity, hydrological, hydrographic, climatic conditions, ocean and sub-sea conditions;
- (c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects;
- (d) the Laws, procedures and labour practices of the Country; and

- (e) the availability and quality of both permanent and temporary access, accommodation, facilities, personnel, labour, power, transport, water, waste disposal, storage or materials and all other services and utilities, necessary for the performance of the Works in accordance with the Contract.

"Specification" means the specification set out in the Schedule of Specification which may include the Employer's stated purpose(s) for which the Works are intended, the scope of the Works, and the objectives and criteria for the Works, including any further documents which are annexed or attached to, or incorporated by reference into the Schedule of Specification, and any additions and modifications to the Specification in accordance with the Contract.

"Statement" means a statement submitted by the Contractor as part of an application, under Clause 14 [*Contract Price and Payment*].

"Subcontractor" means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor or supplier of Materials or Plant, including any Nominated Subcontractor or Permitted Subcontractor, for a part of the Works, and the legal successors in title to each of these persons.

"Taken Over" means the stage in the execution of the whole of the Works, or the relevant Section or part of the Works (as the case may be), when:

- (a) the whole of the Works, or the relevant Section or part of the Works, are complete except for minor omissions and minor defects;
- (b) the Employer's Representative, in its sole and absolute discretion, is satisfied that:
 - (i) those omissions and defects do not prevent the whole of the Works or the relevant Section or part of the Works, and the Site from being used for their intended purpose;
 - (ii) those omissions and defects do not cause any restriction under any Law or under any direction of any Authority on the use or the occupation of the whole of the Works, or the relevant Section or part of the Works;
 - (iii) the Contractor has reasonable grounds for not promptly rectifying those omissions and defects; and
 - (iv) failure to promptly rectify those omissions and defects will not prejudice the safe and convenient use of the whole of the Works, or the relevant Section or part of the Works, and the Site for their intended purpose;
- (c) all commissioning and testing required under the Contract has been successfully performed in accordance with Clause 9 [*Tests on Completion*];
- (d) all information to be provided by the Contractor to the Employer under the Contract including:
 - (i) Contractor's Documents;

- (ii) 6 copies of all as-built drawings in the form approved by the Employer's Representative and related documents including a complete set of specifications and drawings (if any) to be prepared by or on behalf of the Contractor pursuant to the Contract;
- (iii) results of all tests performed in accordance with Clause 9 [*Tests on Completion*];
- (iv) operation and maintenance manuals (if any); and
- (v) the warranties specified in the Contract and any other warranties normally provided by suppliers, manufacturers and Subcontractors for work of similar scope and complexity to the Works, including confirmation that the warranties will be capable of novation from the Employer to any entity to be nominated by the Employer,

has been supplied to the Employer's Representative;

- (e) any certificate or approval, which shall be issued or given by an Authority to lawfully occupy or use the whole of the Works, or the relevant Section or part of the Works, has been issued or given by that Authority and provided to the Employer's Representative;
- (f) the cleaning of the entire Works, or the relevant Section or part of the Works, throughout, including cleaning of interior and exterior surfaces, cleaning debris from the Site and removing waste and surplus materials from the Site;
- (g) dismantling and removing the Temporary Works from Site, including scaffolding, hoardings, barricades and foot crossings specific to the Works or the relevant Section or part of the Works;
- (h) making good access to the Works, including roads, footpaths, kerbs and gutters adjacent to the Works including any rectification work required under Sub-Clause 4.15; and
- (i) a Taking Over Certificate has been issued in accordance with Sub-Clause 10.1 [*Taking Over of the Works and Sections*].

"Taking Over Certificate" means a certificate issued under Clause 10 [*Employer's Taking Over*] certifying that the Works or a Section have reached the stage of being Taken Over.

"Temporary Works" means all temporary works of every kind (other than Contractor's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

"Testing Plan" means the plan, to be prepared and submitted by the Contractor under Sub-Clause 7.4 [*Testing*].

"Tests on Completion" means the tests which are specified in the Specification or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [*Tests on Completion*] before the Works or a Section (as the case may be) are Taken Over by the Employer.

"Time for Completion" means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [*Time for Completion*], as stated in the Schedule of Details, (with any extension under Sub-Clause 8.4 [*Extension of Time for Completion*]), calculated from the Date of the Contract.

"Unforeseeable" means not reasonably foreseeable by an experienced and competent contractor acting in accordance with Industry Best Practices.

"Variation" means a variation to the Works, which is instructed or approved by the Employer's Representative as a variation under Clause 13 [*Variations and Adjustments*].

"Works" mean the Permanent Works and the Temporary Works, or either of them as appropriate and all other things which the Contractor shall do in order to fulfil its obligations under the Contract.

"year" means 365 days.

1.2

Interpretation

- (a) In the Contract, except where the context requires otherwise:
 - (i) words indicating one gender include all genders;
 - (ii) words indicating the singular also include the plural and words indicating the plural also include the singular;
 - (iii) references to the word "including" (or "includes") means including, but not limited to;
 - (iv) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - (v) if a period of time is specified and dates from a given day or the day of an actual event, it shall be calculated exclusive of that day;
 - (vi) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
 - (vii) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
 - (viii) a reference to the Contract includes all Schedules, exhibits and annexures to the Contract; and
 - (ix) a reference to any law, legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under that legislation or legislative provision.

- (b) The marginal words and other headings shall not be taken into consideration in the interpretation of these General Conditions.
- (c) All dates and periods shall be ascertained in accordance with the Gregorian calendar.
- (d) Where references are made in the Contract to industry or technical codes and standards in accordance with which the Works are to be executed, the edition or the revised version of such codes and standards current at the Date of the Contract applies, unless otherwise specified.

1.3

Communications

- (a) Wherever the Contract provides for the giving or issuing of any approvals, certificates, consents, determinations, notices and requests, these communications shall be:
 - (i) in writing;
 - (ii) marked to the attention of the relevant representative of the Parties set out in the Schedule of Details; and
 - (iii) either:
 - (A) delivered at the address set out in the Schedule of Details; or
 - (B) sent by facsimile to the facsimile number of the addressee set out in the Schedule of Details; or
 - (C) sent as a document, signed, scanned and attached in an email to the email address set out in the Schedule of Details.
- (b) If the addressee has notified in writing a change of fax number or email address, then the communication shall be to that number or address.
- (c) In addition to the Contractor's obligations under Sub-Clauses 1.3(a) and (b), if requested by the Employer, the Contractor shall issue a copy of all notices and other communications under the Contract, using an internet based document management system and the corresponding computer software packages to be nominated and hosted by the Employer. The Employer shall provide to the Contractor the necessary Site based training in the use of the nominated document management system and software, as may be reasonably requested by the Contractor, to enable the Contractor to comply with its obligations under this Sub-Clause 1.3(c) only.
- (d) A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- (e) A delivery, letter, document attached to an email or facsimile is deemed to be received:

- (i) in the case of a delivery to the relevant address when delivered to the relevant address (against a written receipt); and
 - (ii) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
 - (iii) in the case of a document attached to an email, upon receipt of the email in the inbox of the recipient's address stated in the Schedule of Details.
- (f) For the avoidance of doubt, any notice or other communication will not be deemed to have been given or made under the Contract, if it is in the form of email (other than as an attached document in accordance with Sub-Clause 1.3(a)), or minutes of any meetings.
 - (g) Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Employer's Representative, a copy shall be sent to the Employer's Representative or the other Party, as the case may be.

1.4

Language

- (a) The language for communications shall be English.
- (b) Unless otherwise specified in the Contract, the Contractor's Documents will be written in English.

1.5

Priority of Documents

- (a) The documents forming the Contract are to be taken as mutually explanatory of one another and shall be read as a whole. For the purposes of interpretation, the priority of the documents shall be as listed in the Instrument of Agreement.
- (b) If either Party discovers an ambiguity or discrepancy in or between the documents forming the Contract, that Party shall immediately notify the Employer's Representative, who shall issue any necessary clarification or instruction to the Parties and the Contractor shall implement such clarification or instruction with due expedition and without delay.
- (c) Notwithstanding the priority of documents set out in Sub-Clause 1.5(a), if there is any ambiguity or discrepancy in or between the documents forming the Contract in regard to the obligations or requirements for the standard or quality of work, then the higher or more onerous obligation or requirement shall prevail unless otherwise instructed in writing by the Employer's Representative.

- (d) If the Contractor suffers delay and/or incurs Costs as a result of failure of the Employer's Representative to issue any necessary clarification or instruction, the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled to, subject to Sub-Clause 20.1 [*Contractor's Claims*]:
 - (i) an extension of time for any such delay, if completion is or will be delayed; and
 - (ii) payment of any such Cost, which shall be added to the Contract Price as a variation.
- (e) After receiving the Claim Notice under Sub-Clause 1.5(d), the Employer's Representative shall proceed under Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine the matters described in Sub-Clause 1.5(d).

1.6

Not Used

1.7

Assignment

- (a) The Contractor acknowledges that by entering into the Contract it agrees that the Employer may, in its absolute discretion and at a date to be determined by the Employer, assign, transfer and/or charge the benefit of the Contract and/or any of its present or future rights, interest and/or benefits hereunder to an Affiliate or any other person upon giving written notice thereof to the Contractor.
- (b) The Contractor acknowledges and agrees that it will, if required by the Employer, do all further things necessary and reasonably requested by the Employer, to give effect to the assignments in Sub-Clause 1.7(a), including executing an assignment agreement(s) in form to be approved and provided by the Employer.
- (c) The Contractor shall not be entitled, without the prior written consent of the Employer, to assign to any third party its interest under the Contract or any right or benefit, arising under the Contract.

1.8

Care and Supply of Documents

- (a) The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, one copy of the Contract and each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.
- (b) Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until the Works are Taken Over by the Employer.

Unless otherwise stated in the Contract, the Contractor shall supply to the Employer's Representative four copies of the Contractor's Documents.

- (c) The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents, the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.
- (d) If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the Employer's Representative and the other Party of such error or defect and the Employer's Representative shall issue any necessary clarification or instruction.

1.9

Delayed Drawings or Instructions

- (a) The Contractor shall give reasonable notice to the Employer's Representative whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction to be issued by the Employer's Representative under the Contract is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and details of the nature and amount of the delay or disruption likely to be suffered if it is late.
- (b) After receiving the notice under Sub-Clause 1.9(a), the Employer's Representative, acting reasonably, shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine if, or when, the drawing and/or instruction should be issued, and the details of the necessary drawing or instruction to be provided to the Contractor.
- (c) If the Contractor suffers delay and/or incurs Costs as a result of a failure of the Employer's Representative to issue the notified drawing or instruction within a time agreed or determined under Sub-Clause 1.9(b), the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled, subject to Sub-Clause 20.1 [*Contractor's Claims*] to:
 - (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
 - (ii) payment of any such Cost, which shall be added to the Contract Price as a Variation.
- (d) After receiving the Claim Notice under Sub-Clause 1.9(c), the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine the matters described in Sub-Clause 1.9(c).

- (e) However, if and to the extent that the Employer's Representative's failure to issue the notified drawing or instruction within a time agreed or determined under Sub-Clause 1.9(b) was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time or Cost.

1.10

Ownership and licence of Intellectual Property Rights

- (a) All Employer's Documents will remain the property of the Employer and shall be returned to the Employer prior to the completion of the Works. The Contractor agrees that it shall not acquire any rights in the Employer's Documents whether under this Contract or otherwise and shall not use or disclose the Employer's Documents other than for the sole and exclusive purpose of the performance of its obligations under or in connection with this Contract.
- (b) The Contractor assigns to the Employer or the Employer's nominee absolutely all of the Contractor's rights, title and interest, including all Intellectual Property Rights, in the Contractor's Documents and any other documentation which the Contractor creates and is required to provide to the Employer or the Employer's Representative under the Contract, upon their creation.
- (c) The Contractor agrees to do everything necessary or requested by the Employer to enable the Employer to own the Intellectual Property Rights in the Contractor's Documents, including formally assigning those rights or assisting the Employer in obtaining registration of those rights in its own name.
- (d) The Contractor agrees to do everything necessary or requested by the Employer to enable the Employer to use the Contractor's Documents and the Intellectual Property Rights in the Contractor's Documents, including, granting or procuring in the name of the Employer, a perpetual, unrestricted, non-exclusive, irrevocable and transferable, royalty-free licence for the Employer to use all the Intellectual Property Rights in the Contractor's Documents, on terms acceptable to the Employer, from subconsultants or all other contributing parties in performance of the Contractor's obligations under this Contract with rights, title and interest in any documents or other copyright works forming the Contractor's Documents.
- (e) The Contractor warrants that use of the Contractor's Documents by the Employer in connection with the Project and the Works or otherwise will not infringe any rights, including the Intellectual Property Rights, of a third party and agrees to defend, hold harmless and indemnify the Employer against all claims, damage, losses, proceedings and liabilities arising out of or in connection with a breach of this warranty. In defending the Employer, the Contractor shall not enter into a settlement agreement without the prior written approval of the Employer.

- (f) The Contractor shall procure the assignment of all rights, title and interest in any documents and other copyrights works created by subcontractors or other contributing parties in performance of its obligations under this Contract from those persons to the Employer.
- (g) The Contractor grants the Employer a perpetual non-exclusive, non-transferable, royalty-free, irrevocable license to use, reproduce, modify and adapt the Contractor Background IP for the purpose of the Project.

1.11

Moral Rights

The Contractor shall procure at its own cost and risk from each Author express agreement that he or she will not enforce any Moral Rights that he or she may have presently or in the future, in the Contractor's Documents, including by executing any Moral Rights consents or waivers required by the Employer.

1.12

Confidential Details

- (a) The Contractor shall disclose all such confidential and other information as the Employer's Representative may reasonably require in order to verify the Contractor's compliance with the Contract.
- (b) Subject to Sub-Clauses 1.12(c) and 1.12(d), the Contractor shall keep confidential and shall not, without the written consent of the Employer, disclose to any third party the terms and conditions of the Contract, or any documents or other information furnished directly or indirectly by either Party in connection with the Contract or the Works, irrespective of whether such information has been furnished prior to the making of the Contract or at any time (including following termination of the Contract). In addition, the Contractor shall not (without the prior written consent of the Employer) take, or authorise the taking of, any photograph of the Works or the Site for use in any publicity or advertising.
- (c) Either Party shall be entitled to disclose the terms and conditions of the Contract and any documents and other information acquired by it under or pursuant to the Contract without the prior written consent of the other Party if such disclosure is made in good faith:
 - (i) to the extent required by applicable Laws;
 - (ii) to any insurer under a policy of insurance issued pursuant to the Contract;
 - (iii) to its internal organs, including its directors, employees and officers and the General Assembly in the case of the Employer;
 - (iv) to any Subcontractor, for the furtherance of the performance of that Party's obligations under the Contract;

- (v) to outside consultants or advisers engaged by or on behalf of the disclosing Party and acting in that capacity in connection with the Works (including insurance, tax and legal advisers); or
 - (vi) to the appropriate authorities of Member States pursuant to the Employer's obligations under the Convention on the Privileges and Immunities of the United Nations.
- (d) The obligations of a Party under this Sub-Clause 1.12 shall not apply to information and documents which:
- (i) now or in the future have entered the public domain through no fault of that Party; or
- otherwise lawfully become available to that Party from a third party under no obligation of confidentiality.
- (e) This Sub-Clause 1.12 survives the completion, expiry or termination of the Contract.

1.13

Compliance with Laws

- (a) The Contractor undertakes that it shall, in executing the Works and performing all of its obligations under the Contract, comply with applicable Laws and that the Contractor's Documents and the completed Works, shall comply with applicable Laws.
- (b) The Employer shall have obtained (or shall obtain) the permits, licences and approvals described in the Specification as being the responsibility of the Employer.
- (c) The Contractor shall give all notices, pay all taxes, duties and fees, coordinate and procure all "no objection certificates" from all relevant Authorities and obtain all other permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects, save for those permits, licences and approvals which are the responsibility of the Employer as referred to in Sub-Clause 1.13(b).
- (d) The Contractor shall complete the Works in accordance with the permits, licences and approvals referred to in Sub-Clause 1.13(b) and Sub-Clause 1.13(c) and to the satisfaction of all relevant Authorities. The Contractor shall be responsible for arranging inspection by all relevant Authorities and for obtaining a "certificate of completion" (or its equivalent) from such Authorities and other approvals necessary to ensure completion of the Works in accordance with the Contract. The Contractor shall defend, indemnify and hold the Employer harmless against and from the consequences of any failure to comply with this Sub-Clause 1.13. In defending the Employer, the Contractor shall not enter into a settlement agreement without the prior written approval of the Employer.

1.14

Joint and Several Liability

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more entities or persons:

- (a) these entities and/or persons shall be deemed to be jointly and severally liable to the Employer for the Works and performing all of the Contractor's obligations under the Contract;
- (b) the Employer may proceed against any or all of these entities and/or persons for failure of the Contractor to comply with any obligation, whether arising under the Contract or otherwise;
- (c) these entities or persons shall notify the Employer of the entity and/or persons, who shall have authority to bind the Contractor and each of these persons; and
- (d) the Contractor shall not alter its composition or legal status without the prior written consent of the Employer.

1.15

Sections

- (a) The interpretations and application of:
 - (i) Time for Completion;
 - (ii) Taking Over Certificate;
 - (iii) Taken Over;
 - (iv) Delay Damages; and
 - (v) Defects Notification Period,apply separately to each Section of the Works specified in the Schedule of Sections or nominated as a Section by the Employer under Sub-Clause 1.15(b), and references in the relevant definitions and clauses to the Works mean those parts of the Works comprised in the relevant Section.
- (b) In addition to Sections of the Works specified in the Schedule of Sections (if any), the Employer's Representative may, at any time, nominate a part of the Works to be an additional Section by requesting the Contractor to submit a proposal. The Employer's Representative will clearly identify, for each additional Section, the:
 - (i) portion of the Works; and
 - (ii) the proposed Time for Completion for the nominated additional Section.

- (c) If the Employer's Representative requests a proposal under Sub-Clause 1.15(b), the Contractor, acting reasonably, shall respond in writing as soon as practicable and in any event within 14 days by submitting:
 - (i) a description of the proposed amendments to the sequence of the works along with proposed additional resources and materials necessary to accelerate the Works (if any);
 - (ii) the Contractor's proposal for any necessary modifications to the Contract Programme and to the Time for Completion for the whole of the Works;
 - (iii) the Contractor's proposal for adjustment to the Contract Price; and
 - (iv) the Contractor's proposed amounts for Delay Damages having regard to the proportion of the Delay Damages for the whole of the Works attributable to the value of the Works for that Section.
- (d) The Employer's Representative shall, as soon as practicable after receiving such proposal under Sub-Clause 1.15(c), respond with approval, disapproval or comments.
- (e) If the Employer, in its sole discretion, elects to proceed with the additional Section, prior to the Contractor commencing any varied or additional work related to that Section, the Employer's Representative and the Contractor's Representative shall, acting reasonably, proceed to agree in writing as soon as possible:
 - (i) the scope and limits of the additional Section;
 - (ii) the Time for Completion for the additional Section;
 - (iii) the necessary modifications to the Contract Programme and/or an extension of time under Sub-Clause 8.4 [*Extension of Time for Completion*] to the Time for Completion of the whole of the Works (if any);
 - (iv) payment of any Costs to be added to the Contract Price as a Variation; and
 - (v) the amount of Delay Damages for that Section having regard to the proportion of the Delay Damages for the whole of the Works attributable to the value of that Section.
- (f) Unless otherwise agreed in writing between the Parties, the Contractor shall not commence any varied or additional work related to an additional Section unless and until agreement has been reached between the Parties on the matters set out in Sub-Clause 1.15(e) in relation to that Section. Promptly after reaching any such agreement in writing, the Contractor shall proceed with the additional Section with due expedition and without delay.

1.16

Warranties as to capacity

- (a) The Employer warrants that it has the power to execute, deliver and perform its obligations under the Contract.
- (b) The Contractor warrants that:
 - (i) it has the power to execute, deliver and perform its obligations under the Contract and all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
 - (ii) it has obtained from all relevant Authorities all licences, permissions and consents required at the Date of the Contract in order for it to execute the Works and to perform all of its obligations under the Contract, except for those which are the express responsibility of the Employer under Sub-Clause 1.13(b); and
 - (iii) it has the facilities, information technology, capability, experience, management expertise, financial resources, equipment, staff and other facilities necessarily required to execute the Works in a competent and expeditious manner and otherwise in accordance with the Contract.

1.17

Registered or Licensed

The Contractor shall at its cost:

- (a) at all times during the performance of the Works be; and
- (b) ensure that any person who performs any part of the Works is,

registered and licensed as required by any applicable Laws and any Authority to execute the Works, including obtaining all permits, licences and approvals which the Contractor is required to obtain under Sub-Clause 1.13 [*Compliance with Laws*].

1.18

Prior Work

- (a) The Contract applies to the execution of any works forming part of the Works, and the performance of any of the Contractor's obligations relating to the Works, carried out before, on or after the Date of the Contract.
- (b) Where the Contractor has undertaken any design, services or works in connection with the Works prior to the Date of the Contract, the Contractor warrants to the Employer that such activities have been carried out in accordance with the requirements of the Contract and confirms that all the warranties, obligations and liabilities of the Contractor under or in connection with the Contract apply to such design, services or works.

- (c) Unless otherwise specified in the Contract, such prior design, services or works in connection with the Works are subject to the terms of the Contract and are deemed to be included in the Contract Price.

1.19

Entire Agreement

The Contract constitutes the entire agreement between the Employer and the Contractor with respect to the subject matter of the Contract and supersedes all prior arrangements, representations, communications, negotiations, agreements and contracts (whether written or oral) made between or entered into by the Parties with respect to the subject matter of the Contract prior to the Date of the Contract.

1.20

Severability

If the enforcement or operation of any provision, or part thereof, of the Contract is prohibited by Law or if any provision, or part thereof, of the Contract is by Law rendered void, invalid or unenforceable, such prohibition, voidness, invalidity or unenforceability shall not affect the validity or enforceability of the rest of that provision and/or any other provisions and conditions of the Contract.

1.21

Counterparts

The Contract may be executed in any number of counterparts, all of which when taken together shall constitute the one and the same instrument.

