

KIBALI GOLD MINE

Democratic Republic of the Congo

TENDER PACKAGE

Construction of the Float Tailings Storage Facility (FTSF) 1 m Lift – Downstream Wall (Raise 6)

Item	Detail
Project	Construction of the FTSF 1 m Lift Downstream Wall (Raise 6)
Client / Employer	Kibali Goldmines SA ("KGM")
Location	Haut-Uele Province, Watsa District, DRC
Contract type	Remeasurable, unit-rate construction contract (Employer's standard form)
Tender issue date	29 July 2026
Compulsory site visit	31 July 2026 at 11:00 – FTS Dam
Tender closing date	14 August 2026
Planned start / completion	17 August 2026 – 30 September 2026
Document reference	PRG-26-07-046

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Tender Package Contents & Instructions

This Tender Package is the complete set of documents on which bidders are invited to price and submit an offer for the Works. It comprises the following components, which are to be read together and are mutually explanatory:

Part	Component	Format / Location
1	General Information & Instructions to Bidders	This document, Section 1
2	Scope of Work (SOW)	This document, Section 2
3	Site & Logistics	This document, Section 3
4	Project Management & Key Performance Indicators (KPIs)	This document, Section 4
5	Quality & Safety Requirements	This document, Section 5
6	Bill of Quantities (BoQ) – pricing summary	This document, Section 6
	Bill of Quantities – fillable pricing workbook	Accompanying Excel file (to be priced & returned)
7	Commercial Terms & Conditions of Contract	This document, Section 7
8	Returnable Schedules & Forms of Tender	This document, Section 8
A	Annexure A – Technical Specifications (FTSF Specs Sheet, Rev 1)	This document, Annexure A

Bidders must submit: (i) the priced Bill of Quantities workbook; (ii) all completed Returnable Schedules in Section 8; and (iii) the technical and commercial documentation required by the Evaluation Criteria in Section 1. Incomplete submissions may be disqualified.

Section 1: General Information & Instructions to Bidders

1.1 General Description of Works

Construction of the Float Tailings Storage Facility (FTSF) 1 m Lift Downstream Wall (Raise 6) at Kibali Goldmine, Democratic Republic of the Congo. The Works comprise a downstream raise of the existing tailings storage facility embankment, including a clay core wall, an engineered waste-rock outer wall, a sand-and-crushed-stone filter drain, and a wearing course, all constructed in accordance with the Engineer's design and the Technical Specifications at Annexure A.

1.2 General Details of the Contract

The Contract shall be concluded on the Employer's (Barrick) standard form of construction contract. The commercial terms that will govern the Contract are consolidated in Section 7 of this Package and are to be read as the commercial schedule to that standard form.

1.3 Site Facilities Available

Accommodation on site is available for the Contractor's senior managers only. The Contractor shall make its own arrangements, at its own cost, for the accommodation, transport, messing and welfare of all other personnel, and shall establish its own site facilities as priced under the Preliminary & General items of the Bill of Quantities.

1.4 Existing Services

All existing services will be pointed out to the Contractor, who shall take all reasonable care not to damage them. Any service damaged by the Contractor shall be repaired at the Contractor's own expense and to the satisfaction of the Engineer.

1.5 Compulsory Site Visit

A compulsory site visit will be held at the FTS Dam on 29 July 2026 at 11:00. Attendance is mandatory for all intending bidders; tenders from bidders who did not attend the site visit will not be considered. Bidders are deemed to have acquainted themselves with the site, access, working conditions and all matters affecting the execution and cost of the Works.

1.6 Tender Programme

Milestone	Date / Time
Tender issued	27 July 2026
Compulsory site visit	31 July 2026, 11:00 (FTS Dam)
Tender closing date	14 August 2026
Anticipated award	Within the tender validity period
Site establishment / start	17 August 2026
Practical completion	30 September 2026

1.7 Evaluation Criteria

Tenders will be evaluated on a combined Safety (30%) commercial (30%) and technical (40%) basis. The weightings within each category are set out below. The Employer reserves the right to adjust the weightings to suit the project and is not bound to accept the lowest or any tender.

Safety – 30%

No.	Criterion	Weighting
1	Contractor safety file compliance to the requirements set out in Section B of the KGM contractor safety standard	50%
2	Is the contractor ISO 45001 certified	20%
3	Safety Personell qaulifications and certification	20%
4	3 Yrs Safety performance in terms of LTIFR and TRIFR	10%

Commercial – 30%

No.	Criterion	Weighting
1	Price competitiveness – detailed cost breakdown	80%
2	Local content compliance & ownership; CRB registration & class	10%
3	Company policies & procedures	5%
4	Barrick terms & conditions and payment terms accepted	5%

Technical – 40%

No.	Criterion	Weighting
1	Company profile with proven experience on works of similar nature in the past 3 years	25%
2	List of resources with CVs of all experienced personnel to be mobilized	10%
3	List and specification of equipment to be mobilized	35%
4	Level II schedule & method statement for the Works	10%
5	Quality Assurance & Quality Control plans and documentation	10%
6	Bidder's OHS policy & procedures	10%

Section 2: Scope of Work

2.1 Detailed Scope

The scope of the Works is the lifting of the FTSF downstream wall in accordance with the Engineer's design and the Technical Specifications (Annexure A). The principal work elements are:

- Build a 1 m inside clay core wall and compact it in 300 mm layers to the specified density.
- Build a 1 m outside waste-rock wall and compact it in 500 mm layers, using mine waste from the Kombokoro pit.
- Place a 1 m filter drain comprising filter sand and 6.7 mm washed crushed stone – both materials issued to the Contractor free of charge by KGM.
- Place a 300 mm wearing course to the specified crest and access-road elevations.

2.2 Key Technical Requirements (from Annexure A)

The following requirements are drawn from the Technical Specifications and govern execution. Full detail, grading criteria and QA/QC frequencies are set out in Annexure A.

Element	Requirement
Clear & grub / topsoil	Clear & grub the extended footprint; strip topsoil to 300 mm and stockpile (max 2 m high).
Clay embankment / box cuts	Rip & recompact 300 mm layers; compact clay walls, box cuts and foundations to 98% Standard Proctor.
Selected fills / access roads	Compact to 95% Standard Proctor; density testing as prescribed (2 tests per 200 m ²).
Outer waste-rock wall	Continuously graded 75 µm–400 mm, not exceeding 600 mm; layers ≤ 1 m; finer material upstream, coarse downstream, well-graded in the centre.
Transition rockfill	Continuously graded 75 µm–200 mm, not exceeding 250 mm; layers ≤ 0.5 m.
Filter drain	Filter sand and washed 6.7 mm / 13.2 mm / 19 mm nominal stone to the specified grading; stone washed and clear of fines.
Bidim / geotextile	A7 (downstream) and A4/A6 (trenches) or similar, held by material weight; ≥ 400 mm unsewn overlaps.
Wearing course	Gravel wearing course – 150 mm on access roads, 300 mm on embankment crests; max size 37.5 mm, CBR 15 at 95% Mod AASHTO.
QA/QC	Density testing (incl. ASTM D5030/D4914 on rockfill), PSDs on transitional/outer layers, and filter/stone grading as prescribed.

2.3 Included Services / Deliverables (by KGM)

KGM shall be responsible for the supply of fuel only. Filter sand and 6.7 mm crushed stone for the filter drain will be issued to the Contractor free of charge; the Contractor prices placement only.

2.4 Resources & Personnel

The Contractor shall provide suitably qualified plant operators, safety personnel and site management for the duration of the Works, together with the CVs required under the Evaluation Criteria.

2.5 Contractor's Responsibilities

The Contractor shall be responsible for the following, at its own cost unless expressly stated otherwise:

- Labour
- Plant and equipment
- Transportation
- Weekly reporting
- Site office and signage
- Water management and rehabilitation of the borrow pit
- Maintenance of the haul roads and waste-dump area
- Selection of boulders / oversize material

Section 3: Site & Logistics

3.1 Description of Site & Site Access

Kibali Goldmine (KGM) is a combined open-pit and underground gold mine located in the Democratic Republic of the Congo, Haut-Uele Province, Watsa District.

3.2 Site Conditions

In the Watsa region, summers are short, hot and humid; winters are long, comfortable but wet; and the area is overcast year-round. Temperatures typically range from 18 °C to 31 °C, rarely below 15 °C or above 35 °C. Bidders shall allow for wet-weather working and the associated water-management obligations.

3.3 Site Access Requirements

- All operators, transporters and managers shall undergo all KGM, KMS and Paragon inductions before commencing work.
- All plant operators shall hold a valid KGM driving permit and a national driving licence.
- All equipment shall comply with the KGM Light & Mobile Equipment (LME) standard.

Section 4: Project Management & Key Performance Indicators

4.1 Schedule & Milestones

The Works shall commence on 17 August 2026 and reach practical completion by 30 September 2026. The Contractor shall submit a Level II programme and method statement with its tender and maintain the approved programme throughout.

4.2 Reporting Requirements

The Contractor shall submit a written weekly report every Saturday, covering progress against programme, a two-week look-ahead, and safety performance.

4.3 Change Control Procedure

The Contractor shall notify KGM in writing within 7 days of becoming aware of any additional or varied works. Work outside the agreed scope shall not proceed without the Engineer's written instruction; failure to notify within the stated period may result in the claim being disallowed.

4.4 Key Performance Indicators

Performance under the Contract will be measured against the KPIs below. These KPIs will be reviewed at the weekly progress meeting and form part of the basis for interim payment certification. Targets marked (proposed) are recommended standard measures introduced for this Package and may be confirmed at award.

KPI Area	Measure	Target	Frequency
Safety (SHE)	Lost-Time Injuries (LTIs) / recordable incidents	Zero LTIs (proposed)	Continuous / weekly
Safety compliance	Inductions & permits valid before start; LME compliance	100%	Continuous
Quality – compaction	Density tests passing at specified Proctor (95% / 98%)	≥ 95% pass; failures re-worked	Per 200 m ² / layer
Quality – rockfill	PSD / grading within specified bands; ASTM D5030/D4914 tests	Within spec bands	6 tests / 2 weeks (proposed)
Schedule adherence	Actual vs planned progress against Level II programme	≥ 95% of planned (proposed)	Weekly
Reporting compliance	Weekly report submitted every Saturday	100% on time	Weekly
Change control	Additional works notified within 7 days	100% within 7 days	Per event
Environmental	Water management; borrow-pit & haul-road rehabilitation	No reportable incidents; rehab complete (proposed)	Weekly / on completion

Persistent failure to meet the safety, quality or schedule KPIs may constitute grounds for step-in, suspension or termination under the Commercial Terms in Section 7.

Section 5: Quality & Safety

5.1 Quality Assurance & Quality Control

All QA/QC shall be undertaken in accordance with SANS standards and the Technical Specifications at Annexure A. The Contractor shall submit a project-specific QA/QC plan with its tender and shall implement the QA/QC control measures set out in the specifications, including:

- Density testing compacted on all selected fills as specified, with sand-replacement or 10th-determination checks.
- Particle Size Distributions (PSDs) on transitional and outer waste-rock layers as prescribed.
- Density testing on outer rockfill walls to ASTM D5030-94 or D4914 at a frequency of 6 tests every 2 weeks.
- Filter sand and nominal stone graded to specification; washed and clear of fines.
- Minimum 400 mm unsewn overlaps of Bidim maintained on all layers and against ground.

5.2 Health, Safety & Environmental Requirements

The Contractor shall comply with all Barrick SHE standards and all applicable KGM site rules. Specific engineering-safety requirements from the specifications include:

- Excavations exceeding 5 m to be battered at 1V:2H, with safety/working benches every 5 m of depth, minimum 8 m wide; maximum permissible depth 10 m.
- Excavations to be continuously assessed for safety and halted if conditions are, or appear to be, unsafe; backfills compacted to 95% density.
- Full compliance with induction, permit, LME and PPE requirements at all times.

Section 6: Bill of Quantities

The priced Bill of Quantities (BoQ) is issued as an accompanying fillable Excel workbook (“BOQ_FTSF_Downstream_1m_Lift_FILLABLE.xlsx”), which the Contractor shall complete and return with its tender. The BoQ is remeasurable: rates are fixed, quantities are subject to remeasurement of the work actually executed and certified by the Engineer.

The pricing summary below reproduces the structure of the workbook for reference. All rates are exclusive of VAT and stated in the tender currency. Filter sand and 6.7 mm crushed stone are free-issued by KGM; the Contractor prices placement only.

6.1 Pricing Summary

Ref	Description	Amount
	PRELIMINARY & GENERAL	
A1	P&G – Fixed Charge Items (SANS 1200A)	...
A2	P&G – Value Related Items	...
A3	P&G – Time Related Items	...
	Sub-total: Preliminary & General	...
	MEASURED WORKS	
A	Site Clearance	...
B	Earthworks & Excavations	...
C	Drainage	...
F	Miscellaneous	...
	Sub-total: Measured Works	...
	Sub-total (P&G + Measured Works)	...
	Contingencies (default 10%, to be confirmed)	...
	TOTAL CAPITAL COST (excl. VAT)	...

6.2 Measured Works – Principal Quantities

The following are the principal remeasurable quantities. The complete item list, pay references and units are in the accompanying workbook.

Item	Description	Unit	Qty
A1.1	Clear & grub – FTSF extended footprint	m ²	15 000
A2.2	Remove topsoil – FTSF extended footprint	m ³	4 500
B2.2	Bulk excavation – Borrow Area	m ³	12 583
B2.3	Bulk excavation – Perimeter access road alterations	m ³	10 038
B4.3	Base preparation – current FTSF wall	m ²	11 500
B5.2	Compacted embankment – Main wall buttress (R6)	m ³	12 200
B6.1	Compacted fill – FTSF clay skin	m ³	12 538
B6.3	Compacted fill – Perimeter access road alterations	m ³	10 038
B7.2	Extra-over haul 2–3 km – Clay	m ³ /km	45 242

Item	Description	Unit	Qty
B7.3	Extra-over haul 3–4 km – Rock	m ³ /km	25 200
C1.1	Supply & place A7 Bidim – downstream section	m ²	5 000
C3.1	Supply & place filter sand – between clay & waste rock	m ³	4 502
C4.1	Supply & place washed 6.7 mm stone	m ³	4 502

Note: Items shown with zero or “Rate Only” quantities in the workbook are carried for completeness and for the valuation of possible variations; the Contractor shall still provide rates where indicated.

Section 7: Commercial Terms & Conditions of Contract

The Contract shall be executed on the Employer's (Barrick) standard form of construction contract. The commercial terms set out in this Section form the commercial schedule to that contract and are to be read together with it. Where a term below is not addressed in the Employer's standard form, this Section applies; where the two conflict, the executed standard form prevails. Bidders must confirm acceptance of these terms in the Form of Tender (Section 8). Terms marked (standard) are ordinary construction-contract provisions supplied to complete this Package and will be finalised at contract negotiation.

Draft contract for review. The draft contract has been added to this tender document for the bidder's review – comprising the Employer's standard form of construction contract read together with the Commercial Terms & Conditions set out in this Section. Bidders shall review the draft contract in full and must clearly identify, in writing with their tender submission (in the Form of Tender, Section 8), all changes or suggested changes to any of its terms. Any proposed change that is not expressly clarified in the submission will be deemed not required, and the draft contract will apply as issued.

7.1 Form & Basis of Contract

Term	Provision
Contract form	Barrick standard form of construction contract.
Pricing basis	Remeasurable unit-rate contract based on the priced Bill of Quantities; fixed rates, quantities remeasured on work executed and certified by the Engineer.
Measurement standard	SANS 1200 series as referenced in the BoQ and Technical Specifications.
Currency & tax	Rates exclusive of VAT, quoted in the tender currency stated in the Form of Tender. All applicable DRC taxes, duties and levies to the Contractor's account unless the standard form provides otherwise (standard).

7.2 Time for Completion

Term	Provision
Commencement	17 August 2026.
Practical completion	30 September 2026.
Programme	Approved Level II programme; progress measured weekly against it (see Section 4).
Extension of time	Granted for Employer-caused delay, variations and other events entitling relief under the standard form (standard).
Delay damages	Liquidated / delay damages for late completion as stated in the standard form and Form of Tender (rate to be inserted at award) (standard).

7.3 Payment Terms

- Payment against monthly interim payment certificates for work executed and materials placed, valued on the remeasured BoQ and certified by the Engineer (standard).
- Payment due within the period stated in the Employer's standard form following certification; Barrick payment terms as confirmed under the Commercial evaluation criterion (standard).
- KGM supplies fuel; filter sand and 6.7 mm crushed stone are free-issued – no payment is made for the supply of free-issued materials, only for their placement.

- Interim certification is contingent on compliance with the safety, quality and reporting KPIs in Section 4 (standard).

7.4 Retention & Security

Term	Provision (standard, to be confirmed at award)
Retention	A percentage of each certified amount retained up to a stated limit, released on practical completion / end of defects liability.
Performance security	Performance guarantee / security as required by the Employer's standard form.
Advance payment	If any advance payment is agreed, it shall be secured by an advance-payment guarantee and recovered from interim certificates.

7.5 Insurance

The Contractor shall effect and maintain all insurances required by the Employer's standard form and the Contract annexures, including contract works / CAR, public liability, motor and statutory employer's / workmen's compensation cover, and shall provide evidence of cover before commencement. Insurance obligations are also reflected in the Preliminary & General items of the BoQ. (standard)

7.6 Variations & Change Control

- Variations only on the Engineer's written instruction; the Contractor shall notify additional works in writing within 7 days (Section 4.3).
- Varied work valued at BoQ rates where applicable, at pro-rata rates where analogous, or at fair rates agreed with the Engineer where no comparable rate exists (standard).
- "Rate Only" items in the BoQ are used to value additional haul and related variations.

7.7 Free-Issue Materials & Employer Obligations

KGM will: (i) supply fuel; and (ii) issue filter sand and 6.7 mm crushed stone free of charge. The Contractor shall take delivery, safeguard, and account for all free-issued materials, and shall bear the cost of replacing material lost or wasted through its default (standard).

7.8 Quality, Defects & Warranty

- All work to conform to the Technical Specifications (Annexure A) and SANS standards; non-conforming work to be reworked at the Contractor's cost.
- Defects liability / warranty period as stated in the Employer's standard form; the Contractor to make good notified defects at its own cost during that period (standard).

7.9 Suspension & Termination

The Employer may suspend or terminate in accordance with the standard form, including for the Contractor's persistent failure to meet the safety, quality or programme KPIs, insolvency, or material breach. On termination the Employer may complete the Works by others and recover additional costs from the Contractor (standard).

7.10 Health, Safety, Environment & Compliance

The Contractor shall comply with all Barrick SHE standards, KGM site rules, and applicable DRC law, and with all local-content, CRB registration and ownership requirements reflected in the Evaluation Criteria. Breach of SHE requirements is a material breach (standard).

7.11 Governing Law & Disputes

The Contract shall be governed by the law and dispute-resolution mechanism stated in the Employer's standard form. Bidders are deemed to have reviewed and accepted that mechanism, subject to any qualification recorded in the Form of Tender (standard).

Section 8: Returnable Schedules & Forms of Tender

Bidders shall complete and return all schedules in this Section together with the priced BoQ workbook and the technical/commercial documentation required by the Evaluation Criteria.

8.1 Form of Tender

To: Kibali Goldmines SA (“the Employer”)

Having examined the Tender Package for the Construction of the FTSF 1 m Lift Downstream Wall (Raise 6), and having attended the compulsory site visit, we offer to execute and complete the Works in conformity with this Tender Package for the tender sum entered in the priced Bill of Quantities.

Item	Bidder to complete
Tender sum (excl. VAT)	
Tender currency	
Tender validity period	
Proposed contract programme accepted (start 17 Aug – completion 30 Sep 2026)	Yes / No
Barrick standard contract & payment terms accepted	Yes / No
Commercial Terms (Section 7) accepted (note any qualification)	
Compulsory site visit attended (29 Jul 2026)	Yes / No
Company name & registration / CRB class	
Local content / ownership status	
Authorised signatory (name)	
Signature & date	

8.2 Returnable Documentation Checklist

Complete the Document Reference No. column with the bidder’s own reference / file number for each document submitted, and tick the Enclosed column.

No.	Document	Document Ref. No.	Enclosed
1	Priced Bill of Quantities workbook (all yellow cells completed)		☐
2	Completed Form of Tender (8.1)		☐
3	Detailed cost breakdown supporting the tender sum		☐
4	Company profile & similar-project experience (last 3 years)		☐
5	Resource list with CVs of key personnel		☐
6	Equipment list & specifications		☐
7	Level II programme & method statement		☐
8	QA/QC plan & documentation		☐
9	OHS policy & procedures		☐

No.	Document	Document Ref. No.	Enclosed
10	Company policies & procedures; CRB registration & class		☐
11	Local content / ownership compliance evidence		☐
12	Safety Documentation returnables (8.3) completed		☐
13	Commercial / statutory documentation (8.4) completed		☐
14	Technical milestone / plan (8.5) completed		☐

8.3 Returnable Safety Documentation

The bidder shall provide the safety documentation below and enter the corresponding document reference number for each item submitted. Item 1 is the overarching KGM-approved safety file; items 1.1–1.12 are its constituent elements.

Ref	Evaluation Criteria	Description	Suggested Documents	Document Ref. No.
1	Existing safety file approved by KGM OHS	Verifies that the contractor's safety file fully meets the requirements in Section B of the KGM Contractor Safety Standard (permits, risk assessments, training, emergency plans, etc.).		
1.1	Safety Performance Indicators	Contractor demonstrates how safety is measured (e.g. LTIFR, TRIFR, near misses, corrective actions).	Safety KPI reports; 3-year statistics	
1.2	Safety Plan	A formal plan outlining the contractor's approach to safety during construction, haulage and road-maintenance operations.	Site-specific Safety Plan document	
1.3	Safety Policy	Contractor's signed safety policy showing top-management commitment to "Journey to Zero".	HSE Policy signed by management	
1.4	Safety Manual / Procedures	Detailed safe work procedures for haulage, loading, unloading, dust suppression and road maintenance.	HSE / Safety Manual; Standard Operating Procedures (SOPs)	
1.5	Safety Professionals (1 in 50)	Demonstrates compliance with the KGM requirement of one qualified Safety Officer per 50 employees.	CVs and certifications of safety professionals; project workforce strength and number of appointed Safety Officers	
1.6	Training Plans & Documentation	Evidence of safety inductions, refresher training and competency assessments for operators and staff.	Training matrix; training-needs analysis; training and attendance records; competency certificates	
1.7	Audit System	Contractor's internal and external safety audit processes.	Audit schedule; sample audit reports; audit manual complying with ISO certification standards	
1.8	Health Surveillance	Medical surveillance programme for workers, including fitness-to-work assessments.	Medical fitness certificates; occupational health programme; medical surveillance programme and documented inspection details	
1.9	Incident Management	System for reporting, investigating and closing out incidents / near misses.	Incident reporting forms; root-cause analysis examples; incident / accident management	

Ref	Evaluation Criteria	Description	Suggested Documents	Document Ref. No.
			procedure detailing the investigation process	
1.10	Risk Management	Risk identification, assessment and mitigation procedures specific to the works, haulage and road work.	Risk register; Job Hazard Analyses (JHAs); risk-management manual and procedures defining and treating risks	
1.11	Work Rosters	Shift rosters demonstrating fatigue management and compliance with KGM rules.	Work schedule; shift-rotation plan	
1.12	Fitness for Work	Fitness-to-work policy including alcohol / drug testing, fatigue protocols and return-to-work processes.	Fitness-for-work policy; test-results records; Drug and Alcohol policy	
2	Contractor ISO Certification (ISO 18001 or 45001)	Company to provide the ISO certification issued and valid.	Provide certificate if certified	
3	Safety Personnel Qualification	Detailed CV of all safety personnel to be appointed on the project.	Detailed CVs and qualifications	
4	Last 3 yrs safety performance (lagging KPIs incl. LTIFR & TRIFR)	Detailed summary of lagging safety indicators – plan vs actual for the last 3 years.	KPI performance records	

8.4 Returnable Commercial & Statutory Documentation

The bidder shall submit the following commercial and statutory documentation, entering the document reference number and ticking the Enclosed column for each item.

No.	Document	Document Ref. No.	Enclosed
1	Registered company name		☐
2	Company owners / ownership status		☐
3	Physical & postal address, telephone number and email address		☐
4	Company registration certificate		☐
5	VAT registration letter (if applicable)		☐
6	Commercial registry certificate (RCCM)		☐
7	National identity card / passport – representative of company		☐
8	Supplier banking details (Notification bancaire)		☐
9	ARSP certificates		☐
10	INPP certificates		☐
11	CNSS documentation		☐
12	Quituz Fiscal documentation		☐
13	ONEM document		☐
14	Company profile (Statut notarié & Acte notarié)		☐
15	Special authorization in domain		☐
16	Tax registration documentation – tax number & import/export tax number		☐

8.5 Returnable Technical Milestone / Plan

The bidder shall complete the milestone / plan table below, entering the planned start and finish date for each activity in line with its Level II programme. The overall contract period is 17 August 2026 (start) to 30 September 2026 (practical completion).

No.	Milestone / Activity	Planned Start	Planned Finish	Document Ref. No.
1	Site establishment & mobilisation	17 Aug 2026		
2	Clear & grub / topsoil stripping			
3	Box cuts & foundation preparation			
4	Clay core wall construction (300 mm layers)			
5	Waste-rock outer wall construction (500 mm layers)			
6	Filter drain placement (sand & 6.7 mm stone) + Bidim			
7	Wearing course placement			
8	QA/QC testing & sign-off			
9	Demobilisation & borrow-pit / haul-road rehabilitation			
10	Practical completion		30 Sep 2026	

The bidder shall attach its detailed Level II programme (bar chart) and method statement in support of the above.

8.6 Returnable Bill of Quantities

The bidder shall price every schedule below (Rate and Amount columns) and return it together with the accompanying Excel workbook. Rates are exclusive of VAT and stated in the tender currency. “Rate Only” items are priced for the valuation of variations; “Sum” items are lump sums entered in the Amount column. Filter sand and 6.7 mm crushed stone are free-issued by KGM – price placement only.

Preliminary & General (SANS 1200A)

Enter a lump sum in the Amount column for each item. Schedule A3, item 1 also requires the contract duration (months) and a monthly rate.

Schedule A1: P&G – Fixed Charge Items

Item	Description	Unit	Qty	Rate	Amount
A1.1	Contractual Requirements	Sum			
A1.2	Insurance – refer Annexures	Sum			
A1.3	Office & Equipment for Engineer’s staff	Sum			
A1.4	Office and storage sheds	Sum			
A1.5	Workshops	Sum			
A1.6	Site establishment area	Sum			
A1.7	Contractor’s personnel encampment / Living Accommodation	Sum			
A1.8	Laboratory facilities	Sum			
A1.9	Sanitary facilities	Sum			
A1.10	Tools and Equipment	Sum			
A1.11	Water supplies	Sum			
A1.12	Electric power	Sum			
A1.13	Air supplies	Sum			
A1.14	Communications	Sum			
A1.15	Access	Sum			
A1.16	Security and safety	Sum			
A1.17	Transport on site	Sum			
A1.18	Transport of workforce to and from site	Sum			
A1.19	Plant for electrical work	Sum			
A1.20	Other obligations – Contractor to submit details	Sum			
A1.21	Removal of site establishment & camp on completion	Sum			
TOTAL SCHEDULE A1 (carried to Summary)					

Schedule A2: P&G – Value Related Items

Item	Description	Unit	Qty	Rate	Amount
A2.1	Contractual Requirements	Sum			

Item	Description	Unit	Qty	Rate	Amount
A2.2	Insurance – refer Annexures	Sum			
A2.3	Office & Equipment for Engineer's staff	Sum			
A2.4	Office and storage sheds	Sum			
A2.5	Workshops	Sum			
A2.6	Site establishment area	Sum			
A2.7	Contractor's personnel encampment / Living Accommodation	Sum			
A2.8	Laboratory facilities	Sum			
A2.9	Sanitary facilities	Sum			
A2.10	Tools and Equipment	Sum			
A2.11	Water supplies	Sum			
A2.12	Electric power	Sum			
A2.13	Air supplies	Sum			
A2.14	Communications	Sum			
A2.15	Access	Sum			
A2.16	Security and safety	Sum			
A2.17	Transport on site	Sum			
A2.18	Transport of workforce to and from site	Sum			
A2.19	Plant for electrical work	Sum			
A2.20	Other obligations – Contractor to submit details	Sum			
A2.21	Removal of site establishment & camp on completion	Sum			
TOTAL SCHEDULE A2 (carried to Summary)					

Schedule A3: P&G – Time Related Items

Item	Description	Unit	Qty	Rate	Amount
A3.1	Contractual Requirements	Month			
A3.2	Insurance – refer Annexures	Sum			
A3.3	Office & Equipment for Engineer's staff	Sum			
A3.4	Office and storage sheds	Sum			
A3.5	Workshops	Sum			
A3.6	Site establishment area	Sum			
A3.7	Contractor's personnel encampment / Living Accommodation	Sum			
A3.8	Laboratory facilities	Sum			
A3.9	Sanitary facilities	Sum			
A3.10	Tools and Equipment	Sum			

Item	Description	Unit	Qty	Rate	Amount
A3.11	Water supplies	Sum			
A3.12	Electric power	Sum			
A3.13	Air supplies	Sum			
A3.14	Communications	Sum			
A3.15	Access	Sum			
A3.16	Security and safety	Sum			
A3.17	Transport on site	Sum			
A3.18	Transport of workforce to and from site	Sum			
A3.19	Plant for electrical work	Sum			
A3.20	Other obligations – Contractor to submit details	Sum			
A3.21	Removal of site establishment & camp on completion	Sum			
A3.22	Salaries and wages	Sum			
A3.23	Flights, visas and taxes	Sum			
TOTAL SCHEDULE A3 (carried to Summary)					

Measured Works

Schedule A: Site Clearance (SANS 1200C & PA)

Item	Description	Unit	Qty	Rate	Amount
A1	Clear & grub site incl. removal of trees up to 1 m girth (spoil spread within 2 km free haul) – SANS 1200C 1.1/3.1/5.1 & PA2				
A1.1	FTSF Extended Footprint Area	m ²	15 000		
A1.2	Borrow Area	m ²	0		
A1.3	Stockpile Area for Topsoil (2 m high assumed)	m ²	0		
A2	Remove topsoil to max 300 mm & stockpile within 2 km free haul – SANS 1200D 5.2.1.2/5.2.2.3 & PA3.6/3.15				
A2.1	Borrow Area	m ³	0		
A2.2	FTSF Extended Footprint Area	m ³	4 500		
A3	Extra over A1 & A2 for haul beyond 2 km free haul – SANS 1200D 5.2.5 & PA3.19				
A3.1	1 km to 2 km	m ³ /km	Rate Only		
A3.2	2 km to 3 km	m ³ /km	Rate Only		
A3.3	3 km to 4 km	m ³ /km	Rate Only		
A3.4	4 km to 5 km	m ³ /km	Rate Only		

Item	Description	Unit	Qty	Rate	Amount
A4.1	Extra over A1 for trees girth > 1 m – Individual Trees	No	0		
	TOTAL SCHEDULE A – SITE CLEARANCE (carried to Summary)				

Schedule B: Earthworks & Excavations (SANS 1200D & PA3)

Item	Description	Unit	Qty	Rate	Amount
B1	Restricted excavation in Class A material – SANS 1200D 3.1.2 & PA3.1.1				
B1.1	Anchor Trench	m ³	0		
B2	Bulk excavation in Class A material (within 3 km free haul) – SANS 1200D 3.1.2 & PA3.1.1				
B2.1	FTSF Wall Box Cut	m ³	0		
B2.2	Borrow Area	m ³	12 583		
B2.3	Perimeter Access Road Alterations	m ³	10 038		
B3	Extra over Class A for Class B material & spoil (within 3 km free haul) – PA3.1.2	m ³	Rate Only		
B4	Base preparation of in-situ material (rip & recompact 300 mm to 98% Std Proctor) – PA3.13				
B4.1	Perimeter Access Road Alterations	m ²	0		
B4.2	FTSF Wall Box Cut	m ²	0		
B4.3	Current FTSF Wall	m ²	11 500		
B5	Compacted embankment / fills from mining operations & excavations – SANS 1200D 5.2.3.1 & PA3.16				
B5.1	FTSF Embankment	m ³	0		
B5.2	Main Wall Buttress R6 (New Rate 2026)	m ³	12 200		
B6	Compacted embankment / fills from borrow pits & excavations – SANS 1200D 5.2.3.1 & PA3.16				
B6.1	FTSF Clay Skin	m ³	12 538		
B6.2	FTSF Clay Kicker Wall (South West)	m ³	0		
B6.3	Perimeter Access Road Alterations	m ³	10 038		
B7	Extra over B5 for haul beyond 3 km free haul – SANS 1200D 5.2.5 & PA3.19				
B7.1	1 km to 2 km	m ³ /km	Rate Only		
B7.2	2 km to 3 km – Clay	m ³ /km	45 242		
B7.3	3 km to 4 km – Rock	m ³ /km	25 200		
B7.4	4 km to 5 km (R6 New Rate 2026)	m ³ /km	0		

Item	Description	Unit	Qty	Rate	Amount
B8	Backfill with selected & approved material, compact to 98% Std Proctor – SANS 1200D 5.2.3.2 & PA3.17				
B8.1	Starter Wall Box Cut	m ³	0		
B8.2	Bidim Anchor Trench	m ³	0		
	TOTAL SCHEDULE B – EARTHWORKS & EXCAVATIONS (carried to Summary)				

Schedule C: Drainage (SANS 1200LD & PE)

Item	Description	Unit	Qty	Rate	Amount
C1.1	Supply & place A7 Bidim – FTSE downstream section between Clay & Waste Rock (PE3)	m ²	5 000		
C2.1	Supply & place 1.5 mm HDPE Liner – South West Clay Wall (PE3)	m ²	0		
C3.1	Supply & place selected filter sand between Downstream Clay & Waste Rock (SANS 1200DE 3.2.2 & PA4.2.1)	m ³	4 502		
C4.1	Supply & place washed 6.7 mm stone between Downstream Clay & Waste Rock (SANS 1200DE 3.2.2 & PA4.2.2)	m ³	4 502		
	TOTAL SCHEDULE C – DRAINAGE (carried to Summary)				

Schedule F: Miscellaneous (PI)

Item	Description	Unit	Qty	Rate	Amount
F1.1	Wearing course – Perimeter Access Road (150 mm)	m ³	0		
F1.2	Wearing course – Crest (300 mm)	m ³	0		
	TOTAL SCHEDULE F – MISCELLANEOUS (carried to Summary)				

Bill of Quantities – Pricing Summary

Ref	Description	Amount
A1	P&G – Fixed Charge Items	
A2	P&G – Value Related Items	
A3	P&G – Time Related Items	
A	Site Clearance	
B	Earthworks & Excavations	
C	Drainage	
F	Miscellaneous	
	Sub-total (P&G + Measured Works)	

Ref	Description	Amount
	Contingencies (default 10%, to be confirmed)	
	TOTAL CAPITAL COST (excl. VAT)	

Annexure A: Technical Specifications

Source: Kibali Gold Mine – FTSF Specifications Drawing, Ref 135-074-Specifications, July 2021, Rev 1 (Epoch Resources (Pty) Ltd). The specifications are reproduced below for tendering; the controlling document is the issued specification drawing, to be read with the construction drawings. This drawing is confidential and the property of Epoch Resources (Pty) Ltd.

A.1 Clear & Grub and Topsoil Stripping

- Clear & grub removal of vegetation and infrastructure within the extended footprint (from existing toe to furthest new downstream infrastructure).
- Topsoil stripping to 300 mm on existing outer walls and extended footprint.
- Stockpile areas not to exceed 2 m in height.

A.2 Box Cuts

- Box cuts on embankments intersecting natural ground; depths considered after topsoil stripping.
- Boxcut depths: waste rock 1 m; clay areas 0.5 m.

A.3 Rip & Recompact

300 mm layers below the following to be ripped and recompacted to the required density: box cuts; stormwater trenches and bunds; pipe trenches and toe-drain trenches; access roads.

A.4 Selected Material Compaction (PA 3.22)

Fill type	Compaction requirement
98% Standard Proctor fills	Clay embankment walls, box cuts & foundation box cuts – rip & recompact. Passing band 98–100%; if 100% exceeded, rip & recompact. 2 tests / 200 m ² .
95% Standard Proctor fills	Access roads. Passing band 95–97%; if 97% exceeded, rip & recompact.
95% Standard Proctor (300 mm layers)	Backfills; stormwater diversion bunds. 2 tests / 200 m ² ; averaging & re-test rules per spec; sand-replacement every 10th determination.

A.5 Typical Rockfill Specifications

Outer Engineered Rockfill Wall (PA 3.21.4)

- Continuously graded 75 µm–400 mm, not exceeding 600 mm; oversize removed.
- Finer material on upstream face, coarse on downstream, most well-graded in the centre.
- Layers ≤ 1 m thick; compaction method confirmed by test runs (smooth, polygon and padfoot drum rollers 10–20 t static, plus haul-truck passes on 1 m layers).
- PSD by sieve analysis on a representative (excavator-bucket) sample – 1 bucket/day per source and wall location, recorded.

Outer Engineered Transition Rockfill Wall (PA 3.21.4)

- Continuously graded 75 µm–200 mm, not exceeding 250 mm; oversize removed.
- Layers ≤ 0.5 m thick; finer upstream, coarse downstream, well-graded centre.
- Compaction method confirmed by test runs as above on 0.5 m layers.

A.6 Rockfill Grading Criteria

Transition Zone & Outer Wall (fine / coarse bands, % passing)

Zone	250–600 mm	100–500 mm	75–250 mm	51–100 mm
Transition (fine–coarse)	100 / –	100 / –	100 / –	– / –
Outer wall (fine–coarse)	– / 100	– / –	– / –	– / –

Intermediate and coarse-stone grading tables (sieve 51 mm down to 1.41 mm, with fine-band and coarse-band % passing) apply as set out on the specification drawing. PSDs to be inserted on grading completion.

A.7 Toe Drain & Sand Drain Grading (PA 4.2)

Filter sand and filter-grading criteria per the specification's filter grading curve; fine and coarse bands defined by particle diameter (e.g. 51 mm → 0.075 mm) with associated % passing.

A.8 Toe Drain & Outlet Pipes

- Single-walled smooth-bore PN4 (or similar strength) HDPE pipes of the specified outer diameter.
- All pipes placed in a 19 mm stone matrix.
- Slotted pipes cut to 240° (66%) of the pipe diameter; nominal slots 2 mm wide.
- Joints HDPE-welded.

A.9 Nominal Crushed Stone (PA 4.2.2)

Stone washed and clear of fines. Nominal gradings supplied for 19 mm, 13.2 mm and 6.7 mm sizes (% passing bands per the specification), e.g. 19 mm nominal 85–100% passing 19 mm; 6.7 mm nominal 85–100% passing 6.7 mm.

A.10 Bidim Installation**Downstream wall & sections above sand drain**

- A7 Bidim or similar; not held in an anchor trench but held by material weight.
- ≥ 400 mm unsewn overlap on layers and against ground where applicable.
- Placed parallel with the embankment slope.

Within trenches

- A4/A6 Bidim or similar (type per drawings); held by material weight.
- ≥ 400 mm unsewn overlap on layers and against ground.

A.11 Wearing Course (TRH 20 Section 3.3.1)

- Gravel wearing course placed on final crest elevations and access roads.
- Layers: 150 mm on access roads; 300 mm on embankment crests.
- Gravel: max size 37.5 mm; oversize index 5%; shrinkage product 100–240; grading coefficient 16–34; CBR 15 at 95% Mod AASHTO and OMC.
- Shrinkage product = linear shrinkage × % passing 0.425 mm sieve.

A.12 Excavations Greater Than 5 m Deep

- Excavations exceeding 5 m battered at 1V:2H.
- Safety / working benches every 5 m of depth, minimum 8 m wide.

- Continuously assessed for safety and halted if unsafe; backfills compacted to 95% density.
- Maximum allowable depth 10 m.

A.13 QA/QC Control Measures

- Density tests compacted on all selected fills as outlined.
- PSDs on transitional and outer waste-rock layers as prescribed.
- Density tests to ASTM D5030-94 or D4914 on outer rockfill walls – 6 tests every 2 weeks.
- Filter sand and nominal stone graded as specified; 400 mm unsewn Bidim overlaps ensured.

A.14 Additional Notes

- Items not reflected on the specification sheet to be consulted in the total construction specifications document.
- Specifications to be used in conjunction with the construction drawings; latest versions always to be consulted.

— End of Tender Package —

Construction Contract

For

Float Tailings Storage Facility – Downstream wall 1m Lift

between

Kibali Gold Mines

And

XXXXX

Contract No.:

0	Approved for Award					
Rev.	Status	Prepared By	Checked By	Checked By	Recommend By	Recommend By

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FORM OF AGREEMENT

THIS AGREEMENT is dated: **17th August 2025** (the "Effective Date").

BY AND BETWEEN:

- (1) **Kibali Gold Mines**, a company incorporated in Democratic Republic of Congo and having its registered office address at **4239, Avenue Tombal Baye, 3eme Etage de Timmeuble, Le Prestige, Commune de la Gombe**, Democratic Republic of Congo , with registration number , together with its legal successors in title (the "**Company**"); and
- (2) **Company xxx**, duly licensed under the laws of Democratic Republic of Congo located at **xxxx, Democratic Republic of Congo** , and with registration number xxxx, (the "**Contractor**"),

each a "**Party**" and together the "**Parties**".

WHEREAS:

- (A) The Company wishes to procure the execution of the Works by the Contractor in connection with the Project.
- (B) The Contractor carries on the business of construction work, such as the Works required under this Agreement.
- (C) The Contractor has agreed to perform and execute the Works on the terms set out in this Agreement.
- (D) This Agreement sets out the terms and conditions upon which the Company and the Contractor will perform their respective obligations in relation to the performance of the Works.

THE PARTIES HAVE AGREED AS FOLLOWS

1 DEFINITIONS

- 1.1 In the Agreement, unless the context otherwise requires, capitalised terms have the meaning given in the General Conditions.

2 PRIORITY OF DOCUMENTS

- 2.1 The following documents are deemed to form and shall be read and construed as part of the Agreement:
 - (a) this Form of Agreement;
 - (b) the Contract Data;
 - (c) the General Conditions;
 - (d) the Schedules to the Conditions:
 - (1) Schedule 1 (Not Used);
 - (2) Schedule 2 (Not Used);
 - (3) Schedule 3 (Not Used);
 - (4) Schedule 4 (Specification);
 - (5) Schedule 5 (Contract Price and Schedule of Payments);
 - (6) Schedule 6 (Milestones);
 - (7) Schedule 7 (List of Subcontractors);

- (8) Schedule 8 (Company's Standards)
- (9) Schedule 9 (Fiscal Terms);
- (10) Schedule 10 (Local Content Requirements);
- (11) Schedule 11 (Daywork Schedule).
- (12) Schedule 12 (Schedule of Deliverables);
- (13) Schedule 13 (Project Execution Plan);
- (14) Schedule 14 (Temporary Works);
- (15) Schedule 15 (Contractor's Equipment);
- (16) Schedule 16 (Project Organisation Structure and Key Personnel);
- (17) Schedule 17 (P&G Breakdown);
- (18) Schedule 18 (Fuel Forecast);
- (19) Schedule 19 (Form of Variation Direction); and
- (20) Schedule 20 (Form of Release).

3 ORDER OF PRECEDENCE

3.1 The Parties agree that the following will apply in the event of any ambiguity or inconsistency in or between the documents comprising the Agreement:

- (a) If the ambiguity or inconsistency is in or between the documents comprising this Agreement, the documents should be given precedence in accordance with the following:
 - (1) the General Conditions;
 - (2) the Contract Data;
 - (3) Schedule 4 (Specification);
 - (4) Schedule 5 (Contract Price); and
 - (5) the remaining Schedules, in the order stated in clause 2.1(d);
- (b) If either Party discovers an ambiguity, inconsistency or discrepancy, error or defects of a technical nature, in or between the documents forming the Agreement, that Party shall immediately inform the Company who shall issue any necessary clarification or instructions, which shall be implemented by both Parties without delay. The Contractor shall not be entitled to any adjustment to the Contract Price or any additional cost arising from or in relation to any such clarification or instruction.
- (c) Notwithstanding the priority of documents in clause 3.1(a), if there is any ambiguity, inconsistency, omissions or discrepancy in or between the documents listed in clause 3.1(a) in regard to the obligations or requirements for the standard or quality of the Works, the Contractor agrees to the higher more stringent obligation or requirement.

4 TERM

4.1 The Agreement comes into force on the Effective Date and unless terminated earlier in accordance with its terms, shall continue in full force and effect until the expiry of the DNP.

5 WORKS

5.1 The Contractor shall commence the execution of the Works on the Commencement Date.

5.2 The Contractor shall perform the Works with due expedition and without delay in accordance with this Agreement and bring the Works to Completion by the Time for Completion.

6 CONTRACT PRICE

6.1 In consideration of the Contractor's satisfactory performance of the Works, the Company shall pay the Contractor the Contract Price of **USD (in words) (excl. VAT)** in the manner and at the time stipulated in the Agreement. The breakdown of the Price is as mentioned below.

6.1 a – Fixed Preliminary and General – Fixed Costs Items – USDxxxx

6.1 b - Fixed Preliminary and General – Time Related Items Costs – USD xxxx

6.1 c – Re-measurable Cost Items with firm and fixed rates and estimated Quantities – USD xxxx (The amount is based on estimated quantity, and payment will be made for the actual quantity executed).

6.2 In consideration of the payments to be made by the Company to the Contractor, the Contractor:

- (a) hereby covenants with the Company to perform the Works and to otherwise perform all of its obligations in accordance with the Agreement; and
- (b) accepts the risks and costs of performing the Works and otherwise complying with its obligations under the Agreement, except to the extent the Agreement expressly provides otherwise.

7 GOVERNING LAW

7.1 This Agreement and any disputes between the Parties arising out of or in connection with this Agreement, its subject matter or formation (whether contractual or non-contractual in nature) shall be governed by and be construed in accordance with the laws of England and Wales.

Signing Page**Executed as an Agreement****Company**

Signed for and on behalf of:
Kibali Gold Mines in the presence of:

<i>sign here</i> ▶	<i>sign here</i> ▶		
		Witness	Witness
<i>title</i>			
<i>print name</i>	<i>print name</i>		
Company			

Contractor

Signed for and on behalf of:
Company xxx (Registration No. xxxxx) in the presence of

<i>sign here</i> ▶	<i>sign here</i> ▶		
		Witness	Witness
<i>title</i>			
<i>print name</i>	<i>print name</i>		

Contract Data

Sub-Clause	Reference	Data
Sub-Clauses 1.1 and 13.2(a)	Advance Payment	Not Applicable
Clause 1.1	Commencement Date	17th August 2026
Sub-Clauses 1.1 and 11.3(b)	Defects Notification Period (DNP)	365 days from the Date of Completion
Sub-Clauses 1.1 and 1.21	Is a Parent Company Guarantee required?	No
Sub-Clause 1.1	Sections	Refer to the relevant Sections specified in Schedule 6 [Milestones]
Sub-Clause 1.1	Time for Completion	Refer to the relevant dates specified in Schedule 6 [Milestones]
Sub-Clause 1.1	Project	Construction of Float Tailings Storage Facility – Downstream wall 1m lift located in Kibali Gold Mines Doka Province of Democratic Republic of Congo.
Sub-Clause 1.3	Notices and Other Communications	
	Agreed methods of electronic transmission	Company's Representative's Sharecentre Portal
	General Notices and communications to the Company shall be addressed to:	The Company's Representative
	General Notices and communications to the Contractor shall be addressed to:	Contractor's Representative's Name: xxxx Contractor's Representative's Title: xxxx Contractor's Representative's Address: , DRC Contractor's Representative's E-mail Address:

Sub-Clause	Reference	Data
	(a) Notices of Claim to the Company shall be addressed to:	<u>The Company's Representative:</u> Kaizer Mbiko Email: Kaizer.Mbiko@kibaligold.com Tel: +243 812 532 441 Kibali Gold Mines 4239, Avenue Tombal Baye 3eme Etage de Timmeuble Le Prestige, Commune de la Gombe Ville de Kinshasa
	(b) Notices of Claim to the Contractor are to be addressed to:	<u>Contractor's Representative's Name:</u> <u>Contractor's Representative's Title:</u> <u>Contractor's Representative's Address:</u> , DRC
Sub-Clause 1.4	Law and Language	
	Governing Law	Laws of England and Wales.
	Language of communication and of the Contract	English.
Sub-Clause 1.6(b)	Required number of paper copies of the Contractor's Documents	The Contractor's Documents shall be submitted in accordance with the provisions set forth in the Specification.
Sub-Clauses 1.13 and 14.2(a)(10)	Contractor's aggregate limitation of liability	100% of the Contract Price.
Sub-Clauses 2.1 and 8.3(b)(2)	Time period for Contractor's access to and possession of all parts of the Site	Commencement Date.
Sub-Clause 3.1(a)	The Company's Representative	Kaizer Mbiko

Sub-Clause	Reference	Data
Sub-Clause 4.3(a)	The Contractor's Representative	xxxxxx
Sub-Clause 4.7(f)(1)	Period for notifying of errors in any items of reference	14 Days
Sub-Clause 4.16(d)	Company's Logistics Service Provider	Tradecorp Logistics (TCL) TCL representative's Name: Caroline Brownson TCL representative E-mail address: carolineb@tclsc.co TCL representative Tel No.: +27 11 397 8950
Sub-Clause 4.20(a)	Cost per litre of diesel fuel	Dry rate
Sub-Clause 4.21	Required copies of progress reports	Shall be submitted in accordance with the provisions set forth in the Specification.
Sub-Clause 6.5(a)	Working hours	As per the Construction Specification included in Schedule 4.
Sub-Clause 8.3(b)	Required copies of programmes	As per Schedule 8
Sub-Clause 8.8(b)	Delay Damages	1% of the Accepted Contract Amount per week of delay or part thereof.
Sub-Clauses 8.8(c), 14.2(a)(3), 14.2(a)(10) and 14.2(a)(15)	Maximum Amount of Delay Damages	The Contractor's maximum aggregate liability for Delay Damages under clause 8.8 [<i>Delay Damages</i>] shall not exceed ten percent (10%) of the Contract Price.