1.22

Independent Contractor

The Contractor shall be an independent contractor performing the Contract. The Contract does not create any partnership, joint venture or other joint relationship between the Employer on the one hand and the Contractor on the other hand.

1.23

Privity

No provision of the Contract is intended to or does confer upon any third party (including any Subcontractor) any implied benefit or right enforceable at the option of the third party against the Employer.

1.24

Waiver

- (a) None of the terms, provisions or conditions of the Contract shall be considered waived by the Employer unless a waiver is given in writing by the Employer.

- (b) Any waiver of the Employer's rights, powers or remedies under the Contract shall be dated and signed by an authorised representative of the Employer granting such waiver, and shall specify the right and the extent to which it is being waived. For the avoidance of doubt, any waiver of any of the Employer's rights, powers or remedies in accordance with this Clause is without prejudice to the privileges and immunities of the United Nations, of which the Employer is an integral part, as expressly reserved under Clause 21 of the Contract.

1.25

Publicity and Use of the Name, Emblem or official Seal of the Employer and the United Nations

The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the Employer, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of the Employer or the United Nations, or any abbreviation of the Employer's name or the United Nations in connection with its business or otherwise without the written permission of the Employer. This Sub-Clause 1.12 survives the completion, expiry or termination of the Contract.

2. THE EMPLOYER

2.1

Right of Access to the Site

- (a) Unless otherwise specified in the Contract, the Employer shall give the Contractor right of access to, and non-exclusive possession of, those parts of the Site set out in the Schedule of Site Plan within the time (or times) stated in the Schedule of Details, and subject to any staged or shared access restrictions as specified in the Schedule of Site Plan. The right of access and possession is not exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Schedule of Details and/or the Specification. The Employer may withhold any right of access or possession until it has received the Bank Guarantee for performance from the Contractor.
- (b) If no such time is stated in the Schedule of Details or the Schedule of Site Plan, the Employer shall give the Contractor right of access to, and possession of, the Site (or part thereof) within such times as may be reasonably required to enable the Contractor to proceed in accordance with the Approved Preliminary Programme.
- (c) If the Contractor suffers delay and/or incurs Costs as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
 - (ii) payment of any such Costs, which shall be added to the Contract Price as a Variation.
- (d) After receiving the Claim Notice under Sub-Clause 2.1(c), the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine the matters set out in Sub-Clause 2.1(c). If and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of any of the Bank Guarantee for performance, the parent company guarantee (if requested) or the Contractor's Documents, or delay in the Contractor obtaining the requisite "no objection certificates", licences and registration from the relevant Authorities necessary for the proper performance of the Works, the Contractor shall not be entitled to such extension of time or payment of Costs or to make any other related claim against the Employer (whether under the Contract or otherwise).

2.2

Permits, Licences or Approvals

The Employer shall (where it is in a position to do so) provide reasonable assistance to the Contractor, at the request of the Contractor, in the application for any permits or approvals required by Law:

- (a) which the Contractor is required to obtain under Sub-Clause 1.13 [*Compliance with Laws*];
- (b) for the delivery of Goods, including clearance through customs; and
- (c) for the export of Contractor's Equipment when it is removed from the Site.

2.3

Employer's Personnel

The Employer shall be responsible for ensuring that the Employer's Personnel:

- (a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [*Co-operation*]; and
- (b) take actions similar to those which the Contractor is required to take under Sub-Clauses 4.8(a), (b) and (c) and Sub-Clause 4.18 [*Protection of the Environment*].

3. THE EMPLOYER'S ADMINISTRATION

3.1

The Employer's Representative

- (a) The Employer shall appoint the Employer's Representative who shall carry out the duties assigned to it in the Contract. The Employer's Representative shall have no authority to amend the terms of the Contract unless an amendment is authorised and approved in writing by the Employer.
- (b) The Employer's Representative may exercise the authority attributable to it as specified in or necessarily to be implied from the Contract.
- (c) Except as otherwise stated in the Contract:
 - (i) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Employer's Representative shall be deemed to act as an agent of the Employer;
 - (ii) the Employer's Representative shall have no authority to relieve the Contractor of any duties, obligations or responsibilities under the Contract without written authorisation and approval from the Employer;
 - (iii) no approval, comment, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act (including absence of disapproval or comment) by or on behalf of the Employer, Employer's Representative or the Employer's Personnel shall relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract, including responsibility or liability for error, omissions, discrepancies, defects and non-compliances;
 - (iv) any failure to disapprove any Work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Employer to reject the Work, Plant or Materials; and
 - (v) if the Contractor questions any determination or instruction of the Employer's Representative or the Employer's Personnel (including, without limitation, the authority of the person to make such determination or instruction), the Contractor may refer the matter to the Employer. The Employer shall promptly confirm, reverse or vary the determination or instruction.

3.2

Employer's Representative's Assistant and Employer's Representative's Consultant

- (a) The Employer's Representative may from time to time assign duties and delegate authority to the Employer's Representative's Assistant, and may also revoke such assignment or delegation. The assignment, delegation or

revocation shall be in writing and shall not take effect until such formal notice has been given to the Contractor.

- (b) The Employer's Representative and/or the Employer's Representative's Assistant may from time to time assign duties and delegate authority to the Employer's Representative's Consultant, and may also revoke such assignment or delegation. The assignment, delegation or revocation shall be in writing and shall not take effect until such formal notice has been given to the Contractor.
- (c) The Employer's Representative's Assistant and or the Employer's Representative's Consultant shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any authorisation, approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the Employer's Representative's Assistant and or the Employer's Representative's Consultant(s), in accordance with the authorised delegation, shall have the same effect as though the act had been an act of the Employer's Representative. The Contractor shall only take instructions from the Employer's Personnel to whom the appropriate authority has been delegated under this Clause 3.

3.3

Instructions

- (a) The Employer and the Employer's Representative may issue to the Contractor (at any time) instructions which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall take instructions from the Employer and the Employer's Representative (and the Employer's Personnel to whom the appropriate authority has been delegated under this Clause 3).
- (b) Subject to Sub-Clause 3.3(c), all instructions shall be given in writing. The Contractor shall comply with the instructions given by the Employer and the Employer's Representative (and the Employer's Personnel to whom the appropriate authority has been delegated under this Clause 3), with due expedition and without delay.
- (c) Verbal instructions may only be given by the Employer and the Employer's Representative (and the Employer's Personnel to whom the appropriate authority has been delegated under this Clause 3) in an emergency or where the Employer or the Employer's Representative considers that there is a risk of damage or injury to the Works or any person, provided written instruction confirming the verbal instruction is issued within 48 hours.

3.4

Not Used

3.5

Determinations

- (a) Whenever these General Conditions provide that the Employer's Representative shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Employer's Representative shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Employer's Representative shall make a determination in accordance with the Contract, taking due regard of all relevant circumstances.
- (b) The Employer's Representative shall give written notice to both Parties of each agreement or determination. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [*Claims, Disputes and Arbitration*].

4. THE CONTRACTOR

4.1

Contractor's General Obligations

- (a) The Contractor shall design (to the extent specified in the Contract), execute, test, commission and complete the Works in accordance with the Contract and with the Employer's Personnel's instructions, and shall remedy any defects in the Works.
- (b) The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for the design, execution, completion of, and remedying of defects in, the Works.
- (c) The Contractor shall undertake all works which are necessary to satisfy the Specifications and the Drawings, or can be implied from the Contract, and all other works which (although not expressly mentioned in the Contract) are necessary for the stability and/or for the completion, and/or safe and proper operation of the Works.
- (d) The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and all methods of construction in performing the Works. The Contractor shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract.
- (e) The Contractor shall, before any part of the Works is commenced, submit to the Employer's Representative, details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified in writing to the Employer's Representative, except in the case of an emergency or where the Contractor

reasonably considers that there is a risk of damage or injury to the Works or any person. In such case, notification of the alteration shall be issued within 48 hours.

- (f) Nothing in the Contract will be construed to authorise the Contractor to effect any unilateral change in the execution of the Works, the Contract Price and/or the Contract without the Employer's Representative's prior written approval.
- (g) If the Contract specifies, or the Employer's Representative otherwise issues an instruction in accordance with Sub-Clause 3.3 [*Instructions*] requiring that the Contractor shall design any Section or part of the Works, then unless otherwise stated in the Contract:
 - (i) the Contractor shall submit to the Employer's Representative the Contractor's Documents, for this Section or part of the Works in accordance with the Contract, including the procedures specified in Sub-Clauses 4.1(h) and 4.1(i) and the Specification;
 - (ii) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in English, and shall include additional information required by the Employer's Representative to add to the Drawings for co-ordination of each Party's designs;
 - (iii) the Contractor shall be responsible for the design and construction of these Sections or parts of the Works, which shall, when completed, be fit for such purposes for which the Sections or parts of the Works are intended as specified in the Contract; and
 - (iv) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Employer's Representative the Contractor's Documents, the "as-built" documents and operation and maintenance manuals in accordance with the Specification and/or the Employer's Representatives instructions, and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this Section or part of the Works. Such Sections or parts of the Works shall not be considered to be completed for the purposes of being Taken Over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until these documents and manuals have been submitted to the Employer's Representative.
- (h) When preparing the Contractor's Documents in accordance with Sub-Clause 4.1(g), the Contractor shall:
 - (i) give the Employer's Representative, for its review, 4 copies of:
 - the Contractor's Documents by the dates, or within the times, set out in the Contract or as otherwise agreed in writing between the Parties; and
 - any amendments proposed to the Contractor's Documents; and

allow 20 days for the Employer's Representative to review and comment on Contractor's Documents or the amended Contractor's Documents as the case may be; and

- (ii) if the Employer's Representative gives the Contractor a written notice, within the time allowed for its review, stating that the Contractor's Documents, or any amended Contractor's Documents, is not acceptable or not in accordance with the Contract:

amend that Contractor's Documents so that it complies with the Contract;

promptly submit the amended Contractor's Documents to the Employer for its review; and

allow 20 days for the Employer's Representative to review and comment on the amended Contractor's Documents.

- (i) Any amendment, which the Contractor proposes to any Contractor's Documents, shall be promptly submitted to the Employer, with details of:
 - (i) the proposed amendment; and
 - (ii) the reasons for the proposed amendment,

together with any other information and supporting documentation the Employer's Representative reasonably requires. If the Contractor proposes a change to the Contractor's Documents that has previously been submitted under Sub-Clause 4.1(h) then it shall resubmit the proposed amendment in accordance with the procedures set out in Sub-Clause 4.1(h).

- (j) For the avoidance of doubt, any review or approval of, or any comment on, any Contractor's Documents by, or on behalf of, the Employer in accordance with the Contract is solely to monitor the performance of the Contractor. No approval, comment or review or similar act (including the absence of disapproval, comment or review) by or on behalf of the Employer, Employer's Representative or the Employer's Personnel shall relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract, including responsibility or liability for error, omissions, discrepancies, defects and non-compliances in the Contractor's Documents. Any failure to disapprove any Contractor's Documents shall not constitute approval, and shall therefore not prejudice the right of the Employer to reject the Contractor's Documents under this Sub-Clause or otherwise under the Contract.
- (k) To the extent that the Contractor is required to design any Section or part of the Works in accordance with Sub-Clause 4.1(g) or otherwise under the Contract, the Contractor shall:
 - (i) design the Works in accordance with Industry Best Practices, the Law and the requirements of all relevant Authorities;

- (ii) ensure such design is prepared by appropriately and professionally qualified and experienced designers in accordance with Industry Best Practices, the Law and the requirements of all relevant Authorities and who shall also comply with the additional criteria (if any) stated in the Specification;
- (iii) if requested by the Employer's Representative, within 7 days, submit to the Employer's Representative for its consent, the names and particulars of each member of the Contractor's design team, including the details of each team members professional qualifications and experience; and
- (iv) warrant that its design of any Section or part of the Works:
 - (A) are fit for such purposes for which the Section or part of the Works is intended as are specified in the Contract;
 - (B) is in accordance with Industry Best Practices;
 - (C) is in accordance with all Laws and requirements of all relevant Authorities; and
 - (D) fulfils the other requirements of the Contract.

4.2

Bank Guarantee for Performance

- (a) Unless otherwise stated in the Schedule of Details, the Contractor shall obtain (at its cost) an unconditional and irrevocable Bank Guarantee for performance. The Bank Guarantee for performance shall be for the amount and currency specified in the Schedule of Details. Unless otherwise specified in the Contract, the Contractor shall deliver the Bank Guarantee for performance to the Employer within 14 days after the Date of the Contract, and shall send a copy to the Employer's Representative. The Bank Guarantee for performance shall be issued by a leading and accredited bank approved by the Employer and shall be based on the terms and in the form set out in the Schedule of Forms of Security.
- (b) Despite any other provision of the Contract, compliance with Sub-Clause 4.2(a) is a condition precedent to the entitlement of the Contractor to receive any payment from the Employer under the Contract and no payment shall be due or payable until Sub-Clause 4.2(a) is satisfied.
- (c) If at any time the measured quantity of one item or multiple items increases from the quantity of this item or items recorded in the Bill of Quantities and this change in quantities multiplied by such specified rate for this item would result in the increase in the Accepted Contract Amount by more than 5%, or if the Accepted Contract Amount increases by more than 5% whether because of one increase or multiple increases as a result of approved Variations, the Contractor shall provide an additional unconditional and irrevocable Bank Guarantee for performance from a leading and accredited bank approved by

the Employer and in the form set out in the Schedule of Forms of Security equal to the amount specified in the Schedule of Details.

- (d) Unless otherwise specified in the Contract, the Contractor shall deliver the additional Bank Guarantee for performance to the Employer within 14 days of any approved increase to the Contract Price as contemplated under Sub-Clause 4.2(c), and shall send a copy to the Employer's Representative.
- (e) All fees, taxes and expenses associated with procuring, preparing, completing, extending, replacing and stamping (if applicable) each of the Bank Guarantees for performance shall be paid by the Contractor.
- (f) If the Contractor is a subsidiary of another corporation, the Contractor shall, if requested by the Employer in its absolute discretion, arrange for its ultimate parent company or any other parent company as the Employer may approve in its absolute discretion, to provide a parent company guarantee in the form set out in the Schedule of Forms of Security.
- (g) Where the Contractor comprises a consortium of two or more entities, they shall all cause their respective ultimate parent companies (or other parent company or parent companies approved by the Employer in its absolute discretion) to provide a joint and several parent company guarantee in accordance with Sub-Clause 4.2(f).
- (h) The Contractor shall, if requested by the Employer, in its absolute discretion also deliver to the Employer a legal opinion in relation to the guarantor's obligations under the parent company guarantee provided under Sub-Clause 4.2(f) or Sub-Clause 4.2(g), if any, and whichever is applicable, in the form set out in the Schedule of Forms of Security from a legal advisor approved by the Employer.
- (i) The Contractor shall, if requested by the Employer, in its absolute discretion provide to the Employer financial or other information the Employer may require to satisfy itself that the parent company is an appropriate entity with sufficient means to satisfy the parent company guarantee.

4.3

Contractor's Representative

- (a) The Contractor shall appoint the Contractor's Representative and shall give it all authority necessary to act on the Contractor's behalf under the Contract.
- (b) Unless the Contractor's Representative is named in the Schedule of Details, the Contractor shall submit to the Employer's Representative for consent the name and particulars of the person the Contractor proposes to appoint as the Contractor's Representative.
- (c) If consent is withheld or subsequently revoked, or if the appointed person fails to act as the Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment. The Contractor shall not, without the prior written consent of

the Employer's Representative, revoke the appointment of the Contractor's Representative or appoint a replacement.

- (d) If the Contractor's Representative is to be temporarily absent during the execution of the Works, a suitable replacement person shall be appointed, subject to the Employer's Representative's prior written consent, and the Employer's Representative shall be notified accordingly.
- (e) The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [*Instructions*].
- (f) The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer's Representative has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.
- (g) The Contractor's Representative and all the persons mentioned in Sub-Clause 4.3(f) shall be fluent in the language stated under Sub-Clause 1.4.

4.4

Subcontractors

- (a) The Contractor shall not subcontract the whole of the Works. The Contractor shall only subcontract part of the Works to a Subcontractor with the prior written consent of the Employer's Representative, except that such consent is not required for Permitted Subcontractors or Nominated Subcontractors.
- (b) For the purposes of obtaining the Employer's Representative's prior written consent, the Contractor shall give the Employer's Representative detailed particulars of any proposed Subcontractor, which shall include:
 - (i) the relevant experience of the proposed Subcontractor;
 - (ii) the proposed terms and conditions of the subcontract; and
 - (iii) financial or other information that the Employer's Representative may require to satisfy itself that the proposed Subcontractor is an appropriate entity to execute the relevant part of the Works.
- (c) Any such consent by the Employer's Representative shall not relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract and it shall be responsible for the acts, omissions or defaults of any Subcontractor (including, without limitation, any Permitted Subcontractor or Nominated Subcontractor), its agents or employees, as if they were the acts, omissions or defaults of the Contractor.
- (d) The Contractor shall give the Employer's Representative notice of:
 - (i) the intended commencement of each Subcontractor's work (such notice not to be less than 28 days) or as otherwise agreed in writing

- by the Parties; and
- (ii) the commencement of each Subcontractor's work on the Site.
- (e) The Contractor shall ensure that each subcontract includes provisions that require the Subcontractor, or the Contractor, as applicable, to enter into:
- (i) a collateral warranty; and
 - (ii) a subcontractor side agreement,
- at the request of the Employer's Representative, in accordance with Sub-Clauses 4.4(f) and 4.4(g).
- (f) The Contractor shall, within 14 days of request by the Employer's Representative, procure that any Subcontractor shall enter into a collateral warranty in favour of the Employer, and such collateral warranty shall be in the form and on terms set out in the Schedule of Forms of Collateral Warranty or in such other no more onerous form as the Employer may reasonably require.
- (g) The Contractor shall, within 14 days of request by the Employer's Representative, procure that any Subcontractor shall enter into a side agreement in favour of the Employer, and such agreement shall be in the form and on terms set out in the Schedule of Form of Subcontractor Side Agreement or in such other no more onerous form as the Employer may reasonably require.
- (h) The Parties agree that if the Employer or the Employer's Representative becomes aware that a Subcontractor is entitled to suspend work under a subcontract or terminate a subcontract due to the Contractor's failure to make payment in accordance with the terms of the subcontract, and the Employer's Representative gives the Contractor written notice 72 hours before it intends to pay, the Employer may, in its absolute discretion, pay that Subcontractor such money that the Employer determines is, or may be, owing to the Subcontractor for subcontract work forming part of the Works and the Employer may recover any such amount paid as a debt due from the Contractor to the Employer.
- (i) The Contractor shall defend, hold harmless and indemnify the Employer against any loss, damage, cost or expense, suffered or incurred by the Employer arising out of a failure by the Contractor to make payment in accordance with any subcontract. In defending the Employer, the Contractor shall not enter into a settlement agreement without the prior written approval of the Employer.
- (j) If a payment is made by the Employer to or in respect of a worker or Subcontractor in compliance with a Law or arbitral order, the amount paid will be a debt due from the Contractor to the Employer.
- (k) The Employer may at any time deduct from any monies which are or may be payable to the Contractor (including security), any sums which may be or are

payable by the Contractor to the Employer pursuant to this Clause 4. Nothing in this Clause 4 affects the right of the Employer to recover from the Contractor, the whole of the debt or any balance that remains owing after any deduction.

4.5

Not Used

4.6

Co-operation

- (a) The Contractor shall allow opportunities for carrying out work to:
 - (i) the Employer's Personnel (and their respective labour, employees and agents);
 - (ii) any other contractors or consultants employed by the Employer; and
 - (iii) the personnel of any Authority,

who may be employed in the execution on or near the Site of any work not included in the Contract, and the Contractor shall co-ordinate the execution of the Works with the activities of such other parties.
- (b) Services for these personnel and other contractors may include the use of the Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.
- (c) Subject to Sub-Clause 4.6(d), the Contractor shall be responsible for its construction activities on the Site, and for coordinating and interfacing its own activities and the execution of the Works with the activities and/or works of those parties listed in Sub-Clause 4.6(a).
- (d) In the event that the Contractor and the persons listed in Sub-Clause 4.6(a) cannot, by all reasonable means, reach agreement on co-ordinating these activities and/or works, the Employer's Representative shall be entitled to instruct the Contractor as to the co-ordination of such activities in accordance with Sub-Clause 3.3 [*Instructions*].
- (e) The Contractor shall indemnify the Employer against any claims of the persons listed in Sub-Clause 4.6(a) for any cost or expense incurred by the Employer as a result of the Contractor's failure to comply with its obligations under this Sub-Clause 4.6.
- (f) Notwithstanding any other provision of the Contract, the Contractor is not entitled to an extension of time or any increase to the Contract Price for co-operating with those parties listed in Sub-Clause 4.6(a) or co-ordinating and interfacing the Contractor's activities and the execution of the Works with the activities and/or works of those parties listed in Sub-Clause 4.6(a), or otherwise in connection with the Contractor's obligations under this Sub-

Clause 4.6, except to the extent that the co-operation or co-ordination and interface was Unforeseeable.

- (g) If the Contractor suffers delay and/or incurs Costs as a result of an Unforeseeable event related to co-operating, co-ordinating or interfacing with those parties listed in Sub-Clause 4.6(a), and the Contractor could not reasonably have avoided this delay and/or Cost, then the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:
 - (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
 - (ii) payment of any such Cost, which shall be added to the Contract Price as a Variation.
- (h) After receiving the notice under Sub-Clause 4.6(g), the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine:
 - (i) whether and (if so) to what extent the delay and/or Cost was necessitated by an Unforeseeable event and could not reasonably have been so avoided; and
 - (ii) the matters described in Sub-Clauses 4.6(g)(i) and (ii) related to this extent.

4.7

Setting Out

- (a) The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Employer's Representative. The Contractor shall be responsible for the correct positioning of all parts of the Works, including verifying the accuracy of these items of reference prior to setting out the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.
- (b) Subject to Sub-Clause 4.7(d), if, prior to setting out the Works, the Contractor confirms, to the satisfaction of the Employer, that there is an error in relation to the original points, lines and levels of reference specified in the Contract or notified by the Employer's Representative, and the Contractor subsequently suffers delay and/or incurs Costs from executing work which was necessitated by an Unforeseeable error in these items of reference, and the Contractor could not reasonably have avoided this delay and/or Costs, then the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:
 - (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and

- (ii) payment of any such Costs, which shall be added to the Contract Price as a Variation.
- (c) After receiving the notice from the Contractor pursuant to Sub-Clause 4.7(b), the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine:
 - (i) whether and (if so) to what extent the delay and/or Costs was necessitated by an Unforeseeable error in these items of reference, and could not reasonably have been so avoided; and
 - (ii) the matters described in Sub-Clauses 4.7(b)(i) and (ii) related to this extent.
- (d) For the avoidance of doubt, the Contractor is not entitled to an extension of time or any increase to the Contract Price arising out of or in connection with any errors in original points, lines and levels of reference specified in the Contract or notified by the Employer's Representative, that are discovered after the Contractor has commenced setting out the corresponding part of the Works.

4.8

Safety Procedures

The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects:

- (a) comply with all applicable safety regulations of the relevant Authorities and the health and safety policies, guidelines, procedures and requirements specified in the Schedule of Health and Safety Requirements;
- (b) submit all procedures and compliance documents specified in the Contract and the Schedule of Health and Safety Requirements, including safe work method statements and risk assessments, to the Employer's Representative for information before each design (if any) and execution stage of the Works is commenced;
- (c) be responsible for the safety of all persons entitled to be on the Site;
- (d) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to those persons;
- (e) provide fencing, lighting, guarding and watching of the Works until the Works have been Taken Over under Clause 10 [*Employer's Taking Over*];
- (f) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land; and

- (g) provide the Employer with reasonable access to the Contractor's records and facilities, both on and off the Site, to enable the Employer to assess the Contractor's compliance with this Sub-Clause 4.8.

4.9

Quality Control

- (a) The Contractor shall institute a quality control system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Specification. The Employer's Representative shall be entitled to audit any aspect of the system.
- (b) All procedures and compliance documents shall be submitted to the Employer's Representative for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Employer's Representative, evidence of the prior approval by the Contractor shall be apparent on the document itself.
- (c) Compliance with the quality control system will not relieve the Contractor of any of its undertakings, warranties, obligations or liabilities under or in connection with the Contract.

4.10

Site Data

- (a) The Employer shall have made available to the Contractor for its information, prior to the Date of the Contract, the relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects ("**Site Data**"). The Employer shall similarly make available to the Contractor all relevant Site Data which comes into the Employer's possession after the Date of the Contract. The Contractor shall be responsible for verifying and interpreting all Site Data and undertaking any such further independent tests or investigations that it deems required in order to establish the veracity of the Site Data.
- (b) The Employer does not warrant and shall have no responsibility or liability whatsoever for the accuracy, sufficiency or completeness of the Site Data, or any information given. The Contractor shall not rely on and shall be deemed not to have relied on any Site Data provided by the Employer and the Employer shall not be liable to the Contractor or any third party (whether or not arising out of any negligence on the part of the Employer or any agent or servant thereof) in respect of any inaccuracy, error, omission, defect or inadequacy of Site Data.
- (c) The Contractor is not entitled to an extension of time or any increase to the Contract Price arising out of or in connection with the contents of any Site Data and waives any claim against the Employer in respect of such Site Data.

4.11

Sufficiency of the Accepted Contract Amount

- (a) The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Accepted Contract Amount and all fixed unit rates and prices inserted in the Bill of Quantities.
- (b) Unless otherwise stated in the Contract, the Accepted Contract Amount and all unit fixed rates and prices inserted in the Bill of Quantities covers all the Contractor's obligations under the Contract before, on or after the Date of the Contract (including those under Provisional Sums, if any) and all things necessary for the proper design (if any), execution, testing, commissioning, completion and operation of the Works and the remedying of any defects.
- (c) Unless otherwise stated in the Contract, the Contractor is responsible for all costs and accepts all risks associated with the execution and completion of the Works in accordance with the Contract.

4.12

Unforeseeable Physical Conditions

- (a) The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the execution of the Works, including the Site Data and the Site Conditions. To the same extent, the Contractor shall, and/or will be deemed to, have inspected and examined the Site, its surroundings, the Site Data, the Site Conditions and other available information, and conducted such further tests and investigations that it required to have satisfied itself before the Date of the Contract as to all relevant matters and conditions in connection with the Site, including the Site Data and all of the Site Conditions.
- (b) Subject to Sub-Clauses 4.12(c) to (j), the Contractor is not entitled to an extension of time or any increase to the Contract Price based in whole or in part upon the actual Site Conditions encountered by the Contractor during the execution of the Works.
- (c) In this Sub-Clause 4.12, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.
- (d) If the Contractor encounters adverse physical conditions which it considers to have been Unforeseeable and which could not reasonably have been contemplated by the Contractor based on any reports that are produced by (or on behalf of) the Employer or the Contractor on the Site Conditions and/or from the Site Data, the Contractor shall give a Claim Notice to the Employer' Representative immediately and not later than 14 days of such conditions being encountered.
- (e) Notwithstanding any other provision of the Contract, the Contractor is not entitled to an extension of time or any increase to the Contract Price arising out of or in connection with such Unforeseeable physical conditions, if it fails

to give such notice within 14 days of such conditions being encountered.

- (f) The notice given under Sub-Clause 4.12(d) shall describe the physical conditions in sufficient detail as required by the Employer's Representative and so that those conditions can be inspected by the Employer's Representative and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using all reasonable measures as are appropriate for the physical conditions, and shall comply with any reasonable instructions the Employer's Representative may give.
- (g) If and to the extent that the Contractor encounters physical conditions which the Employer' Representative determines are Unforeseeable, gives a Claim Notice in accordance with Sub-Clause 4.12(d), and suffers delay and/or incurs Costs due to these conditions, the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:
 - (i) an extension of time for any such delay, if completion is or will be delayed under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
 - (ii) payment of any such Costs, which shall be added to the Contract Price as a Variation.
- (h) After receiving the Claim Notice under Sub-Clause 4.12(g) and inspecting and/or investigating these physical conditions, the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine:
 - (i) whether and (if so) to what extent these physical conditions were Unforeseeable; and
 - (ii) the matters described in Sub-Clauses 4.12(g)(i) and (ii) related to this extent.
- (i) Before an extension of time for any such delay, or additional Costs is finally agreed or determined under Sub-Clause 4.12(h), the Employer's Representative may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen at the Date of the Contract. If and to the extent that these more favourable conditions were encountered, the Employer's Representative may proceed in accordance with Sub-Clause 3.5 [*Determinations*] to determine the reductions in Costs and a reduction in any entitlement to an extension of time, which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. The net effect of all adjustments under Sub-Clause 4.12(g)(ii) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price or Time for Completion.
- (j) The Employer's Representative may take account of any evidence of the physical conditions foreseen by the Contractor prior to the Date of the

Contract, which may be made available by the Contractor, but shall not be bound by any such evidence.

4.13

Rights of Way and Facilities

- (a) The Contractor shall bear all costs and charges for special and/or temporary rights-of-way which it may require, including those for access to the Site. The Contractor shall also obtain, at its risk and cost, any additional facilities outside the Site that it may require for the purposes of executing and completing the Works.
- (b) If the Contractor fails to provide or maintain the diversions for roads and services according to the Contract after written notification by the Employer, then the Employer shall be entitled to employ and pay other persons to carry out the required works and all direct and reasonable Costs incurred by the Employer arising out of or in connection with such default shall be recoverable from the Contractor by the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor. Furthermore, the Contractor shall pay to the Employer the sum per day stated in the Schedule of Details (if any) as delay damages for such default for every day which shall elapse between the written notification by the Employer of such default until such time as the default is rectified or until the diversion is no longer required.
- (c) The payment or deduction of such delay damages and/or Costs shall not relieve the Contractor from its obligations to complete the Works or from any of its other, warranties, obligations or liabilities under or in connection with the Contract.

4.14

Avoidance of Interference

- (a) The Contractor shall not interfere unnecessarily or improperly with:
 - (i) the convenience of the public; or
 - (ii) the access to and use and occupation of all roads, rail and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.
- (b) If any land outside the Site which is the property of or under the control of the Employer is made available to the Contractor, this shall be used strictly in accordance with the instructions of the Employer.
- (c) The Contractor shall observe all agreements entered into by the Employer and made known to the Contractor with any person or persons relating to the occupation of land and properties by the Employer which are affected by the execution of the Works, provided always that compliance with such agreements shall not relieve the Contractor of its obligations under this Sub-

Clause 4.14. The Contractor shall be given, on request, copies of any agreement relating to such matters.

- (d) The Contractor shall defend, indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference. In defending the Employer, the Contractor shall not enter into a settlement agreement without the prior written approval of the Employer.

4.15

Access Route

- (a) The Contractor shall be deemed to have been satisfied as to the suitability, security, and availability of access routes to the Site (including marine and air access (if any)) and the accessibility of such access routes for the Contractor's Personnel. The Contractor shall use its best endeavours, acting in accordance with Industry Best Practice, to prevent any road, rail, bridge or marine access from being damaged by the Contractor's traffic or by the Contractor's Personnel. These endeavours shall include the proper use of appropriate vehicles and routes. If any structure, road surface or any other property is damaged by the carrying out of the Works then the Contractor shall rectify such damage at its own cost.
- (b) Unless otherwise stated in the Contract:
 - (i) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for its use of access routes;
 - (ii) the Contractor shall be responsible for its own security which may be required for its use of access routes;
 - (iii) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for its use of routes, signs and directions;
 - (iv) the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route;
 - (v) the Employer does not guarantee the suitability, security or availability of particular access routes; and
 - (vi) all costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

4.16 Transport of Goods

Transport of Goods

Unless otherwise stated in the Contract:

- (a) the Contractor shall give the Employer's Representative not less than 21 days notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- (b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- (c) the Contractor shall defend, indemnify and hold the Employer harmless against all costs resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport. In defending the Employer, the Contractor shall not enter into a settlement agreement without the prior written approval of the Employer.

4.17

Contractor's Equipment

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of the Contractor's Equipment without the prior written consent of the Employer's Representative. Consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

4.18

Protection of the Environment

- (a) The Contractor shall at all times carry out its obligations under the Contract in an environmentally responsible manner ensuring all necessary precautions are taken to prevent negative impacts on the environment in accordance with Industry Best Practices (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of its operations.
- (b) The Contractor shall comply with the policies, guidelines, standards procedures and requirements specified in the Schedule of Environmental Requirements and the policies, guidelines, standards, procedures and requirements of all relevant Authorities.
- (c) The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Contract and as otherwise prescribed by Law.
- (d) Notwithstanding any other right or remedy the Employer may have under or in connection with the Contract or at Law, the Contractor agrees that in the event it fails to comply with the requirements referred to under Sub-Clause 4.18(b) or Sub-Clause 4.18(c), it shall pay and indemnify the Employer for and against any monetary fines and remediation costs as specified in the Schedule of Environmental Requirements, or as otherwise imposed by any relevant Authority.

4.19

Electricity, Water and Gas

- (a) The Contractor shall be responsible for the provision of all power, water and other services it may require for the execution of the Works.
- (b) The Contractor may, with the prior written approval of the Employer's Representative, use for the purposes of the execution of the Works such supplies of electricity, water, gas and other services as may be available on the Site (if any) and of which details and prices are given in the Specification. The Contractor shall, at its risk and cost, provide any apparatus and connections necessary for its use of these services and for measuring the quantities consumed.
- (c) The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Employer's Representative in accordance with Sub-Clause 3.5 [*Determinations*]. The Contractor shall pay these amounts to the Employer upon request.

4.20 Employer's Equipment and Free-Issue Material

Employer's Equipment and Free-Issue Material

- (a) The Employer shall make the Employer's Equipment (if any) available for the use of the Contractor solely for the execution of the Works in accordance with the details, arrangements and prices stated in the Specification. Unless otherwise stated in the Contract:
 - (i) the Employer shall be responsible for the Employer's Equipment; except that
 - (ii) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.
- (b) The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined by the Employer's Representative in accordance with Sub-Clause 3.5 [*Determinations*]. The Contractor shall pay these amounts to the Employer upon request.
- (c) The Employer shall supply to the Contractor, free of charge, the "free-issue materials" (if any) in accordance with the details and arrangements stated in the Specification. The Contractor, acting in accordance with Industry Best Practices, shall then visually inspect such "free-issue materials", and shall promptly give notice to the Employer's Representative of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer shall immediately rectify the notified shortage, defect or default.
- (d) After this visual inspection and any rectification pursuant to Sub-Clause 4.20(c), the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care,

custody and control shall not relieve the Employer of liability for any shortage, defect or default not apparent from a visual inspection, except to the extent that such shortage, defect or default has arisen due to an act or omission of the Contractor.

4.21

Progress Reports

- (a) Unless otherwise stated in the Contract, monthly progress reports shall be prepared by the Contractor and submitted to the Employer's Representative in two copies and in a form to be approved by the Employer's Representative.
- (b) The first report shall cover the period up to the end of the first calendar month following the Date of the Contract. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.
- (c) Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking Over Certificate for the Works.
- (d) Each report shall include:
 - (i) charts and detailed descriptions of progress, including each stage of design, Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation;
 - (ii) photographs showing the status of the Works and of progress on the Site;
 - (iii) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (A) commencement of manufacture;
 - (B) Contractor's inspections;
 - (C) tests; and
 - (D) shipment and arrival at the Site;
 - (iv) the details described in Sub-Clause 6.10 [*Records of Contractor's Personnel and Equipment*];
 - (v) copies of quality control documents, test results and certificates of Materials;
 - (vi) list of Variations, Claim Notices and other notices given under Sub-Clause 20.1 [*Contractor's Claims*];

- (vii) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
 - (viii) details and duration of adverse weather conditions;
 - (ix) a revised working programme and comparisons of actual and planned progress, in accordance with Sub-Clause 8.3 [*Contract Programme*], with details of any events or circumstances which may jeopardise the completion in accordance with the Contract and the Contract Programme, and the measures being (or to be) adopted to overcome or mitigate any delays; and
 - (x) any other matters as may be set out in the Contract or other information reasonably required by the Employer or the Employer's Representative from time to time.
- (e) If the Contractor fails to submit a monthly progress report in accordance with this Sub-Clause 4.21, the Employer may, in its absolute discretion, withhold payments due to the Contractor until such monthly progress report has been submitted.

4.22

Security of the Site

Unless otherwise stated in the Contract:

- (a) the Contractor shall be responsible for keeping unauthorised persons off the Site. Authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel and any other personnel notified to the Contractor, by the Employer or the Employer's Representative, as authorised personnel of the Employer or the Employer's other contractors on the Site; and
- (b) the security and safety of the Site, the Contractor's Equipment, the Employer's Equipment, Plant, Materials and all other property or personnel on the Site is the sole responsibility of the Contractor.

4.23

Contractor's Operations on Site

- (a) The Contractor shall confine its operations to the Site, and to any additional areas which are directly required by the Contractor to execute the Works and which are agreed by the Employer's Representative as working areas. The Contractor shall take all necessary precautions to keep the Contractor's Equipment and the Contractor's Personnel within the Site and those additional areas, and to keep them off adjacent land.
- (b) The Contractor shall not use any part of the Site for any purpose not connected with the execution of the Works without the prior written approval of the Employer. The Contractor shall not destroy, damage or pull down any tree, hedge, wall or building outside the area occupied by the Permanent

Works but within the Site without the prior written consent of the Employer unless specifically stated otherwise in the Contract.

- (c) During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall promptly clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.
- (d) Upon the issue of a Taking Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. The Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil its obligations under the Contract.

4.24

Fossils

- (a) All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed by the Contractor under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent the Contractor's Personnel or other persons from removing or damaging any of these findings.
- (b) The Contractor shall, upon discovery of any such finding, promptly give notice to the Employer's Representative, who shall issue instructions for dealing with it.
- (c) If the Contractor suffers delay and/or incurs Costs from complying with the instructions, the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:
 - (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
 - (ii) payment of any such Costs, which shall be added to the Contract Price as a Variation.
- (d) After receiving the Claim Notice under Sub-Clause 4.24(c), the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine the matters described in Sub-Clause 4.24(c).

4.25

Assignment and Novation of Manufacturer's Warranties

- (a) The Contractor shall procure that any warranty, express or implied, with respect to any Plant or Materials used in the execution of the Works made or given by the manufacturer, any Subcontractor or supplier thereof, or any other seller thereof, will be made in favour of the Employer or will be assigned or otherwise made available to the Employer or such entity that the Employer nominates.
- (b) The Contractor shall ensure that all warranties referred to in Sub-Clause 4.25(a) given by the manufacturer, any Subcontractor or supplier thereof, or any other seller thereof, will be capable of novation from the Employer to any entity to be nominated by the Employer.
- (c) To the extent that the warranties cannot be made in favour of the Employer, assigned or otherwise made available to the Employer, the Contractor agrees (at its cost) to use its best endeavours to enforce such rights as the Contractor may have, for the benefit of the Employer or its nominee.
- (d) The Works shall not be considered to be completed for the purposes of being Taken Over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] until the Employer has received such warranties and confirmation that the warranties are capable of novation from the Employer to any entity to be nominated by the Employer, or if Sub-Clause 4.25(c) applies, the Contractor has demonstrated to the reasonable satisfaction of the Employer that it has used its best endeavours to enforce such rights as the Contractor may have for the benefit of the Employer.

4.26

Auxiliary Works

- (a) The Contractor shall ensure that the Works connect to and fully interface with the Auxiliary Works.
- (b) Provided the Auxiliary Works:
 - (i) perform in the manner specified in the Schedule of Auxiliary Works; and
 - (ii) are completed on or before the later of the:
 - (A) dates specified in the Schedule of Auxiliary Works; and
 - (B) date the Contractor can and needs to use the relevant item of Auxiliary Works, as assessed by the Employer's Representative,

the Contractor will have no right to claim any additional costs or an extension of time as a result (directly or indirectly) of the impact of the Auxiliary Works on the Works. Any claim the Contractor is entitled to make shall be made

under and shall satisfy the requirements of Sub-Clause 8.4 [*Extension of Time for Completion*] and Sub-Clause 20.1 [*Contractor's Claims*].

- (c) The Contractor acknowledges and agrees that:
 - (i) the Auxiliary Works will be performed by third parties;
 - (ii) it shall co-operate with the party(ies) performing the Auxiliary Works;
 - (iii) it has reviewed and is satisfied with the Schedule of Auxiliary Works; and
 - (iv) the fact that the Auxiliary Works are not performed by the Contractor in no way excuses the Contractor from any of its undertakings, warranties, obligations or liabilities under or in connection with the Contract.

4.27

Mines

- (a) The Contractor warrants and represents that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilised in the manufacture of anti-personnel mines.
- (b) The Contractor acknowledges and agrees that any breach of this Sub-Clause 4.27 shall entitle the Employer to terminate the Contract immediately in accordance with Sub-Clause 15.2, without any liability for termination charges or any other liability of any kind.

4.28

Official-Not-To-Benefit, Corruption and Fraud

- (a) The Contractor warrants that it has not engaged, or attempted to engage, in any way whatsoever, in any corruption or fraud in connection with the selection process or the execution of this Contract or any other activities of the Employer or any other entity of the United Nations, involving, in any way whatsoever, any Employer's Personnel or representative, official, or other agent of the Employer or any other entity of the United Nations.
- (b) In this Sub-Clause 4.28, "corruption" means the offering, giving, receiving or soliciting from or to any person, directly or indirectly, anything of value as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract or the selection process, or any other activities of the Employer or any other entity of the United Nations; or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract, or any other activities of the Employer or any other entity of the United Nations.

- (c) In this Sub-Clause 4.28, "fraud" means a misrepresentation or omission of fact(s) in order to influence, or to attempt to influence, the selection process or the execution of this Contract or any other activities of the Employer or of any other entity of the United Nations.
- (d) Contractor acknowledges and agrees that any breach of this Sub-Clause 4.28 shall entitle the Employer to terminate the Contract immediately by written notice in accordance with Sub-Clause 15.2, without any liability for termination charges or any other liability of any kind.

4.29

Unexploded Ordinances

If at any time during the carrying out of the Works the Contractor discovers an unexploded ordinance or land mine, the Contractor shall immediately stop work, notify the Employer's Representative, take all necessary steps to ensure the safety of all persons and property and secure the Site. The Contractor shall immediately resume the Works when instructed by the Employer's Representative that it is safe to do so.

4.30

Blasting

The Contractor shall not use any explosives without the prior written permission of the Employer. The Contractor shall comply with all regulations in force in the Country regarding the use of explosives and shall provide appropriate storage facilities before applying for permission to use any explosives. For the avoidance of doubt, the Employer's approval or refusal to permit the use of explosives shall not relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract and the Contractor shall not be entitled to an extension of time or additional Costs for such approval or refusal.

5. NOMINATED SUBCONTRACTORS

5.1

Definition of Nominated Subcontractor

In the Contract, "**Nominated Subcontractor**" means a Subcontractor:

- (a) who is stated in the Schedule of Nominated Subcontractors and whom the Contractor shall procure and employ as a Subcontractor to perform certain parts of the Works as specified in the Contract; or
- (b) whom the Employer's Representative, under Clause 13 [*Variations and Adjustments*], instructs the Contractor to procure and employ as a Subcontractor after the Date of the Contract,

on terms and for a price to be approved by the Employer's Representative, such terms (at a minimum) to be consistent with the Contract, including the warranties set out in Sub-Clause 17.7 [*Warranties relating to the Works*], and such price to be a reasonable market price at the time of procuring the Nominated Subcontractor.

5.2

Objection to Nomination

The Contractor shall not be under any obligation to employ a Nominated Subcontractor, whom the Employer's Representative, under Sub-Clause 5.1(b) and Clause 13 [*Variations and Adjustments*], instructs the Contractor to employ as a Subcontractor and, against whom the Contractor raises reasonable objection by notice to the Employer's Representative as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees in writing to indemnify the Contractor against and from the consequences of the matter:

- (a) there are reasons to believe that the Nominated Subcontractor does not have sufficient competence, resources or financial strength;
- (b) the subcontract does not specify that the Nominated Subcontractor shall indemnify the Contractor against and from any negligence or misuse of Goods by the Nominated Subcontractor, its agents and employees; or
- (c) the subcontract does not specify that, for the subcontracted work (including design, if any), the Nominated Subcontractor shall:
 - (i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge its obligations and liabilities under or in connection with the Contract; and
 - (ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities.