Sub-Clause	Reference	Data
Sub-Clauses 13.3	Payment Term	The Fixed P&G as mentioned in Schedule 17 will be paid as below 80% of Fixed P&G with the Interim Payment of the 1st Month Balance 20% of Fixed P&G with the Interim Payment of the 2nd Month. Time-related P&G to be paid on an equal payment basis over 18 months The Interim payment for the Unit rates will be paid as clause 13.3 and shall not exceed the quantities as mentioned in Schedule 5. The payment will be processed for the actual quantity executed after deductions as allowed in the contract including retention.
Sub-Clause 13.3(b)	Frequency for submission of Application for Interim Payment	Monthly, on the 25 th Day of each Month
Sub-Clause 13.3(d)(10)	Retention Percentage	Ten percent (10%)
	Maximum limit of Retention Moneys	Ten percent (10%) of the Contract Amount
Sub-Clause 13.11(b)(2)	Required copies of Statement	2 (two)
Sub-Clause 13.15	Currencies for payment of the Contract Price	US Dollars (\$USD)
Sub-Clause 16.2(b)(4)	Unforeseeable forces of nature which the Contractor is responsible for	None
Clause 18 [Insurance]		
Sub-Clause 18.1(g)	Permitted deductible limits	Maximum of 10% of insured price
Sub-Clause 18.2(a)	Insurance required for the Works (Construction All-Risks Insurance)	The same will be part of Company's Construction All Risk Insurance. The Company, will take insurance covering all real and personal property for "all risks" of expenses, costs, losses and/or damage, including any losses and/or damage resulting from Defective design, plans, Specifications, Goods and/or workmanship of the Works:

Sub-Clause	Reference	Data
		- for the amount of 100% (which shall include a provision for index linking and any other additional expenses, costs and losses that may arise, expenses for Site clearance, and inflation) of the full replacement value of the Works, covering all construction and all Goods, Materials, Plant and equipment incorporated into the Works and/or Site plus professional fees; - which shall include coverage for earthquakes (if available at commercially reasonable rates), water damage (including, groundwater damage and water damage resulting from backed up sewers and drains) and flood damage; - which shall also include coverage for all fixed costs and/or any other additional expenses, costs and losses, necessarily and reasonably incurred by the Company (with the Company to be named as the sole loss payee, in respect of this particular coverage), for the amount of not less than 100% of the Contract Price and for an indemnity period of not less than 24 Months and which:
Sub-Clause 18.2(d)	Insurance required for Contractor's Men and Material	In the joint name of the Company and the contractor, the contractor will avail insurance covering all real and personal property for "all risks" of expenses, costs, losses and/or damage, including any losses and/or damage resulting from Defective design, plans, Specifications, Goods and/or workmanship during the execution of the Works: - shall include, as named insureds, the Company, Company's Personnel, the Contractor, any Other Contractors and any Subcontractors and their personnel, working at the Site; and - shall not contain a deductible which exceeds 10% of the sum insured (except as to earthquake insurance and flood insurance); and which shall include coverage for the property of the Contractor and its Subcontractors or property of others which is in the care, custody or control of the named insureds for which any insured may be liable.
Sub-Clause 18.2(b)	Insurance required for the Goods (Property Insurance)	Covering full replacement value of all Plant and equipment and materials of the Company used by the Contractor in the performance of the Works, for all risks coverage.
Sub-Clause 18.2(c)	Insurance required for the liability (breach) of professional duty and against liability for fitness	Not Applicable (Design by others).

Sub-Clause	Reference	Data
	for purpose (Professional Indemnity)	
Sub-Clause 18.2(d)	Insurance required for injury to persons and damage to property (Public Liability Insurance)	In the joint names of the Contractor and the Company and incorporating a cross liability clause and in the amount of not less than US\$ 20,000,000 in the aggregate, covering liability for bodily injury, illness, death, disease to persons and loss of or damage to property and shall not contain a provision or exclusion intended to specifically exclude coverage for damage to the Company's property; and including, in each case, all claimant's and defendant's costs, including the costs of obtaining legal advice resulting from, or incurred in connection with, the carrying out of the Works and/or the Contractor's observance or performance of, or failure to observe or perform, its other obligations under this Agreement. The policy shall also include the Contractor's Personnel and liability to the Company's Personnel.
Sub-Clause 18.2(e)	Insurance required for injury to employees (Workers Compensation/Company's Liability Insurance)	As required by Law
Sub-Clause 18.2(f)	Other insurances required by Law and by local practice	
(A)	Automobile Liability Insurance	As required by Law

General Conditions

1. General Provisions

1.1 Definitions

In this Agreement the following words and expressions shall have the meanings stated, except where the context requires otherwise.

Term	Meaning
Advance Payment	means the amount (if any) set out in the Contract Data to be paid by the Company to the Contractor in accordance with Sub-Clause 13.2 [<i>Advance Payment</i>].
Advance Payment Guarantee	means the guarantee provided under Sub-Clause 13.2(c) [<i>Advance Payment Guarantee</i>].
Affiliate	means, in relation to any person, any person (excluding the relevant person) which directly or indirectly: 1 is Controlled by the relevant person; 2 Controls the relevant person; or 3 is Controlled by a person which directly or indirectly Controls the relevant person.
Agreement	means the written agreement between the Parties, formed by the contract documents listed in clause 2.1 of the Form of Agreement.
Anti-Corruption Laws	all applicable laws, regulations or policies relating to the prevention of bribery, corruption and money laundering to which the Parties are subject, including Canada's Corruption of Foreign Public Officials Act, and the U.S. Foreign Corrupt Practices Act.
Anti-Corruption Policies	the ethics and anti-bribery policies of the Company, which are available on the public website Barrick Gold Corporation - Sustainability - Reports & Policies or otherwise notified to the Contractor, in each case as updated, amended, supplemented or replaced them from time to time.
Application for Interim Payment	has the meaning given to that term in Sub-Clause 13.3(e).
Asset	means any Goods (whether a single tangible item or a combination) incorporated into the Permanent Works.
Bill of Quantities	means the document entitled "Bill of Quantities" (if any), included in the Schedules.

Term	Meaning
Business and Service Continuity	means the Contractor's continuation of the Works at a satisfactory level and within acceptable timeframes, in accordance with the Specification under this Agreement, following any Emergency or Incident, and/or any other event or condition that disrupts or interrupts the Contractor's execution of the Works and/or the Company's operations.
Business and Service Continuity Plan	means the Contractor's written plan, approved by the Company, describing Contractor's capability and actions to provide Business and Service Continuity.
Business Day	means a day on which banks are legally permitted to be open for business in Democratic Republic of Congo (except a Sunday or public holiday).
Change in Control	means: - if the Contractor or the Parent Company is a Legal Person: - the sale, lease, exchange or other transfer (in one or more transactions) of all or substantially all the Contractor's or the Parent Company's (as applicable) assets; or - a merger with the Contractor's or the Parent Company's (as applicable) involvement; or - consolidation or acquisition of the Contractor or the Parent Company (as applicable) with, by or into another Legal Person; or - any change in the ownership of more than fifty percent (50%) of the voting capital stock of the Contractor or the Parent Company (as applicable) in one or more related transactions; - if the Contractor constitutes a JV, consortium or other unincorporated grouping of two or more entities, known and approved by the Company at the time of signing this Agreement, a change of the Contractor's composition after signing this Agreement; or - change of the Contractor's or the Parent Company's (as applicable) legal status, regardless of whether it was a legal or unincorporated entity before the change.
Change in Law	means the occurrence of any of the following, at any time after the Effective Date: - the introduction, adoption, enactment or promulgation of a new Law by a Government Entity; - the amendment or repeal of an existing Law by a Government Entity; and - the introduction, adoption, change or repeal by a Government Entity of any material condition in any Government Authorization or in connection with the issuance, renewal, or modification of any Government Authorization.

Term	Meaning
Circumstances for Stepping-In	means any of the reasons, stated in Sub-Clause 8.14(d) [<i>Step-In Notice Requirements</i>] of these General Conditions, which gives the Company the right to step in to perform the Works (or any portion of the Works), regardless of a determination of fault at the time the Company steps in and notwithstanding whether an Emergency, Incident or other event or condition is partly or wholly attributable to Contractor's actions or omissions.
Claim	means a request or assertion by one Party to the other Party for an entitlement or relief under any Clause of these General Conditions or otherwise in connection with, or arising out of, this Agreement or the execution of the Works.
Close Out Documents	shall have the meaning given to it in Sub-Clause 13.10 [<i>Statement</i>].
Commencement Date	means the date identified in the Contract Data.
Commissioning and Testing Plan	means the plan prepared by the Contractor for the commissioning and testing of the Works in accordance with Sub-Clause 7.4(b).
Company	means the Party named as such in the Form of Agreement or its lawful successor.
Company's Equipment	means the apparatus, equipment, machinery, construction plant and/or vehicles (if any) to be made available by the Company for the use of the Contractor under Sub-Clause 2.5 [<i>Company-Supplied Materials and Company's Equipment</i>]; but does not include Plant which has not been taken over under Clause 10 [<i>Company's Taking Over</i>].
Company's Personnel	means the Company's Representative, the assistants described in Sub-Clause 3.2 [<i>Delegation by the Company's Representative</i>], and all other staff, labour and other employees of the Company engaged in fulfilling the Company's obligations under the Contract; and any other personnel identified by the Company, the Company's Representative as Company's Personnel, by a Notice from the Company, the Company's Representative to the Contractor.
Company's Representative	means the person named by the Company in the Contract Data appointed by the Company for the purposes of the Contract, or any replacement appointed under Sub-Clause 3.1(h) [<i>The Company's Representative</i>].

Term	Meaning
Company's Standards	means the standards, policies and procedures set out, or referred to, in Schedule 8 [<i>Company's Standards</i>], as may be updated from time to time.
Company-Supplied Amenities	means the amenities supplied, or to be supplied, by the Company to the Contractor under Sub-Clauses 4.19 [<i>Temporary Utilities</i>], 4.20 [<i>Fuel Supply</i>] and 4.22 [<i>Security of the Site</i>].
Company-Supplied Materials	means the materials (if any) supplied, or to be supplied by the Company to the Contractor under Sub-Clause 2.5 [<i>Company-Supplied Materials and Company's Equipment</i>].
Competent Authority	means any court of competent jurisdiction, and any duly authorized local, state or national agency, authority, department, government legislature, minister or ministry, of any local, state or national or international organization.
Completion	in respect of the Works (or each Section), means the occurrence of all of the requirements set out in Sub-Clause 10.1 [<i>Company's Taking Over the Works</i>] (with the words " Complete " and " Completed " to also be construed in accordance Sub-Clause 10.1 [<i>Company's Taking Over the Works</i>]).
Compliance Verification System	means the compliance verification system to be prepared and implemented by the Contractor for the Works in accordance with Sub-Clause 4.9(b) [<i>Compliance Verification System</i>].
Conditions Precedent	means the following pre-conditions to be satisfied by the Contractor prior to executing the Works, namely, the Contractor, providing to the Company, the following: 1 if specified in the Contract Data, a duly executed Parent Company Guarantee. 2 Certifications or registrations required to perform the Work; and 3 Copies of insurance certificates, demonstrating that the Contractor has obtained and is maintaining all the insurance policies, coverage and limits, required by and referred to in this Agreement.
Confidential Information	means the details of this Agreement; the Works; the Company's facilities and premises; the Site; business strategies; ideas; financial, operational and administrative data and/or information; insurance information; know-how, plans, products, services, trade secrets, formulas, processes, ideas, and inventions, which may reasonably be considered to be of a sensitive or confidential nature, whether communicated orally, contained in writing or otherwise recorded, and however held or stored, and including all copies made thereof.

Term	Meaning
Confidentiality	means state of maintaining authorized restrictions on the access to, and disclosure of, Confidential Information.
Contract Data	means the pages in this Agreement immediately prior to the General Conditions entitled 'Contract Data'.
Contract Price	means the amount payable by the Company for the performance of the Works calculated in accordance with Schedule 5.
Contractor	means the Party named as such in the Form of Agreement or its lawful successor.
Contractor's Documents	means any communications, Material, document, design drawings or documents (if any), data, database, or other information, in whatever form or format (whether written, magnetic, electronic, graphic, digitized, or otherwise), as described in Sub-Clause 4.4 [<i>Contractor's Documents</i>], prepared, supplied and/or used by the Contractor (or the Contractor's Personnel) in the performance or management of this Agreement, or which is reasonably required to understand the Works and the Specification.
Contractor's Equipment	means all apparatus, equipment, machinery, construction plant, vehicles and other items required by the Contractor for the execution of the Works, including those specified in Schedule 15, but excluding Temporary Works, 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 whom the Contractor utilizes on Site or other places where the Works are being carried out, including any Subcontractor and the staff, labour, other employees and suppliers 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 natural person named by the Contractor in this Agreement or appointed by the Contractor under Sub-Clause 4.3 [<i>Contractor's Representative</i>], who acts on behalf of the Contractor and whose instructions, requests and decisions issued or made as provided for in this Agreement, shall be binding on the Contractor.
Control	means, in relation to a person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of that person, whether through the ownership of voting securities, by contract or otherwise, and " Controls " and " Controlling " shall be construed accordingly.

Term	Meaning
Cost	(including, with correlative meaning, the term “ Costs ”) mean all verifiable costs and expenditures, reasonably, directly and properly incurred (or to be incurred) by the Contractor, in connection with the execution and Completion of the Works, whether on or off the Site, but does/do not include profit or any allowances or contingency sums for the assumption of any risk under or in connection with this Agreement.
Country	means the Democratic Republic of Congo.
Date of Completion	means: 1 the date stated in the Taking-Over Certificate issued by the Company's Representative; or 2 if the last paragraph of Sub-Clause 10.1 <i>[Taking Over the Works and Sections]</i> applies, the date on which the Works or Section are deemed to have been Completed in accordance with this Agreement; or 3 if Sub-Clause 10.2 <i>[Taking Over Parts]</i> or Sub-Clause 10.3 <i>[Interference with Tests on Completion]</i> applies, the date on which the Works or Section or Part are deemed to have been taken over by the Company.
Day	means a Gregorian calendar day of 24 hours.
Daywork Schedule	means the document entitled day work schedule (if any) included in this Agreement, showing the amounts and manner of payments to be made to the Contractor for labour, materials and equipment used for day work under Sub-Clause 12.4 <i>[Daywork]</i> .
Defect	(including, with correlative meaning, the terms “ defect ,” “ Defects ” and “ Defective ”) means any error, inaccuracy, ambiguity, inconsistency, inadequacy, omission, non-conformity with the Specifications, abnormality, imperfection, shortcoming, flaw, fault, failure, deficiency, or other defect or damages in, around, or to, the Project (or any portion thereof), the Works, the deliverables, the Records, the Contractor's Documents, consumables, Goods, procured and/or installed or any failure of the Project (or any portion thereof) to comply with the requirements of this Agreement, caused by or attributable to the Contractor's (or Contractor's Personnel's) performance of the Works, notwithstanding any consent or approval, given by the Company, the Company's Personnel, or the Company's Representative.
Delay Damages	means the damages for which the Contractor shall be liable under Sub-Clause 8.8 <i>[Delay Damages]</i> for failure to comply with Sub-Clause 8.2 <i>[Time for Completion]</i> .

Term	Meaning
Dispute	means any situation where: 1 one Party makes a claim against the other Party (which may be a Claim, as defined in these General Conditions, or otherwise); and 2 the other Party rejects the claim in whole or in part; provided, however, that a failure by the other Party to oppose or respond to the claim, in whole or in part, may constitute a rejection if, in the circumstances, the arbitrator(s), deem it reasonable for it to do so.
DNP	means the period for notifying Defects and/or damage in the Works or a Section or a Part (as the case may be) under Sub-Clause 11.1 <i>[Completion of Outstanding Work and Remedying Defects]</i> , as stated in the Contract Data and as may be extended in accordance with Sub-Clause 11.3, calculated from the Date of Completion of the Works or Section or Part.
Drawings	means the drawings of the Works included in this Agreement, and any additional and modified drawings issued by (or on behalf of) the Company in accordance with this Agreement.
Effective Date	shall have the meaning given in the Preamble of the Form of Agreement.
Emergency	means a serious, unexpected, and often dangerous situation requiring immediate action.
Emergency Management	means the management of an Emergency or Incident, under the Company's Standards, including actions (along with escalation to and including, the Company's departments for fire protection and emergency services, security, insurance, legal, and risk management, and any other required and necessary department, as determined by the Company) to protect life and property and to minimize the impact of the Emergency, Incident, and/or unforeseen event, occurrence or circumstance that may affect the Contractor's performance of the Works.
Emergency Management Plan	means the Contractor's written plan, approved by the Company, describing the actions to be taken by the Contractor and the Company in an Emergency or in response to an Incident and for the purpose of Emergency Management.
Environmental Damage	means the existence and/or migration (or threatening migration) of any Hazardous Substance on, about and/or beneath, any portion of the Company's premises and/or any property adjoining the Company's premises.

Term	Meaning
EOT	means an extension of the Time for Completion under Sub-Clause 8.5 [<i>Extension of Time for Completion</i>].
Exceptional Event	means an event or circumstance as defined in Sub-Clause 17.1 [<i>Exceptional Events</i>].
Final Invoice	means the request for payment of the final undisputed amount due and owing to the Contractor from the Company after the Company issues the FPC.
Final Payment	means that undisputed amount paid to the Contractor by the Company after the Contractor's compliance with all the Final Invoice requirements under Clause 13 [<i>Contract Price and Payment</i>].
Final Release	a release in the form of Schedule 20 duly executed by the Contractor.
Final Statement	means the Statement defined in Sub-Clause 13.11(d) [<i>Agreed Final Statement</i>].
Financier	means a person providing financial assistance to the Company in connection with the Project.
Form of Agreement	means the agreement executed by the Parties to which these General Conditions are attached.
FPC	means the payment certificate issued by the Company's Representative under Sub-Clause 13.13 [<i>Issue of FPC</i>].
Fuel Supply and Storage Plan	has the meaning given in Sub-Clause 4.20(b).
General Conditions	means the document entitled "General Conditions".

Term	Meaning
Good Industry Practice	means all the professional skill, experience, care, prudence, foresight, good practices, and diligence, reasonably to be expected of duly qualified and experienced contractors undertaking work and other duties, similar to the Works to be performed under this Agreement, in relation to projects similar in size, scale and character to the Project, using the best accepted and current international standards of current professional construction and engineering practice for the construction and operation of the Permanent Works for the Company's intended purpose.
Goods	means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
Government Authorizations	means all authorizations, passports, medical certificates, visas, fees for expatriate workers under the Laws of the Country, licenses, consents, decrees, permits, directives, waivers, privileges, and approvals from, and filings with, any Government Entity, relating to the performance of the Contractor's obligations under this Agreement.
Government Entity	means the government of the Country and any ministry, agency, court, judicial committee, regulatory, or other authority of the government of the Country.
Government Official	includes: 1 an officer or employee of any governmental, semi-governmental or judicial entity or authority, independent or otherwise, including any provincial government, local-level government, any statutory or public body established under a law, any state-owned or state-controlled entity or corporation, or any instrumentality of any government; 2 any person acting in an official capacity on behalf of any of the foregoing; 3 an officer, employee or official of a political party; 4 a candidate for political office; or 5 an official or employee of a public international organization.
Hazard	means any source with a potential to result in an Emergency or Incident related to health, safety and the environment.

Term	Meaning
Hazardous Substances	means any natural or artificial substance (whether in solid or liquid form or in the form of a gas or vapor and whether alone or in combination with any other substance), including any controlled, hazardous, toxic or dangerous waste such as, without limitation, asbestos, polychlorinated biphenyls (PCB), chemicals, fuels, lubricants, crude and motor oils, pipe dope, paints, solvents, bilge, garbage and other similar chemical substances, pollutants, contaminants, hazardous or toxic substances, materials or waste: 1 that is capable of causing harm to man or any other living organism supported by the environment, or damaging the environment or public health; 2 the presence of which requires investigation, notice or remediation under any applicable Laws or applicable Standards; 3 which is or becomes defined as a "hazardous material", "hazardous waste", "hazardous substance", "regulated substance", "pollutant" or "contaminant" under any applicable Laws and/or applicable Standards; 4 which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated by any Government Entity or applicable Competent Authority where the Site is located; 5 the presence of which on the Company's premises and/or property, adjoining the Company's premises (whether land or sea), causes or threatens to cause a nuisance or poses or threatens to pose a hazard to the health or safety of persons on or about the Company's premises or property adjoining the Company's premises (whether land or sea); 6 which contains gasoline, diesel fuel or other petroleum hydrocarbons; or 7 which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; and/or radon gas.
HSE	means health, safety and the environment.
IFC Performance Standards and EHS Guidelines	means, collectively, to the extent applicable to the Works contemplated under this Agreement: 1 the IFC Performance Standards on Environmental and Social Sustainability, dated January 1, 2012, 2 the IFC General Environmental Health and Safety (EHS) Guidelines, dated April 30, 2007, in each case of paragraphs 1 and 2, as in effect on the Effective Date; and 3 with respect to any matter not covered by any standard described in paragraphs 1 and 2 above, any such other IFC Performance Standards and EHS Guidelines as may be adopted by Company from time to time. These standards and guidelines can be found at:

Term	Meaning
	https://www.ifc.org/content/dam/ifc/doc/2010/2012-ifc-performance-standards-en.pdf and at: https://www.ifc.org/content/dam/ifc/doc/2000/2007-general-ehs-guidelines-en.pdf
Incident	means an unwanted event or chain of events (regardless of whether it was Unforeseeable), which: 1 results in: – illness, injury or death to an individual(s); – damage to, or destruction or loss of property, Assets, infrastructure, systems, information, data, and/or the environment; and/or – adverse effect on the provision of Business and Service Continuity and/or the operating environment of either Party; 2 creates: – a Hazard; – a legal liability; and/or – harm to the reputation, legal or financial standing, and/or rights of the Company and/or an individual or group of individuals.
Intellectual Property Rights	means a Party's or third party's right in or to: 1 inventions (whether patentable or un-patentable and whether or not reduced to practice), and all improvements thereto; 2 patents, patent applications, and patent disclosures; 3 registered or unregistered trademarks, service marks, trade names, trade dress, domain names and logos, and all goodwill associated therewith; 4 works of authorship, copyrights, whether registered or unregistered (including copyrights in Software) and applications for copyright registrations; 5 trademarks, designs, design rights, trade secrets and know-how; 6 moral and economic rights of authors and inventors, however denominated; 7 divisions, continuations, renewals, reissuances and extensions of the foregoing (where applicable); 8 to the extent not covered by the foregoing, all Software; and 9 any similar or equivalent rights to any of the foregoing, anywhere in the world.
Interim Invoice	shall have the meaning given to it in Sub-Clause 13.7(a) [<i>Interim Invoices and Interim Payments</i>] of these General Conditions.

Term	Meaning
Interim Payment	means any payments made by the Company to the Contractor other than the Final Payment.
Issued for Construction Document	means the statement of Project requirements, detailed design documents, development plans and specifications, Bill of Quantities (if any) and any other documentation, in respect of the Contractor's Completion of the Works, as set forth in Schedule 4 [<i>Specification</i>].
Items of Reference	has the meaning given to that term in Sub-Clause 2.4(b).
JV	means a joint venture, association, consortium or other unincorporated grouping of two or more persons, whether in the form of a partnership or otherwise.
JV Undertaking	means the letter signed by all the persons who are members of the JV, provided to the Company as part of the Tender setting out the legal undertaking between the two or more persons constituting the Contractor as a JV, addressed to the Company, which shall include: 1 each such member's undertaking to be jointly and severally liable to the Company for the performance of the Contractor's obligations under this Agreement; 2 identification and authorization of the leader of the JV; and 3 identification of the separate scope or part of the Works (if any) to be carried out by each member of the JV.
Key Personnel	means the positions (if any) of the Contractor's Personnel, other than the Contractor's Representative, that are stated in Schedule 16.
Laws	means any one or more of present (as at the Effective Date) and future (as a result of a Change in Law), legislation, statutes, ordinances, rules, regulations (including implementing regulations), codes, decrees, decisions, resolutions, Government Authorizations, judgments, approvals, consents, treaties, and/or directives (to the extent any of them has the force of law); orders of any public authority (as amended, re-promulgated, substituted or replaced from time to time), bylaws, franchises, and requirements and any other laws (or any interpretation of the foregoing by the Competent Authority, including any laws related to a Prohibited Act and any regulations issued under or by international environmental conventions and regulatory bodies, which any Competent Authority has adopted; all applicable laws concerning photography in the Country, labour, employment, tax, immigration, data protection, occupational health and safety, Hazardous Substances, the environment (land, air and sea); any design, engineering, building and zoning codes and laws of the Country; and any other laws, issued by any Competent Authority), to the extent applicable to either Party, the Works, the Site, and/or the Permanent Works (or any portion thereof), whether or not in the contemplation of the Parties at the time this Agreement is executed, and including all Government Authorizations

Term	Meaning
	required to be obtained from, and all rules and regulations of, any applicable Government Entity.
Legal Person	means any individual or organization that has legal rights and is subject to obligations and liabilities.
Local Content Plan	has the meaning given to that term in clause 4.28.
Local Content Requirements	means the employment and procurement related requirements set out in the Schedule 10 [<i>Local Content Requirements</i>].
Materials	means things of all kinds (other than Plant), whether on the Site or otherwise allocated to this Agreement and intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under this Agreement.
Milestone or milestone	means a significant stage or event in the Works and development of the Project, as specified in Schedule 6 [<i>Milestones</i>].
Modern Slavery	has the meaning given to it in clause 1.18(a)(2).
Modern Slavery Laws	has the meaning given to it in clause 1.18(a)(1).
Month	means a Gregorian calendar month.
Nominated Subcontractor	has the meaning given to it in Sub-Clause 5.2(a) [<i>Definition of "Nominated Subcontractors"</i>].
Notice	means a written communication identified as a Notice and issued in accordance with Sub-Clause 1.3 [<i>Notices and Other Communications</i>].
Notice of Claim	shall have the meaning given to it in Sub-Clause 19.2(a) [<i>Notice of Claim</i>].
No-objection	means that the Company's Representative makes no objection to the Contractor's Documents, or other documents submitted by the Contractor under these General Conditions, and such Contractor's Documents or other documents may be used for the Works.

Term	Meaning
OFAC	the U.S. Department of Treasury, Office of Foreign Assets Control.
Other Contractor	means any other contractor(s) and/or consultant(s), including the A/E, engaged by the Company to carry out Related Work.
Parent Company	means the person named as such in the Contract Data.
Parent Company Guarantee	shall have the meaning given to it in Sub-Clause 1.21 [<i>Parent Company Guarantee</i>].
Part	means a part of the Works or part of a Section (as the case may be) which is used by the Company and deemed to have been taken over under Sub-Clause 10.2 [<i>Taking Over Parts</i>].
Parties	means both the Company and the Contractor.
Party	means the Company or the Contractor, as the context requires.
Payment Certificate	means a payment certificate issued by the Company under Clause 13 [<i>Contract Price and Payment</i>].
Performance Certificate	means the certificate issued by the Company's Representative (or deemed to be issued) under Sub-Clause 11.9 [<i>Performance Certificate</i>].
Permanent Works	means the works of a permanent nature which are to be executed by the Contractor under this Agreement, as described in the Specification.
Physical Conditions	means natural physical conditions and physical obstructions (natural or man-made) and pollutants, which the Contractor encounters at the Site during execution of the Works, including sub-surface and hydrological conditions but excluding climatic conditions at the Site and the effects of those climatic conditions.
PICA	means a Payment Certificate issued by the Company's Representative for an interim payment under Sub-Clause 13.6 [<i>Issue of PICA</i>].
Plant	means the apparatus, equipment, machinery and vehicles (including any components) whether on the Site or otherwise allocated to this

Term	Meaning
	Agreement and intended to form or forming part of the Permanent Works.
Programme	means a detailed time programme, prepared and submitted by the Contractor, to which the Company's Representative has given (or is deemed to have given) a Notice of No-objection under Sub-Clause 8.3 [Programme].
Prohibited Act	means: 1 offering, giving or agreeing to offer or give to, or accepting or agreeing to accept from, any person employed by or on behalf of the Company, its Affiliates, any Competent Authority, Public Official, or third party, any bribery, gift, gratuity, consideration, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money laundering, use of insider information, the possession of illegally obtained information or any other criminal activity, of any kind, as an inducement or reward for; 2 doing or not doing (or for having done or not having done) any act, in connection with this Agreement or any other agreement or arrangement with the Company; or 3 showing or not showing favour or disfavour to any person, in relation to this Agreement or any other agreement or arrangement with the Company or any Competent Authority, Public Official, or third party relating to the Works; 4 entering into this Agreement or any other agreement with the Company, in connection with which commission has been paid or has been agreed to be paid by the Contractor or an Affiliate of the Contractor on its behalf or to its knowledge; 5 defrauding, attempting to defraud or conspiring to defraud the Company or any Competent Authority, Public Official or third party; 6 committing or attempting to commit, any offence under the applicable Laws of any applicable jurisdiction, in respect of any of the actions or omissions listed in 1 above.
Prohibited Materials	means Materials that: 1 affect or put at risk the health or safety of any person who may come into contact with the Works (whether during construction or after their Completion); or 2 are by themselves or as a result of their use in a particular situation or in combination with other Materials, would or are likely to have the effect of reducing their normal life expectancy or performance of any other Materials or structure in which the Materials are incorporated or to which they are affixed; or 3 which are otherwise notified to the contractor by the Company or the Company's Representative as being prohibited for use in connection with the Works.

Term	Meaning
Project	has the meaning given to it in the Contract Data.
Public Official	means any person serving any governmental, quasi-governmental, public or quasi-public function or service in the Country and whether permanently or temporarily, including: 1 an arbitrator or an expert assigned by the government or any authority having jurisdiction; 2 any person assigned by the government or any administration entity to perform a specific task; 3 any person who works for the individual companies or establishments that manage and operate or maintain the public utilities or carry out a service therein; 4 personnel and members of non-governmental organizations of the public interest; or 5 personnel of international institutions and organizations regarding the conduct of international business.
Publicity Materials	means any name, logo, trademark, recorded voice or video, likenesses, photographs and negatives, speeches, presentations, performances, advertising, sales promotion, press release, public announcement and other promotional, marketing or publicity material, written or otherwise produced by Contractor, in which the Company's name, corporate logo or trademark appears or is referred to, or which contains language from which the connection of said name, logo, or trademark maybe inferred or implied.
QM System	means the Contractor's quality management system (as may be updated and/or revised from time to time) in accordance with Sub-Clause 4.9(a) [<i>Quality Management System</i>].
Records	means any information (including in electronic format), evidencing the Contractor's performance and Completion of the Works and satisfaction of its obligations under this Agreement.
Related Work	means all and any work being carried out by Other Contractors in relation to the Project as and when notified to the Contractor by the Company's Representative and/or the Company.
Remedial Work	means all Costs, services, Works, resources (including engaging supplemental Contractor's Personnel and provision of Assets, Goods, Temporary Works, in consultation and cooperation with the Company's Personnel, and the preparation of any documents, Records, and deliverables), and other things, which are necessary and required, express or implied, for cleaning up, recovering, restoring, repairing, replacing, remedying, remediating, removing, responding to, abating, containing, closing, and/or monitoring of, any Defect(s) in the Works, all

Term	Meaning
	performed to the Company's sole satisfaction and at the Contractor's Cost.
Required Action	means any action(s) the Company deems required and/or necessary to continue the Works to the extent practical, to mitigate, manage and/or resolve any Circumstances for Stepping-In (including to prevent and/or mitigate any potential escalation), and otherwise perform Emergency Management and Business and Service Continuity activities as required by the Company's Standards.
Resumption Date	means the date by which the Contractor shall recommence the execution of the Works or a part thereof following a period of suspension, as notified in the Resumption Notice.
Resumption Notice	means a Notice served by the Company on the Contractor instructing the Contractor to recommence the execution of the Works or a part thereof during a period of suspension.
Retention Money	means the amount of accumulated money which the Company retains under Sub-Clause 13.3 [<i>Application for Interim Payment</i>] and pays under Sub-Clause 13.8 [<i>Release of Retention Money</i>].
Review	means examination and consideration by the Company's Representative of a Contractor's submission in order to assess whether (and to what extent) it complies with this Agreement and/or with the Contractor's obligations under or in connection with this Agreement.
Sanctioned Person	means: 1 a person or entity with whom United States persons or entities are restricted from doing business under the regulations of OFAC (including but not limited to those persons and entities named on the OFAC Specially Designated and Blocked Persons List and the Sectoral Sanctions Identifications List); 2 a person or entity designated as sanctioned in any European Union, United Kingdom, Canada or any other applicable jurisdiction (including the jurisdiction of incorporation of the Contractor) or under any other applicable sanctions regime, including, but not limited to the EU consolidated list of persons, groups and entities subject to EU financial sanctions, the Consolidated Canadian Autonomous Sanctions List, or HM Treasury's Consolidated List of Financial Sanctions Targets; 3 a person or entity placed on the World Bank blacklist (being the list of firms and individuals ineligible to be awarded a World Bank financed contract, published by the World Bank at www.worldbank.org/debarr);

Term	Meaning
	4 a person or entity placed on the United Nations Security Council Consolidated List, as any such list may be updated from time to time; or 5 a person or entity owned or controlled by, or acting on behalf of, or at the direction of, any of the foregoing.
Schedules	means the documents entitled schedules prepared by the Company and Completed by the Contractor and included in this Agreement. Such document(s) may include data, lists and schedules of payments and/or rates and prices, and guarantees.
Section	means a part of the Works specified in the Contract Data as a Section (if any).
Site	means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, stored and/or fabricated, as described in Schedule 4 [<i>Specification</i>] and in accordance with the Company's Standards, and any other places specified in this Agreement as forming part of the Site.
Site Data	shall have the meaning given to it in Sub-Clause 4.10 [<i>Use of Site Data</i>].
Site Demobilization	means, after the Contractor's receipt of Notice from the Company to close the Site and at the Contractor's expense, the Contractor's cleaning of the Site, touch-up and repair of damaged finishes to match the original finishes; return all facilities, items and locations obstructed during the construction phase of the Works back to normal (or to the extent applicable, improved) operation and/or condition in existence prior to the commencement of any Works; and removal, all Temporary Works and utilities from the Site and the Company's premises (including from the sea or sea bed, located in DRC territorial waters), all Contractor's Personnel, and Contractor's Equipment (including incapacitated or sunken vessels, if any); rubbish; and surplus and unused Materials; and underground installations.
Software	means all computer programs, procedures, rules, source codes, file and design layouts, configuration data elements, assembler or compiler output, binary machine usable codes, user manuals, flow charts, logic diagrams, and all other desi documentation to be provided by Contractor under this Agreement.
Specification	means the document entitled specification included in Schedule 4 and any additions and modifications to the specification in accordance with this Agreement. Such document specifies the Works.

Term	Meaning
Standards	means any standard, code of practice, guidance or publication (or amended standard, code of practice, guidance or publication) that applies in respect of the Project, the Works and/or the Contractor's execution and Completion thereof, including the following: 1 those standards set out or referred to in Schedule 4 [<i>Specification</i>]; 2 international standards and codes; 3 those standards published in the Country, and standards approved; and 4 the Company's Standards.
Statement	shall have the meaning given to it in Sub-Clause 13.3 [<i>Application for Interim Payment</i>].
Statement Pack	shall have the meaning given to it in Sub-Clause 13.3 [<i>Application for Interim Payment</i>].
Step-In Notice	means the Notice, delivered by the Company to the Contractor, under Sub-Clause 8.14(c) [<i>The Company's Measures before Stepping-In</i>] on the occurrence of the Company's stepping-in to perform the Work (or any portion of them) as if the Company were the Contractor.
Step-In Period	means the time period which the Company believes will be necessary to Complete the Required Action.
Step-Out Date	shall have the meaning given to it in Sub-Clause 8.14(g)(1)(B).
Step-Out Notice	shall have the meaning given to it in Sub-Clause 8.14(g)(1).
Step-Out Plan	shall have the meaning given to it in Sub-Clause 8.14(g)(1)(C).
Step-Out Plan Submission Date	shall have the meaning given to it in Sub-Clause 8.14(g)(1)(C).
Subcontractor	means any person named in this Agreement as a subcontractor, or any person or entity appointed by the Contractor in accordance with this Agreement as a subcontractor, supplier or designer, for a part of the Works; and any person appointed by a subcontractor of the Contractor (and so on – to cover subcontractors of any tier), and the legal successors in title to each of these persons.

Term	Meaning
Taking-Over Certificate	means a certificate issued (or deemed to be issued) by the Company's Representative in accordance with Clause 10 [<i>Company's Taking Over</i>].
Temporary Works	means all temporary works of every kind (other than Contractor's Equipment) required on Site for the execution of the Works, as further detailed in Schedule 14.
Tender	means the Contractor's tender proposal, the JV Undertaking (if applicable), and all other documents which the Contractor submitted during the tender process.
Tests after Completion	means the tests (if any) which are stated in the Specification and which are carried out in accordance with this Agreement after the Works or a Section (as the case may be) are taken over under Clause 10 [<i>Company's Taking Over</i>].
Tests on Completion	means the tests which are specified in this Agreement or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [<i>Tests on Completion</i>] before the Works or a Section (as the case may be) are taken over under Clause 10 [<i>Company's Taking Over</i>].
Time for Completion	means the time for Completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [<i>Time for Completion</i>], as stated in the Contract Data as may be extended under Sub-Clause 8.5 [<i>Extension of Time for Completion</i>], calculated from the Commencement Date.
Time Impact Analysis	has the meaning given in Sub-Clause 8.5(c).
Unforeseeable	means not reasonably foreseeable by an experienced contractor by the Effective Date.
Variation	means any change (including any omission) to the Works, which is instructed as a variation under Clause 12 [<i>Variations and Adjustments</i>].
Variation Direction	a variation direction issued by the Company's Representative in substantially the form of Schedule 19.
VAT	means value-added tax or any tax analogous thereto, but excludes any interest or penalties.

Term	Meaning
Works	means the Permanent Works and the Temporary Works, or either of them as appropriate.
Year	means 365 Days (or, in a leap year, 366 Days).
DRC	means the Democratic Republic of Congo.

1.2 Interpretation

- (a) In this Agreement, except where the context requires otherwise;
- (1) words indicating one gender include all genders; and "he", "his" and "himself" shall be read as "he/she", "his/her" and "himself/herself" respectively;
 - (2) words indicating the singular also include the plural and words indicating the plural also include the singular;
 - (3) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
 - (4) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
 - (5) "may" means that the Party or person referred to has the choice of whether to act or not in the matter referred to;
 - (6) "shall" mean that the Party or person referred to has an obligation under this Agreement to perform the duty referred to;
 - (7) "consent" means that the Company, the Contractor or the Company's Representative (as the case may be) agrees to or gives permission for, the requested matter;
 - (8) "including", "include" and "includes" shall be interpreted as not being limited to, or qualified by, the stated items that follow;
 - (9) words indicating persons or parties shall be interpreted as referring to natural and legal persons (including corporations and other legal entities);
 - (10) "execute the Works", "execution of the Works" or "execution and Completion of the Works" means the construction and Completion of the Works and the remedying of any Defects;
 - (11) for the avoidance of doubt, the Company shall pay no profit under this Agreement except that which is incorporated into the Contract Price as of the Effective Date in accordance with Sub-Clause 13.1 [*The Contract Price*] or as a result of a Variation instructed in accordance with Sub-Clause 12.3 [*Variation Procedure*]; and
 - (12) wherever the phrase "remedy Defects" or "remedying of Defects" is used in this Agreement it shall have its normal and customary meaning and in addition, mean "Remedial Work".

- (b) In any list in these General Conditions, where the second-last item of the list is followed by "and" or "or" or "and/or" then all of the list items going before this item shall also be read as if they are followed by "and" or "or" or "and/or" (as the case may be).
- (c) The marginal words and other headings shall not be taken into consideration in the interpretation of these General Conditions.
- (d) Except where this Agreement provides otherwise, each Party shall pay its own costs relating to or in connection with the negotiation, preparation, execution and performance of this Agreement and of each agreement or document entered into pursuant to this Agreement.
- (e) Reference to any policies, procedures, guidelines and Standards of the Company shall include the same as they are developed after the Effective Date and amended, supplemented or re-enacted from time to time by the Company.
- (f) Where the day on or by which any thing is required to be done is not a Business Day, that thing must be done on or by the next Business Day.
- (g) Where any thing is required to be done on or by a given day, it must be done before 5.00pm on that day.
- (h) A reference to dollars or \$ is a reference to the currency of the United States of America unless denominated otherwise.
- (i) No provision of this agreement will be construed adversely to a Party because that Party (or any person on behalf of that party) was responsible for the preparation of this Agreement or that provision.
- (j) Any reference to specific Law is a reference to the law of the Country, unless otherwise stated.

1.3 Notices and Other Communications

- (a) Wherever these General Conditions provide for the giving of a Notice or the issuing, providing, sending, submitting or transmitting of another type of communication (including acceptance, acknowledgement, advising, agreement, approval, certificate, Claim, consent, decision, determination, discharge, instruction, No-objection, record(s) of meeting, permission, proposal, record, reply, report, request, Review, Statement, statement, submission or any other similar type of communication), the Notice or other communication shall be in writing and:
 - (1) shall be:
 - (A) paper-original signed by the Contractor's Representative, the Company's Representative, or the authorized representative of the Company (as the case may be); or
 - (B) an electronic original generated from any of the systems of electronic transmission stated in the Contract Data (if not stated, system(s) acceptable to the Company's Representative), where the electronic original is transmitted by the electronic address uniquely assigned to each of such authorized representatives,
 - (2) or both, as stated in these General Conditions; and
 - (3) if it is a Notice, it shall be identified as a Notice. If it is another form of communication, it shall be identified as such and include reference to the provision(s) of this Agreement under which it is issued where appropriate;
 - (4) delivered by hand (against receipt), or sent by mail or courier (against receipt), or transmitted using any of the systems of electronic transmission under Sub-Clause 1.3(a)(1)(B) above; and

- (5) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract Data. However, if the recipient gives a Notice of another address, all Notices and other communications shall be delivered accordingly after the sender receives such Notice.
- (b) Where these General Conditions state that a Notice or other communication is to be delivered, given, issued, provided, sent, submitted or transmitted, it shall have effect when it is received (or deemed to have been received) at the recipient's current address under Sub-Clause 1.3(a)(5) above. An electronically transmitted Notice or other communication is deemed to have been received on the Day after transmission, provided no non-delivery notification was received by the sender.
- (c) Any Notice received after 5.00pm on a Day is deemed to have been received on the next Day after it is delivered, sent or transmitted.
- (d) The Contractor shall use, in the manner instructed by the Company's Representative, any document control system as may be specified by or otherwise agreed with the Company in order to facilitate and expedite the generation, monitoring and management of information pertaining to planning, project control and documents. The purpose of using such a system will be to communicate plans, drawings, requests for information, minutes of meetings, correspondence, reports as well as submittals and develop a readily available database of the Records for the Project.
- (e) All Notices, and all other types of communication as referred to above, shall not be unreasonably withheld or delayed.
- (f) When a Notice or certificate is issued by a Party or the Company's Representative, the paper and/or electronic original shall be sent to the intended recipient and a copy shall be sent to the Company's Representative or the other Party, as the case may be. All other communications shall be copied to the Parties and/or the Company's Representative as stated under these General Conditions or elsewhere in this Agreement.

1.4 Law and Language

- (a) This Agreement shall be governed by the governing law stated in the Contract Data, excluding any conflict of law rules.
- (b) The ruling language of this Agreement shall be that stated in the Contract Data (if not stated, the language of these General Conditions), if there are versions of any part of this Agreement which are written in more than one language, the version which is in the ruling language shall prevail.
- (c) The language for communications shall be that stated in the Contract Data. If no language is stated there, the language for communications shall be the ruling language of this Agreement.

1.5 Assignment and Novation

- (a) The Contractor shall not assign, novate, or otherwise transfer the whole or any part of this Agreement or any right, benefit or interest in or under this Agreement without the Company's prior written consent.
- (b) The Company shall be freely entitled, without obtaining the consent of the Contractor, to assign, novate, declare a trust over or otherwise transfer, and the Contractor hereby consents to the assignment, novation, trust over or otherwise transfer of, the whole or any part of the Company's obligation, benefit, right or interest in or under the Agreement to any third-party, including Affiliates of the Company. The Contractor acknowledges and agrees that such assignment, novation, trust over or otherwise transfer does not require any further consent of the Contractor.

- (c) Further to the exercise by the Company of any of its rights under Sub-Clause 1.5(b), the Contractor shall do all things reasonably necessary to give effect to the assignment, novation, trust or transfer by the Company of the whole or any part of the Contract or any obligation, benefit, right or interest in or under the Agreement, including, as the case may be, procuring the assignment of the, Advance Payment Guarantee, Parent Company Guarantee, amendments to any of the insurances required to be provided by the Contractor pursuant to Clause 18 [*Insurance*] and/or the signature of a novation agreement.

1.6 Care and Supply of Documents

- (a) The Specification and Drawings shall be in the custody and care of the Company. Unless otherwise stated in this Agreement, two copies of this Agreement and of 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 submitted to the Company's Representative. The Contractor shall supply to the Company's Representative one paper-original, one electronic copy (in the form as stated in the Specification or, if not stated, a form acceptable to the Company's Representative) and additional paper copies (if any) as stated in the Contract Data of each of the Contractor's Documents.
- (c) The Contractor shall keep at all times, on the Site, a copy of:
 - (1) this Agreement;
 - (2) the Records under Sub-Clause 6.10 [*Contractor's Records*] and Sub-Clause 19.2(b) [*Contemporary records*];
 - (3) the publications (if any) named in the Specification;
 - (4) the Contractor's Documents;
 - (5) the Drawings; and
 - (6) Variations, Notices and other communications given under this Agreement.
- (d) The Company's Personnel shall have right of access to all these documents during all normal working hours, or as otherwise agreed with the Contractor.
- (e) If a Party (or the Company's Representative) becomes aware of an error or Defect (whether of a technical nature or otherwise) in a document which was prepared for use in the execution of the Works, the Party (or the Company's Representative) shall promptly give a Notice of such error or Defect to the other Party (or to the Parties).
- (f) The Contractor shall review the various documents supplied by the Company, in respect of the Project, thoroughly and represents and warrants that it knows and understands the full scope of the Works.
- (g) If, at any time during the term of this Agreement, a Party (or the Company's Representative or any Contractor's Personnel) becomes aware of:
 - (1) a Defect (whether of a technical nature or otherwise) in a document, which was prepared for use in the execution of the Works; or
 - (2) that a document is missing from the Project documents that is expressly, or implied as being, required for the execution of the Works, the Party (or Company's Representative) shall promptly give Notice of such Defect or omission to the other Party (or to the Parties).

- (h) The Contractor shall ensure that all documents submitted for the Company's Representative's approval have been checked for compliance with the actual Site conditions prior to its submission to the Company's Representative or Company.

1.7 Delayed Drawings or Instructions

- (a) The Contractor shall give a Notice to the Company's Representative whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction 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) If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Company to issue the notified drawing or instruction within a time which is reasonable and is specified in the Notice with supporting details, the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to an EOT and/or payment of such Cost.
- (c) However, if and to the extent that the Company'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 Contractor's Documents, the Contractor shall not be entitled to such EOT and/or Cost.

1.8 Company's Use of Contractor's Documents

- (a) The Contractor shall, at all times, keep the Company's Representative fully informed as to its progress in the performance of this Agreement and shall promptly make available and deliver to the Company all such information, data, drawings and Contractor's Documents in relation thereto as the Company may from time to time reasonably request through the Company's Representative.
- (b) Intellectual Property Rights in all the Contractor's Documents developed or prepared by or on behalf of the Contractor in the performance of the Works (whether in existence or to be made) and all amendments or additions thereto and any Works, designs or inventions of the Contractor incorporated or referred to therein shall forthwith on creation be vested in the Company free from all encumbrances.
- (c) The Company hereby grants and shall be deemed (by signing the Contract) to have granted, to the Contractor a non-terminable transferable non-exclusive royalty-free license to use and communicate the Contractor's Documents, including making and using modifications of them. The Contractor shall not use the Contractor's Documents for any purpose other than for the performance of this Agreement, and the Contractor hereby warrants to the Company that:
 - (1) the use of the Contractor's Documents which have been or shall be produced by the Contractor or a Subcontractor shall not infringe the Intellectual Property Rights of any third party;
 - (2) the Intellectual Property Rights in the Contractor's Documents shall be the Contractor's or a Subcontractor's original work and shall not be copied wholly or substantially from any other source and the use by the Company of the rights hereby assigned to it will not infringe the rights of any third party;
 - (3) where the Intellectual Property Rights in the Contractor's Documents contain registered Intellectual Property Rights, such rights have been maintained and are enforced and all related renewal fees have been paid; and
 - (4) the Contractor has not licensed or assigned any of the Intellectual Property Rights to any third party in any part of the world and the Intellectual Property Rights are free from all encumbrances.