5.3

Payments to Nominated Subcontractors

The Contractor shall, with the prior written approval of the Employer's Representative, pay to the Nominated Subcontractor the amounts which the Employer's Representative certifies to be due in accordance with the subcontract. These amounts shall be included in the Contract Price paid to the Contractor as Provisional Sums in accordance with Sub-Clause 13.5 [*Provisional Sums*], except as stated in Sub-Clause 5.4 [*Evidence of Payments*].

5.4

Evidence of Payments

Before issuing a Payment Certificate to the Contractor which includes an amount payable to a Nominated Subcontractor, the Employer's Representative may request the Contractor to supply reasonable evidence that the Nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retentions or otherwise. Unless the Contractor submits this reasonable evidence to the Employer's Representative, or

- (a) satisfies the Employer's Representative in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts; and
- (b) submits to the Employer's Representative reasonable evidence that the Nominated Subcontractor has been notified of the Contractor's entitlement,

then the Employer may (at its sole discretion) pay, direct to the Nominated Subcontractor part or all of such amounts previously certified (less applicable deductions) as are due to the Nominated Subcontractor and for which the Contractor has failed to submit the evidence described in either Sub-Clause 5.4(a) or (b), such amounts shall immediately become a debt due and payable by the Contractor to the Employer. The Contractor shall then repay, to the Employer, the amount which the Nominated Subcontractor was directly paid by the Employer.

6. STAFF AND LABOUR

6.1

Engagement of Staff and Labour

Except as otherwise stated in the Contract, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport in accordance with the relevant Laws and the requirements of any Authority.

6.2

Rates of Wages and Conditions of Labour

- (a) The Contractor shall pay rates of wages, and observe conditions of labour in accordance with the relevant Laws and the requirements of any Authority, and such wages and conditions of labour shall not be lower than those minimum standards established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.
- (b) If requested by the Employer's Representative, the Contractor, within 72 hours of such request, shall provide evidence of all payments made to all its

staff and labour. The Parties agree that if the Employer or the Employer's Representative becomes aware that the Contractor has failed to pay its staff and labour in accordance with Sub-Clause 6.2(a), and the Employer's Representative gives the Contractor written notice 72 hours before it intends to pay, the Employer may, in its absolute discretion, pay those staff and labour the amount the Employer determines is, or may be, owing to the staff and labour and the Employer may recover any such amount paid as a debt due from the Contractor to the Employer.

6.3

Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel (and their respective labour, employees and agents).

6.4

Labour Laws

- (a) The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, as may be amended from time to time, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
- (b) The Contractor shall require, and use its best endeavours to ensure, that the Contractor's Personnel obey all applicable Laws, including those concerning safety at work.

6.5

Working Hours

- (a) No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Schedule of Details, unless:
 - (i) otherwise stated in the Contract; or
 - (ii) the Employer's Representative gives consent in writing; or
 - (iii) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Employer's Representative.
- (b) In the event that the Employer's Personnel are required to supervise the Contractor's operations in excess of 8 hours per normal working day, or on locally recognised days or rest or declared public holidays, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the Costs of such additional supervision by the Employer's Personnel. The Employer shall be entitled to deduct such Costs from monies due to the Contractor.

6.6

Facilities for Staff and Labour

- (a) Except as otherwise stated in the Contract, the Contractor shall provide and maintain all necessary accommodation, sanitary and welfare facilities for the Contractor's Personnel in accordance with Law. The Contractor shall also provide facilities for the Employer's Personnel (and their respective labour, employees and agents) (if any) as stated in the Specification and/or the Schedule of Site Plan.
- (b) The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Works.
- (c) The Contractor shall provide the Employer with reasonable access to the Contractor's records and facilities, both on and off the Site, to enable the Employer to assess the Contractor's compliance with this Clause 6, including offsite accommodation and welfare facilities.

6.7

Health and Safety

- (a) The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects:
 - (i) unless otherwise stated in the Contract, be responsible for the safety of all persons on the Site and keep the Site and the Works in an orderly state appropriate to the avoidance of danger to such persons;
 - (ii) comply with the requirements of all Laws, all applicable safety regulations of all relevant Authorities and the policies, guidelines, procedures and requirements specified in the Schedule of Health and Safety Requirements, all as may be amended from time to time; and
 - (iii) provide and maintain, at its own cost all lights, guards, fencing, warning signs, watching, and other temporary works when and where necessary or required by the Employer's Representative or by a duly constituted Authority or any Laws, for the protection of the Works or for the safety and convenience of the public or others.
- (b) The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- (c) The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to

issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

- (d) The Contractor shall send, to the Employer's Representative, details of any accident as soon as practicable and not later than 24 hours after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Employer's Representative may require.
- (e) The Contractor shall implement and comply with a health and safety system which, as a minimum, shall comply with the policies, guidelines, procedures and requirements specified in the Schedule of Health and Safety Requirements and the requirements of all Authorities, and any requirements which the Employer may notify to the Contractor, from time to time.
- (f) Notwithstanding any other right or remedy the Employer may have under the Contract or at Law, the Contractor agrees that in the event it fails to comply with the requirements referred to under this Sub-Clause 6.7, it shall pay and indemnify the Employer for and against any monetary fines and remediation costs as specified in the Schedule of Health and Safety Requirements, or as may be imposed by any Authority.

6.8

Contractor's Superintendence

- (a) Throughout the design (if any) and the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.
- (b) Superintendence shall be given by a sufficient number of persons having adequate spoken and written skills and knowledge in the language defined under Sub-Clause 1.4 [*Language*] and adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the proper and safe execution of the Works.

6.9

Contractor's Personnel

- (a) The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer's Representative may require the Contractor to remove (or cause to be removed) any person employed on the Site or in the execution of the Works, including the Contractor's Representative and Key Personnel if applicable, who in the opinion of the Employer:
 - (i) persists in any misconduct or lack of care;
 - (ii) carries out duties incompetently or negligently;

- (iii) fails to conform with any provisions of the Contract; or
 - (iv) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.
- (b) If Sub-Clause 6.9(a) applies, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person for each person so removed.
- (c) The Contractor shall ensure that the Key Personnel execute the Works and perform the roles required of their nominated positions and are not removed from those positions without the prior written approval of the Employer's Representative.
- (d) If it is necessary to replace any of the Key Personnel (whether as a result of illness, the application of this Sub-Clause 6.9 or otherwise), the Contractor shall immediately arrange for a replacement by a substitute person approved by the Employer's Representative to execute the Works required of the replaced person's nominated position.
- (e) If there is a position listed in the Schedule of Key Personnel but no person is named in that particular role then the Contractor shall obtain the Employer's Representative's approval (such approval not to be unreasonably withheld) before appointing a person to fill that particular role.

6.10

Records of Contractor's Personnel and Equipment

- (a) The Contractor shall submit, to the Employer's Representative, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site.
- (b) The details referred to in Sub-Clause 6.10(a) shall be submitted each calendar month, in a form approved by the Employer's Representative, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking Over Certificate for the Works.

6.11

Disorderly Conduct

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

6.12

Supply of Water

The Contractor shall provide on the Site an adequate supply of drinking and other water for the use of its staff and labour.

6.13

Alcoholic Liquor or Drugs

The Contractor shall not bring onto or store on the Site, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by its Subcontractors, agents, staff or labour.

6.14

Arms, Ammunition and Explosives

Unless otherwise stated in the Schedule of Specification or instructed or permitted by the Employer in writing, the Contractor shall not bring onto or store on the Site, give, barter or otherwise dispose of to any person or persons, any arms, ammunition or explosives of any kind or permit or suffer the same.

6.15

Festivals and Religious Customs

The Contractor shall in all dealings with its staff and labour have due regard to all recognised festivals, days of rest and religious or other customs.

6.16

Epidemics

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Authorities or local medical or sanitary authorities for the purpose of dealing with or overcoming the epidemic.

6.17

Fundamental Principles and Rights at Work:

- (a) The Contractor warrants that it will comply with, and ensure the Contractor's Personnel will comply with, the 1998 International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work. These universal rights, as applied in the context of ILO, are freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.
- (b) In addition to the requirements in Sub-Clause 6.7, the Contractor shall provide a safe and secure working environment, and provide separate amenities on the Site, for women employed in the execution of the Works.
- (c) The Contractor acknowledges and agrees that any breach of this Sub-Clause 6.17 shall entitle the Employer to terminate the Contract immediately in accordance with Sub-Clause 15.2, without any liability for termination charges or any other liability of any kind.

6.18

Child Labour

- (a) The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.
- (b) The Contractor acknowledges and agrees that any breach of this Sub-Clause 6.18 shall entitle the Employer to terminate the Contract immediately in accordance with Sub-Clause 15.2, without any liability for termination charges or any other liability of any kind.

6.19

Sexual Exploitation

- (a) The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by the Contractor's Personnel. For these purposes, sexual exploitation and abuse includes sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, unless such sexual activity is consensual between two persons who are married and such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's Personnel.
- (b) In addition, the Contractor shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favours or activities, or from engaging any sexual activities that are exploitive or degrading to any person.
- (c) The Contractor acknowledges and agrees that any breach of this Sub-Clause 6.19 shall entitle the Employer to terminate the Contract immediately in accordance with sub-Clause 15.2, without any liability for termination charges or any other liability of any kind.

7. PLANT, MATERIALS AND WORKMANSHIP

7.1

Manner of Execution

The Contractor warrants that it shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the Contract;

- (b) exercising the standard of skill, care and diligence of qualified and experienced contractors acting in accordance with Industry Best Practices; and
- (c) with properly equipped facilities and new, good quality and non-hazardous Materials and Plant.

7.2

Samples

- (a) The Contractor shall submit the following samples of Materials, and all relevant information, to the Employer's Representative for its consent, in accordance with the dates identified in the Contract Programme, and in any event not less than 30 days prior to using the Materials in or for the Works:
 - (i) manufacturer's and suppliers standard samples of Materials and any other samples specified in the Contract, all at the Contractor's cost; and
 - (ii) additional samples instructed by the Employer's Representative, (the "**Samples**").
- (b) Each Sample shall be labelled as to origin and intended use in the Works. The Samples shall be submitted in batches of a reasonable quantity to enable the Employer to comply with its obligations under this Sub-Clause 7.2.
- (c) The Employer's Representative may review the Samples submitted by the Contractor under this Sub-Clause 7.2 and any other documents or information required by the Employer's Representative relating to the Samples.
- (d) Subject to the proper submission of the Samples to the Employer's Representative for review under this Sub-Clause 7.2, the Employer's Representative shall, within 30 days of receipt by the Employer's Representative of the relevant Sample, indicate by notice in writing, if the Employer's Representative:
 - (i) is not satisfied that the relevant Sample is in accordance with the Contract, specifying in what respects it considers that the Sample is not in accordance with the Contract and the Contractor shall submit an amended or alternative Sample to the Employer's Representative in accordance with this Sub-Clause 7.2; or
 - (ii) is satisfied that the relevant Sample is in accordance with the Contract.
- (e) The Contractor shall inform the Employer's Representative in writing if any amendments requested by the Employer's Representative to any Samples would be inconsistent with any Laws or any other requirements of the Contract.

- (f) Where the Employer's Representative reviews and is satisfied with any Samples pursuant to this Sub-Clause, it does so for the purpose of administration of the Contract only and any such review or satisfaction shall not relieve the Contractor from its obligations to execute and complete the Works in accordance with the Contract, or from any of its warranties, obligations or liabilities under or in connection with the Contract.
- (g) The Contractor will be deemed to have made sufficient allowance within the Contract Programme for the submission and review of all Samples in accordance with this Sub-Clause 7.2.

7.3

Inspection

- (a) The Employer's Personnel and any other person authorised in writing by any of them for this purpose shall at all reasonable times:
 - (i) have full access to all parts of the Site and to all places from which natural Materials are being obtained; and
 - (ii) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the Materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.
- (b) The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any of its obligations, warranties or liabilities under or in connection with the Contract.
- (c) The Contractor shall give sufficient notice to the Employer's Representative, allowing for any security restraints on the Employer's Personnel travelling to the Site, whenever any Works are ready for inspection and before such Works are covered up, put out of sight, or packaged for storage or transport. The Employer's Representative shall then either carry out the examination, inspection, measurement or testing without unreasonable delay or give notice to the Contractor that the Employer's Representative does not require to do so. If the Contractor fails to give the notice in sufficient time, it shall, if and when required by the Employer's Representative, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

7.4

Testing

- (a) This Sub-Clause 7.4 shall apply to all tests specified in the Contract.
- (b) If requested by the Employer's Representative, the Contractor shall, no later than 60 days after the Date of the Contract, submit a Testing Plan for the Works (including any Sections of the Works) in a format acceptable to the Employer's Representative, that complies with the requirements of the

Contract, including the Specification, the Contractor's quality control system under Sub-Clause 4.9 [*Quality Control*] and the Contract Programme.

- (c) The Testing Plan shall include a detailed description of:
 - (i) the types of tests to be carried out;
 - (ii) the location, number and frequency of the tests;
 - (iii) the test conditions (which shall include normal operating conditions and emergency conditions);
 - (iv) required attendees at the tests (which shall include any persons nominated by the Employer's Representative);
 - (v) the form of the test results; and
 - (vi) any other requirements (if any) set out in the Specification.
- (d) The Employer's Representative will review the Testing Plan provided by the Contractor under Sub-Clause 7.4(b) or under Sub-Clause 7.4(e). If the Testing Plan is not in accordance with the Contract, the Employer's Representative will provide a written notice setting out the reasons why the Testing Plan is not in accordance with the Contract.
- (e) The Contractor shall (at its cost) promptly amend the Testing Plan and re-submit it to the Employer's Representative for review.
- (f) The process shall be repeated until the Employer's Representative determines and approves in writing that the Testing Plan is in accordance with the Contract.
- (g) For the avoidance of doubt, the Contractor is not entitled to an extension of time or an adjustment to the Contract Price for developing or amending the Testing Plan.
- (h) The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out all tests specified in the Contract and any testing equipment, apparatus and/or materials (if any) stated in the Schedule of Specification for use by the Employer.
- (i) Unless otherwise agreed by the Parties, the Contractor shall undertake all tests in accordance with the Testing Plan approved pursuant to Sub-Clause 7.4(f), and shall agree, with the Employer's Representative, 4 days prior written notice of the time and place for the specified testing of any Plant, Materials and other parts of the Works. The Employer, the Employer's Representative and any other Employer's Personnel shall be entitled to be present at any tests.
- (j) The Employer's Representative may, under Clause 13 [*Variations and Adjustments*], vary the location or details of specified tests, or instruct the

Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, all costs of carrying out this Variation shall be borne by the Contractor, notwithstanding any other provisions of the Contract, and the Contractor shall not be entitled to an extension of time or an adjustment to the Contract Price for performing such tests.

- (k) If the Employer's Representative does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Employer's Representative.
- (l) If the Contractor suffers delay and/or incurs Costs from complying with an instruction by the Employer's Representative to perform varied or additional tests, and the results of such tests shows that the tested Plant, Materials or workmanship is in accordance with the Contract, the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:
 - (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
 - (ii) payment of any Costs, which shall be added to the Contract Price as a Variation.
- (m) After receiving the Claim Notice under Sub-Clause 7.4(l), the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine the matters described in Sub-Clause 7.4(l).
- (n) The Contractor shall promptly forward to the Employer's Representative duly certified reports of all tests performed in accordance with the Contract and the Specification. When the specified tests have been passed, the Employer's Representative shall endorse the Contractor's test certificate, or issue a certificate to that effect. If the Employer's Representative has not attended the tests, it shall be deemed to have accepted the readings as accurate.

7.5

Rejection

- (a) If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Employer may reject the Plant, Materials, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall (at its cost) then promptly make good the defect and ensure that the rejected item complies with the Contract.
- (b) If the Employer's Representative requires this Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional Costs, the Contractor shall pay these Costs to the Employer.

- (c) The Employer may instruct the Contractor to open up for inspection and retest part of the Works which have been covered up, to determine if such part of the Works is defective or otherwise not in accordance with the Contract.
- (d) If such parts of the Works, referred to under Sub-Clause 7.5(c), are defective or otherwise not in accordance with the Contract, the costs of such opening up (together with the costs of promptly making good the defects) shall be borne by the Contractor. For the avoidance of doubt, the Contractor shall not be entitled to any extension of time or increase in the Contract Price as a result of any such opening up.
- (e) Subject to Sub-Clause 7.3(c), if such parts of the Works, referred to under Sub-Clause 7.5(c), are in accordance with the Contract and the Contractor suffers delay and/or incurs Cost from complying with an instruction by the Employer's Representative to open up for inspection and retest part of the Works which have been covered up, the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled, subject to Sub-Clause 20.1 [*Contractor's Claims*] to:
 - (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
 - (ii) payment of any Cost, which shall be added to the Contract Price as a Variation.
- (f) After receiving the Claim Notice under Sub-Clause 7.5(e), the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine the matters described in Sub-Clause 7.5(e).

7.6

Remedial Work

- (a) Notwithstanding any previous test or certification, the Employer's Representative may instruct the Contractor to:
 - (i) remove from the Site and replace any Plant or Materials which are not in accordance with the Contract;
 - (ii) remove and re-execute any other work which is not in accordance with the Contract; and
 - (iii) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.
- (b) The Contractor shall comply with the instruction within the time (if any) specified in the instruction, or immediately if urgency is specified under Sub-Clause 7.6(a)(iii).

- (c) If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall pay to the Employer all Costs arising from this failure.

7.7

Ownership of Plant and Materials

Each item of Plant and Materials shall, to the extent consistent with the Laws, become the property of the Employer at whichever is the earlier of the following times, free from Security Interests and other encumbrances:

- (a) when it is delivered to the Site; and
- (b) when the Contractor is entitled to payment of the value of the Plant and Materials under Sub-Clause 8.10 [*Payment for Plant and Materials in Event of Suspension*].

7.8

Royalties

Unless otherwise stated in the Contract, the Contractor shall pay all royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site; and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

7.9

Security Interest

- (a) The Contractor acknowledges and agrees that it shall not file, claim or register any Security Interest, and shall use its best efforts to prevent any Security Interest from being filed, claimed or registered by any Subcontractor or by any employee, servant or agent of the Contractor or Subcontractor, against the Works or any real or other property of the Employer or the Contractor, for any works done or any services rendered or any item of Plant or Materials supplied under the Contract or any subcontract let by the Contractor and shall procure that all subcontracts contain undertakings to the like effect.
- (b) In the event that any such Security Interest should be filed, claimed or registered, the Contractor shall immediately notify the Employer and shall promptly discharge, by bond or otherwise to the satisfaction of the Employer, such Security Interest.
- (c) Until any Security Interest contemplated by Sub-Clause 7.9(b) is fully discharged, the Employer shall have the right to withhold one hundred and

twenty five percent (125%) of the full amount claimed giving rise to the Security Interest from any payments to be made to the Contractor, and such withholding of payment shall not affect the other rights and obligations of the Parties under the Contract. Alternatively, the Employer may, at its discretion, discharge the Security Interest by paying the appropriate amount directly to the relevant person and deduct such amount from further payments to be made to the Contractor pursuant to the Contract.

- (d) The Contractor shall indemnify the Employer against any loss, damage, cost or expense (including legal fees and the cost and expense of the Employer discharging any Security Interest as contemplated by Sub-Clause 7.9(c)) to the extent arising out of or in connection with any Security Interest being filed, claimed or registered as referred to in Sub-Clause 7.9(b).
- (e) On its application for the Taking Over Certificate for the Works, pursuant to Sub-Clause 10 [*Employer's Taking Over*], the Contractor shall certify to the Employer, by way of a certificate, that it has no knowledge of any outstanding Security Interests or claims which may result in Security Interests affecting the Works or the Site.

8. COMMENCEMENT, DELAYS AND SUSPENSION

8.1

Commencement of Work

The Contractor shall commence the execution of the Works (including, without limitation, mobilisation and procurement) promptly after the Date of the Contract and shall proceed with the Works with due expedition and without delay in accordance with the Approved Preliminary Programme and, upon certification by the Employer's Representative, the Contract Programme submitted under Sub-Clause 8.3 [*Contract Programme*].

8.2

Time for Completion

- (a) The Contractor shall complete the whole of the Works, and each Section to enable such Works to be Taken Over by the Employer in accordance with Sub-Clause 10.1 [*Taking Over of the Works and Sections*], within the Time for Completion for the Works or Section (as the case may be) including:
 - (i) achieving each Milestone by the relevant Milestone Date;
 - (ii) achieving the passing of the Tests on Completion to the Employer's Representative's satisfaction;
 - (iii) satisfying all other preconditions to issuing a Taking Over Certificate as specified in the definition of Taken Over in Sub-Clause 1.1 [*Definitions*] or elsewhere in the Contract; and

- (iv) completing all other work and submitting all other information and documents which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of issuing a Taking Over Certificate under Sub-Clause 10.1 [*Taking Over of the Works and Sections*].
- (b) The Contractor shall complete the Milestones by the Milestone Dates set out in the Schedule of Programme.

8.3

Contract Programme

- (a) Not later than 21 days after the Date of the Contract, the Contractor shall submit to the Employer's Representative, for its approval, with a copy to the Employer, a fully detailed draft Contract Programme that complies with the requirements of the Contract, including Industry Best Practices and the requirements set out in the Schedule of Programme under the heading "Programme Requirements".
- (b) After receiving the Contractor's fully detailed draft Contract Programme under Sub-Clause 8.3(a), the Employer's Representative shall review the draft Contract Programme and, if the Employer's Representative determines that the draft Contract Programme does not comply with the requirements specified under Sub-Clause 8.3(a), within 21 days of receiving such draft Contract Programme, provide a written notice to the Contractor's Representative, setting out the reasons why the draft Contract Programme is not in accordance with the Contract.
- (c) The Contractor shall, within 7 days, amend the draft Contract Programme and re-submit it to the Employer's Representative for review and the process shall be repeated until the Employer's Representative determines the draft Contract Programme is in accordance with the Contract.
- (d) Upon the Employer's Representative determining that the draft Contract Programme complies with the requirements specified under Sub-Clause 8.3(a), the Employer's Representative shall provide a written notice to the Contractor, and such draft Contract Programme, upon certification by the Employer's Representative shall become the "Contract Programme" for the purposes of the Contract.
- (e) The Contractor is not entitled to an extension of time or an adjustment to the Contract Price for developing or amending the draft Contract Programme issued in accordance with this Sub-Clause 8.3.
- (f) The Contract Programme will be used to monitor the progress of the execution of the Works.
- (g) If requested at any time by the Employer's Representative, the Contractor shall provide an updated s-curve with each monthly progress report pursuant to Sub-Clause 4.21 [*Progress Reports*] to display actual versus early and late planned progress and updated cash flow estimates every quarter.

- (h) The Contractor shall submit a critical activity listing and a revised working programme with each monthly progress report pursuant to Sub-Clause 4.21 [*Progress Reports*] to reflect the actual progress of the Works relevant to the Contract Programme. The revised working programme shall be in the same format and accompanied by the same supporting information as the Contract Programme and shall detail:
 - (i) the activities recently completed with actual start and finish dates and the activities in progress or to be performed/started in the future;
 - (ii) all Milestones and Milestone Dates;
 - (iii) the physical percentage complete for each activity; and
 - (iv) the critical path for the Works based on the Contractor's latest working programme.
- (i) Following such submission, the Contractor and the Employer's Personnel shall review the critical activity listing to identify problem areas and corrective actions necessary.
- (j) If at any time the Employer's Representative forms the opinion that the actual progress of the Works does not conform to the Contract Programme, the Contractor shall produce, at the request of the Employer's Representative, a revised working programme and supporting report in accordance with Sub-Clause 8.6(a) [*Rate of Progress*].
- (k) The Contractor shall submit such revised working programme to the Employer's Representative within 7 days of being requested to do so by the Employer's Representative. Failure of the Contractor to submit a revised working programme in accordance with this Sub-Clause 8.3, will entitle the Employer to withhold payments due to the Contractor until the revised working programme is submitted in accordance with the Contract.
- (l) Any amended or revised working programme submitted by the Contractor under this Sub-Clause 8.3 will not affect or replace the Contract Programme unless expressly agreed to by the Employer's Representative in writing.
- (m) The submission to and review by the Employer's Representative of any amended or revised working programme or any other document or revision thereof under this Sub-Clause 8.3 shall not in any way relieve the Contractor of any of its warranties, obligations or liabilities under or in connection with the Contract.

8.4

Extension of Time for Completion

- (a) The Contractor is only entitled, subject to Sub-Clause 20.1 [*Contractor's Claims*], to an extension to the Time for Completion if, and to the extent it satisfies the Employer's Representative that, completion for the purposes of Sub-Clause 10.1 [*Taking Over of the Works and Sections*] of an activity on the critical path of the Contract Programme is or will be delayed to the extent

that the Contractor will not be able to complete the Works within the Time for Completion, by any of the following causes:

- (i) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [*Variation Procedure*] and excluding Variations required due to an act, omission or default of the Contractor or the Contractor's Personnel);
 - (ii) a cause of delay expressly giving an entitlement to an extension of time under a Sub-Clause of these General Conditions; or
 - (iii) subject to Sub-Clause 4.6 [*Co-operation*], any delay, impediment or act of prevention caused by or attributable to the Employer, the Employer's Personnel or the Employer's other contractors on the Site.
- (b) If the Contractor considers itself to be entitled to an extension to the Time for Completion, the Contractor shall give a Claim Notice to the Employer's Representative in accordance with Sub-Clause 20.1 [*Contractor's Claims*]. When determining each extension of time under Sub-Clause 20.1 [*Contractor's Claims*], the Employer's Representative shall review previous determinations and may increase, but shall not decrease, the total extension of time.
- (c) If the Employer's Representative agrees or determines that the Contractor is entitled to an extension of the Time for Completion in accordance with Sub-Clause 20.1 [*Contractor's Claims*], the Contractor shall, within 14 days of such determination, submit a revised draft Contract Programme that shows the effect of the approved extension of Time for Completion on the existing Contract Programme.
- (d) After receiving the Contractor's proposed revised Contract Programme under Sub-Clause 8.4(c), the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the adjustment, if any, to the Contract Programme, and such adjusted Contract Programme, certified by the Employer's Representative, shall become the Contract Programme.
- (e) Despite any other provisions of the Contract, the Contractor will not be entitled to any extension to the Time for Completion, unless the cause of the delay has delayed, or will delay, an activity on the critical path of the Contract Programme.

8.5

Delays Caused by Authorities

- (a) If the following conditions apply, namely:
 - (i) the Contractor has diligently followed the procedures laid down by any relevant Authority;

(ii) the Authority delays or disrupts the Contractor's work such that it will not be able to complete the Works within the Time for Completion; and

(iii) the delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under Sub-Clause 8.4(a).

(b) Notwithstanding any other provision of the Contract, if Sub-Clause 8.5(a) applies, the Contractor shall not be entitled to any increase to the Contract Price.

8.6

Rate of Progress

(a) If, at any time:

(i) actual progress of the Works is too slow to allow completion of the Works within the Time for Completion; and/or

(ii) progress has fallen (or will fall) behind the Contract Programme under Sub-Clause 8.3 [*Contract Programme*],

other than as a result of a cause listed in Sub-Clause 8.4 [*Extension of Time for Completion*], then the Employer's Representative may instruct the Contractor to submit a revised working programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and achieve completion of the Works in accordance with the Contract Programme and within the Time for Completion.

(b) Unless the Employer's Representative notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional Costs, the Contractor shall pay these Costs to the Employer, in addition to any Delay Damages under Sub-Clause 8.7 [*Delay Damages*].

(c) The Employer's Representative may, at any time, initiated either by an instruction or by a request for the Contractor to submit a proposal, direct the Contractor's Representative to accelerate the Works for any reason including as an alternative to granting an extension of time to the Time for Completion.

(d) If the Employer's Representative requests a proposal under Sub-Clause 8.6(c), prior to directing the Contractor to accelerate the Works, the Contractor shall respond in writing as soon as practicable and within 14 days by submitting:

(i) a description of the proposed amendments to the sequence of the Works along with proposed additional resources and materials necessary to accelerate the Works;

- (ii) the Contractor's proposal for any necessary modifications to the Contract Programme and to the Time for Completion; and
- (iii) the Contractor's proposal for adjustment to the Contract Price.
- (e) The Employer's Representative shall, as soon as practicable after receiving such proposal under Sub-Clause 8.6(d), respond with approval and direction to accelerate the Works, disapproval or comments.
- (f) If the Employer's Representative directs the Contractor to accelerate the Works, except where the direction was issued as a consequence of the failure of the Contractor to fulfil its obligations under the Contract, the Contractor shall, within 14 days of such determination, submit a proposed revised Contract Programme that shows the effect of the acceleration direction on the Contract Programme.
- (g) After receiving the Contractor's proposed revised Contract Programme under Sub-Clause 8.6(f), the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the adjustment, if any, to the Contract Programme, and such adjusted Contract Programme, certified by the Employer's Representative, shall become the Contract Programme.
- (h) If the Contractor incurs Costs in complying with an acceleration direction under Sub-Clause 8.6(c) or Sub-Clause 8.6(e), except where the direction was issued as a consequence of the failure of the Contractor to fulfil its obligations under the Contract, the Contractor shall give a Claim Notice in accordance with Sub-Clause 20.1 [*Contractor's Claims*] to the Employer's Representative and shall be entitled, subject to Sub-Clause 20.1 [*Contractor's Claims*], to payment of any such Costs, which shall be added to the Contract Price as a Variation.

8.7

Delay Damages

- (a) If the Contractor fails to comply with Sub-Clause 8.2 [*Time for Completion*] and complete the Works or a Section within the Time for Completion, the Contractor shall pay delay damages to the Employer for this default ("**Delay Damages**"). The Delay Damages shall be the sum stated in the Schedule of Details, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date the whole of the Works or relevant Section has been Taken Over as stated in the Taking Over Certificate.
- (b) The Contractor shall also reimburse the Employer for any additional fees payable by the Employer to any consultants engaged by the Employer arising out of or in connection with the Contract which are payable as a result of the Contractor's failure to complete the whole of the Works within the Time for Completion.
- (c) The Contractor expressly agrees that the Employer may in its absolute discretion elect to invoke the remedies set out under Sub-Clauses 14.7 [*Payment*] and 14.16 [*Set Off*] in recovering such Delay Damages and fee.

- (d) The total amount of Delay Damages due under this Sub-Clause 8.7 shall not exceed the aggregate maximum amount of Delay Damages (if any) stated in the Schedule of Details.
- (e) The payment of Delay Damages shall not relieve the Contractor from its obligation to complete the Works in accordance with the Contract, or from any of its warranties, obligations or liabilities under or in connection with the Contract.
- (f) At any time after the Employer has become entitled to Delay Damages, the Employer may give notice to the Contractor under Sub-Clause 15.1 [*Notice to Correct*], requiring the Contractor to complete the Works within a specified reasonable time. The notice shall not prejudice the Employer's entitlements to payment under this Sub-Clause 8.7 or to termination under Sub-Clause 15.2 [*Termination by Employer*].
- (g) If the Employer has become entitled, under this Sub-Clause 8.7, to the aggregate maximum amount of Delay Damages stated in the Schedule of Details, it shall be entitled to terminate the Contract in accordance with Sub-Clauses 15.2(a)(viii) and 15.2(b).

8.8

Suspension of Work

- (a) The Employer's Representative may at any time, at its sole and absolute discretion instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part of the Works against any deterioration, loss or damage.
- (b) During any period of suspension, the Contractor shall not remove from the Site any Materials, Plant or any Contractor's Equipment without the prior written consent of the Employer.
- (c) The Employer's Representative may also notify the Contractor of the cause for the suspension. If and to the extent that the suspension is caused or contributed to by, or the responsibility of, the Contractor, or the Contractor's Personnel, Sub-Clauses 8.9 [*Consequences of Suspension*], 8.10 [*Payment for Plant and Materials in Event of Suspension*] and 8.11 [*Prolonged Suspension*] shall not apply.

8.9

Consequences of Suspension

- (a) Subject to Sub-Clause 8.9(c), if the Contractor suffers delay and/or incurs Costs from complying with the Employer's Representative's instructions under Sub-Clause 8.8 [*Suspension of Work*] and/or from resuming the work, the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

- (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
 - (ii) payment of any such Costs, which shall be added to the Contract Price as a Variation.
- (b) After receiving the Claim Notice under Sub-Clause 8.9(a), the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine the matters described in Sub-Clauses 8.9(a)(i) and (ii).
- (c) For the avoidance of doubt, the Contractor shall not be entitled to an extension of time or any increase to the Contract Price, for making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.8 [*Suspension of Work*] or in respect of any other breach of the Contract by the Contractor or the Contractor's Personnel.

8.10

Payment for Plant and Materials in Event of Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 consecutive days; and
- (b) the Contractor has paid for and properly stored the Plant and/or Materials and marked the Plant and/or Materials as the Employer's property in accordance with the Employer's Representative's instructions.

8.11

Prolonged Suspension

If a suspension under Sub-Clause 8.8 [*Suspension of Work*] has continued for more than 180 consecutive days, the Contractor may request the Employer's Representative's permission to proceed with the Works. If the Employer's Representative does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Employer's Representative, treat the suspension as an omission under Clause 13 [*Variations and Adjustments*] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [*Termination by Contractor*].

8.12

Resumption of Work

After a permission or instruction to proceed with the Works is given by the Employer's Representative, the Contractor and the Employer's Representative shall jointly

examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension. If the cause of the suspension is attributable to or the responsibility of the Contractor, the Contractor shall bear the cost of making good.

9. TESTS ON COMPLETION

9.1

Contractor's Obligations

- (a) The Contractor shall carry out the Tests on Completion in accordance with this Clause 9, Sub-Clause 7.4 [*Testing*] and Sub-Clause 7.5 [*Rejection*], the Specification, the quality control system under Sub-Clause 4.9 [*Quality Control*] and the approved Testing Plan (if any).
- (b) The Contractor shall give the Employer's Representative not less than 21 days written notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Employer's Representative shall instruct.
- (c) Unless otherwise stated in the Contract, the Tests on Completion shall be carried out in accordance with the Specification and the approved Testing Plan.
- (d) As soon as the Works, or a Section, have passed each of the Tests on Completion in accordance with the Specification, the Contractor shall submit a certified report of the results of these tests to the Employer's Representative.

9.2

Delayed Tests

- (a) If the Tests on Completion are unduly delayed by the Contractor, the Employer's Representative may by notice require the Contractor to carry out the Tests on Completion within 21 days after receiving the notice. The Contractor shall carry out the Tests on Completion on such day or days within that period as the Contractor may fix and of which it shall give notice to the Employer's Representative.
- (b) If the Contractor fails to carry out the Tests on Completion within this period of 21 days, the Employer's Personnel may proceed with the Tests on Completion at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests on Completion shall be accepted as accurate.

9.3

Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [*Rejection*] shall apply, and the Employer's Representative or the Contractor may require the failed Tests on Completion, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.4

Failure to Pass Tests on Completion

- (a) If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [*Retesting*], the Employer's Representative may, in its sole and absolute discretion:
 - (i) order further repetition of Tests on Completion under Sub-Clause 9.3 [*Retesting*];
 - (ii) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in Sub-Clause 11.4(b) [*Failure to Remedy Defects*]; or
 - (iii) issue a Taking Over Certificate, if the Employer so requests.
- (b) In the event of the application of Sub-Clause 9.4(a)(iii), the Contractor shall proceed in accordance with all of its other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure.
- (c) Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be:
 - (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking Over Certificate is issued; or
 - (ii) determined and paid under Sub-Clause 3.5 [*Determinations*].

10. EMPLOYER'S TAKING OVER

10.1

Taking Over of the Works and Sections

- (a) Except as stated in Sub-Clause 9.4 [*Failure to Pass Tests on Completion*], the Works shall be Taken Over by the Employer when:

- (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [*Time for Completion*]; and
 - (ii) a Taking Over Certificate for the Works or Section has been issued in accordance with this Sub-Clause 10.1.
- (b) The Contractor may apply by notice to the Employer's Representative for a Taking Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready to be Taken Over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking Over Certificate for each Section.
- (c) The Employer's Representative shall, within 28 days after receiving the Contractor's application:
- (i) issue the Taking Over Certificate to the Contractor, stating the date on which the Works or Section were completed and Taken Over in accordance with the Contract, except for any minor omissions, outstanding work and defects which the Employer's Representative, in its sole and absolute discretion, is satisfied, will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied) (such outstanding works and defects constituting the "**Punch List**"); or
 - (ii) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under Sub-Clause 10.1(b).
- (d) The Parties acknowledge and agree that the Works, or any Section or part of the Works, will not be complete and the Employer is not bound to take delivery and responsibility for the care and custody of the Works, unless the Employer has issued a Taking Over Certificate to the Contractor in accordance with this Clause 10.

10.2

Taking Over of Parts of the Works

- (a) The Employer's Representative may, at the absolute discretion of the Employer, issue a Taking Over Certificate for any part of the Permanent Works, including a Section.
- (b) The Employer shall not use any part of the Works (other than as a temporary measure or which is either specified in the Contract or agreed by both Parties in writing) unless and until the Employer's Representative has issued a Taking Over Certificate for this part. If the Employer does use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties in writing or for reasons attributable to the acts, omissions, breaches or defaults of the Contractor or the Contractor's Personnel) before the Taking Over Certificate is issued:

- (i) the part which is used shall be deemed to have been Taken Over as from the date on which it is used;
 - (ii) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer; and
 - (iii) if requested by the Contractor, the Employer's Representative shall issue a Taking Over Certificate for this part.
- (c) For the avoidance of doubt, the Parties agree that use of any part of the Site by the Employer as a temporary measure or for reasons attributable to the acts, omissions, breaches or defaults of the Contractor or the Contractor's Personnel or which is either specified in the Contract or agreed by both Parties in writing, will not be deemed to have been Taken Over by the Employer. In such cases, the Contractor shall continue to be responsible for the care of such parts of the Works until a Taking Over Certificate is issued to the Contractor in accordance with this Clause 10.
- (d) After the Employer's Representative has issued a Taking Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.
- (e) If the Contractor incurs Costs as a result of the Employer having Taken Over and/or having used a part of the Works, other than as a temporary measure or for reasons attributable to the acts or omissions of the Contractor or which is either specified in the Contract or agreed by both Parties in writing, the Contractor shall:
 - (i) give a Claim Notice to the Employer's Representative; and
 - (ii) be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to payment of any such Costs, which shall be added to the Contract Price as a Variation.
- (f) After receiving the Claim Notice under Sub-Clause 10.2(e), the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine these Costs.
- (g) Where, for reasons attributable to the acts or omissions of the Contractor, the Employer in its absolute discretion elects to issue a Taking Over Certificate or otherwise uses a part of the Works in accordance with this Sub-Clause 10.2, the Contractor shall not be entitled to any extension of time or any increase to the Contract Price.
- (h) If a Taking Over Certificate has been issued for a part of the Works (other than a Section), the Delay Damages thereafter for completion of the remainder of the whole of the Works shall be reduced. Similarly, the Delay Damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated

in this Taking Over Certificate, the proportional reduction in these Delay Damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these proportions. The provisions of this Sub-Clause 10.2(h) shall only apply to the daily rate of Delay Damages under Sub-Clause 8.7 [*Delay Damages*], and shall not affect the maximum amount of these Delay Damages.

- (i) Notwithstanding any other provision of the Contract:
 - (i) where, for reasons attributable to the acts or omissions of the Contractor, the Employer in its absolute discretion elects to issue a Taking Over Certificate or otherwise uses any part of the Site or the Works, prior to the Time for Completion in accordance with this Sub-Clause 10.2, the provisions of Sub-Clause 10.2(h) shall not apply and the daily rate of Delay Damages due and payable by the Contractor under Sub-Clause 8.7 [*Delay Damages*] shall not be reduced; and
 - (ii) if a Taking Over Certificate is issued for part of the Works under this Sub-Clause 10.2 after the Time for Completion has passed, Sub-Clause 10.2(h) shall not apply and the Delay Damages due and payable by the Contractor under Sub-Clause 8.7 [*Delay Damages*] will not be reduced and will continue to apply in full and until the whole of the Works or Section is Taken Over in accordance with the Contract.

10.3

Interference with Tests on Completion

- (a) If the Contractor suffers delay and/or incurs Costs as a result of a delay in carrying out the Tests on Completion for which the Employer is responsible, the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:
 - (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
 - (ii) payment of any such Costs, which shall be added to the Contract Price as a Variation.
- (b) After receiving the Claim Notice under Sub-Clause 10.3(a), the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the matters described under Sub-Clause 10.3(a).

10.4

Surfaces Requiring Reinstatement

Except as otherwise stated in a Taking Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

11. DEFECTS LIABILITY

11.1

Completion of Outstanding Work and Remedying Defects

- (a) In order for the Works and Contractor's Documents, and each Section, to be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:
 - (i) complete any work set out in the Punch List and any other work which is outstanding on the date stated in a Taking Over Certificate, within such reasonable time as is instructed by the Employer's Representative; and
 - (ii) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).
- (b) If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.

11.2

Cost of Remedying Defects

All work referred to in Sub-Clause 11.1(a)(ii) shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) the design of the Works, other than a part of the design for which the Employer is responsible;
- (b) the Works, Plant, Materials or workmanship not being in accordance with the Contract;
- (c) improper operation or maintenance which was attributable to matters for which the Contractor is responsible; or
- (d) failure by the Contractor to comply with any other obligation under the Contract.

11.3

Extension of Defects Notification Period

- (a) The Defects Notification Period for the Works or a Section shall be extended if and to the extent that the Works, Section or a major item of Plant (as the case may be) cannot be used for the purposes for which they are intended by reason of a defect or damage or failure by the Contractor to comply with any other obligation of the Contract and such extension shall be equal to the period for which the Works cannot be so used for the purpose intended or, if instructed in writing by the Employer's Representative, the Defects Notification Period shall recommence (and restart from the beginning) from the date of the repair, replacement or making good of such defect or damage, but only in respect of that part of the Works repaired, replaced or made good.
- (b) If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [*Suspension of Work*] or Clause 16 [*Suspension and Termination by Contractor*], the Contractor's obligations under this Clause 11 shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

11.4

Failure to Remedy Defects

- (a) If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.
- (b) If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Employer may (at its sole and absolute discretion):
 - (i) carry out the work itself or by others, in a reasonable manner and at the Contractor's cost and risk, and the Contractor shall pay to the Employer the Costs incurred by the Employer in remedying the defect or damage;
 - (ii) require the Employer's Representative to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [*Determinations*]; or
 - (iii) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus Costs, including the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

11.5

Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant and/or Works as are defective or damaged. This consent may, at the Employer's absolute discretion, require the Contractor to increase the amount of the Bank Guarantee for performance by the full replacement cost of these items, or to provide other appropriate security approved by the Employer.

11.6

Further Tests

- (a) If the work of remedying any defect or damage may affect the performance of the Works, the Employer's Representative may require the repetition of any of the tests described in the Contract, including Tests on Completion. The requirement shall be made by notice within 28 days after the defect or damage is remedied.
- (b) These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [*Cost of Remedying Defects*], for the cost of the remedial work.

11.7

Right of Access

Until the Final Completion Certificate has been issued, the Contractor shall, with the Employer's prior written approval, have limited right of access to the Works and to records of the operation and performance of the Works, as is reasonably required in order for the Contractor to comply with this Clause 11, except as may be inconsistent with the Employer's reasonable security restrictions, or agreements with third parties such as purchasers and other contractors.

11.8

Contractor to Search

The Contractor shall, if required by the Employer's Representative, search for the cause of any defect, under the direction of the Employer's Representative. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Costs for the search shall be agreed or determined by the Employer's Representative in accordance with Sub-Clause 3.5 [*Determinations*] and shall be included in the Contract Price.