- (d) All information, data, drawings and documents of the Company, of which the Contractor may become possessed or aware, shall remain at all times the Company's absolute property and the Contractor shall only be entitled to use the same insofar as is necessary for the performance of this Agreement.
- (e) Unless the Company agrees otherwise, all Contractor's Documents shall be provided to the Company in both "hard" and "soft" copy. For each "soft" copy the Contractor shall provide a detailed description of the Software used and any applicable layering or other applicable protocol or information required for future reading of the "soft" copy, their reproduction and the Contractor shall operate a suitable electronic document archiving management system. The Contractor grants to the Company an irrevocable exclusive license to use and have access to all of the Contractor's computer hardware employed by the Contractor in the performance of this Agreement.
- (f) The Contractor shall provide the Company with a list of all Software employed and intended to be employed in the performance of this Agreement and shall provide that all licenses acquired by the Contractor and to be acquired by the Contractor for Software employed or to be employed by the Contractor in the performance of this Agreement be held in joint title of the Contractor and Company until advised by the Company otherwise, but not later than the issue of the Performance Certificate.
- (g) Subject to the Intellectual Property Rights described above, ownership in all existing documents, including all Records, Drawings, the Specification, the Contractor's Documents and other physical embodiments of the design, produced in connection with the Project and the Works or otherwise relating to the Project, which may be owned by the Contractor at any time, shall transfer from the Contractor to the Company on creation of the relevant document. In such circumstances, the Contractor shall hand over all such documents and designs, including all copies to the Company immediately.
- (h) The Contractor shall indemnify and hold the Company harmless from and against all costs, losses, damages, claims, disputes, and proceedings which might be suffered or incurred by the Company arising out of or in connection with any infringement of any Intellectual Property Rights in respect of any Contractor's Equipment, Materials, Plant or Contractor's Documents used for or in connection with or for incorporation in the Works.

1.9 Contractor's Use of Company's Documents

- (a) As between the Parties, the Company shall retain the copyright and other intellectual property rights in the Specification and Drawings and other documents made by (or on behalf of) the Company. The Contractor may, at the Contractor's cost, copy, use and communicate these documents for the purposes of this Agreement.
- (b) These documents (in whole or in part) shall not, without the Company's prior consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of this Agreement.

1.10 Confidentiality

- (a) The Contractor shall keep confidential and shall not, without the prior written consent of the Company, divulge to any third party any Confidential Information, save to the extent it may be strictly necessary to make such disclosure in order to perform its obligations under this Agreement or to comply with applicable Laws.
- (b) The obligations set out in Sub-Clause 1.10(a) above do not apply to any information that:
 - (1) is publicly known or becomes publicly known through no fault of or disclosure by the Contractor;
 - (2) is given to the Contractor by someone other than the Company as a matter of right and without restriction of disclosure; or

- (3) was known to the Contractor prior to disclosure hereunder and was not subject to any confidentiality obligations.
- (c) The Contractor will ensure that the Contractor's Personnel, the Contractor's agents or employees, or others with whom the Contractor has a contractual relationship will not at any time make known, or allow to be made known, any Confidential Information. For the avoidance of doubt, to the extent that such disclosure is required by applicable Laws or at the request of any Government Entity or Competent Authority within the Country, the Contractor shall use its best endeavours to obtain the prior written consent of the Company before releasing any information of a confidential nature.
- (d) The Contractor shall ensure that any subcontract entered into in relation to the Works contains a provision in the same terms as this Sub-Clause 1.10 [*Confidentiality*].
- (e) The obligations contained in this Sub-Clause 1.10 [*Confidentiality*] shall continue, notwithstanding the issue of the Performance Certificate or the termination of this Agreement.
- (f) The Contractor shall indemnify and hold the Company harmless from and against all costs, losses, damages, claims, disputes, and proceedings which might be suffered or incurred by the Company arising out of or in connection with any breach by the Contractor of this Sub-Clause 1.10 [*Confidentiality*].
- (g) The Contractor acknowledges that damages may not be an adequate remedy, and that the Company will be entitled to injunctive relief or specific performance to enforce its rights under this Sub-Clause 1.10 [*Confidentiality*].

1.11 Compliance with Laws

- (a) The Contractor shall, and where applicable, shall ensure that all Subcontractors, comply with all applicable Laws and shall indemnify the Company for any such breach by the Contractor or its Subcontractors of any applicable Laws. Unless otherwise stated in the Specification:
 - (1) the Contractor shall have prepared, submitted and obtained (or shall prepare, submit and obtain) all approvals and any kinds of Government Authorizations (or work permits and other relevant permissions required by the Company) with respect to the planning, insurance, construction, and security of the Works from the applicable Government Entities and the Company and any other approvals, consents and/or permissions required by this Agreement to be prepared, submitted and obtained by the Contractor; and
 - (2) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain and comply with all other permits, permissions, licences and/or approvals, as required by this Agreement and Laws in relation to the execution of the Works. The Contractor shall indemnify and hold the Company harmless against and from the consequences of any failure to do so.
- (b) The Contractor shall be responsible for approaching, coordinating, paying all required fees and obtaining all necessary approvals for relocating all utilities affected by the Project.
- (c) All work on utilities must be performed by Company's Representative-approved Contractor's Personnel and the final work must be in full conformity with all requirements of the respective utility company. Any utility relocations work will be inspected by the respective utility company in accordance with their supervision policies and procedures.
- (d) The Contractor shall be deemed to have taken all due cognizance of the procedures, processes and constraints involved in the relocation of utilities, including as to any

unforeseen surface, sub-surface, ground conditions and obstructions and all time implications resulting from the utility relocations. Work shall be deemed to be accepted when approved by the respective utility agency and the Company's Representative. The approval shall not exempt or relieve the Contractor from its responsibilities and liabilities under this Agreement.

- (e) The Contractor shall, in relation to the execution and Completion of the Works and the Remedial Work therein, ascertain and, in all respects, including in the giving of all Notices and the paying of all fees, adhere to the provisions of:
 - (1) any Laws, including the provisions of any Laws relating to labour and the employment or engagement of the Contractor's Personnel;
 - (2) the Company's Standards; and
 - (3) to the extent applicable to the Company, any Laws and Standards of all Competent Authorities and companies whose property or rights are affected or may be affected in any way by the Works.
- (f) The Contractor shall keep the Company indemnified against all losses, damages, costs, penalties and liabilities of every kind which might be suffered or incurred by the Company arising out of or in connection with any breach of or failure to strictly comply with this Sub-Clause 1.11 [*Compliance with Laws*] by the Contractor or its Contractor's Personnel.
- (g) The Contractor shall ensure its subcontracts contain provisions similar to this Sub-Clause 1.11 [*Compliance with Laws*] including but not limited to:
 - (1) the Subcontractors shall promptly provide such assistance and all documentation, as described in the Specification or otherwise reasonably required by the Contractor or the Company; and
 - (2) the Subcontractors shall comply with all permits, permissions, licenses and/or approvals obtained by the Company.

1.12 Joint and Several Liability

If the Contractor is a JV:

- (a) The Contractor must have provided to the Company as part of the Tender a JV Undertaking;
- (b) the members of the JV shall be jointly and severally liable to the Company for the performance of the Contractor's obligations under this Agreement;
- (c) the JV leader shall have authority to bind the Contractor and each member of the JV; and
- (d) neither the members of the JV nor (if known) the scope and parts of the Works to be carried out by each member nor the legal status of the JV shall be altered without the prior consent of the Company (but such consent shall not relieve the altered JV from any liability under Sub-Clause 1.12(b).

The Contractor shall not, at any time after the Effective Date, alter its composition or legal status without the prior consent of the Company.

1.13 Limitation of Liability

- (a) Subject to Sub-Clause 1.13(b), the Contractor's liability under this Agreement shall not exceed the sum stated in the Contract Data (including for breach of contract, in tort, breach of statutory duty, equity or any other legal theory).
- (b) The following liabilities shall not count towards the aggregate liability limit set out in Sub-Clause 1.13(a):
 - (1) liability of the Contractor arising in respect of any injury or death to any persons whatsoever;

- (2) liability of the Contractor arising under Sub-Clause 16.4 [*Indemnities by Contractor*], or any other provision of this Agreement pursuant to which the Contractor has agreed to indemnify the Company, its Affiliates, and/or the Company's Personnel;
 - (3) liability of the Contractor arising in respect of any breach of Confidentiality and/or its obligations under Sub-Clause 1.10 [*Confidentiality*];
 - (4) liability of the Contractor arising in respect of any infringement, misuse, or misappropriation of Intellectual Property Rights or of any license relating to the use of any Intellectual Property Rights or otherwise under Sub-Clause 16.3 [*Intellectual and Industrial Property Rights*];
 - (5) amounts required to be expended by the Contractor in connection with the Works prior to the termination of this Agreement;
 - (6) to the extent Company-obtained financing is applicable to the Project, interest payments due from the Contractor, in accordance with this Agreement;
 - (7) breach, by the Contractor, of any Laws;
 - (8) liability in respect of which the Contractor has recovered or is entitled to recover from any insurer (including funds received indirectly through the Company);
 - (9) liability for which the Contractor would have recovered from any insurer, but for a breach by the Contractor of its obligations under this Agreement in relation to effecting and maintaining insurance, or as a result of an act or omission of the Contractor or any member of the Contractor's Personnel;
 - (10) liability arising out of a fraudulent or criminal act or misappropriation or misapplication of any property, whether tangible or intangible, of the Contractor or the Contractor's Personnel;
 - (11) liability arising as a result of the abandonment of the Works by the Contractor; and/or
 - (12) liability which cannot be limited by Law;
 - (13) liability of the Contractor arising in any case of gross negligence, deliberate default or wilful or reckless misconduct by the Contractor; and/or
 - (14) costs of any Remedial Work performed by the Contractor and/or costs incurred by the Company in carrying out such work in case the Contractor fails to perform any Remedial Work as and when required under this Agreement.
- (c) Subject to Sub-Clause 1.13(d), neither Party shall be liable to the other Party for loss of profit, loss of opportunity, loss of customer contract or loss of business which may be suffered by either Party in connection with this Agreement.
- (d) Sub-Clause 1.13(c) shall not apply in respect of any:
- (1) gross negligence, deliberate default or wilful or reckless misconduct by a Party;
 - (2) amounts payable by the Contractor under Sub-Clause 8.8 [*Delay Damages*];
 - (3) liability arising in respect of any injury or death to any persons whatsoever;
 - (4) liability arising in respect of any breach of Confidentiality and/or its obligations under Sub-Clause 1.10 [*Confidentiality*];

- (5) liability of the Contractor arising in respect of any infringement, misuse, or misappropriation of Intellectual Property Rights or of any license relating to the use of any Intellectual Property Rights or otherwise under Sub-Clause 16.3 [*Intellectual and Industrial Property Rights*];
- (6) breach of any Laws;
- (7) liability in respect of which the Party has recovered or is entitled to recover from any insurer (including funds received indirectly through the other Party);
- (8) liability for which a Party would have recovered from any insurer, but for a breach by that Party of its obligations under this Agreement in relation to effecting and maintaining insurance, or as a result of an act or omission of that Party or any member of its personnel;
- (9) liability arising out of a fraudulent or criminal act or misappropriation or misapplication of any property, whether tangible or intangible, of a Party or its personnel;
- (10) liability arising as a result of the abandonment of the Works by the Contractor; and
- (11) liability which cannot be limited by Law.

1.14 Contract Termination

Subject to any mandatory requirements under the governing law of this Agreement, termination of this Agreement under any Sub-Clause of these General Conditions shall require no action of whatsoever kind by either Party other than as stated in the Sub-Clause.

1.15 Change in Control

- (a) Subject to Sub-Clause 1.15(b), the Contractor must not permit a Change in Control of the Contractor or its Parent Company without the prior written consent of the Company, which consent must not be unreasonably withheld.
- (b) If a Change in Control occurs due to an internal corporate restructure or reorganization and the ultimate parent company of the Contractor remains the same following the Change in Control, the Contractor is not required to seek the prior written consent of the Company in respect of such Change in Control, but the Contractor must notify the Company of the Change in Control prior to, or as soon as possible after, the Change in Control occurring.

1.16 Anti-Corruption

- (a) In this clause 1.16 [*Anti-Corruption*], the term '**Contractor**' will include any parent, subsidiary, or Affiliate of the Contractor, and any of its officers, directors, employees, shareholders (registered or beneficial), or individuals with a direct or indirect financial interest in the Contractor.
- (b) Notwithstanding any other provision of this Agreement, the Contractor shall:
 - (1) comply with all Anti-Corruption Laws;
 - (2) comply with the Anti-Corruption Policies;
 - (3) maintain in place throughout the duration of this Agreement its own policies and procedures to ensure compliance with the Anti-Corruption Laws and the Anti-Corruption Policies and will enforce them where appropriate;
 - (4) immediately report to the Company any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Agreement;

- (5) immediately notify the Company in writing if a public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor;
 - (6) not, either directly or indirectly, pay any commission or fees or grant any rebates or other remuneration or gratuity to any employee, agent, or officer of the Company or any of its Affiliates;
 - (7) immediately notify the Company if any person solicits improper payments or other things of value from the Contractor in connection with the Contractor's work on behalf of the Company; and
 - (8) ensure that no monies paid to it by the Company under this Agreement shall be used by Contractor for bribery or similar illegal activity.
- (c) The Contractor represents and warrants that:
 - (1) none of its officers, directors or employees, shareholders (registered or beneficial), or individuals with a direct or indirect financial interest in the Contractor, are Government Officials. The Contractor shall notify the Company promptly in writing if a Government Official acquires an ownership or beneficial interest in the Contractor, or becomes an officer or director of the Contractor;
 - (2) it has not, and will not, promise, offer, give, or authorize the giving of any payments or the provision of other things of value to any individual or entity to obtain business, to retain business, to receive an improper advantage, or to receive favored treatment. These prohibitions apply even if payments of this kind are commonplace and accepted as a way of doing business in a given part of the world;
 - (3) it has not received, agreed or attempted to receive the proceeds of or profits from a crime or agreed to assist any person to retain the benefits of a crime; and
 - (4) it will perform appropriate anti-corruption-related due diligence on any subcontractor engaged to perform this Agreement and inform any such subcontractor of the Company's anti-Anti-Corruption Policies in advance of the subcontractor performing services or receiving funds provided to the Contractor pursuant to this Agreement.
- (d) The foregoing representations and warranties shall be continuing in effect throughout the term of this Agreement, and the Contractor shall immediately notify the Company in writing if any aspect of such warranties cease to be complete and accurate.
- (e) In performance of the services in connection with this Agreement, the Contractor shall not use any subcontractors or third parties without the prior written consent of the Company. The Contractor shall require that any subcontractors used in connection with this Agreement agree to the terms contained in this clause 1.16 [*Anti-Corruption*].
- (f) The Contractor and any subcontractor the Contractor uses in connection with this Agreement shall provide such periodic certificates of compliance with this clause 1.16 [*Anti-Corruption*] as may from time-to-time be reasonably requested in writing by the Company.
- (g) Upon request from the Company, the Contractor shall make its books and records available for review so that the Company may confirm compliance with terms of this Agreement.
- (h) The Contractor's failure to abide by this clause 1.16 [*Anti-Corruption*] shall be deemed a material breach of this Agreement, and:

- (1) the Company shall have no further obligation to pay the Contractor;
- (2) the Contractor shall immediately repay the Company the amount of funds or value paid by the Contractor to a third party in breach of this clause 1.16 [*Anti-Corruption*];
- (3) the Contractor shall hold harmless and indemnify on demand the Company for any losses, liabilities, costs, expenses (including attorneys' fees and court costs), penalties and sanctions related to or arising out of the Contractor's breach of this clause 1.16 [*Anti-Corruption*]; and
- (4) the Company shall be entitled to immediately suspend or terminate this Agreement pursuant to clause 8.9 [*Company's Suspension*] and clause 14 [*Termination by Company*] respectively.

1.17 Sanctions and Export Controls

- (a) In this clause 1.17 [*Sanctions and Export Controls*], the term '**Contractor**' will include any parent, subsidiary, or Affiliate of the Contractor, and any of its officers, directors, employees, shareholders (registered or beneficial), or individuals with a direct or indirect financial interest in the Contractor.
- (b) The Contractor shall ensure that:
 - (1) it complies with the export control and sanctions laws of the United States, European Union, Canada, and other applicable government authorities, including without limitation the Export Administration Regulations;
 - (2) it will not infringe any embargo imposed by the European Union, United Kingdom, Canada, the United States, the United Nations or any other applicable jurisdiction (including the jurisdiction of incorporation of the Contractor), also considering the limitations of domestic business and prohibitions of by-passing;
 - (3) in relation to goods, works or services provided by, or supplied to a third party by the Contractor, these are not intended for use in connection with armaments, nuclear technology or weapons, if such use is subject to prohibition or authorisation which has not been obtained; and
 - (4) it complies with the regulations applicable to Sanctioned Persons concerning the trading with entities, persons and organisations listed therein.
- (c) The Contractor and any subcontractor the Contractor uses in connection with this Agreement shall provide periodic certificates of compliance with this clause 1.17 [*Sanctions and Export Controls*] as may from time-to-time be reasonably requested in writing by the Company.
- (d) The Contractor represents and warrants that it is not a Sanctioned Person and to the best of its knowledge, it is not likely to become a Sanctioned Person for the duration of this Agreement. The foregoing shall be continuing in effect throughout the term of this Agreement, and the Contractor shall immediately notify the Company in writing if any aspect of such warranty ceases to be complete and accurate.
- (e) Nothing in this Agreement requires any Party to take any action, or refrain from taking any action, where doing so would be prohibited by, or subject to, penalty under any applicable national and international export control laws and regulations (including trade sanctions).
- (f) The Contractor's failure to abide by this clause 1.17 [*Sanctions and Export Controls*], or the Contractor exposing the Company to the risk of penalties under any applicable export control and sanctions laws, shall be deemed a material breach of this Agreement, and:

- (1) the Company shall have no further obligation to pay the Contractor, including for any amounts that may be owed by the Company to the Contractor prior to the date the Contractor became a Sanctioned Person;
- (2) the Contractor shall immediately repay the Company the amount of funds or value paid by the Contractor to a third party in breach of this clause 1.17 [*Sanctions and Export Controls*];
- (3) the Contractor shall hold harmless and indemnify on demand the Company for any losses, liabilities, costs, expenses (including attorneys' fees and court costs), penalties and sanctions related to or arising out of the Contractor's breach of this clause 1.17 [*Sanctions and Export Controls*]; and
- (4) the Company shall be entitled to immediately suspend or terminate this Agreement pursuant to clause 8.9 [*Company's Suspension*] and clause 14 [*Termination by Company*] respectively.

1.18 Modern Slavery obligations

- (a) With respect of the matters which are the subject of this Agreement or in connection with this Agreement and any matters resulting from it, the Contractor undertakes that it and, to the best of its knowledge and belief, its officers, employees, Affiliates, consultants and agents ("**Representatives**") have not been involved in any activity (or agreed to be involved in any activities) which:
 - (1) would violate any anti-Modern Slavery laws or regulations in force in any relevant jurisdiction including anti-slavery and human trafficking Laws, international anti-slavery and human trafficking Laws ("**Modern Slavery Laws**"); or
 - (2) was intended to, or did, involve the use of slavery, servitude, forced labour, trafficking in persons (including orphanage trafficking of children), forced marriage, child labour, debt bondage and other slavery-like practices as defined in the Modern Slavery Laws ("**Modern Slavery**").
- (b) With respect of the matters which are the subject of this Agreement or in connection with this Agreement and any matters resulting from it, the Contractor undertakes that it:
 - (1) will not become involved in any activities (nor agree to become involved in any activities), and will not request any action, inaction or services, which would constitute Modern Slavery; and
 - (2) will use reasonable endeavours to ensure that its Representatives do not become involved (or agree to become involved) in any activities, or request any action, inaction or services which would constitute Modern Slavery.
- (c) The Contractor or, to the best of its knowledge and belief, any of its Representatives, suppliers or persons acting on its behalf have not at any time:
 - (1) been found by a court in any jurisdiction to have engaged in Modern Slavery;
 - (2) engaged or admitted to having engaged in Modern Slavery;
 - (3) been investigated or been suspended in any jurisdiction for having engaged in Modern Slavery; or
 - (4) been involved in circumstances likely to give rise to any such investigation, admission or finding.
- (d) The Contractor agrees that if, at any time, it becomes aware that any of the representations set out in this clause are no longer correct, it will notify the Company of this immediately in writing.

1.19 Reasonableness

In all matters governed by this Agreement, including without limitation any required Notice, request, submission, decision, consent, approval, comment, agreement, opinion, instruction and other communication and activity, the Contractor shall act reasonably in a manner consistent with the requirements of good faith and without delay.

1.20 Conflict of Interest

- (a) The Contractor warrants that, to the best of its knowledge and after making diligent inquiry, no conflict of interest exists or is likely to arise in connection with the performance of its obligations under this Agreement prior to the Effective Date. The Contractor shall not engage, either directly or indirectly, in any activity which might conflict with the interests of the Company and/or any Company's Personnel under this Agreement or in relation to the Project.
- (b) The Contractor shall comply with the terms and conditions incorporated in the Company's Standards on conflicts of interest to the extent applicable to the Contractor, which shall be deemed to be incorporated into this Sub-Clause 1.20 [*Conflict of Interest*] by reference.

1.21 Parent Company Guarantee

If specified in the Contract Data, the Contractor must, prior (and as a Condition Precedent) to the Commencement Date, provide the Company with a guarantee in the form set out in Schedule 1 [*Form of Parent Company Guarantee*] (the "**Parent Company Guarantee**"), duly executed by the Parent Company. The Parent Company Guarantee provided by the Contractor in accordance with this Sub-Clause 1.21 [*Parent Company Guarantee*] shall also be accompanied by:

- (a) a board resolution, authorizing the Parent Company to give the Parent Company Guarantee; and
- (b) an opinion letter that ensures the admissibility of such guarantee from a law firm lawfully practicing in the jurisdiction where the Parent Company is incorporated and approved by the Company, in a form which is approved by the Company.

1.22 Entire Agreement

This Agreement constitutes the entire understanding and agreement between the Parties with respect to its subject matter and supersedes all previous agreements, representations, arrangements and contracts made orally or entered into in writing between the Parties, in connection with the same subject matter, prior to the Commencement Date.

1.23 Amendment or waiver

- (a) No variation, amendment, waiver or addition to this Agreement or any agreement or document entered into pursuant to this Agreement shall be valid unless it is made in writing and signed by authorized representatives of each of the Parties.
- (b) No waiver by a Party of a breach of any term of this Agreement will operate as a waiver of another breach of that term, or of a breach of any other term, of this Agreement.
- (c) No single or partial exercise or non-exercise of any right, power or remedy provided by this Agreement or by relevant Laws shall preclude any other or further exercise of such right, power or remedy or of any other right, power or remedy. The rights, powers and remedies provided by this Agreement are cumulative and are not exclusive of any rights, powers and remedies provided by relevant Laws.

1.24 Severability

A term or part of a term of this Agreement that is illegal, invalid or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement shall continue in full force and effect.

1.25 Relationship of the Parties

The Contractor shall at all times act as an independent contractor in performing this Agreement and this Agreement shall not create a relationship of employment, agency or partnership as between the Parties.

1.26 Counterparts and Electronic Signatures

- (a) This Agreement may be executed in counterparts. Any single counterpart or a set of counterparts executed, in either case, by the Parties, shall constitute one complete Contract.
- (b) The Parties agree that this Agreement and any other document or notice required by this Agreement to be signed by any person may be signed using an electronic signature of the authorised signatory which shall have the same force and effect as a manuscript signature of the authorised signatory.

1.27 Further Action

Each Party must do, at its own expense, everything reasonably necessary (including preparing, negotiating, and executing documents) to give full effect to this Agreement.

1.28 Survival

The following Sub-Clauses shall survive the termination of this Agreement:

- (a) the Form of Agreement;
- (b) Sub-Clause 1.1 [*Definitions*];
- (c) Sub-Clause 1.2(a) [*Interpretation*];
- (d) Sub-Clause 1.3 [*Notices and Other Communications*];
- (e) Sub-Clause 1.4 [*Law and Language*];
- (f) Sub-Clause 1.5 [*Assignment and Novation*];
- (g) Sub-Clause 1.8 [*Company's Use of Contractor's Documents*];
- (h) Sub-Clause 1.9 [*Contractor's Use of Company's Documents*];
- (i) Sub-Clause 1.10 [*Confidentiality*];
- (j) Sub-Clause 1.11 [*Compliance with Laws*];
- (k) Sub-Clause 1.12 [*Joint and Several Liability*];
- (l) Sub-Clause 1.13 [*Limitation of Liability*];
- (m) Sub-Clause 1.20 [*Conflict of Interest*];
- (n) Sub-Clause 1.22 [*Entire Agreement*];
- (o) Sub-Clause 1.25 [*Relationship of the Parties*];
- (p) Sub-Clause 1.29 [*Publicity Material*];
- (q) Sub-Clause 4.4(d) [*Records and Audits*];
- (r) Sub-Clause 4.6 [*Co-operation*];
- (s) Sub-Clause 4.25 [*Assignment of Manufacturers' and Suppliers' Warranties*];
- (t) Sub-Clause 4.27 [*Hazardous Substances*];
- (u) Sub-Clause 5.1 [*Subcontractors*];
- (v) Sub-Clause 11.10 [*Unfulfilled Obligations*];
- (w) Sub-Clause 13.1 [*The Contract Price*];
- (x) Sub-Clause 13.7(c) [*Payments at Termination*];

- (y) Sub-Clause 13.16 [*Taxes*];
- (z) Sub-Clause 13.18 [*Set-Off*];
- (aa) Sub-Clause 14 [*Termination by Company*];
- (bb) Sub-Clause 15.2 [*Contractor's Obligations After Termination*];
- (cc) Sub-Clause 16 [*Care of the Works and Indemnities*];
- (dd) Sub-Clause 17.5 [*Optional Termination*];
- (ee) Clause 18 [*Insurance*];
- (ff) Clause 19 [*Company's and Contractor's Claims*]; and
- (gg) Clause 20 [*Disputes*]; and
- (hh) any other provision which relates to or is in connection with:
 - (1) the Company's right to set-off or to recover money;
 - (2) any indemnity or any other financial security given under this Agreement;
or
 - (3) any right arising on termination of this Agreement; and
- (ii) any other provision which expressly or by implication from its nature is intended to survive termination.

1.29 Publicity Material

- (a) Neither Party shall publish, release, use, or authorize the publication or use of any Publicity Material without obtaining the other Party's prior approval.
- (b) Should the Contractor or Contractor's Personnel wish to publish or release any Publicity Material, of any kind in connection with the Project, the Works, the Company's facilities or premises; the Contractor's or Contractor Personnel's activities in connection with this Agreement, whether in writing or otherwise, the Contractor shall first submit such Publicity Material to the Company for Review and not publish or release (and shall ensure that its Contractor's Personnel do not publish or release,) any such Publicity Materials, without the Company's prior written approval.
- (c) Any Publicity Material shall make clear that the Company does not endorse the Contractor or the Contractor's provision of the Works or contain quality statements about the Contractor's performance of the Works, and any description of the Works in any Publicity Material shall be in general terms only. Notwithstanding the restrictions and approval requirements under this Sub-Clause 1.29, the Parties shall be entitled to use the other Party's name for the purposes of internal announcements within its organization.

1.30 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,
- (c) registered and licensed as required by any Law to execute the Works.

1.31 Rights of third parties

- (a) Except as expressly stated, no provision of the Agreement confers or purports to confer on any third party any benefit.
- (b) No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

2. The Company

2.1 Right of Access to the Site

- (a) The Company shall give the Contractor right of access to, and temporary possession of, all parts of the Site within the time (or times) stated in the Contract Data. The Contractor shall comply with the Company's security requirements and safety procedures upon accessing the Site. The right and possession may not be exclusive to the Contractor. If, under this Agreement, the Company is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Company shall do so in the time and manner stated in the Specification. However, the Company may withhold any such right or possession until the Conditions Precedent have been satisfied by the Contractor.
- (b) If no such time is stated in the Contract Data, the Company shall give the Contractor right of access to, and possession of, those parts of the Site within such times as may be required to enable the Contractor to proceed in accordance with the Programme or, if there is no Programme at that time, the initial programme submitted under Sub-Clause 8.3 [*Programme*].
- (c) If the Contractor suffers delay as a result of a failure by the Company to give any such right or possession within the time stated in the Contract Data, the Contractor shall, subject to any applicable Notice requirements, be entitled to an EOT in accordance with Sub-Clause 8.5 [*Extension of Time for Completion*].
- (d) However, if and to the extent that the Company'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 applicable Contractor's Documents, the Contractor shall not be entitled to such EOT and/or Cost.
- (e) If, under the Contract, the Company is required to give to the Contractor possession of any foundation, structure, Plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such Contractor's Documents to the Company or the Company's Representative in the time and manner stated in the Company's Standards or the Specification.
- (f) The Contractor shall maintain and permit access for the inspection, operation and maintenance by the Company or other authorities of any services or works which lie within the Site or in other areas which are affected by the Contractor's operations.

2.2 Government Authorisations

- (a) The Contractor shall be responsible for:
 - (1) obtaining copies of the Laws of the Country which are relevant to this Agreement; and
 - (2) its applications for Government Authorizations required by the Laws:
 - (A) which it is required to obtain under Sub-Clause 1.11 [*Compliance with Laws*];
 - (B) for the delivery of Goods, including clearance through customs; and
 - (C) for the export of the Contractor's Equipment when it is removed from the Site.
- (b) The Contractor shall comply with all such Laws and obtain all such Government Authorizations which it is required to obtain under this Agreement at its own cost and such costs shall be deemed included in the Contract Price.

2.3 Company's Financial Arrangements

- (a) The Company may, at any time, obtain financing in connection with the Project and the Contractor shall assist the Company, as the Company may request, in connection with obtaining such financing, including:
 - (1) providing to the Company and any potential financing party information relating to the status of the Works, the status of any Government Authorizations required in connection with the Project and such other matters as the Company or any potential financing party may reasonably request;
 - (2) providing such documents and take such actions, including amending this Agreement and providing consents to assignment, certifications, opinions of counsel and/or such other documents, as may be reasonably requested by the Company or any potential financing party; and
 - (3) allowing any potential financing party and its respective agents and advisers such reasonable access to the Site and to documentation, in relation to this Agreement, at such times as they may reasonably require.
- (b) The Contractor must review and negotiate in good faith with the Company any reasonable amendments to this Agreement, which are required by any potential financing party (including, by way of example, certain mechanics regarding the payment terms), in connection with the financing of the Project.

2.4 Site Data and Items of Reference

- (a) The Company shall have made available to the Contractor for information, before the Effective Date, all relevant data in the Company's possession on the topography of the Site and on sub surface, hydrological, climatic and environmental conditions at the Site. The Company shall promptly make available to the Contractor all such data which comes into the Company's possession after the Effective Date.
- (b) The original survey control points, lines and levels of reference (the "**Items of Reference**" in these General Conditions) shall be specified on the Drawings and/or in the Specification or issued to the Contractor by a Notice from the Company's Representative.
- (c) The Company shall have no responsibility for the accuracy, sufficiency or completeness of such data and/or Items of Reference.

2.5 Company-Supplied Materials and Company's Equipment

- (a) If Company-Supplied Materials and/or Company's Equipment are listed in the Specification for the Contractor's use in the execution of the Works, the Company shall make such materials and/or equipment available to the Contractor in accordance with the details, times, arrangements, rates and prices stated in the Specification.
- (b) The Contractor shall be responsible for the care and protection of Company-Supplied Materials and Company's Equipment from the time it enters the Contractor's possession until, in the case of Company's Equipment, it is returned to the Company's custody.

3. The Company's Administration

3.1 The Company's Representative

- (a) The Company shall appoint the Company's Representative, who, except as otherwise stated in these General Conditions and subject to the constraints set out in this Sub-Clause 3.1 shall be deemed to act for the Company wherever carrying out duties or exercising authority under this Agreement.

- (b) Subject to Sub-Clause 3.1(c), the Company's Representative may exercise the authority attributable to the Company's Representative as specified in or necessarily to be implied from this Agreement.
- (c) The Company's Representative shall obtain the specific approval of the Company before taking action under the following Clauses and Sub-Clauses of these General Conditions:
- (1) Sub-Clause 3.2 [*Delegation by the Company's Representative*];
 - (2) Clause 5 [*Subcontracting*];
 - (3) Sub-Clause 7.4 [*Testing by the Contractor*];
 - (4) Sub-Clause 8.3 [*Programme*];
 - (5) Sub-Clause 8.11 [*Prolonged Suspension*];
 - (6) Sub-Clause 9.4 [*Failure to Pass Tests on Completion*];
 - (7) Sub-Clause 10.1 [*Taking Over the Works and Sections*];
 - (8) Sub-Clause 10.2 [*Taking Over Parts*];
 - (9) Sub-Clause 11.6 [*Further Tests after Remedying Defects*];
 - (10) Sub-Clause 11.9 [*Performance Certificate*];
 - (11) Sub-Clause 12.1 [*Right to Vary*];
 - (12) Clause 13 [*Contract Price and Payment*];
 - (13) Sub-Clause 14.3 [*Valuation after Termination for Contractor's Default*];
 - (14) Sub-Clause 14.7 [*Valuation after Termination for Company's Convenience*];
 - (15) Sub-Clause 14.8 [*Payment after Termination for Company's Convenience*]; and
 - (16) Sub-Clause 19.2 [*Claims for Payment and/or EOT*].
- (d) Notwithstanding the above, if, in the opinion of the Company's Representative, an Emergency, Incident or other event or condition occurs affecting or likely to affect the safety or security of any persons or of the Works or of adjoining property, the Company's Representative may, without relieving the Contractor of any of its duties and responsibilities under this Agreement, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Company's Representative, be necessary to abate or reduce the risk. The Contractor shall comply immediately, despite the absence of approval of the Company, with any such instruction of the Company's Representative.
- (e) If the Contractor suffers delay and / or incurs Cost as a direct and sole result of an instruction given by the Company's Representative pursuant to Sub-clause 3.1(d) and the Emergency, Incident or other event or condition was not caused or contributed to in any way by the Contractor, the Contractor shall give Notice to the Company's Representative and shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to:
- (1) an EOT for any such delay, if Completion is or will be directly and solely delayed pursuant to Sub-Clause 8.5 [*Extension of Time for Completion*]; and
 - (2) payment of any such Cost, which shall be included in the Contract Price.
- (f) The Company's Representative shall have no authority to amend the Agreement or, except as otherwise stated in these General Conditions, to relieve either Party of any duty, obligation or responsibility under or in connection with the Contract.

- (g) Any acceptance, agreement, approval, check, certificate, comment, consent, disapproval, examination, inspection, instruction, Notice, Notice of No-objection, record(s) of meeting, permission, proposal, record, reply, report, request, Review, test, valuation, or similar act (including the absence of any such act) by the Company's Representative or any assistant shall not relieve the Contractor from any duty, obligation or responsibility the Contractor has under or in connection with the Contract.
- (h) If the Company replaces any person appointed as the Company's Representative, the Company shall, as soon as reasonably practicable, give a Notice to the Contractor of the replacement's name, address, duties and authority, and of the date of appointment.

3.2 Delegation by the Company's Representative

- (a) The Company and the Company's Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation, by giving a Notice to the Parties, describing the assigned duties and the delegated authority of each assistant. The assignment, delegation or revocation shall not take effect until this Notice has been received by both Parties.
- (b) Assistants shall be suitably qualified natural persons, who are experienced and competent to carry out these duties and exercise this authority and who are fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].
- (c) All persons, including the Company's Representative and assistants, to whom duties have been assigned or authority has been delegated by a Notice of delegation given under Sub-Clause 3.2(a) [*Delegation by the Company's Representative*] shall only be authorised to issue instructions and communications and/or to give Notices to the Contractor to the extent defined by the Notice of delegation.

3.3 Company's Representative's Instructions

- (a) The Company may, through the Company's Representative or an assistant as stated below, issue to the Contractor (at any time) instructions which may be necessary or, in the Company's Representative's opinion, appropriate for the execution of the Works, all in accordance with the Contract.
- (b) The Contractor shall only take instructions from the Company's Representative or an assistant to whom the appropriate authority to give instruction has been delegated by a Notice given under Sub-Clause 3.2(a) [*Delegation by the Company's Representative*].
- (c) Subject to the following provisions of this Sub-Clause, the Contractor shall comply with the instructions given by the Company's Representative or delegated assistant, on any matter related to this Agreement.
- (d) If an instruction states that it constitutes a Variation or if within the ten (10) Day period specified below the Company's Representative confirms that it is a Variation (with or without variation of the instruction), Sub-Clause 12.3(a) [*Variation by Instruction*] shall apply.
- (e) If not so stated, and the Contractor considers that the instruction:
 - (1) constitutes a Variation (or involves work that is already part of an existing Variation); or
 - (2) does not comply with applicable Laws or will reduce the safety of the Works or is technically impossible,

the Contractor shall immediately and before commencing any work related to the instruction, give a Notice to the Company's Representative with reasons (simultaneously copied to the Company). If the Company's Representative does not respond within ten (10) Days after receiving this Notice, by giving a Notice confirming, reversing or varying the instruction, the Company's Representative

shall be deemed to have revoked the instruction. Otherwise the Contractor shall comply with and be bound by the terms of the Company's Representative's response.

3.4 Meetings

- (a) The Company's Representative or the Contractor's Representative may require the other to attend a management meeting to discuss arrangements for future work and/or other matters in connection with execution of the Works.
- (b) The Company's Personnel, the personnel of legally constituted public authorities and/or private utility companies, and/or Subcontractors may attend any such meeting, if requested by the Company's Representative or the Contractor's Representative. Any of the Company's Personnel and any other person authorized by the Company may also attend.
- (c) In addition to formal and informal communications between the Company's Representative and the Contractor, the Contractor shall prepare for and attend Project team meetings agreed between the parties which are organized by the Company between the Contractor's Personnel and Company's Personnel. Such meetings shall be held no less frequently than Monthly (or such other frequency as the Company determines) until the Performance Certificate has been issued by the Company's Representative and may be held in person, by video conference that is visible or by telephone conference that is audible to all parties involved, simultaneously. The purpose of such meetings shall be to discuss the progress and status of the Project and those Costs incurred by the Contractor in the previous Month and/or which are anticipated to be incurred in the next Month. The Contractor shall deliver a copy of the minutes of each meeting to the Company within seven (7) Days of such meeting.
- (d) The Company's Representative shall keep a record of each management meeting and supply copies of the record to those attending and to the Company. At any such meeting, and in the record, responsibilities for any actions to be taken shall be in accordance with this Agreement.

4. The Contractor

4.1 Contractor's General Obligations

- (a) The Contractor shall (in accordance with and subject to the terms and conditions of this Agreement and all reasonable directives, instructions of the Company's Representative, the Company's instructions, Good Industry Practice, all applicable Standards and all Laws) do, without limitation, the following:
 - (1) execute the Works in accordance with the Agreement and ensure that the Works when Completed, comply in all respects with the Contract;
 - (2) execute and Complete all Project management, material procurement, construction, installation, quality control, Tests on Completion, pre-commissioning, commissioning, and start-up assistance, Tests after Completion (to the extent required by the Contract), Remedial Work, and other related technical services;
 - (3) exercise, at all times, the degree of skill, care and diligence in the carrying out of the Works and the Remedial Work that would be expected to be exercised by a properly qualified, competent contractor, fully skilled and experienced in projects of a similar size, scope and complexity as the Project (and without limiting the foregoing, the Contractor acknowledges that the Company is relying upon the skill, judgment and expertise of the Contractor in carrying out of the Works and the coordination of and planning thereof);

- (4) provide and maintain all necessary and required Temporary Works, including porta-cabins for Contractor offices and suppliers' office spaces, barricades, storage areas, lay-down areas, garbage bins, Goods, the Contractor's Documents, all Contractor's Personnel, Contractor's Equipment, and other things, services, and resources, whether of a temporary or permanent nature, required for this execution and Completion of the Works and the Remedial Work, in accordance with this Agreement;
- (5) be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all of the Works;
- (6) exert all reasonable efforts to control Costs (and the Contractor acknowledges that it shall not be entitled to payment for any additional man-hours or additional Costs unless there is a Variation in the Specification and/or Drawings for additional Works, as determined and approved by the Company in its sole discretion);
- (7) implement, as specified in the Specification and Drawings and in accordance with Good Industry Practice, quality control and quality assurance requirements and procedures, including physical progress measurements, drawing/document controls and engineering database controls;
- (8) not use, specify for use or permit to be used any Materials which at the time the Works are being carried out are generally accepted or reasonably suspected of being Prohibited Materials, and shall, if requested, issue to the Company (and to such persons as the Company may require) a certificate that no such Materials have been used or specified for use in the Works;
- (9) comply with its, and ensure that all Subcontractor's personnel comply with their responsibilities pursuant to all Laws;
- (10) ensure that the Contractor, the Contractor's Personnel, any Subcontractors and the Subcontractors' personnel do not enter into any similar contract with, or accept any employment from, any third party which shall interfere in any way with the Contractor's performance of its obligations under this Agreement;
- (11) manage, schedule and coordinate the work of all of its Contractor's Personnel, in order to Complete the Works in a timely manner and in accordance with this Agreement;
- (12) perform quality management and inspection activities (to the extent required by the Contract) in respect of the Works and carry out all necessary Site visits and surveys required;
- (13) the Contractor shall provide documentary evidence that the Contractor's insurance policies required pursuant to Clause 18 [Insurance] to support such warranty;
- (14) create and submit to the Company's Representative for approval all "as-built" Drawings and project record books, and operation and maintenance manuals, in accordance with this Agreement and in English and in sufficient detail to enable the Company to operate, maintain, test, dismantle, reassemble, adjust, and repair the Works (or any part thereof); and
- (15) perform all other obligations, work and services, and furnish all other things and resources, which are required by the terms and conditions of this Agreement, or which can implied by or reasonably be inferred from

the terms and conditions of this Agreement, as being necessary for the successful and timely Completion of the Works.

- (b) The Contractor shall provide the Plant (and spare parts, if any) and Contractor's Documents specified in this Agreement, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required to fulfil the Contractor's obligations under this Agreement.
- (c) The Contractor shall be responsible for the adequacy, stability and safety of all the Contractor's operations and activities, of all methods of construction and of all the Temporary Works. Except to the extent specified in this Agreement, the Contractor:
 - (1) 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 this Agreement; and
 - (2) shall not otherwise be responsible for the design or specification of the Permanent Works.
- (d) The Contractor shall, whenever required by the Company's Representative, submit 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 alteration having been submitted to the Company's Representative.
- (e) The Contractor acknowledges that the Company is relying upon the Contractor's expertise and experience. The representations and warranties provided under this Sub-Clause 4.1 [*Contractor's General Obligations*] survive the completion, termination or expiry of the Contract.

4.2 Not Used

4.3 Contractor's Representative

- (a) The Contractor shall appoint the Contractor's Representative and shall give him/her all authority necessary to act on the Contractor's behalf under this Agreement, except to replace the Contractor's Representative.
- (b) The Contractor's Representative shall be qualified, experienced and competent in the main building and/or engineering disciplines applicable to the Works and fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].
- (c) Unless the Contractor's Representative is named in this Agreement, the Contractor shall, before the Commencement Date, submit to the Company's Representative for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative, if consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable replacement for such appointment. If the Company's Representative does not respond within twenty-eight (28) Days after receiving this submission, by giving a Notice to the Contractor objecting to the proposed person or replacement, the Company's Representative shall be deemed to have given his/her consent.
- (d) The Contractor shall not, without the Company's Representative's prior consent, revoke the appointment of the Contractor's Representative or appoint a replacement (unless the Contractor's Representative is unable to act as a result of death, illness, incapacity, disability or resignation, in which case his/her appointment shall be deemed to have been revoked with immediate effect and the appointment of a replacement shall be treated as a temporary appointment until the Company's Representative gives his/her consent to this replacement, or another replacement is appointed, under this Sub-Clause).
- (e) The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of this Agreement. The Contractor's Representative shall

act for and on behalf of the Contractor at all times during the performance of this Agreement, including issuing and receiving all Notices and other communications under Sub-Clause 1.3 [*Notices and Other Communications*] and for receiving instructions under Sub-Clause 3.2(c) [*Company's Representative's Instructions*].

- (f) The Contractor's Representative shall be based at the Site for the whole time that the Works are being executed at the Site, if the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement shall be temporarily appointed, subject to the Company's Representative's prior consent.
- (g) The Contractor's Representative may delegate any powers, functions and authority except:
 - (1) the authority to issue and receive Notices and other communications under Sub-Clause 1.3 [*Notices and Other Communications*]; and
- (h) the authority to receive instructions under Sub-Clause 3.2(c) [*Company's Representative's Instructions*] to any suitably competent and experienced person and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Company's Representative has received a Notice from the Contractor's Representative, naming the person, specifying the powers, functions and authority being delegated or revoked, and stating the timing of the delegation or revocation.
- (i) All these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].
- (j) The Contractor's Representative shall be based in the Country and shall have a valid work visa for the duration of the Project.

4.4 Contractor's Documents

(a) Preparation and Review

- (1) The Contractor's Documents shall comprise the documents:
 - (A) stated in the Specification;
 - (B) required to satisfy all permits, permissions, licences and other regulatory approvals which are the Contractor's responsibility under Sub-Clause 1.11 [*Compliance with Laws*];
 - (C) described in Sub-Clause 4.4(b) [*As-Built Records*] and Sub-Clause 4.4(c) [*Operation and Maintenance Manuals*], where applicable; and
 - (D) required under Sub-Clause 4.1(a) [*Contractor's General Obligations*], where applicable.
- (2) Unless otherwise stated in the Specification, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].
- (3) The Contractor shall prepare all Contractor's Documents and the Company's Personnel shall have the right to inspect the preparation of all these documents, wherever they are being prepared.
- (4) If the Specification or these General Conditions specify that a Contractor's Document is to be submitted to the Company's Representative for Review, it shall be submitted accordingly, together with a Notice from the Contractor stating that the Contractor's Document is ready for Review and that it complies with this Agreement.

- (5) The Company's Representative shall, within fifteen (15) Business Days after receiving the Contractor's Document and this Notice from the Contractor (the "**Review Period**"), give a Notice to the Contractor:
- (A) of No-objection (which may include comments concerning minor matters which will not substantially affect the Works); or
- (B) that the Contractor's Document fails (to the extent stated) to comply with this Agreement, with reasons.
- (6) If the Company's Representative gives no Notice within the Review Period, the Company's Representative shall be deemed to have given a Notice of No-objection to the Contractor's Document.
- (7) After receiving a Notice under Sub-Clause 4.4(a)(5)(B), above, the Contractor shall revise the Contractor's Document and resubmit it to the Company's Representative for Review in accordance with this Sub-Clause and the Review Period shall be calculated from the date that the Company's Representative receives it.
- (b) **As-Built Records**
- (1) If no as-built records to be prepared by the Contractor are stated in the Specification, this Sub-Clause shall not apply.
- (2) The Contractor shall prepare, and keep up to date, a complete set of "as built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed by the Contractor. The format, referencing system, system of electronic storage and other relevant details of the as-built records shall be as stated in the Specification (if not stated, as acceptable to the Company's Representative). These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause.
- (3) The as-built records shall be submitted to the Company's Representative for Review, and the Works shall not be considered to be Completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over the Works and Sections*] until the Company's Representative has given (or is deemed to have given) a Notice of No objection under Sub-Clause 4.4(a)(5)(A).
- (4) The number of copies of as-built records to be submitted by the Contractor under this Sub-Clause shall be as required under Sub-Clause 1.6 [*Care and Supply of Documents*].
- (c) **Operation and Maintenance Manuals**
- (1) If no operation and maintenance manuals to be prepared by the Contractor are stated in the Specification, this Sub-Clause shall not apply.
- (2) The Contractor shall prepare, and keep up-to-date, the operation and maintenance manuals in the format and other relevant details as stated in the Specification.
- (3) The operation and maintenance manuals shall be submitted to the Company's Representative for Review, and the Works shall not be considered to be Completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over the Works and Sections*] until the Company's Representative has given (or is deemed to have given) a Notice of No-objection under Sub-Clause 4.4(a)(5)(A).
- (d) **Records and Audits**

- (1) The Contractor shall keep and maintain, or cause to be kept and maintained, all such Records, concerning this Agreement and Works as may be reasonably required to evidence the performance of its obligations under this Agreement, and shall promptly provide any such Records to the Company upon its reasonable request.
- (2) The Contractor shall keep and maintain, or cause to be kept and maintained, for a period of ten (10) Years after the date of the Final Statement, all financial Records, including timesheets, relating to the Works as may be reasonably necessary for the Company to verify the accuracy of the amounts invoiced by Contractor under this Agreement.
- (3) The Contractor shall permit the Company to inspect and audit all such Records for the purpose of verifying the accuracy of the amounts invoiced under this Agreement, and shall provide the Company with such access as may be reasonably necessary in order to carry out such an audit. The Contractor may perform audits itself or appoint an accountant, auditor or other suitably qualified third party to perform audits on the Company's behalf if agreed between the Parties.