11.9

Final Completion Certificate

- (a) Performance of the Contractor's obligations shall not be considered to have been completed until the Employer's Representative has issued the Final Completion Certificate to the Contractor, stating the date on which the Contractor completed its obligations under the Contract.
- (b) The Employer's Representative shall issue the Final Completion Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all of the Works, including remedying defects notified under Sub-Clause 11.1 before the last Defects Notification Period expired. A copy of the Final Completion Certificate shall be issued to the Employer.
- (c) Notwithstanding the issue of a Final Completion Certificate, the Contractor shall be responsible for remedying at its cost and expense any Latent Defect, as well as any damage to the Works caused by such Latent Defect, which appears or occurs at any time during the Latent Defect Period. The Employer's Representative shall give the Contractor written notice of any such Latent Defect or damage. The Employer shall afford the Contractor such access to the Permanent Works as may be reasonable in all the circumstances for such purposes. The Contractor shall remedy such Latent Defect or damage as soon as reasonably practicable.
- (d) If the Contractor fails to remedy any Latent Defect or damage within a reasonable time, a reasonable date may be fixed by (or on behalf of) the Employer, on or by which the Latent Defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date. If the Contractor fails to remedy the Latent Defect or damage by this notified date the Employer may carry out the work himself or by others, in a reasonable manner and at the Contractor's cost (but the Contractor shall have no responsibility for this work) and the Contractor shall pay to the Employer the costs reasonably incurred by the Employer in remedying the Latent Defect or damage. This Sub-Clause shall not relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract or otherwise at Law.

11.10

Unfulfilled Obligations

After the Final Completion Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

11.11

Clearance of Site

- (a) Upon receiving the Final Completion Certificate, the Contractor shall at its cost remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.
- (b) If all the items referred to in Sub-Clause 11.11(a) have not been removed within 28 days after the Employer receives a copy of the Final Completion Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.
- (c) Subject to Sub-Clauses 14.7 [*Payment*] and 14.16 [*Set Off*], any balance of the monies from the sale of the items referred to in Sub-Clause 11.11(b) shall be paid to the Contractor. If these monies are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

12. MEASUREMENT AND EVALUATION

12.1

Works to be Measured

- (a) The Works shall be measured, and valued for payment, in accordance with this Clause 12.
- (b) Whenever the Employer's Representative requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:
 - (i) promptly either attend or send another qualified representative to assist the Employer's Representative in making the measurement; and
 - (ii) supply any particulars requested by the Employer's Representative.
- (c) If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Employer's Representative shall be accepted and deemed as accurate.
- (d) Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Employer's Representative. The Contractor shall, as and when requested, attend to examine and agree the records with the Employer's Representative and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted and deemed as accurate.
- (e) If the Contractor examines and disagrees with the records, and/or does not

sign them as agreed, then the Contractor shall give notice to the Employer's Representative of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Employer's Representative shall review the records and either confirm or vary them. If the Contractor does not give such notice to the Employer's Representative within 14 days after being requested to examine the records, they shall be accepted and deemed as accurate.

12.2

Method of Measurement

Except as otherwise stated in the Contract and notwithstanding local practice:

- (a) measurement shall be made of the net actual quantity of each item of the Permanent Works; and
- (b) the method of measurement shall be in accordance with the method specified in the Schedule of Contract Price.

12.3

Evaluation

- (a) Except as otherwise stated in the Contract, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with Sub-Clauses 12.1 [*Works to be Measured*] and 12.2 [*Method of Measurement*] and the appropriate rate or price for the item.
- (b) For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Bill of Quantities or, if there is no such item, specified for similar work. However, a new rate or price shall be appropriate for an item of work if:
 - (i) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities and this change in quantity:
 - (A) multiplied by such specified rate for this item exceeds 0.01% of the Accepted Contract Amount; or
 - (B) directly changes the cost per unit quantity of this item by more than 1%; or
 - (ii) the item is not specified in the Contract as a "fixed rate item"; or
 - (iii) the work is instructed under Clause 13 [*Variations and Adjustments*]; or
 - (iv) no rate or price is specified in the Contract for the item; or

- (v) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.
- (c) Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in Sub-Clause 12.3(b). If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable cost of executing the work, together with reasonable profit, taking account of any other relevant matters.
- (d) Until such time as an appropriate rate or price is agreed or determined, the Employer's Representative shall determine a provisional rate or price for the purposes of Interim Payment Certificates.

12.4

Omissions

- (a) If the omission of work forms part (or all) of a Variation, the value of which has not been agreed, and:
 - (i) the Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount; or
 - (ii) the omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; or
 - (iii) this cost is not deemed to be included in the evaluation of any substituted work,then the Contractor shall give notice to the Employer's Representative accordingly, with supporting particulars.
- (b) Upon receiving the notice under Sub-Clause 12.4(a), the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine this cost, which shall be included in the Contract Price. For the avoidance of doubt the Contractor is not entitled to loss of profit.

13. VARIATIONS AND ADJUSTMENTS

13.1

Right to Vary

- (a) Subject to the provisions of Clause 3 [*The Employer's Administration*], Variations may be initiated by the Employer in its absolute discretion at any time prior to issuing the Taking Over Certificate for the whole of the Works, either by an instruction or by a request for the Contractor to submit a

proposal.

- (b) The Contractor shall execute and be bound by each Variation.
- (c) Each Variation may include:
 - (i) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation);
 - (ii) changes to the quality and other characteristics of any item of work;
 - (iii) changes to the levels, positions and/or dimensions of any part of the Works;
 - (iv) omission of any part of the Works;
 - (v) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work; or
 - (vi) changes to the sequence or timing of the execution of the Works (including advancing or postponing the Time for Completion).
- (d) The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Employer instructs a Variation in writing.
- (e) The Contractor may, at its cost, submit to the Employer's Representative a written request for a Variation which (in the Contractor's reasonable opinion) is necessary for the proper performance of the Works which will, if adopted:
 - (i) accelerate completion of the Works and/or the Project;
 - (ii) reduce the cost to the Employer of the Works and/or the Project;
 - (iii) improve the efficiency or value to the Employer of the Works and/or the Project; or
 - (iv) otherwise be of benefit to the Employer,

("Contractor Requested Variation").
- (f) A Contractor Requested Variation issued under Sub-Clause 13.1(e) shall, at a minimum, comply with any requirements specified in the Schedule of Specification.
- (g) Subject to the Contractor's compliance with Sub-Clauses 13.1(e) and 13.1(f), the Employer's Representative shall review the Contractor Requested Variation issued under Sub-Clause 13.1(e), and may, in its absolute discretion, direct a Variation in accordance with this Sub-Clause 13.1 or otherwise notify the Contractor that the Employer will not proceed with the Contractor Requested Variation.

- (h) Notwithstanding any other provisions of the Contract, no change, modification, addition or deletion to, in or from the Specification or the Contractor's Documents, the Works or the Contractor's conditions and methods of working, which are necessary due to any act, omission or default of the Contractor in the performance of its obligations under the Contract, shall be deemed to be a Variation and any such matter shall not result in any adjustment of the Contract Price, extension of time or other relief. Any additional Costs to the Employer caused by such change, modification, addition or deletion which are attributable to such default or breach shall be borne by the Contractor and may be recovered by the Employer in accordance with Sub-Clauses 14.7 [*Payment*] and 14.16 [*Set Off*].
- (i) For the avoidance of doubt, the Employer and the Employer's Representative shall have the right to instruct a Variation and the Contractor shall be obliged to execute such Variation notwithstanding any failure of the Parties to agree on the changes (if any) to the Contract Price, Contract Programme and/or the Works required as a result of such Variation.
- (j) No Variation invalidates the Contract. The Contractor agrees that a Variation may involve the omission of any part or parts of the Works and the Contractor agrees that the Employer may engage others to perform that part or parts of the Works which have been omitted. The Contractor further acknowledges that any omission or omissions will not constitute a basis to allege that the Employer has repudiated the Contract no matter the extent or timing of the omission or omissions.

13.2

Value Engineering

- (a) The Contractor may, at any time submit to the Employer's Representative a written proposal which (in the Contractor's opinion) will, if adopted:
 - (i) accelerate completion of the Works and/or the Project;
 - (ii) reduce the cost to the Employer of executing, maintaining or operating the Works and/or the Project;
 - (iii) improve the efficiency or value to the Employer of the completed Works and/or the Project; or
 - (iv) otherwise be of benefit to the Employer.
- (b) The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [*Variation Procedure*].
- (c) If a proposal, which is approved by the Employer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:
 - (i) the Contractor shall design this part;
 - (ii) Sub-Clause 4.1(g) [*Contractor's General Obligations*] shall apply; and

- (iii) if the Employer's Representative determines that this change results in a reduction in the Contract Price, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine a fee (if any), which shall be added to the Contract Price. This fee shall be 30% of the difference between the following amounts:
 - (A) such reduction in the Contract Price, resulting from the change; and
 - (B) the reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.
- (d) If the amount in Sub-Clause 13.2(c)(iii)(A) is less than the amount in Sub-Clause 13.2(c)(iii)(B) no fee shall be added to the Contract Price.

13.3

Variation Procedure

- (a) If the Employer's Representative requests a proposal under Sub-Clause 13.1(a) [*Right to Vary*], prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable and within 14 days by submitting:
 - (i) a description of the proposed design and/or work to be performed and a works programme for its execution;
 - (ii) the Contractor's proposal for any necessary modifications to the Contract Programme according to Sub-Clause 8.3 [*Contract Programme*], including Milestone Dates and the Time for Completion;
 - (iii) the Contractor's proposal for adjustment to the Contract Price (which shall, where applicable, be in accordance with the rates set out in the Schedule of Contract Price); and
 - (iv) any other information requested by the Employer's Representative.
- (b) The Employer's Representative shall, as soon as practicable after receiving such proposal under Sub-Clause 13.3(a) or after receiving a value engineering proposal under Sub-Clause 13.2 [*Value Engineering*], respond with approval, disapproval or comments.
- (c) Each instruction to execute a Variation shall be issued by the Employer's Representative to the Contractor's Representative, who shall acknowledge receipt.
- (d) Upon instructing or approving a Variation, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine adjustments to the Contract Price, valued using rates set out in the Schedule of Contract Price, to the extent the Employer's Representative determines that the scope of the varied work is reasonably comparable to the unit descriptions contained in the Schedule of Contract Price. To the extent

that the scope of the varied work is not reasonably comparable to such unit descriptions, the Employer's Representative shall determine a fair and reasonable valuation.

13.4

Payment in Applicable Currencies

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the valuation of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

13.5

Provisional Sums

- (a) Each Provisional Sum shall only be used, in whole or in part, in accordance with the Employer's Representative's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such actual direct, reasonable and properly incurred and substantiated amounts, for the work, supplies or services to which the Provisional Sum relates, as the Employer's Representative shall have instructed under Sub-Clause 13.5(a)(i) and/or Sub-Clause 13.5(a)(ii). For each Provisional Sum, the Employer's Representative may instruct:
 - (i) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [*Variation Procedure*]; and/or
 - (ii) Plant, Materials or services to be purchased by the Contractor, for which there shall be included in the Contract Price:
 - (A) the actual direct, reasonably and properly incurred and substantiated expenditure paid (or due to be paid) by the Contractor; and
 - (B) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate stated in the Schedule of Details.
- (b) The Contractor shall, when required by the Employer's Representative, produce all quotations, invoices, vouchers and accounts or receipts in substantiation of such amounts.

13.6

Daywork

- (a) For work of a minor or incidental nature, the Employer's Representative may instruct that a Variation shall be executed on a daywork basis. The work shall

then be valued in accordance with the daywork schedule included in the Schedule of Contract Price or as otherwise agreed in writing between the Parties, and the following procedure shall apply.

- (b) Before ordering Goods for the work, the Contractor shall submit quotations to the Employer's Representative. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.
- (c) Except for any items for which the daywork schedule specifies that payment is not due, the Contractor shall deliver each day to the Employer's Representative accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:
 - (i) the names, occupations and time of Contractor's Personnel;
 - (ii) the identification, type and time of Contractor's Equipment and Temporary Works; and
 - (iii) the quantities and types of Plant and Materials used.
- (d) One copy of each statement will, if correct, or when agreed, be signed by the Employer's Representative and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Employer's Representative, prior to their inclusion in the next Statement under Sub-Clause 14.3 [*Application for Interim Payment Certificates*].

13.7

Adjustments for Changes in Law

The Contract Price shall not be adjusted to take account of any increase or decrease in costs resulting from changes in Laws (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws made after the Date of the Contract, which affect the Contractor in the performance of its obligations under the Contract.

13.8

Adjustments for Changes in Cost

- (a) Unless otherwise expressly stated in the Schedule of Contract Price, the Contract Price, and the rates and prices inserted in the Bill of Quantities, shall not be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works.
- (b) Unless allowance for the rises or falls in the cost of labour, Goods and other inputs to the Works is stated in the Schedule of Contract Price, the Accepted Contract Amount and the rates and prices inserted in the Bill of Quantities, shall be deemed to include amounts to cover contingency of rises and falls in the cost of labour, Goods and other inputs to the Works.
- (c) For the avoidance of doubt, if the Contractor is entitled to payment of any Costs to be included in the Contract Price under a Sub-Clause of these

General Conditions (other than in the event of any Variation or a suspension which is not attributable to or the responsibility of the Contractor) then the Employer's Representative shall determine such Costs, valued using an appropriate rate (if any) set out in the Schedule of Contract Price and such rates shall not be adjusted for any rise or fall in the cost of such labour, Goods and other inputs to the Works, unless otherwise stated in the Schedule of contract Price.

14. CONTRACT PRICE AND PAYMENT

14.1

The Contract Price

Unless otherwise stated in the Contract:

- (a) the Contract Price shall be agreed or determined under Sub-Clause 12.3 [*Evaluation*] and shall be subject to adjustments in accordance with the Contract;
- (b) the Contractor shall pay all taxes, duties and fees required to be paid by it under the Contract and as required by Law, and the Contract Price shall not be adjusted for any of these costs;
- (c) any quantities which may be set out in the Schedule of Contract Price (including the Bill of Quantities) are estimated quantities and are not to be taken as the actual and correct quantities;
 - (i) of the Works which the Contractor is required to execute; or
 - (ii) for the purposes of Clause 12 [*Measurement and Evaluation*]; and
- (d) the Contractor shall submit to the Employer's Representative, within 28 days after the Date of the Contract, a proposed breakdown of each lump sum price in the Schedule of Contract Price (including the Bill of Quantities). The Employer's Representative may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

14.2

Advance Payment

- (a) The Employer shall make the advance payment (if any) set out in the Schedule of Payments, as a loan for mobilisation, when the Contractor submits a guarantee in accordance with this Sub-Clause 14.2. If no advance payment is set out in the Schedule of Payments, then this Sub-Clause 14.2 shall not apply.
- (b) The Employer shall pay the advance payment only after receiving:

- (i) a Statement (under Sub-Clause 14.3 [*Application for Interim Payment Certificates*]);
 - (ii) all Bank Guarantees for performance in accordance with Sub-Clause 4.2 [*Bank Guarantee for Performance*]; and
 - (iii) a Bank Guarantee for advance payment in accordance with Sub-Clause 14.2(c), in amounts and currencies equal to the advance payment.
- (c) The Bank Guarantee for advance payment payable in accordance with Sub-Clause 14.2(b)(iii), shall be an unconditional and irrevocable on-demand bank guarantee in the form set out in the Schedule of Forms of Security from a leading and accredited bank approved by the Employer. Unless and until the Employer receives this guarantee, this Sub-Clause 14.2 shall not apply.
- (d) The Contractor shall ensure that the Bank Guarantee for advance payment is valid and enforceable until the whole of the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor in the interim payments. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.
- (e) The advance payment shall be repaid by the Contractor through percentage deductions in Payment Certificates. The Employer shall deduct a percentage of each Payment Certificate, at the rate stated in the Schedule of Payments, until such time as the advance payment has been repaid.
- (f) If the advance payment has not been repaid prior to the issue of the Taking Over Certificate for the Works or prior to termination under Clause 15 [*Termination by Employer*], Clause 16 [*Suspension and Termination by Contractor*] or Clause 19 [*Force Majeure*] (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

14.3

Application for Interim Payment Certificates

- (a) The Contractor shall, in accordance with the timing specified in the Schedule of Payments, submit a Statement in four copies to the Employer's Representative, in a form approved by the Employer's Representative, showing in detail the amounts to which the Contractor considers itself to be entitled up to the end of the relevant payment period, together with supporting documents which shall include the relevant report on progress in accordance with Sub-Clause 4.21 [*Progress Reports*].
- (b) The Statement shall include the following items, as applicable, which shall be expressed in the currency in which the Contract Price is payable, in the sequence listed:

- (i) the estimated contract value of the Works executed (which shall be calculated in accordance with the Schedule of Contract Price) and the Contractor's Documents produced up to the end of the relevant payment period (including Variations but excluding items described in Sub-Clauses 14.3 (b)(ii) to (vii) below);
- (ii) the achievement of any Milestones which entitle the Contractor to Milestone Payments (if any) set out in the Schedule of Contract Price in the amounts specified therein;
- (iii) any amount to be deducted for Retention Monies, calculated by applying the percentage of retention stated in the Schedule of Details to the total of the above amounts until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Schedule of Details;
- (iv) any amounts to be deducted for advance payment and repayments in accordance with Sub-Clause 14.2 [*Advance Payment*];
- (v) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [*Plant and Materials intended for the Works*];
- (vi) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [*Claims, Disputes and Arbitration*]; and
- (vii) the deduction of amounts certified in all previous Payment Certificates.

14.4

Instalment Payment Estimates

- (a) If the Schedule of Payments specifies the instalment amounts in which the Contract Price will be paid, then, unless otherwise stated in the Schedule of Payments:
 - (i) the instalment amounts quoted in the Schedule of Payments shall be estimated contract values for the purposes of Sub-Clause 14.3(b)(i);
 - (ii) Sub-Clause 14.5 [*Plant and Material intended for the Works*] shall not apply; and
 - (iii) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less than that on which the Schedule of Payments was based, then the Employer's Representative may proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine revised instalment amounts, taking into account the extent to which the progress is less than that on which the instalment amounts were previously based.

- (b) If the Schedule of Payments does not specify the instalment amounts in which the Contract Price will be paid, the Contractor shall submit non-binding estimates of the payments which it expects to become due during each monthly period. The first estimate shall be submitted within 28 days after the Date of the Contract. Revised estimates shall be submitted at monthly intervals, until the Taking Over Certificate has been issued for the whole of the Works.

14.5

Plant and Materials intended for the Works

- (a) If this Sub-Clause 14.5 applies, Interim Payment Certificates shall include, under Sub-Clause 14.3(b)(v):
 - (i) an amount for Plant and Materials which have been delivered to the Site for incorporation in the Permanent Works; and
 - (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under Sub-Clause 14.3(b)(i).
- (b) If the lists referred to in either Sub-Clauses 14.5(c)(ii)(A) or 14.5(c)(iii)(A) below are not included in the Schedule of Payments, this Sub-Clause 14.5 shall not apply.
- (c) The Employer's Representative shall determine and certify each addition if the following conditions are satisfied:
 - (i) the Contractor has:
 - (A) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection; and
 - (B) submitted a statement of the Costs incurred in acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence,and either:
 - (ii) the relevant Plant and Materials:
 - (A) are those listed in the Schedule of Payments for payment when shipped;
 - (B) have been shipped to the Country, en route to the Site, in accordance with the Contract; and
 - (C) are described in a clean shipped bill of lading or other evidence, of shipment, which has been submitted to the Employer's Representative together with evidence of payment of freight and insurance, any other documents reasonably

required, and a bank guarantee in a form and issued by an entity approved by the Employer in amounts and currencies equal to the amount due under this Sub-Clause 14.5 (this guarantee shall be in a form acceptable to the Employer and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration); or

- (iii) the relevant Plant and Materials:
 - (A) are those listed in the Schedule of Payments for payment when delivered to the Site; and
 - (B) have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Contract.
- (d) The additional amount to be certified shall be the equivalent of eighty percent of the Employer's Representative's determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause 14.5 and of the contract value of the Plant and Materials.
- (e) The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under Sub-Clause 14.3(b)(i). At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

14.6

Issue of Interim Payment Certificates

- (a) No amount will be certified or paid until the Employer has received and approved the Bank Guarantee for performance. Thereafter, the Employer's Representative shall, within 28 days after receiving a Statement and supporting documents, issue to the Employer an Interim Payment Certificate which shall state the amount which the Employer's Representative fairly determines to be due, with supporting particulars.
- (b) Prior to issuing the Taking Over Certificate for the Works, the Employer's Representative shall not be bound to issue an Interim Payment Certificate in an amount which would be less than the minimum amount of Interim Payment Certificates as set out in the Schedule of Payments. In this event, the Employer's Representative shall give notice to the Contractor accordingly.
- (c) An Interim Payment Certificate shall not be withheld for any other reason, although:
 - (i) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement

- may be withheld until rectification or replacement has been completed;
- (ii) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Employer's Representative, the value of this work or obligation may be withheld until the work or obligation has been performed; and/or
 - (iii) if the Contractor fails to submit a revised works programme in accordance with Sub-Clause 8.3 [*Contract Programme*] or monthly progress report in accordance with Sub-Clause 4.21 [*Progress Reports*], payment may be withheld until such programme or monthly progress report (as the case may be) has been submitted.
- (d) The Employer's Representative may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate or payment of the amounts there under shall not be deemed to indicate the Employer's Representative's or Employer's (as the case may be) acceptance, approval, consent or satisfaction.

14.7

Payment

- (a) Except as otherwise stated in Sub-Clause 14.6 [*Issue of Interim Payment Certificates*], the Employer shall pay to the Contractor:
 - (i) the amount certified in each Interim Payment Certificate within 30 days after the Employer's Representative issues such Interim Payment Certificate; and
 - (ii) the amount certified in the Final Payment Certificate within 30 days after the Employer receives this Payment Certificate.
- (b) Payment of the amount due shall be made into the bank account nominated by the Contractor except as otherwise stated in the Contract and the Contractor shall be responsible for and shall pay any bank transfer fees arising out of or in connection with payments made by the Employer to the Contractor pursuant to the Contract.
- (c) The Contractor undertakes to pay its Subcontractors and suppliers in accordance with the provisions of the relevant contract and to ensure that labourers employed in the execution of the Works, whether by the Contractor or by its Subcontractors, are paid in accordance with their respective contracts and the Laws.
- (d) Notwithstanding any other provision of the Contract, the Employer may withhold from any payment due to the Contractor amounts the Employer deems reasonably necessary or appropriate to protect it from liability or loss because of any one or more of the following reasons:

- (i) defects and deficiencies in any Works, whether or not payment has been made;
- (ii) failure by the Contractor to provide a Bank Guarantee for performance in accordance with the Contract;
- (iii) failure by the Contractor to procure and maintain insurance policies in accordance with the Contract;
- (iv) reasonable evidence that completion of the Works or a Section will not occur by the Time for Completion and the unpaid balance of the Contract Price will not be adequate to cover amounts that are likely to be payable by the Contractor under Sub-Clause 8.7 [*Delay Damages*];
- (v) failure by the Contractor, in any material respect, to execute the Works;
- (vi) failure by the Contractor to comply with its obligations under Sub-Clauses 1.13 [*Compliance with Laws*] and 1.17 [*Registered or Licensed*];
- (vii) any overpayments made by the Employer in a previous payment; and
- (viii) a dispute exists as to the accuracy or completeness of any Statement (but only with respect to the amount then in dispute).