4.5 Training

- (a) If no training of employees of the Company (and/or other identified personnel) by the Contractor is stated in the Specification, this Sub-Clause shall not apply.
- (b) The Contractor shall carry out training of the Company's employees (and/or other personnel identified in the Specification) in the operation and maintenance of the Works, and any other aspect of the Works, to the extent stated in the Specification. The timing of the training shall be as stated in the Specification (if not stated, as acceptable to the Company). The Contractor shall provide qualified and experienced training staff, training facilities and all training materials as necessary and/or as stated in the Specification.
- (c) If the Specification specifies training which is to be carried out before taking over, the Works shall not be considered to be Completed for the purposes of taking over under Sub-Clause 10.1 [*Taking Over the Works and Sections*] until this training has been Completed in accordance with the Specification.

4.6 Co-operation

- (a) In executing the Works, the Contractor shall at its own cost and without any entitlement to an EOT:
 - (1) permit and facilitate the execution of Related Work on or near the Site by Other Contractors, including access to the Site and/or Works if required;
 - (2) fully and actively cooperate and coordinate with all Other Contractors and suppliers where necessary jointly prepare coordination Drawings, calculations, Works execution, and other Works, taking account of the Related Work of the Other Contractors;
 - (3) where necessary or where directed by the Company's Representative arrange and/or attend meetings with Other Contractors and use its best endeavours to ensure that no interruption or interference is caused by or to any such Other Contractors;
 - (4) satisfy itself in adequate time before commencing any part of the Works as to the position, dimensions and suitability of any previous Related Work forming part of the Project which might in any way affect the Works and advise the Company's Representative in writing immediately if it becomes aware that such previous Related Work is out of position, wrongly dimensioned or in any other way unsuitable, so as to minimize any resultant interruption or interference;

- (5) coordinate the Works with any Related Work; and
 - (6) in case of any Emergency, Incident or other event or condition and/or any Defect in the Contractor's performance of the Works, the Parties shall coordinate with each other to mitigate the potential consequences to the Company, in order to ensure Emergency Management and Business and Service Continuity of the Company.
- (b) In relation to the above matters, the Contractor shall comply with the Company's Representative's instructions. Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to incur Costs in an amount that was not reasonably foreseeable by a competent, experienced contractor as at the Commencement Date.
- (c) The Contractor shall have no claim for any EOT and/or addition to the Contract Price in relation to the above matters and the Contractor shall be deemed to have factored the costs of complying with its obligations under this Sub-Clause in the Contract Price.
- (d) Where there is an interface between the Works and work to be done by Other Contractors, the Contractor shall notify the Company of any discrepancies between the works undertaken by such Other Contractors and the Specifications or Drawing not less than fourteen (14) Days prior to the date the Contractor is to commence the relevant Works in accordance with the Programme.

4.7 Setting Out

- (a) The Contractor shall:
 - (1) accurately set out the Works in relation to original points, lines and levels of reference specified in this Agreement or notified by the Company's Representative in writing;
 - (2) be responsible for the correctness of all position, levels, dimensions and alignment of the Works; and
 - (3) be responsible for the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.
- (b) If, at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor shall, at its own cost, rectify such error to the satisfaction of the Company's Representative.
- (c) The Contractor confirms that it is not aware of any error or discrepancies in the points, lines and levels of reference specified in this Agreement. If the Contractor becomes aware of any error or discrepancies in the points, lines and levels of reference subsequently notified to it by the Company's Representative, the Contractor shall notify the Company's Representative immediately and shall take all reasonable steps to mitigate the effect of any such error.
- (d) The checking of any setting-out or of any line or level by the Company's Representative shall not in any way relieve the Contractor of its responsibility for the accuracy thereof and the Contractor shall carefully protect and preserve all benchmarks, sight-rails, pegs and other things used in setting-out the Works.
- (e) **Accuracy**
The Contractor shall:
 - (1) verify the accuracy of all these items of reference before they are used for the Works;
 - (2) promptly deliver the results of each verification to the Company's Representative;

- (3) rectify any error in the positions, levels, dimensions or alignment of the Works; and
 - (4) be responsible for the correct positioning of all parts of the Works.
- (f) **Errors**

If the Contractor finds an error in any items of reference, the Contractor shall give a Notice to the Company's Representative describing it:

 - (1) within the period stated in the Contract Data (if not stated, twenty-eight (28) Days) calculated from the Commencement Date, if the items of reference are specified on the Drawings and/or in the Specification; or
 - (2) as soon as practicable after receiving the items of reference, if they are issued by the Company's Representative under Sub-Clause 2.4 [*Site Data and Items of Reference*].
- (g) **Agreement or Determination of rectification measures, delay and/or Cost**
 - (1) After receiving a Notice from the Contractor under Sub-Clause 4.7(f) [*Errors*], the Company's Representative shall determine:
 - (A) whether or not there is an error in the items of reference;
 - (B) whether or not (taking account of cost and time) an experienced contractor exercising due care would have discovered such an error:
 - (i) when examining the Site, the Drawings and the Specification before submitting the Tender; or
 - (ii) if the items of reference are specified on the Drawings and/or in the Specification and the Contractor's Notice is given after the expiry of the period stated in Sub-Clause 4.7(f)(1): and
 - (C) what measures (if any) the Contractor is required to take to rectify the error.
 - (2) If, under Sub-Clause 4.7(g)(1)(B) above, an experienced contractor would not have discovered the error:
 - (A) Sub-Clause 12.3(a) [*Variation by Instruction*] shall apply to the measures that the Contractor is required to take (if any); and
 - (B) if the Contractor suffers delay and/or incurs Cost as a result of the error, the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to EOT and/or payment of such Cost.

4.8 Health and Safety Obligations

- (a) The Contractor shall:
 - (1) comply with all applicable health and safety regulations and Laws and Standards, required by this Agreement;
 - (2) comply with all applicable health and safety obligations specified in this Agreement;
 - (3) comply with the more stringent of the directives issued by the Contractor's health and safety officer (appointed under Sub-Clause 6.7 [*Health and Safety of Personnel*]) and the Company;
 - (4) comply with all health and safety policies and/or procedures issued by the Company;

- (5) take care of the health and safety of all persons on the Site and other places (if any) where the Works are being executed;
- (6) keep the Site, Works (and the other places (if any) where the Works are being executed) clear of unnecessary obstruction so as to avoid danger to these persons;
- (7) provide fencing, lighting, safe access, guarding and watching of:
 - (A) the Works, until the Works are taken over under Clause 10 [*Company's Taking Over*]; and
 - (B) any part of the Works where the Contractor is executing outstanding works or remedying any Defects during the DNP; and
- (8) 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 property.
- (b) Within twenty-one (21) Days of the Commencement Date and before commencing any construction on the Site, the Contractor shall submit to the Company's Representative for Review a health and safety manual which has been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works. This manual shall be in addition to any other similar document required under applicable health and safety regulations and Laws.
- (c) The health and safety manual shall set out all the health and safety requirements:
 - (1) stated in the Specification and the Company's Standards;
 - (2) that comply with all the Contractor's health and safety obligations under this Agreement; and
 - (3) that are necessary to effect and maintain a healthy and safe working environment for all persons entitled to be on the Site and other places (if any) where the Works are being executed.
- (d) This manual shall be revised as necessary by the Contractor or the Contractor's health and safety officer, or at the reasonable request of the Company's Representative. Each revision of the manual shall be submitted promptly to the Company's Representative for Review.
- (e) In addition to the reporting requirement of Sub-Clause 4.21(b)(7), the Contractor shall submit to the Company's Representative details of any accident as soon as practicable after its occurrence and, in the case of an accident causing serious injury or death, shall inform the Company's Representative immediately.
- (f) The Contractor shall, as stated in the Specification and as the Company's Representative may reasonably require, maintain Records and make reports (in compliance with the applicable health and safety regulations and Laws) concerning the health and safety of persons and any damage to property.
- (g) The Contractor shall ensure that all Contractor's Personnel, for whom the applicable Laws prescribe periodic medical fitness tests and check-ups, undergo such examinations and Complete any resulting follow up treatments.
- (h) The Contractor shall indemnify the Company in respect of any liability, loss, claim or proceedings of whatsoever nature arising out of or in connection with any breach of the duties and obligations referred to in this Sub-Clause 4.8 [*Health and Safety Obligations*] or any health and safety requirements under any applicable Laws, policies or manuals.

4.9 Quality Management and Compliance Verification Systems

(a) Quality Management System

- (1) The Contractor shall prepare and implement a QM System to demonstrate compliance with the requirements of this Agreement. The QM System shall be specifically prepared for the Works and submitted to the Company's Representative within twenty-eight (28) Days of the Commencement Date. Thereafter, whenever the QM System is updated or revised, a copy shall promptly be submitted to the Company's Representative.
- (2) The Contractor shall submit details of the quality assurance plan to the Company's Representative's for approval as per Schedule 6 [Milestones].
- (3) The QM System shall be in accordance with the details stated in the Specification (if any) and shall include the Contractor's procedures:
 - (A) to ensure that all Notices and other communications under Sub-Clause 1.3 [*Notices and Other Communications*], Contractor's Documents, as-built records (if applicable), operation and maintenance manuals (if applicable), and contemporary records can be traced, with full certainty, to the Works, Goods, work, workmanship or test to which they relate;
 - (B) to ensure proper coordination and management of interfaces between the stages of execution of the Works, and between Subcontractors; and
 - (C) for the submission of Contractor's Documents to the Company's Representative for Review.
- (4) The Company's Representative may review the QM System and may give a Notice to the Contractor stating the extent to which it does not comply with this Agreement. Within fourteen (14) Days after receiving this Notice, the Contractor shall revise the QM System to rectify such non-compliance. If the Company's Representative does not give such a Notice within twenty-one (21) Days of the date of submission of the QM System, the Company's Representative shall be deemed to have given a Notice of No-Objection.
- (5) The Company's Representative may, at any time, give a Notice to the Contractor stating the extent to which the Contractor is failing to correctly implement the QM System to the Contractor's activities under this Agreement. After receiving this Notice, the Contractor shall immediately remedy such failure.
- (6) The Contractor shall carry out internal audits of the QM System regularly, and at least once every six (6) Months. The Contractor shall submit to the Company's Representative a report listing the results of each internal audit within seven (7) Days of completion. Each report shall include, where appropriate, the proposed measures to improve and/or rectify the QM System and/or its implementation.
- (7) If the Contractor is required by the Contractor's quality assurance certification to be subject to external audit, the Contractor shall immediately give a Notice to the Company's Representative describing any failing(s) identified in any external audit. If the Contractor is a JV, this obligation shall apply to each member of the JV.

(b) Compliance Verification System

- (1) The Contractor shall prepare and implement a Compliance Verification System to demonstrate that the design (if any), Materials, Company-

Supplied Materials (if any), Plant, work and workmanship comply in all respects with this Agreement.

- (2) The Compliance Verification System shall be in accordance with the details stated in the Specification (if any) and shall include a method for reporting the results of all inspections and tests carried out by the Contractor. In the event that any inspection or test identifies a non-compliance with this Agreement, Sub-Clause 7.5 [*Defects and Rejection*] shall apply.
- (3) The Contractor shall prepare and submit to the Company's Representative a complete set of compliance verification documentation for the Works or Section (as the case may be), fully compiled and collated in the manner described in the Specification or, if not so described, in a manner acceptable to the Company's Representative.

(c) **General provision**

Compliance with the QM System and/or Compliance Verification System shall not relieve the Contractor from any duty, obligation or responsibility under or in connection with this Agreement.

4.10 Use of Site Data

- (a) The Contractor shall be responsible for interpreting all data referred to under Sub-Clause 2.4 [*Site Data and Items of Reference*].
- (b) The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies, and other circumstances which may influence or affect the Works. The Contractor acknowledges and agrees that it has thoroughly investigated the Site, its surroundings and all available information and has verified existing conditions and dimensions to avoid any conflict with Site execution; and has fully satisfied itself as to all general and location conditions, affecting the Works (the "**Site Data**"), including in respect of the following:
 - (1) the requirements for, and availability of, transportation (including vehicle repairs and maintenance) and access routes to, and parking areas at, the Site;
 - (2) the form, availability, nature, quantity, quality and all other conditions, Materials or obstacles to be encountered in respect of roads at or near the Site;
 - (3) the topography, surface, subsurface and hydrological conditions at the Site;
 - (4) the environmental aspects of, and fencing and lighting located at, the Site;
 - (5) the requirements (including facilities required) for the disposal, handling, fabrication and storage of Goods;
 - (6) the facilities to be provided to the Contractor's Personnel (and Company's Personnel) with respect of food service, toilet, conference, medical, fire protection and firefighting and outdoor smoking facilities;
 - (7) the requirements for, and availability, quality and quantity of, labour, water and power;
 - (8) the Laws and Standards for labour and their accommodations;
 - (9) the climatic conditions, tides and ground water;
 - (10) the equipment, tools, machinery and Goods required by the Contractor, prior to and during its performance of this Agreement; and

- (11) the facilities and any other services, things and resources necessary for the execution and Completion of the Works and the Remedial Work.
- (c) The Contractor understands that the Contractor's commencement of the Works represents the Contractor's acceptance of all existing conditions, in respect of the Site.
- (d) The risk of encountering adverse physical conditions (whether above or below ground) and artificial obstructions (whether above or below ground) during the course of the execution of the Works shall be borne by the Contractor and the Contractor shall use its best endeavours to adjust the order and sequence in which the Contractor proposes to execute the Works in such manner as to minimize the effects of the delay in, or if possible to avoid altogether any delay in the Works.
- (e) The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied itself before the date of this Agreement as to the nature of the ground and the sub-surface conditions (any information in connection therewith which may have been provided by or on behalf of the Company being provided by way of information only without any warranty or representation as to its accuracy, reliability or completeness), the form and nature of the Site, the extent, nature and difficulty of the work necessary for Completion of the Works, the means of communication with and restrictions of access to the Site, the accommodation it may require, and in general to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the Works.
- (f) The Contractor shall not be entitled to any EOT or to any additional payment on grounds of any misunderstanding or misinterpretation of any such matter, nor shall the Contractor be released from any of the risks accepted or the obligations undertaken by the Contractor under this Agreement on the ground that the Contractor did not or could not have foreseen any matter which might affect or might have affected the execution of the Works.

4.11 Sufficiency of the Contract Price

- (a) The Contractor shall be deemed to:
 - (1) have satisfied itself as to the correctness and sufficiency of the Contract Price; and
 - (2) have based the Contract Price on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters described in Sub-Clause 4.10 [*Use of Site Data*].
- (b) Unless otherwise stated in this Agreement, the Contract Price shall be deemed to cover all the Contractor's obligations under this Agreement and all things necessary for the proper execution of the Works in accordance with this Agreement.

4.12 Unforeseeable Physical Conditions

- (a) The Contractor shall be deemed to have inspected and examined the Site, its surroundings and all existing structures thereon and generally to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or affecting the Contract Price and the Works.
- (b) The Contractor shall not have any claim, whether in contract or otherwise, in respect of information provided or statements made by or on behalf of the Company in respect of such risks, contingencies or circumstances relating thereto.
- (c) In so far as this Agreement contains any report regarding the ground conditions these are included for information purposes only and the Company shall have no responsibility for and gives no warranty as to the accuracy of information contained within such reports.

- (d) The Contractor shall remain fully responsible for ascertaining the ground conditions and will be deemed to have satisfied itself of all relevant matters including but not limited to those specified in Sub-Clause 4.10 [*Use of Site Data*].
- (e) If the Contractor encounters Physical Conditions which the Contractor considers to have been Unforeseeable, having considered and taken into account the matters referred to in Sub-Clauses 4.12(a) to 4.12(d), and that will have an adverse effect on the progress of the execution of the Works, the following procedure shall apply:
- (1) Contractor's Notice
- If the Contractor encounters adverse Physical Conditions, the Contractor shall give Notice to the Company's Representative within five (5) Days from the date on which the Contractor became aware, or ought reasonably to have been aware, of such adverse Physical Conditions, which Notice shall;
- (A) be given as soon as practicable and in good time to give the Company's Representative opportunity to inspect and investigate the Physical Conditions promptly and before they are disturbed;
- (B) describe the Physical Conditions, so that they can be inspected and/or investigated promptly by the Company's Representative;
- (C) set out the reasons why the Contractor considers the Physical Conditions to be Unforeseeable; and
- (D) describe the manner in which the Physical Conditions will have an adverse effect on the progress of the execution of the Works.
- (2) Company's Representative's inspection and investigation
- (A) The Company's Representative shall inspect and investigate the Physical Conditions within seven (7) Days, or a longer period agreed with the Contractor, after receiving the Contractor's Notice.
- (B) The Contractor shall continue execution of the Works, using such proper and reasonable measures as are appropriate for the Physical Conditions and to enable the Company's Representative to inspect and investigate them.
- (3) Company's Representative's instructions
- The Contractor shall comply with any instructions which the Company's Representative may give for dealing with the Physical Conditions.
- (f) **Delay**
- If and to the extent that the Contractor suffers delay due to these Physical Conditions, having complied with Sub-Clauses 4.12(e)(1), 4.12(e)(2)(B) and 4.12(e)(3) above and having considered and taken into account the matters referred to in Sub-Clauses 4.12(a) to 4.12(d), the Contractor shall be entitled, subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*], to an EOT.
- (g) **Agreement or Determination of Delay**
- (1) The agreement or determination, under Sub-Clause 19.2(d) [*Agreement or determination of the Claim*], of any Claim under Sub-Clause 4.12(f) [*Delay*] shall include consideration of whether and (if so) to what extent the Physical Conditions were Unforeseeable, having considered and taken into account the matters referred to in Sub-Clauses 4.12(a) to 4.12(d).

- (2) The Company'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 by the Effective Date. If and to the extent that these more favourable conditions were encountered, the Company's Representative may take account of any time savings or improvements in the progress of the Works that were due to these conditions in calculating any EOT to be agreed or determined under this Sub-Clause 4.12(g) [*Agreement or Determination of Delay*].
- (3) The Company's Representative may take account of any evidence of the Physical Conditions foreseen by the Contractor by the Effective Date, which the Contractor may include in the supporting particulars for the Claim under Sub-Clause 19.2(c) [*Fully detailed Claim*], but shall not be bound by any such evidence.
- (h) **No entitlement to increase in the Contract Price**

Notwithstanding any other provision of this Agreement, the Contractor shall not be entitled to any addition to the Contract Price arising from such Physical Conditions, whether or not Unforeseeable.

4.13 Rights of Way and Facilities

- (a) Subject to the Company's obligations with respect to the Company-Supplied Amenities and Company-Supplied Materials, the Contractor shall bear all costs and charges for special and/or temporary rights-of-way which may be required for the purposes of the Works, including those for access to the Site.
- (b) Subject to the Company's obligations with respect to the Company-Supplied Amenities and Company-Supplied Materials, the Contractor shall also obtain, at the Contractor's risk and cost, any additional facilities outside the Site which may be required for the purposes of the Works.

4.14 Avoidance of Interference

- (a) The Contractor shall not interfere unnecessarily or improperly with:
 - (1) the convenience of the public; or
 - (2) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Company or of others.
- (b) The Contractor shall indemnify and hold the Company harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.
- (c) The Contractor shall observe all agreements entered into by the Company and made known to the Contractor with any person or persons or other third party (including organizations and body corporate) relating to occupation of land and properties by the Company which are affected by or otherwise relate to the Project, Site or the execution of the Works thereon provided always that compliance with such agreements shall not relieve the Contractor of its obligations under this Sub-Clause.

4.15 Access Route

- (a) The Contractor shall be deemed to have been satisfied, at the Effective Date, as to the suitability and availability of the access routes to the Site. The Contractor shall take all necessary measures to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These measures shall include the proper use of appropriate vehicles (conforming to legal load and width limits (if any) and any other restrictions) and routes.
- (b) Except as otherwise stated in these General Conditions:

- (1) the Contractor shall (as between the Parties) be responsible for repair of any damage caused to, and any maintenance which may be required for the Contractor's use of, access routes;
 - (2) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permissions or permits which may be required from the relevant authorities, for the Contractor's use of routes, signs and directions;
 - (3) the Company shall not be responsible for any third party claims which may arise from the Contractor's use or otherwise of any access route;
 - (4) the Company does not guarantee the suitability or availability of particular access routes;
 - (5) 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; and
 - (6) the Contractor shall be responsible for the payment of all customs duties, and all other import duties, harbor and port dues, wharfage, charges, demurrage, landing, pilotage and other charges incurred in relation to the Goods and/or for the Works except for the items which are agreed to be provided by the Company.
- (c) To the extent that non-suitability or non-availability of an access route arises as a result of changes to that access route by the Company or a third party after the Effective Date and as a result the Contractor suffers delay and/or incurs Cost, the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to EOT and/or payment of such Cost.
- (d) The Contractor shall indemnify and hold the Company harmless against and from all damages, losses and expenses arising out of or in relation to any breach by the Contractor of the provisions of this Sub-Clause 4.15 [*Access Route*].

4.16 Transport of Goods

The Contractor shall:

- (a) give a Notice to the Company's Representative not less than twenty-one (21) Days before the date on which any Plant, or a major item of other Goods (as stated in the Specification), will be delivered to the Site;
- (b) be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works;
- (c) be responsible for customs clearance, permits, fees and charges related to the import, transport and handling of all Goods, including all obligations necessary for their delivery to the Site except for the items provided Company in association with execution of works;
- (d) engage the Company's logistics service provider specified in the Contract Data for the delivery of Goods to the Site; and
- (e) indemnify and hold the Company harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the import, transport and handling of all Goods, and shall negotiate and pay all third party claims arising from their import, transport and handling.

4.17 Contractor's Equipment

- (a) 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 Contractor's Equipment without the Company's Representative's consent. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

- (b) In addition to any Notice given under Sub-Clause 4.16 [*Transport of Goods*], the Contractor shall give a Notice to the Company's Representative of the date on which any major item of Contractor's Equipment has been delivered to the Site. This Notice shall be given within seven (7) Days of the delivery date, shall identify whether the item of Contractor's Equipment is owned by the Contractor or a Subcontractor or another person and, if rented or leased, shall identify the rental or leasing entity.
- (c) The Contractor's Equipment and the equipment of its Subcontractors shall be suitable for the safe and efficient performance of the Contractor's obligations under this Agreement, including the Completion of the Works, and shall be maintained in good working and safe condition by the Contractor. All such equipment shall be subject to inspection from time to time by the Company. Any such equipment which is found to be in an unsafe condition shall be promptly removed from the Site by the Contractor and replaced or repaired without expense to the Company, and without delay to the Completion of the Works.
- (d) The Contractor shall not be allowed to operate any cranes or heavy equipment on the Site without having all required current valid permits, certificates, operator certificates and approvals as required by the government of the Country and having obtained the prior approval of the Company.

4.18 Protection of the Environment

- (a) The Contractor shall take all necessary measures to:
 - (1) protect the environment (both on and off the Site, land, air and sea);
 - (2) comply with the environmental impact statement for the Works (if any); and
 - (3) limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor's operations and/or activities.
- (b) The Contractor shall ensure that emissions, surface discharges, effluent and any other pollutants from the Contractor's activities shall exceed neither the values indicated in the Specification, nor those prescribed by applicable Laws.
- (c) The Contractor shall prevent any interference with or nuisance to the rights of any adjoining landowner, tenant, occupier, government authority, body or service or utility provider arising out of the performance of the Works. The Contractor shall ensure at all times that there is no trespass by the Contractor or its Contractor's Personnel (including without limitation the over-sailing of tower crane jibs) on, under or over any adjoining property including roads and shall take all necessary measures to prevent damage or injury to any persons (including but without limitation) the occupiers of adjoining or neighbouring property and members of the public.
- (d) The Contractor shall use its best efforts to prevent and take all reasonable precautions to avoid Environmental Damage to land, air or water arising out of the Contractor's or the Contractor's Personnel's performance of the Works, including operations at the Site.
- (e) The Contractor shall lend any and all reasonable assistance to the Company in the remedying of any Environmental Damage, as set forth in this Sub-Clause 4.18 [*Protection of the Environment*]. If the Environmental Damage is caused by or arises from the negligence, breach, or failure of the Contractor or the Contractor's Personnel, invitees, licensees or guests, the Contractor's assistance shall be at the Contractor's expense.
- (f) The Contractor shall assume liability for and indemnify and hold the Company harmless against and from all damages, losses, expenses costs, claims or proceedings arising out of or in relation to any breach by the Contractor of the provisions of this Sub-Clause 4.18 [*Protection of the Environment*].

4.19 Temporary Utilities

- (a) The Company shall provide construction water to the Contractor on the Site and necessary for the Works. The Contractor must arrange for the taking and transportation of such water as is needed for the Works.
- (b) Subject to Sub-Clauses 4.19(a) and 4.20 [*Fuel Supply*], the Contractor shall provide power, gas and sewer services, and all other utilities on the Site, at its risk and Cost.
- (c) The Contractor shall liaise with the Company's Representative and any applicable Government Entities to ensure that no disruption is caused to Related Work or to existing services.
- (d) If the Works are delayed as a result of the Contractor's failure to fully comply with its obligations under this Sub-Clause 4.19 [*Temporary Utilities*], the Contractor shall not be entitled to an EOT or to payment of any additional costs in any circumstances.

4.20 Fuel Supply

- (a) The Company will supply diesel fuel to the Contractor for the performance of the Work at the cost per litre stated in the Contract Data and otherwise in accordance with the Company's Requirements. The cost of diesel supplied under this clause may be set off by the Company against amounts payable to the Contractor under this Agreement.
- (b) The Contractor shall submit its fuel supply and storage plan to the Company for review and approval within 21 days after the Effective Date and prior to mobilisation to Site (**Fuel Supply and Storage Plan**).
- (c) The Fuel Supply and Storage Plan must include details of the proposed number of bulk storage tanks, size of tanks and nominate suitable locations for the tanks as well as environmental and safety management.
- (d) Once approved by the Company, the Contractor must comply with the fuel supply and storage plan.

4.21 Progress Reports

- (a) Progress reports, in the format stated in the Specification (if not stated, including management reports in a format and frequency acceptable to the Company's Representative) shall be prepared by the Contractor and submitted to the Company's Representative. Each progress report shall be submitted in one paper-original, one electronic copy and additional paper copies (If any) as stated in the Contract Data. The first report shall cover the period up to the end of the first Month following the Commencement Date. Reports shall be submitted Monthly thereafter, each within seven (7) Days after the last Day of the Month to which it relates.
- (b) Reporting shall continue until the Date of Completion of the Works or, if outstanding work is listed in the Taking-Over Certificate, the date on which such outstanding work is Completed. Unless otherwise stated in the Specification, each progress report shall include:
 - (1) charts, diagrams and detailed descriptions of progress, including each stage of (design by the Contractor, if any) Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing;
 - (2) photographs and/or video recordings showing the status of manufacture and of progress on and off the Site;
 - (3) 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;
- (4) the details described in Sub-Clause 6.10 [*Contractor's Records*];
- (5) copies of quality management documents, inspection reports, test results, and compliance verification documentation (including certificates of Materials);
- (6) a list of Variations, and any Notices given (by either Party) under Sub-Clause 19.2(a) [*Notice of Claim*];
- (7) health and safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- (8) comparisons of actual and planned progress, with details of any events or circumstances which may adversely affect the Completion of the Works in accordance with the Programme and the Time for Completion, and the measures being (or to be) adopted to overcome delays;
- (9) cost reporting (in a format approved by the Company's Representative), including but not limited to projected cash flow, the status of Variations, the cost of Works already incurred and forecast final account;
- (10) a diary recording weather conditions and major events on the Site;
- (11) a status report of any anticipated, pending and existing Claims and unresolved Disputes;
- (12) any outstanding information and/or approval which the Contractor anticipates requiring from the Company over the next Month; and
- (13) such other matters and details as the Company may reasonably require from time to time.
- (c) However, nothing stated in any progress report shall constitute a Notice under a Sub-Clause of these General Conditions.

4.22 Security of the Site

- (a) The Company shall have responsibility for overall Site security.
- (b) The Contractor agrees to notify the Company's Representative and the Company immediately if it becomes aware that a security incident has occurred on the Site or anywhere else on the Company's premises.

4.23 Contractor's Operations on Site

- (a) The Contractor shall confine the Contractor's operations to the Site, and to any additional areas which may be obtained by the Contractor and acknowledged by the Company's Representative as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.
- (b) At all times, the Contractor shall keep the Site free from all unnecessary obstruction, and shall properly store or remove from the Site any Contractor's Equipment (subject to 4.17 [*Contractor's Equipment*]) and/or surplus materials, The Contractor shall promptly clear away and remove from the Site any wreckage, rubbish, hazardous waste and Temporary Works which are no longer required.
- (c) Prior to 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, hazardous waste and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain at locations on the Site agreed with the Company's Representative, during the DNP, such Goods as are required for the Contractor to fulfil obligations under this Agreement and remediate any damage to the Site, resulting from the execution of the Works, at its sole Cost.

- (d) The Contractor shall comply with any direction by the Company's Representative, in relation to the storage, disposal or removal of Contractor's Equipment, surplus Materials (not owned by the Company), transfer and/or relocation of any dismantled Goods and/or equipment to an Company-approved designated area on the Company's premises; wreckage, rubbish and Temporary Works on or from the Site.
- (e) In the event that the Contractor fails to comply with the provisions of this Sub-Clause 4.23 [*Contractor's Operations of Site*] within a reasonable time of receipt of a Notice from the Company's Representative notifying of such default, the Company shall be entitled to employ and pay other persons to carry out the same, and all costs consequent thereon or incidental thereto shall after due consultation with the Contractor and the Company, be determined by the Company's Representative and shall be recoverable from the Contractor by the Company and may be deducted by the Company from any monies due or to become due to the Contractor.

4.24 Archaeological and Geological Findings

- (a) All fossils, coins, articles of value or antiquity, and structures and other remains or items of a geological or archaeological nature found on the Site shall be placed under the care and authority of the Company. The Contractor shall take all reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.
- (b) The Contractor shall, as soon as practicable after discovery of any such finding, give a Notice to the Company's Representative in good time to give the Company's Representative opportunity to promptly inspect and/or investigate the finding before it is disturbed. This Notice shall describe the finding and the Company's Representative shall issue instructions for dealing with it.
- (c) If the Contractor suffers delay and/or incurs Cost from complying with the Company's Representative's instructions, the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to EOT and/or payment of such Cost.

4.25 Assignment of Manufacturers' and Suppliers' Warranties

- (a) The Contractor shall provide, at the Site, such manufacturer and supplier representative Works as are required to ensure proper installation and testing and commissioning of Materials and Plant, as may be necessary so as to maintain all supplier and manufacturer warranties, as may be required to Complete the Works (or any Sections or systems thereof) and in order ensure that the Performance Certificate is successfully issued by the Company.
- (b) The Company's requirements for manufacturers' and suppliers' warranties shall be as stated in Schedule 4 [*Specification*], and the Contractor agrees to provide the Company's manufacturers' and suppliers' warranties as stated in Schedule 4 [*Specification*].
- (c) The Contractor shall, at all times, follow all suppliers' and manufacturers' written instructions and recommended practices, in respect of the application, assembly, preservation, installation, protective and preventive maintenance and testing of all Materials and Plant. The resolution of any conflicts between such instructions and practices and this Agreement shall be at the direction of the Company's Representative.

- (d) The Contractor shall advise the Company's Representative when supplier and manufacturer representatives are ready for Site Demobilization and shall ensure that the supplier and/or manufacturer representatives are available to the Company, on an ongoing basis, as and when requested by the Company's Representative.
- (e) The Contractor shall ensure that any warranty or guarantee required by this Agreement, in relation to any Plant or Materials used in the Works, made or given by the manufacturer, any Subcontractor, any supplier, or any other seller thereof, is made in favour of, transferred to, and shall be used by, the Company, and further, that all rights of the Contractor (as buyer) for any failure to satisfy the requirements under this Agreement or for any other breach of warranty shall run to the benefit of and be fully enforceable by, the Company and any Financier.
- (f) Alternatively, the Contractor shall ensure to the extent possible under applicable Laws that the benefit of such warranty is expressly assigned to the Company, or to a third party nominated by the Company (including any Financier).
- (g) The Works shall not be considered to be Complete for the purpose of the issuance of the Taking-Over Certificate under Sub-Clause 10.1 [*Taking Over the Works and Sections*] until the Company has received such warranties, save to the extent that any warranties cannot be assigned or otherwise made available to the Company under the applicable Laws, in which case 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 Company.

4.26 Technical Standards and Regulations

As a condition precedent to the issue of the Taking-Over Certificate under Sub-Clause 10.1 [*Taking Over the Works and Sections*] the Contractor shall supply to the Company three (3) copies of:

- (a) the Contractor's commissioning report;
- (b) all maintenance and operation manuals required by this Agreement or as may be reasonably required to ensure the safe and proper maintenance and operation of all parts of the Works;
- (c) as-built Drawings of the Works, including all systems and Plant installed by the Contractor;
- (d) Material certificates of steel members;
- (e) any calculations of strength and stability relied upon or used in the course of the Works;
- (f) spare parts list;
- (g) Materials specification sheets;
- (h) Materials request inspections completed;
- (i) contact list for all suppliers and manufacturers;
- (j) Asset equipment list, in compliance with Sub-Clause 7.9 [*Asset Management*];
- (k) Works inspection Record books;
- (l) Issued for Construction Document Drawings;
- (m) all warranty certificates required under the Contractor in relation to the Works, including any specific Materials and Plant used; and
- (n) all Government Authorizations required by the Laws and Standards, stated in Schedule 8 [*Company's Standards*], in relation to the construction, Completion and execution of the Works issued by any Government Entity.

4.27 Hazardous Substances

- (a) The Contractor shall not transport to, use, generate, dispose of, or install at the Site any Hazardous Substances except in accordance with applicable Laws and shall not specify for use, knowingly permit or approve any materials to be used in connection with the Works that are deleterious to health and safety or to the durability or integrity of the Works in the particular circumstances in which they are used or which are not in accordance with this Agreement. The Contractor shall notify the Company immediately if it becomes aware that any Hazardous Substances have been or are intended to be used in connection with the Works.
- (b) The Contractor shall proactively liaise with the Company in relation to any health, safety and environment issues related to Hazardous Substances in connection with the Works and the Site.
- (c) The Contractor assumes all liability for and shall indemnify, defend, reimburse and hold the Company, its Affiliates, and Company's Parties harmless from and against any and all Claims, actual damages, Costs, and losses, of whatsoever nature (including any liability to any Competent Authority or third party), and including in relation to the investigation and performance of any Remedial Work of any and all Environmental Damage, which is incurred as a result of:
 - (1) the existence of any Hazardous Substance on, about or beneath the Company's facilities, or which are migrating or threatening to migrate to or from the Company's facilities; and/or
 - (2) any clean-up, remediation, containment, removal, abatement or other similar Remedial Work undertaken by the Company (which shall include any costs incurred in respect of any investigation and/or the preparation of any feasibility studies or reports by or on behalf of the Company in respect of the same).

4.28 Local Content Requirements

- (a) The Contractor acknowledges that the Local Content Requirements apply to the Project and agrees to comply with the Local Content Requirements in performing the Works.
- (b) The Contractor agrees to, within thirty (30) Days of the Effective Date, prepare and submit to the Company a plan detailing the Contractor's proposed actions and targets in compliance with the Local Content Requirements (**Local Content Plan**).
- (c) The Company will review the Contractor's draft Local Content Plan and will either:
 - (1) notify the Contractor that the Local Content Plan is approved; or
 - (2) request the Contractor make amendments to the Local Content Plan.
- (d) If the Company requests amendments be made to the Local Content Plan, the Contractor must submit a revised Local Content Plan within ten (10) Days and clauses 4.28(c) to 4.28(d) will continue to apply until the Company approves the Local Content Plan.
- (e) The Contractor's performance against the Local Content Plan will be reviewed by the Company's Representative for each period as determined by the Company's Representative acting reasonably. The Contractor must provide the Company with all information reasonably required by the Company's Representative to assess the Contractor's performance against the Local Content Plan for the applicable period.

4.29 Other Agreements

The Contractor shall have regard to any obligations owed by the Company under any agreement relating to the Works or relating to the finance, sale or lease of the whole or any part of the Works or the Site insofar as details of such obligations have been provided to the Contractor and the Contractor shall carry out and Complete the Works in such a manner as not to constitute, cause or contribute to any breach by the Company of any such obligations

providing payment for any additional Works identified under this Sub-Clause 4.29 [*Other Agreements*] is agreed.

4.30 Supply of Water

The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

4.31 Illegal Substances

The Contractor shall not, otherwise than in accordance with applicable Laws, import, sell, give, barter or otherwise dispose of any illegal substances, or permit or suffer any such importation, sale, gift, barter or disposal by its Subcontractors, agents, employees or labour.

4.32 Arms and Ammunition

The Contractor shall not permit to be on Site or give, barter or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.

4.33 Festivals and Religious Ceremonies

The Contractor shall in all dealings with its Contractor's Personnel have due regard to all festivals, days of rest and religious or other customs recognized in the Country.

5. Subcontracting

5.1 Subcontractors

- (a) The Contractor shall not subcontract the whole of the Works. Subject to the Company's prior written approval, the Contractor may subcontract certain specialized parts of the Works to a Subcontractor approved by the Company.
- (b) The Contractor shall be responsible for the work of all Subcontractors, for managing and coordinating all the Subcontractors' works, and for the acts or defaults of any Subcontractor and any Subcontractor's agents or employees, as if they were the acts or defaults of the Contractor. The Contractor shall only employ Subcontractors who are competent and have proven track records for performing the tasks allocated to them by the Contractor, the Contractor shall apply fair and timely payment conditions to its Subcontractors, and the Contractor shall ensure that a harmonious relationship exists among and between all its and the Subcontractors' employees.
- (c) The Contractor shall obtain the Company's Representative's prior consent to all proposed Subcontractors, except subcontracts for which the Subcontractor is named in Schedule 7 [*List of Approved Subcontractors*], and to any proposed replacement of a Subcontractor, including the replacement of a Subcontractor listed in Schedule 7 [*List of Approved Subcontractors*].
- (d) If the Company objects to the proposed Subcontractor, then, the Contractor shall either, execute and complete that part of the Works that would have been executed and Completed by the proposed Subcontractor, if qualified, or shall propose another Subcontractor to which the Company has no objection.
- (e) If requested by the Company's Representative, the Contractor shall, prior to subcontracting any part of the Works to a Subcontractor, in accordance with this Sub-Clause 5.1 [*Subcontractors*], procure the provision by that other Party of a collateral warranty.
- (f) The Contractor shall, upon the Company's request in the event of (in the opinion of the Company) any Subcontractor's non-performance, terminate that Subcontractor's appointment.
- (g) Nothing in this Sub-Clause 5.1 [*Subcontractors*] shall reduce or absolve any obligations that the Contractor has under this Agreement to procure and provide

warranties to the Company (extending beyond the DNP) from Subcontractors for certain specified items.

- (h) Where the Contractor is required to obtain the Company's Representative's consent to a proposed Subcontractor, the Contractor shall submit the name, address, detailed particulars and relevant experience of such a Subcontractor and the work intended to be subcontracted to the Company's Representative and further information which the Company's Representative may reasonably require. If the Company's Representative does not respond within fourteen (14) Days after receiving this submission (or further information if requested), by giving a Notice objecting to the proposed Subcontractor, the Company's Representative shall be deemed to have given his/her consent.
- (i) The Contractor shall give a Notice to the Company's Representative not less than twenty-eight (28) Days before the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site. Such consent may be given subject to conditions (including conditions as to the terms of the relevant subcontract).
- (j) Each subcontract shall include the following:
 - (1) provisions, which would entitle the Company to require the subcontract to be novated to the Company under Sub-Clause 1.5 [*Assignment and Novation*] (if or when applicable), or assigned to the Company in the event of termination under Clause 14 [*Termination by Company*];
 - (2) provisions, which bind the Subcontractor to participate in any assignment or novation required by the Company, in the event of a breach of this Agreement by the Contractor and regardless of whether the Company terminates this Agreement and, in such event, the Company may, to the extent permitted by applicable Laws and with prior notification of the Contractor, enforce directly against any Subcontractor all rights of the Contractor under such subcontract;
 - (3) provisions, which bind the Subcontractor under Sub-Clause 15.2 [*Contractor's Obligations After Termination*];
 - (4) without limiting or affecting the operation of Sub-Clause 7.7 [*Ownership of Plant and Materials*] (as between the Company and the Contractor), provisions analogous to those in Sub-Clause 7.7 [*Ownership of Plant and Materials*];
 - (5) provisions, which comply with Sub-Clause 7.1(f) [*Other instances required by Laws and by local practice*];
 - (6) provisions, which require the Subcontractor to abide by and observe, to the same extent required of the Contractor, Good Industry Practice, all applicable Standards and all Laws; and
 - (7) a provision, prohibiting further subcontracting of any portion of the Subcontractor's part of the Works by the Subcontractor.
- (k) Nothing in this Agreement shall create any contractual relationship between the Company and any Subcontractor, unless the Company elects to exercise its rights under Sub-Clauses 1.1(a)(1) and 1.1(a)(2) above.

5.2 Nominated Subcontractors

(a) Definition of "Nominated Subcontractors"

In this Sub-Clause, "**Nominated Subcontractor**" means a Subcontractor named as such in the Specification or whom the Company's Representative, instructs the Contractor to employ as a Subcontractor.

(b) **Objection to Nomination**

The Contractor shall not be under any obligation to employ a nominated Subcontractor whom the Company's Representative instructs and against whom the Contractor raises reasonable objection by giving a Notice to the Company's Representative, with detailed supporting particulars, no later than fourteen (14) Days after receiving the Company's Representative's instruction. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Company agrees to indemnify the Contractor against and from the consequences of the matter.

- (1) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;
- (2) the refusal of the nominated subcontractor to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, the nominated Subcontractor's agents and employees; or
- (3) the refusal of the nominated subcontractor to accept a term of the subcontract that, for the subcontracted work, the subcontract does not specify that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
 - (A) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge the Contractor's corresponding obligations and liabilities under this Agreement, and
 - (B) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with this Agreement and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities.

(c) **Payments to Nominated Subcontractors**

The Contractor shall pay to the Nominated Subcontractor the amounts due in accordance with the subcontract entered into by the Contractor and the Nominated Subcontractor. These amounts plus other charges shall be included in the Contract Price.

(d) **Evidence of Payments**

- (1) The provisions of this Sub-Clause 7.1(d) [*Evidence of Payments*] shall apply in relation to Subcontractors and to such other Subcontractors as the Company may require. Before issuing a Payment Certificate which includes an amount payable to a Subcontractor, the Company's Representative may request the Contractor to supply reasonable evidence that the Subcontractor has received all amounts due in accordance with the previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Contractor:
 - (A) submits this reasonable evidence to the Company's Representative, or
 - (B) satisfies the Company's Representative in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and

- (C) submits to the Company's Representative reasonable evidence that the Subcontractor has been notified of the Contractors entitlement,

then the Company may (at the Company's sole discretion) pay, directly to the Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the Subcontractor and for which the Contractor has failed to submit the evidence described in Sub-Clauses (A) or (B) above.

- (2) Thereafter, the Company's Representative shall give a Notice to the Contractor stating the amount paid directly to the Subcontractor by the Company and, in the next PICA after this Notice, shall include this amount as a deduction under Sub-Clause 1.1(a)(2).
- (3) The Company shall be entitled to pay to such Subcontractor directly, upon the certificate of the Company's Representative, all payments, less retentions as provided for in the subcontract, which the Contractor has failed to make to such Subcontractor and to deduct by way of set-off the amount so paid by the Company from any sums due or to become due from the Company to the Contractor.

6. Staff and Labour

6.1 Engagement of Staff and Labour

- (a) Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all Contractor's Personnel, and for their payment, accommodation, feeding, transport and welfare.
- (b) Within fourteen (14) Days of the Commencement Date, the Contractor shall submit to Company's Representative an organizational chart in respect of its performance of the Works. Key personnel as designated in the organizational chart shall be assigned to the Works and shall not be removed or reassigned without the Company's prior written permission.
- (c) The Contractor shall be responsible for the return to the place, either where they were recruited from or where their domicile is located, of all imported members of the Contractor's Personnel. In the event of any death in the Country of any imported members of the Contractor's Personnel, or members of their families, the Contractor shall also be responsible for making the appropriate arrangements for their return and burial.

6.2 Rates of Wages and Conditions of Labour

- (a) The Contractor shall pay rates of wages, and observe conditions of labour (including the minimum working age and maximum working hours permitted by Law), which comply with all applicable Laws and are not lower than those established for the trade or industry where the work is carried out.
- (b) 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 Company's whose trade or industry is similar to that of the Contractor.
- (c) The Contractor must pay its Contractor's Personnel and provide Contractor-provided benefits on time, in accordance with the Contractor's human resources and payroll policies and procedures. The Contractor hereby specifically acknowledges its responsibility to all Contractor's Personnel pursuant to any Law and, in particular, its obligations to pay and provide time (as the case may be), in a timely manner, all agreed salaries, benefits, leave, rest breaks and, whenever applicable, overtime.

- (d) If the Contractor fails to submit the Completed certification letter referred to in Sub-Clause 13.3 [*Application for Interim Payment*], in addition to and without prejudice to any other rights and remedies that the Company may have available to it under this Agreement, the Company shall notify the Contractor and, upon receipt of Notice from the Company, the Contractor shall promptly execute and complete or arrange for the execution and completion of the corrective action required within fourteen (14) Days from the receipt of such Notice.

6.3 Recruitment of Persons

- (a) The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Company's Personnel.
- (b) Neither the Company nor the Company's Representative shall recruit, or attempt to recruit, staff and labour from amongst the Contractor's Personnel.
- (c) In employing additional personnel to supplement its permanent staff in the execution and Completion of the Works, the Contractor shall give priority to qualified nationals of the Country and shall ensure that all its Subcontractors, at whatever tier, do the same. If the Contractor is unable to obtain sufficient numbers of qualified nationals of the Country to satisfy its requirements for the execution and Completion of the Works, the Contractor shall employ the additional personnel required by recruiting them outside the Country.
- (d) The Contractor must ensure that any imported members of the Contractor's Personnel are provided with residence visas and work permits, in accordance with all applicable Laws and this Agreement.

6.4 Labour Laws

- (a) The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment (including wages and working hours), health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
- (b) The Contractor shall require the Contractor's Personnel to obey all applicable Laws, including those concerning health and safety at work and the environment; all applicable rules and instructions issued by the Company.

6.5 Working Hours

- (a) Working hours are to be agreed between the Company's Representative and Contractor. Once agreed, any deviation by the Contractor from the agreed working hours shall be subject to the Company's Representative's prior approval.
- (b) The Contractor is considered to have planned and taken into account all public holidays, religious days of rest and Ramadan reduced working hours applicable in the Country and the Contractor is deemed to have taken all such losses of output into account in its Programme and in the Contract Price as of the Effective Date.
- (c) Subject to the applicable Laws and the approval of the concerned authorities, the Parties agree that the Company may in its sole discretion require the work on the Site to be carried out twenty-four hours a Day in the event that this is considered necessary.

6.6 Facilities for Staff and Labour

- (a) Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel except for Expatriate, Non-Local Management Supervisors.
- (b) If accommodation is provided by the Company in accordance with the Specification, the Contractor must pay the daily fee applicable to such accommodation to the Company and the Company may set-off such amounts from any payments due to the Contractor.

- (c) If such accommodation and facilities are to be located on the Site, except where the Company has given the Contractor prior permission, they shall be located within the areas identified in this Agreement. If any such accommodation or facilities are found elsewhere within the Site, the Contractor shall immediately remove them at the Contractor's risk and cost. The Contractor shall also provide facilities for the Company's Personnel as stated in the Specification.
- (d) Accommodation for Expatriate and Non-Local Management Supervisors will be provided by Company on as is basis and Contractor has no further claims with regards to the same.
- (e) Company's Charter flight facility will be provided for Contractor's Management and Supervision staff on as is and on as available basis.

6.7 Health and Safety of Personnel

- (a) The Contractor shall take full responsibility for the safety of the Site (including all Plant, Contractor's Equipment and Temporary Works) and the safety of all persons who enter the Site, in accordance with this Agreement and all applicable Standards, applicable Laws, issued by any Government Entity or the Company.
- (b) In addition to the above, the Contractor shall also comply with the Company's health and safety Standards, as specified in Schedule 8 [*Company's Standards*].
- (c) The Contractor shall take all reasonable precautions to maintain the health and safety of the Contractor's Personnel.
- (d) Prior to the Commencement Date, the Contractor shall appoint an accident prevention officer at the Site, who shall be responsible for maintaining safety and protection against accidents and whose identity should be notified to the Company's Representative. This person shall be qualified for this responsibility and shall have the authority to issue directions to the Contractor's Personnel and instigate preventative and protective measures on Site to prevent accidents.
- (e) The Contractor shall give Notice to the Company's Representative of any accident as soon as practicable after its occurrence, in accordance with the Company's Standards, pursuant to Schedule 8 [*Company's Standards*]. The Contractor shall maintain Records and make reports concerning health, safety and welfare of persons and damage to property, as the Company may reasonably require and the Company's Representative may reasonably instruct.
- (f) The Contractor shall ensure that medical and first aid facilities are available at all times at the Site as stipulated in the Company's Standards and the Project Health, Safety and Environmental Management Plan and should arrange for ambulance and medical services without delay if any Emergency, Incident or other event or condition occurs. Such facilities should be present at any accommodation for Contractor's Personnel (and, if applicable, Company's Personnel), and suitable arrangements shall be made for all necessary welfare and hygiene requirements.
- (g) The Company will make available a medical clinic that can be used by the Contractor's Personnel. The Contractor shall ensure that the Company's medical clinic is only used for work related illnesses and injuries. The Contractor is responsible for all costs associated with the use of the Company's medical clinic by Contractor's Personnel and must pay the amount of such costs to the Company and the Company may set off such amounts from any payments due to the Contractor.
- (h) Despite the Company making available a medical clinic, the Contractor remains fully responsible for all injuries to any of the Contractor's Personnel and cannot make any claim against the Company in relation to the availability of, or quality of, any medical services. The Contractor shall be responsible for all costs for medical evacuations or hospitalisation of the Contractor's Personnel and its Subcontractor's personnel.

- (i) The Contractor shall be responsible for the provision of its own front line first aid facilities. The Contractor shall provide its own first-aid services, equipment and supplies including specific medical stocks and sufficiently equipped first-aid kits at a place(s) within reasonable accessibility from the location where Contractor's Personnel are working.
- (j) The Contractor indemnifies the Company from any claims or demands made by any of Contractor's Personnel against the Company with respect to the provision of the Site medical clinic and services (or the lack thereof).
- (k) The Contractor acknowledges that the Site is remote and that the Site medical clinic and services furnished by the Company are limited. The Contractor agrees that by using the Company's medical clinic, that any and all decisions regarding medical treatment of Contractor's Personnel, which may be made by the Company's Site medical services contractor, including without limitation, any decision to evacuate a patient to another location for further medical treatment, with or without the Contractor's knowledge, shall be binding on the Contractor.
- (l) The Company shall, at no time and in no event, assume responsibility for payment of any expenses arising out of any medical evacuation or hospitalisation of any of Contractor's Personnel or its Subcontractor's personnel.
- (m) The PPE's required with respect to Covid 19 is not included in the Contract Price and will be charged additional on Cost basis if the Company insist for the use of the same. The same will not be charged in Case Company is able to provide the same.

6.8 Contractor's Superintendence

- (a) From the Commencement Date until the issue of the Performance Certificate, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect, test and monitor the execution of the Works.
- (b) Superintendence shall be given by a sufficient number of persons:
 - (1) who are fluent in or have adequate knowledge of the language for communications (denined in Sub-Clause 1.4 [*Law and Language*]); and
 - (2) who have 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 satisfactory and safe execution of the Works.
- (c) The Contractor shall ensure that a competent and authorized representative (who may or may not be the Contractor's Representative) approved by the Company's Representative, which approval may at any time be withdrawn, shall be constantly on the Site and shall give its whole time to the superintendence of the Works. Such authorized representative shall receive, on behalf of the Contractor, instructions from the Company's Representative or, subject to the provisions of Clause 3 [*The Company's Representative*], the Company's Representative, and shall have 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 satisfactory and safe execution of the Works.
- (d) All the Contractor's Personnel with supervisory responsibilities down to and including general foreman level shall have a proficient command of the English language and there shall be, at all times during the progress of the Works, a sufficient number of Contractor's Personnel provided by the Contractor who are competent in English to ensure transmission and comprehension of all instructions.

6.9 Contractor's Personnel

- (a) The Contractor shall ensure that the Contractor's Personnel and the personnel of its Subcontractors on the Site are fully qualified, skilled, experienced, certified, licensed, and competent to provide each of their parts of the Works to which they

are assigned. In particular, all engineers employed or engaged by the Contractor, who shall be working on the Works are required to be qualified and certified engineers in the appropriate disciplines. Non-compliance of Contractor and/or Contractor's Personnel with licensure and certification qualifications required under this Agreement and in accordance with applicable Standards and applicable Laws of any Competent Authority where any of the Works is being performed is a material breach of this Agreement.

- (b) The Contractor's Personnel shall perform such Works in the manner and within the time stipulated in this Agreement. In the event of a breach of this Agreement, the Company may, at its discretion, step-in to the Project, pursuant to Sub-Clause 8.14 [*Company's Right to Step-In*], in addition to any other rights available to it, to execute and Complete the Works of such personnel by utilizing available Company manpower at their then current rate of 100% pay, plus overheads, or through other third parties. In such circumstances, the Company shall, without being required to raise a claim, be entitled to charge the Contractor any costs incurred by the Company for performing the Works of the Contractor's Personnel until such time as the Contractor has allocated and assigned fully qualified Contractor's Personnel to the Works.
- (c) The Company's Representative and/or the Company may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative and Key Personnel (if any), who:
 - (1) persists in any misconduct or lack of care;
 - (2) carries out duties incompetently or negligently;
 - (3) fails to comply with any provision of this Agreement;
 - (4) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;
 - (5) is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice;
 - (6) has been recruited from the Company's Personnel in breach of Sub-Clause 6.3 [*Recruitment of Persons*]; or
 - (7) whose presence on Site is otherwise considered by the Company's Representative or the Company, at their absolute discretion, to be undesirable.
- (d) If appropriate, the Contractor shall then promptly appoint (or cause to be appointed) a suitable replacement. In the case of replacement of the Contractor's Representative, Sub-Clause 4.3 [*Contractor's Representative*] shall apply, in the case of replacement of Key Personnel (if any), Sub-Clause 6.12 [*Key Personnel*] shall apply.
- (e) The Contractor shall be liable for any additional Cost or delay incurred as a result of such replacement, which Cost may be deducted from any monies otherwise due from the Company to the Contractor.

6.10 Contractor's Records

- (a) Unless otherwise proposed by the Contractor and agreed by the Company's Representative, in each progress report under Sub-Clause 4.21 [*Progress Reports*], the Contractor shall include Records of:
 - (1) occupations and actual working hours of each class of Contractor's Personnel;
 - (2) the type and actual working hours of each of the Contractor's Equipment;
 - (3) the types of Temporary Works used;

- (4) the types of Plant installed in the Permanent Works; and
- (5) the quantities and types of Materials used,

for each work activity shown in the Programme, at each work location and for each Day of work.

- (b) The Contractor shall, within fourteen (14) Days of the Company's request, submit to the Company satisfactory evidence that it has the necessary and required qualifications and Government Authorizations for the Contractor and Contractor's Personnel and to execute the Works, including evidence of any required renewals of the same. The Contractor warrants that it will maintain all renewals, necessary and required to maintain the qualifications and any Government Authorizations for the Contractor and the Contractor's Personnel and to execute the Works.
- (c) The Contractor shall submit a comprehensive resource schedule of proposed Contractor's Personnel for the execution of the Works, identifying the role of each member of the Contractor's team and the precise scope of any sub-contractors to be appointed, together with CVs of the Contractor's Representative and any other key members of the Contractor's team, for the approval of the Company. The resource schedule shall be submitted within fourteen (14) Days prior to the Commencement Date.

6.11 Disorderly Conduct

The Contractor shall at all times take all necessary 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. In so doing, the Contractor shall ensure the Contractor's Personnel to comply with all applicable Laws and all generally acceptable Standards of conduct of the Company and in the Country, including in relation to inappropriate behaviour at work, anti-harassment, anti-discrimination, and those laws relating to photography and videography in workplaces.

6.12 Key Personnel

- (a) If no Key Personnel are stated in the Specification this Sub-Clause shall not apply.
- (b) The Contractor shall appoint the natural persons named in the Tender to the positions of Key Personnel. If not so named, or if an appointed person fails to act in the relevant position of Key Personnel, the Contractor shall submit to the Company's Representative for consent the name and particulars of another person the Contractor proposes to appoint to such position. If consent is withheld or subsequently revoked, the Contractor shall similarly submit the name and particulars of a suitable replacement for such position.
- (c) If the Company's Representative does not respond within fourteen (14) Days after receiving any such submission, by giving a Notice stating his/her objection to the appointment of such person (or replacement) with reasons, the Company's Representative shall be deemed to have given his/her consent.
- (d) The Contractor shall not, without the Company's Representative's prior consent, revoke the appointment of any of the Key Personnel or appoint a replacement (unless the person is unable to act as a result of death, illness, disability or resignation, in which case the appointment shall be deemed to have been revoked with immediate effect and the appointment of a replacement shall be treated as a temporary appointment until the Company's Representative gives his/her consent to this replacement, or another replacement is appointed, under this Sub-Clause).
- (e) All Key Personnel shall be based at the Site (or, where Works are being executed off the Site, at the location of the Works) for the whole time that the Works are being executed. If any of the Key Personnel is to be temporarily absent during execution of the Works, a suitable replacement shall be temporarily appointed, subject to the Company's Representative's prior consent.

- (f) All Key Personnel shall be fluent in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

7. Plant, Materials and Workmanship

7.1 Manner of Execution

- (a) The Contractor shall carry out the manufacture, supply, installation, testing, pre-commissioning and commissioning and/or repair of Plant, the production, manufacture, supply and testing of Materials, and all other operations and activities during the execution of the Works:
- (1) in the manner (if any) specified in this Agreement;
 - (2) in a proper workmanlike and careful manner, in accordance with Good Industry Practice; and
 - (3) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in this Agreement.
- (b) The Contractor warrants to the Company:
- (1) that, save to the extent the Parties have expressly agreed otherwise, all Materials, Plant, and Goods, forming part of the Permanent Works, shall be new (or as otherwise required by the Contract), free from any charge, lien, pledge, claim, time, lease, easement, security interest or encumbrance of any kind; free from Defects of any kind, suitable for their intended purpose and shall conform to any descriptions set out in this Agreement;
 - (2) that the performance of the Works shall conform strictly to the standards identified in this Agreement and, if no such standards are laid down, to the best accepted international standards of current building design and construction practices; and
 - (3) that the Contractor shall take full responsibility for the adequacy, quality, stability and safety of all Site operations, methods of construction, the adequacy and quality of the workmanship and the adequacy and quality of the Works themselves, notwithstanding any approval which may be given by the Company's Representative.
- (c) All Materials, Plant and workmanship shall be subjected from time to time to such tests as the Company's Representative may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in this Agreement, and the Contractor shall procure such access as the Company's Representative may reasonably require in order to perform such tests.
- (d) All Plant and Materials provided by the Contractor shall be of good quality, free of Defects and suitable for their purposes and the Company's intended purposes of the Permanent Works. The Contractor must ensure that all Plant and Materials supplied by the Contractor, including its packaging, comply with all applicable quality, safety and environmental Standards.
- (e) No used Plant or Materials shall be incorporated in the Permanent Works unless required by any term of this Agreement, or unless prior approved, in writing, by the Company's Representative.

7.2 Samples

- (a) The Contractor shall submit the following samples of Materials, and relevant information, to the Company's Representative for consent prior to using the Materials in or for the Works:

- (1) manufacturer's standard samples of Materials and samples specified in this Agreement, all at the Contractor's cost, and
 - (2) additional samples instructed by the Company's Representative as a Variation.
- (b) Each sample shall be labelled as to origin and intended use in the Works.
- (c) The Contractor shall provide such samples and undertake any testing required by the Company's Representative at its own cost.

7.3 Inspection

- (a) The Company's Personnel, the Company's Representative and any relevant governing body and/or utility company and any other person from time to time notified to the Contractor by the Company or the Company's Representative at all reasonable times shall:
 - (1) have full access to all parts of the Site and to all places from which natural Materials are being obtained;
 - (2) during production, manufacture and construction (at the Site and elsewhere), be entitled to:
 - (A) examine, inspect, measure and test (to the extent stated in the Specification) the Materials, Plant and workmanship,
 - (B) check the progress of manufacture of Plant and production and manufacture of Materials, and
 - (C) make records (including photographs and/or video recordings); and
 - (3) carry out other duties and inspections, as specified in these General Conditions and the Specification.
- (b) The Contractor shall give the Company's Personnel full opportunity to carry out these activities, including providing safe access, facilities, permissions and safety equipment.
- (c) The Contractor shall give a Notice to the Company's Representative whenever any Materials, Plant or work is ready for inspection, and before it is to be covered up, put out of sight, or packaged for storage or transport. The Company's Personnel shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or the Company's Representative shall promptly give a Notice to the Contractor that the Company's Personnel do not require to do so. If the Company's Representative gives no such Notice and/or the Company's Personnel do not attend at the time stated in the Contractor's Notice (or such time as may be agreed with the Contractor), the Contractor may proceed with covering up, putting out of sight or packaging for storage or transport.
- (d) If the Contractor fails to give a Notice in accordance with this Sub-Clause, the Contractor shall, if and when required by the Company's Representative, uncover the work and thereafter reinstate and make good, all at the Contractor's risk and cost.
- (e) Notwithstanding the above, the Contractor shall at its own cost uncover any part of the Works or make openings in or through the same as the Company's Representative may from time to time instruct in order to allow inspection thereof, and the Contractor shall reinstate and make good such parts of the Works to the Company's Representative's satisfaction.

7.4 Testing by the Contractor

- (a) This Sub-Clause shall apply to all tests specified in this Agreement, other than the Tests after Completion (if any).
- (b) The Contractor must prepare for approval by the Company a Commissioning and Testing Plan as required under the Specification and once approved must comply with the Commissioning and Testing Plan.
- (c) Subject to any other express provision of this Agreement to the contrary, the Contractor shall provide all apparatus, assistance, documents and other information, temporary supplies of electricity and water, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified, experienced and competent staff, as are necessary to carry out the specified tests efficiently and properly. All apparatus, equipment and instruments shall be calibrated in accordance with the standards stated in the Specification or defined by applicable Laws and, if requested by the Company's Representative, the Contractor shall submit calibration certificates before carrying out testing.
- (d) The Contractor shall give a Notice to the Company's Representative, stating the time and place for the specified testing of any Plant, Materials and other parts of the Works. This Notice shall be given in reasonable time, having regard to the location of the testing, for the Company's Personnel to attend.
- (e) The Company's Representative may, under Clause 12 [*Variations and Adjustments*], vary the location or timing 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 this Agreement, the Cost and any delay incurred in carrying out this Variation shall be borne by the Contractor.
- (f) The Company's Representative shall give a Notice to the Contractor of not less than 72 hours of his/her intention to attend the tests. If the Company's Representative does not attend at the time and place stated in the Contractor's Notice under this Sub-Clause, the Contractor may proceed with the tests, unless otherwise instructed by the Company's Representative. These tests shall then be deemed to have been made in the Company's Representative's presence.
- (g) If the Contractor causes any delay to specified tests (including varied or additional tests) and such delay causes the Company to incur costs, the Company shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to payment of these costs by the Contractor.
- (h) The Contractor shall promptly forward to the Company's Representative duly certified reports of the tests. When the specified tests have been passed, the Company's Representative shall endorse the Contractor's test certificate, or issue a test certificate to the Contractor, to that effect. If the Company's Representative has not attended the tests, he/she shall be deemed to have accepted the readings as accurate.
- (i) Sub-Clause 7.5 [*Defects and Rejection*] shall apply in the event that any Plant, Materials and other parts of the Works fails to pass a specified test.
- (j) The Company's Representative or the Company may require the Contractor to re-examine, to re-test, to uncover or to expose for re-examination any part of the Works at any time, in which case the Contractor shall make necessary arrangements for such re-examination, retesting, uncovering and exposing activities at the Contractor's cost and expense should the part of the Works fail the re-test or re-examination.

7.5 Defects and Rejection

- (a) If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, Contractor's design (if any) or workmanship is found to be Defective or

otherwise not in accordance with this Agreement, the Company's Representative or the Company may give a Notice to the Contractor describing the item of Plant, Materials, design or workmanship that has been found to be Defective. The Contractor shall then promptly prepare and submit a proposal for necessary remedial work or replace such Plant, Materials, Contractor's design or workmanship which is Defective if instructed to do so by the Company's Representative and/or the Company.

- (b) The Company's Representative may Review this proposal, and may give a Notice to the Contractor stating the extent to which the proposed work, if carried out, would not result in the Plant, Materials, Contractor's design (if any) or workmanship complying with this Agreement. After receiving such a Notice, the Contractor shall promptly submit a revised proposal to the Company's Representative. If the Company's Representative gives no such Notice within fourteen (14) Days after receiving the Contractor's proposal (or revised proposal), the Company's Representative shall be deemed to have given a Notice of No-objection.
- (c) If the Contractor fails to promptly submit a proposal (or revised proposal) for remedial work, or fails to carry out the proposed remedial work to which the Company's Representative has given (or is deemed to have given) a Notice of No-objection:
 - (1) Sub-Clause 7.6 [*Remedial Work*] shall apply; or
 - (2) the Company's Representative may reject the Plant, Materials, Contractor's design (if any) or workmanship by giving a Notice to the Contractor, with reasons, in which case Sub-Clause 11.4(b)(1) shall apply.
- (d) After remedying Defects in any Plant, Materials, design (if any) or workmanship, if the Company's Representative requires any such items to be retested, the tests shall be repeated in accordance with Sub-Clause 7.4 [*Testing by the Contractor*] at the Contractor's risk and cost. If the rejection and retesting cause the Company to incur additional costs, the Company's entitlement shall be, subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*], to payment of these costs by the Contractor.
- (e) The Contractor shall not be entitled to any EOT, reimbursement of additional costs and/or adjustment to the Contract Price, in respect of any such rejection of the making good of Defects and/or retesting of Plant, Materials, and/or any design and/or workmanship, pursuant to this Sub-Clause 7.5 [*Defects and Rejection*].

7.6 Remedial Work

- (a) The Contractor shall correct, at no cost to the Company, any document that is found to be Defective and to resubmit it to the Company's Representative. The Review and submission process shall be repeated until all Defects and comments are resolved.
- (b) In addition to any previous examination, inspection, measurement or testing, or test certificate or Notice of No-objection by the Company's Representative, at any time before the issue of the Taking-Over Certificate for the Works the Company's Representative may instruct the Contractor to:
 - (1) repair or remedy (if necessary, off the Site), or remove from the Site and replace any Plant or Materials which are not in accordance with this Agreement;
 - (2) repair or remedy, or remove and re-execute, any other work which is not in accordance with this Agreement; and
 - (3) carry out any remedial work which is urgently required for the safety of the Works, whether because of an accident, Unforeseeable event or otherwise.

- (c) The Contractor shall comply with the instruction as soon as practicable and not later than the time (if any) specified in the instruction, or immediately if urgency is specified under Sub-Clause 7.6(b)(3) above.
- (d) The Contractor shall bear the cost of all remedial work required under this Sub-Clause, except to the extent that any work under Sub-Clause 7.6(b)(3) above is attributable to:
 - (1) any act by the Company or the Company's Personnel. If the Contractor suffers delay and/or incurs Cost in carrying out such work, the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to EOT and/or payment of such Cost; or
 - (2) an Exceptional Event, in which case Sub-Clause 17.4 [*Consequences of an Exceptional Event*] shall apply.
- (e) If the Contractor fails to comply with the Company's Representative's instruction, the Company may (at the Company's sole discretion) employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for work under this Sub-Clause, the Company shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to payment by the Contractor of all costs arising from this failure. This entitlement shall be without prejudice to any other rights the Company may have, under this Agreement or otherwise.

7.7 Ownership of Plant and Materials

- (a) Each item of Plant and Materials shall, to the extent consistent with the mandatory requirements of the Laws of the Country, become the property of the Company at whichever is the earlier of the following times, free from liens and other encumbrances:
 - (1) when it is delivered to the Site; or
 - (2) when the Contractor is paid the value/amount determined for the Plant and Materials under this Agreement.
- (b) Notwithstanding this, the Contractor shall remain responsible for the care, custody, safekeeping, protection, and insurance of such Plant and Materials until such time as the Company issues a Taking-Over Certificate in respect of the part or parts of the Works in which such Plant and/or Materials are used or incorporated.

7.8 Royalties

Unless otherwise stated in the Specification, 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 stated in the Specification.

7.9 Asset Management

Throughout this Agreement, the Contractor shall maintain and update, on a no less than a Monthly basis, a master list of Assets and equipment, installed by the Contractor in connection with the Permanent Works, in the form and format as instructed by the Company's Representative, including the associated costs of each Asset and piece of equipment, and in compliance with the Company's Standards. The Contractor shall ensure that all required Asset data is made available to the Company prior to issuance of the Taking-Over Certificate. The Contractor shall ensure that Asset tag numbers are assigned and affixed to all Assets and equipment installed by the Contractor, in connection with the Permanent Works, using references and providing other requirements as instructed by the Company's Representative.

8. Commencement, Delays and Suspension

8.1 Commencement of Works

- (a) The Contractor shall as soon as reasonably practical and in any event within fourteen (14) Days of the Effective Date, satisfy the Conditions Precedent.
- (b) The Contractor shall commence the execution of the Works on the Commencement Date and shall then proceed with the Works with due expedition and without delay.

8.2 Time for Completion

The Contractor shall Complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including Completion of all work which is stated in this Agreement as being required for the Works or Section to be considered to be Completed for the purposes of taking over under Sub-Clause 10.1 [*Taking Over the Works and Sections*].

8.3 Programme

- (a) The Contractor shall submit an initial programme for the execution of the Works to the Company's Representative within twenty-eight (28) Days after the Commencement Date. This programme shall be prepared using programming software state in the Specification (if not stated, the programming software acceptable to the Company's Representative or the Company). The Contractor shall also submit a revised programme which accurately reflects the actual progress of the Works, whenever any programme ceases to reflect actual progress or is otherwise inconsistent with the Contractor's obligations.
- (b) The initial programme and each revised programme shall be submitted to the Company's Representative in one paper copy, one electronic copy and additional paper copies (if any) as stated in the Contract Data, and shall include:
 - (1) the Commencement Date and the Time for Completion, of the Works and of each Section (if any);
 - (2) the date right of access to and possession of (each part of) the Site is to be given to the Contractor in accordance with the time (or times) stated in the Contract Data. If not so stated, the dates the Contractor requires the Company to give right of access to and possession of (each part of) the Site;
 - (3) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), preparation and submission of Contractor's Documents, procurement, manufacture, inspection, delivery to Site, construction, erection, installation, work to be undertaken by any nominated Subcontractor (as defined in Sub-Clause 5.2 [*Nominated Subcontractors*]), testing, pre-commissioning, commissioning and trial operation, in sufficient detail so as to demonstrate the activities, sequence, durations and dependencies for executing the Works in order for the Contractor to achieve all the Milestones by the applicable date for Milestone achievement as set forth in Schedule 6 [*Milestones*];
 - (4) the Review periods for any submissions stated in the Specification or required under these General Conditions;
 - (5) the sequence and timing of inspections and tests specified in, or required by, this Agreement;
 - (6) for a revised programme: the sequence and timing of the remedial work (if any) to which the Company's Representative has given a Notice of No-objection under Sub-Clause 7.5 [*Defects and Rejection*] and/or the remedial work (if any) instructed under Sub-Clause 7.6 [*Remedial Work*];

- (7) all activities (to the level of detail stated in the Specification), logically linked and showing the earliest and latest start and finish dates for each activity, the float (If any), and the critical path(s) method time-scaled Gantt chart;
- (8) the dates of all locally recognized days of rest and holiday periods (if any);
- (9) all key delivery dates of Plant and Materials;
- (10) for a revised programme and for each activity: the actual progress to date, any delay to such progress and the effects of such delay on other activities (if any);
- (11) a supporting report which includes:
 - (A) a description of all the major stages of the execution of the Works;
 - (B) a general description of the methods which the Contractor intends to adopt in the execution of the Works;
 - (C) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel, and of each type of Contractor's Equipment, required on the Site, for each major stage of the execution of the Works;
 - (D) if a revised programme, identification of any significant change(s) to the previous programme submitted by the Contractor; and
 - (E) the Contractor's proposals to overcome the effects of any delay(s) on progress of the Works;
- (12) a work breakdown structure for the execution of the Works;
- (13) resource loading for all activities where applicable (though Milestones need not show resource loading);
- (14) a manpower histogram by Project month, with the following disciplines to be identified as categories of man-days in the support to the histograms:
 - (A) Project management;
 - (B) Administrative support;
 - (C) Quality Assurance and Quality Control (QA/QC);
 - (D) Site superintendents and assistant superintendents and shift managers;
 - (E) Inspectors;
 - (F) Document control;
 - (G) HSE;
 - (H) Security;
 - (I) Crafts;
 - (J) Unskilled labour; and
 - (K) Other categories as may be required by the Company's Representative; and
- (15) planned engineering and construction Works completion, by Month, with a table of incremental and cumulative progress percentages along with

weighted physical progress percentages for each major phase and corresponding "S" curves.

- (c) The Company's Representative shall review the initial programme and each revised programme submitted by the Contractor and may give a Notice to the Contractor stating the extent to which it does not comply with this Agreement or ceases to reflect actual progress or is otherwise inconsistent with the Contractor's obligations. If the Company's Representative gives no such Notice:
 - (1) within twenty-one (21) Days after receiving the initial programme; or
 - (2) within fourteen (14) Days after receiving a revised programme,
 - (3) the Company's Representative shall be deemed to have given a Notice of No-objection and the initial programme or revised programme (as the case may be) shall be the Programme.
- (d) The Contractor shall proceed in accordance with the Programme, subject to the Contractor's other obligations under this Agreement. The Company's Personnel shall be entitled to rely on the Programme when planning their activities.
- (e) Nothing in any programme, the Programme or any supporting report shall be taken as, or relieve the Contractor of any obligation to give, a Notice under this Agreement.
- (f) If, at any time, the Company's Representative gives a Notice to the Contractor that the Programme fails (to the extent stated) to comply with this Agreement or ceases to reflect actual progress or is otherwise inconsistent with the Contractor's obligations, the Contractor shall within fourteen (14) Days after receiving this Notice submit a revised programme to the Company's Representative in accordance with this Sub-Clause.

8.4 Advance Warning

- (a) The Contractor and the Company shall operate an early warning system whereby each Party shall serve Notice to the other Party of any matter adversely affecting or threatening the Works as soon as practically possible, including the following:
 - (1) any anticipated Exceptional Events and/or Defects; and/or
 - (2) the Contractor being delayed, disrupted or interrupted in its performance of the Works; or
 - (3) either Party becoming aware of any specific, actual or probable Defects and/or future event or circumstance which might:
 - (A) directly prevent it from discharging its obligations under this Agreement; or
 - (B) lead to a delay in the execution of the Works; or
 - (C) an increase in the cost of the Works or in the Project budget.
- (b) Such Notice shall include the Party's proposals for remedying or avoiding the consequences of any such matter. Within the scope of its agreed role, expertise and responsibilities, the Contractor shall take all reasonable steps to minimize such effects and shall include in its notification its proposals for avoiding or remedying such matters.
- (c) Upon the giving such Notice, the Company shall convene a meeting of the Parties and the Company's Representative within ten (10) Days to discuss with the Parties and subsequently issue a direction on an appropriate course of action unless the Parties and the Company's Representative agree such course of action without a meeting.

- (d) Any entitlement that the Contractor may have pursuant to this Agreement to an EOT or additional payment shall be limited to such time and payment which would have been due if the Contractor had given prompt Notice and taken all reasonable steps.

8.5 Extension of Time for Completion

- (a) The Contractor shall, subject to compliance with Sub-Clause 8.4 [*Advance Warning*] and this Sub-Clause 8.5 [*Extension of Time for Completion*], be entitled to an EOT, if:
 - (1) an Exceptional Event occurs, pursuant to Clause 17 [Exceptional Events], and which prevents or delays the Contractor in carrying out the Works by the Time for Completion; or
 - (2) the Time for Completion is or will be delayed, disrupted or interrupted by any of the following causes:
 - (A) a Variation to the Works (except that there shall be no requirement to comply with Sub-Clause 19.2 [*Claims for Payment and/or EOT*]);
 - (B) any delay, impediment or prevention caused by or attributable to the Company or the Company's Personnel; or
 - (C) any other event or circumstance giving an entitlement to extension of the Time for Completion under this Agreement.
- (b) If the Contractor considers itself entitled to any EOT under this Clause 8.5 [*Extension of Time for Completion*] or any other Clause of this Agreement, the Contractor shall give Notice of Claim for EOT to the Company's Representative and the Company, in accordance with Clause 19.2 [*Claims for Payment and/or EOT*] and this Sub-Clause 8.5, describing the event or circumstance giving rise to the Claim for an EOT.
- (c) Such Notice of Claim for EOT shall be accompanied by a "**Time Impact Analysis**" and critical path Programme. The Time Impact Analysis shall:
 - (1) define the extent of adjustment and the basis therefor in a form acceptable to the Company's Representative;
 - (2) include:
 - (A) identification of activities which will require change;
 - (B) an analysis of how float has been used to minimize the additional time required; and
 - (C) providing a cause and effect analysis of the factual events relied on and how this materially affects the critical path of the Works; and
 - (3) indicate the date(s) that the relevant event and any extra or additional work occurred (or will occur), the status of the work at that time, and the resultant impact on the Time for Completion.
- (d) The Time Impact Analysis and any additional supporting information shall form an integral part of the fully detailed claim for any EOT for Completion and shall be provided regardless of whether the event is continuing.
- (e) When assessing whether there is any entitlement to an extension of the Time for Completion, the Company's Representative shall have regard to the various different elements of float contained in the Programme at the relevant time. To avoid any doubt, float in the Programme (whether included in the original Programme or created during the course of the Works) does not belong to the Contractor. If the Contractor is entitled to claim an extension of the Time for Completion under this Agreement, the Contractor acknowledges and agrees that it shall only be entitled to

an actual extension of the Time for Completion where and to the extent that the event which entitles the Contractor to claim an extension of the Time for Completion reduces the float in the affected activities to be below zero at the relevant time.

- (f) The Notice of Claim shall be given within fourteen (14) Days of the date of occurrence of the event or circumstance giving rise to the Claim.
- (g) The Notice of Claim for EOT and Time Impact Analysis shall be given within twenty-one (21) Days of the date of occurrence of the event or circumstance giving rise to the Claim.
- (h) If the Contractor fails to give a Notice of Claim for EOT and Time Impact Analysis within twenty-one (21) Days of the date of occurrence of the event or circumstance giving rise to the Claim for EOT, the Time for Completion shall not be extended and the Contractor shall not be entitled to an EOT and the Company shall be discharged from any and all liability in connection with the Claim.
- (i) When determining each request for an EOT, under this Sub-Clause 8.5, any other Clause of this Agreement or otherwise in accordance with this Agreement, the Company's Representative shall review the request and shall consider the time impact analysis and critical path Programme and make a determination as to the appropriate increase (but not a decrease) in the total EOT.
- (j) Any EOT shall have due regard to the Programme and any constraints therein.
- (k) For the avoidance of doubt, compliance with the Notice of Claim requirements in accordance with Sub-Clause 19 [*Company and Contractor Claims*] and the delivery of a time impact analysis Programme and/or critical path Programme (if requested) shall be conditions precedent to the Contractor's entitlement to an extension of the Time for Completion.
- (l) The Contractor shall not be entitled to any extension of the Time for Completion in respect of:
 - (1) any event or period of delay which does not cause critical delay to Completion and/or taking over under Clause 10.1 [*Taking Over the Works and Sections*]; or
 - (2) any event or period of delay caused or materially contributed to by a negligent act or omission, breach of contract or other default on the part of the Contractor or any one for whom the Contractor is responsible (including its Subcontractors, or any of their respective employees, servants, agent, subcontractors and/or suppliers); or
 - (3) any event or period of delay caused by delay to any other Works which the Contractor may be carrying out for the Company pursuant to other contracts, being delays for the Contractor is not entitled to an extension of the Time for Completion pursuant to such contracts; or
 - (4) any event or period of delay that the Contractor has not taken all reasonable steps to avoid or mitigate without diverging from the requirements of this Agreement; or
 - (5) any event or period of delay which is concurrent delay.
- (m) The Contractor shall constantly use best endeavours to avoid or mitigate delays to the Completion of the Works and any Sections, and the Contractor shall not be entitled to an EOT on account of any delay, however caused, to the extent that the Contractor is in breach of its obligation to avoid or mitigate such delay by the use of such endeavours. The Contractor shall propose a detailed methodology of its mitigation measures taken and/or proposed future mitigation measures for the Company's Representative's Review and approval.

8.6 Delays Caused by Authorities

In cases where:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities or private utility entities in the Country;
- (b) these authorities or entities delay or disrupt the Contractor's work;
- (c) the delay or disruption was Unforeseeable; and
- (d) the Contractor took all reasonable steps to remedy and/or mitigate the effects of the delay or disruptions,

then the Contractor shall, subject to Sub-Clause 8.5 [*Extension of Time for Completion*] be entitled to an EOT.

8.7 Rate of Progress

- (a) If, at any time:

- (1) actual progress is too slow to Complete the Works or a Section (if any) within the relevant Time for Completion; and/or
- (2) progress has fallen (or will fall) behind the Programme (or the initial programme if it has not yet become the Programme) under Sub-Clause 8.3 [*Programme*],

other than as a result of a cause listed in Sub-Clause 8.5 [*Extension of Time for Completion*], then the Company's Representative may instruct the Contractor to submit, under Sub-Clause 8.3 [*Programme*], a revised programme describing the revised methods which the Contractor proposes to adopt in order to expedite progress and Complete the Works or a Section (if any) within the relevant Time for Completion.

- (b) Unless the Company's Representative gives a Notice to the Contractor stating 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 the Goods, at the Contractor's risk and cost. If these revised methods cause the Company to incur additional costs, the Company shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to payment of these costs by the Contractor, in addition to Delay Damages (if any).
- (c) Sub-Clause 12.3(a) [*Variation by Instruction*] shall apply to revised methods, including acceleration measures, instructed by the Company's Representative to reduce delays resulting from causes listed under Sub-Clause 8.5 [*Extension of Time for Completion*].

8.8 Delay Damages

- (a) If the Contractor fails to comply with Sub-Clause 8.2 [*Time for Completion*], the Company shall be entitled (without the need for compliance with Clause 19.2 [*Claims for Payment and/or EOT*]) to payment of, or to deduct or recover Delay Damages from, the Contractor for this default.
- (b) Delay Damages in the amount stated in the Contract Data shall be paid for every Day which shall elapse between the relevant Time for Completion and the relevant Date of Completion of the Works or Section or, if earlier, the date of termination of this Agreement for any reason.
- (c) The total amount due under this Sub-Clause 8.8 [*Delay Damages*] shall not exceed the maximum amount of Delay Damages (if any) stated in the Contract Data.
- (d) Delay Damages shall be payable by the Contractor to the Company whether the Company actually suffers or incurs loss, damage, liability, cost or expense equivalent to the delayed damages, or at all. The Company shall not be obliged to prove that it has suffered or incurred loss, damage, liability, cost or expense as a

consequence of the Contractor delaying Completion and it shall not be a defence to any claim or demand by the Company that the Contractor pay Delay Damages that the Company has not suffered or incurred loss, damage, liability, cost or expense equivalent to the Delay Damages, or at all.

- (e) The Parties agree that the amount of Delay Damages payable by the Contractor in accordance with this Sub-Clause 8.8 represents an agreed, genuine pre-estimate of loss likely to be suffered by the Company in the event of a delay to Completion of the Works and/or any of the relevant Sections beyond the relevant Time for Completion.
- (f) The Company may deduct any Delay Damages to which it is entitled under Sub-Clause 8.8 from any Payment Certificates presented following the beginning of the Contractor's failure to comply with Sub-Clause 8.1(a) [*Time for Completion*] until the Performance Certificate has been issued.
- (g) If the Company does not deduct any Delay Damages in accordance with Sub-Clause 8.8(f), the Contractor must pay such Delay Damages to the Company within fourteen (14) Days after it receives Notice from the Company's Representative or the Company of the amount of Delay Damages due. For the avoidance of doubt, failure of the Contractor to timely pay the amount due for Delay Damages shall be a material breach of this Agreement and shall, without limiting the Contractor's other rights under this Agreement, entitle the Company to proceed under Sub-Clause 13.18 [*Set-Off*] or 14.2(a) [*Notice*].
- (h) If, for any reason whatsoever, Delay Damages for any period of delay to any part of the Works become invalid or unenforceable, general damages for the period may be recovered by the Company, provided that such general damages will not exceed the amount of Delay Damages that would otherwise have been payable under this Agreement.
- (i) If, before the Time for Completion of the whole of the Works, a Taking-Over Certificate is issued for any part(s) of the Works, the Delay Damages to which the Company is entitled for delay in Completion of the remainder of the Works shall, for any period of delay after the date stated in the Taking-Over Certificate, and in the absence of alternative provisions in this Agreement, be reduced in proportion which the value of the part(s) so certified or omitted bears to the value of the whole of the Works.
- (j) Nothing in this Sub-Clause 8.8 shall limit the Contractor's liability for Delay Damages in any case of fraud, gross negligence, deliberate default or reckless misconduct by the Contractor.

8.9 Company's Suspension

- (a) Without prejudice to any rights or remedies available to it under this Agreement, the Company may with fourteen (14) Days' advance Notice to the Contractor to suspend any or all of the Works and the Contractor must comply with such Notice to the Company's reasonable satisfaction.
- (b) On receipt of instruction to suspend (including as a result of an Exceptional Event), the Contractor shall use its best efforts to utilize its construction equipment and Contractor's Personnel in such a manner as to minimize the costs associated with such suspension and shall, unless the Company's instruction requires otherwise:
 - (1) immediately discontinue the Work on the date and to the extent specified in the Notice;
 - (2) place no further orders or subcontracts for Goods with respect to suspended Work other than to the extent required in the Notice;
 - (3) promptly make every reasonable effort to obtain suspension upon terms satisfactory to Company of all subcontracts, to the extent they relate to performance of Work suspended;

- (4) protect, store and secure such part or the Works against deterioration, loss or damage; and
 - (5) maintain the Contractor's Personnel ready to resume normal working within a reasonable time period on receipt of an instruction from the Company to proceed.
- (c) If and to the extent that such suspension is not the result of the Contractor's breach of its obligations under this Agreement, the Contractor shall, subject to Sub-Clause 8.5 [*Extension of Time for Completion*], be entitled to an EOT and the Company shall pay the Contractor that part of the Contract Price that is verifiable by Records and that has become due and payable to the Contractor up to and including the date of suspension. The Company shall not be liable to the Contractor for any loss of profit, loss of contract, indirect (including financing costs) or consequential losses, or any other losses as a result of any suspension arising pursuant to this Sub-Clause 8.9.
- (d) If the Company so instructs by way of Resumption Notice within one hundred and eighty (180) Days of the Notice of suspension, whether such suspension arises pursuant to this Sub-Clause 8.9 or Sub-Clause 17 [*Exceptional Events*], the Contractor shall resume execution of the Works by the Resumption Date stated in the Resumption Notice.
- (e) Following receipt of such Resumption Notice, the Contractor shall resume the execution of the Works or relevant part of the Works on or before the Resumption Date.

8.10 Consequences of Company's Suspension

- (a) If the Contractor suffers delay and/or incurs Cost from complying with a Company's Representative's instruction under Sub-Clause 8.9 [*Company's Suspension*] and/or from resuming the work under Sub-Clause 8.12 [*Resumption of Work*], the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to EOT and/or payment of such Cost.
- (b) The Contractor shall not be entitled to EOT, or to payment of the Cost incurred, in making good:
 - (1) the consequences of the Contractor's faulty or Defective (design, if any) workmanship, Plant or Materials; and/or
 - (2) any deterioration, loss or damage caused by the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.9 [*Company's Suspension*].

8.11 Prolonged Suspension

- (a) If the suspension under Sub-Clause 8.9 [*Company's Suspension*] has continued for more than one hundred and eighty (180) Days, the Contractor may give a Notice to the Company's Representative requesting permission to proceed.
- (b) If the Company's Representative does not give a Notice under Sub-Clause 8.12 [*Resumption of Work*] within twenty-eight (28) Days after receiving the Contractor's Notice under this Sub-Clause, the Contractor may either:
 - (1) agree to a further suspension, in which case the Parties may agree the EOT and/or Cost (if the Contractor incurs Cost), and/or payment for suspended Plant and/or Materials, arising from the toted period of suspension; or (and if the Parties fail to reach agreement under this subparagraph (1)); or
 - (2) after giving a (second) Notice to the Company's Representative, treat the suspension as an omission of the affected part of the Works (as if it had been instructed under Sub-Clause 12.3(a) [*Variation by Instruction*]) with immediate effect including release from any further obligation to protect,

store and secure under Sub-Clause 8.9 [*Company's Suspension*]. If the suspension affects the whole of the Works, the Contractor may give a Notice of termination under Sub-Clause 15.1(e) [*Termination*].

8.12 Resumption of Work

- (a) The Contractor shall resume work as soon as practicable after receiving a Resumption Notice from the Company's Representative to proceed with the suspended work.
- (b) At the time stated in this Resumption Notice (if not stated, immediately after the Contractor receives this Resumption Notice), the Contractor and the Company's Representative shall jointly examine the Works and the Plant and Materials affected by the suspension. The Company's Representative shall record any deterioration, loss, damage or Defect in the Works or Plant or Materials which has occurred during the suspension and shall provide this record to the Contractor. The Contractor shall promptly make good all such deterioration, loss, damage or Defect so that the Works, when Completed, shall comply with this Agreement.

8.13 Acceleration and Re-sequencing

- (a) When, in the Company's reasonable opinion, it is necessary to do so, the Company's Representative may (subject to the provisions of this Sub-Clause) instruct that the Contractor shall accelerate the Works (or any part thereof) in order to achieve the mitigation of any actual, probable or potential delay to the Works (regardless of how caused).
- (b) The Company's Representative and the Contractor shall then take all reasonable steps to agree the revisions to the Programme submitted by the Contractor pursuant to Sub-Clause 8.3 [*Programme*] (and any revised Programme submitted in accordance with Sub-Clause 8.3 [*Programme*]) and (where applicable) the Time for Completion for the Works and the amount of any additional payment to the Contractor, provided that the Contractor shall not be entitled to any additional payment to the extent that its delay or defaults contributed to the need to accelerate the Works.
- (c) If the Company's Representative and the Contractor agree to the revisions to the Programme and the Contractor's amount of the additional payment, the Company's Representative will issue an instruction confirming details of the acceleration and fixing the agreed date as the Time for Completion. The agreed additional payment will be added to the Contract Price and paid as appropriate in accordance with the provisions contained in Sub-Clause 13 [*Contract Price and Payment*].
- (d) If the Company's Representative and the Contractor agree the revisions to the Programme but are unable to agree the amount of the additional payment, the Company may nevertheless issue an instruction that the Contractor accelerates the Works and amends the Time for Completion. In those circumstances provided that the acceleration was not due to the Contractor's delay or default then the additional costs of the acceleration will be ascertained by the Company's Representative as a variation in accordance with the provisions of Clause 12 [*Variations and Adjustments*].

8.14 Company's Right to Step-In

- (a) **Circumstances for Stepping-In**
 - (1) Without prejudice to any of its rights or remedies under this Agreement, at Law or in equity, the Company shall be entitled, at any time, to step-in, either on its own or with the involvement of a third party, to perform the Works (or any part thereof) and take any actions which the Company deems necessary in any of the following circumstances:
 - (A) in the event of a breach or an alleged breach of this Agreement by the Contractor;

- (B) in the event of an Emergency, Incident or other event or condition or Defect in or failure to perform the Works (as reasonably determined by the Company's Representative or Company's Standards);
- (C) in the event of any material risk to the confidentiality, integrity or availability of the Company's Personnel or any of the Company's Assets or operations;
- (D) in the case of any potential or actual inability of the Company to perform any of its day-to-day business activities and/or any functions thereof, arising as a result of the action (or inaction) of the Contractor;
- (E) in order to prevent or address a delay in the execution and/or Completion of the Works, or any Section thereof, by the Contractor;
- (F) in the event of a repeated failure (consecutively or nonconsecutively) on the part of the Contractor to supply sufficient numbers of, and properly qualified and skilled, personnel (including Contractor's Personnel), Contractor's Equipment, Goods, Materials, Plant, and/or other items, services or resources which it is required to supply in accordance with this Agreement; or
- (G) upon the occurrence of an Exceptional Event.

(b) **Stepping-In Procedures**

In the event that the Company elects to exercise its right to step-in, in accordance with this Sub-Clause 8.14 [*Company's Right to Step-In*], the Company shall, at all times, comply with the step-in procedures set out in this Sub-Clause 8.14 [*Company's Right to Step-In*] and the Contractor shall cooperate, to the fullest extent possible, with the Company and any third parties, as well as any directions of the Company or the Company's Representative.

(c) **The Company's Measures before Stepping-In**

- (1) When time allows, as determined by the Company's Representative, the Company's Representative may, in its sole discretion, give Notice ("**Step-In Notice**") to the Contractor that the Company is considering stepping-in and request the Contractor's Representative to perform the Works required to eliminate the Circumstances for Stepping-In (and prevent or mitigate its escalation) within a time period determined by Company's Representative. If the Contractor gives Notice to the Company's Representative of its inability to perform such Works or the Contractor's attempts to perform such Works are unsuccessful within the time period required by Company's Representative, the Company may step-in and itself perform such Works (or cause such Works to be performed by an Other Contractor).
- (2) Before stepping-in, the Company's Representative may inform the Contractor verbally initially and, thereafter, in due time, confirm the Company's exercise of its step-in rights, by delivering a Step-In Notice; provided however, in an Emergency, Incident or other event or condition and/or any Defect in the Works and/or the Contractor's provision of the Works, the Company may step-in without any Notice to Contractor and written confirmation shall be sent to the Contractor after the Company has determined the Circumstances for Stepping-In, in the Company's sole

determination, has dissipated sufficiently or the Company has otherwise re-gained control over the Circumstances for Stepping-In.

(d) **Step-In Notice Requirements**

- (1) To the extent practical, the Step-in Notice shall state the following:
 - (A) a description of the Circumstances for Stepping-In and the date the Company estimates the Circumstances for Stepping-In may have commenced;
 - (B) the Required Action the Company intends to take and the objective and, in particular that portion of the Works or the Contractor's performance of the Works the Company intends to control;
 - (C) whether the Company reasonably believes, at the time of stepping-in, that the primary reason for needing to take the Required Action is attributable to Contractor;
 - (D) the Step-In Period, including the date the intends to commence the Required Action;
 - (E) the extent and form of the Contractor's participation, cooperation or assistance (if any) is required by the Company; and
 - (F) any effect that the Required Action may have on the Contractor and its obligation to continue performing any of Works during the Step-In Period.
- (2) In no event shall all the formalities of the Step-In Notice be required before the Company may commence exercising its right to step-in, including the Required Action.

(e) **Stepping-In by the Company**

Upon delivering the Step-In Notice, the Company shall:

- (1) take the Required Action;
- (2) keep Records of the Required Action taken and provide information about the Required Action to the Contractor;
- (3) cooperate with the Contractor, during the Step-In Period to the extent reasonable, in an effort to enable Contractor to continue to provide those parts of the Works not under the control of the Company; and
- (4) act reasonably in mitigating the Costs that the Contractor will incur as a result of the Company's exercising its step-in rights under this Agreement.

(f) **Contractor's Cooperation during the Step-In Period**

- (1) While the Company is exercising its step-in rights, the Contractor shall participate, cooperate and provide all reasonable assistance, as and when required by the Company during the Step-In Period.
- (2) The terms and conditions of the applicable Contract, with respect to the Contractor's cooperation shall apply.
- (3) Failure of the Contractor to cooperate, coordinate and integrate with any Other Contractors to take action during the Step-In Period as well as any directions of the Company's Representative shall waive the Contractor's right to make a Claim under this Agreement.

(g) **Stepping Out by the Company**

- (1) Before ceasing to exercise the Company's step-in rights, the Company's Representative shall deliver a Notice ("**Step-Out Notice**") to the Contractor's Representative, specifying the following:
 - (A) the Required Action that the Company, any Company's Personnel, or any third party has actually taken;
 - (B) the date on which the Company plans to end the Required Action ("**Step-Out Date**"), subject to the Company's satisfaction with the Contractor's ability to resume full provision of the Works; and
 - (C) the latest date by which the Contractor shall submit a draft plan ("**Step-Out Plan Submission Date**"), relating to the resumption of the Works by the Contractor that describes the actions proposed by Contractor to be taken to resume the Works with assurances that the affected Works will satisfy all Contract requirements (the "**Step-Out Plan**").
 - (2) Prior to the Step-Out Date, the Contractor's Representative shall submit the Step-Out Plan to the Company's Representative by the Step-Out Plan Submission Date. After reviewing the Step-Out Plan, the Company shall either:
 - (A) approve the Step-Out Plan; or
 - (B) reject the Step-Out Plan until the Contractor complies with all the Company's requirements for full resumption of the Works, in compliance with this Agreement.
 - (3) After the relevant Step-Out Plan has been approved by the Company, subject to the requirements for resumption of the Works under Sub-Clause 8.9 [*Company's Suspension*], the Company's Representative shall give a Resumption Notice to the Contractor and the Company shall step-out and, concurrently, the Contractor shall resume the suspended Works, as and when directed by the Company's Representative, and if required by the Company's Representative, accelerate the Works in accordance with Sub-Clause 8.13 [*Acceleration and Re-sequencing*].
 - (4) If Circumstances for Stepping-In, in accordance with this Sub-Clause 8.14 [*Company's Right to Step-In*], were caused or contributed to by the Contractor's failure to comply with this Agreement, then all costs and losses, incurred by the Company, in connection with the exercise of its step-in rights (including any general staff expenses, overtime premiums, administrative expenses, and other overheads caused by, arising as a result of or related to the actions taken by the Company) shall be borne by the Contractor and the Contractor shall reimburse the Company in respect of all such Costs and losses.
 - (5) Until satisfactory corrective action has been taken and remedying of the Works has been Completed by the Contractor, (or the Company's decision to terminate this Agreement (in its entirety or in part), in accordance with the Contract), the Company shall be entitled to step-in, either on its own or with the involvement of an Other Contractor, in accordance with this Sub-Clause 8.14 [*Company's Right to Step-In*], and to take Required Action.
- (h) **Costs of Stepping-In**
- (1) If the Circumstances for Stepping-In were caused or contributed to by the Contractor's failure to comply with this Agreement, then all costs and losses, incurred by the Company, in connection with the exercise of the Company's step-in rights shall be borne by the Contractor and the

Contractor shall reimburse the Company, in respect of all such Costs and losses.