14.8

Not Used

14.9

Payment of Retention Money

- (a) When the Taking Over Certificate has been issued for the whole of the Works and the Works have passed all specified tests, the first half of the Retention Money will be certified by the Employer's Representative for payment to the Contractor.
- (b) Promptly after the latest expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Employer's Representative for payment to the Contractor.
- (c) If any part of the Works remains to be executed under Clause 11 [*Defects Liability*], the Employer's Representative shall be entitled to withhold certification of the estimated cost of that part of the Works until it has been completed.

14.10

Statement at Taken Over

- (a) Within 60 days after receiving the Taking Over Certificate for the Works, the Contractor shall submit to the Employer's Representative four copies of a Statement with supporting documents, in accordance with Sub-Clause 14.3 [*Application for Interim Payment Certificates*], showing:
 - (i) the value of all work done in accordance with the Contract up to the date stated in the Taking Over Certificate for the Works;
 - (ii) any further sums which the Contractor considers to be due; and
 - (iii) an estimate of any other amounts which the Contractor considers will become due to it under the Contract. Estimated amounts shall be shown separately in this Statement, (**"Statement at Taken Over"**).
- (b) The Employer's Representative shall then review and certify the Statement at Taken Over in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*].
- (c) Unless the Contractor includes the details required by Sub-Clause 20.1(g) [*Contractor's Claims*] in the Statement at Taken Over, the Contractor is not entitled to, and the Contractor releases the Employer from any liability for any additional time, relief or the payment of any money arising out of or in connection with any events or circumstances occurring prior to the date of the Statement at Taken Over is submitted.

14.11

Application for Final Payment Certificate

- (a) Within 56 days after receiving the Final Completion Certificate, the Contractor shall submit, to the Employer's Representative, four copies of a draft final statement with supporting documents showing in detail, in a form approved by the Employer's Representative:
 - (i) the value of all work done in accordance with the Contract; and
 - (ii) any further sums which the Contractor considers to be due to it under the Contract or otherwise.
- (b) If the Employer's Representative disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Employer's Representative may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Employer's Representative the final statement as agreed. This agreed statement is referred to in these General Conditions as the "Final Statement".

- (c) If, following discussions between the Employer's Representative and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Employer's Representative shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement.
- (d) Thereafter, if the dispute is finally resolved under Sub-Clauses 20.2 [*Disputes and Differences*] and 20.3 [*Dispute Resolution Procedures*], the Contractor shall then prepare and submit to the Employer (with a copy to the Employer's Representative) a Final Statement.

14.12

Discharge

When submitting the Final Statement, the Contractor shall submit a written discharge in the form set out in the Schedule of Forms of Certificates, which confirms that the total of the Final Statement represents full and final settlement of all monies due to the Contractor under or in connection with the Contract.

14.13

Issue of Final Payment Certificate

- (a) Within 28 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 14.11 [*Application for Final Payment Certificate*] and Sub-Clause 14.12 [*Discharge*], the Employer's Representative shall issue, to the Employer, the Final Payment Certificate which shall state:
 - (i) the amount which is finally due; and
 - (ii) the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be, after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled,.
- (b) If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [*Application for Final Payment Certificate*] and Sub-Clause 14.12 [*Discharge*], the Employer's Representative shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Employer's Representative shall issue the Final Payment Certificate for such amount as it fairly determines to be due.
- (c) No payment by the Employer, or the issue of any certificate, constitutes acceptance by the Employer of the Works or any part of the Works, or releases the Contractor from any of its warranties, obligations or liabilities under or in connection with the Contract.

14.14

Cessation of Employer's Liability

- (a) The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:
 - (i) in the Final Statement;
 - (ii) (except for matters or things after the issue of the Taking Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [*Statement at Completion*]; and
 - (iii) the Employer's Representative has certified such amounts as due and payable to the Contractor.
- (b) This Sub-Clause 14.14 shall not limit the Employer's liability under its indemnification obligations or in case of fraud, deliberate default or reckless misconduct by the Employer.

14.15

Currencies of Payment

Unless otherwise stated in the Contract, the Contract Price and all other payments under the Contract shall be paid in the currency or currencies stated in the Schedule of Details. Unless otherwise stated in the Particular Conditions, if more than one currency is so named, payments shall be made as follows:

- (a) if the Contract Price is only expressed in the local currency of the Country:
 - (i) the proportions or amounts of the local and foreign currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Schedule of Details, except as otherwise agreed by both Parties;
 - (ii) payments and deductions under Sub-Clause 13.5 [*Provisional Sums*] and Sub-Clause 13.7 [*Adjustments for Changes in Law*] shall be made in the applicable currencies and proportions; and
 - (iii) other payments and deductions under Sub-Clause 14.3 [*Application for Interim Payment Certificates*] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;
- (b) payment of the damages specified in the Schedule of Details shall be made in the currencies and proportions specified in the Schedule of Details;
- (c) other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;

- (d) if any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (e) if no rates of exchange are stated in the Schedule of Details, they shall be those prevailing on the Date of the Contract and determined by the central bank of the Country.

14.16

Set Off

The Employer may retain or set off any amounts which are or may be payable by the Contractor to the Employer against amounts that may become or are payable to the Contractor (including security) under the Contract.

14.17

Audit and Investigations

- (a) Each payment made by the Employer to the Contractor may be subject to a post-payment audit by auditors, whether internal or external, of the Employer or by other authorised and qualified agents of the Employer at any time during the term of the Contract and for a period of two (2) years following the expiration or prior termination of the Contract. The Employer shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the Employer other than in accordance with the terms and conditions of the Contract.
- (b) The Contractor acknowledges and agrees that, from time to time, the Employer may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract. The right of the Employer to conduct an investigation and the Contractor's obligation to comply with such an investigation shall not lapse upon issuance of the Final Completion Certificate or prior termination of the Contract. The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available the Contractor's Personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to the Employer access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's Personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by the Employer.

15. TERMINATION BY EMPLOYER

15.1

Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Employer's Representative may by written notice require the Contractor to make good the failure and to remedy it within a specified time.

15.2

Termination by Employer

- (a) The Employer shall have the right to terminate the Contract if the Contractor:
- (i) fails to comply with Sub-Clause 4.2 [*Bank Guarantee for Performance*] or with a notice under Sub-Clause 15.1 [*Notice to Correct*];
 - (ii) fails to comply with its obligations under Clause 18 [*Insurance*];
 - (iii) abandons the Works or otherwise demonstrates the intention not to continue performance of its obligations under the Contract;
 - (iv) without reasonable excuse fails:
 - (A) to proceed with the Works in accordance with Clause 8 [*Commencement, Delays and Suspension*]; or
 - (B) to comply with a notice issued under Sub-Clause 7.5 [*Rejection*] or Sub-Clause 7.6 [*Remedial Work*], within 28 days after receiving it; or
 - (C) to comply with its obligations under Sub-Clauses 1.13 [*Compliance with Laws*] and 1.17 [*Registered or Licensed*]; or
 - (v) subcontracts the execution of the whole of the Works or assigns the Contract or any part thereof without the Employer's prior written consent;
 - (vi) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events;
 - (vii) is in breach of Sub-Clauses 4.27, 4.28, 6.17, 6.18 and 6.19;

- (viii) provides the Employer with a right to terminate under the provisions of Sub-Clause 8.7 [*Delay Damages*];
 - (ix) submits a guarantee, certificate, statement, test result or any document it is required to submit under the Contract that is false or intentionally misleading; or
 - (x) is otherwise in material breach of the Contract.
- (b) In any of these events or circumstances, the Employer may, upon giving 14 days written notice to the Contractor, terminate the Contract and expel the Contractor from the Site. In the case of Sub-Clauses 15.2(a)(vi) to (vii) and Sub-Clause 15.2(a)(ix), the Employer may by written notice terminate the Contract immediately.
- (c) The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under or in connection with the Contract.
- (d) The Contractor shall then leave the Site and deliver any required Goods and all Contractor's Documents made by or for it, to the Employer's Representative. The Contractor shall use its best efforts to comply immediately with any reasonable instructions included in the notice:
- (i) for the assignment of any subcontract; or
 - (ii) for the protection of life or property or for the safety of the Works.
- (e) After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods and/or Contractor's Documents made by or on behalf of the Contractor.
- (f) The Employer shall then give written notice to the Contractor as to when the Contractor's Equipment and Temporary Works will be released at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. If by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

15.3

Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 [*Termination by Employer*] has taken effect, the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

15.4

Payment after Termination

After a notice of termination under Sub-Clause 15.2 [*Termination by Employer*] has taken effect, the Employer may:

- (a) withhold further payments to the Contractor until the Costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established and paid; and/or
- (b) recover from the Contractor any costs incurred by the Employer and any extra costs of completing the Works, including, without limitation, the reasonable costs of technical, legal and other advisers incurred by the Employer in relation to the employment of a new contractor to rectify and complete the Works after allowing for any sum due to the Contractor under Sub-Clause 15.3 [*Valuation at Date of Termination*]. After recovering any such costs, the Employer shall pay any balance to the Contractor.

15.5

Employer's Entitlement to Termination for Convenience

- (a) The Employer may in its absolute discretion terminate the Contract, at any time for the Employer's convenience, by giving written notice of such termination to the Contractor. The termination shall take effect 28 days after the latter of the dates on which the Contractor receives the written notice, or the Employer returns the Bank Guarantee for performance.
- (b) Upon termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*] and shall be paid in accordance with Sub-Clause 19.6 [*Optional Termination, Payment and Release*].

16. SUSPENSION AND TERMINATION BY CONTRACTOR

16.1

Contractor's Entitlement to Suspend Work

- (a) If the Employer fails to comply with Sub-Clause 14.7 [*Payment*], the Contractor may, after giving not less than 21 days written notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received payment.
- (b) The Contractor's action shall not prejudice its entitlements to termination under Sub-Clause 16.2 [*Termination by Contractor*].
- (c) If, subsequent to issuing the notice to the Employer under Sub-Clause 16.1(a) and before giving a notice of termination, the Contractor receives

payment, the Contractor shall resume normal working as soon as is reasonably practicable.

- (d) If the Contractor suffers delay and/or incurs Costs as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause 16.1, the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:
 - (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
 - (ii) payment of any such Costs, which shall be added to the Contract Price as a Variation.
- (e) After receiving the Claim Notice under Sub-Clause 16.1(d), the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine the matters described in Sub-Clause 16.1(d).

16.2

Termination by Contractor

- (a) Subject to Sub-Clause 16.2(b), the Contractor shall have the right to terminate the Contract, after giving 28 days written notice to the Employer of its intention to terminate the Contract, if:
 - (i) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the Works have been suspended by the Contractor under Sub-Clause 16.1 (a) (except for payments withheld or deductions in accordance with Sub-Clause 14.7 [*Payment*] or 14.16 [*Set off*]);
 - or
 - (ii) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [*Prolonged Suspension*].
- (b) If the Employer remedies the alleged breach under Sub-Clause 16.2(a) within the 28 day notice period, the Contractor may not terminate the Contract.

16.3

Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [*Employer's Entitlement to Termination for Convenience*], Sub-Clause 16.2 [*Termination by Contractor*] or Sub-Clause 19.6 [*Optional Termination; Payment and Release*] has taken effect, the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Employer's Representative for the protection of life or property or for the safety of the Works;
- (b) hand over to the Employer the Contractor's Documents, all Plant, Materials and other work, for which the payment has been certified in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*];
- (c) remove all other Goods from the Site, except as necessary for safety or those owned by the Employer, and vacate the Site;
- (d) to the extent legally possible, procure the assignment or novation or otherwise to the Employer or an entity nominated by the Employer all rights, title and benefit of the Contractor to the Works and in the Plant, Materials and other work as at the date of termination;
- (e) deliver to the Employer all Contractor's Documents prepared by the Contractor or its Subcontractors as at the date of termination in connection with the Works; and
- (f) unless otherwise notified in writing by the Employer, remove all Contractor's Equipment from the Site and remove from the Site any wreckage, rubbish and debris of any kind and leave the whole of the Site in a clean and safe condition.

16.4

Payment on Termination

After a notice of termination under Sub-Clause 16.2 [*Termination by Contractor*] has taken effect, the Employer shall promptly:

- (a) return the Bank Guarantee for performance to the Contractor; and
- (b) pay the Contractor in accordance with Sub-Clause 19.6 [*Optional Termination, Payment and Release*].

17. RISK AND RESPONSIBILITY

17.1

Indemnities

- (a) The Contractor shall defend, indemnify, hold and save harmless, at its own expense, including all legal costs, the Indemnified Parties from and against any and all suits, actions or administrative proceedings, claims, demands and costs arising in any manner out of the acts or omissions of the Contractor or its employees, agents or Subcontractors or otherwise in connection with the execution of the Works and the Contractor's other obligations under or in connection with the Contract, including but not limited to, in respect of:

- (i) the remedying of any defects in accordance with Clause 11 [*Defects Liability*] and for any periods prescribed by Law;
 - (ii) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Works;
 - (iii) damage to or loss of any property of the Indemnified Parties or any other property, real or personal, for any period prescribed by Law;
 - (iv) fines or penalties and/or any additional costs imposed by Law; or any Authority, arising out of or in connection with a breach of Law, the requirements of any Authority and/or guidelines, caused by the Contractor (both on and off site) or the Contractor's Personnel;
 - (v) a failure by the Contractor to comply with its obligations under Sub-Clauses 1.13 [*Compliance with Laws*] and 1.17 [*Registered or Licensed*]; and
 - (vi) the infringement of any Intellectual Property Rights.
- (b) In defending the Employer, the Contractor shall not enter into a settlement without the prior written approval of the Employer.
 - (c) The indemnities required by this Sub-Clause 17.1 survive the completion, termination or expiry of the Contract.

17.2

Contractor's Care of the Works

- (a) The Contractor shall take full responsibility for the care of the Works from the Date of the Contract, and the parts of the Site set out in the Schedule of Site Plan from the dates stated in the Schedule of Details, until the Taking Over Certificate is issued under Sub-Clause 10.1 [*Taking Over of the Works and Sections*] for the Works, at which time responsibility for the care of the Works shall pass to the Employer. If a Taking Over Certificate is issued for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.
- (b) After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking Over Certificate, until this outstanding work has been completed.
- (c) If any loss or damage happens to the Works, during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [*Employer's Risks*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, including any Goods and Contractor's Documents conform with the Contract.
- (d) The Contractor shall be liable for any Costs caused by any actions performed by the Contractor, the Contractor's Personnel or any Subcontractor after a

Taking Over Certificate has been issued. The Contractor shall also be liable for any Costs which occur after a Taking Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

17.3

Employer's Risks

The risks referred to in Sub-Clause 17.4 [*Consequences of Employer's Risks*] below are:

- (a) war, (whether war be declared or not), invasion, act of foreign enemies within the Country;
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war within the Country, but excluding civil unrest;
- (c) munitions of war, ionising radiation or contamination by radio-activity within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and
- (d) use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract.

17.4

Consequences of Employer's Risks

- (a) If and to the extent that any of the risks listed in Sub-Clause 17.3 [*Employer's Risks*] above results in loss or damage to the Works the Contractor shall promptly give notice to the Employer's Representative and shall rectify this loss or damage to the extent instructed by the Employer's Representative.
- (b) If the Contractor suffers delay and/or incurs Costs from rectifying this loss or damage, the Contractor shall give a Claim Notice to the Employer's Representative and shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:
 - (i) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*]; and
 - (ii) payment of any such Costs, which shall be added to the Contract Price as a Variation.
- (c) After receiving this Claim Notice, the Employer's Representative shall proceed in accordance with Sub-Clause 20.1 [*Contractor's Claims*] and Sub-Clause 3.5 [*Determinations*] to agree or determine the matters described in Sub-Clause 17.4(a). If such delays and/or Costs arise as a consequence of any risk listed in Sub-Clause 17.3 [*Employer's Risks*] and any other risk not listed therein, then the agreement or determination in accordance with Sub-Clause 3.5 [*Determinations*] shall take into account the proportionate responsibility of the Contractor and the Employer.

17.5

Intellectual and Industrial Property Rights

- (a) In this Sub-Clause 17.5:
 - (i) "**infringement**" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and
 - (ii) "**claim**" means a claim (or proceedings pursuing a claim) alleging an infringement.
- (b) The Employer shall indemnify the Contractor against and from any claim alleging an infringement which is or was:
 - (i) an unavoidable result of the Contractor's use of the Employer Documents in accordance with Sub-Clause 1.10 [*Ownership and licence of Intellectual Property Rights*]; or
 - (ii) a result of any Works being used by the Employer:
 - (A) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract; or
 - (B) in conjunction with any thing not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Date of the Contract or is stated in the Contract.
- (c) The Contractor shall indemnify the Employer against and from any other claim which arises out of or in relation to:
 - (i) the manufacture, use, sale or import of any Goods; or
 - (ii) any design for which the Contractor is responsible.
- (d) If a Party is entitled to be indemnified under this Sub-Clause 17.5, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.
- (e) The indemnities required by this Sub-Clause 17.5 survive the completion, termination or expiry of the Contract.

17.6

Limitation of Liability

- (a) Neither Party shall be liable to the other Party for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under Sub-Clauses 4.6 [*Co-operation*], 4.14 [*Avoidance of Interference*], 4.16 [*Transport of Goods*], 4.18 [*Protection of the Environment*], 17.1 [*Indemnities*] and 17.5 [*Intellectual and Industrial Property Rights*] and as may be included in any delay damages pursuant to Sub-Clause 4.13 [*Rights of Way and Facilities*] and 8.7 [*Delay Damages*].
- (b) Subject to Sub-Clause 17.6(c), the total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clauses 4.14 [*Avoidance of Interference*], 4.16 [*Transport of Goods*], 4.18 [*Protection of the Environment*], 4.19 [*Electricity, Water and Gas*], 4.20 [*Employer's Equipment and Free-Issue Material*], 17.1 [*Indemnities*], and 17.5 [*Intellectual and Industrial Property Rights*] shall not exceed the amount of the aggregate limit of liability stated in the Schedule of Details.
- (c) If:
- (i) the Contractor fails to procure or maintain the Contractor's insurance policies that it is required to procure and maintain under Clause 18 [*Insurance*] and the Employer does not elect to take out such insurance policies under Sub-Clause 18.1(n); or
 - (ii) the Contractor fails to comply with its obligations under the Contract and through any act or omission it prejudices or otherwise breaches and renders void, voidable, unenforceable, suspended, impaired or it defeats the insurances that are procured either by itself or the Employer in accordance with Clause 18 [*Insurance*],
- then the aggregate limit of liability under Sub-Clause 17.6(b) shall not exceed the Contract Price.
- (d) It is expressly agreed that any limitation of liability that is stated under this Sub-Clause 17.6 does not apply to, or limit in any manner the Contractor's liability in relation to the Employer's entitlement to:
- (i) Delay Damages under Sub-Clauses 8.7 [*Delay Damages*] and damages under Sub-Clause 9.4 [*Failure to Pass Tests on Completion*];
 - (ii) withhold payment under Sub-Clause 14.7 [*Payment*];
 - (iii) set-off in accordance with Sub-Clause 14.16 [*Set Off*]; or
 - (iv) make claims on Final Completion Certificates.
- (e) This Sub-Clause 17.6 shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the Contractor.

17.7

Warranties relating to the Works

Without prejudice to any other warranties expressed elsewhere in the Contract, and despite any inclusion of the Employer Documents in the Contract (including in the Specification and the Drawings) or any approval given or withheld by the Employer under the Contract, the Contractor warrants that:

- (a) the Works will be executed with all the skill and care to be expected of appropriately qualified and experienced international contractors with experience in performing works and services of a similar size, type, nature, scope and complexity to the Works and in accordance with Industry Best Practices;
- (b) the Works will be executed in accordance with the Contract, for the Contract Price, and by the Time for Completion and that it will furnish all parts of the Works and all materials and services necessary to make the Works fully and operationally complete as specified in the Contract;
- (c) when the Works are completed they shall be fit for such purposes for which the Works are intended as are specified in the Schedule of Specification;
- (d) the Works will be executed with the highest regard for safety and protection of the environment and so that the Works are capable of being operated and utilised in accordance with all applicable Laws and the Contract;
- (e) the Works and the Plant and Materials utilise proven technology, being a technology that has operated commercially at other similar works and which, as of the Date of the Contract, is capable of being insured on a reasonable commercial basis;
- (f) the Plant and Materials shall, when first used during the performance of the Works, be new and unused and shall also be, in accordance with the Contract and of a quality reasonably expected in the international construction and design industries, free from material defects and deficiencies of any kind, and free from any encumbrance or Security Interest and shall conform to the requirements set out in the Contract; and
- (g) the Works will comply with all applicable Laws and the requirements of all relevant Authorities at the time the Works are Taken Over; and
- (h) the warranties provided under this Sub-Clause 17.7 survive the completion, termination or expiry of the Contract.