- (2) The Company shall be entitled to deduct any such costs and losses, incurred by the Company for undertaking the Required Action taken from any sums payable to the Contractor under this Agreement or any other contract with Contractor.
- (3) During the Step-In Period, the Company shall pay the Contractor for performance of the unsuspended part of the Works; taking into consideration any deductions allowed by this Agreement for the longer of the period of suspension or the Step-In Period; however, that suspended Works shall not be payable.
- (4) If, after reviewing the Records collected in support of the Company's exercise of its step-in rights,
 - (A) none of the Circumstances for Stepping-In actually existed, and/or
 - (B) the Circumstances for Stepping-In are determined by the Company's Representative not to have been caused by Contractor, the Company shall refund all reasonable, verifiable amounts paid by the Contractor or set off by the Company, in accordance with Sub-Clause 13.18 [*Set-Off*], from the Contractor's payments under this Agreement or any other contract with Contractor as determined by the Company, in accordance with this Agreement, for any steps taken by the Contractor and/or as a result of the Contractor's engaging any Other Contractors to take the steps and/or providing any assistance, requested by the Company, while implementing the Required Action, less any savings made by Contractor or resulting from the Required Action actually being carried out by the Company or Company's Personnel.
- (5) When calculating the amounts due to the Contractor for the suspended Works in a Month when the Company implemented the Required Action, the amount payable to Contractor, relative to the period of the unsuspended Works shall be calculated in proportion to the Step-In Period in its entirety.
- (6) The Company shall pay the Contractor for the Completed unsuspended Works; provided, however, the Contractor understands and agrees that the Contractor shall not be entitled to (and expressly waives) any and all payments for or recovery of any costs and losses from the Company, resulting from the Company's exercise of its step-in rights, except for recovery those amounts allowed by this Sub-Clause 8.14 [*Company's Right to Step-In*].

8.15 Business and Service Continuity and Emergency Management

- (a) The Contractor, at no cost to the Company, shall develop and maintain a Business and Service Continuity Plan that describes the steps the Contractor shall follow to enable the recovery and testing are undertaken internally, and, ensure that the Business and Service Continuity Plan is appropriate and up-to-date, at all times, during the term of this Agreement so that the Contractor ensures minimal disruption, delay, or interruption or health, safety or environmental hazard to the Company, Company's Personnel, the Contractor, Contractor's Personnel and the Works.
- (b) The Business and Service Continuity Plan shall include aspects of Emergency Management, including an Emergency Management Plan and scenarios that clearly

set out procedures to ensure that Works continue with minimal to no interruption, disruption or delay, or health, safety or environmental hazard. The Emergency Management Plan shall comply with the Company's Standards for such Emergency Management Plans and shall otherwise be developed and finalized in accordance with the Company's Representative's instructions.

- (c) In addition, the Contractor shall ensure that periodic reviews and testing are undertaken internally, and, ensure that the Business and Service Continuity Plan is appropriate and up-to-date, at all times, during the term of this Agreement so that the Contractor ensures minimal disruption, delay, or interruption or health, safety or environmental hazard to the Company, Company's Personnel, the Contractor, Contractor's Personnel and the Works

8.16 Data Protection

- (a) The Contractor must:
- (1) develop, implement, operate, maintain, regularly review and update (if required) policies, processes, systems, standards, procedures and other technical or other measures to ensure the security of the Contractor's IT environment which are consistent with Good Industry Practice, having regard to the nature of the Contractor's activities and obligations under this Agreement and associated security risks; and
 - (2) implement, maintain and enforce appropriate and Good Industry Practice security procedures and safeguards in order to protect any data of the Company or the Company's Personnel (which for the purposes of this Sub-Clause 8.16 [*Data Protection*] includes the employees of contractors of the Company (other than the Contractor)) that the Contractor or the Contractor's Personnel access store or process in connection with this Agreement (**Company Data**) against any misuse, loss, interference unauthorised access, modification or disclosure;
- (b) If any Company Data in the possession of the Contractor is lost, damaged, corrupted or otherwise unable to be accessed, the Contractor must take all reasonably practicable measures available to the Contractor to recover and restore that Company Data immediately (and such measures will be at the Contractor's cost unless such loss, damage, corruption or loss of access is caused or contributed to by the Company or the Company's Personnel).

8.17 Emergency and Incident Notification and Response

- (a) The Contractor shall promptly notify the Company, in writing, of any suspected or confirmed Emergency and/or Incident (as the case may be) within the sooner of:
- (1) five (5) Days; and
 - (2) the notification time period required under applicable Laws,
 - (3) after the Contractor discovers or is notified of it or would have discovered it had the Contractor exercised reasonable care and diligence.
- (b) The Notice of Emergency and/or Incident shall include at least, to the extent known by the Contractor:
- (1) the nature, extent, and duration of the suspected or confirmed Emergency and/or Incident (as the case may be);
 - (2) the types and volume of data and/or information that may be or has been impacted by any suspected or confirmed data breach;
 - (3) the identity(ies) of the individual(s) who have been impacted by the Emergency and/or Incident;
 - (4) the data and/or information impacted by the Emergency and/or Incident;

- (5) the likely consequences of the suspected or confirmed Emergency and/or Incident (as the case may be);
 - (6) the steps the Contractor has taken (inclusive of dates) and will take to investigate, remediate, and mitigate the effects of the suspected or confirmed Emergency and/or Incident (including activity and response timeline and responsible persons);
 - (7) any other information the Company might reasonably request or need-to-know or required by applicable Company's Standards, any other applicable Standards, and/or applicable Laws.
- (c) The Contractor shall provide commercially reasonable assistance to the Company in fulfilling any legal notification obligations that arise in connection with any data breach. The Contractor shall not hide any information regarding the details of any data breach.
- (d) The Contractor shall pay for all costs and expenses reasonably incurred by the Company as a result of any data breach attributable to Contractor's failure to comply with Sub-Clause 8.16 [*Data Protection*] and/or this Sub-Clause 8.17 [*Emergency and Incident Notification and Response*].

8.18 Data Back Up

Upon receipt of the Performance Certificate or termination of this Agreement, the Contractor shall deliver to the Company's Representative all data located on its servers and the servers of its Subcontractors and shall effectively destroy any data produced or retained by its equipment and the equipment of all its Subcontractors, so as to prevent unauthorized distribution. Once Completed, the Contractor shall notify the Company's Representative, in writing, that all such data has been effectively destroyed and/or removed from the Contractors server(s) and its Subcontractors' server(s).

9. Tests on Completion

9.1 Contractor's Obligations

- (a) The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [*Testing by the Contractor*] and the requirements of the Specification, after submitting the documents under Sub-Clause 4.4(b) [*As-Built Records*] (if applicable) and Sub-Clause 4.4(c) [*Operation and Maintenance Manuals*] (if applicable).
- (b) The Contractor shall submit to the Company's Representative, not less than forty-two (42) Days before the date the Contractor intends to commence the Tests on Completion, a detailed test programme showing the intended timing and resources required for these tests.
- (c) Unless otherwise stated in this Agreement, the Tests on Completion shall be carried out in the following sequence:
- (1) pre-commissioning tests, which shall include the appropriate inspections and functional tests to demonstrate that each item of Plant and equipment can safely undertake the next stage;
 - (2) commissioning tests, which shall include the specified operational test to demonstrate that the Works can be operated safely and as specified, under all available operating conditions; and
 - (3) trial operation which shall demonstrate that the Works and each item of Plant and equipment perform reliably and in accordance with this Agreement.
- (d) During the trial operation, when the Works are operating under stable conditions, the Contractor shall give Notice to the Company and the Company's Representative

that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform to any criteria as may be specified in the Company's requirements in the Drawings and Specification.

- (e) Trial operation shall not constitute taking over under Clause 10 [*Company's Taking Over*].
- (f) The Company's Representative may Review the proposed test programme and may give a Notice to the Contractor stating the extent to which it does not comply with this Agreement. Within fourteen (14) Days after receiving this Notice, the Contractor shall revise the test programme to rectify such non-compliance. If the Company's Representative gives no such Notice within fourteen (14) Days after receiving the test programme (or revised test programme), the Company's Representative shall be deemed to have given a Notice of No-objection. The Contractor shall not commence the Tests on Completion until a Notice of No-objection is given (or is deemed to have been given) by the Company's Representative.
- (g) In addition to any date(s) shown in the test programme, the Contractor shall give a Notice to the Company's Representative, of not less than twenty-one (21) Days, of the date after which the Contractor will be ready to carry out each of the Tests on Completion. The Contractor shall commence the Tests on Completion within fourteen (14) Days after this date, or on such Day or Days as the Company's Representative shall instruct, and shall proceed in accordance with the Contractor's test programme to which the Company's Representative has given (or is deemed to have given) a Notice of No-objection.
- (h) As soon as the Works or Section have, in the Contractor's opinion, passed the Tests on Completion, the Contractor shall submit a certified report of the results of these tests to the Company's Representative. The Company's Representative shall Review such a report and may give a Notice to the Contractor stating the extent to which the results of the tests do not comply with this Agreement. If the Company's Representative does not give such a Notice within fourteen (14) Days after receiving the results of the tests, the Company's Representative shall be deemed to have given a Notice of No-objection.
- (i) In considering the results of the Tests on Completion, the Company's Representative shall make allowances for the effect of any use of (any part of) the Works by the Company on the performance or other characteristics of the Works.

9.2 Delayed Tests

- (a) If the Contractor has given a Notice under Sub-Clause 9.1 [*Contractor's Obligations*] that the Works or Section (as the case may be) are ready for Tests on Completion, and these tests are unduly delayed by the Company's Personnel or by a cause for which the Company is responsible, Sub-Clause 10.3 [*Interference with Tests on Completion*] shall apply.
- (b) If the Tests on Completion are unduly delayed by the Contractor, the Company's Representative may by giving a Notice to the Contractor require the Contractor to carry out the tests within twenty-one (21) Days after receiving the Notice. The Contractor shall carry out the tests on such Day or Days within this period of twenty-one (21) Days as the Contractor may fix, for which the Contractor shall give a prior Notice to the Company's Representative of not less than seven (7) Days.
- (c) If the Contractor fails to carry out the Tests on Completion within this period of twenty-one (21) Days:
 - (1) after a second Notice is given by the Company's Representative to the Contractor, the Company's Personnel may proceed with the tests;
 - (2) the Contractor may attend and witness these tests;

- (3) within twenty-eight (28) Days of these tests being completed, the Company's Representative shall send a copy of the test results to the Contractor; and
 - (4) if the Company incurs additional costs as a result of such testing, the Company shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to payment by the Contractor of the costs reasonably incurred.
- (d) Whether or not the Contractor attends, these Tests on Completion shall be deemed to have been carried out in the presence of the Contractor and the results of these tests shall be accepted as accurate.

9.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion at the first attempt, Sub-Clause 7.5 [*Defects and Rejection*] and Sub-Clause 7.6 [*Remedial Work*] shall apply. The Company's Representative or the Contractor may require these failed tests, and the Tests on Completion on any related work, to be repeated under the same terms and conditions. Such repeated tests shall be treated as Tests on Completion for the purposes of this Clause.

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 Company's Representative shall be entitled to:
- (1) order further repetition of Tests on Completion under Sub-Clause 9.3 [*Retesting*];
 - (2) reject the Works if the effect of the failure is to deprive the Company of substantially the whole benefit of the Works in which event the Company shall have the same remedies as are provided under Sub-Clause 11.4(b);
 - (3) reject the Section if the effect of the failure is that the Section cannot be used for its intended purpose(s) under this Agreement, in which event the Company shall have the same remedy as is provided under Sub-Clause 11.4(b); or
 - (4) Issue a Taking-Over Certificate, if the Company so requests.
- (b) In the event of Sub-Clause 9.4(a)(4) above, the Contractor shall then proceed in accordance with all other obligations under this Agreement, and the Company shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to payment by the Contractor or a reduction in the Contract Price and/or damages as described under Sub-Clause 11.4(b)(2), respectively. This entitlement shall be without prejudice to any other rights the Company may have, under this Agreement or otherwise.
- (c) Alternatively, the Company may agree to issue a conditional Taking-Over Certificate (but shall not be obliged to do so) in which the Company agrees to take over the Works subject to such conditions and/or compliance with such conditions as the Company may reasonably require and the Contractor shall agree to comply with. The issue of a qualified Taking-Over Certificate may (if the Company so agrees) relieve the Contractor of liability to pay or continue paying Delay Damages beyond the date of issue of the qualified Taking-Over Certificate but the Contractor shall not otherwise be considered to have Completed or fulfilled its obligations under this Agreement and the Company shall not be obliged to issue the Performance Certificate until such time as the qualifications no longer apply and/or the Contractor has complied with the agreed conditions of issue of the qualified Taking-Over Certificate with the reasonable satisfaction of the Company.

10. Company's Taking Over

10.1 Taking Over the Works and Sections

- (a) Except as stated in Sub-Clause 9.4 [*Failure to Pass Tests on Completion*], Sub-Clause 10.2 [*Taking Over Parts*] and Sub-Clause 10.3 [*Interference with Tests on Completion*], the Works (or each Section, as the case may be) shall be taken over by the Company when; and provided that, as a condition precedent to the issuing of a Taking-Over Certificate:
- (1) the Works (or each Section, as the case may be) have been Completed in accordance with this Agreement, Including the passing of the Tests on Completion and except as allowed in Sub-Clause 10.1(d)(1) below;
 - (2) if applicable, the Company's Representative has given (or is deemed to have given) a Notice of No-objection to the as-built records submitted under Sub-Clause 4.4(b) [*As-Built Records*];
 - (3) if applicable, the Company's Representative has given (or is deemed to have given) a Notice of No-objection to the operation and maintenance manuals under Sub-Clause 4.4(c) [*Operation and Maintenance Manuals*];
 - (4) if applicable, the Contractor has carried out the training as described under Sub-Clause 4.5 [*Training*];
 - (5) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause;
 - (6) the Contractor shall have obtained and provided to the Company all permits, licenses, no objection certificates or other documents required for the occupation and use of the Permanent Works pursuant to this Agreement;
 - (7) the Contractor shall have provided manufacturer's and supplier's warranties in favour of the Company and/or any third party in accordance with this Agreement;
 - (8) the Contractor shall have paid in full all costs, expenses and damages paid in full payable by the Contractor to the Company on the date on which the Company issues Taking-Over Certificate;
 - (9) the Contractor shall have ensured that all preconditions to Completion of the Works (or each Section, as the case may be) detailed in this Agreement have been complied with or have occurred, including the issuance of all relevant certificates required to be issued prior to the Taking-Over Certificate, in accordance with the Specification and the achievement of all Milestones, which are required to be achieved prior to Completion of the Works;
 - (10) the Contractor shall have ensured that all Tests on Completion, in relation to the Works (or each Section, as the case may be) have been passed;
 - (11) the Contractor has provided all documents, licenses, and complied with all other requirements set out in Sub-Clause 1.8 [*Company's Use of Contractor's Documents*];
 - (12) the Contractor has paid all Delay Damages or other damages which are payable, in respect of the Works (or each Section, as the case may be) pursuant to Sub-Clause 8.8 [*Delay Damages*]; and
 - (13) the Works have (or each Section, as the case may be, has) been taken over by the Company, in accordance with Sub-Clause 10.1 [*Taking Over the Works and Sections*].
- (b) The Contractor may apply for a Taking-Over Certificate by giving a Notice to the Company's Representative not more than fourteen (14) Days before the Works will, in the Contractor's opinion, be Complete and ready for taking over by the Company.

- If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.
- (c) If any Part of the Works is taken over under Sub-Clause 10.2 [*Taking Over Parts*], the remaining Works or Section shall not be taken over until the conditions described in Sub-Clauses 10.1(a)(1) to 10.1(a)(5) above (where applicable) have been fulfilled.
 - (d) The Company's Representative shall, within twenty-eight (28) Days after receiving the Contractor's Notice, either:
 - (1) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were Completed in accordance with this Agreement, except for any minor outstanding work and Defects (as listed in the Taking-Over Certificate) which will not substantially affect the safe use of the Works or Section for their intended purpose (either until or whilst this work is Completed and these Defects are remedied); or
 - (2) reject the application by giving a Notice to the Contractor, with reasons. This Notice shall specify the work required to be done, the Defects required to be remedied and/or the documents required to be submitted by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then Complete this work, remedy such Defects and/or submit such documents before giving a further Notice under this Sub-Clause.
 - (e) If the Company's Representative fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of twenty-eight (28) Days, and if the Works or Section (as the case may be) are substantially in accordance with this Agreement, the Contractor shall issue a further Notice to the Company's Representative (with copy to the Company) in writing and the Company shall request the Company's Representative to make such orders, issuances and/or take action in accordance with this Agreement.

10.2 Taking Over Parts

- (a) If, at any time before Completion of the Works, the Company wishes to use any part or parts of the Works, then, notwithstanding any other provision of this Agreement, the Company may take possession thereof provided that the Company shall issue a Taking-Over Certificate in relation to such part or parts of the Works stating the date on which such part or parts of the Works were Completed and taken over by the Company.
- (b) For the purposes of Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*], the Contractor shall Complete any work which is outstanding at the date of the Taking-Over Certificate within such reasonable time as instructed by the Company and the DNP, in respect of such part or parts of the Works, shall be deemed to have commenced on the date stated in the Taking-Over Certificate.
- (c) The obligation on the Contractor to insure the relevant part or parts of the Works referred to in the Taking-Over Certificate shall cease from the date stated in the Taking-Over Certificate.
- (d) If the Company's Representative issues a Taking-Over Certificate for any part of the Works, or if the Company is deemed to have taken over a Part under Sub-Clause 10.2(a) above, for any period of delay after the date under Sub-Clause 10.2(a) above, the Delay Damages for completion of the remainder 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. This reduction shall be calculated as the proportion which the value of the Part (except the value of any outstanding works and/or Defects to be remedied) bears to the value of the Works or Section (as the case may be) as a whole and shall be calculated by the Company's Representative and notified to the Contractor in writing. The provisions of this

paragraph shall only apply to the daily rate of Delay Damages, and shall not affect the maximum amount of these damages.

10.3 Interference with Tests on Completion

- (a) If the Contractor is prevented, for more than fourteen (14) Days (either a continuous period, or multiple periods which total more than fourteen (14) Days), from carrying out the Tests on Completion by the Company's Personnel or by a cause for which the Company is responsible:
 - (1) the Contractor shall give a Notice to the Company's Representative describing such prevention;
 - (2) the Company shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been Completed; and
 - (3) the Company's Representative shall immediately issue a Taking-Over Certificate for the Works or Section (as the case may be).
- (b) After the Company's Representative has issued this Taking-Over Certificate, the Contractor shall carry out the Tests on Completion as soon as practicable and, in any case, before the expiry date of the DNP. The Company's Representative shall give a Notice to the Contractor, of not less than fourteen (14) Days, of the date after which the Contractor may carry out each of the Tests on Completion. Thereafter, Sub-Clause 9.1 [*Contractor's Obligations*] shall apply.
- (c) If the Contractor suffers delay and/or incurs Cost as a result of being prevented from carrying out the Tests on Completion, the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to EOT and/or payment of such Cost.

10.4 Surfaces Requiring Reinstatement

Except as otherwise stated in the 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 after Taking Over

11.1 Completion of Outstanding Work and Remedying Defects

- (a) In order that the Works and Contractor's Documents, and each Section and/or Part, shall be in the condition required by this Agreement (fair wear and tear excepted) by the expiry date of the relevant DNP or as soon as practicable thereafter, the Contractor shall:
 - (1) complete any work which is outstanding on the relevant Date of Completion, within the time(s) stated in the Taking-Over Certificate or such other reasonable time as is instructed by the Company's Representative; and
 - (2) execute all work required to remedy Defects or damage, of which a Notice is given to the Contractor by the Company's Representative, promptly and in any event before the expiry date of the DNP for the Works or Section or Part (as the case may be).
- (b) If a Defect appears (including if the Works fail to pass the Tests after Completion, if any) or damage occurs during the relevant DNP, a Notice may be given to the Contractor accordingly, by the Company's Representative. Promptly thereafter:
 - (1) the Contractor, the Company's Representative and the Company's Personnel shall jointly inspect the Defect or damage;
 - (2) the Contractor shall then prepare and submit a proposal for necessary remedial work; and

- (3) the second, third and fourth paragraphs of Sub-Clause 7.5 [*Defects and Rejection*] (and Sub-Clause 7.6 [*Remedial Work*], so far as relevant) shall apply.

11.2 Cost of Remedying Defects

- (a) All work under Sub-Clause 11.1(a)(2) shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:
 - (1) design (if any) of the Works for which the Contractor is responsible;
 - (2) Plant, Materials or workmanship not being in accordance with this Agreement;
 - (3) improper operation or maintenance which was attributable to matters for which the Contractor is responsible (under Sub-Clauses 4.4(b) [*As-Built Records*], Sub-Clause 4.4(c) [*Operation and Maintenance Manuals*] and/or Sub-Clause 4.5 [*Training*] (where applicable) or otherwise); or
 - (4) failure by the Contractor to comply with any other obligation under this Agreement.
- (b) If the Contractor considers that the work is attributable to any other cause, the Contractor shall promptly give a Notice to the Company's Representative. If the Company's Representative determines that the work is attributable to a cause other than those listed above, Sub-Clause 12.3(a) [*Variation by Instruction*] shall apply as if such work had been instructed by the Company's Representative.

11.3 Extension of Defects Notification Period

- (a) The Company shall be entitled to an extension of the DNP for the Works, or a Section or a Part:
 - (1) if and to the extent that the Works, Section, Part or a major item of Plant (as the case may be, and after taking over) cannot be used for the intended purpose by reason of a Defect or damage which is attributable to any of the matters under Sub-Clauses 11.2(a)(1) to 11.2(a)(4); and
 - (2) subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*].
- (b) However, a DNP shall not be extended by more than a period of two (2) Years after the expiry of the DNP stated in the Contract Data.

11.4 Failure to Remedy Defects

- (a) If the remedying of any Defect or damage under Sub-Clause 11.1 [*Completion of Outstanding Work and Remedying Defects*] is not Completed within such time (if any) as has been notified by the Company's Representative, or otherwise is unduly delayed by the Contractor, a date may be fixed by (or on behalf of) the Company, on or by which the Defect or damage is to be remedied. A Notice of this fixed date shall be given to the Contractor by (or on behalf of) the Company, which Notice shall allow the Contractor reasonable time (taking due regard of all relevant circumstances) to remedy the Defect or damage.
- (b) If the Contractor fails to remedy the Defect or damage by the date stated in this Notice and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Company may (at the Company's sole discretion):
 - (1) carry out the work or have the work carried out by others (including any retesting), in the manner required under this Agreement and at the Contractor's cost, and the Contractor shall have be responsible for this work, The Company shall be entitled subject to Sub-Clause 19.2 [*Claims*

- for Payment and/or EOT*] to payment by the Contractor of the costs reasonably incurred by the Company in remedying the Defect or damage;
- (2) accept the damaged or Defective work, in which case the Company shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to a reduction in the Contract Price. The reduction shall be in full satisfaction of this failure only and shall be in the amount as shall be appropriate to cover the reduced value to the Company as a result of this failure;
 - (3) require the Company's Representative to treat any part of the Works which cannot be used (or which it is not practical or economic for the Company to use) for its intended purpose under this Agreement by reason of the relevant Defect or damage as having been omitted from the Works pursuant to an instruction for a Variation, in which case there shall be excluded from the Contract Price that part of the value of the Works which relates or is attributable to that part, and the Contractor shall be liable to the Company for any costs it reasonably incurs to remove, isolate or make safe that part; or
 - (4) if the Defect or damage substantially deprives the Company of the benefit of the Works, terminate this Agreement entirely with immediate effect. In that case, Sub-Clause 14.2 [*Termination for Contractor's Default*] shall apply and the Contractor shall be liable to the Company in damages for such Defect, damage and termination. Such damages shall include, but not be limited to, all amounts paid to the Contractor under this Agreement, any costs of removing the Works from the Site and disposing of the same, Site clearance and reinstatement costs and financing costs.
- (c) The exercise of discretion by the Company under Sub-Clauses 11.4(b)(3) or 11.4(b)(4) above shall be without prejudice to any other rights the Company may have, under this Agreement or otherwise.
 - (d) The Company is substantially deprived of the benefit of the Works if, for functional or commercial reasons flowing from the relevant Defect or damage, it would not be reasonable in the economic interests of the Company to use the Works for their intended purpose.
 - (e) Any amount becoming due to the Company in consequence of this Sub-Clause 11.4 [*Failure to Remedy Defects*] may be deducted from any amount becoming due to the Contractor under this Agreement, and unless so deducted, shall be payable by the Contractor to the Company.
 - (f) This Sub-Clause 11.4 [*Failure to Remedy Defects*] applies to any incomplete work referred to in Sub-Clause 11.1(a)(1) as it applies to Defects or damage referred to in Sub-Clause 11.1(a)(2).
 - (g) The Company's remedies under this Sub-Clause 11.4 [*Failure to Remedy Defects*] shall not exclude or diminish any other rights and/or remedies which may be available to the Company under this Agreement or any Laws.
 - (h) For the avoidance of doubt, the Company shall have the right to make deductions or otherwise set off any sums it considers are due to him by the Contractor pursuant to this Sub-Clause 11.4 [*Failure to Remedy Defects*] against sums due or claimed by the Contractor.

11.5 Remedying of Defective Work off Site

- (a) If, during the DNP, the Contractor considers that any Defect or damage in any Plant cannot be remedied expeditiously on the Site the Contractor shall give a Notice, with reasons, to the Company requesting consent to remove the Defective or damaged Plant off the Site for the purposes of repair. This Notice shall clearly identify each item of Defective or damaged Plant, and shall give details of:

- (1) the Defect or damage to be repaired;
 - (2) the place to which Defective or damaged Plant is to be taken for repair;
 - (3) the transportation to be used (and insurance cover for such transportation);
 - (4) the proposed inspections and testing off the Site;
 - (5) the planned duration required before the repaired Plant shall be returned to the Site; and
 - (6) the planned duration for reinstallation and retesting of the repaired Plant (under Sub-Clause 7.4 [*Testing by the Contractor*] and/or Clause 9 [*Tests on Completion*] if applicable).
- (b) The Contractor shall also provide any further details that the Company may reasonably require.
- (c) When the Company gives consent (which consent shall not relieve the Contractor from any obligation or responsibility under this Clause), the Contractor may remove from the Site such items of Plant as are Defective or damaged. As a condition of this consent, the Company may require the Contractor to provide an unconditional bank guarantee issued by a bank or financial institution approved by the Company in an amount equal to the full replacement cost of the Defective or damaged Plant.

11.6 Further Tests after Remedying Defects

- (a) Within seven (7) Days of completion of the work of remedying of any Defect or damage, the Contractor shall give a Notice to the Company's Representative describing the remedied Works, Section, Part and/or Plant and the proposed repeated tests (under Clause 9 [*Tests on Completion*]). Within seven (7) Days after receiving this Notice, the Company's Representative shall give a Notice to the Contractor either:
- (1) agreeing with such proposed testing; or
 - (2) instructing the repeated tests that are necessary to demonstrate that the remedied Works, Section, Part and/or Plant comply with this Agreement.
- (b) If the Contractor fails to give such a Notice within the seven (7) Days, the Company's Representative may give a Notice to the Contractor, within fourteen (14) Days after the Defect or damage is remedied, instructing the repeated tests that are necessary to demonstrate that the remedied Works, Section, Part and/or Plant comply with this Agreement.
- (c) All repeated tests under this Sub-Clause 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 after Taking Over

- (a) Until the date twenty-eight (28) Days after issue of the Performance Certificate, the Contractor shall have the right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Company's reasonable security restrictions.
- (b) Whenever the Contractor intends to access any part of the Works during the relevant DNP:
- (1) the Contractor shall request access by giving a Notice to the Company, describing the parts of the Works to be accessed, the reasons for such access, and the Contractor's preferred date for access. This Notice shall be given in reasonable time in advance of the preferred date for access,

- taking due regard of all relevant circumstances including the Company's security restrictions; and
- (2) within seven (7) Days after receiving the Contractor's Notice, the Company shall give a Notice to the Contractor either:
- (A) stating the Company's consent to the Contractor's request; or
- (B) proposing reasonable alternative date(s), with reasons, if the Company fails to give this Notice within the seven (7) Days, the Company shall be deemed to have given consent to the Contractor's access on the preferred date stated in the Contractor's Notice.
- (c) If the Contractor incurs additional Cost as a result of any unreasonable delay by the Company in permitting access to the Works by the Contractor, the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to payment of any such Cost.

11.8 Contractor to Search

- (a) The Contractor shall, if instructed by the Company's Representative, search for the cause of any Defect, under the direction of the Company's Representative. The Contractor shall carry out the search on the date(s) stated in the Company's Representative's instruction or other date(s) agreed with the Company's Representative.
- (b) Unless the Defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to payment of the Cost of the search.
- (c) If the Contractor fails to carry out the search in accordance with this Sub-Clause, the search may be earned out by the Company's Personnel. The Contractor shall be given a Notice of the date when such a search will be carried out and the Contractor may attend at the Contractor's own cost. If the Defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [*Cost of Remedying Defects*], the Company shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to payment by the Contractor of the costs of the search reasonably incurred by the Company.

11.9 Performance Certificate

- (a) The Company's Representative shall issue the Performance Certificate to the Contractor (with a copy to the Company) within twenty-eight (28) Days after the latest of the expiry dates of the DNP, or as soon thereafter as the Contractor has:
- (1) supplied all the Contractor's Documents; and
- (2) Completed and tested all the Works (including remedying any Defects) in accordance with this Agreement.
- (b) Only the Performance Certificate shall be deemed to constitute acceptance of the Works.
- (c) The issue of a Performance Certificate is not evidence that the Contractor has carried out and Completed the Works or remedied any Defects in all or any respects in accordance with this Agreement and does not deprive the Company of its remedies for any failure of the Contractor to do so.

11.10 Unfulfilled Obligations

- (a) After the issue of the Performance Certificate, tests 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, this Agreement shall be deemed to remain in force.

- (b) However, in relation to Plant, the Contractor shall not be liable for any Defects or damage occurring more than two (2) years after the expiry of the DNP for the Plant except if prohibited by Law or in any case of fraud, gross negligence, deliberate default or reckless misconduct.

11.11 Clearance of Site

- (a) Promptly after the issue of the Performance Certificate, the Contractor shall:
 - (1) remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site;
 - (2) reinstate all parts of the Site which were affected by the Contractor's activities during the execution of the Works and are not occupied by the Permanent Works; and
 - (3) leave the Site and the Works in the condition stated in the Specification (if not stated, in a clean and safe condition).
- (b) If the Contractor fails to comply with sub-paragraphs (1), (2) and/or (3) above within twenty-eight (28) Days after the issue of the Performance Certificate, the Company may sell (to the extent permitted by applicable Laws) or otherwise dispose of any remaining items and/or may reinstate and clean the Site (as may be necessary) at the Contractor's cost.
- (c) The Company shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to payment by the Contractor of the costs reasonably incurred in connection with, or attributable to, such sale or disposal and reinstating and/or cleaning the Site, less an amount equal to the moneys from the sale (if any).

12. Variations and Adjustments

12.1 Right to Vary

- (a) Variations may be initiated by the Company's Representative under Sub-Clause 12.3 [*Variation Procedure*] at any time before the issue of the Taking-Over Certificate for the Works.
- (b) Other than as stated under Sub-Clause 11.4 [*Failure to Remedy Defects*], a Variation shall not comprise the omission of any work which is to be carried out by the Company or by others unless otherwise agreed by the Parties.
- (c) The Contractor shall be bound by each Variation instructed under Sub-Clause 12.3(a) [*Variation by Instruction*], and shall execute the Variation with due expedition and without delay, unless the Contractor promptly gives a Notice to the Company's Representative stating (with detailed supporting particulars) that:
 - (1) the varied work was Unforeseeable having regard to the scope and nature of the Works described in the Specification;
 - (2) the Contractor cannot readily obtain the Goods required for the Variation; or
 - (3) it will adversely affect the Contractor's ability to comply with Sub-Clause 4.8 [*Health and Safety Obligations*] and/or Sub-Clause 4.18 [*Protection of the Environment*].
- (d) Promptly after receiving this Notice, the Company's Representative shall respond by giving a Notice to the Contractor cancelling, confirming or varying the instruction. Any instruction so confirmed or varied shall be taken as an instruction under Sub-Clause 12.3(a) [*Variation by Instruction*].
- (e) Each Variation may include:

- (1) changes to the quantities of any item of work included in this Agreement (however, such changes do not necessarily constitute a Variation);
 - (2) changes to the quality and other characteristics of any item of work;
 - (3) changes to the levels, positions and/or dimensions of any part of the Works;
 - (4) the omission of any work, unless it is to be carried out by others without the agreement of the Parties;
 - (5) 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
 - (6) changes to the sequence or timing of the execution of the Works.
- (f) The Contractor shall not make any alteration to and/or modification of the Permanent Works, unless and until the Company's Representative instructs a Variation under Sub-Clause 12.3(a) [*Variation by Instruction*].

12.2 Value Engineering

- (a) The Contractor may, at any time, submit to the Company's Representative a written value engineering proposal which (in the Contractor's opinion) will, if adopted:
- (1) accelerate Completion;
 - (2) reduce the cost to the Company of executing, maintaining or operating the Works;
 - (3) improve the efficiency or value to the Company of the Completed Works; or
 - (4) otherwise be of benefit to the Company.
- (b) The proposal shall be prepared at the cost of the Contractor and shall include the details as stated in Sub-Clauses 12.3(a)(2)(A) to 12.3(a)(2)(C) [*Variation by Instruction*].
- (c) The Company's Representative shall, as soon as practicable after receiving such a proposal, respond by giving a Notice to the Contractor stating his/her consent or otherwise. The Company's Representative's consent or otherwise shall be at the sole discretion of the Company. The Contractor shall not delay any work while awaiting a response.
- (d) If the Company's Representative gives his/her consent to the proposal, with or without comments, the Company's Representative shall then instruct a Variation under Sub-Clause 12.3(a) [*Variation by Instruction*]. Thereafter, the Contractor shall submit any further particulars that the Company's Representative may reasonably require, and the last paragraph of Sub-Clause 12.3(a) [*Variation by Instruction*] shall apply which shall include consideration by the Company's Representative of the sharing (if any) of the benefit, costs and/or delay between the Parties.
- (e) If a proposal under this Sub-Clause, to which the Company's Representative gives their consent, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties, the Contractor shall design this part at his/her cost.
- (f) Notwithstanding any provision to the contrary, the Contractor will not be entitled to any EOT or any increase in the Contract Price for any Variation issued under Sub-Clause 12.2(d).

12.3 Variation Procedure

Subject to Sub-Clause 12.1 [*Right to Vary*], Variations shall be initiated by the Company's Representative in accordance with either of the following procedures:

(a) **Variation by Instruction**

- (1) The Company's Representative may instruct a Variation by giving a Variation Direction (describing the required change and stating any requirements for the recording of Costs) to the Contractor in accordance with Sub-Clause 3.2(c).
- (2) The Contractor shall proceed with execution of the Variation and shall within twenty-eight (28) Days (or other period proposed by either Party and agreed by the other) of receiving the Company's Representative's Variation Direction, submit to the Company's Representative detailed particulars including:
 - (A) a description of the varied work performed or to be performed, including details of the resources and methods adopted or to be adopted by the Contractor;
 - (B) a programme for its execution and the Contractor's proposal for any necessary modifications (if any) to the Programme according to Sub-Clause 8.3 [*Programme*] and to the Time for Completion;
 - (C) the Contractor's proposal for adjustment to the Contract Price by valuing the Variation in accordance with Clause 12 [*Variations and Adjustments*], with supporting particulars (which shall include identification, profit, direct and indirect cost for all items with unit rates and total rates of any estimated quantities and, if the Contractor incurs or will incur Cost as a result of any necessary modification to the Time for Completion, shall show the additional payment (if any) to which the Contractor considers that the Contractor is entitled); and
 - (D) all information which is reasonably required by the Company's Representative in connection with the request and the Contractor's submission.
- (3) Thereafter, the Contractor shall submit any further particulars that the Company's Representative may reasonably require.
- (4) The Company's Representative shall then determine:
 - (A) EOT, if any; and/or
 - (B) the adjustment to the Contract Price,
 - (i) on the basis of a lump sum amount, which is agreed between the Parties;
 - (ii) fair and reasonable amount taking into account any applicable rates and prices set out in this Agreement in the first instance; or
 - (iii) where no such rates and prices are provided, a fair and reasonable amount under all the circumstances,

The Contractor shall be entitled to such EOT and/or adjustment to the Contract Price, without any requirement to comply with Sub-Clause 19.2 [*Claims for Payment and/or EOT*].

(b) Variation by Request for Proposal

- (1) The Company's Representative may request a proposal, before instructing a Variation, by giving a Notice (describing the proposed change) to the Contractor.
- (2) The Contractor shall respond to this Notice as soon as practicable, by either:
 - (A) submitting a proposal, which shall include the matters as described in Sub-Clauses 12.3(a)(2)(A) to 12.3(a)(2)(C): or
 - (B) giving reasons why the Contractor cannot comply (if this is the case), by reference to the matters described in Sub-Clauses 12.1(c)(1) to 12.1(c)(3).
- (3) If the Contractor submits a proposal, the Company's Representative shall, as soon as practicable after receiving it, respond by giving a Notice to the Contractor stating his/her consent or otherwise. The Contractor shall not delay any work whilst awaiting a response.
- (4) If the Company's Representative gives consent to the proposal, with or without comments, the Company's Representative shall then instruct the Variation by issuing a Variation Direction. Thereafter, the Contractor shall submit any further particulars that the Company's Representative may reasonably require and the last paragraph of Sub-Clause 12.3(a) [*Variation by Instruction*] shall apply.
- (5) Upon approving the proposal for the Variation (as the case may be), the Company's Representative shall proceed to determine any adjustment to the Contract Price on the basis of the Contractor's proposal, submitted pursuant to this Sub-Clause 12.3 [*Variation Procedure*], if such proposal was accepted or, if the proposal was not accepted,
 - (A) on the basis of a lump sum amount, which is agreed between the Parties;
 - (B) fair and reasonable amount taking into account any applicable rates and prices set out in this Agreement in the first instance; or
 - (C) where no such rates and prices are provided, a fair and reasonable amount in all the circumstances.

12.4 Daywork

- (a) If a Daywork Schedule is not included in this Agreement, this Sub-Clause shall not apply.
- (b) For work of a minor or incidental nature, the Company'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, and the following procedure shall apply.
- (c) Before ordering Goods for such work (other than any Goods priced in the Daywork Schedule), the Contractor shall submit one or more quotations from the Contractor's suppliers and/or subcontractors to the Company's Representative. Thereafter, the Company's Representative may instruct the Contractor to accept one of these quotations (but such an instruction shall not be taken as an instruction under Sub-Clause 5.2 [*Nominated Subcontractors*]). If the Company's Representative does not so instruct the Contractor within seven (7) Days of receiving the quotations, the Contractor shall be entitled to accept any of these quotations at the Contractor's discretion.

- (d) Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each Day to the Company's Representative accurate statements in duplicate (and one electronic copy), which shall include Records of the resources used in executing the previous Day's work.
- (e) One copy of each statement shall, if correct and agreed, be signed by the Company's Representative and promptly returned to the Contractor. If not correct or agreed, the Contractor must amend and resubmit to the Company's Representative and this clause shall re-apply.
- (f) In the next Statement, the Contractor shall then submit priced statements of the agreed or determined resources to the Company's Representative, together with all applicable invoices, vouchers and accounts or receipts in substantiation of any Goods used in the daywork (other than Goods priced in the Daywork Schedule).
- (g) Unless otherwise stated in the Daywork Schedule, the rates and prices in the Daywork Schedule shall be deemed to include taxes, overheads and profit.

12.5 Adjustments for Changes in Laws

- (a) If the Contractor suffers or will suffer any delay in the execution of the Works as a result of any Change in Law of the Country occurring after the Effective Date, the Contractor shall give Notice of Claim to the Company's Representative, in accordance with Sub-Clause 19.2 [*Claims for Payment and/or EOT*].
- (b) If the Company's Representative determines that the Contractor has suffered or will suffer a delay in execution of the Works as a result of any Change in Law occurring after the Effective Date, the Contractor shall be entitled to an EOT, in accordance with Sub-Clause 8.5 [*Extension of Time for Completion*].
- (c) Notwithstanding any other provision in this Agreement, the Contractor shall not be entitled to the payment of any additional Costs or any addition to the Contract Price arising from or relating to a Change in Law.

13. Contract Price and Payment

13.1 The Contract Price

- (a) The Contract Price is the gross amount to compensate the Contractor, in respect of any and all costs, expenses, and taxes imposed on the Contractor and arising as a result of revenues earned by the Contractor, burdens, profits and overheads of every kind whatsoever and howsoever incurred by the Contractor, including those in respect of:
 - (1) the employment and engagement of the Contractor's Personnel to perform any part of the Works, including their remuneration, benefits, travel, transportation, and accommodation; and insurance;
 - (2) any and all costs and losses for Government Authorizations;
 - (3) documentation and deliverables (and the translation of any of them);
 - (4) insurance requirements;
 - (5) procurement;
 - (6) Remedial Work,
 - (7) compliance with applicable Laws and applicable Standards;
 - (8) any Change in Law, and
 - (9) Exceptional Events,which are incurred in connection with the Contractor's execution and Completion of the Works.

- (b) Unless and to the extent provided otherwise in this Agreement, the Contract Price shall be inclusive of all taxes (except VAT) and Government Authorizations, expenses and costs, however incurred, that are required to be paid by the Company, in relation to the Works, whether applicable as at or subsequent to the Effective Date or which otherwise become applicable.
- (c) The Contractor has the sole responsibility to correctly assess the quantities from the Drawings during the Tender stage of the Project. Any changes in, or additions to, quantities or other the Works, necessary and required due to the Contractors error or failure in assessing, prior to the Effective Date, the quantities from the Drawings, shall not be treated as a Variation and the Contractor shall assume full liability for any impact on the Works, including any additional Costs or delays in Completing the Works.
- (d) The Contract Price shall not be adjusted as a result of changes in the relative value of any currency or for escalation or changes in market prices or conditions unless expressly permitted under the terms and conditions of this Agreement.

13.2 Advance Payment

- (a) If no amount of Advance Payment is stated in the Contract Data, this Sub-Clause shall not apply.
- (b) After receiving the Advance Payment Guarantee in accordance with Sub-Clause 13.2(c) [*Advance Payment Guarantee*], the Company shall make an Advance Payment, as an interest-free loan for mobilization (and design, if any). The amount of the Advance Payment and the currencies in which it is to be paid shall be as stated in the Contract Data.
- (c) **Advance Payment Guarantee**
 - (1) As a condition precedent to receiving an Advance Payment in accordance with Sub-Clause 13.2(b), the Contractor shall obtain (at the Contractor's cost) an Advance Payment Guarantee in amounts and currencies equal to the Advance Payment, and shall submit it to the Company with a copy to the Company's Representative.
 - (2) The Contractor shall ensure that the Advance Payment Guarantee is valid and enforceable until the Advance Payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor as stated in the Payment Certificates.
 - (3) If the terms of the Advance Payment Guarantee specify its expiry date, and the Advance Payment has not been repaid by the date twenty-eight (28) Days before the expiry date:
 - (A) the Contractor shall extend the validity of this guarantee until the Advance Payment has been repaid;
 - (B) the Contractor shall immediately submit evidence of this extension to the Company, with a copy to the Company's Representative; and
 - (C) if the Company does not receive this evidence seven (7) Days before the expiry date of this guarantee, the Company shall be entitled to claim under the guarantee the amount of Advance Payment which has not been repaid.
 - (4) When submitting the Advance Payment Guarantee, the Contractor shall include an application (in the form of a Statement) for the Advance Payment.
- (d) **Repayment of Advance Payment**

- (1) The Advance Payment shall be repaid through percentage deductions in Payment Certificates as follows:
 - (A) deductions shall commence in the PICA in which the total of all certified interim payments in the same currency as the Advance Payment (excluding the Advance Payment and deductions and release of Retention Money) exceeds ten percent (10%) of the portion of the Contract Price payable in that currency; and
 - (B) deductions shall be made at the amortization rate of one quarter (25%) of the amount of each PICA (excluding the Advance Payment and deductions and release of Retention Money) in the currencies and proportions of the Advance Payment, until such time as the Advance Payment has been repaid.
- (2) If the Advance Payment has not been repaid before the issue of the Taking-Over Certificate for the Works, or before termination under Clause 14 [*Termination by Company*], Clause 15 [*Suspension and Termination by Contractor*] or Clause 17 [*Exceptional Events*] (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Company.

13.3 Application for Interim Payment

- (a) The Company shall pay the Contract Price to the Contractor for the carrying out and Completion of the Works in accordance with Schedule 5 [*Contract Price*].
- (b) At the frequency set out in the Contract Data, the Contractor shall submit an Application for Interim Payment by submitting to the Company's Representative a Statement and Statement Pack showing the amounts to which the Contractor considers itself to be entitled, consistent with Schedule 5 [*Contract Price*].
- (c) Each application for Interim Payment and Statement and Statement Pack shall be submitted strictly in accordance with the process and requirements set out in this Clause 13.3 [*Application for Interim Payment*], together with such additional supporting information and documentation as the Company's Representative may require from time to time.
- (d) Each Statement shall be VAT-compliant and 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 herein:
 - (1) this Agreement number (and any Variation numbers);
 - (2) the estimated Contract value (exclusive of VAT) of the Works executed and the Contractor's Documents produced up to the date seven (7) Days before the date of the Statement;
 - (3) any unpaid gross amount (exclusive of VAT), certified by the Company's Representative in the PICA;
 - (4) the gross amount to be paid by the Company;
 - (5) the VAT registration number;
 - (6) any VAT amount at the applicable prevailing legal rate;
 - (7) any withholding tax amount at the applicable prevailing legal rate;
 - (8) any additions and/or other deductions, including Delay Damages, that may have become due and payable under this Agreement and for the Month to be invoiced, whether under this Agreement or otherwise;
 - (9) any deductions of previously un-deducted amounts, in any previous Statements, certified to be deducted in any previous PICAs;

- (10) any amount to be deducted as Retention Money, calculated by applying the percentage of the retention stated in the Contract Data to the total of above amounts until the amount so retained by the Company reaches the limit of Retention Money stated in the Contract Data; and
- (11) the net amount to be paid by the Company to the Contractor, (together, the "Statement"); and
- (12) each Statement shall also include the following items:
- (A) a letter from the Contractor, certifying:
 - that the Works, including any deliverables, have been carried out and Completed strictly in accordance with the terms of this Agreement; and
 - the corresponding amount to the paid, broken down by the deliverables;
 - (B) the original receipt(s) for any expenses reimbursable by the Company under this Agreement or as otherwise agreed between the Parties;
 - (C) any reports or additional information that the Company or the Company's Representative deems necessary or required, including a report on progress for the relevant Month for which the Statement is submitted, in accordance with Sub-Clause 4.21 [*Progress Reports*];
 - (D) a written statement by the Contractor, in a form to be agreed with the Company's Representative:
 - certifying that the Contractor has paid all the respective salaries and benefits for Contractor's Personnel and for all for the Works that have been Completed by them in the Month to be invoiced, consistent with their employment agreements and engagement agreements, respectively, and with all applicable Laws; and
 - specifying which of the Contractor's Personnel has not been paid and the reasons for non-payment; and
 - (E) Any other information reasonably deemed required by the Company's Representative or the Company,
- (together, the "**Statement Pack**").
- (e) The Statement and the Statement Pack are the "**Application for Interim Payment**".

13.4 Status of Retention Money

The Parties agree that no trust fund status attaches to any Retention Money and the Company cannot be required to segregate any amount representing such Retention Money.

13.5 Plant and Materials Intended for the Works

- (a) If the Contract Price includes any payment for Plant and Materials that have not yet been delivered to Site, the Company shall not pay the Contractor such payment unless:
- (1) the relevant Plant and Materials have been clearly marked as the Company's property, in accordance with the Company's instructions; and

- (2) the Contractor has delivered to the Company a bank guarantee, in a format to be approved by the Company and in the amounts and currencies equal to such payment or part payment and which shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage and deterioration.
- (b) The Contractor shall ensure that Plant and Materials to which this Sub-Clause 13.5 [*Plant and Materials Intended for the Works*] applies are free from liens and other encumbrances in accordance with Sub-Clause 7.7 [*Ownership of Plant and Materials*].

13.6 Issue of PICA

No amount shall become due to the Contractor until:

- (a) the Contractor has appointed the Contractor's Representative in accordance with Sub-Clause 4.3 [*Contractor's Representative*]; and
- (b) the Condition Precedents set out in this Agreement have been satisfied.
- (c) **The PICA**
 - (1) After the receipt of the Contractor's compliant Statement, the Company's Representative shall, within twenty one (21) Days of the 10th Day of the Month for which the Statement was submitted, issue an PICA to the Company with a copy to the Contractor, notifying the Contractor of the undisputed amount to be paid to the Contractor and identify any difference between a certified amount and the corresponding amount in the Statement and give the reasons for such difference and the basis for its calculation of the amount.
 - (2) If the Company's Representative does not issue the PICA, the Application for Interim Payment will be adopted as the PICA; provided, however, that the Application for Interim Payment will not be deemed to be the PICA if the Application for Interim Payment (including the Statement and Statement Pack) has not been submitted by the Contractor strictly in accordance with the requirements of this Clause 13 [*Contract Price and Payment*].
 - (3) If the Contractor objects to the amount specified in PICA, then either Party shall attempt to resolve the disagreed amount or method of calculation by proceeding under Sub-Clause 19.2 [*Claims for Payment and/or EOT*].
- (d) **Withholding (Amounts in) and PICA**
 - (1) Without limiting the Company's rights under this Agreement, including under Sub-Clause 13.18 [*Set-Off*], the Company has the right, by reasonable written Notice to the Contractor, to proportionally reduce and deduct an amount from any PICA or suspend payments to the Contractor under this Agreement:
 - (A) if anything supplied or work done by the Contractor is not in accordance with this Agreement, the estimated cost of rectification or replacement may be withheld or deducted until rectification or replacement has been Completed; and/or
 - (B) if the Contractor was or is failing to perform any work, service or obligation in accordance with this Agreement, the value of this work or obligation may be withheld or deducted until the work or obligation has been performed. In this event, the Company's Representative shall promptly give a Notice to the Contractor describing the failure and with detailed supporting particulars of the value withheld or deducted.

- (2) For each amount so withheld or deducted, in the supporting particulars for the PICA the Company's Representative shall detail his/her calculation of the amount and state the reasons for it being withheld or deducted.
- (3) The Contractor shall, at all times, and regardless of disputed amounts, disagreements, Claims and/or Disputes, proceed with Completing the Works in the most expeditious manner, without any delay, disruption or interruption, maximizing the use of all the Contractor's Personnel and other things, services, and resources, whether of a temporary or permanent nature, implied, necessary and required, for the timely execution and Completion of the Works, in accordance with the Programme (as revised from time to time) and, in all cases, by the Time for Completion.

(e) **Correction or Modification**

The Company'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 shall not be deemed to indicate the Company's Representative's acceptance, approval, consent or Notice of No-objection to any Contractor's Document or to (any part of) the Works.

13.7 Payment

(a) **Interim Invoices and Interim Payments**

- (1) Within twenty-eight (28) Days after the Contractor receives the PICA, the Contractor shall submit a PICA, Interim Invoice, and the Application for Interim Payment (and updated to the extent required by the Company, consistent with the PICA) (the "**Interim Invoice**") to the Company, strictly in accordance with the process and requirements set out in this Sub-Clause 13.7 [*Payment*].
- (2) Subject to the Company's receipt of a valid and contractually compliant Interim Invoice (all as certified by the Company's Representative), the Company shall, subject to any right of withholding or set off under this Agreement or a valid Claim or Dispute pay the amount certified for payment in the PICA within forty (40) Days of the date of the PICA. Such payment shall be made into the Contractor's bank account as notified to the Company, pursuant to Sub-Clause 13.7(d) [*Contractor's Banking Details*].

(b) **Final Payment**

Within fifty six (56) Days after the Contractor receives the FPC, the Contractor shall submit the FPC, Final Invoice and Close Out Documents (as certified by the Company's Representative), presented in a form and format approved by the Company's Representative, showing the cumulative value of all the Works performed by the Contractor, and showing the agreed undisputed and certified amount due under this Agreement. Within forty (40) Days of receipt of the Contractor's valid Final Invoice and Close Out Documents (as certified by the Company's Representative), the Company shall pay the balance of the Contract Price, if any, due and owing to the Contractor.

(c) **Payments at Termination**

- (1) Payments due to the Contractor after termination of this Agreement shall still be subject to the retention requirements in Sub-Clause 13.8 [*Release of Retention Money*] and shall, for the avoidance of doubt:
 - (A) be reduced by any amounts paid to the Contractor under this Agreement not supported by progress actually achieved on terminated Works;

- (B) be reduced by any amounts referred to in Sub-Clause 13.6 [*Issue of PICA*];
 - (C) exclude compensation for any costs attributable to payments made under this Agreement;
 - (D) exclude compensation for depreciation, liquidation, the unexpired portion of leases for capital equipment and Permanent Works or other capital costs attributable to Works not to be Completed as a result of the termination;
 - (E) exclude compensation paid by the Contractor to any of the Contractor's Personnel to settle their entitlements of any kind, arising from terminated Works to the extent such compensation is not a reasonable, auditable and verifiable Cost of the Contractor's Personnel, that is attributable to the termination of this Agreement (and for the avoidance of doubt, compensation in the nature of Sub-Clause 13.7(a)(1) under this Sub-Clause 13.7(c) [*Payments at Termination*] shall not be reimbursed by the Company, in respect of the Contractor's Personnel); and
 - (F) be reduced by amounts which may be set off under this Agreement.
- (2) In no event shall the payments due to the Contractor, upon termination of this Agreement exceed the Contract Price, less the portion of the Contract Price for any Works not terminated, even if it results in a credit to the Company.
 - (3) If the Contractor would have sustained a loss on this Agreement had it been Completed, then the payments due to it, upon the termination of this Agreement shall be reduced in proportion to the estimated rate of loss.
 - (4) For the purposes of this Sub-Clause 13.7 [*Payment*], the Contractor acknowledges and agrees that, in the event that the Company terminates this Agreement in accordance with Sub-Clause 14.2 [*Termination for Contractor's Default*] and Completion of the Works is not achieved, then any delay costs and finance costs (if any), directly incurred by the Company as a result of such termination and non-completion shall be deemed to be reasonable direct costs within the contemplation of the Contractor at the Effective Date.

(d) **Contractor's Banking Details**

All payments shall be made into the Contractor's bank account as stated in the Company's "*Vendor Registration Form*" within fourteen (14) days following the Effective Date. The Contractor shall submit a completed "*Vendor Registration Form*" to the Company.

- (e) In the event the Contractor intends to change the details required by the Company to be provided on the "*Vendor Registration Form*", including the bank to which payments are to be made by the Company, the Contractor shall provide the Company with a request to updated bank details, accompanied with the new bank details, which shall be provided by the bank on the bank's letterhead and which shall be signed and stamped by the bank.
- (f) The Company shall not be liable for delays in the remittance of payments to the Contractor's bank account due to reasons not within the Company's direct control.

13.8 Release of Retention Money

- (a) After the issue of the Taking Over Certificate of the whole of the Works, the Contractor shall include the first half of the Retention Money in a Statement. After the latest of the expiry dates of the DNP of the whole of the Works, the Contractor

shall include the second half of the Retention Money in a Statement promptly after such latest date.

- (b) In the next PICA after the Company's Representative receives any such Statement, the Company's Representative shall certify the release of the corresponding amount of Retention Money. However, when certifying any release of Retention Money under Sub-Clause 13.6 [*Issue of PICA*], if any work remains to be executed under Clause 11 [*Defects after Taking Over*], the Company's Representative shall be entitled (without limiting any other remedy of the Company in respect of the work, remaining to be executed) to withhold certification of the estimated cost of this work until it has been executed.
- (c) Notwithstanding any other provision, if, at any time prior to the issuance of the Taking-Over Certificate for the Works, the amount of the accumulated Retention Money held by the Company is an amount which is less than the maximum Retention Amount percentage specified in the Contract Data, the Company shall be entitled to withhold such further amounts from any and all payments under this Agreement that are necessary to ensure that, , the Company is holding an amount equal the maximum Retention Money percentage specified in the Contract Data at the time the Taking-Over Certificate for the Works is issued.

13.9 Statement at Completion

- (a) Within eighty four (84) Days after the Date of Completion of the Works, the Contractor shall submit to the Company's Representative a Statement at completion with supporting documents, in accordance with Sub-Clause 13.3 [*Application for Interim Payment*], showing:
 - (1) the value of all work done in accordance with this Agreement up to the Date of Completion of the Works;
 - (2) any further sums which the Contractor considers to be due at the Date of Completion of the Works; and
 - (3) an estimate of any other amounts which the Contractor considers have or will become due after the Date of Completion of the Works under this Agreement or otherwise. These estimated amounts shall be shown separately (to those of sub-paragraphs (1) and (2) above) and shall include estimated amounts for Claims for which the Contractor has submitted a Notice under Sub-Clause 19.2 [Claims for Payment and/or EOT].
- (b) The Company's Representative shall then issue a PICA in accordance with Sub-Clause 13.6 [*Issue of PICA*].

13.10 Statement

Submission by the Contractor of any Statement shall not be delayed by reason of any arbitration or dispute resolution procedure under Sub-Clause 20 [*Disputes*].

13.11 Draft Final-Statement

- (a) Within fifty-six (56) Days after the issue of the Performance Certificate, the Contractor shall submit to the Company's Representative, a draft final Statement.
- (b) This Statement shall
 - (1) be in the same form as Statements previously submitted under Sub-Clause 13.3 [*Application for Interim Payment*];
 - (2) be submitted in one paper-original, one electronic copy and additional paper copies (if any) as stated in the Contract Data;
 - (3) show in detail, with supporting documents:
 - (A) the value of all work done in accordance with this Agreement;

- (B) any further sums which the Contractor considers to be due at the date of the issue of the Performance Certificate, under this Agreement or otherwise; and
 - (C) an estimate of any other amounts which the Contractor considers have or will become due after the issue of the Performance Certificate, under this Agreement or otherwise, including estimated amounts, by reference to the matters described in Sub-Clauses 13.9(a)(1) to 13.9(a)(3). These estimated amounts shall be shown separately (to those of subparagraphs (A) and (B) above).
- (4) a Final Release, signed by the Contractor, discharging the Company from any and all Claims, Disputes, and liabilities, arising under this Agreement, except for the Final Payment and any surviving obligations set forth in this Agreement;
- (5) written proof, satisfactory to the Company, that there are no unsatisfied third party claims, Claims, Disputes or other indebtedness, existing in connection with the Works (or if such Claims, Disputes or indebtedness exists, the Contractor shall provide the Company with a written agreement that is sufficient to indemnify, defend and hold Contractor's Personnel harmless from any costs and losses, connected with said third party claims, Claims, Disputes or other indebtedness);
- (6) a valid commercial registration certificate;
- (7) confirmation that any amounts, paid to the Contractor by the Company under this Agreement, and referred to in this Sub-Clause 13.10 [Statement] are compliant with Laws;
- (8) copies of Contractor's insurance certificates, confirming maintenance of required insurance policies, coverage and limits and continuous satisfaction of all insurance requirements that survive this Agreement;
- (9) all manufacturer and supplier warranties, not previously submitted, all Records for the Project, as-built Drawings, operations, systems, and maintenance manuals; and
- (10) such other Records for the Project deemed reasonably required by the Company's Representative and Company,
(together, the "**Close Out Documents**").
- (c) If the Company's Representative disagrees with or cannot verify any part of the draft final Statement, the Company's Representative shall promptly give a Notice to the Contractor. The Contractor shall then submit such further information as the Company's Representative may reasonably require within the time stated in this Notice and shall make such changes in the draft as may be agreed between them.
- (d) **Agreed Final Statement**
 - (i) If there are no amounts under Sub-Clause 13.11(b)(3)(C), the Contractor shall then prepare and submit to the Company's Representative the final Statement as agreed (the "**Final Statement**" in these General Conditions).
 - (ii) However, if:
 - (A) there are amounts under Sub-Clause 13.11(b)(3)(C); and/or
 - (B) following discussions between the Company's Representative and the Contractor, it becomes evident that they cannot agree any amount(s) in the draft final Statement,

the Contractor shall then prepare and submit to the Company's Representative a Statement, identifying separately: the agreed amounts, the estimated amounts and the disagreed amount(s) (the **"Partially Agreed Final Statement"** in these General Conditions).

13.12 Discharge

The Company's payment of the balance Contract Price and all previously undisputed amounts shall be deemed the full and final settlement of all amounts required to be paid to the Contractor by the Company for all Works under this Agreement, subject always and only to amounts related to:

- (a) Clause 20 [*Disputes*];
- (b) compliance with Sub-Clause 13.11(d) [*Agreed Final Statement*], in respect of a Partially Agreed Final Statement;
- (c) Sub-Clause 13.16 [*Taxes*]; and
- (d) any other causes of action or other rights and remedies whether known or otherwise and available to the Company under this Agreement or at Law.

13.13 Issue of FPC

- (a) Within twenty-eight (28) Days after submission of the Final Statement (or Partially Agreed Final Statement (as the case may be)) under Sub-Clause 13.11(d) and the Close Out Documents under Sub-Clause 13.11 [*Draft Final-Statement*], the Company's Representative shall issue to the Company (with a copy to the Contractor), the FPC which shall state:
 - (1) the amount which the Company's Representative fairly considers is finally due, including any additions and/or deductions which have become due under this Agreement or otherwise: and
 - (2) after giving credit to the Company for all amounts previously paid by the Company and for all sums to which the Company is entitled, , the balance (if any) due from the Company to the Contractor or from the Contractor to the Company, as the case may be.
- (b) If the Contractor fails to comply with Sub-Clause 13.10 [*Statement*], the Company's Representative may give the Contractor Notice to do so. If the Contractor neglects to comply with the Notice within forty-two (42) Days, the Company's Representative shall issue an FPC, stating the amounts in Sub-Clauses paragraphs 13.13(a)(1) and 13.13(a)(2) and such other amounts as the Company's Representative fairly considers to be due.

13.14 Cessation of Company's Liability

- (a) The FPC shall be conclusive evidence of the correctness of its contents, and the Company shall have no other liability to the Contractor under or in connection with this Agreement, save in relation to any Dispute:
 - (1) which is the subject matter of any arbitration under Clause 20 [*Disputes*] at the date of issue of the FPC; or
 - (2) as to the FPC itself, of which Notice is given by a Party to the other Party within ninety (90) Days after the date on which the FPC is issued,
 - (3) and the certificate shall have no evidential effect in relation to the subject matter of any such Dispute.
- (b) Unless the Contractor makes or has made a Claim under Sub-Clause 19.2 [*Claims for Payment and/or EOT*] in respect of an amount or amounts under the FPC within fifty six (56) Days of receiving a copy of the FPC the Contractor shall be deemed to have accepted the amounts so certified. The Company shall then have no further liability to the Contractor, other than to pay the amount due under the FPC.

13.15 Currencies of Payment

The Contract Price, Delay Damages and any other payments due and payable under this Agreement shall be paid in the currency or currencies named in the Contract Data.

13.16 Taxes

- (a) **Not applicable.**
- (b) Without limiting Sub-Clause 13.16(a), the Contractor shall be responsible for paying all taxes, and/or Government Authorizations (including any change in the amounts due to a Change in Law) required to be paid by the Contractor or its representatives under this Agreement or as otherwise payable in respect of the performance of the Works pursuant to any Laws of the Country, any other countries in which the Works are performed and otherwise in respect of this Agreement and the Parties. The Contract Price shall not be adjusted or reimbursed by the Company for any taxes or costs for Government Authorizations, excluding VAT. Such liabilities and obligations of the Contractor shall also apply to the Contractor's Personnel or any of their respective possessions and property.
- (c) The Contract Price paid by the Company to the Contractor, if the Contractor is a non-resident of the Country, shall be subject to deduction for withholding taxes for all Works rendered outside the Country. Where applicable, the Company shall make the required deduction of the applicable withholding taxes from every invoice, in accordance with the applicable Laws of the Country. Alternatively, in case a double tax treaty is in effect between the Contractor's country of residency and the Country, the Contractor may furnish the Company with a tax residency certificate, in respect of the double tax treaty, in order to avail such tax treaty benefits as they exist provided however, that if such certificate is challenged or held invalid by any taxing authority, then Contractor agrees to pay for all resulting taxes, fines, penalties and expenses (including reasonable attorney's fees and costs).
- (d) Subject to Sub-Clause 16.4 [*Indemnities by Contractor*], if the Company is ordered, in writing, by any Competent Authority, to withhold any taxes and/or to pay for the costs, in respect of any Government Authorizations, the Company shall notify the Contractor as soon as practicable upon receipt of any such order. The Company shall withhold such amounts from any amounts due to the Contractor under this Agreement.

13.17 VAT

- (a) All amounts, consideration, supplies and transactions referred to in, or made under or in connection with, this Agreement are exclusive of VAT, unless expressly indicated otherwise.
- (b) The VAT treatment of a taxable supply or taxable transaction made by a Party (the **Supplier**) to another Party (the **Recipient**) under or in connection with this Agreement will be determined pursuant to the Laws applicable in the jurisdiction where the taxable supply or taxable transaction for VAT purposes is deemed to take place. If VAT is payable by the Supplier, the Recipient will pay to the Supplier an amount equal to the VAT at the rate applicable from time to time; provided that such amount will only be required to be paid once the Supplier provides the Recipient with a valid invoice for VAT purposes (applicable in the jurisdiction of supply) in relation to that amount.

13.18 Set-Off

- (a) Notwithstanding any other provision of this Agreement (whether expressed or implied), the Company shall be entitled to:
 - (1) deduct or set-off from any money (including any Retention Money) otherwise due from or owed to the Contractor by the Company under this Agreement; and

- (2) apply against monies awarded in dispute resolution procedures or arbitration arising out of or in connection with this Agreement in favour of the Contractor,

any amounts due or which may become due or owed, whether under the provisions of or in connection with this Agreement or otherwise, to the Company from the Contractor or whether or as a result of any claim which the Company may have against the Contractor for costs and / or damages arising under this Agreement or which the Company has suffered or will suffer by reason of any breach of, or failure to observe the provisions of, this Agreement by the Contractor.

- (b) Any amount set off under the provisions of this Sub-Clause 13.18 [*Set-Off*] or otherwise, is without prejudice to any other rights of the Company under this Agreement, or the rights of the Company in any subsequent negotiations, dispute resolution procedures or arbitration proceedings or litigation to seek to vary the amount claimed and set off by the Company, and will not discharge any obligations of the Contractor.

14. Termination by Company

14.1 Notice to Correct

- (a) If the Contractor defaults or otherwise fails to carry out any obligation under this Agreement (including a default set out in Sub-Clause 14.2(a) [*Notice*]) the Company's Representative may, by giving a Notice to the Contractor, require the Contractor to make good the failure and to remedy it within a specified time ("**Notice to Correct**" in these General Conditions).
- (b) The Notice to Correct shall:
- (1) describe the Contractor's default or failure;
 - (2) state the Sub-Clause and/or provisions of this Agreement under which the Contractor has the obligation; and
 - (3) specify the time within which the Contractor shall remedy the failure, which shall be reasonable, taking due regard of the nature of the failure and the work and/or other action required to remedy it.
- (c) After receiving a Notice to Correct the Contractor shall immediately respond by giving a Notice to the Company's Representative describing the measures the Contractor will take to remedy the default or failure, and stating the date on which such measures will be commenced in order to comply with the time specified in the Notice to Correct.
- (d) The time specified in the Notice to Correct shall not imply any extension of the Time for Completion.

14.2 Termination for Contractor's Default

Termination of this Agreement under this Clause shall not prejudice any other rights of the Company under this Agreement or otherwise.

(a) **Notice**

A Contractor's default occurs if the Contractor:

- (1) fails to comply with a Notice to Correct and such failure constitutes a material breach of the Contractor's obligations under the Contract;
- (2) abandons the Works or otherwise plainly demonstrates an intention not to continue performance of the Contractor's obligations under and in accordance with this Agreement;
- (3) without reasonable excuse fails to proceed with the Works in accordance with Clause 8 [*Commencement, Delays and Suspension*] or, continues to

- be in breach of Sub-Clause 8.2 [*Time for Completion*] after having become liable for Delay Damages up to any maximum amount of Delay Damages stated in the Contract Data;
- (4) without reasonable excuse fails to comply with a Notice of rejection given by the Company's Representative under Sub-Clause 7.5 [*Defects and Rejection*] or an Company's Representative's instruction under Sub-Clause 7.6 [*Remedial Work*], or any Notice to resume the Works after suspension of the Works under Sub-Clause 15.1 [*Suspension by Contractor*], Clause 17 [*Exceptional Events*] or any other directive by the Company's Representative, within twenty-eight (28) Days after receiving it;
 - (5) subcontracts the whole, or any part of, the Works in breach of Sub-Clause 5.1 [*Subcontractors*], or assigns this Agreement without the required agreement under Sub-Clause 1.5 [*Assignment and Novation*];
 - (6) or the Parent Company becomes bankrupt or insolvent; goes into liquidation, administration, reorganization, winding-up or dissolution; becomes subject to the appointment of a liquidator, receiver, administrator, manager or trustee; enters into a composition or arrangement with the Contractor's creditors; or any act is done or any event occurs which is analogous to or has a similar effect to any of these acts or events under applicable Laws;
 - (7) fails to maintain any of the insurances required pursuant to Clause 18 [*Insurance*] of this Agreement;
 - (8) commits any Prohibited Act or is otherwise in breach of Sub-Clause 1.16 [*Anti-Corruption*];
 - (9) has an actual, potential, or apparent conflict of interest contemplated by Sub-Clause 1.20 [*Conflict of Interest*] that, within sixty (60) Days from the date of discovery, cannot be reasonably managed or eliminated as determined by the Company;
 - (10) has accrued, at any point in time, Delay Damages which exceed the maximum Delay Damages stated in the Contract Data (if any) or an overall liability in excess of the limitation stated in the Contract Data (if any) in relation to Sub-Clause 1.13 [*Limitation of Liability*];
 - (11) suspends the performance of the Works or any part thereof other than in accordance with Sub-Clause 15.1 [*Suspension by Contractor*] or as necessary for the safety or security of the Works;
 - (12) persistently fails to execute the Works in accordance with the requirements of this Agreement and/or persistently neglects to carry out and/or fulfils its obligations and/or responsibilities under this Agreement without due course when the Company has given fourteen (14) Days' Notice with intention to terminate this Agreement unless the Contractor is able to satisfy the Company that appropriate steps have been taken to ensure that there is no reoccurrence of such default;
 - (13) is in breach of any material obligation that it has under this Agreement and the Company has given fourteen (14) Days' Notice of its intention to terminate this Agreement and the Contractor fails or is unable to remedy such breach to the satisfaction of the Company prior to the expiry of such Notice;
 - (14) is unable or fails to make a material start to the Works on-Site within sixty (60) Days of the Commencement Date or if having commenced the Works on Site, the Contractor is unable or fails to proceed with the Works with due expedition and without delay (other than as a result of the occurrence

of one of the causes as set out at Sub-Clause 8.5 [*Extension of Time for Completion*];

- (15) fails to progress the Works such that, in the opinion of the Company, the Contractor would be unable to achieve the taking over of the Works in accordance with Clause 10 [*Company's Taking Over*] prior to accruing Delay Damages which exceed the amount of Delay Damages stated in the Contract Data (if any);
- (16) fails to comply with the Laws which exposes the Company to liability or adversely impacts upon the Company's ability to use, operate, maintain, or occupy the Completed Works and/or the Project and the Company has given fourteen (14) Days' Notice of its intention to terminate this Agreement unless the Contractor remedies such a breach to the satisfaction of the Company and the Contractor fails or is unable to remedy such a breach to the satisfaction of the Company prior to the expiry of such Notice; and/or
- (17) fails to pay any sum rightfully demanded by the Company within the prescribed time period or in the absence with prescribed time period within the reasonable period of such demand which in any event will not exceed fourteen (14) Days;
- (18) is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to this Agreement;
- (19) is subject to a Change in Control otherwise than in accordance with Sub-Clause 1.15 [*Change in Control*]; or
- (20) is a JV and:
 - (A) any of these matters apply to a member of the JV; and
 - (B) the other member(s) do not promptly confirm to the Company that, in accordance with Sub-Clause 1.12 [*Joint and Several Liability*], such member's obligations under this Agreement shall be fulfilled in accordance with this Agreement.

(b) **Termination**

- (1) Unless the Contractor remedies the matter described in a Notice given under Sub-Clause 14.1(a) [*Notice*] within fourteen (14) Days of receiving the Notice, the Company may by giving a second Notice to the Contractor immediately terminate this Agreement. The date of termination shall be the date the Contractor receives this second Notice.
- (2) However, in the case of a default referred to in sub-paragraph (2), (5), (6), (8), (9), (10), (16), (18) or (19) of Sub-Clause 14.2(a) [*Notice*], the Company may by giving a Notice to the Contractor immediately terminate this Agreement and the date of termination shall be the date the Contractor receives this Notice.

(c) **After termination**

- (1) After termination of this Agreement under Sub-Clause 14.2(b) [*Termination*], the Contractor shall:
 - (A) comply immediately with any reasonable instructions included in a Notice given by the Company under this Sub-Clause:
 - for the assignment of any subcontract or agreement for the hire of any Contractor's Equipment or agreement for the supply of any labour, Goods or services that the Contractor may have entered into; and

- for the protection of life or property or for the safety of the Works;
- (B) deliver to the Company's Representative:
- any Goods required by the Company,
 - all Contractor's Documents, and
 - all other design documents made by or for the Contractor to the extent, if any, that the Contractor is responsible for the design of part of the Permanent Works under Sub-Clause 4.1 [*Contractor's General Obligations*]; and
- (C) leave the Site and, if the Contractor does not do so, the Company shall have the right to expel the Contractor from the Site.
- (2) Where the Company is entitled to terminate this Agreement, pursuant to Sub-Clause 14.2(b) [*Termination*] of Sub-Clause 14.2 [*Termination for Contractor's Default*], the Company shall also be entitled to terminate all other contracts entered into with the Contractor, and the Company may recover from the Contractor any loss, damage, or expense incurred by the Company by reason of such termination.
- (d) **Completion of the Works**
- (1) After termination under this Sub-Clause, the Company may Complete the Works and/or arrange for any other entities to do so. The Company and/or these entities may then use any Goods and Contractor's Documents (and other design documents, if any) made by or on behalf of the Contractor to Complete the Works.
- (2) After such Completion of the Works, the Company shall give another Notice to the Contractor that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall then promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Company, these items may be sold (to the extent permitted by applicable Laws) by the Company in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

14.3 Valuation after Termination for Contractor's Default

- (a) After termination of this Agreement under Sub-Clause 14.2 [*Termination for Contractor's Default*], the Company's Representative shall determine the value of the Permanent Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with this Agreement.
- (b) This valuation shall include any additions and/or deductions, and the balance due (if any), by reference to the matters described in sub-paragraphs (1) and (2) of Sub-Clause 13.13 [*Issue of FPC*].
- (c) This valuation shall not include the value of any Contractor's Documents, Materials, Plant and Permanent Works to the extent that they do not comply with this Agreement.

14.4 Payment after Termination for Contractor's Default

- (a) The Company may withhold payment to the Contractor of the amounts agreed or determined under Sub-Clause 14.3 [*Valuation after Termination for Contractor's Default*] until all the costs, losses and damages (if any) described in the following provisions of this Sub-Clause have been established.

- (b) After termination of this Agreement under Sub-Clause 14.2 [*Termination for Contractor's Default*], the Company shall be entitled subject, where applicable, to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to payment by the Contractor of:
- (1) the additional costs of execution of the Works or of rectifying Defects in the Works, and all other costs reasonably incurred by the Company (including costs incurred in clearing, cleaning and reinstating the Site as described under Sub-Clause 11.11 [*Clearance of Site*]), after allowing for any sum due to the Contractor under Sub-Clause 14.3 [*Valuation after Termination for Contractor's Default*];
 - (2) any losses and damages suffered by the Company in completing the Works;
 - (3) Delay Damages accrued up to the date of termination and any other losses suffered by the Company as a result of delayed Completion of the Works; and
 - (4) any other loss or damage suffered or incurred by the Company in consequence of the termination of this Agreement.
- (c) Payments due to the Contractor after termination of this Agreement shall still be subject to the retention requirements in Sub-Clause 13.8 [*Release of Retention Money*] and shall, for the avoidance of doubt:
- (1) be reduced by any amounts paid to the Contractor under this Agreement not supported by progress actually achieved on terminated Works;
 - (2) be reduced by any amounts referred to in Sub-Clause 13.6 [*Issue of PICA*];
 - (3) exclude compensation for any costs attributable to payments made under this Agreement;
 - (4) exclude compensation for depreciation, liquidation, the unexpired portion of leases for capital equipment and the Permanent Works or other capital costs, attributable to any terminated Works, which shall not be Completed as a result of the termination;
 - (5) exclude compensation paid by the Contractor to any of the Contractor's Personnel to settle their entitlements of any kind arising from terminated Works to the extent such compensation are not reasonable, auditable and verifiable Costs of the Contractor's Personnel (and for the avoidance of doubt, compensation in the nature of sub-paragraph (1) under this Sub-Clause 14.4 [*Payment After Termination for Contractors Default*] shall not be reimbursed by the Company, in respect of the Contractor's Personnel); and
 - (6) be reduced by amounts which may be setoff under this Agreement.
- (d) In no event shall the payments due to the Contractor, upon termination of this Agreement, exceed the Contract Price, less the portion of the Contract Price for any Works not terminated, even if it results in a credit to the Company.
- (e) If the Contractor would have sustained a loss on this Agreement had it been Completed, then the payments due to it, upon the termination of this Agreement shall be reduced in proportion to the estimated rate of loss.
- (f) For the purposes of paragraph (3) of this Sub-Clause 14.4 [*Payment after Termination of Contractor's Default*], the Contractor acknowledges and agrees that, in the event that the Company terminates this Agreement in accordance with Sub-Clause 14.2 [*Termination by Company*] and Completion of the Works is not achieved, then any delay costs and finance costs (if any), directly incurred by the Company as a result of such termination and non-Completion shall be deemed to

be reasonable direct costs within the contemplation of the Contractor at the Effective Date.

14.5 On-Account Payments After Termination

If this Agreement is terminated under Sub-Clause 14.2 [*Termination for Contractor's Default*], the following shall apply:

- (a) At any time before any net amount due to the Company by operation of Sub-Clause 14.3 [*Valuation after Termination for Contractor's Default*] and Sub-Clause 14.4 [*Payment after Termination for Contractor's Default*] is finally ascertained, the Company's Representative may serve on the Contractor a particularized forecast of that amount or, if it is not practicable to forecast the amount in full, the Company's Representative may serve a particularized forecast of a sum below which such amount could not fall in any foreseeable circumstances, and in either case the Company's Representative may, thereafter from time to time, serve a revised forecast whenever it is practicable to make such revised forecast.
- (b) The Contractor may agree any forecast provided under Sub-Clause (a) or may propose any lesser forecast and in that case the amount agreed or proposed shall be payable by the Contractor to the Company as an on-account payment, in respect of the Contractor's liability, by operation of Sub-Clause 14.3 [*Valuation after Termination for Contractor's Default*] and Sub-Clause 14.4 [*Payment after Termination for Contractor's Default*].
- (c) Any such Company's Representative's forecast, if not agreed, may be referred to arbitration, in accordance with Sub-Clause 20 [*Arbitration*].
- (d) In respect of any Company's Representative's forecast, the arbitral tribunal may order the Contractor to make an on-account payment to the Company of such amount (if any) as the arbitral tribunal sees fit and in respect of any Company's Representative's revised forecast (or in respect of any application to the arbitral tribunal made by the Contractor) may order the payment of such further amount (or may order the repayment of all or any part of any previous on-account payment) as the arbitral tribunal sees fit.
- (e) Any on-account payments or repayments made pursuant to this Sub-Clause 14.5 shall be taken into account in the final determination of any amount due under Sub-Clauses 14.3 [*Valuation after Termination for Contractor's Default*] and 14.4 [*Payment after Termination for Contractor's Default*].

14.6 Termination for Company's Convenience

- (a) The Company shall be entitled to terminate this Agreement at any time for the Company's convenience, by giving a Notice of such termination to the Contractor (which Notice shall state that it is given under this Sub-Clause 14.6).
- (b) The Parties hereby acknowledge and expressly agree that the Company's entitlement to terminate this Agreement pursuant to this Sub-Clause is in accordance with the meaning of 'consent' and 'mutual consent' under the Laws and that an arbitral tribunal or court order will not be required to give effect to any termination of this Agreement under this Sub-Clause.
- (c) Termination under this Sub-Clause 14.6 shall take effect on the date stated in the Notice of termination of the Works.
- (d) After this termination, the Contractor shall proceed in accordance with Sub-Clause 15.2 [*Contractor's Obligations After Termination*].

14.7 Valuation after Termination for Company's Convenience

- (a) After termination under Sub-Clause 14.6 [*Termination for Company's Convenience*] the Contractor shall, as soon as practicable, submit detailed supporting particulars (as reasonably required by the Company's Representative) of the value of work done, which shall include:

- (1) the matters described in Sub-Clause 17.5(c), and
 - (2) any additions and/or deductions, and the balance due (if any), by reference to the matters described in sub-paragraphs (1) and (2) of Sub-Clause 13.13 [*Issue of FPC*].
- (b) The Company's Representative shall determine the matters described in sub-paragraphs (1) and (2) above and shall issue a Payment Certificate for the amount so agreed or determined, without the need for the Contractor to submit a Statement.

14.8 Payment after Termination for Company's Convenience

- (a) The Company's Representative shall issue to the Contractor a valuation and FPC, in respect of the total amount properly due to the Contractor up to the date of termination (including the value of all Plant and/or Materials in respect of which the Contractor has made commitments, in accordance with its Programme, prior to the date of termination) after the Contractor has provided to the Company possession and unencumbered ownership to the Company of any and all Records for the Project, Asset registers, Contractor's Documents, manufacturer and supplier warranties and insurance, and other required documentation, including as-built Drawings, operation and maintenance manuals and Goods, in respect of the Project, through the date of termination (even if they have not been approved by the Company's Representative or the Company or otherwise signed off by either Party) and, subject to the submission of any substantiation, if requested by the Company.
- (b) The Company shall pay the Contractor the amount certified in the Payment Certificate under Sub-Clause 14.7 [*Valuation after Termination for Company's Convenience*] within 112 Days after the Company's Representative receives the Contractor's submission under Sub-Clause 14.7 [*Valuation after Termination for Company's Convenience*], including the amounts of such valuation under this Sub-Clause 14.8.

15. Suspension and Termination by Contractor

15.1 Suspension by Contractor

- (a) If the Company's Representative fails to certify in accordance with Sub-Clause 13.6 [*Issue of PICA*] or the Company fails to comply with Sub-Clause 13.7 [*Payment*], then the Contractor may give the Company not less than eighty four (84) Days' Notice that it will suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and specifying the date of suspension in the Notice.
- (b) The Company shall have the eighty four (84) Days as a corrective action period to pay the Contractor and if the Contractor subsequently receives such Payment Certificate, reasonable evidence or payment (as described in the relevant Sub-Clause and in the Notice of suspension), the Contractor shall resume normal working on the date the Company's Representative so directs by Notice of resumption of the Works to the Contractors.
- (c) If the Contractor suffers delay as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give Notice to the Company's Representative and shall be entitled subject to Sub-Clause 19 [*Company's and Contractor's Claims*] to an EOT for any such delay, if Completion is or will be delayed, under Sub-Clause 8.5 [*Extension of Time for Completion*].
- (d) **Notice**

The Contractor shall be entitled to give a Notice (which shall state that it is given under this Sub-Clause 15.1(d)) to the Company of the Contractor's intention to terminate this Agreement or, in the case of sub-paragraph (4), (5) or (6) below a

Notice of termination, if:

- (1) the Company's Representative fails, within fifty-six (56) Days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate;
- (2) the Contractor does not receive the amount due under any Payment Certificate within forty-two (42) Days after the expiry of the time stated in Sub-Clause 13.7 [*Payment*];
- (3) the Company substantially fails to perform, and such failure constitutes a material breach of, the Company's obligations under the Contract;
- (4) a prolonged suspension affects the whole of the Works as described in sub-paragraph (2) of Sub-Clause 8.11 [*Prolonged Suspension*];
- (5) the Company becomes bankrupt or insolvent; goes into liquidation, administration, reorganization, winding-up or dissolution; becomes subject to the appointment of a liquidator, receiver, administrator, manager or trustee; enters into a composition or arrangement with the Company's creditors; or any act is done or any event occurs which is analogous to or has a similar effect to any of these acts or events under applicable Laws; or
- (6) the Company is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to this Agreement.

(e) **Termination**

- (1) Unless the Company remedies the matter described in a Notice given under Sub-Clause 15.1(d) [*Notice*] within fourteen (14) Days of receiving the Notice, the Contractor may by giving a second Notice to the Company immediately terminate this Agreement. The date of termination shall then be the date the Company receives this second Notice.
- (2) However, in the case of sub-paragraph (4), (5) or (6) of Sub-Clause 15.1(d) [*Notice*], by giving a Notice under Sub-Clause 15.1(d) the Contractor may terminate this Agreement immediately and the date of termination shall be the date the Company receives this Notice.
- (3) if the Contractor suffers delay and/or incurs Cost during the above period of fourteen (14) Days, the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to EOT and/or payment of such Cost.

15.2 Contractor's Obligations After Termination

After termination of this Agreement under Sub-Clause 14.6 [*Termination for Company's Convenience*] or Sub-Clause 17.5 [*Optional Termination*], the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Company's Representative for the protection of life or property or for the safety of the Works. If the Contractor incurs Cost as a result of carrying out such instructed work the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to be paid such Costs;
- (b) deliver to the Company's Representative all Contractor's Documents, Plant, Materials and other work for which the Contractor has received payment or for which it is entitled to payment; and

- (c) remove all other Goods from the Site, except as necessary for safety and unless the Contractor has been paid (or is entitled to be paid) the value of the Goods and leave the Site.

16. Care of the Works and Indemnities

16.1 Responsibility for Care of the Works

- (a) Unless this Agreement is terminated in accordance with these General Conditions or otherwise, subject to Sub-Clause 16.2 [*Liability for Care of the Works*] the Contractor shall take full responsibility for the care of the Works, Goods and Contractor's Documents from the Commencement Date until the Date of Completion of the Works, when responsibility for the care of the Works shall pass to the Company. If a Taking-Over Certificate is issued (or is deemed to be issued) for any Section or Part, responsibility for the care of the Section or Part shall then pass to the Company.
- (b) If this Agreement is terminated in accordance with these General Conditions or otherwise, the Contractor shall cease to be responsible for the care of the Works from the date of termination.
- (c) After responsibility has accordingly passed to the Company, the Contractor shall take responsibility for the care of any work which is outstanding on the Date of Completion, until this outstanding work has been Completed.
- (d) If any loss or damage occurs to the Works, Goods or Contractor's Documents, during the period when the Contractor is responsible for their care, from any cause whatsoever except as stated in Sub-Clause 16.2 [*Liability for Care of the Works*], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods or Contractor's Documents (as the case may be) comply with this Agreement.

16.2 Liability for Care of the Works

- (a) The Contractor shall be liable for any loss or damage caused by the Contractor to the Works, Goods or Contractor's Documents after the issue of a Taking-Over Certificate. The Contractor shall also be liable for any loss or damage, which occurs after the issue of a Taking-Over Certificate and which arose from an event which occurred before the issue of this Taking-Over Certificate, for which the Contractor was liable.
- (b) The Contractor shall have no liability whatsoever, whether by way of indemnity or otherwise, for loss or damage to the Works, Goods or Contractor's Documents caused by any of the following events (except to the extent that such Works, Goods or Contractor's Documents have been rejected by the Company's Representative under Sub-Clause 7.5 [*Defects and Rejection*] before the occurrence of any of the following events):
 - (1) interference, whether temporary or permanent, with any right of way, light, air, water or other easement (other than that resulting from the Contractor's method of construction) which is the unavoidable result of the execution of the Works in accordance with this Agreement;
 - (2) use or occupation by the Company of any part of the Permanent Works, except for a purpose indicated in or reasonably to be inferred from this Agreement;
 - (3) fault, error, Defect or omission in any element of the design of the Works by the Company or which may be contained in the Specification and Drawings (and which an experienced contractor exercising due care would not have discovered when examining the Site and the Specification and Drawings before submitting the Tender), other than design carried out by

- the Contractor in accordance with the Contractor's obligations under this Agreement;
- (4) any operation of the forces of nature (other than those allocated to the Contractor in the Contract Data) which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions;
 - (5) any Exceptional Event; and/or
 - (6) any act or default of the Company's Personnel or the Company's other contractors.
- (c) Subject to Sub-Clause 17.4 [*Consequences of an Exceptional Event*], if any of the events described in sub-paragraphs (1) to (6) above occurs and results in damage to the Works, Goods or Contractor's Documents the Contractor shall promptly give a Notice to the Company's Representative. Thereafter, the Contractor shall rectify any such loss and/or damage that may arise to the extent instructed by the Company's Representative. Such instruction shall be deemed to have been given under Sub-Clause 12.3(a) [*Variation by Instruction*].
- (d) If the loss or damage to the Works or Goods or Contractor's Documents results from a combination of:
- (1) any of the events described in sub-paragraphs (1) to (6) above, and
 - (2) a cause for which the Contractor is liable,
- and the Contractor suffers a delay and/or incurs Cost from rectifying the loss and/or damage, the Contractor shall subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] be entitled to a proportion of EOT to the extent that any of the above events have contributed to such delays and/or Cost.

16.3 Intellectual and Industrial Property Rights

- (a) In this Sub-Clause, "**infringement**" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Works or the Company; and "**claim**" means a third party claim (or proceedings pursuing a third party claim) alleging an infringement.
- (b) Whenever a Party receives a claim but fails to give Notice to the other Party of the claim within twenty-eight (28) Days of receiving it, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.
- (c) The Contractor shall indemnify and hold the Company harmless against and from any other claim (including legal fees and expenses) alleging an infringement which arises out of or in relation to:
 - (1) the Contractor's execution of the Works; or
 - (2) the use of Contractor's Equipment,

if a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at the indemnifying Party's cost) assume overall responsibility for negotiating the settlement of the claim, and/or 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 the Contractor's Personnel or the Company's Personnel, as the case may be) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to promptly assume overall responsibility for the conduct of any negotiations, litigation or arbitration after being requested to do so by the other Party.

16.4 Indemnities by Contractor

- (a) The Contractor shall indemnify and hold harmless the Company, the Company's Personnel, and their respective agents, against and from all third-party claims, damages, losses and expenses (including legal fees and expenses) in respect of:
- (1) bodily injury, sickness, disease or death of any person whatsoever arising out of or in the course of or by reason of the Contractor's execution of the Works, unless attributable to any negligence, wilful act or breach of this Agreement by the Company, the Company's Personnel, or any of their respective agents; and
 - (2) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
 - (A) arises out of or in the course of or by reason of the Contractor's execution of the Works, and
 - (B) is attributable to any negligence, wilful act or breach of this Agreement by the Contractor, the Contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.
- (b) To the extent, if any, that the Contractor is responsible for the design of part of the Permanent Works under Sub-Clause 4.1 [*Contractor's General Obligations*], and/or any other design under this Agreement, the Contractor shall also indemnify and hold harmless the Company against all acts, errors or omissions by the Contractor in carrying out the Contractor's design obligations that result in the Works (or Section or Part or major item of Plant, if any), when Completed, not being fit for the purpose(s) for which they are intended under Sub-Clause 4.1 [*Contractor's General Obligations*].

16.5 Contractor's Warranties

Without prejudice to any other warranties or representations in this Agreement, the Contractor warrants and represents to the Company that:

- (a) the Works shall be constructed and the workmanship shall conform strictly in accordance with applicable Standards, applicable Laws, applicable insurance requirements, and Schedule 4 [*Specification*] and that there shall not be, any departure from the requirements stated in this Agreement, except in accordance with Clause 12 [*Variations and Adjustments*] and/or otherwise approved, in writing, by the Company;
- (b) it shall not specify for use, approve the use of, or cause to be used, any Defective, deleterious and/or malicious Contractor's Equipment, Contractor's supplied Assets, Goods, documents or other things, services or resources that do not comply with the requirements of this Agreement, all applicable Standards, and all applicable Laws, and, in particular, that all such Goods and other things, services and resources, supplied by the Contractor, shall be:
- (1) new (except as otherwise required by this Agreement or approved in writing by the Company's Representative);
 - (2) free from any charge, lien, pledge, claim, mortgage, lease, easement, security interest or encumbrance of any kind; and
 - (3) free from material or structural Defects of any kind, the best and most suitable of their respective kinds for their intended uses and the Company's intended purpose of the Permanent Works and shall conform to their descriptions as set out in this Agreement;
- (c) it shall not cause or contribute to a data breach;

- (d) the Contractor's Personnel and Subcontractors are properly qualified, skilled, competent, experienced, trained, certified, licensed and fully capable, having regard to the nature and extent of the Works;
- (e) it shall, at all times, provide supervision, labour, construction materials, Contractor's Equipment and Temporary Works of sufficient quantity and quality so as to ensure that the Works are Completed by or within the Time for Completion;
- (f) the Works when constructed shall, from a construction perspective, meet the operational performance standards as set out in Schedule 4 [*Specification*];
- (g) the Works on Completion shall be fit for the Company's intended purpose and use set out in, or which can be reasonably inferred from, this Agreement; and
- (h) subject to the Contractor's obligations to rectify Defects, in accordance with Clause 11 [*Defects after Taking Over*], the Works shall be free from Defects and, in no event shall be Defective or incomplete by reason of:
 - (1) Defective workmanship;
 - (2) incorrect selection or quantities of material or equipment;
 - (3) Defective Goods or workmanship or that would prevent or interfere with the safe, uninterrupted operation of the Works for their intended purpose, or which would prevent the Works from complying with applicable building, electrical or other codes and with all applicable Laws, or which would prevent the Works from meeting the requirements contained in the Specifications and Drawings;
 - (4) incorrect or incomplete designs or other documents for which the Contractor is responsible;
 - (5) inadequate Site supervision by the Contractor or incorrect instructions issued by the Contractor; or
 - (6) Defective any act or omission of the Contractor or Contractor's Personnel.
- (i) it is, and shall continue to be, for the duration of this Agreement, adequately and properly insured and financed to meet all the financial obligations that it may be required to assume under this Agreement and it has, at all times, such resources, experience, qualifications and capability at its disposal, as may be required to enable it to perform its obligations under this Agreement;
- (j) the Works, on Completion, shall comply with all Standards set out in this Agreement, the Works have been and shall be tested to verify that they meet, as a minimum, the requirements set out in this Agreement (including all Laws), and Schedule 4 [*Specification*] or to any other Standards approved, in writing, by the Company;
- (k) it (nor any of the Contractor's Personnel) shall not participate, directly or indirectly in any Prohibited Act; and
- (l) except for customary promotional material, business entertainment limited in value in any instance to the reasonable cost of a business meal and/or as otherwise specifically authorized under this Agreement, it (nor any of the Contractor's Personnel) shall neither receive nor give, offer, pay or promise to pay, or accept, either directly or indirectly, anything of value to or from the Company, its Affiliates, trustees, officers, or Company's Personnel, Public Official or any their family members, in connection with any business opportunities which are the subject of this Agreement or in order to influence the award of any contract that has been, or which may be awarded by the Company, or the terms, performance, administration, extension or termination thereof.

17. Exceptional Events

17.1 Exceptional Events

- (a) **"Exceptional Event"** means an event or circumstance the occurrence of which:
- (1) is beyond a Party's control;
 - (2) the Party could not reasonably have provided against;
 - (3) having arisen, such Party could not reasonably have avoided or overcome; and
 - (4) is not substantially attributable to the other Party.
- (b) An Exceptional Event is limited to any of the following events or circumstances provided that conditions (1) to (4) above are satisfied:
- (1) war, hostilities (whether war be declared or not), invasion, act of foreign enemies in the Country;
 - (2) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war in the Country;
 - (3) riot, commotion or disorder by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors;
 - (4) strike or lockout not solely involving the Contractor's Personnel and other employees of the Contractor and Subcontractors;
 - (5) encountering munitions of war, explosive materials, ionizing radiation or contamination by radioactivity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity at the Site; or
 - (6) earthquake, tsunami, volcanic activity, hurricane or typhoon at the Site.
- (c) For the avoidance of doubt, save for events or circumstances expressly set out in Sub-Clauses 17.1(b)(1) to 17.1(b)(6) and the pre-requisites required in Sub-Clauses 17.1(a)(1)(1) to 17.1(a)(4), Exceptional Events shall not include any of the following:
- (1) the weather or climatic conditions at the Site other than to the extent set out in clause 17.1(b)(6);
 - (2) any epidemic or pandemic;
 - (3) the lack of funds on the part of Contractor (or any Subcontractors or suppliers);
 - (4) any failure to perform by the Contractor or Contractor's Personnel that is not the result of another element of Exceptional Event;
 - (5) any civil disobedience or go-slow or lockout;
 - (6) the inability to obtain or renew visas for expatriate employees of the Contractor;
 - (7) the inability to obtain or delays in obtaining any Government Authorizations;
 - (8) any late performance by a Subcontractors or supplier; or
 - (9) any delays or late delivery of Goods and/or other deliverables, implied, necessary and required for the Contractor to perform the Works, caused by supply chain disruption or interruption, congestion at a store, manufacturer's plant or elsewhere, an oversold condition of the market,

escalation of commodities, including gasoline or fuel prices, inefficiencies, or similar occurrences.

17.2 Notice of an Exceptional Event

- (a) If a Party is or will be prevented from performing any obligations under this Agreement due to an Exceptional Event (the "**affected Party**" in this Clause), then the affected Party shall give a Notice to the other Party of such an Exceptional Event, and shall specify the obligations, the performance of which is or will be prevented (the "**prevented obligations**" in this Clause).
- (b) This Notice shall be given within fourteen (14) Days after the affected Party became aware, or should have become aware, of the Exceptional Event, and the affected Party shall then be excused performance of the prevented obligations from the date such performance is prevented by the Exceptional Event. If this Notice is received by the other Party after this period of fourteen (14) Days, the affected Party shall be excused performance of the prevented obligations only from the date on which this Notice is received by the other Party.
- (c) Thereafter, the affected Party shall be excused performance of the prevented obligations for so long as such Exceptional Event prevents the affected Party from performing them. Other than performance of the prevented obligations, the affected Party shall not be excused performance of all other obligations under this Agreement.
- (d) However, the obligations of either Party to make payments due to the other Party under this Agreement shall not be excused by an Exceptional Event.