18. INSURANCE

18.1

General Requirements for Insurances

- (a) The Employer shall procure and maintain at all times as valid and enforceable, insurances as described in the Schedule of Insurance Requirements as the “Employer Insurances”, if any, for the periods set out therein.
- (b) The Contractor shall procure and maintain at all times valid and enforceable insurances described in the Schedule of Insurance Requirements as “Contractor Insurances” as set out therein. The Contractor shall also procure and maintain at all times any other valid and enforceable insurances as may be required by Law and cause its Subcontractors to effect and maintain at all times such valid and enforceable insurance(s) (as appropriate). Unless otherwise instructed by the Employer, the Contractor insurances shall be placed with insurers of good repute and with a financial rating of not lower than Standard & Poor's BBB, Moody's Baa or A.M.Best BBB+.
- (c) A Party shall immediately notify the other Party in writing of the occurrence of any of the following events:
 - (i) any circumstance which may lead to the cancellation, non-renewal, suspension or impairment of any insurance taken out pursuant to this Sub-Clause 18.1;
 - (ii) an insurer denying coverage or liability for a claim;
 - (iii) an insurer asserting orally or in writing, that one or more of the insurances is void, voidable or otherwise unenforceable; or
 - (iv) it becoming aware of any circumstances which might lead to one or more of the insurances becoming void, voidable or unenforceable.
- (d) The Parties will each provide the other with not less than 28 days written notice in advance of the cancellation, non-renewal, suspension or impairment of any of the insurances taken out pursuant to this Sub-Clause 18.1 or any material change to the terms and conditions of such insurances.
- (e) The Contractor shall, at the request of the Employer, disclose the following information to the insurers in relation to the insurances to be procured by the Employer:
 - (i) all information which the Contractor acting in accordance with Industry Best Practices believes that the insurers will require in their analysis of any risk;
 - (ii) all information which the insurers and Employer specifically require to be disclosed;

- (iii) all other information which the Contractor acting in accordance with Industry Best Practices and in good faith could reasonably consider to be material to the relevant insurance cover; and
 - (iv) all information in respect of any problem or delay that is deemed material to the insurance in the opinion of the Employer.
- (f) The Contractor shall provide all such information in a timely manner so as to enable the Employer to comply with its obligations of disclosure to its insurers.
- (g) The Contractor shall keep the Employer informed of any material changes in its methods or procedures of working which may affect insurance cover. Neither Party shall make any material alteration to the terms of any insurance without the prior written consent of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give written notice to the other Party.
- (h) The Contractor shall comply fully with, and shall require its Subcontractors to comply fully with, all procedures and services including completion of all necessary applications for insurance, prompt and full compliance with all audit requests and claim reporting procedures, and full participation in and compliance with safety and loss control programmes implemented by, or at the request of, the Employer.
- (i) Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage.
- (j) The insurances referred to in Sub-Clauses 18.1(a) and 18.1(b) shall:
 - (i) name the other Party as co-insured;
 - (ii) contain a clause waiving the insurers' subrogation rights against each insured party, its employees and agents (except where such rights are due to a vitiating act); and
 - (iii) provide for 30 days prior written notice of their cancellation, non-renewal or amendment to be given to the Employer.
- (k) The Contractor shall, as soon as reasonably practicable, submit to the Employer copies of cover notes and/or a broker letter in evidence that:
 - (i) the insurances to be procured and maintained pursuant to this Sub-Clause 18.1 have been effected; and
 - (ii) all premiums due have been paid.
- (l) If the Contractor or the Employer is a co-insured to an insurance policy, it shall be entitled to:
 - (i) receive, as soon as reasonably practicable, a copy of the policy documents, including the policy wording and any endorsements; and

- (ii) inspect during ordinary business hours such original policies of insurances.
- (m) Renewal certificates in relation to such insurances shall be obtained as and when necessary and copies thereof (certified in a manner acceptable to the other Party) shall be forwarded to the other Party as soon as possible but in any event at least 28 days before the renewal date.
- (n) If the Contractor fails to procure or maintain at all times any of the insurances required under this Sub-Clause 18.1, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause 18.1, the Employer may, at its option and without prejudice to any other right or remedy, after having notified the Contractor in writing, pay any premiums or take any such other steps as may be required to procure or maintain such insurance in force at the expense of the Contractor.
- (o) Subject to Sub-Clauses 18.1(p), (q), (r) and (s), the Employer shall be responsible for handling any claims under the Employer Insurances and the Contractor shall be responsible for handling any claims under the Contractor Insurances.
- (p) The Contractor will give the Employer, and the insurer (as may be required by the applicable insurance) written notice immediately upon:
 - (i) the occurrence of any loss which will or may exceed the deductible on a Contractor Insurance policy; and
 - (ii) becoming aware of any circumstances which might give rise to a loss which will exceed the deductible of the applicable insurance.
- (q) Any notice given by the Contractor will include full details of the nature of the loss or the circumstances which may give rise to the loss, its amount and the steps that have been taken, or will be taken in respect of such loss or circumstances subject to the insurer's consent (as may be required under the applicable insurance). The Contractor will keep the Employer fully informed in respect of any material developments as soon as they occur.
- (r) The Contractor shall not, without obtaining the prior written consent of the Employer, and the insurer (as may be required under the applicable insurance):
 - (i) make any admission of liability to a third party;
 - (ii) enter into any negotiation to settle or compromise a claim under a Contractor Insurance;
 - (iii) enter into a settlement or compromise a claim on the Contractor Insurances; or
 - (iv) commence litigation or arbitration proceedings.

- (s) In handling a claim with an insurer, the Contractor shall keep the Employer fully informed and seek the co-operation of the Employer and its professional advisors.
- (t) The insurances required in Sub-Clauses 18.1(a) and 18.1(b) shall be primary to and not in excess to (except in respect of any layers of third party cover effected specifically for the Works) or contributing with any other insurance maintained by any insured.
- (u) Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve the Contractor of its liabilities and obligations under the Contract. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities.
- (v) The insurances required in Sub-Clause 18.1(b) shall be procured with insurers, and in terms, approved in writing by the Employer. Such approval shall not be unreasonably withheld or delayed by the Employer.
- (w) The Contractor shall be responsible under any of the insurance policies required in Sub-Clause 18.1(a) for any deductible, fees and other costs or failure to recover in whole or part, in which case the Contractor shall indemnify the Employer in respect of such deductible, fees and other costs or failure to recover.
- (x) Any comment, review or approval by the Employer or the Employer's Representative under this Sub-Clause 18.1 shall not relieve the Contractor from any of its warranties, obligations or liabilities under or in connection with this Clause 18 or otherwise under the Contract. The Contractor will be deemed to have undertaken its own analysis of the suitability, enforceability and adequacy of all insurance policies procured under Sub-Clause 18.1. The Contractor acknowledges and agrees that neither the Employer nor the Employer's Representative will be liable to the Contractor arising out of or in connection with any comment, review or approval given by them under this Sub-Clause 18.1.
- (y) The obligations in this Sub-Clause 18.1 shall survive the completion, termination or expiry of the Contract.

19. FORCE MAJEURE

19.1

Definition of Force Majeure

- (a) In this Clause 19, Force Majeure means an exceptional event or circumstance:
 - (i) which is beyond a Party's control;

- (ii) which such Party could not reasonably have provided against before entering into the Contract;
 - (iii) which, having arisen, such Party could not reasonably have avoided or overcome; and
 - (iv) which is not substantially attributable to the other Party.
- (b) Subject to Sub-Clause 19.1(c), Force Majeure means the following events or circumstances, so long as the conditions set out in Sub-Clauses 19.1(a)(i) to (iv) are satisfied:
- (i) war, (whether war be declared or not), invasion, act of foreign enemies within the Country;
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war within the Country;
 - (iii) munitions of war, ionising radiation or contamination by radio-activity within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and
 - (iv) earthquake, hurricane, typhoon, tsunami or fire emanating from outside the Site within the Country that are outside the normal range for that place at that time of year, but excluding any other weather conditions regardless of the severity.
- (c) The Contractor acknowledges and agrees that, with respect to any of its obligations under the Contract, the Contractor will be performing such obligations in areas in which the United Nations, including the Employer, is engaged in, preparing to engage in, or disengaging from peacekeeping, humanitarian or similar operations and any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, shall not, in and to itself, constitute a Force Majeure event.

19.2

Notice of Force Majeure

- (a) If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure ("**Affected Party**"), then it shall give a written notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given as soon as practicable and not later than 7 days after the Affected Party became aware, or should have become aware acting in accordance with Industry Best Practices, of the relevant event or circumstance constituting Force Majeure or, if it is not possible to give such notice strictly by reason of the event of Force Majeure, three (3) days after the resumption of any means of providing notice between the Parties.
- (b) The Affected Party shall, having given a notice, be excused from performance of such obligations for so long as such Force Majeure prevents it from performing them.

- (c) Notwithstanding any other provision of this Clause 19, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.
- (d) Notwithstanding any other provision of this Clause 19, a Force Majeure shall not relieve a Party from an obligation which arose before the occurrence of that event, including the care of the Works prior to the issuance of a Taking Over Certificate.

19.3

Duty to Minimise Delay

- (a) Each Party shall at all times use all reasonable endeavours to overcome the effects of and minimise any delay in the performance of the Contract as a result of Force Majeure.
- (b) An Affected Party shall give notice to the other Party when it ceases to be affected by Force Majeure, but in any event, not later than seven (7) days after the Affected Party ceases to be affected by the Force Majeure.

19.4

Consequences of Force Majeure

- (a) If the Contractor is prevented from performing any of its obligations under the Contract by Force Majeure of which a notice has been given under Sub-Clause 19.2 [*Notice of Force Majeure*], and suffers delay by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*].
- (b) After receiving the notice under Sub-Clause 19.2 [*Notice of Force Majeure*], the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the matters described in Sub-Clause 19.4(a). For the avoidance of doubt, subject to the provisions of Sub-Clause 17.4 [*Consequences of Employer's Risks*], the Contractor shall not be entitled to payment of any costs incurred by reason of such Force Majeure.

19.5

Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from Force Majeure on terms additional to or broader than those specified in this Clause 19, such additional or broader Force Majeure events or circumstances shall not excuse the Contractor's non-performance or entitle it to relief under this Clause 19.

19.6

Optional Termination, Payment and Release

- (a) If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure (excluding, for the avoidance of doubt:
- (i) the period of any rectification of loss or damage to the Works caused by Force Majeure which is not an Employer's risk set out in Clause 17.3 [*Employer's Risks*] and in respect of which the Employer has not instructed the Contractor to carry out such rectification; and
 - (ii) the consequences of such event or circumstance covered by the insurances referred to in Clause 18 [*Insurance*] of which a notice has been given under Sub-Clause 19.2 [*Notice of Force Majeure*]),

then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*].

- (b) Upon termination in accordance with Sub-Clause 19.6(a), the Employer's Representative shall determine the value of the work done as at that date and issue a Payment Certificate which shall include:
- (i) the amounts payable for any work carried out for which a price is stated in the Contract (except for the Employer's entitlement to withhold and/or set-off from payments due to the Contractor in accordance with the Contract);
 - (ii) the Costs for Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery. This Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
 - (iii) any other Costs which in the circumstances was reasonably and properly incurred by the Contractor in the expectation of completing the Works;
 - (iv) the reasonable and properly incurred Costs for the removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in its country (or to any other destination at no greater cost); and
 - (v) the reasonable and properly incurred Costs for the repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

19.7

Release from Performance under the Law

- (a) Notwithstanding any other provision of the Contract, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which:
- (i) makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations (despite such affected Party using Industry Best Practices to overcome and/or mitigate such circumstances); or
 - (ii) which under Law, entitles the Parties to be released from further performance of the Contract,

then either Party may by written notice inform the other Party of such event or circumstance.

- (b) Upon receiving or issuing such notice (as the case may be) under Sub-Clause 19.7(a), the Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine these matters. Where it is determined by the Employer's Representative that it is impossible or unlawful for a Party or the Parties to complete their contractual obligations or that the law entitles the Parties to be released from such obligations:
- (i) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract; and
 - (ii) subject to the Employer's rights under Sub-Clause 14.16 [*Set-off*] the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [*Optional Termination, Payment and Release*] if the Contract had been terminated under Sub-Clause 19.6.

20. CLAIMS, DISPUTES AND ARBITRATION

20.1

Contractor's Claims

- (a) If the Contractor considers itself to be entitled to any extension of the Time for Completion, any additional payment, Costs and/or other entitlements or relief from obligations, under any clause of these General Conditions or otherwise arising out of or in connection with the Contract, the Contractor shall give a Claim Notice stating that it is a notice pursuant to this Sub-Clause 20.1 to the Employer's Representative, describing the event or circumstance giving rise to the claim. The notice shall be given immediately, and not later than 14 days after the Contractor became aware, or should have become aware

acting in accordance with Industry Best Practices, of the event or circumstance.

- (b) If the Contractor fails to give a Claim Notice duly completed and signed including detailed particulars within 14 days of the event arising, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment or Costs and the Contractor shall be deemed to have waived its entitlement to make such claim, and the Employer shall be discharged from all liability arising out of or in connection with the claim and the Contractor shall comply with its obligations to perform the Works by the Time for Completion and for the Contract Price.
- (c) Where an event has a continuing effect or where the Contractor is unable to determine whether the effect of an event will actually cause delay to the progress of the Works or entitle it to any additional payment or Costs and/or other relief from its obligations, so that it is not practicable for the Contractor to give notice in accordance with Sub-Clause 20.1(a), the Contractor shall immediately but no later than 14 days after the event has first arisen, give written notice to the Employer, to that effect with reasons and interim written particulars (including details of the likely consequences of the event on progress of the Works and an estimate of the likelihood or likely extent of the delay and/or resultant costs) and such notice shall be submitted in place of the notice required under Sub-Clause 20.1(a). The Contractor shall then submit to the Employer's Representative, at intervals of 30 days, further interim written particulars until the actual event or delay caused (if any) is, or should be, ascertainable, whereupon the Contractor shall as soon as practicable but in any event within 14 days give a final Claim Notice to the Employer's Representative including the particulars set out in Sub-Clause 20.1(a).
- (d) If the Contractor fails to give the initial notice, the further interim particulars and the final Claim Notice duly completed and signed including all the particulars required within the times stated in Sub-Clause 20.1(c), then the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment or Costs, the Contractor shall be deemed to have waived its entitlement to make such claim, and the Employer shall be discharged from all liability arising out of or in connection with the claim and the Contractor shall comply with its obligations to perform the Works by the Time for Completion and for the Contract Price. Otherwise, the following provisions of this Sub-Clause 20.1 shall apply.
- (e) The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- (f) The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Employer's Representative. Without admitting the Employer's liability, the Employer's Representative may, after receiving any notice under this Clause 20, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Employer's

Representative to inspect all these records, and shall (if instructed) submit copies to the Employer's Representative.

- (g) Within 28 days after the Contractor has given a Claim Notice in accordance with either Sub-Clause 20.1(a) or 20.1(c), the Contractor shall give to the Employer's Representative a fully detailed claim which shall include full supporting particulars of the basis of the claim including:
 - (i) the material circumstances of the event including the cause or causes;
 - (ii) the legal basis of the claim;
 - (iii) the nature and extent of any delay;
 - (iv) the nature and extent of any resultant additional Costs;
 - (v) the corrective action already undertaken or to be undertaken;
 - (vi) the effect on the critical path noted on the Contract Programme, including any Milestone Dates;
 - (vii) the period, if any, by which in its opinion the Time for Completion should be extended;
 - (viii) the adjustment, if any which in its opinion should be made to the Contract Price; and
 - (ix) a statement that it is a further notice pursuant to this Sub-Clause 20.1.
- (h) If the Contractor fails to give a final Claim Notice in accordance with Sub-Clause 20.1(g) duly completed and signed including all the particulars required within 28 days of giving a Claim Notice in accordance with Sub-Clauses 20.1(a) or 20.1(c), the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment or Costs, the Contractor shall be deemed to have waived its entitlement to make such claim, and the Employer shall be discharged from all liability arising out of or in connection with the claim and the Contractor shall comply with its obligations to perform the Works by the Time for Completion and for the Contract Price.
- (i) Within 42 days after receiving the fully detailed claim in accordance with Sub-Clause 20.1(g), or within such other period as may be agreed in writing between the Parties, the Employer's Representative shall respond with approval, or with disapproval and detailed comments. The Employer's Representative may also request any necessary further particulars.
- (j) The Employer's Representative shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine:
 - (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*];

- (ii) the additional payment of Costs (if any) to which the Contractor is entitled under the Contract; and/or
 - (iii) any relief from obligations.
- (k) Despite any other provisions of the Contract, the Employer or the Employer's Representative may, in its sole and absolute discretion, at any time make a fair and reasonable extension of the Time for Completion. The Employer and the Employer's Representative have no obligation to grant, or to consider whether they should grant, an extension of time and they are not required to exercise this discretion for the benefit of the Contractor.
- (l) For the avoidance of doubt, a delay caused by any act or omission of the Employer or any failure by the Employer or the Employer 's Representative to comply with this Sub-Clause 20.1 will not, for any reason, render Sub-Clause 8.7 [*Delay Damages*] void, invalid or unenforceable, and will not relieve the Contractor of its obligations under Sub-Clause 8.7 [*Delay Damages*], or limit the Employer's entitlement to invoke the remedies set out in Sub-Clause 8.7 [*Delay Damages*] or otherwise to recover Delay Damages.
- (m) If more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is a cause of delay which would not entitle the Contractor to an extension of time under Sub-Clause 8.4 [*Extension of Time for Completion*], then, to the extent of the concurrency, the Contractor will not be entitled to an extension of time.
- (n) An extension of time granted under this Clause 20 is, unless otherwise stated in the Contract, the Contractor's sole entitlement to compensation for delay or disruption, including delay or disruption caused by the Employer, whether in breach of the Contract or otherwise.
- (o) The requirements of this Sub-Clause 20.1 are in addition to those of any other clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause of the Contract in relation to any claim, the Time for Completion shall not be extended and the Contractor shall not be entitled to additional payment and/or other relief under the Contract or otherwise in relation to such claim.
- (p) Nothing in this Sub-Clause 20.1 creates an additional right or entitlement of the Contractor to an extension to the Time for Completion, additional payment and/or relief from obligations, where such right or entitlement did not otherwise exist under the Contract.
- (q) Despite any other provision of the Contract, the Contractor shall use its best endeavours, acting in accordance with Industry Best Practices, to mitigate the effects of any event or circumstance which has or may adversely affect the Works, increase the Contract Price or delay the execution of the Works.

20.2

Disputes and Differences

All disputes or disagreements arising out of or in connection with the formation, performance, interpretation, nullification, termination or invalidation of the Contract or the Works, or any other related dispute or disagreement ("**Dispute**"), shall be resolved in accordance with Sub-Clause 20.3 [*Dispute resolution procedures*]. Further, if a Dispute arises, the Parties agree that they will, prior to the initiation of any arbitral proceedings, use their best efforts in good faith to reach a reasonable and equitable resolution of the Dispute. The Parties agree that in the event a Dispute cannot be resolved using the procedure in Sub-Clauses 20.3(a) to 20.3(d) then that Dispute will be submitted, if requested by either Party, to arbitration in accordance with Sub-Clause 20.3(e).

20.3

Dispute resolution procedures

- (a) In the event of a Dispute, written notice of such Dispute shall be given to the other Party's Representative. That notice shall:
 - (i) set out the legal basis of the claim;
 - (ii) set out the facts upon which the claim is based;
 - (iii) have annexed copies of correspondence and any relevant background material;
 - (iv) contain detailed particulars of the quantification of the claim; and
 - (v) if the claim is made by the Contractor, be signed by its chief executive officer (or equivalent officer).
- (b) If the Employer's Representative and the Contractor's Representative are unable to resolve the Dispute within 28 days after such notice is given, the Dispute shall be referred, if requested by either Party, to the Senior Representatives of the Parties set out in the Schedule of Details, or any replacement notified in writing.
- (c) If the Senior Representatives of the Parties are unable to resolve the Dispute within 28 days, either Party may invite the other to conciliate the Dispute in accordance with the provisions of Sub-Clause 20.3(e). Otherwise the Dispute shall be referred, if requested by either Party, directly to arbitration in accordance with the provisions of Sub-Clause 20.3(f).
- (d) Service of the notices under, and compliance with the process outlined in, Sub-Clauses 20.3(a), to 20.3(c) are conditions precedent to the commencement of any conciliation or arbitration in respect of a Dispute.
- (e) In accordance with Sub-Clause 20.1(c), either Party may invite the other to conciliate a Dispute under the UNCITRAL Permanent Court of Arbitration Optional Conciliation Rules, 1996 (the "**Conciliation Rules**") provided that;

- (i) the language of the conciliation shall be in English;
- (ii) one conciliator shall be appointed by agreement between the Parties;
or
- (iii) if the Parties are unable to agree on the appointment of a conciliator within 14 days after the matter has been referred to conciliation, the conciliator will be appointed by the Secretary-General of the Permanent Court of Arbitration in accordance with the Conciliation Rules.

If the Parties do not reach agreement under the Conciliation Rules, the Dispute shall be referred, if requested by either Party, to arbitration in accordance with Sub-Clause 20.1(f).

- (f) If the Parties are unable to resolve the Dispute in accordance with Sub-Clause 20.3(c) or 20.3(e), the Dispute shall be referred, if requested by either Party, to and finally resolved by arbitration in accordance with the UNCITRAL Arbitration Rules then in effect ("**Rules**") provided that:
 - (i) there shall be no seat or place of arbitration. The place of hearing shall be the place stated in the Schedule of Details;
 - (ii) the language of the arbitration shall be English;
 - (iii) the decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only; and
 - (iv) the Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.
- (g) The arbitral proceedings and any information and documents relating to these proceedings shall be regarded as confidential in accordance with the meaning contemplated in Sub-Clause 1.12 [*Confidential Details*].

20.4

Dispute resolution not to delay execution of the Works

Despite any activation of the dispute resolution procedures under Sub-Clause 20.3 [*Dispute resolution procedures*], the Contractor shall continue to execute the Works and its other obligations under or in connection with the Contract.

20.5

Survival

This Clause 20 survives the completion, expiry or termination of the Contract.

21. PRIVILEGES AND IMMUNITIES

Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs, of which the Employer is an integral part, which are hereby expressly reserved.

22. MISCELLANEOUS

- (a) In connection with the performance of the Contract, the Contractor acknowledges that the imports and customs Law and regulations of the Country shall apply to the furnishings and shipments of any products and components thereof to the Country. The Contractor specifically acknowledges that the aforementioned import and custom Laws and regulations of the Country prohibit, among other things, the importation into the Country of certain products and components.
- (b) The Contract may not be amended except in writing signed by a duly authorised representative of each of the Parties.
- (c) Subject to any express provision in the Contract to the contrary, the respective warranties, obligations or liabilities of the Parties do not cease on the completion, expiry or termination of this Contract.

PARTICULAR CONDITIONS

NO ADDITIONAL CONDITIONS APPLY