17.3 Duty to Minimise Delay

- (a) Each Party shall at all times use all reasonable endeavours to minimize any delay in the performance of this Agreement as a result of an Exceptional Event.
- (b) if the Exceptional Event has a continuing effect, the affected Party shall give further Notices describing the effect every twenty-eight (28) Days after giving the first Notice under Sub-Clause 17.2 [*Notice of an Exceptional Event*].
- (c) The affected Party shall immediately give a Notice to the other Party when the affected Party ceases to be affected by the Exceptional Event. If the affected Party fails to do so, the other Party may give a Notice to the affected Party stating that the other Party considers that the affected Party's performance is no longer prevented by the Exceptional Event, with reasons.

17.4 Consequences of an Exceptional Event

If the Contractor is the affected Party and suffers delay and/or incurs Cost by reason of the Exceptional Event of which he/she gave a Notice under Sub-Clause 17.2 [*Notice of an Exceptional Event*], the Contractor shall be entitled subject to Sub-Clause 19.2 [*Claims for Payment and/or EOT*] to EOT.

17.5 Optional Termination

- (a) If the execution of substantially all the Works in progress is prevented for a continuous period of eighty four (84) Days by reason of an Exceptional Event of which Notice has been given under Sub-Clause 17.2 [*Notice of an Exceptional Event*], or for multiple periods which total more than one hundred and eighty (180) Days due to the same Exceptional Event, then either Party may give to the other Party a Notice of termination of this Agreement.
- (b) In this event, the date of termination shall be the date seven (7) Days after the Notice is received by the other Party, and the Contractor shall proceed in accordance with Sub-Clause 15.2 [*Contractor's Obligations After Termination*].
- (c) After the date of termination, the Contractor shall, as soon as practicable, submit detailed supporting particulars (as reasonably required by the Company's Representative) of the value of the work done, which shall include:

- (1) the amounts payable for any work carried out for which a price is stated in this Agreement;
 - (2) the Cost of 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 the Company when paid for by the Company, and the Contractor shall place the same at the Company's disposal but shall remain at the risk of the Contractor until received by (or on behalf of) the Company; and
 - (3) any other Cost or liability which in the circumstances the Company's Representative agrees or determines that the Cost or liability was reasonably incurred by the Contractor in the expectation of completing the Works.
- (d) The Company's Representative shall determine the value of work done and shall issue a Payment Certificate, under Sub-Clause 13.6 [*Issue of PICA*], for the amount so agreed or determined, without the need for the Contractor to submit a Statement.

18. Insurance

18.1 General Requirements

- (a) Without limiting either Party's obligations or responsibilities under this Agreement, the Contractor shall effect and maintain all insurances for which the Contractor is responsible with insurers approved by the Company and in terms, both of which shall be subject to consent by the Company. These terms shall be consistent with terms (if any) agreed by both Parties before the date of the Effective Date. All insurance must include a waiver of subrogation with respect to Claims against the Company, its officers and representatives.
- (b) The insurances required to be provided under this Clause are the minimum required by the Company, and the Contractor may, at the Contractor's own cost, add such other insurances that the Contractor may deem prudent.
- (c) Prior to accessing the Site and thereafter whenever required by the Company, the Contractor shall produce the insurance policies, certificates of currency, renewal certificates or other evidence of compliance with the Contractor's insurance obligation under this Clause 18 [*Insurance*] as may be required by the Company, acting reasonably. As each premium is paid, the Contractor shall promptly submit either a copy of each receipt of payment to the Company (with a copy to the Company's Representative), or confirmation from the insurers that the premium has been paid.
- (d) If the Contractor fails to effect and keep in force any of the insurances required under Sub-Clause 18.2 [*Insurance to be provided by the Contractor*] then, and in any such case, the Company may effect and keep in force such insurances and pay any premium as may be necessary and recover the same from the Contractor from time to time by deducting the amount(s) so paid from any moneys due to the Contractor or otherwise recover the same as a debt from the Contractor. The provisions of Clause 19 [*Company's and Contractor's Claims*] shall not apply to this Sub-Clause.
- (e) If the Contractor fails to comply with any condition of the insurances effected under this Agreement, the Contractor shall indemnify the Company against all direct losses and claims (including legal fees and expenses) arising from such failure.
- (f) The Contractor shall also be responsible for the following:
 - (1) notifying the insurers of any changes in the nature, extent or programme for the execution of the Works;

- (2) the adequacy and validity of the insurances in accordance with this Agreement at all times during the performance of this Agreement; and
 - (3) ensuring that any incidents or losses that may give rise to a claim under any of the insurances effected under this Agreement are notified to the insurers and the Company, in accordance with the terms and conditions of the policies and Sub-Clause 1.3 [*Notices and Other Communications*].
- (g) The permitted deductible limits allowed in any policy shall not exceed the amounts stated in the Contract Data (if not stated, the amounts agreed with the Company).
- (h) Where there is a shared liability the loss shall be borne by each Party in proportion to each Party's liability, provided the non-recovery from insurers has not been caused by a breach of this Clause by the Contractor or the Company. In the event that non-recovery from insurers has been caused by such a breach, the defaulting Party shall bear the loss suffered.
- (i) Except for any insurance policies that are in the joint names of the Parties, the Company shall not, under any circumstances, be obligated to disclose to the Contractor or any of the Contractor's Personnel details of any insurance it may effect and maintain in relation to the Project or otherwise.

18.2 Insurance to be provided by the Contractor

The Contractor shall provide the following insurances:

- (a) **The Works – NA.**
 - (1) The Contractor shall insure and keep insured in the joint names of the Contractor and the Company from the Commencement Date until the expiry of the indemnity period stated in the Contract Data.
 - (2) The insurance cover shall cover the Company and the Contractor against all loss or damage from whatever cause arising until the issue of the Taking-Over Certificate for the Works. Thereafter, the insurance shall continue until the date of the issue of the Performance Certificate in respect of any incomplete work for loss or damage arising from any cause occurring before the date of the issue of the Taking-Over Certificate for the Works, and for any loss or damage occasioned by the Contractor in the course of any operation carried out by the Contractor for the purpose of complying with the Contractor's obligations under Clause 11 [*Defects after Taking Over*] and Clause 9 [*Tests on Completion*].
 - (3) However, the insurance cover provided by the Contractor for the Works may exclude any of the following:
 - (A) the cost of making good any part of the Works which is Defective (including Defective material and workmanship) or otherwise does not comply with this Agreement, provided that it does not exclude the cost of making good any loss or damage to any other part of the Works attributable to such Defect or non-compliance;
 - (B) indirect or consequential loss or damage including any reductions in the Contract Price for delay;
 - (C) wear and tear, shortages and pilferages; and
 - (D) unless otherwise stated in the Contract Data, the risks arising from Exceptional Events.
- (b) **Goods**

- (1) The Contractor shall insure, in the joint names of the Contractor and the Company, the Goods and other things brought to Site by the Contractor to the extent specified and/or amount stated in the Contract Data (if not specified or stated, for their full replacement value including delivery to Site).
 - (2) The Contractor shall maintain this insurance from the time the Goods are delivered to the Site until they are no longer required for the Works.
- (c) **Liability for breach of professional duty**
 - (1) To the extent, if any, that the Contractor is responsible for the design of part of the Permanent Works under Sub-Clause 4.1 [*Contractor's General Obligations*], and/or any other design under this Agreement, and consistent with the indemnities specified in Clause 16 [*Care of the Works and Indemnities*]:
 - (A) the Contractor shall effect and maintain professional indemnity insurance against liability arising out of any act, error or omission by the Contractor in carrying out the Contractor's design obligations in an amount not less than that stated in the Contract Data (if not stated, the amount agreed with the Company); and
 - (B) if stated in the Contract Data, such professional indemnity insurance shall also indemnify the Contractor against liability arising out of any act, error or omission by the Contractor in carrying out the Contractor's design obligations under this Agreement that results in the Works (or Section or Part or major item of Plant, if any), when Completed, not being fit for the purpose(s) for which they are intended under Sub-Clause 4.1 [*Contractor's General Obligations*].
 - (2) The Contractor shall maintain this insurance for the period specified in the Contract Data.
- (d) **Injury to persons and damage to property**
 - (1) The Contractor shall insure, in the joint names of the Contractor and the Company, against liabilities for death or injury to any person, or loss of or damage to any property (other than the Works) arising out of the performance of this Agreement and occurring before the issue of the Performance Certificate, other than loss or damage caused by an Exceptional Event.
 - (2) The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and the Company as separate insureds.
 - (3) Such insurance shall be effected before the Contractor begins any work on the Site and shall remain in force until the issue of the Performance Certificate and shall be for not less than the amount stated in the Contract Data (if not stated, the amount agreed with the Company).
- (e) **Injury to employees**
 - (1) The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising out of the execution of the Works in respect of injury, sickness, disease or death of any person employed by the Contractor or any of the Contractor's Personnel as stated in the Contract Data.
 - (2) The Company and the Company's Representative shall also be indemnified under the policy of insurance, except that this insurance may

exclude losses and claims to the extent that they arise from any act or neglect of the Company or of the Company's Personnel.

- (3) The insurance shall be maintained in full force and effect during the whole time that the Contractor's Personnel are assisting in the execution of the Works. For any person employed by a Subcontractor, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for the Subcontractor's compliance with this Sub-Clause 18.

(f) **Other instances required by Laws and by local practice**

- (1) The Contractor shall provide all other insurances required by the Laws of the countries where (any part of) the Works are being carried out, at the Contractor's own cost.
- (2) Other insurances required by local practice (if any) shall be detailed in the Contract Data and the Contractor shall provide such insurances in compliance with the details given, at the Contractor's own cost.
- (3) The Company's acceptance of or non-objection to the Contractor's insurance certificates or policies shall not relieve the Contractor of any obligation or liability under this Agreement.

19. Company's and Contractor's Claims

19.1 Claims

- (a) A Claim includes:
 - (1) a claim by the Company to be entitled to any additional payment from the Contractor (or reduction in the Contract Price) and/or to an extension of the DNP;
 - (2) a claim by the Contractor to be entitled to any additional payment from the Company and/or to EOT; or
 - (3) a claim by either Party to any other entitlement or relief against the other Party. Such other entitlement or relief may be of any kind whatsoever (including in connection with any certificate, determination, instruction, Notice, opinion or valuation of the Company's Representative), except to the extent that it involves any entitlement referred to in sub-paragraphs (1) and/or (2) above.
- (b) In the case of a Claim under sub-paragraph (1) or (2) above, Sub-Clause 19.2 [*Claims for Payment and/or EOT*] shall apply.
- (c) In the case of a Claim under sub-paragraph (3) of Sub-Clause (a) above, where the other Party or the Company's Representative has disagreed with the requested entitlement or relief (or is deemed to have disagreed if he/she does not respond within a period of thirty (30) Days), either Party may refer the matter for resolution under Sub-Clause 20 [*Disputes*].

19.2 Claims for Payment and/or EOT

If either Party considers that he/she is entitled to any additional payment by the other Party (or, in the case of the Company, a reduction in the Contract Price) and/or to EOT (in the case of the Contractor) or an extension of the DNP (in the case of the Company) under any Clause of these General Conditions or otherwise in connection with this Agreement, the following Claim procedure shall apply:

(a) **Notice of Claim**

- (1) The claiming Party shall give a Notice in accordance with this Clause 19 [*Company's and Contractor's Claims*] of this Agreement, to the Company's

Representative, describing the event or circumstance giving rise to the cost, loss, delay or extension of DNP for which the Claim is made as soon as practicable. In respect of the Contractor, the Contractor's Notice shall be served no later than twenty-eight (28) Days after the Contractor became aware, or should have become aware, of the event or circumstance (the "Notice of Claim" in these General Conditions).

- (2) If the Contractor fails to give a Notice of Claim within this period of twenty-eight (28) Days, the Contractor shall not be entitled to any additional payment, the Contract Price shall not be increased, the Time for Completion shall not be extended (in the case of the Contractor) and the Company shall be discharged from any liability in connection with the event or circumstance giving rise to the Claim.

(b) **Contemporary records**

- (1) In this Sub-Clause 19.2, "contemporary records" means records that are prepared or generated at the same time, or immediately after, the event or circumstance giving rise to the Claim.
- (2) The claiming Party shall keep such contemporary records as may be necessary to substantiate the Claim.
- (3) Without admitting the Company's liability, the Company's Representative may monitor the Contractor's contemporary records and/or instruct the Contractor to keep additional contemporary records. The Contractor shall permit the Company's Representative to inspect all these records during normal working hours (or at other times agreed by the Contractor) and shall if instructed submit copies to the Company's Representative. Such monitoring, inspection or instruction (if any) by the Company's Representative shall not imply acceptance of the accuracy or completeness of the Contractor's contemporary records.

(c) **Fully detailed Claim**

- (1) In this Sub-Clause 19.2, "fully detailed Claim" means a submission which includes (so far as is reasonably practicable at the date of its submission):
 - (A) a detailed description of the event or circumstance giving rise to the Claim;
 - (B) a statement of the contractual and/or other legal basis of the Claim;
 - (C) all contemporary records on which the claiming Party relies; and
 - (D) detailed supporting particulars of the amount of additional payment claimed (or amount of reduction of the Contract Price in the case of the Company as the claiming Party), and/or EOT claimed (in the case of the Contractor) or extension of the DNP claimed (in the case of the Company).
- (2) The Contractor shall submit a fully detailed Claim to the Company's Representative within forty-two (42) Days of submitting a valid and compliant Notice pursuant to Sub-Clause 19.2(a) [*Notice of Claim*].
- (3) The Company shall submit a fully detailed Claim to the Contractor as soon as it considers it reasonably practicable to do so.
- (4) If the Contractor fails to give a fully detailed claim within the period referred to under Sub-Clause 19.2(c)(2), the Contractor shall not be entitled to any additional payment, the Contract Price shall not be increased, the Time for

Completion shall not be extended (in the case of the Contractor) and the Company shall be discharged from any liability in connection with the event or circumstance giving rise to the Claim.

- (5) If the event or circumstance giving rise to the Claim has a continuing effect, Sub-Clause 19.2(e) [*Claims of continuing effect*] shall apply, except where the Contractor has failed to give a Notice of Claim within the period referred to under Sub-Clause 19.2(a) [*Notice of Claim*] or a fully detailed claim within the period referred to under Sub-Clause 19.2(c)(2), in which case Sub-Clauses 19.2(a)(2) or 19.2(c)(4) shall apply (as applicable).

(d) **Agreement or Determination of the Claim**

- (1) After receiving a fully detailed Claim either under Sub-Clause 19.2(c) [*Fully detailed Claim*], or an interim or final fully detailed Claim (as the case may be) under Sub-Clause 19.2(e) [*Claims of continuing effect*], the Company's Representative shall determine:

- (A) the additional payment (if any) to which the claiming Party is entitled or the reduction of the Contract Price (in the case of the Company as the claiming Party); and/or
- (B) the extension (if any) of the Time for Completion (before or after its expiry) under Sub-Clause 8.5 [*Extension of Time for Completion*] (in the case of the Contractor as the claiming Party),

to which the claiming Party is entitled under this Agreement.

- (2) If, having received the fully detailed Claim under Sub-Clause 19.2(c) [*Fully detailed Claim*], or in the case of a Claim under Sub-Clause 19.2(e) [*Claims of continuing effect*] an interim or final fully detailed Claim (as the case may be), the Company's Representative requires necessary additional particulars:

- (A) within fifty six (56) Days from receiving the fully detailed Claim, he/she shall promptly give a Notice to the claiming Party, describing the additional particulars and the reasons for requiring them;
- (B) as soon as practicable and no later than twenty eight (28) Days after receiving the Notice under Sub-Clause 19.2(d)(2)(A) above, the claiming Party shall submit the additional particulars; and
- (C) the Company's Representative shall then determine the matters under Sub-Clauses 19.2(d)(1)(A) and/or 19.2(d)(1)(B) above.

(e) **Claims of continuing effect**

Subject always to Sub-Clause 19.2(c)(5), if the event or circumstance giving rise to a Claim under this Sub-Clause 19.2 [*Claims for Payment and/or EOT*] has a continuing effect:

- (1) the fully detailed Claim submitted under Sub-Clause 19.2(c) [*Fully detailed Claim*] shall be considered as interim;
- (2) after submitting the first interim fully detailed Claim the claiming Party shall submit further interim fully detailed Claims at Monthly intervals, giving the accumulated amount of additional payment claimed (or the reduction of the Contract Price, in the case of the Company as the claiming Party),

and/or EOT claimed (in the case of the Contractor as the claiming Party) or extension of the DNP (in the case of the Company as the claiming Party); and

- (3) the claiming Party shall submit a final fully detailed Claim within twenty-eight (28) Days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the claiming Party and agreed by the Company's Representative. This final fully detailed Claim shall give the total amount of additional payment claimed (or the reduction of the Contract Price, in the case of the Company as the claiming Party), and/or EOT claimed (in the case of the Contractor as the claiming Party) or extension of the DNP (in the case of the Company as the claiming Party).

(f) **General requirements**

- (1) At any time and from time to time before making a final determination of a Claim, the Company's Representative may require a Party to provide any information or clarification as to the Claim which that Party is able to provide and which the Company's Representative reasonably requires to assist in making the determination, and that Party shall provide such information or clarification without delay.
- (2) After receiving the Notice of Claim, and until the Claim is agreed or determined under Sub-Clause 19.2(d) [Agreement or Determination of the Claim], in each Payment Certificate the Company's Representative shall include such amounts for any Claim as have been reasonably substantiated as due to the claiming Party under the relevant provision of this Agreement.
- (3) No Claim, disagreement or difference between the Parties to which this Clause 19 [*Company's and Contractor's Claims*] applies may be referred to arbitration under Sub-Clause 20.5 [*Arbitration*] other than in accordance with this Clause 19 [*Company's and Contractor's Claims*] or Clause 20 [*Disputes*] (as applicable) and except where a provision of this Agreement (including Sub-Clause 8.8 [*Delay Damages*]) expressly provides that Clause 19 [*Company's and Contractor's Claims*] do not apply or do not need to be complied with.
- (4) The requirements of this Sub-Clause 19.2 [*Claims for Payment and/or EOT*] are in addition to those of any other Sub-Clause which may apply to the Claim. If the Contractor fails to comply with this or any other Sub-Clause in relation to the Claim, the Contractor shall not be entitled to any additional payment, the Contract Price shall not be increased, the Time for Completion shall not be extended and the Company shall be discharged from any liability in connection with the event or circumstance giving rise to the Claim.
- (5) The Contractor's entitlement to any additional payment and/or an EOT will be reduced to the extent such delay or increased cost is caused or materially contributed to by:
 - (A) any acts or omissions of the Contractor relating to any other Works which the Contractor may be carrying out for the Company pursuant to other contracts, in respect of which the Contractor is not entitled to relief pursuant to such contracts;
 - (B) a negligent act or omission, breach of contract or other default on the part of the Contractor or any one for whom the Contractor is responsible (including its Subcontractors, or any

of their respective employees, servants, agent, subcontractors and/or suppliers); or

- (C) the Contractor's failure to take all reasonable steps to avoid or mitigate without diverging from the requirements of this Agreement.

20. Disputes

20.1 Procedures to settle Disputes

- (a) The procedure that is to be followed to settle a Dispute is as follows:
- (1) first, issue of a Notice of Dispute under clause 20.2 [*Notice of dispute and response*];
 - (2) second, negotiation of the Dispute between the Company's Representative and the Contractor's Representative under clause 20.3 [*Meeting in good faith between Company's Representative and Contractor's Representative*];
 - (3) third, negotiation of the Dispute between senior representatives of the Parties under clause 20.4 [*Meeting in good faith between senior representatives of the Parties*]; and
 - (4) finally, arbitration.

20.2 Notice of dispute and response

- (a) In the event of a Dispute either Party will deliver (by hand or sent by certified mail or facsimile transmission) a written notice to the other Party which identifies the Dispute (**Notice of Dispute**).
- (b) A Party delivering a Notice of Dispute must provide enough information about the Dispute for the other Party to reasonably understand:
- (1) the alleged facts on which the claim is based;
 - (2) the legal basis on which the claim is made; and
 - (3) the relief that is claimed.
- (c) Within ten (10) Business Days of a Notice of Dispute being delivered the receiving Party will deliver (by hand, certified mail or facsimile transmission) a written response to the other Party stating:
- (1) its position in relation to the Dispute; and
 - (2) the basis for its position.

20.3 Meeting in good faith between Company's Representative and Contractor's Representative

- (a) If a Notice of Dispute is delivered, the Company's Representative and the Contractor's Representative will, within twenty (20) Business Days of the Notice of Dispute being delivered, meet for the purpose of:
- (1) resolving the Dispute, in whole or in part; or
 - (2) considering whether a process other than that already provided for under this Agreement should be used to resolve the Dispute.
- (b) At a without prejudice meeting under clause 20.3(a):
- (1) the Company's Representative and the Contractor's Representative should have the authority to resolve the Dispute;

- (2) unless otherwise agreed in writing, all communications shall be deemed to occur on a without prejudice basis; and
- (3) any agreement must be in writing and signed by both Parties.

20.4 Meeting in good faith between senior representatives of the Parties

- (a) In the event the Dispute cannot be resolved within thirty (30) Business Days of the date of delivery of the Notice of Dispute, the Company's chief executive officer and the Contractor's chief executive officer will meet for the purpose of:
 - (1) resolving the Dispute, in whole or in part; or
 - (2) considering whether a process other than that already provided for under this Agreement should be used to resolve the Dispute.
- (b) At a without prejudice meeting under clause 20.4 [Meeting in good faith between senior representatives of the Parties]:
 - (1) the representatives of the Parties should have the authority to resolve the Dispute;
 - (2) unless otherwise agreed in writing, all communications will be deemed to occur on a without prejudice basis; and
 - (3) any agreement must be in writing and signed by both Parties.

20.5 Arbitration

- (a) In the event the Dispute cannot be resolved within forty (40) Business Days after the date of delivery of the Notice of Dispute, either Party may commence arbitration in accordance with the following:
 - (1) The seat of the arbitration shall be London, England, and the arbitration shall be conducted in the English language.
 - (2) The venue of the arbitration shall be London or in another location as agreed to between the parties.
- (b) The arbitration shall be conducted by three arbitrators, in accordance with the rules of the London Court of International Arbitration (the "**LCIA**") in effect at the time of the arbitration (the "**LCIA Rules**"), except as they may be modified herein or by mutual agreement of the Parties.
- (c) Subject to Art. 8 of the LCIA Rules currently in effect or any equivalent provision in subsequent editions of the LCIA Rules, each Party shall nominate one arbitrator within 30 days of receipt of the request for arbitration. The two arbitrators so nominated shall nominate the third arbitrator within 30 days after the appointment of the later-nominated of these two arbitrators. The third arbitrator, once appointed, shall act as the presiding arbitrator. The LCIA Court shall have the power to make any default appointments in accordance with the LCIA Rules.
- (d) In order to facilitate the comprehensive resolution of related disputes, and upon request of any party to the arbitration proceeding, the arbitral tribunal shall have the power to order, with the approval of the LCIA Court, the consolidation of the arbitration proceeding with any other arbitration proceeding relating to this Agreement.
- (e) Every award (including reasons for such award) shall be final and binding on the Parties. The Parties undertake to carry out any award immediately and without any delay; and also waive irrevocably their right to any form of appeal, review or recourse to any state court or other legal authority, insofar as such waiver shall not be prohibited under any applicable law.

20.6 Interlocutory relief

This clause 20 [Disputes] does not prevent any Party from seeking urgent interlocutory or

declaratory relief from a court of competent jurisdiction where, in that Party's reasonable opinion, that action is necessary to protect its rights.

20.7 Survival of clause

The obligations in this clause 20 [*Disputes*] shall survive the expiry or termination of this Agreement for any reason.

Schedule 1: Not Used

Schedule 2: Not Used

Schedule 3: List of Company Provided Items:

The following Items will be provided by Company without any additional charges. Contractor to make sure the proper use of the items provided by the Company.

- HDPE
- Bidiem
- Stones for Stone Pitching
- Aggregates

Any excess consumption of the Company provided items over the agreed norms will be back charged to the Contractor at Cost plus basis.

Schedule 4: Specification

Schedule 4 [*Specification*], including:

- 1 Scope of Works Document No. XX and
- 2 Engineering Document List (EDL) No. XXXXXXXXX (containing all specifications, drawings, datasheets, standards, etc.),

describes the Company's requirements and, as incorporated by reference as if they are fully stated in this Schedule, the Specification, Drawings and the Bill of Quantities, and including any attachments, documentation and/or material referred therein.

The Company's requirements, Specification, Drawings and Bill of Quantities represent the minimum requirements to which the Contractor must adhere in performing the Works. The Company, in its sole discretion, may add additional documentation and material to the list set out in the EDL, as necessary, during the execution and performance of the Works.

The Contractor shall be solely responsible for obtaining from the Company all existing current statement of requirements, the Specification, Drawings, Bill of Quantities, Standards, manuals and other documentation, as may be required by it in order to inform the Contractor's performance of the Works.

The Contractor shall perform the Works in their entirety (except where indicated, if at all, as "Optional in the Company Discretion") in accordance with the Project documents, specified in this Schedule [*Specification*] and the terms and conditions of the Agreement.

Schedule 5: Contract Price

5.1 Preamble to Bill of Quantities

1. GENERAL

- 1.1 The **General Conditions** of Contract, the Particular Conditions of Contract (if any), the **Specifications** (including the **Project** specification) and the **Drawings** are to be read in conjunction with the Bill of Quantities.
- 1.2 Descriptions in the Bill of Quantities are abbreviated and have been drawn up generally in accordance with the latest issue of South African National **Standards** (SANS 1200) Standardized **Specifications** for Civil Engineering Construction as amended by the Amendments to the Standardized **Specifications** but, should any of the items of the Bill of Quantities conflict with any requirement for measurement or payment given in **Specification**, the requirement of the **Specification** shall prevail.
- 1.3 The **Contractor** is advised to read carefully the item descriptions in the Bills of Quantities. Where a description of material or procedure in the description conflicts with the relevant Clause of the **Specifications**, or with any **Drawings** forming part of the RFP **Documents**, the attention of **Construction of Float Tailings Storage Facility 1m Downstream lift** shall immediately be drawn to such a conflict and the conflict shall be resolved by specific instruction. No **Claim** whatsoever will be allowed in respect of errors in pricing due to brevity of descriptions, which are fully, described when read in conjunction with other relevant sections of the contract.
- 1.4 Should there be any doubt or obscurity as to the meaning of any item, the **Contractor** must obtain an explanation in writing from **FTSF Downstream 1m Lift**. No **Claims** for extras arising from any such doubt or obscurity will be considered after submission of the proposal.
- 1.5 The **Contractor** is hereby advised that the whole of the contents of the Bill of Quantities (BOQ or direct costs) must be considered as "Fixed Rate" for each and every measured item and the quantities are therefore subject to re-measurement and adjustment in part or as whole. Any errors (whether in quantity excess or shortfall and/or in items being insufficiently or incorrectly described) will be adjusted once the relevant **Drawings** are completed and issued for construction. Although every endeavour will be made to ensure the correctness of such adjustments, the Bill of Quantities shall still be considered as provisional and therefore subject to re-measurement and adjustment in part or as whole. Any errors thereon will be adjusted on **Completion** of the contract by **FTSF**. No **Claims** whatsoever arising due to the Bill of Quantities being used for ordering purposes will be entertained.
- 1.6 The Bill of Quantities comprises items covering the **Contractor's** profit, overheads, costs of general liabilities and duties (if needed) of the construction of temporary and permanent **Works**.
- 1.7 The rates and prices to be inserted in the schedule of quantities are to be the full inclusive value of the work described under the several items, including all costs and expenses (e.g. consumables, fuel, labour salaries, insurances, medicals, transportation, duties, etc) which may be required in and for the construction and installation of the Work described in the Bill of Quantities and **Specifications**, together with all general risks, liabilities and obligations set forth or to be implied in the several **Documents** forming the contract. Where special risks, liabilities and obligations cannot be dealt with as above, then the price thereof is to be separately stated in the item or items provided for that purpose. No liability whatsoever will be accepted in respect of errors due to the foregoing.

- 1.8 The **Contractor** is at liberty to insert a rate of his own choosing for each item in the Bill of Quantities and his attention is drawn to the fact that the **Contractor** has the right, under various circumstances, to payment for additional **Works** carried out and that **FTSF** is obliged to base the assessment of the rates to be paid for such additional work on the rates inserted in the Bill of Quantities by the **Contractor**. A price or rate is to be entered against each item in the Bill of Quantities, whether the quantities are stated or not. An item against which no price or rate is entered will be considered to be covered by the other prices or rates in the Bill of Quantities.
- 1.9 Clause 8 of each SANS 1200 **Specification** and the measurement and payment clause of each **Specification**, read together with the relevant clauses of the **Project Specification**, set out what ancillary or associated activities are included in the rate for the operations specified.
- 1.10 Unless otherwise stated, items are measured nett in accordance with the **Drawings**, and no allowance has been made for waste in the quantities, any allowance for waste must be included in the rates.
- 1.11 The **Contractor** shall check his own item extensions and total additions. The prices in the Bill of Quantities shall predominate, and if there are any errors in the extensions, any such errors shall be adjusted accordingly and be reflected in an adjusted **Contract Price** subject to the understanding that if there is any obvious mistake in the rate of any item, in the opinion of **FTSF**, the **Contractor** will be called upon to adjust the said rate(s) and the **Contract Price** accordingly.
- 1.12 Rates inserted in the Bill of Quantities shall allow for all abnormal working hours as may be necessary to execute the **Works**.
- 1.13 In the event of there being any contradiction or ambiguity between the Bill of Quantities and any other part of this Contract, then the Bill of Quantities will take precedence only in so far as unit rates and prices are applicable. The quantities have been assessed from the **Information** available at time of **Tender** and shall be revised to the actual **Works** as required on **Site**.
- 1.14 All rates inserted in the Bill of Quantities must exclude V.A.T. In-country labour taxes and import duties should be included and accounted for in the rates.
- 1.15 V.A.T. shall be added only when invoices are submitted in accordance with the statutory requirement.
- 1.16 The following units of measurement and abbreviations shall be used,

Unit	Abbreviation
Millimetre	Mm
Metre	M
Square Millimetre	mm ²
Square Metre	m ²
Hectare	ha or Ha
Cubic Metre	m ³
Kilogram	kg or Kg
Cubic metre kilometre	m ³ .km
Kilometre	km or Km
Tonne	ton or Ton
Sum	sum or Sum
Item	Item
Number	No
Hour	Hr
Week	Wk.

Day	Day
Minute	Min
Second	Sec
Deci cubic metre	dm ³
Litre	L

- 1.17 All quantities are to be calculated to two decimals unless otherwise stated in the Bill of Quantities.
- 1.18 The payment of all items in the Bill of Quantities will be made as nett and only when fixed in the **Works**.
- 1.19 Where any items are required to be passivated, pickling is deemed to be included. Pickling and passivation will be included in the relevant rate.
- 1.20 Salvage material
- 1.20.1 Designated salvage material to be stacked in salvage yard within a free-haul distance as indicated by **FTSF**. The **Contractor** shall cart material not designated for salvage off the **Site** daily. The **Contractor** is to note that all salvage material shall remain the property of the **Company**, unless otherwise agreed in writing by **FTSF**. The **Contractor** is to ensure that all designated salvage material is properly documented and signed for by **FTSF** upon delivery to the designated salvage yard.
- 1.21 Alteration work and changeovers
- 1.21.1 The **Contractor** shall prior to the commencement of any work to existing, submit to **FTSF** for his approval the method and sequence of work to be done.
- 1.21.2 During the execution of the **Contract** care is to be taken not to damage any existing structure, pipelines, services or equipment. Any damage to such is to be rectified, at the instruction of **FTSF**, to the original condition at the expense of the **Contractor**.
- 1.21.3 When structures, pipelines, services, equipment, and any other items are likely to impede the **Contractor's** progress, relocation of the structures, pipelines, services, equipment, and other such items are only to be carried out under express **Direction** of **FTSF**. Such likely impediment of progress is to be brought to **LEP** notice as soon as it becomes evident.
- 1.22 Provisional *bill of quantities*
- 1.22.1 The quantities contained in the *bill of quantities* are provisional and are subject to re-measurement.

2. PRELIMINARY AND GENERAL

- 2.1 Provision has been made within this Bill of Quantities for the **Contractor** to separately include for Fixed Charge and Time Related items as he deems appropriate in accordance with SANS 1200A.
- 2.2 The **Contractor** is required to submit a detailed breakdown of Preliminary and General items as priced in the Bill of Quantities. The Preliminary and General breakdown submitted will be used to ascertain costs in the event of additional work or Contract

- 2.3 Escalation and/or extension of time being required of the **Contractor** subject to the approval by **FTSF** of the duration, number and category of staff and equipment employed.
- 2.4 The detailed breakdown must clearly indicate the categories, durations (start and finish dates) and rates for all the items scheduled in the Preliminary and General.

3. CIVIL WORKS

3.1 Survey Control

- 3.1.1 On the handing over of structures the **Contractor** will submit “as-built” surveys for **FTSF** to approve.
- 3.1.2 Where excavations require quantification for whatever reason, the survey must be agreed to by **FTSF** prior to any further work commencing.

3.2 Earthworks

- 3.2.1 A survey of the **Site** will be done by the **Contractor's** land surveyor before stripping of topsoil may commence. This survey will form the basis for the final account and will be agreed between **FTSF** and the **Contractor**. Needs to be signed-off by both parties and classification needs to be done by a competent person where needed on the relevant surveys.
- 3.2.2 The total volume of cut or borrow to fill will be computed between the natural ground level (NGL), taking topsoil strip into account, and the design levels.
- 3.2.3 Topsoil strip will be deducted from this cut and fill volumes and paid separately.
- 3.2.4 Only intermediate or hard rock excavation as classified and approved by **FTSF** shall be certified for payment. Signed and approved surveyed levels of the different material classifications will be submitted prior to certification.
- 3.2.5 The **Contractor** shall notify and record, for approval, existing services that intersect or adjoin excavations. Only approved **Records** of existing services which intersect or adjoin an excavation shall be assessed for payment.
- 3.2.6 No bulking factors shall be applied in any earthworks measure. Excavation and backfill shall be measured compacted and to the design levels and dimensions.

3.3 Civil Works

- 3.3.1 Propping shall only be measured to beams and suspended slabs in stages.
- 3.3.2 The mass of reinforcing will be calculated in accordance with the standard dimensions for rounds as published by the South African Institute of Steel Construction (Latest Edition).

3.4 Building work

- 3.4.1 Building work items not covered in the SANS 1200 standardised **Specification** have been drawn up and measured in accordance with the “Standard System of Measuring Building Work”, (latest edition), as issued by the Association of South African Quantity Surveyors. All trades specified are to be in accordance with the “Model Preambles for Trades” (latest edition), as

recommended and published by the Association of South African Quantity Surveyors.

4. **VARIATIONS AND ADDITIONS TO CLAUSE 8: MEASUREMENT AND PAYMENT OF SANS 1200 STANDARDISED SPECIFICATION FOR CIVIL ENGINEERING CONSTRUCTION**

PSA PRELIMINARY AND GENERAL.

PSA8.3 FIXED CHARGED AND VALUE RELATED ITEMS:
ADD THE FOLLOWING NEW ITEMS

PSA8.3.5 HEALTH AND ENVIRONMENTAL:

“Safety, Health and Environmental requirements of **LEP**.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost of all Safety, Health and Environmental requirements of **FTSF**.

PSA8.3.6 SECURITY:

“Security including erection of manual boom gates and suitable guard shelter.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost of security including erection of manual boom gates and suitable guard shelter etc.

PSA8.3.7 STORMWATER AND DRAINAGE:

“Management of stormwater and drainage.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost associated with the management of stormwater and drainage etc.

PSA8.3.8 WASTE MANAGEMENT:

“Waste Management.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost associated with the waste management etc.

PSA8.3.9 TRAFFIC MANAGEMENT:

“Traffic Management on Public and Third Party Access Roads.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost associated with the traffic management on public and third party access roads etc.

PSA8.3.10 DUST MANAGEMENT:

“Dust Management.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost associated with the dust management etc.

PSA8.4 TIME RELATED ITEMS:
ADD THE FOLLOWING NEW ITEMS

PSA8.4.6 HEALTH AND ENVIRONMENTAL:

“Safety, Health and Environmental requirements of **FTSF**.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost of all Safety, Health and Environmental requirements of **FTSF**.

PSA8.4.7 SECURITY:

“Security including erection of manual boom gates and suitable guard shelter.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost of security including erection of manual boom gates and suitable guard shelter etc.

PSA8.4.8 STORMWATER AND DRAINAGE:

“Management of stormwater and drainage.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost associated with the management of stormwater and drainage etc.

PSA8.4.9 WASTE MANAGEMENT:

“Waste Management.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost associated with the waste management etc.

PSA8.4.10 TRAFFIC MANAGEMENT:

“Traffic Management on Public and Third Party Access Roads.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost associated with the traffic management on public and third party access roads etc.

PSA8.4.11 DUST MANAGEMENT:

“Dust Management.”

Note: The unit of measurement for the above item shall be sum.
This unit rate shall cover the cost associated with the dust management etc.

PSG – CONCRETE (STRUCTURAL)

PSG 8.1.3.1 Concrete

Clause c) shall be replaced with the following:

“Blinding layers will be measured to the net plan area of the concrete structure resting on the blinding. Rates are to allow for any necessary formwork or for additional blinding where additional excavation was carried out. Items will be scheduled for blinding in square metres stating the minimum thickness and grade of concrete.”

5. LOCATION STRUCTURE FOR THIS CONTRACT

WBS Code	WinQS Location Code	Description
	A	General
	AA	Preliminary & General
	AAA	Preliminary & General
	AAAA	Preliminary & General
1000	B	Mining - OP
1200	BA	Mine Infrastructure Area & Services
1230	BAA	Central Facilities
1231	BAAA	HIA Offices
1211	BAAB	Bulk Site Earthworks
1214	BAAC	Site Security Fencing
1240	BAB	Mine Equipment Maintenance Facilities
1241	BABA	Fuel Storage
1243	BABB	HV Maintenance Workshop
1243	BABC	HV Overhaul Workshop
1244	BABD	HV Tyre Change
1245	BABE	Truck Wash Facility
1260	BAC	Water Services
1260	BACA	Water Services
1290	BAD	Mine Infrastructure Area & Services Facilities & Servic
1270	BADA	SS-001 - TR2 L.I.A Substation
1270	BADB	SS-002 - TR2 HV Workshop and Washdown Sub
1270	BADC	SS-004 - TR2 LIA Building Sub
1280	BADD	HIA Compressed Air Services
6000	F	Internal Infrastructure
6100	FA	On-Site Infrastructure
6100	FAE	LV, HME Roads
6128	FAEA	LV ROADS - ROAD R6
6128	FAEE	LV ROADS - ROAD R17
6128	FAEF	LV ROADS - ROAD R18

5.2 Bill of Quantities

Refer to the attached Bill of Quantities Float Tailings Storage Facility 1m Detailed Design Bill of Quantities.

Schedule 6: Milestones

The Contractor's programme must comply with all requirements in this Agreement and this Schedule 6 and in accordance with the Contractor Planning Specification No..

In accordance with sub-clause 8.3 the Contractor's programme must incorporate and adhere to the following milestones:

- Table 6 1: Definition of Sections
- Table 6-2: Drawing

Table 6-1: Definition of Sections

Section No.	Description of parts of the Works that designated a Section for the purposes of the Agreement (Sub-Clause 1.1)	Time for Completion (Sub-Clause 1.1)	Delay Damages (Sub-Clause 8.8b)
1.	Milestone 1 – Clayfill	30 August 2026	1% per week of the Accepted Contract Amount
2.	<u>Milestone 2 – Waste rock</u>	15 – Sept-2026	1% per week of the Accepted Contract Amount
3.	<u>Milestone 3 – Filter drain</u>	30 September	1% per week of the Accepted Contract Amount
4.	<u>Milestone 4 –</u>		1% per week of the Accepted Contract Amount

The above completion schedule is agreed based on the below.

Access to FTSF activities to start from the Company to Contractor will be no later than 17th August 2026.

Access to Under Ground Waste Stockpile activities to start from the Company to Contractor will be no later than 17th August 2026.

The Company's Representative will issue drawings and other engineering deliverables related to the design of the Works as required for completion of the milestones mentioned above.

Table 6-2: List of Drawings

6.1 Labour

The table below represent the labour the Contractor will mobilise to Site to perform the Works.

Table 6-3: Contractor's Personnel

Schedule 7: List of approved subcontractors

As of the Effective Date, the Parties have agreed on the Subcontractors listed below. At any time during the term of this Agreement, the Parties may modify (add, decrease, or otherwise amend) the list, in accordance with Clause 5 [*Subcontractors*] of the General Conditions.

Table 7-1: Subcontractors

Name	Section of the Works	Approximate Subcontract Value
None		

Schedule 8: Company's Standards

The Company Standards as listed in the Engineering Document List No. shall form part of the Agreement.

Schedule 9: Not Applicable.

Schedule 10: Local Content Requirements

1.1 Local personnel

The Contractor shall apply all reasonable endeavours to maximise the employment of qualified individuals residing in the Province XXX where practicable to do so, including by ensuring that the Contractor implements training, development, and apprenticeship programs to enhance the qualifications and skillsets of its personnel.

1.2 Local procurement

The Contractor shall establish and follow procurement processes that:

- (a) maximize, to the greatest extent reasonably practicable, the securing of local goods, materials and services required for the Works from businesses operated by local persons wherever they are competitive on cost, quality, reliability, availability, warranty and security of supply relative to foreign sourced goods, materials and services, and so long as their quality, availability and performance meet the needs and expectations of the Company; and
- (b) work with national, provincial and local level public sector entities to support the development of, and supply and procurement from, businesses operated by local persons,

provided, in each case, that, where goods, materials and services can be reasonably procured from businesses operated by local persons on the basis of the foregoing, the Contractor shall give:

- (1) first preference to businesses owned and operated by local persons which are located within the Province XXXXX, and
- (2) second preference to businesses owned and operated by local persons located elsewhere in DRC.

Table 10-1: Local Content Commitment

Item	Name of Business	Description	Business Origin	% of Works	Estimated Value
Local Personnel					
1	Local Personnel - Direct Works	Workforce Personnel			
2	Local Personnel - Indirect, Supervision & Support	Workforce Personnel			
TOTAL PERSONNEL					
Local Procurement (Goods, materials and services)					
1	Quarries	Aggregates			
2	Cement	Cement			
3	Zambia	Reinforcing Steel			
4	Accommodation and Feeding	Local Suppliers			

Item	Name of Business	Description	Business Origin	% of Works	Estimated Value
5	Local Personnel Transport	Local Service Providers			
6	Establishment Costs + Local Services	Local Service Providers			
7	Local Transportation	Local Service Providers			
TOTAL PROCUREMENT					

Schedule 11: Daywork Schedule

The following rates will be used for work performed in addition to the Contract, where unit prices/rates in the Contract are not applicable, and at the written request of the Company's Representative.

Rates include any markups for and by the Contractor's subcontractors as these will not be recognized as separate from the Contractor's own work.

For work performed, on a "cost plus" basis, the Contractor will supply a detailed itemization of labor, material and equipment costs to support claims. All time sheets, material or equipment bills must also be supplied.

Time sheets and material or equipment records must be signed by Representative or his authorized representative on a daily basis. The following are hourly rates for the Contractor's and Subcontractor's personnel. Rates are inclusive of payroll burden and based on a 60-hour work week and reflected in the Table 11-1.

Table 11-1: Personnel Rates

Role Description	Normal Time USD/hour	Overtime/Sundays USD/hour	Standing Time USD/hour
General Worker	\$		
Semi Skilled	\$		
Skilled	\$		
Operator Grade 1	\$		
Operator Grade 3	\$		
Operator Grade 5	\$		

The following are hourly rates for the Contractor's and Subcontractor's plant and equipment. Rates are based on a 60-hour work week and reflected in Table 11-2. Rates include the cost of operators, fuel, mobilization and demobilization.

Table 11-2: Plant/Equipment Rates

Description	Size/ Capacity	Normal Rate USD/Hour	Overtime USD/Hour	Sunday/Public Holiday USD/Hour	Standby Rate USD/Hour
B30 ADT	30 Tons				
B45 ADT	45 Tons				
20 Ton Excavator	20 Tons				
30 Ton Excavator	30 Tons				
50 Ton Excavator	50 Tons				
TLB	62 kW				

Description	Size/ Capacity	Normal Rate USD/Hour	Overtime USD/Hour	Sunday/Public Holiday USD/Hour	Standby Rate USD/Hour
Front End Loader	211 kW				
140G Grader	147 kW				
12 Ton Roller	12 Ton				
19 Ton Roller	19 Ton				
D6 Dozer	168 kW				
18KL Water Tanker	18 KL				
30 Ton Mobile Crane	30 Tons				
7 Ton Crane Truck	7 Tons				
Spinner Truck	6m3				
Light Duty Vehicle	TBC				
Bus	30 Seater				
4 Inch Water Pump	4 Inch				
200 CFM Compressor	200 CFM				
6kVa Generator	6 kVa				
88kVa Generator	88 kVa				
Lighting Plant	-				
6KL Diesel Bowser	6KL				

Schedule 12: Schedule of Contractor's Documents

The Contractor shall submit documents in the format and within the period of time as defined in the Vendor Document and Data Requirements (VDDR) Document No. and elsewhere in this Agreement.

All documents shall be submitted to the Company Representative's ShareCenter Portal as outlined in the Manage Controlled Supplier/Contractor Documents Document No..

The Contractor shall not be permitted to mobilise to Site until all Pre-Mobilisation Deliverables listed in the VDDR have been approved by the Company

Schedule 13: Project Execution Plan

Not Applicable.

Schedule 14: Temporary Works

The Contractor shall provide the following temporary works (Accommodation and messing facilities, offices, workshops, stores, ablutions, etc.), it requires to perform the Works.

- a) Site Establishment as per Figure 1
- b) Staff and labour accommodation to be established off site.

Figure 1: Site Establishment Layout

Schedule 15: Contractor's Equipment

The following is a detailed list of construction equipment proposed by the Contractor for the performance of the Works. Once approved by the Company, the construction equipment listed below shall not be changed except with the Company's prior written approval.

Figure 2: Contractor's Equipment

Schedule 16: Project Organisation Structure and Key Personnel

Attached is the Contractor's Project Organisation Structure and each role and Contractor's Personnel identified therein shall be deemed to be Key Personnel for the performance of the Works under this Agreement.

The Contractor has confirmed availability of the Key Personnel identified on the attached Project Organisation Structure. The Contractor shall ensure that all Key Personnel listed below have appropriate coverage during R&R, including sufficient handover overlap.

The on-Site Key Personnel shall be on Site on a full-time basis.

Table 16-1: Key Personnel

Name	Function
	Contracts Director
	Contracts Manager
	QA Manager
	Safety Manager
	Planner

Figure 3: Project Organisation Structure

Schedule 17: P&G Breakdown

Refer to the attached detailed P&G dated 30.01.26

Schedule 18: Fuel Forecast

The Contractor shall provide a Fuel Supply and Storage Plan per Sub-Clause 4.20(b) for the fuel forecasted in Table 18-1.

Table 18-1: Fuel Forecast

Item No	Month	Estimated Quantity (liters)
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		

VARIATION DIRECTION

THE CONTRACT SHALL BE VARIED TO THE EXTENT SET OUT BELOW:

Schedule

This Variation Direction represents the final adjustment to the Contract Price, for any and all amounts due or becoming due to the Contractor inclusive of preliminaries and all general recurring costs, and the final adjustment, if any, to the Time for Completion, for and in relation to this Variation. Except for any amendment(s) specifically made in this Variation Direction, the Contract remains unchanged.

Signatures

Company	Signed by authorised representative for and on behalf of KIBALI GOLD MINES
	Signature:
	Name:
	Date:

Schedule 20: Form of Release

This Deed is executed pursuant to the provisions of the agreement between Kibali Gold Mines (Company) and [insert Contract entity] (Contractor) (Contract Number: [insert no.]) (the Agreement). Capitalized terms contained herein and not otherwise defined shall have the same meaning as is given to them in the Agreement.

In consideration of payment by the Company of the Final Payment under the Agreement, and subject to the Company's return of the Retention Money (if any) the Contractor hereby waives, releases and forever discharges the Company and each of its Affiliates and directors, servants or agents from any and all claims, actions, demands, suits or proceedings for damages, debt, restitution, compensation, account, injunction, specific performance or any other remedy which the Contractor has as of the date of this release, irrespective of whether the circumstances giving rise to such are known to the Contractor, including Claims, Disputes, and liabilities arising under or in connection with the Agreement, except for the Final Payment and any surviving obligations set forth in the Agreement.

This Deed may be pleaded in bar to any action, suit, proceeding claim or demand which may be brought against Company or any of its Affiliates or directors, servants or agents.

This Deed is governed by the laws of England and Wales and the parties agree that Clause 20 of the Agreement will apply to any Disputes arising from this Deed.

Date: [INSERT Date]

Executed as a Deed Poll

Duly authorized for and on behalf of the Contractor:

By: _____

Name: [insert authorized signatory for Contractor]

Title: [insert employment title for authorized signatory for Contractor]

Date: [insert signature date]

END OF CONTRACT